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

11 JOHN SONES, on behalf of himself, and on  
12 behalf of all persons similarly situated,

13 Plaintiffs,

14 vs.

15 WORLD MORTGAGE COMPANY; and,  
16 Does 1 to 10,

17 Defendants.  
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CASE No. 08 cv 00756 BEN (JMA)

**FIRST AMENDED CLASS AND  
COLLECTIVE ACTION COMPLAINT  
FOR:**

1. FAILURE TO PAY COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;
2. FAILURE TO PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 515, 551, 552, 1182, 1194, 1197 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
4. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
5. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
6. FAILURE TO INDEMNIFY IN VIOLATION OF CAL. LAB. CODE § 2802;
7. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*; and
8. LABOR CODE PRIVATE ATTORNEY GENERAL ACT [Labor Code § 2698],

DEMAND FOR A JURY TRIAL

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

3 **NATURE OF THE ACTION**

4 1. Plaintiff John Sones (“PLAINTIFF”) brings this class action on behalf of  
5 himself and a California class consisting of all individuals who are or previously were employed by  
6 Defendant World Mortgage Company (hereinafter referred to as “DEFENDANTS”) as loan  
7 officers, loan representatives and/or mortgage counselors in California during the Class Period as  
8 hereinafter defined (the “CLASS”).

9 2. Individuals in this position or loan officer and/or mortgage counselor with  
10 DEFENDANTS are and were employees entitled to be classified as non-exempt, entitled to be paid  
11 at least minimum wage, entitled to regular and overtime compensation, entitled to be provided with  
12 meal and rest breaks, entitled to reimbursement for out-of-pocket expenses spent in discharge of  
13 services for the employer’s benefit, and entitled to prompt payment of all amounts due and unpaid  
14 owing upon leaving employment.

15 3. Although DEFENDANTS require their employees employed as loan officers and  
16 mortgage counselors to work more than eight (8) hours a day, more than forty (40) hours a week,  
17 and work hours on the seventh (7<sup>th</sup>) consecutive day of a work week, as a matter of policy and  
18 practice, DEFENDANTS consistently and uniformly failed to properly classify these employees,  
19 and through such practice, failed to record and pay such employees for hours worked, denying them  
20 the compensation that the law requires.

21 4. PLAINTIFF, on behalf of himself and the CLASS of loan officers and mortgage  
22 counselors similarly situated, seeks to have all such employees reclassified and recover all the  
23 compensation that DEFENDANTS were required by law to provide, but failed to provide, to  
24 PLAINTIFF and all other CLASS members, including but not limited to minimum wage for hours  
25 worked, regular and overtime compensation for hours worked, compensation for missed meal and  
26 rest breaks, reimbursement for out of pocket expenses, compensation for amounts not paid upon  
27 leaving employment and such other and further compensation, penalties, and interest as shall be  
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1 determined.

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**JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over PLAINTIFF’S federal claim pursuant to 28  
5 U.S.C. §1331, federal question jurisdiction, 29 U.S.C. § 219, the Fair Labor Standards Act, and 28  
6 U.S.C. § 1367, supplemental jurisdiction of state law claims.

7 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), because  
8 DEFENDANTS do substantial business in this District and committed the wrongful conduct against  
9 certain members of the CLASS in San Diego County, California.

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**PARTIES**

12 7. Plaintiff John Sones was employed by DEFENDANTS from on or about July 17,  
13 2006 to August 15, 2007, in the state of California in the positions of “Loan Officer” and  
14 “Mortgage Counselor.”

15 8. DEFENDANTS conducted and continue to conduct substantial and regular business  
16 in San Diego County, California, and throughout California. DEFENDANTS also conduct business  
17 throughout the United States and are an enterprise engaged in commerce within the meaning of the  
18 Fair Labor Standards Act by regularly and recurrently receiving or transmitting interstate  
19 communications.

20 9. The Defendants named in this Complaint, and Does 1 through 10,  
21 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of  
22 each of the other Defendant and each Defendant was acting within the course of scope of his, her or  
23 its authority as the agent, servant and/or employee of each of the other Defendant (the  
24 “DEFENDANTS”). Consequently, all the DEFENDANTS are jointly and severally liable to the  
25 PLAINTIFF and the other members of the CLASS, for the losses sustained as a proximate result of  
26 DEFENDANTS’ conduct.

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**COLLECTIVE ACTION UNDER THE FLSA**

10. PLAINTIFF brings this lawsuit as a collective action under the Fair Labor and Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”), on behalf of all persons who were, are, or will be employed by DEFENDANTS as loan officers, mortgage counselors, or in other substantially similar positions, at any time within the applicable statute of limitations period (the “COLLECTIVE CLASS PERIOD”), who have been misclassified as exempt from compensation for all hours worked (the “COLLECTIVE CLASS”). To the extent equitable tolling operates to toll claims by the COLLECTIVE CLASS against the DEFENDANTS, the COLLECTIVE CLASS PERIOD should be adjusted accordingly. The COLLECTIVE CLASS includes all such persons, whether or not they were paid by commission, by salary, or by part commission and part salary.

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

- a. Whether DEFENDANTS misclassified PLAINTIFF and members of the COLLECTIVE CLASS as exempt from receiving compensation for all hours worked, including federal minimum wage compensation and overtime compensation;
- b. Whether DEFENDANTS failed to adequately compensate the members of the COLLECTIVE CLASS for all hours worked as required by the FLSA, including the time worked through their meal periods;
- c. Whether DEFENDANTS should be enjoined from continuing the practices which violate the FLSA; and,
- d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

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

13. PLAINTIFF John Sones and the COLLECTIVE CLASS are similarly situated,

1 have substantially similar job requirements and pay provisions, and are subject to DEFENDANTS’  
2 common and uniform policy and practice of misclassifying their employees, failing to pay for all  
3 actual time worked and wages earned, and failing to accurately record all hours worked by these  
4 employees in violation of the FLSA and the Regulations implementing the Act as enacted by the  
5 Secretary of Labor (the “REGULATIONS”).

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**CLASS ACTION ALLEGATIONS**

8 14. PLAINTIFF John Sones brings this action on behalf of himself in his individual  
9 capacity and also on behalf of a California Class of all employees of DEFENDANTS in California  
10 who were, are, or will be employed as loan representatives, loan officers, mortgage counselors, or in  
11 other substantially similar positions, who were misclassified as exempt from receiving  
12 compensation for all hours worked during the period commencing July 1, 2007 and ending on the  
13 class period cutoff date (the “CALIFORNIA CLASS PERIOD”). This class is hereinafter referred  
14 to as the “CALIFORNIA CLASS.” The CALIFORNIA CLASS includes all such persons, whether  
15 or not they were paid by commission, by salary, or by part commission and part salary.

