

1 KINGSLEY & KINGSLEY, APC
 2 GEORGE R. KINGSLEY, ESQ. SBN-38022
 3 ERIC B. KINGSLEY, ESQ. SBN-185123
 4 DARREN M. COHEN, ESQ. SBN-221938
 5 ELANA R. LEVINE, ESQ. SBN-234155
 6 16133 VENTURA BL., SUITE 1200
 7 ENCINO, CA 91436
 8 (818) 990-8300, FAX (818) 990-2903

CONFIRMED COPY
 OF ORIGINAL FILES
 Los Angeles Superior Court

DEC 08 2006

John A. Clark Executive Officer/Clerk
 By D. Garcia, Deputy

Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES-UNLIMITED

11 RICKY J. SIERRA, on behalf	)	CASE NO.:	BC362928
12 of himself and others)		
12 similarly situated,	)	CLASS ACTION COMPLAINT FOR:	
)		
13 Plaintiffs,	)	1. Failure to Pay	
	)	Wages/Overtime	
14 v.	)	2. Meal Break Premium Pay	
	)	Under Labor §226.7	
15 AAMES HOME LOAN;	)	3. Rest Break Premium Pay	
16 and DOES 1 to 50, Inclusive,	)	Under Labor Code §226.7	
	)	4. Penalties Pursuant to	
17 Defendants.	)	Labor Code §203	
	)	5. Violation of Business &	
	)	Professions Code §17200	

19 Plaintiff RICKY SIERRA on behalf of himself and all others
 20 similarly situated, complain of defendants, and each of them, as
 21 follows:

I

INTRODUCTION

24 1. This is a Class Action, pursuant to Code of Civil
 25 Procedure §382, on behalf of plaintiff and a Proposed Class. The
 26 Class consists of all employees employed by defendant AAMES HOME
 27 LOAN (hereinafter referred to as "AAMES") and any subsidiaries or
 28 affiliated companies in any of its offices located in the State of

1 California who worked as a loan officer and/or similar title.

2 2. For at least four (4) years prior to the filing of this
3 action continuing to the present, defendants have had a consistent
4 policy of failing to pay wages to hourly employees for all hours
5 worked.

6 3. From at least four (4) years prior to the filing of this
7 action and continuing to the present, defendants have had a
8 consistent policy of requiring hourly employees within the State of
9 California, including plaintiff, to work at least five (5) hours
10 without a meal period and failing to pay such employees one (1)
11 hour of pay at the employees regular rate of compensation for each
12 workday that the meal period is not provided or provided after five
13 (5) hours, as required by California state wage and hour laws.

14 4. From at least four (4) years prior to the filing of this
15 action and continuing to the present, defendants have had a
16 consistent policy of failing to provide hourly employees within the
17 State of California, including plaintiff, rest periods of at least
18 ten (10) minutes per four (4) hours worked or major fraction
19 thereof and failing to pay such employees one (1) hour of pay at
20 the employees regular rate of compensation for each workday that
21 the rest period was not provided, as required by California state
22 wage and hour laws.

23 5. Plaintiff, on behalf of himself and all Class Members,
24 brings this action pursuant to Labor Code §§201, 202, 203, 226.7,
25 510, 512, 1994, and California Code of Regulations, Title 8,
26 Section 11040 seeking unpaid wages, meal and rest period
27 compensation, penalties, injunctive and other equitable relief, and
28 reasonable attorneys' fees and costs.

1 regular rate of compensation for each workday that a rest period
2 was not provided.

3 10. Defendants willfully failed to provide all wages at the
4 termination of their employment with defendants.

5 B. Defendants

6 11. Defendant AAMES HOME LOAN, a California corporation,
7 operates in the state of California. Defendants employed plaintiff
8 and similarly situated persons as employees within California.
9 Defendant's corporate address is 350 S. Grand Av., 43rd Floor, Los
10 Angeles, CA 90071.

