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**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**11/17/2015**  
ahall2  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2015-00186855**

8  
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

12 RICHARD SMIGELSKI, in his representative  
13 capacity

14 Plaintiff,

15 vs.

16 PENNYMAC FINANCIAL SERVICES, INC.;  
17 PENNYMAC MORTGAGE INVESTMENT  
TRUST; PRIVATE NATIONAL MORTGAGE  
18 ACCEPTANCE CO. (aka "PENNYMAC"), and  
Does 1-50, inclusive,

19 Defendants.

Case No. \_\_\_\_\_

**REPRESENTATIVE ACTION**

**COMPLAINT FOR VIOLATION OF  
THE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 (Labor Code  
Section 2698 et seq.)**

**DEMAND FOR JURY TRIAL**

**BY FAX**

20  
21 Plaintiff Richard Smigelski, in his representative capacity, alleges as follows:

22 **INTRODUCTION**

23 1. Plaintiff brings this action against defendants PennyMac Financial Services, Inc.,  
24 PennyMac Mortgage Investment Trust, and Private National Mortgage Acceptance Co.  
25 (collectively "PennyMac") to recover penalties. Defendants do not include all of their non-  
26 exempt employees' pay in calculating the regular rate of pay for overtime purposes. Defendants  
27 also do not provide their employees with paystubs that comply with California law (or at all).  
28 Finally, Defendants do not pay employees their bonuses on a timely basis, and do not pay

1 employees all wages owed at the time of their termination. Plaintiff brings this action pursuant to  
2 the Private Attorneys General Act of 2004 ("PAGA"), Labor Code Section 2698 *et seq.* on behalf  
3 of the state of California and on a representative basis. All California-based current and former  
4 employees of Defendants are aggrieved employees.

#### 5 PARTIES

6 2. Plaintiff Richard Smigelski worked for Defendants from November 2014 to April  
7 30, 2015 as an account executive in Defendants' Sacramento-based call center.

8 3. Defendants Private National Mortgage Acceptance Co., PennyMac Financial  
9 Services, Inc., and PennyMac Mortgage Investment Trust are an integrated enterprise, single  
10 employer, or joint employer of Plaintiff. All of the defendants are headquartered in Moorpark,  
11 California. They all have essentially the same C-level executives. All defendants exercise  
12 common control over labor relations.

13 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
14 Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
15 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.  
16 Plaintiff is informed and believes and thereon alleges that each of these fictitiously named  
17 defendants is responsible in some manner for the acts or omissions herein alleged.

18 5. At all times mentioned herein, Defendants and Does 1 through 50, inclusive, were  
19 the employees, agents, or representatives of each other defendant and were acting with the  
20 knowledge and consent of each other defendant and within the purpose and scope of such  
21 employment, agency, or representation in doing or failing to do the things alleged in this  
22 complaint.

#### 23 JURISDICTION & VENUE

24 6. This Court has jurisdiction over Plaintiff's claims for civil penalties under  
25 PAGA.

26 7. Venue is proper because Plaintiff worked in Sacramento and Defendants  
27 employed Plaintiff and other aggrieved employees in Sacramento.

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## GENERAL ALLEGATIONS

8. In or around August 2014, Plaintiff signed an offer letter from PennyMac to work as an account executive in one of its call centers. His job, in essence, was to cold call individuals and attempt to sell them mortgages. PennyMac offered to pay Plaintiff \$14.42 per hour for his work. PennyMac also agreed to pay Plaintiff an additional \$1500 per month for his first three months of work, wages that it termed a "draw." PennyMac also agreed to pay Plaintiff a referral bonus of \$1,000 for referring other persons to work for PennyMac. PennyMac also agreed to pay Plaintiff a monthly bonus based on its variable pay plan. PennyMac also agreed to pay Plaintiff a benefit stipend of \$125.00 per month.

9. Plaintiff worked a considerable amount of overtime. PennyMac calculated Plaintiff's overtime rate based on an hourly rate of \$14.42 an hour. PennyMac did not include the "draw," referral bonus, variable pay bonus, or benefit stipend in calculating Plaintiff's hourly rate for overtime purposes.

10. Moreover, PennyMac did not pay Plaintiff the "draw" as it was earned. Rather, it paid the "draw" one time a month. In addition, pursuant to PennyMac's variable pay plan, Plaintiff earned certain monthly bonuses. PennyMac did not pay these bonuses once they were earned, but rather delayed paying such bonuses until the second regular pay period following the month in which the bonus was earned.

