

EXHIBIT A

1 Matthew C. Helland, CA State Bar No. 250451
2 Helland@nka.com
3 NICHOLS KASTER, LLP
4 One Embarcadero Center, Suite 720
5 San Francisco, CA 94111
6 Telephone: (415) 277-7235
7 Facsimile: (415) 277-7238

8 Attorneys for Plaintiff and those similarly situated

9 **IN THE UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 KAREN WILLIAMS, SANDRA ADAMS,
12 LISA CRAWFORD, DEBRA DUDLEY,
13 KENNETH FREESTONE, CONNIE LEITING,
14 MARIO MORA, JAMIE NOONAN-SILVA,
15 and KIMBERLY SEYMOUR individually and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 U.S. BANK NATIONAL ASSOCIATION
20 and DOES 1-50, inclusive,

21 Defendants.

Case No.: 2:12-cv-01907-LKK-EFB

**FIRST AMENDED COLLECTIVE
ACTION COMPLAINT**

**(1) Failure to Pay Overtime Compensation
in Violation of the Fair Labor Standards
Act (29 U.S.C. § 201, et seq.)**

**(2) Failure to Pay Overtime Compensation
in Violation of California Law (Cal. Lab.
Code §§ 510, 1194, and 1198, and IWC
Wage Order(s))**

**(3) Waiting Time Penalties (Cal. Lab.
Code §§ 201-203)**

**(4) Failure to Provide Itemized Wage
Statements (Cal. Lab. Code § 226)**

**(5) Failure to Provide and/or Authorize
Meal and Rest Periods (Cal. Lab. Code §
226.7)**

**(6) Violation of California Business and
Professions Code §§ 17200 et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiffs Karen Williams, Sandra Adams, Lisa Crawford, Debra Dudley, Kenneth
2 Freestone, Connie Leiting, Mario Mora, Jamie Noonan-Silva, and Kimberly Seymour
3 (“Plaintiffs”), on their own behalf and on behalf of all similarly situated individuals, by and
4 through her attorneys Nichols Kaster, LLP, brings this action against Defendant U.S. Bank
5 National Association (“Defendant”), and certain Doe Defendants, for damages and other relief
6 relating to violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq* and
7 California Wage and Hour law.

8 **JURISDICTION AND VENUE**

9 1. This Court has jurisdiction to hear this Complaint and to adjudicate the claims
10 stated herein under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards
11 Act, 29 U.S.C. § 201 *et seq*. This Court also has supplemental jurisdiction over the California
12 state law claims pursuant to 28 U.S.C. § 1367.

13 2. Venue is proper in the United States District Court for the Eastern District of
14 California pursuant to 28 U.S.C. § 1391 because Defendant operates in this district, and because a
15 substantial part of the events or omissions giving rise to the claims occurred in this district.
16 Pursuant to L.R. 120, this action is properly assigned to the Sacramento Division of the Eastern
17 District of California because a substantial portion of the events or omissions giving rise to the
18 claims occurred in Placer County, California.

19 **THE PARTIES**

20 3. Plaintiff Karen Williams is an individual residing in Rancho Cordova, California
21 (Sacramento County). Plaintiff Williams was employed by Defendant from approximately
22 September 2010 to April 2011 as a mortgage underwriter in Defendant’s Roseville, California
23 office (Placer County).

24 4. Plaintiff Sandra Adams is an individual residing in Cameron Park, California.
25 Plaintiff Adams has been employed by Defendant since approximately 2011, and was previously
26 employed by Defendant from approximately February 2008 to 2010 as a mortgage underwriter in
27 Defendant’s Roseville, California office (Placer County).

28 5. Plaintiff Lisa Crawford is an individual residing in Tustin, California. Plaintiff

1 Crawford was employed by Defendant from approximately November 2008 to December 2011 as
2 a mortgage underwriter in Defendant's Los Alamitos, California office (Orange County).

3 6. Plaintiff Debra Dudley is an individual residing in Marina, California. Plaintiff
4 Dudley was employed by Defendant from approximately February 2011 to July 2012 as a
5 mortgage underwriter in Defendant's Campbell, California office (Santa Clara County).

6 7. Plaintiff Kenneth Freestone is an individual residing in Livermore, California.
7 Plaintiff Kenneth Freestone has been employed by Defendants since approximately June 2010 as
8 a mortgage underwriter in Defendant's Campbell, California office (Santa Clara County).

