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11 Attorneys for Individual and Representative Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

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15
16 MARY ANN ADLAO, and MARIAN
17 WILLIAMS, individually, on behalf of
18 others similarly situated, and on behalf of
the general public,

19 Plaintiffs,

20 vs.

21 JPMORGAN CHASE & CO.,
22 JPMORGAN CHASE BANK, N.A., and
EMC MORTGAGE CORP., as
23 successors in interest to BEAR
STEARNS, INC., and ENCORE
24 CREDIT CORP., and Does 1-50,
inclusive.

25 Defendants.
26
27
28

Case No.: cv-10-04508-SBA

CLASS AND COLLECTIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF**

- (1) **Violation of Fair Labor Standards Act
29 U.S.C. Section 207**
- (2) **Violation of California Labor Code
Sections 510, 1194, and 1198, and IWC
Wage Order(s)**
- (3) **Failure to Provide Itemized Wage
Statements (California Labor Code
Section 226)**
- (4) **Failure to Indemnify for Business
Expenses (California Labor Code §
2802)**
- (5) **Failure to Provide and/or Authorize
Meal and Rest Periods (California
Labor Code 512, 226.7, and IWC Wage
Order(s))**
- (6) **Violation of California Business and**

1 | **Professions Code Sections 17200, et seq.**

2 | **(7) Civil Penalties Pursuant to California**
3 | **Labor Code Section 2698, et seq., the**
4 | **Labor Code Private Attorneys General**
5 | **Act of 2004**

6 | **DEMAND FOR JURY TRIAL**

7 | **PRELIMINARY STATEMENT**

8 | 1. This is a collective and class action brought by Individual and Representative
9 | Plaintiffs Mary Ann Adlao and Marian Williams on their own behalf and on behalf of the
10 | proposed class identified below. Plaintiffs and the putative class members were or are employed
11 | by Defendant JPMorgan Chase & Co., and certain Doe Defendants, or their predecessors-in-
12 | interest, as Appraisers. As Appraisers, Plaintiffs and the putative class members are, were, or
13 | should have been classified as covered, non-exempt employees under federal and state wage and
14 | hour laws, and entitled to overtime pay consistent with the requirements of these laws. These
15 | employees are similarly situated under the Federal Rules of Civil Procedure 23 and the Fair
16 | Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

17 | 2. The Collective Class is made of all persons who are or have been employed by
18 | Defendants as an Appraiser, at any time within the United States within three years prior to this
19 | action’s filing date, through the date of final disposition of this action (the “Collective Class
20 | Period”).

21 | 3. The California Class is made up of all persons who are or have been employed by
22 | Defendants as an Appraiser in the State of California within the period four years prior to the
23 | filing date of this Complaint (the “California Class Period”).

24 | 4. During the Collective Class Period and the California Class Periods, Defendants
25 | failed to pay appropriate overtime compensation to each member of the Collective Class and
26 | California Class as required by federal and state law. Plaintiffs seek relief for the California
27 | Class pursuant to the applicable State Law, Rules, Regulations, and Wage Orders of the
28 |

1 Industrial Welfare Commission (“IWC”). Plaintiffs also seek relief for the Collective Class
2 under the Fair Labor Standards Act. All of the relief sought is to remedy the Defendants’ failure
3 to pay appropriate overtime compensation, to provide or authorize meal and rest periods, to
4 indemnify Plaintiffs for necessary business expenses, and to maintain accurate time records, in
5 addition to injunctive relief.

6 **THE PARTIES**

7 5. Individual and representative Plaintiff Mary Ann Adlao resides in San Ramon,
8 California (Contra Costa County). She has been employed by Defendants since 2003 as an
9 Appraiser,¹ and has worked from her home in San Ramon for Defendants since 2008. Plaintiff
10 Adlao brings her claim on behalf of herself and the Collective and California Classes. A written
11 consent form for Plaintiff Adlao is attached as Exhibit A.

12 6. Individual and representative Plaintiff Marian Williams currently resides in
13 Litchfield Park, Arizona. She has been employed by Defendants since approximately July 2006
14 as an Appraiser. Plaintiff Williams worked from approximately July 2006 to December 2008 in
15 California. From December 2008 to the present, Plaintiff Williams has worked from her current
16 home in Litchfield Park, Arizona. Plaintiff Williams brings her claim on behalf of herself and
17 both the California Class for the period Ms. Williams worked in California and the Collective
18 Class for the period Ms. Williams has worked in Arizona. A written consent form for Plaintiff
19 Williams is attached as Exhibit B.

20 7. Upon information and belief, Defendant JP Morgan Chase & Co. is a Delaware
21 Corporation doing business in and maintaining offices in several states throughout the United
22 States, including California.

23 8. Upon information and belief, Defendant JPMorgan Chase Bank, N.A., is a wholly
24 owned subsidiary of Defendant JPMorgan Chase & Co.

