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SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

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7 RICHARD SMIGELSKI

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

BY FAX

12 RICHARD SMIGELSKI, in his representative  
13 capacity and on behalf of others similarly situated

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. 34-2015-00186855

**CLASS ACTION  
REPRESENTATIVE ACTION**

**FIRST AMENDED COMPLAINT**

**(1) OVERTIME  
(2) LABOR CODE 226  
(3) WAITING TIME PENALTIES  
(4) UNFAIR BUSINESS PRACTICES  
(5) PAGA**

**DEMAND FOR JURY TRIAL**

21 Plaintiff Richard Smigelski, in his representative capacity and on behalf of similarly  
22 situated former and current employees, complains as follows:

23 **INTRODUCTION**

24 1. Plaintiff brings this action against defendants PennyMac Financial Services, Inc.,  
25 PennyMac Mortgage Investment Trust, and Private National Mortgage Acceptance Co.  
26 (collectively "PennyMac") to recover damages, restitution, penalties and other appropriate relief.  
27 Defendants do not include all of their non-exempt employees' compensation in calculating the  
28 regular rate of pay for overtime purposes. Defendants also do not provide their employees with

1 wage statements that comply with California law (or provide wage statements at all). Finally,  
2 Defendants do not pay employees their bonuses on a timely basis, and do not pay employees all  
3 wages owed at the time of their termination. Plaintiff brings this action pursuant to the Labor  
4 Code, the relevant IWC wage orders, and the Private Attorneys General Act of 2004 (“PAGA”),  
5 Labor Code Section 2698 *et seq.* With respect to PAGA, Plaintiff brings this case, not as class  
6 action, but on behalf of the state of California and on a representative basis and on behalf of other  
7 aggrieved employees.

## 8 **PARTIES**

9 2. Plaintiff Richard Smigelski worked for Defendants from November 2014 to April  
10 30, 2015 as an account executive in Defendants’ Sacramento-based call center.

11 3. Defendants Private National Mortgage Acceptance Co., PennyMac Financial  
12 Services, Inc., and PennyMac Mortgage Investment Trust are an integrated enterprise, single  
13 employer, or joint employer of Plaintiff. All of the defendants are headquartered in Moorpark,  
14 California. They all have essentially the same C-level executives. All defendants exercise  
15 common control over labor relations. According to its website, PennyMac has sales offices in  
16 California, Minnesota, Nevada, Hawaii, Missouri and Texas.

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

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



1 For example, the itemized statements included neither the number of hours nor the hourly rate for  
2 pay termed “bonus overtime.”

3 11. On April 30, 2015, PennyMac terminated Plaintiff’s employment. However,  
4 consistent with its general practice, it did not provide him with a final paycheck until May 6, 2015  
5 (the next regular payroll date). The final paycheck that was provided to Plaintiff did not include  
6 his April bonus. This payment was not made until June 2015. Moreover, the itemized statement  
7 that accompanied the final paycheck did not include the inclusive dates of the pay period. The  
8 itemized statement also did not include the rate of pay or hours worked for his “bonus overtime.”

9 12. Plaintiff was paid pursuant to PennyMac’s company-wide policies and practices.  
10 Accordingly, Plaintiff is similarly situated to the Classes he seeks to represent.

11 13. The Sacramento Superior Court has declared the arbitration agreement signed by  
12 Plaintiff unenforceable in its entirety.

13 **CLASS ACTION ALLEGATIONS**

14 14. With respect to Plaintiff’s Class Action Allegations, Plaintiff brings this action on  
15 behalf of the following classes (collectively the “Smigelski Class”):

16 **The “Rate of Pay” Class**

17 a. All California-based current and former employees whom Defendants  
18 classified as “non-exempt” and whose rate of pay calculation for overtime purposes did not  
19 include: (1) a draw; (2) referral bonus; (3) variable pay bonus; or (4) benefit stipend, including,  
20 but not limited to, account executives, loan officers, and loan processors within the applicable  
21 limitations period.

22 **The “Rate of Pay” Subclass**

23 b. All California-based former employees whom Defendants classified as  
24 “non-exempt” and whose rate of pay calculation for overtime purposes did not include: (1) a  
25 draw; (2) referral bonus; (3) variable pay bonus; or (4) benefit stipend, including, but not limited  
26 to, account executives, loan officers, and loan processors within the applicable limitations period.  
27  
28



1 d. Must the benefit stipend be included in a non-exempt employee's rate of  
2 pay when calculating overtime wages?

3 e. Was Defendants' conduct willful and/or lack good faith?

