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other individuals similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DENISE DROESCH; KYONNA
HARRISON; and JANISHA LEE PRICE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a United
States Corporation, and DOES 1 - 100,
Inclusive,

Defendants.

Case No. 34-2021-00292066-CU-OE-GDS

CLASS ACTION

Assigned To: Hon. Jill H. Talley

Dept.: 25

**SECOND AMENDED CONSOLIDATED
CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in
Violation of California *Labor Code* §§
510 and 1194;**
- 2. Failure to Pay Minimum Wages in
Violation of California *Labor Code* §§
1182.12, 1194, 1197, 1194.2, and 1198;**
- 3. Failure to Pay Regular Wages in
Violation of California *Labor Code* §§
221-223;**
- 4. Failure to Provide Meal Periods or
Compensation in Lieu Thereof in
Violation of California *Labor Code* §§**

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226.7 and 512, IWC Wage Orders, and Cal. Code Regs., Title 8, § 11040, *et seq.*

- 5. Failure to provide Rest Periods or Compensation in Lieu Thereof in Violation of California *Labor Code* § 226.7, IWC Wage Orders, and Cal. Code. Of Regs., Title 8, § 11040(12)(A);**
- 6. Failure to Pay All Wages Upon Termination in Violation of California *Labor Code* §§ 201-203, and 256;**
- 7. Failure to Provide Accurate Wage Statements in Violation of California *Labor Code* § 226;**
- 8. Violation of California *Business & Professions Code*, §§ 17200, *et seq.*; and**
- 9. Civil Penalties Under the Private Attorney General Act of 2004, California *Labor Code* §§ 2698, *et seq.***

Action Filed: January 7, 2021

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Kyonna Harrison, Janisha Lee Price, and
7 other individuals similarly situated
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Plaintiffs **DENISE DROESCH, KYONNA HARRISON, and JANISHA LEE PRICE,** (hereinafter collectively referred to as “Plaintiffs” or “Representative Plaintiffs”) individually and on behalf of all other similarly situated employees, bring this lawsuit against Defendant Wells Fargo, N.A. (“Wells Fargo” or “Defendant”), and allege as follows:

INTRODUCTION

1. This is a class and representative action brought pursuant to California *Code of Civil Procedure* § 382, and California *Labor Code* § 2698, *et seq.*, challenging Defendants’ systemic illegal employment practices resulting in various violations of California Labor Code, California *Business and Professions Code* § 17200, *et seq.*, (“Unfair Competition Law” or “UCL”), and the applicable Industrial Welfare Commission Wage Order.

2. Defendant Wells Fargo employs the telephone-based workers who are the putative class members and aggrieved employees in this lawsuit.

3. Plaintiff DROESCH worked as a telephone-dedicated employee in the position of Premier Phone Banker at Wells Fargo's California Business Banking Call Center. Plaintiff HARRISON worked as a telephone dedicated employee at Wells Fargo's Mortgage Call Center in Rancho Cucamonga, California, and is currently employed by Defendants as an hourly Telephone Banker at a Call Center located in San Bernardino, California. Plaintiff PRICE worked as a telephone dedicated employee in the position of Mortgage Customer Service Representative and Home Loan Processor in San Bernardino, California. Lead Plaintiff DENISE DROESCH's individual claims have been settled.

4. Plaintiffs and similarly situated employees had to be ready to handle a call at the start of their scheduled shift times. In order to be ready to handle a call, Plaintiffs and similarly situated employees had to first boot up their computers and open various software programs necessary for handling a call. Plaintiffs and similarly situated employees had to be available to handle calls until the end of their scheduled shift time.

5. Defendant knowingly required and/or permitted Plaintiffs and other similarly situated telephone-dedicated employees to perform unpaid work before and after their scheduled shift times. This unpaid work includes but is not limited to booting up computers, initializing several software programs, reading company issued emails and instructions at the beginning of their shifts,

1 and completing customer service calls, securing their workstations, locking their desk drawers, and
2 securing any customer or proprietary information at the end of their shifts.

3 6. Defendant maintained a policy and practice of failing to pay Plaintiffs and similarly
4 situated employees for all hours worked, such as the time engaged in work tasks completed before
5 and after their shift. Plaintiffs and similarly situated employees spent significant time performing
6 this work off the clock and Defendant did not pay them for this time. Because much of this time
7 qualifies as overtime within the meaning of applicable laws, Plaintiffs and similarly situated
8 employees were not paid overtime for this time.

9 JURISDICTION AND VENUE

10 7. The Court has jurisdiction over this class action pursuant to article 6, section 10 of
11 the California Constitution and Code of Civil Procedure § 410.10.

12 8. Additionally, this Court has jurisdiction over Plaintiffs' and the Classes' claims for
13 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
14 under Business & Professions Code §§ 17203 and 17204.

