

May 6, 2008

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State of California
Labor & Workforce Development Agency

Via Certified Mail

Labor and Workforce Development Agency
801 "K" Street, Suite 201
Sacramento, CA 95814

Re: *Bowman v. CMG, Inc. et al.* - Northern District Case No. C-07-3140-SI
Notice of Labor Code § 2699 Violations

Dear Sir or Madam:

This is written pursuant to Labor Code § 2699.3 to provide the LWDA with notice that the Plaintiffs in the above-referenced matter intend to file an amended complaint raising claims under Labor Code § 2699 against Defendants CMG Mortgage, Inc., et al.

Plaintiff's amended complaint will allege violations of the Labor Code that include §§ 201/202, 203, 204, 221-225.5, 400-410, 432, 2802-2804, and 3751.

A copy of the Second Amended Complaint Plaintiffs intend to file shortly is attached setting forth the facts and theories giving rise to these claims.

The plaintiffs may be reached through my office. Should you have any questions or need further information, please contact me directly at (415) 984-1943. Thank you for your time in this matter.

Sincerely,



Alan F. Cohen

Enclosures

cc: CMG Mortgage, Inc. CMG Mortgage Services, Inc., CMG Financial Services,
Christopher M. George, all c/o counsel:
David Medlin
Joshua Rosenthal
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14 Attorneys for Plaintiffs James Bowman and
15 Pacific Real Estate Management Company, Inc.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 JAMES W. BOWMAN, JR. and PACIFIC
20 REAL ESTATE MANAGEMENT
21 COMPANY, INC., a Washington
22 Corporation,

23 Plaintiffs,

24 v.

25 CMG MORTGAGE, INC., a California
26 Corporation; CMG MORTGAGE, INC.,
27 d/b/a PACIFIC GUARANTEE
28 MORTGAGE, CMG MORTGAGE
SERVICES, INC., a California
corporation; CMG MORTGAGE
SERVICES, INC., d/b/a PACIFIC
GUARANTEE MORTGAGE, CMG
FINANCIAL SERVICES, INC., a
California Corporation, CHRISTOPHER
M. GEORGE, an individual,

Defendants.

Case No.: C-07-3140-SI

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs JAMES W. BOWMAN, JR. and PACIFIC REAL ESTATE MANAGEMENT
2 COMPANY, INC. allege:

3 **JURISDICTION**

4 1. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C
5 § 1332 (a) (1) because Plaintiffs and Defendants are citizens of different states, and the amount
6 in controversy exceeds the sum of seventy-five thousand dollars (\$75,000) exclusive of interests
7 and costs, as required by 28 U.S.C. § 1332(b). Diversity of citizenship exists. Plaintiffs are
8 citizens of the State of Washington. Defendants are citizens of the State of California because
9 they are incorporated in, and have their principal place of business in, the State of California.

10 **VENUE**

11 2. Venue is appropriate in this Court because the Defendants reside in this district,
12 and a substantial amount of the acts and omissions giving rise to this lawsuit occurred in this
13 district.

14 **INTRADISTRICT ASSIGNMENT**

15 3. Pursuant to Civil L.R. 3-2(d), this lawsuit should be assigned to the San Francisco
16 or Oakland Division of this Court because a substantial part of the events or omissions which
17 give rise to this lawsuit occurred in Contra Costa County.

18 **PARTIES**

19 4. **JAMES W. BOWMAN, JR.** Plaintiff JAMES W. BOWMAN, JR. (Bowman)
20 resides in Pierce County, Washington. From December, 2003, through January, 2007,
21 Defendant, CMG Mortgage, Inc. employed BOWMAN as a Branch Manager and as a Loan
22 Originator in the State of Washington.

23 5. **PACIFIC REAL ESTATE MANAGEMENT COMPANY, INC.** Plaintiff
24 Pacific Real Estate Management Company, Inc. (PREMCO) is a Washington corporation.
25 Along with BOWMAN, PREMCO entered into contracts with the Defendants under which it
26 leased office space and equipment in Washington and in turn sublet that space and equipment to
27 Defendants.
28

1 6. **CMG MORTGAGE, INC.** Defendant CMG Mortgage, Inc. (CMG) is a
2 California Corporation with a principal place of business in San Ramon, California. On
3 information and belief, CMG operates as a retail mortgage broker and a wholesale mortgage
4 bank. CMG licensed itself in the State of Washington as CMG Mortgage Inc., d/b/a Pacific
5 Guarantee Mortgage and employed BOWMAN as Branch Manager for the Federal Way and
6 Vancouver, Washington Branch Offices. CMG also licensed itself as CMG Mortgage Inc., d/b/a
7 Pacific Trust Lending and employed BOWMAN as a Loan Originator for the Federal Way and
8 Vancouver, Washington Branch Offices.

9 7. **CMG MORTGAGE SERVICES, INC.** Defendant CMG Mortgage Services,
10 Inc., (CMGS) is a California Corporation with a principal place of business in San Ramon,
11 California. CMGS is a retail mortgage broker. CMGS licensed itself in the State of Washington
12 as CMG Mortgage Services, Inc., d/b/a Pacific Guarantee Mortgage. Defendant CMGS
13 subleased and rented office space and equipment from Plaintiffs BOWMAN and PREMCO in
14 the State of Washington.

15 8. **CMG FINANCIAL SERVICES, INC.** Defendant CMG Financial Services,
16 Inc. is a California Corporation with a principal place of business in San Ramon, California. On
17 information and belief, CMG Financial Services is a holding company for CMG and CMGS.
18 CMG Financial Services, CMG and CMGS may be referred to herein as the "Corporate
19 Defendants."

20 9. **CHRISTOPHER M. GEORGE.** Defendant Christopher M. George (George) is
21 the president and chief executive officer of the Corporate Defendants. On information and
22 belief, George is also the sole owner of the Corporate Defendants.

23 10. On information and belief, each defendant named herein is in some manner
24 responsible for the wrongs and damages alleged in this complaint. In so acting, each defendant
25 was functioning as the agent, servant, partner and/or employee of the other defendants, and
26 throughout the events alleged in this complaint was acting within the course and scope of his or
27 her authority as principal, agent, servant, partner and/or employee with the permission and
28

1 consent of the other defendants. Further, on information and belief, the acts alleged herein were
2 authorized and/or ratified by each and every other defendant.

