

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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<p>JANET HOSKINS, ELIZABETH NUDO AND PAUL DANKO, JR., and all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CONTOUR MORTGAGE CORPORATION,</p> <p>Defendant.</p>	<p>CIVIL ACTION COMPLAINT</p> <p>CIVIL ACTION NO:</p> <p><u>(JURY TRIAL DEMANDED)</u></p>
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**INDIVIDUAL, CLASS, AND COLLECTIVE ACTION  
COMPLAINT**

JANET HOSKINS of Maryland (“HOSKINS”), ELIZABETH NUDO of Maryland (“NUDO”), and PAUL DANKO, JR. of Maryland (“DANKO”) (collectively, the "Named Plaintiffs"), by and through their undersigned attorneys, file this Complaint and bring this action against Defendant, CONTOUR MORTGAGE CORPORATION, (“Defendant” or “CONTOUR”), on behalf of themselves and all others similarly situated employees (“Collective Action Plaintiffs”), for minimum wages, unpaid overtime compensation, and other relief under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* In addition to bringing such claims on an individual basis, Named Plaintiffs bring this action as a collective action pursuant to 29 U.S.C. § 216(b).

In addition to their FLSA claims, HOSKINS, NUDO and DANKO (hereinafter the “Maryland Named Plaintiffs”) also seek relief on behalf of themselves and all others similarly situated employees who worked for Defendant in Maryland in the three years preceding the date of filing of this action (the “Maryland Class”) under the Maryland Wage and Hour Law, Md. Code

Ann. Lab. & Empl. §§ 401-431 and the Maryland Wage Payment and Collection Law, MD Code Ann. Lab. & Empl. §§ 3-501 – 3-509 (the “Maryland Wage Laws” or “MDWHL”).

### **NATURE OF THE CASE**

1. Named Plaintiffs have initiated the instant action to redress Defendant’s violations of the Fair Labor Standards Act (FLSA), and the Maryland Wage Laws.

2. Defendant failed to pay Named Plaintiffs, Collective Action Plaintiffs, and members of the Maryland Class (Collective Action Plaintiffs and members of the Maryland Class will be collectively referred to as “All Putative Class Members”) at least one-and-one-half times their hourly rate for the hours worked over forty per workweek by intentionally misclassifying them as an exempt employees under federal and state law. Similarly, Defendants’ pay system regularly failed to pay Named Plaintiffs and All Putative Class Members the legally mandated minimum wage for all hours worked up to forty (40) hours per week.

3. As a direct consequence of Defendant’s actions, Named Plaintiffs and All Putative Class Members have suffered damages.

### **JURISDICTION AND VENUE**

4. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

5. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, the FLSA, 29 U.S.C. § 201 *et seq.* This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367, because they arise out of a common nucleus of operative fact, and form part of the same case or controversy under Article III of the United States Constitution.

6. Additionally, this Court has original jurisdiction over the Maryland State Law Claims alleged in this action implicate the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1332(d), because this is a class action in which: (1) there are 100 or more members in the

Plaintiffs' proposed class; (2) at least some members of the proposed class have different citizenship from Defendant; and (3) the claims of the proposed class members, upon information and belief, exceed \$5,000,000 in the aggregate. In addition, or in the alternative, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over Plaintiffs' Maryland State Law Claims because those claims derive from a common nucleus of operative facts as to those alleged pursuant to the FLSA claims.

7. This Court may properly maintain personal jurisdiction over Defendant because, upon information and belief, Defendant maintains its headquarters in Garden City, New York, regularly conducts business in New York and within this jurisdictional district, and Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendant resides in and/or conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

### **PARTIES**

9. The foregoing paragraphs are incorporated as if set forth in full.

10. Plaintiff HOSKINS, at all times material hereto, resided in Maryland and worked for Defendant as a Mortgage Loan Originator ("Inside Loan Originator") from approximately July 2020 to approximately October 2021 at Defendant's offices located at 555 Fairmont Avenue, Suite 301, Towson, Maryland.

11. Plaintiff NUDO, at all times material hereto and currently, resides in Maryland and worked for Defendant as a Mortgage Loan Originator ("Inside Loan Originator") from

approximately January 2021 to approximately October 2022 at Defendant's offices located at 555 Fairmont Avenue, Suite 301, Towson, Maryland.

