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SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 Timothy D. Cohelan, Esq., SBN 60827
Isam C. Khoury, Esq., SBN 58759
2 Michael D. Singer, Esq., SBN 115301
Kimberly D. Neilson, Esq., SBN 216571
3 **COHELAN KHOURY & SINGER**
605 C Street, Suite 200
4 San Diego, CA 92101
Tel.: (619) 595-3001
5 Fax: (619) 595-3000
E-mail: tcohelan@ck-lawfirm.com
6 E-mail: ikhoury@ck-lawfirm.com
E-mail: msinger@ck-lawfirm.com
7 E-mail: kneilson@ck-lawfirm.com

8 James R. Patterson, Esq., SBN 211102
HARRISON PATTERSON O'CONNOR & KINKEAD LLP
9 402 West Broadway, 29th Floor
San Diego, CA 92101
10 Tel: (619) 756-6990
Fax: (619) 756-6991
11 E-mail: jpatterson@hpolaw.com

12 Attorneys for Plaintiff Gregory Ives, on behalf
13 of himself and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**

16 GREGORY IVES, on behalf of himself and
all others similarly situated,
17
18 Plaintiffs,

20 vs.

22 FIDELITY NATIONAL FINANCIAL,
INC., a Delaware corporation, and DOES 1-
23 100, inclusive,
24
25 Defendants.

CASE NO. 37-2009-00087068-CU-OE-CTL

17 **CLASS ACTION COMPLAINT FOR**
18 **DAMAGES, INJUNCTIVE AND**
19 **DECLARATORY RELIEF AND**
20 **RESTITUTION**

- 1) Failure to Reimburse Employee Expenses (Labor Code §2802)
- 2) Failure to Pay Earned Wages to Separated Employees (Labor Code §219)
- 3) Failure to Timely Pay Wages Due at Termination (Labor Code §203)
- 4) Unfair Business Practices (Bus. & Prof. Code §17200 *et seq.*)

26 **DEMAND FOR JURY TRIAL**

1 Plaintiff Gregory Ives on behalf of himself and all others similarly situated (herein referred
2 to as "Plaintiff"), brings this action against Defendant FIDELITY NATIONAL FINANCIAL, INC.
3 and DOES 1-100 (hereinafter collectively referred to as "Defendant" or "FIDELITY"). Plaintiff is
4 informed and believes, and on the basis of that information and belief, alleges as follows:

5 I.

6 INTRODUCTION

7 1. This is a civil action seeking recovery of unreimbursed job-related business
8 expenses, failure to pay earned wages to separated employees, and waiting time penalties, plus
9 interest, attorneys' fees and costs under California Labor Code sections 203, 219, and 2802.
10 Plaintiff, on behalf of himself and all other members of the class alleged herein, seeks monetary
11 recovery for Defendant's violations of California Business and Professions Code sections 17200,
12 *et. seq.*, including full restitution and/or disgorgement of all compensation retained by Defendant
13 as a result of its unlawful, fraudulent and unfair business practices.

14 2. Defendant operates and, at all times during the relevant time period or liability period
15 (four years prior to the filing of the Complaint in this matter), has done business as a provider of
16 residential and commercial title insurance policies in San Diego County, and other counties
17 throughout the state of California. Defendant has, among other things, employed persons as sales
18 representatives, title representatives, account managers, and similar job positions performing the
19 functions of sales representatives, title representatives and/or account managers, but holding
20 different titles, employed by Defendant in the State of California and performing duties on behalf
21 of any of Defendant's brands, including but not limited to Fidelity National Title Insurance
22 Company, Ticor Title Insurance, Lawyer's Title Insurance Corporation, Chicago Title Insurance
23 Company, Security Union Title Insurance Company, and Aero Records and Title Co., from the date
24 four years prior to the commencement of this action through the time of trial.

25 3. Defendant's corporation provides residential and commercial title insurance for
26 individuals and businesses within the state of California. In its endeavor, Defendant has employed
27 sales representatives, title representatives, account managers, and similarly titled positions to secure
28 clients for these policies. It is Defendant's uniform policy and procedure to require its sales

1 representatives, title representatives, account managers, and similarly titled positions to incur
2 business related expenses to secure and maintain client relationships.

