

1 Joshua S. Boyette (SBN 343330)
2 jboyette@swartz-legal.com
3 Swartz Swidler LLC
4 201 Spear Street, Ste. 1100
5 San Francisco, CA 94105
6 Tel: (510) 255-4660
7 Fax: (510) 255-4660

8 *Attorneys for Plaintiffs*

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ROBERT PETERS, individually and on
13 behalf of all those similarly situated,

14 Plaintiff,

15 v.

16 GUARANTEED RATE, INC,

17 Defendant,

18 And

19 VICTOR CIARDELLI

20 Defendant,

21 And

22 NIKOLAOS ATHANASIOU

23 Defendant.

Case No: 3:23-cv-05602

INDIVIDUAL AND COLLECTIVE
ACTION COMPLAINT FOR UNPAID
OVERTIME WAGES UNDER THE
FAIR LABOR STANDARDS ACT

INDIVIDUAL AND CLASS ACTION
COMPLAINT FOR VIOLATIONS OF
CALIFORNIA LAW, INCLUDING:

- FAILURE TO PAY MINIMUM WAGES;
- FAILURE TO PAY OVERTIME WAGES;
- PAID REST PERIOD VIOLATIONS;
- FAILURE TO PAY FOR NON-PRODUCTIVE TIME;
- FAILURE TO TIMELY PAY EARNED WAGES AFTER SEPARATION;
- FAILURE TO PROVIDE ACCURATE ITEMIZED PAY STATEMENTS;
- VIOLATIONS OF THE UNFAIR COMPETITION LAW;

DEMAND FOR JURY TRIAL

**AMENDED INDIVIDUAL, CLASS, AND COLLECTIVE
ACTION COMPLAINT**

Named Plaintiff Robert Peters (hereinafter “Named Plaintiff”), individually and on behalf of all those similarly situated, by and through his undersigned counsel, hereby complains as follows against Defendants Guaranteed Rate, Inc., Victor Ciardelli, and Nikolaos Athanasiou (hereinafter “Defendants”).

INTRODUCTION

1. Named Plaintiff has initiated the instant action to redress Defendants’ violations of the Fair Labor Standards Act (“FLSA”), the California Labor Code (“Labor Code”), the California Industrial Welfare Commission Wage Orders (IWC Wage Orders”), and the California Unfair Competition Law (“Unfair Competition Law”). Named Plaintiff asserts Defendants failed to pay Named Plaintiff and those similarly situated all minimum wages and overtime wages owed to them in violation of the FLSA. Named Plaintiff further asserts Defendants violated California law. Specifically, Named Plaintiff asserts Defendants failed to pay the minimum wage and overtime wages to him and those similarly situated the minimum wage, overtime wages, and wages for non-productive time. Named Plaintiff further asserts Defendants failed to provide him and those similarly situated required paid rest periods or premium wages for missed required paid rest periods. Named Plaintiff further asserts Defendants failed to timely pay him and those similarly situated all owed wages upon separation. Named Plaintiff further asserts Defendants failed to reimburse them and those similarly situated for expenses they incurred. Finally, Named Plaintiff asserts Defendants failed to provide accurate, itemized pay statements. As a result of Defendants’ unlawful conduct, Named Plaintiff and those similarly situated have suffered damages as set forth herein.

JURISDICTION AND VENUE

1 27. Named Plaintiff’s claims are typical of the claims of the putative class members,
2 because Named Plaintiff, like all Class Plaintiffs, was subject to the same wage policies and
3 practices of Defendants described herein.

4 28. Named Plaintiff will fairly and adequately protect the interests of the putative
5 class, because Named Plaintiff’s interests are coincident with, and not antagonistic to, those
6 of the class. Named Plaintiff has retained counsel with substantial experience in the
7 prosecution of class claims involving employee wage disputes.