12. Plaintiff DANKO, at all times material hereto and currently, resides in Maryland and worked for Defendant as a Mortgage Loan Originator ("Inside Loan Originator") from approximately February 2018 to approximately September 2021 at Defendant's offices, initially located at 110 West Road, Towson, Maryland, and later at 555 Fairmont Avenue, Suite 301, Towson, Maryland.

13. Named Plaintiffs and All Putative Class Members were "employees" of Defendant as defined by 29 U.S.C. §203(e).

14. Defendant, at all times material hereto, is an enterprise within the meaning of 29 U.S.C §203(r) and engaged in interstate commerce within the meaning of 29 U.S.C §203(s)(1) at all times material hereto with an annual gross sales volume in excess of \$500,000.

15. Defendant is and was at all times material hereto, an "Employer," as that term is defined in the FLSA, 29 U.S.C §203(d), as well as pursuant to the Maryland Wage Laws.

16. Defendant is a New York Corporation.

## **COLLECTIVE ACTION ALLEGATIONS**

### **General Allegations**

17. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

18. Named Plaintiffs bring this action for violations of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b), on behalf of all Mortgage Loan Originators ("MLOs"), and those who performed MLO functions regardless of title, who

were employed by Defendant nationwide within the last three years (members of this putative class are referred to as “Collective Action Plaintiffs”).

19. Named Plaintiffs’ claims are typical of the claims of Collective Action Plaintiffs because Named Plaintiffs, like all Collective Action Plaintiffs, were employed by Defendant as Mortgage Loan Originators, and others who performed Mortgage Loan Originator functions of originating and producing residential mortgage loans from CONTOUR regardless of title (hereinafter, “MLOs”), and to whom Defendant failed to pay minimum wages and overtime wages as required by the FLSA within the last three (3) years. Further, Named Plaintiffs, like all Collective Action Plaintiffs, were denied overtime compensation under the official company-wide practice of Defendant which uniformly misclassified MLOs, and others who performed MLO functions, regardless of title, as exempt from overtime compensation.

20. Defendant advised Plaintiff HOSKINS, throughout her employment with Defendant, including in written policies and procedures which were common to all similarly situated employees, that she was an “exempt” employee under the FLSA, and she did not need to regularly maintain daily time records reflecting her daily work starting and stopping times; accordingly, HOSKINS did not regularly maintain her daily time records reflecting her starting and stopping times, and, as a result, HOSKINS cannot precisely reconstruct her daily and weekly work hours for the period she was employed by Defendant.

21. Each week throughout her employment with Defendant, except on rare occasions, HOSKINS worked on Monday through Friday from approximately 8:30 a.m. through approximately 6:30 p.m., in Defendant’s offices and later at home each week night until approximately 8:00 p.m., and additionally worked each Saturday and Sunday a total of 5 to 10 hours; and therefore, HOSKINS worked approximately 65 to 70 hours per week during

her employment with Defendant, of which virtually all hours HOSKINS worked were worked at Defendant's offices and HOSKINS' home.

22. Defendant advised Plaintiff, NUDO, throughout her employment with Defendant that she was an "exempt" employee under the FLSA, and she did not need to regularly maintain daily time records reflecting her daily work starting and stopping times; accordingly, NUDO did not regularly maintain her daily time records reflecting her starting and stopping times, and, as a result, NUDO cannot precisely reconstruct her daily and weekly work hours for the period she was employed by Defendant.

23. Each week throughout her employment with Defendant, except on rare occasions, NUDO worked Monday through Friday from approximately 9:00 a.m. through 2:30 p.m., in Defendant's offices and later at home each weeknight from approximately 3:30 p.m. until 6:00 p.m., and 7:00 p.m. to 9:00 p.m. or later, and additionally worked each Saturday and Sunday a total of 6 hours; and therefore, NUDO worked approximately 56 hours per week during her employment with Defendant. And nearly all of NUDO's work hours were worked at Defendant's offices and NUDO's home office.

