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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/01/2021
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

CGC-21-596359

GAETANO BALISTRERI, individually, and
on behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

vs.

STERLING BANK & TRUST, FSB; STERLING
BANCORP. INC., and, DOES 1 through 100,
inclusive,

Defendants.

Case No.:

**COMPLAINT FOR PENALTIES FOR
VIOLATION OF LABOR CODE § 2698
et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

1 Plaintiff GAETANO BALISTRERI (“Plaintiff”) hereby submits his Complaint against
2 Defendants and DOES 1 through 100, inclusive (collectively, “Defendants”), on behalf of
3 himself and other current and former aggrieved employees of Defendants for penalties as
4 follows:

5 **INTRODUCTION**

6 **1.** This is not a class action. This representative action brought individually and on
7 behalf of other current and former aggrieved employees pursuant to Labor Code § 2698 *et seq.*
8 (the Private Attorneys General Act of 2004 (“PAGA”) for Defendants’ violations of Labor Code
9 §§ 200, 201, 202, 203, 204, 208, 210, 221, 222, 223, 224, 226(a), 226.2 226.3, 226.7, 500-508,
10 510, 512(a), 515, 558, 558(a)(3), 1174, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699,
11 2800,2802 and 2810.5).

12 **2.** This Complaint challenges Defendants’ systemic illegal employment practices
13 resulting in violations of the stated provisions of the Labor Code against the identified group of
14 aggrieved employees.

15 **3.** Plaintiff is informed and believes and thereon alleges Defendants jointly and
16 severally acted intentionally and with deliberate indifference and conscious disregard to the
17 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)
18 failing to properly calculate and pay all minimum and overtime wages, (3) failing to provide
19 accurate wage statements, (4) failing to pay all wages due and owing upon termination of
20 employment, and (5) failing to reimburse all necessary business expenses.

21 **JURISDICTION AND VENUE**

22 **4.** This action is brought pursuant to PAGA. The civil penalties sought by Plaintiff
23 exceed the minimal jurisdiction limits of the Superior Court and will be established according to
24 proof at trial.

25 **5.** This Court has jurisdiction over this action pursuant to California Constitution,
26 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
27 those given by statute to other courts. The statutes under which this action is brought do not
28 specify any other basis for jurisdiction.

6. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 221, 222, 223, 224, 226(a), 226.2 226.3, 226.7, 500-508, 510, 512(a), 515, 558, 558(a)(3), 1174, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699, 2800, 2802 and 2810.5.

7. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county.

PARTIES

9. Plaintiff GAETANO BALISTRERI is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint a citizen of the State of California, and was a non-exempt branch employee employed by Defendants located in the County of San Francisco, California. Plaintiff and other current and former aggrieved employees herein were regularly scheduled as a matter of uniform company policy to work in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours, missed meal and rest breaks worked in violation of California Labor Code and the applicable California Industrial Welfare Commission wage order(s). Plaintiff seeks to represent: All current and former aggrieved employees that held the position of non-exempt branch employees in California while employed by Sterling Bank & Trust, FSB and Sterling Bancorp Inc. (hereinafter “Defendants”) working in its California branch offices for the period of August 26, 2020 to the present date. Plaintiff alleges that he and the other aggrieved employees were in fact “non-exempt” employees that were regularly scheduled as a matter of uniform company policy to work and did work in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or

1 overtime compensation for such overtime hours and suffered missed meal and rest breaks in
2 violation of California law.

3 **10.** Defendants are now, and/or at all times mentioned in this Complaint a California
4 company and the owner and operator of an industry, business and/or facility licensed to do
5 business and/or actually doing business in the State of California, including the County of San
6 Francisco.

7 **11.** On information and belief, the name “STERLING BANCORP. INC.” is a trade
8 name, a.k.a., pseudonym, or on information and belief d/b/a of STERLING BANK & TRUST,
9 FSB and is now, and/or at all times mentioned in this Complaint liable for the allegations to
10 Plaintiff and the California-based aggrieved employees as fully set forth in this Complaint,
11 including the County of San Francisco.