3 **STATEMENT OF FACTS**

4 **Introduction**

5 11. Beginning in December, 2003, Plaintiffs and the Corporate Defendants entered
6 into a series of agreements which established an employment relationship between Bowman and
7 those Defendants.

8 12. All of the agreements between Plaintiffs and the Corporate Defendants contained
9 a Choice of Law clause in which the parties agreed to the following: "This Agreement shall be
10 governed by and construed under the laws of the State of California, without regard to conflicts
11 of laws principles." Throughout the course of Plaintiff Bowman's employment, Defendant
12 CMG's headquarters and principal place of business, at 3160 Crow Canyon Road in San Ramon,
13 California served as the Command and Control Center for the management and operations of the
14 two Branch Offices which Plaintiff Bowman managed in Washington.

15 13. From its California location, Defendants directed and controlled the Washington
16 Branch Offices, on a continual and systematic basis, regarding the following, but not limited to:
17 (a) Underwriting for loan documents; (b) Network Branch Office Operations; (c) Loan Funding;
18 (d) Audits; (e) Conference Calls; (f) Marketing; (g) Technical Support; (h) Human Resources;
19 (i) Branch Office Accounting; (j) Human Resources; (k) 401(k) plans; (l) corporate policy and
20 procedures.

21 14. In March 2006, Defendant CMG presented revised Agreements to Plaintiffs
22 BOWMAN and PREMCO to sign. The new Agreements would have replaced the existing
23 Agreements between Plaintiffs and Defendants. Plaintiffs did not sign them because they
24 appeared to be one sided in Defendants' favor with many significant terms left to the sole
25 discretion of Defendants. As a result of Plaintiffs' not signing the new Agreements, Defendants
26 terminated the existing Agreements effective as of January 31, 2007.

Branch Manager Employment Agreements

15. On, or about, December 3, 2003, Plaintiff Bowman and Defendant CMG entered into the first of two written BRANCH MANAGEMENT AND EMPLOYMENT AGREEMENTS (Branch Management Agreements). Under this agreement, CMG employed Bowman as a branch manager for the Federal Way Branch Office. A copy of this agreement is attached as **Exhibit A**. Bowman and CMG entered into a second written Branch Management Agreement on or about July 7, 2004. CMG employed Bowman as a Branch Manager for the Vancouver Branch Office. A copy of the Vancouver branch management agreement is attached as **Exhibit B**.

16. The Branch Management Agreements (drafted entirely by Defendants) expressly state that the relationship between Bowman and CMG is that of an employee and employer.

17. Paragraph nine (9) of both Branch Management Agreements required CMG to pay Bowman one hundred percent (100%) of the Branch Office Net Profits, defined as "Net Income from operations after Expenses but before taxes." The Agreements further define Net Income as being determined by deducting Expenses from Gross Income. Gross Income is defined as "all income earned and derived from the Branch Office."

18. Defendants breached the Branch Management Agreements in numerous ways. For example:

- a. Defendants have failed and refused to pay Bowman wages earned for labor performed during his last month of employment;
- b. Defendants deducted from Bowman's wages items improperly classified as "Expenses," including, without limitation, costs and losses of the employer that could not be attributed to Bowman; losses due to overpayment of former employees; and fines and taxes levied on CMG by state regulatory agencies. In general, Defendants unlawfully sought to make Bowman an insurer of their business losses at every opportunity;
- c. Defendants failed to account for numerous items improperly charged as Expenses against Gross Income, thus wrongfully reducing Bowman's wages. For example,

1 and without limitation, Defendants overpaid Branch employees, miscalculated
2 benefits contributions, and deducted money to pay a portion of CMG's tax
3 liability in Washington state even though 1) this was a corporate expense to
4 Defendants, not a Branch operating Expense, and 2) the Branch Management
5 Agreement specifically provides that Bowman was to be paid Net Income "after
6 Expenses but before taxes." Despite Bowman's many complaints, Defendants
7 refused to correct its errors and pay him his full wages owed;

- 8 d. Defendants failed to include all "income earned and derived from the Branch
9 Office" in its calculation of Gross Income, thus depriving Bowman of earned
10 wages. For example, and without limitation, fees paid by borrowers, service
11 release premiums, yield spread premiums, income generated on the sale of loans,
12 and other revenues all constituted income earned and derived from the Branch
13 Office but were not counted toward Bowman's wages;
- 14 e. Defendants deducted money from Branch revenues to pay matching contribution
15 to employee benefits (such as CMG's 401k program). Some of these employees
16 terminated their employment without vesting into those benefits, meaning that
17 those contributions should have been considered Gross Income to Bowman's
18 Branches. Defendants did not return these amounts to Bowman either during his
19 employment or when he was terminated.

20 19. The Branch Management Agreements provide that they shall be governed by and
21 construed under California law, without regard to conflicts of law principles.

22 **Facilities and Equipment Rental Agreements**

23 20. On or about December 3, 2003, Plaintiffs entered into the first of two written
24 Facilities and Equipment Rental Agreement ("Facilities Agreement") with Defendant CMG
25 relating to the Federal Way Branch Office. A copy of this agreement is attached as **Exhibit C**.
26 On or about July 7, 2004, Plaintiffs entered into a second written Facilities Agreement with
27 CMG for the Vancouver Branch Office. A copy of this agreement is attached as **Exhibit D**.
28

1 Defendants required Mr. Bowman to enter into these Facilities Agreements as a condition of his
2 employment.

3 21. Under the Facilities Agreements, Defendants required Plaintiffs to enter into a
4 lease with third parties for the office space for the Federal Way and Vancouver Branches. The
5 Corporate Defendants in turn subleased these facilities from the Plaintiffs and located CMG's
6 Branch Offices there.

7 22. Defendants required Plaintiffs to advance all costs of operating the Branch
8 Offices, including rent, facilities, equipment, services, and supplies. Pursuant to the Facilities
9 Agreement, each month BOWMAN submitted to Defendants a list of the actual costs he had
10 incurred.

11 23. The Facilities Agreements required CMG to pay Plaintiffs a "Rental Fee" of one
12 hundred and twenty five percent (125%) of the actual costs incurred by both of the Branch
13 Offices. The Rental Fees were to be paid on a monthly basis.

14 24. Defendants breached the Facilities Agreements by failing to pay on a monthly
15 basis all expenses incurred by Bowman in operating the Branches. Defendants further breached
16 the Facilities Agreements by failing to pay Bowman the Rental Fees he was owed under the
17 Agreements.