24. Defendant advised Plaintiff, DANKO, throughout his employment with Defendant, including in written policies and procedures which were common to all similarly situated employees, that he was an "exempt" employee under the FLSA, and he did not need to regularly maintain daily time records reflecting his daily work starting and stopping time; accordingly, DANKO did not regularly maintain his daily time records reflecting his starting and stopping times, and, as a result, DANKO cannot precisely reconstruct his daily and weekly work hours for the period he was employed by Defendant.

25. Each week throughout his employment with Defendant, except on rare occasions or when on vacation, DANKO worked Monday through Friday from approximately

9:00 a.m. through 6:30 p.m., in Defendant's offices and later approximately 3 to 4 hours each week night, and additionally worked each Saturday and Sunday a total of 6 hours, including typically 4 hours on one or two Saturdays per month in the office, and therefore, DANKO worked approximately 66 hours per week during his employment with Defendant. And nearly all of DANKO's work hours were worked at Defendant's offices and DANKO's home office.

26. Named Plaintiffs will fairly and adequately represent and protect the interests of Collective Action Plaintiffs, because Named Plaintiffs' interests are coincident with, and not antagonistic to, those of Collective Action Plaintiffs. Named Plaintiffs have retained counsel with substantial experience in the prosecution of claims involving employee wage disputes.

27. No difficulties are likely to be encountered in the management of this collective action that would preclude its maintenance as a collective action. Collective Action Plaintiffs are easily identifiable from Defendant's records.

28. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant's records. Based on information and belief, the number of Collective Action Plaintiffs is estimated to be in excess of five hundred individuals.

29. Therefore, Named Plaintiffs should be permitted to bring this action as a collective action for and on behalf of themselves and those employees similarly situated, pursuant to the "opt-in" provisions of the FLSA, 29 U.S.C. §216(b).

**CLASS ACTION ALLEGATIONS**  
**Rule 23 Maryland Class**

30. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

31. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Maryland Named Plaintiffs JANET HOSKINS, ELIZABETH NUDO and PAUL DANKO, JR. (the “Maryland Named Plaintiffs”) brings their claims for relief on behalf of themselves and those similarly situated.

32. Specifically, the Maryland Named Plaintiffs seek to represent a class of all persons (the “Maryland Class”) who worked for Defendant as a Mortgage Loan Originators, and others who performed Mortgage Loan Originator functions of originating and producing residential mortgage loans from CONTOUR regardless of title, in the three (3) years prior to the date of filing of this action continuing through the present, in the state of Maryland.

33. The class is so numerous that the joinder of all class members is impracticable. Based on information and belief, the number of potential class members is estimated to be in excess of 100 individuals.

34. Maryland Named Plaintiffs’ claims are typical of the claims of the Maryland Class, because the Maryland Named Plaintiffs, like all Maryland Class members, were denied minimum wage and overtime wages under the Maryland Wage Laws.

35. Maryland Named Plaintiffs will fairly and adequately protect the interests of the Maryland Class because Maryland Named Plaintiffs’ interests are coincident with, and not antagonistic to, those of the class. Maryland Named Plaintiffs have retained counsel with substantial experience in the prosecution of claims involving employee wage disputes.

36. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant’s records.

37. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to

prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the Maryland Class that would establish incompatible standards of conduct for Defendant. Furthermore, the amount at stake for individual Maryland Class members may not be great enough to enable all of the individual Maryland Class members to maintain separate actions against Defendant.

38. Questions of law and fact that are common to the Maryland Class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the Maryland Named Plaintiffs and the Maryland Class are whether the MLOs who work in Maryland meet any exemption for overtime compensation under the Maryland Wage Laws, whether Maryland Named Plaintiffs and Maryland Class worked more than 40 hours per week without overtime pay, and whether Defendants' pay system failed to consistently pay MLOs minimum wage for all hours worked.

### **FACTUAL BACKGROUND**

39. The foregoing paragraphs are incorporated herein as if set forth in full.

40. Named Plaintiffs and All Putative Class Members worked for Defendant as an MLO or in a position with similar job duties.

41. Named Plaintiffs and All Putative Class Members were paid solely by commissions, without any salary or hourly wages and received no additional pay for overtime hours worked.