25 9. Upon information and belief, Defendant EMC Mortgage Corp. (“EMC”) is a
26 wholly owned subsidiary of JPMorgan Chase & Co. Upon information and belief, EMC is a

27 ¹ Upon information and belief, Defendants have changed the job title for the position Plaintiffs have held/continue to
28 hold. At various times it has been referred to as, *inter alia*, “Appraisal Review Analyst,” “Valuation Analyst,” and
“Senior Operations Associate.” The position is referred to herein as “Appraiser.”

1 Delaware Corporation doing business in and maintaining offices in several states throughout the
2 United States, including California.

3 10. Upon information and belief, Defendants JP Morgan Chase & Co., JP Morgan
4 Chase Bank, N.A, and EMC (collectively “Chase” or “Defendants”) are successors in interest to
5 Bear Stearns, Inc. Upon information and belief, Bear Stearns, Inc. was successor in interest to
6 Encore Credit Corp.

7 11. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true
8 names and capacities are unknown to Plaintiffs. When their true names and capacities are
9 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities
10 herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named
11 Defendants is responsible in some manner for the occurrences herein alleged, and that the
12 damages of Plaintiffs and the putative class members herein alleged were proximately caused by
13 such Defendants.

14 12. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
15 herein was, at all times relevant to this action, the agent, employee, representative partner, and/or
16 joint venturer of the remaining Defendants and was acting within the course and scope of the
17 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the
18 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the
19 remaining Defendants.

20 **JURISDICTION AND VENUE**

21 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this case
22 is being brought under the FLSA, 29 U.S.C. § 207 *et seq.* Each representative Plaintiff has
23 signed a consent form to join this lawsuit, attached hereto as Exhibits A & B. This Court has
24 original jurisdiction over all the state and federal claims under the Class Action Fairness Act, 28
25 U.S.C. §1332(d), because, upon information and belief, the amount in controversy exceeds
26 \$5,000,000.00 and the parties are citizens of diverse jurisdictions. This Court also has
27 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367.

28 14. Venue is proper in the United States District Court, Northern District of California

1 pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the
2 claims occurred in this district by virtue of the work performed by Plaintiff Adlao.

3 15. Pursuant to Civil L.R. 3-2 (c) and (d), this action is properly assigned to the
4 Northern District of California because a substantial portion of the events giving rise to this
5 dispute occurred in Contra Costa County, California.

6 **COLLECTIVE ACTION ALLEGATIONS**

7 16. Plaintiffs bring this action on behalf of themselves and other employees similarly
8 situated as authorized under FLSA, 29 U.S.C. § 216(b). The employees similarly situated are:

9 **Collective Class:** All persons who are or have been employed by Defendants as an
10 Appraiser, within the United States at any time three years prior to the filing of this Complaint,
11 to the final disposition of this case.

12 17. Upon information and belief, Defendants suffered and permitted Plaintiffs and the
13 Collective Class to work more than forty hours per week without appropriate overtime
14 compensation.

15 18. Defendants' unlawful conduct has been widespread, repeated, and consistent.

16 19. Upon information and belief, Defendants knew that Plaintiffs and the Collective
17 Class, performed work that required overtime pay. Defendants have operated under a scheme to
18 deprive these employees of appropriate overtime compensation by failing to properly
19 compensate them for all hours worked.

20 20. Upon information and belief, Defendants misclassified Plaintiffs and members of
21 the Collective Class with the Job titles of Appraiser or with similar duties to persons with this
22 job title or any job title held by Plaintiffs as "exempt" from federal and state overtime laws,
23 Defendants misrepresented to these employees that they were "exempt" and therefore were not
24 entitled to overtime pay for hours worked in excess of forty a week.

25 21. Upon information and belief, Defendants reclassified Appraisers in about late July
26 or early August 2010, without providing them full compensation for the period of time in which
27 they were misclassified.

28 22. Plaintiffs are not learned professionals as defined by the Act.

1 23. Plaintiffs' and the Collective Class members' primary duties consisted of routine
2 mental work, dictated by detailed guidelines enforced by Defendants. In essence, Plaintiffs and
3 the Collective Class members were required to follow a "checklist" for each appraisal they
4 reviewed.

5 24. Plaintiffs' and the Collective Class members are subject to productivity
6 requirements and are production workers, not administrators of Defendants' general business
7 operations or makers of Defendants' overarching policies.

8 25. In particular, Appraisers are expected to evaluate each appraisal report under
9 Defendants' pre-established guidelines, within a set period of time for each appraisal, and issue a
10 yes or no decision regarding the accuracy of the report. They are trained only to apply
11 Defendants' pre-established guidelines and procedures as they find them. Defendants measure
12 the performance of Plaintiffs and other Appraisers by assessing their productivity and adherence
13 to Defendants' production quotas and other pre-established guidelines and procedures. Upon
14 information and belief, Appraisers occasionally were awarded performance-based bonuses for,
15 *inter alia*, meeting their production quotas. Plaintiffs are constantly threatened with discipline up
16 to and including termination if they fail to meet their production quotas. Plaintiffs' production
17 quotas frequently require work in excess of forty hours per week.

