

1 CHRISTOPHER W. DECKER, CA Bar No. 229426
christopher.decker@ogletree.com
2 MAZEN I. KHATIB, CA Bar No. 306263
mazen.khatib@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213.239.9800
Facsimile: 213.239.9045

6 Attorneys for Defendant
7 FAIRWAY INDEPENDENT MORTGAGE
CORPORATION

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SUSANA VALDEZ, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FAIRWAY INDEPENDENT
16 MORTGAGE CORPORATION, a
Texas corporation; and DOES 1
17 through 20, inclusive,

18 Defendants.

Case No. **'18CV2748 CAB KSC**

**DEFENDANT FAIRWAY
INDEPENDENT MORTGAGE
CORPORATION'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
UNITED STATES DISTRICT COURT**

[Filed concurrently with Declaration of Christopher W. Decker In Support of Removal of Civil Action to U.S.D.C.; Declaration of Ariel Kumpinsky In Support of Civil Action to U.S.D.C.; Declaration of Steve Riese In Support of Removal of Civil Action to United States District Court; Declaration of Leonard Krupinski In Support of Defendant Fairway Independent Mortgage Corporation's Removal of Civil Action to U.S.D.C.; Notice of Party with Financial Interest; and Certificate of Service]

Complaint Filed: October 23, 2018
Trial Date: None

1 **TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN**
2 **DISTRICT OF CALIFORNIA, TO PLAINTIFF, AND TO HER ATTORNEYS**
3 **OF RECORD:**

4 PLEASE TAKE NOTICE THAT Defendant Fairway Independent Mortgage
5 Corporation (hereinafter, “Defendant” or “Fairway”), by and through the
6 undersigned counsel, hereby removes the above-entitled action from the Superior
7 Court of the State of California for the County of San Diego to the United States
8 District Court for the Southern District of California, pursuant to 28 U.S.C.
9 Sections 1332, 1441(a) and 1446. In support of such removal, Defendant states as
10 follows:

11 **I. BACKGROUND**

12 1. On or about October 23, 2018, Plaintiff commenced this action by filing
13 an unverified Complaint in the Superior Court of California, County of San Diego,
14 captioned Susana Valdez, an individual, on behalf of herself and on behalf of all
15 persons similarly situated, v. Fairway Independent Mortgage Corporation, and
16 DOES I through 20, inclusive, and bearing case number 37-2018-00053677-CU-OE-
17 CTL. (A true and correct copy of this Complaint is attached as “Exhibit A” to this
18 Notice of Removal (“Notice”).)

19 2. Fairway was served with this action on November 6, 2018. (Proof of
20 Service, a true and correct copy of which is attached hereto as “Exhibit B”).

21 3. The Complaint asserts claims for: (1) Failure to Pay Overtime in
22 Violation of Cal. Lab. Code §§ 510, 1194, 1198 and the Applicable IWC Wage
23 Order; (2) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code
24 §§ 226.7 & 512 and the Applicable IWC Wage Order; (3) Failure to Provide
25 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and the Applicable
26 IWC Wage Order; (4) Failure to Provide Wages When Due in Violation of § Cal.
27 Lab. Code § 201, 202 and 203; (5) Failure to Provide Accurate Itemized Wage
28 Statements in Violation of Cal. Lab. Code § 226; and (6) Unfair Competition in

1 Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*

2 4. As set out more fully below, based on the allegations of the Complaint
3 and other evidence collected by Fairway, this Court has original jurisdiction over this
4 action under the Class Action Fairness Act ("CAFA") 28 U.S.C. § 1332(d) and hence
5 the action may be removed by Defendant pursuant to 28 U.S.C. § 1441. Original
6 jurisdiction exists here because there are at least 100 class members in all proposed
7 plaintiff classes, the combined claims of all class members exceed \$5,000,000
8 exclusive of interest and costs, and Fairway is a citizen of a different state than at
9 least one class member.

10 **II. DEFENDANT HAS SATISFIED THE PROCEDURAL**
11 **REQUIREMENTS FOR REMOVAL.**

12 **A. Timeliness**

13 5. The time to remove under 28 U.S.C. § 1446(b) does not begin to run
14 until receipt by the defendant, through service or otherwise, of a pleading, motion,
15 order or other paper from which it may first be ascertained that the case is one which
16 is or has become removable. *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 694
17 (9th Cir. 2005). Here, the four corners of the Complaint does not provide readily
18 ascertainable grounds for removal. The Complaint does not allege sufficient facts to
19 calculate the amount in controversy with reasonable certainty as to the individually
20 named plaintiff or as to the putative class. The Complaint does not allege the size of
21 any putative class nor does it allege any claim under federal law. Accordingly, as
22 mentioned, it is not possible to ascertain from the Complaint that this case is
23 removable, and, to date, Defendant has not received any other document which
24 would constitute an "other pleading, motion, order or other paper" providing this
25 missing information. (Declaration of Christopher W. Decker ¶ 5.) Accordingly, the
26 time to remove this action has not yet begun. Where the time to remove has not yet
27 expired, a defendant may remove at any time if it uncovers evidence establishing that
28 the case is removable. *Roth v. CHA Hollywood Medical Center, L.P.*, 720 F.3d 1121,

1 1125 (9th Cir. 2013). As set forth below, Defendant has only recently discovered
2 such evidence after an arduous collection and review of all records of potential class
3 members and a complex analysis of the estimated damages allocated to each cause of
4 action. Therefore, Defendant is timely removing this case based on that discovery.

5 **B. Venue**

6 6. The Superior Court of California for the County of San Diego is located
7 within the Southern District of California. Therefore, the action is properly removed
8 to this Court pursuant to 28 U.S.C. 84(d) because it is the "district and division
9 embracing the place where such action is pending." 28 U.S.C. § 1441(a).

10 **C. Procedural Requirements**

11 7. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and
12 orders served upon Defendant are attached as Exhibits to this Notice of Removal.

13 8. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is
14 being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the
15 Superior Court of California in the County of San Diego and with the Clerk of the
16 Southern District of California. True and correct copies of the Notice to the Plaintiff
17 and the state court shall be filed promptly.

18 **III. THE CASE IS REMOVABLE PURSUANT TO THE CLASS ACTION**
19 **FAIRNESS ACT ("CAFA")**

20 9. As set forth below, Plaintiff's claims as alleged in the Complaint are
21 removable under 28 U.S.C. § 1332(d).

22 10. Under CAFA, the Federal District Court has jurisdiction if:

- 23 (a) There are at least 100 class members in all proposed plaintiff
24 classes; and
25 (b) The combined claims of all class members exceed \$5 million
26 exclusive of interest and costs; and
27 (c) Any class member (named or not) is a citizen of a different state
28 than any defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B),

1 1453(a).

2 **A. There are at least 100 Class Members in all Proposed Plaintiff**
3 **Classes**

4 11. In this action, Plaintiff seeks to represent a class of all persons
5 employed by Defendant in non-exempt positions in California at any time beginning
6 on October 23, 2014 to the date of class certification (Complaint ¶ 19).¹ Using the
7 present date as the period end date, the class exceeds 100 members, and therefore the
8 requirement of 29 U.S.C. § 1332(d)(5)(B) is satisfied.

9 12. Plaintiff’s Complaint omits any reference to the number of individuals
10 in the putative class but also asserts that the number class members exceeds the
11 minimum requirements for numerosity under California law. (Complaint ¶ 24.)
12 Based on a review and analysis of Fairway’s timekeeping and payroll records, the
13 company has employed 678 individuals in non-exempt positions in California from
14 October 23, 2014 to present.² (Declaration of Ariel Kumpinsky [“Kumpinsky
15 Decl.”] ¶ 8.)³ Thus, the first requirement for CAFA jurisdiction is satisfied.

16 13. Based on the above, there are more than 100 class members in all
17 proposed plaintiff classes.

18 **B. The Combined Claims of all Class Members Exceed \$5 Million**
19 **Exclusive of Interest and Costs.**

20 14. Based on Plaintiff’s allegations in the Complaint and other evidence

21 _____
22 ¹ Plaintiff simultaneously seeks to represent a subclass consisting of all persons
23 employed by Defendant in non-exempt positions in California at any time beginning
24 on October 23, 2015 to the date of class certification (Complaint ¶ 20). This sub-
25 class has a technical role. The first cause of action under Bus. & Prof. Code §§
26 17200, *et seq.* extends by one additional year the three-year statute of limitations that
27 ordinarily applies to claims under the Labor Code 226.7 and 512.

28 ² Specifically, the date November 28, 2018 is used as the “present date.”

³ Mr. Kumpinsky attests to certain calculations performed on employment and
payroll data provided by Fairway. The precise contents of that data set are
described in the Declaration of Steve Riese, filed concurrently herewith, and the
transmission of that data set to Mr. Kumpinsky is confirmed by the Declaration of
Christopher W. Decker, also filed concurrently herewith.

1 collected by Fairway, the aggregate value of the claims of all proposed plaintiff
2 classes exceeds the \$5 million threshold needed to establish federal jurisdiction
3 under the Class Action Fairness Act. The \$5 million jurisdictional minimum may be
4 based on aggregation of the claims of all potential class members. 28 U.S.C. §
5 1132(d)(6). As is shown below, the evidence shows that Plaintiff's Causes of Action
6 exceed \$5 million in controversy.

7 **1. Plaintiff's First Cause of Action for Failure to Pay Overtime**
8 **Places at least \$251,765.42 in Controversy.**

9 15. Plaintiff's First Cause of Action seeks wages for Defendant's alleged
10 failure to pay overtime "because Defendants improperly calculated the overtime rate
11 by failing to include performance bonuses, commissions, other incentive pay and
12 shift differentials in the computation of their regular rate of pay." (Complaint ¶¶ 23,
13 29, 35-42.)