8 29. Defendants have acted and refused to act on grounds that apply generally to the
9 class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting
10 the class as a whole insofar as Defendants have applied consistent unlawful wage policies to
11 the entire class and have refused to end these policies.

12 30. No difficulties are likely to be encountered in the management of this class action
13 that would preclude its maintenance as a class action. The class will be easily identifiable
14 from Defendants’ records.

15 31. A class action is superior to other available methods for the fair and efficient
16 adjudication of this controversy. Such treatment will allow all similarly situated individuals
17 to prosecute their common claims in a single forum simultaneously. Prosecution of separate
18 actions by individual members of the putative class would create the risk of inconsistent or
19 varying adjudications with respect to individual members of the class that would establish
20 incompatible standards of conduct for Defendants.

21 32. Questions of law and fact that are common to the members of the class
22 predominate over questions that affect only individual members of the class. Among the
23 questions of law and fact that are common to the class are:

24 a. Whether Defendants’ policy regarding the timing of its payment of final
25 earned commissions to Named Plaintiff and Class Plaintiffs after their separation from
26 employment violate California law regarding the prompt payment of final wages.

27 b. Whether Named Plaintiff and Class Plaintiffs were non-exempt and
28 entitled to minimum wages and overtime.

1 c. Whether Named Plaintiff and Class Plaintiffs were entitled to paid rest
2 periods and at what rate should premium wages have been paid for missed paid rest
3 periods.

4 d. Whether Defendants created and enforced the wage and hour policies at
5 issue under the good faith belief that such policies did not violate California law.

6 **FACTUAL BACKGROUND**

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

8 34. Defendant Guaranteed Rate is in the business of selling residential property (*i.e.*,
9 homes) mortgage loans throughout the United States, including California.

10 35. At all times relevant, Defendants employed mortgage loan officers (“MLOs”) in
11 branches throughout the United States, including California, to sell residential mortgage loans
12 to customers.

13 36. From in or around January 2017 to on or around December 1, 2020, Defendants
14 employed Named Plaintiff Peters as an MLO in California.

15 37. As an MLO, Named Plaintiff Peters sold loans to customers for properties
16 located throughout California, including within the geographic boundaries of this Court.

17 38. Named Plaintiff Peters worked the vast majority of his time at a Guaranteed Rate
18 office, his home office, or similar fixed locations.

19 39. Named Plaintiff Peters used the phone and internet to sell and consummate these
20 loans.

21 40. Defendants employed/employ Party, Collective, and Class Plaintiffs as MLOs or
22 in other similar positions.

23 41. Defendants paid/pay Named Plaintiff, Party Plaintiffs, and Collective and Class
24 Plaintiffs on a commission-only basis.

25 42. Accordingly, if an MLO did/does not sell, Defendants did/do not pay them any
26 wages for the work they performed/performed.

27 43. Named Plaintiff, Party Plaintiffs, and Collective and Class Plaintiffs regularly
28 worked/work more than 40 hours in a workweek.

1 44. Named Plaintiff, Party Plaintiffs, and Class Plaintiffs regularly worked/work
2 more than 8 hours in a day and often more than 12 hours in a day.

3 45. Defendants did not pay Named Plaintiff, Party Plaintiffs, and Collective and
4 Class Plaintiffs any additional wages for working more than 40 hours in a workweek, or 8
5 hours in a day, or 12 hours in a day.

6 46. Named Plaintiff, Party Plaintiffs, and Class Plaintiffs regularly worked/work at
7 least 3.5 hours during workdays.

8 47. Defendants did/do not provide uninterrupted, paid rest periods of at least 10
9 uninterrupted minutes to Named Plaintiff, Party Plaintiffs, and Class Plaintiffs on days during
10 which they worked at least 3.5 hours.

11 48. Defendants further did/do not provide Named Plaintiff, Party Plaintiffs and Class
12 Plaintiffs wages equal to one hour at their regular rate (hereinafter “premium wages”) for each
13 workday during which they worked at least 3.5 hours and did not receive a 10-minute,
14 uninterrupted, paid rest period.

