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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

10 DENISE DROESCH, as an individual and
11 on behalf of other aggrieved employees,

12 Plaintiffs,

13 vs.

14 WELLS FARGO BANK, N.A., a United
15 States Corporation, and DOES 1 – 10,
16 inclusive

17 Defendants.

CASE NO. 34E2021-00292066

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEY
GENERAL ACT OF 2004 (Labor Code §§2698,
et. seq.)**

FILED/ENDORSED

JAN 07 2021

By: K. Johnson
Deputy Clerk

1 Plaintiff DENISE DROESCH, on behalf of herself and all other aggrieved employees
2 (“Plaintiff”), hereby files this Complaint against Defendants WELLS FARGO BANK, N.A., and
3 DOES 1 through 10, inclusive (collectively “Defendants” or “Wells Fargo”). Plaintiff is informed and
4 believes, and on the basis of that information and belief, alleges as follows:

5 **INTRODUCTION**

6 1. This action is brought by Plaintiff on behalf of all non-exempt phone bankers working
7 at Wells Fargo call centers in California and challenges Defendant’s employment practices with
8 respect to payment of wages and provisions for meal and rest periods applicable to non-exempt
9 employees, including Defendant’s policies and practices of (a) failing to pay for every hour worked,
10 including minimum wages, designated wages, and overtime; (b) failing to provide meal and rest breaks
11 that comply with California law; (c) failing to pay premium wages and/or restitution for on-duty,
12 missed, short, and/or late meal and rest breaks; (d) failing to maintain accurate employment records
13 for aggrieved employees; (e) failing to provide accurate itemized pay stubs; and (f) failing to pay all
14 wages owed timely on regular payroll and upon termination.

15 2. In this case, Plaintiff, on behalf of herself and other aggrieved employees, seeks civil
16 penalties for Defendant’s violations of the California Labor Code, including failure of Defendant to
17 pay Plaintiff and aggrieved employees all wages due to them including, minimum wages, accurate
18 wages, and overtime for all hours worked (Labor Code §§ 223, 510, 512, 558, 1174.5, 1193.5, 1193.6,
19 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and Wage Order 4); failure to pay premium wages (Labor
20 Code §§ 226.7, 512, 1194.5, and Wage Order 7); failure to maintain accurate employment records
21 (Labor Code §§ 226, 1174, 1174.5, and 1194.5); failure to timely furnish accurate, itemized wage
22 statements (Labor Code §§ 226, 226.3, 226.4, 1174, 1174.5, and 1194.5); and for failure to pay wages
23 timely on regular payroll and on termination (Labor Code §§ 201-203, 204).

24 3. In this action Plaintiff, on behalf of herself and aggrieved employees, seeks penalties
25 established by Labor Code section 2699, the Private Attorney General’s Act (“PAGA”) and other
26 provisions in the Labor Code, against Defendants for their unlawful employment practices.

27 4. The acts complained of herein have occurred, are presently occurring, and are expected
28 to continue occurring, within the time period from one year prior to the filing of this complaint up to

1 and through the time of trial for this matter (hereinafter, the “Relevant Time Period”).

2 **PARTIES**

3 ***Plaintiff DENISE DROESCH***

4 5. Plaintiff DENISE DROESCH is an individual over the age of eighteen (18) and is now
5 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of Sacramento
6 County, State of California. Ms. Droesch worked for Defendants as a non-exempt premier phone
7 banker at a Business Banking Call Center operated by Wells Fargo located in Sacramento County,
8 California. Her employment ended in March 2020.

9 ***Defendants***

10 6. Plaintiff is informed and believes, and based thereon alleges, that Wells Fargo is an
11 international bank that offers services related to banking, loans and credit, insurance, investing and
12 wealth management. Wells Fargo operates Call Centers in California, in the County of Sacramento
13 as well as other locations, where telephone-dedicated hourly employees handle phone calls with Wells
14 Fargo customers regarding customer service and banking issues.

15 7. Plaintiff is informed and believes that that Defendant is liable for all acts set forth in
16 this complaint under general joint employer liability and Labor Code Section 2810.3.

17 8. DOES 1 through 10 inclusive are now and/or at all times mentioned in this Complaint
18 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
19 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
20 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant to
21 California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
22 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 5 are
23 believed to be business entities who were also co-employers of the Plaintiff and the aggrieved
24 employees herein.

25 9. Plaintiff is informed and believes and based thereon alleges that at all times herein
26 mentioned, Defendant was responsible in whole for the matters referred to herein.