14 16. Plaintiff alleges that, "During the relevant time period, Defendants
15 failed to pay Plaintiff and the class members overtime wages for all overtime hours
16 worked." (Complaint ¶ 39.) Under Labor Code section 510(a), an employee is
17 entitled to compensation at 1.5 times the employee's regular rate of pay for "work in
18 excess of eight hours in one workday and any work in excess of 40 hours in any one
19 workweek and the first eight hours worked on the seventh day of work in any one
20 workweek."

21 18. The statute of limitations for a claim seeking wages for failure to pay
22 overtime at the correct rate is three years. Cal. Lab. Code § 203; Cal. Civ. Proc. §
23 338. This statute of limitations is extended to four years where, as here, the
24 complaint includes a claim for Unfair Business Practices under Bus. & Prof. Code
25 § 17200. Accordingly, if the allegations of the Complaint are true, Defendant owes
26 additional remuneration to each individual employed in a non-exempt position in
27 California who received a performance bonus, commission, other incentive pay or
28 shift differential and also received compensation for overtime hours. Defendant

1 would owe additional remuneration for each such hour from October 23, 2014 to the
2 present.

3 19. The Complaint does not allege the number of overtime hours for which
4 additional overtime compensation is due, the amount of the underpayment, or how
5 that amount could be determined, except to say that performance bonuses,
6 commissions, other incentive pay and shift differentials to each employee should
7 have been included in that employee's regular rate of pay. Based on a review of
8 Defendant's records, the Putative Class Members worked the following regular (i.e.
9 nonovertime), overtime and doubletime hours between October 23, 2014 and the
10 present.

	Regular	Overtime	Doubletime	Total
2014	9,192.7	418.8	0	9,611.5
2015	96,988.2	3,274.1	0	100,262.3
2016	222,136.5	6,700.1	0	228,836.6
2017	398,158.3	6,600.8	64.9	404,824
2018	582,346.7	11,418.3	200.5	593,965.5

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19 (Kumpinsky Decl. ¶ 11). If Plaintiff's allegations in the Complaint are true, then
20 Fairway owes additional compensation for these overtime and doubletime hours, as
21 performance bonuses, commission, other incentive pay and shift differentials were
22 allegedly not included in the regular rate of pay when computing the applicable
23 overtime premium rate.

24 20. Based on a review of Defendant's records, Putative Class Members
25 collectively received the following amounts in bonuses and commissions, between
26 October 23, 2014 and the present.

	Hourly Wages	Commissions & Bonuses	Total
2014	\$153,739.38	\$135,440.64	\$289,180.02
2015	\$1,521,826.96	\$1,608,888.16	\$3,130,715.12
2016	\$3,795,279.88	\$4,755,072.64	\$8,550,352.52
2017	\$7,126,970.63	\$7,112,907.5	\$14,239,878.13
2018	\$11,194,626.41	\$9,433,437.55	\$20,628,063.96

(Kumpinsky Decl. ¶ 12).

21. For purposes of removal under CAFA, one can estimate with reasonable accuracy the amount to be added to the regular rate of pay due to the payment of bonuses and commissions as follows: 1) Divide the total bonuses and commissions paid to the putative class in a calendar year by the total hours worked by the putative class in that calendar year; 2) Multiply this amount by .5 to calculate the hourly overtime premium attributable to these bonuses and commissions, and double that hourly overtime premium to calculate the hourly doubletime premium attributable to these bonuses and commissions;⁴ 3) Multiply that hourly overtime premium by the overtime hours worked (and the hourly doubletime premium by the doubletime hours worked) to calculate the unpaid overtime (and doubletime) wages due, as illustrated below:

⁴ If the ruling of *Alvarado v. Dart Container Corp. of California*, 229 Cal. Rptr. 3d 347 (2018), applies to the bonuses and commissions here, the total bonuses and commissions would be divided only by *nonovertime* hours, and then multiplied by 1.5, resulting in an amount-in-controversy at least three times greater than calculated here. *Id.* at 370. This Notice of Removal conservatively calculates the overtime payable on the bonus under the formula applicable to production bonuses, piecework bonuses and/or commissions. *See id.* at 365-66; DLSE, The 2002 Update of the DLSE Enforcement Policies and Interpretations Manual (Revised) (April 2017) <http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfmanual.pdf> at § 49.2.4.

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	Commissions & Bonuses	Total Hours Worked	Add to Regular Rate	OT Premium	DT Premium
2014	\$135,440.64	9,611.5	14.09	7.05	14.10
2015	\$1,608,888.16	100,262.3	16.05	8.02	16.05
2016	\$4,755,072.64	228,836.6	20.78	10.39	20.78
2017	\$7,112,907.5	404,824	17.57	8.78	17.57
2018	\$9,433,437.55	593,965.5	15.88	7.94	15.88

	Overtime Hours	OT Premium	Total Allegedly Unpaid OT
2014	418.8	7.05	2,952.54
2015	3,274.1	8.02	26,258.28
2016	6,700.1	10.39	69,614.04
2017	6,600.8	8.78	57,955.03
2018	11,418.3	7.94	90,661.30
TOTAL			\$247,441.19

	Doubletime Hours	DT Premium	Total Allegedly Unpaid DT
2014	0	14.10	0
2015	0	16.05	0
2016	0	20.78	0
2017	64.9	17.57	1,140.29
2018	200.5	15.88	3,183.94
TOTAL			\$4,324.23

1 22. Hence, based on the above conservative calculations, Plaintiff’s first
2 cause of action for failure to pay overtime places at least \$251,765.42 (\$247,441.19
3 + \$ 4,324.23) in controversy.

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5 **2. Plaintiff’s Second⁵ Cause of Action for Failure to Provide**
6 **Meal Periods Places at least \$1,145,893.72 in Controversy.**

7 23. Plaintiff’s Second Cause of Action seeks premium wages for Fairway’s
8 alleged failure to provide meal periods as required by law. (Complaint ¶¶ 30, 43-51.)

9 24. Plaintiff alleges that, "During the relevant time period, Plaintiff and
10 class members did not receive compliant meal periods for working more than five (5)
11 and/or ten (10) hours per day because, among other things, Defendants did not
12 provide timely meal periods for shifts over five hours, and Defendants did not
13 provide timely meal periods for shifts over 10 hours." (Complaint ¶ 48.)

14 25. Plaintiff also alleges that “Defendants failed to pay Plaintiff and class
15 members the full meal period premium for missed and untimely meal periods
16 pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC wage
17 order.” (Complaint ¶ 50.) As a result, Plaintiff alleges that she and the other class
18 members are entitled to one additional hour of compensation, at each employee’s
19 regular rate of pay, for each work-date that a meal was not provided. (Complaint ¶
20 51.)

21 26. The statute of limitations for a claim seeking premium wages for failure
22 to provide legally required meal periods and rest breaks is three years. Cal. Lab.
23 Code §§ 203 and 338. This statute of limitations is extended to four years where, as
24 here, the complaint includes a claim for Unfair Business Practices under Bus. &
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26 ⁵ As noted above, the purpose of the sixth cause of action under Bus. & Prof. Code
27 §§ 17200, et seq. is simply to extend the claims under the Labor Code by an
28 additional year; as a result, the claims under the Labor Code are calculated using a
four-year prior to filing period, and no separate calculation for the first cause of
action is needed.

1 Prof. Code § 17200. Accordingly, if the allegations of the Complaint are true,
 2 Fairway owes each individual employed in a non-exempt position in California an
 3 additional hour of pay for each work day between October 23, 2014 and the present
 4 that such individual either did not receive a meal break prior to their fifth hour of
 5 work or did not receive a second meal break on days when employee worked ten
 6 hours of work or more. The Complaint does not allege the number of meal periods
 7 not provided to Plaintiff or putative class members for which premium pay is due.
 8 However, where a class action complaint alleging failure to provide meal periods
 9 (and/or rest breaks) does not provide this detail, the Court should assume for
 10 purposes of calculating the amount in controversy that each putative class member is
 11 entitled to premium pay for at least one meal period per week worked. See, e.g.,
 12 *Quintana v. Claire's Stores, Inc.*, 2013 WL 1736671 at *6 (N.D. Cal.); *Jasso v.*
 13 *Money Market Express, Inc.*, 2012 WL 699465 (ND. Cal.).

14 27. The Complaint does not allege the number of weeks worked by Putative
 15 Class Members between October 23, 2014 to the present. However, this number can
 16 be estimated with reasonable accuracy from Fairway's business records. Based on
 17 those records, Putative Class Members collectively worked the following regular (i.e.
 18 nonovertime) hours in each calendar year between October 23, 2014 to the present.

	Regular Hours
2014	9,192.7
2015	96,988.2
2016	222,136.5
2017	398,158.3
2018	582,346.7

27 (Kumpinsky Decl. ¶ 11.)
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1 28. Assuming, conservatively, that all Putative Class Members were full-
 2 time employees who always worked at least eight hours on each workday, one can
 3 derive the minimum number of days worked by Putative Class Members by dividing
 4 these amounts by eight. One missed meal period per week equates to one missed
 5 meal period for every five days worked or 40 regular hours worked. Accordingly,
 6 for purposes of calculating the amount in controversy, this Court should assume one
 7 missed meal period for every 40 regular hours worked by Putative Class Members,
 8 which yields the following numbers of such violations.

