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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 VINCENT BOVA, on behalf of himself,
and on behalf of all persons similarly
13 situated,

14 Plaintiffs,

15 vs.

16 WASHINGTON MUTUAL BANK and
17 Does 1 to 10,

18 Defendants.
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CASE No. **07 cv 2410** WQH (JMA)

FIRST AMENDED COMPLAINT FOR:

- (1) FAILURE TO PAY REGULAR AND OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;
- (2) FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 515.5, 551, 552, 1194 AND 1198, *et seq.*
- (3) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
- (4) FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
- (5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226
- (6) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*; and,
- (7) LABOR CODE PRIVATE ATTORNEY GENERAL ACT [Labor Code § 2698]

DEMAND FOR A JURY TRIAL

1 Plaintiff Vincent Bova alleges on information and belief, except for his own acts and
2 knowledge, the following:

3 **NATURE OF THE ACTION**

4 1. Plaintiff Vincent Bova (“PLAINTIFF”) brings this class action on behalf of
5 himself and a California class consisting of all individuals employed by WAMU as non-
6 supervisory underwriters and non-supervisory senior underwriters who by reason of their
7 position and in accordance with the Defendant's job duties for these two positions were
8 required to follow strict uniform written criteria with limited and expressed exception
9 authority in determining whether each proposed loan met the approval criteria established by
10 the Defendant for loan approval of a residential loan, during the Collective Class Period and
11 California Class Period as hereinafter defined (the “CLASS”). By reason of this strict
12 written approval criteria with limited exception authority, the members of the class lacked
13 the required level of independent judgment and discretion for the administrative exemption
14 to apply to them as they had no say in the criteria or the limited exception authority they
15 were granted but instead were required to perform within this expressed written criteria
16 established by the management of the company. The members of the CLASS were all
17 required by WAMU to follow the written underwriting criteria established by WAMU and
18 lacked the authority to deviate from the established written criteria in performing their
19 underwriting duties. As a result there was no variance between what the members of the
20 class were required to do on a daily basis.

21 2. Individuals in these positions are and were employees who are and were
22 entitled to be (i) classified as non-exempt, (ii) paid for regular and overtime compensation,
23 (iii) provided with meal breaks, (iv) promptly paid the amounts that the employer owes an
24 employee as and when due, and (v) paid other compensation that is prescribed by law.
25 Given the common job titles and duties of these CLASS members as defined herein, their
26 classification can be addressed with common proof as to the policies and criteria of the
27 Defendant that was developed by management personnel other than the members of the
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1 CLASS.

2 3. Although WAMU requires members of the CLASS to work more than forty
3 (40) hours a week, as a matter of policy and practice, WAMU consistently and uniformly
4 denies them the required overtime and other compensation that the law requires as a result of
5 being erroneously classified as exempt employees.

6 4. In this action, PLAINTIFF, on behalf of himself and the CLASS, seeks to be
7 properly classified as non-exempt and recover all the compensation that WAMU was
8 required by law to provide, but failed to provide, to PLAINTIFF and all other CLASS
9 members.

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JURISDICTION AND VENUE

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13 5. This Court has jurisdiction over PLAINTIFF’S federal claim pursuant to
14 28 U.S.C. §1331, federal question jurisdiction, 29 U.S.C. § 219, the Fair Labor Standards
15 Act, and 28 U.S.C. § 1367, supplemental jurisdiction of state law claims. This Court also
16 has jurisdiction over the action pursuant to 28 USC §1332(d)(1), as amended by the Class
17 Action Fairness Act of 2005 because (i) this case is a class action, (ii) at least one class
18 member is a citizen of a state different from WAMU, and (iii) the amount in controversy
with respect to the claims for the entire class as alleged herein exceeds \$5,000,000.

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20 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c),
because WAMU does business in this District and committed the wrongful conduct against
21 certain members of the CLASS in San Diego County, California. Venue is also proper in
22 this district because Plaintiff Bova resides and was and is employed by WAMU in San
23 Diego County, California.

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PARTIES

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27 7. Plaintiff Vincent Bova was and is employed by Defendant WAMU from on or
28 about April of 2005 to the present, in the state of California, city of San Diego in the

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1 capacity of a non-supervising underwriter who by reason of his position and job duties,
2 lacked the authority to exercise independent judgment or discretion while making credit
3 decisions for the residential loans of borrowers using their home as collateral for their loan.
4 Plaintiff Bova had no authority to alter the written criteria for loan approval but instead was
5 given the non-discretionary task of verifying whether or not the loan came within the criteria
6 established by WAMU.

7 8. Defendant, WAMU is a corporation with a principal place of business in
8 Seattle, Washington and is organized under the laws of the state of Washington. WAMU
9 conducts substantial and regular business in San Diego County, California, and throughout
10 California. WAMU is in the business of producing loans as one of WAMU's principal
11 source of revenues Defendant WAMU also conducts business throughout the United States
12 and is engaged in commerce within the meaning of the Fair Labor Standards Act by
13 regularly and recurrently receiving or transmitting interstate communications.

14 9. The Defendants, WAMU, named in this Complaint, and Does 1 through 10,
15 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees
16 of each of the other Defendant and each Defendant was acting within the course of scope of
17 his, her or its authority as the agent, servant and/or employee of each of the other Defendant
18 (the "DEFENDANTS"). Consequently, all the DEFENDANTS are jointly and severally
19 liable to the PLAINTIFF and the other members of the CLASS, for the losses sustained as a
20 proximate result of DEFENDANTS' conduct.

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22 **COLLECTIVE ACTION UNDER THE FLSA**

23 10. PLAINTIFF brings this lawsuit as a collective action under the Fair Labor and
24 Standards Act, 29 U.S.C. § 201, et seq. (the "FLSA"), on behalf of all persons who were,
25 are, or will be employed by Defendant WAMU in California as non-supervisory
26 underwriters and non-supervisory senior underwriters who by reason of their position and in
27 accordance with the Defendant's job duties for these two positions were required to follow
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1 strict, uniform, written criteria with limited and expressed exception authority in determining
2 whether each proposed loan met the written criteria established by the Defendant for loan
3 approval of a residential loan, at any time within the applicable statute of limitations period
4 (the “COLLECTIVE CLASS PERIOD”), and who have been misclassified as exempt from
5 overtime (the “COLLECTIVE CLASS”). By reason of this strict criteria with limited
6 exception authority, the members of the CLASS lacked the required level of independent
7 judgment and discretion for the administrative exemption to apply to them as they had no
8 say in writing the criteria or the limited exception authority they were granted but instead
9 were required to perform within this expressed written criteria established by the
10 management of the company. The members of the CLASS were all required by WAMU to
11 follow the written underwriting criteria established by WAMU and lacked the authority to
12 deviate from the established criteria in performing their underwriting duties. As a result
13 there was no variance between what the members of the class were required to do on a daily
14 basis. To the extent equitable tolling operates to toll claims by the COLLECTIVE CLASS
15 against the DEFENDANTS, the COLLECTIVE CLASS PERIOD should be adjusted
16 accordingly. The COLLECTIVE CLASS includes all such persons, whether or not they
17 were paid by commission, by salary, or by part commission and part salary.