27 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
28 mentioned, Defendant caused Plaintiff, all others similarly situated and the general public to be

1 subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this
2 Complaint.

3 11. Plaintiff is informed and believes and based thereon alleges that Defendant caused the
4 injuries and/or damages alleged in this Complaint.

5 **JURISDICTION AND VENUE**

6 12. The California Superior Court has jurisdiction in the matter because the claims exceed
7 the jurisdictional minimum of this court and Plaintiff is a resident of the state of California and
8 Defendants perform substantial business in the State of California. Further, the issues herein are based
9 on California statutes, specifically the Private Attorney General Act of 2004.

10 13. Venue is proper in the County of Sacramento because Defendant transact substantial
11 business in this County and Plaintiff's claims arose in this County.

12 **FACTUAL ALLEGATIONS**

13 ***Background***

14 14. Defendant Wells Fargo employs the telephone-based workers who are the Aggrieved
15 Employees in this lawsuit.

16 15. Plaintiff DROESCH worked as a telephone-dedicated employee in the position of
17 Premier Phone Banker at Wells Fargo's California Business Banking Call Center.

18 16. Wells Fargo operates and has operated "call centers" across California where
19 telephone-dedicated employees similar to Plaintiffs handle phone calls regarding various issues related
20 to Wells Fargo's business.

21 17. Defendant's policy and practice permits and/or requires telephone-based employees in
22 its Call Centers to be logged into their phones by the employee's scheduled start time.

23 18. Wells Fargo required Plaintiffs and similarly situated phone-based employees to be
24 ready to handle a call at the start of their scheduled shift time. Wells Fargo maintained similar
25 requirements at all its Call Centers across California.

26 19. In order to be ready to handle a call, Plaintiffs and similarly situated telephone-
27 dedicated employees had to be logged into Wells Fargo's telephone systems and call queue.

28 20. In order to be logged into Wells Fargo's telephone systems and call queue, Defendant

1 required and/or permitted Plaintiffs and similarly situated telephone-based employees to arrive at their
2 work station prior to their scheduled shift time and boot up computers, initialize several software
3 programs, and read company emails and/or instructions.

4 21. Defendant's policy and practice results in telephone-based employees, including
5 passing through security steps if their computer screen was at Check Point when they logged on.
6 Check Point required Plaintiffs and other similar situated employees to follow key prompts to get an
7 access code or speak to a representative at the help desk. Following the Check Point process was a
8 frequent occurrence and could take a few to several minutes each day.

9 22. After accessing their computers, Plaintiffs and other similarly situated employees were
10 required to open and initialize several software programs, such as DAT, Hogan, CIV, Visa, Claims,
11 SOTA, among others. Opening all the necessary programs and systems would take additional time.
12 Plaintiffs and other similarly situated employees sometimes were required to read company emails
13 and instructions prior to their start of their scheduled shift time.

14 23. Only after all the processes are completed and programs started could Plaintiffs and
15 other similarly situated employees log into Soft Phone, which commenced and recorded the paid
16 portion of their workday.

17 24. Defendant's policy and practice disciplines telephone-based employees if they are not
18 logged into their phones and ready to handle calls by the start of their scheduled shift time.

19 25. Defendant did not instruct Plaintiffs and similarly situated telephone-based employees
20 to not log into their computers or telephone, or to not read company emails prior to the start of their
21 scheduled shift time. Rather, Defendant required, permitted and/or allowed Plaintiffs and the putative
22 class members to work prior to and after their scheduled shift time.

23 26. At the end of their shift, Plaintiffs and similarly situated phone-based employees were
24 expected to be available to handle a call until the end of their scheduled shift time. As a result,
25 Plaintiffs and similarly situated telephone-based employees regularly worked past the end of their
26 scheduled shift times when logged off their software programs and computers and secured their work
27 stations and Wells Fargo's customer and proprietary information pursuant to Wells Fargo's policies
28 and practices.

1 27. Plaintiffs and similarly situated phone-based employees at Wells Fargo's Call Centers
2 had their pre- and/or post-shift work rounded away from their pay and were regularly not paid for
3 some or all of their work activities prior to the beginning of their shifts or after the end of their shifts.

4 28. Prior to starting work on the call center floor, Plaintiffs and other similarly situated
5 telephone-based employees were and are interviewed by employees and managers of Wells Fargo.

6 29. Wells Fargo had the power to hire and fire Plaintiffs and other persons similarly
7 situated. Wells Fargo controlled and set the schedules for Plaintiffs and similarly situated telephone-
8 dedicated workers.

