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8 and all others similarly situated

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

11 DAVID GENTILCORE , an individual,
12 on behalf of himself and all others
13 similarly situated,

14 Plaintiff,

15 v.

16 BANK OF AMERICA, N.A.; and
17 DOES 1 through 10, inclusive,
18 Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

- 1. **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 2. **FAILURE TO PAY MINIMUM WAGES**
- 3. **FAILURE TO PAY OVERTIME WAGES**
- 4. **FAILURE TO PROVIDE MEAL BREAKS;**
- 5. **FAILURE TO PROVIDE REST BREAKS;**
- 6. **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- 7. **FAILURE TO PAY ALL WAGES UPON SEPARATION;**
- and
- 8. **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION ACT, *BUS. & PROF. CODE §17200, et seq.***

DEMAND FOR JURY TRIAL

1
2 Plaintiff David Gentilcore (“Plaintiff”) is informed and believes, and on that basis
3 alleges, as follows:

4 **NATURE OF THE ACTION**

5 1. This is a California state-wide class action for wage and labor violations
6 arising out of, among other things, Defendant Bank of America, N.A.’s (“Defendant” or
7 “BofA”) failure to reimburse business expenses incurred by Plaintiff and class members
8 while working from home during the coronavirus crisis. In addition, Defendant instituted
9 an unlawful pay plan for home mortgage loan personnel, whereby it advanced a base pay
10 against commission, but clawed the advance back from the commissions. Defendant
11 failed and continues to fail to separately compensate Plaintiffs or class members for rest
12 breaks, and fails to pay minimum and overtime wages as required, and engages in other
13 Labor Code violations.

14 2. Plaintiff seeks among other things, all wages, restitutionary disgorgement,
15 and statutory penalties.

16 **PARTIES**

17 3. Plaintiff David Gentilcore was, at all relevant times, a resident and citizen
18 of the State of California. Plaintiff Gentilcore was employed by Defendant as a mortgage
19 loan supervisor in the County of Sacramento, State of California, during the Class period
20 as alleged herein.

21 4. Defendant Bank of America, N.A. is a bank, that is authorized to conduct
22 and is actually conducting business in the State of California, and is a citizen of North
23 Carolina.

24 5. Plaintiffs are currently ignorant of the true names and capacities, whether
25 individual, corporate, associate, or otherwise, of the Defendants sued herein under the
26 fictitious names Does 1 through 10, inclusive, and therefore sue such Defendants by such
27 fictitious names. Plaintiff will seek leave to amend this complaint to allege the true
28 names and capacities of said fictitiously named Defendants when their true names and

1 capacities have been ascertained. Plaintiff is informed and believes and thereon alleges
2 that each of the fictitiously named Defendants is legally responsible in some manner for
3 the events and occurrences alleged herein, and for the damages suffered by the Class.

4 6. Plaintiffs are informed and believe and thereon allege that all Defendants,
5 including the fictitious Doe Defendants, were at all relevant times acting as actual agents,
6 conspirators, ostensible agents, alter egos, partners and/or joint venturers and/or
7 employees of all other Defendants, and that all acts alleged herein occurred within the
8 course and scope of said agency, employment, partnership, and joint venture, conspiracy
9 or enterprise, and with the express and/or implied permission, knowledge, consent
10 authorization and ratification of their co-Defendant; however, each of these allegations
11 are deemed “alternative” theories whenever not doing so would result in a contradiction
12 with other allegations.

13 **JURISDICTION AND VENUE**

14 7. This Court has jurisdiction over the entire action by virtue of the fact that
15 this is a civil action wherein the matter in controversy, exclusive of interest and costs,
16 exceeds the jurisdictional minimum of the Court. The acts and omissions complained of
17 in this action took place in part in the State of California. At least one Defendant is a
18 citizen of a state outside of California, and federal diversity jurisdiction exists and/or
19 jurisdiction under the Class Action Fairness Act (“CAFA”). The class amount at issue
20 exceeds \$5,000,000 and the jurisdictional minimum of this Court under CAFA. Venue is
21 proper because this is a class action, the acts and/or omissions complained of took place,
22 in whole or in part within the venue of this Court.