18 11. Questions of law and fact common to the COLLECTIVE CLASS as a
19 whole, but not limited to the following, include:

- 20 a. Whether DEFENDANTS misclassified PLAINTIFF and members of the
21 COLLECTIVE CLASS as exempt from the overtime requirements imposed by
22 the FLSA, 29 U.S.C. § 207;
- 23 b. Whether DEFENDANTS failed to adequately compensate the members
24 of the COLLECTIVE CLASS for overtime hours worked as required by the
25 FLSA, 29 U.S.C. § 207;
- 26 c. Whether DEFENDANTS failed to adequately compensate the members of the
27 COLLECTIVE CLASS for all time worked for the benefit of DEFENDANTS
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- 1 as required by the FLSA, including the time worked through their meal
2 periods;
- 3 d. Whether DEFENDANTS have systematically misclassified the members of
4 the COLLECTIVE CLASS as exempt from receiving overtime compensation
5 under section 13 of the FLSA and the applicable provisions of the Code of
6 Federal Regulations;
- 7 e. Whether DEFENDANTS should be enjoined from continuing the unlawful
8 practices; and,
- 9 f. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

10 12. The first cause of action for the violations of the FLSA may be brought
11 and maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29
12 U.S.C. 216(b), for all claims asserted by the representative PLAINTIFF of the
13 COLLECTIVE CLASS because the claims of the PLAINTIFF are similar to the claims of
14 the members of the prospective COLLECTIVE CLASS.

15 13. PLAINTIFF Vincent Bova and the COLLECTIVE CLASS are similarly
16 situated, have substantially similar job requirements and pay provisions, and are subject to
17 DEFENDANTS’ common and uniform policy and practice of misclassifying their
18 employees, failing to pay for all actual time worked and wages earned, and failing to fully
19 pay for all overtime in violation of the FLSA and the Regulations implementing the Act as
20 enacted by the Secretary of Labor (the “REGULATIONS”).

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22 **CLASS ACTION ALLEGATIONS**

23 14. PLAINTIFF Vincent Bova brings this action on behalf of himself in his
24 individual capacity and also on behalf of a California Class consisting of all individuals in
25 California employed by WAMU as non-supervisory underwriters and non-supervisory
26 senior underwriters who by reason of their position and in accordance with the Defendant's
27 job duties for these positions were required to follow strict, uniform, written criteria with
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1 limited and expressed exception authority in determining whether each proposed loan met
2 the criteria established by the Defendant for loan approval of a residential loan during the
3 period commencing on the date four years prior to the filing of this complaint and ending on
4 the class period cutoff date (the “CALIFORNIA CLASS PERIOD”). This class is
5 hereinafter referred to as the “CALIFORNIA CLASS.” By reason of this strict criteria with
6 limited exception authority, the members of the class lacked the required level of
7 independent judgment and discretion for the administrative exemption to apply to them as
8 they had no say in the writing of the criteria or the limited exception authority they were
9 granted but instead were required to perform within this expressed written criteria
10 established by the management of the company. The members of the CLASS were all
11 required by WAMU to follow the written underwriting criteria established by WAMU and
12 lacked the authority to deviate from the established criteria in performing their underwriting
13 duties. As a result there was no variance between what the members of the class were
14 required to do on a daily basis. The CALIFORNIA CLASS includes all such persons,
15 whether or not they were paid by commission, by salary, or by part commission and part
16 salary.

17 15. DEFENDANTS, as a matter of corporate policy, practice and procedure,
18 and in violation of the applicable California Labor Code (“Labor Code”) and Industrial
19 Welfare Commission (“IWC”) Wage Order Requirements intentionally and knowingly, on
20 the basis of job title alone and without regard to the actual overall requirements of the job,
21 systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA
22 CLASS as exempt from overtime wages and other labor laws in order to avoid the payment
23 of overtime wages by misclassifying their positions as exempt from overtime wages and
24 other labor laws. To the extent equitable tolling operates to toll claims by the
25 CALIFORNIA CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD
26 should be adjusted accordingly.

27 16. DEFENDANTS violated the rights of the CALIFORNIA CLASS under
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1 California Law by:

2 (a) Committing an act of unfair competition in violation of the California
3 Labor Code, by failing to pay PLAINTIFF and the members of the
4 CALIFORNIA CLASS overtime pay for a work day longer than eight
5 (8) hours and/or a work week longer than forty (40) and/or for all hours
6 worked on the seventh (7th) consecutive day in a work week and by
7 violating the California Labor Code and regulations promulgated
8 thereunder as hereinafter alleged.

9 (b) Violating Cal. Lab. Code § 510 by failing to pay PLAINTIFF and the
10 members of the CALIFORNIA CLASS overtime pay for a work day
11 longer than eight (8) hours and/or a work week longer than forty (40)
12 hours and/or for all hours worked on the seventh (7th) consecutive day
13 in a work week, for which DEFENDANTS are liable pursuant to Cal.
14 Lab. Code § 1194.

15 (c) Violating Cal. Lab. Code § 515.5 by misclassifying PLAINTIFF and
16 the members of the CALIFORNIA CLASS as exempt from receiving
17 overtime compensation.

18 (d) Violating Cal. Lab. Code § 203, which provides that when an employee
19 is discharged or quits from employment, the employer must pay the
20 employee all wages due without abatement, by failing to tender full
21 payment and/or restitution of wages owed or in the manner required by
22 California law to the PLAINTIFF and the members of the
23 CALIFORNIA CLASS who have terminated their employment. Thus,
24 DEFENDANTS are liable for such wages for a period of thirty (30)
25 days following the termination of such employment.

26 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
27 the members of the CALIFORNIA CLASS with an accurate itemized
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1 statement in writing showing the total hours worked by the employee.
2 (f) Violating Cal. Lab. Code §§ 1198 and 226.7 and the regulations and
3 orders implementing the Code, by failing to provide PLAINTIFF and
4 the members of the CALIFORNIA CLASS with meal periods and are
5 thus liable for premium pay of one hour for each workday such meal
6 periods were denied.

7 17. This Class Action meets the statutory prerequisites for the maintenance
8 of a Class Action as set forth in Rule 23 of the Federal Rules of Civil Procedure
9 (“F.R.C.P.”), in that:

- 10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
11 that the joinder of all such persons is impracticable and the disposition
12 of their claims as a class will benefit the parties and the Court;
- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
14 issues that are raised in this Complaint are common to the
15 CALIFORNIA CLASS and will apply uniformly to every member of
16 the CALIFORNIA CLASS;
- 17 (c) The claims of the representative PLAINTIFF are typical of the claims
18 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
19 other members of the CALIFORNIA CLASS, was systematically
20 misclassified as exempt and sustained economic injuries arising from
21 DEFENDANTS’ violations of the laws of California. PLAINTIFF and
22 the members of the CALIFORNIA CLASS are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern
24 of misconduct engaged in by the DEFENDANTS of systematically
25 misclassifying as exempt all members of the CALIFORNIA CLASS
26 solely on the basis of their job title and without regard to
27 DEFENDANTS’ realistic expectations and the actual, overall
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1 requirements of the job resulting in economic injury to employees so
2 misclassified.