9 30. At the Wells Fargo Call Centers managers were on the floor during the workday,
10 managing the work activities of the Plaintiffs and other similarly situated persons.

11 31. Defendant monitored, directed, and controlled the work activities of Plaintiffs and other
12 similarly situated persons, including the unpaid work at issue.

13 32. Wells Fargo's managers and supervisors on the call center floor could and did regularly
14 see with their own eyes that Plaintiffs and similarly situated telephone-based employees arrived at
15 their work stations before the start of their scheduled shift time, logged into Wells Fargo's computers,
16 and began working on their computers prior to the start of their scheduled shift time.

17 33. Wells Fargo's managers and supervisors on the call center floor could and did regularly
18 see with their own eyes that Plaintiff and similarly situated telephone-based employees worked past
19 the end of their scheduled shift time handling phone calls and securing their work stations.

20 34. Despite seeing and knowing that Plaintiffs and similarly situated telephone-based
21 employees performed work at their work stations prior to and after their scheduled shift times,
22 Defendant and its managers and supervisors on the floor of the call center did not make any effort to
23 stop or otherwise disallow this unpaid work and instead allowed and permitted it to happen.

24 35. Defendant possesses, controls and/or has access to information and electronic data that
25 shows the times Plaintiffs and similarly situated telephone-based employees logged into and out of
26 their computers each day and the time they logged into and out of their telephone systems each day.

27 36. By possessing, controlling and/or accessing this information, Defendant knew that
28 Plaintiffs and similarly situated telephone-based employees worked prior to the start and after the end

1 of their scheduled shift time.

2 37. Despite having this information and knowing that Plaintiffs and similarly situated
3 telephone-based employees logged into their computers, initialized necessary software programs, and
4 read company issued emails and instructions prior to the start of their scheduled shift time, and despite
5 requiring and/or allowing them to handle a call up until the end of their scheduled shift time, Defendant
6 did not make any effort to stop or otherwise disallow the pre- or post-shift work and instead allowed
7 and permitted it to happen.

8 38. Defendant knowingly required and/or permitted Plaintiffs and those similarly situated
9 to her to perform unpaid work before and after the start and end times of their shifts, including booting
10 up computers, initializing several software programs, and reading company issued emails and
11 instructions prior to the start of their scheduled shift time, as well as completing customer service calls,
12 closing down the software programs, logging off the system, securing their workstations, locking their
13 desk drawers, and securing any customer or proprietary information after the end of their scheduled
14 shift times.

15 39. Defendants additionally knowingly required Plaintiffs and those similarly situated to
16 work during meal or rest periods, and/or failed to pay premium wages for missed, short, late, or on-
17 duty meal or rest periods.

18 40. Defendant determined the rate of pay for Plaintiffs and other similarly situated persons.

19 41. Defendant's managers and supervisors reviewed and approved Plaintiffs and other
20 similarly situated persons' time records prior to receiving their paychecks.

21 42. Defendant supervised and controlled the work schedule of Plaintiffs and other similarly
22 situated persons.

23 43. Plaintiffs and those employees similarly situated are individuals who were, or are,
24 employed by Defendant and who had their pre- and/or post-shift work rounded away from their pay
25 and were not paid for some or all of their work activities prior to the beginning of their shifts or after
26 the end of their shifts.

27 44. Plaintiffs and the other employees are also similar because Defendant did not pay them
28 for all time they actually worked.

1 45. The net effect of Defendant's policies and practices, instituted and approved by
2 company managers and supervisors, is that Defendant willfully failed to pay all compensation owed
3 to Plaintiffs and others similarly situated, and willfully failed to keep accurate time records to save
4 payroll costs. Defendant thus enjoyed ill-gained profits at the expense of its hourly employees.

5 46. Plaintiffs and others similarly situated at times work or worked in excess of forty hours
6 per week for Defendant in a given workweek.

7 47. Defendant's policy and practice of requiring and/or permitting its employees, including
8 Plaintiffs and other non-exempt, hourly employees, to perform work without pay for such work
9 performed, violates California Labor Code.

10 48. Defendant's policy and practice of requiring its employees to perform work without
11 pay in many instances has caused and continues to cause Plaintiffs and certain other similarly situated
12 hourly employees to work in excess of forty hours per week, without being properly compensated at
13 a minimum or regular wage or 1.5 times their respective hourly rate for such work performed.

