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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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and the Plaintiff Classes

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 **06 7924**

11 ANDREA X. BULOW, individually, and
on behalf of all others similarly situated,

Case No.:

CLASS/COLLECTIVE ACTION

12 Plaintiffs,

13 vs.

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

14 WELLS FARGO INVESTMENTS,
15 LLC,

Defendant.

DEMAND FOR JURY TRIAL

16
17
18 Representative Plaintiff alleges as follows:

20 PRELIMINARY STATEMENT

21 1. This is a class/collective action, seeking unpaid wages, including unpaid overtime
22 compensation and interest thereon, liquidated damages and other penalties, injunctive and other
23 equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, various provisions (e.g.,
24 29 U.S.C. §§ 206 and 207) of the Fair Labor Standards Act ("FLSA"). This action further invokes
25 diversity jurisdiction and the supplemental jurisdiction of this Court to consider claims for items
26 such as unpaid wages, including unpaid overtime compensation, reimbursement of business
27 expenses, rest and meal period penalties, waiting time penalties and other penalties, forms of relief
28 and attorneys' fees and costs, arising under California law (e.g., Title 8 of the California Code of

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1 Regulations, California Business and Professions Code §§ 17200, et seq., California Code of Civil
2 Procedure § 1021.5, and the California Labor Code).

3 2. Representative Plaintiff brings this action on behalf of herself and all other persons
4 similarly situated (hereinafter referred to as the “Class Members,” the “Plaintiff Classes” and/or,
5 more specifically, the “FLSA class” and/or the “California class”) who are, or have been, employed
6 by defendant Wells Fargo Investments, LLC to sell and/or assist in selling and/or to market and/or
7 assist in marketing securities and other financial products to the public on defendant’s behalf within
8 the applicable statutory periods.

9 3. The “California class period” is designated as the time from December 28, 2002
10 through the trial date, based upon the allegation that the violations of California’s wage and hour
11 laws, as described more fully below, have been ongoing throughout that time. The “FLSA class
12 period” is designated as the time from December 28, 2003 through the trial date, based upon the
13 allegation that the violations of the FLSA, as described more fully below, have been willful and
14 ongoing throughout that time. During these class periods, Wells Fargo Investments, LLC
15 (hereinafter “Wells Fargo” and/or “defendant”) has had a consistent policy of (1) permitting,
16 encouraging and/or requiring its allegedly-overtime-exempt financial services representatives
17 (including, but not necessarily limited to persons holding positions for defendant entitled “registered
18 representatives,” “financial services representatives” and/or various seniority levels of “financial
19 consultants”), including the representative plaintiff and members of both classes, to work in excess
20 of eight (8) hours per day and in excess of forty (40) hours per week without paying them overtime
21 compensation as required by the FLSA and/or California’s wage and hour laws, (2) requiring the
22 representative plaintiff and California class members to pay for services and supplies necessary to
23 the business matters of the employer, (3) unlawfully denying the representative plaintiff and the
24 California class members statutorily-mandated meal and rest periods, (4) willfully failing to pay
25 compensation (including unpaid overtime) in a prompt and timely manner to the representative
26 plaintiff and/or the California class members whose employment with Defendant terminated and
27 (5) willfully failing to provide the representative plaintiff and the California class members with
28 accurate semi-monthly itemized wage statements reflecting the total number of hours each of them

1 worked, the applicable deductions and the applicable hourly rates in effect during the pay period.

2
3 **INTRODUCTION**

4 4. The Fair Labor Standards Act of 1938, as amended, §§ 201 et seq., (hereinafter
5 referred to as “the Act” or the “FLSA”) provides for minimum standards for both wages and
6 overtime entitlement, and details administrative procedures by which covered work time must be
7 compensated. The enactment of the provisions of the FLSA provide federal courts with substantial
8 authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well as the
9 overtime pay provisions at issue in this Complaint.

10 5. According to Congressional findings, the existence of labor conditions detrimental
11 to the maintenance of the minimum standard of living engenders unfair commercial competition,
12 labor disputes, barriers to commerce and the free flow of goods in commerce, and interferes with the
13 orderly and fair marketing of goods.

14 6. California’s Labor Code and Industrial Welfare Commission Wage Orders provide
15 even more expansive protection to hourly workers, including, but not necessarily limited to,
16 entitlements to overtime pay and work performed beyond eight hours per day and substantial
17 penalties for the denial of rest and meal periods.

18 7. Both federal and California state studies have linked long work hours to increased
19 rates of accident and injury and a loss of family cohesion when either one or both parents are kept
20 away from home for extended periods of time, on either a daily or weekly basis.