16 15. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in  
17 violation of the applicable California Labor Code (“Labor Code”) and Industrial Welfare  
18 Commission (“IWC”) Wage Order Requirements intentionally, knowingly, and systematically  
19 misclassified the PLAINTIFF and the other members of the CALIFORNIA CLASS as exempt from  
20 receiving compensation for all hours worked and other labor laws in order to avoid the payment of  
21 wages due for hours worked by misclassifying their positions as commissioned sales employees.  
22 To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
23 DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24 16. DEFENDANTS violated the rights of the CALIFORNIA CLASS under California  
25 law by:

26 (a) Committing an act of unfair competition in violation of the California Labor  
27 Code, by failing to pay PLAINTIFF and the members of the CALIFORNIA  
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CLASS all wages and compensation due for all hours worked in a work week.

(b) Violating California law, including Cal. Labor Code § 204, by failing to pay PLAINTIFF and the members of the CALIFORNIA CLASS pay for all work hours for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194.

(c) Violating Cal. Lab. Code §§ 1194 and 1197, the California Wage Order 4-2001 (the “Wage Order”), California Code of Regulations § 11040(4), and the applicable California Minimum Wage Orders by failing to pay PLAINTIFF and the members of the CALIFORNIA CLASS at least the applicable minimum wage rate for each year of the CALIFORNIA CLASS PERIOD.

(d) Violating the Wage Order and California Code of Regulations § 11040 by misclassifying PLAINTIFF and the members of the CALIFORNIA CLASS as exempt commissioned sales persons and failing to provide overtime compensation for all hours worked excess of eight (8) hours in a day, forty (40) in a week, or for hours worked on the seventh (7<sup>th</sup>) consecutive workday day.

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

(f) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the

1 members of the CALIFORNIA CLASS with an accurate itemized statement  
2 in writing showing the total hours worked by the employee.

3 (g) Violating the Wage Order and California Code of Regulations § 11040,  
4 subsection 7, by failing to maintain accurate records of time and hours  
5 worked in the payroll period and failing to make such information available  
6 to employees.

7 (h) Violating Cal. Lab. Code §§ 1198 and 226.7 and the regulations and orders  
8 implementing the Code, by failing to provide PLAINTIFF and the members  
9 of the CALIFORNIA CLASS with meal periods and are thus liable for  
10 premium pay of one hour for each workday such meal periods were denied.

11 (i) Violating Cal. Lab. Code § 2802 by failing to indemnify and reimburse  
12 PLAINTIFF, and all the members of the CALIFORNIA CLASS for all  
13 expenses incurred in direct consequence of the discharge of their duties

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

16 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that  
17 the joinder of all such persons is impracticable and the disposition of their  
18 claims as a class will benefit the parties and the Court;

19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
20 are raised in this Complaint are common to the CALIFORNIA CLASS and  
21 will apply uniformly to every member of the CALIFORNIA CLASS;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of each  
23 member of the CALIFORNIA CLASS. PLAINTIFF, like all other members  
24 of the CALIFORNIA CLASS, was systematically misclassified as exempt  
25 from receiving compensation for all hours worked and sustained economic  
26 injuries arising from DEFENDANTS’ violations of the laws of California.  
27 PLAINTIFF and the members of the CALIFORNIA CLASS are similarly or  
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1 identically harmed by the same unlawful, deceptive, unfair and pervasive  
2 pattern of misconduct engaged in by the DEFENDANTS of systematically  
3 misclassifying as exempt all loan officers and mortgage counselors from  
4 receiving compensation for all hours worked.

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

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

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

- 18 1) Inconsistent or varying adjudications with respect to individual  
19 members of the CALIFORNIA CLASS which would establish  
20 incompatible standards of conduct for the parties opposing the  
21 CALIFORNIA CLASS; or,
- 22 2) Adjudication with respect to individual members of the  
23 CALIFORNIA CLASS which would as a practical matter be  
24 dispositive of interests of the other members not party to the  
25 adjudication or substantially impair or impede their ability to protect  
26 their interests.

27 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds  
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1 generally applicable to the CALIFORNIA CLASS, making appropriate class-  
2 wide relief with respect to the CALIFORNIA CLASS as a whole in that the  
3 DEFENDANTS systematically misclassified all loan officers and mortgage  
4 counselors as exempt from receiving compensation for all hours worked;

5 (c) Common questions of law and fact exist as to the members of the  
6 CALIFORNIA CLASS and predominate over any question affecting only  
7 individual members, and a Class Action is superior to other available  
8 methods for the fair and efficient adjudication of the controversy, including  
9 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 controversy  
14 already commenced by or against members of the CALIFORNIA  
15 CLASS;
- 16 3) The desirability or undesirability of concentrating the litigation of the  
17 claims in the particular forum;
- 18 4) The difficulties likely to be encountered in the management of a Class  
19 Action; and,
- 20 5) The basis of DEFENDANTS misclassifying PLAINTIFF and the  
21 CALIFORNIA CLASS as exempt from receiving overtime  
22 compensation.

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

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

3 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
4 impractical to bring all members of the CALIFORNIA CLASS before the  
5 Court;

6 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able  
7 to obtain effective and economic legal redress unless the action is maintained  
8 as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable  
10 relief for the common law and statutory violations and other improprieties,  
11 and in obtaining adequate compensation for the damages and injuries which  
12 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;

13 (f) There is a community of interest in ensuring that the combined assets and  
14 available insurance of DEFENDANTS are sufficient to adequately  
15 compensate themembers of the CALIFORNIA CLASS for the injuries  
16 sustained;

17 (g) DEFENDANTS have acted or refused to act on grounds generally applicable  
18 to the CALIFORNIA CLASS, thereby making final class-wide relief  
19 appropriate with respect to the CALIFORNIA CLASS as a whole; and

20 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
21 the business records of the DEFENDANTS. The CALIFORNIA CLASS  
22 consists of all of DEFENDANTS' employees employed as loan officers and  
23 mortgage counselors in California who were classified as exempt from  
24 receiving wages for all hours worked. DEFENDANTS, as a matter of law,  
25 has the burden of proving the basis for the exemption as to each and every  
26 loan officer and mortgage counselor so classified. To the extent that  
27 DEFENDANTS have failed to maintain records sufficient to establish the  
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1 basis for the exemption (including but not limited to, the employee’s job  
2 duties, wages, and hours worked) for any loan officer or mortgage counselor,  
3 DEFENDANTS are estopped, as a matter of law, to assert the existence of  
4 the exemption.

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6 **GENERAL ALLEGATIONS**

7 20. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in  
8 violation of the applicable California Labor Code (“Labor Code”), Industrial Welfare Commission  
9 (“IWC”) Wage Order Requirements, and the applicable provisions of the FLSA, intentionally,  
10 knowingly, and wilfully, on the basis of job title alone and without regard to the actual overall  
11 requirements of the job or compensation paid, systematically misclassified the PLAINTIFF and the  
12 other members of the CALIFORNIA CLASS and the COLLECTIVE CLASS (the “CLASS”) as  
13 exempt from receiving wages for all hours worked. This practice of DEFENDANTS was intended  
14 to purposefully avoid the payment of earned wages by misclassifying the PLAINTIFF and other  
15 loan officers and mortgage counselors similarly situated as exempt, commissioned sales people,  
16 regardless of whether wages should have been paid, irrespective of the fact that DEFENDANTS do  
17 not qualify as “retail establishments” and regardless of whether actual “commissions” were in fact  
18 paid to the CLASS. To the extent equitable tolling operates to toll claims by the CLASS against  
19 DEFENDANTS, the CALIFORNIA CLASS PERIOD and the COLLECTIVE CLASS PERIOD  
20 (the “CLASS PERIODS”) should be adjusted accordingly.