18 25. Because Defendants failed to reimburse Plaintiffs for all Branch Office operating
19 costs, Plaintiffs were forced to pay these remaining costs out of their own pockets. In Bowman's
20 case, this meant not only paying expenses of his employer but doing so with after-tax dollars.

21 26. Defendants also required Plaintiffs to pay a "Security Deposit" "to secure any and
22 all obligations of [Plaintiffs], whether arising out of this agreement or otherwise." This so-called
23 security deposit arrangement is unlawful under California law. *See* Labor Code § 401 *et seq.* and
24 Labor Code § 2082. Defendants also failed to segregate and properly account for the security
25 deposits. Moreover, on information and belief, Defendants wrongfully converted these funds
26 and used them to their own financial benefit.

27. Defendants breached the Facilities Agreements by failing to refund Plaintiffs' Security Deposits, by failing to pay the interest accrued through the use of Plaintiffs' funds, and by misusing the Security Deposits to pay expenses of Defendants with informing Plaintiffs.

28. Like the Branch Management Agreements, the Facilities Agreements provide that they shall be governed by and construed under California, without regard to conflicts of law principles.

Marketing Credits

29. As part of his compensation as Branch Manager, Plaintiff BOWMAN accrued so-called Marketing Credits which, pursuant to written and oral promises by Defendants, were to be paid as a bonus for CMG funded marketing campaigns.

30. Defendants acknowledged that Bowman is owed wages based on the Marketing Credits at the time of his termination from CMG. For example, CMG's Associate Marketing Director, Kern Lewis, wrote in an email dated January 30, 2007 that Bowman had accrued 15,383 credits, that Bowman had submitted documentation showing eligible marketing expenses (a condition precedent to payments based on the Marketing Credits), and that Bowman was due \$12,306 as a result. (On information and belief, Bowman was owed a greater sum than this).

31. Despite Defendants' promises, and despite performance of all conditions precedent to earning wages based on the Marketing Credits, Defendants have failed and refused to pay Bowman these wages.

Branch Office Reserves

32. During Plaintiff Bowman's employment, Defendants deducted amounts from the Branch Net Profits as so-called Reserves. Defendants, including Mr. George, represented to Bowman that these Reserves were required by the Department of Housing and Urban Development, and that the Branch Managers were required to maintain these Reserves with Defendants. On information and belief, Mr. George made the same representation to other Branch Managers.

1 33. Defendants, including Mr. George, also represented to Bowman that they were
2 taking Reserves from Bowman's wages to ensure against Branch losses. On information and
3 belief, Mr. George made the same representation to other Branch Managers.

4 34. Defendants' representations were false when made, and Defendants, including
5 Mr. George, knew them to be false. Defendants deposited the "Reserves" into their bank
6 operating accounts and used them for purposes other than those disclosed to Plaintiffs. These
7 purposes included providing collateral to obtain and maintain Defendants' lines of credits,
8 reducing Defendants' exposure to losses, and, on information and belief, meeting Defendants'
9 general financial obligations. Defendants, including Mr. George individually, benefited
10 financially from their deceit at the expense of Bowman and other Branch Managers.

11 35. Bowman reasonably relied on Defendants' misrepresentations and duly honored
12 Defendants' request for reserves. He was unaware that Defendants' stated reasons for requesting
13 Reserves were false, or that Defendants were using the Reserves for other wrongful purposes,
14 which Defendants concealed.

15 36. Defendants had no right to withhold "Reserves" from employees, including
16 Branch Managers, for any reason, including ensuring against losses or satisfying government
17 regulations. If such regulations had any application at all, they were applicable to the Corporate
18 Defendants only and did not create a duty belonging to the individual branches and Branch
19 Managers. An employer may not make its employees an insurer of its business losses. *See, e.g.,*
20 *Kerr's Catering v. DIR* (1962) 57 Cal.2d 319, 327-328).

21 37. Defendants' practice of taking "Reserves" from Branch Managers is unlawful
22 under California law. Labor Code § 402 makes it unlawful for any employer to demand, exact,
23 or accept any cash bond from any employee except in limited circumstances not present here.
24 Sections 402 *et seq.* impose rigorous limits on an employer's ability to extract a bond from
25 employees. Among other things, even where the bond is permissible the employer is required to
26 hold the amounts received **in trust** for the employees in a savings account. The employer may
27 not intermingle the amounts held in trust with the employer's own funds, and may not use the
28 entrusted funds for any other purpose other than that provided by the bond law. Labor Code

1 §§ 403, 405. As a matter of law, Defendants are “guilty of theft, and shall be punished in
2 accordance with the provisions of the Penal Code relating to theft.” Labor Code § 405.

3 38. Defendants’ intent and practice of holding employees responsible for expenses
4 incurred in the course and scope of their employment is also unlawful under Labor Code § 2802.

5 39. Defendants failed to keep the Reserves received from Bowman and other Branch
6 Managers segregated from other funds and failed to pay interest earned on the reserves to
7 Bowman and other Branch Managers.

8 **CMG Terminated its Agreements with Plaintiffs BOWMAN & PREMCO**

9 40. By Notice of Termination, dated December 18, 2006, Defendants gave Bowman
10 notice that they were terminating him as an employee and that they were also terminating all
11 agreements with him and PREMCO. The terminations were effective as of January 31, 2007.

12 41. Plaintiff Bowman has attempted, in good faith, to contact Defendants regarding
13 the payment of monies owed to him and PREMCO. Bowman has requested and demanded
14 payment during telephone conversations and in writing to Defendant. However, Defendants
15 have not paid Plaintiffs. As a result of Defendants’ willful nonpayment of wages and other
16 monies owed, Plaintiff BOWMAN has suffered, and continues to suffer, extreme economic
17 hardship in his business and personal life. Plaintiff PREMCO has, also suffered, and continues
18 to suffer extreme economic hardship in business.

19 **CLAIMS FOR RELIEF**

20 **FIRST CAUSE OF ACTION**

21 **[Breach of Contract – Federal Way Branch Management Agreement]
22 [By Plaintiff Bowman Against the Corporate Defendants]**

23 42. Plaintiff realleges and incorporates by reference each and every allegation
24 contained in paragraphs 1 through 41 above as though fully set forth herein.

25 43. As alleged in part above, Plaintiff Bowman entered into an employment
26 agreement with the Corporate Defendants to be Branch Manager of Defendants’ Federal Way
27 Branch that was partly written, partly oral, and partly implied in fact.

