

PATRICK HACKMAN, on behalf of himself
and others similarly situated,

Plaintiff,

v.

J. G. WENTWORTH HOME LENDING, LLC,

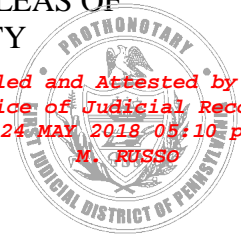
Defendant.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

CIVIL ACTION

APRIL TERM, 2018
NO. 01276

Filed and Attested by the
Office of Judicial Records
24 MAY 2018 05:10 pm
M. RUSSO



ORDER

AND NOW, this ___ day of _____, 2018 upon consideration of the Preliminary Objections of Defendant J.G. Wentworth Home Lending, LLC, and any response thereto, it is hereby **ORDERED** that Defendant's Preliminary Objections are **SUSTAINED** and Plaintiff's Complaint is **DISMISSED**.

J.

To: Plaintiff
You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from service hereof or a judgment may be entered against you.


Attorney for Defendant

FOX ROTHSCHILD LLP
Colin D. Dougherty (No. 88363)
Brian A. Berkley (No. 200821)
Kimberly A. Havener (No. 311282)
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-6500

Attorneys for Defendant
J.G. Wentworth Home Lending, LLC

PATRICK HACKMAN, on behalf of :
himself and others similarly situated, :
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 Plaintiff, :
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 J. G. WENTWORTH HOME LENDING, :
 LLC, :
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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

APRIL TERM, 2018
NO. 01276

**DEFENDANT’S PRELIMINARY OBJECTIONS TO PLAINTIFF’S COMPLAINT
RAISING ADR AGREEMENT AND QUESTIONS OF VENUE**

Defendant J.G. Wentworth Home Lending, LLC (“JGWHL”) seeks dismissal of Plaintiff Patrick Hackman’s Putative Class Action Complaint under Pa. R. Civ. P. 1028 for failure to engage in alternative dispute resolution and improper venue, and avers as follows:

1. Plaintiff Patrick Hackman is a former loan officer for JGWHL, a national residential mortgage lender.
2. In his Complaint, Plaintiff asserts a single cause of action seeking overtime wages under the Pennsylvania Minimum Wage Act (“PMWA”).

3. This Court need not address the substance of Plaintiff's claims because this action was improperly brought in Philadelphia County and should be dismissed.

4. Plaintiff entered into a Loan Officer Compensation and Employment Agreement ("Employment Agreement"), which sets forth the terms and conditions of his at-will employment with JGHWL, including his right to compensation and benefits. A true and correct copy of Plaintiff's Employment Agreement is attached at **Exhibit A**.¹

5. Plaintiff failed to attach his Employment Agreement as required by Rule 1019 of the Pennsylvania Rules of Civil Procedure. *See* Pa. R. Civ. P. 1019(i) (stating if a claim is based upon a writing, the pleading party must attach a copy of the writing).

6. Plaintiff seeks to avoid his contractual obligations under the Employment Agreement.

7. Plaintiff's Employment Agreement required him to engage in alternative dispute resolution ("ADR") before initiating this action.

8. If ADR proved unsuccessful, Plaintiff was required to litigate his claims in Prince William County, Virginia.

9. For the reasons that follow, Plaintiff's Complaint should be dismissed for failure to comply with the ADR and forum selection provisions as required by his Employment Agreement.

¹ "[I]t is well-settled that a court may rely on documents forming in part the foundation of the suit even where a plaintiff does not attach such documents to its complaint." *Feldman v. Hoffman*, 107 A.3d 821, 836 (Pa. Commw. Ct. 2014) (ruling on preliminary objections).

A. Plaintiff's Complaint Should Be Dismissed Pursuant to Pa. R. Civ. P. 1028(a)(6) Because He Failed to Engage in Alternative Dispute Resolution with JGWHL Before Filing This Action as His Employment Agreement Requires.

10. Plaintiff's Complaint should be dismissed under Rule 1028(a)(6) of the Pennsylvania Rules of Civil Procedure for failure to comply with the ADR provision set forth in his Employment Agreement. *See Exhibit A* Section VIII(U).

11. The ADR provision included in Plaintiff's Employment Agreement expressly states that:

Prior to initiating any action or proceeding for monetary damages that arises out of or relates to this Agreement, the initiating Party shall provide the other Party with written notice of its claim or claims (the 'Initial Notice') in accordance with the Notice Section of this Agreement . . .

See id. at Section VIII(U).

12. The ADR provision goes on to state that upon "receipt of the Initial Notice, the Parties shall attempt to amicably resolve the claim or claims for a period of sixty (60) days." *See id.*

13. Plaintiff did not provide JGWHL with written notice of his claims before filing this action, nor did he engage in any good faith negotiations with JGWHL to resolve his claims.

14. Compliance with a contractual ADR provision is "condition precedent" to initiating a lawsuit and failure to do so warrants dismissal. *See Tattoo Art, Inc. v. Tat Int'l, LLC*, 711 F. Supp. 2d 645, 651 (E.D. Va. 2010) (finding "failure to mediate a dispute pursuant to a contract that makes mediation a condition precedent to filing a lawsuit warrants dismissal"); *Dominion Transmission, Inc. v. Precision Pipeline, Inc.*, No. 3:13CV442-JAG, 2013 WL 5962939, at *3 (E.D. Va. Nov. 6, 2013) (finding plaintiff's complaint was "fundamentally flawed by virtue of its noncompliance with a condition precedent[,] [thereby] impair[ing] [the

plaintiff]’s right to access the courts”); *McKenna v. N. Strabane Twp.*, 700 A.2d 577, 580 (Pa. Commw. Ct. 1997) (dismissing employee’s claim for failing to submit dispute to ADR as required by employment agreement and noting that the Pennsylvania courts favor ADR and supplemented Pa. R. Civ. P. 1028 to allow objections based on ADR agreements); *Atl. Concrete Cutting, Inc. v. Turner Constr. Co.*, No. 00830, 2005 WL 167475, at *2 (Pa. Com. Pl. Jan. 5, 2005) (sustaining defendant’s preliminary objection and dismissing plaintiff’s complaint based upon the existence of an ADR agreement between the parties).²

15. Accordingly, Plaintiff’s Complaint should be dismissed for failure to comply with the ADR provision set forth in his Employment Agreement.

B. Plaintiff’s Complaint Should Be Dismissed for Failure to Comply with the Forum Selection Clause Set Forth in His Employment Agreement Requiring this Action be Filed in Prince William County, Virginia.

16. Plaintiff’s Complaint should be dismissed under Rule 1028(a)(1) of the Pennsylvania Rules of Civil Procedure for failure to comply with the mandatory forum selection clause. *See Exhibit A* Section VIII(M).

17. The forum selection clause included in Plaintiff’s Employment Agreement requires that “[a]ny action or proceeding arising under or relating to [the Employment Agreement] shall be brought in either the federal or state courts in Prince William County, Virginia.” *See id.* at Section VIII(M).

18. The forum selection clause goes on to state that “[e]ach party irrevocably submits to the jurisdiction of the federal or state courts in Prince William County, Virginia for the

² The choice-of-law provision in Plaintiff’s Employment Agreement states that “[the Employment] Agreement shall be governed in all respects by and construed in accordance with the laws of the Commonwealth of Virginia, without recourse to its choice of law rules.” *See id.* at Section VIII(L). Accordingly, this Court should apply Virginia law when interpreting and enforcing the ADR and forum selection provisions of the Employment Agreement. Nevertheless, Pennsylvania and Virginia law do not materially differ in this context and so Defendant relies on both Pennsylvania and Virginia law to support its Preliminary Objections.

purposes of resolving any dispute or claim arising under or relating to [the Employment] Agreement, and waives any objection to venue . . .” *See id.*

19. Plaintiff’s claim for overtime under the Pennsylvania Minimum Wage Act undisputedly arises under and is “related” to his Employment Agreement and therefore falls under the broad scope of the forum selection clause.

20. A forum selection clause is presumptively valid and enforceable under both Pennsylvania and Virginia law. *See O’Hara v. First Liberty Ins. Corp.*, 984 A.2d 938, 941-42 (Pa. Super. Ct. 2009); *Jones v. Dent Wizard Int’l Corp.*, No. 02-386, 2002 WL 32254731, at *1 (Va. Cir. Ct. May 6, 2002).

21. A court must “decline to proceed with the [case] when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation.” *See Cent. Contracting Co. v. C.E. Youngdahl & Co.*, 209 A.2d 810, 816 (Pa. 1965); *see also Dent Wizard Int’l Corp.*, 2002 WL 32254731, at *1.

22. The forum selection clause at issue here is valid and should be enforced because Plaintiff voluntarily and knowingly entered into his Employment Agreement and was free to resign at any time if he was dissatisfied with the terms of his employment. *See Gehin-Scott v. Newson, Inc.*, 848 F. Supp. 585, 589 (E.D. Pa.), *aff’d*, 40 F.3d 1240 (3d Cir. 1994) (stating that if an at-will employee is “dissatisfied with the terms offered by the employer, the employee is free to resign”); *see also Dent Wizard Int’l Corp.*, 2002 WL 32254731, at *2-3 (granting motion to dismiss based on forum selection clause and rejecting argument based on allegedly unequal bargaining power); *Barbuto v. Med. Shoppe Int’l, Inc.*, 166 F. Supp. 2d 341, 346–47 (W.D. Pa. 2001) (finding forum selection clause should be enforced in employment context because employees were not “powerless” and had a choice when entering into the relationship).

23. Furthermore, requiring Plaintiff to litigate in Virginia is not unreasonable. The courts consistently enforce forum selection clauses requiring plaintiffs to pursue litigation in another state regardless of any inconvenience or additional expense. *See Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 64 (2013) (finding “[w]hen parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation”); *see also John C. Cardullo & Sons, Inc. v. Int’l Profit Assocs., Inc.*, No. 03515, 2006 WL 2348553, at *3 (Pa. Com. Pl. Aug. 7, 2006) (enforcing Illinois forum selection clause and acknowledging that while “it will be very inconvenient and costly [for plaintiff] to prosecute its claims in Illinois . . . such inconvenience does not rise to the level of unreasonableness”); *Savoia v. Wal-Mart Stores, Inc.*, No. 2014-00746, 2014 WL 12746848, at *1 (Pa. Com. Pl. Aug. 25, 2014) (dismissing matter based upon Virginia forum selection clause after finding inconvenience to plaintiffs would not be so substantial that it should disregard a “clear and unambiguous” forum selection clause).

24. Pennsylvania and Virginia public policy is also served by enforcing the forum selection clause. *See Susquehanna Patriot Commercial Leasing Co., Inc. v. Holper Indus., Inc.*, 928 A.2d 278, 283 (Pa. Super. Ct. 2007); *see also Paul Bus. Sys., Inc. v. Canon U.S.A., Inc.*, 397 S.E.2d 804, 808 (Va. 1990) (finding enforcement of the forum provisions would not violate “a strong public policy of Virginia” because the courts have “expressly sustained the validity of such provisions, approved their use, and enforced them”).

25. For all of these reasons, Plaintiff should be bound by the terms of his Employment Agreement and his Complaint should be dismissed for failure to file this action in the mutually selected forum.

C. Plaintiff's Complaint Should Be Dismissed Based Upon Improper Venue Where None of the Underlying Events Took Place in Philadelphia County and JGWHL Does Not Regularly Conduct Business in Philadelphia County.

26. Alternatively, if Plaintiff is permitted to proceed with his claims in Pennsylvania, his Complaint should be dismissed because venue is improper in Philadelphia County.

