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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 Lorenzo Dominguez, individually, on
 17 behalf of others similarly situated and
 18 other aggrieved employees, and on
 behalf of the general public,

19 Plaintiff,

20 v.

21 Better Mortgage Corporation,

22 Defendant.
 23

Case No. 8:20-cv-01784-JLS-KES

**SECOND AMENDED CLASS AND
 COLLECTIVE ACTION
 COMPLAINT FOR DAMAGES,
 RESTITUTION, PENALTIES, AND
 INJUNCTIVE RELIEF**

**(1) Failure to Pay Overtime
 Compensation in Violation of the
 Fair Labor Standards Act (29 U.S.C.
 § 201, et seq.)**

**(2) Failure to Pay Overtime
 Compensation in Violation of
 California Law (Cal. Lab. Code §§
 510, 1194, and 1198, and IWC Wage
 Order(s))**

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- (3) Failure to Provide Itemized Wage Statements (Cal. Lab. Code § 226)**
- (4) Failure to Provide and/or Authorize Meal and Rest Periods (Cal. Lab. Code §§ 226.7, 512, and IWC Wage Order)**
- (5) Failure to Pay Earned Wages Upon Discharge, Waiting Time Penalties in Violation of Labor Code §§ 201-203;**
- (6) Violation of California Business and Professions Code §§ 17200 et seq.**
- (7) Civil Penalties (Cal. Labor Code § 2698, et seq.)**

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PRELIMINARY STATEMENT

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2 1. This is a class and collective action brought by individual and
3 representative Plaintiff Lorenzo Dominguez on his own behalf and on behalf of the
4 proposed California Class and nationwide FLSA Collective. Plaintiff was employed,
5 and the putative class members are or were employed, by Defendant Better Mortgage
6 Corporation (“Better Mortgage” or “Defendant”) as mortgage underwriters paid by
7 salary and any earned incentive bonuses, and were denied proper compensation as
8 required by federal and state wage and hour laws. These employees are similarly
9 situated under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) and Rule
10 23 of the Federal Rules of Civil Procedure.

11 2. The FLSA Collective is made up of all persons who have been employed
12 by Defendant as mortgage underwriters at any time within three years prior to this
13 action’s filing date through the trial of this action (the “Collective Period”).

14 3. The California Class is made up of all persons who have been employed
15 by Defendant as mortgage underwriters in the state of California at any time within
16 four years prior to this action’s filing date through the trial of this action (the
17 “California Class Period”).

18 4. During the Collective Period, Defendant paid Plaintiff and each member
19 of the FLSA Collective by salary and incentive bonuses but failed to pay any
20 overtime premiums for hours worked over 40 in a workweek to Plaintiff and each
21 member of the FLSA Collective as required by federal law. Plaintiff seeks relief for
22 himself and for the FLSA Collective under the FLSA to remedy Defendant’s failure
23 to pay appropriate overtime compensation.

24 5. During the California Class Period, Defendant paid Plaintiff and each
25 member of the California Class by salary and incentive bonuses but failed to pay
26 overtime premiums to Plaintiff and each member of the California Class for overtime
27 hours worked as defined and required by California law. Defendant also failed to
28 authorize, permit, or provide meal and rest periods and failed to provide accurate

1 wage statements. Plaintiff seeks relief for himself and the California Class under
2 California law to remedy Defendant’s failure to pay appropriate overtime
3 compensation, to provide accurate wage statements, to provide, authorize, and/or
4 permit meal and rest periods, and to reimburse necessary business expenses, in
5 addition to equitable and injunctive relief. Plaintiff also seeks penalties under
6 California’s Private Attorneys General Act (“PAGA”) on behalf of the State of
7 California as to all aggrieved employees.

8 **THE PARTIES**

9 6. Individual and representative Plaintiff Lorenzo Dominguez is an
10 individual residing in California. He was employed by Defendant as a mortgage
11 underwriter from December 3, 2019 until August 17, 2020. Prior to being assigned
12 to work remotely full-time due to the coronavirus pandemic, he was based out of and
13 worked in Defendant’s Orange County office, which was located in Costa Mesa
14 before Defendant relocated it to Irvine. During that time, he was required by
15 Defendant to work (and did in fact work) three days in the branch office, and two
16 days remotely not in the office. In or about February or March, 2020, Defendant
17 instructed Plaintiff to work remotely from his home full-time.

18 7. Upon information and belief, Defendant Better Mortgage Corporation
19 operates throughout the United States, with offices in Irvine, California; Oakland,
20 California; New York, New York; and Charlotte, North Carolina. Defendant employs
21 mortgage underwriters working in/based out of its branch offices as well as
22 underwriters working remotely from home offices. Defendant Better Mortgage
23 Corporation is a California corporation headquartered in New York, New York.