14 49. Defendant's failure to compensate its non-exempt, hourly call center employees with
15 the full amount of the applicable minimum or regular wage or overtime wage has caused Plaintiffs
16 and other similarly situated non-exempt call center employees to suffer harm.

17 50. Defendant's non-exempt, call center hourly employees are entitled to compensation for
18 all time they worked without pay in any given workweek.

19 ***Defendant's Failure to Pay Minimum Wages and Designated Rates***

20 51. IWC Wage Order, No. 4 defines "hours worked" to mean "the time during which an
21 employee is subject to the control of an employer, and includes all the time the employee is suffered
22 or permitted to work, whether or not required to do so."

23 52. Labor Code § 1182.12 and IWC Wage Order, No. 4-2001, § 4 provide that on and after
24 January 1, 2020, the minimum wage for all industries shall be not less than thirteen dollars (\$13.00)
25 per hour, and on and after January 1, 2021, the minimum wage for all industries shall be not less than
26 fourteen dollars (\$14) per hour.

27 53. Labor Code § 1194(a) provides in relevant part: "Notwithstanding any agreement to
28 work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
2 interest thereon, reasonable attorney's fees, and costs of suit."

3 54. Labor Code § 1194.2(a) provides in relevant part: "In any action under Section 1193.6
4 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
5 by an order of the commission, an employee shall be entitled to recover liquidated damages in an
6 amount equal to the wages unlawfully unpaid and interest thereon."

7 55. Labor Code § 1197 provides: "The minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
9 minimum so fixed is unlawful."

10 56. Labor Code § 223 provides: "Where any statute or contract requires an employer to
11 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
12 to pay the wage designated by statute or contract."

13 57. Defendant classified Plaintiff and aggrieved employees as non-exempt and paid them
14 on an hourly basis. Hours worked include, but are not limited to, all hours that an employee is
15 permitted or suffered to work including, but not limited to, off-the-clock work that an employer either
16 knew or should have known that an employee was performing.

17 58. As a matter of policy and/or practice, Defendant routinely suffered or permitted
18 Plaintiff and aggrieved employees to work portions of the day during which they were subject to
19 Defendants' control, but Defendants failed to compensate them.

20 59. Throughout the Relevant Time Period, Plaintiff, and aggrieved employees, were
21 subject to Defendants' uniform policy and/or practice of failing to pay minimum wages and/or
22 designated rates for hours worked off-the-clock. As a result, Plaintiff and aggrieved employees were
23 routinely denied compensation for all hours worked.

24 60. Additionally, Defendant did not maintain adequate records of all wages earned, hours
25 worked, and meal and rest breaks taken.

26 ***Defendant's Failure to Pay Overtime Compensation***

27 61. Labor Code § 1194 provides that an employee receiving less than the legal overtime
28 compensation is entitled to recover in a civil action the unpaid balance of the full amount of this

1 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
2 costs of suit.

3 62. Labor Code § 510(a) states: "Any work in excess of eight hours in one workday and
4 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh
5 day of work in any one workweek shall be compensated at the rate of no less than one and one-half
6 times the regular rate of pay for an employee." Labor Code § 510(a) further states: "Any work in
7 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
8 pay for an employee." Labor Code § 510(a) further states: "[A]ny work in excess of eight hours on
9 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate
10 of pay of an employee."

11 63. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
12 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
13 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
14 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
15 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
16 seventh (7th) day of work in any one workweek.

17 64. Defendants classified Plaintiff and aggrieved employees as non-exempt, therefore they
18 were entitled to overtime compensation for all hours worked in excess of the hours and time specified
19 in the Wage Order, statutes and regulations identified herein.

20 65. As a matter of policy and/or practice, Defendants routinely suffered or permitted
21 Plaintiff and aggrieved employees to work portions of the day during which they were subject to
22 Defendants' control and failed to compensate them. Accordingly, Defendants failed to properly record
23 the actual hours worked by Plaintiff and aggrieved employees, and thus failed to pay overtime wages
24 for the actual amount of overtime hours worked.

25 ***Defendants' Failure to Provide Meal Breaks***

26 66. At all times relevant hereto, Labor Code § 226.7 and IWC Wage Order, No. 7-2001, §
27 11, required employers to authorize, permit, and provide a meal period of not less than thirty (30)
28 minutes when the employee is completely relieved of all duty.

1 67. Plaintiffs and the members of the class did not waive their meal periods, by mutual
2 consent with Defendants or otherwise. Plaintiff is informed and believes, and based thereon alleges,
3 that Defendants failed to effectively communicate California meal period requirements to Plaintiff and
4 aggrieved employees.