27. None of the events underlying Plaintiff's wage claim occurred in Philadelphia County.

28. Plaintiff resides in Montgomery County and at all relevant times worked at JGWHL's Wayne branch in Chester County, Pennsylvania.

29. The only grounds offered by Plaintiff to support his venue selection is that JGWHL regularly conducts business in Philadelphia County by providing mortgage loans to Philadelphia residents and by utilizing the Philadelphia courts when filing foreclosure actions. *See* Pl.'s Compl. ¶ 2.

30. Despite Plaintiff's averments to the contrary, JGWHL does not regularly conduct business in Philadelphia County.

31. It is well settled in Pennsylvania that courts must apply the "quality" and "quantity" test to determine if a corporation's business contacts are sufficient to constitute regular business conduct for purposes of establishing venue. *Wyszynski v. Greenwood Gaming & Entm't, Inc.*, 160 A.3d 198, 200 (Pa. Super. Ct. 2017) (citing *Purcell v. Bryn Mawr Hosp.*, 579 A.2d 1282, 1285 (Pa. 1990)).

32. To meet the quality prong, a corporation's contacts with a county must be essential to or in furtherance of a corporate object, rather than being incidental acts. *See Purcell*, 579 A.2d at 1285.

33. To meet the quantity prong, the contacts must be “so continuous and sufficient to be general or habitual.” *Id.* at 1285.

34. In the present case, JGWHL’s contacts with Philadelphia County are minimal and do not satisfy either the quality or quantity prongs necessary to establish proper venue.

35. JGWHL is incorporated in the Commonwealth of Virginia and its principal place of business is in Woodbridge, Virginia. *See* Declaration of Richard Byrd, Chief Financial Officer of J.G. Wentworth Home Lending, LLC at **Exhibit B**.

36. JGWHL does not have a branch office in Philadelphia County and its employees do not work in Philadelphia County. *See id.*; *see also* relevant pages from JGWHL’s website at **Exhibit C** reflecting branch offices.

37. JGWHL does not maintain bank accounts in Philadelphia County, nor does it pay Philadelphia taxes or operate under a Philadelphia business license. *See* **Exhibit B**.

38. JGWHL does not target its advertising in Philadelphia County, nor does it specifically solicit business from Philadelphia County. *See id.*

39. JGWHL does not host or sponsor events in Philadelphia County. *See id.*

40. Although JGWHL provides mortgage loans to Philadelphia residents, it does not enter Philadelphia County in furtherance of these transactions.

41. JGWHL’s lending services are performed outside Philadelphia County.

42. JGWHL’s customers have the option of meeting with a mortgage specialist in person at one of the Company’s branch offices (none of which are located in Philadelphia County) or they can go through the lending process remotely via telephone or online. *See* **Exhibit B**; *see also* **Exhibit C** (reflecting that JGWHL has only three branches locations in

Pennsylvania: (i) Hazleton, Pennsylvania; (ii) Wayne, Pennsylvania, and (iii) York, Pennsylvania).

43. Not only does JGWHL not enter Philadelphia County in furtherance of its business, but the amount of revenue generated from mortgages in Philadelphia County is insufficient to establish proper venue. See **Exhibit B**; see also *Masel v. Glassman*, 689 A.2d 314, 318 (Pa. Super. Ct. 1997) (finding venue was improper in Philadelphia County because Philadelphia residents only generated 3% of the defendant's gross revenue and all services were provided by defendant in Bucks County); *Banaszewski v. Corbo Landscaping Corp.*, No. 3287 EDA 2012, 2013 WL 11253448, at *5 (Pa. Super. Ct. Sept. 27, 2013) (finding defendant's contacts were insufficient to establish venue where the defendant's sales figures reflected less than 1% of its total business over a six year period was generated from Philadelphia County); *Zarenkiewicz v. Lefkowitz*, No. 1947 EDA 2014, 2015 WL 7289393, at *3 (Pa. Super. Ct. Apr. 9, 2015) (determining venue was improper in Philadelphia County where defendant attorney estimated only 2% of his gross revenues derived from business conducted in Philadelphia County); *Glassic v. Stillwater Lakes Civic Ass'n, Inc.*, No. 1973 C.D. 2015, 2016 WL 4821149, at *4 (Pa. Commw. Ct. Sept. 14, 2016) (affirming trial court order that venue was improper where defendant law firm only represented 10 clients over 14 years on a piecemeal basis in Lehigh County, amounting to less than 1% of revenue); *Jackson v. COPS Monitoring*, No. 1944 EDA 2016, 2017 WL 3929086, at *4 (Pa. Super. Ct. Sept. 8, 2017) (finding venue was improper in Philadelphia County where defendant held a Philadelphia business license, but only derived 0.25-1% of its revenue from business conducted there); *Jones v. Giant Food Stores, LLC*, No. 1128, 2011 WL 4352215 (Pa. Com. Pl. Apr. 8, 2011) *aff'd*, 47 A.3d 1250 (Pa. Super.

Ct. 2012) (transferring venue out of Philadelphia County after determining that Philadelphia customers amounted to less than 1% of the corporate defendant's total business).

44. The revenue generated from mortgages in Philadelphia County in 2015 amounted to **0.18%** of JGWHL's gross annual revenue. *See Exhibit B.*

45. The revenue generated from mortgages in Philadelphia County in 2016 amounted to **0.11%** of JGWHL's gross annual revenue. *See id.*

46. The revenue generated from mortgages in Philadelphia County in 2017 amounted to **0.12%** of JGWHL's gross annual revenue. *See id.*

47. Finally, the fact that JGWHL initiates foreclosure lawsuits in Philadelphia County arising from defaulted mortgage loans is not only required under Pennsylvania law, but insufficient to establish proper venue because it does not amount to "conducting business." *See Pa. R. Civ. P. 1142* (stating mortgage foreclosure "may be brought in and only in a county in which the land or part of the land is located"); *see also Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc.*, 698 A.2d 647, 652 n.8 (Pa. Super. Ct. 1997) (finding the fact defendant initiated legal proceedings in Philadelphia County was insufficient to satisfy venue requirements and was comparable to advertising).

48. For all of these reasons, Plaintiff's Complaint should be dismissed on the basis of improper venue because JGWHL does not regularly conduct business in Philadelphia County as its contacts are insufficient in both quality and quantity.

WHEREFORE, Defendant J.G. Wentworth Home Lending, LLC respectfully requests the entry of an Order sustaining its Preliminary Objections and dismissing Plaintiff's Complaint pursuant to Pa. R. Civ. P. 1028 for failure to engage in alternative dispute resolution and improper venue.

FOX ROTHSCHILD LLP



Colin D. Dougherty (No. 88363)
Brian A. Berkley (No. 200821)
Kimberly A. Havener (No. 311282)
10 Sentry Parkway
Suite 200, P.O. Box 3001
Blue Bell, PA 19422
cdougherty@foxrothschild.com
bberkley@foxrothschild.com
Telephone: 610.397.6500
Counsel for Defendant

Date: May 24, 2018

FOX ROTHSCHILD LLP

Colin D. Dougherty (No. 88363)
Brian A. Berkley (No. 200821)
Kimberly A. Havener (No. 311282)
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-6500

Attorneys for Defendant

PATRICK HACKMAN, on behalf of	:	COURT OF COMMON PLEAS
himself and others similarly situated,	:	PHILADELPHIA COUNTY
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	APRIL TERM, 2018
	:	NO. 01276
J. G. WENTWORTH HOME LENDING,	:	
LLC,	:	
	:	
Defendant.	:	

DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFF’S COMPLAINT

I. MATTER BEFORE THE COURT

Motion to Determine Preliminary Objections on behalf of Defendant J.G. Wentworth Home Lending, LLC (“JGWHL”) seeking dismissal of Plaintiff Patrick Hackman’s Putative Class Action Complaint under Pa. R. Civ. P. 1028 for failure to engage in alternative dispute resolution and improper venue.

II. INTRODUCTION

Plaintiff Patrick Hackman is a former loan officer for JGWHL. Plaintiff contends he is entitled to overtime wages under the Pennsylvania Minimum Wage Act (“PMWA”). This Court need not address the substance of Plaintiff’s claims because this action was improperly brought in Philadelphia County and should be dismissed.

Plaintiff voluntarily and knowingly entered into a Loan Officer Compensation and Employment Agreement (“Employment Agreement”) with JGHWL, which sets forth his right to compensation and benefits. Plaintiff’s Employment Agreement required him to engage in alternative dispute resolution (“ADR”) before initiating this action against JGHWL. To the extent ADR was unsuccessful, Plaintiff agreed to litigate any claims in Prince William County, Virginia. The Pennsylvania courts consistently enforce ADR and forum selection provisions like those included in Plaintiff’s Employment Agreement, including when a Plaintiff raises the type of claim raised here under the PMWA. Accordingly, Plaintiff’s Complaint should be dismissed for failure to engage in ADR and for failure to file this action in the mutually selected forum. It would be contrary to public policy to allow Plaintiff to avoid his contractual obligations and litigate this matter in Pennsylvania.

Alternatively, if Plaintiff is permitted to proceed with this action in Pennsylvania, venue is improper in Philadelphia County. JGWHL is incorporated and headquartered in Virginia. None of the events underlying this action arose in Philadelphia County and JGWHL does not regularly conduct business in Philadelphia County. Accordingly, this matter should not proceed in Philadelphia County.

III. STATEMENT OF QUESTIONS INVOLVED

1. Whether Plaintiff’s Complaint should be dismissed because he failed to engage in alternative dispute resolution with JGWHL before initiating this action as required by his Employment Agreement?

Suggested Answer: *Yes.*

2. Whether Plaintiff's Complaint should be dismissed based upon the forum selection clause set forth in Plaintiff's Employment Agreement requiring that this action be brought in Prince William County, Virginia?

Suggested Answer: *Yes.*

3. Whether Plaintiff's Complaint should be dismissed based upon improper venue because none of the underlying events took place in Philadelphia County and JGWHL does not regularly conduct business in Philadelphia County?

Suggest Answer: *Yes.*

IV. OPERATIVE FACTS

Plaintiff brings this putative class action against JGWHL seeking overtime compensation under the Pennsylvania Minimum Wage Act. Plaintiff is a former loan officer for JGWHL, a national residential mortgage lender. As part of his employment, Plaintiff executed a Loan Officer Compensation and Employment Agreement ("Employment Agreement") with JGWHL. A true and correct copy of the Employment Agreement is attached at **Exhibit A**.³

Plaintiff failed to attach his Employment Agreement to the Complaint as required under Rule 1019 of the Pennsylvania Rules of Civil Procedure. *See* Pa. R. Civ. P. 1019(i) (stating "[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing . . ."). Plaintiff's Employment Agreement sets forth the terms and conditions of his at-will employment with JGWHL, including his right to compensation and benefits. *See Exhibit A* at Section II & VII(A). Plaintiff's Employment Agreement also includes provisions regarding

³ "[I]t is well-settled that a court may rely on documents forming in part the foundation of the suit even where a plaintiff does not attach such documents to its complaint." *Feldman v. Hoffman*, 107 A.3d 821, 836 (Pa. Commw. Ct. 2014) (ruling on preliminary objections).

alternative dispute resolution (“ADR”), choice-of-law and forum selection. *See id.* at Sections VIII(L), (M) & (U).