15 9. The Court also has jurisdiction over Plaintiffs' and the Aggrieved Employees' claims
16 for penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698,
17 *et seq.*

18 10. On information and belief, Defendants are either citizens of California, have
19 sufficient minimum contacts in California, or otherwise intentionally avails themselves of the
20 California market so as to render the exercise of jurisdiction over them by the California courts
21 consistent with traditional notions of fair play and substantial justice.

22 11. Venue is proper in Sacramento County because Defendants transact substantial
23 business in this County and plaintiff DROESCH's claims arose in this County.

24 PARTIES

25 12. Plaintiff **Denise Droesch** is an individual currently residing in Sacramento,
26 California who Defendant employed from approximately December 2019, to approximately March
27 2020, as an hourly, non-exempt premier phone banker at the Business Banking Call Center operated
28 by Wells Fargo located in Sacramento, California.

13. Plaintiff **Kyonna Harrison** is an individual currently residing in Rancho Cucamonga, California who Defendant has employed since September 4, 2012, and currently employs, as an hourly Telephone Banker at the Call Center operated by Wells Fargo located in San Bernardino, California.

14. Plaintiff **Janisha Lee Price** is an individual currently residing in Victorville, California who Defendant employed from August 10, 2015 to December 1, 2022 as an hourly Telephone Banker at the Call Center operated by Wells Fargo in San Bernardino, California.

15. Wells Fargo is an international bank that offers services related to banking, loans and credit, insurance, investing and wealth management. Wells Fargo operates Fraud Department Call Centers in California, as well as other locations, where telephone-dedicated hourly employees handle phone calls with Wells Fargo customers regarding fraudulent and potentially fraudulent transactions on their accounts.

CALIFORNIA CLASS DEFINITION

16. Plaintiffs bring this action on behalf of a proposed class action of all individuals working in the non-exempt position of “Telephone Banker” in the State of California from September 28, 2016 onward. This definition excludes persons who perform or performed management duties. The California Class Members are similarly situated to Plaintiffs Harrison, Price, and each other. The California Class also includes a Sub-Class of Class Members whose employment has terminated and a Sub-Class of Class Members who did not execute arbitrations agreements during their employment.

AGGRIEVED EMPLOYEES

17. A civil action under PAGA may be brought by an “aggrieved employee,” any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

18. Plaintiffs assert PAGA claims on behalf of all “Aggrieved Employees” who were employed as non-exempt telephone bankers by Defendants, at any time from November 3, 2019 onward, and worked one or more shifts in California Call Centers.

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1 **FACTUAL ALLEGATIONS**

2 **A. Defendant's Practice of Requiring and/or Permitting Telephone-Based Hourly**
3 **Employees to Work Before the Start of and After the End of Their Scheduled Shifts.**

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

7 20. Plaintiffs work or have worked as telephone-dedicated employees at Call Centers
8 within California which are or have been owned or operated by Wells Fargo.

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

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

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

16 24. In order to be logged into Wells Fargo's telephone systems and call queue, Defendant
17 required and/or permitted Plaintiffs and similarly situated telephone-based employees to arrive at
18 their work station prior to their scheduled shift time and boot up computers, initialize several
19 software programs, and read company emails and/or instructions.

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

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

1 27. Only after all the processes are completed and programs started could Plaintiffs and
2 other similarly situated employees log into Soft Phone, which commenced and recorded the paid
3 portion of their workday.

4 28. Defendant's policy and practice is to closely monitor and discipline telephone-based
5 employees if they are not in adherence, or logged into their phones and ready to handle calls by the
6 start of their scheduled shift time.

7 29. Defendant did not instruct Plaintiffs and similarly situated telephone-based
8 employees to not log into their computers or telephone, or to not read company emails prior to the
9 start of their scheduled shift time. Rather, Defendant required, permitted and/or allowed Plaintiffs
10 and the similarly situated employees to work prior to and after their scheduled shift time.

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

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

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

23 33. Wells Fargo had the power to hire and fire Plaintiffs and other persons similarly
24 situated. Wells Fargo controlled and set the schedules for Plaintiffs and similarly situated telephone-
25 dedicated workers.

B. Defendant Knew of and Assented to the Unpaid Work.

26 34. At the Wells Fargo Call Centers managers were on the floor during the workday,
27 managing the work activities of the Plaintiffs and other similarly situated persons.
28

1 35. Defendant monitored, directed, and controlled the work activities of Plaintiffs and
2 other similarly situated persons, including the unpaid work at issue.

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

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

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

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

19 40. By possessing, controlling and/or accessing this information, Defendant knew that
20 Plaintiffs and similarly situated telephone-based employees worked prior to the start and after the
21 end of their scheduled shift time.

