

1 WILLIAM HAYS WEISSMAN, Bar No. 178976
LITTLER MENDELSON, P.C.
2 Treat Towers
1255 Treat Boulevard
3 Suite 600
Walnut Creek, CA 94597
4 Telephone: 925.932.2468
Fax No.: 925.946.9809

5 Attorneys for Defendant
6 BANKERS LIFE AND CASUALTY COMPANY
and COLONIAL PENN LIFE INSURANCE
7 COMPANY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ANDROW TOMA, on behalf of himself,
11 all others similarly situated, and the general
public,

12 Plaintiffs,

13 v.

14 BANKERS LIFE AND CASUALTY
COMPANY, an Illinois Corporation;
15 COLONIAL PENN LIFE INSURANCE
COMPANY, a Pennsylvania Corporation;
16 and DOES 1 through 100, inclusive,

17 Defendants.
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CASE NO. **'18CV2046 WQHAGS**

(San Diego County Superior Court Case No.
37-2018-00038568-CU-OE-CTL)

**NOTICE TO FEDERAL COURT OF
REMOVAL OF ACTION FROM
STATE COURT**

(DIVERSITY JURISDICTION)

Complaint Filed: August 1, 2018

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO
2 PLAINTIFF ANDROW TOMA AND HIS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants BANKERS LIFE AND
4 CASUALTY COMPANY and COLONIAL PENN LIFE INSURANCE COMPANY
5 hereby remove the above-entitled action from the Superior Court of the State of
6 California, County of San Diego, to the United States District Court for the Southern
7 District of California, pursuant to 28 U.S.C. sections 1332(a), 1441(a) and (b), and
8 1446.

9 This Notice is based upon the original jurisdiction of the federal district court
10 over the parties under 28 U.S.C. § 1332 based upon complete diversity of citizenship.

11 In support of its Notice of Removal, Defendants state to the Court as follows:

12 **I. STATEMENT OF JURISDICTION**

13 1. This Court has original jurisdiction over this action under the diversity of
14 citizenship statute. 28 U.S.C. § 1332(a). In relevant part, the diversity statute grants
15 district courts original jurisdiction over civil actions where the matter in controversy
16 exceeds the sum of value of \$75,000, exclusive of interest and costs, and is between
17 citizens of different states. As set forth below, this case meets all of the diversity
18 statute's requirements for removal and is timely and properly removed by the filing of
19 this Notice.

20 **II. PLEADINGS, PROCESS, AND ORDERS**

21 2. On or about August 1, 2018, Plaintiff Androw Toma ("Toma") filed a
22 Complaint for Damages against Bankers Life & Casualty Company ("Bankers Life"),
23 Colonial Penn Life Insurance Company ("Colonial Penn") and various Doe
24 defendants in the Superior Court of California, San Diego County, Case No. 37-2018-
25 00038568-CU-OE-CTL. The Complaint asserts the following causes of action: (1)
26 Failure to compensate for all hours worked (Cal. Lab. Code, §§ 200-204, 216, 223,
27 225.5, 500, 510, 558, 1197, 1194, 1198); (2) Failure to pay overtime (Cal. Lab. Code,
28 §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198); (3) Failure to pay

1 minimum wage (Cal. Lab. Code, §§ 223, 1194 *et seq.*); (4) Failure to provide meal
 2 and rest periods (Cal. Lab. Code, §§ 226.7, 512); (5) Failure to reimburse business
 3 expenses (Cal. Lab. Code, § 2802); (6) Failure to pay all owed commissions (Cal.
 4 Lab. Code, § 200); (7) Failure to provide written commission agreement (Cal. Lab.
 5 Code, §§ 2751 *et seq.*); (8) Willful misclassification of employees (Cal. Lab. Code, §
 6 226.8); (9) Declaratory Relief that plaintiffs are employees and not independent
 7 contractors (Cal. Lab. Code, § 226.8); (10) Failure to pay final wages on time (Cal.
 8 Lab. Code, §§ 201 *et seq.*); (11) Failure to maintain accurate records (Cal. Lab. Code,
 9 §§ 1174, 1174.5); (12) Failure to provide adequate wage and hour statements (Cal.
 10 Lab. Code, §§ 226(e), 226.3); (13) Promissory estoppel; (14) breach of contract; (15)
 11 breach of the implied covenant and good faith and fair dealing; and (16) unfair
 12 business practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

13 3. On or about August 6, 2018, Toma served Bankers Life and Colonial
 14 Penn by serving their agent for service, CSC corporation. A true and correct copy of
 15 the notice of service is attached hereto as **Exhibit A**.

16 4. Pursuant to 28 U.S.C. § 1446(d), attached as **Exhibit B** are all process,
 17 pleadings and orders served on Defendants or filed or received by Defendants in this
 18 action. To Defendants' knowledge, no further pleadings or orders related to this case
 19 have been filed in San Diego County Superior Court or served by any party.

20 **III. TIMELINESS OF REMOVAL**

21 5. This Notice of Removal is timely filed as it is filed within thirty (30) days
 22 of August 6, 2018, the date Defendants' agent for service was served, (*see Exhibit A*),
 23 and within one year from the commencement of this action. *See* 28 U.S.C. § 1446(b).

24 **IV. REMOVAL JURISDICTION**

25 6. The diversity of citizenship statute, 28 U.S.C. section 1332(a), provides
 26 in relevant part:

27 The district courts shall have original jurisdiction of all civil
 28 actions where the matter in controversy exceeds the sum or

1 value of \$75,000, exclusive of interest and costs, and is
2 between –

3 (1) citizens of different States. . . .

4 This action is a civil action over which this Court has original jurisdiction based
5 on diversity of citizenship pursuant to 28 U.S.C. section 1332(a), and is one which
6 may be removed to this Court by Defendant pursuant to 28 U.S.C. section 1441(b)
7 because it is a civil action between citizens of different states and the amount in
8 controversy exceeds \$75,000, exclusive of interest and costs, as set forth below.

9 **A. Diversity of Citizenship**

10 7. Toma was at the time of filing this action a citizen of the State of
11 California. To establish citizenship for diversity purposes, a natural person must be
12 both a citizen of the United States and a domiciliary of a particular state. *Kantor v.*
13 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Toma is a citizen of
14 the United States. Declaration of Nate Richardson in Support of Bankers Life’s Notice
15 of Removal (“Wilkins Decl.”), ¶ 5.

16 8. In addition, allegations of residency in a state court complaint can create
17 a rebuttable presumption of domicile supporting diversity of citizenship. *Lew v. Moss*,
18 797 F.2d 747, 751 (9th Cir. 1986); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19
19 F.3d 514, 519-20 (10th Cir. 1994) (allegation by party in state court complaint of
20 residency “created a presumption of continuing residence in [state] and put the burden
21 of coming forward with contrary evidence on the party seeking to prove otherwise”);
22 *Bergman v. Bank of Am.*, No. 13–cv–00741–JCS, 2013 WL 5863057, at *1 n.2 (N.D.
23 Cal. Oct. 23, 2013) (“A party’s residence is prima facie evidence of domicile. In the
24 absence of evidence to the contrary, a party will be treated as a citizen of its state of
25 residence”). Further, a natural person’s domicile is established, in part, by physical
26 presence. *Lew*, 797 F.2d at 749-50. Toma’s Complaint states that at times Toma “was
27 a resident of the State of California, County of San Diego.” Compl., ¶ 1. Toma was
28 domiciled in the State of California the entire time he was appointed as an

1 independent insurance agent with Bankers Life, and there is no reason to believe he is
2 no longer domiciled there. *Id.*; Richardson Decl., ¶ 5.

3 9. For diversity jurisdiction purposes, a corporation is deemed a citizen of
4 its state of incorporation and the state where it has its principal place of business. 28
5 U.S.C. § 1332(c)(1). Bankers Life is a citizen of the State of Illinois, where it is
6 incorporated and where it maintains its principal place of business. Richardson Decl.,
7 ¶¶ 2-4. The United States Supreme Court has also held that, for purposes of removal,
8 the “nerve center” test should be applied to determine a corporation’s principal place
9 of business. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Under the “nerve
10 center” test, the principal place of business is “where a corporation’s officers direct,
11 control, and coordinate the corporation’s activities.” *Id.* Bankers Life’s corporate
12 offices and global headquarters, which house the company’s executive and
13 administrative functions, are located in Chicago, Illinois. Richardson Decl., ¶ 4. Thus,
14 Bankers Life is a citizen of Illinois for diversity purposes.

15 10. For purposes of removal jurisdiction, Colonial Penn Life Insurance
16 Company is a citizen of the State of Pennsylvania, where it is incorporated and where
17 it maintains its principal place of business. Declaration of Ronald L. Jackson in
18 Support of Colonial Penn’s Notice of Removal (“Jackson Decl.”), ¶¶ 2-4.

19 11. Neither Bankers Life nor Colonial Penn are citizens of the State of
20 California, where this action is currently pending, nor do they have their “nerve
21 center” in such state. Richardson Decl., ¶¶ 2-4; Jackson Decl., ¶¶ 2-4.

22 12. The presence of Doe defendants in this case has no bearing on diversity
23 with respect to removal. *See* 28 U.S.C. § 1441(a) (“[f]or purposes of removal under
24 this chapter, the citizenship of defendants sued under fictitious names shall be
25 disregarded”). The existence of Does 1-100 does not change this analysis because
26 Does are fictional defendants who has not been identified or served. *See Tukay v.*
27 *United Cont’l Holdings, Inc.*, No. 14-CV-04343-JST, 2014 WL 7275310, at *2 (N.D.
28 Cal. Dec. 22, 2014) (finding that “Doe One,” who was identified in the complaint as

1 “the instigator for plaintiff’s removal from the United payroll” and was “a principal
2 witness against plaintiff in the San Mateo criminal action” could not destroy
3 diversity). Accordingly, there is complete diversity between Toma as plaintiff and
4 Bankers Life and Colonial Penn as defendants for purposes of removal jurisdiction.

5 **B. Amount in Controversy Exceeds \$75,000¹**

6 13. To establish diversity jurisdiction, Bankers Life and Colonial Penn only
7 need to show by a preponderance of the evidence (that it is more probable than not)
8 that Toma’s claimed damages exceed the jurisdictional minimum. *Sanchez v.*
9 *Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

10 14. The Court can reasonably ascertain from Toma’s Complaint and prayer
11 for relief that the amount in controversy exceeds \$75,000. *See Singer v. State Farm*
12 *Mutual Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (“The district court may
13 consider whether it is ‘facially apparent’ from the complaint that the jurisdictional
14 amount is in controversy.”) If a plaintiff’s state court complaint is silent as to the
15 amount of damages claimed, the removing defendant need only establish that it is
16 more probable than not that plaintiff’s claim exceeds the jurisdictional minimum.
17 *Sanchez v. Monumental Life Ins. Co.*, 95 F.3d 856, 860-861 (9th Cir. 1996), *amended*
18 *by, reh’g en banc denied by*, 102 F.3d 398, 404 (9th Cir. 1996). “In measuring the
19 amount in controversy, a court must assume that the allegations of the complaint are
20 true and that a jury will return a verdict for the plaintiff on all claims made in the
21 complaint.” *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d
22 993, 1001 (C.D. Cal. 2002). The removing party does not need to prove actual facts
23 but rather need only include a “short and plain statement” setting forth “a plausible
24 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*

25 _____
26 ¹ Defendants deny the validity and merit of the entirety of Toma’s alleged claims, the
27 legal theories upon which they are based and the alleged claims for monetary and
28 other relief. However, for purposes of removal only, and without conceding that Toma
is entitled to recover any damages or penalties whatsoever, it is readily apparent that
the amount damages sought by Toma more likely than not exceeds the jurisdictional
minimum of \$75,000.

1 *Cherokee Basin Operating Company, LLC v. Owens*, 574 U.S. —, 135 S.Ct. 547, 554
2 (2014); Fed. R. Civ. P. 8(a).

