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6 Attorneys for Plaintiffs

7 ERICH HEIDRICH, ERIC KIDD

8 and MARIA ANGELICA CASTRO

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 ERICH HEIDRICH, ERIC KIDD, and MARIA  
14 ANGELICA CASTRO, on behalf of themselves  
15 and others similarly situated,

16 Plaintiffs,

17 vs.

18 PENNYMAC FINANCIAL SERVICES, INC.;  
19 PENNYMAC MORTGAGE INVESTMENT  
20 TRUST; and PRIVATE NATIONAL  
21 MORTGAGE ACCEPTANCE CO. (collectively  
22 "PENNYMAC"),

23 Defendants.

Case No. 2:16-CV-02821-TLN-EFB

**PAGA, CLASS AND COLLECTIVE  
ACTION**

**FIRST AMENDED COMPLAINT**

**(1) OVERTIME UNDER THE FLSA  
(2) OVERTIME UNDER STATE LAW  
(3) CALIFORNIA LABOR CODE 226  
(4) WAITING TIME PENALTIES  
(4) UNFAIR BUSINESS PRACTICES**

**DEMAND FOR JURY TRIAL**

23 Plaintiffs Erich Heidrich, Eric Kidd, and Maria Angelica Castro, on behalf of similarly  
24 situated former and current employees, aggrieved employees, and the State of California,  
25 complains as follows through this First Amended Complaint:

26 **INTRODUCTION**

27 1. Plaintiffs bring this action against defendants PennyMac Financial Services, Inc.,  
28 PennyMac Mortgage Investment Trust, and Private National Mortgage Acceptance Co.

1 (collectively “PennyMac”) to recover damages, restitution, penalties and other appropriate relief.  
2 Specifically, Defendants do not include all of their non-exempt employees’ compensation in  
3 calculating the regular rate of pay for overtime purposes under either state or federal law.  
4 Defendants also do not provide their employees with wage statements that comply with California  
5 law. Finally, Defendants do not pay employees their bonuses on a timely basis, and do not pay  
6 employees all wages owed at the time of their termination. Plaintiffs bring this action pursuant to  
7 the Fair Labor Standards Act, the California Labor Code, the relevant IWC wage orders, and the  
8 Private Attorneys General Act (PAGA).

9 2. PennyMac attempts to avoid liability for its systemic violation of state and federal  
10 wage and hour laws through coerced arbitration agreements that purport to waive employees’  
11 section 7 rights under the National Labor Relations Act. These agreements are unlawful in the  
12 Ninth Circuit.

13 3. Plaintiffs file this First Amended Complaint as a matter of right in accordance with  
14 California Labor Code § 2699.3(a).

### 15 **PARTIES**

16 4. Plaintiff Erich Heidrich worked for Defendants from April 2013 to February 2016  
17 as an account executive in Defendants’ Sacramento-based call center. He was a non-exempt  
18 employee engaged in sales.

19 5. Plaintiff Eric Kidd worked for Defendants from approximately December 2014 to  
20 December 2015 as an account executive in Defendants’ Sacramento-based call center. He was a  
21 non-exempt employee engaged in sales.

22 6. Plaintiff Maria Angelica Castro works for Defendants in the position of customer  
23 service representative in Defendants’ Moorpark-based call center. She is a non-exempt employee  
24 engaged in, among other things, customer service.

25 7. Defendants Private National Mortgage Acceptance Co., PennyMac Financial  
26 Services, Inc., and PennyMac Mortgage Investment Trust are an integrated enterprise, single  
27 employer, or joint employer of Plaintiffs. All of the defendants are headquartered in Thousand  
28 Oaks, California. They all have essentially the same C-level executives. All Defendants exercise

1 common control over labor relations. According to its website, PennyMac has sales offices in  
2 California, Minnesota, Nevada, Hawaii, Missouri and Texas.

3 8. At all times mentioned herein, Defendants were the employees, agents, or  
4 representatives of each other defendant and were acting with the knowledge and consent of each  
5 other defendant and within the purpose and scope of such employment, agency, or representation  
6 in doing or failing to do the things alleged in this complaint.

