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19 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 SAN FRANCISCO COUNTY

21 HUY NGUYEN, individually and on behalf of all
22 others similarly situated,

23 Plaintiff,

24 v.

25 WELLS FARGO BANK, NATIONAL
26 ASSOCIATION and DOES 1 through 10,
27 inclusive,

28 Defendants.

Case No. **CCC-15-547596**

COMPLAINT FOR: (1) UNLAWFUL FORFEITURE OF PAID TIME OFF (LABOR CODE § 227.3); (2) FAILURE TO TIMELY PAY WAGES (LABOR CODE §§ 204, 226); (3) UNLAWFUL WAGE DEDUCTIONS (LABOR CODE §§ 221, 223, 400-410, Cal.Code Reg. tit. 8, § 11040(8)); (4) UNLAWFUL WAGE DEDUCTIONS (LABOR CODE § 2802); (5) FAILURE TO PAY WAGES AT TERMINATION (LABOR CODE § 203); (6) UNLAWFUL WAGE STATEMENTS (LABOR CODE 226); and (7) UCL VIOLATIONS (BUS. & PROF. CODE § 17200)

[CLASS ACTION]

**ENDORSED
FILED**
Superior Court of California
County of San Francisco

AUG 25 2015

CLERK OF THE COURT

BY: ARLENE RAMOS
Deputy Clerk

BY FAX

1 Plaintiff Huy Nguyen, on behalf of himself and all others similarly situated, complains and
2 alleges as follows:

3 **A. INTRODUCTION**

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 damages, restitution, declaratory relief, equitable relief, penalties, and reasonable attorneys' fees
6 and costs, under California Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 227.3, 400-410,
7 2802, Cal. Code Reg. tit. 8, § 11040(8), Code of Civil Procedure § 1021.5, and Business and
8 Professions Code § 17200, et seq., on behalf of Plaintiff and all other individuals who are or have
9 been employed as Home Mortgage Consultants, Home Mortgage Consultants Jr., and Private
10 Mortgage Bankers ("Loan Officers" or "Class Members," as defined below) by Defendant Wells
11 Fargo Bank, National Association (hereafter "Wells Fargo" or "Defendant"), in California during
12 the four years prior to the filing of this action. Huy Nguyen brings this complaint on behalf of
13 similarly situated Loan Officers who were (a) subject to an unlawful forfeiture of their earned paid
14 time off; (b) had their commissions improperly paid; (c) subject to unlawful deductions from their
15 wages; and (d) not timely and properly paid all their wages at time of separation.

16 2. The "Class Period" is designated as the period from four years prior to the filing of
17 this Complaint through the time the Court certifies this case as a class action. The violations of
18 California's wage and hour laws, as described more fully below, have been ongoing for at least
19 four years prior to the filing of this action, are continuing at present, and will continue unless and
20 until enjoined by the Court.

21 **B. JURISDICTION AND VENUE**

22 3. This Court has jurisdiction over the claims brought under the California Labor Code
23 and California's Unfair Competition Law, Business & Professions Code § 17200 et seq.

24 4. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5.
25 Defendant is a foreign corporation, maintains corporate offices in San Francisco, California and
26 has designated 464 California Street, San Francisco, California as its principal place of business in
27 California with the California Secretary of State. Venue is therefore proper in any County in the
28 state. Venue is further proper in this Court as Defendant conducts business within this judicial

1 district and some of the harms complained of herein occurred within this judicial district.

2 **C. PARTIES**

3 5. During the Class Period, Plaintiff Huy Nguyen was employed by Wells Fargo Bank,
4 National Association as a Home Mortgage Consultant within the State of California.

5 6. During the Class Period, Defendant Wells Fargo Bank, National Association is a
6 business with its principal place of business in Sioux Falls, South Dakota. Defendant Wells Fargo
7 Bank, National Association is a wholly-owned subsidiary of Wells Fargo & Company, a Delaware
8 registered corporation with its principal place of business in San Francisco, California.

9 7. The true names and capacities of persons or entities, whether individual, corporate,
10 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
11 Plaintiff, who therefore sue Defendant by such fictitious names under Code of Civil Procedure §
12 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
13 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
14 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
15 capacities of the Defendants designated hereinafter as DOES when such identities become known.