11 12. The true names and capacities, whether individual,
12 corporate, associate, or otherwise, of defendants sued herein as
13 DOES 1 through 50, inclusive, are currently unknown to plaintiffs,
14 who therefore sues defendants by such fictitious names under Code
15 of Civil Procedure §474. Plaintiff is informed and believes, and
16 based thereon allege, that each of the defendants designated herein
17 as a DOE is legally responsible in some manner for the unlawful
18 acts referred to herein. Plaintiff will seek leave of court to
19 amend this Complaint to reflect the true names and capacities of
20 the defendants designated hereinafter as DOES when such identities
21 become known.

22 13. Plaintiff is informed and believes, and based thereon
23 alleges, that each defendant acted in all respects pertinent to
24 this action as the agent of the other defendants, carried out a
25 joint scheme, business plan or policy in all respects pertinent
26 hereto, and the acts of each defendant are legally attributable to
27 the other defendants. Furthermore, defendants in all respects acted
28 as the employer and/or joint employer of plaintiff and the Class.

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

III

FACTUAL BACKGROUND

14. Plaintiff and the Class are, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. Defendants hire employees who work as "loan officers" and/or similar title.

15. Plaintiff and the Class were not compensated for all hours that they worked. Plaintiff and the Class worked more than eight (8) hours per day and/or forty (40) hours per week without the proper compensation.

16. Plaintiff and the Class have not been provided meal periods for work days in excess of five (5) hours and were not compensated one hours wages in lieu thereof.

17. Plaintiff and the Class have rest periods for work days in excess of three and one-half hours (3 1/2) without being provided a rest period and were not compensated one hours wages in lieu thereof.

18. Plaintiff and the proposed class are, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

19. Plaintiff and the class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001, California Industrial Welfare Commission in No. 4 (Title 8 Cal. Code of Reg. §§11040).

///
///

IV

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a class composed of and defined as follows:

All persons who are employed or have been employed, and who have worked as "loan officer" and/or similar title for AAMES in the State of California since four (4) years prior to the filing of this action.

21. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

22. This action has been brought and may properly be maintained as a class action under the provisions of §382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

23. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, plaintiff is informed and believes that defendants employed as many as 1000 employees during the relevant time periods.

24. Plaintiff alleges defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not

1 practicable.

2 B. Commonality

3 25. There are questions of law and fact common to the Class
4 that predominate over any questions affecting only individual Class
5 Members. These common questions of law and fact include, without
6 limitation:

7 (a) Whether defendants failed to pay wages as required
8 by the Labor Code and Wage Orders;

9 (b) Whether defendants violated Labor Code §§226.7 and
10 512, IWC Wage Order 5-2001 or other applicable IWC Wage Orders, and
11 Cal. Code Regs., Title 8, Section 11050 by failing to provide meal
12 periods before the fifth hour of employment and failing to
13 compensate said employees one (1) hours wages in lieu of meal
14 periods;

15 (c) Whether defendants violated Labor Code §§226.7 and
16 512, Wage Order 5-2001 or other applicable IWC Wage Orders, and
17 Cal. Code Regs., Title 8, Section 11050 by failing to provide daily
18 rest periods for every three and one-half (3 1/2) hours or major
19 fraction thereof worked and failing to compensate said employees
20 one (1) hours wages in lieu of rest periods;

21 (d) Whether defendants violated §§201-203 of the Labor
22 Code by failing to pay compensation due and owing at the time that
23 any Class member's employment with defendants terminated;

24 (e) Whether defendants violated §17200 et seq. of the
25 Business & Professions Code by engaging in the acts previously
26 alleged; and

27 (f) Whether plaintiff and the members of the class are
28 entitled to equitable relief pursuant to Business & Professions

1 Code §17200, et. seq.

2 C. Typicality

3 26. The claims of the named plaintiff are typical of the
4 claims of the Class. Plaintiff and all members of the Class
5 sustained injuries and damages arising out of and caused by
6 defendants' common course of conduct in violation of laws,
7 regulations that have the force and effect of law and statutes as
8 alleged herein.

9 D. Adequacy of Representation

10 27. Plaintiff will fairly and adequately represent and protect
11 the interests of the members of the Class. Counsel who represents
12 Plaintiff is competent and experienced in litigating large
13 employment class actions.

