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HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Mossamat N. Karim (SBN 329711)
nkarim@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 02 2020

BY 
JULIANA MARISCAL, DEPUTY

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

ELIZABETH GONZALEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a United States Corporation;
and DOES 1 through 100,

Defendants.

Case No. CIVDS2020899

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*); and
(2) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Elizabeth Gonzalez (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Wells Fargo Bank, National Association, a United States
4 Corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 action for recovery of unpaid penalties under California Labor Code §§ 226 and 2698 *et seq.*, in
9 addition to seeking declaratory relief and restitution. This class action is brought pursuant to
10 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
11 of the California Labor Code because the amount in controversy exceeds this Court’s
12 jurisdictional minimum.

13 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
23 the filing of the Complaint in this action, and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by California
27 Labor Code §§ 226 and 2698 *et seq.*

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
2 year preceding the filing of this Complaint and continuing to the present, Defendants did (and do)
3 business by operating an international banking and financial services company, and employed
4 hourly non-exempt employees within San Bernardino County and, therefore, were (and are) doing
5 business in San Bernardino County and the State of California.

6 5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
7 herein, Defendants were licensed to do business in California and the County of San Bernardino,
8 and were the employers of Plaintiff and the members of the Class(es) (as defined in Paragraph
9 13).

10 6. Plaintiff does not know the true names, capacities, relationships and/or the extent
11 of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this
12 Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such
13 fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and
14 capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each
15 fictitiously named defendant is and was responsible in some way for the alleged wage and hour
16 violations and other wrongful conduct which subjected Plaintiff and members of the Class(es), as
17 defined below, to the illegal employment practices, wrongs and injuries complained of herein. All
18 references in this Complaint to “Defendants” shall be deemed to include all DOE Defendants.

19 7. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
2 members of the Class(es) (as defined in Paragraph 13).

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff has been employed by Defendants as a non-exempt employee at their
5 facility in El Monte, California since approximately November 2010. Plaintiff's primary job duty
6 consists of performing customer service at a call center.

7 10. During Plaintiff's employment, Defendants issued facially non-compliant wage
8 statements to Plaintiff, in violation of Labor Code Section 226(a).

9 11. Specifically, the wage statements issued by Defendants to Plaintiff failed to list
10 the rate of pay and corresponding hours for "Language Differential" pay. Instead, Defendants
11 blended the "Language Differential" pay with the employees' base hourly pay such that neither
12 the employees' base rate nor the rate for "Language Differential" was listed on the wage
13 statement. Defendants were obligated to furnish Plaintiff with complete and accurate itemized
14 wage statements which list, among other things, all applicable hourly rates in effect during the
15 pay period and the corresponding number of hours worked at each hourly rate by the employee.
16 See Labor Code § 226(a)(9).

17 12. As a result of these violations, Plaintiff also seeks to represent a group of similarly
18 aggrieved employees which include all of Defendants' current and former non-exempt employees
19 in California who received at least one wage statement that included the line item "Lang Diff incl.
20 in Pay" from September 21, 2019 to the present.

21 **CLASS ACTION ALLEGATIONS**

22 13. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
23 following Class(es) pursuant to § 382 of the California Code of Civil Procedure:

- 24 a. The Wage Statement Class consists of all Defendants' current and former non-
25 exempt employees in California who received at least one wage statement that
26 included the line item "*Lang Diff incl. in Pay" during the one year immediately
27 preceding the filing of the Complaint through the present, and who have not signed
28 an arbitration agreement with Defendants.

1 14. **Numerosity/Ascertainability:** The members of the Class(es) are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Class(es)
3 and subclass(es) are unknown to Plaintiff at this time; however, it is estimated that the Class(es)
4 number greater than five hundred (500) individuals as to each Class. The identity of such
5 membership is readily ascertainable via inspection of Defendants' employment records.

6 15. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
8 situated employees, which predominate over questions affecting only individual employees
9 including, without limitation: whether Defendants furnished legally compliant wage statements
10 to members of the Wage Statement Class pursuant to Labor Code § 226.

11 16. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Class(es). The common
13 questions of law set forth above are numerous and substantial and stem from Defendants' policies
14 and/or practices applicable to each individual class member, such as Defendants' uniform wage
15 statement policies/practices. As such, the common questions predominate over individual
16 questions concerning each individual class member's showing as to his or her eligibility for
17 recovery or as to the amount of his or her damages.