	Regular Hours	Meal Period Violations
2014	9,192.7	229.81
2015	96,988.2	2,424.71
2016	222,136.5	5,553.41
2017	398,158.3	9,953.96
2018	582,346.7	14,558.67

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 18 29. The premium wage due for each such meal period violation would be an
 19 additional hour of compensation at the employee’s regular rate of compensation.
 20 While the matter has not been definitively resolved, some courts have held that the
 21 phrase “regular rate of compensation” in Labor Code Section 226.7 is equivalent to
 22 “regular rate of pay” and therefore includes both hourly rates and any other amounts
 23 (such as bonuses and commissions) which must be included in the regular rate of pay
 24 as a matter of law. *See Ibarra v. Wells Fargo Bank, N.A.*, No. CV 17-4344 PA
 25 (ASX), 2018 WL 2146380, at *6 (C.D. Cal. May 8, 2018); *Studley v. All. Healthcare*
 26 *Servs., Inc.*, 2012 WL 12286522, at *4 (C.D. Cal. July 26, 2012).

27 30. To estimate the regular rate of compensation due for each meal period
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1 violation on a class-wide basis, one can divide the total compensation paid to
 2 Putative Class Members by the total hours worked by Putative Class Members,
 3 yielding the following results:

	Total Hours Worked	Total Wages Paid	Average Regular Rate
2014	9,611.5	\$289,180.02	30.09
2015	100,262.3	\$3,130,715.12	31.23
2016	228,836.6	\$8,550,352.52	37.36
2017	404,824	\$14,239,878.13	35.18
2018	593,965.5	\$20,628,063.96	34.73

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 13 31. Multiplying the average regular rate of compensation by the number of
 14 meal period violations yields the amount placed in controversy by Plaintiff's cause
 15 of action for failure to provide meal periods, as follows:

	Meal Period Violations	Average Regular Rate	Allegedly Unpaid Meal Period Premiums
2014	229.81	30.09	6,914.98
2015	2,424.71	31.23	75,723.69
2016	5,553.41	37.36	207,475.40
2017	9,953.96	35.18	350,180.31
2018	14,558.67	34.73	505,599.34
TOTAL			\$1,145,893.72

26 32. Thus, Plaintiffs Second Cause of Action places at least \$1,145,893.72 in
 27 controversy.

1 **3. Plaintiff's Third Cause of Action for Failure to Provide Rest**
2 **Periods Places at least \$1,145,893.72 in Controversy.**

3 33. Plaintiff's Third Cause of Action seeks premium wages for Fairway's
4 alleged failure to provide rest breaks as required by law. (Complaint ¶¶ 31, 52-58.)

5 34. Plaintiff alleges that Defendant failed to provide employees the legally
6 required rest periods for every four hours worked. Plaintiff alleges that the class
7 members did not receive their first rest period of at least ten minutes for every four
8 hours or "major fraction thereof worked because they were required to work through
9 their daily rest periods and/or were not authorized to work their rest periods."

10 (Complaint ¶ 55.) Plaintiff further alleges that the class members are entitled to one
11 hour of premium pay for each day in which a rest period was not provided.

12 (Complaint ¶ 56-57.)

13 35. The statute of limitations for a claim seeking premium wages for failure
14 to provide legally required meal periods and rest breaks is three years. Cal. Lab.
15 Code §§ 203 and 338. This statute of limitations is extended to four years where, as
16 here, the complaint includes a claim for Unfair Business Practices under California
17 Business and Professions Code section 17200. Accordingly, if the allegations of the
18 Complaint are true, Fairway owes each individual employed in a non-exempt
19 position in California an additional hour of pay for each work day between October
20 23, 2014 and the present that such individual worked in excess of 3.5 hours. The
21 Complaint does not allege the number of rest breaks not provided to Plaintiff or
22 putative class members for which premium pay is due. However, where a class
23 action complaint alleging failure to provide meal periods and/or rest breaks does not
24 provide this detail, the Court should assume for purposes of calculating the amount
25 in controversy that each putative class member is entitled to premium pay for at least
26 one meal period and one rest break per week worked. See, e.g., *Quintana v. Claire's*
27 *Stores, Inc.*, 2013 WL 1736671 at *6 (N.D. Cal.); *Jasso v. Money Market Express,*
28 *Inc.*, 2012 WL 699465 (N.D. Cal.).

1 36. The Complaint does not allege the number of weeks worked by Putative
2 Class Members between October 23, 2014 to the present. However, this number can
3 be estimated with reasonable accuracy from Fairway's business records. Based on
4 those records, Putative Class Members collectively worked the following regular (i.e.
5 nonovertime) hours in each calendar year between October 23, 2014 to the present.

	Regular Hours
2014	9,192.7
2015	96,988.2
2016	222,136.5
2017	398,158.3
2018	582,346.7

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14 (Kumpinsky Decl. ¶ 11.)

15 37. Assuming, conservatively, that all Putative Class Members were full-
16 time employees who always worked at least eight hours on each workday, one can
17 derive the minimum number of days worked by dividing these amounts by eight.
18 One missed rest break per week equates to one missed rest break for every five days
19 worked or 40 regular hours worked. Accordingly, for purposes of calculating the
20 amount in controversy, this Court should assume one missed rest break for every 40
21 regular hours worked by Putative Class Members, which yields the following
22 numbers of such violations.

	Regular Hours	Rest Break Violations
2014	9,192.7	229.81
2015	96,988.2	2,424.71
2016	222,136.5	5,553.41

2017	398,158.3	9,953.96
2018	582,346.7	14,558.67

38. The premium wage due for each such rest break violations would be an additional hour of compensation at the employee's regular rate of compensation. While the matter has not been definitively resolved, some courts have held that the phrase "regual rate of compensation" in Labor Code Section 226.7 is equivalent to "regular rate of pay" and therefore includes both hourly rates and any other amounts (such as bonuses and commissions) which must be included in the regular rate of pay as a matter of law. *See Ibarra v. Wells Fargo Bank, N.A.*, No. CV 17-4344 PA (ASX), 2018 WL 2146380, at *6 (C.D. Cal. May 8, 2018); *Studley v. All. Healthcare Servs., Inc.*, 2012 WL 12286522, at *4 (C.D. Cal. July 26, 2012).

39. To estimate the regular rate of compensation due for each rest break violation on a class-wide basis, one can divide the total compensation paid to Putative Class Members by the total hours worked by Putative Class Members, yielding the following results:

	Total Hours Worked	Total Wages Paid	Average Regular Rate
2014	9,611.5	\$289,180.02	30.09
2015	100,262.3	\$3,130,715.12	31.23
2016	228,836.6	\$8,550,352.52	37.36
2017	404,824	\$14,239,878.13	35.18
2018	593,965.5	\$20,628,063.96	34.73

40. Multiplying the average regular rate of compensation by the number of rest break violations yields the amount placed in controversy by Plaintiff's cause of

1 action for failure to provide rest breaks, as follows:

	Rest Break Violations	Average Regular Rate	Allegedly Unpaid Rest Break Premiums
2014	229.81	30.09	6,914.98
2015	2,424.71	31.23	75,723.69
2016	5,553.41	37.36	207,475.40
2017	9,953.96	35.18	350,180.31
2018	14,558.67	34.73	505,599.34
TOTAL			\$1,145,893.72

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12 41. Thus, Plaintiff's Third Cause of Action places at least \$1,145,893.72 in
13 controversy.

14 **4. Plaintiff's Fourth Cause of Action Places at least**
15 **\$1,246,586.11 in Controversy.**

16 42. Plaintiff's Fourth Cause of Action seeks penalties under California
17 Labor Code section 203 for failure to timely pay wages due at termination.
18 (Complaint ¶¶ 59-64.) Section 203 provides that, if an employer willfully fails to pay
19 all wages due at termination, the employer must, as a penalty, continue to pay the
20 subject employees' wages until the back wages are paid in full or an action is
21 commenced, up to a maximum of 30 days continuation wages.

22 43. As noted above, for purposes of calculating the amount-in-controversy,
23 this Court can and should assume that each putative class member experienced one
24 meal period violation and one rest period violation per week. On that reasonable
25 assumption, each putative class member would be owed at least one meal period
26 premium and one rest break premium for each week worked. Hence, each putative
27 class member who terminated did not receive all wages due to him or her at the time
28

1 of termination, and any putative class member member whose employment
2 terminated more than 30 days ago is entitled to 30 days' continuation wages as a
3 penalty under Labor Code section 203.

4 44. The applicable statute of limitations for a claim under Labor Code
5 section 203 is three years. Cal. Lab. Code §§ 203 and 338. If the allegations of the
6 Complaint and Plaintiff's legal theories are correct, Fairway owes the maximum 30
7 days of continuation wages to each and every individual employed in a non-exempt
8 position in California who terminated employment between October 23, 2015 and
9 the present. Review of Fairway's employment records reveals that there are at least
10 345 such individuals. (Kumpinsky Decl. ¶ 8.) If the allegations of the Complaint
11 and Plaintiff's legal theories are correct, Fairway owes thirty (30) days of
12 continuation wages for a full-time hourly employee at the employee's final wage rate.
13 Multiplying each of these terminated employees' final hourly rate of pay by 240
14 hours (30 days * 8 hours/day) yields \$1,246,586.11. (Kumpinsky Decl. ¶ 9). This
15 amount represents a conservative estimate, as it includes only the employee's base
16 hourly pay, and not any bonus or commission wages.

17 45. Thus, Plaintiff's claim for waiting time penalties under the Fourth Cause
18 of Action place at least \$1,246,586.11 in controversy.

19 **5. Plaintiff's Fifth Cause of Action Places at least \$909,000 in**
20 **Controversy.**

21 46. Plaintiff's Fifth Cause of Action seeks penalties under California Labor
22 Code section 226(e) for failure to provide accurate itemized wage statements.
23 (Complaint ¶¶ 65-71.) The applicable penalty is fifty dollars for the initial pay period
24 in which a violation occurs, and one hundred dollars for each violation in a
25 subsequent pay period, up to a maximum aggregate penalty of four thousand dollars.
26 Cal. Lab. Code § 226(e). Plaintiff alleges that Defendant violated Cal. Lab. Code §
27 226(e) by not accurately stating "the gross and net wages earned, total hours worked,
28 and all applicable hourly rates in effect and the number of hours worked at each

1 hourly rate by Plaintiff and class members.” (Complaint ¶ 67.)