3 4. It is also Defendant's policy and practice not to reimburse its employees for such
4 business related expenses, to fail to pay earned wages to separated employees and timely pay wages
5 owed at separation. Plaintiff seeks reimbursement for business expenses and compensation for
6 earned wages not paid at separation and penalties for failure to timely pay wages owed at separation.

7 5. Plaintiff, Gregory Ives, on behalf of himself and all Class Members, brings this
8 action pursuant to Labor Code sections 203, 219, and 2802, seeking compensation for wages
9 Defendant failed to pay at separation, penalties for failure to timely pay wages owed at separation,
10 and reimbursement for business expenses.

11 6. Plaintiff, Gregory Ives on behalf of himself and all Class Members, pursuant to
12 Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and
13 disgorgement of all benefits Defendant has enjoyed from its failure to pay all wages owed at
14 separation, timely pay wages owed at separation and properly reimburse for business expenses.

15 II.

16 JURISDICTION AND VENUE

17 7. The California Superior Court has jurisdiction in this matter due to Defendant's
18 violations of Labor Code sections 203, 219, and 2802 and Business and Professions Code sections
19 17200, *et seq.*, and related common law principles.

20 8. The California Superior Court also has jurisdiction in this matter because both the
21 individual and aggregate monetary damages and restitution sought herein exceed the minimal
22 jurisdictional limits of the Superior Court and will be established at trial, according to proof. Venue
23 as to each Defendant is proper in this judicial district, pursuant to California Code of Civil
24 Procedure sections 395 (a) and 395.5 as at least some of the acts complained of herein occurred in
25 the County of San Diego. Each Defendant either owns, maintains offices, transacts business, has
26 an agent or agents within the County of San Diego or otherwise is found within the County of San
27 Diego and each Defendant is within the jurisdiction of this Court for purposes of service of process.

1 geographical locations within the state of California, including but not limited to the County of San
2 Diego, for the purpose of providing residential and commercial title insurance.

3 16. DOES 1 through 100, inclusive are now, and/or at all times mentioned in this
4 Complaint were, licensed to do business and/or actually doing business in the state of California.

5 17. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
7 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
8 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
9 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
10 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
11 names and capacities of the Defendants designated hereinafter as DOES when such identities
12 become known.

13 18. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
15 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
16 legally attributable to the other Defendants.

17 IV.

18 CLASS ACTION ALLEGATIONS

19 19. Plaintiff brings this action on behalf of himself and all others similarly situated,
20 as a class action pursuant to Code of Civil Procedure section 382. The Class which Plaintiff seeks
21 to represent is composed of and defined as follows:

22 **All current and former California-based sales representatives, title**
23 **representatives, account managers, and similar job positions performing the**
24 **functions of sales representatives, title representatives and/or account**
25 **managers, but holding different titles, employed by Defendant in the State of**
26 **California and performing duties on behalf of any of Defendant's brands,**
27 **including but not limited to Fidelity National Title Insurance Company, Ticor**
Title Insurance, Lawyer's Title Insurance Corporation, Chicago Title
Insurance Company, Security Union Title Insurance Company, and Aero
Records and Title Co., from the date four (4) years prior to the commencement
of this action through the time of trial (hereafter "Class").

1 20. The subclass Plaintiff will seek to certify is currently composed of and defined as
2 follows:

3 **All members of the Class who separated from employment at anytime between four**
4 **(4) years prior to the commencement of this action through the time of trial**
 (hereinafter "Separated Subclass")

5 21. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or
6 necessary to amend the definition of the Class and/or Subclass. Plaintiff will formally define and
7 designate a class definition when he seeks to certify the Class and Subclass alleged herein.

8 22. The potential quantity of members of the Class and Subclass as defined is so
9 numerous that joinder of all members would be unfeasible and impractical. The disposition of their
10 claims through this class action will benefit both the parties and this Court. The quantity of
11 members of the Class and Subclass is unknown to Plaintiff at this time, however, it is estimated that
12 each of the Class and Subclass numbers is in excess of 100 individuals. The quantity and identity
13 of such membership is readily ascertainable via inspection of Defendant's records.