9 8. Plaintiff Connie Leiting is an individual residing in Sacramento, California.
10 Plaintiff Connie Leiting was employed by Defendant from approximately October 2003 to
11 September 2012 as a mortgage underwriter in Defendant's Roseville, California office (Placer
12 County).

13 9. Plaintiff Mario Mora is an individual residing in Hawthorne, California. Plaintiff
14 Mora was employed by Defendant from approximately November 2009 to February 2012 as a
15 mortgage underwriter in Defendant's Los Alamitos, California office (Orange County).

16 10. Plaintiff Jamie Noonan-Silva is an individual residing in Citrus Heights,
17 California. Plaintiff Noonan-Silva has been employed by Defendant since approximately
18 December 2008 as a mortgage underwriter in Defendant's Roseville, California office (Placer
19 County).

20 11. Plaintiff Kimberly Seymour is an individual residing in Fair Oaks, California.
21 Plaintiff Seymour was employed by Defendant from approximately 2008 to November 2011 as a
22 mortgage underwriter in Defendant's Roseville, California office (Placer County).

23 12. Plaintiffs Adams, Crawford, Dudley, Freestone, Leiting, Mora, Noonan-Silva, and
24 Seymour are referred to collectively herein as the "California State Law Plaintiffs".

25 13. Plaintiffs bring this action on behalf of themselves and all other similarly situated
26 individuals pursuant to 29 U.S.C. § 216(b). Plaintiffs and the similarly situated individuals are, or
27 were, employed by Defendant as mortgage underwriters across the country during the applicable
28 statutory period.

1 did not accurately reflect all hours Plaintiffs worked.

2 20. Defendant uniformly misrepresented to Plaintiffs and the other mortgage
3 underwriters that they were ineligible to receive overtime pay. In reality, Plaintiffs and the other
4 mortgage underwriters are, and were, nonexempt production employees who are, and were,
5 entitled to overtime pay.

6 21. Because Defendant required Plaintiffs to review a certain number of files per day,
7 and because Plaintiffs were required to work until they completed their allocation of files,
8 Plaintiffs regularly, on average at least weekly, worked through meal periods and rest periods.
9 Defendant's production requirements prevented Plaintiffs from taking uninterrupted meal and rest
10 periods.

11 22. Defendant's supervisory employees observed Plaintiffs working through meal and
12 rest periods. For example, Plaintiffs and other Mortgage Underwriters regularly ate lunch while
13 they worked. Defendant's supervisory employees observed this activity.

14 23. Defendant was aware, or should have been aware, that Plaintiffs and the other
15 mortgage underwriters performed work that required payment of overtime compensation.
16 Defendant is aware of wage and hour laws, as evidenced by the fact that it provides overtime
17 compensation to other employees who are not mortgage underwriters. Moreover, federal courts
18 have found mortgage underwriters to be non-exempt as a matter of law.

19 24. Defendant's conduct, as set forth in this Complaint, was willful and in bad faith.
20 Defendant operated under a scheme that has caused significant damages to Plaintiffs and the
21 similarly situated individuals.

22 **COLLECTIVE ACTION ALLEGATIONS**

23 25. Plaintiffs, on behalf of themselves and all other similarly situated individuals,
24 restate and incorporate by reference the above paragraphs as if fully set forth herein.

25 26. Plaintiffs bring their claims on behalf of themselves and other similarly situated
26 employees as authorized under the FLSA, 29 U.S.C. § 216(b). The proposed collective class is as
27 follows:

28 All persons who are, or have been, employed by Defendant as mortgage

1 underwriters at any time within three years prior to this action's filing date through
the date of final disposition of this action (the "FLSA Collective").

2 27. Plaintiffs have signed consent forms to join this lawsuit pursuant to 29 U.S.C. §
3 216(b), which have previously been filed with the Court.

4 28. Defendant classified all of its mortgage underwriters as "exempt" from overtime
5 under the FLSA. Accordingly, Plaintiffs and the FLSA Collective were subject to Defendant's
6 policy, decision, and/or plan of improperly treating and classifying underwriters as "exempt"
7 under the FLSA, and failing to pay appropriate overtime compensation.

8 29. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs
9 and the FLSA Collective. Accordingly, notice should be sent to the FLSA Collective. There are
10 numerous similarly situated current and former employees of Defendant who have been denied
11 overtime pay in violation of the FLSA who would benefit from the issuance of a Court-supervised
12 notice of this lawsuit and the opportunity to join. Those similarly situated employees are known
13 to Defendant and are readily identifiable through Defendant's records.