3 (d) The representative PLAINTIFF will fairly and adequately represent and
4 protect the interest of the CALIFORNIA CLASS, and has retained
5 counsel who are competent and experienced in Class Action litigation.
6 There are no material conflicts between the claims of the representative
7 PLAINTIFF and the members of the CALIFORNIA CLASS that would
8 make class certification inappropriate. Counsel for the CALIFORNIA
9 CLASS will vigorously assert the claims of all Class Members.

10 18. In addition to meeting the statutory prerequisites to a Class Action, this
11 action is properly maintained as a Class Action pursuant to F.R.C.P. 23, in that:

12 (a) Without class certification and determination of declaratory, injunctive,
13 statutory and other legal questions within the class format, prosecution
14 of separate actions by individual members of the CALIFORNIA
15 CLASS will create the risk of:

16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA CLASS which would establish
18 incompatible standards of conduct for the parties opposing the
19 CALIFORNIA CLASS; or,

20 2) Adjudication with respect to individual members of the
21 CALIFORNIA CLASS which would as a practical matter be
22 dispositive of interests of the other members not party to the
23 adjudication or substantially impair or impede their ability to
24 protect their interests.

25 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
26 generally applicable to the CALIFORNIA CLASS, making appropriate
27 class-wide relief with respect to the CALIFORNIA CLASS as a whole
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1 in that the DEFENDANTS systematically misclassified as exempt all
2 members of the CALIFORNIA CLASS solely on the basis of their job
3 title and without regard to DEFENDANTS' realistic expectations and
4 actual overall requirements of the job;

5 (c) Common questions of law and fact exist as to the members of the
6 CALIFORNIA CLASS and predominate over any question affecting
7 only individual members, and a Class Action is superior to other
8 available methods for the fair and efficient adjudication of the
9 controversy, including consideration of:

- 10 1) The interests of the members of the CALIFORNIA CLASS in
11 individually controlling the prosecution or defense of separate
12 actions;
- 13 2) The extent and nature of any litigation concerning the
14 controversy already commenced by or against members of the
15 CALIFORNIA CLASS;
- 16 3) The desirability or undesirability of concentrating the litigation
17 of the claims in the particular forum;
- 18 4) The difficulties likely to be encountered in the management of a
19 Class Action; and,
- 20 5) The basis of DEFENDANTS misclassifying PLAINTIFF and
21 the CALIFORNIA CLASS as exempt by job title.

22 19. This Court should permit this action to be maintained as a Class Action
23 pursuant to F.R.C.P. 23 because:

- 24 (a) The questions of law and fact common to the CALIFORNIA CLASS
25 predominate over any question affecting only individual members;
- 26 (b) A Class Action is superior to any other available method for the fair
27 and efficient adjudication of the claims of the members of the
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CALIFORNIA CLASS;

- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets and available insurance of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole; and
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of the DEFENDANTS. The CALIFORNIA CLASS consists of all individuals in California employed by WAMU as non-supervising underwriters and non-supervising senior underwriters who, by reason of their position and in accordance with Defendant's job duties for these positions, were required to follow strict, uniform, written criteria with limited and expressed exception

1 authority in determining whether each proposed loan met the approval
2 criteria established by the Defendant for approval of a residential loan.
3 By reason of this strict approval criteria with limited exception
4 authority, the members of the CLASS lacked the requisite level of
5 independent judgment and discretion for the administrative exemption
6 to apply to them as they had no say in the writing of the criteria or the
7 limited exception authority they were granted but instead were required
8 to perform within this expressed written criteria established by the
9 management of the company. The members of the CALIFORNIA
10 CLASS were all required by WAMU to follow the underwriting criteria
11 established by WAMU and lacked the authority to deviate from the
12 established written criteria in performing their underwriting task.
13 DEFENDANTS, as a matter of law, have the burden of proving the
14 basis for the exemption as to each and every Underwriter and Senior
15 Underwriter. To the extent that DEFENDANTS have failed to
16 maintain records sufficient to establish the basis for the exemption
17 (including but not limited to, the employee's job duties, wages, and
18 hours worked) for any member of the CALIFORNIA CLASS,
19 DEFENDANTS are estopped, as a matter of law, to assert the
20 existence of the exemption.
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22 **GENERAL ALLEGATIONS**

23 20. WAMU, as a matter of corporate policy, practice and procedure, and in
24 violation of the applicable California Labor Code ("Labor Code"), Industrial Welfare
25 Commission ("IWC") Wage Order Requirements, and the applicable provisions of the
26 FLSA, intentionally, knowingly, and wilfully, on the basis of job title alone and without
27 regard to the actual overall requirements of the job, systematically misclassified the
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1 PLAINTIFF and the other members of the CALIFORNIA CLASS and the COLLECTIVE
2 CLASS (the "CLASS") as exempt from overtime wages and other labor laws in order to
3 avoid the payment of overtime wages by misclassifying their non-supervisory underwriters
4 and non-supervisory senior underwriters who by reason of their position and in accordance
5 with their job duties for these two positions were required to follow strict, uniform, written
6 criteria with limited and expressed exception authority in determining whether each
7 proposed loan met the criteria established by the Defendant for approval of a residential
8 loan. By reason of this strict criteria with limited exception authority, the members of the
9 class lacked the required level of independent judgment and discretion for the administrative
10 exemption to apply to them as they had no say in the criteria or the limited exception
11 authority they were granted but instead were required to perform within this expressed
12 written criteria established by the management of the company. The members of the
13 CLASS were all required by WAMU to follow the underwriting criteria established by
14 WAMU and lacked the exception authority to deviate from the established criteria in
15 performing their underwriting duties except as expressly set forth in the criteria. As a result,
16 there was no variance between what the members of the class were required to do on a daily
17 basis.

18 21. WAMU has intentionally and deliberately created numerous job levels and a
19 multitude of job titles to create the superficial appearance of hundreds of unique jobs, when
20 in fact, these jobs are substantially similar and can be easily grouped together for the
21 purpose of determining whether they are exempt from overtime wages. Indeed, one of
22 WAMU'S purposes in creating and maintaining this multi-level job classification scheme is
23 to create a roadblock to discovery and class certification for all employees similarly
24 misclassified as exempt. The members of the CALIFORNIA CLASS were all required by
25 WAMU to follow the written underwriting criteria established by WAMU and lacked the
26 authority to deviate from the established criteria in performing their underwriting duties.
27 Despite these facts, WAMU has uniformly misclassified these CLASS members as exempt
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1 and denied them overtime wages and other benefits to which non-exempt employees are
2 entitled in order to unfairly cheat the competition and unlawfully profit.

3 22. WAMU maintains records from which the Court can ascertain and identify
4 each of DEFENDANTS' employees who as CLASS members, have been systematically,
5 intentionally and uniformly misclassified as exempt as a matter of DEFENDANTS'
6 corporate policy, practices and procedures. PLAINTIFF will seek leave to amend the
7 complaint to include the specific job titles or designations for the members of the
8 CALIFORNIA CLASS when they have been identified.