18 26. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith,
19 and has caused significant damages to Plaintiffs, and the Collective Class.

20 27. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs
21 and the Collective Class, and as such, notice should be sent to the Collective Class. There are
22 numerous similarly situated current and former employees of Defendants who have been denied
23 overtime pay in violation of the FLSA who would benefit from the issuance of a Court
24 supervised notice of the present lawsuit and the opportunity to join in the present lawsuit. Those
25 similarly situated employees are known to Defendants and are readily identifiable through
26 Defendants' records.

27 **CALIFORNIA CLASS ALLEGATIONS**

28 28. Plaintiffs bring this action as a class action pursuant to Rule 23 of the

1 Federal Rules of Civil Procedure on behalf of the following defined class:

2 **Proposed California Class:** All employees of Defendants who were, are, or will
3 be employed in the State of California as an Appraiser at
4 any time within four years of the filing of this Complaint
5 until the final disposition of this case.

6 29. Numerosity: The Proposed Class is so numerous that joinder of all members is
7 impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
8 relevant time period, Defendants employed dozens of people who are geographically dispersed
9 and who satisfy the definition of the Proposed Class.

10 30. Typicality: Plaintiffs' claims are typical of the members of the Proposed
11 Classes. Plaintiffs are informed and believe that, like other Appraisers, they routinely worked
12 more than eight hours per day and more than 40 hours per week during the Class Period.
13 Plaintiffs had the same duties and responsibilities as other Class members and were subject to
14 Defendants' policy and practice of improperly treating and classifying these employees as
15 "exempt" from federal and state overtime law, misrepresenting to these employees that they
16 were exempt from federal and state overtime law, improperly failing to pay appropriate overtime
17 compensation for all hours worked, failing to provide or authorize meal and rest breaks in
18 compliance with state laws, failing to maintain accurate time records of hours worked by the
19 Proposed Classes, failing to issue accurate itemized wage statements to these individuals, and
20 failing to indemnify these employees for routine business expenses.

21 31. Superiority: A class action is superior to other available methods of the fair and
22 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
23 where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits
24 in federal court against large corporate defendants and fear retaliation. Prosecuting dozens of
25 identical, individual lawsuits statewide does not promote judicial efficiency or equity and
26 consistency in judicial results.

27 32. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
28 Proposed Class, and has retained counsel experienced in complex wage and hour class and

1 collective action litigation.

2 33. Commonality: Common questions of law and fact exist to all members of the
3 Proposed Class and predominate over any questions solely affecting individual members of the
4 Proposed Class, including but not limited to:

- 5 A. Whether Defendants improperly classified Plaintiffs and members of the
6 California Class with the job title of Appraiser as exempt;
- 7 B. Whether Defendants unlawfully failed to fully pay appropriate overtime
8 compensation to members of the California Class in violation of federal
9 and state wage laws;
- 10 C. Whether Plaintiffs and California Class members who are no longer
11 employed with Defendants are entitled to penalties for failure to timely pay
12 wages upon termination of employment, pursuant to the applicable state
13 laws;
- 14 D. Whether Defendants' policies and practices provide and/or authorize meal
15 and rest periods in compliance with applicable state laws;
- 16 E. Whether Defendants failed to keep accurate time records for all hours
17 worked by the Plaintiffs and the Proposed Class in violation of FLSA, 29
18 U.S.C. § 201, *et seq.*, and state wage laws;
- 19 F. Whether Defendants provided adequate itemized wage statements to the
20 Plaintiffs and the California Class pursuant to applicable state wage laws;
- 21 G. Whether Defendants paid Plaintiffs and California Class members for the
22 full vacation time they earned, based, as promised, on their actual hours
23 worked, including overtime hours;
- 24 H. The proper measure of damages sustained by the California Class; and
- 25 I. Whether Defendants' actions were "willful."

26 34. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
27 prosecution of actions by or against individual members of the class would result in inconsistent
28 or varying adjudications and create the risk of incompatible standards of conduct for Defendants.

1 Further, adjudication of each individual member’s claim as separate action would be dispositive
2 of the interest of other individuals not party to this action, impeding their ability to protect their
3 interests.

4 35. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
5 questions of law and fact common to the Proposed Classes predominate over any questions
6 affecting only individual members of the Proposed Class, and because a class action is superior
7 to other available methods for the fair and efficient adjudication of this litigation. Defendants’
8 common and uniform policies and practices denied the Proposed Classes the overtime pay to
9 which they are entitled. The damages suffered by the individual Proposed Class members are
10 small compared to the expense and burden of individual prosecution of this litigation. Proposed
11 Class members fear workplace retaliation and being “blackballed” from obtaining future
12 employment in the financial services industry. In addition, class certification is superior because
13 it will obviate the need for unduly duplicative litigation that might result in inconsistent
14 judgments about Defendants’ practices.