14 E. Superiority of Class Action

15 28. A class action is superior to other available means for
16 the fair and efficient adjudication of this controversy.
17 Individual joinder of all Class Members is not practicable, and
18 questions of law and fact common to the Class predominate over any
19 questions affecting only individual members of the Class. Each
20 member of the Class has been damaged and is entitled to recovery by
21 reason of Defendants' illegal policy and/or practice of failing to
22 compensate Class Members for overtime and missed meal and rest
23 breaks.

24 29. Class action treatment will allow those similarly situated
25 persons to litigate their claims in the manner that is most
26 efficient and economical for the parties and the judicial system.
27 Plaintiffs are unaware of any difficulties that are likely to be
28 encountered in the management of this action that would preclude

1 its maintenance as a class action.

2 V

3 FIRST CAUSE OF ACTION

4 FAILURE TO PAY WAGES AND/OR OVERTIME

5 (Labor Code, §§510 and 1194)

6 30. Plaintiff incorporates paragraphs 1 through 29 as though
7 fully set forth herein.

8 31. Defendants willfully violated the provisions of the Labor
9 Code by failing to compensate plaintiff and the proposed class for
10 all hours worked.

11 32. By their policy of requiring non-exempt employees to work
12 more then eight (8) hours per day and/or forty (40) hours per week
13 without the proper overtime compensation. Plaintiff and the class
14 were required to work, as a condition of employment, approximately
15 fifteen (15) minutes per day off the clock without compensation.
16 AS a result, defendants willfully violated the provisions of Labor
17 Code Sections 510 and 1194.

18 33. As a result of the unlawful acts of defendants, plaintiff
19 and the Class they seek to represent have been deprived of wages in
20 amounts to be determined at trial, and are entitled to recovery of
21 such amounts, plus interest and penalties thereon, attorneys' fees,
22 and costs, pursuant to Labor Code §§1194 and/or 218.5.

23 VI

24 SECOND CAUSE OF ACTION

25 FAILURE TO ALLOW MEAL BREAKS PURSUANT TO LABOR CODE §226.7

26 34. Plaintiff incorporates paragraphs 1 through 33 as though
27 fully set forth herein.

28 35. Labor Code §226.7 requires an employer to pay an

1 additional hour of compensation for each meal period the employer
 2 fails to provide. Employees are entitled to a meal period of at
 3 least thirty (30) minutes per five (5) hour work period. Plaintiff
 4 and the class consistently worked over five (5) hour shifts.
 5 Pursuant to the Code, plaintiff and the class are entitled to a
 6 meal period of not less than thirty (30) minutes prior to exceeding
 7 five (5) hours of employment.

8 36. Defendants failed to provide plaintiff and others with
 9 timely meal breaks of not less than thirty (30) minutes as required
 10 by the Labor Code during the relevant class period.

11 37. Pursuant to Labor Code §226.7, plaintiff is entitled to
 12 damages in an amount equal to one (1) hour of wages per missed meal
 13 break, in a sum to be proven at trial.

14 38. Pursuant to Labor Code §218.5 plaintiff requests that the
 15 court award reasonable attorney's fees and costs incurred in this
 16 action.

17 VI

18 THIRD CAUSE OF ACTION

19 FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7

20 39. Plaintiff incorporates paragraphs 1 through 38 as though
 21 fully set forth herein.

22 40. Labor Code §226.7 requires an employer to pay an
 23 additional hour (1) of compensation for each rest period the
 24 employer fails to provide. Employees are entitled to a paid ten
 25 (10) minute rest break for every four (4) hours worked. Plaintiff
 26 and the class consistently worked over four (4) hours per shift
 27 with no rest breaks.

28 41. Defendants failed to provide plaintiff and others with

1 rest breaks of not less than ten (10) minutes as required by the
2 Labor Code during the relevant class period.

3 42. Pursuant to Labor Code §226.7, plaintiff is entitled to
4 damages in an amount equal to one (1) hour of wages per missed rest
5 break as well as attorney's fees and costs under Labor Code §218.5,
6 in a sum to be proven at trial.