3 15. A single plaintiff's claims against a single defendant can be aggregated to
4 meet the minimum jurisdictional amount. *Bank of Calif. v. Twin Harbors Lumber Co.*,
5 465 F.2d 489, 491 (9th Cir. 1972). Whether a single plaintiff's claims against several
6 defendants can be aggregated for jurisdictional purposes depends on whether the
7 defendants are jointly liable to the plaintiff on each claim. *Sovereign Camp Woodmen*
8 *v. O'Neill*, 266 U.S. 292, 297-98 (1924); *Libby, McNeill & Libby v. City Nat'l Bank*,
9 592 F.2d 504, 510 (9th Cir.1978). Here, Toma alleges that Bankers Life and Colonial
10 Penn Life are both liable for all damages and conduct alleged. (Compl., ¶¶ 5, 8.) In
11 addition, Toma asserts each and every causes of action against both Defendants. *See*
12 *generally*, Compl. Accordingly, the amount in controversy of all of the claims may be
13 aggregated for purposes of the amount-in-controversy to the extent either Defendant
14 would be separately liable for any such claims. *See Chanouzas v. U.S. Bank Nat.*
15 *Ass'n*, No. CV. 09-469 PK, 2009 WL 3734101, at *3 (D. Or. Nov. 3, 2009) (citing to
16 *Libby*, 592 F.2d at 510, and aggregating the claims where the plaintiffs alleged that the
17 defendants were responsible "in any combination").

18 16. Toma seeks general damages, compensatory damages, punitive damages,
19 special damages, unpaid wages, penalties, emotional distress, injunctive and
20 declaratory relief, all other forms of equitable relief permitted by law attorneys' fees,
21 and costs of suit. (Compl., Prayer for Relief.)

22 **a. Wage Related Damages**

23 17. Toma claims to have suffered "substantial losses incurred in seeking
24 substitute employment and in earnings, bonuses, deferred compensation, stock
25 options, and other employment benefits; and has suffered, and continues to suffer,
26 emotional distress in an amount according to proof at the time of trial" as a result of
27 Defendants' conduct. (Compl., ¶ 126.)

28 18. Toma received no compensation from either Defendant. (Compl., ¶ 16;

Richardson Decl., ¶ 6.) Nonetheless, he seeks all unpaid wages. (Compl., ¶¶ 58-65.)

19. All non-exempt employees are required by California law to receive at least minimum wage. E.g., Cal. Lab. Code, §§ 206, 210, 216, 218, 223, 1185, 1194. Further “[u]nder both federal and California law, employees may not agree to waive their entitlement to the minimum wage” *Flowers v. Los Angeles Cty. Metro. Trans. Auth.*, 2015 Cal App. LEXIS 1127, at *22 (November 25, 2015). Therefore, it is reasonable to assert that Toma is entitled to at least minimum wage from the date of appointment to the date of removal of this action. Such damages are approximately \$34,320, assuming minimum wage at 40 hours per week.² Toma has offered no evidence that he has mitigated his damages. Accordingly, it is reasonable to assume that for purposes of removal jurisdiction, Toma could be entitled to recover at least \$34,320 in unpaid minimum wages. *See Rivera v. Costco Wholesale Corp.*, No. C 08-02202 CW, 2008 WL 2740399, at *3 (N.D. Cal. July 11, 2008); *see also Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1032 (N.D. Cal. 2002).

20. Toma is also seeking front pay, which could run for several years or more. *See Smith v. Brown-Forman Distillers Corp.*, 196 Cal.App.3d 503, 518 (1989) (front pay until mandatory retirement age reached); *Rabago-Alvarez v. Dart Indus.*, 55 Cal.App.3d 91, 92 (1976) (four years); *Drzewiecki v. H & R Block, Inc.*, 24 Cal.App.3d 695, 705 (1972) (ten years). Conservatively estimating that Toma seeks front pay damages for two years, that amounts to another \$45,760 in unpaid wages, based on the current minimum wage for 40 hours per week, 52 weeks per year. As a result, Toma’s claims for lost wages may reasonably be said to exceed \$75,000 in and of themselves. *Id.*

21. Toma further alleges that he was not “paid for overtime hours despite

² From February 22, 2017, to September 5, 2018, is approximately 80 weeks. Taking California’s minimum of \$10.50 per hour from February 22, 2017, to December 31, 2017, or 44 weeks, which totals \$18,480, and \$11 per hour from January 1, 2018, to September 5, 2018, or 36 weeks, which totals \$15,840, Toma would be entitled to \$34,320 in unpaid minimum wages.

1 routinely and consistently working more than 8 hours per day and 40 hours per week.”
 2 (Compl., ¶ 18.) While the Complaint does not specify the amount of overtime worked,
 3 based on the allegations it is reasonable to assume that he would have worked one
 4 hour of overtime per day, or five hours per week, on average, resulting in an
 5 additional \$6,435 in unpaid wages.³

6 22. In addition, because none of these “wages” were timely paid upon
 7 separation, Toma seeks waiting time penalties, which accrue at his daily wage up to
 8 30 days, or \$11 times eight hours times 30 days, equaling \$2,640. (Compl., ¶¶ 136-
 9 143.)

10 23. Toma also alleges that he routinely worked more than three and a half
 11 hours without a 10 minute rest break, and more than 5 hours without a meal period,
 12 and more than six hours without a second 10 minute rest break, and more than 10
 13 hours without a second meal period. (Compl., ¶¶ 72-76.) As a result, Toma would be
 14 entitled to at least one additional hour of pay per day (and possibly more). Such
 15 damages would amount to \$4,290.⁴

16 24. Toma’s unpaid wage related claims total \$93,445.

17 **c. Unreimbursed Business Expense Damages**

18 25. Toma also asserts that he incurred business expenses that were not
 19 reimbursed by Defendants. For example, he claims he drove between 60 and 100
 20 miles per week, and incurred cell phone expenses of \$90 per month. (Compl., ¶¶ 14,
 21 85-93.) For the period of time Toma was actually contracted, taking the middle
 22 estimate of his mileage (80 miles), he would be owed \$256.80 (\$0.535 per mile, times
 23 80 miles, times 6 weeks), plus \$180 for cell phone (2 months), for a total \$436.80.

24 **d. Attorneys’ Fees**

25 26. Plaintiff also seeks an award of reasonable attorneys’ fees under several

26 ³ 1.5 times the hourly rate of \$10.50, or \$15.75, times five hours per week, times 44
 27 weeks, equals \$3,465, and 1.5 times \$11 per hour, or \$16.50, times five hours per
 28 week, times 36, weeks, equals \$2,970.

⁴ \$10.50 times five days times 44 weeks, and \$11 times five days times 36 weeks.

1 Labor Code provisions (Compl., ¶¶ 11, 40 [First Cause of Action for unpaid wages],
 2 57 [Second Cause of Action for failure to pay overtime], 65 [Third Cause of Action
 3 for failure to pay minimum wage], 82, 84 [Fourth Cause of Action for failure provide
 4 meal and rest periods], 93 [Fifth Cause of Action for failure to reimburse business
 5 expenses], 101 [Sixth Cause of Action for failure to pay commissions], 107 [Seventh
 6 Cause of Action for failure to provide written commission agreement], 127 [Eighth
 7 Cause of Action for willful misclassification], 143 [Tenth Cause of Action for failure
 8 to pay final wages timely], 149 [Eleventh Cause of Action for to provide accurate
 9 records], 158 [Twelfth Cause of Action for failure to furnish wage statements]) as well
 10 as under the Business and Professions Code and Civil Code. (Compl., Prayer for
 11 Relief.)

12 27. It is well-settled that when authorized by statute, attorneys' fees are to be
 13 included in the calculation of the amount of Plaintiff's claims for purposes of
 14 determining whether the requisite jurisdictional minimum is met. *Galt G/S v. JSS*
 15 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute
 16 authorizes an award of attorneys' fees, either with mandatory or discretionary
 17 language, such fees may be include in the amount in controversy"); *Brady v.*
 18 *Mercedes-Benz USA, Inc.*, 243 F.Supp.2d 1004, 1010-11 (N.D. Cal. 2002) (in
 19 deciding amount in controversy issue, court may estimate the amount of reasonable
 20 attorneys' fees like to be recovered by plaintiff if she were to prevail). Furthermore,
 21 "[e]mployment claims have been found to "require substantial effort from counsel."
 22 *Garcia v. ACE Cash Express, Inc.*, No. SACV 14-0285-DOC, 2014 WL 2468344, at
 23 *5 (C.D. Cal. May 30, 2014).

24 28. It is reasonable to include attorneys' fees in the amount-in-controversy
 25 calculation here because Toma is authorized to recover attorneys' fees on several
 26 causes of action under the Labor Code. E.g., Cal. Lab. Code, §§ 226(e)(1), 1194.
 27 While Toma's attorneys' fees cannot be precisely calculated, it is reasonable to
 28 assume that they could exceed a damages award. *Simmons*, 209 F. Supp. 2d at 1035.

1 In addition, all attorneys' fees likely to be incurred in the future – not just those
 2 incurred at the time of removal – may be taken into consideration for purposes of
 3 estimating the amount in controversy. *Id.* at 1035, 1011, fn.4; *see also Celestino v.*
 4 *Renal Advantage Inc.*, No. C 06-07788 JSW, 2007 WL 1223699, at *4 (N.D. Cal.
 5 Apr. 24, 2007) (determining that the amount-in-controversy calculation may include a
 6 reasonable assessment of damages likely to be accrued after the time of removal).
 7 Accordingly, Toma's counsel's anticipated attorneys' fees through the time of trial
 8 may be incorporated in evaluating the amount-in-controversy.

9 29. Defendants may use damage awards in other cases to establish the
 10 amount in controversy. *Simmons*, 209 F. Supp. 2d at 1033. Attorneys' fee awards in
 11 wage and hour cases can be sizeable. Attorneys' fees awards can be significant in
 12 wage and hour cases. *See, e.g., Lippold v. Godiva Chocolatier, Inc.*, 2010 U.S. Dist.
 13 LEXIS 47144, *10-*11 (N.D. Cal. Apr. 15, 2010) (denying plaintiff's motion to
 14 remand by finding that the anticipated attorneys' fees were sufficient to exceed the
 15 \$75,000 threshold where plaintiff's wage and hour claims totaled only \$38,747). Thus,
 16 it is reasonably likely that Plaintiff's Labor Code claims could result in an attorneys'
 17 fees award in excess of the \$75,000 jurisdictional minimum in and of themselves. The
 18 total amount is likely to be even greater when considering potential attorneys' fees
 19 relating to Toma's other causes of action. However, even just taking 25 percent of the
 20 total of Toma's wage claims, business expense claims and penalties would result in
 21 attorney's fees of at least \$27,040.45, an unrealistically low figure.

22 **e. Punitive Damages**

23 30. Plaintiff also seeks punitive or exemplary damages. (See Compl., ¶¶ 101,
 24 127, 168, Prayer for Relief.) The Court must take into account punitive damages for
 25 purposes of determining the amount in controversy where such damages are
 26 recoverable under state law. *Davenport v. Mutual Benefit Health and Accident Ass'n*,
 27 325 F.2d 785, 787 (9th Cir. 1963); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp.
 28 2d 1004, 1009 (2002). California law does not provide any specific monetary limit on

1 the amount of punitive damages that may be awarded under Civil Code section 3294.
 2 *Boyle v. Lorimar Productions, Inc.*, 13 F.3d 1357, 1360 (9th Cir. 1994). Additionally,
 3 employment discrimination cases have the potential for large punitive damages
 4 awards. *Simmons, supra*, 209 F.Supp.2d at 1033. A punitive damages award may
 5 equal as much as four times the amount of the actual damages award. *State Farm*
 6 *Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Using this ratio, a
 7 punitive damage award would well exceed \$75,000.

8 31. Furthermore, to establish the amount-in-controversy, a defendant may
 9 introduce evidence of jury verdicts with analogous facts. *Rivera v. Costco Wholesale*
 10 *Corp.*, No. C 08-02202 CW, 2008 WL 2740399, at *4 (N.D. Cal. July 11, 2008).
 11 Awards have been far in excess of jurisdictional limits. E.g., *Maxwell v. Beverly*
 12 *Enterprises-California, Inc.*, (1998) 75 Cal.Rptr.2d 222, 228-229 (the court awarded
 13 over \$1 million in punitive damages to an employee that was wrongfully terminated);
 14 *Green v. Laibco, LLC* (2011) 192 Cal.App.4th 441, 443-446 (the court awarded the
 15 employee over \$1 million in punitive damages for wrongfully discharging employee);
 16 *Roberts v. Ford Aerospace & Communications Corp.* (1991) 224 Cal.App.3d 793,
 17 796-797 (court awarded punitive damages of \$750,000 to an employee as a result of a
 18 claim for wrongful termination).