15 36. Plaintiff intends to send notice to all members of the Proposed Classes to the
16 extent required by Rule 23. The names and address of the Proposed Classes are available from
17 Defendants.

18 **FIRST CLAIM FOR RELIEF**

19 **Failure to Pay Overtime Compensation in Violation of the Fair Labor Standards Act**

20 **(On Behalf of Plaintiffs and the Collective Class)**

21 37. Plaintiffs, on behalf of themselves and the collective class, allege and incorporate
22 by reference the allegations in the preceding paragraphs.

23 38. Plaintiffs consent in writing to be a party of this action, pursuant to 29 U.S.C. §
24 216(b). Plaintiffs’ written consent forms are attached hereto as Exhibits A and B. Plaintiffs
25 anticipate that other individuals will continue to sign consent forms and join as plaintiffs.

26 39. At all relevant times, Defendants have been, and continue to be, “employers”
27 engaged in interstate commerce and/or in the production of goods for commerce, within the
28 meaning of the FLSA, 20 U.S.C. § 203. At all relevant times, Defendants have employed and

1 continue to employ employees, including Plaintiffs, and the Collective Class. At all relevant
2 times, upon information and belief, Defendants have had gross operating revenues in excess of
3 \$500,000.00.

4 40. The FLSA requires each covered employers such as Defendants to compensate all
5 non-exempt employees at a rate of not less than one and one-half times the regular rate of pay
6 for work performed in excess of forty hours per work week.

7 41. During their employment with Defendants, within the applicable statute of
8 limitations, Plaintiffs and the other Collective Class members worked in excess of forty hours
9 per workweek. Despite the hours worked by Plaintiffs and the Collective Class members,
10 Defendants willfully, in bad faith, and in knowing violation of the Federal Fair Labor Standards
11 Act, failed and refused to pay them the appropriate overtime compensation for all the hours
12 worked in excess of forty.

13 42. By failing to accurately record, report, and/or preserve records of hours worked by
14 Plaintiffs and the Collective Class, Defendants have failed to make, keep, and preserve records
15 with respect to each of its employees sufficient to determine their wages, hours, and other
16 conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

17 43. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,
18 within the meaning of 29 U.S.C. § 255(a).

19 44. Plaintiffs, on behalf of themselves and the Collective Class, seek damages in the
20 amount of their respective unpaid overtime compensation, liquidated damages from three years
21 immediately preceding the filing of this action, plus interests and costs as allowed by law,
22 pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the
23 Court deems just and proper.

24 45. Plaintiffs, on behalf of themselves and the Collective Class, seek recovery of their
25 attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C.
26 § 216(b).

27 **SECOND CLAIM FOR RELIEF**

28 **Failure to Pay Overtime Compensation in Violation of California Law**

1 **(On Behalf of Plaintiffs and the California Class)**

2 46. Plaintiffs, on behalf of themselves and the California Class, allege and incorporate
3 by reference the allegations in the preceding paragraphs.

4 47. At all relevant times herein, IWC Wage Order No. 4 (8 C.C.R. § 11040) and
5 California Labor Code § 510 required employers, like Defendants, to pay overtime premium(s)
6 for hours worked in excess of 8 in a given workday, 40 in a given workweek, or on the seventh
7 day worked in a single workweek. Pursuant to California Labor Code § 1198, it is unlawful to
8 employ persons for hours longer than the hours set by the Industrial Welfare Commission
9 (“IWC”), or under conditions prohibited by the applicable wage orders of the IWC.

10 48. Plaintiffs are informed and believe, and thereon allege, that members of the Class
11 worked in excess of eight hours per day and in excess of 40 hours per week, and Defendants
12 unlawfully failed to pay members of the Class the proper overtime compensation required in
13 violation of IWC Wage Order 4 (8 C.C.R. § 11040), and the California Labor Code §§ 510 and
14 1198. Pursuant to California Labor Code § 1194, the Plaintiffs and the other Class members are
15 entitled to recover their unpaid overtime compensation.

16 49. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
17 herein, Plaintiffs and the Class have sustained damages, including loss of earnings for hours of
18 overtime worked on behalf of Defendants in an amount to be established at trial, plus damages,
19 interest, attorneys’ fees and costs.

20 **THIRD CLAIM FOR RELIEF**

21 **Failure to Provide Accurate Itemized Wage Statements**

22 **(On Behalf of Plaintiffs and the California Class)**

23 50. Plaintiffs, on behalf of themselves and the California Class, allege and incorporate
24 by reference the allegations in the preceding paragraphs.