18 17. **Typicality:** The claims of Plaintiff are typical of the claims of the Class(es)
19 because Plaintiff was employed by Defendants as a non-exempt employee in California during
20 the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action.
21 As alleged herein, Plaintiff, like the members of the Wage Statement Class was furnished with
22 inaccurate and incomplete wage statements.

23 18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
24 steps to represent fairly and adequately the interests of the members of the Class(es). Moreover,
25 Plaintiff's attorneys are ready, willing, and able to represent the members of the Class(es) and
26 Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage-
27 and-hour class actions in state and federal courts in the past and are committed to vigorously
28 prosecuting this action on behalf of the members of the Class(es).

1 19. **Superiority:** The California Labor Code is broadly remedial in nature and serves
2 an important public interest in establishing minimum working conditions and standards in
3 California. These laws and labor standards protect the average working employee from
4 exploitation by employers who have the responsibility to follow the laws and who may seek to
5 take advantage of superior economic and bargaining power in setting onerous terms and
6 conditions of employment. The nature of this action and the format of laws available to Plaintiff
7 and members of the Class(es) make the class action format a particularly efficient and appropriate
8 procedure to redress the violations alleged herein. If each employee were required to file an
9 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
10 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
11 their vastly superior financial and legal resources. Moreover, requiring each member of the
12 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
13 employees who would be disinclined to file an action against their former and/or current employer
14 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
15 employment. Further, the prosecution of separate actions by the individual class members, even
16 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
17 with respect to the individual class members against Defendants herein; and which would
18 establish potentially incompatible standards of conduct for Defendants; and/or legal
19 determinations with respect to individual class members which would, as a practical matter, be
20 dispositive of the interest of the other class members not parties to adjudications or which would
21 substantially impair or impede the ability of the class members to protect their interests. Further,
22 the claims of the individual members of the class are not sufficiently large to warrant vigorous
23 individual prosecution considering all of the concomitant costs and expenses attending thereto.
24 As such, the Class(es) identified in Paragraph 13 is maintainable under Section 382 of the Code
25 of Civil Procedure.

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FIRST CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other things, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

22. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

23. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit according to Labor Code §§ 226 and 226.3.

SECOND CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, and acting on behalf of herself and other similarly aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to: (1) \$50.00 for each initial violation and \$100 for each subsequent violation of Labor Code § 226 per employee per pay period

pursuant to Labor Code § 226(e); and (2) \$250 per employee for each initial violation and \$1,000 per employee for each subsequent violation of Labor Code § 226(a) pursuant to Labor Code § 226.3, based on the following Labor Code violations:

- a. Defendants have violated Labor Code §§ 226 and 226.3 by failing to furnish Plaintiff and other aggrieved employees with compliant itemized wage statements.

26. On September 21, 2020, Plaintiff notified Defendant Wells Fargo Bank, National Association via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified above. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

27. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699

PRAYER

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

1. For an order certifying the proposed Class(es);
2. For an order appointing Plaintiff as representative of the Class(es);
3. For an order appointing Plaintiff’s counsel as Counsel for the Class(es);
4. Upon the First Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et seq.*;
5. Upon the Second Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f), including, but not limited to: (1) \$50.00 for each initial violation and

1 \$100 for each subsequent violation of Labor Code § 226 per employee per pay period pursuant to
2 Labor Code § 226(e); and (2) \$250 per employee for each initial violation and \$1,000 per
3 employee for each subsequent violation of Labor Code § 226(a) pursuant to Labor Code § 226.3;

4 6. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
5 2699, and Code of Civil Procedure § 1021.5; and

6 7. For such other and further relief the Court may deem just and proper.

7
8 Dated: November 30, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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10 By:



11 Fletcher W. Schmidt
Attorneys for Plaintiff

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

14 Dated: November 30, 2020

HAINES LAW GROUP, APC

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16 By:



17 Fletcher W. Schmidt
18 Attorneys for Plaintiff
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On November 30, 2020, I served the foregoing document(s) described as:

on the interested party(ies) in this action as follows:

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

Executed on November 30, 2020, at El Segundo, California.

Jonathan Ramirez