21 21. DEFENDANTS have intentionally and deliberately created numerous job levels and  
22 a multitude of job titles to create the superficial appearance of hundreds of unique jobs, when in  
23 fact, these jobs are substantially similar and can be easily grouped together for the purpose of  
24 determining whether they are entitled to wages for hours worked and whether DEFENDANTS were  
25 required to maintain accurate time and hour records. For example, although PLAINTIFF was  
26 initially hired as “Loan Officer,” DEFENDANTS later changed his job title to “Mortgage  
27 Counselor” approximately nine (9) months after hiring. Despite the new title, PLAINTIFF

1 continued to perform only the same job functions as a “Mortgage Counselor” that he performed as a  
2 “Loan Officer.” Indeed, one of DEFENDANTS’ purposes in creating and maintaining this multi-  
3 level job classification scheme is to create a roadblock to discovery and class certification for all  
4 employees similarly misclassified as exempt. DEFENDANTS have uniformly misclassified these  
5 CLASS members as exempt and denied them wages and other benefits to which they are entitled in  
6 order to unfairly cheat the competition and unlawfully profit.

7 22. DEFENDANTS maintain records from which the Court can ascertain and identify  
8 each of DEFENDANTS’ employees who as CLASS members, have been systematically,  
9 intentionally and uniformly misclassified as exempt from receiving wages for all hours worked as a  
10 matter of DEFENDANTS’ corporate policy, practice and procedure. To the extent  
11 DEFENDANTS’ have assigned job titles, other than loan officer and mortgage counselor, to  
12 employees subjected to the practices herein alleged, PLAINTIFF will seek leave to amend the  
13 complaint to include any additional job titles when they have been identified.

14 23. DEFENDANTS have intentionally and deliberately created a variety of pay  
15 structures to create the superficial appearance of unique payment plans, when in fact, these payment  
16 plans were all effectuated and applied across the board to all employees at certain times during the  
17 CLASS PERIOD. One of DEFENDANTS’ purposes in creating and maintaining different payment  
18 schemes throughout the CLASS PERIOD is to create a roadblock to discovery and class  
19 certification for all employees similarly misclassified as exempt. PLAINTIFF and the other  
20 members of the CLASS were all similarly subjected to each payment plan when such plans were  
21 put in place by DEFENDANTS. These employees can be easily grouped together for the purpose  
22 of analyzing whether each payment plan deprived the PLAINTIFF and members of the CLASS of  
23 wages and rights to which these employees were entitled receive because DEFENDANTS  
24 uniformly subjected PLAINTIFF and the CLASS members to each payment plan, for each period  
25 that each plan was in effect, thereby denying PLAINTIFF and the members of the CLASS wages  
26 and rights to which they are entitled, in order to unfairly cheat the competition and unlawfully  
27 profit.



1 established by DEFENDANTS. Effectively, the members of the CLASS act simply as clerks,  
2 delivering loan applications and preparing the loan applications based upon DEFENDANTS'  
3 criteria so as to qualify the product as a loan. In delivering and preparing loan applications, the  
4 members of the CLASS are endowed with no authority to change any of DEFENDANTS' product  
5 criteria. Like any clerk, the members of the CLASS can only follow the criteria established by the  
6 DEFENDANTS in a routine, automatic manner that is devoid of any independent judgment or  
7 discretion. In addition, as part of his employment with DEFENDANTS, PLAINTIFF was required  
8 to use his cell-phone and automobile to conduct business. DEFENDANTS, however, refused to  
9 reimburse PLAINTIFF for the cell-phone expense and automobile expense expended in direct  
10 consequence of the discharge of PLAINTIFF'S duties for DEFENDANTS.

11 26. In performing the conduct herein alleged, the DEFENDANTS uniformly  
12 misrepresented to the PLAINTIFF and the other members of the CLASS that they were exempt  
13 from overtime and the applicable state and federal labor laws, when in fact, they were not. The  
14 DEFENDANTS' wrongful conduct and violations of law as herein alleged demeaned and  
15 wrongfully deprived PLAINTIFF and the other members of the CLASS of the career opportunities  
16 to which they were lawfully entitled. DEFENDANTS engaged in such wrongful conduct by failing  
17 to have adequate employment policies and maintaining adequate employment practices consistent  
18 with such policies. DEFENDANTS wrongful conduct as herein alleged converted the money  
19 belonging to the PLAINTIFF and the other members of the CLASS.

20 27. In performing these routine tasks for DEFENDANTS at DEFENDANTS' offices,  
21 the  
22 members of the CLASS have worked and continue to work for DEFENDANTS without being paid  
23 the requisite minimum or overtime wages for all hours worked. As a result of these rigorous  
24 demands, PLAINTIFF and other similarly situated employees were also often unable to take meal  
25 and/or rest breaks due to the press of DEFENDANTS' business. During the Class Period,  
26 PLAINTIFF, and the members of the CLASS worked and/or still work on the production side of the  
27 DEFENDANTS' business, but are nevertheless misclassified as exempt.

28 28. Neither the PLAINTIFF, nor any member of the CLASS, was primarily engaged in

1 work of a type that was or now is directly related to the DEFENDANTS' management policies or  
2 general business operations, when giving these words a fair but narrow construction. Neither the  
3 PLAINTIFF, nor any member of the CLASS was primarily engaged in work of a type that was or  
4 now is performed at the level of the policy or management of the DEFENDANTS. To the contrary,  
5 the work of DEFENDANTS' loan officers and mortgage counselors is work wherein PLAINTIFF  
6 and members of the CLASS are primarily engaged in the day to day business operations of the  
7 DEFENDANTS, to mechanically deliver completed loan applications in accordance with the  
8 established criteria of the management policies and general business operations established by  
9 DEFENDANTS' management. In this way, the work of PLAINTIFF and the members of the  
10 CLASS is focused solely on the mechanical routine of obtaining and submitted the loan  
11 documentation pursuant to DEFENDANTS' established criteria. A loan officer or a mortgage  
12 counselor's work in obtaining and preparing loan applications does not permit judgment or  
13 discretion that is independent, as this work is performed according to DEFENDANTS' established  
14 criteria and procedures.

15 29. Considerations such as (a) DEFENDANTS' realistic expectations for the jobs titled  
16 loan officer and mortgage counselor, on the production side of the DEFENDANTS' business  
17 enterprise, and (b) the actual overall requirements of the jobs titled loan officer and mortgage  
18 counselor, are susceptible to common proof. The fact that their work and those of other similarly  
19 situated employees involved, on occasion, a bonus or a draw on commission does not mean that the  
20 PLAINTIFF and other members of the CLASS are exempt from receiving minimum or overtime  
21 wages for all hours worked. The work that PLAINTIFF and other members of the CLASS were  
22 and are primarily engaged in performing day to day activities is the work that is required to be  
23 performed as part of the day to day business of DEFENDANTS of obtaining and preparing loan  
24 applications. As a result, PLAINTIFF and the other members of the CLASS were and still are  
25 primarily engaged in work that falls squarely on the production side of the  
26 administrative/production worker dichotomy.