15 49. Throughout their employment, Named Plaintiff, Party Plaintiffs and Class
16 Plaintiffs regularly performed tasks required by Defendants other than selling loans
17 (hereinafter referred to as “non-productive work”), including but not limited to participating
18 in meetings, administrative work, and booting up a work computer.

19 50. Defendants further did/do not pay Named Plaintiff, Party Plaintiffs and Class
20 Plaintiffs additional wages for time spent performing non-productive work.

21 51. Defendants further provided/provide Named Plaintiff, Party Plaintiffs and Class
22 Plaintiffs with pay statements for each pay period that did/do not show: a) the total hours
23 worked; b) the number of piece rate units earned and the applicable rate; c) the applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at
25 each rate, d) the total number of non-productive work hours and the hourly rate earned for
26 time spent performing non-productive work, and e) the number of paid rest periods not
27 provided and the premium wages owed for same.

28

1 52. Defendants further did not pay Named Plaintiff, Party Plaintiffs and Class
2 Plaintiffs who have separated from Defendants all earned commissions: a) within 72 hours if
3 they resigned without notice, or b) immediately if they provided notice or Defendants
4 discharged them.

5 53. Instead, Defendants paid Named Plaintiff, Party Plaintiffs and Class Plaintiffs
6 their final earned commissions according to the same schedule for the payment of
7 commissions that was in effect during their employment at the earliest or later.

8 54. Furthermore, pursuant to the Compensation Agreements signed with Named
9 Plaintiff, Party Plaintiffs and Class Plaintiffs, Defendants deducted from the wages they paid
10 Named Plaintiff and Class Plaintiffs the cost of business expenses.

11 55. The aforementioned conduct has caused Named Plaintiff, Collective Plaintiffs,
12 and Class Plaintiffs to suffer damages.

13 **COUNT I**
14 **Violations of the Fair Labor Standards Act (“FLSA”)**
15 **(Failure to Pay Overtime Wages)**
16 **(Party Plaintiffs and Collective Plaintiffs v. Defendants)**

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

18 57. At all times relevant herein, Defendant Guaranteed Rate was/is an employer
19 within the meaning of the FLSA.

20 58. At all times relevant herein, Defendant Guaranteed Rate was/is responsible for
21 paying wages to Named Plaintiff, Party Plaintiffs and Collective Plaintiffs.

22 59. At all times relevant herein, Named Plaintiff, Party Plaintiffs and Collective
23 Plaintiffs were/are employed with Defendant Guaranteed Rate as “employees” within the
24 meaning of the FLSA.

25 60. At all times relevant herein, Defendant Ciardelli directly and indirectly, directed,
26 aided, abetted, and/or assisted with creating and/or executing the policies and practices which
27 violated the FLSA.
28

1 71. At all times relevant herein, Defendant Athanasiou directly and indirectly,
2 directed, aided, abetted, and/or assisted with creating and/or executing the policies and
3 practices which violated the Labor Code and the IWC Wage Orders.

4 72. Under the Labor Code and the §4 of IWC Wage Order No. 4-2001, an employer
5 must pay an employee at least the minimum wage for time spent performing non-productive
6 work.

7 73. Defendants violated the Labor Code and §4 of IWC Wage Order No. 4-2001 by
8 failing to pay them any wages for time spent performing non-productive work.

9 74. Defendants' conduct in failing to pay Named Plaintiff, California Party
10 Plaintiffs, and Class Plaintiffs properly was and is willful and was not based upon any
11 reasonable interpretation of the law.

12 75. As a result of Defendants' unlawful conduct, Named Plaintiff, California Party
13 Plaintiffs, and Class Plaintiffs have suffered injuries.