25 51. California Labor Code § 226(a) provides that, at the time of each payment of
26 wages, an employer shall provide each employee with a wage statement itemizing, among other
27 things, the total hours worked by the employee in the pay period. California Labor Code
28 § 226(e) provides that an employee suffering injury as a result of a knowing and intentional

1 failure by an employer to comply with Labor Code § 226(a) may recover the greater of his or her
2 actual damages or a penalty of \$50 for the initial pay period in which a violation occurs and
3 \$100 per employee for each violation in a subsequent pay period (up to a maximum of \$4,000),
4 in addition to attorneys fees and costs.

5 52. Defendants knowingly and intentionally failed to provide timely, accurate,
6 itemized wage statements including, *inter alia*, hours worked, to Plaintiffs and the California
7 Class in accordance with Labor Code § 226(a). Such failure caused injury to Plaintiffs and the
8 California Class members, by, among other things, impeding them from knowing the total hours
9 worked and the amount of wages to which they are and were entitled. Plaintiffs and the
10 California Class are therefore entitled to the damages and penalties provided for under Labor
11 Code § 226(e). Additionally, pursuant to Code of Civil Procedure section 1021.5, Plaintiffs and
12 the California Class are entitled to attorneys fees and costs. Pursuant to Labor Code section
13 226(g), are also entitled to and seek injunctive relief requiring Defendants to comply with Labor
14 Code 226(a).

15 **FOURTH CLAIM FOR RELIEF**

16 **Failure to Indemnify for Business Expenses**

17 **(On Behalf Plaintiffs and the California Class)**

18 53. Plaintiffs, on behalf of themselves and the California Class, allege and incorporate
19 by reference the allegations in the preceding paragraphs.

20 54. California Labor Code § 2802(a) requires an employer to indemnify its employees
21 “for all necessary expenditures or losses incurred by the employee in direct consequence of the
22 discharge of his or her duties[.]” California Labor Code § 2802(b) provides that all awards made
23 under California Labor Code § 2802(a) shall “carry interest at the same rate as judgments in civil
24 actions” and that interest “shall accrue from the date on which the employee incurred the
25 necessary expenditure or loss.”

26 55. Defendants failed to indemnify Plaintiffs and the California Class for their
27 necessary expenditures related to the cost of supplies necessary to complete their work,
28

1 including, but not limited to peripheral computer equipment, telephone charges, Internet charges,
2 postage and delivery charges, and office supplies.

3 56. Plaintiffs and the Class Members are therefore entitled to full reimbursement for
4 said expenditures and all other relief provided by California law, including but not limited to
5 attorneys' fees and costs, , pursuant to Code of Civil Procedure section 1021.5, and injunctive
6 relief requiring Defendants to pay reimbursement to its employees for such routine business
7 expenses.

8 **FIFTH CLAIM FOR RELIEF**

9 **Failure to Provide Rest Breaks and Meal Periods**

10 **(On Behalf Plaintiffs and the California Class)**

11 57. Plaintiffs, on behalf of themselves and the California Class, allege and incorporate
12 by reference the allegations in the proceeding paragraphs.

13 58. California Labor Code § 512 prohibits an employer from employing an employee
14 for a work period of more than five hours per day without providing the employee with a meal
15 period of not less than 30 minutes, or for a work period of more than 10 hours per day without
16 providing the employee with a second meal period of not less than 30 minutes.

17 59. Section 11 of Wage Order No. 4 provides (and at all times relevant hereto
18 provided) in relevant part that:

19
20 No employer shall employ any person for a work period of more than five (5)
21 hours without a meal period of not less than 30 minutes, except that when a work
22 period of not more than six (6) hours will complete the day's work the meal period
23 may be waived by mutual consent of the employer and the employee. Unless the
24 employee is relieved of all duty during a 30 minute meal period, the meal period
25 shall be considered an "on duty" meal period and counted as time worked. An "on
26 duty" meal period shall be permitted only when the nature of the work prevents an
27 employee from being relieved of all duty and when by written agreement between
28 the parties an on-the-job paid meal period is agreed to. The written agreement shall
state that the employee may, in writing, revoke the agreement at any time.
If an employer fails to provide an employee a meal period in accordance with the
applicable provisions of this order, the employer shall pay the employee one (1)
hour of pay at the employee's regular rate of compensation for each workday that
the meal period is not provided.

60. Section 12 of Wage Order No. 4 provides (and at all times relevant hereto

1 provided) in relevant part that:

2
3 Every employer shall authorize and permit all employees to take rest periods,
4 which insofar as practicable shall be in the middle of each work period. The
5 authorized rest period time shall be based on the total hours worked daily at the
6 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
7 However, a rest period need not be authorized for employees whose total daily
8 work time is less than three and one-half (3 1/2) hours. Authorized rest period time
9 shall be counted as hours worked for which there shall be no deduction from
10 wages. If an employer fails to provide an employee a rest period in accordance
11 with the applicable provisions of this order, the employer shall pay the employee
12 one (1) hour of pay at the employee's regular rate of compensation for each
13 workday that the rest period is not provided.