23 **FACTUAL ALLEGATIONS**

24 8. Plaintiff worked for Defendant in California within the liability period.

25 9. Plaintiff and similarly situated employees of Defendants were subject to
26 common policies, practices and/or procedures regarding reimbursement of reasonable and
27 necessary expenses, including expenses incurred while employees worked from home
28 during coronavirus pandemic. Following the outbreak of the coronavirus crisis, in or

1 about March 2020, Defendant had its employees, including Plaintiff, work from home.
2 Plaintiff and similarly situated employees incurred reasonable and necessary business
3 expenses, including expenses incurred while working from home during the coronavirus
4 pandemic. Defendant, however, failed to reimburse Plaintiff and the class for necessary
5 business expenses incurred while working from home during the coronavirus outbreak.
6 The business expenses Defendant failed to reimburse Plaintiff and other class members
7 for during the coronavirus crisis include, but are not limited to, internet, phone, personal
8 computer usage, office supplies, utility bills, and/or fair rental value of space used for
9 home office. Defendant's failure to reimburse for these expenses violated California
10 Labor Code § 2802.

11 10. Plaintiff worked as a mortgage home loan salesperson and supervisor for
12 Defendant home mortgage loan division. Defendant paid Plaintiff and other home
13 mortgage loan personnel based on a sales commission, where their income is derived
14 from mortgage sales. Defendant advanced Plaintiff and Class members a base pay
15 against commission, but clawed the advance back from the commissions. Under
16 California law, the advances against commission was not compensation or a salary, but
17 rather a loan. As a result of Defendant's pay plan, Plaintiff and Class members were not
18 paid minimum wage for certain non-sales tasks, not properly paid overtime, and were not
19 provided or compensated for meal or rest breaks.

20 11. Defendant's pay plan failed to compensate for non sales work. Defendant
21 failed to pay Plaintiff and Class members for all hours worked, including but not limited
22 to, meetings, loan processing, training, loan tracking, and/or customer service.

23 12. Plaintiff and the Class regularly worked overtime, including working days
24 that were 10 hours or more, and weeks that were 50 hours or more. Plaintiff is informed
25 and believes, and on that basis alleges, that Plaintiff and class members regularly worked
26 overtime that they was not compensated for. Plaintiff is informed and believes, and on
27 that basis alleges, that Defendant clawed back a portion of the overtime pay from
28 commissions, and failed to pay overtime based on the regular rate of pay. In violation of

1 Labor Code §510, Defendant failed to pay for overtime to its mortgage loan officers.

2 13. Defendant did not provide and/or properly pay Plaintiff or the Class for
3 meal or rest breaks. Defendant failed to pay Plaintiff and class members based on their
4 regular rate of compensation under Labor Code §226.7(c) for missed meal and rest
5 breaks. In violation of Labor Code §226.7, Defendant also did not compensate Plaintiff
6 and the Class for rest breaks because Defendant paid on a commission basis for sales
7 work, and failed to separately pay Plaintiffs and Class members for rest breaks.

8 14. In violation of Labor Code § 226(a), Defendants have issued false and
9 inaccurate wage statements which fail to account for all Plaintiff and other non-exempt
10 employees' wages earned, including minimum wage, overtime and premium pay for
11 missed meal or rest breaks, and/or failed to accurately reflect reimbursement for business
12 expenses.

13 15. Defendant's conduct violated, among other statutes, Labor Code §§ 201,
14 202, 203, 204, 218.5 226, 226.3, 226.7, 510, 512, 1194, as well as IWC Wage Order No.
15 4-2001.

16 16. Plaintiff is a member of and seeks to be the representative for the group of
17 employees who all have been exposed to, have suffered, and/or were permitted to work
18 under, Defendants' unlawful employment practices as alleged herein.