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THE CONDUCT

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23. PLAINTIFF Vincent Bova was hired by Defendant WAMU and placed into a non-supervising underwriting position in one of WAMU's "Loan Fulfillment Centers" located in the city of San Diego, in the state of California. The position was described to the PLAINTIFF as an exempt and full time position. The PLAINTIFF functions as a working member on the production side of a loan underwriting team. The job duties of PLAINTIFF and the other members of the CLASS are to deliver approvals or denials of loans that are referred to the Loan Fulfillment Center based on established criteria that is set by others and followed by the members of the CLASS. A loan is the product that WAMU delivers to the customers. The PLAINTIFF and other UNDERWRITERS decide whether to approve or deny the loan application based on rigidly defined criteria established by WAMU and the members of the CLASS had only limited and expressed exception authority to deviate from this criteria. Effectively, the members of the CLASS act simply as quality control technicians, mechanically reviewing whether a loan application fits within WAMU criteria so as to qualify as a WAMU loan. The members of the CLASS all spend the majority of their time at work mechanically determining whether the income ratio, credit, collateral and other financial statement information provided by the applicant fits within WAMU's loan criteria, which is developed by WAMU, and not the members of the CLASS, and if not,

1 whether any of the written exceptions provided by WAMU to the CLASS members for loan
2 applications would apply. In delivering approvals or denials, the members of the CLASS
3 have no authority to change any of WAMU's product criteria that determine whether a loan
4 application is to be approved. Like any product quality control technician, the members of
5 the CLASS can only enforce the criteria established by the DEFENDANT in a routine,
6 automatic manner that is devoid of any independent judgment or discretion.

7 24. In performing these routine tasks, the members of the CLASS have worked
8 and continue to work worked more than eight (8) hours a day and more than forty (40) hours
9 a week. Workweeks have often consisted of seven (7) straight working days. Within this
10 schedule, the members of the CLASS were subjected to intense scrutiny by their managers
11 and supervisors, under which they were expected to deliver approvals or denials of each loan
12 within strictly enforced "production goals." WAMU determines whether a member of the
13 CLASS is meeting the "production goals" by routinely supervising the production rate of
14 each employee pursuant to a structured point system. According to this system, each loan
15 approval earns the member of the CLASS one (1) point. "Production goals" that range from
16 six (6) to eight (8) point per day often cause the members of the CLASS to work between
17 ten and a half (10 ½) and fourteen (14) hours per day. As a result of these rigorous
18 demands, PLAINTIFF and other similarly situated employees were also often unable to take
19 meal breaks. During the Class Period, PLAINTIFF, and the other members of the CLASS
20 worked and still work on the production side of WAMU's business, but are nevertheless
21 classified as exempt from overtime pay and worked and still work more than eight (8) hours
22 a day, more than forty (40) hours a week, and on the seventh (7th) consecutive day of a week.

23 25. Neither the PLAINTIFF, nor any member of the CLASS, was primarily
24 engaged in work of a type that was or now is directly related to WAMU's management
25 policies or general business operations, when giving these words a fair but narrow
26 construction, as the job of the members of the CLASS was to follow established policies and
27 procedures. . Neither the PLAINTIFF, nor any member of the CLASS was primarily
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1 engaged in work of a type that was or now is performed at the level of the policy or
2 management of WAMU. To the contrary, the work primarily performed by the members of
3 the CLASS is work wherein PLAINTIFF and members of the CLASS are primarily engaged
4 in the day to day business operations of WAMU, to mechanically deliver routine product
5 approvals or denials of loans in accordance with the established criteria of the management
6 policies and general business operations established by WAMU's management. In this way,
7 the work of PLAINTIFF and the members of the CLASS is focused solely on mechanically
8 approving or denying the product produced by WAMU, pursuant to WAMU's established
9 criteria.

10 26. Considerations such as (a) DEFENDANTS' realistic expectations for CLASS
11 members' positions, on the production side of WAMU's business enterprise working in
12 teams in Loan Fulfillment Centers, of which PLAINTIFF was a member, and (b) the actual
13 overall requirements of the CLASS members' positions, are susceptible to common proof.
14 The fact that their work involved a specialized skill set in a defined area does not mean that
15 the PLAINTIFF and other members of the CLASS are exempt from overtime wages.
16 Indeed, the exercise of discretion and independent judgment must be more than the use of a
17 skill set described in a manual or other sources. The work that PLAINTIFF and other
18 members of the CLASS were and are primarily engaged in performing day to day activities
19 is the work that is required to be performed as part of the day to day business of WAMU's in
20 processing loan applications. As a result, PLAINTIFF and the other members of the CLASS
21 were and still are primarily engaged in work that falls squarely on the production side of the
22 administrative/production worker dichotomy.

23 27. WAMU systematically misclassified as exempt PLAINTIFF and all other
24 members of the CALIFORNIA CLASS and COLLECTIVE CLASS solely on the basis of
25 their job title and without regard to DEFENDANTS' realistic expectations and actual overall
26 requirements of the job. Consequently, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS and COLLECTIVE CLASS were uniformly and systematically
28

1 exempted from payment for overtime wages for hours worked in excess of eight (8) hours
2 per day and/or (40) forty hours per week and/or for all hours worked on the seventh (7th)
3 consecutive day of any work week during the applicable CLASS PERIOD.

4 28. Cal. Lab. Code § 515 appoints the Industrial Welfare Commission to
5 establish exemptions from the requirement that an overtime rate of compensation be paid
6 pursuant to Sections 510 and 511 for executive, administrative, and professional employees,
7 provided that the employee is primarily engaged in the duties that meet the test of the
8 exemption, customarily and regularly exercises discretion and independent judgment in
9 performing those duties, and earns a monthly salary equivalent to no less than two times the
10 state minimum wage for full-time employment. California Labor Code Section 515.5 and
11 Industrial Welfare Commission Wage Order 4-2001, set forth the requirements which must
12 be satisfied in order for an employee to be lawfully classified as exempt. Although
13 wrongfully classified by DEFENDANTS as exempt at the time of hire and thereafter,
14 PLAINTIFF, and all other members of the similarly-situated CALIFORNIA CLASS, are not
15 exempt under Industrial Welfare Commission Wage Order 4-2001, and Cal. Lab. Code §
16 515.5.

17 29. Section 13 of the FLSA and 29 Code of Federal Regulations Part 541, et
18 seq., set forth the requirements which must be satisfied in order for an employee to be
19 lawfully classified as exempt from receiving overtime compensation. Although wrongfully
20 classified by DEFENDANTS as exempt at the time of hire and thereafter, PLAINTIFF, and
21 all other members of the similarly-situated COLLECTIVE CLASS, are not exempt under
22 section 13 of the FLSA or the provisions of 29 C.F.R. 541, et seq.