42. Defendant provided paychecks issued "twice a month" to Named Plaintiffs and Putative Class Members which paychecks, consisted solely of commissions generated from sales or mortgage loans, based on a percentage or basis points or flat dollar amount of such mortgage loans, or, if no commissions or low commissions had been generated, a "draw" was provided.

43. Pursuant to Defendant's written policy, all "draws" or "advances" were recovered or "charged back" from commissions paid to Named Plaintiffs and Putative Class Members in in paychecks where commissions were paid, and any remaining "deficit," i.e. non-recovered draw, carried over to future months until all draws were "fully recovered" by Defendant.

44. Named Plaintiffs and All Putative Class Members regularly and routinely worked in excess of 40 hours per workweek, and generally worked 50 to 70 hours or more per workweek and performed virtually all such work for Defendant at Defendant's offices and at Named Plaintiffs' and Putative Class Members' home offices.

45. Due to the payment structure discussed above, Named Plaintiffs and All Putative Class Members were denied minimum wages in pay periods when they received only a "draw" or commissions less than the applicable minimum wage.

46. During pay periods where commissions received were insufficient, Defendant's pay system failed to pay Named Plaintiffs and All Putative Class Members at least minimum wage for all hours worked during that bi-monthly pay period.

47. Defendant failed to maintain detailed time records, i.e. records which show the daily start time and end time for each working day of each Named Plaintiff and Putative Class Member.

48. Defendant failed to pay any overtime compensation for overtime hours, *i.e.* hours worked in excess of 40 per workweek, worked by Named Plaintiffs and All Putative Class Members.

49. Named Plaintiffs and All Putative Class Members were at all times relevant herein not exempt pursuant the FLSA and Maryland State Laws overtime exemptions for professional, administrative, executive employees or for outside sales employees.

50. Named Plaintiffs and All Putative Class Members duties consisted of selling mortgage loan products, completing and reviewing paperwork relating to such products, assisting clients of Defendant in completing paperwork and obtaining loans, providing customer service to loan customers, completing online training, attending sales and other meetings, and other duties.

51. Named Plaintiffs and All Putative Class Members performed the vast majority of their work and sales from inside Defendant's offices, and from home offices.

52. Named Plaintiffs and All Putative Class Members performed duties that did not require the exercise of discretion or independent judgment.

53. At all times relevant herein Named Plaintiffs and All Putative Class Members performed non-exempt work within the meaning of the FLSA and the Maryland Wage Laws.

54. Therefore, Named Plaintiffs and All Putative Class Members were entitled to overtime compensation pursuant to the FLSA and Maryland Wage Laws at the rate of at least one and one-half times their regular rate of pay for hours worked in excess of 40 per workweek.

55. Defendant intentionally classified Named Plaintiffs and All Putative Class Members as administrative employees exempt from overtime.

56. Defendant's designation of Named Plaintiffs and All Putative Class Members as exempt under the administrative exemption was not based on a reasonable basis of the law and was intentionally designed solely to evade its overtime obligations under the law.

57. Defendant intentionally failed to pay Named Plaintiffs and All Putative Class Members minimum wage and overtime wages for the time worked in excess of 40 hours in a workweek.

58. Accordingly, Named Plaintiffs and All Putative Class Members performed have been denied overtime wages in violation of the law.

**COUNT I**  
**Violations of the Fair Labor Standards Act (“FLSA”)**  
**(Failure to Pay Overtime and Minimum Wages)**  
**(Named Plaintiffs and Collective Action Plaintiffs v. Defendant)**

59. The foregoing paragraphs are incorporated herein as if set forth in full.

60. At all times relevant herein, Defendant has been and continues to be an “employer” within the meaning of the FLSA.

61. At all times relevant herein, Defendant was responsible for paying wages to Named Plaintiffs and Collective Action Plaintiffs.

62. At all times relevant herein, Named Plaintiffs and Collective Action Plaintiffs were employed with Defendant as “employees” within the meaning of the FLSA.

63. At all times relevant herein, Named Plaintiffs and Collective Action Plaintiffs were non-exempt employees within the meaning of the FLSA.

64. Under the FLSA, an employer must pay a non-exempt employee time and one-half their regular rate of pay for each hour worked in excess of 40 hours in a workweek.