19 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

20 17. Plaintiff brings this action on behalf of herself, and on behalf of all others
21 similarly situated, and as a member of the Classes defined as follows:

22 **EXPENSE REIMBURSEMENT CLASS:** All current or former
23 employees of Defendant who worked in California in any exempt
24 or nonexempt capacity, who incurred business expenses as a result
25 of their performance of duties for Defendant while working from
home during the coronavirus crisis, at any time beginning March 1,
2020 through the date notice is mailed to the Class.

26 **MORTGAGE LOAN CLASS:** All current or former employees
27 of Defendant who worked in California as mortgage loan officer,
28 salesperson, supervisor or similar position, and were paid an
advance against commission, at anytime beginning four years prior
to the filing of this complaint through the date notice is mailed to
the Class.

1 18. Plaintiff reserves the right to amend or otherwise alter the class definitions
2 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in
3 response to facts learned through discovery, legal arguments advanced by Defendant or
4 otherwise.

5 19. This action has been brought and may be properly maintained as a class
6 action, as follows:

7 20. **Numerosity of the Class:** Members of the Class are so numerous that their
8 individual joinder is impracticable. The precise number of Class members and their
9 addresses are known to Plaintiff or will be known to Plaintiff through discovery. Class
10 members may be notified of the pendency of this action by mail, electronic mail, the
11 Internet, or published notice.

12 21. **Existence of Predominance of Common Questions of Fact and Law:**
13 Common questions of law and fact exist as to all members of the Class. These questions
14 predominate over any questions affecting only individual Class members. These common
15 legal and factual questions include:

- 16 a. Whether Defendant violated Labor Code § 2802 by failing to reimburse its
17 employees for business expenses incurred while working from home during
18 the coronavirus crisis.
- 19 b. Whether Defendant misclassified mortgage loan supervisors as exempt.
- 20 c. Whether Defendant violated IWC Wage Order No. 4-2001 and Labor Code §
21 1194 by failing provide or pay minimum wage to its mortgage loan
22 supervisors for non-sales time.
- 23 d. Whether Defendant violated IWC Wage Order No. 4-2001 and Labor Code §
24 510 by failing provide or pay overtime to mortgage loan supervisors.
- 25 e. Whether Defendant violated IWC Wage Order No. 4-2001 and Labor Code §
26 226.7 by failing provide or pay for meal breaks.
- 27 f. Whether Defendant violated IWC Wage Order No. 4-2001 and Labor Code §
28 226.7 by failing provide or pay for rest breaks.

1 g. Whether Defendant engaged in unlawful, unfair, or fraudulent practices and
2 violated California Business and Professions Code § 17200 by failing to
3 reimburse for business expenses, and misclassifying Treasury Service
4 Associates as exempt.

5 h. The nature and extent of class-wide injury and measure of damages.

6 22. **Typicality:** Plaintiff's claims are typical of the claims of the members of
7 the subclasses they represent because Plaintiff worked during the coronavirus crisis from
8 home, without getting reimbursed for business expenses, and was employed as a
9 mortgage loan officer, was not reimbursed business expenses during the coronavirus, was
10 paid on a commission basis, and was misclassified as exempt based on the outside
11 salesperson exemption by Defendant. Thus, Plaintiff was exposed and subjected to the
12 same unlawful business practices as each Class member during the liability period.
13 Plaintiff and the members of the classes she seeks to represent sustained the same types
14 of damages and losses.

15 23. **Adequacy:** Plaintiff is an adequate representatives of the Class he seeks to
16 represent because his interests do not conflict with the interests of the members of the
17 Class Plaintiffs seek to represent. Plaintiff has retained counsel competent and
18 experienced in complex class action litigation and Plaintiff intends to prosecute this
19 action vigorously. The interests of members of each Class will be fairly and adequately
20 protected by Plaintiff and their counsel.