4 f. Did Defendants' wage statements allow the Rate of Pay Class to promptly  
5 and easily determine, from the wage statements alone, their total hours worked and/or all applicable  
6 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
7 hourly rate?

8 g. Did Defendants' wage statements violate the California Labor Code?

9 h. Was Defendants' conduct in failing to pay the Late Pay Class all wages  
10 owed at the time of termination willful?

11 23. A class action is the superior way of resolving these claims. Class treatment will  
12 permit a large number of similarly situated persons to prosecute their claims in a single forum and  
13 without unnecessary duplication, and without fear of retaliation. The cost to the court system of  
14 individualized litigation would be substantial.

15 **FIRST CAUSE OF ACTION**

16 **OVERTIME**

17 **ON BEHALF OF**  
18 **THE RATE OF PAY CLASS**

19 24. Plaintiff incorporates paragraphs 1 through 23 of this First Amended Complaint as  
20 if fully set forth here.

21 25. Under California law, an employer must pay an employee overtime based upon  
22 their regular rate of pay for time worked in excess of 8 hours in a day. *See* California Labor Code  
23 sections 510, 1194.

24 26. Defendants did not include required compensation in calculating the overtime rate  
25 of Plaintiff or the Rate of Pay Class.

26 27. Defendants conduct was willful and not done in good faith.

27 28. Plaintiff and the Class were harmed as a result. They did not receive all the wages  
28 to which they were entitled.

1 **SECOND CAUSE OF ACTION**

2 **LABOR CODE § 226**

3 **ON BEHALF OF**  
4 **THE RATE OF PAY CLASS**

5 29. Plaintiff incorporates paragraphs 1 through 28 of this First Amended Complaint  
6 as if fully set forth here.

7 30. Under California law, an employer must provide employees with an accurate wage  
8 statement. Among other things, the wage statement must include the gross wages earned, the  
9 total hours worked, and the wage rate worked for each hour. An employee suffers injury when  
10 this law is violated if the employee cannot (among other things) easily determine from the wage  
11 statement the gross or net wages paid or earned or the hours worked. The penalties for violating  
12 this law are set by statute. See California Labor Code sections 226.

13 31. As set forth above, Defendants knowingly and intentionally failed to provide  
14 Plaintiff and the Rate of Pay Class with accurate wage statements.

15 32. Plaintiff and the Rate of Pay Class suffered injury as a result of Defendants'  
16 conduct.

17 **THIRD CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

19 **ON BEHALF OF**  
20 **THE RATE OF PAY SUBCLASS AND THE LATE PAY CLASS**

21 33. Plaintiff incorporates paragraphs 1 through 32 of this First Amended Complaint as  
22 if fully set forth here.

23 34. Under California law, an employer must pay an employee all wages due upon  
24 termination or resignation. The willful failure to do so results in waiting time penalties equal to  
25 30 days of an employee's wage. See Labor Code section 203.

26 35. Defendants did not pay Plaintiff and the Rate or Pay Subclass and the Late Pay  
27 Class all wages due and owing upon their separation from Defendants' employ.

28 36. This conduct by Defendants was willful. It knew or should have known of the  
overtime wages incurred and not paid to Plaintiff and the Rate of Pay Subclass. It knew or should

1 have known that it was not paying Plaintiff or the Late Pay Class all earned but unpaid bonuses at  
2 the time of their separation.

3 37. As a result, Defendants are liable to Plaintiff and the relevant Classes for waiting  
4 time penalties.

5 **FOURTH CAUSE OF ACTION**

6 **UNFAIR BUSINESS PRACTICES**  
7 **ON BEHALF OF THE CLASSES**

8 38. Plaintiff incorporates paragraphs 1 through 37 of this First Amended Complaint  
9 as if fully set forth here.

10 39. California law prohibits any unlawful, unfair, or fraudulent business practice. *See*  
11 California Business and Professions Code section 17200.

12 40. Through its actions (as described above), Defendants have violated a variety of  
13 California wage and hour laws, including the California Labor Code. Plaintiff and the Classes  
14 have been harmed by Defendants' conduct. They have not been paid all wages earned. They  
15 have not been paid on a timely basis. They are entitled to restitution and an injunction.

16 **FIFTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEY GENERAL ACT ("PAGA")**

18 41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as if set forth  
19 here with the following exception. Plaintiff does not bring this PAGA cause of action as a class  
20 action.

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

27 43. Plaintiff seeks penalties pursuant to PAGA for violation of the following Labor  
28 Code sections:



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

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

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

7 d. Failure to pay earned wages bi-weekly in accordance with Labor Code §  
8 204.

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

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

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

24 47. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100)  
25 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per  
26 pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for  
27 which a civil penalty is not specifically provided.  
28