24 **JURISDICTION AND VENUE**

25 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
26 as this case is brought under the FLSA, 29 U.S.C. §§ 201 *et seq.* Plaintiff Dominguez
27 has signed a consent form to join this lawsuit, which is attached as Exhibit A (and
28 was filed with the original complaint). As this case proceeds, it is likely that other

1 individuals will file consent forms and join as opt-in plaintiffs. This Court also has
2 supplemental jurisdiction over Plaintiff's California state law claims pursuant to 28
3 U.S.C. § 1367.

4 9. Venue is proper in the United States District Court, Central District of
5 California pursuant to 28 U.S.C. § 1391, because Defendant operated an office in
6 Orange County, California and because a substantial part of the events giving rise to
7 the claims occurred in this district. This case is properly assigned to the Southern
8 Division of the Central District.

9 **FACTUAL ALLEGATIONS**

10 10. During the applicable statutory period, Plaintiff and those similarly
11 situated worked as mortgage underwriters for Defendant. Defendant, through its
12 policies, practices, and supervisors, directed the work activity of Plaintiff and other
13 mortgage underwriters. Employees of Defendant had the authority to discipline
14 Plaintiff and other mortgage underwriters.

15 11. Defendant's gross annual sales made or business done has been
16 \$500,000.00 or greater at all times relevant herein. Defendant operates in interstate
17 commerce by, among other things, selling mortgage loan products in multiple states.

18 12. Defendant has classified and paid its mortgage underwriters, including
19 Plaintiff and those similarly situated, as exempt from FLSA and state wage and hour
20 protections.

21 13. Defendant uniformly misrepresented to Plaintiff and other mortgage
22 underwriters that they were exempt employees and therefore ineligible to receive
23 overtime pay. In reality, Plaintiff and other mortgage underwriters are, and were,
24 nonexempt employees who are, and were, entitled to overtime pay.

25 14. Plaintiff and those similarly situated worked in excess of eight (8) hours
26 per day and forty (40) hours per week for Defendant on one or more occasions
27 without receiving proper overtime pay.

28 15. Defendant is and was aware that Plaintiff and those similarly situated

1 work(ed) under these conditions, and yet Defendant still denied them overtime
2 compensation. Plaintiff regularly worked over 8 hours in a day, often worked 14 or
3 15 hour days, and occasionally worked 6 or 7 days per week. By way of example,
4 during the week of March 30, 2020 to April 5, 2020, Plaintiff worked at least 70
5 hours, including over 8 hours in a day on at least 5 days during that week, for which
6 he was paid his regular weekly salary and the amount of his earned incentive bonus,
7 but he was not paid any overtime premiums for those hours defined as overtime under
8 the FLSA and applicable California law.

9 16. Defendant did not keep accurate records of the hours Plaintiff and other
10 mortgage underwriters worked. Accordingly, the wage statements Defendant issued
11 to Plaintiff did not accurately reflect all hours worked. Moreover, because Defendant
12 did not pay Plaintiff and other mortgage underwriters for all hours worked, including
13 overtime hours, during weeks paid by salary and any earned incentive bonus, the
14 wage statements Defendant issued to Plaintiff and other mortgage underwriters did
15 not accurately reflect the proper rates of pay or the hours worked at each rate of pay.

16 17. Plaintiff's wage statements for hours worked consistently listed
17 "Regular" hours worked, and "Gross" hours, as "0.00." As but one example,
18 Plaintiff's wage statement for the week worked March 30 – April 4, 2020, during
19 which Plaintiff worked at least 70 hours showed, "Regular" hours of "0.00,"
20 "Incentive" hours of "0.00", and a gross total "0.00" hours, and failed to show
21 overtime hours worked or any rate of pay for overtime. Because Defendant used the
22 same third party payroll provider to provide wage statements to all of its California
23 employees, upon information and belief the California class members' wage
24 statements were similarly deficient. Defendant knew that its wage statements
25 reflected this information and intended them to read as such.

26 18. Defendant did not have a policy or practice of providing meal periods
27 to employees it classified as exempt (like Plaintiff and other mortgage underwriters),
28 nor did Defendant have a policy or practice of authorizing or permitting rest periods

1 to employees it classified as exempt (like Plaintiff and other mortgage underwriters).
2 Instead, Defendant's meal and rest period policies applied only to employees
3 classified as non-exempt.

4 19. Defendant did not have a policy or practice of tracking whether Plaintiff
5 or other mortgage underwriters took meal or rest periods. Due to Defendant's
6 production and turaround time requirements, Plaintiff often did not take a 30 minute
7 meal period during the first five hours of his day when he was fully relieved from
8 duty.

9 20. For example, in the weeks leading up to the pandemic in 2020, Plaintiff
10 typically arrived to the office between 6:00 and 6:30. If he took a meal period, it
11 usually was not until 12:00 or 1:00 beause that is when Uber Eats would deliver food
12 to the office. Prior to the pandemic therefore, and for example during the last week
13 in January 2020, Plaintiff regularly worked more than 5 hours without receiving a
14 meal period. During this week, Plaintiff also regularly worked more than four hours
15 without taking a 10 minute rest period during which he was fully relieved from duty.