21 24. **Superiority and Substantial Benefit:** The class action is superior to other
22 available means for the fair and efficient adjudication of Plaintiff and the Class members'
23 claims. The violations of law were committed by Defendant in a uniform manner and
24 class members were exposed to the same unlawful practices. The damages suffered by
25 each individual Class member may be limited. Damages of such magnitude are small
26 given the burden and expense of individual prosecution of the complex and extensive
27 litigation necessitated by Defendant's conduct. Further, it would be virtually impossible
28 for the Class members to redress the wrongs done to them on an individual basis. Even if

1 members of the Class themselves could afford such individual litigation, the court system
2 could not. Individualized litigation increases the delay and expense to all parties and the
3 court system, due to the complex legal and factual issues of the case. By contrast, the
4 class action device presents far fewer management difficulties, and provides the benefits
5 of single adjudication, economy of scale, and comprehensive supervision by a single
6 court.

7 25. The Class should also be certified because:

8 a. The prosecution of separate actions by individual members of the Class
9 would create a risk of inconsistent or varying adjudications with respect to individual
10 Class members which would establish incompatible standards of conduct for Defendant;

11 b. The prosecution of separate actions by individual members of the Class
12 would create a risk of adjudication with respect to them, which would, as a practical
13 matter, be dispositive of the interests of the other Class members not parties to the
14 adjudications, or substantially impair or impede their ability to protect their interests; and

15 c. Defendant has acted or refused to act on grounds generally applicable to the
16 Class, and/or the general public, thereby making appropriate final and injunctive relief
17 with respect to the Classes as a whole.

18 **FIRST CAUSE OF ACTION**
19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
20 **(Violation of Labor Code § 2802)**
21 **(Against All Defendants)**

22 26. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs
23 of this Complaint, as though fully set forth herein.

24 27. This cause of action is brought on behalf of the Expense Reimbursement
25 Class.

26 28. California Labor Code § 2802 provides “An employer shall indemnify his or
27 her employee for all necessary expenditures or losses incurred by the employee in direct
28 consequence of the discharge of his or her duties, or of his or her obedience to the
directions of the employer, even though unlawful, unless the employee, at the time of

1 obeying the directions, believed them to be unlawful.”

2 29. During the applicable statutory period, Plaintiff and the Class members
3 incurred necessary expenditures and losses in direct consequence of the discharge of
4 their employment duties and their obedience to the directions of Defendants. These
5 business expenses which Plaintiff and class members incurred, which were not
6 reimbursed include, but are not limited to, internet, phone, personal computer usage,
7 office supplies, utility bills, and/or fair rental value of space used for home office.
8 Defendants did not reimburse these expenditures or losses to Plaintiff and the Expense
9 Reimbursement Class.

10 30. Defendants has failed to fully reimburse Plaintiff and the members of the
11 Business Expense Reimbursement Class for necessary business-related expenses and
12 losses. Thus, all employees who worked for Defendant from home in California in any
13 position or capacity suffered losses from Defendant’s failure to reimburse business
14 expenses, and are part of the Expense Reimbursement Class.

15 31. Plaintiff and the Expense Reimbursement Class members are entitled to
16 recover their unreimbursed expenditures and losses pursuant to Labor Code § 2802.

17 **SECOND CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM WAGES**
19 **(Violation of Labor Code §§ 510, 1194, 1194.2, 1197; Wage Order No. 4-2001, §4)**
20 **(Against All Defendants)**

21 32. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs
22 of this Complaint, as though fully set forth herein.

23 33. This cause of action is brought on behalf of the Mortgage Loan Class.

24 34. Labor Code § 510 provides in relevant part: “[e]ight hours of labor
25 constitutes a day’s work.” Labor Code §1197 provides: “The minimum wage for
26 employees fixed by the commission is the minimum wage to be paid to employees, and
27 the payment of a less wage than the minimum so fixed is unlawful.”