14 61. California Labor Code § 226.7 prohibits any employer from requiring any
15 employee to work during any meal or rest period mandated by an applicable IWC wage order,
16 and provides that an employer that fails to provide an employee with a required rest break or
17 meal period shall pay that employee one additional hour of pay at the employee's regular rate of
18 compensation for each work day that the employer does not provide a compliant meal or rest
19 period.

20 62. Defendants failed to provide Plaintiffs and California Class members with meal
21 periods as required by law, and failed to authorize and permit the Plaintiffs and California Class
22 members to take rest periods as required by law.

23 63. Plaintiffs and the California Class members are therefore entitled to payment of
24 the meal and rest period premiums as provided by law. Additionally, pursuant to Code of Civil
25 Procedure section 1021.5, Plaintiffs and the California Class are entitled to attorneys fees and
26 costs.

27 **SIXTH CLAIM FOR RELIEF**

28 **Unfair Practice under the Unfair Competition Act**

(On Behalf Plaintiffs and the California Class)

64. Plaintiffs, on behalf of themselves and the California Class, allege and incorporate
by reference the allegations in the preceding paragraphs.

1 65. Section 17200 of the California Business and Professions Code — California’s
2 Unfair Competition Law — prohibits unfair competition by prohibiting, *inter alia*, any unlawful
3 or unfair business acts or practices. The foregoing conduct by Defendants, as alleged, constitutes
4 unlawful business actions and practices in violation of Section 17200, *et seq.*

5 66. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiffs and the
6 California Class members are entitled to restitution of the overtime earnings, business expenses,
7 and other unpaid wages and premiums alleged herein that Defendants have improperly withheld
8 and retained during a period that commences four years prior to the filing of this action, a
9 permanent injunction requiring Defendants to pay overtime and meal/rest premiums to all
10 workers as defined herein, in California, an award of attorneys’ fees pursuant to Code of Civil
11 Procedure section 1021.5, and other applicable law, and costs.

12 **SEVENTH CAUSE OF ACTION**

13 **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEY GENERALS ACT**

14 **OF 2004**

15 **(California Labor Code §§ 2698, et seq.)**

16 67. Plaintiffs incorporate by reference in this cause of action each allegation of the
17 preceding paragraphs as though fully set forth herein.

18 68. California Labor Code § 2698, et seq., the Labor Code Private Attorney Generals
19 Act of 2004 (“PAGA”), enables a Court to award civil penalties for violations of the Labor Code
20 that, prior to the Act, could only be assessed and collected by the Labor and Workforce
21 Development Agency.

22 69. Plaintiffs have provided notice pursuant to Cal. Labor Code § 2699.3 and have
23 asked the California Labor and Workforce Development Agency if it intends to investigate
24 alleged Labor Code violations, as set forth in the letter attached hereto as Exhibit C.

25 70. Plaintiffs’ counsel did not receive notification from the California Labor &
26 Workforce Development Agency that it does not intend to investigate the alleged violations
27 within the statutory limit of 33 days. Therefore Plaintiffs are entitled to prosecute their PAGA
28 claims.

1 71. Accordingly, on behalf of themselves and all other Class Members who have
2 worked for Defendants at any time since one year prior to the filing of this First Amended
3 Complaint to the trial in this action (“PAGA Class Members”), Plaintiffs allege as follows:

4 72. California Labor Code § 558 imposes civil penalties, in addition to any other civil
5 or criminal penalty provided by law, upon any employer or other person acting on behalf of an
6 employer who violates a section of Division 2, Part 2, Chapter 1 of the Labor Code or any
7 provision regulating hours and days of work in any Industrial Welfare Commission Wage Order.
8 Pursuant to Labor Code § 558, Defendants are subject to a civil penalty of (1) for an initial
9 violation, fifty dollars \$50 for each underpaid Plaintiff and PAGA Class Member for each pay
10 period for which the employee was not paid appropriate overtime premiums under Labor Code §
11 510, as alleged in the Second Cause of Action, in addition to an amount sufficient to recover
12 underpaid wages; and (2) for each subsequent violation, one hundred dollars (\$100) for each
13 underpaid Plaintiff and PAGA Class Member for each pay period for which the employee was
14 underpaid under Labor Code § 510, as alleged in the Second Cause of Action, in addition to an
15 amount sufficient to recover underpaid wages.