16 21. As an additional example, during the week of March 30, 2020 to April
17 5, 2020, Plaintiff worked more than 8 hours on at least 5 days without taking a meal
18 period of at least 30 minutes during which he was completely relieved from duty.
19 Instead, Plaintiff ate while he continued to work, due to Defendant's production and
20 turnaround time requirements. During this week, there were several occasions during
21 which Plaintiff worked more than four hours consecutively without being relieved
22 from duty for 10 minute rest period, again, due to Defendant's production and
23 turnaround time requirements.

24 22. Defendant did not pay Plaintiff or other underwriters and meal or rest
25 period premiums when they did not receive required meal or rest breaks.

26 23. Defendant employed Plaintiff and other Class Members to work
27 remotely (i.e., not within a branch office), and assigned, directed, or otherwise
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1 required Plaintiff and other Class Members to work remotely, on one or more days
2 of their workweeks.

3 24. Prior to February or March 2020, Defendant required that Plaintiff work
4 (and Plaintiff did in fact work) three days in the branch office, and two days remotely
5 not in the office.

6 25. Plaintiff and other Class Members could only perform underwriting
7 duties when working remotely by connecting with Defendant's systems via the
8 internet, and by communicating telephonically and/or by electronic messaging.

9 26. For all weeks worked prior to February or March 2020, Defendant did
10 not provide Plaintiff and other Class Members with a mobile hotspot device, a
11 wireless connection device, router, wireless/internet service, telephone or cellular
12 phone, or cellular service for the aforementioned communications and connections
13 required to work remotely.

14 27. For all weeks worked prior to February or March 2020, Defendant did
15 not reimburse Plaintiff and other Class Members for expenses incurred in
16 establishing and maintaining an accessible internet connection used for underwriting
17 work while working remotely.

18 28. For all weeks worked prior to February or March 2020, Defendant did
19 not reimburse Plaintiff and other Class Members for expenses incurred in
20 communicating telephonically and/or by electronic messaging for underwriting work
21 while working remotely.

22 29. Plaintiff's employment with Defendant ended on August 17, 2020 by
23 his resignation, but Defendant failed to pay all wages that were due at that time,
24 including by failing to pay Plaintiff any overtime premiums and any meal and rest
25 period premiums. More than 30 days passed since the end of Plaintiff's employment,
26 and Defendant still has not paid all wages that are due and owing.

27 30. Defendant is aware of wage and hour laws. Federal courts, including the
28 United States Courts of Appeals for the Ninth Circuit and Second Circuit, have

1 determined that underwriters with similar duties to Plaintiff and those similarly
2 situated are non-exempt employees as a matter of law. Yet Defendant has continued
3 to misclassify its mortgage underwriters as exempt from the overtime provisions of
4 the FLSA and state law.

5 31. Defendant's unlawful conduct has been widespread, repeated, and
6 consistent.

7 32. Defendant's conduct, as set forth in this Amended Complaint, was
8 willful, knowing and intentional, and in bad faith. Defendant operated under a
9 scheme that has caused significant damages to Plaintiff and the similarly situated
10 individuals.

11 **COLLECTIVE ACTION ALLEGATIONS**

12 33. Plaintiff brings this action on behalf of himself and other similarly
13 situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). The
14 employees similarly situated are as follows:

15 **FLSA Collective:** All Persons who have been employed by Defendant as
16 mortgage underwriters within the United States paid a
17 salary on a pay date within the period starting three years
18 prior to the filing of the initial complaint in this action until
19 trial of this action.

20 34. Upon information and belief, Defendant knew that Plaintiff and the
21 FLSA Collective performed work that required overtime pay. Defendant operated
22 under a scheme to deprive these employees of overtime compensation by failing to
23 properly compensate them for all hours worked.

24 35. Defendant is liable under the FLSA for failing to properly compensate
25 Plaintiff and the FLSA Collective, and as such, notice should be sent to the FLSA
26 Collective. There are numerous similarly situated current and former employees of
27 Defendant who have been denied overtime pay in violation of the FLSA who would
28 benefit from the issuance of Court-supervised notice of this lawsuit and the

1 opportunity to join. Those similarly situated employees are known to Defendant and
2 are readily identifiable through Defendant's records.

3 **CLASS ACTION ALLEGATIONS**

4 36. Plaintiff brings this action on behalf of himself and as a class action on
5 behalf of all similarly situated mortgage underwriters. The Rule 23 California Class
6 is defined as follows:

7 **California Class:** All current and former mortgage underwriters employed
8 by Defendant in the state of California at any time starting
9 four years prior to the filing date of the initial complaint in
10 this action, through the date of trial.