14 23. The claims of Plaintiff Gregory Ives are typical of the claims of all members of the
15 Class and Subclass mentioned herein because all members of the Class and Subclass sustained
16 injuries and damages arising out of Defendant's common course of conduct in violation of law, and
17 the injuries and damages of all members of the Class and Subclass were caused by Defendant's
18 wrongful conduct in violation of the law, as alleged herein.

19 24. Plaintiff Gregory Ives is an adequate representative of the Class and Subclass herein,
20 will fairly protect the interests of the members of the Class and Subclass, has no interests
21 antagonistic to the members of the Class and Subclass and will vigorously pursue this suit via
22 attorneys who are competent, skilled and experienced in litigating matters of this type. Class
23 Counsel are competent and experienced in litigating large employment law class actions.

24 25. A class action is superior to other available means of fair and efficient adjudication
25 of the claims of the Plaintiff and members of the Class and Subclass, since joinder of all members
26 of the Class and Subclass is impractical. Class action treatment will allow a large number of
27 similarly situated persons to prosecute their common claims in a single forum, simultaneously,
28 efficiently, and without the unnecessary duplication of effort and expense that numerous individual

1 actions would cause to such Plaintiff or to the court system. Further, the damages of many
2 individual class members may be relatively small, and the burden and expenses of individual
3 litigation would make it difficult or impossible for individual members of the class to seek and
4 obtain relief, while a class action will serve an important public interest.

5 26. Plaintiff is unaware of any difficulties likely to be encountered in the management
6 of this action that would preclude its maintenance as a class action.

7 27. There are common questions of law and fact as to the members of the Class and
8 Subclass which predominate over questions affecting only individual members of the Class and
9 Subclass including, without limitation:

- 10 a. Whether the members of the Class were regularly required to incur business
11 expenses during the course of their job duties without reimbursement in
12 violation of Labor Code section 2802 or any other provision of law;
- 13 b. Whether separated employees were properly paid for all wages owed them
14 at the time of separation;
- 15 c. Whether separated employees are entitled to waiting time penalties pursuant
16 to Labor Code section 203;
- 17 d. Whether Defendant's conduct constitutes unfair competition within the
18 meaning of Business and Professions Code sections 17200 and 17203.

19 **V.**

20 **CAUSES OF ACTION**

21 **First Cause of Action Against All Defendants**
22 **Failure to Fully Compensate for Business Expenses**
(On Behalf of the Class)

23 28. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

24 29. Pursuant to California Labor Code section 2802, Defendant is required to reimburse
25 Plaintiff, and members of the Class for expenses incurred by them in the performance of their job
26 duties (which may include but is not limited to the following expenses: vehicles usage, mileage,
27 entertainment expenses related to client acquisition and retention, meals, office supplies,
28 advertising, cell phone usage, and home office expenses.)

1 of the Class are entitled to recover from Defendant the full amount of owed wages, plus interest,
2 reasonable attorneys' fees and costs of suit.

3 **Third Cause of Action against All Defendants**
4 **Failure to Timely Pay Wages Due at Termination**
(On Behalf of Plaintiff and the Separated Subclass)

5 37. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

6 38. Labor Code sections 201 and 202 require Defendant to pay its employees all wages
7 due within 72 hours of termination of employment. Labor Code section 203 provides that if an
8 employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code
9 sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the
10 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
11 paid or until an action therefor is commenced; but the wages shall not continue for more than thirty
12 (30) days.

13 39. Defendant had a consistent and uniform policy, practice and procedure of willfully
14 failing to pay the earned wages of Defendant's former employees, including, but not limited to,
15 amounts earned but not paid at the time of separation and other wages earned and remaining
16 uncompensated according to proof.

17 40. Plaintiff and members of the Separated Subclass are no longer employed by
18 Defendant. They were either discharged from or quit Defendant's employ.

19 41. Defendant willfully failed to pay terminated employees a sum certain at the time of
20 their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums
21 for thirty (30) days thereafter.