21 8. Defendant has sold and continues to sell securities and financial products to the
22 public. The representative plaintiff is informed and believes and, based thereon, alleges that, within
23 each of the class periods, the defendant has operated numerous facilities throughout the United
24 States. In so doing, the defendant has employed hundreds, if not thousands, of individuals in recent
25 years alone in allegedly-exempt financial services representative (as defined above) positions,
26 employment positions which have not, and currently do not, meet any test for exemption from the
27 payment of overtime wages.

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1 9. Despite actual knowledge of these facts and legal mandates, the defendant has
2 enjoyed an advantage over its competition and has disadvantaged its workers by electing not to pay
3 premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to particular financial services
4 representatives, among other employment positions.

5 10. The representative plaintiff is informed and believes and, based thereon, alleges that
6 officers of Wells Fargo knew of these facts and legal mandates, yet, nonetheless, repeatedly
7 authorized and/or ratified the violation of the laws cited herein.

8 11. Despite Wells Fargo's knowledge of the plaintiff classes' entitlement to premium
9 (overtime) pay, expense reimbursement, and/or meal and/or rest periods for all applicable work
10 periods, Wells Fargo failed to provide the same to the members thereof, in violation of California
11 state statutes, California Industrial Welfare Commission Orders, Title 8 of the California Code of
12 Regulations and/or the FLSA. This action is brought to redress and end this long-time pattern of
13 unlawful conduct.

14 JURISDICTION AND VENUE

15 12. This Court has jurisdiction of this action pursuant to the provisions of the Fair Labor
16 Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201 et seq., including under 29 U.S.C. §§ 207, 216,
17 and 217. This Court also has jurisdiction in light of the existence of a controversy arising under the
18 laws of the United States (28 U.S.C. § 1331), diversity jurisdiction under 28 U.S.C. § 1332 and
19 supplemental jurisdiction to consider claims arising under California state law, pursuant to 28 U.S.C.
20 § 1367.

21 13. Venue as to Defendant is proper in this judicial district, pursuant to 28 U.S.C. § 1391.
22 Wells Fargo maintains offices within the Northern District of California, transacts business, has
23 agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The
24 unlawful acts alleged herein have a direct effect on the representative plaintiff and those similarly
25 situated within the State of California and within this judicial district. Wells Fargo operates said
26 facilities and has employed numerous class members in this judicial district as well as throughout
27 the State of California and elsewhere.
28

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PLAINTIFF(S)

14. Representative Plaintiff Andrea Bulow is a natural person and was, during the relevant time period identified herein, employed by Wells Fargo as a financial services representative and was responsible for selling financial securities on behalf of said employer.

15. In said position, the representative plaintiff was repeatedly paid a substandard wage insofar as she was denied full pay for all hours worked, including overtime pay, denied reimbursement for expenses made on behalf of her employer, and was frequently permitted to work, and did work during the class periods, shifts exceeding four hours or a major fraction thereof (of at least three and one-half hours) without being afforded ten minute rest periods and without being afforded mandatory meal periods. The representative plaintiff is informed and believes, and based thereon, alleges that this conduct of Wells Fargo is/was commonplace at every California facility operated thereby.

16. As used throughout this Complaint, the terms "class members" and/or "plaintiff classes" refer to the named plaintiff herein as well as each and every person eligible for membership in one or more of the plaintiff classes, as further described and defined below.

17. At all times herein relevant, the representative plaintiff was, and now is, a person within each of the classes of persons further described and defined herein.

DEFENDANT

18. At all times herein relevant, defendant Wells Fargo Investments, LLC (hereinafter "Wells Fargo" and/or "defendant") was, and is, a corporation doing business as a NASD registered securities brokerage firm with offices located within this judicial district, across California as well as throughout the United States.

19. The representative plaintiff is informed and believes and, on that basis, alleges that defendant has, and does, directly and/or indirectly employ(ed) and/or exercise(d) control over the wages, hours and working conditions of the representative plaintiff and the class members.

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CLASS ACTION ALLEGATIONS

20. The representative plaintiff brings this action individually and as a class action on behalf of all persons similarly situated and proximately damaged by Wells Fargo's conduct, including, but not necessarily limited to, the following plaintiff classes:

FLSA class:

All persons who are, or have been, employed by defendant Wells Fargo Investments, LLC in the United States in positions responsible for selling financial securities and/or other financial products to the public within the applicable statutory period.

California class:

All persons who are, or have been, employed by defendant Wells Fargo Investments, LLC in the State of California in positions responsible for selling financial securities and/or other financial products to the public within the applicable statutory period.