16 8. All of Plaintiff's claims stated herein are asserted against Defendant and any of its
17 owners, predecessors, successors, subsidiaries, and/or assigns.

18 **D. FACTUAL BACKGROUND**

19 9. Huy Nguyen and all Loan Officers were covered by Defendant's Wells Fargo Home
20 Mortgage Incentive Compensation Plan ("Incentive Plan"). The Incentive Plan sets forth
21 Defendant's compensation policies and procedures applicable to all Loan Officers. The Incentive
22 Plan has been amended from time to time, but, based on information and belief, Plaintiff alleges
23 that the essential terms relevant to Plaintiff's claims herein have remained substantially the same
24 during the Class Period.

25 10. Defendant's Incentive Plan provides that Loan Officers' compensation is comprised
26 of hourly pay, commissions, bonuses, incentives, and premium pay for overtime hours worked.

27 11. Defendant's Incentive Plan provides that Loan Officers receive Paid Time Off
28 ("PTO") pay for standard work hours, i.e., non-overtime hours. PTO pay is compensation earned

1 by the Class Member. However, the Incentive Plan states that PTO pay is treated as an “advance”
2 against future commissions. As a result, Defendant deducts any PTO pay from Loan Officers’
3 future commissions after the PTO time is earned and paid. Therefore, Loan Officers who take time
4 away from work and receive PTO pay are subject to an unlawful forfeiture by having their PTO
5 pay deducted from their commissions.

6 12. Defendant’s Incentive Plan also provides that commission payments are paid on a
7 monthly basis and in the last pay period of the month following the actual funding of mortgage
8 loans generated by the Class Member during the previous month. Therefore, commission payments
9 are not paid in a timely manner following the conclusion of the period in which they are earned.

10 13. Huy Nguyen and Loan Officers were subject to deductions from their compensation
11 by Defendant that were not the result of dishonest, willful, or grossly negligent acts by those
12 employees, but instead were the ordinary costs of doing business. Residential mortgages have fees,
13 costs, and expenses such as application fees, credit report fees, appraisal fees, investor mandated
14 commitment fees, extended lock fees and closing costs (collectively, “loan fees”). Normally, these
15 loan fees are passed on to the borrower. However, in some instances, such as for example when a
16 loan is cancelled or denied, the borrower does not pay all the loan fees. In those instances,
17 Defendant has made it its policy and practice pursuant to its Incentive Plan to recover the loan fees
18 directly from Loan Officers even though these losses and shortages are an ordinary cost of doing
19 business and are incurred by Loan Officers as a direct result of carrying out the essential function
20 of their jobs. Defendant refers to its recovery of loan fees as an “adjustment” to the wages of its
21 employees. Defendant does, however, provide a cap on the loan fees it collects from Loan Officers.
22 Defendant’s policy and practice is that if loan fees remain uncollected up to the cap, the difference
23 between what has been collected and the cap will be deducted from the compensation of Loan
24 Officers. Pursuant to Defendant’s policy and practice, Defendant has deducted its ordinary costs of
25 doing business in the form of loan fees related to the sales of residential mortgages from the
26 compensation of Loan Officers up to the applicable cap.

27 14. Defendant at all times knew that not all loan fees can be collected from all
28 borrowers due to such events as the borrower canceling the loan prior to closing, the loan being

1 denied, and the borrower providing payment upfront that is subsequently not honored. Defendant
2 also knows that the inability to receive the loan fees from borrowers is not the result of dishonest,
3 willful or grossly negligent conduct on behalf of Loan Officers. Nevertheless, Defendant has
4 deducted and continues to deduct these loan fees from the compensation of Loan Officers.

5 15. Plaintiff and Loan Officers were also subject to deductions from their compensation
6 by Defendant for fees for marketing programs that were reasonably and necessarily incurred by
7 Loan Officers in direct consequence of the discharge of their duties for Defendant's benefit.
8 Defendant engages in many forms of marketing, including "HMC Websites," "FASTMail," "My
9 Mortgage Gift," "Marketing Agreements," and "Facebook." Defendant makes these marketing
10 programs available to Loan Officers and then charges them a marketing fee for it. Defendant sets
11 the marketing fee for each marketing program utilized by Loan Officers. Defendant creates,
12 controls, designs, manages, edits and otherwise has final approval on all content and design of the
13 various marketing programs it allows Loan Officers to use. Defendant's trade name and other
14 identifying information are featured in all of these marketing materials. Loan Officers are trained
15 and encouraged to use Defendant's approved marketing programs. Defendant realizes revenue
16 from any sales generated as a result of the marketing programs. Pursuant to its Incentive Plan,
17 Defendant charges Loan Officers a fee for each marketing program Loan Officers utilize and
18 deducts those fees as a set-off against future commissions. Defendant refers to its recovery of the
19 marketing fees as "adjustments" to the wages of its employees.