The ADR provision in Plaintiff’s Employment Agreement expressly states that: “[p]rior to initiating any action or proceeding for monetary damages that arises out of or relates to this Agreement, the initiating Party shall provide the other Party with written notice of its claim or claims (the ‘Initial Notice’) in accordance with the Notice Section of this Agreement . . .” *See id.* at Section XIII(U). The ADR provision goes on to state that upon “***receipt of the Initial Notice, the Parties shall attempt to amicably resolve the claim or claims for a period of sixty (60) days.***” *See id.* (emphasis added). The Notice provision in Plaintiff’s Employment Agreement required Plaintiff to mail written notice of his claim to the President of JGWHL and the Company’s General Counsel, both of whom are located in Woodbridge, Virginia. *See id.* at Section VIII(C). Plaintiff failed to comply with the ADR provision in his Employment Agreement. Plaintiff did not provide JGWHL with written notice of his claims before filing this action, nor did he engage in any good faith negotiations with JGWHL to resolve his claims.

Plaintiff’s initiation of this action also violates the forum selection clause set forth in his Employment Agreement. The Parties expressly agreed that Plaintiff’s Employment Agreement would be “governed in all respects by and construed in accordance with the laws of the Commonwealth of Virginia, without recourse to its choice of law rules.” *See id.* at Section VIII(L). The Parties also agreed that “[a]ny action or proceeding arising under or relating to [the Employment Agreement] shall be brought in either the federal or state courts in Prince William County, Virginia.” *See id.* at Section VIII(M). The forum selection clause goes on to state that “[e]ach party irrevocably submits to the jurisdiction of the federal or state courts in Prince

William County, Virginia for the purposes of resolving any dispute or claim arising under or relating to [the Employment] Agreement, and waives any objection to venue . . .” *See id.*

As fully discussed in the sections that follow, JGWHL is entitled to dismissal of this action as a result of Plaintiff’s failure to comply with the ADR and forum selection clauses set forth in his Employment Agreement.

Even if Plaintiff could proceed with his claims in Pennsylvania, Philadelphia County is the wrong venue. None of the events underlying Plaintiff’s Complaint occurred in Philadelphia County. Plaintiff resides in Montgomery County and at all relevant times worked at JGWHL’s Wayne branch in Chester County, Pennsylvania. *See* Pl.’s Compl. at ¶¶ 3, 12. The only grounds for venue asserted in Plaintiff’s Complaint are that JGWHL “regularly conducts business within Philadelphia County by providing customers with mortgage loans on real property located in Philadelphia County” and that JGWHL initiates foreclosure actions in the Philadelphia courts. *See id.* at ¶ 2.

Despite Plaintiff’s allegations to the contrary, JGWHL does not regularly conduct business in Philadelphia County. JGWHL is incorporated in the Commonwealth of Virginia and its principal place of business is in Woodbridge, Virginia. *See* Declaration of Richard Byrd, Chief Financial Officer of JGWHL at **Exhibit B**. JGWHL does not have a branch office in Philadelphia County and its employees do not work in Philadelphia County. *See id.*; *see also* relevant pages from JGWHL’s website at **Exhibit C** reflecting branch offices. JGWHL does not maintain bank accounts in Philadelphia County, nor does it pay Philadelphia taxes or operate under a Philadelphia business license. *See* **Exhibit B**. JGWHL does not target its advertising in Philadelphia County, nor does it specifically solicit business from Philadelphia County. *See id.* JGWHL does not host or sponsor events in Philadelphia County. *See id.*

Although JGWHL provides mortgage loans to residents in Philadelphia County, the business transactions take place outside the county. The few times when JGWHL provides mortgage loans to Philadelphia residents, its lending services are performed outside Philadelphia County. JGWHL's customers have the option of meeting with a mortgage specialist in person at one of the Company's branch offices (none of which are located in Philadelphia County) or they can go through the lending process remotely via telephone or online. *See* Pl.'s Compl. ¶ 8; *see also Exhibit B; Exhibit C* (reflecting that JGWHL has only three branches locations in Pennsylvania: (i) Hazleton, Pennsylvania; (ii) Wayne, Pennsylvania, and (iii) York, Pennsylvania). The fact that JGWHL initiates foreclosure lawsuits in Philadelphia County arising from defaulted mortgage loans is required under Pennsylvania law and insufficient to establish proper venue because it does not constitute "conducting business." *See Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc.*, 698 A.2d 647, 652 n.8 (Pa. Super. Ct. 1997).

Not only does JGWHL not enter Philadelphia County in furtherance of its business, but the amount of revenue generated from mortgages in Philadelphia County is less than 1%. *See Exhibit B*. The revenue generated from mortgages in Philadelphia County in 2015 amounted to **0.18%** of JGWHL's gross annual revenue. *See id.* The revenue generated from mortgages in Philadelphia County in 2016 amounted to **0.11%** of JGWHL's gross annual revenue. *See id.* The revenue generated from mortgages in Philadelphia County in 2017 amounted to **0.12%** of JGWHL's gross annual revenue. *See id.*

V. ARGUMENT

A. Plaintiff's Complaint Should Be Dismissed Pursuant to Pa. R. Civ. P. 1028(a)(6) Because He Failed to Engage in Alternative Dispute Resolution with JGWHL Before Filing This Action as His Employment Agreement Requires.

Plaintiff's Complaint should be dismissed under Rule 1028(a)(6) of the Pennsylvania Rules of Civil Procedure for failure to comply with the ADR provision set forth in his Employment Agreement with JGWHL. *See Exhibit A* Section VIII(U). Plaintiff asserts a claim for overtime under the Pennsylvania Minimum Wage Act. Plaintiff's claim is undeniably subject to the ADR provision in his Employment Agreement, which requires him to provide JGWHL with written notice of any claim for monetary damages arising out of or relating to his Employment Agreement *before* initiating any action against JGWHL. *See id.* Upon receipt of such notice, the Parties are to engage in good faith negotiations for sixty days in an attempt to amicably resolve such claims. *See id.*

The Pennsylvania courts have found that ADR provisions similar to that included in Plaintiff's Employment Agreement apply broadly and encompass contract, tort and statutory claims. *See, e.g., Dodds v. Pulte Home Corp.*, 909 A.2d 348, 349 (Pa. Super. Ct. 2006) (finding ADR provision included in parties' agreement included tort claims and violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law); *Pittsburgh Logistics Sys., Inc., v. Prof'l Transp. & Logistics, Inc.*, 803 A.2d 776, 781-82 (Pa. Super. Ct. 2002) (holding tort claims which implicate contractual obligations are subject to unrestricted arbitration provision); *Borough of Ambridge Water Auth. v. Columbia*, 328 A.2d 498, 499, 501 (Pa. 1974) (“[A]ny controversy or claim arising out of or relating to this Agreement or the breach thereof,” is “found in the broadest conceivable language from which it must be concluded that the parties intended the scope of the submission to be unlimited.”); *Freedman v. Tozzoli*, 71 Pa. D. & C.4th 353, 359

(C.C.P. Lehigh Cty. Feb. 17, 2005) (clause requiring the arbitration of “any controversy or claim arising out of or relating to this agreement, or the breach thereof” is a “very broad arbitration clause” and includes claims under the Pennsylvania Human Relations Act).

Both Pennsylvania and Virginia courts recognize that compliance with a contractual ADR provision is a “condition precedent” to initiating a lawsuit and that failure to do so warrants dismissal.⁴ In *Tattoo Art, Inc. v. Tat Int’l, LLC*, the Eastern District of Virginia found that “failure to mediate a dispute pursuant to a contract that makes mediation a condition precedent to filing a lawsuit warrants dismissal.” *See* 711 F. Supp. 2d 645, 651 (E.D. Va. 2010) (citation omitted). The *Tattoo* court held that “when parties to a lawsuit have elected not to be subject to a court’s jurisdiction until some condition precedent is satisfied, such as mediation, the appropriate remedy is to dismiss the action.” *Id.* The court reasoned that dismissal was warranted even if ADR might “ultimately prove inefficient and futile because the parties [we]re not required to actually resolve the dispute.” *Id.* at 652.

The court reached a similar conclusion in *Dominion Transmission, Inc. v. Precision Pipeline, Inc.*, where it granted the defendant’s motion to dismiss after finding the parties’ contract mandated adherence to an ADR process before either could commence litigation. *See* No. 3:13CV442-JAG, 2013 WL 5962939, at *2-3 (E.D. Va. Nov. 6, 2013). The court went on to state that the plaintiff’s complaint was “fundamentally flawed by virtue of its noncompliance with a condition precedent[,] [thereby] impair[ing] [the plaintiff]’s right to access the courts.” *Id.* at *3. Notably, the reasoning set forth in *Dominion* was adopted in full by the Western

⁴ The choice-of-law provision in Plaintiff’s Employment Agreement states that “[the Employment] Agreement shall be governed in all respects by and construed in accordance with the laws of the Commonwealth of Virginia, without recourse to its choice of law rules.” *See id.* at Section VIII(L). Accordingly, this Court should apply Virginia law when interpreting and enforcing the ADR and forum selection provisions of the Employment Agreement. Nevertheless, Pennsylvania and Virginia law do not materially differ in this context and so Defendant relies on both Pennsylvania and Virginia law to support its Preliminary Objections.

District of Pennsylvania in *Precision Pipeline LLC v. Dominion Transmission, Inc.*, when the plaintiff tried to proceed with litigation again two years later despite still not fulfilling its obligation to engage in ADR. *See* No. 15-977, 2016 WL 6211011, at *1 (W.D. Pa. Mar. 21, 2016).

In *Atl. Concrete Cutting, Inc. v. Turner Constr. Co.*, this Court sustained a defendant's preliminary objection and dismissed the plaintiff's complaint based upon the existence of an ADR agreement between the parties. *See* No. 00830, 2005 WL 167475, at *2 (Pa. Com. Pl. Jan. 5, 2005). The agreement required the parties to "participate in good faith in voluntary and non-binding Alternative Dispute Resolution (ADR) procedures." *See id.* at *1. This Court found that Pennsylvania law "advocates strict construction" of such agreements and "any doubts or ambiguity" should be resolved in favor of ADR. *See id.* (citing *Smith v. Cumberland Grp., Ltd.*, 687 A.2d 1167, 1171 (Pa. Super. Ct. 1997) (stating "[w]hen parties agree to arbitration in a clear and unmistakable manner, the court will make every reasonable effort to favor such agreements")); *see also McKenna v. N. Strabane Twp.*, 700 A.2d 577, 580 (Pa. Commw. Ct. 1997) (dismissing employee's claim for failing to submit dispute to ADR as required by employment agreement and noting that the Pennsylvania courts favor ADR and supplemented Pa. R. Civ. P. 1028 to allow objections based on ADR agreements).

By failing to engage in ADR, Plaintiff denied JGWHL the benefit of its bargain under the Employment Agreement and failed to satisfy the condition precedent necessary to trigger the right to initiate litigation. Dismissal of Plaintiff's Complaint is warranted under both Pennsylvania and Virginia law as a result of Plaintiff's failure to submit to ADR.

B. Plaintiff's Complaint Should Be Dismissed on the Basis of Improper Venue.

1. Plaintiff's Complaint Should Be Dismissed for Failure to Comply with the Forum Selection Clause Set Forth in His Employment Agreement Requiring this Action be Filed in Prince William County, Virginia.

Plaintiff's Employment Agreement includes a mandatory forum selection clause, which states in relevant part: "Any action or proceeding arising under or relating to this Agreement shall be brought in either the federal or state courts in Prince William County, Virginia." *See Exhibit A* at Section VIII(M). The forum selection clause goes on to state that the Parties "waive[] any objection to venue" and "irrevocably submit[] to the jurisdiction of the federal or state courts in Prince William County, Virginia." *See id.* The forum selection clause is binding and enforceable as to Plaintiff's wage claims and, as such, Plaintiff's Complaint should be dismissed.