19 **g. Emotional Distress Damages**

20 32. Toma also seeks recovery of non-economic damages for “severe
 21 emotional distress.” (E.g., Compl. ¶¶ 175, 184.) He further claims he has suffered
 22 harm to his reputation, “mental anguish, embarrassment, humiliation, and other
 23 emotion distress and/or medical and related expenses in an amount to be established at
 24 trial” as a result of Defendants’ conduct. (*Id.*) An award of damages for emotional
 25 distress alone can reasonably be anticipated to be far in excess of the jurisdictional
 26 minimum. *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal. 2002)
 27 (citing case law in which an award for pain and suffering in an employment
 28 discrimination case totaled \$3.5 million, and recognizing that “emotional distress

1 damages in a successful employment discrimination case may be substantial”).

2 **h. Additional Relief**

3 33. Toma asserts willful misclassification claims against Defendants.
4 (Compl., ¶¶ 108-137.) The penalties range between \$5,000 and \$25,000 for such
5 conduct. Again assuming Toma were meritorious on such claim, and taking the
6 midpoint for the potential penalties, Toma would be entitled to another \$15,000.

7 34. Toma also seeks such open-ended relief as injunctive relief, restitution,
8 disgorgement of profits, declaratory relief, “other general and special damages to be
9 ascertained prior to trial” other appropriate equitable relief.” FAC, ¶ 22, 78, 109, 113,
10 119; Prayer for Relief. Although uncertain in amount, these additional damages claims
11 only serve to increase the amount in controversy, and they may be considered in
12 determining the amount-in-controversy. *See Lewis v. Exxon Mobil Corp.*, 348 F. Supp.
13 2d 932, 932-934 (W.D. Tenn. 2004) (the “open ended” relief sought by plaintiff, who
14 prayed for “judgment to be determined by a jury, for all incidental, consequential,
15 compensatory and punitive damages” established that her case met the amount in
16 controversy requirement even though she plead in the complaint that she did not assert
17 a claim in excess of \$75,000).

18 35. In sum, although Defendants do not concede Toma’s claims have any
19 merit, when the relief sought by Toma is taken as a whole, the amount in controversy
20 for Toma’s claims more likely than not exceed the \$75,000 jurisdiction requirement,
21 exclusive of interest and costs. Defendants’ conservative estimates of the amounts in
22 controversy are summarized below:

23

24 Claim	Amount in controversy
25 Back wages (to date of removal)	\$34,320
26 Front wages (from date of removal)	\$45,760
27 Overtime	\$6,435

28

Meal and rest periods	\$4,290
Waiting time penalties	\$2,640
Misclassification penalties	\$15,000
Unpaid expenses	\$436.80
Attorney's fees	\$27,220.45
Emotional distress	\$27,220.45
Punitive damages	\$108,881.80
Total	\$272,204.50

36. Thus, this Court has original jurisdiction over the claims asserted by Toma in this action based on diversity of citizenship jurisdiction under 28 U.S.C. sections 1332(a)(1) and 1441(a).

V. VENUE

37. Venue lies in the Southern District of California pursuant to 28 U.S.C. sections 84(a) and 1441(a). This action was originally brought in the Superior Court of the State of California, County of San Diego.

VI. NOTICE OF REMOVAL

38. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Southern District of California, the undersigned is providing written notice of such filing to Toma's counsel of record: Alvin M, Gomez, Stephen Noel Ilg, and Frank Zeccola, Gomez Law Group, 2725 Jefferson Street, Suite 7, Carlsbad, California, 92008. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Superior Court of the State of California, County of San Diego.

WHEREFORE, Bankers Life & Casualty Company and Colonial Penn Life Insurance Company pray that this civil action be removed from the Superior Court of the State of California, County of San Diego, to the United States District Court for the Southern District of California.

1
2 Dated: September 4, 2018
3

4 /s/ William Hays Weissman
5 WILLIAM HAYS WEISSMAN
6 LITTLER MENDELSON, P.C.
7 Attorneys for Defendant
8 BANKERS LIFE AND CASUALTY
9 COMPANY and COLONIAL PENN
10 LIFE INSURANCE COMPANY
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Androw Toma

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alvin V. Gomez (alvingomez@thegomezlawgroup.com)
Gomez Law Group, 2725 Jefferson St., Suite 7, Carlsbad, CA 92008
Tel: (858) 552-0000

DEFENDANTS

Bankers Life and Casualty Company, an Illinois Corp., Colonial
Penn Life Insurance Company, a Pennsylvania Corp. & DOES 1-100

County of Residence of First Listed Defendant Chicago, Illinois
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

William H. Weissman (wweissman@littler.com)
Littler Mendelson, PC, 1255 Treat Blvd., Suite 600
Tel: (925) 932-2468

'18CV2046 WQHAGS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 424 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (Specify)
☐ 6 Multidistrict Litigation-Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. sections 1332(a), 1441(a) and (b), and 1446

Brief description of cause:

442-Employment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE September 4, 2018

SIGNATURE OF ATTORNEY OF RECORD /s/ William H. Weissman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.





Notice of Service of Process

null / ALL
Transmittal Number: 18533405
Date Processed: 08/07/2018

Primary Contact: Rita Mennen
CNO Financial Group, Inc.
11825 N Pennsylvania St
Carmel, IN 46032-4555

Entity:	Bankers Life and Casualty Company Entity ID Number 2425585
Entity Served:	Bankers Life and Casualty Company
Title of Action:	Androw Toma vs. Bankers Life and Casualty Company
Document(s) Type:	Summons/Complaint
Nature of Action:	Class Action
Court/Agency:	San Diego County Superior Court, California
Case/Reference No:	37-2018-00038568-CU-OE-CTL
Jurisdiction Served:	California
Date Served on CSC:	08/06/2018
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Alvin M Gomez 858-552-0000

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BANKERS LIFE AND CASUALTY COMPANY, an Illinois Corporation;
COLONIAL PENN LIFE INSURANCE COMPANY, a Pennsylvania Corporation;
and DOES 1 through 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ANDROW TOMA, on behalf of himself, all others similarly situated,
and the general public,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/01/2018 at 11:52:18 AM

Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court State of California
330 W. Broadway
San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alvin M. Gomez 137818 GOMEZ LAW GROUP
2725 Jefferson Street, Suite 7 (858) 552-0000
Carlsbad, CA 92008

CASE NUMBER
(Número del Caso):

37-2018-00038568-CU-0E-CTL

DATE: 08/02/2018

(Fecha)

Clerk, by

(Secretario)

G. Dieu

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): BANKERS LIFE AND CASUALTY COMPANY, an Illinois Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): Alvin M. Gomez 137818 GOMEZ LAW GROUP 2725 Jefferson Street, Suite 7 Carlsbad, CA 92008 TELEPHONE NO.: (858) 552-0000 FAX NO.: (760) 720-5217 ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 08/01/2018 at 11:52:18 AM Clerk of the Superior Court By Gen Dieu, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF County of San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	
CASE NAME: Androw Toma, et al. v. Bankers Life and Casualty Company, et	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: 37-2018-00038568-CU-DE-CTL JUDGE: Judge Randa Trapp DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 16
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 6/13/18

Alvin M. Gomez

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet orally on other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty-Breach-Seller-Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
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Miscellaneous Civil Complaint

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Injunctive Relief Only *(non-harassment)*
Mechanics Lien
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Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

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Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

ALVIN M. GOMEZ, ESQ. (Cal. State Bar No. 137818)
 STEPHEN NOEL ILG, ESQ. (Cal. State Bar No. 275599)
 FRANK ZECCOLA, ESQ. (Cal. State Bar No. 308875)

GOMEZ LAW GROUP

2725 Jefferson Street, Suite 7
 Carlsbad, CA 92008
 Telephone: (858) 552-0000
 Facsimile: (858) 755-3364
 alvingomez@thegomezlawgroup.com
 silg@ilglegal.com
 frankzeccola@thegomezlawgroup.com

Attorneys for Plaintiff Androw Toma

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Clerk of the Superior Court
 By Gen Dieu, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

ANDROW TOMA, on behalf of himself,
 all others similarly situated, and the
 general public,

Plaintiffs,

vs.

BANKERS LIFE AND CASUALTY
 COMPANY, an Illinois Corporation;
 COLONIAL PENN LIFE INSURANCE
 COMPANY, a Pennsylvania
 Corporation; and DOES 1 through 100,
 inclusive,

Defendants.

Case No. 37-2018-00038568-CU-OE-CTL

CLASS ACTION

1. **FAILURE TO COMPENSATE FOR ALL HOURS WORKED** (Lab. Code §§ 200-204, 216, 223, 225.5, 500, 510, 558, 1197, 1194, 1198; IWC Wage Orders);
2. **FAILURE TO PAY OVERTIME WAGES** (Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage Orders);
3. **FAILURE TO PAY MINIMUM WAGE** (Lab. Code §§ 223, 1194 *et seq.*);
4. **FAILURE TO PROVIDE MEAL AND REST PERIODS** (Lab. Code §§ 226.7, 512; IWC Wage Orders);
5. **FAILURE TO REIMBURSE BUSINESS EXPENSES** (Lab. Code § 2802);
6. **FAILURE TO PAY ALL OWED COMMISSIONS** (Lab. Code § 200);
7. **FAILURE TO PROVIDE A WRITTEN COMMISSION AGREEMENT** (Lab. Code §§ 2751 *et seq.*);
8. **WILLFUL MISCLASSIFICATION OF EMPLOYEES** (Lab. Code § 226.8);
9. **DECLARATORY RELIEF THAT**

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**PLAINTIFFS ARE EMPLOYEES
 AND NOT INDEPENDENT
 CONTRACTORS** (Lab. Code §
 226.8);

**10. FAILURE TO PAY FINAL
 WAGES ON TIME** (Lab. Code §§
 201 *et seq.*);

**11. FAILURE TO MAINTAIN
 ACCURATE RECORDS** (Lab.
 Code §§ 1174, 1174.5);

**12. FAILURE TO FURNISH WAGE
 AND HOUR STATEMENTS** (Lab.
 Code §§ 226(e), 226.3);

13. PROMISSORY ESTOPPEL (*C &
 K Engineering Contractors v. Amber
 Steel Co.*);

14. BREACH OF CONTRACT (Civil
 Code);

**15. BREACH OF THE IMPLIED
 COVENANT OF GOOD FAITH
 AND FAIR DEALING;**

**16. UNFAIR BUSINESS
 PRACTICES** (Bus. & Prof. Code §§
 17200 *et seq.*).

JURY TRIAL DEMANDED

This Complaint is brought by Plaintiff ANDROW TOMA ("Plaintiff" and/or "Mr. Toma"), on behalf of himself, all others similarly situated, and the general public, against this former employers, Defendant BANKERS LIFE AND CASUALTY COMPANY ("BLI"), Defendant COLONIAL PENN LIFE INSURANCE COMPANY ("CPL"), and DOES 1-100, inclusive ("DOE Defendants") (collectively "Defendants"). Plaintiff hereby demands a jury trial on all causes of action. Plaintiff alleges the following:

PLAINTIFF

1. At all times material herein, Plaintiff Tomawas and is a competent adult and resident of the State of California, County of San Diego. Plaintiff began working for Defendants as a Sales Insurance Representative on November 2016. While working for Defendants, Plaintiff's job duties included but were not limited to: selling insurance.

DEFENDANTS

2. At all times material herein, Defendant BLI was and is an Illinois Corporation registered to do business in the State of California, including but not

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1 limited to conducting business within San Diego, California, with its corporate
2 headquarters located in Chicago, Illinois. Defendant BLI is in the insurance industry.
3 On information and belief, Defendant BLI provides insurance throughout the U.S. At all
4 relevant times alleged herein, Plaintiff is informed and believes that Defendant BLI is
5 authorized to and does conduct business in the State of California in the insurance
6 industry, including but not necessarily limited to San Diego, California.

7 3. At all times material herein, Defendant CPL was and is a Pennsylvania
8 Corporation registered to do business in the State of California, including but not
9 limited to conducting business within San Diego County, with its corporate
10 headquarters located in Philadelphia, PA. Defendant CPL is in the insurance industry.
11 On information and belief, Defendant CPL provides insurance throughout the U.S. At
12 all relevant times alleged herein, Plaintiff is informed and believes that Defendant CPL
13 is authorized to and does conduct business in the State of California in the insurance
14 industry, including but not necessarily limited to San Diego, California.

15 4. Plaintiff is informed and believes and thereon alleges that Defendant CPL,
16 while contracting with Defendant BLI, retained sufficient control of the wages, hours,
17 and conditions of employment of Plaintiff and Class Members in doing the acts
18 hereinafter alleged, and that each corporation is liable under California and federal law
19 for the damages sustained by Plaintiff and Class Members.

20 5. Plaintiff is informed and believes and thereon alleges that BLI and CPL,
21 and each of them, were his employers under California law, that all Defendants herein
22 did acts consistent with the existence of an employer-employee relationship with
23 Plaintiff and Class Members. Moreover, Defendants, Plaintiff and Class Members were
24 controlled, directly or indirectly, by CPL.