14 **FIRST CLAIM FOR RELIEF**

15 **FAIR LABOR STANDARDS ACT – FAILURE TO PAY OVERTIME**

16 **(on behalf of Plaintiffs and the FLSA Collective)**

17 30. Plaintiffs, on behalf of themselves and all other similarly situated individuals,
18 restate and incorporate by reference the above paragraphs as if fully set forth herein.

19 31. The FLSA, 29 U.S.C. § 207, requires each covered employer, such as Defendant,
20 to compensate all nonexempt employees at a rate of not less than one and one-half times the
21 regular rate of pay for work performed in excess of forty hours per work week.

22 32. Defendant routinely suffered and permitted Plaintiffs and the FLSA Collective to
23 work more than forty hours per week without overtime compensation.

24 33. By failing to compensate Plaintiffs and the FLSA Collective overtime
25 compensation, Defendant violated the FLSA, 29 U.S.C. § 201 *et seq.*

26 34. By failing to record, report, and/or preserve records of hours worked by Plaintiffs
27 and the FLSA Collective, Defendant failed to make, keep, and preserve records with respect to
28 each of their employees sufficient to determine their wages, hours, and other conditions and

1 practice of employment, in violation of the FLSA, 29 U.S.C. § 201 *et seq.*

2 35. Defendant knew, or showed reckless disregard for the fact, that it failed to pay
3 these individuals overtime compensation in violation of the FLSA. The foregoing conduct, as
4 alleged in this Complaint, constitutes a willful violation of the FLSA, within the meaning of 29
5 U.S.C. § 255(a).

6 36. As a direct and proximate cause of Defendant's unlawful conduct, Plaintiffs and
7 the FLSA Collective have suffered, and will continue to suffer, a loss of income and other
8 damages. Plaintiffs, on behalf of themselves and the FLSA Collective, seek damages in the
9 amount of the unpaid overtime compensation, liquidated damages as provided by the FLSA, 29
10 U.S.C. § 216(b), interest, attorneys' fees and costs, and such other legal and equitable relief as the
11 Court deems just and proper.

12 **SECOND CLAIM FOR RELIEF**

13 **CALIFORNIA STATE LABOR CODE – FAILURE TO PAY OVERTIME**

14 Cal. Wage Order No. 4; Cal. Labor Code §§ 510, 1194

15 (On Behalf of the California State Law Plaintiffs)

16 37. The California State Law Plaintiffs allege and incorporate by reference the
17 allegations in the preceding paragraphs.

18 38. At all times relevant to this action, the California State Law Plaintiffs were
19 employed by Defendants within the meaning of the California Labor Code.

20 39. By the course of conduct set forth above, Defendant violated Cal. Labor Code §§
21 510 and 1194.

22 40. The California Labor Code requires employers, such as Defendant, to pay
23 overtime compensation to all non-exempt employees.

24 41. The California State Law Plaintiffs were non-exempt employees entitled to be paid
25 proper overtime compensation for all hours worked.

26 42. During the relevant statutory period, the California State Law Plaintiffs worked in
27 excess of eight hours in a work day and/or forty hours in a work week for Defendant.
28

1 43. During the relevant statutory period, Defendant failed and refused to pay the
2 California State Law Plaintiffs proper overtime compensation for overtime hours worked.

3 44. Defendant had a policy and practice of failing and refusing to pay proper overtime
4 pay to the California State Law Plaintiffs for their hours worked.

5 45. As a result of Defendant's failure to pay wages earned and due, Defendant violated
6 the California Labor Code.

7 46. As a direct and proximate result of Defendant's unlawful conduct, as set forth
8 herein, the California State Law Plaintiffs have sustained damages, including loss of earnings for
9 hours of overtime worked on behalf of Defendant, prejudgment interest, and attorneys' fees and
10 costs.

11 **THIRD CLAIM FOR RELIEF**

12 **CALIFORNIA WAGE PAYMENT PROVISIONS OF LABOR CODE**

13 **Cal. Labor Code §§ 201, 202 & 203**

14 (On Behalf of the California State Law Plaintiffs Except for Plaintiffs Adams, Freestone, and
15 Noonan-Silva)

16 47. The California State Law Plaintiffs allege and incorporate by reference the
17 allegations in the preceding paragraphs.

18 48. California Labor Code §§ 201 and 202 require Defendant to pay employees all
19 wages due within the time specified by law. California Labor Code § 203 provides that if an
20 employer willfully fails to timely pay such wages, the employer must continue to pay the subject
21 employees' wages until the back wages are paid in full or an action is commenced, up to a
22 maximum of thirty days of wages.