27 30. DEFENDANTS systematically misclassified as exempt PLAINTIFF and all other  
28 members of the CALIFORNIA CLASS and COLLECTIVE CLASS solely on the basis of their job

1 title and without regard to DEFENDANTS' realistic expectations, the actual overall requirements of  
2 the job, or the pay received by the employee. Consequently, PLAINTIFF and the other members of  
3 the CALIFORNIA CLASS and COLLECTIVE CLASS were uniformly and systematically  
4 exempted by DEFENDANTS from payment of wages due for hours worked during the CLASS  
5 PERIOD.

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

19 32. Section 13 of the FLSA and 29 Code of Federal Regulations Part 541, *et seq.*, set  
20 forth the requirements which must be satisfied in order for an employee to be lawfully classified as  
21 exempt. Although wrongfully classified by DEFENDANTS as exempt at the time of hire and  
22 thereafter, PLAINTIFF, and all other members of the similarly-situated COLLECTIVE CLASS, are  
23 not exempt under section 13 of the FLSA or the provisions of 29 C.F.R. 541, *et seq.* Further,  
24 DEFENDANTS are banks which do not qualify as "retail establishments" pursuant to 29 C.F.R.  
25 779.317, and therefore DEFENDANTS' employees do not qualify for the exemption set forth in 29  
26 U.S.C. § 207(i). DEFENDANTS' conduct as herein alleged was willful and not in good faith, and  
27 DEFENDANTS had no reasonable grounds for believing that the alleged conduct was not a  
28 violation of the FLSA.

1 33. Despite the fact that PLAINTIFF, and the other members of the CLASS, regularly  
2 worked in excess of eight (8) hours a day and/or forty (40) hours per week and/or on the seventh  
3 (7<sup>th</sup>) consecutive day of a work week, they did not receive minimum wages for the time worked nor  
4 overtime wages for the overtime hours worked, and as a result suffered an economic injury.

5 34. Pursuant to California Labor Code Section 1197, the payment of wages to  
6 employees less than the minimum wage established by the Industrial Welfare Commission is  
7 unlawful. DEFENDANTS have failed to pay PLAINTIFF and the other members of the  
8 CALIFORNIA CLASS wages at the amount established by the Minimum Wage Order, as set forth  
9 in Cal. Code of Regulations § 11000. The only employees to whom the applicability of the  
10 minimum wage order would not apply are employees who are exempt under the executive,  
11 administrative, or professional exemptions. As described above, the duties of PLAINTIFF and the  
12 other members of the CLASS do not qualify these employees for any of these exemptions. The  
13 only other employees who may be exempt from the minimum wage requirements are “outside sales  
14 persons.” Neither PLAINTIFF nor any member of the CALIFORNIA CLASS were outside sales  
15 persons as defined by the Wage Order because more than half the working day was not spent away  
16 from the employer's place of business selling tangible or intangible items or obtaining orders or  
17 contracts for products, services or use of facilities.

18 35. California Code of Regulations § 11040(3)(A) provides that:

19 The provisions of subsections (A), (B) and (C) [of the Wage Order] above shall not  
20 apply to any employee whose earnings exceed one and one-half (1 1/2) times the  
21 minimum wage if more than half of that employee's compensation represents  
22 commissions.

23 PLAINTIFF and the other members of the CLASS were not paid according to the structure above,  
24 and were, therefore, not exempt from the requirement that they be paid overtime. Further,  
25 employees who are paid pursuant to the pay structure outlined by Cal. Code of Regs. § 11040(3)  
26 would only be exempt from the provisions of subsections (A), (B) and (C), which govern the  
27 payment of overtime. Nothing in this limited exemption, however, relieves an employer from the  
28 obligations of :

- 1 (i) California Code of Regulations § 11040(4), which requires employers to pay at least
- 2 minimum wage;
- 3 (ii) California Code of Regulations § 11040(7), which requires employers to provide
- 4 accurate, itemized statements;
- 5 (iii) California Code of Regulations § 11040(11), which requires employers to provide
- 6 meal periods to employees; or
- 7 (iv) California Code of Regulations § 11040(12), which requires employers to provide
- 8 rest periods to employees.

9 36. Section 6 of the FLSA sets forth the requirement that employees engaged in  
10 commerce, such as PLAINTIFF and the other members of the COLLECTIVE CLASS, shall be paid  
11 at the applicable federally established rate of minimum wage. DEFENDANTS have violated  
12 section 6 of the FLSA by not paying PLAINTIFF and the other members of the COLLECTIVE  
13 CLASS at the rates established by section 6 of the FLSA.

14 37. Pursuant to 29 U.S.C. § 207, PLAINTIFF and other members of the COLLECTIVE  
15 CLASS, were required to be compensated for all meal breaks taken by PLAINTIFF and the other  
16 members of the COLLECTIVE CLASS where they performed duties predominantly for the benefit  
17 of the DEFENDANTS during the meal breaks. Under 29 CFR 785.19, this time spent during the  
18 lunch break is compensable because PLAINTIFF and the other members of the COLLECTIVE  
19 CLASS were required to perform duties while eating.

20  
21 **FIRST CAUSE OF ACTION**

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

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

24 38. PLAINTIFF, and the other members of the COLLECTIVE CLASS,  
25 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 36  
26 of this Complaint.

27 39. DEFENDANTS are engaged in communication, business, and transmission  
28 throughout the United States and are, therefore, engaged in commerce within the meaning of 29

1 U.S.C. § 203(b).

2 40. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful  
3 violations of the FLSA.

4 41. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, states that an employee must  
5 be compensated for all hours worked, including all straight time compensation and overtime  
6 compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction  
7 over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

8 42. 29 U.S.C. § 206 provides that every employer shall pay to each of his  
9 employees who in any workweek is engaged in commerce or in the production of goods for  
10 commerce, or is employed in an enterprise engaged in commerce or in the production of goods for  
11 commerce, wages at the rate of \$5.15 per hour during the period of the COLLECTIVE CLASS  
12 PERIOD up to July 24, 2007, except that employees under twenty (20) years of age must be paid  
13 at least \$4.25 per hour during their first 90 consecutive calendar days of employment with an  
14 employer. For the period from July 24, 2007 to twelve (12) months thereafter, the federal minimum  
15 rate for hourly wages was \$5.85 per hour. Beginning July 24, 2008, the federal minimum rate for  
16 hourly wages will be \$6.55 per hour, until July 24, 2009, when the rate will be \$7.25.