28 35. Labor Code § 1194, subdivision (a) provides: “Notwithstanding any
agreement to work for a lesser wage, an employee receiving less than the legal minimum
wage or the legal overtime compensation applicable to the employee is entitled to

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

4 36. Labor Code § 1194.2 provides in relevant part: "In any action under
5 Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less
6 than the minimum wage fixed by an order of the commission, an employee shall be
7 entitled to recover liquidated damages in an amount equal to the wages unlawfully
8 unpaid and interest thereon."

9 37. Pursuant to IWC Wage Order No. 4-2001, at all times material hereto,
10 "hours worked" includes "the time during which an employee is subject to the control of
11 an employer, and includes all the time the employee is suffered or permitted to work,
12 where or not required to do so."

13 38. Plaintiff and Class members were required to work non-selling time, for
14 which they were not compensated, in violation of California's minimum wage laws.
15 This includes, but is not limited to, including but not limited to, meetings, loan
16 processing, supervising, training, loan tracking, and/or customer service.

17 39. At all times relevant during the liability period, under the provisions of
18 Wage Order No. 4-2001, Plaintiff and each Class member should have received not less
19 than the minimum wage in a sum according to proof for the time worked, but not
20 compensated.

21 40. For all hours that Plaintiff and the Class members worked, they are entitled
22 to not less than the California minimum wage and, pursuant to Labor Code § 1194.2(a)
23 liquidated damages in an amount equal to the unpaid minimum wages and interest
24 thereon. Pursuant to Labor Code § 1194, Plaintiff and the Class members are also
25 entitled to their attorneys' fees, costs and interest according to proof.

26 41. At all times relevant during the liability period, Defendants willfully failed
27 and refused, and continues to willfully fail and refuse, to pay Plaintiff and Class
28 members the amounts owed.

1 42. Defendants' unlawful conduct alleged herein occurred in the course of
2 employment of Plaintiff and all other similarly situated loan supervisors, and Defendants
3 has done so continuously throughout the filing of this complaint.

4 43. As a direct and proximate result of Defendants' violation of Labor Code §§
5 510 and 1197, Plaintiff and other Mortgage Loan Class members have suffered
6 irreparable harm and money damages entitling them to damages, injunctive relief or
7 restitution. Plaintiff, on behalf of himself and on behalf of the Mortgage Loan Class,
8 seeks damages and all other relief allowable including all wages due while working as
9 Defendants' drivers, attorneys' fees, liquidated damages, prejudgment interest, and as to
10 those employees no longer employed by Defendants, waiting time penalties pursuant to
11 Labor Code § 200 *et seq.*

12 44. Plaintiff and the Mortgage Loan Class members are entitled to back pay,
13 pre-judgment interest, liquidated damages, statutory penalties, attorneys' fees and costs,
14 and for Plaintiff and the Class of members no longer employed, waiting time penalties
15 pursuant to Labor Code § 1194.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME WAGES**
18 **(Violation of *Labor Code* §§ 510 and 1194; Wage Order No. 4-2001, § 3(A))**

19 45. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs
20 of this Complaint, as though fully set forth herein.

21 46. This cause of action is brought on behalf of the Mortgage Loan Class.

22 47. California *Labor Code* §510 provides that, "Any work in excess of eight
23 hours in one workday and any work in excess of 40 hours in any one workweek and the
24 first eight hours worked on the seventh day of work in any one workweek shall be
25 compensated at the rate of no less than one and one-half times the regular rate of pay for
26 an employee. Any work in excess of 12 hours in one day shall be compensated at the
27 rate of no less than twice the regular rate of pay for an employee...."

28 48. Labor Code § 1194, subdivision (a) provides: "Notwithstanding any
agreement to work for a lesser wage, an employee receiving less than the legal minimum

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

5 49. Section 3(a)(1) of Wage Order No. 4-2001 also mandates that employers
6 pay one and one-half times the employees' regular rate of pay for employees who work
7 more than eight (8) hours in a day or forty (40) hours in a week, and two times their
8 regular rate of pay for any work in excess of twelve (12) hours in one day.