22 42. Defendant's willful failure to pay wages to terminated employees violates Labor
23 Code section 203 because Defendant knew wages were due to terminated employees but Defendant
24 failed to pay them.

25 43. Thus, the terminated employees are entitled to penalties pursuant to Labor Code
26 section 203, in the amount of each LC 203 Subclass members' daily wage multiplied by thirty (30)
27 days.

1 **Fourth Cause of Action Against All Defendants**
2 **Unfair Business Practices**
3 **(On Behalf of Plaintiff and the General Public)**

4 44. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

5 45. Defendant's failure to provide business expense reimbursement, failure to
6 compensate for all wages owed at separation and failure to timely pay wages owed at separation to
7 Plaintiff and members of the Class and Subclass, under the IWC Wage Orders and under California
8 Labor Code, as alleged herein, constitute unlawful activity prohibited by Business and Professions
9 Code sections 17200, et seq..

10 46. The actions of Defendant in failing to pay Plaintiff and members of the Class and
11 Subclass in a lawful manner, as will be further alleged herein, constitute false, unfair, fraudulent and
12 deceptive business practices, within the meaning of Business and Professions Code sections 17200,
13 *et. seq.*

14 47. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
15 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
16 avoid a multiplicity of lawsuits. He brings this cause individually and as a member of the general
17 public as a representative of all others subject to Defendant's unlawful acts and practices.

18 48. As a result of its unlawful acts, Defendant has reaped and continues to reap unfair
19 benefits at the expense of Plaintiff, the Class and Subclass he seeks to represent. Defendant should
20 be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiff and
21 the members of the Class and Subclass the wrongfully withheld wages, pursuant to Business and
22 Professions Code section 17200, *et seq.* Plaintiff is informed and believes, and thereon alleges, that
23 Defendant is unjustly enriched through its failure to reimburse business expenses and pay all wages
24 owed to Plaintiff and members of the Class and Subclass.

25 49. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members
26 of the Class are prejudiced by Defendant's unfair trade practices.

27 50. As a direct and proximate result of the unfair business practices of Defendant,
28 Plaintiff, individually and on behalf of all employees similarly situated, is entitled to equitable and
injunctive relief, including full restitution, disgorgement, and/or specific performance of payment

1 of all wages and expense reimbursement that have been unlawfully withheld from Plaintiff and
2 members of the Class and Subclass as a result of the business acts and practices described herein
3 and enjoining Defendant to cease and desist from engaging in the practices described herein.

4 51. The illegal conduct alleged herein is continuing, and there is no indication that
5 Defendant will not continue such activity into the future. Plaintiff alleges that if Defendant is not
6 enjoined from the conduct set forth in this Complaint, it will continue to fail to reimburse employee
7 expenses, will continue to improperly refuse to pay wages earned at separation and will avoid
8 paying appropriate taxes, insurance, and unemployment withholdings.

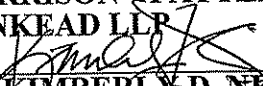
9 52. Plaintiff further requests that the court issue a preliminary and permanent injunction
10 prohibiting Defendant to continue engaging in the practices described above.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 1. For compensatory damages;
- 14 2. For restitution of all money due to Plaintiff, Class and Subclass from the unlawful
15 business practices of Defendant;
- 16 3. For waiting time penalties under Labor Code section 203.
- 17 4. For interest accrued to date;
- 18 5. For costs of suit incurred herein and reasonable attorneys' fees;
- 19 6. For such other and further relief that the Court may deem just and proper.

20 DATED: April 6, 2009

21 **COHELAN KHOURY & SINGER**
22 **HARRISON PATTERSON O'CONNOR &**
23 **KINKEAD LLP**
24 By: 
25 **KIMBERLY D. NEILSON**
26 Counsel for Plaintiff

27 **DEMAND FOR JURY TRIAL**

28 Plaintiff hereby demands a jury trial.

DATED: April 6, 2009

COHELAN KHOURY & SINGER
HARRISON PATTERSON O'CONNOR &
KINKEAD LLP
By: 
KIMBERLY D. NEILSON
Counsel for Plaintiff