23 49. The California State Law Plaintiffs are entitled to unpaid overtime compensation,
24 but to date have not received all such compensation.

25 50. As a consequence of Defendant's willful conduct in not paying proper
26 compensation for all hours worked, the California State Law Plaintiffs (except for Plaintiffs
27 Adams, Freestone and Noonan-Silva) are entitled to up to thirty days' wages under Labor Code §
28 203, together with interest thereon, and attorneys' fees and costs.

1 **FOURTH CLAIM FOR RELIEF**

2 **CALIFORNIA WAGE STATEMENT PROVISIONS OF LABOR CODE**

3 Cal. Wage Order No. 4; Cal. Labor Code § 226

4 (On Behalf of Plaintiffs Adams, Freestone and Noonan-Silva)

5 51. Plaintiffs Adams, Freestone and Noonan-Silva allege and incorporate by reference
6 the allegations in the preceding paragraphs.

7 52. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
8 wage statements including, *inter alia*, hours worked, to Plaintiffs Adams and Freestone in
9 accordance with Labor Code § 226(a) and the IWC Wage Orders. Such failure caused injury to
10 Plaintiffs Adams and Freestone, by, among other things, impeding them from knowing the
11 amount of wages to which they are and were entitled.

12 53. Plaintiffs Adams, Freestone and Noonan-Silva are entitled to and seek injunctive
13 relief requiring Defendant to comply with Labor Code 226(a) and further seek the amount
14 provided under Labor Code 226(e), including the greater of all actual damages or fifty dollars for
15 the initial pay period in which a violation occurs and one hundred dollars (\$100) for each
16 violation in a subsequent pay period.

17 **FIFTH CLAIM FOR RELIEF**

18 **CALIFORNIA REST BREAK AND MEAL PERIOD PROVISIONS**

19 Cal. Wage Order No. 4; Cal. Labor Code §§ 226 et seq., 512,

20 (On Behalf of the California State Law Plaintiffs)

21 54. The California State Law Plaintiffs allege and incorporate by reference the
22 allegations in the proceeding paragraphs.

23 55. California Labor Code section 512 prohibits an employer from employing an
24 employee for a work period of more than five hours per day without providing the employee with
25 a meal period of not less than 30 minutes, or for a work period of more than 10 hours per day
26 without providing the employee with a second meal period of not less than 30 minutes.

27 56. Section 11 of Wage Order No. 4 provides (and at all times relevant hereto
28 provided) in relevant part that:

1 No employer shall employ any person for a work period of more than five
2 (5) hours without a meal period of not less than 30 minutes, except that
3 when a work period of not more than six (6) hours will complete the day's
4 work the meal period may be waived by mutual consent of the employer and
5 employee. Unless the employee is relieved of all duty during a 30 minute
6 meal period, the meal period shall be considered an "on duty" meal period
7 and counted as time worked. An "on duty" meal period shall be permitted
8 only when the nature of the work prevents an employee from being relieved
9 of all duty and when by written agreement between the parties an on-the-job
10 paid meal period is agreed to. The written agreement shall state that the
11 employee may, in writing, revoke the agreement at any time. If an employer
12 fails to provide an employee a meal period in accordance with the applicable
13 provisions of this Order, the employer shall pay the employee one (1) hour
14 of pay at the employee's regular rate of compensation for each work day
15 that the meal period is not provided.

16 57. Section 12 of Wage Order No. 4 provides (and at all times relevant hereto
17 provided) in relevant part that:

18 Every employer shall authorize and permit all employees to take rest
19 periods, which insofar as practicable shall be in the middle of each work
20 period. The authorized rest period time shall be based on the total hours
21 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
22 or major fraction thereof. However, a rest period need not be authorized for
23 employees whose total daily work time is less than three and one-half (3 ½)
24 hours. Authorized rest period time shall be counted, as hours worked, for
25 which there shall be no deduction from wages. If an employer fails to
26 provide an employee a rest period in accordance with the applicable
27 provisions of this Order, the employer shall pay the employee one (1) hour
28

1 of pay at the employee's regular rate of compensation for each work day
2 that the rest period is not provided.

3 58. California Labor Code section 226.7 prohibits any employer from requiring any
4 employee to work during any meal or rest period mandated by an applicable IWC wage order,
5 and provides that an employer that fails to provide an employee with a required rest break or meal
6 period shall pay that employee one additional hour of pay at the employee's regular rate of
7 compensation for each work day that the employer does not provide a compliant meal or rest
8 period.