2 47. As noted above, for purposes of calculating the amount-in-controversy,
3 this Court can and should assume that each putative class member experienced one
4 meal period violation and one rest period violation per week. On that reasonable
5 assumption, each putative class member would be owed at least one meal period
6 premium and one rest break premium for each week worked. As these premium
7 wages were not paid to them, they did not appear on the wage statement issued to
8 them, and – if Plaintiff’s allegations and legal theories are correct – the wage
9 statement did not accurately state all gross and net wages earned. Hence, each wage
10 statement issued to putative class members was inaccurate, as it did not include the
11 weekly meal and rest period premium wages which, according to Plaintiff, were due
12 to putative class members but not paid.

13 48. The Labor Code provides for a penalty of \$50.00 for the initial pay
14 period in which a violation of Labor Code § 226(a) occurred, and \$100.00 for each
15 subsequent pay period in which a violation of Labor Code § 226(a) occurred, not to
16 exceed an aggregate penalty of \$4,000.00 per class member. Labor Code § 226(e).

17 49. The applicable statute of limitations to recover penalties under
18 California Labor Code section 226(e) is one year. Cal. Civ. Pr. Code § 340(a).
19 Accordingly, if the allegations of the Complaint and Plaintiff’s legal theories are
20 correct, any individual employed by Fairway in a non-exempt position in California
21 on or after October 23, 2017 through present is entitled to penalties under Labor
22 Code section 226(e) for each wage statement issued during that time period. Based
23 on review of Defendant’s timekeeping and payroll records, the company has
24 employed 546 non-exempt individuals in California during that time and has issued
25 9,363 wage statements to them (Kumpinsky Decl. ¶ 10.)

26 50. Accordingly, given the inputs above, Plaintiff and the other class
27 members would be entitled to recover at least the following: [546 (initial wage
28 statements) * \$50] + [8,817 (subsequent wage statements) * \$100] = \$909,000.

1 51. Thus, Plaintiff's Fifth Cause of Action places at least \$909,000 in
2 controversy.

3 **6. Plaintiff's Prayer for Attorneys' Fees Places an Additional**
4 **\$1,174,784.74 in Controversy.**

5 34. Plaintiff seeks attorneys' fees on behalf of the putative class.
6 (Complaint, Prayer for Relief). Attorneys' fees are properly included in the amount
7 in controversy. *See, Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir.
8 2007) (statutorily-mandated attorneys' fees are properly included in the amount in
9 controversy for CAFA jurisdiction purposes); *see also Galt G/S v. JSS Scandinavia*,
10 142 F.3d 1150, 1156 (9th Cir. 1998) (attorneys' fees may properly be included in
11 calculation of the amount of controversy where an underlying statute authorizes an
12 award of attorneys' fees).

13 35. In class action litigation, courts routinely grant attorneys' fees awards
14 that range from 25% to 33% of the settlement or verdict amount. *See, e.g., Hanlon v.*
15 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) ("This circuit has established
16 25% of the common fund as a benchmark award for attorney fees."); *In re Activision*
17 *Securities Litigation*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (awarding 30%
18 attorneys' fee award and compiling cases where range of attorneys' fee award ranged
19 between 25% and more than 40%). Accordingly, including attorneys' fees of 25% is
20 reasonable when calculating the amount in controversy. *See, e.g., Giannini v.*
21 *Northwestern Mut. Life Ins. Co.*, No. C 12-77 CW, 2012 WL 1535196, at *4 (N.D.
22 Cal. Apr. 30, 2012) (holding that defendant's inclusion of attorneys' fees to satisfy
23 amount in controversy was reasonable where defendant's "base this amount by
24 multiplying by twenty-five percent the sum of the amounts placed in controversy by
25 the four claims" asserted by plaintiff.); *Jasso v. Money Mart Express, Inc.*, No. 11-
26 CV-5500 YGR, 2012 WL 699465, at *6-7 (N.D. Cal. Mar. 1, 2012) (holding that "it
27 was not unreasonable for [Defendant] to rely on" an "assumption about the
28 attorneys' fees recovery as a percentage of the total amount in controversy" and

1 noting that “it is well established that the Ninth Circuit ‘has established 25% of the
2 common fund as a benchmark award for attorney fees.’”) (citation omitted).

3 36. Additionally, the Ninth Circuit has recently confirmed that future
4 attorneys’ fees must be included in an amount in controversy calculation under
5 CAFA. *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 2018 U.S. App. LEXIS 22036,
6 *17 (9th Cir. 2018). Accordingly, assuming the low-end 25% figure reflected in the
7 case law, a reasonable and conservative assumption for purposes of establishing the
8 amount-in-controversy, attorneys’ fees in this matter would amount to at least 25%
9 of the unpaid wages and penalties sought, which, as detailed above, amount to
10 \$4,699,138.97 [$\$251,765.42 + \$1,145,893.72 + \$1,145,893.72 + \$909,000 +$
11 $\$1,246,586.11 = \$4,699,138.97$]. Plaintiff’s prayer for attorney’s fees therefore adds
12 at least \$1,174,784.74 (25% of \$4,699,138.97) to the amount-in-controversy. This
13 brings the total amount-in-controversy to \$5,873,923.71 ($\$4,699,138.97 +$
14 $1,174,784.74$), exceeding the \$5 million threshold needed to establish federal
15 jurisdiction under the Class Action Fairness Act.⁶

16 **C. Any Class Member Is A Citizen Of A Different State Than Any**
17 **Defendant**

18 52. For purposes of establishing diversity under CAFA, this Court need
19 only find that there is diversity between one putative class member and the named
20 Defendant, Fairway. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(a).

21 **A. Plaintiff is a citizen of California.**

22 53. Plaintiff alleges that she is a citizen of California. (Complaint ¶ 10.)

23 **B. Defendant is a citizen of Wisconsin or Texas.**

24 54. Defendant was at the time of the filing of this action, and still is, a
25

26 ⁶ Should the Court or opposing counsel request additional information, evidence
27 and/or calculations to demonstrate that this Action places at least \$5m in
28 controversy, Defendant reserves the right to refine the methodologies used here and
calculate the amount-in-controversy with greater precision, which may significantly
increase the result.

1 corporation formed under the laws of Texas. (Declaration of Leonard Krupinski
2 [“Krupinski Decl.”] ¶ 3.)

3 55. Pursuant to 28 United States Code § 1332(c), "a corporation shall be
4 deemed to be a citizen of any State by which it has been incorporated and of the
5 State where it has its principal place of business." The United States Supreme Court
6 established the proper test for determining a corporation's principal place of business
7 for purposes of diversity jurisdiction in *Hertz Corporation v. Friend*, 130 S.Ct. 1181
8 (2010). The Supreme Court concluded that the "'principal place of business' is best
9 read as referring to the place where a corporation's officers direct, control, and
10 coordinate the corporation's activities." *Id.* at 1184. The Court further clarified that
11 the principal place of business is the place where the corporation "maintains its
12 headquarters — provided that the headquarters is the actual center of direction,
13 control, and coordination." *Id.*

14 56. Fairway’s principal place of business and the location that its directors
15 direct, control, and coordinate its corporate activities is Wisconsin or Texas.
16 (Krupinski Decl. ¶P 3-5.)

17 57. Therefore, at all material times, Defendant has been a citizen of the
18 State of Wisconsin or Texas, and not of the State of California.

19 58. There are no other named Defendants in this action. Accordingly, there
20 is no requirement for anyone else to join in this removal. The citizenship of
21 fictitiously-named "Doe" defendants is to be disregarded for the purposes of removal
22 based on diversity jurisdiction. 28 U.S.C. §1441(a).

23 59. Since Plaintiff and Defendant are citizens of different states, the third
24 requirement of CAFA jurisdiction is satisfied. Moreover, because Defendant is not a
25 citizen of California, the exceptions to CAFA jurisdiction under 28 U.S.C. §
26 1332(d)(3) and (d)(4) are inapplicable.

27
28

1 **IV. REMOVAL IS PROPER BECAUSE THIS COURT HAS**
2 **SUPPLEMENTAL MATTER JURISDICTION PURSUANT TO**
3 **28 U.S.C. §§ 1332 AND 1367**

4 60. As set forth above, this action is removable under 28 U.S.C. § 1332(d).

5 61. To the extent this Court would not otherwise have jurisdiction over any
6 claim asserted in the Complaint, it may exercise supplemental jurisdiction over such
7 a claim pursuant to 28 U.S.C. § 1367.

8 **V. CONCLUSION**

9 62. This Court, therefore, has original jurisdiction over Plaintiff's claims by
10 virtue of the Class Action Fairness Act 28 U.S.C. § 1332(d)(2). This action is thus
11 properly removable to federal court pursuant to 28 U.S.C. § 1441.

12 63. In the event this Court has a question regarding the propriety of this
13 Notice of Removal, Defendant requests that it issue an Order to Show Cause so that
14 it may have the opportunity to more fully brief the basis for this removal.

15
16 WHEREFORE, Defendant removes this action to this Court.

17
18 DATED: December 6, 2018

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

19
20
21 By: /s/ Christopher W. Decker
22 Christopher W. Decker
Mazen I. Khatib

23 Attorneys for Defendant
24 FAIRWAY INDEPENDENT MORTGAGE
CORPORATION

25 36467519.5

CIVIL COVER SHEET

JS 44 (Rev. 08/18)

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

Susana Valdez

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

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

AEGIS LAW FIRM
9811 Irvine Center Drive, Suite. 100, Irvine, CA 92618
Telephone: (949) 379-6250

DEFENDANTS

Fairway Independent Mortgage Corporation

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

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

Attorneys (If Known)

'18CV2748 CAB KSC
Christopher W. Decker, Mazen Khatib, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
400 S. Hope Street, Suite 1200, Los Angeles, CA 90071

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)

- PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [X] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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

- 1 Original Proceeding
[X] 2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
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(d), 1441 and 1446

Brief description of cause:

Failure to Pay Overtime; Failure to Provide Meal Periods; Failure to Permit Rest Breaks; et al.