28 44. Plaintiff Bowman has performed all conditions and covenants necessary to
receive full payment under the above promises.

45. Defendants have breached their promises and duties to Plaintiff by wrongfully failing to pay all of the compensation due and owing under the terms of the various promises.

46. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiffs have suffered substantial economic damages in excess of the minimum subject matter jurisdiction of this court, all in an amount according to proof.

47. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiff is entitled to payment of wages, pre-judgment interest thereon pursuant to Labor Code § 218.6, penalties provided by the Labor Code and an award of attorneys' fees and costs pursuant to Labor Code § 218.5, all in an amount according to proof. If California law is found to be inapplicable, Plaintiff pleads, in the alternative, Revised Code of Washington (RCW) §§ 49.48.010, 49.48.030, 49.52.050, and 49.52.070. Under RCW § 49.48.030, Plaintiff is entitled to reasonable attorney's fees.

SECOND CAUSE OF ACTION

[Breach of Contract – Vancouver Branch Management]
[By Plaintiff Bowman Against the Corporate Defendants]

48. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 47 above as though fully set forth herein.

49. As alleged in part above, Plaintiff Bowman entered into an employment agreement with the Corporate Defendants to be Branch Manager of Defendants' Vancouver Branch that was partly written, partly oral, and partly implied in fact.

50. Plaintiff Bowman has performed all conditions and covenants necessary to receive full payment under the above promises.

51. Defendants have breached their promises and duties to Plaintiff by wrongfully failing to pay all of the compensation due and owing under the terms of the various promises.

52. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiffs have suffered substantial economic damages in excess of the minimum subject matter jurisdiction of this court, all in an amount according to proof.

53. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiff is entitled to payment of wages, pre-judgment interest thereon pursuant to Labor

1 Code § 218.6, penalties provided by the Labor Code and an award of attorneys' fees and costs
2 pursuant to Labor Code § 218.5, all in an amount according to proof. If California law is found
3 to be inapplicable, Plaintiff pleads, in the alternative, Revised Code of Washington (RCW)
4 §§ 49.48.010, 49.48.030, 49.52.050, and 49.52.070. Under RCW § 49.48.030, Plaintiff is
5 entitled to reasonable attorney's fees.

6 **THIRD CAUSE OF ACTION**

7 **[Breach of Contract – Federal Way Facilities Agreement]
8 [By Both Plaintiffs Against the Corporate Defendants]**

9 54. Plaintiffs reallege and incorporate by reference each and every allegation
10 contained in paragraphs 1 through 53 above as though fully set forth herein.

11 55. As alleged in part above, a Facilities Agreement existed between the Plaintiffs
12 and the Corporate Defendants concerning Defendants' Federal Way Branch.

13 56. Plaintiffs have performed all conditions and covenants necessary to receive full
14 payment under the above promises.

15 57. Defendants have breached their promises and duties to Plaintiffs by wrongfully
16 failing to pay all of the compensation due and owing under the Facilities Agreements.

17 58. As a direct and proximate result of the unlawful conduct of Defendants alleged
18 herein, Plaintiffs have suffered substantial economic damages in excess of the minimum subject
19 matter jurisdiction of this court, all in an amount according to proof.

20 59. Plaintiffs also seek an award of attorneys' fees and costs and interest.

21 **FOURTH CAUSE OF ACTION**

22 **[Breach of Contract – Vancouver Facilities Agreement]
23 [By Both Plaintiffs Against the Corporate Defendants]**

24 60. Plaintiffs reallege and incorporate by reference each and every allegation
25 contained in paragraphs 1 through 59 above as though fully set forth herein.

26 61. As alleged in part above, a Facilities Agreement existed between the Plaintiffs
27 and the Corporate Defendants concerning Defendants' Vancouver Branch.

28 62. Plaintiffs have performed all conditions and covenants necessary to receive full
payment under the above promises.

63. Defendants have breached their promises and duties to Plaintiffs by wrongfully failing to pay all of the compensation due and owing under the Facilities Agreements.

64. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiffs have suffered substantial economic damages in excess of the minimum subject matter jurisdiction of this court, all in an amount according to proof.

65. Plaintiffs also seek an award of attorneys' fees and costs and interest.

FIFTH CAUSE OF ACTION

**[Breach of Implied Covenant of Good Faith and Fair Dealing]
[By Both Plaintiffs Against the Corporate Defendants]**

66. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 65 above as though fully set forth herein.

67. The contractual terms alleged above contained an implied covenant of good faith and fair dealing that obligated Defendants to perform the terms and conditions of the contractual terms fairly and in good faith and to refrain from doing any act that would deprive Plaintiffs of the benefits of the contractual terms.

68. Plaintiffs have performed all conditions and covenants necessary to receive full payment under their contracts with Defendants.

69. By their actions and/or failures to act as alleged above, the Corporate Defendants breached the implied covenant of good faith and fair dealing with the intent and effect of depriving Plaintiffs of the benefits of the contractual terms.

70. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiffs have suffered substantial economic damages in excess of the minimum subject matter jurisdiction of this court, all in an amount according to proof.

71. As a direct and proximate result of the unlawful conduct of Defendants alleged herein, Plaintiff is entitled to payment of wages, pre-judgment interest thereon pursuant to Labor Code § 218.6, penalties provided by the Labor Code and an award of attorneys' fees and costs pursuant to Labor Code § 218.5, all in an amount according to proof. If California law is found to be inapplicable, Plaintiff pleads, in the alternative, Revised Code of Washington (RCW)

1 §§ 49.48.010, 49.48.030, 49.52.050, and 49.52.070. Under RCW § 49.48.030, Plaintiff is
2 entitled to reasonable attorney's fees.

3 **SIXTH CAUSE OF ACTION**

4 **[Failure to Pay Wages – Labor Code Statutory Cause of Action]**
5 **[By Plaintiff Bowman Against the Corporate Defendants]**

6 72. Plaintiff realleges and incorporates by reference each and every allegation
7 contained in paragraphs 1 through 71 above as though fully set forth herein.