17 43. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does not  
18 apply to:

19 any employee employed in a bona fide executive, administrative, or professional  
20 capacity (including any employee employed in the capacity of academic  
21 administrative personnel or teacher in elementary or secondary schools), or in the  
22 capacity of outside salesman (as such terms are defined and delimited from time to  
23 time by regulations of the Secretary, subject to the provisions of the Administrative  
24 Procedure Act [5 USCS §§ 551 *et seq.*] except [that] an employee of a retail or  
25 service establishment shall not be excluded from the definition of employee  
26 employed in a bona fide executive or administrative capacity because of the number  
27 of hours in his workweek which he devotes to activities not directly or closely  
28 related to the performance of executive or administrative activities, if less than 40

1 per centum of his hours worked in the workweek are devoted to such activities).

2 44. DEFENDANTS have willfully engaged in a widespread pattern and practice of  
3 violating the provisions of the FLSA, as detailed above, by uniformly designating certain  
4 employees as “exempt” employees, by their job title and without regard to DEFENDANTS’  
5 realistic expectations and actual overall requirements of the job and without regard to the fact that  
6 DEFENDANTS do not qualify as a retail establishment within the meaning of FLSA, including  
7 PLAINTIFF and the other members of the COLLECTIVE CLASS who worked on the production  
8 side of the DEFENDANTS’ business enterprise. This was done in an illegal attempt to avoid  
9 payment of minimum wages, overtime wages and other benefits in violation of the FLSA and Code  
10 of Federal Regulations requirements.

11 45. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, PLAINTIFF and  
12 the members of the COLLECTIVE CLASS are entitled to compensation for all hours actually  
13 worked, including time working during meal periods, compensation based on wages at a rate not  
14 less than the federal minimum wage describe above, and compensation at a rate not less than one  
15 and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in any  
16 workweek.

17 46. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the  
18 exempt status of an employee. The exempt or nonexempt status of any particular employee must be  
19 determined on the basis of whether the employee’s salary and duties meet the requirements of the  
20 regulations in this part.

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

1 training.

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

- 4 (a) The employee’s primary duty must be management of the enterprise, or of a  
5 customarily recognized department or subdivision;
- 6 (b) The employee must customarily and regularly direct the work of at least two (2) or  
7 more other employees;
- 8 (c) The employee must have the authority to hire and fire, or to command particularly  
9 serious attention to his or his recommendations on such actions affecting other  
10 employees; and,
- 11 (d) The employee must be primarily engaged in duties which meet the test of exemption.

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

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

- 16 (a) The employee must perform office or non-manual work directly related to  
17 management or general business operation of the employer or the employer’s  
18 customers;
- 19 (b) The employee must customarily and regularly exercise discretion and independent  
20 judgment with respect to matters of significance; and,
- 21 (c) The employee must regularly and directly assist a proprietor or an exempt  
22 administrator; or,
- 23 (d) The employee must perform under only general supervision, work requiring special  
24 training, experience, or knowledge; and,
- 25 (e) The employee must be primarily engaged in duties which meet the test of exemption.

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

28 541.202. PLAINTIFF and the other members of the COLLECTIVE CLASS perform their primary,

1 day to day duties without the requisite amount of discretion and independent judgment needed to  
2 qualify for the administrative exemption. Further, PLAINTIFF and the other members of the  
3 COLLECTIVE CLASS were not paid on a salary basis of not less than \$455 per week.

4 50. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other  
5 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and  
6 were also required to perform duties that were primarily for the benefit of the employer during meal  
7 periods.

8 51. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
9 of the COLLECTIVE CLASS, minimum wages for all hours worked and overtime compensation  
10 for the hours they have worked in excess of the maximum hours permissible by law as required by  
11 section 7 of the FLSA, even though PLAINTIFF and the other members of the COLLECTIVE  
12 CLASS, were regularly required to work, and did in fact work, both regular overtime hours.

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

16 53. For purposes of the Fair Labor Standards Act, the employment practices of  
17 DEFENDANTS were and are uniform throughout California in all respects material to the claims  
18 asserted in this Complaint.

19 54. Pursuant to 29 CFR 779.317, DEFENDANTS are not “retail establishments,” and  
20 are therefore not entitled to claim the exemption set forth in 29 U.S.C. § 207(i). There are no other  
21 FLSA exemptions applicable to PLAINTIFF and/or to members of the COLLECTIVE CLASS.

22 55. As a result of DEFENDANTS’ failure to pay minimum wages and overtime  
23 compensation for hours worked, as required by the FLSA, PLAINTIFF and the members of the  
24 COLLECTIVE CLASS were damaged in an amount to be proved at trial.

25 56. PLAINTIFF, therefore, demands that he and the members of the COLLECTIVE  
26 CLASS be paid minimum wages as required by the FLSA for every hour worked in any work week  
27 for which they were not compensated, overtime compensation as required by the FLSA for every  
28 hour of overtime worked in any work week for which they were not compensated, straight wages

1 for every hour worked primarily for the benefit of DEFENDANTS during meal breaks for which  
2 they were not compensated, liquidated damages, plus interest and attorneys' fees as provided by  
3 law.

4  
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Earned Wages and Overtime Compensation**

7 **[Cal. Lab. Code §§ 204, 210, 218, 510, 1194, 1197 and 1198]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against all Defendants)**

9  
10 57. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
11 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 55 of this  
12 Complaint.

13 58. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as  
14 follows: "all wages... ..earned by any person in any employment are due and payable twice during  
15 each calendar month, on days designated in advance by the employer as the regular paydays." Cal.  
16 Lab. Code § 510 further provides that employees in California shall not be employed more than  
17 eight (8) hours in any workday or forty (40) hours in a workweek or on a seventh (7<sup>th</sup>) consecutive  
18 workday of a workweek unless they receive additional compensation beyond their regular wages in  
19 amounts specified by law.

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

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

24 61. Cal. Lab. Code § 1194 states:

25 Notwithstanding any agreement to work for a lesser wage, any employee receiving  
26 less than the legal minimum wage or the legal overtime compensation applicable to  
27 the employee is entitled to recover in a civil action the unpaid balance of the full  
28 amount of this minimum wage or overtime compensation, including interest thereon,

1 reasonable attorney's fees, and costs of suit.

2 62. Cal. Lab. Code § 1197 states the requirement that a minimum wage be paid and  
3 provides:

4 The minimum wage for employees fixed by the commission is the minimum wage to  
5 be paid to employees, and the payment of a less wage than the minimum so fixed is  
6 unlawful.

7 63. Cal. Lab. Code § 1198 provides:

8 The maximum hours of work and the standard conditions of labor fixed by the  
9 commission shall be the maximum hours of work and the standard conditions of  
10 labor for employees. The employment of any employee for longer hours than those  
11 fixed by the order or under conditions of labor prohibited by the order is unlawful.

12 64. DEFENDANTS have intentionally and uniformly designated certain employees as  
13 “exempt” from receiving wages for all hours worked and from receiving certain other rights, by  
14 their job title and without regard to DEFENDANTS’ realistic expectations, the requirements of the  
15 job, and the method of payment made by DEFENDANTS, including PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS who worked on the production side of the DEFENDANTS’  
17 business enterprise. This was done in an illegal attempt to avoid payment of regular and overtime  
18 wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission  
19 requirements.