12 **12.** Plaintiff does not know the true names or capacities, whether individual, partner or
13 corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
14 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 thereon alleges that each of Defendants designated as a DOE was responsible in some way for
17 the matters alleged herein and proximately caused Plaintiff and other current and former
18 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
19 complained of herein.

20 **13.** At all times herein mentioned, Defendants, and each of them, were agents, partners,
21 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
22 assigns, each of the other, and at all times relevant hereto were acting within the course and scope
23 of their authority as such agents, partners, joint venturers, representatives, servants, employees,
24 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly
25 committed with ratification, knowledge, permission, encouragement, authorization and consent
26 of each Defendant designated herein.

27 **14.** As such, and based upon all the facts and circumstances incident to Defendants’
28 business in California, Defendants are subject to PAGA and Labor Code §§ 200, 201, 202, 203,

204, 208, 210, 221, 222, 223, 224, 226(a), 226.2 226.3, 226.7, 500-508, 510, 512(a), 515, 558, 558(a)(3), 1174, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699, 2800, 2802 and 2810.5.

CAUSE OF ACTION

VIOLATION OF PAGA

(AGAINST ALL DEFENDANTS BY PLAINTIFF)

15. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 15 as though fully set forth herein.

16. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

17. On August 26, 2021, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. Plaintiff believes that on or about October 30, 2021, the sixty-five (65) days notice period expired and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted the statutory time period to bring this action.

18. Plaintiff and the other non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

19. At all times relevant herein, Defendants were required to compensate their non-exempt employees’ minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

20. As a pattern and practice, Defendants failed to compensate Plaintiff and other aggrieved current and former employees for all hours worked, including for work performed off-the-clock, and improperly excluded bonuses and commissions from its calculation of Plaintiff’s

1 and other aggrieved current and former employees' regular rate of pay for overtime
2 compensation purposes, resulting in a failure to pay all minimum wages and overtime wages,
3 where applicable.

4 **Failure to Provide Meal Periods and Authorize and Permit Rest Breaks**

5 **21.** In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants were
6 required to authorize and permit their non-exempt employees to take a paid off duty 10-minute
7 rest break for every four (4) hours worked or major fraction thereof, and were further required
8 to provide their non-exempt employees with an off duty 30-minute meal period for every five
9 (5) hours worked.

10 **22.** As a pattern and practice, Defendants failed to provide Plaintiff and other aggrieved
11 current and former employees with legally-mandated meal periods and failed to authorize and
12 permit legally-mandated rest breaks, and failed to compensate them premium wages. Defendants
13 required Plaintiff and other aggrieved current and former employees to work through, interrupt,
14 or cut short their meal periods and/or rest breaks to complete their daily workload and satisfy the
15 company's expectations, without compensation. Additionally, Defendants required Plaintiff and
16 other aggrieved current and former employees to record their received meal periods despite the
17 fact Defendants were not providing them with legally mandated meal periods. Further,
18 Defendants failed to provide Plaintiff and other aggrieved current and former employees with
19 the requisite number of meal periods and rest breaks when working shifts exceeding greater than
20 10 hours in length.

21 **Failure to Timely Pay Wages During Employment**

22 **23.** At all times relevant herein, Defendants were required to pay their employees within
23 a specified time period pursuant to the mandate of Labor Code § 204.

24 **24.** As a pattern and practice, Defendants regularly failed to timely pay Plaintiff and
25 other aggrieved current and former employees all wages due and owing them within the required
26 time period.

27 **Failure to Timely Pay Wages Upon Termination**

28 **25.** At all times relevant herein, Defendants were required to pay their employees all

wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

26. As a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

Failure to Provide Complete and Accurate Wage Statements

Defendants do not comply with the requirements of Labor Code Section 226 which requires that "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing:

(1) gross wages earned,

(2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) net wages earned,

(6) the inclusive dates of the period for which the employee is paid,

(7) the name of the employee (and the last four digits of his or her social security number or an employee identification number other than a social security number *may* be shown on the itemized statement),

(8) the name and address of the legal entity that is the employer, and

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Defendants fail to provide accurate and complete information, as specified in items specific herein above as set forth in section 226(a).

27. California Labor Code Section 226(e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees." Plaintiff and the other aggrieved employees suffered injuries as defined and set forth in California Labor Code Section 226(e) because, in addition to Defendants' failure to provide accurate and complete information, as specified as set forth herein above (as set forth in section 226(a)), Plaintiff and the other aggrieved employees could not "promptly and easily determine" from the wage statements alone the correct hourly rate in effect during the pay period (i.e., without reference to other documents or information), nor was the overtime rate or the hours worked provided in the statements accurate.

28. During the applicable time period, Defendants failed to provide Plaintiff and the other aggrieved employees with timely and accurate wage and hour statements showing gross wages earned, net wages earned, overtime pay, and all applicable hourly rates in effect during each pay period with the corresponding number of hours worked at each hourly rate by that individual.

29. As alleged herein, Plaintiff and the other aggrieved employees are/were not exempt from the requirements of California's labor laws and regulations. Plaintiff and the aggrieved employees were and will be injured by Defendants' failure to comply with the aforementioned requirements for time records and wage statements.

30. At all times relevant herein, Defendants were required to both provide and keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

31. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiff and other aggrieved current and former employees. For

1 example, Defendants failed in their affirmative obligation to keep accurate records regarding
2 Plaintiff and other aggrieved current and former employees' gross wages earned, total hours
3 worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours
4 worked at each hourly rate.

5 **Failure to Reimburse Business Expenses**

6 **32.** At all times relevant herein, Defendants were required to reimburse its employees
7 for any and all necessary expenditures or losses incurred by the employees in direct
8 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
9 2800 and 2802. Plaintiff and the aggrieved employees incurred expenditures and losses in direct
10 consequences of the discharge of his or her duties pursuant to the mandate of Labor Code §§
11 2800 and 2802.

12 **33.** As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved
13 current and former employees all business expenses incurred and owing them within the required
14 time period, including for the purchase of electronics and supplies, and the use of their personal
15 cellular phones and internet connections to perform their job duties.

16 **Penalties**

17 **34.** Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of
18 other current and former aggrieved employees, requests and is entitled to recover from
19 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well
20 as all statutory penalties against Defendants, and each of them, including but not limited to:

21 **35.** Penalties under California Labor Code § 2699 in the amount of one hundred dollars
22 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
23 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

24 **36.** Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty
25 dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one
26 hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
27 violation;

28 **37.** Penalties under California Labor Code § 210 in addition to, and entirely independent

1 and apart from, any other penalty provided in the California Labor Code in the amount of one
2 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
3 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
4 violation;

5 **38.** Penalties under Labor Code § 1197.1 in the amount of one hundred dollars (\$100)
6 for each aggrieved employee per pay period for the initial violation, and two hundred and fifty
7 dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

8 **39.** Any and all additional penalties as provided by the Labor Code and/or other statutes;
9 and;

10 **40.** Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2802, and 2699, and
11 any other applicable statute.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on his own behalf and as representative of other
14 aggrieved current and former employees pursuant to PAGA, prays for judgment as follows:

- 15 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
16 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 200, 201,
17 202, 203, 204, 208, 210, 218.5, 221, 223, 226, 226.3, 226.7, 500-508, 510, 512(a),
18 515, 551, 552, 558, 558(a)(3), 1174, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1,
19 1198, 2699, 2800, 2802 and 2810.5.
- 20 2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
21 §§ 210, 1194, and 2699, and any other applicable statute; and
- 22 3. For such other and further relief the court may deem just and proper.

23
24 Dated: November 1, 2021

RIGHETTI GLUGOSKI, P.C.

25
26
27 By: 
28 John Glugoski
Attorneys for Plaintiff