7 VI

8 FOURTH CAUSE OF ACTION

9 WAITING TIME PENALTIES UNDER LABOR CODE §203

10 43. Plaintiff incorporates paragraphs 1 through 42 as though
11 fully set forth herein.

12 44. Numerous members of the Class are no longer employed by
13 defendants. They were either fired or quit defendants employ.

14 45. Defendant's failure to pay wages, as alleged above was
15 willful in that defendants and each of them knew wages to be due
16 but failed to pay them, thus entitling plaintiff and the Class to
17 penalties under Labor Code §203, which provides that an employee's
18 wages shall continue as a penalty until paid for a period of up to
19 thirty (30) days from the time they were due.

20 46. Defendants have failed to pay plaintiff and others a sum
21 certain at the time of termination or within seventy-two (72) hours
22 of their resignation, and have failed to pay those sums for thirty
23 (30) days thereafter. Pursuant to the provisions of Labor Code
24 §203, plaintiff and the Class are entitled to a penalty in the
25 amount of their daily wage multiplied by thirty (30) days.

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

VII

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE §17200

47. Plaintiff incorporates paragraphs 1 through 46 as though fully set forth herein.

48. This is a Representative Private Attorney General Action and Class Action for Unfair Business Practices. RICKY J. SIERRA on his own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code §17200, et seq. The conduct of all defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to plaintiff, the general public, and the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of C.C.P. §1021.5.

49. Plaintiff is a "person" within the meaning of Business & Professions Code §17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

50. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business practices.

51. Wage and hour laws express fundamental public policies. Providing employees with the proper overtime compensation and meal and rest breaks are a fundamental public policy of this State and of the United States. Labor Code §90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect

1 law-abiding employers and their employees from competitors who
2 lower their costs by failing to comply with minimum labor
3 standards.

4 52. Defendants have violated statutes and public policies.
5 Through the conduct alleged in this Complaint, defendants, and each
6 of them, have acted contrary to these public policies, have
7 violated specific provisions of the Labor Code, and have engaged in
8 other unlawful and unfair business practices in violation of
9 Business & Profession Code §17200, et seq., depriving plaintiff,
10 and all persons similarly situated, and all interested persons of
11 rights, benefits, and privileges guarantees to all employees under
12 law.

13 53. Defendants' conduct, as alleged hereinabove, constitutes
14 unfair competition in violation of §17200 of the Business &
15 Professions Code.

16 54. As a proximate result of the above mentioned acts of
17 defendants, plaintiff and others similarly situated have been
18 damaged in a sum as may be proven.

19 55. Unless restrained by this Court, defendants will continue
20 to engage in the unlawful conduct as alleged above. Pursuant to
21 Business & Professions Code this Court should make such orders or
22 judgments, including the appointment of a receiver, as may be
23 necessary to prevent the use or employment, by defendants, their
24 agents or employees, of any unlawful or deceptive practice
25 prohibited by the Business & Professions Code, and/or, including
26 but not limited to, disgorgement of profits which may be necessary
27 to restore plaintiff and the Class Members to the money defendants
28 have unlawfully failed to pay.

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

VIII

RELIEF REQUESTED

WHEREFORE, plaintiff prays for the following relief:

1. For compensatory damages in the amount of plaintiff's and each class members' unpaid wages, from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of plaintiff's and each class members' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of plaintiff's and each class members' hourly wage for each shift where rest period(s) were missed from at least four (4) years prior to the filing of this action to the present as may be proven;.

4. For penalties pursuant to Labor Code §203 for all employees who quit or were fired equal to their daily wage times thirty (30) days;

5. An award of prejudgment and post judgment interest;

6. For restitution for unfair competition pursuant to Business & Professions Code §17200, including disgorgement or profits, in an amount as may be proven;

7. An award providing for payment of costs of suit;

8. An award of attorneys' fees; and

9. Such other and further relief as this Court may deem proper and just.

///
///
///

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

DATED: _____, 2006

KINGSLEY & KINGSLEY, APC

By: *Darren M. Cohen*
DARREN M. COHEN
ATTORNEY FOR PLAINTIFFS