9 50. At all times relevant hereto, Plaintiff and members of the Mortgage Loan
10 Class were non-exempt for purposes of the overtime and double pay requirements set
11 forth in the Labor Code and Wage Order No. 4-2001. In addition, during the Class
12 period, Plaintiffs and other members of the Class consistently worked ten (10) hours or
13 more per day, and 50 hours or more per week.

14 51. Plaintiff and the Class seek to recover unpaid overtime and double-time
15 compensation in an amount to be determined at trial, as well as attorney's fees and costs.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL PERIODS**
18 **(Violation of Labor Code §§ 512 and 226.7; IWC Wage Order No. 4-2001, § 11)**
19 **(Against All Defendants)**

20 52. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs
21 of this Complaint, as though fully set forth herein.

22 53. This cause of action is brought on behalf of the Mortgage Loan Class.

23 54. California Labor Code § 226.7(a) provides, "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the
25 Industrial Welfare Commission."

26 55. IWC Order No. 4-2001(11)(A) provides, in relevant part: "No employer
27 shall employ any person for a work period of more than five (5) hours without a meal
28 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

1 consent of the employer and the employee.”

2 56. Section 512(a) of the California Labor Code provides, in relevant part, that:
3 “An employer may not employ an employee for a work period of more than five hours
4 per day without providing the employee with a meal period of not less than 30 minutes,
5 except that if the total work period per day of the employee is no more than six hours,
6 the meal period may be waived by mutual consent of both the employer and employee.
7 An employer may not employ an employee for a work period of more than 10 hours per
8 day without providing the employee with a second meal period of not less than 30
9 minutes, except that if the total hours worked is no more than 12 hours, the second meal
10 period may be waived by mutual consent of the employer and the employee only if the
11 first meal period was not waived.”

12 57. As alleged herein, Defendants failed to authorize and permit uninterrupted
13 meal breaks. Plaintiff and members of the Class were routinely required to work without
14 an uninterrupted meal break at the direction of Defendants and/or with Defendants’
15 knowledge and acquiescence. Defendant also failed to pay Plaintiff and class members
16 based on their regular rate of compensation under Labor Code §226.7(c) for missed meal
17 breaks.

18 58. By failing to provide for meal periods, requiring its employees to work
19 through meal periods and/or its failing to relieve employees of their duties for meal
20 periods, Defendant have violated California Labor Code § 226.7 and § 11 of IWC Wage
21 Order No. 4-2001, and is liable to Plaintiff and the Loan Officer class.

22 59. As a result of the unlawful acts of Defendants, Plaintiff and the Mortgage
23 Loan Class have been deprived of timely off-duty meal periods, and are entitled to
24 recovery under Labor Code § 226.7(b) and § 11 of IWC Wage Order No. 4-2001, in the
25 amount of one additional hour of pay at the employee’s regular rate of compensation for
26 each work period during each day in which Defendants failed to provide its drivers with
27 timely statutory off-duty meal periods.

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Violation of Labor Code §§ 226.7, 512, and 1194; IWC Wage Order No. 4-2001, §12)

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4 60. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs
5 of this Complaint, as though fully set forth herein.

6 61. This cause of action is brought on behalf of the Mortgage Loan Class.

7 62. California Labor Code § 226.7(a) provides, “No employer shall require any
8 employee to work during any meal or rest period mandated by an applicable order of the
9 Industrial Welfare Commission.”

10 63. IWC Order No.4-2001(12)(A) provides, in relevant part: “Every employer
11 shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period. The authorized rest period time
13 shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
14 per four hours or major fraction thereof. However, a rest period need not be authorized
15 for employees whose total daily work times is less than three and one-half hours.
16 Authorized rest period time shall be counted as hours worked for which there shall be no
17 deduction from wages.”