Plaintiff's claim for overtime under the Pennsylvania Minimum Wage Act undisputedly arises under and is "related" to his Employment Agreement, which sets forth Plaintiff's right to compensation and benefits. As such, this action falls within the broad scope of the Employment Agreement's clear and unambiguous forum selection clause. *See, e.g., Caballero v. Healthcare Res., Inc.*, No. 17-CV-00228, 2017 WL 2909693, at *1 (W.D. Pa. July 7, 2017) (transferring PMWA claim to Arizona based upon forum selection clause in employment contract); *Campanini v. Studsvik, Inc.*, No. 08-5910, 2009 WL 926975, at *7 (E.D. Pa. Apr. 6, 2009) (transferring claim brought under Pennsylvania's Wage Payment and Collection Law to Tennessee); *Newman v. Advanced Tech. Innovation Corp.*, No. 1:12CV24, 2012 WL 1414859, at *6 (E.D. Va. Apr. 20, 2012) (holding that forum selection clause contained in employment agreement applied to overtime wage FLSA claims, where the clause stated that it applied to "all . . . matters regarding" the employment agreement, and the agreement set forth the employee's rate

of pay); *Sharpe v. Ally Fin., Inc.*, No. 3:17CV189-GCM, 2017 WL 5078900, at *3 (W.D.N.C. Nov. 3, 2017) (holding that forum selection clause providing for venue in Tennessee included overtime wage FLSA claims where contract indicated that the clause applied to all claims “in connection” with the employment agreement); *McCusker v. hibu PLC*, No. 14-5670, 2015 WL 1600066, at *4 (E.D. Pa. Apr. 8, 2015) (“Plaintiff’s unpaid wage claim under the [Pennsylvania Wage Payment Collection Law], however, clearly falls within the scope of the parties’ forum selection clause since any resolution of the claim will depend on the terms of the Employment Agreement.”); *see also Collins v. Mary Kay, Inc.*, No. 15-7129, 2016 WL 3546581, at *3–5 (D.N.J. June 29, 2016) (rejecting the plaintiff’s contention that a forum selection clause “concerning any matter relating to this Agreement” did not encompass a claim under the New Jersey Wage Payment Law). A forum selection clause is presumptively valid and enforceable under both Pennsylvania and Virginia law. *See O’Hara v. First Liberty Ins. Corp.*, 984 A.2d 938, 941-42 (Pa. Super. Ct. 2009); *Jones v. Dent Wizard Int’l Corp.*, No. 02-386, 2002 WL 32254731, at *1 (Va. Cir. Ct. May 6, 2002).

In Pennsylvania, a court must “decline to proceed with the [case] when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation.” *See Cent. Contracting Co. v. C.E. Youngdahl & Co.*, 209 A.2d 810, 816 (Pa. 1965); *see also O’Hara*, 984 A.2d at 941-42. Similarly, in Virginia, contractual provisions limiting the place or court where potential actions between the parties may be brought are “considered *prima facie* valid, unless proven to be unfair or unreasonable.” *See Dent Wizard Int’l Corp.*, 2002 WL 32254731, at *1 (citing *Paul Bus. Sys., Inc. v. Canon U.S.A., Inc.*, 397 S.E.2d 804, 807 (Va. 1990)).

A party challenging a forum selection clause has a “heavy burden” in establishing that it is unreasonable. *See id.*; *see also O'Hara*, 984 A.2d at 941. Pennsylvania and Virginia courts both apply the factors originally described by the Supreme Court of the United States when evaluating the reasonableness of a forum a selection clause:

1. Whether the clause was induced by fraud or overreaching;
2. Whether the forum selected in the clause is so unfair or inconvenient that a party, for all practical purposes, will be deprived of an opportunity to be heard; or
3. Whether the clause is found to violate public policy.

See id.; *see also Patriot Commercial Leasing Co., Inc. v. Kremer Rest. Enters., LLC*, 915 A.2d 647, 651 (Pa. Super. Ct. 2006); *Paul Bus. Sys., Inc.*, 397 S.E.2d at 807-08; *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15-17 (1972). All of these factors favor enforcement of the forum-selection clause included in Plaintiff’s Employment Agreement.

a. Plaintiff Freely Executed His Employment Agreement with JGWHL.

As far as the first factor, there is no evidence of any fraud or overreach. Instead, Plaintiff may argue the Employment Agreement’s forum selection clause is not valid because it is contained within a contract of adhesion. That argument fails.

Courts in both Pennsylvania and Virginia have rejected arguments that the unequal bargaining power between employers and employees inherently renders employment agreements unreasonable contracts of adhesion. *Zaklit v. Glob. Linguist Sols., LLC*, 53 F. Supp. 3d 835, 845-46 (E.D. Va. 2014) (finding that “[s]imply because an employer and an employee do not stand on equal footing with respect to bargaining power does not magically transform an employment agreement into an adhesion contract.”); *Dent Wizard Int’l Corp.*, 2002 WL 32254731, at *2-3 (granting motion to dismiss based on forum selection clause and rejecting argument based on

allegedly unequal bargaining power); *O'Hara*, 984 A.2d at 942 (affirming use of forum selection clause in form contract). “Absent evidence of a bad-faith motive, disparity in bargaining power does not render a forum selection clause fundamentally unfair.” *Torres v. SOH Distrib. Co.*, No. 10–CV-179, 2010 WL 1959248, at *3 (E.D. Va. May 13, 2010); *Savoia v. Wal-Mart Stores, Inc.*, No. 2014-00746, 2014 WL 12746848, at *1 (Pa. Com. Pl. Aug. 25, 2014) (same).

Rather, the test for adhesion is whether “an employee has the freedom to consider employment elsewhere and is not bound to continue working for his current employer.” *Senture, LLC v. Dietrich*, 575 F. Supp. 2d 724, 727 n.1 (E.D. Va. 2008); *see also Barbuto v. Med. Shoppe Int'l, Inc.*, 166 F. Supp. 2d 341, 346–47 (W.D. Pa. 2001) (finding forum selection clause should be enforced in employment context because employees were not “powerless” and had a choice when entering into the relationship). Where such freedom exists, an employment agreement will not be considered an unreasonable adhesion contract. *See Senture*, 575 F. Supp. 2d at 727 n.1.

In *Senture, LLC v. Dietrich*, an employee argued that his employment agreement was a contract of adhesion and challenged the reasonableness of its Kentucky forum selection clause. *See id.* at 726. The Eastern District of Virginia rejected the employee’s argument, finding that “an adhesion contract is defined as a standard form contract, prepared by one party and presented to a weaker party—usually, a consumer—who has no bargaining power and little or no choice about the terms If an employee has the freedom to consider employment elsewhere an employment agreement will not be considered an adhesion contract.” *Id.* at 727 n.1 (internal quotations omitted).

In the present case, Plaintiff’s Employment Agreement is not a contract of adhesion under Pennsylvania or Virginia law. Plaintiff was an at-will employee with JGWHL and was therefore free to terminate his Employment Agreement at any time and work elsewhere. *See*

Exhibit A at Section VII(A); *Gehin-Scott v. Newson, Inc.*, 848 F. Supp. 585, 589 (E.D. Pa.), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (stating that if an at-will employee is “dissatisfied with the terms offered by the employer, the employee is free to resign”). Further, JGWHL had no bad faith motive when it included the forum selection clause in the Employment Agreement. JGWHL selected Virginia because that is where the company is incorporated and headquartered. *See Exhibit B*. JGWHL employs loan officers across the county and the Virginia forum selection clause assures uniform treatment of its employees. *See Exhibit C*. In *SKF USA Inc. v. Okkerse*, the Eastern District of Pennsylvania court recognized the need for a company with employees nationwide to include a forum selection clause in its employment agreements to “ensure the uniform treatment of its employees.” *See* 992 F. Supp. 2d 432, 444 (E.D. Pa. 2014) (finding forum selection clause was reasonable given that company had employees located throughout the country and sought to ensure equal treatment).

b. Plaintiff Waived Any Argument that Litigating in Virginia is Inconvenient.

In terms of the second factor, “[m]ere inconvenience or additional expense” is not the test when evaluating whether a forum selection clause is reasonable. *See O’Hara*, 984 A.2d at 941. “When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation.” *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 64 (2013). In line with this reasoning, Pennsylvania courts have consistently enforced forum selection clauses even when it requires the plaintiff to pursue litigation in another state.⁵

⁵ Virginia courts also enforce forum selection clauses where it requires the plaintiff to litigate out-of-state. *See, e.g. Prater v. Dent Wizard Int’l Corp.*, No. 04-2911, 2005 WL 2898731, at *1 (Va. Cir. Ct. May 12, 2005) (enforcing forum selection clause calling for litigation in Missouri); *Jones v. Dent Wizard Int’l Corp.*, No. CL02-386, 2002 WL 32254731, at *1 (Va. Cir. Ct. May 6, 2002) (enforcing Missouri forum selection clause); *Equip. Leasing Co. v. Talbot Homes, Inc.*, 23 Va. Cir. 125 (Va. Cir. Ct. 1991) (enforcing Maryland forum selection clause); *Paul Bus. Sys.*,

See, e.g. John C. Cardullo & Sons, Inc. v. Int'l Profit Assocs., Inc., No. 03515, 2006 WL 2348553, at *3 (Pa. Com. Pl. Aug. 7, 2006) (enforcing Illinois forum selection clause and acknowledging that while “it will be very inconvenient and costly [for plaintiff] to prosecute its claims in Illinois . . . such inconvenience does not rise to the level of unreasonableness”); *Savoia v. Wal-Mart Stores, Inc.*, No. 2014-00746, 2014 WL 12746848, at *1 n.1 (Pa. Com. Pl. Aug. 25, 2014) (dismissing matter based upon Virginia forum selection clause after finding inconvenience to plaintiffs would not be so substantial that it should disregard a “clear and unambiguous” forum selection clause); *Autochoice Unlimited, Inc. v. Avangard Auto Fin., Inc.*, 9 A.3d 1207, 1215 (Pa. Super. Ct. 2010) (affirming enforcement of Florida venue clause); *Nelson Med. Grp. v. Phoenix Health Corp.*, No. 3078-2001, 2002 WL 1066959, at *3 (Pa. Com. Pl. May 28, 2002) (determining that “[t]here exist no grounds for finding Maryland to be an unreasonable forum” even where plaintiff sought small recovery); *Kelly v. Bear, Stearns & Co. Inc.*, No. 080832, 2001 WL 1807360, at *1–2 (Pa. Com. Pl. Dec. 18, 2001) (dismissing based on New York forum selection clause); *Credit Am., Inc. v. Intercept Corp.*, No. 3923, 2001 WL 1807381, at *2 (Pa. Com. Pl. Oct. 2, 2001) (dismissing based on North Dakota forum selection clause).

Here, Plaintiff waived any argument that Virginia is an inconvenient forum. When Plaintiff executed the Employment Agreement with JGWHL, he consented⁶ to have “any action or proceeding arising under or relating to” his Employment Agreement heard exclusively by the

Inc. v. Canon U.S.A., Inc., 397 S.E.2d 804, 808 (Va. 1990) (affirming enforcement of New York forum selection clause).