11 37. This action is properly brought as a class action pursuant to the class
12 action procedures of Rule 23 of the Federal Rules of Civil Procedure.

13 38. The class is so numerous that joinder of all members is impractical.
14 While the exact number and identities of class members are unknown at this time,
15 and can only be ascertained through appropriate discovery, Plaintiff believes that
16 there are at least forty (40) class members.

17 39. This litigation is properly brought as a class action because of the
18 existence of questions of fact and law common to Plaintiff and other members of the
19 class which predominate over any questions affecting only individual members,
20 including:

21 a. Whether Defendant is liable to members of the class described
22 above for violations of the applicable labor codes;

23 b. Whether Defendant properly classified members of the class
24 described above as exempt from state overtime requirements.

25 c. Whether Defendant failed to pay proper overtime pay to members
26 of the class described above;

27 d. Whether Defendant failed to provide off-duty meal periods;

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1 e. Whether Defendant failed to permit and authorize paid, off-duty
2 rest periods;

3 f. Whether Defendant knowingly and intentionally failed to provide
4 accurate wage statements;

5 g. Whether Defendant willfully failed to pay all wages due at
6 termination;

7 h. Whether defendant failed to reimburse all necessary business
8 expenses; and

9 i. Whether Defendant engaged in unfair competition.

10 40. This litigation is properly brought as a class action because Plaintiff's
11 claims are typical of the claims of the class members, inasmuch as all such claims
12 arise from Defendant's standard policies and practices, as alleged herein.

13 41. Like all class members, Plaintiff was damaged by Defendant's system-
14 wide policies and practices of misclassifying mortgage underwriters as exempt from
15 overtime pay, failing to pay overtime pay for overtime hours worked, failing to
16 provide off-duty meal periods, failing to provide compliant wage statements, failing
17 to pay all wages due at separation from employment, failing to permit and authorize
18 paid, off-duty rest periods, and failing to reimburse necessary business expenses, thus
19 giving rise to legal remedies under applicable California labor law.

20 42. Plaintiff has no interests antagonistic to the interests of other class
21 members.

22 43. Plaintiff is committed to the vigorous prosecution of this action and
23 retained competent counsel experienced in class action litigation. Accordingly,
24 Plaintiff is adequate and will fairly and adequately protect the interests of the class.

25 44. A class action is an appropriate and superior method for the fair and
26 efficient adjudication of the controversy, particularly in the context of wage and hour
27 litigation where individual plaintiffs lack the financial resources to vigorously
28 prosecute separate lawsuits in federal court against large corporate defendants.

1 45. Class certification is also fair and efficient because prosecution of
2 separate actions by individual class members would create a risk of differing
3 adjudications with respect to such individual members of the classes, which as a
4 practical matter may be dispositive of the interests of other members not parties to
5 the adjudication, or substantially impair or impede their ability to protect their
6 interests. Plaintiff anticipates there will be no difficulty in the management of this
7 litigation. This litigation presents claims under applicable state wage statutes of a
8 type that have often been prosecuted on a class wide basis, and the manner of
9 identifying the class members and providing any monetary relief to it can easily be
10 effectuated from a review of Defendant's records.

11 **FIRST CLAIM FOR RELIEF**

12 **FAILURE TO PAY OVERTIME UNDER THE FLSA**

13 29 U.S.C. §§ 201 et seq.

14 (On Behalf of Plaintiff and the FLSA Collective)

15 46. Plaintiff and the FLSA Collective allege and incorporate by reference
16 the allegations in paragraphs 1-35

17 47. At all relevant times, Defendant was an "employer" engaged in
18 interstate commerce and/or in the production of goods for commerce, within the
19 meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendant employed
20 employees, including Plaintiff and each member of the FLSA Collective.

21 48. Plaintiff consents in writing to be a part of this action, pursuant to 29
22 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will sign
23 consent forms and join as plaintiffs.

24 49. The FLSA requires each covered employer, such as Defendant, to
25 compensate all non-exempt employees at a rate of not less than one and one-half
26 times the regular rate of pay for work performed in excess of forty hours per work
27 week.

28 50. Plaintiff and the FLSA Collective are entitled to be paid overtime

1 compensation for all hours worked. Plaintiff and the FLSA Collective worked over
2 40 hours in one or more weeks performing mortgage underwriting tasks for
3 Defendant, but on each such occasion they were paid by salary and any earned
4 incentive bonus but did not receive any overtime premiums as required by the FLSA.
5 By failing to compensate Plaintiff and the FLSA Collective overtime compensation,
6 Defendant violated the FLSA, 29 U.S.C. §§ 201 *et seq.*

7 51. By failing to record, report, and/or preserve records of hours worked by
8 Plaintiff and the FLSA Collective, Defendant failed to make, keep, and preserve
9 records with respect to each of their employees sufficient to determine their wages,
10 hours, and other conditions and practice of employment, in violation of the FLSA,
11 29 U.S.C. §§ 201 *et seq.*

12 52. The foregoing conduct, as alleged, constitutes a willful violation of the
13 FLSA, within the meaning of 29 U.S.C. § 255(a).