5 68. Plaintiff is further informed and believes, and based thereon alleges, that as a matter of
6 policy and/or practice, Defendants routinely failed to provide Plaintiff and aggrieved employees, with
7 meal periods during which they were relieved of all duties by requiring them to perform duties such as
8 hourly paid factory work at a soup factory of Defendants engaged in line work.

9 69. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 10 a. Failed to provide Plaintiff and aggrieved employees with a first meal period of not
11 less than thirty (30) minutes during which they are relieved of all duty before
12 working more than five (5) hours;
13 b. Failed to provide Plaintiff and aggrieved employees with a second meal period of
14 not less than thirty (30) minutes during which they are relieved of all duty before
15 working more than ten (10) hours per day; and
16 c. Failed to pay Plaintiff and aggrieved employees one hour of pay at their regular
17 rate of compensation for each workday that a meal period was not provided; and
18 d. Failed to accurately record all meal periods.

19 ***Defendant's Failure to Provide Rest Breaks***

20 70. At all times relevant hereto, Labor Code § 226.7 and IWC Wage Order, No. 7-2001, §
21 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4)
22 hours of work, during which employees are relieved of all duty.

23 71. At all times relevant hereto, Labor Code § 226.7(b) and IWC Wage Order, No. 7-2001,
24 § 12 required employers to pay one hour of additional pay at the regular rate of compensation for each
25 employee and each workday that a proper rest period is not provided.

26 72. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to
27 effectively communicate California rest period requirements to Plaintiff and aggrieved employees.
28 Plaintiff is further informed and believes and based thereon alleges that throughout the Relevant Time

1 Period Defendants failed to provide rest periods.

2 73. Throughout the Relevant Time Period, Plaintiff and aggrieved employees were
3 routinely denied the rest breaks they were entitled to under California law.

4 74. Specifically, throughout the Relevant Time Period, Defendant regularly:

5 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and
6 aggrieved employees were relieved of all duty for each four (4) hours of work and able
7 to take rest periods within the middle of the shift;

8 b. Failed to pay Plaintiff and aggrieved employees one (1) hour of pay at their regular rate
9 of compensation for each workday that a rest period was not permitted.

10 ***Defendant's Failure to Pay All Wages Due Timely and at Termination of Employment***

11 75. At all times relevant hereto, Labor Code § 201 required an employer that discharges an
12 employee to pay compensation due and owing to said employee immediately upon discharge. Labor
13 Code § 202 requires an employer to pay an employee who quits any compensation due and owing to
14 said employee within seventy-two (72) hours of an employee's resignation. Labor Code § 203
15 provides that if an employer willfully fails to pay compensation promptly upon discharge or
16 resignation, as required under Sections 201 and 202, then the employer is liable for waiting time
17 penalties in the form of continued compensation for up to thirty (30) work days.

18 76. At all time relevant thereto, California Labor Code § 204(b)(d) provides that all wages
19 payable on a weekly, biweekly, or semimonthly payroll become due and payable within seven calendar
20 days following the close of the payroll period.

21 77. California Labor Code §210 provides for penalties for violations of Labor Code §204
22 in the amount of (a) \$100 for an initial violation; (b) \$200 for a subsequent violation, or any willful or
23 intentional violation, \$200 for each failure to pay each employee, plus 25 percent of the amount
24 unlawfully withheld.

25 78. As of January 1, 2020, AB 673 amends Labor Code §210 to create a private right of
26 action to seek penalties for late payment of payday wages.

27 79. Defendants willfully and knowingly failed to pay Plaintiff and aggrieved employees,
28 upon termination of employment, all accrued compensation including payment of minimum wage

1 compensation, agreed wages, overtime, and/or premium wages.

2 ***Defendant's Failure to Maintain Accurate Employment Records***

3 80. At all times relevant hereto, Labor Code §§ 226, 1174, 1174.5, 1194.5 and Cal. Code
4 Regs., tit. 8, § 11090 required employers to maintain accurate employment records.

5 81. As noted herein, throughout the Relevant Time Period, Defendants failed to maintain
6 documentation of the actual hours worked each day by Plaintiff and other aggrieved employees, all
7 wages earned, hourly rates applicable, and meal breaks taken. As such, Defendants failed to maintain
8 accurate employment records.

9 ***Defendant's Failure to Provide Accurate, Itemized Wage Statements***

10 82. At all times relevant hereto, Labor Code § 226 and IWC Wage Order, No. 4-2001, § 7
11 required employers to maintain adequate employment records and provide employees with accurate
12 itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked
13 during each pay period, the corresponding number of hours worked at each hourly rate, and meal
14 breaks taken.