⁶ Because the Parties contractually agreed to Virginia as a forum, there is no need for this Court to perform a “contacts” analysis. *See Frontier Leasing Corp. v. Shah*, 931 A.2d 676, 680 (Pa. Super. Ct. 2007) (“Personal jurisdiction can be established by consent of the parties; when such consent is established, the famous ‘minimum contacts’ framework developed by the United States Supreme Court in *International Shoe Co. v. Washington* is inapplicable.”) (internal citation omitted); *Reco Equip. Inc. v. John T. Subrick Contracting Inc.*, 46 Pa. D. & C.4th 415, 418 (Pa. Com. Pl. 2000) (“The forum selection clause by its very nature preempts consideration of the sufficiency of defendant’s contacts with Ohio.”); *Paul Bus. Sys., Inc.*, 397 S.E.2d at 807-08 (holding that parties can consent to personal jurisdiction).

courts in Prince William County, Virginia. See **Exhibit A** at Section VIII(M). Following execution, Plaintiff’s continued performance of his duties as a loan officer further signified acceptance of the Employment Agreement’s terms and conditions, including the forum selection clause. See *Bauer v. Pottsville Area Emergency Med. Servs., Inc.*, 758 A.2d 1265, 1269 (Pa. Super. Ct. 2000) (stating an employee “signifies acceptance of the terms and conditions by continuing to perform the duties of his or her job; no additional or special consideration is required”). Moreover, both the Pennsylvania and Virginia courts have enforced forum selection clauses requiring plaintiffs to litigate at distances much further than that between Pennsylvania and Virginia.

c. Public Policy Supports Enforcement of the Forum Selection Clause.

Finally, as to the third factor, “[o]nly in the clearest of cases may a court declare a contract void as against public policy.” See *O’Hara*, 984 A.2d at 943 (citation omitted). To be contrary to public policy, “a contract must tend to injure the public or be against the public good, or must be inconsistent with good morals as to the consideration to be exchanged or the thing to be done for consideration.” See *id.* When evaluating forum selection clauses, Pennsylvania and Virginia courts have emphasized that public policy is in fact *served* by holding a party bound by the clear language set forth in his or her agreements. See *Susquehanna Patriot Commercial Leasing Co., Inc. v. Holper Indus., Inc.*, 928 A.2d 278, 283 (Pa. Super. Ct. 2007); see also *Paul Bus. Sys., Inc.*, 397 S.E.2d at 808 (finding enforcement of the forum provisions would not violate “a strong public policy of Virginia” because the courts have “expressly sustained the validity of such provisions, approved their use, and enforced them”).

Even where a plaintiff seeks to recover under Pennsylvania state law – including most notably claims like the one here under PMWA – the Pennsylvania courts will still enforce out-of-

state forum selection clauses. *See, e.g., Caballero v. Healthcare Res., Inc.*, No. 17-00228, 2017 WL 2909693, at *1 (W.D. Pa. July 7, 2017) (transferring PMWA claim to Arizona based upon forum selection clause in employment contract); *Campanini v. Studsvik, Inc.*, No. 08-5910, 2009 WL 926975, at *7 (E.D. Pa. Apr. 6, 2009) (transferring claim brought under Pennsylvania's Wage Payment and Collection Law to Tennessee); *Stivason v. Timberline Post & Beam Structures Co.*, 947 A.2d 1279, 1283 (Pa. Super. Ct. 2008) (affirming dismissal of claims brought pursuant to Pennsylvania's Unfair Trade Practices and Consumer Protection Law so that the case could be filed in Ohio based upon a forum selection clause).

In the instant case, transferring this case to Virginia does not contravene Pennsylvania public policy. *See Campanini*, 2009 WL 926975, at *5 (transferring plaintiff's Pennsylvania statutory wage claim to Tennessee based on forum selection clause included in employment agreement). Rather, it would be contrary to public policy to allow Plaintiff to avoid his contractual obligations and litigate this matter in Pennsylvania. Pennsylvania and Virginia public policy favors enforcement of the forum selection clause.

For all of these reasons, the forum selection clause included in Plaintiff's Employment Agreement is valid and enforceable. Accordingly, Plaintiff's Complaint should be dismissed and he should be required to refile in Virginia.

2. Plaintiff's Complaint Should Be Dismissed Based Upon Improper Venue Where None of the Underlying Events Took Place in Philadelphia County and JGWHL Does Not Regularly Conduct Business in Philadelphia County.

If Plaintiff is permitted to proceed with his claims in Pennsylvania, his Complaint should be dismissed because venue is improper in Philadelphia County. None of the events underlying Plaintiff's claims took place in Philadelphia County and JGWHL does not regularly conduct business in Philadelphia County.

Under the Pennsylvania Rules of Civil Procedure, a defendant may challenge venue as improper by preliminary objection. *See* Pa. R. Civ. P. 1006(e) (stating “[i]mproper venue shall be raised by preliminary objection and if not so raised shall be waived.”). Rule 2179 of the Pennsylvania Rules sets forth the grounds for establishing proper venue in an action against a corporation. Under Rule 2179, venue is only proper in:

1. The county where a corporation’s registered office or principal place of business is located;
2. A county where a corporation regularly conducts business;
3. The county where the cause of action arose;
4. A county where a transaction or occurrence took place out of which the cause of action arose, or
5. A county where the property or part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa. R. Civ. P. 2179(a). The question of improper venue is answered by taking a “snapshot” of the case at the time the suit is initiated. *Zappala v. Brandolini Prop. Mgmt. Inc.*, 909 A.2d 1272, 1281 (Pa. 2006). When evaluating venue, a trial court has the discretion to consider evidence outside the complaint where preliminary objections raise an issue of fact. *See* Pa. R. Civ. P. 1028(c)(2). A trial court has the “discretion to determine the lack of need for further discovery on the issue of venue” and its decision will only be disturbed for abuse of discretion. *Schultz v. MMI Prods.*, 30 A.3d 1224, 1228 (Pa. Super. Ct. 2011).

In the present case, venue is improper in Philadelphia County because Plaintiff cannot satisfy any of the requirements set forth in Rule 2179. None of the events underlying Plaintiff’s wage claim occurred in Philadelphia County. Plaintiff resides in Montgomery County and at all relevant times worked at JGWHL’s Wayne branch in Chester County, Pennsylvania. JGWHL does not have a registered office in Philadelphia County, nor is its principal place of business

located in Philadelphia County. *See* Declaration of Richard Byrd, Chief Financial Officer of J.G. Wentworth Home Lending, LLC at **Exhibit B**.

The only grounds offered by Plaintiff to support his venue selection is that JGWHL regularly conducts business in Philadelphia County by providing mortgage loans to Philadelphia residents and by utilizing the Philadelphia courts when filing foreclosure actions. *See* Pl.’s Compl. ¶ 2. It is well settled in Pennsylvania that courts must apply the “quality” and “quantity” test to determine if a corporation’s business contacts are sufficient to constitute regular business conduct for purposes of establishing venue. *Wyszynski v. Greenwood Gaming & Entm’t, Inc.*, 160 A.3d 198, 200 (Pa. Super. Ct. 2017) (citing *Purcell v. Bryn Mawr Hosp.*, 579 A.2d 1282, 1285 (Pa. 1990)). To meet the quality prong, a corporation’s contacts with a county must be essential to or in furtherance of a corporate object, rather than being incidental acts. *See Purcell*, 579 A.2d at 1285. Soliciting business within a county is generally insufficient to satisfy the quality prong and is considered an incidental act. *Id.* at 1287. To meet the quantity prong, the contacts must be “so continuous and sufficient to be general or habitual.” *Id.* at 1285.

a. JGWHL’s Contacts with Philadelphia County Do Not Satisfy the “Quality” Prong to Establish Proper Venue.

JGWHL has extremely limited contact with Philadelphia County. The few contacts that do exist, do not satisfy the “quality” prong to establish proper venue under Pennsylvania precedent. In *Purcell*, the Pennsylvania Supreme Court found that venue was not proper in a suit against Bryn Mawr Hospital despite the fact the hospital engaged in numerous activities in Philadelphia County, including: receiving income from Philadelphia patients; contracting with teaching hospitals in Philadelphia; recruiting and employing medical residents from Philadelphia hospitals; purchasing goods and services from Philadelphia businesses; and paying for advertisements in Philadelphia phone books and in the Philadelphia Inquirer. *See* 579 A.2d at

1285. The Supreme Court found that these activities did not satisfy the quality prong of the venue analysis because they were incidental and not essential to the hospital's business objectives. The court found that the hospital's corporate object was to care for patients and that all of its patients were treated exclusively at its location in Montgomery County. *See id.* at 1287. The Court suggested that venue would have been properly laid in Philadelphia, had that hospital operated a branch clinic in Philadelphia where paying customers would be diagnosed or treated on such premises. *See id.* Such activity would rise to the level of being in direct furtherance of, or essential to, the hospital's corporate objects. *See id.*

In addition, Pennsylvania courts have consistently found that when a defendant does not enter the county in furtherance of its corporate objectives, the mere fact that the defendant conducts some of its business with county residents is insufficient to confer venue, particularly when such business take place outside the county. *See Masel v. Glassman*, 689 A.2d 314, 318 (Pa. Super. Ct. 1997); *Purcell*, 579 A.2d at 1285; *Med. Staffing Network, Inc. v. Keystone Care Corp.*, Nos. 1641, 111059, 2002 WL 1758349, at *4 (Pa. Com. Pl. July 8, 2002) (all rejecting arguments that generating income from Philadelphia residents is sufficient to establish venue).

Unlike the *Purcell* case wherein the court dismissed on venue even though the Defendant had a number of contacts with the forum, JGWHL has virtually no contact with Philadelphia County. It is incorporated in the Commonwealth of Virginia and its principal place of business is in Woodbridge, Virginia. *See* Declaration of Richard Byrd, Chief Financial Officer of JGWHL at **Exhibit B**. JGWHL does not have a branch office in Philadelphia County and its employees do not work in Philadelphia County. *See id.*; *see also* relevant pages from JGWHL's website at **Exhibit C** reflecting branch offices. JGWHL does not maintain bank accounts in Philadelphia County, nor does it pay Philadelphia taxes or operate under a Philadelphia business

license. *See Exhibit B.* JGWHL does not target its advertising in Philadelphia County, nor does it specifically solicit business from Philadelphia County. *See id.* JGWHL does not host or sponsor events in Philadelphia County. *See id.*

Although JGWHL provides mortgage loans to Philadelphia residents, it does not enter Philadelphia County in furtherance of these transactions. JGWHL's lending services are performed outside Philadelphia County. JGWHL's customers have the option of meeting with a mortgage specialist in person at one of the Company's branch offices (none of which are located in Philadelphia County) or they can go through the lending process remotely via telephone or online. *See Exhibit B; see also Exhibit C* (reflecting that JGWHL has only three branches locations in Pennsylvania: (i) Hazleton, Pennsylvania; (ii) Wayne, Pennsylvania, and (iii) York, Pennsylvania). The fact that JGWHL initiates foreclosure lawsuits in Philadelphia County arising from defaulted mortgage loans is not only required under Pennsylvania law, but insufficient to establish proper venue because it does not amount to "conducting business." *See Pa. R. Civ. P. 1142* (stating mortgage foreclosure "may be brought in and only in a county in which the land or part of the land is located"); *see also Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc.*, 698 A.2d 647, 652 n.8 (Pa. Super. Ct. 1997) (finding the fact defendant initiated legal proceedings in Philadelphia County was insufficient to satisfy venue requirements and was comparable to advertising). JGWHL is in the business of mortgage lending, not the commencement of lawsuits.

b. JGWHL's Contacts with Philadelphia County Do Not Satisfy the "Quantity" Prong to Establish Proper Venue.