16 73. Under California Labor Code § 226.3, which provides for civil penalties for
17 violations of California Labor Code § 226(a) in addition to any other penalty provided by law,
18 Defendants are subject to a civil penalty of two hundred fifty dollars (\$250) per each Plaintiff
19 and PAGA Class Member for the first violation, and one thousand dollars (\$1,000) per each
20 Plaintiff and PAGA Class Member for each subsequent violation of Labor Code § 226(a) for
21 failure to provide timely, accurate, itemized wage statements, as alleged in the Third Cause of
22 Action.

23 74. Under California Labor Code § 2699(f)(2), described above, Defendants are
24 subject to a civil penalty of one hundred dollars (\$100) for each Plaintiff and PAGA Class
25 Member per pay period for the initial violation of Labor Code § 2802 for their failure to
26 indemnify employees for necessary expenditures and/or losses in discharging duties, as alleged
27 in the Fourth Cause of Action, and two hundred dollars (\$200) for each Plaintiff and PAGA
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1 Class Member per pay period for each subsequent violation of Labor Code § 2802, as alleged in
2 the Fourth Cause of Action.

3 75. Under California Labor Code § 558, described above, Defendants are subject to a
4 civil penalty of (1) for an initial violation, fifty dollars \$50 for each underpaid Plaintiff and
5 PAGA Class Member for each pay period for which the employee was not provided a meal
6 period under Labor Code § 512, as alleged in the Fifth Cause of Action, in addition to an amount
7 sufficient to recover underpaid wages; and (2) for each subsequent violation, one hundred dollars
8 (\$100) for each underpaid Plaintiff and PAGA Class Member for each pay period for which the
9 employee was underpaid under Labor Code § 512, as alleged in the Fifth Cause of Action, in
10 addition to an amount sufficient to recover underpaid wages.

11 76. Under California Labor Code § 2699(f)(2), described above, Defendants are
12 subject to a civil penalty of one hundred dollars (\$100) for each Plaintiff and PAGA Class
13 Member per pay period for the initial violation of Labor Code § 226.7 for failing to provide meal
14 periods, as alleged in the Fifth Cause of Action, and two hundred dollars (\$200) for each
15 Plaintiff and PAGA Class Member per pay period for each subsequent violation of Labor Code §
16 226.7 for failing to provide meal periods, as alleged in the Fifth Cause of Action.

17 77. Under California Labor Code § 2699(f)(2), described above, Defendants are
18 subject to a civil penalty of one hundred dollars (\$100) for each Plaintiff and PAGA Class
19 Member per pay period for the initial violation of Labor Code § 226.7 for failing to provide rest
20 periods, as alleged in the Fifth Cause of Action, and two hundred dollars (\$200) for each
21 Plaintiff and PAGA Class Member per pay period for each subsequent violation of Labor Code §
22 226.7 for failing to provide rest periods, as alleged in the Fifth Cause of Action.

23 **PRAYER FOR RELIEF**

24 78. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the
25 Collective and California Classes, pray for relief as follows:

26 A. That the Court determine that this action may proceed as a class action
27 under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure;

28 B. That Defendants are found to have violated the overtime, meal/rest period,

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itemized wage statement/time records, failure to indemnify, and failure to timely pay wages penalty provisions of the California wage laws cited above as to the California Class;

C. That Defendants are found to have violated the overtime provisions of the Federal Fair Labor Standards Act as to Plaintiffs and the Collective Class;

D. That Defendants are found to have violated the FLSA by failing to maintain accurate time records of all the hours worked by Plaintiffs and the Collective Class;

E. That Defendants' violations as described above are found to be willful;

F. An award to Plaintiffs and the California and Collective Classes for the amount of unpaid wages owed, liquidated damages and penalties where provided by state and federal law, and interest thereon, subject to proof at trial;

G. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the California Class due to Defendants' unlawful activities, pursuant to California state law cited above;

H. That Defendants further be enjoined to cease and desist from unlawful activities in violation of state laws cited above;

I. That the Court grant declaratory relief stating that Defendants' scheme is unlawful;

J. For an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. section 216 and/or other applicable state laws;

K. That the Court award penalties under PAGA for violations under Labor Code §§ 201, 202, 203, 204, 221, 222, 223, 225.5, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 1198, 2800, and 2802; and

L. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

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DEMAND FOR JURY TRIAL

79. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by jury.

Dated: September 2, 2011

BRYAN SCHWARTZ LAW

By: 

Bryan Schwartz
Hillary Benham-Baker
ATTORNEYS FOR THE INDIVIDUAL
AND REPRESENTATIVE PLAINTIFFS
AND THE PUTATIVE CLASS

EXHIBIT A

1 **CONSENT FORM AND DECLARATION**

2 I hereby consent to join a lawsuit against JPMorgan Chase as a Plaintiff to assert claims
3 against it for violations of the wage and hour laws of the United States and/or the state(s) where I
4 worked for JPMorgan Chase. During the past three years, there were occasions when I worked
over 40 hours per week for JPMorgan Chase and did not receive overtime compensation.