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

28 42. Defendant knowingly required and/or permitted Plaintiffs and those similarly
situated to him to perform unpaid work before and after the start and end times of their shifts,

1 including booting up computers, initializing several software programs, and reading company issued
2 emails and instructions prior to the start of their scheduled shift time, as well as completing customer
3 service calls, closing down the software programs, logging off the system, securing their
4 workstations, locking their desk drawers, and securing any customer or proprietary information after
5 the end of their scheduled shift times.

6 43. Defendant additionally knowingly required Plaintiffs and those similarly situated to
7 work during meal or rest periods, and/or failed to pay premium wages for missed, short, late, or on-
8 duty meal or rest periods.

9 **C. Defendant's Failure to Pay Minimum, Regular, and Overtime Wages to Its**
10 **Telephone-Based Hourly Employees.**

11 44. Defendant determined the rate of pay for Plaintiffs and other similarly situated
12 persons.

13 45. Defendant's managers and supervisors reviewed and approved Plaintiffs and other
14 similarly situated persons' time records prior to receiving their paychecks.

15 46. Defendant supervised and controlled the work schedule of Plaintiffs and other
16 similarly situated persons.

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

21 48. Plaintiffs and the other employees are also similar because Defendant did not pay
22 them for all time they actually worked.

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

27 50. Plaintiffs and others similarly situated at times work or worked in excess of forty
28 hours per week for Defendant in a given workweek.

1 51. Defendant's policy and practice of requiring and/or permitting its employees,
2 including Plaintiffs and other non-exempt, hourly employees, to perform work without pay for such
3 work performed, violates the California Labor Code.

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

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

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

14 **CALIFORNIA CLASS ALLEGATIONS**

15 55. Plaintiffs incorporate all other paragraphs as though fully set forth herein.

16 56. **Numerosity.** Plaintiffs estimate the size of the California Class to be at least 500
17 individuals. This size makes bringing the claims of each individual member of the class before this
18 Court impracticable. Likewise, joining each individual member of the California Class as a plaintiff
19 in this action is impracticable. The identity of the members of the California Class will be
20 determined from Defendant's records, as will the compensation paid to each of them. As such, a
21 class action is a reasonable and practical means of resolving these claims. To require individual
22 actions would prejudice the California Class and Defendant.

23 57. **Typicality.** Plaintiffs Harrison and Price's claims are typical of those of the
24 California Class because like the members of the California Class Members, Plaintiffs were subject
25 to Defendant's uniform policies and practices and was compensated in the same manner as others
26 in the California Class. Defendant failed to pay the California Class Members compensation for all
27 hours worked, permit timely and compliant meal and rest breaks, pay premium wages, pay timely
28 wages regularly and upon termination, and provide accurate and itemized wage statements.

1 58. Plaintiffs Harrison, Price, and the California Class Members have been
2 uncompensated and/or under-compensated as a result of Defendant's common policies and
3 practices, which failed to comply with California law.

4 59. **Adequacy.** Plaintiffs Harrison and Price are representative parties who will fairly
5 and adequately protect the interests of the California Class because it is in their interest to effectively
6 prosecute the claims herein alleged in order to obtain the unpaid wages and penalties required under
7 California law. Plaintiffs have retained attorneys who are competent in both class actions and wage
8 and hour litigation. Plaintiffs do not have any interest which may be contrary to or in conflict with
9 the claims of the California Class they seeks to represent.

10 60. **Commonality.** Common issues of fact and law predominate over any individual
11 questions in this matter. The common issues of fact and law include, but are not limited to:

- 12 a. Whether Defendant had a policy or practice of requiring Plaintiffs and California
13 class members to perform work off-the-clock;
- 14 b. Whether Defendant failed to pay Plaintiffs and the California Class Members
15 minimum, regular, and overtime wages for all hours worked;
- 16 c. Whether Defendant failed to provide meal and rest breaks to Plaintiffs and the
17 California Class Members;
- 18 d. Whether Defendant failed to pay premium wages to Plaintiffs and the California
19 Class Members;
- 20 e. Whether Defendant failed to pay Plaintiffs and the California Class Members all of
21 their wages earned and due regularly and upon the termination of their employment;
- 22 f. Whether Defendant provided Plaintiffs and the California Class Members timely and
23 accurate wage statements;

24 61. **Superiority.** A class action is superior to other available means for the fair and
25 efficient adjudication of this lawsuit. Even in the event any member of the California Class could
26 afford to pursue individual litigation against companies the size of Defendant, doing so would
27 unduly burden the court system. Individual litigation would magnify the delay and expense to all
28 parties and flood the court system with duplicative lawsuits. Prosecution of separate actions by

individual members of the California Class would create the risk of inconsistent or varying judicial results and establish incompatible standards of conduct for Defendant.