Not only does JGWHL not enter Philadelphia County in furtherance of its business, but the amount of revenue generated from mortgages in Philadelphia County is insufficient to establish proper venue. *See Exhibit B.* Venue is improper where the percentage of income that

the defendant generates from its contacts with a county is extremely minimal. *See, e.g. Masel*, 689 A.2d at 318 (finding venue was improper in Philadelphia County because Philadelphia residents only generated 3% of the defendant's gross revenue and all services were provided by defendant in Bucks County); *Banaszewski v. Corbo Landscaping Corp.*, No. 3287 EDA 2012, 2013 WL 11253448, at *5 (Pa. Super. Ct. Sept. 27, 2013) (finding defendant's contacts were insufficient to establish venue where the defendant's sales figures reflected less than 1% of its total business over a six year period was generated from Philadelphia County); *Zarenkiewicz v. Lefkowitz*, No. 1947 EDA 2014, 2015 WL 7289393, at *3 (Pa. Super. Ct. Apr. 9, 2015) (determining venue was improper in Philadelphia County where defendant attorney estimated only 2% of his gross revenues derived from business conducted in Philadelphia County); *Glassic v. Stillwater Lakes Civic Ass'n, Inc.*, No. 1973 C.D. 2015, 2016 WL 4821149, at *4 (Pa. Commw. Ct. Sept. 14, 2016) (affirming trial court order that venue was improper where defendant law firm only represented 10 clients over 14 years on a piecemeal basis in Lehigh County, amounting to less than 1% of revenue); *Jackson v. COPS Monitoring*, No. 1944 EDA 2016, 2017 WL 3929086, at *4 (Pa. Super. Ct. Sept. 8, 2017) (finding venue was improper in Philadelphia County where defendant held a Philadelphia business license, but only derived 0.25-1% of its revenue from business conducted there); *Jones v. Giant Food Stores, LLC*, No. 1128, 2011 WL 4352215 (Pa. Com. Pl. Apr. 8, 2011) *aff'd*, 47 A.3d 1250 (Pa. Super. Ct. 2012) (transferring venue out of Philadelphia County after determining that Philadelphia customers amounted to less than 1% of the corporate defendant's total business).

In the present case, the revenue data for the last three years reflects that JGWHL does a miniscule amount of business in Philadelphia County. In 2015, revenue generated from mortgages in Philadelphia County amounted to **0.18%** of JGWHL's gross annual revenue. *See*

Exhibit B. In 2016, the revenue generated from mortgages in Philadelphia County in 2016 amounted to **0.11%** of JGWHL's gross annual revenue. *See id.* In 2017, the revenue generated from mortgages in Philadelphia County amounted to **0.12%** of JGWHL's gross annual revenue. *See id.*

Based upon the foregoing, JGWHL does not regularly conduct business in Philadelphia County as its contacts are insufficient in both quality and quantity. Accordingly, Plaintiff's Complaint should be dismissed on the basis of improper venue.

VI. CONCLUSION

Plaintiff may not ignore his Employment Agreement to improperly burden this Court's docket. As he bargained for, he first has to negotiate a resolution with J.G. Wentworth Home Lending, LLC before bringing this case. If that fails, he must bring his claim in Virginia, not Pennsylvania, and certainly not in Philadelphia County. As a result, Pa. R. Civ. P. 1028 requires dismissal for failure to engage in alternative dispute resolution and improper venue.

FOX ROTHSCHILD LLP



Colin D. Dougherty (No. 88363)
Brian A. Berkley (No. 200821)
Kimberly A. Havener (No. 311282)
10 Sentry Parkway
Suite 200, P.O. Box 3001
Blue Bell, PA 19422
cdougherty@foxrothschild.com
bberkley@foxrothschild.com
Telephone: 610.397.6500

Counsel for Defendant

Date: May 24, 2018

CERTIFICATE OF SERVICE

I, Colin D. Dougherty, hereby certify that, on this date, I caused the foregoing Preliminary Objections and Memorandum of Law in Support to be filed electronically with this Court, where it is available for viewing and downloading from the Court's ECF system, and that such electronic filing automatically generates a Notice of Electronic Filing constituting service of the filed document, upon interested parties.



Dated: May 24, 2018

Colin D. Dougherty

Filed and Attested by the
Office of Judicial Records
24 MAY 2018 05:10 pm
M. RUSSO

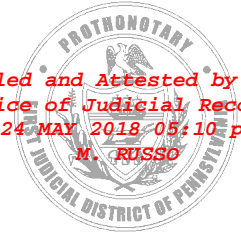


EXHIBIT “A”

**LOAN OFFICER
COMPENSATION AND EMPLOYMENT AGREEMENT**

This Loan Officer Compensation and Employment Agreement (this "Agreement") is entered into, as of 3/25/16 ("Effective Date") by and between J.G. Wentworth Home Lending, Inc. ("J.G. Wentworth Home Lending") and Patrick Hackman ("Loan Officer"), (J.G. Wentworth Home Lending and Loan Officer are collectively referred to as the "Parties" and each individually a "Party").

WHEREAS, the Parties desire that Loan Officer work in the employment of J.G. Wentworth Home Lending as a loan officer at a branch office of J.G. Wentworth Home Lending to be located at Wayne ("Branch"); and

WHEREAS, the Parties desire to set forth their agreement with respect to such employment in this Agreement;

Now, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the consideration for which receipt and sufficiency are hereby acknowledged, the Parties agree as follows:

I. GENERAL TERMS OF ENGAGEMENT

A. Engagement. Subject to the terms and conditions provided herein, J.G. Wentworth Home Lending hereby engages Loan Officer as a full-time employee and a loan officer of the Branch.

II. COMPENSATION

A. Compensation. At all times during Loan Officer's employment, as full compensation, J.G. Wentworth Home Lending hereby agrees to pay Loan Officer as set forth below and in the compensation schedule attached hereto as Exhibit A. J.G. Wentworth Home Lending at all times shall have the right to modify the applicable compensation formula on a prospective basis upon notice to Loan Officer. Compensation shall be paid to Loan Officer at such times and in a manner consistent with J.G. Wentworth Home Lending Policies (as defined below) as may be in effect from time to time.

B. Compensation at End of Employment. Upon cessation of Loan Officer's employment, for any reason, Loan Officer shall be paid any compensation earned up to and including the date employment ends. Except as otherwise expressly provided herein, or required by applicable law, Loan Officer shall not be entitled to any further compensation, including (but not limited to) draws, benefits, fringe benefits, commissions, or bonuses, as applicable. Loan Officer hereby covenants not to attempt to move any pipeline loan to any other person or entity following the end of employment.

C. Sole Compensation. Other than as provided for in this Article II, Loan Officer shall not be entitled to any other compensation or benefits.

III. CONDUCT AND RESPONSIBILITIES

A. Loan Officer Responsibilities. Loan Officer shall originate loans on behalf of J.G. Wentworth Home Lending and perform such other duties and tasks as may be assigned. Loan Officer shall strictly comply with and enforce J.G. Wentworth Home Lending Policies (as defined below). Loan Officer shall further comply with any oral or written instructions provided to Loan Officer by J.G. Wentworth Home Lending's corporate management team and/or Loan Officer's manager.

B. Applicable Requirements. In performing any duties or obligations under this Agreement, Loan Officer shall be familiar with and shall comply with all Applicable Requirements. As used in this Agreement, the term "Applicable Requirements" means:

- i. all of J.G. Wentworth Home Lending's manuals, guides, instructions, memoranda, e-mails, and other materials that set forth J.G. Wentworth Home Lending's policies and procedures ("J.G. Wentworth Home Lending Policies");
- ii. all applicable federal, state and local laws, ordinances, rules, regulations, guidelines and other requirements pertaining to the mortgage banking industry, to the business of J.G. Wentworth Home Lending, and to the origination, processing, underwriting, closing, or funding of mortgages, or other activities of J.G. Wentworth Home Lending, including but not limited to applicable consumer protection laws and regulations; and
- iii. all applicable investor, agency, and insurer guidelines.

C. Licenses and NMLS. Loan Officer shall be registered on the National Mortgage Licensing System (the "NMLS") and shall obtain and maintain any and all licenses that may be necessary for Loan Officer to transact business as a loan officer. Loan Officer shall obtain any additional licenses J.G. Wentworth Home Lending may direct Loan Officer to obtain, including those required by state law.

D. Professional Education. Loan Officer shall maintain a working knowledge of all current federal and state laws and regulations applicable to the origination and processing of mortgage loans. Loan Officer shall also maintain a working knowledge of all Applicable Requirements. Loan Officer shall take any educational courses that J.G. Wentworth Home Lending may direct Loan Officer to complete and shall attend J.G. Wentworth Home Lending's regularly scheduled training meeting to assist with Loan Officer's obligation to maintain a working knowledge of all Applicable Requirements.

E. No Contracting Authority. Loan Officer shall not, and has no authority to, enter into any contract on behalf of J.G. Wentworth Home Lending. Loan Officer shall not, and has no authority to, set up any personal or business accounts in J.G. Wentworth Home Lending's name. Loan Officer shall not, and has no authority to, authorize any recurring periodic charges on behalf of J.G. Wentworth Home Lending.

Any contract executed in violation of this provision shall be a nullity and shall be deemed a personal liability of the Loan Officer, not an obligation of J.G. Wentworth Home Lending.

F. Miscellaneous Business Expenses. J.G. Wentworth Home Lending may, in its discretion, reimburse Loan Officer for individual business expense in accordance with the terms of J.G. Wentworth Home Lending's Expense Reimbursement Policy. J.G. Wentworth Home Lending shall not reimburse Loan Officer for expenses unless such expenses are incurred and submitted in accordance with the Expense Reimbursement Policy.

G. Real Estate Licenses. If Loan Officer possesses a real estate salesperson's or broker's license, Loan Officer must place such license on inactive status during Loan Officer's employment. If Loan Officer does not possess a real estate salesperson's or broker's license, Loan Officer must not apply for such a license during Loan Officer's employment.

H. Funds. Loan Officer shall ensure and direct that all monies from a borrower and/or the closing of a mortgage loan are sent or delivered to J.G. Wentworth Home Lending in the most expeditious manner possible.

I. Advertising. All advertising and other uses of J.G. Wentworth Home Lending's Intellectual Property shall comply with J.G. Wentworth Home Lending's Advertising Policy and shall be submitted to J.G. Wentworth Home Lending's corporate office for review and approval prior to being published and/or disseminated to the public.

J. Records. Loan Officer shall not maintain duplicate "hard" copies of loan files at the Branch. All records and loan files shall be maintained in accordance with J.G. Wentworth Home Lending's record retention policy.

K. Background Check. At J.G. Wentworth Home Lending's request, Loan Officers shall execute such documents and provide such information as is necessary to enable J.G. Wentworth Home Lending to obtain a complete background check and credit report on Loan Officer. Loan Officer agrees that J.G. Wentworth Home Lending, at its discretion, may obtain a background check and credit report prior employment and periodically during the course of Loan Officer's employment.

L. Post-Closing Duties. Loan Officer shall cooperate and take all steps that are reasonably necessary to resolve post-closing issues related to a loan closed by Loan Officer. This obligation shall survive the termination of Loan Officer's employment.

M. No Pricing Discretion. Loan Officer has no authority to, and shall not, vary the pricing of a loan or otherwise make pricing concessions with respect to any loan.