9 59. Defendant knowingly failed to provide the California State Law Plaintiffs with
10 meal periods as required by law, and knowingly failed to authorize and permit the California
11 State Law Plaintiffs to take rest periods as required by law. The California State Law Plaintiffs
12 are therefore entitled to payment of the meal and rest period premiums as provided by law.

13 **SIXTH CLAIM FOR RELIEF**

14 **CALIFORNIA UNFAIR COMPETITION LAW**

15 Cal. Bus. & Prof. Code §§ 17200 et seq.

16 (On Behalf of the California State Law Plaintiffs)

17 60. The California State Law Plaintiffs allege and incorporate by reference the
18 allegations in the preceding paragraphs.

19 61. The foregoing conduct, as alleged, violates the California Unfair Competition Law
20 ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq. of the Cal. Bus. & Prof. Code prohibits unfair
21 competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

22 62. Beginning at a date unknown to the California State Law Plaintiffs, but at least as
23 long ago as the year 2009, Defendant committed acts of unfair competition, as defined by the
24 UCL, by, among other things, engaging in the acts and practices described herein. Defendant's
25 conduct as herein alleged has injured the California State Law Plaintiffs by wrongfully denying
26 them earned wages, and therefore was substantially injurious to the California State Law
27 Plaintiffs.

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- 1 B. Judgment against Defendant for an amount equal to Plaintiff and the FLSA
- 2 Collective's unpaid overtime wages at the applicable rates;
- 3 C. A finding that Defendant's conduct was willful
- 4 D. An equal amount to the overtime wages as liquidated damages;
- 5 E. All costs and attorney' fees incurred prosecuting these claims, including expert
- 6 fees;
- 7 F. Pre-judgment and post-judgment interest, as provided by law;
- 8 G. Leave to add additional plaintiffs and/or state law claims by motion, the filing
- 9 of written consent forms, or any other method approved by the Court; and
- 10 H. Such further relief as the Court deems just and equitable.

11 68. WHEREFORE, the California State Law Plaintiffs pray for relief as follows:

- 12 A. Unpaid overtime wages, other due wages, injunctive relief, and unpaid
- 13 meal and rest premiums pursuant to California law;
- 14 B. Appropriate equitable relief to remedy Defendants' violations of state law;
- 15 C. Appropriate statutory penalties;
- 16 D. An award of damages and restitution to be paid by Defendant according to
- 17 proof;
- 18 E. Attorneys' fees and costs of suit, including expert fees pursuant to Cal.
- 19 Labor §§ 1194, and California Code of Civil Procedure § 1021.5;
- 20 F. Pre-judgment and post-judgment interest, as provided by law; and
- 21 G. Such other equitable relief as the Court may deem just and proper.

22 **DEMAND FOR JURY TRIAL**

23 69. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs,

24 individually and on behalf of all others similarly situated, demand a trial by jury.

25 Dated: NICHOLS KASTER, LLP

26 By: _____

27 Matthew C. Helland

28 Attorneys for Plaintiff and those similarly situated

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~~Robert L. Schug, CA State Bar No. 249640~~
~~RSchug@nka.com~~
Matthew C. Helland, CA State Bar No. 250451
Helland@nka.com
NICHOLS KASTER, LLP
One Embarcadero Center, Suite 720
San Francisco, CA 94111
Telephone: (415) 277-7235
Facsimile: (415) 277-7238

Attorneys for Plaintiff and those similarly situated

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KAREN WILLIAMS, SANDRA ADAMS,
LISA CRAWFORD, DEBRA DUDLEY,
KENNETH FREESTONE, CONNIE LEITING,
MARIO MORA, JAMIE NOONAN-SILVA,
and KIMBERLY SEYMOUR individually and
on behalf of all others similarly situated,

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and DOES 1-50, inclusive,

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**(2) Failure to Pay Overtime Compensation
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Code §§ 510, 1194, and 1198, and IWC
Wage Order(s))**

**(3) Waiting Time Penalties (Cal. Lab.
Code §§ 201-203)**

**(4) Failure to Provide Itemized Wage
Statements (Cal. Lab. Code § 226)**

**(5) Failure to Provide and/or Authorize
Meal and Rest Periods (Cal. Lab. Code §
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**(6) Violation of California Business and
Professions Code §§ 17200 et seq.**