25 6. Plaintiff is informed and believes and, based thereon, alleges that, within
26 the Class Period, Defendants conducted business within the insurance industry. In so
27 doing, there are hundreds, if not thousands, of individuals in recent years alone who
28 qualify to participate as a Class Member in this action.

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7. The defendants identified as DOES 1 through 100, inclusive, were, at all times herein-mentioned, agents, business affiliates, successors- and/or predecessors-in-interest, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Plaintiff is informed and believes and, on that basis, alleges that, at all times herein-mentioned, each of the defendants identified as DOES 1 through 100, inclusive, employed, and/or exercised control over the conditions of Plaintiff and Class Members which led to the instant lawsuit and which are described herein. In doing the acts herein alleged, each Defendant is liable and responsible to Plaintiff and Class Members for the acts of every other Defendant. The true names and capacities of the DOE Defendants, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such DOE Defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and believes that the DOE Defendants are residents of the State of California. Plaintiff will amend this complaint to show such DOE Defendants' true names and capacities when they are known.

8. Plaintiff is informed and believes and thereon alleges that, unless otherwise indicated, each Defendant was the agent and/or employee of every other Defendant within the course and scope of said agency and/or employment, with the knowledge and/or consent of said Defendant.

9. To the extent any allegation contradicts another allegation, they are to be construed as "alternative" theories.

JURISDICTION AND VENUE

10. This Court is the proper Court, and this action is properly filed in the San Diego County for the Superior Court of California, because Defendants BLI and CPL transact business within this county at San Diego County. Plaintiff and Class Members performed work for Defendants and experienced the legal violations that are the subject of this Complaint in San Diego County.

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11. This Court has jurisdiction over the Plaintiff's and Class Members' claims for damages, interest thereon, related penalties, injunctive and other equitable relief, restitution of ill-gotten benefits arising from Defendants' unlawful, unfair, and/or fraudulent business practices, and attorneys' fees and costs pursuant to, *inter alia*., California Business and Professions Code sections 17200-17208, and the statutes cited herein.

12. The California Workers' Compensation Act does not preempt this action because Defendants' unlawful practices, as alleged herein, are not risks or conditions of employment. Plaintiff is not required to satisfy any further private, administrative, or judicial prerequisites to the institution of this action, insofar as such prerequisites pertain to any of the remaining causes of action in this complaint.

FACTS REGARDING PLAINTIFF'S INDIVIDUAL CAUSES OF ACTION

13. Plaintiff Toma worked at BLI for four months, beginning in November/December 2016 to March 2017. Toma was given a desk, rules to follow, a time schedule, had to report daily to his manager, and was required to attend morning meetings. Toma was required to wear a suit to wear business professional attire. BLI provided training materials and a binder so that Toma could study for the state test.

14. In addition, BLI provided leads to call along with materials and scripts to follow when calling potential clients. Toma had to use his own cell phone which costs approximately \$90 per month, and Toma was not reimbursed for use of this phone. Toma was not permitted to go out to sell insurance in person until he had his script memorized. The script was provided by Toma's supervisors. Further, Toma was not reimbursed for the mileage he spent when going out to search for sales. Toma believes he drove 60 to 100 miles per week when he would go out canvassing on Tuesdays and Thursdays. Other out of pocket expenses include expenses for studying, time spent doing training modules, and other training.

15. During his time working for Defendants, Toma was not provided with a 30-minute uninterrupted lunch break.

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16. For the year 2017, Toma did not receive a 1099—because he was paid \$0 for the entire four months working at BLI. Additionally, Toma did not receive any wage statements. BLI categorized Toma and other workers as independent contractors and pays commission on the sale of insurance.

FACTS REGARDING PLAINTIFF'S CLASS ACTION CAUSES OF ACTION

17. All policies and practices described herein were in place at all of Defendants' business locations in California. As such, all members of the classes were subject to these same unlawful policies and practices in violation of California law. Plaintiff is informed and believes that Defendants knowingly engaged in the unlawful acts alleged herein, thereby enjoying a significant competitive edge over other companies within its industry. In many, if not all cases, these common practices have led to willful violations of California and federal law, entitling Plaintiff and Class Members to a recovery, pursuant to, *inter alia*, the statutes cited herein.

18. Plaintiff and Class Members were not paid for overtime hours despite routinely and consistently working more than 8 hours per day and 40 hours per week.

19. Instead, Plaintiff and Class Members were paid the same "salary" regardless of the number of hours actually worked. Defendants' policy and practice of not maintaining time records for its employees violates California law on its face. Defendants' failure to record hours also resulted in substantial off-the-work, including overtime hours, since employees were required to work shifts in excess of 8 hours per day and sometimes in excess of 12 hours per day. Defendants' failure to pay for all hours worked, including overtime hours, resulted in part from Defendants' failure to record all hours worked. Defendants' failure to pay for all hours worked, including overtime hours, resulted in payroll records such as wage statements that were not accurate or legally compliant, in violation of California Labor Code sections 226 and/or 1174(d).

20. Defendants misclassified Plaintiff and Class Members. Defendants controlled Plaintiff and Class Members as to the work done and the manner and means

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1 in which work was to be performed, suggesting an employer-employee relationship.
2 Many other factors suggest an employer-employee relationship, including but not
3 limited to the following: Plaintiff and Class Members were not engaged in a line of
4 business distinct from Defendants. Plaintiff and Class Members provided the very
5 services that define Defendants' business. Defendants supplied the instrumentalities,
6 tools and place for these workers. The services provided by these workers do not
7 require a specialized skillset. The workers had no opportunity to grow their own
8 independent businesses by outsourcing or subcontracting work. Finally, services are
9 provided on a long-term basis for no set time period. Defendants' failure to pay for all
10 hours worked, including overtime hours, resulted in part from Defendants' failure to
11 record all hours worked. Defendants' failure to pay for all hours worked, including
12 overtime hours, resulted in payroll records such as wage statements that were not
13 accurate or legally compliant, in violation of California Labor Code sections 226 and/or
14 1174(d).

15 21. Plaintiff and Class Members were not consistently authorized or
16 permitted to take meal and rest breaks as required by California law. Pursuant to
17 California law, an employee is entitled to one ten-minute rest period if required to work
18 at least three and one-half hours, two ten-minute rest periods if required to work more
19 than six hours, and three ten-minute rest periods if required to work more than ten
20 hours. Pursuant to California law, an employee is entitled to one thirty-minute meal
21 period if required to work at least five hours and two thirty-minute meal periods if
22 required to work at least ten hours. Defendants did not consistently provide the meal
23 and rest periods to which Plaintiff and Class Members were entitled because business
24 needs took precedence, routinely interfering with their breaks. If Plaintiff or Class
25 Members failed to address business needs at any time, including during breaks, they
26 were subject to discipline, up to and including termination. Despite these policies and
27 practices, Plaintiff alleges on information and belief that Defendants have not paid
28 missed meal or rest period premiums to Plaintiff or Class Members. Defendants failed

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1 to provide meal and rest periods and failed to make premium payments to Plaintiff and
 2 Class Members for missed meal and rest breaks. Defendants' failure to record all breaks
 3 and failure to pay applicable premiums, resulted in part from Defendants' failure to
 4 record all hours worked. Defendants' failure to record all breaks and failure to pay
 5 applicable premiums resulted in payroll records such as wage statements that were not
 6 accurate or legally compliant, in violation of California Labor Code sections 226 and/or
 7 1174(d).

8 22. Moreover, Defendants' policies required Plaintiff and Class Members to
 9 incur business expenses related to the operations of Defendants but did not reimburse
 10 employees for all business expenses.

11 23. Defendants failed to provide a written commission agreement and failed
 12 to inform employees of how much the employee would receive prior to performing
 13 work.

14 24. Even after Plaintiff or Class Members were terminated or voluntarily
 15 resigned, Defendants refused to pay owed wages despite California Labor Code sections
 16 201-204, inclusive. More than 30 days has passed since certain individuals left
 17 Defendants' employ, entitling those individuals to the maximum penalties.

18 25. As a direct and proximate result of Defendants' unlawful conduct, as set
 19 forth herein, Plaintiff and Class Members have sustained damages, as described above,
 20 including monetary losses and other damages in an amount to be established at trial. As
 21 a further direct and proximate result of Defendants' unlawful conduct, as set forth
 22 herein, Plaintiff and Class Members are entitled to recover penalties and damages for
 23 the claims described herein in an amount to be established at trial. As a further direct
 24 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and
 25 Class Members are also entitled to recover attorneys' fees, litigation costs, and
 26 restitution of ill-gotten gains, pursuant to statute.

27 26. Plaintiff brings this action on behalf of himself and as a class action on
 28 behalf of the following Employee Class and Subclass:

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1 All persons who worked for, in the State of California as a Sales Insurance
 2 Representative or other similar job titles at any time on or after the date
 3 that is four years prior to when the Complaint was filed.

4
 5 Terminated Subclass: All persons who are eligible for membership in the
 6 Class but who are no longer employed by Defendant.

7
 8 Class Members can be identified through Defendants' records including
 9 employee timekeeping and payroll records.

10 27. Defendants and their officers and directors are excluded from any class
 11 defined in the preceding paragraphs.

12 28. This action has been brought and may properly be maintained as a class
 13 action under California Code of Civil Procedure section 382 because there is a well-
 14 defined community of interest in the litigation and the proposed Classes are easily
 15 ascertainable. The Class and subclass defined herein satisfy all class action
 16 requirements:

17 a. Numerosity: A class action is the only available method for the fair
 18 and efficient adjudication of this controversy. The members of the
 19 Plaintiff Classes are so numerous that joinder of all members is
 20 impractical, if not impossible, insofar as Plaintiff is informed and
 21 believes and, on that basis, alleges that the total number of Class
 22 Members is, at least, in the hundreds, if not thousands of
 23 individuals. Membership in the Classes will be determined by and
 24 upon analysis of records maintained by Defendants.

25 b. Commonality: Plaintiff and Class Members share a community of
 26 interests in that there are numerous common questions and issues
 27 of fact and law which predominate over any questions and issues
 28 solely affecting individual members, including, but not necessarily
 limited to:

- 1) Whether Defendants violated one or more of California's
 Wage Orders, the California Labor Code and/or
 California Business and Professions Code sections 17200
et seq. by failing to pay all wages due to Plaintiff and
 Class Members;
- 2) Whether Defendants violated one or more of California's
 Wage Orders, the California Labor Code and/or
 California Business and Professions Code sections 17200

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et seq. by failing to pay overtime wages due to Plaintiff and Class Members;

3) Whether Defendants violated California Labor Code sections 400-410 and/or section 2802 by requiring Plaintiff and Class Members to pay all or a portion of the normal business expenses of Defendants;

4) Whether Defendants violated and/or continues to violate, California Labor Code section 1174 by failing to keep accurate records of Plaintiff's and Class Members' hours of work;

5) Whether Defendants violated, and continues to violate California Labor Code sections 201-204 by failing to pay all wages due and owing at the time particular Class Members' employment with Defendants terminated;

6) Whether Defendants violated and/or continues to violate California Labor Code section 226 by failing to provide semi-monthly itemized wage statements to Plaintiff and Class Members of total hours worked and all applicable hourly rates in effect during each relevant pay period.

7) Whether Defendants violated and/or continues to violate California Labor Code section 1194 by failing to pay minimum wage;

c. Typicality: Plaintiff's claims are typical of the claims of Class Members. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

e. Adequacy of Representation: Plaintiff is an adequate representative of the Plaintiff Classes, in that Plaintiff's claims are typical of those of Class Members, and Plaintiff has the same interests in the litigation of this case as Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel experienced in litigation of this nature. Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class as a whole. Plaintiff anticipates no management difficulties in this litigation.

///

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(Lab. Code §§ 200-204, 218, 223, 225.5, 226, 500, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198)

(On behalf of Plaintiff and all Class Members against all Defendants)

29. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

30. Defendants were required to compensate Plaintiff and Class Members for all hours worked pursuant to the Industrial Welfare Commission Order 1-2001, California Code of Regulations, Title 8, Chapter 5, Section 11070 and Labor Code sections 200-204, 225.5, 500, 510, 558, 1197, 1198.

31. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

32. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest.

33. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours worked.

34. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent, or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

35. Labor Code section 223 provides, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

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36. Plaintiff and Class Members routinely performed work "off-the-clock." Thus, Defendants are liable for an additional violation to the extent Defendants are in fact secretly paying less than the designated wage scale.