IV. CONDITIONS OF EMPLOYMENT

A. Exclusivity. During Loan Officer's employment with J.G. Wentworth Home Lending, Loan Officer shall not:

- i. establish, operate, participate in, advise, or assist in establishing, any business that would compete in any way with the business of J.G. Wentworth Home Lending;
- ii. take any preliminary or preparatory steps toward investigating the viability of or toward establishing or operating a business that would compete in any way with the business of J.G. Wentworth Home Lending;
- iii. take, or assist anyone else in taking, an action that would divert any business or any business opportunity from J.G. Wentworth Home Lending; or
- iv. engage in any other activity that conflicts with Loan Officer's obligations to J.G. Wentworth Home Lending.

B. Non-Solicitation of Customers. For a period of one (1) year after the termination of Loan Officer's employment, Loan Officer shall not, directly or indirectly, on the Loan Officer's behalf or on behalf of another, solicit, contact or accept business from any person or company that:

- i. inquired about obtaining loan through J.G. Wentworth Home Lending within the ninety (90) day period immediately preceding the termination of Loan Officer's employment, or
- ii. had an active application to obtain a loan through J.G. Wentworth Home Lending within the ninety (90) day period immediately preceding the termination of Loan Officer's employment.

C. Non-Solicitation of Employees. During Loan Officer's employment with J.G. Wentworth Home Lending and for a period of one (1) year after the termination of Loan Officer's employment at J.G. Wentworth Home Lending, Loan Officer shall not, directly or indirectly, on Loan Officer's behalf or on behalf of another:

- i. solicit for employment or employ any individual that was an employee or agent of J.G. Wentworth Home Lending during term of Loan Officer's employment regardless of where such employee is located; or
- ii. encourage any employee or agent of J.G. Wentworth Home Lending to leave their employment with or terminate their relationship with J.G. Wentworth Home Lending.

D. No Conflicting Obligations. Loan Officer represents and warrants that Loan Officer is not subject to any non-compete, non-solicitation or other contractual or legal obligation to a prior employer or another entity that would interfere with Loan Officer's obligations to J.G. Wentworth Home Lending.

Loan Officer represents and warrants that Loan Officer did not commit any tortious acts, breach the duty of good faith to his prior employer, or interfere with the contractual expectancy of another entity by joining J.G. Wentworth Home Lending and/or recruiting loan officers to join the Branch.

Loan Officer is not in possession of and will not use the confidential and/or proprietary information of another entity and/or a prior employer in the fulfillment of Loan Officer's duties and obligations under this Agreement.

E. Injunction. Loan Officer agrees that J.G. Wentworth Home Lending's employment relationship with other employees and J.G. Wentworth Home Lending's customer and client relationships are of substantial value to J.G. Wentworth Home Lending and that a breach of the provisions of this Article (Article IV) will give rise to an irreparable injury to J.G. Wentworth Home Lending for which there is no adequate remedy at law; therefore, without limiting J.G. Wentworth Home Lending's other rights available at law or in equity, the Parties agree that J.G. Wentworth Home Lending shall be entitled to seek injunctive relief for any violation of the provisions of this Article (Article IV).

V. INTELLECTUAL PROPERTY

A. Intellectual Property. The term "Intellectual Property" includes but is not limited to: (i) trademarks, service marks, trade dress, logos, trade names, and corporate names, and all goodwill associated therewith, together with all translations, adaptations, derivations, and combinations, applications, registrations, and renewals relating thereto, (ii) copyrightable works, all copyrights, and all applications, registrations, and renewals relating thereto, (iii) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations relating thereto, (iv) computer software (including all data and related documentation), (v) advertising and promotional materials, (vi) other proprietary rights, domain names, email addresses, telephone numbers, social media identifications and tags, and (vii) copies and tangible embodiments of the foregoing (in whatever form or medium).

B. Proprietary Rights. Loan Officer acknowledges and agrees that J.G. Wentworth Home Lending has exclusive right, title, and interest in and to all of the Intellectual Property whether now or hereafter held, applied for, granted or utilized by J.G. Wentworth Home Lending in connection with the conduct of its business and/or operation of the Branch.

C. Limited Licenses. J.G. Wentworth Home Lending hereby grants Loan Officer a limited, non-exclusive, license to use J.G. Wentworth Home Lending's Intellectual Property in the operation of the Branch and the execution of Loan Officer's duties. All uses of the Intellectual Property shall be for the benefit of J.G. Wentworth Home Lending. Except as expressly granted in this Article (Article V), no other right, title or license, whether expressed or implied, is granted to Loan Officer.

Notwithstanding the foregoing limited license, J.G. Wentworth Home Lending reserves the right to limit Loan Officer's use of its Intellectual Property to specific purposes. J.G. Wentworth Home Lending may exercise this right in its sole discretion and may establish specific policies and procedures limiting Loan Officer's use of the Intellectual Property.

D. Termination of Limited License. The limited license granted by this Article (Article V) is revoked immediately upon the termination of Loan Officer's employment with J.G. Wentworth Home Lending. Upon the termination of the limited license, Loan Officer shall immediately cease using and/or accessing the Intellectual Property for any purpose and shall promptly return all Intellectual Property to J.G. Wentworth Home Lending whether such information is in written form, reducible to written form, electronically stored, or in other form.

E. Improvements. Any modifications, additions, and/or improvements to or on the Intellectual Property shall be the sole and exclusive property of J.G. Wentworth Home Lending. Such modifications, additions, and improvements include, but are not limited to, advertisements, websites, and slogans created or used by the Branch. Loan Officer shall take all necessary steps to transfer ownership and access to such improvements and modification to J.G. Wentworth Home Lending.

F. Injunction. Loan Officer agrees that the Intellectual Property is of substantial value to J.G. Wentworth Home Lending and that any breach of the provisions of this Article (Article V) will give rise to an irreparable injury to J.G. Wentworth Home Lending for which there is no adequate remedy at law; therefore, without limiting J.G. Wentworth Home Lending's other rights available at law or in equity, the Parties agree that J.G. Wentworth Home Lending shall be entitled to seek injunctive relief for any violation of the provisions of this Article (Article V).

VI. CONFIDENTIAL INFORMATION

A. Confidential Information. "Confidential Information" means any data or information that is proprietary to J.G. Wentworth Home Lending and not generally known to the public that is disclosed to or learned by the Loan Officer during the course of his employment. The term Confidential Information includes, but is not limited to: (i) any marketing strategies, pricing information, financial information, projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of J.G. Wentworth Home Lending, its affiliates, subsidiaries and affiliated companies; (ii) plans for products or services; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any trade secrets, concepts, reports, data, know-how, operating procedures, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) any information protected by the Gramm-Leach-Bliley Act; (vi) customer lists, employee lists, lead sources, client information and venter contacts; and (vii) any other information deemed by J.G. Wentworth Home

Lending to be Confidential Information and information that should reasonably be recognized as J.G. Wentworth Home Lending's confidential information. Loan Officer agrees that confidential information need not be novel, unique, patentable, copyrightable and/or constitute a trade secret in order to be deemed Confidential Information.

B. Proprietary Rights. Loan Officer acknowledges and agrees that J.G. Wentworth Home Lending has exclusive right, title, and interest in and to all of its Confidential Information whether now or hereafter held, applied for, granted or utilized by J.G. Wentworth Home Lending in connection with the conduct of its business and/or operation of the Branch.

C. Access to Confidential Information. During the course of Loan Officer's employment it will become necessary for J.G. Wentworth Home Lending to disclose to Loan Officer certain aspects of J.G. Wentworth Home Lending's Confidential Information. Loan Officer agrees to use such Confidential Information only in executing Loan Officer's duties. Any use of the Confidential Information shall be for the benefit of J.G. Wentworth Home Lending. Except as expressly granted in this Article (Article VI), no other right, title or interest, whether expressed or implied, is granted to Loan Officer.

Notwithstanding the foregoing, J.G. Wentworth Home Lending reserves the right to limit Loan Officer's access and use of its Confidential Information. J.G. Wentworth Home Lending may exercise this right in its sole discretion and may establish specific policies and procedures limiting Loan Officer's access and use of the Confidential Information.

D. Termination of Access. Loan Officer's use and access to J.G. Wentworth Home Lending's Confidential Information is revoked immediately upon the termination of Loan Officer's employment with J.G. Wentworth Home Lending. Upon such termination, Loan Officer shall immediately cease using and/or accessing the Confidential Information for any purpose and shall promptly return all Confidential Information to J.G. Wentworth Home Lending whether such information is in written form, reducible to written form, electronically stored, or in other form.

E. Improvements. Any modifications, additions, and/or improvements to or on the Confidential Information shall be the sole and exclusive property of J.G. Wentworth Home Lending. Such modifications, additions, and improvements include, but are not limited to, advertisements created or used by the Branch and customer lists developed or used while Loan Officer is an employee. Loan Officer shall take all necessary steps to transfer ownership and access to such improvements and modification to J.G. Wentworth Home Lending.

F. Confidentiality. Loan Officer shall (i) limit disclosure of the Confidential Information provided to him or her to other employees who have a need to know such Confidential Information in connection with the execution of Loan Officer's duties, (ii) shall keep all Confidential Information strictly confidential, and (iii) shall not disclose any Confidential Information to any third parties without the written consent of the President or Executive Vice President of J.G. Wentworth Home Lending.

Notwithstanding anything in the foregoing to the contrary, Loan Officer may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that Loan Officer promptly notifies J.G. Wentworth Home Lending in writing of such demand for disclosure so that J.G. Wentworth Home Lending may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information.

G. Injunction. Loan Officer agrees that the Confidential Information is of substantial value to J.G. Wentworth Home Lending and that a breach of the provisions of this Article (Article VI) will give rise to an irreparable injury to J.G. Wentworth Home Lending for which there is no adequate remedy at law; therefore, without limiting J.G. Wentworth Home Lending's other rights available at law or in equity, the Parties agree that J.G. Wentworth Home Lending shall be entitled to seek injunctive relief for any violation of the provisions of this Article (Article VI).

VII. TERM AND TERMINATION

A. Term Employment. Loan Officer is an at-will employee and may be terminated by J.G. Wentworth Home Lending at any time, with or without cause.

B. Termination for Cause. The following events shall constitute cause for termination of Loan Officer's employment:

- i. a breach of any provision of this Agreement;
- ii. insolvency or committing any act of bankruptcy, except to the extent that such acts are protected from constituting cause by state or federal statutes;
- iii. failure to perform any act or duty required to be performed under this Agreement;
- iv. failure to comply with Applicable Requirements;
- v. the knowing inclusion of a misstatement in any loan application or loan file;
- vi. the knowing omission of a fact from any loan application or loan file;
- vii. any act, or failure to act, involving a misrepresentation associated with a loan file;
- viii. failure to competently carry out the job of a loan officer;
- ix. failure to follow the instructions of J.G. Wentworth Home Lending's corporate management team;
- x. any act involving dishonesty, whether associated with Loan Officer's employment with J.G. Wentworth Home Lending or otherwise; or
- xi. any act which constitutes a criminal offense whether associated with Loan Officer's employment with J.G. Wentworth Home Lending or otherwise.

VIII. MISCELLANEOUS

A. Severability. If any provision of this Agreement is deemed to be illegal or unenforceable, all other provisions shall remain in full force and effect as if the Agreement did not contain the illegal or unenforceable provision. Should any provision of this Agreement be deemed to exceed the maximum scope of such a provision under any statute, regulation or court decision, said provision shall be reformed to equal said maximum scope. To the extent reformation is not possible, the offending provision shall be struck from the Agreement.

B. Further Assurances. Loan Officer agrees to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered all such further documents that J.G. Wentworth Home Lending reasonably deems necessary or appropriate to carry out the terms and provisions of this Agreement.