62. **Manageability.** A class action, by contrast, presents far fewer management difficulties and affords the benefits of uniform adjudication of the claims, financial economy for the parties, and comprehensive supervision by a single court. By concentrating this litigation in one forum, judicial economy, and parity among the claims of individual California Class Members are promoted. Additionally, class treatment in this matter will provide for judicial consistency. Trial of Plaintiffs' class claims will be manageable because Plaintiffs can rely on Defendant's records, corporate testimony from Defendant's management, and representative testimony from Class Members.

63. Notice of the pendency and any resolution of this action can be provided to the California Class by mail, electronic mail, print, broadcast, internet and/or multimedia publication. The identity of members of the California Class is readily identifiable from Defendant's records.

64. This type of case is well-suited for class action treatment because: (1) Defendant's practices, policies, and/or procedures were uniform; (2) the burden is on Defendant to prove that it properly compensated Plaintiffs and Class Members; and (3) the burden is on Defendant to accurately record hours worked by employees.

65. Ultimately, a class action is a superior form to resolve the California claims detailed herein because of the common nucleus of operative facts centered on the continued failure of Defendant to pay Plaintiffs and the California Class Members according to applicable California laws.

FIRST CAUSE OF ACTION

Failure to Pay Overtime Wages

(California Labor Code §§ 510 and 1194)

On Behalf of Plaintiffs and the California Class

66. Plaintiffs hereby incorporate by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein

67. At all relevant times, Defendant was required to compensate its nonexempt employees for all hours worked. Since at least four years prior to this lawsuit being filed to the

1 present, Defendant was required to compensate all of its employees for all overtime worked, at one-
2 and-a-half times their regular rates of pay for hours worked in excess of eight hours per day or forty
3 hours per workweek, and double-time for hours worked in excess of twelve (12) hours per day.
4 Defendant was also required to pay one-and-a-half times the regular rate for the first eight hours
5 worked on the seventh day of a workweek.

6 68. Defendant failed to properly record and pay for Plaintiffs' Droesch, Harrison, Price,
7 and the California Class Members' hours worked, including overtime. For example, Wells Fargo
8 allowed, encouraged, or required Plaintiffs and the California Class Members to clock out during
9 their shifts, including during time opening necessary programs, following instructions, and reading
10 emails. Despite the provisions of California's overtime law, Defendant has willfully failed and
11 refused to pay the California Class, including Plaintiffs, overtime wages for any of the overtime
12 hours they worked.

13 69. The California Class, including Plaintiffs, has been deprived of their rightfully
14 earned overtime wages as a direct and proximate result of Defendant's failure and refusal to pay
15 such compensation.

16 70. Defendant's conduct violates California Labor Code §§ 510 and 1194. Therefore,
17 pursuant to California Labor Code § 1194, the California Class, including Plaintiffs, is entitled to
18 recover, and seeks to recover, damages for the nonpayment of overtime wages for all overtime hours
19 worked in excess of eight hours per day, in excess of forty hours per workweek, for the first eight
20 hours worked on the seventh day of a workweek, and double-time pay for the hours worked in
21 excess of twelve in a day in addition to interest on such amounts pursuant to California Labor Code
22 § 1194, plus reasonable attorneys' fees and costs of suit, and the relief requested below in the Prayer
23 for Relief.

SECOND CAUSE OF ACTION

Failure to Pay Minimum Wages

(California Labor Code §§ 1182.12, 1194, 1197, 1194.2 and 1198)

On Behalf of Plaintiffs and the California Class

27 71. Plaintiffs hereby incorporate by reference each and every one of the allegations
28 contained in the preceding paragraphs as if the same were fully set forth herein.

1 72. At all relevant times, Plaintiffs and the California Class Members earned “wages”
2 for labor or services rendered to Defendant within the meaning of California Labor Code § 200(a)
3 and/or “hours worked” within the meaning of the applicable Wage Order of the Industrial Wage
4 Commission.

5 73. Employers are required to pay their employees for all hours worked. Defendant failed
6 to properly record and pay for Plaintiffs and the California Class Members’ hours worked. For
7 example, Wells Fargo allowed, encouraged, or required Plaintiffs and the California Class Members
8 to clock out during their shifts, including during time opening necessary programs, following
9 instructions, and reading emails. Despite the provisions of California’s overtime law, Defendant
10 has willfully failed and refused to pay the California Class, including Plaintiffs, overtime wages for
11 any of the overtime hours they worked.

12 74. Defendant’s conduct deprived Plaintiffs and the California Class Members of full
13 and timely payment for all hours worked in violation of the California Labor Code.

14 75. Defendant did not pay Plaintiffs and the California Class Members for all hours
15 worked and did not properly pay Plaintiffs and the California Class Members, in violation of
16 California Labor Code §§ 1182.12, 1194, 1197, and/or 1198.