20 65. Only employees whose primary job duties meet the test of exemption as a(n)  
21 “executive,” “administrator,” “professional,” or as an “outside salesperson” may be exempt from  
22 the provisions of the Wage Order that require the payment of minimum wage and overtime. The  
23 primary job duties of the PLAINTIFF and the members of the CALIFORNIA CLASS would not  
24 qualify these employees to meet either of these exemptions.

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

27 (a) The employee’s primary duty must be management of the enterprise, or of a  
28 customarily recognized department or subdivision; and,

- 1 (b) The employee must customarily and regularly direct the work of at least two (2) or  
2 more other employees; and,
- 3 (c) The employee must have the authority to hire and fire, or to command particularly  
4 serious attention to his or his recommendations on such actions affecting other  
5 employees; and,
- 6 (d) The employee must customarily and regularly exercise discretion and independent  
7 judgment; and,
- 8 (e) The employee must be primarily engaged in duties which meet the test of exemption.

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

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

- 13 (a) The employee must perform office or non-manual work directly related to  
14 management policies or general business operation of the employer; and,
- 15 (b) The employee must customarily and regularly exercise discretion and independent  
16 judgment; and,
- 17 (c) The employee must regularly and directly assist a proprietor or an exempt  
18 administrator; or,
- 19 (d) The employee must perform, under only general supervision, work requiring special  
20 training, experience, or knowledge, or,
- 21 (e) The employee must execute special assignments and tasks under only general  
22 supervision; and,
- 23 (f) The employee must be primarily engaged in duties which meet the test of exemption.

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

26 68. The Industrial Welfare Commission, ICW Wage Order 4-2001 also sets forth the  
27 requirements which must be complied with to place an employee in the “professional” exempt  
28 category. For an employee to be exempt as a bona fide professional, all the following criteria must

1 be met:

- 2 (a) The employee must primarily perform work that is intellectual or creative  
3 and that requires the exercise of discretion and independent judgment.
- 4 (b) The employee must be licensed or certified by the state of California and is  
5 primarily engaged in the practice of one of the following recognized  
6 professions: law, medicine, dentistry, optometry, architecture, engineering,  
7 teaching or accounting.

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

10 69. PLAINTIFF, and other members of the CALIFORNIA CLASS, do not fit the  
11 definition of an exempt executive, administrative, or professional employee because:

- 12 (a) Less than fifty percent (50%) of their work hours are spent on managerial or  
13 administrative (exempt) duties;
- 14 (b) More than fifty percent (50%) of their work hours are spent performing non  
15 exempt duties, including but not limited to answering telephones, filling out pre-  
16 printed forms and following strict and exacting procedures;
- 17 (c) They do not have the discretion or independent judgment, in that they must  
18 follow exacting and comprehensive company-wide policies and procedures which  
19 dictate every aspect of their work day;
- 20 (d) They do not have the authority to hire and/or fire other personnel; and,
- 21 (e) PLAINTIFF and the other members of the CALIFORNIA CLASS did not earn a  
22 monthly salary equivalent to two (2) times the state minimum wage for full-time employment.

23 70. PLAINTIFF, and other members of the CALIFORNIA CLASS, are not outside  
24 salespersons within the meaning of the Wage Order because they did not and do not customarily  
25 and regularly work more than half their working time away from the employer’s place of business  
26 selling tangible or intangible items or obtaining orders or contracts for products, services or use of  
27 facilities.

28 71. PLAINTIFF, and other members of the CALIFORNIA CLASS, are not qualified

1 for exemption from overtime by virtue of receipt of payment of commissions, under subsection (D)  
2 of Section 3 of the Wage Order, because the earnings of PLAINTIFF and the other members of the  
3 CLASS did not exceed one and one-half (1 ½) times the minimum wage and/or less than half the  
4 employee's compensation represents "commissions."

5 72. During the class period, the PLAINTIFF, and other members of the CALIFORNIA  
6 CLASS, worked more than eight (8) hours in a workday and/or forty (40) hours in a work week  
7 and/or on the seventh (7<sup>th</sup>) consecutive day of a workweek.

8 73. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
9 of the CALIFORNIA CLASS, at least minimum wage for all hours they have worked and overtime  
10 compensation for the hours they worked in excess of the maximum hours permissible by law as  
11 required by Cal. Lab. Code §§ 510 and 1198, *et seq.* and the Wage Order, even though PLAINTIFF,  
12 and the other members of the CALIFORNIA CLASS, were regularly worked regular hours at  
13 DEFENDANTS' offices, and did in fact work overtime hours for DEFENDANTS.

14 74. By virtue of DEFENDANTS' unlawful failure to pay additional  
15 compensation to the PLAINTIFF, and the other members of the CALIFORNIA CLASS, for their  
16 regular and overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
17 have suffered, and will continue to suffer, an economic injury in amounts which are presently  
18 unknown to them and which will be ascertained according to proof at trial.

19 75. DEFENDANTS knew or should have known that PLAINTIFF, and the other  
20 members of the CALIFORNIA CLASS, were misclassified as exempt from wages and  
21 DEFENDANTS systematically elected, either through intentional malfeasance or gross  
22 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice and  
23 procedure. There is no basis for DEFENDANTS' failure to pay minimum wages to loan officers  
24 and mortgage counselors for hours worked.

25 76. Therefore, PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
26 request recovery of regular and overtime compensation according to proof, interest, attorney's fees  
27 and cost pursuant to Cal. Lab. Code § 218.5 and § 1194(a), as well as the assessment of any  
28 statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other

1 statutes. Further, PLAINTIFF, and the other members of the CALIFORNIA CLASS, are entitled  
2 to seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5 and  
3 1194.

4 77. In performing the acts and practices herein alleged in violation of labor laws and  
5 refusing to provide the requisite regular and overtime compensation, the DEFENDANTS acted and  
6 continue to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and toward the  
7 other members of the CALIFORNIA CLASS, with a conscious and utter disregard of their legal  
8 rights, or the consequences to them, and with the despicable intent of depriving them of their  
9 property and legal rights and otherwise causing them injury in order to increase corporate profits at  
10 the expense of PLAINTIFF and the members of the Class.

11  
12 **THIRD CAUSE OF ACTION**

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

14 **[ Cal. Lab. Code § 203]**

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

16 78. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
17 incorporate by reference, as though fully set forth herein, paragraphs 1 through 76 of this  
18 Complaint.

19 79. Cal. Lab. Code § 200 provides that:

20 As used in this article:

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

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

27 80. Cal. Lab. Code § 202 provides, in relevant part, that:

28 If an employee not having a written contract for a definite period quits his or her

1 employment, his or her wages shall become due and payable not later than 72 hours  
2 thereafter, unless the employee has given 72 hours previous notice of his or her  
3 intention to quit, in which case the employee is entitled to his or her wages at the  
4 time of quitting. Notwithstanding any other provision of law, an employee who quits  
5 without providing a 72-hour notice shall be entitled to receive payment by mail if he  
6 or she so requests and designates a mailing address. The date of the mailing shall  
7 constitute the date of payment for purposes of the requirement to provide payment  
8 within 72 hours of the notice of quitting.