20 16. Defendant encourages Loan Officers to engage in marketing in order to carry out
21 the essential functions of their jobs. Defendant nevertheless charges Loan Officers for such
22 ordinary business expenses incurred by them in their work as they sell mortgage products to
23 Defendant's clients and prospective clients at locations throughout Defendant's business areas.

24 17. Plaintiff and other formerly employed Loan Officers were not timely and properly
25 paid all of their wages at time of termination. Plaintiff and other formerly employed Loan Officers
26 did not absent or secret themselves from timely and properly receiving their final wages at time of
27 termination.

28 18. Plaintiff and Loan Officers have been harmed by Defendant's unlawful business

1 policies and/or practices in that they have had their wages subject to unlawful deductions, as
2 alleged above, thereby diminishing their agreed-upon compensation, in amounts to be proven at
3 trial.

4 **E. CLASS ACTION ALLEGATIONS**

5 19. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
6 class action pursuant to Code of Civil Procedure § 382. The Class, and Sub-Classes, that Plaintiff
7 seeks to represent is composed of and defined as follows:

8 All persons who are or have been employed, at any time from four years prior
9 to the filing of this action through the date of the Court's granting of class
10 certification in this matter, by Wells Fargo Bank, National Association in
11 California under the job titles Home Mortgage Consultant, Home Mortgage
12 Consultant Jr. and Private Mortgage Banker (collectively "Loan Officers")

12 Plaintiff further alleges sub-classes as set forth below:

13 The Paid Time Off Sub-Class:

14 All persons who are or have been employed, at any time from four years prior
15 to the filing of this action through the date of the Court's granting of class
16 certification in this matter, by Wells Fargo Bank, National Association in
17 California under the job titles Home Mortgage Consultant, Home Mortgage
18 Consultant Jr. and Private Mortgage Banker who received Paid Time Off pay
19 that was then credited against future commissions.

19 The Wage Deduction Sub-Class:

20 All persons who are or have been employed, at any time from four years prior
21 to the filing of this action through the date of the Court's granting of class
22 certification in this matter, by Wells Fargo Bank, National Association in
23 California under the job titles Home Mortgage Consultant, Home Mortgage
24 Consultant Jr. and Private Mortgage Banker whose wages have been subject
25 to an adjustment due to a loan fee and/or a marketing fee.

24 The Waiting Time Penalty Sub-Class:

25 All persons who have been employed and separated from employment (either
26 by involuntary termination or resignation), at any time from four years prior to
27 the filing of this action through the date of the Court's granting of class
28 certification in this matter, by Wells Fargo Bank, National Association in
California under the job titles Home Mortgage Consultant, Home Mortgage

1 Consultant Jr. and Private Mortgage Banker and who did not timely receive
2 all of their wages at time of separation.

3 20. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
6 Class and Sub-Classes:

7 a. Numerosity: The potential members of the Class as defined are numerous
8 and therefore joinder of all the members of the Class is impracticable. While the precise
9 number of Loan Officers has not been determined at this time, Plaintiff is informed and
10 believes that Defendant has employed hundreds of Home Mortgage Consultants, Home
11 Mortgage Consultants Jr. and Private Mortgage Bankers in California during the Class
12 Period. Joinder of all members of the proposed class is not practicable.