8 73. At all times material to this complaint, Labor Code §§ 201, 202, 204, 208, 216,
9 and 218 were in full force and effect and governed the conduct of Defendants. Section 204
10 required Defendants to pay all wages owed to Mr. Bowman during his employment no later than
11 the conclusion of the pay period in which the wages were earned, which when applied to
12 commission wages means the pay period after all conditions precedent to payment were satisfied.
13 Sections 201, 202, and 208 required Defendants to pay Mr. Bowman at the time and place of
14 discharge. Section 216 provides that an employer who, having the ability to pay, willfully
15 refuses to pay wages due and payable after demand has been made, is guilty of a misdemeanor.
16 Section 218 provides that an employee may sue directly for wages or penalties due him.

17 74. At all times material to this complaint, Labor Code §§ 221-225.5 and 400-410
18 were in full force and effect and governed the conduct of Defendants. These statutes make it
19 unlawful for Defendants to collect or receive from an employee any part of wages theretofore
20 paid, or to demand, withhold or divert such wages, or exact or accept a cash bond from
21 employees under any but the most limited of circumstances.

22 75. As alleged in part above, and in violation of the above Labor Code provisions,
23 Defendants owed Mr. Bowman wages that remained unpaid at the time his employment with
24 Defendants terminated.

25 76. Despite demands by Mr. Bowman, Defendants willfully refused, and continue to
26 refuse, to pay all wages they owe.

27 77. Plaintiff has performed all conditions and covenants necessary to receive full
28 payment of his earned but unpaid commission wages.

1 78. As a direct and proximate result of the unlawful conduct of Defendants alleged
2 herein, Plaintiff is entitled to payment of wages, pre-judgment interest thereon pursuant to Labor
3 Code § 218.6, penalties provided by the Labor Code and an award of attorneys' fees and costs
4 pursuant to Labor Code § 218.5, all in an amount according to proof.

5 **SEVENTH CAUSE OF ACTION**
6 **[Labor Code Waiting Time Penalties]**
7 **[By Plaintiff Bowman Against the Corporate Defendants]**

8 79. Plaintiff realleges and incorporates by reference each and every allegation
9 contained in paragraphs 1 through 78 above as though fully set forth herein.

10 80. At all times material to this complaint, Labor Code §§ 201-203 have been in full
11 force and effect and were binding on Defendants. These sections provide that employers must
12 pay their employees all earned but unpaid wages at the time of termination, for employees whose
13 termination is involuntary or who provide more than 72 hours of notice before resigning, or
14 within 72 hours, for employees whose termination is voluntary but without notice.

15 81. Section 203 provides that if an employer willfully fails to pay any wages of an
16 employee who is discharged or quits, the wages of such employee shall continue as from the due
17 date thereof at the same rate until paid or until an action therefor is commenced, for not more
18 than 30 days.

19 82. Defendants failed to pay Mr. Bowman all earned but unpaid wages within the
20 time period set forth in Labor Code §§ 201-203.

21 83. Defendant's failure to timely pay Mr. Bowman following his termination was
22 willful within the meaning of § 203.

23 84. More than 30 days have passed since Plaintiff was discharged or quit his
24 employment with Defendant.

25 **EIGHTH CAUSE OF ACTION**
26 **[Intentional Fraud]**
27 **[By Both Plaintiffs Against All Defendants]**

28 85. Plaintiffs reallege and incorporate by reference each and every allegation
contained in paragraphs 1 through 84 above as though fully set forth herein.

1 86. On several occasions, Defendant George represented to Bowman that Bowman
2 was required to contribute "Reserves" by the Department of Housing and Urban Development, to
3 be held by Defendants. George told Bowman that if the decision were left up to George, CMG
4 would not require the Branch Managers to pay into Reserves. On information and belief,
5 Mr. George made the same or similar representation to other Branch Managers. For example, in
6 a conference call held on or about December 16, 2004, George made these representations to a
7 group of Branch Managers. George also made these representations to Bowman personally.

8 87. Defendants, including Mr. George, also represented to Bowman that they were
9 withholding Reserves from Bowman's wages to ensure against Branch losses. On information
10 and belief, Mr. George made the same representation to other Branch Managers.

11 88. Defendants' representations were false when made, and Defendants, including
12 Mr. George, knew them to be false. As alleged above, Defendants deposited the "reserves" into
13 their operating bank accounts and used them for purposes other than those disclosed to Plaintiffs.
14 Defendants concealed this information and never informed Bowman that his reserves were being
15 commingled with Defendants' operating funds and used for other purposes. Defendants' actions
16 in extracting these funds from Plaintiffs were illegal, and Defendants' use of these funds was
17 illegal as well. Labor Code § 402-409.

18 89. Defendants' true purposes for taking Reserves from Bowman included providing
19 additional operating capital to fund Defendants' operations, providing collateral to obtain and
20 maintain Defendants' lines of credits, providing additional funds allowing CMG to operate as a
21 mortgage bank, reducing Defendants' exposure to losses, increasing the funds available to fund
22 loans, and meeting Defendants' general financial obligations. It is entirely possible that these
23 funds were used from time to time to pay wages to employees, including Mr. Bowman himself.
24 Defendants, including Mr. George individually, benefited financially from their deceit at the
25 expense of Bowman and other Branch Managers.

26 90. Defendants made their false representations with the intent of inducing Bowman
27 to rely upon those representations and act, or refrain from acting, to his detriment.
28

1 91. Plaintiffs reasonably relied on Defendants' misrepresentations and agreed to
2 produce the Reserves requested by Defendants. He was unaware that Defendants' stated reasons
3 for requesting reserves were false, or that Defendants were using the reserves for other wrongful
4 purposes, which Defendants concealed. Plaintiffs were induced to surrender security deposits
5 and Reserves to Defendants which they would not have done had they known the true facts.

6 92. As a result of Defendants' misrepresentations, Plaintiffs have suffered damages,
7 including general, special, and foreseeable economic damages caused by Defendants'
8 withholding and refusal to timely return the Reserves at or soon after the time when Bowman's
9 employment with Defendants was terminated.

10 93. The persons who committed the unlawful acts described herein were officers,
11 directors, and/or managing agents of Defendants acting within the scope of their employment.
12 The unlawful acts described herein were committed with oppression, fraud and/or malice and
13 were authorized, ratified or both by such officers, directors, and/or managing agents. In light of
14 Defendants' willful, knowing, and intentional misrepresentations, Plaintiffs seek an award of
15 punitive and exemplary damages in an amount according to proof.

16 94. Defendants' misrepresentations concerning the Reserves created a constructive
17 trust over that property, imposing on Defendants all duties of a trustee and entitling Plaintiffs to
18 recover all rights and remedies flowing to a trust beneficiary.