15 83. Wage statements provided to Plaintiff and aggrieved employees by Defendant do not
16 show all wages earned, all hours worked, or all applicable rates, in violation of Labor Code § 226,
17 IWC Wage Order, No. 4-2001, § 7.

18 84. Moreover, Defendants did not maintain adequate records of all wages earned, hours
19 worked and breaks taken.

20 **FIRST CAUSE OF ACTION**

21 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

22 **(Lab. Code §§ 2698 *et seq.*)**

23 85. Plaintiff incorporates by reference the allegations set forth above.

24 86. Pursuant to California Labor Code § 2698 *et seq.*, Plaintiff is entitled to act as a private
25 attorney general to assess and recover civil penalties against Defendant on behalf of Plaintiff and any
26 other current or former employees of Defendants for violations of the California Labor Code.

27 87. In this case, Plaintiff, on behalf of herself and all other Aggrieved Employees, seeks
28 relief for Defendant's unlawful employment policies, practices and procedures, which have resulted

1 in the failure of Defendants to pay Plaintiff and members of the putative class all wages due to them
2 including, minimum wages and overtime for all hours worked (Labor Code §§ 201.3, 510, 558, 1174.5,
3 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and Wage Order 4); premium wages (Labor
4 Code §§ 201.3, 226.7, 512, 1194.5 and Wage Order 4); penalties for unlawful deductions from
5 employees' wages (Labor Code §§ 221, 222, and 224; IWC Wage Order 4-2001, section 8); penalties
6 for failing to maintain accurate employment records (Labor Code §§ 226, 1174, 1174.5, 1194.5);
7 penalties for failure to timely furnish accurate, itemized wage statements (Labor Code §§ 226, 226.3,
8 226.4, 1174, 1174.5, 1194.5, and 2810.5); and penalties for wages due weekly and/or on termination
9 (Labor Code §§ 201-203, 201.3).

10 88. Plaintiff asserts claims on behalf of the following "Aggrieved Employees":
11

- 12 a. Aggrieved Employee Group: All persons employed as non-exempt telephone bankers
13 by Defendants who, at any time from one year prior to the filing of this complaint to
14 present, worked one or more shifts in California Call Centers.
15 b. Former Aggrieved Employee Group: All persons formerly employed as non-exempt
16 telephone bankers by Defendants who, at any time from one year prior to the filing of
17 this complaint to present, worked one or more shifts in California Call Centers.

18 89. Pursuant to *Labor Code* § 2699.3, an aggrieved employee, may commence a civil
19 action arising under *Labor Code* § 2699 after the following requirements have been met:

- 20 a. The aggrieved employee shall give written notice (hereinafter "Notice") by
21 certified mail to the Labor and Workforce Development Agency (hereinafter
22 "Agency") and the employer of the specific provisions of the Labor Code alleges
23 to have been violated, including the facts and theories to support the alleges
24 violation.
25 b. The agency shall notify the employer and the aggrieved employee or representative
26 by certified mail that it does not intend to investigate the alleged violation within
27 sixty (60) calendar days of the postmark date of the notice received. Upon receipt
28 of that notice or if no notice is provided within sixty-five (65) calendar days of the
postmark date of the notice, the aggrieved employee may commence a civil action

1 pursuant to Section 2699.

2 90. Plaintiffs has complied with the procedures for bringing suit specified in California
3 Labor Code Section 2699.3. Within the statutory time frame, Plaintiff, on behalf of herself and the
4 other Aggrieved Employees, gave the required notice to the Labor and Workforce Development
5 Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code alleged to
6 have been violated, including the facts and theories to support the alleged violations. See Exhibit “A”
7 attached hereto. Plaintiff also paid the \$75.00 fee to the LWDA pursuant to SB 836. More than sixty-
8 five (65) days have passed and the LWDA has not responded to Plaintiff’s letter. Furthermore, a copy
9 of this complaint is being provided to the LWDA the same day this document is filed with the Superior
10 Court.

11 **Penalties Authorized by PAGA**

12 91. Defendants violated Labor Code §§ 210, 225.5, 223, 510, 1174.5, 1182.12, 1193.5,
13 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and Wage Order 4-2001 when they failed to pay
14 Plaintiff and other aggrieved employees for off-the-clock time worked. As a matter of policy and/or
15 practice, Defendants failed to compensate Plaintiff and other aggrieved employees for all work hours
16 and thus, failed to pay minimum wages, accurate wages, and overtime wages for all hours worked by
17 Plaintiff and other aggrieved employees in violation of California law.