14 53. Plaintiff, on behalf of himself and the FLSA Collective, seeks damages
15 in the amount of all unpaid overtime compensation owed to himself and the FLSA
16 Collective, liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b),
17 interest, and such other legal and equitable relief as the Court deems just and proper.

18 54. Plaintiff, on behalf of himself and the FLSA Collective, seeks recovery
19 of attorneys' fees and costs to be paid by Defendant, as provided by the FLSA, 29
20 U.S.C. § 216(b).

21 **SECOND CLAIM FOR RELIEF**

22 **FAILURE TO PAY OVERTIME UNDER CALIFORNIA LAW**

23 Cal. Wage Order No. 4; Cal. Labor Code §§ 510, 1194

24 (On Behalf of Plaintiff and the California Class)

25 55. Plaintiff alleges and incorporates by reference the allegations in
26 paragraphs 1-32 and 36-45.

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1 56. At all times relevant to this action, Plaintiff and members of the
2 California Class were employed by Defendant within the meaning of the California
3 Labor Code.

4 57. By the course of conduct set forth above, Defendant violated Cal. Labor
5 Code §§ 510 and 1194.

6 58. The California Labor Code requires employers, such as Defendant, to
7 pay overtime compensation to all non-exempt employees.

8 59. Plaintiff and members of the California Class were non-exempt
9 employees entitled to be paid proper overtime compensation for all hours worked.

10 60. During the relevant statutory period, Plaintiff and Class Members
11 worked in excess of eight hours in a work day and/or forty hours in a work week
12 performing mortgage underwriting tasks, and on occasion over twelve hours in a day
13 and/or a seventh consecutive day for Defendant, but on each such occasion they were
14 paid by salary and any earned incentive bonus but did not receive any overtime
15 premiums as required by California law.

16 61. During the relevant statutory period, Defendant failed and refused to pay
17 the Plaintiff and the California Class proper overtime compensation for overtime
18 hours worked.

19 62. Defendant had a policy and practice of failing and refusing to pay proper
20 overtime pay to Plaintiff and members of the California Class for overtime hours
21 worked.

22 63. As a result of Defendant's failure to pay wages earned and due,
23 Defendant violated the California Labor Code.

24 64. As a direct and proximate result of Defendant's unlawful conduct, as set
25 forth herein, Plaintiff and the California Class have sustained damages, including loss
26 of earnings for hours of overtime worked on behalf of Defendant, prejudgment
27 interest, and attorneys' fees and costs.

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THIRD CLAIM FOR RELIEF

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

Cal. Labor Code § 226

(On Behalf of Plaintiff and the California Class)

65. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1-32 and 36-64.

66. Defendant knowingly and intentionally failed to provide Plaintiff and the California Class with timely, accurate, itemized wage statements showing all items required pursuant to California Labor Code § 226(a), including, but not limited to, total hours worked, rates of pay, and hours worked at each rate of pay.

67. Pursuant to Labor Code section 226(e)(2), Plaintiff and members of the California Class suffered injury because, due to Defendants’ failure to provide the required information, Plaintiff and the California Class members could not promptly and easily determine from the wage statement alone, among other things, their hours worked, rates of pay, hours worked at each rate of pay, wages earned, and whether they received all wages owed them.

68. Plaintiff, individually and on behalf of the California Class, is entitled to and does seek injunctive relief requiring Defendant to comply with Labor Code § 226(a) and further seeks the amount provided under Labor Code § 226(e), including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, plus attorneys’ fees and costs.

FOURTH CLAIM FOR RELIEF

FAILURE TO AUTHORIZE, PERMIT, OR PROVIDE MEAL AND REST

PERIODS

Cal. Wage Order No. 4; Cal. Labor Code §§ 226.7 et seq., 512

(On Behalf of Plaintiff and the California Class)

1 69. Plaintiff alleges and incorporates by reference the allegations in
2 paragraphs 1-32 and 36-68.

3 70. California Labor Code § 512 prohibits an employer from employing an
4 employee for a work period of more than five hours per day without providing the
5 employee with a meal period of not less than 30 minutes, or for a work period of
6 more than 10 hours per day without providing the employee with a second meal
7 period of not less than 30 minutes.