14 **COUNT III**

15 **Violations of the Labor Code and §12 of IWC Wage Order No. 4-2001**

16 **(Failure to Provide Paid Rest Periods)**

17 **(Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs v. Defendants)**

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

19 77. The Labor Code and §12 of IWC Wage Order No. 4-2001 require an employer
20 to provide an employee with uninterrupted, paid rest periods of at least 10 minutes during any
21 workday on which they work at least 3.5 hours.

22 78. The Labor Code and §12 of IWC Wage Order No. 4-2001 require an employer
23 to pay an employee 1 hour's worth of wages at their regular rate for each workday on which
24 they worked at least 3.5 hours but were not provided with an uninterrupted, paid rest period
25 of at least 10 minutes.

26 79. Defendants violated the Labor Code and §12 of IWC Wage Order No. 4-2001 by
27 neither providing uninterrupted, paid rest periods of at least 10 minutes to Named Plaintiff,
28 California Party Plaintiffs, and Class Plaintiffs when they worked at least 3.5 hours during a

1 workday nor paying them an additional 1 hour’s worth of wages at their regular rate for each
2 such missed paid rest period.

3 80. Defendants’ conduct in failing to pay Named Plaintiff, California Party
4 Plaintiffs, and Class Plaintiffs properly was/is willful and was not based upon any reasonable
5 interpretation of the law.

6 81. As a result of Defendants’ unlawful conduct, Named Plaintiff, California Party
7 Plaintiffs, and Class Plaintiffs have suffered injuries.

8 **COUNT IV**

9 **Violations of the Labor Code**

10 **(Failure to Timely Pay All Earned Wages After Separation)**

11 **(Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs v. Defendants)**

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

13 83. The Labor Code requires an employer to pay an employee all earned wages
14 promptly upon the employee’s separation.

15 84. Defendants violated the Labor Code by failing to timely pay Named Plaintiff,
16 California Party Plaintiffs, and Class Plaintiff all earned wages, including commissions,
17 including minimum wages for time spent performing non-productive work, premium wages
18 for days on which Defendant did not provide a required paid rest period after their separation.

19 85. As a result of Defendants’ conduct, Named Plaintiff, California Party Plaintiffs,
20 and Class Plaintiffs have suffered injuries.

21 **COUNT V**

22 **Violations of the Labor Code and §7 of IWC Wage Order No. 4-2001**

23 **(Failure to Provide Accurate and Itemized Pay Statements
24 and Keep Accurate Time and Pay Records)**

25 **(Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs v. Defendants)**

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

27 87. The Labor Code and §7 of IWC Wage Order No. 4-2001 require an employer to
28 provide an employee with an accurate, itemized pay statement showing: a) the total hours

1 worked; b) the number of piece rate units earned and the applicable rate; c) the applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at
3 each rate, d) the total number of non-productive work hours and the hourly rate earned for
4 time spent performing non-productive work, and e) the number of paid rest periods not
5 provided and the premium wages owed for same

6 88. The Labor Code and §7 of IWC Wage Order No. 4-2001 also require an
7 employer to maintain accurate records of the hours worked and wages earned by employees.

8 89. Defendants violated the Labor Code and §7 of IWC Wage Order No. 4-2001 by
9 failing to provide the required information on pay statements it issued to Named Plaintiff,
10 California Party Plaintiffs, and Class Plaintiffs.

11 90. Defendants further violated the Labor Code and §7 of IWC Wage Order No. 4-
12 2001 by failing to maintain accurate records of the hours worked and wages earned by Named
13 Plaintiff, California Party Plaintiffs, and Class Plaintiffs.

14 91. As a result of the aforementioned conduct, Named Plaintiff, California Party
15 Plaintiffs, and Class Plaintiffs have suffered injuries.

16 **COUNT VI**

17 **Violations of the Unfair Competition Law**

18 **(Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs v. Defendants)**

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

20 92. The Unfair Competition Law prohibits any unlawful, unfair, or fraudulent
21 business practices.