### 7 **JURISDICTION & VENUE**

8 9. This Court has jurisdiction over Plaintiffs' claims. Plaintiffs seek relief  
9 under the Fair Labor Standards Act as well as state law.

10 10. The Eastern District of California is the appropriate venue for this case.  
11 Defendants do business in the Eastern District of California and Plaintiffs Heidrich and  
12 Kidd reside in the Eastern District of California.

### 13 **GENERAL ALLEGATIONS**

14 11. Plaintiffs Heidrich and Kidd worked as account executives in one of Defendants'  
15 call centers. Their job, in essence, was to take calls from individuals and attempt to sell them  
16 mortgages. PennyMac offered to pay Heidrich and Kidd \$14.42 per hour for their work.  
17 PennyMac also agreed to pay Heidrich and Kidd an additional \$1500 per month for their first  
18 three months of work, wages that it termed a "draw." PennyMac also agreed to pay Heidrich and  
19 Kidd a variety of non-discretionary bonuses and/or commissions for their sales efforts and other  
20 work they performed. PennyMac also agreed to pay Kidd a monthly "benefit stipend."

21 12. Plaintiff Castro worked as a customer service representative in one of Defendants'  
22 call centers. Her job, in essence, was to answer customer calls. She also received a variety of  
23 non-discretionary bonuses for the work she performed, including bonuses based on the number of  
24 customer calls she referred to the account executives. She also received nondiscretionary  
25 compensation in the form of pre-paid visa cards when she won certain sales contests or met other  
26 goals, and "meal" or "lunch cards" when she was required to work mandatory overtime. The  
27 meal or lunch cards could only be used at the "PennyMac Pantry" or PennyMac's "town store,"  
28 which sold food, apparel, and other items to employees. The meal cards expired if not used. This

1 compensation was identified as “SPIFF Non Cash” on Castro’s wage statements, and PennyMac  
2 withheld payroll taxes from these payments.

3 13. Plaintiffs worked a considerable amount of overtime. Defendants did not include  
4 the benefit stipend, the draw, or non-discretionary bonuses (as referenced above) in the  
5 calculation of the Plaintiffs’ regular rate of pay in determining their overtime. Defendants also  
6 miscalculated Plaintiffs’ overtime by calculating the bonus overtime rate for a specific month by  
7 using the hours worked (in whole or in part) from a different month, or some either means that  
8 resulted in the inaccurate payment of overtime.

9 14. Defendants purposefully concealed their systemic violation of California and  
10 federal law by refusing to include all required information in the Plaintiffs’ wage statements. For  
11 example, Defendants would belatedly pay Plaintiffs “Bonus Overtime” without identifying the  
12 number of overtime hours worked or the applicable rate of pay for these overtime hours.  
13 Defendants also failed to include the accurate rate of pay for all hours worked or the amount of  
14 the bonus earned each pay period.

15 15. In addition, PennyMac did not pay Plaintiffs Heidrich or Kidd the “draw” as it was  
16 earned. Rather, PennyMac paid the “draw” one time a month. In addition, pursuant to  
17 PennyMac’s various bonus/commission plans, Plaintiffs earned certain bonuses. PennyMac did  
18 not pay these bonuses as they were earned, but rather delayed paying such bonuses (if at all) until  
19 the second regular pay period following the month in which the bonus was earned.

20 16. When Plaintiffs Kidd and Heidrich separated from Defendants’ employ,  
21 Defendants did not provide them with their final paycheck until the next regular payroll rate.  
22 Defendants did not provide these employees with their bonus payments until the following  
23 month.

24 17. Plaintiffs were paid pursuant to Defendants’ company-wide policies and practices.  
25 Accordingly, Plaintiffs are similarly situated to the Classes they seeks to represent.