13 b. Commonality: There are questions of law and fact common to Plaintiff and
14 the Class that predominate over any questions affecting only individual members of the
15 Class. These common questions of law and fact include, but are not limited to, the
16 following:

17 (i) Whether Defendant's policy of causing Loan Officers to forfeit their
18 PTO pay is illegal under California law;

19 (ii) Whether Defendant's policy of not paying commissions in the period
20 they are earned is illegal under California law;

21 (iii) Whether Defendant's policy of deducting from Loan Officers'
22 commissions for loan fees is illegal under California law;

23 (iv) Whether Defendant's policy of deducting from Loan Officers'
24 commissions for marketing fees is illegal under California law;

25 (v) Whether Defendant timely paid all formerly employed Loan Officers
26 their wages at time of termination; and,

27 (vi) Whether Defendant's wage statements violate California law.
28

1 c. Typicality: Plaintiff's claims are typical of the claims of the Class and Sub-
2 Classes. Plaintiff and Loan Officers sustained injuries and damages, and were deprived of
3 property rightly belonging to them, arising out of and caused by Defendant's common
4 course of conduct in violation of law as alleged herein, in similar ways and for the same
5 types of expenses.

6 d. Adequacy of Representation: Plaintiff is a member of the Class and Sub-
7 Classes and will fairly and adequately represent and protect the interests of the Class
8 Members. Plaintiff's interests do not conflict with those of Class Members. Counsel who
9 represent Plaintiff are competent and experienced in litigating large wage and hour class
10 actions and will devote sufficient time and resources to the case and otherwise adequately
11 represent the Class.

12 e. Superiority of Class Action: A class action is superior to other available
13 means for the fair and efficient adjudication of this controversy. Individual joinder of all
14 Loan Officers is not practicable, and questions of law and fact common to the Class
15 predominate over any questions affecting only individual members of the Class. Each
16 Class Member has been damaged or may be damaged in the future by reason of
17 Defendant's unlawful policies and/or practices as alleged herein. Certification of this case
18 as a class action will allow those similarly situated persons to litigate their claims in the
19 manner that is most efficient and economical for the parties and the judicial system.
20 Certifying this case as a class action is superior because Plaintiff seeks relief that will affect
21 all Loan Officers in a common way, and will also allow for efficient and full disgorgement
22 of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful business policies
23 and practices, and will thereby effectuate California's strong public policy of protecting
24 employees from deprivation or offsetting of compensation earned in their employment. If
25 this action is not certified as a Class Action, it will be impossible as a practical matter for
26 many or most Loan Officers to bring individual actions to recover monies unlawfully
27 withheld from their lawful compensation due from Defendant due to the relatively small
28 amounts of such individual recoveries relative to the costs, burdens, and risks of litigation.

FIRST CAUSE OF ACTION
FORFEITURE OF PAID TIME OFF
(Labor Code §§ 201, 202, 203, 221, 223, 227.3)
(Claim by Paid Time Off Sub-class)

1
2
3 21. The allegations of Paragraphs 1 through 21 are re-alleged and incorporated herein
4 by reference.

5 22. Defendant's Incentive Plan provides that Loan Officers receive Paid Time Off
6 ("PTO pay") for standard work hours, i.e., non-overtime hours. Based on the length of
7 employment, Loan Officers earn PTO time. PTO pay is compensation earned by the Class
8 Member.

9 23. Plaintiff and Loan Officers worked a sufficient amount of time for Defendant to
10 earn PTO time. Plaintiff and Loan Officers took time away from work and received their regular
11 pay through their earned PTO pay.

12 24. Plaintiff and Loan Officers earned commissions. Plaintiff's and Loan Officers'
13 commissions were then reduced by the amount of PTO pay they had previously earned and been
14 paid.

15 25. Defendant's conduct as described herein constitutes a violation Labor Code § 227.3
16 because it causes Loan Officers to unlawfully forfeit their earned and paid PTO wages, which must
17 be paid at the time of separation.

18 26. Defendant's conduct as described herein constitutes a violation of Labor Code § 221
19 because Defendant is collecting and receiving from Loan Officers the PTO wages already paid to
20 the Class.

21 27. Defendant's conduct as described herein constitutes a violation of Labor Code § 223
22 because Defendant is secretly paying a lower wage than the one required by statute or contract
23 while purporting to pay the wages required by statute or contract.

24 28. Plaintiff and similarly situated Loan Officers have been damaged by Defendant's
25 seizure of their PTO wages and Loan Officers are entitled to repayment of those wages with
26 interest thereon at the legal rate.