37. As alleged throughout this Complaint, Defendants failed to track their hours worked and refused to compensate Plaintiff and Class Members for some and/or all of the wages (including overtime wages) earned, in violation of the applicable California Wage Order, Title 8 of the California Code of Regulations and the California Labor Code.

38. At all relevant times, Defendants were aware of, and were under a duty to comply with the wage and overtime provisions of the California Labor Code, including, but not limited to California Labor Code sections 200-204, 216, 225.5, 500, 510, 558 1197, 1198. Plaintiff and Class Members are not exempt from the requirements of the Employment Laws and Regulations. Plaintiff and Class Members have been deprived of their rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Under California employment laws and regulations, Plaintiff and Class Members are entitled to recover compensation for all hours worked, in addition to reasonable attorney's fees and costs of suit.

39. Labor Code section 216 provides, "In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

40. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including loss of earnings for hours worked, including overtime hours worked, on behalf of Defendants,

1 in an amount to be established at trial, and are entitled to recover attorneys' fees and
2 costs of suit.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY OVERTIME WAGES**

5 (Lab. Code §§ 200-204, 210,216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage
6 Orders)

7 *(On behalf of Plaintiff and all Class Members against all Defendants)*

8 41. Plaintiff incorporates in this cause of action each and every allegation of
9 the preceding paragraphs, with the same force and effect as though fully set forth
10 herein.

11 42. Labor Code section 1194 invalidates any agreement between an employer
12 and an employee to work for less than the minimum or overtime wage required under
13 the applicable Wage Orders.

14 43. Labor Code section 510 defines a day's work as 8 hours and states that
15 any work in excess of 8 hours in one workday and any work in excess of 40 hours in any
16 one workweek must be compensated at the rate of no less than one and one-half times
17 the regular rate of pay. Pursuant to Labor Code section 1194(a), a plaintiff may bring a
18 civil action for overtime wages to recover wages, interest, penalties, attorney's fees and
19 costs.

20 44. Plaintiff and Class Members are not exempt from receiving overtime
21 compensation. At all times relevant hereto, Defendants treated Plaintiff and other
22 similarly situated persons as exempt from the right to be paid overtime hours.

23 45. Defendants required Plaintiff and Class Members to work in excess of 8
24 hours per day, and/or in excess of 40 hours per week. Defendants misclassified Plaintiff
25 and Class Members as exempt from California's overtime laws. Defendants did so
26 despite the fact that Plaintiff and Class Members did not meet the exemption criteria
27 because, among other things, Plaintiff and Class Members, were not employees exempt
28 from the right to overtime because, *inter alia*, they were not primarily engaged in the
management of the enterprise in which they are/were employed or of a customarily

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1 recognized department or subdivision thereof, were not customarily and regularly
2 directing the work of at least two other full-time employees or the equivalent, did not
3 have authority to hire other employees, did not have the authority to fire other
4 employees, did not customarily and regularly exercise discretion and independent
5 judgment, and spent less than fifty percent of their time engaged in managerial work.
6 Furthermore, Plaintiff and Class Members were not independent contractors because,
7 *inter alia*, they did not have the freedom to choose how to perform tasks, Defendants
8 had authority to control how tasks were performed, and Defendants were not engaged
9 in a distinct business from Defendants and, instead, performed the very tasks that are
10 the core of Defendants' business.

11 46. Plaintiff and Class Members are and were expected to work in excess of 8
12 hours in a day and/or 40 hours in a week, resulting in many hours that were unpaid or
13 were not paid at the appropriate overtime rates of pay.

14 47. As a uniform practice, Defendants failed to keep the records of hours
15 worked by its employees as required by California's wage orders. However, records of
16 the rates of pay for Plaintiff and Class Members are in the possession or within
17 Defendants' custody and control.

18 48. Plaintiff and Class Members were entitled to receive one-and-one half
19 times the hourly wage for each hour worked past 8 hours in one day, one-and-one half
20 times the hourly wage for each hour worked past 40 hours in one week, and twice the
21 hourly wage for each hour worked past 12 hours in one day and for all hours over 8
22 during their seventh consecutive day of work in one week.

23 49. In many instances, Plaintiff and Class Members were entitled to twice
24 their regular rate of pay for the work performed, as Plaintiff and Class Members were
25 often (1) working shifts that lasted more than 12 hours in length or (2) working shifts
26 for Defendants of 8 hours or more on a seventh consecutive day of work.

27 50. At all relevant times, Defendants were aware of, and were under a duty to
28 comply with the wage and overtime provisions of the California Labor Code, including,

1 but not limited to California Labor Code sections 200 *et seq.*, 510, 1194 and 1198 and
2 IWC wage orders. As a consequence, Defendants are subject to all applicable penalties,
3 the exact amount to be proven at trial.

4 51. Defendants violated Labor Code section 204 when they failed to pay
5 Plaintiff and Class Members minimum wage and failed to pay all wages earned for labor
6 in excess of the normal work period no later than the pay day for the next regular
7 payroll period. As a consequence for violating Labor Code section 204, Defendants are
8 subject to all applicable penalties including those specified pursuant to Labor Code
9 section 210. The exact amount of the applicable penalties will be proven at trial.

10 52. Labor Code section 223 provides, "Where any statute or contract requires
11 an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
12 lower wage while purporting to pay the wage designated by statute or by contract.
13 Plaintiff and Class Members routinely performed work "off-the-clock." Thus,
14 Defendants are liable for an additional violation to the extent Defendants are in fact
15 secretly paying less than the designated wage scale.

16 53. Labor Code section 216 provides, "In addition to any other penalty
17 imposed by this article, any person, or an agent, manager, superintendent, or officer
18 thereof is guilty of a misdemeanor, who: (a) Having the ability to pay, willfully refuses to
19 pay wages due and payable after demand has been made. (b) Falsely denies the amount
20 or validity thereof, or that the same is due, with intent to secure for himself, his
21 employer or other person, any discount upon such indebtedness, or with intent to
22 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
23 indebtedness is due."

24 54. During the last four years, and at all times relevant to this Complaint,
25 Defendants intentionally refused to pay overtime wages to Plaintiff and Class Members
26 in order to receive an economic benefit in violation of Labor Code section 216. As a
27 consequence for violating Labor Code section 216, Defendants are subject to all
28

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1 applicable civil penalties including those specified pursuant to Labor Code section
 2 225.5. The exact amount of the applicable penalties will be proven at trial.

3 55. At all times relevant to this Complaint, Defendants were and are the
 4 employers of Plaintiff and Class Members within the meaning of Labor Code section
 5 558 and violated or caused to be violated a provision or provisions of Part 2, Chapter 1,
 6 of the Labor Code regulating hours and days of work and, as such, are liable to each
 7 Class Member for each such violation as set forth in Labor Code section 558, in addition
 8 to an amount sufficient to recover underpaid wages. The exact amount of the applicable
 9 penalties will be proven at trial.

10 56. Plaintiff and Class Members are entitled to interest on all due and unpaid
 11 wages pursuant to Labor Code section 218.6.

12 57. Pursuant to Labor Code section 1194, Plaintiff and Class Members seek to
 13 recover in a civil action the unpaid balance of the full amount of the unpaid overtime
 14 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

15 **THIRD CAUSE OF ACTION**
 16 **FAILURE TO PAY MINIMUM WAGE**

(Lab. Code §§ 223, 1194 *et seq.*)

17 *(On behalf of Plaintiff and all Class Members against all Defendants)*

18 58. Plaintiff incorporates in this cause of action each and every allegation of
 19 the preceding paragraphs, with the same force and effect as though fully set forth
 20 herein.

21 59. At all relevant times, Defendants were aware of and were under a duty to
 22 comply with California Labor Code section 1194 *et seq.*

23 60. California Labor Code section 1194(a) in relevant part provides:

24 Notwithstanding any agreement to work for a lesser wage,
 25 any employee receiving less than the legal minimum wage
 26 or the legal overtime compensation applicable to the
 27 employee is entitled to recover in a civil action the unpaid
 28 balance of the full amount of this minimum wage or
 overtime compensation, including interest thereon,
 reasonable attorney's fees, and costs of suit.

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61. Moreover, California Labor Code section 1197 provides:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

62. Finally, California Labor Code section 1194.2(a) provides:

In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

63. Labor Code section 223 provides, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract. Plaintiff and Class Members routinely performed work "off-the-clock." Thus, Defendants are liable for an additional violation to the extent Defendants are in fact secretly paying less than the designated wage scale.

64. During the Class Period, Defendants employed Plaintiff and Class Members, each of whom did not receive the applicable minimum wage for all hours worked on Defendants' behalf. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

65. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including loss of earnings for hours worked on behalf of Defendants, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Lab. Code §§ 226.7, 512; IWC Wage Orders)

(On behalf of Plaintiff and all Class Members against all Defendants)

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66. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

67. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code sections 226.7 and 512 and applicable sections of the IWC Wage Order.

68. California Labor Code section 226.7 provides:

No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

....
 If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

69. Moreover, California Labor Code section 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70. Section 11 of the applicable Wage Order provides:

- a. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes....
- b. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes....
- c. If an employer fails to provide an employee a meal 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 workday that the meal period is not provided.

71. Moreover, section 12 of the applicable Wage Order provides:

- a. 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
- b. 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 workday that the rest period is not provided.

72. Defendants routinely required Plaintiff and Class Members to work at least three and one-half hours without a rest period of at least 10 minutes and failed to compensate the Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

73. Defendants routinely required Plaintiff and Class Members to work more than six hours without a second rest period of at least 10 minutes and failed to compensate Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

74. Defendants routinely required Plaintiff and Class Members to work more than ten hours without a third rest period of at least 10 minutes and failed to compensate the Plaintiff and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

75. Defendants routinely required Plaintiff and Class Members to work more than five hours without a meal period of at least 30 minutes and failed to compensate the Plaintiff and Class Members for said missed meal periods, as required by California Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Orders.

1 76. Defendants routinely required Plaintiff and Class Members to work more
2 than ten hours without a second meal period of at least 30 minutes and failed to
3 compensate the Plaintiff and Class Members for said missed meal periods, as required
4 by California Labor Code sections 226.7 and 512, and Industrial Welfare Commission
5 Wage Orders.

6 77. By requiring Plaintiff and Class members to attend to business and failing
7 to consistently (1) provide meal breaks within the first five hours of a work shift, (2)
8 provide uninterrupted thirty-minute meal periods, and/or (3) authorize and permit
9 ten-minute rest periods to Class Members, Defendants violated the California Labor
10 Code and sections 11 and 12 of the applicable IWC Wage Order.

11 78. Even where Defendants' records specifically evidence that no meal and/or
12 rest periods were provided to Plaintiff and Class Members, Defendants refuse to
13 provide these employees with one hour of compensation for these respective violations
14 as mandated by California law. Plaintiff is informed and believes and, on that basis,
15 alleges that Defendants have never paid the one hour of compensation to any worker.

16 79. Plaintiff and Class Members are not exempt from the meal and rest period
17 requirements of the aforementioned Employment Laws and Regulations.

18 80. Plaintiff and Class Members did not willfully waive, through mutual
19 consent with Defendants, any such meal and rest periods.

20 81. Defendants did not pay premium payments to Plaintiff or Class Members
21 for missed meal periods. Similarly, Defendants did not pay premium payments to
22 Plaintiff or Class Members for missed rest periods.

23 82. Plaintiff and Class Members have been deprived of their rightfully earned
24 compensation for rest periods as a direct and proximate result of Defendants' failure
25 and refusal to pay said compensation. Plaintiff and Class Members are entitled to
26 recover such amounts pursuant to California Labor Code section 226.7(b), plus interest
27 thereon, attorney's fees, and costs of suit.

28

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83. Plaintiff and Class Members have been deprived of their rightfully earned compensation for meal periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and costs of suit.

84. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in an amount to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND
 (Lab. Code §§ 406, 2802)

(On behalf of Plaintiff and all Class Members against all Defendants)

85. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

86. During the Class Period, Defendants required Plaintiff and Class Members to incur expenses related to the business operations of Defendants. These expenses include(d), without limitation, costs related to cell phone, internet usage plan, cell phone usage plan, travel, mileage, continuing education, training modules and other trainings, and other expenses.

87. These expenditures were incurred in direct consequence of the discharge of the duties of Plaintiff and Class Members, or of their obedience to the directions of the employer and have not yet been reimbursed by Defendants.

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88. At all relevant times, Defendants were aware of and were under a duty to comply with various provisions of the California Labor Code, including, but not necessarily limited to sections 406 and 2802(a).

