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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Thomason, Deputy

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Attorneys for Plaintiff and others similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
MARIN COUNTY

SERGIO DEMATOS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

CITIBANK, N.A. and DOES 1 through 10,
inclusive,

Defendants.

Case No. CN 1903887

CLASS ACTION

COMPLAINT FOR:

CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698, *et seq.*)

FAXED

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1 Plaintiff Sergio Dematos, on behalf of himself and as a representative for all others similarly
2 situated, complains and alleges as follows:

3 **A. INTRODUCTION**

4 1. This is a representative action, under the California Private Attorneys General Act
5 (“PAGA”), California Labor Code §§ 2698 *et seq.*, seeking civil penalties for violations of the
6 California Labor Code, on behalf of Plaintiff and all other individuals who are or have been employed
7 as Home Lending Officers, Producing Lending Managers, Mortgage Lending Officers and Mortgage
8 Loan Officers (collectively “Loan Officers”) by Defendant Citibank, N.A. (hereafter “Citibank” or
9 “Defendant”), in California during the relevant time period. Sergio Dematos brings this complaint
10 for himself and on behalf of similarly situated Loan Officers who (1) paid out-of-pocket business
11 expenses reasonably necessary for the performance of their jobs as Loan Officers but have not
12 received reimbursement from Defendant; (2) were not paid their commissions timely; and (3)
13 received non-complaint itemized wage statements

14 **B. JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over claims brought under the California Labor Code,
16 including PAGA.

17 3. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5. Defendant
18 is a foreign corporation and has not registered a principal office in California with the California
19 Secretary of State, and therefore is subject to venue in any county in California. Defendant maintains
20 and operates hundreds of branches in the State of California, including branches in Marin County.
21 Venue is further proper in this Court as Defendant conducts business within this judicial district and
22 some of the harms complained of herein occurred within this judicial district.

23 **C. PARTIES**

24 4. During the relevant time period, Plaintiff Sergio Dematos was employed by Citibank,
25 N.A. as a Home Lending Officer within the State of California.

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28 5. During the relevant time period, Defendant Citibank, N.A. was a business with its

1 principal place of business at 701 East 60th Street, North, Sioux Falls, South Dakota 57104-0432.
2 Defendant Citibank, N.A. is a wholly-owned subsidiary of Citigroup, Inc., a Delaware registered
3 corporation with its principal place of business in New York, New York.

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

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

13 **D. FACTUAL BACKGROUND**

14 8. Defendant is an international bank, employing hundreds of individuals as Home
15 Lending Officers, Producing Lending Managers, Mortgage Lending Officers and Mortgage Loan
16 Officers (collectively "Loan Officers") in California to sell mortgage products to customers within
17 this state.

18 9. Citibank's policies, practices, and procedures with respect to reimbursement of
19 business expenses and timing of payment of commission wages existed at all times relevant to this
20 Complaint. On information and belief, these policies, practices, and procedures are ongoing.

21 10. Plaintiff and other Loan Officers are or were engaged in the sales of residential and
22 commercial mortgage products on behalf of Citibank in California. Many of these sales-related
23 duties are or were performed in the field, away from Defendant's offices or facilities. Defendant
24 encouraged and directed Loan Officers to engage in their work-related activities away from
25 Defendant's facilities. Many of these activities also involved travel between Citibank's offices or
26 facilities. Citibank expects Loan Officers to drive their own vehicles to and from sites of
27 customers and prospective customers and to and from Citibank's offices, facilities, and branches.
28 Citibank expects their Loan Officers to spend much of their work time away from Citibank

1 locations. Plaintiff and similarly situated Loan Officers are expected by Defendant to pay, and
2 have personally paid, expenses incurred operating their personal vehicles. Defendant has not
3 exercised due diligence and taken all reasonable steps to fully reimburse, and has failed to fully
4 reimburse, Plaintiff and other present and former Loan Officers for these business expenses that
5 were incurred in the regular course of their duties as Defendant's outside sales employees, as
6 required by Labor Code § 2802.

7 11. Plaintiff and all Loan Officers were covered by Defendant's Distributor Sales Home
8 Lending Officer Variable Incentive Compensation Program ("Incentive Plan"). The Incentive Plan
9 sets forth Defendant's compensation policies and procedures applicable to all Loan Officers. The
10 Incentive Plan has been amended from time to time. However, based on information and belief,
11 Plaintiff alleges that the essential terms of the Incentive Plan relevant to Plaintiff's claims herein
12 have remained substantially the same during the relevant period.

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

15 13. Defendant's Incentive Plan provides that Defendant pays commission compensation
16 on a monthly basis and in the last pay period of the month following the actual funding of mortgage
17 loans generated by the Loan Officer during the previous month. Therefore, Defendant does not pay
18 commission compensation on a timely manner following the conclusion of the period in which they
19 are earned.

20 14. On information and belief, Plaintiff alleges that the application of and essential terms
21 relevant to Plaintiff's claims herein have remained substantially the same during the relevant time
22 period and had the same or substantially similar effect on similarly situated Loan Officers.

23 **FIRST CAUSE OF ACTION**
24 **PENALTIES UNDER PAGA – FAILURE TO REIMBURSE BUSINESS EXPENSES**
25 **(Labor Code §§ 2698 *et seq.*)**

26 15. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
27 fully alleged herein.

28 16. Labor Code § 2699 gives any aggrieved employee the right to file an action for civil

1 penalties on behalf of himself and other current or former employees, for the employer's violations
2 of the Labor Code.

3 17. Plaintiff and other Loan Officers are aggrieved employees within the meaning of
4 PAGA, because Defendant employed them and committed Labor Code violations against them,
5 including violations of Labor Code § 2802.

6 18. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee
7 for all necessary expenditures or losses incurred by the employee in direct consequence of the
8 discharge of his or her duties." During the statutory time covered by this action, Defendant has
9 maintained business expense policies and/or practices that result in a failure to reimburse fully Loan
10 Officers for use of their personal vehicles in carrying out their job duties. Those policies and/or
11 practices require, encourage, and/or with knowledge thereof permit, Loan Officers to pay for
12 expenses incurred in direct consequence of discharging their sales duties on behalf of Defendant,
13 including maintenance of a motor vehicle and all travel-related expenses, including vehicle
14 insurance, mileage, gasoline, parking, and tolls incurred while driving their vehicles for business.

15 19. Defendant is aware that Loan Officers regularly incur business expenses in the
16 discharge of their duties as employees of Defendant. Nevertheless, Defendant has failed to take all
17 reasonable efforts to reimburse fully Loan Officers for such business expenses incurred by them in
18 their work as they sell mortgage products to Defendant's clients and prospective clients at locations
19 throughout Defendant's business areas.

20 20. Plaintiff and other aggrieved Loan Officers have been harmed by Defendant's illegal
21 and unlawful business expense policies and/or practices in that they have not been adequately paid
22 for certain business expenses incurred while employed by Defendant, as alleged above, thereby
23 diminishing their agreed-upon compensation, in amounts to be proved at trial.

24 21. Defendant has maintained these same business expense policies and/or practices or
25 substantially similar ones throughout the statutory time covered by this action.

26
27 **SECOND CAUSE OF ACTION**
28 **PENALTIES UNDER PAGA – FAILURE TO PAY TIMELY COMMISSION WAGES**
(Labor Code §§ 2698 et seq.)