DEMAND FOR JURY TRIAL

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Plaintiffs Karen Williams, Sandra Adams, Lisa Crawford, Debra Dudley, Kenneth Freestone, Connie Leiting, Mario Mora, Jamie Noonan-Silva, and Kimberly Seymour (“Plaintiffs”), on ~~her~~their own behalf and on behalf of all similarly situated individuals, by and through her attorneys Nichols Kaster, LLP, brings this action against Defendant U.S. Bank National Association (“Defendant”), and certain Doe Defendants, for damages and other relief relating to violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* and California Wage and Hour law.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* This Court also has supplemental jurisdiction over the California state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391 because Defendant operates in this district, and because a substantial part of the events or omissions giving rise to the claims occurred in this district. Pursuant to L.R. 120, this action is properly assigned to the Sacramento Division of the Eastern District of California because a substantial portion of the events or omissions giving rise to the claims occurred in Placer County, California.

THE PARTIES

3. Individual and representative Plaintiff Karen Williams is an individual residing in Rancho Cordova, California (Sacramento County). Plaintiff Williams was employed by Defendant from approximately September 2010 to April 2011 as a mortgage underwriter in Defendant’s Roseville, California office (Placer County).

4. Plaintiff Sandra Adams is an individual residing in Cameron Park, California. Plaintiff Adams has been employed by Defendant since approximately 2011, and was previously employed by Defendant from approximately February 2008 to 2010 as a mortgage underwriter in

1 Defendant's Roseville, California office (Placer County).

2 5. Plaintiff Lisa Crawford is an individual residing in Tustin, California. Plaintiff
3 Crawford was employed by Defendant from approximately November 2008 to December 2011 as
4 a mortgage underwriter in Defendant's Los Alamitos, California office (Orange County).

5 6. Plaintiff Debra Dudley is an individual residing in Marina, California. Plaintiff
6 Dudley was employed by Defendant from approximately February 2011 to July 2012 as a
7 mortgage underwriter in Defendant's Campbell, California office (Santa Clara County).

8 7. Plaintiff Kenneth Freestone is an individual residing in Livermore, California.
9 Plaintiff Kenneth Freestone has been employed by Defendants since approximately June 2010 as
10 a mortgage underwriter in Defendant's Campbell, California office (Santa Clara County).

11 8. Plaintiff Connie Leiting is an individual residing in Sacramento, California.
12 Plaintiff Connie Leiting was employed by Defendant from approximately October 2003 to
13 September 2012 as a mortgage underwriter in Defendant's Roseville, California office (Placer
14 County).

15 9. Plaintiff Mario Mora is an individual residing in Hawthorne, California. Plaintiff
16 Mora was employed by Defendant from approximately November 2009 to February 2012 as a
17 mortgage underwriter in Defendant's Los Alamitos, California office (Orange County).

18 10. Plaintiff Jamie Noonan-Silva is an individual residing in Citrus Heights,
19 California. Plaintiff Noonan-Silva has been employed by Defendant since approximately
20 December 2008 as a mortgage underwriter in Defendant's Roseville, California office (Placer
21 County).

22 11. Plaintiff Kimberly Seymour is an individual residing in Fair Oaks, California.
23 Plaintiff Seymour was employed by Defendant from approximately 2008 to November 2011 as a
24 mortgage underwriter in Defendant's Roseville, California office (Placer County).

25 3-12. Plaintiffs Adams, Crawford, Dudley, Freestone, Leiting, Mora, Noonan-Silva, and
26 Seymour are referred to collectively herein as the "California State Law Plaintiffs".

27 4-13. Plaintiffs brings this action on behalf of herself-themselves and all other similarly
28 situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiffs and the similarly situated

1 individuals are, or were, employed by Defendant as mortgage underwriters across the country
2 during the applicable statutory period.

3 ~~5-14.~~ Defendant U.S. Bank National Association is a wholly owned subsidiary of U.S.
4 Bancorp. Defendant does business and maintains offices in cities throughout the country,
5 including Roseville, California (Placer County). Defendant employed Plaintiff and the similarly
6 situated individuals within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times,
7 Defendant's gross annual sales made or business done has been in excess of \$500,000. Defendant
8 operates in interstate commerce by, among other things, selling mortgage loan products in
9 multiple states.

10 ~~6-15.~~ Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their
11 true names and capacities are unknown to Plaintiff. When their true names and capacities are
12 ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities
13 herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously-named
14 defendants is responsible in some manner for the occurrences herein alleged, and that the
15 damages of Plaintiff and the putative class members herein alleged were proximately caused by
16 such Defendant.