89. California Labor Code section 406 provides:

Any property put up by an employee, or applicant as a part of the contract of employment, directly or indirectly, shall be deemed to be put up as a bond and is subject to the provisions of this article whether the property is put up on a note or as a loan or an investment and regardless of the wording of the agreement under which it is put up.

90. California Labor Code section 2802(a) provides:

An employer shall indemnify their employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

91. By requiring Plaintiff and Class Members to incur uncompensated expenses in direct consequence of the discharge of their duties, Plaintiff and Class Members were forced and/or brought to contribute to the capital and expenses of Defendants' business which is legally a cash bond, and which must be refunded by Defendants to Plaintiff and each Class Member.

92. California Labor Code section 2802(b) and (c) provides for interest at the statutory post judgment rate of ten percent simple interest per annum from the date of the expenditure, plus attorneys' fees to collect reimbursement.

93. Therefore, Plaintiff and Class Members demand reimbursement for expenditures or losses in direct consequence of the discharge of their duties, or of their obedience to the directions of Defendants, plus return of all cash bonds or other coerced investments in the business of Defendants, with interest, at the statutory rate, plus attorneys' fees and costs and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL OWED COMMISSIONS

(Lab. Code § 200)

(On behalf of Plaintiff and all Class Members against all Defendants)

94. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

95. Labor Code section 200 *et seq.*, applicable at all times relevant herein to Plaintiff's employment with Defendants, requires employers to pay employees all earned wages, including commission and bonus wages, at regular intervals.

96. Plaintiff entered into written agreements with Defendants, entitling him to receive commissions in accordance with the formulas set forth in the agreement.

97. Plaintiff performed all of the duties and obligations required of him by Defendants during their employment, including those duties and obligations that would entitle Plaintiff to receive commissions and bonuses.

98. Defendants have knowingly, intentionally, and willfully failed and refused to pay to Plaintiff the full and complete amount of the commissions and bonuses they properly earned during their employment with Defendants.

99. Pursuant to Labor Code sections 200 *et seq.*, Plaintiff is entitled to recover their unpaid commissions and bonuses with interest, attorney's fees, costs, and penalties, in amounts to be proven at trial.

100. As a proximate result of Defendants' wrongful acts, Plaintiff has suffered, and continues to suffer, substantial lost earnings, bonuses, deferred compensation, stock options, and other employment benefits; and has suffered, and continues to suffer, emotional distress in an amount according to proof at the time of trial.

101. Defendants, through their officers, managing agents, and/or their supervisors, authorized, condoned and/or ratified the unlawful conduct described herein above. By reason thereof, Plaintiff is entitled to an award of punitive damages in

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1 an amount according to proof at the time of trial, as well as attorneys' fees and costs,
2 pursuant to statute.

3 **SEVENTH CAUSE OF ACTION**
4 **FAILURE TO PROVIDE A WRITTEN COMMISSION AGREEMENT**

(Lab. Code §§ 2751 *et seq.*)

(On behalf of Plaintiff and all Class Members against all Defendants)

5 102. Plaintiff incorporates in this cause of action each and every allegation of
6 the preceding paragraphs, with the same force and effect as though fully set forth
7 herein.

8 103. Defendants failed to provide Plaintiff and Class Members with a written
9 commission agreement specifying how they would be compensated.

10 104. Plaintiff and Class Members were injured by Defendants' failure to
11 provide wage statements, because, as alleged above, Plaintiff and Class Members did
12 not receive the amount of compensation promised, and thus suffered monetary
13 damages due to Defendants' policies described above.

14 105. Plaintiff and Class Members are not exempt from the requirements of the
15 Employment Laws and Regulations.

16 106. Although Plaintiff alleges he/she/they had a right to the commissions in
17 dispute, in the event the Court does not consider there to be a valid,
18 written, commission agreement, Plaintiff alternatively pleads a claim for Failure to
19 Provide a Written Commission Agreement in violation of Labor Code section 2751 for
20 any pay period in which there was no written commission agreement in effect.

21 107. Based on Defendants' conduct as alleged herein, Defendants are liable for
22 damages and statutory penalties pursuant to California Labor Code section 2751, and
23 other applicable provisions of the Employment Laws and Regulations and other
24 applicable provisions of the Employment Laws and Regulations in amounts to be
25 established at trial, as well as attorneys' fees and costs, pursuant to statute.

26 **EIGHTH CAUSE OF ACTION**
27 **WILLFUL MISCLASSIFICATION OF EMPLOYEES**

(Lab. Code §§ 201, 226.8)

28 (On behalf of Plaintiff and all Class Members against all Defendants)

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108. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

109. Labor Code section 1198 provides that, "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

110. Industrial Welfare Commission Order No. 9-2001, which applies to Defendants' business states at section 2:

- a. "Employ means to engage, suffer, or permit to work."
- b. "Employee means any person employed by another."
- c. "Employer means any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over wages, hours or working conditions of any person."

111. Other Industrial Welfare Commission Orders contain similar provisions regarding employee status.

112. The conditions of employment with Defendants include, but are not limited to:

- a. Defendants exercised direction and control over the manner that each Sales Insurance Representative performs their work, including controlling their schedules, paperwork, contact and communication, reporting requirements, and related controls exerted by Defendants;
- b. Sales Insurance Representatives report to Defendants offices where they are assigned work;
- c. Defendants can and did discipline, de-allocate and terminate Sales Insurance Representatives;
- d. Defendants require Sales Insurance Representatives to follow its policies, procedures, customs and practices;
- e. Defendants provide Sales Insurance Representatives' work-related training;
- f. Defendants take corrective action against Sales Insurance Representatives for policy violations;
- g. Each Plaintiff worked fulltime exclusively for Defendant continuously;
- h. Defendants pay Sales Insurance Representatives on established pay periods and regularly;
- i. Defendants unilaterally and exclusively control the rate of pay paid to Sales Insurance Representatives without the opportunity to negotiate;

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- j. The duties performed by the Sales Insurance Representatives for Defendants are a regular and essential part of Defendants business;
- k. Plaintiffs could be disciplined by Defendants if a Plaintiff was not courteous to Defendants customers;
- l. Defendants required that each Plaintiff follow any rules established by Defendants customers;
- m. Defendants required that each Plaintiff report any incidents, accidents, conflicts;
- n. The work performed by each Plaintiff was an integral and regular part of Defendants business.

113. Defendants engaged in subterfuge to avoid employee status, among other factors that establish an Employer and Employee relationship.

114. Defendants exercised the same dominion and control over every Sales Insurance Representative that Defendant employed during the liability period.

115. At all times during the liability period, Plaintiffs were unlawfully, illegally and wrongfully required to bear the costs of Defendants business expenses which Defendant did not reimburse to its Sales Insurance Representatives.

116. California Labor Code section 226.8(a)(1) provides, "It is unlawful for any person or employer to willfully misclassify an individual as an independent contractor."

117. California Labor Code section 226.8(i)(4) provides, "'Willful misclassification' means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor."

118. California Labor Code section 226.8(b) provides, "If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law."

119. California Labor Code section 226.8(c) provides, "If the person or employer has engaged in or is engaging in a pattern or practice willfully misclassifying individuals as independent contractors, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-

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1 five thousand dollars (\$25,000) for each violation, in addition to any other penalties or
2 fines permitted by law.”

3 120. Each Defendant was aware of its obligations under the California Labor
4 Code.

5 121. Each Defendant was given notice of its violations, yet chose to ignore its
6 obligations under California law.

7 122. Each Defendant devised a scheme and plan to usurp and violate
8 California Labor laws so that they could achieve maximum profits at the expense of
9 each Plaintiff.

10 123. Defendants violated Labor Code section 226.8 by willfully misclassifying
11 many of its employees, past and present, including Plaintiff, as independent
12 contractors.

13 124. Defendants have engaged in a pattern and practice of misclassifying their
14 employees as independent contractors to avoid the taxes, insurance and other costs that
15 accompany employee status.

16 125. Plaintiff is entitled to all damages, penalties, interest, and attorney fees as
17 a result of Defendants’ violations of the Labor Code and it is requested that this Court
18 issue an Order to enjoin and stop Defendants from engaging in this practice of
19 misclassifying employees.

20 126. As a proximate result of Defendants’ wrongful acts, Plaintiff has suffered,
21 and continues to suffer, substantial losses incurred in seeking substitute employment
22 and in earnings, bonuses, deferred compensation, stock options, and other employment
23 benefits; and has suffered, and continues to suffer, emotional distress in an amount
24 according to proof at the time of trial.

25 127. Defendants, through their officers, managing agents, and/or their
26 supervisors, authorized, condoned and/or ratified the unlawful conduct described
27 herein above. By reason thereof, Plaintiff is entitled to an award of punitive damages in
28

1 an amount according to proof at the time of trial, as well as attorneys' fees and costs,
2 pursuant to statute.

3 **NINTH CAUSE OF ACTION**
4 **DECLARATORY RELIEF THAT CLASS MEMBERS ARE**
5 **EMPLOYEES AND NOT INDEPENDENT CONTRACTORS**

(Lab. Code § 226.8)

(On behalf of Plaintiff and all Class Members against all Defendants)

6 128. Plaintiff incorporates in this cause of action each and every allegation of
7 the preceding paragraphs, with the same force and effect as though fully set forth
8 herein.

9 129. Labor Code section 1198 provides that, "The maximum hours of work and
10 the standard conditions of labor fixed by the commission shall be the maximum hours
11 of work and the standard conditions of labor for employees. The employment of any
12 employee for longer hours than those fixed by the order or under conditions of labor
13 prohibited by the order is unlawful."

14 130. Industrial Welfare Commission Order No. 9-2001, which applies to
15 Defendants' business states at section 2:

- 16 a. "Employ means to engage, suffer, or permit to work."
- 17 b. "Employee means any person employed by another."
- 18 c. "Employer means any person...who directly or indirectly, or
19 through an agent or any other person, employs or exercises control
20 over wages, hours or working conditions of any person."

21 131. Other Industrial Welfare Commission Orders contain similar provisions
22 regarding employee status.

23 132. The conditions of employment with Defendants are set forth herein.

24 133. Plaintiff and Class Members assert they are entitled to the rights of
25 employees. Plaintiff and Class Members assert they are not independent contractors.

26 134. Defendants assert that Plaintiff and Class Members were properly treated
27 as independent contractors and not employees of Defendants.

28 135. An actual dispute exists between the parties. Plaintiff and Class Members
seek a declaration that, based upon the premises set forth above, Plaintiff and Class
Members are Defendants' employees and not independent contractors.

TENTH CAUSE OF ACTION
FAILURE TO PAY FINAL WAGES ON TIME

(Lab. Code §§ 201-204)

(On behalf of Plaintiff and all Class Members against all Defendants)

136. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

137. California Labor Code section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge. Section 202 provides that all earned and unpaid wages of an employee who resigns are due and payable immediately if the employee provided at least seventy-two hours' notice; otherwise, wages of an employee who resigns are due within seventy-two hours of resignation.

138. At all relevant times herein, Defendants failed to implement a policy and practice to pay Plaintiff and Class Members accrued wages and other compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code. As a result, Class Members whose employment has ended have not been paid all compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code.

139. Defendant willfully failed to pay all final wages on time.

140. Defendants willfully failed to pay all final wages to involuntarily terminated employees at the time of discharge even though California Labor Code section 201 requires that employers provide immediate payment of all final wages at the time of termination.

141. Defendants willfully failed to pay all final wages on time to employees who voluntarily resigned. Defendants were made aware of each terminated employee's preference with respect to an election of whether to receive final wages by tender in person or by delivery. Those who elected to receive tender in person were present at the

1 workplace to collect payment. Accordingly, California Labor Code section 202 has been
2 satisfied.

3 142. Plaintiff and Class Members are not exempt from these requirements of
4 the Employment Laws and Regulations.

5 143. Based on Defendants' conduct as alleged herein, Defendants are liable for
6 statutory penalties pursuant to California Labor Code section 203 and other applicable
7 provision of the Employment Laws and Regulations in amounts to be established at
8 trial, as well as attorneys' fees and costs, pursuant to statute.

9 **ELEVENTH CAUSE OF ACTION**
10 **FAILURE TO MAINTAIN ACCURATE RECORDS**

(Lab. Code §§ 1174, 1174.5)

11 *(On behalf of Plaintiff and all Class Members against all Defendants)*

12 144. Plaintiff incorporates in this cause of action each and every allegation of
13 the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 145. California Labor Code section 1174(d) provides:

16 Every person employing labor in this state shall ... [k]eep, at a central
17 location in the state ... payroll records showing the hours worked daily by
18 and the wages paid to ... employees.... These records shall be kept in
19 accordance with rules established for this purpose by the commission, but
20 in any case shall be kept on file for not less than two years.