27 29. Defendant's seizure of the Loan Officers' PTO pay through the deductions to their
28

1 commission wages was knowing and willful. Defendant has failed and refused to repay the PTO
2 wages that it has unlawfully collected and received from Loan Officers. Defendant's conduct as
3 described herein constitutes a violation of Labor Code §§ 201-202 for the failure to pay all the
4 wages owed to its formerly employed Loan Officers. As a result, Defendant is liable for waiting
5 time penalties pursuant to Labor Code § 203 to the formerly employed Loan Officers whose PTO
6 wages were taken by Defendant and not repaid at the time of separation from employment.

7 30. Plaintiff, on behalf of himself and Members of the Paid Time Off Sub-Class,
8 requests relief as described below.

9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO TIMELY PAY WAGES**
11 **(Labor Code §§ 204, 226)**
12 **(Claim on behalf of the Class)**

13 31. The allegations of Paragraphs 1 through 31 are re-alleged and incorporated herein
14 by reference.

15 32. Defendant's Incentive Plan provides that non-commission wages are paid semi-
16 monthly. However, Defendant's Incentive Plan provides that commission wages are paid on a
17 monthly basis. In addition, Defendant's Incentive Plan pays the commission wages in arrears: it
18 pays the commission wages in the second pay period in the month following when the commission
19 wages were earned. Therefore, commission wages are not paid during the period in which they are
20 earned.

21 33. Labor Code § 204 provides that, "[a]ll wages ... earned by any person in any
22 employment are due and payable twice during each calendar month..." Labor Code § 204 further
23 requires that any labor performed between the first and 15th day of any month must be paid for no
24 later than the 26th day of that month, and that any labor performed between the 16th and last day of
25 any month must be paid for no later than the 10th day of the following month.

26 34. Labor Code § 226 requires that the paychecks be accompanied by an itemized
27 statement listing the "(1) gross wages earned, ... (5) net wages earned, [and] (6) the inclusive dates
28 of the period for which the employee is paid."

35. Defendant's conduct as described herein constitutes a violation of Labor Code § 204

1 because Defendant does not pay the commissions on a semi-monthly basis during the mandated
2 time periods and does not pay the commission wages during the pay period in which they are
3 earned.

4 36. Defendant's conduct, as described herein, constitutes a violation of Labor Code §
5 226 because the itemized statements accompanying the paychecks that Defendant issues to Loan
6 Officers do not list or otherwise include the commission wages earned during that pay period.

7 37. Plaintiff and Loan Officers customarily and regularly earned commissions and were
8 not paid the commissions on a semi-monthly basis. Further, Plaintiff and Loan Officers were paid
9 commissions in arrears in the second pay period of the month following the month in which the
10 commissions were earned. Plaintiff and Loan Officers were injured thereby.

11 38. Plaintiff, on behalf of himself and similarly situated Loan Officers, requests relief as
12 described below.

13 **THIRD CAUSE OF ACTION**
14 **UNLAWFUL WAGE DEDUCTIONS**
15 **(Labor Code §§ 221, 223, 400-410, Cal. Code Reg. Tit. 8, § 11040(8))**
16 **(Claim by Wage Deduction Sub-class)**

17 39. The allegations of Paragraphs 1 through 39 are re-alleged and incorporated herein
18 by reference.

19 40. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
20 receive from an employee any part of wages theretofore paid by said employer to said employee."

21 41. Labor Code § 223 provides: "Where any statute or contract requires an employer to
22 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
23 purporting to pay the wage designated by statute or by contract."

24 42. These and related statutes are designed to prevent employers from using deductions
25 or other accounting practices to drive down the wage scale or pay employees less than the stated
26 wage. They also reflect California's fundamental and substantial public policy protecting employee
27 wages.

28 43. Labor Code §§ 400-410 provide the limited circumstances under which an
employer can exact a cash bond from its employees. These provisions are designed to protect

1 employees from an employer taking or misappropriating employee funds held by the employer in
2 trust.

3 44. Title 8 of the California Code of Regulations, § 11040(8), commonly referred to as
4 “IWC Wage Order 4-2001” states, “No employer shall make any deduction from the wage or
5 require any reimbursement from an employee for any cash shortage, breakage, or loss of
6 equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or
7 willful act, or by the gross negligence of the employee.”