19 **NINTH CAUSE OF ACTION**

20 **[Fraud by Concealment]**

21 **[By Both Plaintiffs Against All Defendants]**

22 95. Plaintiffs reallege and incorporate by reference each and every allegation
23 contained in paragraphs 1 through 94 above as though fully set forth herein.

24 96. On several occasions, Defendant George represented to Bowman that Bowman
25 was required to contribute "Reserves" by the Department of Housing and Urban Development, to
26 be held by Defendants. George told Bowman that if the decision were left up to George, CMG
27 would not require the Branch Managers to pay into Reserves. On information and belief,
28 Mr. George made the same or similar representation to other Branch Managers. For example, in

1 a conference call held on or about December 16, 2004, George made these representations to a
2 group of Branch Managers. George also made these representations to Bowman personally.

3 97. Defendants, including Mr. George, also represented to Bowman that they were
4 withholding Reserves from Bowman's wages to ensure against Branch losses. On information
5 and belief, Mr. George made the same representation to other Branch Managers.

6 98. Defendants' representations concealed their true purposes for requiring these
7 reserves. As alleged above, Defendants deposited the "reserves" into their operating bank
8 accounts and used them for purposes other than those disclosed to Plaintiffs. Defendants
9 concealed this information and never informed Bowman that his reserves were being
10 commingled with Defendants' operating funds and used for other purposes. Defendants' actions
11 in extracting these funds from Plaintiffs were illegal, and Defendants' use of these funds was
12 illegal as well. Labor Code § 402-409.

13 99. On information and belief, Defendants' true purposes for taking Reserves from
14 Bowman included providing additional operating capital to fund Defendants' operations,
15 providing collateral to obtain and maintain Defendants' lines of credits, providing additional of
16 funds allowing CMG to operate as a mortgage bank, reducing Defendants' exposure to losses,
17 increasing the funds available to fund loans, and meeting Defendants' general financial
18 obligations. It is entirely possible that these funds were used from time to time to pay wages to
19 employees, including Mr. Bowman himself. Defendants, including Mr. George individually,
20 benefited financially from their deceit at the expense of Bowman and other Branch Managers.

21 100. By virtue of his position of authority and trust, George was under a duty to
22 disclose the true facts to Bowman and the Branch Managers. Moreover, since did speak to
23 Bowman about these facts and Bowman's associated rights, George was bound not only to tell
24 the truth but also not to suppress or conceal facts within his knowledge that materially qualified
25 his statements. One who speaks at all to certain facts must make a full and fair disclosure of the
26 related facts. *See, e.g., Brownlee v. Vang (1965) 235 Cal.App.2d 465, 477.*

101. Defendants made their false representations and concealed pertinent facts with the intent of inducing Bowman to rely upon those representations and act, or refrain from acting, to his detriment.

102. Plaintiffs reasonably relied on Defendants' misrepresentations and, in ignorance of the facts Defendants had concealed, agreed to produce the Reserves requested by Defendants. He was unaware that Defendants' stated reasons for requesting Reserves were false, or that Defendants were using the reserves for other wrongful purposes, which Defendants concealed. Plaintiffs were induced to surrender security deposits and Reserves to Defendants which they would not have done had they known the true facts.

103. As a result of Defendants' concealment and suppression of facts, Bowman has suffered damages, including general, special, and foreseeable economic damages caused by Defendants' withholding and refusal to timely return the Reserves at or soon after time when Bowman's employment with Defendants was terminated.

104. The persons who committed the unlawful acts described herein were officers, directors, and/or managing agents of Defendants acting within the scope of their employment. The unlawful acts described herein were committed with oppression, fraud and/or malice and were authorized, ratified or both by such officers, directors, and/or managing agents. In light of Defendants' willful, knowing, and intentional concealment, Plaintiffs seek an award of punitive and exemplary damages in an amount according to proof.

105. Defendants' concealment of the true facts concerning the Reserves created a constructive trust over that property, imposing on Defendants all duties of a trustee and entitling Plaintiffs to recover all rights and remedies flowing to a trust beneficiary.

TENTH CAUSE OF ACTION

[Conversion]

[By Both Plaintiffs Against the Corporate Defendants]

106. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 105 above as though fully set forth herein.

1 107. As alleged above, Defendants have taken possession of ascertainable sums of
2 money belonging to Plaintiffs. These sums include, but are not limited to, the wages and
3 Reserves belonging to Bowman and the security deposits belonging to Bowman and PREMCO.

4 108. By failing to surrender these ascertainable sums when they were owed and at no
5 time later than Bowman's termination, Defendants wrongfully exercised dominion and control
6 over Plaintiffs' property, and, thus converted the property to their own use.

7 109. Plaintiffs are entitled to be paid these sums and have been denied the possession,
8 use, and enjoyment of their property.

9 110. As a direct and proximate result of Defendant's alleged conduct, Plaintiffs have
10 been damaged in an amount to be proven at trial.

11 111. As a direct and proximate cause of Defendants' alleged conduct, Plaintiffs are
12 entitled to special damages, damages for emotional distress suffered, and for compensation for
13 time and money expended in the pursuit of the converted property, as provided by Cal. Civil
14 Code § 3336, all in an amount to be proven at trial.

15 112. The persons who committed the unlawful acts described herein were officers,
16 directors, and/or managing agents of Defendants acting within the scope of their employment.
17 The unlawful acts described herein were committed with oppression, fraud and/or malice and
18 were authorized, ratified or both by such officers, directors, and/or managing agents. In light of
19 Defendants' willful, knowing, and intentional acts, Plaintiffs seek an award of punitive and
20 exemplary damages in an amount according to proof.

21 **ELEVENTH CAUSE OF ACTION**
22 **[Breach of Fiduciary Duty]**
23 **[By Both Plaintiffs Against All Defendants]**

24 113. Plaintiffs reallege and incorporate by reference each and every allegation
25 contained in paragraphs 1 through 112 above as though fully set forth herein.

26 114. A fiduciary relationship existed between Defendants, on the one hand, and
27 Plaintiffs, on the other. The fiduciary nature of this relationship was established both by statute
28 and by common law when, among other things, Defendants demanded and extracted a cash bond

1 (the security deposits and Reserves) from Plaintiffs. Labor Code §§ 402-409 expressly create a
2 fiduciary duty in Defendants to hold the security deposits and Reserves in trust for Plaintiffs and
3 not to use them for any forbidden purpose. Moreover, the confidential nature of the relationship
4 between Defendants and Plaintiffs also created a fiduciary relationship between the parties.