17 76. As a result of Defendant’s willful and unlawful failure to pay Plaintiffs and the
18 California Class their earned wages, Plaintiffs and the California Class are entitled to recover their
19 unpaid wages, liquidated damages, costs and reasonable attorneys’ fees, and the relief requested
20 below in the Prayer for Relief.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Pay Regular Wages**

23 **(California Labor Code §§ 221-223)**

24 **On Behalf of Plaintiffs and the California Class**

25 77. Plaintiffs hereby incorporate by reference each and every one of the allegations
26 contained in the preceding paragraphs as if the same were fully set forth herein.

27 78. At all relevant times, Plaintiffs and the California Class Members earned “wages”
28 for labor or services rendered to Defendant within the meaning of California Labor Code § 200(a)

1 and/or “hours worked” within the meaning of the applicable Wage Order of the Industrial Wage
2 Commission.

3 79. Employers are required to pay their employees for all hours worked. Defendant failed
4 to properly record and pay for Plaintiffs and the California Class Members’ hours worked. For
5 example, Wells Fargo allowed, encouraged, or required Plaintiffs and the California Class Members
6 to clock out during their shifts, including during time opening necessary programs, following
7 instructions, and reading emails. Despite the provisions of California’s overtime law, Defendant
8 has willfully failed and refused to pay the California Class, including Plaintiffs, overtime wages for
9 any of the off-the-clock hours they worked.

10 80. Defendant’s conduct deprived Plaintiffs and the California Class Members of full
11 and timely payment for all hours worked in violation of the California Labor Code.

12 81. Defendant did not pay Plaintiffs and the California Class Members for all hours
13 worked and did not properly pay Plaintiffs and the California Class Members, in violation of
14 California Labor Code §§ 221-223.

15 82. As a result of Defendant’s willful and unlawful failure to pay Plaintiffs and the
16 California Class their earned wages, Plaintiffs and the California Class are entitled to recover their
17 unpaid wages, liquidated damages, costs and reasonable attorneys’ fees, and the relief requested
18 below in the Prayer for Relief.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

21 **(California Labor Code §§ 226.7 and 512, IWC Wage Orders, and Cal. Code of Regs.,
22 Title 8, § 11040, et seq.)**

23 **On Behalf of Plaintiffs and the California Class**

24 83. Plaintiffs hereby incorporate by reference each and every one of the allegations
25 contained in the preceding paragraphs as if the same were fully set forth herein.

26 84. Defendant has a policy and practice of failing to provide lawful duty-free meal
27 periods due, in part, to the rushed and high-pressure working environment fostered by Defendants,
28 for days during the liability period on which non-exempt employees work(ed)/work periods in
excess of **five (5)** hours, and Defendants failed to provide compensation in lieu thereof. Further,

1 Defendant has a policy of rounding meal periods interrupted before thirty (30) minutes into
2 compliant meal periods.

3 85. By failing to provide meal periods on the days non-exempt hourly employees worked
4 periods in excess of **five (5)** hours, and failing to compensate said employees one hour's wages at
5 the regular rate in lieu of meal periods, as alleged above, Defendants willfully violate the provisions
6 of Labor Code §§ 226.7 and 512, § 11 of the IWC Wage Orders, and Cal. Cod Regs., Title 8, §
7 11040, *et seq.*

8 86. Plaintiffs and the Class Members they seek to represent did not voluntarily or
9 willfully waive meal periods.

10 87. By failing to keep adequate records as required by §§ 226 and 1174(d) of the Labor
11 Code, Defendants have injured Plaintiffs and Class Members and made it difficult to calculate the
12 unpaid meal period compensation (including wages, interest, and penalties thereon) due to Plaintiff
13 and Class Members. Further, when meal period premiums were paid, they were not calculated
14 correctly at the regular rate of pay.

15 88. As a result of the unlawful acts of Defendants, Plaintiffs and the Class Members they
16 seek to represent have been deprived of premium wages in amounts to be determined at trial, and
17 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
18 costs, under Labor Code §§ 203, 226, 226.7, and 1194, and applicable IWC Wage Orders.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

21 **(California Labor Code §§ 226.7 and 512, IWC Wage Orders, and Cal. Code of Regs.,**
22 **Title 8, § 11040, *et seq.*)**

23 **On Behalf of Plaintiffs and the California Class**

24 89. Plaintiffs hereby incorporate by reference each and every one of the allegations
25 contained in the preceding paragraphs as if the same were fully set forth herein.

26 90. Defendant has a policy and practice of failing to authorize and permit lawful duty
27 free rest periods due, in part, to the rushed and high-pressure working environment fostered by
28 Defendant, for days during the liability period on which non-exempt hourly employees

1 work(ed)/work periods in excess of **three and a half (3.5)** hours or a major fraction thereof, and
2 Defendants failed to provide compensation in lieu thereof.

