

1 AARON KAUFMANN, SBN 148580
2 DAVID POGREL, SBN 203787
3 ELIZABETH GROPMAN, SBN 294156
4 LEONARD CARDER, LLP
5 1330 Broadway, Suite 1450
6 Oakland, CA 94612
7 Telephone: (510) 272-0169
8 Facsimile: (510) 272-0174
9 akaufmann@leonardcarder.com
10 dpogrel@leonardcarder.com

11 EDWARD J. WYNNE, SBN 165819
12 WYNNE LAW FIRM
13 100 Drakes Landing Road, Ste. 275
14 Greenbrae, CA 94904
15 Telephone: (415) 461-6400
16 Facsimile: (415) 461-3900
17 ewynne@wynnelawfirm.com

18 *Attorneys for Plaintiff and the putative class*

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. CGC-15-547596

FIRST AMENDED 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); (7) UCL VIOLATIONS (BUS. & PROF. CODE § 17200); and, (8) PENALTIES (LABOR CODE § 2699)

[CLASS ACTION]

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
09/28/2015
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

1 Plaintiff Huy Nguyen, on behalf of himself and all others similarly situated,
2 complains and 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, 2699, 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. Plaintiff and Loan Officers were also subject to deductions from their compensation
11 by Defendant for fees for marketing programs that were reasonably and necessarily incurred by
12 Loan Officers in direct consequence of the discharge of their duties for Defendant’s benefit.
13 Defendant engages in many forms of marketing, including “HMC Websites,” “FASTMail,” “My
14 Mortgage Gift,” “Marketing Agreements,” and “Facebook.” Defendant makes these marketing
15 programs available to Loan Officers and then charges them a marketing fee for it. Defendant sets
16 the marketing fee for each marketing program utilized by Loan Officers. Defendant creates,
17 controls, designs, manages, edits and otherwise has final approval on all content and design of the
18 various marketing programs it allows Loan Officers to use. Defendant’s trade name and other
19 identifying information are featured in all of these marketing materials. Loan Officers are trained
20 and encouraged to use Defendant’s approved marketing programs. Defendant realizes revenue
21 from any sales generated as a result of the marketing programs. Pursuant to its Incentive Plan,
22 Defendant charges Loan Officers a fee for each marketing program Loan Officers utilize and
23 deducts those fees as a set-off against future commissions. Defendant refers to its recovery of the
24 marketing fees as “adjustments” to the wages of its employees.

25 14. Defendant encourages Loan Officers to engage in marketing in order to carry out
26 the essential functions of their jobs. Defendant nevertheless charges Loan Officers for such
27 ordinary business expenses incurred by them in their work as they sell mortgage products to
28 Defendant’s clients and prospective clients at locations throughout Defendant’s business areas.

1 The Waiting Time Penalty Sub-Class:

2 All persons who have been employed and separated from employment (either
3 by involuntary termination or resignation), at any time from August 25, 2012
4 through the date of the Court's granting of class certification in this matter, by
5 Wells Fargo Bank, National Association in California under the job titles
6 Home Mortgage Consultant, Home Mortgage Consultant Jr. and Private
7 Mortgage Banker and who did not timely receive all of their wages at time of
8 separation.

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

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

19 b. Commonality: There are questions of law and fact common to Plaintiff and
20 the Class that predominate over any questions affecting only individual members of the
21 Class. These common questions of law and fact include, but are not limited to, the
22 following:

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

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

27 (iii) Whether Defendant's policy of deducting from Loan Officers'
28 commissions for marketing fees is illegal under California law;

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

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

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

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

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

1 amounts of such individual recoveries relative to the costs, burdens, and risks of litigation.

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

6 19. The allegations of Paragraphs 1 through 18 are re-alleged and incorporated herein
7 by reference.

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

12 21. Plaintiff and Loan Officers worked a sufficient amount of time for Defendant to
13 earn PTO time. Plaintiff and Loan Officers took time away from work and received their regular
14 pay through their earned PTO pay.

15 22. Plaintiff and Loan Officers earned commissions. Plaintiff's and Loan Officers'
16 commissions were then reduced by the amount of PTO pay they had previously earned and been
17 paid.

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

21 24. Defendant's conduct as described herein constitutes a violation of Labor Code § 221
22 because Defendant is collecting and receiving from Loan Officers the PTO wages already paid to
23 the Class.

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

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

1 employer can exact a cash bond from its employees. These provisions are designed to protect
2 employees from an employer taking or misappropriating employee funds held by the employer in
3 trust.

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

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

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

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

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

23 ///

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

28 48. The allegations of Paragraphs 1 through 46 are re-alleged and incorporated herein
by reference.

1 49. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties.”

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

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

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

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

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

21 ///

22 ///

23 ///

24

25

26

27

28

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

1
2
3
4 55. The allegations of Paragraphs 1 through 54 are re-alleged and incorporated herein
5 by reference.

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

8 57. Labor Code § 202 provides: “If an employee not having a written contract for a
9 definite period quits his or her employment, his or her wages shall become due and payable not
10 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
11 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

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

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

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

25 61. Plaintiff, on behalf of himself and Members of the Waiting Time Penalty Sub-Class,
26 request relief as described below.