26 **COLLECTIVE ACTION ALLEGATIONS**

27 18. Plaintiffs bring their First Cause of Action for violation of the FLSA as a  
28 nationwide collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b). The

1 collective action is brought on behalf of themselves and all former and current non-exempt  
2 employees of Defendants who file consents to join this collective action, and:

3 a. Whose overtime rate of pay did not include a draw, non-discretionary  
4 bonuses/commissions (including visa cards, meal and lunch cards, and other non-cash  
5 compensation), or a benefit stipend; or

6 b. Whose “bonus overtime” was not calculated using hours worked in the  
7 time period in which the bonus was earned.

8 (The “Nationwide FLSA Collection Plaintiffs.”)

9 19. Plaintiffs and the Nationwide FLSA Collective Plaintiffs are similarly situated in  
10 that they are subject to Defendants common practice and policy of failing to include required  
11 amounts in calculating their rate of pay for overtime purposes and miscalculating bonus overtime  
12 by using hours from the wrong month in calculating the amount owed.

13 20. The First Cause of Action for violations of the FLSA may be brought and  
14 maintained as an “opt-in” collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §  
15 216(b), because Plaintiffs’ claims are substantially similar to the claims of the Nationwide FLSA  
16 Collective Plaintiffs.

17 21. The names and addresses of the Nationwide FLSA Collective Plaintiffs are  
18 available from Defendants, and notice should be provided to the Nationwide FLSA Collective  
19 Plaintiffs via first class mail and email to the last address known to their employer(s) as soon as  
20 possible.

21 22. Attached to the original complaint, filed on November 28, 2016, are the consents  
22 to sue signed by Plaintiffs pursuant to 29 USC § 203.

23 **CLASS ACTION ALLEGATIONS**

24 23. Plaintiffs bring their other causes of action on behalf of the following California  
25 classes pursuant to Federal Rule of Civil Procedure 23.

26 24. **The “Rate of Pay” Class**

27 a. All California-based current and former employees whom Defendants  
28 classified as “non-exempt” and whose rate of pay calculation for overtime purposes did not

1 include: (1) a draw; (2) any non-discretionary bonus/commission; or (3) benefit stipend, within  
2 the applicable limitations period. Or

3 b. All California-based current and former employees whom Defendants  
4 classified as “non-exempt” and whose bonus overtime pay was miscalculated using hours worked  
5 in a time period different from when the bonus was earned.

6 **25. The “Rate of Pay” Subclass**

7 a. All California-based former employees of Defendants who otherwise meet  
8 the definition of the Rate of Pay Class.

9 **26. The “Late Pay” Class**

10 a. All California-based former employees whom Defendants classified as  
11 “non-exempt” and who were paid a bonus following their separation from Defendants’ employ.

12 27. Plaintiffs reserve the right to refine the definition of the proposed Classes based on  
13 further investigation and discovery.

14 28. Plaintiffs’ claims should be resolved on a class-wide basis, and there is a well-  
15 defined community of interest with respect to the litigation.

16 29. The Classes are sufficiently numerous and joinder of all putative class members is  
17 impracticable.

18 30. The Classes are ascertainable.

19 31. Plaintiffs’ claims are typical and/or similar to the claims of the Classes they seek  
20 to represent.

21 32. Plaintiffs will fairly and adequately represent and protect the interests of the  
22 Classes. Plaintiffs do not have interests which are adverse to the interests of absent class  
23 members.

24 33. Class counsel is experienced, qualified and capable. They have litigated numerous  
25 class and collective action cases.

26 34. There are common questions of law and fact. These include:

27 a. Must non-discretionary bonuses be included in a non-exempt employee’s  
28 rate of pay when calculating overtime wages?







1 **THIRD CAUSE OF ACTION**

2 **LABOR CODE § 226**

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

5 49. Plaintiffs incorporate paragraphs 1 through 48 of this First Amended Complaint  
6 as if fully set forth here.

7 50. 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 51. As set forth above, Defendants knowingly and intentionally failed to provide  
14 Plaintiffs and the Rate of Pay Class with accurate wage statements.

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

17 **FOURTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

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

21 53. Plaintiffs incorporate paragraphs 1 through 52 of this First Amended Complaint as  
22 if fully set forth here.