21 146. Defendants failed to maintain accurate records of the hours worked and
22 the wages paid to Plaintiff and Class Members. Defendants did not employ policies,
23 procedures, and practices to track Plaintiff's and Class Members' hours.

24 147. Plaintiff and Class Members were injured by Defendants' failure to
25 maintain accurate records, because, as alleged above, Plaintiff and Class Members did
26 not receive pay for all hours worked, and thus suffered monetary damages due to
27 Defendants' policies described above.

28 148. Plaintiff and Class Members are not exempt from the requirements of the
Employment Laws and Regulations.

1 149. Based on Defendants' conduct as alleged herein, Defendants are liable for
 2 damages and statutory penalties pursuant to California Labor Code sections 1174,
 3 1174.5, and other applicable provisions of the Employment Laws and Regulations in
 4 amounts to be established at trial, as well as attorneys' fees and costs, pursuant to
 5 statute.

6 **TWELFTH CAUSE OF ACTION**
FAILURE TO FURNISH WAGE AND HOUR STATEMENTS

7 (Lab. Code §§ 226(e), 226.3)

8 *(On behalf of Plaintiff and all Class Members against all Defendants)*

9 150. Plaintiff incorporates in this cause of action each and every allegation of
 10 the preceding paragraphs, with the same force and effect as though fully set forth
 11 herein.

12 151. California Labor Code section 226(a) provides:

13 Every employer shall, semimonthly or at the time of each payment of
 14 wages, furnish each of their employees, either as a detachable part of the
 15 check, draft, or voucher paying the employee's wages, or separately when
 16 wages are paid by personal check or cash, an accurate itemized statement
 17 in writing showing (1) gross wages earned, (2) total hours worked by the
 18 employee, except for any employee whose compensation is solely based
 19 on a salary and who is exempt from payment of overtime under
 20 subdivision (a) of Section 515 or any applicable order of the Industrial
 21 Welfare Commission, (3) the number of piece-rate units earned and any
 22 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
 23 deductions, provided that all deductions made on written orders of the
 24 employee may be aggregated and shown as one item, (5) net wages
 25 earned, (6) the inclusive dates of the period for which the employee is
 26 paid, (7) the name of the employee and his/her/their social security
 27 number, except that by January 1, 2008, only the last four digits of
 28 his/her/their social security number or an employee identification
 number other than a social security number may be shown on an itemized
 statement, (8) the name and address of the legal entity that is the
 employer, and (9) all applicable hourly rates in effect during the pay
 period and the corresponding number of hours worked at each hourly rate
 by the employee. The deductions made from payment of wages shall be
 recorded in ink or other indelible form, properly dated, showing the
 month, day, and year, and a copy of the statement and the record of the
 deductions shall be kept on file by the employer for at least three years at
 the place of employment or at a central location within the State of
 California.

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152. California Labor Code section 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

153. California Labor Code section 226(e)(2) provides:

(A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his/her/their social security number or an employee identification number other than a social security number.

154. California Labor Code section 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a central location in the state . . . payroll records showing the hours worked daily by and the wages paid to . . . employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

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155. Defendants knowingly failed to provide Plaintiff and Class Members with timely and accurate wage and hour statements showing the inclusive dates of the pay period, gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing them, all applicable hourly rates in effect during each pay period, and the corresponding number of hours worked at each hourly rate. Plaintiff and Class Members in fact never received accurate wage statements at all, as Defendants did not employ a timekeeping system that actually tracked all hours their workers worked.

156. Plaintiff and Class Members were injured by Defendants' failure to provide accurate wage statements, because, as alleged above, Plaintiff and Class Members could not determine whether they were paid properly and/or did not receive pay for all hours worked, and thus suffered monetary damages due to Defendants' policies described above.

157. Plaintiff and Class Members are not exempt from the requirements of the Employment Laws and Regulations.

158. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and statutory penalties pursuant to California Labor Code section 226, and other applicable provisions of the Employment Laws and Regulations and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

THIRTEENTH CAUSE OF ACTION
PROMISSORY ESTOPPEL

(C & K Engineering Contractors v. Amber Steel Co.)
(On behalf of Plaintiff as an individual against all Defendants)

159. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

160. Defendants are liable for damages based on the doctrine of Promissory Estoppel. The elements of the doctrine of Promissory Estoppel, as described in section

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1 90 of the Restatement of Contracts, are: "A promise which the promisor should
 2 reasonably expect to induce action or forbearance of a definite and substantial
 3 character on the part of the promisee and which does induce such action or forbearance
 4 is binding if injustice can be avoided only by enforcement of the promise." The
 5 foregoing rule has been judicially adopted in California. *C & K Engineering Contractors*
 6 *v. Amber Steel Co.*, 23 Cal. 3d 1, 6 (1978).

7 161. The doctrine of promissory estoppel states that an injured party can
 8 recover damages if: (1) promisor made a promise significant enough to cause the
 9 promisee to act on it, (2) promisee relied upon the promise, (3) promisee suffered a
 10 significant detriment, and (4) relief can only come in the form of the promisor fulfilling
 11 the promise of paying for the damages caused.

12 162. First, Defendants made an incredibly significant promise to Plaintiff to
 13 pay him for his work. This promise caused Plaintiff to act in reliance on said promise.

14 163. Second, Plaintiff's decision-making process depended on Defendants'
 15 promise.

16 164. Third, Plaintiff suffered a significant detriment due to Defendants'
 17 promise not being fulfilled. Plaintiff spent resources and time traveling to Defendants'
 18 location and Defendant's customers' locations. Plaintiff also lost the job security he had
 19 at his former position by resigning in order to work for Defendants. He forfeited the
 20 opportunity for a significant salary that would have been provided with an offer he could
 21 have accepted but instead rejected in order to work with Defendants. Plaintiff turned
 22 down another job offer, trusting in Defendants' good faith to employing him as
 23 promised.

24 165. Finally, relief can only come in the form of Defendants fulfilling their
 25 promise by satisfying the originally agreed-upon terms.

26 166. For the reasons set forth above and in satisfaction of the elements of the
 27 doctrine of promissory estoppel, Defendants must perform on the promises.
 28

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167. As a proximate result of Defendants' wrongful acts, Plaintiff has suffered, and continues to suffer, substantial losses incurred in seeking substitute employment and in earnings, bonuses, deferred compensation, stock options, and other employment benefits; and has suffered, and continues to suffer, emotional distress in an amount according to proof at the time of trial.

168. Defendants, through their officers, managing agents, and/or their supervisors, authorized, condoned and/or ratified the unlawful conduct described herein above. By reason thereof, Plaintiff is entitled to an award of punitive damages in an amount according to proof at the time of trial, as well as attorneys' fees and costs, pursuant to statute.

FOURTEENTH CAUSE OF ACTION

BREACH OF CONTRACT

(On behalf of Plaintiff as an individual against all Defendants)

169. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

170. To recover damages from for breach of contract, a plaintiff must prove all of the following: 1. That the parties formed a contract; 2. That plaintiff did all, or substantially all, of the significant things that the contract required him to do or was otherwise excused; 3. That all conditions required by the contract for the defendant's performance occurred or were excused; and 4. That defendant did something or failed to do something that violates the contract. *See* CACI No. 303.

171. According to Labor Code § 2750, "the contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person." Plaintiff and Defendants entered into a contract upon hire and throughout the term of Plaintiff's employment. The contract was in writing and oral and implied-in-fact and provided that Plaintiff's employment would be secure for as long as his respective performance was

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1 satisfactory, that Plaintiff would not be terminated without good cause, and that
 2 Plaintiff would earn agreed-upon wages and fringe benefits. Plaintiff undertook and
 3 continued employment and duly performed all of the conditions of the employment
 4 agreement to be performed by him until prevented by Defendants from further
 5 performance. Plaintiff had, at all times, been ready, willing and able to perform all of the
 6 conditions of the agreement to be performed by him. Furthermore, Ambiguous
 7 language in a contract shall be construed against party who caused uncertainty to exist,
 8 if ambiguity is not eliminated by interpreting ambiguous provisions in sense that
 9 promisor believed the promisee understood them at time of formation. Civil Code §§
 10 1649, 1654.

11 172. On or about March 2017, Defendants breached the employment
 12 agreement by discharging Plaintiff without good cause and despite his continued
 13 satisfactory performance.

14 173. Plaintiff suffered damages legally caused by the breach of contract as
 15 described in this Complaint, all paragraphs of which are incorporated here to the extent
 16 pertinent as if set forth here in full.

17 174. Plaintiff is informed and believes and, based thereon, alleges that the
 18 fictitious Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited,
 19 compelled, coerced, or conspired to commit one or more of the acts alleged in this
 20 Cause of Action.

21 175. As a direct and proximate result of Defendants' conduct, Plaintiff
 22 sustained damages, including, but not limited to, monetary losses, missed
 23 opportunities, harm to their reputation, mental anguish, embarrassment, humiliation,
 24 and other emotional distress and/or medical and related expenses in an amount to be
 25 established at trial. As a result of this wrongful conduct, Plaintiff is entitled to attorneys'
 26 fees, costs, and injunctive relief.

27 **FIFTEENTH CAUSE OF ACTION**

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(On behalf of Plaintiff as an individual and all Class Members against all Defendants)

176. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

177. The agreement referred to above contained an implied covenant of good faith and fair dealing, which obligated Defendants to perform the terms and conditions of the agreement fairly and in good faith and to refrain from doing any act that would prevent or impede Plaintiff from performing any or all of the conditions of the agreement that they agreed to perform, or any act that would deprive Plaintiff of the benefits of the agreement.

178. Plaintiff worked for Defendants for approximately four months and reasonably relied on the provisions of the personnel manual regarding the causes for which employees could be written up or discharged and the procedures set forth for such corrective action including terminations for the expectation that Defendants would apply its policies even-handedly to afford Plaintiff the protections of those procedures if Defendants believed there was cause to take corrective action against Plaintiff, including termination. Nonetheless, Defendants failed to follow the agreed-upon terms of the bargain and, instead, Defendants summarily terminated Plaintiff's employment. Defendants breached the implied covenant of good faith and fair dealing under the contract by discharging Plaintiff intentionally, without just or probable cause, in bad faith and for reasons extraneous to the contract. Such motives were retaliatory in nature and extraneous to the employment relationship and were intended to deprive Plaintiff of the benefits thereof. Defendants further breached the implied covenant of good faith and fair dealing by violating and failing to follow its own personnel policies and past practices before discharge.

179. Plaintiff performed all the duties and conditions of the contract.

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180. Defendants knew that Plaintiff had fulfilled all of his duties and conditions under the contract.

181. Defendants further breached the implied covenant of good faith and fair dealing by violating and failing to follow the terms of the contract.

182. As a proximate result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiff has suffered, and continues to suffer, monetary losses and other damage in an amount to be established at trial. As a further proximate result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiff has incurred reasonable attorney's fees in attempting to secure the benefits owed to them under the employment contract.

183. Plaintiff is informed and believes and, based thereon, alleges that the fictitious Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited, compelled, coerced, or conspired to commit one or more of the acts alleged in this Cause of Action.

184. As a direct and proximate result of Defendants' conduct, Plaintiff sustained damages, including, but not limited to, loss of earnings and earning potential, opportunities and other benefits of employment and employment opportunities and harm to his reputation, mental anguish, embarrassment, humiliation, and other emotional distress and/or medical and related expenses in an amount to be established at trial. As a result of this wrongful conduct, Plaintiff is entitled to attorneys' fees, costs, and injunctive relief.

SIXTEENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(Bus. & Prof. Code §§ 17200 *et seq.*)

(On behalf of Plaintiff and all Class Members against all Defendants)

185. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

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1 186. Plaintiff brings this cause of action individually and on behalf of all others
2 similarly situated.

3 187. Defendants' violations of California law, including Defendants' violations
4 of the Employment Laws and Regulations as alleged herein constitutes an unfair
5 business practice in violation of California Business and Professions Code sections
6 17200 *et seq* because they were done repeatedly, over a significant period of time, and
7 in a systematic manner to the detriment of Plaintiff and Class Members.

8 188. In addition, Plaintiff brings this cause of action seeking equitable and
9 statutory relief to stop Defendants' misconduct, as complained of herein, and to seek
10 restitution of the amounts Defendants acquired through the unfair, unlawful, and
11 fraudulent business practices described herein.