8 45. Plaintiff and Loan Officers of the Wage Deduction Sub-Class were subject to
9 deductions from their compensation by Defendant for loan fees and marketing fees which were not
10 the result of dishonest, willful, or grossly negligent acts by those employees, but instead were the
11 ordinary costs of doing business.

12 46. Defendant has maintained a policy and practice to recover costs, fees and expenses
13 directly from Loan Officers for loan fees and marketing fees even though such shortages, losses
14 and expenses are an ordinary cost of doing business and are reasonably and necessarily incurred by
15 Loan Officers in order to carry out the essential functions of their positions.

16 47. Defendant unlawfully charged costs, fees and expenses for loan fees and marketing
17 fees to in violation of Labor Code §§ 221, 223, 400-410, and Cal. Code Reg. tit. 8, § 11040(8) and
18 Plaintiff and similarly situated Loan Officers of the Wage Deduction Sub-Class are entitled to
19 reimbursement for, and repayment of, these deductions, plus interest and attorneys’ fees and costs.

20 48. Plaintiff, on behalf of himself and Members of the Wage Deduction Sub-Class,
21 requests relief as described below.

22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
24 **(Labor Code § 2802)**
25 **(Claim by Wage Deduction Sub-class)**

26 49. The allegations of Paragraphs 1 through 50 are re-alleged and incorporated herein
27 by reference.

28 50. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
employee for all necessary expenditures or losses incurred by the employee in direct consequence

1 of the discharge of his or her duties.”

2 51. While discharging their duties for Defendant, Plaintiff and similarly situated
3 Members of the Wage Deduction Sub-Class have incurred work-related expenses. Such expenses
4 include but are not limited to the marketing fees for Defendant’s marketing programs utilized by
5 Loan Officers.

6 52. Defendant has failed to indemnify or in any manner reimburse Plaintiff and
7 similarly situated Members of the Wage Deduction Sub-Class for these expenditures and losses.
8 By requiring those employees to pay expenses and cover losses that they incurred in direct
9 consequence of the discharge of their duties for Defendant and/or in obedience of Defendant’s
10 direction or expectations, Defendants has violated and continues to violate Labor Code § 2802.

11 53. By unlawfully failing to indemnify Plaintiff and similarly situated Members of the
12 Wage Deduction Sub-Class, Defendant is liable for reasonable attorneys’ fees and costs under
13 Labor Code § 2802(c).

14 54. As a direct and proximate result of Defendant’s conduct, Plaintiff and similarly
15 situated Members of the Wage Deduction Sub-Class have suffered substantial losses according to
16 proof, as well as pre-judgment interest, costs, and attorneys’ fees for the prosecution of this action.

17 55. Plaintiff, on behalf of himself and Members of the Wage Deduction Sub-Class,
18 requests relief as described below.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PAY WAGES AT TERMINATION**
21 **(Labor Code §§ 201-203)**
22 **(Claim by Waiting Time Penalty Sub-class)**

23 56. The allegations of Paragraphs 1 through 57 are re-alleged and incorporated herein
24 by reference.

25 57. Labor Code § 201 provides: “If an employer discharges an employee, the wages
26 earned and unpaid at the time of discharge are due and payable immediately.”

27 58. Labor Code § 202 provides: “If an employee not having a written contract for a
28 definite period quits his or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her

1 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

2 59. Labor Code § 203 provides: “If an employer willfully fails to pay, without
3 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
4 of an employee who is discharged or who quits, the wages of the employee shall continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefor is
6 commenced; but the wages shall not continue for more than 30 days.”

7 60. Plaintiff and other formerly employed Loan Officers in the Waiting Time Penalties
8 Sub-Class were discharged by Defendant or voluntarily quit. Defendant, in violation of California
9 Labor Code §§ 201 and 202, has a consistent and uniform policy, practice and procedure of
10 willfully failing to timely pay the wages to its former employees. Plaintiff and other formerly
11 employed Loan Officers did not secret or absent themselves from Defendant nor refuse to accept
12 the earned and unpaid wages from Defendant.

13 61. As a result of Defendant’s violations of Labor Code §§ 201-202, Defendant is liable
14 for waiting time penalties to Plaintiff and the members of the Waiting Time Penalties Sub-Class.

15 62. Plaintiff, on behalf of himself and Members of the Waiting Time Penalty Sub-Class,
16 request relief as described below.