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: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

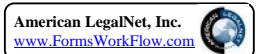
(See instructions): JUDGE DOCKET NUMBER

DATE December 6, 2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Mazen I. Khatib

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.

EXHIBIT A

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AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
ALI S. CARLSEN, State Bar No. 289964
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Attorneys for Plaintiff Susana Valdez

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/23/2018 at 01:29:18 PM
Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SUSANA VALDEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FAIRWAY INDEPENDENT
MORTGAGE CORPORATION, a Texas
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 37-2018-00053877-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Pay All Wages Due Within the Required Time and Upon Separation of Employment;
5. Failure to Furnish Accurate Wage Statements; and
6. Violation of Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Susana Valdez, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Susana Valdez (“Plaintiff”) brings this putative class action pursuant to
5 California Code of Civil Procedure section 382, on behalf of Plaintiff and all non-exempt employees
6 employed by, or formerly employed by, FAIRWAY INDEPENDENT MORTGAGE
7 CORPORATION; and DOES 1 through 20, inclusive (collectively, “Defendants”) within the State
8 of California.

9 2. Defendants are in the business of providing personal mortgage lending services.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay overtime wages;
- 17 (b) Failing to provide meal periods or compensation in lieu thereof;
- 18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
19 thereof;
- 20 (d) Willfully failing to provide accurate, semi-monthly itemized wage
21 statements; and
- 22 (e) Failing to pay all wages due upon separation of employment.

23 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
24 of herself and all other members of the general public similarly situated in California to recover,
25 among other things, unpaid wages and benefits, interest, attorney’s fees, costs and expenses and
26 penalties (to the extent permitted by law) pursuant to Labor Code §§ 201, 202, 203, 226, 226.7,
27 510, 512, 1194, and 1198.

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JURISDICTION AND VENUE

6. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff Susana Valdez is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants were and are corporations doing business in California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named Defendants once their names and capacities become known.

1 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are
2 the partners, agents, owners, shareholders, managers or employees of Defendants, at all relevant
3 times.

4 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
5 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1
6 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other’s
7 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
8 policy of Defendants.

9 15. At all relevant times, Defendants, and each of them, acted within the scope of such
10 agency or employment, or ratified each and every act or omission complained of herein. At all
11 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
12 all the other Defendants in proximately causing the damages herein alleged.

13 16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
14 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
15 occurrences and transactions alleged herein.

16 **CLASS ACTION ALLEGATIONS**

17 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself
18 and all other members of the general public similarly situated who were affected by Defendants’
19 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

20 18. All claims alleged herein arise under California law for which Plaintiff seeks relief
21 authorized by California law.

22 19. Plaintiff’s proposed class consists of and is defined as follows:

23 Class:
24 All California citizens currently or formerly employed as non-exempt employees by
25 Defendants in California within four years prior to the filing of the Complaint to the date
of class certification.

26 20. Plaintiff also seeks to certify the following Subclass:

27 Waiting Time Subclass:
28 All Class members who separated their employment from Defendants within three years
prior to the filing of this Complaint to the date of class certification.

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21. Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate.

22. Members of the class and subclass described above will be collectively referred to as “class members.” Plaintiff reserves the right to re-define the above class and subclass and add additional subclasses as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants required Plaintiff and class members to work over 8 hours per day, over 12 hours per day and/or over 40 hours per week and failed to pay them proper overtime compensation;
- b. Whether Defendants improperly calculated Plaintiff’s and class members’ overtime rate by not including bonuses, commissions, other incentive pay and shift differentials into their regular rate of pay;
- c. Whether Defendants deprived Plaintiff and class members of meal periods or required Plaintiff and class members to work through meal periods;
- d. Whether Defendants deprived Plaintiff and class members of paid rest breaks or required Plaintiff and class members to work through rest breaks;
- e. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- f. Whether Defendants failed to furnish Plaintiff and class members with accurate, itemized wage statements; and
- g. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

1 24. There is a well-defined community of interest in this litigation and the proposed
2 class and subclasses are readily ascertainable:

3 (a) Numerosity: The members of the class and subclass are so numerous that joinder
4 of all members is impractical. Although the members of the entire class and
5 subclass are unknown to Plaintiff at this time, on information and belief, the class
6 is estimated to be greater than one hundred (100) individuals. The identities of the
7 class and subclass are readily ascertainable by inspection of Defendants'
8 employment and payroll records.

9 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or
10 defenses, if any) of the class because Defendants' failure to comply with the
11 provisions of California wage and hour laws entitled each class member to similar
12 pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of
13 the injuries sustained by the class and subclass, because they arise out of and are
14 caused by Defendants' common course of conduct as alleged herein.

15 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the interests of
16 all members of the class and subclass because it is in her best interests to prosecute
17 the claims alleged herein to obtain full compensation and penalties due her and the
18 class and subclass. Plaintiff's attorneys, as proposed class counsel, are competent
19 and experienced in litigating large employment class actions and versed in the rules
20 governing class action discovery, certification and settlement. Plaintiff has
21 incurred and, throughout the duration of this action, will continue to incur
22 attorney's fees and costs that have been and will be necessarily expended for the
23 prosecution of this action for the substantial benefit of each class member.

24 (d) Superiority: The nature of this action makes use of class action adjudication
25 superior to other methods. A class action will achieve economies of time, effort
26 and expense as compared with separate lawsuits, and will avoid inconsistent
27 outcomes because the same issues can be adjudicated in the same manner and at
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1 the same time for the entire class and subclass. If appropriate this Court can, and
2 is empowered to, fashion methods to efficiently manage this case as a class action.

3 (e) Public Policy Considerations: Employers in the State of California violate
4 employment and labor laws every day. Current employees are often afraid to assert
5 their rights out of fear of direct or indirect retaliation. Former employees are fearful
6 of bringing actions because they believe their former employers might damage their
7 future endeavors through negative references and/or other means. Class actions
8 provide the class members who are not named in the complaint with a type of
9 anonymity that allows for the vindication of their rights at the same time as
10 affording them privacy protections.

11 **GENERAL ALLEGATIONS**

12 25. At all relevant times mentioned herein, Defendants employed Plaintiff and other
13 persons as non-exempt employees.

14 26. Defendants employed Plaintiff in a non-exempt position at Defendants' California
15 business location during the relevant time period.

16 27. Defendants continue to employ non-exempt employees within California.

17 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
19 were knowledgeable about California wage and hour laws, employment and personnel practices
20 and the requirements of California law.

21 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive certain wages for
23 overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class
24 members were not properly paid for all of their overtime work because Defendants improperly
25 calculated the overtime rate by failing to include performance bonuses, commissions, other
26 incentive pay and shift differentials in the computation of their regular rate of pay.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive all meal periods or

1 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when
2 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC
3 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)
4 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive
5 a timely, uninterrupted meal period.

6 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive all rest breaks or
8 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when
9 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class
10 members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff's
11 and class members' regular rate of pay when a rest break was missed.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
14 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
15 and Waiting Time Subclass members did not receive payment of all wages including, but not
16 limited to, unpaid minimum wage and overtime compensation, within permissible time periods.

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive complete and accurate
19 wage statements in accordance with California law. In violation of the California Labor Code,
20 Plaintiff and class members were not furnished with complete and accurate wage statements
21 showing their accurate gross and net wages, and the number of hours worked at each applicable
22 hourly rate, among other things.

23 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known they had a duty to compensate Plaintiff and class members, and Defendants had
25 the financial ability to pay such compensation but willfully, knowingly and intentionally failed to
26 do so all in order to increase Defendants' profits.

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FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

35. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

36. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half or two times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

37. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time period, Defendants were required to compensate Plaintiff and class members for all overtime hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours of the seventh consecutive work day.

38. Plaintiff and class members were non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194.

39. During the relevant time period, Defendants failed to pay Plaintiff and class members overtime wages for all overtime hours worked.

40. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations and compensate Plaintiff and class members for all wages earned and all hours worked, by failing to include in Plaintiff and class members' overtime rate the amount that they earned in performance bonuses, commissions, other incentive pay and shift differentials, among other things.

41. Defendants' failure to pay Plaintiff and class members the unpaid balance of overtime compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

42. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

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SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

44. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

45. Section 11 of the applicable IWC Wage Order states, “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, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

46. Labor Code § 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

47. Labor Code § 512(a) also provides that 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 thirty (30) minutes, except that if the total hours worked is no more than twelve (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.

48. During the relevant time period, Plaintiff and class members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because, among other things, Defendants did not provide timely meal periods for shifts over five hours, and Defendants did not provide a second meal period for shifts over 10 hours.

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1 49. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
2 an employer to pay an employee one additional hour of pay at the employee's regular rate of
3 compensation for each work day that the meal period is not provided.

4 50. At all relevant times, Defendants failed to pay Plaintiff and class members the full
5 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
6 section 11 of the applicable IWC Wage Order.

7 51. As a result of Defendants' failure to pay Plaintiff and class members an additional
8 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered and
9 continue to suffer a loss of wages and compensation.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PERMIT REST BREAKS**

12 **(Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)**

13 52. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein.

15 53. Labor Code § 226.7(a) provides that no employer shall require an employee to work
16 during any rest period mandated by the IWC Wage Orders.

17 54. Section 12 of the applicable IWC Wage Order states "every employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
19 middle of each work period" and the "authorized rest period time shall be based on the total hours
20 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof"
21 unless the total daily work time is less than three and one-half (3½) hours.