12 189. Defendants' knowing conduct, as alleged herein, constitutes an unlawful
13 and/or fraudulent business practice, as set forth in California Business and Professions
14 Code sections 17200-17208. Specifically, Defendants conducted business activities
15 while failing to comply with the legal mandates cited herein.

16 190. As a result of Defendants' unfair business practices, Defendants have
17 reaped unfair benefits at Plaintiff's and Class Members' expense.

18 191. Defendants' business practices were unfair as set forth herein, providing
19 an independent basis to support this claim.

20 192. Defendants' business practices were also fraudulent, as set forth herein,
21 providing yet another independent basis to support the claim.

22 193. Plaintiff is informed and believes and, based thereon, alleges that the
23 fictitious Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited,
24 compelled, coerced, or conspired to commit one or more of the acts alleged in this
25 Cause of Action.

26 194. Defendants have clearly established a policy of accepting a certain amount
27 of collateral damage as incidental to its business operations, rather than accepting the
28 alternative costs of full compliance with fair, lawful, and honest business practices,

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ordinarily borne by its responsible competitors and as set forth in legislation and the judicial record. Defendants' policy is confirmed by Plaintiff's and Class Members' damages as herein alleged.

195. Defendants' unfair business practices entitle Plaintiff and Class Members to seek preliminary and permanent injunctive relief and other restitutionary relief, including but not limited to orders that Defendants account for and restore unlawfully withheld compensation to the Plaintiff and Class Members and discontinue certain unlawful employment practices, conduct and implement adequate training, including the implementation of policies and procedures designed to prevent the legal violations at issue in this lawsuit. Defendants' unfair business practices also entitle Plaintiff to attorneys' fees and costs.

196. Defendants committed "unlawful" business acts or practices, by among other things, engaging in false advertising in violation of Business and Professions Code section 17500 and the CLRA as described above.

197. Defendants committed "unfair" business acts or practices by, among other things:

- a. Engaging in conduct where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and Class Members;
- b. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to plaintiffs and class members; and
- c. Engaging in conduct that undermines or violates the spirit or intent of the consumer protection

198. Defendants committed "fraudulent" business acts or practices by, among other things, engaging in conduct Defendant knew or should have known were likely to and did deceive the public, including Plaintiffs and other Class Members.

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1 199. Plaintiffs and Class Members seek restitution, declaratory and injunctive
2 relief, and other relief allowable under Section 17200, *et seq.*

3
4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for the following forms of relief, individually and on
6 behalf of all others similarly situated:

7 1. Certification of this action as a class action on behalf of the classes defined
8 herein and designation of Plaintiff as representative of the classes and his counsel as
9 counsel for the classes;

10 2. For penalties pursuant to all provisions of the Labor Code referenced
11 herein which provide for penalties as a result of the conduct alleged herein;

12 3. For costs of suit incurred herein and attorneys' fees pursuant to the
13 statutes cited herein;

14 4. For compensatory damages;

15 5. Compensation for all hours worked but not paid;

16 6. For general damages in amounts according to proof and in no event in an
17 amount less than the jurisdictional limit of this court;

18 7. For special damages according to proof;

19 8. For punitive damages where allowed by law;

20 9. For restitution of all monies due to Plaintiff from the unlawful business
21 practices of Defendants;

22
23 ///

24 ///

25 ///

26 ///

27 ///

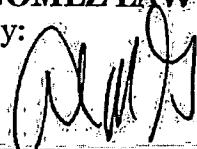
10. For injunctive relief;
11. For pre-judgment and post-judgment interest as provided by law; and
12. For such other and further relief as this Court deems just and proper.

June 13, 2018

Respectfully submitted,

GOMEZ LAW GROUP

By:



ALVIN M. GOMEZ, Esq.
Attorneys for Plaintiffs

DEMAND FOR TRIAL BY JURY


Plaintiff Androw Toma, individually, and on behalf of class members hereby demands a trial by jury.

June 13, 2018

Respectfully submitted,

GOMEZ LAW GROUP

By:



ALVIN M. GOMEZ, Esq.
Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7070	
PLAINTIFF(S) / PETITIONER(S): Androw Toma	
DEFENDANT(S) / RESPONDENT(S): BANKERS LIFE AND CASUALTY COMPANY et.al.	
TOMA VS BANKERS LIFE AND CASUALTY COMPANY [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2018-00038568-CU-OE-CTL

CASE ASSIGNMENT

Judge: Randa Trapp

Department: C-70.

COMPLAINT/PETITION FILED: 08/01/2018

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	04/05/2019	10:00 am	C-70	Randa Trapp

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

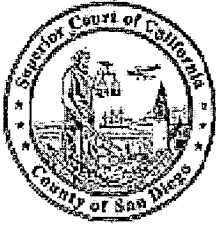
DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

***ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2018-00038568-CU-OE-CTL CASE TITLE: Toma vs Bankers Life and Casualty Company [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Androw Toma	
DEFENDANT(S): BANKERS LIFE AND CASUALTY COMPANY et.al.	
SHORT TITLE: TOMA VS BANKERS LIFE AND CASUALTY COMPANY [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2018-00038568-CU-OE-CTL

Judge: Randa Trapp

Department: C-70

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 08/02/2018

JUDGE OF THE SUPERIOR COURT

1 WILLIAM HAYS WEISSMAN, Bar No.
178976

2 LITTLER MENDELSON, P.C.

Treat Towers

3 1255 Treat Boulevard

Suite 600

4 Walnut Creek, CA 94597

Telephone: 925.932.2468

5 Fax No.: 925.946.9809

6 Attorneys for Defendants

BANKERS LIFE AND CASUALTY

7 COMPANY AND COLONIAL PENN LIFE

8 INSURANCE COMPANY

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 ANDROW TOMA, on behalf of
12 himself, all others similarly situated,
and the general public,

13 Plaintiffs,

14 v.

15 BANKERS LIFE AND
CASUALTY COMPANY, an
16 Illinois Corporation; COLONIAL
PENN LIFE INSURANCE
17 COMPANY, a Pennsylvania
Corporation; and DOES 1 through
18 100, inclusive,

19 Defendants.

Case No.: **'18CV2046 WQHAGS**

(San Diego County Superior Court Case
No. 37-2018-00038568-CU-OE-CTL)

**DECLARATION OF NATHAN
RICHARDSON IN SUPPORT OF
BANKERS LIFE AND CASUALTY
COMPANY'S NOTICE OF
REMOVAL OF ACTION**

Complaint Filed: August 1, 2018

20
21 I, Nathan Richardson, declare as follows:

22 1. I make this declaration in support of Defendant Bankers Life and Casualty
23 Company's Notice of Removal. I currently serve as Senior Vice President, Sales &
24 Distribution for Bankers Life and Casualty Company ("Bankers"). I have been with
25 the company since May of 1996. I am over the age of 18, have personal knowledge of
26 the matters contained herein, and am able to testify to them if called to do so.

27 2. Bankers is incorporated under the laws of the state of Illinois.
28

1 3. Bankers' principal place of business is in Chicago, Illinois, where its
2 headquarters is located. The Chicago, Illinois, headquarters is the actual center of
3 direction, control and coordination of Bankers' operations.

4 4. The majority of Bankers' administrative functions and physical
5 operations are also performed in Chicago, Illinois.

6 5. In my role as a Senior Vice President I have access to the agent files and
7 commission statements for independent insurance agents, including plaintiff Andrew
8 Toma. I have reviewed Mr. Toma's agent file and commission statements. Mr. Toma
9 was appointed an independent insurance agent for Bankers Life & Casualty Company
10 on February 22, 2017, and he voluntarily terminated his appointment on April 6, 2017.
11 Mr. Toma's file indicates that he lived in California the entire time that he worked for
12 Bankers Life & Casualty Company and that he is a citizen of the United States.

13 6. Bankers Life & Casualty Company has no records of paying any
14 commissions to Mr. Toma.

15
16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct. Executed on September 4, 2018, at Chicago, Illinois.

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21 
22 NATHAN RICHARDSON

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24 Firmwide:156710433.1 999999.2179

1 WILLIAM HAYS WEISSMAN, Bar No. 178976
LITTLER MENDELSON, P.C.
2 Treat Towers
1255 Treat Boulevard
3 Suite 600
Walnut Creek, CA 94597
4 Telephone: 925.932.2468
Fax No.: 925.946.9809

5 Attorneys for Defendant
6 BANKERS LIFE AND CASUALTY COMPANY
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ANDROW TOMA, on behalf of himself,
11 all others similarly situated, and the general
public,

12 Plaintiffs,

13 v.

14 BANKERS LIFE AND CASUALTY
COMPANY, an Illinois Corporation;
15 COLONIAL PENN LIFE INSURANCE
COMPANY, a Pennsylvania Corporation;
16 and DOES 1 through 100, inclusive,

17 Defendants.
18

(San Diego County Superior Court Case No.
37-2018-00038568-CU-OE-CTL)

**DECLARATION OF RONALD L.
JACKSON IN SUPPORT OF
COLONIAL PENN LIFE
INSURANCE COMPANY'S NOTICE
OF REMOVAL OF ACTION**

Complaint Filed: August 1, 2018

'18CV2046 WQHAGS

19 I, Ronald L. Jackson, declare as follows:

20 1. I make this declaration in support of Defendant Colonial Penn Life
21 Insurance Company's (Colonial Penn) Notice of Removal. I am Assistant Secretary of
22 Colonial Penn Life Insurance Company and am authorized to make this Declaration on
23 its behalf. I am familiar with the business and operations of Colonial Penn Life
24 Insurance Company. I am over the age of 18, have personal knowledge of the matters
25 contained herein, and am able to testify to them if called to do so.

26 2. Colonial Penn is incorporated under the laws of the state of Pennsylvania.
27
28

1 3. Colonial Penn's principal place of business is in Philadelphia,
2 Pennsylvania, where its headquarters is located. The Philadelphia, Pennsylvania,
3 Carmel, Indiana and Chicago, Illinois headquarters are the actual centers of direction,
4 control and coordination of Colonial Penn's operations.

5 4. The majority of Colonial Penn's administrative functions and physical
6 operations, are performed out of its Philadelphia, Pennsylvania, headquarters and in
7 Carmel, Indiana.

8
9
10 I declare under penalty of perjury under the laws of the United States that the
11 foregoing is true and correct. Executed on August 31, 2018, at Carmel, Indiana.
12

13
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15 RONALD L. JACKSON
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WILLIAM HAYS WEISSMAN, Bar No. 178976
LITTLER MENDELSON, P.C.
Treat Towers
1255 Treat Boulevard
Suite 600
Walnut Creek, CA 94597
Telephone: 925.932.2468
Fax No.: 925.946.9809

Attorneys for Defendant
BANKERS LIFE AND CASUALTY COMPANY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANDROW TOMA, on behalf of himself,
all others similarly situated, and the general
public,

Plaintiffs,

v.

BANKERS LIFE AND CASUALTY
COMPANY, an Illinois Corporation;
COLONIAL PENN LIFE INSURANCE
COMPANY, a Pennsylvania Corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. **'18CV2046 WQHAGS**

(San Diego Superior Court Case No. 37-2018-
00038568-CU-OE-CTL)

CERTIFICATE OF SERVICE

Complaint Filed: August 1, 2018

I am employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Treat Towers, 1255 Treat Boulevard, Suite 600, Walnut Creek, California 94597. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On September 4, 2018, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**NOTICE TO FEDERAL COURT OF REMOVAL FROM STATE
COURT**

CIVIL COVER SHEET

**DECLARATION OF NATHAN RICHARDSON IN SUPPORT
OF BANKERS LIFE AND CASUALTY COMPANY'S NOTICE**

OF REMOVAL OF ACTION

**DECLARATION OF RONALD L. JACKSON IN SUPPORT OF
COLONIAL PENN LIFE INSURANCE COMPANY'S NOTICE
OF REMOVAL OF ACTION**

DEFENDANT'S CERTIFICATION AS TO INTERESTED PARTIES

in a sealed envelope, postage fully paid, addressed as follows:

Alvin Gomez, Esq.
Stephen Noel ILG, Esq.
Gomez Law Group
2725 Jefferson Street, Suite 7
Carlsbad, CA 92008
Phone: (858) 552-0000
Fax: (858) 755-3364
Email:
alvingomez@thegomezlawgroup.com
silg@ilglegal.com
Frankzeccola@thegomezlawgroup.com

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 4, 2018, at Walnut Creek, California.

Gina Camacho

Gina R. Camacho

Firmwide:156847002.1 999999.2179

ClassAction.org

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