8 71. Section 11 of Wage Order No. 4 provides (and at all times relevant
9 hereto provided) in relevant part that:

10 No employer shall employ any person for a work period of more
11 than five (5) hours without a meal period of not less than 30
12 minutes, except that when a work period of not more than six (6)
13 hours will complete the day's work the meal period may be waived
14 by mutual consent of the employer and employee. Unless the
15 employee is relieved of all duty during a 30 minute meal period,
16 the meal period shall be considered an "on duty" meal period and
17 counted as time worked. An "on duty" meal period shall be
18 permitted only when the nature of the work prevents an employee
19 from being relieved of all duty and when by written agreement
20 between the parties an on-the-job paid meal period is agreed to.
21 The written agreement shall state that the employee may, in
22 writing, revoke the agreement at any time. If an employer fails to
23 provide an employee a meal period in accordance with the
24 applicable provisions of this Order, the employer shall pay the
25 employee one (1) hour of pay at the employee's regular rate of
26 compensation for each work day that the meal period is not
27 provided.

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1 72. Section 12 of Wage Order No. 4 provides (and at all times relevant
2 hereto provided) in relevant part that:

3 Every employer shall authorize and permit all employees to take
4 rest periods, which insofar as practicable shall be in the middle of
5 each work period. The authorized rest period time shall be based
6 on the total hours worked daily at the rate of ten (10) minutes net
7 rest time per four (4) hours or major fraction thereof. However, a
8 rest period need not be authorized for employees whose total daily
9 work time is less than three and one-half (3 ½) hours. Authorized
10 rest period time shall be counted, as hours worked, for which there
11 shall be no deduction from wages. If an employer fails to provide
12 an employee a rest period in accordance with the applicable
13 provisions of this Order, the employer shall pay the employee one
14 (1) hour of pay at the employee's regular rate of compensation for
15 each work day that the rest period is not provided.

16 73. California Labor Code § 226.7 prohibits any employer from requiring
17 any employee to work during any meal or rest period mandated by an applicable IWC
18 wage order, and provides that an employer that fails to provide an employee with a
19 required rest break or meal period shall pay that employee one additional hour of pay
20 at the employee's regular rate of compensation for each work day that the employer
21 does not provide a compliant meal or rest period.

22 74. Defendant, through its policies, procedures and practices, failed to
23 provide Plaintiff and other mortgage underwriters with 30 minute uninterrupted meal
24 periods, and failed to authorize or permit Plaintiff and other underwriters to take 10
25 minute rest periods during which they were completely relieved from duty. Instead,
26 Defendant's meal and rest period policies applied to employees classified as non-
27 exempt.

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1 75. Plaintiff and other underwriters regularly worked more than 5 hours
2 without being provided a 30 minute meal period during which they were completely
3 relieved from duty, and more than 4 hours without being authorized or permitted to
4 take a 10 minute rest period during which they were completely relieved from duty.

5 76. Defendant did not pay meal or rest period premiums when Plaintiff and
6 other underwriters did not receive required meal or rest periods.

7 77. Defendant knowingly failed to provide Plaintiff and the California Class
8 with meal periods as required by law, and knowingly failed to authorize and permit
9 Plaintiff and the California Class to take rest periods as required by law. Plaintiff
10 and Class Members are therefore entitled to payment of the meal and rest period
11 premiums as provided by law.

12 **FIFTH CLAIM FOR RELIEF**

13 **WAITING TIME PENALTIES**

14 California Labor Code §§ 201-203

15 (On Behalf of Plaintiff and the California Class)

16 78. Plaintiff alleges and incorporates by reference the allegations in
17 paragraphs 1-32 and 36-77.

18 79. California Labor Code sections 201 and 202 require an employer to
19 pay its employees all wages due within the time specified by law. Labor Code
20 section 203 provides that if an employer willfully fails to pay such wages, the
21 employer must continue to pay the subject employee's wages until the back wages
22 are paid in full or an action is commenced, up to a maximum of thirty days of
23 wages.

24 80. Plaintiff and other Class Members who ceased employment with
25 Defendant are entitled to unpaid compensation, but to date have not received such
26 compensation, more than 72 hours after the cessation of their employment.

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1 88. For certain periods of time, Defendant did not reimburse Plaintiff and
2 other Class Members for expenses incurred in communicating telephonically and/or
3 by electronic messaging for underwriting work while working remotely.

4 89. Defendant knew that Plaintiff and the other Class Members were
5 providing underwriting work while working remotely, knew that such underwriting
6 work could only be provided by using an internet and telephonic/cellular service
7 connection, and knew that it had not provided internet and telephonic/cellular service
8 connectivity for use when working remotely, but failed to reimburse those expenses
9 for certain periods of time.

10 90. Defendant also knew that Plaintiff and the other Class Members were
11 providing underwriting work while working remotely by using an internet and
12 telephonic/cellular service connection by communicating with Plaintiff and the other
13 Class Members in a manner that could only be received by Plaintiff and the other
14 Class Members via internet connection and telephonic/cellular service connection.