3 91. By failing to authorize and permit rest periods on the days non-exempt hourly
4 employees worked periods in excess of three and a half (3.5) hours and failing to compensate said
5 employees one hour's wages at the regular rate in lieu of rest periods, as alleged above, Defendant
6 willfully violated the provisions of Labor Code §§ 226.7 and Cal. Code of Regs., Title 8, §
7 11040(12)(A).

8 92. Plaintiffs and the Class Members they seek to represent did not voluntarily or
9 willfully waive rest periods. Further, when rest period premiums were paid, they were not calculated
10 correctly at the regular rate of pay.

11 93. By virtue of the Defendant's unlawful failure to authorize and permit rest periods to
12 Plaintiffs and the Class Members, they have suffered, and will continue to suffer damages in
13 amounts which are presently unknown to Plaintiffs and the Class Members, but which exceed the
14 jurisdictional limits of this Court, and which will be ascertained according to proof at trial.

15 94. As a result of the unlawful acts of Defendant, Plaintiffs and the Class Members they
16 seek to represent have been deprived of premium wages in amounts to be determined at trial, and
17 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
18 costs, under Labor Code §§ 203, 226, 226.7, and 1194, and applicable IWC Wage Orders.

19 **SIXTH CAUSE OF ACTION**

20 **Failure to Pay All Wages Upon Termination**

21 **(California Labor Code §§ 201, 202, 203)**

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

23 95. Plaintiffs hereby incorporate by reference each and every one of the allegations
24 contained in the preceding paragraphs as if the same were fully set forth herein.

25 96. California Labor Code § 201 provides that any discharged employee is entitled to all
26 wages due at the time of discharge.

27 97. Where an employer willfully fails to pay discharged or resigning employees all
28 wages due as required under the California Labor Code, the employer is liable to such employees
under California Labor Code § 203 for waiting time penalties in the amount of one day's

1 compensation at the employees' regular rate of pay for each day the wages are withheld, up to thirty
2 days.

3 98. During all relevant times, Defendant knowingly and willfully violated California
4 Labor Code §§ 201 and 202 by failing to pay Plaintiffs and members of the California Class who
5 are no longer employed by Wells Fargo all wages owed as alleged herein. Wells Fargo is therefore
6 liable to Plaintiffs and members of the California Class who are no longer employed by Defendant
7 for waiting time penalties as required by California Labor Code § 203.

8 99. Plaintiffs, individually and on behalf of the members of the California Class who are
9 no longer employed by Defendant, respectfully request that the Court award all waiting time
10 penalties due, and the relief requested below in the Prayer for Relief.

11 **SEVENTH CAUSE OF ACTION**

12 **Failure to Provide Accurate Wage Statements**

13 **(California Labor Code § 226)**

14 **On Behalf of Plaintiffs and the California Class**

15 100. Plaintiffs hereby incorporate by reference each and every one of the allegations
16 contained in the preceding paragraphs as if the same were fully set forth herein.

17 101. California Labor Code § 226 provides that an employer shall furnish its employees
18 with accurate itemized statements in writing showing gross wages earned and total hours worked
19 by the employee, among other items of information.

20 102. During all relevant times, Defendant knowingly and willfully violated California
21 Labor Code § 226 by failing to provide Plaintiffs and members of the California Class with accurate
22 wage statements as alleged herein. Defendant knowingly and willfully violated said Labor Code
23 provision by providing Plaintiffs and members of the California Class with wage statements that
24 systematically undercounted the number of hours that Plaintiffs and members of the California Class
25 worked. Defendant is therefore liable to Plaintiffs and members of the California Class for
26 providing inaccurate wage statements in violation of Labor Code § 226.

27 103. Plaintiffs, individually and on behalf of the members of the California Class,
28 respectfully request that the Court award all penalties due, and the relief requested below in the
Prayer for Relief.

1 **EIGHTH CAUSE OF ACTION**

2 **Unlawful and/or Unfair Competition Law Violations**
3 **(California Business & Professions Code § 17200 et seq.)**

4 **On Behalf of Plaintiffs and the California Class**

5 104. Plaintiffs hereby incorporate by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 105. California Business & Professions Code § 17200 et seq. prohibits unfair competition
8 in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

9 106. Plaintiffs bring this cause of action individually and as representatives of all others
10 subject to Wells Fargo's unlawful acts and practices.

11 107. During all relevant times, Defendant committed unlawful, unfair, and/or fraudulent
12 acts as defined by California Business & Professions Code § 17200. Defendant's unlawful, unfair,
13 and/or fraudulent business practices include, without limitation, failing to pay all wages owed
14 wages, including premium wages, and failing to provide complaint meal and rest breaks.