23 54. 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 55. Defendants did not pay Plaintiffs Kidd and Heidrich and the Rate or Pay Subclass  
27 and the Late Pay Class all wages due and owing upon their separation from Defendants' employ.

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

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

3 57. As a result, Defendants are liable to these Plaintiffs and the relevant Classes for  
4 waiting time penalties.

5 **FIFTH CAUSE OF ACTION**

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

8 58. Plaintiffs incorporates paragraphs 1 through 57 of this First Amended Complaint  
9 as if fully set forth here.

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

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

17 **SIXTH CAUSE OF ACTION**

18 **PAGA**  
19 **ON BEHALF OF PLAINTIFFS,**  
20 **AGGRIEVED EMPLOYEES AND THE STATE OF CALIFORNIA**

21 61. Plaintiffs incorporates paragraphs 1 through 60 of this First Amended Complaint  
22 as if fully set forth here.

23 62. On November 28, 2016, Plaintiffs provided a copy of the Complaint in this case, in  
24 addition to a LWDA Letter set forth as Exhibit 1, to the Labor Workforce and Development  
25 Agency and Defendants.

26 63. As of January 6, 2017, Plaintiffs have received no response to this correspondence.

27 64. Plaintiffs have exhausted their administrative remedies under PAGA.

28 65. Plaintiffs are aggrieved employees under PAGA.

1           66.     As a result of the allegations and claims set forth above, Plaintiffs, other aggrieved  
2 employees, and the State of California are entitled to civil penalties and reasonable attorneys' fees  
3 and costs.

4           67.     Specifically, Plaintiffs seek penalties pursuant to PAGA for violations of the  
5 following Labor Code Sections:

6           a.     Defendants failed to provide prompt payment of wages to employees upon  
7 termination or resignation in violation of Labor Code §§ 201, 202, 203.

8           b.     Defendants failed to provide accurate itemized wage statements to  
9 employees in violation of Labor Code §§226 and 226.3.

10          c.     Defendants failed to pay overtime wages at the appropriate rate of pay in  
11 violation of applicable wage orders and Labor Code §§ 510, 558, and 1194.

12          d.     Defendants failed to pay earned wages on a timely basis or bi-weekly in  
13 accordance with Labor Code § 204.

14          e.     Through Defendants' payment of wages through visa cards, "lunch or meal  
15 cards," and other non-cash payments, (a) the failure to pay employees wages through an "order,  
16 check, draft, note, memorandum, or other acknowledgement of indebtedness" that is negotiable  
17 on demand and without a discount; (b) the failure to include on the instrument of indebtedness the  
18 name and address of the place where these non-cash payments may be negotiated; and (c) the  
19 unlawful payment to employees in "scrip, coupon, cards, or other thing redeemable otherwise in  
20 money," all in violation of Labor Code § 212.

21          f.     Through Defendants' payment of wages through "lunch or meal cards" that  
22 could only be redeemable at the PennyMac Pantry, unlawfully requiring employees to patronize  
23 his or her employer in the purchase of something of value, in violation of Labor Code § 450.

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

27           69.     With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a  
28 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)

1 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved  
2 employee for each subsequent violation of Labor Code § 226.

3 70. With respect to violations of Labor Code §§ 510, Labor Code § 558 imposes a  
4 civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial  
5 violations for each underpaid employee for each pay period in addition to an amount equal to the  
6 employee's underpaid wages, and one hundred dollars (\$100) for subsequent violations for each  
7 underpaid employee for each pay period in addition to an amount equal to the employee's  
8 underpaid wages. Plaintiffs seek civil penalties in the amount of unpaid wages owed to aggrieved  
9 employees pursuant to Labor Code § 558(a)(3), as well as other civil penalties.