15 91. Defendant also knew that Plaintiff and the other Class Members were
16 using an internet and telephonic/cellular service connection to provide underwriting
17 work while working remotely because Defendant posted work and file assignments
18 on a queue that was solely accessible by connection to Defendant's computer
19 systems, and requiring monitoring and pulling of assignments from that queue, which
20 Plaintiff and the other Class Members were required to access while working
21 remotely, in a manner that could only be accessed and received by Plaintiff and the
22 other Class Members via internet connection and telephonic/cellular service
23 connection when working remotely.

24 92. Defendant has therefore violated and continues to violate Labor Code §
25 2802.

26 93. Defendant was required, and shall be required, to pay a reasonable
27 percentage of Plaintiff's and the other Class Members' internet and
28 telephonic/cellular connectivity service and equipment costs, as referenced above, in

1 addition to an award of attorney’s fees and costs for enforcing their rights to payment
2 of business expenses under § 2802(c).

3 **SEVENTH CLAIM FOR RELIEF**

4 **CALIFORNIA UNFAIR COMPETITION LAW**

5 Cal. Bus. & Prof. Code §§ 17200 et seq.

6 (On Behalf of Plaintiff and the California Class)

7 94. Plaintiff alleges and incorporates by reference the allegations in
8 paragraphs 1-32 and 36-93.

9 95. The foregoing conduct, as alleged, violates the California Unfair
10 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq. The UCL
11 prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair
12 business acts or practices.

13 96. Beginning at a date unknown to Plaintiff when Defendant first employed
14 underwriters in California, at least as long ago as the year 2018 but possibly as early
15 as 2016, Defendant committed acts of unfair competition, as defined by the UCL, by,
16 among other things, engaging in the acts and practices described herein. Defendant’s
17 conduct as herein alleged has injured Plaintiff and Class Members by wrongfully
18 denying them earned wages, and therefore was substantially injurious to Plaintiff and
19 Class Members.

20 97. Defendant engaged in unfair competition in violation of the UCL by
21 violating, *inter alia*, each of the following laws. Each of these violations constitutes
22 an independent and separate violation of the UCL:

- 23 A. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
24 B. California Labor Code §§ 510 & 1194
25 C. California Labor Code § 226.7 & 512
26 D. California Labor Code § 2802
27 E. IWC Wage Order 4
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1 98. Defendant’s course of conduct, acts, and practices in violation of the
2 California laws mentioned in the above paragraph constitute a separate and
3 independent violation of the UCL. Defendant’s conduct described herein violates the
4 policy or spirit of such laws or otherwise significantly threatens or harms
5 competition.

6 99. The harm to Plaintiff and Class Members in being wrongfully denied
7 lawfully earned wages outweighed the utility, if any, of Defendant’s policies or
8 practices and therefore, Defendant’s actions described herein constitute an unfair
9 business practice or act within the meaning of the UCL.

10 100. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiff is
11 entitled to restitution of the overtime earnings, meal and rest period premiums, and
12 other unpaid wages alleged herein that were withheld and retained by Defendant
13 during a period that commences four years prior to the filing of this action, a
14 permanent injunction requiring Defendant to pay required wages, an award of
15 attorneys’ fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
16 law, and costs.

17 **EIGHTH CLAIM FOR RELIEF**

18 **CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

19 Cal. Lab. Code § 2699, et seq.

20 (On behalf of Plaintiff and Other Aggrieved Employees)

21 101. Plaintiff re-alleges and incorporate all previous paragraphs herein.

22 102. During the period one year prior to exhaustion of administrative
23 remedies in the years prior to that, Defendant violated California Labor Code
24 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, and 2802 as alleged
25 in more detail above.

26 103. California Labor Code section 2699 authorizes an aggrieved employee,
27 on behalf of himself or other current or former employees, to recover civil penalties
28 for the employer’s Labor Code violations.

1 104. Plaintiff has complied with the procedures for bringing suit specified
2 in Section 2699.3. By letter dated and postmarked September 23, 2020 Plaintiff
3 gave written notice to the Labor and Workforce Development Agency (“LWDA”)
4 and to Defendant of the specific provisions of the California Labor Code alleged to
5 have been violated, including facts and theories that supported the alleged
6 violations. A copy of this PAGA letter is attached hereto as **Exhibit B**. Notice was
7 accompanied by a filing fee of \$75, as reflected in the accompanying **Exhibit C**.
8 More than 66 days passed since September 23, 2020 and the LWDA did not notify
9 Plaintiff that it intended to investigate Plaintiff’s allegations. The allegations in
10 Plaintiff’s PAGA letter are incorporated herein by reference.

11 105. Pursuant to stipulated agreement of the parties and accompanying
12 Court orders, the statute of limitations for PAGA claims and the time period for
13 filing an amended complaint as a matter of right, were tolled from November 18,
14 2020 through June 28, 2021, in addition to the tolling that applied upon Plaintiff’s
15 filing of the First Amended Complaint. *See* ECF Nos. 23, 24, 31, 32.