9 81. Cal. Lab. Code § 203 provides:  
10 If an employer willfully fails to pay, without abatement or reduction, in accordance  
11 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
12 discharged or who quits, the wages of the employee shall continue as a penalty from  
13 the due date thereof at the same rate until paid or until an action therefor is  
14 commenced; but the wages shall not continue for more than 30 days.

15 82. Many of the CALIFORNIA CLASS members, including the PLAINTIFF, have  
16 terminated their employment and DEFENDANTS have not tendered payment of wages owed.

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

22  
23 **FOURTH CAUSE OF ACTION**

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

25 **[Cal. Lab. Code § 226]**

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

27 84. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
28 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 82 of this

1 Complaint.

2 85. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
3 “accurate itemized statement in writing showing:

- 4 (1) gross wages earned,  
5 (2) total hours worked by the employee, except for any employee whose compensation is  
6 solely based on a salary and who is exempt from payment of overtime under subdivision (a)  
7 of Section 515 or any applicable order of the Industrial Welfare Commission,  
8 (3) the number of piecerate units earned and any applicable piece rate if the employee is  
9 paid on a piece-rate basis,  
10 (4) all deductions, provided that all deductions made on written orders of the employee may  
11 be aggregated and shown as one item,  
12 (5) net wages earned,  
13 (6) the inclusive dates of the period for which the employee is paid,  
14 (7) the name of the employee and his or her social security number, except that by January  
15 1, 2008, only the last four digits of his or her social security number or an employee  
16 identification number other than a social security number may be shown on the itemized  
17 statement,  
18 (8) the name and address of the legal entity that is the employer, and  
19 (9) all applicable hourly rates in effect during the pay period and the corresponding number  
20 of hours worked at each hourly rate by the employee.”

21 86. At all times relevant herein, DEFENDANTS violated Labor Code § 226,  
22 in that DEFENDANTS failed to properly and accurately itemize the number of hours worked by  
23 PLAINTIFF, and the other members of the CALIFORNIA CLASS at the effective regular rates of  
24 pay and the effective overtime rates of pay.

25 87. Both the Wage Order at Section 7 and California Code of Regulations § 11040(7)  
26 further require that every employer to do the following:

27 Every employer shall keep accurate information with respect to each employee  
28 including the following:

- 1 (1) Full name, home address, occupation and social security number.
- 2 (2) Birth date, if under 18 years, and designation as a minor.
- 3 (3) Time records showing when the employee begins and ends each work period. Meal
- 4 periods, split shift intervals and total daily hours worked shall also be recorded. Meal
- 5 periods during which operations cease and authorized rest periods need not be recorded.
- 6 (4) Total wages paid each payroll period, including value of board, lodging, or other
- 7 compensation actually furnished to the employee.
- 8 (5) Total hours worked in the payroll period and applicable rates of pay. This information
- 9 shall be made readily available to the employee upon reasonable request.
- 10 (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the
- 11 incentive plan formula shall be provided to employees. An accurate production record shall
- 12 be maintained by the employer.

13 88. At all times relevant herein, DEFENDANTS violated Section 7 of the Wage Order  
14 and California Code of Regulations § 11040(7) in that DEFENDANTS failed to properly and  
15 accurately maintain information of the PLAINTIFF and other members of the CALIFORNIA  
16 CLASS, consisting of time records showing when the employee begins and ends each work period  
17 and the total hours worked in the payroll period with applicable rates of pay. Further,  
18 DEFENDANTS failed to make such information available to employees.

19 89. DEFENDANTS knowingly and intentionally failed to comply with Labor Code §§  
20 226, Section 7 of the Wage Order, and California Code of Regulations § 11040(7), causing  
21 economic injury to PLAINTIFF, and the other members of the CALIFORNIA CLASS. These  
22 damages include, but are not limited to, costs expended calculating the true hours worked and the  
23 amount of employment taxes which were not properly paid to state and federal tax authorities.  
24 These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the  
25 CLASS are entitled to recover liquidated damages of \$50.00 for the initial pay period in which the  
26 violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code  
27 § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for  
28 PLAINTIFF and each respective member of the CALIFORNIA CLASS herein) plus reasonable

1 attorney's fees and costs pursuant to Labor Code § 226(g).

2

3

**FIFTH CAUSE OF ACTION**

4

**For Failure to Provide Meal and/or Rest Periods**

5

**[Cal. Lab. Code §§ 226.7 and 512]**

6

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

7

90. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 88 of this Complaint.

10

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

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92. Section 11 of the Order 4-2001 of the Industrial Wage Commission (the "Wage Order") provides, in relevant part:

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Meal Periods:

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(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted

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1 only when the nature of the work prevents an employee from being relieved  
2 of all duty and when by written agreement between the parties an on-the-job  
3 paid meal period is agreed to. The written agreement shall state that the  
4 employee may, in writing, revoke the agreement at any time.

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

9 93. Section 12 of the Order 4-2001 of the Industrial Wage Commission (the "Wage  
10 Order") provides, in relevant part:

11 Rest Periods:

12 (A) Every employer shall authorize and permit all employees to take rest periods,  
13 which insofar as practicable shall be in the middle of each work period. The  
14 authorized rest period time shall be based on the total hours worked daily at  
15 the rate of ten (10) minutes net rest time per four (4) hours or major fraction  
16 thereof. However, a rest period need not be authorized for employees whose  
17 total daily work time is less than three and one-half (3 1/2) hours. Authorized  
18 rest period time shall be counted as hours worked for which there shall be no  
19 deduction from wages.

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

21 (a) No employer shall require any employee to work during any meal or rest period  
22 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 not  
27 provided.

28 95. DEFENDANTS have intentionally and improperly failed to provide all rest and/or

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

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

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10 **SIXTH CAUSE OF ACTION**

11 **For Failure to Indemnify**

12 **[Cal. Lab. Code § 2802]**

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

14 97. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
15 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 95 of this  
16 Complaint.

17 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

18 An employer shall indemnify his or her employee for all necessary expenditures or  
19 losses incurred by the employee in direct consequence of the discharge of his or her  
20 duties, or of his or her obedience to the directions of the employer, even though  
21 unlawful, unless the employee, at the time of obeying the directions, believed them  
22 to be unlawful.

23 99. At all relevant times herein, DEFENDANTS have violated Cal. Lab. Code § 2802,  
24 by failing to indemnify and reimburse PLAINTIFF, and all the members of the CALIFORNIA  
25 CLASS for all expenditures or losses incurred in direct consequence of the discharge of  
26 PLAINTIFF'S duties. In particular, DEFENDANTS required PLAINTIFF and the other members  
27 of the CALIFORNIA CLASS to utilize a cell-phone and their automobile in order to perform and  
28 fully discharge the duties imposed by DEFENDANTS. Subscription to a cell-phone provider and

1 the use of an automobile by PLAINTIFF and the members of the CALIFORNIA CLASS were  
2 necessary to meet with realtors, attend meetings and make necessary telephones calls. Although the  
3 cell-phone subscription and the use of the automobile were necessary expenditures incurred by  
4 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify  
5 and reimburse as an employer is required to do under the laws and regulations of California

6 100. Thus, PLAINTIFF and the members of the CALIFORNIA CLASS were forced to  
7 contribute to the expenses of the DEFENDANTS' business, which expenses must be refunded by  
8 DEFENDANTS to each member of the CALIFORNIA CLASS.