15 108. As a result of these unlawful and/or unfair and/or fraudulent business practices,
16 Defendant reaped unfair benefits and illegal profits at the expense of Plaintiffs and the California
17 Class. Defendant must disgorge these ill-gotten gains and restore as restitution to Plaintiffs and the
18 California Class Members all wrongfully withheld wages, including, but not limited to minimum,
regular, premium, and overtime wages.

19 109. Plaintiffs, individually and on behalf of the members of the California Class,
20 respectfully request that judgment be awarded to provide restitution and interest, and the relief
21 requested below in the Prayer for Relief, including injunctive relief to correct the practices
22 complained of.

23 **NINTH CAUSE OF ACTION**

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

25 **(California Lab. Code §§ 2698 et seq.)**

26 **On Behalf of Plaintiffs Droesch and Harrison, the State of California, and**

27 **All Aggrieved Employees**
28

1 110. Plaintiffs hereby incorporate by reference each and every one of the allegations
2 contained in the preceding paragraphs as if the same were fully set forth herein.

3 111. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
4 California Labor Code §§ 2698-99) applied to Defendants' employment of Plaintiffs and the
5 Aggrieved Employees.

6 112. At all times set forth herein, California Labor Code § 2699(a) has provided that any
7 provision of law under the California Labor Code that provides for a civil penalty to be assessed and
8 collected by the Labor and Workforce Development Agency (LWDA) for violations of the
9 California Labor Code may, as an alternative, be recovered through a civil action brought by an
10 aggrieved employee on behalf of himself and other current or former employees pursuant to
11 procedures outlined in California Labor Code § 2699.3.

12 113. At all times set forth herein, the PAGA has also provided that for the violation of any
13 Labor Code provision that does not itself contain a civil penalty, there are established civil penalties
14 of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
15 aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

16 114. A civil action under PAGA may be brought by an "aggrieved employee," any person
17 that was employed by the alleged violator and against whom one or more of the alleged violations
18 was committed.

19 115. Defendants violated Labor Code §§ 210, 225.5, 223, 510, 1174.5, 1182.12, 1193.5,
20 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and Wage Order 4-2001 when they failed to pay
21 Plaintiffs and other aggrieved employees for off-the-clock time worked. As a matter of policy and/or
22 practice, Defendants failed to compensate Plaintiffs and other aggrieved employees for all work
23 hours and thus, failed to pay minimum wages, accurate wages, and overtime wages for all hours
24 worked by Plaintiffs and other aggrieved employees in violation of California law.

25 116. Defendants violated Labor Code §§ 226.7, 512, 1194.5, and IWC Wage Order No.
26 4-2001, section 11, by failing to provide Plaintiffs and other aggrieved employees a meal period of
27 at least 30 minutes when the work period is more than five hours and a second meal period of at
28 least 30 minutes when the work period is more than 10 hours. Defendants routinely failed to provide
Plaintiffs and other aggrieved employees, with meal periods during which they were relieved of all

1 duties. Similarly, IWC Wage Order No. 4-2001, § 12 requires employers to “authorize and permit”
2 employees to take a 10-minute rest break every four hours of work, during which they must be
3 relieved of all duties. Defendants failed to do so, entitling Plaintiffs and other aggrieved employees
4 to a premium of one hour’s worth of pay at the employee’s regular rate for each day that Defendants
5 failed to provide a meal or period, pursuant to Labor Code section 226.7(c). Defendants further
6 failed to pay premium pay when a meal or rest break was reported late, missed, short, or on-duty in
7 violation of the same Labor Code sections and failed to properly record meal periods.

8 117. Defendants violated Labor Code §§ 226, 226.3, 226.4, 1174, 1174.5, and 1194.5 by
9 knowingly and intentionally providing Plaintiffs and other aggrieved employees with wage
10 statements that, among others items required, do not show all applicable wage rates, the number of
11 hours worked, and the applicable rate for those hours, and all wages earned.

12 118. Defendants violated Labor Code §§ 226, 1174, 1174.5, and 1194.5, and IWC Wage
13 Order No. 4-2001 by failing to maintain documentation of the actual hours worked each day by
14 Plaintiffs and other aggrieved employees, all wages earned, hourly rates applicable, and meal breaks
15 taken.

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

19 120. Plaintiffs were employed by Defendants and the alleged violations have been
20 committed against them during their time of employment and they are, therefore, aggrieved
21 employees. Plaintiffs and other employees are “aggrieved employees” as defined by California
22 Labor Code § 2699(c) in that they are all current or former employees of Defendant, and one or
23 more of the alleged violations were committed against them.