22 93. Defendants violated the Unfair Competition law by engaging in the unlawful
23 conduct alleged herein, including but not limited to failing to pay the minimum wage, failing
24 to timely pay earned wages after separation, failing to provide required paid rest periods,
25 making unlawful deductions from wages for business expenses, and issuing wage statements
26 containing false and/or misleading information about the amount of wages or compensation
27 due Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs.

28 94. Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs lack an adequate
remedy at law.

1 95. Named Plaintiff, California Party Plaintiffs, Class Plaintiffs have been harmed,
2 including by being unable to work for Defendant without being subject to legal violations.

3 96. Named Plaintiff, California Party Plaintiffs, Class Plaintiffs have been harmed,
4 including by being denied wages due under law as alleged herein.

5 **COUNT VII**

6 **Violations of the Labor Code**

7 **(Unlawful deduction of business expenses from wages)**

8 **(Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs v. Defendants)**

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

10 98. Pursuant to California Labor Code § 2802, “an employer shall indemnify his or
11 her employees for all necessary expenditures... incurred by the employee in direct
12 consequence of the discharge of his or her duties...”

13 99. Defendants reduced the wages of Named Plaintiff, California Party Plaintiffs,
14 and Class Plaintiffs for business expenses, including but not limited to: marketing costs and
15 rate locks, among other business expenses.

16 100. The Labor Code prohibits employers from making deductions from employees’
17 pay to defray ordinary business expenses.

18 101. Defendants violated the Labor Code by deducting business expenses from the
19 wages and compensation due Named Plaintiff, California Party Plaintiffs, and Class Plaintiffs.

20 102. Named Plaintiff and Class Plaintiffs lost wages and other money due as a result
21 of Defendants’ conduct.

22 **WHEREFORE**, Named Plaintiff, Party Plaintiffs, Collective Plaintiffs, and Class
23 Plaintiffs pray that this Court enter an Order providing that:

24 (1) Defendants are to compensate, reimburse, and make Named Plaintiff, Party
25 Plaintiffs, Collective Plaintiffs, and Class Plaintiffs whole for any and all pay and benefits they
26 would have received had it not been for Defendants’ illegal actions, including but not limited
27 to past lost earnings owed under the FLSA and/or the Labor Code and the IWC Wage Orders;
28

1 (2) Named Plaintiff, Party Plaintiffs, and Collective Plaintiffs are to be awarded
2 liquidated damages under the FLSA in an amount equal to the actual damages in this case;

3 (3) Defendants are to pay all applicable statutory penalties under the Labor Code;

4 (4) Defendants are to pay restitutionary disgorgement pursuant to the Unfair
5 Competition Law;

6 (5) Defendants are to immediately cease its unlawful employment practices in
7 failing to provide paid rest periods, deducting business expenses wages from their employees'
8 wages, failing to pay overtime due under law, failing to pay minimum wage due under law,
9 and failing to pay for non-productive time;

10 (6) Defendants are to pay prejudgment interest at the maximum legal rate to Named
11 Plaintiff and Class Plaintiffs;

12 (7) Defendants are to pay general, special, and consequential damages, to the extent
13 allowed by law;

14 (8)

15 (9) Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs are to be awarded the
16 costs and expenses of this action and reasonable legal fees as provided by applicable federal
17 and state law.

18 (10) Named Plaintiff and Class Plaintiffs are to be awarded applicable liquidated
19 damages under the Labor Code;

20 (11) Defendants are to provide such other relief as the Court may deem just and
21 proper;

22 (12) Named Plaintiff's, Collective Plaintiffs', WHL Plaintiffs', WPL Plaintiffs', and
23 Common Law Plaintiffs' claims are to receive a trial by jury.

24 Respectfully Submitted,

25
26 /s/ Joshua S. Boyette

27 Joshua S. Boyette, Esq.

28 **SWARTZ SWIDLER, LLC**

201 Spear St., Ste. 1100

San Francisco, CA 94105
Phone: (510) 255-4660

Date: February 29, 2024

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28