21. Defendant, its officers and directors are excluded from each of these classes.

22. This action has been brought and may properly be maintained as a class/collective action under FRCP Rule 23 and 29 U.S.C. § 216 because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the classes are so numerous that joinder of all members is impractical, if not impossible, insofar as the representative plaintiff is informed and believes and, on that basis, alleges that the total number of class members exceeds hundreds of individuals. Membership in the plaintiff classes will be determined upon analysis of employee and payroll, among other, records maintained by Defendant.

b. Commonality: The representative plaintiff and the class members share a community of interests, in part, since there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under FRCP Rule 23 and 29 U.S.C. § 216(b). These common questions include, but are not necessarily limited to:

1. Whether Defendant violated the FLSA and/or California laws by failing to pay overtime compensation to Wells Fargo financial services representatives who worked in excess of 40 hours per week;

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2. Whether Defendant violated the applicable California Wage Order(s) and/or Labor Code § 510 by failing to pay overtime compensation to Wells Fargo financial services representatives who worked in excess of 40 hours per week and/or eight (8) hours a day;
3. Whether Defendant violated California Business and Professions Code § 17200 by failing to pay overtime compensation to financial services representatives who worked in excess of forty (40) hours per week and/or eight (8) hours a day;
4. Whether Defendant violated Cal. Lab. Code §§ 200, 202, 204 and portions of the applicable California Wage Order(s) by subjecting its financial services representatives to deductions from wages, including commissions and losses claimed by Defendant's customers;
5. Whether Defendant violated Cal. Lab. Code §§ 400-410 and 2802 by charging and/or otherwise requiring its financial services representatives to pay all or a portion of the compensation of other agents/employees of the Defendant, as well as other normal business expenses of the Defendant;
6. Whether Defendant violated, and continues to violate, California Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and/or rest periods to the California class members;
7. Whether Defendant failed to post or keep posted a notice explaining the overtime pay rights provided by the FLSA in any area where Plaintiffs and Collective Action Members are/were employed, in violation of C.F.R. § 516.4;
8. Whether Defendant violated, and continues to violate, California Labor Code § 1174 by failing to keep accurate records of its California financial services representatives' hours of work;
9. Whether Defendant violated, and continues to violate, California Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time particular California class members' employment with Defendant terminated;
10. Whether Defendant violated, and continues to violate, California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to class members of total hours worked and all applicable hourly rates in effect during the pay period;
11. Whether the representative plaintiff and the California class members are entitled to "waiting time" penalties/wages pursuant to California Labor Code § 203.

c. Typicality: The representative plaintiff's claims are typical of the claims of each of the plaintiff classes. The representative plaintiff and all members of the plaintiff classes sustained injuries and damages arising out of and caused by Wells Fargo's common course of conduct in violation of state and federal law, as alleged herein.

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- 1 d. Superiority of Class Action: Since the damages suffered by individual class
2 members, while not inconsequential, may be relatively small, the expense and
3 burden of individual litigation by each member makes, or may make it,
4 impractical for class members to seek redress individually for the wrongful
5 conduct alleged herein. Should separate actions be brought or be required to
6 be brought by each individual class member, the resulting multiplicity of
7 lawsuits would cause undue hardship and expense for the Court and the
8 litigants. The prosecution of separate actions would also create a risk of
9 inconsistent rulings, which might be dispositive of the interests of other class
10 members who are not parties to the adjudications and/or may substantially
11 impede their ability to adequately protect their interests. Moreover, the
12 representative plaintiff is informed and believes, and based thereon alleges,
13 that Defendant, in refusing to pay overtime to the FLSA class members and
14 the California class members, has acted and refused to act on grounds
15 generally applicable to all claims, thereby making appropriate injunctive and
16 monetary relief for all members of each class. Consequently, class
certification is proper under FRCP Rule 23 and 29 U.S.C. § 216(b).
- 17 e. Adequacy of Representation: The representative plaintiff in this class action
18 is an adequate representative of each of the plaintiff classes, in that the
19 representative plaintiff's claims are typical of those of the plaintiff classes
20 and the representative plaintiff has the same interests in the litigation of this
21 case as those class members. The representative plaintiff is committed to
22 vigorous prosecution of this case, and has retained competent counsel,
23 experienced in litigation of this nature. The representative plaintiff is not
24 subject to any individual defenses unique from those conceivably applicable
25 to either of the classes as a whole. The representative plaintiff anticipates no
26 management difficulties in this litigation.

16 COMMON FACTUAL ALLEGATIONS

17 23. As described herein, Wells Fargo has, for years, knowingly failed to adequately
18 compensate those financial services representatives within the class definitions identified above for
19 premium (overtime) wages due under the FLSA (29 U.S.C. §§ 206 and 207), California Labor Code
20 § 510 and/or applicable California Wage Orders. Moreover, Wells Fargo has knowingly failed to
21 provide its California financial services representatives with mandatory meal and rest periods,
22 thereby enjoying a significant competitive edge over other securities brokerage firms.

23 24. Even upon the termination or resignation of the employment of the representative
24 plaintiff and numerous California class members during the California class period, Wells Fargo
25 declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

26 25. Additionally, according to Defendant's policy, California class members were
27 required to pay for services and supplies related to the business of their employer.

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1 26. Through the misclassification of the representative plaintiff and the class members
2 as exempt employees, