

HAINES LAW GROUP, APC
 Paul K. Haines (SBN 248226)
 phaines@haineslawgroup.com
 Tuvia Korobkin (SBN 268066)
 tkorobkin@haineslawgroup.com
 2155 Campus Drive, Suite 180
 El Segundo, California 90245
 Tel: (424) 292-2350
 Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PIERRE FISTANIC, as an individual and on
 behalf of all others similarly situated,

Plaintiff,

vs.

HILLTOP SECURITIES INC., a Delaware
 corporation; and DOES 1 through 100,

Defendants.

Case No.: **20STCV47743**

**REPRESENTATIVE ACTION
 COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698, *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Pierre Fistanic (“Plaintiff”), on behalf of himself, all other aggrieved employees,
2 and the State of California, hereby brings this Representative Action Complaint (“Complaint”)
3 against Hilltop Securities Inc., a Delaware corporation, and DOES 1 to 100, inclusive
4 (collectively, “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself, all other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the Private
8 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare
9 Commission Wage Order 4 (“Wage Order 4”). The monetary damages that Plaintiff seeks exceed
10 this Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to California Code of Civil
13 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
14 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
15 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
16 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
20 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
21 exempt employee.

22 4. Plaintiff is informed and believes, and based thereon alleges, that within the statute
23 of limitations period applicable to each cause of action pled herein and continuing to the present,
24 Defendants did (and continue to do) business of manufacturing secondary containment fiberglass
25 products, and employed Plaintiff and other non-exempt employees within Los Angeles County
26 and the state of California and, therefore, were (and are) doing business in Los Angeles County
27 and the State of California.

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1 5. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
5 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
6 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
7 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
8 employment practices, wrongs, injuries and damages complained of herein.

9 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

11 7. At all times herein mentioned, each of said Defendants participated in the doing
12 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
13 Defendants, and each of them, were the agents, servants, and employees of each and every one of
14 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
15 were acting within the course and scope of said agency and employment. Defendants, and each
16 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
17 omissions complained of herein.

18 8. At all relevant times, Defendants, and each of them, were members of and engaged
19 in a joint venture, partnership, and common enterprise, and acted within the course and scope of
20 and in pursuance of said joint venture, partnership, and common enterprise. Further, all
21 Defendants were joint employers for all purposes of Plaintiff and other aggrieved employees.

22 **REPRESENTATIVE ACTION ALLEGATIONS**

23 9. Defendants offer financial services to a range of industries and individuals,
24 including in the public finance, wealth management, fixed income capital markets, and structured
25 finance/debt capital markets industries. During Plaintiff's employment with Defendant, Plaintiff
26 and other aggrieved employees were paid on a commission-only basis, whereby they were paid
27 commissions based on the financial transactions they completed, and were not paid a salary or
28 hourly wage. While paid on a commission-only basis, Plaintiff and other aggrieved employees

1 were not separately compensated for time spent working on tasks which were not compensated
2 on a commission basis, including, for example, time spent attending meetings and trainings (i.e.,
3 non-productive time). As a result, Plaintiff and other aggrieved employees were not paid at least
4 the minimum wage for all hours worked.

5 10. While working on a commission-only basis, Plaintiff and other aggrieved
6 employees worked for 3.5 hours or more in a workday, but were never provided with a paid rest
7 period for every 4-hour period worked, or major fraction thereof, because Defendant's
8 commission pay plan failed to separately compensate Plaintiff and other aggrieved employees for
9 required rest periods. *See* Labor Code § 226.2 (requiring employers to separately compensate
10 piece-rate employees for rest periods and other non-productive time); *Vaquero v. Stoneledge*
11 *Furniture LLC*, 9 Cal.App.5th 98, 113-14 (2017) (holding that commission-based employees
12 must be paid separately for rest periods and non-productive time, finding that "[n]othing in section
13 226.2, however, suggests that the Legislature intended to adopt a different rule for commission-
14 based employees"); *see also Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (finding pay
15 plan unlawful because "[t]here is no dispute that Safeway's activity-based compensation system
16 did not separately compensate drivers for their rest periods."). As a result, Plaintiff and other
17 aggrieved employees were not authorized and permitted paid rest periods as required by Wage
18 Order 4, § 12(A).

19 11. As a result of Defendants' failure to pay all minimum wages and rest period
20 premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage
21 statements. In addition, Defendant issued facially non-compliant wage statements to Plaintiff and
22 other aggrieved employees by failing to list the total hours of compensable rest and recovery
23 periods and the corresponding rate of compensation and gross wages for those periods, in
24 violation of Labor Code § 226.2(a)(2)(A); and failing to state the total hours of non-productive
25 time along with the corresponding rate of compensation and gross wages for non-productive time
26 worked in violation of Labor Code § 226.2(a)(2)(B).

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12. As a further result of Defendants' failure to pay all minimum wages and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff and other aggrieved former employees upon their separation of employment with Defendants.

13. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, for purposes of this Complaint, “aggrieved employees” refers to all of Defendants’ California employees who have been paid on a commission pay plan at any time in the one-year plus 178 days preceding the submission of Plaintiff’s letter to the LWDA through the present.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

14. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

15. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of the PAGA and, acting on behalf of himself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other aggrieved employees against whom one or more of the violations has been committed, and the State of California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of

the Labor Code for which no civil penalty is specifically provided pursuant to Labor Code § 2699(f), based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 226.2, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;
- c. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226 and 226.2;
- d. Failing to timely pay all final wages and compensation earned by Plaintiff and other aggrieved former employees at the time of separation of employment, in violation of Labor Code §§ 201-203;
- e. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code § 1174.

16. On October 7, 2020, Plaintiff notified Defendant Hilltop Securities Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under PAGA with respect to violations of the California Labor Code identified in Paragraph 15 (a)-(f) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

17. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 18. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699,
6 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
8 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
9 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
10 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
11 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
12 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
13 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
14 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
15 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
16 Labor Code § 2699(f);

17 19. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
18 2699(g) and Code of Civil Procedure § 1021.5; and

19 20. For such other and further relief the Court may deem just and proper.

20 Dated: December 14, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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22 By:



23 Paul K. Haines
24 Attorneys for Plaintiff
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