11. In addition, as a general rule, PennyMac did not furnish Plaintiff with an accurate itemized statement explaining his pay. PennyMac simply deposited monies into his bank account. On information and belief, these itemized statements existed (though they were not provided to Plaintiff). Regardless, these statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. For example, the itemized statements included neither the number of hours nor the hourly rate for pay termed "bonus overtime."

12. On April 30, 2015, PennyMac terminated Plaintiff's employment. However, consistent with its general practice, it did not provide him with a final paycheck until May 6, 2015 (the next regular payroll date). The final paycheck that was provided to Plaintiff did not include

1 his April bonus. This payment was not made until June 2015. Moreover, the itemized statement  
2 that accompanied the final paycheck did not include the inclusive dates of the pay period. The  
3 itemized statement also did not include the rate of pay or hours worked for his "bonus overtime."

4 13. Plaintiff was paid pursuant to PennyMac's company-wide policies and practices.  
5 Accordingly, all California-based PennyMac employees are similarly aggrieved by PennyMac's  
6 unlawful practices.

7 **FIRST CAUSE OF ACTION**

8 **Private Attorney General Act ("PAGA")**

9 14. Plaintiff incorporates paragraphs 1 through 13 of this Complaint as if set forth  
10 here.

11 15. Plaintiff is an aggrieved employee under PAGA because he was employed by  
12 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
13 violations set forth in this complaint. Plaintiff seeks to recover on his behalf, on behalf of the  
14 State, and on behalf of all current and former aggrieved employees of Defendants, the civil  
15 penalties provided by PAGA, plus reasonable attorney's fees and costs in this representative  
16 action.

17 16. Plaintiff seeks penalties pursuant to PAGA for violation of the following Labor  
18 Code sections:

19 a. Failure to provide prompt payment of wages to employees upon  
20 termination and resignation in violation of Labor Code §§ 201, 202, 203;

21 b. Failure to provide accurate itemized wage statements to employees in  
22 violation of Labor Code §§ 226 and 226.3;

23 c. Failure to pay overtime wages at the appropriate rate of pay in violation of  
24 applicable wage orders and Labor Code §§ 510, 558, and 1194;

25 d. Failure to pay earned wages bi-weekly in accordance with Labor Code §  
26 204.

1           16.     With respect to violations of Labor Code § 204, Labor Code § 210 imposes a civil  
2 penalty (apart from other penalties) of \$100 for each initial violation, and \$200 for each  
3 subsequent violation, in addition to 25% of the amount unlawfully withheld.

4           17.     With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a  
5 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)  
6 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved  
7 employee for each subsequent violation of Labor Code § 226(a).

8           18.     With respect to violations of Labor Code §§ 510, Labor Code § 558 imposes a  
9 civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial  
10 violations for each underpaid employee for each pay period in addition to an amount equal to the  
11 employee's underpaid wages, and one hundred dollars (\$100) for subsequent violations for each  
12 underpaid employee for each pay period in addition to an amount equal to the employee's  
13 underpaid wages. The statute of limitations with respect penalties under Labor Code § 558 is  
14 three years. Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved  
15 employees pursuant to Labor Code § 558(a)(3).

16           19.     Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100)  
17 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per  
18 pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for  
19 which a civil penalty is not specifically provided.

20           20.     To the extent applicable, Plaintiff has satisfied the requirements of Labor Code  
21 section 2699.3.

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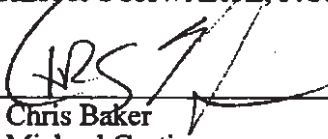
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays individually and on behalf of aggrieved employees for judgment against Defendants as follows:

- 1. An award of civil penalties pursuant to PAGA;
- 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g) and/or other applicable law;
- 3. Pre-judgment and post-judgment interest as provided by law; and
- 4. Such other and further relief that the Court may deem just and proper.

Dated: November 17, 2015

BAKER & SCHWARTZ, P.C.

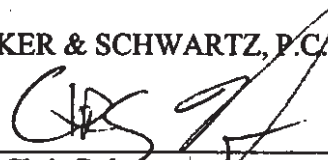
By:   
 Chris Baker  
 Michael Curtis  
 Attorneys for Plaintiff  
 RICHARD SMIGELSKI

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: November 17, 2015

BAKER & SCHWARTZ, P.C.

By:   
 Chris Baker  
 Michael Curtis  
 Attorneys for Plaintiff  
 RICHARD SMIGELSKI