18 92. Defendants violated Labor Code §§ 226.7, 512, 1194.5, and IWC Wage Order No. 4-
19 2001, section 11, by failing to provide Plaintiff and other aggrieved employees a meal period of at
20 least 30 minutes when the work period is more than five hours and a second meal period of at least 30
21 minutes when the work period is more than 10 hours. Defendants routinely failed to provide Plaintiff
22 and aggrieved employees, with meal periods during which they were relived of all duties. Similarly,
23 IWC Wage Order No. 4-2001, § 12 requires employers to “authorize and permit” employees to take a
24 10-minute rest break every four hours of work, during which they must be relieved of all duties.
25 Defendants failed to do so, entitling Plaintiff and other aggrieved employees to a premium of one
26 hour’s worth of pay at the employee’s regular rate for each day that Defendants failed to provide a
27 meal or period, pursuant to Labor Code section 226.7(c). Defendants further failed to pay premium
28 pay when a meal or rest break was reported late, missed, short, or on-duty in violation of the same

1 Labor Code sections and failed to properly record meal periods.

2 93. Defendants violated Labor Code §§ 226, 226.3, 226.4, 1174, 1174.5, and 1194.5 by
3 knowingly and intentionally providing Plaintiff and other aggrieved employees with wage statements
4 that, among others items required, do not show all applicable wage rates, the number of hours worked,
5 and the applicable rate for those hours, and all wages earned.

6 94. Defendants violated Labor Code §§ 226, 1174, 1174.5, and 1194.5, and IWC Wage
7 Order No. 4-2001 by failing to maintain documentation of the actual hours worked each day by
8 Plaintiff and other aggrieved employees, all wages earned, hourly rates applicable, and meal breaks
9 taken.

10 95. Defendants violated Labor Code §§ 201-203, 204 and 201.3 by failing to timely pay all
11 earned and unpaid wages, including unpaid minimum wage, during employment and at the time of
12 separation from employment, for those aggrieved employees no longer employed by Defendants.

13 96. Plaintiff is entitled to recover 25% of any civil penalties assessed against Defendants
14 for such violations, with the remaining 75% of the recover being paid to the Labor and Workforce
15 Development Agency.

16 97. Accordingly, Plaintiff seeks to recover any and all civil penalties otherwise capable of
17 being collected under the law, including any statutes applicable under section 2699.5, and any penalty
18 provisions provided for by §§ 201.3, 203, 204, 210, 225.5, 226(e), 226.3, 226.7, 256, , 1174.5, 1194,
19 1194.2(a), 1197.1, and 2699; CA Civil Code 3287(b); and Wage Order 4-2001.

20 98. Labor Code section 2699(g) also provides for the payment of reasonable attorneys' fees
21 and costs to a prevailing party seeking recovery under the Private Attorney General Act. Accordingly,
22 Plaintiff seeks to recover civil penalties, attorneys' fees, and costs in an amount to be proven at trial
23 pursuant to any applicable provisions of the law.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 26 a. Civil penalties;
27 b. Other penalties and fines permitted by law;
28 c. Costs of suit;

- 1 d. Injunctive Relief;
2 e. Reasonable attorneys' fees; and
3 f. Such other relief as the Court deems just and proper.
4

5
6 DATED: January 6, 2021

CHRISTINA HUMPHREY LAW, P.C.

7
8 By:

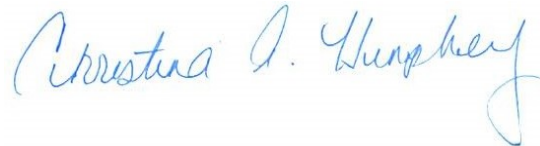

Christina A. Humphrey, Esq.
Attorneys for Plaintiff

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10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand trial of Plaintiff's and the members of the putative class claims
13 by jury to the extent authorized by law.
14

15 DATED: January 6, 2021

CHRISTINA HUMPHREY LAW, P.C

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20 Christina A. Humphrey, Esq.
Attorneys for Plaintiffs
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EXHIBIT A



Christina Humphrey Law

September 28, 2020

Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Filed online at dir.ca.gov

RE: Denise Droesch, et al v. Wells Fargo Bank, N.A., et. al

PAGA Administrator

Pursuant to *Labor Code* 2699.3, please accept this as notice that Denise Droesch (“Plaintiff”) alleges that Wells Fargo Bank, NA, (“Defendant”) violated, and continues to violate, provisions of the California Labor Code including, but not limited to, Labor Code §§ 201-203, 221-223, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1198, and 2699.