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19 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

20 ~~7-16.~~ At all times relevant herein, Defendant operated a willful scheme to deprive its
21 mortgage underwriters of overtime compensation.

22 ~~8-17.~~ Plaintiff~~s~~ and the similarly situated individuals worked as mortgage underwriters
23 for Defendant during the applicable statutory period.

24 ~~9-18.~~ Defendant routinely suffered and permitted Plaintiff~~s~~ and the other mortgage
25 underwriters to work in excess of eight hours per day and forty hours per week. However,
26 Defendant improperly classified its mortgage underwriters as "exempt" from the FLSA and state
27 wage and hour law, and therefore did not pay them overtime compensation for all overtime hours
28 worked. Defendant uniformly applied this policy and practice to all mortgage underwriters.

1 ~~14-25.~~ Plaintiffs, on behalf of ~~herself-themselves~~ and all other similarly situated
2 individuals, restates and incorporates by reference the above paragraphs as if fully set forth
3 herein.

4 ~~15-26.~~ Plaintiffs brings ~~her-their~~ claims on behalf of ~~herself-themselves~~ and other
5 similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). The proposed
6 collective class is as follows:

7 All persons who are, or have been, employed by Defendant as mortgage
8 underwriters at any time within three years prior to this action's filing date through
the date of final disposition of this action (the "FLSA Collective").

9 ~~16-27.~~ Plaintiffs ~~have has~~ signed ~~a~~ consent forms to join this lawsuit pursuant to 29
10 U.S.C. § 216(b), which ~~is attached hereto as Exhibit~~ have previously been filed with the Court-A.
11 ~~As this case proceeds, it is likely that other individuals will sign consent forms and join as opt in~~
12 ~~plaintiffs.~~

13 ~~17-28.~~ Defendant classified all of its mortgage underwriters as "exempt" from overtime
14 under the FLSA. Accordingly, Plaintiffs and the FLSA Collective were subject to Defendant's
15 policy, decision, and/or plan of improperly treating and classifying underwriters as "exempt"
16 under the FLSA, and failing to pay appropriate overtime compensation.

17 ~~18-29.~~ Defendant is liable under the FLSA for failing to properly compensate Plaintiffs
18 and the FLSA Collective. Accordingly, notice should be sent to the FLSA Collective. There are
19 numerous similarly situated current and former employees of Defendant who have been denied
20 overtime pay in violation of the FLSA who would benefit from the issuance of a Court-supervised
21 notice of this lawsuit and the opportunity to join. Those similarly situated employees are known
22 to Defendant and are readily identifiable through Defendant's records.

23 **FIRST CLAIM FOR RELIEF**

24 **FAIR LABOR STANDARDS ACT – FAILURE TO PAY OVERTIME**

25 **(on behalf of Plaintiffs and the FLSA Collective)**

26 ~~19-30.~~ Plaintiffs, on behalf of ~~herself-themselves~~ and all other similarly situated
27 individuals, restates and incorporates by reference the above paragraphs as if fully set forth
28 herein.

CALIFORNIA REST BREAK AND MEAL PERIOD PROVISIONS

Cal. Wage Order No. 4; Cal. Labor Code §§ 226 et seq., 512,

(On Behalf of the California State Law Plaintiffs)

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4 54. The California State Law Plaintiffs allege and incorporate by reference the
5 allegations in the proceeding paragraphs.

6 55. California Labor Code section 512 prohibits an employer from employing an
7 employee for a work period of more than five hours per day without providing the employee with
8 a meal period of not less than 30 minutes, or for a work period of more than 10 hours per day
9 without providing the employee with a second meal period of not less than 30 minutes.

10 56. Section 11 of Wage Order No. 4 provides (and at all times relevant hereto
11 provided) in relevant part that:

12 No employer shall employ any person for a work period of more than five
13 (5) hours without a meal period of not less than 30 minutes, except that
14 when a work period of not more than six (6) hours will complete the day's
15 work the meal period may be waived by mutual consent of the employer and
16 employee. Unless the employee is relieved of all duty during a 30 minute
17 meal period, the meal period shall be considered an "on duty" meal period
18 and counted as time worked. An "on duty" meal period shall be permitted
19 only when the nature of the work prevents an employee from being relieved
20 of all duty and when by written agreement between the parties an on-the-job
21 paid meal period is agreed to. The written agreement shall state that the
22 employee may, in writing, revoke the agreement at any time. If an employer
23 fails to provide an employee a meal period in accordance with the applicable
24 provisions of this Order, the employer shall pay the employee one (1) hour
25 of pay at the employee's regular rate of compensation for each work day
26 that the meal period is not provided.