16 106. Pursuant to California Labor Code sections 2699(a) and (f), and
17 2699.5, Plaintiff and the aggrieved employees are entitled to recover civil penalties
18 for Defendant’s violations of California Labor Code sections 201, 202, 203, 204,
19 226, 226.7, 510, 512, 558, 1174, 1194, and 2802 during the civil penalty period, as
20 follows:

- 21 a. For violations of California Labor Code sections 201, 202, 203, and 204,
22 one hundred dollars (\$100) for each aggrieved employee per pay period
23 for the initial violation and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation. The penalty
25 amounts are established by California Labor Code section 2699(f)(2).
26 b. For violations of California Labor Code section 2802, one hundred dollars
27 (\$100) for each aggrieved employee per pay period for the initial violation
28 and two hundred dollars (\$200) for each aggrieved employee per pay

1 period for each subsequent violation. The penalty amounts are established
2 by California Labor Code section 2699(f)(2).

3 c. For violations of California Labor Code section 226, two hundred and
4 fifty dollars (\$250) for each aggrieved employee for each pay period for
5 the initial violation, and for each subsequent violation, one thousand
6 dollars (\$1,000) for each aggrieved employee for each pay period. The
7 penalty amounts are established by California Labor Code section 226.3.

8 d. For violations of California Labor Code sections 226.7, 512, and IWC
9 Order No. 4 one hundred dollars (\$100) for each aggrieved employee per
10 pay period for the initial violation and two hundred dollars (\$200) for
11 each aggrieved employee per pay period for each subsequent violation.
12 The penalty amounts are established by California Labor Code section
13 2699(f)(2).

14 e. For violations of California Labor Code sections 510, 1194, and 558, \$50
15 for an initial violation for each underpaid employee for each pay period
16 for which the employee was underpaid, and \$100 for subsequent
17 violations for each underpaid employee for each pay period in which the
18 employee was underpaid. The penalty amounts are in addition to an
19 amount sufficient to recover underpaid wages. The penalty amounts are
20 established by California Labor Code section 558.

21 f. For violations of California Labor Code section 1174, five hundred
22 dollars (\$500) for each aggrieved employee. The penalty amounts are
23 established by California Labor Code section 1174.5.

24 107. Pursuant to California Labor Code section 2699(g)(1), Plaintiff and the
25 aggrieved employees are entitled to an award of reasonable attorney's fees and
26 costs in connection with their claims for civil penalties.

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28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all members of the FLSA Collective, prays for relief as follows:

- A. Designation of this action as a collective action on behalf of Plaintiff and those similarly situated and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- B. Judgment that Plaintiff and those similarly situated are non-exempt employees entitled to protection under the FLSA;
- C. Judgment against Defendant for violation of the overtime provisions of the FLSA;
- D. Judgment that Defendant’s violations as described above were willful;
- E. An award in an amount equal to Plaintiff’s and the Collective’s unpaid back wages at the applicable overtime rate;
- F. An award to Plaintiff and those similarly situated for the amount of unpaid wages owed, liquidated damages and penalties where provided by law, and interest thereon, subject to proof at trial;
- G. An award of reasonable attorneys’ fees and costs pursuant to 29 U.S.C. § 216 and/or other applicable laws;
- H. An award of prejudgment interest to the extent liquidated damages are not awarded;
- I. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and

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J. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

WHEREFORE, Plaintiff, on behalf of himself and the California Class, prays for additional relief as follows:

- A. That the Court determine that this action may be maintained as a class action under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure.
- B. That Plaintiff be designated as the representative of the Rule 23 California Class, and Plaintiff’s Counsel be designated as Class Counsel.
- C. Unpaid overtime wages, meal and rest period premiums, other due wages, expense reimbursement, and injunctive relief, pursuant to California law;
- D. Appropriate equitable relief to remedy Defendant’s violations of state law;
- E. Appropriate statutory penalties;
- F. An award of damages and restitution to be paid by Defendant according to proof;
- G. Attorneys’ fees and costs of suit, including expert fees pursuant to Cal. Labor Code §§ 1194, 226, and 2802, and Cal. Code of Civil Procedure § 1021.5;
- H. That Defendant be further enjoined to cease and desist from the unlawful activities in violation of the state laws cited above;
- I. Pre-judgment and post-judgment interest, as provided by law; and
- J. Such other equitable relief as the Court may deem just and proper.

WHEREFORE, Plaintiff, on behalf of himself and other aggrieved employees, prays for additional relief as follows:

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- A. Appropriate penalties under PAGA;
- B. Attorneys’ fees and costs of suit, including expert fees pursuant to Cal. Labor Code § 2699(g)(1);
- C. Such other equitable relief as the Court may deem just and proper.

Dated: August 3, 2021

NICHOLS KASTER, LLP

By: s/ Matthew C. Helland
Matthew C. Helland

Attorney for Plaintiff and Others Similarly
Situated