24 121. Accordingly, Plaintiffs seeks to recover any and all civil penalties otherwise capable
25 of being collected under the law, including any statutes applicable under section 2699.5, and any
26 penalty provisions provided for by §§ 201.3, 203, 204, 210, 225.5, 226(e), 226.3, 226.7, 256, ,
27 1174.5, 1194, 1194.2(a), 1197.1, and 2699; CA Civil Code 3287(b); and Wage Order 4-2001.
28

1 122. Pursuant to California Labor Code § 2699.3, aggrieved employees, including
2 Plaintiffs, may pursue a civil action arising under the PAGA after the following requirements have
3 been met:

- 4 a. The aggrieved employee shall give written notice (hereinafter “Employee’s
5 Notice”) to the LWDA and the employer of the specific provisions of the
6 California Labor Code alleged to have been violated, including the facts and
7 theories to support the alleged violations;
- 8 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
9 employer and the aggrieved employee by certified mail that it does not intend
10 to investigate the alleged violations sixty (60) calendar days of the postmark
11 date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the
12 LWDA Notice is not provided within sixty-five (65) calendar days of the
13 postmark date of the Employee’s Notice, the aggrieved employee may
14 commence a civil action pursuant to California Labor Code §2699 to recover
15 civil penalties in addition to any other penalties to which the employee may
16 be entitled.

17 123. Plaintiffs have provided written notice to the LWDA and by certified mail to
18 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
19 including the facts and theories to support the alleged violations. See Exhibit “A” attached hereto.

20 124. More than 65 calendar days have passed since the date notice was provided to the
21 LWDA and Defendant, and the LWDA did not respond to Plaintiffs’ letter. Accordingly, Plaintiffs
22 have satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to
23 recover civil penalties against Defendant for violations of California Labor Code identified in this
24 Complaint.

25 125. Accordingly, Plaintiffs and the other aggrieved employees are entitled to and seek to
26 recover civil penalties for Defendants’ violation of the Labor Code during the applicable limitations
27 period.
28

1 126. Pursuant to California Labor Code Section 2699(g), Plaintiffs, on behalf of
2 themselves and other aggrieved employees, are entitled to an award of reasonable attorneys' fees
3 and costs.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, by and
6 through their attorneys, demand judgment against Defendant and in favor of Plaintiffs and all others
7 similarly situated, for a sum that will properly, adequately and completely compensate them for the
8 nature, extent and duration of their damages, the costs of this action and as follows:

- 9 a. Declaring that Defendant Wells Fargo's policies and/or practices of failing to pay
10 overtime wages, to pay minimum wages, to pay regular wages, to provide meal and
11 rest periods, to provide accurate wage statements, and to pay all wages earned
12 regularly and upon termination of employment to the California Class violate the
13 California Labor Code;
- 14 b. Declaring that Defendant Wells Fargo's above-mentioned policies and/or practices
15 violate California Business and Professions Code § 17200 et seq.;
- 16 c. Preliminary, permanent, mandatory injunctive relief prohibiting Wells Fargo, its
17 officers, agents, and all those acting in concert with it, from committing in the future
18 those violations of law herein alleged;
- 19 d. Awarding damages, liquidated damages, restitution, and/or statutory penalties to be
20 paid by Defendant Wells Fargo for the causes of action alleged herein;
- 21 e. Awarding costs and expenses, including reasonable attorneys' fees and expert fees,
22 as permitted by law;
- 23 f. Awarding class representative service payments to Plaintiffs and all other class
24 representatives for their service to the California Class, the State of California, and
25 the public; and
- 26 g. Ordering such other and further legal and equitable relief the Court deems just,
27 necessary, and proper.
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DATED: October 25, 2024

BRADLEY/GROMBACHER, LLP
CHRISTINA HUMPHREY LAW, P.C.

By: /s/ Christina A. Humphrey
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PROOF OF SERVICE

Denise Droesch, et al. v. Wells Fargo Bank, N.A, et al.
California Superior Court, County of Sacramento
Case No. 34-2021-00292066

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 1117 State Street, Santa Barbara, CA 93101.

On October 25, 2024, I served the following document(s):

**1. SECOND AMENDED CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

On the following:

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Attorneys for Plaintiffs

[] (VIA US MAIL) I caused such envelope(s) to be deposited in the mail at Santa Barbara, California with postage fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

[] (VIA OVERNIGHT DELIVERY) I caused to have served such document(s) by depositing them in the drop box at Santa Barbara, California, for priority overnight next day delivery.

1 [X] (VIA E-MAIL): by transmitting via e-mail or electronic transmission, per California Code
2 of Civil Procedure, § 1010.6, the document(s) listed above to the person(s) at the e-mail
3 address(es) listed above.

4 [X] (STATE) I declare under penalty of perjury under the laws of the State of California that
5 the above is true and correct.

6 [] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court
7 at whose direction the service was made.

8 Executed on October 25, 2024.

Stefano Congedo

Stefano Congedo