9 101. Cal. Lab. Code § 2802(b) and (c) provide for interest at the statutory post judgment  
10 rate of 10% simple interest per annum from the date of the expenditure plus attorneys' fees to  
11 collect reimbursement.

12 102. PLAINTIFF, therefore, demands reimbursement for expenditures or losses incurred  
13 by him and the members of the CALIFORNIA CLASS in direct consequence of the discharge of  
14 their duties, or their obedience to the directions of the DEFENDANTS with interest at the statutory  
15 rate and attorneys' fees.

16  
17 **SEVENTH CAUSE OF ACTION**

18 **For Unlawful, Unfair and Deceptive Business Practices**

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

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

21 103. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
22 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 101 of this  
23 Complaint.

24 104. DEFENDANTS are "persons" as that term is defined under California Business &  
25 Professions Code § 17021.

26 105. California Business & Professions Code § 17200 defines unfair competition as any  
27 unlawful, unfair, or fraudulent business act or practice.

28 106. By the conduct alleged hereinabove in the First through Sixth Claims for Relief,

1 DEFENDANTS have violated the provisions of the Wage Orders, the Fair Labor Standards Act, 29  
2 USC §201, the REGULATIONS, the California Labor Code, the Code of Federal Regulations and  
3 the California Code of Regulations, *et seq.*, for which this Court should issue equitable and  
4 injunctive relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
5 wrongfully withheld or labor taken without proper compensation.

6 107. By and through the unfair and unlawful business practices described hereinabove,  
7 DEFENDANTS have obtained valuable property, money, and services from the PLAINTIFF, and  
8 the other members of the CLASS, and has deprived them of valuable rights and benefits guaranteed  
9 by law, all to their detriment and to the benefit of DEFENDANTS so as to allow DEFENDANTS to  
10 unfairly compete.

11 108. All the acts described herein as violations of, among other things, the Cal. Lab.  
12 Code,  
13 California Code of Regulations, and the Industrial Welfare Commission Wage Orders, are unlawful  
14 and in violation of public policy, are immoral, unethical, oppressive, and unscrupulous, and thereby  
15 constitute unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et*  
16 *seq.*

17 109. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further  
18 entitled to, and do, seek a declaration that the above described business practices are unfair and  
19 unlawful and that an injunctive relief should be issued restraining DEFENDANTS from engaging in  
20 any of these unfair and unlawful business practices in the future.

21 110. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no plain,  
22 speedy, and/or adequate remedy at law that will end the unfair and unlawful business practices of  
23 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a  
24 result of the unfair and unlawful business practices described above, PLAINTIFF, and the other  
25 members of the CALIFORNIA CLASS, have suffered and will continue to suffer irreparable harm  
26 unless DEFENDANTS are restrained from continuing to engage in these unfair and unlawful  
27 business practices. In addition, DEFENDANTS should be required to disgorge the unpaid moneys  
28 to PLAINTIFF, and the other members of the CALIFORNIA CLASS.

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**EIGHTH CAUSE OF ACTION**

**Labor Code Private Attorneys General Act**

**[Cal. Labor Code § 2698]**

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

111. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 109 of this Complaint.

112. On May 13, 2008, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "LWDA") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. More than thirty-three (33) days have elapsed since PLAINTIFF gave notice to the LWDA. As a result, pursuant to Section 2699.3, Plaintiff may now commence a civil action pursuant to Section 2699.

113. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS' failure to pay wages, failure to provide rest and meal period breaks, failure to pay wages and compensation for work without rest and meal period breaks and failure to provide accurate wage statements and maintain accurate time records for PLAINTIFF and the other members of the CLASS violates applicable Labor Code sections and gives rise to statutory penalties as a result of such conduct, including but not limited to penalties as provided by Labor Code §§ 221, 226, 226.7, 558, 1174 and 1194, applicable Industrial Welfare Commission Wage Orders. PLAINTIFF, as an aggrieved employee, hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of himself and other current and former employees of DEFENDANTS which comprise the CLASS, against whom one or more of the violations of the Labor Code was committed. In addition, PLAINTIFF, as an aggrieved employee, hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of the State of California and/or the LWDA, to the fullest extent available under the law.

**PRAYER**

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

- A) Compensatory damages, according to proof at trial due PLAINTIFF and the other members of the COLLECTIVE CLASS and CALIFORNIA CLASS, during the applicable COLLECTIVE CLASS PERIOD and CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
- B) Restitution, according to proof at trial, due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
- C) One (1) hour of pay for each workday in which a meal period was not provided to PLAINTIFF and each member of the CALIFORNIA CLASS for each four (4) hours of work during the period commencing on the date that is within four years prior to the filing of this Complaint;
- D) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- E) An order requiring DEFENDANTS to provide an accounting of all hours worked, all wages, and 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 liquidated damages, statutory damages, including reasonable attorneys' fees and cost of suit, but only to the extent that such reasonable attorneys' fees and costs are recoverable pursuant to Cal. Lab. Code §1194 or the FLSA at 29 U.S.C. §216. Neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for

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- attorneys' fees or costs available under Cal. Lab. Code § 218.5;
- I) For liquidated damages pursuant to 29 U.S.C. § 216(b);
- J) For all appropriate relief pursuant to Cal. Lab. Code § 2699.3, including any applicable interest thereon; and,
- K) Such other and further relief as the Court deems just and proper.

Dated: June 16, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal  
Norman B. Blumenthal  
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**DEMAND FOR JURY TRIAL**

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

Dated: June 16, 2008

BLUMENTHAL & NORDREHAUG

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

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15 **UNITED STATES DISTRICT COURT**  
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 JOHN SONES, on behalf of himself, and on  
 18 behalf of all persons similarly situated,

CASE No. 08 cv 00756 BEN (JMA)

19 Plaintiffs,

**PROOF OF SERVICE**

20 vs.

21 WORLD MORTGAGE COMPANY; and,  
 22 Does 1 to 10,

23 Defendants.

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**CERTIFICATE OF SERVICE [F.R.C.P. §5]**

I am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On June 16, 2008, I served the document(s) described as below in the manner set forth below:

(1) **FIRST AMENDED COMPLAINT**

XX (BY ELECTRONIC SERVICE): I caused the listed documents to be electronically filed through the CM/ECF system at the United States District Court for the Southern District of California which generates a Notice of Electronic Filing to all parties and constitutes service of the electronically filed documents on all parties for purposes of the Federal Rules of Civil Procedure.

XX (Federal): I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the foregoing is true and correct under penalty of perjury.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 16, 2008 at San Diego, California.

By:                   s/Norman Blumenthal                    
Norman B. Blumenthal