18 64. IWC Order No. 4-2001 (12)(B) further provides, “If an employer fails to
19 provide an employee with a rest period in accordance with the applicable provisions of
20 this order, the employer shall pay the employee one (1) hour of pay at the employee’s
21 regular rate of compensation for each workday that the rest period is not provided.”

22 65. As alleged herein, Defendant failed to provide or pay rest breaks during the
23 Mortgage Loan Class period. Defendant paid Plaintiff and class members based on a
24 commission, and did not separately compensate them for their time. Defendant failed to
25 pay Plaintiff and class members based on their regular rate of compensation under Labor
26 Code §226.7(c) for missed rest breaks.

1 except that by January 1, 2008, only the last four digits of his or her social security
2 number or an employee identification number other than a social security number may
3 be shown on the itemized statement, (8) the name and address of the legal entity that is
4 the employer, and (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.”

6 72. Labor Code § 226(e) provides that an employee is entitled to recover \$50
7 for the initial pay period in which a violation of § 226 occurs and \$100 for each
8 subsequent pay period, as well as an award of costs and reasonable attorneys’ fees, for
9 all pay periods in which the employer knowingly and intentionally failed to provide
10 accurate itemized statements to the employee causing the employee to suffer injury.

11 73. Plaintiff is informed, believe and thereon alleges that at all times relevant,
12 Defendants knowingly and intentionally failed to furnish and continues to knowingly
13 and intentionally fail to furnish Plaintiff, the Expense Reimbursement Class and the
14 Mortgage Loan Class with timely and accurate itemized statements showing the gross
15 wages earned by each of them, as required by Labor Code § 226 (a), in that the
16 payments owed to Plaintiff and the members of the Class for unreimbursed business
17 expenses, unpaid wages, and missed meal and rest periods, were not included in gross
18 wages earned by Plaintiff and the Class.

19 74. Defendants’ failure to provide Plaintiff and members of the Expense
20 Reimbursement Class and the Mortgage Loan Class with accurate itemized wage
21 statements during the Class period has caused Plaintiff and members of the Class to
22 incur economic damages in that they were not aware that they were owed and not paid
23 compensation for missed rest periods and on-duty meal periods, for hours worked
24 without pay, and for overtime worked without pay.

25 75. As a result of Defendants’ issuance of inaccurate itemized wage statements
26 to Plaintiff and members of the Expense Reimbursement Class and the Mortgage Loan
27 Class in violation of Labor Code § 226(a), Plaintiff and the members of each Class are
28 each entitled to recover penalties pursuant to § 226(e) of the Labor Code.

SEVENTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE AT SEPARATION
(Violation of Labor Code § 203)

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3 76. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs
4 of this Complaint, as though fully set forth herein.

5 77. This cause of action is brought on behalf of the Expense Reimbursement
6 Class and the Mortgage Loan Class, who have separated from employment with
7 Defendant.

8 78. California Labor Code §§ 201 and 202 requires Defendant to pay all
9 compensation due and owing to former mortgage salespersons at or around the time
10 employment is terminated. Section 203 of the California Labor Code provides that if an
11 employer willfully fails to pay compensation promptly upon discharge or resignation, as
12 required by §§ 201 and 202, then the employer is liable for penalties in the form of
13 continued compensation up to thirty (30) work days.

14 79. At all times relevant during the liability period, Plaintiff and the other
15 members of the Class were employees of Defendant covered by Labor Code § 203.

16 80. Plaintiff and the Expense Reimbursement Class and the Mortgage Loan
17 Class were not paid for their work performed, as set forth herein, including minimum
18 wage for non-sales time, overtime pay, vacation pay, or their proper commission for
19 certain loans.

20 81. Defendant willfully failed to pay Plaintiff and other members of the
21 Expense Reimbursement Class and the Mortgage Loan Class who are no longer
22 employed by Defendant for their uncompensated hours, uncompensated overtime, and
23 for other items alleged herein upon their termination or separation from employment
24 with Defendant as required by California Labor Code §§ 201 and 202. As a result,
25 Defendant is liable to Plaintiff and other members of the Expense Reimbursement Class
26 and the Mortgage Loan Class who are no longer employed by Defendant for all wages or
27 compensation owed, as well as waiting time penalties amounting to thirty days wages
28 for Plaintiff and each such Class member pursuant to California Labor Code § 203.