23 30. Despite the fact that PLAINTIFF, and the other members of the CLASS,
24 regularly worked in excess of 8 hours a day and/or 40 hours per week and/or on the seventh
25 (7th) consecutive day of a work week, they did not receive overtime compensation and as a
26 result suffered an economic injury.

27 31. Further, under Cal. Lab. Code §§ 226.7 and 512, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS, were required to be provided with meal breaks each
2 workday. DEFENDANTS failed to provide PLAINTIFF and all other members of the
3 CALIFORNIA CLASS with the statutorily required uninterrupted meal breaks during the
4 CALIFORNIA CLASS PERIOD, thereby causing additional economic injuries to
5 PLAINTIFF and other members of the CALIFORNIA CLASS.

6 32. Under 29 U.S.C. § 207, PLAINTIFF and other members of the
7 COLLECTIVE CLASS, were required to be compensated for all meal breaks taken by
8 PLAINTIFF and the other members of the COLLECTIVE CLASS where they performed
9 duties predominantly for the benefit of the DEFENDANTS during the meal breaks. Under
10 29 CFR 785.19, this time spent during the lunch break is compensable because PLAINTIFF
11 and the other members of the COLLECTIVE CLASS were required to perform duties while
12 eating.

13
14 **FIRST CAUSE OF ACTION**

15 **Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA")**

16 **(By PLAINTIFF and the COLLECTIVE CLASS and Against all DEFENDANTS)**

17 33. PLAINTIFF, and the other members of the COLLECTIVE CLASS,
18 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
19 through 32 of this Complaint.

20 34. DEFENDANTS are engaged in communication, business, and transmission
21 throughout the United States and is, therefore, engaged in commerce within the meaning of
22 29 U.S.C. § 203(b).

23 35. 29 U.S.C. § 255 provides that a three-year statute of limitations applies
24 to willful violations of the FLSA.

25 36. 29 U.S.C. § 207(a)(1) provides in pertinent part:

26 Except as otherwise provided in this section, no employer shall employ any of
27 his employees who in any workweek is engaged in commerce or in the
28

1 production of goods for commerce, or is employed in an enterprise engaged in
2 commerce or in the production of goods for commerce, for a workweek longer
3 than forty hours unless such employee receives compensation for his
4 employment in excess of the hours above specified at a rate not less than one
5 and one-half times the regular rate at which he is employed.

6 37. Section 213(a)(1) of the FLSA provides that the overtime pay requirement
7 does not apply to:

8 any employee employed in a bona fide executive, administrative, or
9 professional capacity (including any employee employed in the capacity of
10 academic administrative personnel or teacher in elementary or secondary
11 schools), or in the capacity of outside salesman (as such terms are defined and
12 delimited from time to time by regulations of the Secretary, subject to the
13 provisions of the Administrative Procedure Act [5 USCS §§ 551 et seq.]
14 except [that] an employee of a retail or service establishment shall not be
15 excluded from the definition of employee employed in a bona fide executive
16 or administrative capacity because of the number of hours in his workweek
17 which he devotes to activities not directly or closely related to the performance
18 of executive or administrative activities, if less than 40 per centum of his hours
19 worked in the workweek are devoted to such activities).

20 38. DEFENDANTS have willfully engaged in a widespread pattern and practice
21 of violating the provisions of the FLSA, as detailed above, by uniformly designating certain
22 employees as “exempt” employees, by their job title and without regard to DEFENDANTS’
23 realistic expectations and actual overall requirements of the job, including PLAINTIFF and
24 the other members of the COLLECTIVE CLASS who worked on the production side of the
25 DEFENDANTS’ business enterprise. This was done in an illegal attempt to avoid payment
26 of overtime wages and other benefits in violation of the FLSA and Code of Federal
27 Regulations requirements.

28

1 39. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*,
2 PLAINTIFF and the members of the COLLECTIVE CLASS are entitled to compensation
3 for all hours actually worked, including time spent training DEFENDANTS' employees
4 during meal periods, and are also entitled to wages at a rate not less than one and one-half
5 times their regular rate of pay for all hours worked in excess of forty (40) hours in any
6 workweek.

7 40. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
8 exempt status of an employee. The exempt or nonexempt status of any particular employee
9 must be determined on the basis of whether the employee's salary and duties meet the
10 requirements of the regulations in this part.

11 41. The exemptions of the FLSA as listed in section 13(a), and as explained
12 by 29 C.F.R. 541.3, do not apply to PLAINTIFF and the other members of the
13 COLLECTIVE CLASS, because their work consists of non-management, production line
14 labor performed with skills and knowledge acquired from on-the-job training, rather than
15 from the prolonged course of specialized intellectual instruction required for exempt learned
16 professional employees such as medical doctors, architects and archeologists. PLAINTIFF
17 does not hold a bachelor's degree related to finance, has not taken any prolonged course of
18 specialization relating to finance, and has attained the vast majority of the skills used as an
19 employee of DEFENDANTS from on the job training.

20 42. For an employee to be exempt as a bona fide "executive," all the
21 following criteria must be met and DEFENDANTS have the burden of proving that:

- 22 (a) The employee's primary duty must be management of the enterprise, or of a
23 customarily recognized department or subdivision;
- 24 (b) The employee must customarily and regularly direct the work of at least two
25 (2) or more other employees;
- 26 (c) The employee must have the authority to hire and fire, or to command
27 particularly serious attention to his or his recommendations on such actions
28

1 affecting other employees; and,

2 (d) The employee must be primarily engaged in duties which meet the test of
3 exemption.

4 No member of the COLLECTIVE CLASS was or is an “executive” because they all fail to
5 meet the requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R.
6 541.100.

7 43. For an employee to be exempt as a bona fide “administrator,” all of the
8 following criteria must be met and DEFENDANTS have the burden of proving that:

9 (a) The employee must perform office or non-manual work directly related to
10 management or general business operation of the employer or the employer’s
11 customers;

12 (b) The employee must customarily and regularly exercise discretion and
13 independent judgment with respect to matters of significance; and,

14 (c) The employee must regularly and directly assist a proprietor or an exempt
15 administrator; or,

16 (d) The employee must perform under only general supervision, work requiring
17 special training, experience, or knowledge; and,

18 (e) The employee must be primarily engaged in duties which meet the test of
19 exemption.

20 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
21 meet the requirements of for being an “administrator” under section 13(a) of the FLSA and
22 29 C.F.R. 541.300.

23 44. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other
24 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week
25 and were also required to perform duties that were primarily for the benefit of the employer
26 during meal periods.

27 45. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and
28

1 other members of the COLLECTIVE CLASS, overtime compensation for the hours they
2 have worked in excess of the maximum hours permissible by law as required by section 207
3 of the FLSA, even though PLAINTIFF and the other members of the COLLECTIVE
4 CLASS, were regularly required to work, and did in fact work, overtime hours.

5 46. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and
6 other members of the COLLECTIVE CLASS, regular compensation for the hours they have
7 worked, performing duties primarily for the benefit of the employer during meal periods.

8 47. For purposes of the Fair Labor Standards Act, the employment practices
9 of DEFENDANTS were and are uniform throughout California in all respects material to the
10 claims asserted in this Complaint.