17 **SIXTH CAUSE OF ACTION**
18 **UNLAWFUL WAGE STATEMENTS**
19 **(Labor Code §§ 226, 1174, and 1174.5)**
20 **(Claim on behalf of the Class)**

21 63. The allegations of Paragraphs 1 through 64 are re-alleged and incorporated herein
22 by reference.

23 64. Defendant, as a matter of corporate policy did not maintain or provide accurate
24 itemized wage statements in violation of Labor Code §§ 226 and 1174.

25 65. Defendant did not state or did not accurately state, inter alia, the wages earned in the
26 pay period or the actual hourly rate of Plaintiff and other Loan Officers. Defendant’s failure to
27 maintain accurate itemized wage statements was willful, knowing, intentional, and the result of
28 Defendant’s custom, habit, pattern and practice. Defendant’s failure to maintain accurate itemized
wage statements was not the result of isolated, sporadic or unintentional behavior. Due to

1 Defendant's failure to comply with the requirements of Labor Code §§ 226 and 1174, Plaintiff and
2 other Loan Officers were injured thereby.

3 66. Such a pattern and practice as alleged herein is unlawful and creates an entitlement
4 to recovery by Plaintiff and Loan Officers identified herein for all damages and penalties pursuant
5 to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees and costs.

6 67. Plaintiff, on behalf of himself and similarly situated Loan Officers, requests relief as
7 described below.

8 **SEVENTH CAUSE OF ACTION**
9 **UNFAIR COMPETITION LAW VIOLATIONS**
10 **(Bus. & Prof. Code § 17200)**
11 **(Claim on behalf of the Class)**

12 68. The allegations of Paragraphs 1 through 69 are re-alleged and incorporated herein
13 by reference.

14 69. Business & Professions Code § 17200, California's Unfair Competition Law
15 ("UCL"), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business
16 act or practice. Business & Professions Code § 17204 allows "any person who has suffered injury
17 in fact and has lost money or property" to prosecute a civil action for violation of the UCL.

18 70. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
19 filing of this action, and continuing to the present, Defendant has committed unlawful, unfair,
20 and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200,
21 by causing Plaintiff and similarly situated Loan Officers to forfeit their earned and paid PTO pay in
22 violation of Labor Code §§ 201, 202, 221, 223, 227.3, in making unlawful deductions from the
23 compensation of Plaintiff and similarly situated Loan Officers in violation Labor Code §§ 221,
24 223, 400-410, 2802 and Cal. Code Reg. tit. 8, § 11040(8), and in not paying commission wages to
25 Plaintiff and similarly situated Loan Officers in a timely manner in violation of Labor Code § 204.

26 71. Defendant has a policy and/or practice of requiring Loan Officers to forfeit their
27 earned and paid PTO pay by charging the amounts previously paid in PTO against future
28 commissions.

72. Defendant has a policy and/or practice of deducting ordinary business expenses

1 from the compensation of Loan Officers where the deductions are not the result of dishonest,
2 willful, or grossly negligent acts by those employees. Defendant's policy and practice is that all
3 fees, costs and expenses of a residential loan mortgage should be paid for by the borrower.
4 However, if for any reason whatsoever, a fee, cost or expense is not collected and paid for by the
5 borrower, it is Defendant's policy and practice to deduct from the wages of Loan Officers the
6 amount of the fee, cost or expense not paid for by the borrower.

7 73. Defendant has a policy and/or practice of deducting ordinary business expenses
8 from the compensation of Loan Officers for fees for marketing programs which were reasonably
9 and necessarily incurred by Loan Officers in direct consequence of the discharge of their duties for
10 Defendant's benefit. Defendant's policy and practice is that any "voluntary" marketing programs
11 utilized by Loan Officers should be paid by Loan Officers. However, it is reasonably necessary for
12 Loan Officers to incur these expenses in order to carry out the essential functions of their position.

13 74. Defendant has a policy and/or practice of not paying earned commission wages
14 within the statutory time period required under Labor Code § 204.