22 55. During the relevant time period, Plaintiff and class members did not receive a ten
23 (10) minute rest period for every four (4) hours or major fraction thereof worked because they were
24 required to work through their daily rest periods and/or were not authorized to take their rest
25 periods.

26 56. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
27 an employer to pay an employee one additional hour of pay at the employee's regular rate of
28 compensation for each work day that the rest period is not provided.

1 these efforts and incur these costs had Defendants provided the accurate wages earned. This has
2 also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

3 69. California Labor Code § 226(a) requires an employer to pay the greater of all actual
4 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
5 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
6 attorney's fees and costs, to each employee who was injured by the employer's failure to comply
7 with California Labor Code § 226(a).

8 70. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
9 class members from knowing, understanding and disputing the wages paid to them, and resulted in
10 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
11 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
12 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be
13 shown according to proof at trial.

14 71. Plaintiff and class members are also entitled to injunctive relief under California
15 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and
16 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

17 **SIXTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

19 72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 73. Defendants' conduct, as alleged herein, has been and continues to be unfair,
22 unlawful and harmful to Plaintiff, class members and to the general public. Plaintiff seeks to
23 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
24 § 1021.5.

25 74. Defendants' activities, as alleged herein, violate California law and constitute
26 unlawful business acts or practices in violation of California Business and Professions Code §§
27 17200, *et seq.*

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1 75. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
2 on the violation of any state or federal law.

3 76. Defendants' policies and practices have violated state law in at least the following
4 respects:

5 (a) Failing to pay Plaintiff and class members all overtime compensation in violation
6 of Labor Code §§ 200 *et seq.*, 510, 1194, and 1198;

7 (b) Failing to provide meal periods without paying Plaintiffs and class members
8 premium wages for every day said meal periods were not provided in violation of
9 Labor Code §§ 226.7 and 512;

10 (c) Failing to authorize or permit rest breaks without paying Plaintiff and class
11 members premium wages for every day said rest breaks were not authorized or
12 permitted in violation of Labor Code § 226.7;

13 (d) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass
14 members upon separation of employment in violation of Labor Code §§ 201, 202
15 and 203; and

16 (e) Failing to provide accurate, itemized wage statements to Plaintiff and class
17 members in violation of Labor Code § 226.

18 77. Defendants intentionally avoided paying Plaintiff's and class members' wages and
19 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
20 undercut their competitors and establish and gain a greater foothold in the marketplace.

21 78. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
22 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
23 during a period that commences four years prior to the filing of the Complaint; an award of
24 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
25 award of costs.

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PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

- 1. For certification of this action as a class action;
- 2. For appointment of Susana Valdez as the class representative;
- 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
- 4. For compensatory damages in an amount according to proof with interest thereon;
- 5. For economic and/or special damages in an amount according to proof with interest thereon;
- 6. For reasonable attorney’s fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e) and 1194;
- 7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
- 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- 10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties;
- 11. For pre-judgment interest; and
- 12. For such other relief as the Court deems just and proper.

Dated: October 23, 2018

AEGIS LAW FIRM, PC

By: 

Ali S. Carlsen

Attorneys for Plaintiff Susana Valdez

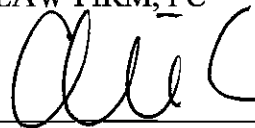
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: October 23, 2018

AEGIS LAW FIRM, PC

By: 

Ali S. Carlsen

Attorneys for Plaintiff Susana Valdez

EXHIBIT B

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

FAIRWAY INDEPENDENT MORTGAGE CORPORATION, a Texas corporation; and DOES 1 through 20, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SUSANA VALDEZ, individually and on behalf of all others similarly situated,

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/23/2018 at 01:29:18 PM
Clerk of the Superior Court
By Valeria Contreras, 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 San Diego Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2018-00053677-CU-0E-CTL

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):
Samuel Wong Esq., AEGIS LAW FIRM, PC, 9811 Irvine Ctr Dr, Ste 100, Irvine, CA 92618, 949-379-6250

DATE: 10/24/2018
(Fecha)

Clerk, by
(Secretario)

V. Contreras
V. Contreras

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):

FAIRWAY INDEPENDENT MORTGAGE CORPORATION, a

- 3. on behalf of (specify): Texas 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)

- 4. other (specify):
- 4. by personal delivery on (date): 11/6/18



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): AEGIS LAW FIRM, PC Samuel Wong (SBN: 217104) Ali S. Carlsen (SBN: 289964) 9811 Irvine Center Dr., Suite 100 Irvine, California 92618 TELEPHONE NO.: 949-379-6250 FAX NO.: 949-379-6251 ATTORNEY FOR (Name): Plaintiff Susana Valdez	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 10/23/2018 at 01:29:18 PM Clerk of the Superior Court By Valeria Contreras, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice	CASE NUMBER: 37-2018-00053677-CU-OE-CTL JUDGE: Judge Kenneth J Medel DEPT:
CASE NAME: Valdez v. Fairway Independent Mortgage Corporation	
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) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

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)
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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 type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | 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 |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | 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): **6**
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: **October 23, 2018**
 Ali S. Carlsen


 (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 on all 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.

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) 450-7066	
PLAINTIFF(S) / PETITIONER(S): Susana Valdez	
DEFENDANT(S) / RESPONDENT(S): Fairway Independent Mortgage Corporation	
VALDEZ VS FAIRWAY INDEPENDENT MORTGAGE CORPORATION [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2018-00053677-CU-OE-CTL

CASE ASSIGNMENT

Judge: Kenneth J Medel

Department: C-66

COMPLAINT/PETITION FILED: 10/23/2018

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	06/14/2019	08:30 am	C-66	Kenneth J Medel

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).

1 CHRISTOPHER W. DECKER, CA Bar No. 229426
christopher.decker@ogletree.com
2 MAZEN I. KHATIB, CA Bar No. 306263
mazen.khatib@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213.239.9800
Facsimile: 213.239.9045

6 Attorneys for Defendant
7 FAIRWAY INDEPENDENT MORTGAGE
CORPORATION

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SUSANA VALDEZ, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FAIRWAY INDEPENDENT
16 MORTGAGE CORPORATION, a
Texas corporation; and DOES 1
17 through 20, inclusive,

18 Defendants.

Case No. **'18CV2748 CAB KSC**

**DECLARATION OF CHRISTOPHER
W. DECKER IN SUPPORT OF
REMOVAL OF CIVIL ACTION TO
UNITED STATES DISTRICT COURT**

[Filed concurrently with Notice of
Removal of Civil Action to United States
District Court, inclusive of Civil Cover
Sheet; Declaration of Ariel Kumpinsky In
Support of Civil Action to U.S.D.C.;
Declaration of Steve Riese In Support of
Removal of Civil Action to United States
District Court; Declaration of Leonard
Krupinski In Support of Defendant
Fairway Independent Mortgage
Corporation's Removal of Civil Action to
U.S.D.C.; Notice of Party with Financial
Interest; and Certificate of Service]

Complaint Filed: October 23, 2018
Trial Date: None

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DECLARATION OF CHRSTOPHER W. DECKER

I, Chrstopher W. Decker, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the state of California, and am an attorney with Ogletree, Deakins, Nash, Smoak and Stewart, counsel of record for Defendant Fairway Independent Mortgage Corporation (hereinafter, “Defendant” or “Fairway”). I make this Declaration in support of Defendant’s Notice of Removal of Civil Action. The facts set forth below are based on my personal knowledge, or information collected for and relayed to me by persons acting under my direction, supervision and control in the normal course of business, and if called upon to testify to same, I could and would do so competently and truthfully.

2. Attached as Exhibit A to the Notice of Removal of Civil Action of Defendant Fairway Independent Mortgage Corporation, filed concurrently herewith, is a true and correct copy of the Class Action Complaint which initiated this action in Superior Court for the State of California, County of San Diego.

3. Attached as Exhibit B to the Notice of Removal of Civil Action of Defendant Fairway Independent Mortgage Corporation, filed concurrently herewith, is a true and correct copy of all documents served on Fairway in this action.

4. Exhibits A-B to the Notice of Removal of Civil Action of Civil Action of Defendant Fairway Independent Mortgage Corporation, filed concurrently herewith, collectively represent all copies of all process, pleadings, and orders served upon Defendant in this action.

5. To date, Defendant has not received any document, other than those included in Exhibits A-B which would constitute an “other pleading, motion, order or other paper” within the meaning of 28 U.S.C. § 1446(b).

6. On November 21, 2018, my office received two spreadsheets which were transmitted to us via e-mail from Alicia Anderson of Fairway. One spreadsheet contained a list of individuals who, we were told by Ms. Anderson, were active non-

1 exempt employees currently employed by Fairway in California, along with certain
2 information regarding these employees. The other spreadsheet contained a list of
3 individual who, we were told by Ms. Anderson, were former non-exempt employees
4 previously employed by Fairway in California who had terminated their employment
5 on or after October 23, 2014. This spreadsheet included, for each, his or her date of
6 termination and final hourly rate of pay, along with certain other information
7 regarding the former employee.

8 7. On November 27, 2018, I received from Steve Riese of Fairway a
9 spreadsheet containing payroll records which, he informed me, reflected each
10 paycheck issued to a non-exempt Fairway employee in California between October
11 10, 2014 and November 30, 2018 including, among other information, for each
12 paycheck: (i) the paydate, (ii) the name and employee identification number of the
13 employee, (iii) the start and end dates of the pay period, (iv) the total hours worked
14 by that employee in that pay period, with sub-categories itemizing regular (i.e.
15 nonovertime), overtime, and double time hours, and (v) the total wages paid to that
16 employee for that pay period, with sub-categories itemizing hourly wages, bonus
17 wages and commission wages.