11 48. There are no other exemptions applicable to PLAINTIFF and/or to
12 members of the COLLECTIVE CLASS.

13 49. As a result of DEFENDANTS' failure to pay overtime and failure to pay
14 regular compensation for hours worked during meal periods, as required by the FLSA,
15 PLAINTIFF and the members of the COLLECTIVE CLASS were damaged in an amount to
16 be proved at trial.

17 50. Therefore, PLAINTIFF demands that he and the members of the
18 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every
19 hour of overtime worked in any work week for which they were not compensated, regular
20 compensation for every hour worked primarily for the benefit of DEFENDANTS for which
21 they were not compensated, plus interest and attorneys' fees as provided by law.

22
23 **SECOND CAUSE OF ACTION**

24 **For Failure To Pay Overtime Compensation**

25 **[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]**

26 **(By PLAINTIFF and the CALIFORNIA CLASS and Against all DEFENDANTS)**

27
28 51. PLAINTIFF, and the other members of the CALIFORNIA CLASS,

1 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
2 through 50 of this Complaint.

3 52. Cal. Lab. Code § 510 states in relevant part:

4 Eight hours of labor constitutes a day's work. Any work in excess of eight
5 hours in one workday and any work in excess of 40 hours in any one
6 workweek and the first eight hours worked on the seventh day of work in any
7 one workweek shall be compensated at the rate of no less than one and one-
8 half times the regular rate of pay for an employee. Any work in excess of 12
9 hours in one day shall be compensated at the rate of no less than twice the
10 regular rate of pay for an employee. In addition, any work in excess of eight
11 hours on any seventh day of a workweek shall be compensated at the rate of
12 no less than twice the regular rate of pay of an employee.

13 53. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of
14 labor is entitled to one day's rest therefrom in seven."

15 54. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his
16 employees to work more than six days in seven."

17 55. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the
18 overtime rate of compensation required to be paid to a nonexempt full-time salaried
19 employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly
20 salary.

21 56. Cal. Lab. Code § 1194 states:

22 Notwithstanding any agreement to work for a lesser wage, any employee
23 receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action
25 the unpaid balance of the full amount of this minimum wage or overtime
26 compensation, including interest thereon, reasonable attorney's fees, and costs
27 of suit.
28

1 57. Cal. Lab. Code § 1198 provides: “The maximum hours of work and the
2 standard conditions of labor fixed by the commission shall be the maximum hours of work
3 and the standard conditions of labor for employees. The employment of any employee for
4 longer hours than those fixed by the order or under conditions of labor prohibited by the
5 order is unlawful.”

6 58. DEFENDANTS have intentionally and uniformly designated certain
7 employees as “exempt” employees, by their job title and without regard to DEFENDANTS’
8 realistic expectations and actual overall requirements of the job, including PLAINTIFF and
9 the other members of the CALIFORNIA CLASS who worked on the production side of the
10 DEFENDANTS’ business enterprise. This was done in an illegal attempt to avoid payment
11 of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial
12 Welfare Commission requirements.

13 59. For an employee to be exempt as a bona fide “executive,” all the following
14 criteria must be met and DEFENDANTS have the burden of proving that:

- 15 (a) The employee’s primary duty must be management of the enterprise, or of a
16 customarily recognized department or subdivision; and,
- 17 (b) The employee must customarily and regularly direct the work of at least two
18 (2) or more other employees; and,
- 19 (c) The employee must have the authority to hire and fire, or to command
20 particularly serious attention to his or his recommendations on such actions
21 affecting other employees; and,
- 22 (d) The employee must customarily and regularly exercise discretion and
23 independent judgment; and,
- 24 (e) The employee must be primarily engaged in duties which meet the test of
25 exemption.

26 No member of the CALIFORNIA CLASS was or is an executive because they all fail to
27 meet the requirements of being an “executive” within the meaning of Order No. 4-2001.

28

1 60. For an employee to be exempt as a bona fide “administrator,” all of the
2 following criteria must be met and DEFENDANTS have the burden of proving that:

- 3 (a) The employee must perform office or non-manual work directly related to
4 management policies or general business operation of the employer; and,
- 5 (b) The employee must customarily and regularly exercise discretion and
6 independent judgment; and,
- 7 (c) The employee must regularly and directly assist a proprietor or an exempt
8 administrator; or,
- 9 (d) The employee must perform, under only general supervision, work requiring
10 special training, experience, or knowledge, or,
- 11 (e) The employee must execute special assignments and tasks under only general
12 supervision; and,
- 13 (f) The employee must be primarily engaged in duties which meet the test of
14 exemption.

15 No member of the CALIFORNIA CLASS was or is an administrator because they all fail to
16 meet the requirements for being an “administrator” under Order No. 4-2001.

17 61. The Industrial Welfare Commission, ICW Wage Order 4-2001 also sets forth
18 the requirements which must be complied with to place an employee in the “professional”
19 exempt category. For an employee to be exempt as a bona fide professional, all the
20 following criteria must be met:

- 21 (a) The employee must primarily perform work that is intellectual or
22 creative and that requires the exercise of discretion and independent
23 judgment.
- 24 (b) The employee must be licensed or certified by the state of California
25 and is primarily engaged in the practice of one of the following
26 recognized professions: law, medicine, dentistry, optometry,
27 architecture, engineering, teaching or accounting.

1 No member of the CALIFORNIA CLASS was or is an administrator because they all fail to
2 meet the requirements for being an “professional” under Order No. 4-2001.

3 62. PLAINTIFF, and other members of the CALIFORNIA CLASS, do not
4 fit the definition of an exempt executive, administrative, or professional employee because:

5 (a) Less than fifty percent (50%) of their work hours are spent on managerial
6 or administrative (exempt) duties;

7 (b) More than fifty percent (50%) of their work hours are spent performing
8 non exempt duties, including but not limited to answering telephones, filling out pre-printed
9 forms and following strict and exacting procedures;

10 (c) They do not have the discretion or independent judgment, in that they must
11 follow exacting and comprehensive company-wide policies and procedures which dictate
12 every aspect of their work day;

13 (d) They do not have the authority to hire/or and fire other personnel; and,

14 (e) None of the exemptions articulated in Wage Order No. 4, subparagraph (h),
15 apply to the PLAINTIFF, or to the other members of the CLASS.

16 63. During the class period, the PLAINTIFF, and other members of the
17 CALIFORNIA CLASS, worked more than eight (8) hours in a workday and/or forty (40)
18 hours in a work week and/or on the seventh (7th) consecutive day of a workweek.

19 64. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other
20 members of the CALIFORNIA CLASS, overtime compensation for the hours they have
21 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code
22 §§ 510 and 1198, even though PLAINTIFF, and the other members of the CALIFORNIA
23 CLASS, were regularly required to work, and did in fact work, overtime hours.

24 65. By virtue of DEFENDANTS’ unlawful failure to pay additional compensation
25 to the PLAINTIFF, and the other members of the CALIFORNIA CLASS, for their regular
26 and overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA CLASS,
27 have suffered, and will continue to suffer, an economic injury in amounts which are
28

1 presently unknown to them and which will be ascertained according to proof at trial.