EIGHTH CAUSE OF ACTION

**FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS
(Violation of Labor Code §§ 226 and 226.3)**

82. Plaintiff re-alleges, and incorporates by reference, the preceding paragraphs of this Complaint, as though fully set forth herein.

83. This cause of action is brought on behalf of the Expense Reimbursement Class and the Mortgage Loan Class.

84. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

85. Through its action alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL. Defendant’s conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

86. Defendant’s unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendant’s unfair conduct under the UCL includes, but is not limited to, failure to pay Class members wages and compensation for unreimbursed business expenses, minimum wage, overtime, and meal or rest breaks, as alleged herein. Defendant’s fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about compensation for Class members.

87. Plaintiff has standing to assert this claim because she has suffered injury in fact and has lost money as a result of Defendant’s conduct.

88. Plaintiff and the Expense Reimbursement Class and the Mortgage Loan Class seek restitutionary disgorgement from Defendant, and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

PRAYER

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated and also on behalf of the general public, prays for judgment against Defendants as follows:

- A. An order that this action may proceed and be maintained as a class action;
- B. For reimbursement of business expenses under Labor Code § 2802 for

- 1 Plaintiff and all members of the Expense Reimbursement Class;
- 2 C. For all unpaid minimum wages and liquidated damages due to Plaintiff and
- 3 each Mortgage Loan Class member on their minimum wage claim;
- 4 D. For all unpaid overtime wages and liquidated damages under California law
- 5 due to Plaintiff and each Mortgage Loan Class member on their overtime
- 6 wage claim;
- 7 E. For one hour of wages due to Plaintiff and each Mortgage Loan Class
- 8 member at their regular rate of compensation for each meal break
- 9 violations;
- 10 F. For one hour of wages due to Plaintiff and each Mortgage Loan Class
- 11 member at their regular rate of compensation for each rest break violations;
- 12 G. For statutory penalties under Labor Code § 226(e) for Plaintiff and each
- 13 Expense Reimbursement Class or Mortgage Loan Class member;
- 14 H. An order requiring Defendants to comply with Labor Code § 226(a) with
- 15 respect to all currently employed members of the Expense Reimbursement
- 16 Class or Mortgage Loan Class;
- 17 I. For damages and/or penalties under Labor Code Sections 201, 202, and 203
- 18 for the failure to provide all wages due at separation;
- 19 J. For restitutionary disgorgement pursuant to the UCL;
- 20 K. An order enjoining Defendants from further unfair and unlawful business
- 21 practices in violation of Business & Professions Code §§ 17200 *et seq.*;
- 22 L. Prejudgment interest at the maximum legal rate;
- 23 M. For reasonable attorneys' fees and costs under Labor Code §§ 218.5,
- 24 226(e)(1) and/or Code of Civil Procedure §1021.5;
- 25 N. Accounting of Defendants' records for the liability period;
- 26 O. General, special and consequential damages, to the extent allowed by law;

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P. Costs of suit; and

Q. Such other relief as the Court may deem just and proper.

DATED: July 14, 2021

HAFFNER LAW PC

By: /s/ Joshua H. Haffner
Joshua H. Haffner
Attorneys for Plaintiff and others
Similarly Situated

DEMAND FOR JURY TRIAL

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2 Plaintiff demands a trial by jury for herself and the Class members on all claims so
3 triable.

4 DATED: July 14, 2021

HAFFNER LAW PC

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7 By: /s/ Joshua H. Haffner
8 Joshua H. Haffner
9 Attorneys for Plaintiff and others
10 Similarly situated
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America Owes Reimbursement for Work-From-Home Business Expenses, Class Action Says](#)