C. Notices. All notices or requests required or permitted by this Agreement: (i) shall be in writing; (ii) shall be addressed to the Parties as indicated below unless notified in writing of change in address; and (iii) shall be deemed to have been given either when personally delivered, upon delivery thereof if sent by certified mail, return receipt requested, or the business day after such notice is placed in the hands of an overnight delivery service. The addresses of the Parties are as follows:

To J.G. Wentworth Home Lending: J.G. Wentworth Home Lending, Inc.
Attn.: Roger W. Jones, President
3350 Commission Court, Woodbridge, VA 22192

With Copy to: Jeremy Martin
Vice President, Division General Counsel
J.G. Wentworth Home Lending, Inc.
3350 Commission Court, Woodbridge, VA 22192

To Loan Officer:

Patrick Haekman
214 Hancock Ave
Norristown, PA 19401

D. No Waiver. Any failure by J.G. Wentworth Home Lending to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any of J.G. Wentworth Home Lending's rights under this Agreement. Except as may be specifically provided elsewhere, the Parties agree that any and all waivers shall be in writing.

E. Construction. This Agreement shall be construed as being drafted by the Parties jointly and shall not be construed against either Party. The headings, titles, and captions contained in this Agreement are merely for reference and do not define, limit, extend, or describe the scope of this Agreement or any provision herein. Unless the

context requires otherwise, the gender (or lack of gender) and number of all words used in this Agreement shall be interpreted to include the singular, plural, masculine, feminine, and neuter.

F. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed an original instrument.

G. Cooperation. At all times during and after separation of employment, the Parties hereto shall cooperate in effecting an orderly transition of the business contemplated by this Agreement to avoid any interruption in the handling of the business contemplated by this Agreement.

H. No Reliance. Loan Officer is not resigning Loan Officer's employment or relocating a residence in reliance on any promise or representation by J.G. Wentworth Home Lending regarding any guaranteed length of employment or guaranteed compensation by J.G. Wentworth Home Lending.

I. Withholding. Loan Officer acknowledges that all compensation earned under this Agreement shall be subject to applicable withholding and deductions.

J. Incorporation. The attachments identified in this Agreement constitute a part of this Agreement and are hereby expressly and specifically incorporated herein by reference in their entirety as if fully set forth in this Agreement.

K. Survival of Provisions. The provisions contained in this Agreement which, by their terms or by implication, require performance by either party subsequent to the termination or expiration of this Agreement shall be enforceable notwithstanding the termination or expiration of this Agreement.

L. Governing Law. This Agreement shall be governed in all respects by and construed in accordance with the laws of the Commonwealth of Virginia, without recourse to its choice of law rules.

M. Forum and Venue. Any action or proceeding arising under or relating to this Agreement shall be brought in either the federal or state courts in Prince William County, Virginia. Each party irrevocably submits to the jurisdiction of the federal or state courts in Prince William County, Virginia for the purposes of resolving any dispute or claim arising under or relating to this Agreement, and waives any objection to venue laid therein. The Parties agree that this provision shall not act to limit J.G. Wentworth Home Lending's right to seek injunctive relief in any other forum or venue with jurisdiction to grant such relief.

N. Assignment by Loan Officer. This contract is for the personal services of the Loan Officer and is offered contingent upon securing the skills and ability of said Loan Officer. Accordingly, Loan Officer may not assign this Agreement or any portion thereof. Any attempt by the Loan Officer to assign this Agreement shall be a nullity.

O. Assignment by J.G. Wentworth Home Lending. J.G. Wentworth Home Lending may assign this Agreement in its sole discretion. To the extent J.G. Wentworth Home Lending assigns this Agreement, Loan Officer and said assignee shall be bound by the terms of this Agreement as if they were both original parties to this Agreement.

P. Terms of Agreement Understood. Each Party to this Agreement represents and warrants to each other Party that such Party has read and fully understands the terms and provisions hereof, has had an opportunity to review this Agreement with legal counsel, and has executed this Agreement based upon such Party's own judgment and, if sought, the advice of independent legal counsel.

Q. Third Party Rights. This Agreement shall not be construed as creating or giving rise to any rights for a third party.

R. Attorney Fees and Costs. To the extent permitted by applicable law, including without limitation, Federal Housing Administration ("FHA") regulations and guidance applicable to FHA insured loans, Loan Officer agrees that in the event J.G. Wentworth Home Lending must retain counsel (i) to enforce a provision of this Agreement, (ii) as a result of a breach by a Loan Officer, (iii) to defend a claim filed by Loan Officer, and/or (iv) as a result of any other dispute between the Parties, J.G. Wentworth Home Lending shall be entitled to recover its reasonable attorney's fees from the Loan Officer. J.G. Wentworth Home Lending shall further be entitled to recover any expenses of the action, including the costs of any interstate or international travel by J.G. Wentworth Home Lending and its counsel and witnesses. J.G. Wentworth Home Lending shall also be entitled to interest on any sums found owing as a result of the dispute, computed at the legal interest rate effective on the judgment date, and computed from the original date of the notice of the breach.

S. Remedies. Each and every power and remedy in this Agreement specifically given to J.G. Wentworth Home Lending shall be cumulative and shall be in addition to every other right, power and remedy herein or now or hereafter existing at law, in equity, or by statute, and each and every right, power and remedy whether specifically in this Agreement given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by J.G. Wentworth Home Lending, and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

T. Entire Agreement. This Agreement and all documents incorporated by reference contain the entire agreement of the Parties with regard to the subject matter set forth herein. This Agreement supersedes any and all prior agreements executed between the Parties related to the subject matter set forth herein. No representations were made or relied upon by either Party, other than those that are expressly contained herein. No amendment, modification, supplement or waiver of any provision of this Agreement may be made unless it is in writing and signed by the Parties.

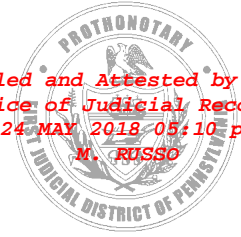
U. Negotiation of Disputes. Prior to initiating any action or proceeding for monetary damages that arises out of or relates to this Agreement, the initiating Party shall provide the other Party with written notice of its claim or claims (the "Initial Notice") in accordance with the Notice Section of this Agreement (Article VIII, Section C). Following receipt of the Initial Notice, the Parties shall attempt to amicably resolve the claim or claims for a period of sixty (60) days. Each Party shall appoint a representative of its management to be a point of contact during the negotiating period. Nothing in the foregoing shall prevent either Party from amending claims and/or asserting counterclaims in any action or proceeding that is initiated if negotiations relating to the Initial Notice are unsuccessful. This provision shall not be construed as limiting J.G. Wentworth Home Lending's right to seek injunctive relief against Loan Officer.

V. Waiver of Jury Trial. **THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THE PARTIES, THEIR HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS, MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENTS CONTEMPLATED HEREBY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PARTIES RELATED HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE EXECUTION OF THIS AGREEMENT BY THE PARTIES.**

Loan Officer: Patrick Hackman (print)
Patrick Hackman (sign) Date: 3/25/16

J.G. Wentworth Home Lending, Inc.:

By: _____ (sign) Date: _____
Roger W. Jones,
President of J.G. Wentworth Home Lending, Inc.



Filed and Attested by the
Office of Judicial Records
24 MAY 2018 05:10 pm
M. RUSSO

EXHIBIT “B”

PATRICK HACKMAN, on behalf of himself
and others similarly situated,

Plaintiff,

v.

J. G. WENTWORTH HOME LENDING LLC,
Defendant.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

CIVIL ACTION

APRIL TERM, 2018
NO. 001276

**DECLARATION OF RICHARD BYRD IN SUPPORT OF DEFENDANT'S
PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

1. I, Richard Byrd, am the Chief Financial Officer for J.G. Wentworth Home Lending, LLC (the "Company") and I make this declaration based upon my personal knowledge.

2. The Company is incorporated in the Commonwealth of Virginia and its principal place of business is in Woodbridge, Virginia.

3. The Company operates three branches in the Commonwealth of Pennsylvania and they are located in: (i) Hazleton, Pennsylvania; (ii) Wayne, Pennsylvania, and (iii) York, Pennsylvania.

4. The Company does not operate a branch office in Philadelphia County and its employees do not work in Philadelphia County.

5. The Company does not maintain bank accounts in Philadelphia County.

6. The Company does not pay Philadelphia taxes, nor does it operate under a Philadelphia business license.

7. The Company does not target its advertising in Philadelphia County, nor does it specifically solicit business from Philadelphia County.

8. The Company does not host or sponsor events in Philadelphia County.

9. The Company provides mortgage loans to Philadelphia residents; however, all lending services are performed outside of Philadelphia County.

10. Customers have the option of meeting with a mortgage specialist at one of the Company's branch offices (none of which are located in Philadelphia County) or they can go through the lending process remotely via telephone or online.

11. The revenue generated from mortgages in Philadelphia County in 2015 amounted to **0.18%** of the Company's gross annual revenue. The number of Philadelphia County mortgages generating revenue in 2015 represents **0.19%** of the total number of mortgages generating revenue for the Company nationally.

12. The revenue generated from mortgages in Philadelphia County in 2016 amounted to **0.11%** of the Company's gross annual revenue. The number of Philadelphia County mortgages generating revenue in 2016 represents **0.17%** of the total number of mortgages generating revenue for the Company nationally.

13. The revenue generated from mortgages in Philadelphia County in 2017 amounted to **0.12%** of the Company's gross annual revenue. The number of Philadelphia County mortgages generating revenue in 2017 represents **0.16%** of the total number of mortgages generating revenue for the Company nationally.

14. I personally obtained these numbers from the Company's revenue system database and can attest that they are true and correct.

Dated: May 23, 2018

A handwritten signature in black ink, appearing to be 'R. Byrd', is written over a horizontal line. The signature is stylized and cursive.

Richard Byrd, CFO
J.G. Wentworth Home Lending, LLC

Filed and Attested by the
Office of Judicial Records
24 MAY 2018 05:10 pm
M. RUSSO

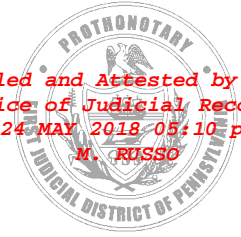


EXHIBIT “C”

Home Lending Branch Locations

Find the nearest location

Pennsylvania

California

Glendora

115 E. Foothill Blvd, Suite 101
Glendora CA 91741
(626) 827-2807

[Get Directions >](#)

[Meet Our Loan Officers >](#)

San Diego

2667 Camino Del Rio South, Suite 307-2
San Diego CA 92108

[Get Directions >](#)

[Meet Our Loan Officers >](#)

Connecticut

Dayville

559 Hartford Pike, Suite 209
Dayville CT 06241
(603) 620-5388

[Get Directions >](#)

[Meet Our Loan Officers >](#)

Delaware

Millsboro

26506 Victoria's Landing Rd, Unit 3
Millsboro DE 19966
(302) 945-0561

[Get Directions >](#)

[Meet Our Loan Officers >](#)

Georgia

Roswell

600 Houze Way, Suite D1
Roswell GA 30076
(404)-437-7283

[Get Directions >](#)

[Meet Our Loan Officers >](#)

Kansas

Wichita

1445 N Rock Road, Suite 180
Wichita KS 67206
(316) 665-4235

[Get Directions >](#)

[Meet Our Loan Officers >](#)

Maryland

Greenbelt

6401 Golden Triangle Dr., Suite 150
Greenbelt MD 20770
(240) 241-5341

[Get Directions >](#)

[Meet Our Loan Officers >](#)

Rockville

6000 Executive Blvd. , Suite 405
Rockville MD 20852
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