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray individually and on behalf of other persons similarly  
16 situated, for judgment against Defendants as follows:

- 17 1. An Order that this action may proceed on a collective and class-wide basis;
- 18 2. Appropriate injunctive relief, including restitution;
- 19 3. An award of reasonable attorneys' fees and costs;
- 20 4. Damages in the form of statutory penalties, unpaid wages, and other damages,  
21 according to proof;
- 22 5. Pre-judgment and post-judgment interest as provided by law; and

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6. Such other and further relief that the Court may deem just and proper.

Dated: January 9, 2017

BAKER CURTIS & SCHWARTZ, P.C.

By: \_\_\_\_\_S\_\_\_\_\_

Chris Baker  
Michael Curtis  
Attorneys for Plaintiffs  
ERICH HEIDRICH, ERIC KIDD, AND MARIA  
ANGELICA CASTRO

**JURY TRIAL DEMAND**

Plaintiffs hereby demand a trial by jury.

Dated: January 9, 2017

BAKER CURTIS & SCHWARTZ, P.C.

By: \_\_\_\_\_S\_\_\_\_\_

Chris Baker  
Michael Curtis  
Attorneys for Plaintiffs  
ERICH HEIDRICH, ERIC KIDD, AND MARIA  
ANGELICA CASTRO

# Exhibit 1



**BAKER CURTIS &  
SCHWARTZ PC**

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November 28, 2016

**Via On Line**

Labor & Workforce Development Agency  
Attn. PAGA Administrator

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

**Via Certified Mail**

Jeffrey P. Grogin  
Chief Administrative and Legal Officer  
PennyMac  
3043 Townsgate Road  
Westlake Village, CA 91361

*RE: Request For Relief Under the Private Attorney General's Act*

Dear LWDA and Mr. Grogin:

I represent Erich Heidrich, Eric Kidd, and Maria Castro (“Plaintiffs”), all former and/or current employees of PennyMac Financial Services, Inc., PennyMac Mortgage Investment Trust, and Private National Mortgage Acceptance Co. (collectively “PennyMac”). Plaintiffs are “aggrieved employees” under California Labor Code section 2699 *et seq.* The purpose of this letter is to provide notice to the LWDA and their employers.

Plaintiffs seek to represent themselves and other current and former employees with respect to violations of the California Labor Code pursuant to Labor Code section 2699 *et seq.* The facts and theories in support of their claims are set forth in the attached Complaint, as well as below.

Specifically (and in addition to the bases set forth in the attached Complaint), Plaintiffs seek penalties based on the following violations of the Labor Code:



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1. Failure to provide prompt payment of wages to employees upon termination and resignation in violation of Labor Code §§ 201, 202, 203;
2. Failure to provide accurate itemized wage statements to employees in violation of Labor Code § 226;
3. Failure to pay overtime wages at the appropriate rate of pay in violation of applicable wage orders and Labor Code §§ 510, 558, and 1194;
4. Failure to pay earned wages bi-weekly in accordance with Labor Code § 204.
5. Through PennyMac's payment of wages through visa cards, "lunch or meal cards," and other non-cash payments, (a) the failure to pay employees wages through an "order, check, draft, note, memorandum, or other acknowledgement of indebtedness" that is negotiable on demand and without a discount; (b) the failure to include on the instrument of indebtedness the name and address of the place where these non-cash payments may be negotiated; and (c) the unlawful payment to employees in "scrip, coupon, cards, or other thing redeemable otherwise in money," all in violation of Labor Code § 212.
6. Through PennyMac's payment of wages through "lunch or meal cards" that could only be redeemable at the PennyMac Pantry, unlawfully requiring employees to patronize his or her employer in the purchase of something of value, in violation of Labor Code § 450.

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

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

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

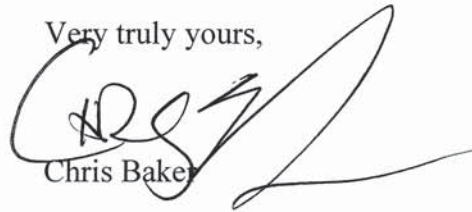


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Also, Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for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

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "CB", with a long horizontal flourish extending to the right. The signature is positioned above the printed name "Chris Baker".

Chris Baker