18 8. On November 26, 2018 Rachel Evey, a paralegal in my office,
19 transmitted the two spreadsheets received from Fairway on November 21, 2018 to
20 the Claro Group. On November 28, 2018, she transmitted the spreadsheet received
21 from Fairway on November 27, 2018 to the Claro Group.

22 I declare under penalty of perjury under the laws of the State of California and
23 the United States of America that the foregoing is true and correct, and that this
24 declaration was executed this 6th day of December, 2018, at Los Angeles,
25 California.

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/s/ Christopher W. Decker
Christopher W. Decker

1 CHRISTOPHER W. DECKER, CA Bar No. 229426
christopher.decker@ogletree.com
2 MAZEN I. KHATIB, CA Bar No. 306263
mazen.khatib@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213.239.9800
Facsimile: 213.239.9045

6 Attorneys for Defendant
7 FAIRWAY INDEPENDENT MORTGAGE
CORPORATION
8

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SUSANA VALDEZ, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FAIRWAY INDEPENDENT
16 MORTGAGE CORPORATION, a
Texas corporation; and DOES 1
17 through 20, inclusive,

18 Defendants.
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Case No. **'18CV2748 CAB KSC**

**DECLARATION OF ARIEL
KUMPINSKY IN SUPPORT OF
REMOVAL OF CIVIL ACTION TO
UNITED STATES DISTRICT COURT**

[Filed concurrently with Notice of
Removal of Civil Action to United States
District Court, inclusive of Civil Cover
Sheet; Declaration of Christopher W.
Decker In Support of Removal of Civil
Action to U.S.D.C.; Declaration of Steve
Riese In Support of Removal of Civil
Action to United States District Court;
Declaration of Leonard Krupinski In
Support of Defendant Fairway
Independent Mortgage Corporation's
Removal of Civil Action to U.S.D.C.;
Notice of Party with Financial Interest;
and Certificate of Service]

Complaint Filed: October 23, 2018
Trial Date: None

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DECLARATION OF ARIEL KUMPINSKY

I, Ariel Kumpinsky, hereby declare and state as follows:

1. I have personal knowledge of the facts herein and if called as a witness, could and would competently testify thereto.

2. I am a senior manager with The Claro Group, LLC, a multi-disciplinary consulting firm with offices in Los Angeles, Chicago, Houston, Austin, and Washington D.C. I have a Master’s Degree in Economics from the University of Virginia. I have Bachelor’s degrees in Economics and Business Economics from Ohio University. In my capacity as senior manager, I have expertise in analyzing a variety of data, including employment-related data. I regularly collect, organize, and analyze time, payroll, and human resources data in relation to wage and hour cases.

3. I submit this Declaration in support of Fairway Independent Mortgage Corporation (“Fairway”) Notice of Removal. This declaration is based on my personal knowledge or my review of information and data collected by other employees of the Claro Group acting under my direction and control, and whose work I supervised. If called upon to testify as to the facts set forth in this declaration, I could and would competently testify to them.

4. On November 26, 2018, The Claro Group received a compact disc from Ogletree Deakins, Nash, Smoak & Stewart P.C. (“Ogletree Deakins”), counsel for Defendant Fairway, containing two Microsoft Excel spreadsheets. One spreadsheet contained a list of active non-exempt employees and the other spreadsheet contained a list of former non-exempt employees. Both spreadsheets contained information such as the name and employee identification number of the employee, his or her date of termination, state of residence, and final hourly rate of pay, along with certain other information regarding these employees.

5. On November 28, 2018, The Claro Group received a second compact disc from Ogletree Deakins listing paychecks including, among other information, for each paycheck: (i) the pay date, (ii) the name and employee identification number

1 of the employee, (iii) the start and end dates of the pay period, (iv) the total hours
2 worked by that employee in that pay period, with sub-categories itemizing regular
3 (i.e. non-overtime), overtime and doubletime hours, (v) the total wages paid to that
4 employee for that pay period, with sub-categories itemizing hourly wages, bonus
5 wages and commission wages.

6 6. I have been informed by counsel for Fairway in this action, Christopher
7 Decker, that the three Microsoft Excel spreadsheets included on these two compact
8 discs (the "Records"), contain employment and payroll records extracted from the
9 business records of Fairway. Counsel asked me to analyze the Records to perform
10 certain calculations, that are detailed below.

11 7. I, along with other employees of The Claro Group acting under my
12 supervision and control, reviewed the Records to enumerate certain information
13 regarding: (i) the number of non-exempt employees who have worked for Fairway in
14 California on or after October 23, 2014, (ii) the number of such employees who have
15 terminated their employment with Fairway on or after October 23, 2015, (iii) the
16 number of such employees who have worked for Fairway on or after October 23,
17 2017, (iv) the hours worked by these employees, calculated by calendar year (or
18 portion thereof) and categorized as regular (i.e. non-overtime) hours, overtime hours,
19 or doubletime hours, and (v) the wages paid to these employees, calculated by
20 calendar year (or portion thereof) and categorized as hourly wages, bonus wages or
21 commission wages.

22 8. Based on review of the Records, I was able to determine that Fairway
23 has employed a total of 678 non-exempt employees in California between October
24 23, 2014 and November 24, 2018. Of those 678 individuals, 345 terminated their
25 employment on or after October 23, 2015. The remainder either terminated their
26 employment before October 23, 2015, or are currently employed.

27 9. From the Records, I was able to isolate the final hourly rate of pay for
28 each of Fairway's 345 non-exempt California employees who terminated their

1 employment on or after October 23, 2015. For each, I multiplied their final hourly
 2 rate of pay by 240 hours. The aggregate total of these amounts is \$1,246,586.11.

3 10. From the Records, I was able to determine that Fairway pays wages to
 4 its non-exempt California employees every two weeks, because the pay dates for the
 5 paychecks in the Records were two weeks apart. Based on my review of the
 6 Records, I was also able to count the total number of bi-weekly paychecks Fairway
 7 issued to its non-exempt California employees between October 23, 2017 and the
 8 present. The total number of such paychecks is 9,363. Based on my review of the
 9 Records, I was also able to count the number of unique non-exempt California
 10 employees who received a paycheck during this timeframe. There were 546 such
 11 individuals.

12 11. Based on my review of the Records, I was able to calculate the hours
 13 worked by Fairway’s non-exempt California employees, collectively, by calendar
 14 year between October 23, 2014 and November 24, 2018, in the following categories:
 15 (i) regular (i.e. non-overtime) hours, (ii) overtime hours (including both overtime
 16 hours and doubletime hours). Those hours were:

	Regular	Overtime	Doubletime	Total
2014	9,192.70	418.80	0.00	9,611.50
2015	96,988.20	3,274.10	0.00	100,262.30
2016	222,136.50	6,700.10	0.00	228,836.60
2017	398,158.30	6,600.80	64.90	404,824.00
2018	582,346.70	11,418.30	200.50	593,965.50

24
 25 12. Based on review of the Records, I was able to calculate the wages paid
 26 to non-exempt California employees, collectively, by calendar year between October
 27 23, 2014 and the present, in the following categories: (i) hourly wages, (ii) bonus
 28 wages, and (iii) commission wages. Those wages were:

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	Hourly Wages	Commissions & Bonuses	Total
2014	\$153,739.38	\$135,440.64	\$289,180.02
2015	\$1,521,826.96	\$1,608,888.16	\$3,130,715.12
2016	\$3,795,279.88	\$4,755,072.64	\$8,550,352.52
2017	\$7,126,970.63	\$7,112,907.50	\$14,239,878.13
2018	\$11,194,626.41	\$9,433,437.55	\$20,628,063.96

I declare under penalty of perjury under the laws of the United State of America and the State of California that the foregoing is true and correct.

Executed on December 5, 2018, at Los Angeles, California.



Ariel Kumpinsky

36562311.1

1 CHRISTOPHER W. DECKER, CA Bar No. 229426
christopher.decker@ogletree.com
2 MAZEN I. KHATIB, CA Bar No. 306263
mazen.khatib@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213.239.9800
Facsimile: 213.239.9045

6 Attorneys for Defendant
7 FAIRWAY INDEPENDENT MORTGAGE
CORPORATION
8

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SUSANA VALDEZ, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FAIRWAY INDEPENDENT
16 MORTGAGE CORPORATION, a
Texas corporation; and DOES 1
17 through 20, inclusive,

18 Defendants.
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Case No. '18CV2748 CAB KSC

**DECLARATION OF STEVE RIESE
IN SUPPORT OF REMOVAL OF
CIVIL ACTION TO UNITED
STATES DISTRICT COURT**

[Filed concurrently with Notice of
Removal of Civil Action to United States
District Court; Civil Cover Sheet;
Declaration of Christopher W. Decker In
Support of Removal of Civil Action to
U.S.D.C.; Declaration of Ariel
Kumpinsky In Support of Civil Action to
U.S.D.C.; Declaration of Leonard
Krupinski In Support of Defendant
Fairway Independent Mortgage
Corporation's Removal of Civil Action to
U.S.D.C.; Notice of Party with Financial
Interest; and Certificate of Service]

Complaint Filed: October 23, 2018
Trial Date: None

DECLARATION OF STEVE RIESE

I, Steve Riese, hereby declare and state as follows:

1. I am employed by Fairway Independent Mortgage Corporation (“Fairway”), the Defendant in this action, as AVP, HR Operations. In my position as AVP, HR Operations I am familiar with Fairway’s electronic business records of hours worked and compensation paid to its non-exempt employees in California. I am also familiar with Fairway’s human resources information system database, which contains information regarding the dates of employment and hourly rate of pay for each of Fairway’s non-exempt employees in California. Those records are kept in the normal course of Fairway’s business, and the entries in those records are made at or about the time of the events they record, either by persons with personal knowledge of those events, or by the automated operation of Fairway’s electronic systems. Fairway relies on these records for a variety of business purposes, including accounting, financial reporting, and tax reporting and compliance. It is the regular practice of Fairway’s business to maintain these records.