65. Named Plaintiffs and Collective Action Plaintiffs regularly worked in excess of 40 hours per workweek.

66. At all times relevant herein, Defendant failed to maintain records of daily start and stop times for all MLOs, including for all Named Plaintiffs and Collective Action Plaintiffs.

67. Defendant’s compensation system regularly failed to pay Named Plaintiffs and Collective Action Plaintiffs at least minimum wage for all hours worked.

68. Named Plaintiffs and Collective Action Plaintiffs never received any overtime pay.

69. Defendant violated the FLSA by misclassifying Named Plaintiffs and Collective Action Plaintiffs as exempt outside sales employees and failed to properly pay Named Plaintiffs

and Collective Action Plaintiffs minimum wage, and time and one-half their regular rate of pay for the hours worked in excess of 40 hours per workweek.

70. Defendant's conduct in failing to pay Named Plaintiffs and Collective Action Plaintiffs properly was willful and is not based on any reasonable interpretation of the law.

71. As a direct and proximate cause of Defendant's actions, Named Plaintiffs and Collective Action Plaintiffs has suffered damages as set forth herein.

72. Because of Defendant's willful violation of the FLSA, Named Plaintiffs and Collective Action Plaintiffs are entitled to recover from Defendant unpaid minimum wages, unpaid overtime compensation, and an equal amount of liquidated damages, as well as reasonable attorneys' fees and costs of the action, all in an amount to be determined at trial.

## **COUNT II**

### **Maryland Wage Laws**

#### **(Failure to Pay Overtime and Minimum Wage)**

#### **(Maryland Named Plaintiff and Maryland Class v. Defendant)**

73. The foregoing paragraphs are incorporated herein as if set forth in full.

74. At all times relevant herein, Defendant has been and continues to be an employer within the meaning of the MDWHL.

75. At all times relevant herein, Defendant was responsible for paying wages to the Maryland Named Plaintiffs and Maryland Class.

76. At all times relevant herein, Maryland Named Plaintiffs and Maryland Class were employed with Defendant as "employees" within the meaning of the MDWHL.

77. Under the MDWHL, an employer must pay an employee at least one and one-half times their regular rate of pay for each hour worked in excess of forty (40) hours per workweek.

78. Defendant violated the MDWHL by misclassifying Maryland Named Plaintiffs and Maryland Class as exempt employees and failing to properly pay Maryland Named Plaintiffs and

Maryland Class at least the Maryland required minimum wage for all hours worked and at least one- and one-half times their regular rate of pay for all hours worked over 40 hours in a workweek.

79. Defendant's conduct in failing to pay Maryland Named Plaintiffs and Maryland Class properly was willful and was not based upon any reasonable interpretation of the law.

80. As a direct and proximate result of Defendant's willful violation of MDWHL, Maryland Named Plaintiffs and the Maryland Class seek unpaid minimum wage, unpaid overtime compensation, statutory/liquidated damages, attorney's fees, costs, and all other legal remedies available under the law as a consequence of Defendant's failure to pay them overtime compensation for hours worked over 40 per workweek, in an amount to be determined at trial.

**WHEREFORE**, Named Plaintiffs and all Putative Class Members pray that this Court enter an Order providing that:

A. Defendant is to compensate, reimburse, and make Named Plaintiffs and All Putative Class Members whole for any and all pay and benefits they would have received had it not been for Defendant's illegal actions, including but not limited to unpaid minimum wages, unpaid overtime, and other compensation due under the law;

B. Named Plaintiffs and All Putative Class Members are to be awarded statutory, liquidated, treble, and/or punitive damages;

C. Named Plaintiffs and All Putative Class Members are to be awarded pre-judgment and post-judgment interest on their claims;

D. Named Plaintiffs and All Putative Class Members are to be awarded attorneys' fees and costs, together with the costs and expenses of this action as provided by applicable law;

E. Named Plaintiffs and All Putative Class Members are to have a trial by jury; and

F. Named Plaintiffs and All Putative Class Members are to be accorded any and all other equitable and legal relief due under the law.

Dated: March 24, 2023.

Respectfully Submitted,

*/s/ Carly Jane Skarbnik Meredith*  
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