2 66. DEFENDANTS knew or should have known that PLAINTIFF, and the other
3 members of the CALIFORNIA CLASS, were misclassified as exempt and DEFENDANTS
4 systematically elected, either through intentional malfeasance or gross nonfeasance, not to
5 pay them for their overtime labor as a matter of uniform corporate policy, practice and
6 procedure.

7 67. Therefore, PLAINTIFF, and the other members of the CALIFORNIA CLASS,
8 request recovery of regular and overtime compensation according to proof, interest,
9 attorney's fees and cost pursuant to Cal. Lab. Code § 218.5 and § 1194(a), as well as the
10 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
11 Cal. Lab. Code and/or other statutes. Further, PLAINTIFF, and the other members of the
12 CALIFORNIA CLASS, are entitled to seek and recover reasonable attorneys' fees and costs
13 pursuant to Cal. Lab. Code §§ 218.5 and 1194.

14 68. In performing the acts and practices herein alleged in violation of labor laws
15 and refusing to provide the requisite regular and overtime compensation, the
16 DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously
17 toward the PLAINTIFF, and toward the other members of the CALIFORNIA CLASS, with
18 a conscious and utter disregard of their legal rights, or the consequences to them, and with
19 the despicable intent of depriving them of their property and legal rights and otherwise
20 causing them injury in order to increase corporate profits at the expense of PLAINTIFF and
21 the members of the Class.

22
23 **THIRD CAUSE OF ACTION**

24 **For Failure to Pay Wages When Due**

25 **[Cal. Lab. Code § 203]**

26 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

27 69. PLAINTIFF, and the other members of the CALIFORNIA CLASS,
28

1 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through
2 68 of this Complaint.

3 70. Cal. Lab. Code § 200 provides that:

4 As used in this article:

5 (a) "Wages" includes all amounts for labor performed by employees of every
6 description, whether the amount is fixed or ascertained by the standard of time,
7 task, piece, commission basis, or other method of calculation.

8 (b) "Labor" includes labor, work, or service whether rendered or performed
9 under contract, subcontract, partnership, station plan, or other agreement if the
10 labor to be paid for is performed personally by the person demanding payment.

11 71. Cal. Lab. Code § 202 provides, in relevant part, that:

12 If an employee not having a written contract for a definite period quits his or
13 her employment, his or her wages shall become due and payable not later than
14 72 hours thereafter, unless the employee has given 72 hours previous notice of
15 his or her intention to quit, in which case the employee is entitled to his or her
16 wages at the time of quitting. Notwithstanding any other provision of law, an
17 employee who quits without providing a 72-hour notice shall be entitled to
18 receive payment by mail if he or she so requests and designates a mailing
19 address. The date of the mailing shall constitute the date of payment for
20 purposes of the requirement to provide payment within 72 hours of the notice
21 of quitting.

22 72. Cal. Lab. Code § 203 provides:

23 If an employer willfully fails to pay, without abatement or reduction, in
24 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
25 employee who is discharged or who quits, the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid or
27 until an action therefor is commenced; but the wages shall not continue for
28

1 more than 30 days.

2 73. Many of the California Class members have terminated their employment and
3 DEFENDANTS have not tendered restitution of wages owed.

4 74. Therefore, as provided by Cal lab. Code § 203, on behalf of himself and
5 the members of the CALIFORNIA CLASS, PLAINTIFF demands thirty days of pay as
6 penalty for not paying all wages due at time of termination for all employees who terminated
7 employment during the CALIFORNIA CLASS PERIOD and demand an accounting and
8 payment of all wages due, plus interest, as provided by Cal lab. Code § 218.6 plus attorneys
9 fees and interest as allowed by law.

10

11

FOURTH CAUSE OF ACTION

12

For Failure to Provide Meal Periods

13

[Cal. Lab. Code §§ 226.7 and 512]

14

(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)

15

16 75. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
17 and incorporate by reference, as though fully set forth herein, paragraphs 1 through 74 of
18 this Complaint.

18

19 76. Cal. Lab. Code § 512 provide, in relevant part: “An employer may not employ
20 an employee for a work period of more than five hours per day without providing the
21 employee with a meal period of not less than 30 minutes, except that if the total work period
22 per day of the employee is no more than six hours, the meal period may be waived by
23 mutual consent of both the employer and employee. An employer may not employ an
24 employee for a work period of more than 10 hours per day without providing the employee
25 with a second meal period of not less than 30 minutes, except that if the total hours worked
26 is no more than 12 hours, the second meal period may be waived by mutual consent of the
27 employer and the employee only if the first meal period was not waived.”

27

28

77. Section 11 of the Order 4-2001 of the Industrial Wage Commission provides,

1 in relevant part:

2 Meal Periods:

3 (A) No employer shall employ any person for a work period of more than
4 five (5) hours without a meal period of not less than 30 minutes, except
5 that when a work period of not more than six (6) hours will complete
6 the day's work the meal period may be waived by mutual consent of the
7 employer and the employee. Unless the employee is relieved of all duty
8 during a 30 minute meal period, the meal period shall be considered an
9 "on duty" meal period and counted as time worked. An "on duty" meal
10 period shall be permitted only when the nature of the work prevents an
11 employee from being relieved of all duty and when by written
12 agreement between the parties an on-the-job paid meal period is agreed
13 to. The written agreement shall state that the employee may, in writing,
14 revoke the agreement at any time.

15 (B) If an employer fails to provide an employee a meal period in
16 accordance with the applicable provisions of this order, the employer
17 shall pay the employee one (1) hour of pay at the employee's regular
18 rate of compensation for each workday that the meal period is not
19 provided.

20 78. Cal. Lab. Code § 226.7 provides:

21 (a) No employer shall require any employee to work during any meal or rest
22 period mandated by an applicable order of the Industrial Welfare Commission.

23 (b) If an employer fails to provide an employee a meal period or rest period in
24 accordance with an applicable order of the Industrial Welfare Commission, the
25 employer shall pay the employee one additional hour of pay at the employee's
26 regular rate of compensation for each work day that the meal or rest period is
27 not provided.

28

1 79. DEFENDANTS have intentionally and improperly failed to provide all rest
2 and/or meal periods without any work or duties to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS who worked more than three and one half hours (3 ½) per day, and
4 by failing to do so DEFENDANTS violated the provisions of Labor Code 226.7.

5 80. Therefore, PLAINTIFF demands on behalf of himself and the members of the
6 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not
7 provided for each four (4) hours of work during the period commencing on the date that is
8 within four years prior to the filing of this Complaint and one (1) hour of pay for each five
9 (5) hours of work in which a meal period was not provided.

10
11 **FIFTH CAUSE OF ACTION**

12 **For Failure to Provide Accurate Itemized Statements**

13 **[Cal. Lab. Code § 226]**

14 **(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)**

15 81. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
16 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 80
17 of this Complaint.