2. I submit this Declaration in support of Fairway’s Notice of Removal. This declaration is based on my personal knowledge or review of the business records of Fairway, and if called upon to testify as to the facts set forth in this declaration, I could and would competently testify to them.

3. I am aware that a class action has been filed against Fairway alleging certain failures to comply with California’s wage and hour laws. At the request of Fairway’s outside counsel, on November 26 and 27, 2018, I and another employee of Fairway acting under my supervision collaborated to collect certain information from Fairway’s business records, in order to assist our outside counsel in calculating the potential damages and penalties that could be recovered in that class action.

4. Specifically, I and my colleague collaborated to prepare three Microsoft Excel spreadsheets (the “Records”). One spreadsheet contained a list of active non-exempt employees currently employed by Fairway in California, along with certain

1 other information regarding these employees. Another spreadsheet contained a list
 2 of all former non-exempt employees previously employed by Fairway in California
 3 who had terminated their employment on or after October 23, 2014 and included, for
 4 each, his or her date of termination and final hourly rate of pay, along with certain
 5 other information regarding these employees. The final spreadsheet contained
 6 payroll records reflecting each paycheck issued to a non-exempt Fairway employee
 7 in California between October 10, 2014 and November 30, 2018 including, among
 8 other information, for each paycheck: (i) the payday, (ii) the name and employee
 9 identification number of the employee, (iii) the start and end dates of the pay period,
 10 (iv) the total hours worked by that employee in that pay period, with sub-categories
 11 itemizing regular (i.e. non overtime), overtime and double time hours, (v) the total
 12 wages paid to that employee for that pay period, with sub-categories itemizing
 13 hourly wages, bonus wages and commission wages.

14 5. The Records were transmitted to our outside counsel, Ogletree Deakins,
 15 by e-mails dated November 21, 2018 and November 27, 2018.

16 I declare under penalty of perjury under the laws of the United State of
 17 America and the State of California that the foregoing is true and correct.

18 Executed on December 3, 2018, at Madison, Wisconsin.

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 21 Steve Riese

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1 CHRISTOPHER W. DECKER, CA Bar No. 229426
christopher.decker@ogletree.com
2 MAZEN I. KHATIB, CA Bar No. 306263
mazen.khatib@ogletree.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
5 Telephone: 213.239.9800
Facsimile: 213.239.9045

6 Attorneys for Defendant
7 FAIRWAY INDEPENDENT MORTGAGE
CORPORATION
8

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SUSANA VALDEZ, individually and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 FAIRWAY INDEPENDENT
16 MORTGAGE CORPORATION, a
Texas corporation; and DOES 1
17 through 20, inclusive,

18 Defendants.
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Case No. '18CV2748 CAB KSC

**DECLARATION OF LEONARD
KRUPINSKI IN SUPPORT OF
DEFENDANT FAIRWAY
INDEPENDENT MORTGAGE
CORPORATION'S REMOVAL OF
CIVIL ACTION TO UNITED
STATED DISTRICT COURT**

[Filed concurrently with Notice of
Removal of Civil Action to United States
District Court; Civil Cover Sheet;
Declaration of Christopher W. Decker In
Support of Removal of Civil Action to
U.S.D.C.; Declaration of Ariel
Kumpinsky In Support of Civil Action to
U.S.D.C.; Declaration of Steve Riese In
Support of Removal of Civil Action to
United States District Court; Notice of
Party with Financial Interest; and
Certificate of Service]

Complaint Filed: October 23, 2018
Trial Date: None

DECLARATION OF LEONARD KRUPINSKI

I, Leonard Krupinski, declare as follows:

1. I am currently employed by Fairway Independent Mortgage Corporation (“Defendant” or “Fairway”), the Defendant in the above-captioned action, as its Chief Operating Officer. My office is located at 4750 S. Biltmore Lane, Madison Wisconsin 53718. I have been employed by Fairway since September 21, 1998. As Chief Operating Officer, I am generally familiar with (i) the place of incorporation of Fairway, (ii) the identity and location of Fairway’s highest-level corporate officers, (iii) the location of Fairway’s corporate headquarters, and the work performed there.

2. This declaration is based on my personal knowledge, and if called upon to testify as to the facts set forth in this declaration, I could and would do so competently and truthfully. To the extent this declaration is based upon business records, those records are kept in the regular course of business, entries are made on those records in a timely manner by people with knowledge of the information being entered, and it is the regular practice of Fairway’s business to main such records.

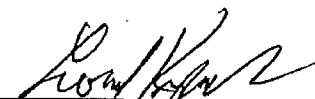
3. Fairway is incorporated in the State of Texas. Its principal place of business, and the location from which its high level officers direct, control, and coordinate the corporation’s activities, is located at the company’s worldwide headquarters in Madison, Wisconsin and Carrollton, Texas.

4. The following high level corporate officers for Fairway have their offices located at the corporate headquarters in Madison, Wisconsin: Julie Fry, Chief HR Officer; Leonard Krupinski, Chief Operating Officer, and Todd Gavinski, Chief Financial Officer. The following high level corporate officers for Fairway have their offices located at the corporate headquarters in Carrollton, Texas: Steve Jacobson, Chief Executive Officer; and Paul Walnick, President Business Development and Servicing. The majority of Fairway’s corporate decisions are made at its corporate headquarters in Madison, Wisconsin, or Carrollton, Texas, including its operational, executive, administrative, and policy making decisions. The officers

1 listed above are responsible for the direction and coordination of the activities
2 covered by their respective offices.

3 5. Fairway conducts the majority of its administrative functions such as
4 payroll, legal, tax, benefits, and accounting at its corporate headquarters in Madison,
5 Wisconsin. Moreover, the majority of the administrative functions crucial to
6 Fairway's day-to-day operations are conducted in its Madison, Wisconsin, or
7 Carrollton, Texas locations.

8 I declare under penalty of perjury under the laws of the State of California that
9 the foregoing is true and correct, and that this declaration was executed on this 3rd
10 day of December, 2018, at Madison, Wisconsin.

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13 Leonard Krupinski

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1 CHRISTOPHER W. DECKER, CA Bar No. 229426
 christopher.decker@ogletree.com
 2 MAZEN I. KHATIB, CA Bar No. 306263
 mazen.khatib@ogletree.com
 3 OGLETREE, DEAKINS, NASH,
 SMOAK & STEWART, P.C.
 4 400 South Hope Street, Suite 1200
 Los Angeles, CA 90071
 5 Telephone: 213.239.9800
 Facsimile: 213.239.9045

6 Attorneys for Defendant
 7 FAIRWAY INDEPENDENT MORTGAGE
 CORPORATION

8
 9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SUSANA VALDEZ, individually and
 on behalf of all others similarly
 12 situated,

13 Plaintiff,

14 v.

15 FAIRWAY INDEPENDENT
 16 MORTGAGE CORPORATION, a
 Texas corporation; and DOES 1
 17 through 20, inclusive,

18 Defendants.

Case No. **'18CV2748 CAB KSC**

CERTIFICATE OF SERVICE

[Filed concurrently with Notice of
 Removal of Civil Action to United States
 District Court; Civil Cover Sheet;
 Declaration of Christopher W. Decker In
 Support of Removal of Civil Action to
 U.S.D.C.; Declaration of Ariel
 Kumpinsky In Support of Civil Action to
 U.S.D.C.; Declaration of Steve Riese In
 Support of Removal of Civil Action to
 United States District Court; Notice of
 Party with Financial Interest; and This
 Certificate of Service]

Complaint Filed: October 23, 2018
 Trial Date: None

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to this action. My business address is 400 S. Hope Street, Suite 1200, Los Angeles, California 90071.

On December 6, 2018, I served the following document(s) described as:

- 1. *Defendant Fairway Independent Mortgage Corporation's Notice of Removal of Civil Action to United State District Court, inclusive of Civil Cover Sheet;*
- 2. *Declaration of C. Decker ISO Removal of Civil Action;*
- 3. *Declaration of A. Kumpinsky ISO Removal of Civil Action;*
- 4. *Declaration of S. Riese ISO Removal of Civil Action;*
- 5. *Declaration of Leonard Krupinski ISO Removal of Civil Action;*
- 6. *Notice of Party with Financial Interest in Compliance with FRCP 7.1 and Local Rule 40.2;* and
- 7. *This Certificate of Service*

on the persons below as follows:

Samuel A. Wong, Esq. Kashif Haque, Esq. Jessica L. Campbell, Esq. Ali S. Carlsen, Esq. AEGIS LAW FIRM, PC 9811 Irvine Center Drive, Suite 100 Irvine, CA 92618 Telephone: (949) 379-6250 Facsimile: (949) 379-6251	Attorneys for Plaintiff Susana Valdez, individually and on behalf of all others similarly situated
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I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses as indicated above and:

- deposited the sealed envelope or package with the United States Postal Service, with the postage fully prepaid.*
- placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope or package with postage fully prepaid.

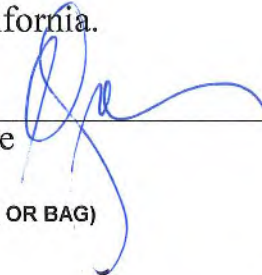
I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

1 (Federal) I declare that I am employed in the office of a member of the Bar
2 of this Court at whose direction the service was made. I declare
3 under penalty of perjury under the laws of the United States of
4 America that the above is true and correct.

Executed on December 6, 2018, at Los Angeles, California.

5 Candace Roni

6 _____
Type or Print Name

Signature 

7 * (SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fairway Independent Mortgage Corporation Sued Over Alleged Wage Violations](#)