27 ///

28 ///

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

62. The allegations of Paragraphs 1 through 61 are re-alleged and incorporated herein by reference.

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

64. Defendant did not state or did not accurately state, inter alia, the wages earned in the pay period or the actual hourly rate of Plaintiff and other Loan Officers. Defendant's failure to maintain accurate itemized wage statements was willful, knowing, intentional, and the result of 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 Defendant's failure to comply with the requirements of Labor Code §§ 226 and 1174, Plaintiff and other Loan Officers were injured thereby.

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

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

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

67. The allegations of Paragraphs 1 through 66 are re-alleged and incorporated herein by reference.

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

///

1 69. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
2 filing of this action, and continuing to the present, Defendant has committed unlawful, unfair,
3 and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200,
4 by causing Plaintiff and similarly situated Loan Officers to forfeit their earned and paid PTO pay in
5 violation of Labor Code §§ 201, 202, 221, 223, 227.3, in making unlawful deductions from the
6 compensation of Plaintiff and similarly situated Loan Officers in violation Labor Code §§ 221,
7 223, 400-410, 450, 2802 and Cal. Code Reg. tit. 8, § 11040(8), and in not paying commission
8 wages to Plaintiff and similarly situated Loan Officers in a timely manner in violation of Labor
9 Code § 204.

10 70. Defendant has a policy and/or practice of requiring Loan Officers to forfeit their
11 earned and paid PTO pay by charging the amounts previously paid in PTO against future
12 commissions.

13 71. Defendant has a policy and/or practice of deducting ordinary business expenses
14 from the compensation of Loan Officers where the deductions are not the result of dishonest,
15 willful, or grossly negligent acts by those employees.

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

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

24 74. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
25 acts and practices described herein, Defendant has received and continues to hold ill-gotten gains
26 belonging to Plaintiff and Loan Officers in the form of forfeited wages and unlawful deductions
27 that reduced or offset compensation earned by Plaintiff and Loan Officers and interest on late
28 commission payments. As a direct and proximate result of Defendant's unlawful business

1 practices, Plaintiff and Loan Officers have suffered economic injuries including, but not limited to
2 unlawful forfeiture of wages and unlawful deductions, resulting reductions and/or off-sets to
3 earned compensation, and unlawful withholding of wages. Defendant has profited from its
4 unlawful, unfair, and/or fraudulent acts and practices in the amount of those forfeitures and
5 deductions and interest accrued thereon.

6 75. Plaintiff and similarly situated Loan Officers are entitled to restitution pursuant to
7 Business & Professions Code §§ 17203 and 17208 for all unlawful forfeitures, unlawful
8 deductions, and interest thereon accruing, from four years prior to the filing of this action to the
9 date of such restitution, and Defendant should be required to disgorge all the profits and gains it
10 has reaped and restore such profits and gains to Plaintiff and Loan Officers, from whom they were
11 unlawfully taken.

12 76. Injunctive relief is necessary and appropriate to prevent Defendant from continuing
13 and repeating its unlawful, unfair and fraudulent business acts and practices alleged above.

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

20 78. Plaintiff, on behalf of himself and similarly situated Loan Officers, requests relief as
21 described below.

22 **EIGHTH CAUSE OF ACTION**
23 **THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
24 **(Labor Code § 2699 et seq.)**
25 **(Claim on behalf of the Class)**

26 79. Plaintiff incorporates the allegations contained in the previous paragraphs of this
27 Complaint as if fully set forth herein.
28

1 PTO promptly upon termination of employment;

- 2 b. Labor Code § 204, for failing to commission wages in a timely manner;
- 3 c. Labor Code § 221 and Title 8 of the California Code of Regulations, §
4 11040(8) by making unlawful deductions from the compensation paid to
5 Plaintiff and Class Members for ordinary business expenses and losses
6 without a showing that the expenses and/or losses were due to the Loan
7 Officers' dishonest or willful act, or to the gross negligence of the Loan
8 Officers;
- 9 d. Labor Code § 2802 by failing to indemnify Plaintiff and Class Members
10 for all necessary business expenses and losses;
- 11 e. Labor Code § 226 by failing to provide Loan Officers with itemized
12 statements of all wages earned during each pay period;
- 13 f. Labor Code §§ 201-203, for willfully failing to pay all accrued PTO and
14 failing to repay unlawfully deducted wages at the time of termination of
15 employment, resulting in unpaid waiting time penalties; and
- 16 g. Business & Professions Code §§ 17200-17208, by failing to pay all
17 accrued PTO without forfeiture, making wrongful deductions from
18 wages, failing to pay wages in a timely manner, failing to reimburse
19 Loan Officers for necessary business expenses and losses, and failing to
20 provide Loan Officers with itemized wage statements showing all wages
21 earned;

- 22 4. For an Order appointing Plaintiff and his counsel to represent the proposed
23 classes, as defined in this Complaint;
- 24 5. For compensatory damages according to proof;
- 25 6. For an order requiring Defendant to make restitution of all wages that were
26 illegally withheld;
- 27 7. For an order requiring Defendant to make restitution of all wages that were
28 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.

DATED: September 28, 2015

WYNNE LAW FIRM
LEONARD CARDER, LLP

/s/Edward J. Wynne

By: Edward J. Wynne

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