15 75. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
16 acts and practices described herein, Defendant has received and continues to hold ill-gotten gains
17 belonging to Plaintiff and Loan Officers in the form of forfeited wages and unlawful deductions
18 that reduced or offset compensation earned by Plaintiff and Loan Officers and interest on late
19 commission payments. As a direct and proximate result of Defendant's unlawful business
20 practices, Plaintiff and Loan Officers have suffered economic injuries including, but not limited to
21 unlawful forfeiture of wages and unlawful deductions, resulting reductions and/or off-sets to
22 earned compensation, and unlawful withholding of wages. Defendant has profited from its
23 unlawful, unfair, and/or fraudulent acts and practices in the amount of those forfeitures and
24 deductions and interest accrued thereon.

25 76. Plaintiff and similarly situated Loan Officers are entitled to restitution pursuant to
26 Business & Professions Code §§ 17203 and 17208 for all unlawful forfeitures, unlawful
27 deductions, and interest thereon accruing, from four years prior to the filing of this action to the
28 date of such restitution, and Defendant should be required to disgorge all the profits and gains it

1 has reaped and restore such profits and gains to Plaintiff and Loan Officers, from whom they were
2 unlawfully taken.

3 77. Injunctive relief is necessary and appropriate to prevent Defendant from continuing
4 and repeating its unlawful, unfair and fraudulent business acts and practices alleged above.

5 78. Plaintiff has assumed the responsibility of enforcement of the laws and public
6 policies specified herein by suing on behalf of himself and others similarly situated members of the
7 public previously and presently employed by Defendant in California. Plaintiff's success in this
8 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
9 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
10 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

11 79. Plaintiff, on behalf of himself and similarly situated Loan Officers, requests relief as
12 described below.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests the following relief:

- 15 1. For an Order certifying the proposed Class and Sub-Classes and designating
16 this action as a class action pursuant to CCP § 382;
- 17 2. For provision of class notice to all members of the Class and Sub-Classes;
- 18 3. For a declaratory judgment that Defendant has knowingly and intentionally
19 violated the following provisions of law:
 - 20 a. Labor Code §§ 227.2 and 221 causing a forfeiture of accrued and paid
21 PTO by and denying employees compensation for their vested, unused
22 PTO promptly upon termination of employment;
 - 23 b. Labor Code § 204, for failing to commission wages in a timely manner;
 - 24 c. Labor Code § 221 and Title 8 of the California Code of Regulations, §
25 11040(8) by making unlawful deductions from the compensation paid to
26 Plaintiff and Class Members for ordinary business expenses and losses
27 without a showing that the expenses and/or losses were due to the Loan
28 Officers' dishonest or willful act, or to the gross negligence of the Loan

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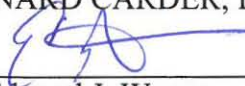
Officers;

- d. Labor Code § 2802 by failing to indemnify Plaintiff and Class Members for all necessary business expenses and losses;
 - e. Labor Code § 226 by failing to provide Loan Officers with itemized statements of all wages earned during each pay period;
 - f. Labor Code §§ 201-203, for willfully failing to pay all accrued PTO and failing to repay unlawfully deducted wages at the time of termination of employment, resulting in unpaid waiting time penalties; and
 - g. Business & Professions Code §§ 17200-17208, by failing to pay all accrued PTO without forfeiture, making wrongful deductions from wages, failing to pay wages in a timely manner, failing to reimburse Loan Officers for necessary business expenses and losses, and failing to provide Loan Officers with itemized wage statements showing all wages earned;
- 4. For an Order appointing Plaintiff and his counsel to represent the proposed classes, as defined in this Complaint;
 - 5. For compensatory damages according to proof;
 - 6. For an order requiring Defendant to make restitution of all wages that were illegally withheld;
 - 7. For an order requiring Defendant to make restitution of all wages that were unlawfully deducted by Defendant;
 - 8. For an order requiring Defendant to provide an accounting of all wages and all sums unlawfully charged back and withheld from compensation due to Plaintiff and the other members of the proposed class;
 - 9. For interest according to proof;
 - 10. For penalties alleged herein;
 - 11. For reasonable attorneys' fees and costs; and
 - 12. For such other relief the Court deems just and proper.

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DATED: August 25, 2015

WYNNE LAW FIRM
LEONARD CARDER, LLP



By: Edward J. Wynne

Attorneys for Plaintiff Huy Nguyen, individually
and on behalf of all others similar situated