5 115. By virtue of the trust relationship imposed on Defendants as a matter of law,
6 Defendants owed numerous duties to Plaintiffs, including the duty of loyalty, the duty to avoid
7 conflicts of interest, the duty to preserve trust property, the duty to make trust property
8 productive, the duty to dispose of improper investments, and the duty to report and account.

9 116. Defendants breached their fiduciary duties to Plaintiffs by, among other things,
10 unlawfully obtaining the security deposits and Reserves from Plaintiffs and other Branch
11 Managers, misrepresenting the true purposes for demanding these funds from Plaintiffs, failing
12 to segregate the corpus of the trust, intermingling Plaintiffs' entrusted funds with Defendants'
13 own operating funds, failing to report and account to Plaintiffs, failing to make the trust property
14 productive, misusing the entrusted funds for Defendants' own unlawful purposes, profiting from
15 the entrusted funds for Defendants' sole benefit and at Plaintiff's expense, and refusing to return
16 the entrusted funds to Plaintiff despite numerous demands.

17 117. As a direct and proximate result of Defendant's alleged conduct, Plaintiffs have
18 been damaged in an amount to be proven at trial.

19 118. As a direct and proximate cause of Defendants' breach of their fiduciary duties,
20 Plaintiffs are entitled to general, special damages, and punitive damages. In addition, Plaintiffs
21 are entitled to recover any loss or depreciation in value of the entrusted funds, including an
22 amount equal to that which would have been earned but for Defendants failure to make the trust
23 property productive; any profit that would have accrued to Plaintiffs but for Defendants breach;
24 interest; **and any and all profits made by Defendants through the breach of trust.**

25 119. The persons who committed the unlawful acts described herein were officers,
26 directors, and/or managing agents of Defendants acting within the scope of their employment.
27 The unlawful acts described herein were committed with oppression, fraud and/or malice and
28 were authorized, ratified or both by such officers, directors, and/or managing agents. In light of

Defendants' willful, knowing, and intentional acts, Plaintiffs seek an award of punitive and exemplary damages in an amount according to proof.

120. Plaintiffs request that the Court enjoin Defendants from committing further breaches of trust and compel Defendants to redress their breaches to date.

121. Plaintiffs also request that the Court remove Defendants as trustees over the entrusted property, appoint a receiver or temporary trustee to take possession of the trust property and to administer the trust, impose an equitable lien or constructive trust as necessary, trace trust property and recover Plaintiffs' property or its proceeds, and impose such other remedies as appropriate and available under law or equity, all at Defendants' sole expense.

TWELFTH CAUSE OF ACTION

[Aiding and Abetting Breach of Fiduciary Duty] [By Both Plaintiffs Against All Defendants]

122. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 121 above as though fully set forth herein.

123. A fiduciary relationship existed between the Corporate Defendants, on the one hand, and Plaintiffs, on the other. The fiduciary nature of this relationship was established both by statute and by common law when, among other things, Defendants demanded and extracted a cash bond (the security deposits and Reserves) from Plaintiffs. Labor Code §§ 402-409 expressly create a fiduciary duty in Defendants to hold the security deposits and Reserves in trust for Plaintiffs and not to use them for any forbidden purpose. Moreover, the confidential nature of the relationship between Defendants and Plaintiffs also created a fiduciary relationship between the parties.

124. By virtue of the trust relationship imposed on Defendants as a matter of law, Defendants owed numerous duties to Plaintiffs, including the duty of loyalty, the duty to avoid conflicts of interest, the duty to preserve trust property, the duty to make trust property productive, the duty to dispose of improper investments, and the duty to report and account.

125. Defendants breached their fiduciary duties to Plaintiffs by, among other things, unlawfully obtaining the security deposits and Reserves from Plaintiffs and other Branch

1 Managers, misrepresenting the true purposes for demanding these funds from Plaintiffs, failing
2 to segregate the corpus of the trust, intermingling Plaintiffs' entrusted funds with Defendants'
3 own operating funds, failing to report and account to Plaintiffs, failing to make the trust property
4 productive, misusing the entrusted funds for Defendants' own unlawful purposes, profiting from
5 the entrusted funds for Defendants' sole benefit and at Plaintiff's expense, and refusing to return
6 the entrusted funds to Plaintiff despite numerous demands.

7 126. Defendant Christopher George, and on information and belief other officers,
8 directors, employees, partners, agents, subsidiaries, and parents of the Corporate Defendants
9 aided and abetted in the breach of fiduciary duty to their own individual advantage and financial
10 gain.

11 127. As a direct and proximate result of Defendant's alleged conduct, Plaintiffs have
12 been damaged in an amount to be proven at trial.

13 128. As a direct and proximate cause of Defendants' aiding and abetting the breach of
14 fiduciary duties, Plaintiffs are entitled to general, special damages, and punitive damages. In
15 addition, Plaintiffs are entitled to recover any loss or depreciation in value of the entrusted funds,
16 including an amount equal to that which would have been earned but for Defendants failure to
17 make the trust property productive; any profit that would have accrued to Plaintiffs but for
18 Defendants breach; interest; **and any and all profits made by Defendants through the breach**
19 **of trust.**

20 129. The persons who committed the unlawful acts described herein were officers,
21 directors, and/or managing agents of Defendants acting within the scope of their employment.
22 The unlawful acts described herein were committed with oppression, fraud and/or malice and
23 were authorized, ratified or both by such officers, directors, and/or managing agents. In light of
24 Defendants' willful, knowing, and intentional acts, Plaintiffs seek an award of punitive and
25 exemplary damages in an amount according to proof.

26 130. Plaintiffs request that the Court enjoin Defendants from committing further
27 breaches of trust and compel Defendants to redress their breaches to date.
28

1 Plaintiffs also request that the Court remove Defendants as trustees over the entrusted
2 property, appoint a receiver or temporary trustee to take possession of the trust property and to
3 administer the trust, impose an equitable lien or constructive trust as necessary, trace trust
4 property and recover Plaintiffs' property or its proceeds, and impose such other remedies as
5 appropriate and available under law or equity, all at Defendants' sole expense.

6 **THIRTEENTH CAUSE OF ACTION**

7 **[Failure to Reimburse Expenses – Labor Code § 2802]**
8 **[By Plaintiff Bowman Against the Corporate Defendants]**

9 131. Plaintiff realleges and incorporates by reference each and every allegation
10 contained in paragraphs 1 through 130 above as though fully set forth herein.