5 I worked for JPMorgan Chase as an (please check all that apply):

6 Appraiser

Other (Specify Title: _____)

7 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
8 correct to the best of my knowledge, information, and belief.

9 *Mary Ann Adlao* 9/23/10
Signature Date

10 MARY ANN ADLAO
11 Print Name

12
13
14 **Fax or Mail To:**

15 **Hillary Jo Baker**
16 **Bryan Schwartz Law**
17 **180 Grand Avenue, Suite 1550**
18 **Oakland, CA 94612**
19 **FAX (510) 444-9301**

20
21
22 **REDACTED**

23 (Emergency Contact
work from home IRVINE
San Ramon for CA
24 Location(s) Worked (City/State)

EXHIBIT B

1 **CONSENT FORM AND DECLARATION**

2 I hereby consent to join a lawsuit against JPMorgan Chase as a Plaintiff to assert claims
3 against it for violations of the wage and hour laws of the United States and/or the state(s) where I
4 worked for JPMorgan Chase. During the past three years, there were occasions when I worked
over 40 hours per week for JPMorgan Chase and did not receive overtime compensation.

5 I worked for JPMorgan Chase as an (please check all that apply):

- 6 Appraiser
 Other (Specify Title: _____)

7 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
8 correct to the best of my knowledge, information, and belief.

9 Marian Williams 9/29/2010
Signature Date

10 MARIAN C. WILLIAMS
11 Print Name

12 Fax or Mail To:

13
14 Hillary Jo Baker
15 Bryan Schwartz Law
16 180 Grand Avenue, Suite 1550
17 Oakland, CA 94612
18 FAX (510) 444-9301

REDACTED

19
20
21
22 Emergency Contact

23 IRVINE, CA; LITCHFIELD PARK, AZ
24 Location(s) Worked (City/State)

Exhibit C

BRYAN SCHWARTZ LAW

180 Grand Avenue, Suite 1550 | Oakland, CA 94612 | Tel. 510-444-9300 | Fax: 510-444-9301 | Hillary@BryanSchwartzLaw.com | www.BryanSchwartzLaw.com

July 22, 2011

VIA CERTIFIED MAIL

Labor & Workforce Development Agency (LWDA)
801 K Street, Ste. 2101
Sacramento, CA 95814

RE: *Adlao, et al. v. JPMorgan Chase & Co., et al.* (N.D. Cal. Case No. 4:10-cv-04508-SBA)

To Whom It May Concern:

I represent the Plaintiffs in the above-captioned matter, which is currently pending in federal court in Oakland, concerning their class claims for unpaid wages, denied meal and rest breaks, and violations of additional other wage and hour statutes against JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and EMC Mortgage Corp. (hereinafter "Chase"). With the help of a respected mediator, Michael Dickstein, a settlement agreement has been reached in this matter, and this settlement agreement encompasses claims pursuant to the provisions of California Labor Code Sections 2699 and 2699.3. The settlement would provide a payment of \$7,500 to the LWDA. The purpose of my letter is to notify the LWDA of these claims and afford the LWDA an opportunity to investigate my clients' allegations of violations of Labor Code §§ 201, 202, 203, 204, 221, 222, 223, 225.5, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 1198, 2800, and 2802. The following is a very brief summary of my clients' allegations against Chase.

Plaintiffs allege that Chase misclassified them as "exempt" from overtime premiums. Likewise, Plaintiffs allege that Chase failed to provide meal and rest breaks and failed to provide premium payments for missed meal and rest breaks. My clients are current and former "Review Appraisers" located in California. Plaintiffs also allege that Chase (1) failed to provide accurate and complete itemized wage statements; (2) failed to reimburse employees and/or indemnify them for necessary business expenses; and (3) failed to correct all of the foregoing deficiencies and pay all wages due upon employees' termination.


Defendants deny violating any of the above-referenced laws, and the settlement contains a non-admissions clause.

Chase is represented by Eric Meckley, Carrie Gonnell, and Jennifer Lockhart of Morgan Lewis & Bockius, One Market, Spear Street Tower, San Francisco, CA 94105-1126.

Plaintiffs' counsel has thoroughly investigated the facts supporting the allegations, and Chase's defenses. Plaintiffs' counsel believes that the settlement is a fair one. The settlement has been agreed to by all of the named Plaintiffs.

Thank you for your assistance and cooperation in this matter. Please contact the undersigned if you have any questions. Please advise the parties within the statutory period whether the LWDA intends to investigate the claims.

Sincerely,

A handwritten signature in black ink, appearing to read "Hillary Benham-Baker". The signature is fluid and cursive, with a large initial "H" and "B".

Hillary Benham-Baker

cc: Chase, c/o Eric Meckley, Carrie Gonnell, and Jennifer Lockhart of Morgan Lewis & Bockius, One Market, Spear Street Tower, San Francisco, CA 94105-1126 (by agreement of the parties)