18 82. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an “accurate itemized statement in writing showing:

- 20 (1) gross wages earned,
21 (2) total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the
24 Industrial Welfare Commission,
25 (3) the number of piecerate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,
27 (4) all deductions, provided that all deductions made on written orders of the
28

- 1 employee may be aggregated and shown as one item,
2 (5) net wages earned,
3 (6) the inclusive dates of the period for which the employee is paid,
4 (7) the name of the employee and his or her social security number, except that by
5 January 1, 2008, only the last four digits of his or her social security number or an
6 employee identification number other than a social security number may be shown on
7 the itemized statement,
8 (8) the name and address of the legal entity that is the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.”

11 83. At all times relevant herein, DEFENDANTS violated Labor Code § 226, in
12 that DEFENDANTS failed to properly and accurately itemize the number of hours worked
13 by PLAINTIFF, and the other members of the CALIFORNIA CLASS at the effective
14 regular rates of pay and the effective overtime rates of pay.

15 84. DEFENDANTS knowingly and intentionally failed to comply with Labor
16 Code § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA
17 CLASS. These damages include, but are not limited to, costs expended calculating the true
18 hours worked and the amount of employment taxes which were not properly paid to state
19 and federal tax authorities. These damages are difficult to estimate. Therefore,
20 PLAINTIFF, and the other members of the CLASS elect to recover liquidated damages of
21 \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each
22 violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to
23 proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each
24 respective member of the CALIFORNIA CLASS herein) plus reasonable attorney’s fees and
25 costs pursuant to Labor Code § 226(g).

26
27 **SIXTH CAUSE OF ACTION**
28

For Unlawful Business Practices

[Cal. Bus. And Prof. Code § 17200 et seq.]

(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)

1
2
3
4 85. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
5 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 84
6 of this Complaint.

7 86. DEFENDANTS are “persons” as that term is defined under Cal. Bus. and
8 Prof. Code § 17021.

9 87. Cal. Bus. And Prof. Code § 17200 defines unfair competition as any unlawful,
10 unfair, or fraudulent business act or practice.

11 88. By the conduct alleged hereinabove in the Second through Fifth Claims for
12 Relief, DEFENDANTS have violated the provisions of the Unfair Competition Law, Cal.
13 Bus. & Prof. Code §§ 17200, et seq., for which this Court should issue equitable and
14 injunctive relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
15 wrongfully withheld or labor taken without proper compensation.

16 89. By and through the unfair and unlawful business practices described
17 hereinabove, DEFENDANTS have obtained valuable property, money, and services from
18 the PLAINTIFF, and the other members of the CLASS, and has deprived them of valuable
19 rights and benefits guaranteed by law, all to their detriment and to the benefit of
20 DEFENDANTS so as to allow DEFENDANTS to unfairly compete.

21 90. All the acts described herein as violations of, among other things, the Cal. Lab.
22 Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of
23 public policy, are immoral, unethical, oppressive, and unscrupulous, and thereby constitute
24 unfair and unlawful business practices in violation of Cal. Bus. And Prof. Code § 17200 et
25 seq.

26 91. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further
27 entitled to, and do, seek a declaration that the above described business practices are unfair
28

1 and unlawful and that an injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any of these unfair and unlawful business practices in the future.

3 92. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no
4 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
5 practices of DEFENDANTS. As a result of the unfair and unlawful business practices
6 described above, PLAINTIFF, and the other members of the CALIFORNIA CLASS, have
7 suffered and will continue to suffer irreparable harm unless DEFENDANTS are restrained
8 from continuing to engage in these unfair and unlawful business practices. In addition,
9 DEFENDANTS should be required to disgorge the unpaid moneys to PLAINTIFF, and the
10 other members of the CALIFORNIA CLASS.

11
12 **SEVENTH CAUSE OF ACTION**

13 **Labor Code Private Attorneys General Act**

14 **[Cal. Labor Code § 2698]**

15 **(By PLAINTIFF and the CALIFORNIA CLASS and against All DEFENDANTS)**

16 68. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate
17 by this reference, as though fully set forth herein, paragraphs 1 through 67 of this Complaint.

18 69. On January 25, 2008, Plaintiff gave written notice by certified mail to the
19 Labor and Workforce Development Agency and the employer of the specific provisions of
20 this code alleged to have been violated as required by Labor Code § 2699.3. No notice of an
21 intent to investigate or not investigate was provided by the agency within 33 calendar days
22 of the postmark date of the notice, and the agency subsequently provided notice that they did
23 not intend to investigate. As a result, pursuant to Section 2699.3, Plaintiff may now, and
24 hereby does, commence a civil action pursuant to Section 2699.

25 70. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANTS' failure to pay wages, failure to provide
27 rest and meal period breaks, failure to pay wages and compensation for work without rest
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1 and meal period breaks and failure to provide accurate wage statements and maintain
2 accurate time records for PLAINTIFFS and the other members of the CLASS violates
3 applicable Labor Code sections and gives rise to statutory penalties as a result of such
4 conduct, including but not limited to penalties as provided by Labor Code §§ 221, 226,
5 226.7, 558, 1174 and 1194, applicable Industrial Welfare Commission Wage Orders.
6 Plaintiffs, as aggrieved employees, hereby seeks recovery of civil penalties as prescribed by
7 the Labor Code Private Attorney General Act of 2004 on behalf of himself and other current
8 and former employees of DEFENDANTS, against whom one or more of the violations of
9 the Labor Code was committed.

10
11 **PRAYER**

12 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

- 14 A) Compensatory damages, according to proof at trial due PLAINTIFF and the
15 other members of the COLLECTIVE CLASS and CALIFORNIA CLASS,
16 during the applicable COLLECTIVE CLASS PERIOD and CALIFORNIA
17 CLASS PERIOD plus interest thereon at the statutory rate;
- 18 B) Restitution, according to proof at trial, due PLAINTIFF and the other
19 members of the CALIFORNIA CLASS, during the applicable CALIFORNIA
20 CLASS PERIOD plus interest thereon at the statutory rate;
- 21 C) One (1) hour of pay for each workday in which a meal period was not
22 provided to PLAINTIFF and each member of the CALIFORNIA CLASS for
23 each four (4) hours of work during the period commencing on the date that is
24 within four years prior to the filing of this Complaint;
- 25 D) An order temporarily, preliminarily and permanently enjoining and restraining
26 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 27 E) An order requiring DEFENDANTS to provide an accounting of all wages and
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all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the COLLECTIVE and CALIFORNIA CLASSES;

- F) Imposition of a constructive trust upon the assets of the DEFENDANTS to the extent of the sums due to PLAINTIFF and to the other members of the COLLECTIVE and CALIFORNIA CLASSES;
- G) An award of interest, including prejudgment interest at the legal rate;
- H) An award of statutory damages and/or penalties as available under the law;
- I) Reasonable attorneys’ fees and cost of suit pursuant to statute and/or as available under the law;
- J) An award of civil penalties as provided by the Labor Code Private Attorneys General Act of 2004.
- K) Such other and further relief as the Court deems just and proper.

Dated: March 28, 2008

BLUMENTHAL & NORDREHAUG

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on issues triable to a jury.

Dated: March 28, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

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