11 132. At all times material to this complaint, Labor Code § 2802 was in full force and
12 effect and applied to Defendants. Section 2802 requires an employer to:

13 indemnify his or her employee for all necessary expenditures or losses incurred by
14 the employee in direct consequence of the discharge of his or her duties, or of his
or her obedience to the directions of the employer, event though unlawful, unless
the employee, at the time of obeying the directions, believed them to be unlawful.

15 133. As alleged in part above, Plaintiff Bowman expended and lost money in direct
16 consequence of the discharge of his duties.

17 134. Defendants have never properly and fully indemnified Plaintiff for the interest
18 expenditures he incurred in the course and scope of his employment.

19 135. As a direct and proximate result of Defendants' failure to indemnify
20 Mr. Bowman, he has been damaged in an amount subject to proof at trial. Pursuant to Labor
21 Code § 2802, Mr. Bowman is entitled to reimbursement and indemnification, interest and
22 attorney's fees and costs, all in an amount subject to proof.

23 **FOURTEENTH CAUSE OF ACTION**

24 **[Wrongful Termination in Violation of Public Policy]**
25 **[By Plaintiff Bowman Against the Corporate Defendants]**

26 136. Plaintiff realleges and incorporates by reference each and every allegation
27 contained in paragraphs 1 through 130 above as though fully set forth herein.
28

1 137. Defendants terminated Mr. Bowman's employment at least in part because he
2 refused to sign a revised set of Branch Management Agreements that contained numerous
3 unlawful provisions. For example, the revised agreements demanded unlawful refunds of wages
4 already paid under certain circumstances, had the intent and effect of requiring Mr. Bowman to
5 provide a cash bond, and would have made Mr. Bowman an insurer of his employer's business
6 losses.

7 138. The provisions of these revised agreements were contrary to the fundamental,
8 substantial, and well-established public policy set forth in the Labor Code provisions described
9 above, including Labor Code §§ 221-225.5, 400-410, and 2802-2804. Defendants' actions in
10 terminating Mr. Bowman for refusing to agree to these provisions were contrary to public policy.

11 139. As a direct and proximate result of Defendant's alleged conduct, Mr. Bowman has
12 been damaged in an amount to be proven at trial.

13 140. As a direct and proximate cause of Defendants' alleged conduct, Mr. Bowman is
14 entitled to special damages, general, and punitive damages, all in an amount to be proven at trial.

15 141. The persons who committed the unlawful acts described herein were officers,
16 directors, and/or managing agents of Defendants acting within the scope of their employment.
17 The unlawful acts described herein were committed with oppression, fraud and/or malice and
18 were authorized, ratified or both by such officers, directors, and/or managing agents. In light of
19 Defendants' willful, knowing, and intentional acts, Plaintiffs seek an award of punitive and
20 exemplary damages in an amount according to proof.

21 **FIFTEENTH CAUSE OF ACTION**
22 **[Unfair Competition Law – Bus. & Prof. Code § 17200]**
23 **[By Both Plaintiffs Against All Defendants]**

24 142. Plaintiffs reallege and incorporate by reference each and every allegation
25 contained in paragraphs 1 through 141 above as though fully set forth herein.

26 143. At all times material to this complaint, Business & Professions Code § 17200 was
27 in full force and effect and was binding on Defendants. Section 17200 may also be known as
28 the Unfair Competition Law or UCL.

1 144. Section 17200 makes it unlawful for any “person” to engage in any unlawful,
2 unfair, or fraudulent business practice.

3 145. Defendants’ actions and failures to act alleged above, including, without
4 limitation, their failure to pay wages to Bowman, their use of unfair and unlawful employment
5 contracts to obtain advantages over their competitors, their imposition of unlawful terms and
6 conditions on their employees; their unlawful acquisition and use of Reserves and security
7 deposits; their misrepresentations and concealments; all of these were unfair, unlawful, and
8 fraudulent within the meaning of the UCL.

9 146. Defendants’ acts constitute a continuing and ongoing unfair, unlawful, and
10 fraudulent activity prohibited by the UCL and justify the issuance of an injunction, restitution
11 and other equitable relief pursuant to Business and Professions Code § 17203 both as to the
12 company and its managing agents and officers. All remedies are cumulative pursuant to Business
13 and Professions Code section 17205.

14 147. On information and belief, each Defendant committed the unlawful, unfair, and/or
15 fraudulent acts alleged herein directly and personally, or conspired or aided and abetted in the
16 commissions of those acts.

17 148. Pursuant to Business and Professions Code section 17203, Plaintiffs request
18 restitution and/or disgorgement of all wages and other amounts wrongfully retained by
19 Defendants in violation of Business and Professions Code § 17200 *et seq.* Further, Plaintiffs
20 request attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 upon proof they
21 have acted in the public interest as set forth in the Private Attorney General Act.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 25 1. For compensatory (special) damages, on all but the Seventh and Fifteenth Causes of Action;
26
27
28

2. For general damages, including, without limitation, for physical harm and mental and emotional distress according to proof, as applicable, on the Eighth through Twelfth Causes of Action;
3. For punitive damages on the Sixth, Eighth, Ninth, Tenth, Eleventh, and Twelfth Causes of Action);
4. For applicable penalties provided by the Labor Code;
5. For restitution and/or reimbursement on the Thirteenth and Fifteenth Causes of Action;
6. For injunctive relief;
7. For disgorgement of all ill-gotten gains and monies obtained by Defendants;
8. For an accounting;
9. For imposition of an equitable lien or constructive trust;
10. For an award of interest, including prejudgment interest, at the legal rate;
11. For an award of attorneys' fees;
12. For costs of suit incurred; and
13. For such other and further relief as the Court deems appropriate.

LAW OFFICES OF ALAN F. COHEN

Dated: May ___, 2008

By /s/ Alan F. Cohen
Alan F. Cohen
Attorney for Plaintiffs

Dated: May ___, 2008

By /s/ Angela M. Xavier
Angela M. Xavier
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury on all issues.

Dated: May __, 2008

By /s/ Alan F. Cohen
Alan F. Cohen
Attorney for Plaintiffs

Dated: May __, 2008

By /s/ Angela M. Xavier
Angela M. Xavier
Attorney for Plaintiffs

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Sacramento CA 95814-3500