Wells Fargo operates Call Centers in California, as well as other locations, where telephone-dedicated hourly employees handle phone calls with Wells Fargo customers regarding various issues on their accounts. Plaintiff worked as a non-exempt employee in Sacramento, California. Her job duties were to handle phone calls related to customer service and business banking.

Defendant failed to pay Plaintiff and other non-exempt phone bankers for all time worked for Defendant, including any time spent booting up their computers, opening various software necessary to perform her tasks, and checking emails. Defendant additionally required Plaintiff and other non-exempt employees to clock out at night before they complete customer service calls, securing their workstations, locking their desk drawers, and securing any customer or proprietary information at the end of their shifts. Defendant failed to keep accurate time records and at times, intentionally manipulated time records to avoid having to compensate for overtime.

Plaintiff is an “aggrieved employee” as defined in Labor Code section 2699, subdivision (a) and brings this Private Attorney General’s Act action on behalf of herself and all other aggrieved employees. Plaintiff, on behalf of herself and other aggrieved employees, seeks penalties under the Private Attorney General’s Act (Labor Code § 2698, *et seq.*). The specific provisions of the Labor Code allegedly violated, and the facts and theories which support said alleged violations, are as follows:

Failure to Pay Minimum Wages and Designated Rates

Defendant classified Plaintiff and other aggrieved employees as non-exempt and paid them on an hourly basis. As a matter of policy and/or practice, Defendant routinely required Plaintiff and other aggrieved employees to work portions of the day during which they were subject to Defendant’s control, but Defendant failed to compensate them for this time.

As a result, Defendant violated Labor Code §§ 1182.12, 1197 and Wage Order No. 4 due to their failure to pay minimum wages and designated rates for all hours worked. Labor Code § 1194.2 entitles Plaintiff and other aggrieved employees to recover liquidated damages in an amount equal to the unpaid wages and interest thereon.

Failure to Pay Overtime Compensation

Due to Defendant's practice of requiring Plaintiff and other aggrieved employees to work portions of the day during which they were subject to Defendant's control without pay, Defendant failed to properly record actual hours worked by Plaintiff and other aggrieved employees and failed to pay overtime wages for the actual amount of overtime worked.

The Defendant's actions violate Labor Code § 1194, § 510(a), and Wage Order No. 4 due to their failure to pay overtime wages equal to one and one half times the employee's regular rate for hours worked over eight per day and forty per workweek or double the employee's regular rate for all hours worked in excess of twelve hours in any workday or eight hours on the seventh day of work in any one workweek.

Failure to Pay Compensation Timely and Timely at Time of Termination

As a result of the failures of the Defendant to keep adequate employment records including records of hours worked and overtime Plaintiff and aggrieved employees were not paid all compensation owed during regular pay periods and at the time of termination. The Defendant's failure to pay all outstanding compensation owed at the time of termination violates Labor Code § 201-204.

Failure to Provide Accurate Itemized Wage Statements

Labor Code § 226(a) requires every employer to provide employees with itemized wage statements that accurately reflect, among other things, total hours worked. The Defendant consistently violated this Labor Code provision through Defendant's failure to accurately keep track of all hours worked by Plaintiff and aggrieved employees. Hours worked included time worked without being paid by the Defendant as well as missed meal and rest breaks.

As a result of the violations of numerous provisions of California law, the Plaintiff and other Aggrieved Employees are civil penalties allowed by law pursuant to CA Labor Code §§ 201.3, 203, 204, 210, 221-223, 225.5, 226(e), 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1193.5, 1194, 1194.2(a), 1197.1, 1194.5, 1198, 2699; and Wage Order 4-2001.

Plaintiff respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail, return receipt, to Defendant.

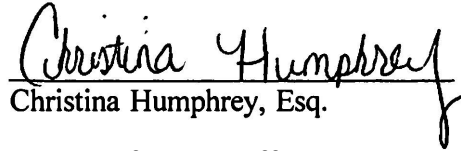
LWDA

Re: Denise Droesch v. Wells Fargo Bank, N.A.

September 28, 2020

Page 3

Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.


Christina Humphrey, Esq.

Attorney for Plaintiff Denise Droesch

Cc: Wells Fargo Bank, N.A.
Registered Agent for Service of Process
CSC – Lawyers Inc
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Wells Fargo
PAGA LTR.

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