27 57. Section 12 of Wage Order No. 4 provides (and at all times relevant hereto
28 provided) in relevant part that:

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Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

58. California Labor Code section 226.7 prohibits any employer from requiring any employee to work during any meal or rest period mandated by an applicable IWC wage order, and provides that an employer that fails to provide an employee with a required rest break or meal period shall pay that employee one additional hour of pay at the employee's regular rate of compensation for each work day that the employer does not provide a compliant meal or rest period.

59. Defendant knowingly failed to provide the California State Law Plaintiffs with meal periods as required by law, and knowingly failed to authorize and permit the California State Law Plaintiffs to take rest periods as required by law. The California State Law Plaintiffs are therefore entitled to payment of the meal and rest period premiums as provided by law.

SIXTH CLAIM FOR RELIEF

CALIFORNIA UNFAIR COMPETITION LAW

Cal. Bus. & Prof. Code §§ 17200 et seq.

(On Behalf of the California State Law Plaintiffs)

60. The California State Law Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

1 61. The foregoing conduct, as alleged, violates the California Unfair Competition Law
2 ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq. of the Cal. Bus. & Prof. Code prohibits unfair
3 competition by prohibiting, inter alia, any unlawful or unfair business acts or practices.

4 62. Beginning at a date unknown to the California State Law Plaintiffs, but at least as
5 long ago as the year 2009, Defendant committed acts of unfair competition, as defined by the
6 UCL, by, among other things, engaging in the acts and practices described herein. Defendant's
7 conduct as herein alleged has injured the California State Law Plaintiffs by wrongfully denying
8 them earned wages, and therefore was substantially injurious to the California State Law
9 Plaintiffs.

10 63. Defendant engaged in unfair competition in violation of the UCL by violating,
11 inter alia, each of the following laws. Each of these violations constitutes an independent and
12 separate violation of the UCL:

13 A. Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.

14 B. California Labor Code §§ 510 & 1194

15 C. California Labor Code §§ 226.7 & 512

16 64. Defendant's course of conduct, acts, and practices in violation of the California
17 laws mentioned in the above paragraph constitute a separate and independent violation of the
18 UCL. Defendant's conduct described herein violates the policy or spirit of such laws or
19 otherwise significantly threatens or harms competition.

20 65. The harm to the California State Law Plaintiffs in being wrongfully denied
21 lawfully earned wages outweighed the utility, if any, of Defendant's policies or practices and
22 therefore, Defendant's actions described herein constitute an unfair business practice or act within
23 the meaning of the UCL.

24 25-66. Pursuant to Business and Professions Code § 17200 et seq., the California State
25 Law Plaintiffs are entitled to restitution of the overtime earnings and other unpaid wages alleged
26 herein that were withheld and retained by Defendant during a period that commences four years
27 prior to the filing of this action, a permanent injunction requiring Defendant to pay required
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1 wages, an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other
2 applicable law, and costs.

3 **PRAYER FOR RELIEF**

4 67. WHEREFORE, Plaintiffs, on behalf of ~~herself~~ themselves and all members of the
5 FLSA Collective, pray for relief as follows:

6 A. Designation of this action as a collective action on behalf of the FLSA

7 Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all
8 similarly situated members of the Collective, apprising them of the pendency
9 of this action, and permitting them to assert timely FLSA claims in this action
10 by filing individual consent forms pursuant to 29 U.S.C. § 216(b);

11 B. Judgment against Defendant for an amount equal to Plaintiff and the FLSA

12 Collective's unpaid overtime wages at the applicable rates;

13 C. A finding that Defendant's conduct was willful

14 D. An equal amount to the overtime wages as liquidated damages;

15 E. All costs and attorney' fees incurred prosecuting these claims, including expert
16 fees;

17 F. Pre-judgment and post-judgment interest, as provided by law;

18 G. Leave to add additional plaintiffs and/or state law claims by motion, the filing
19 of written consent forms, or any other method approved by the Court; and

20 H. Such further relief as the Court deems just and equitable.

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22 68. WHEREFORE, the California State Law Plaintiffs pray for relief as follows:

23 A. Unpaid overtime wages, other due wages, injunctive relief, and unpaid
24 meal and rest premiums pursuant to California law;

25 B. Appropriate equitable relief to remedy Defendants' violations of state law;

26 C. Appropriate statutory penalties;

27 D. An award of damages and restitution to be paid by Defendant according to
28 proof;

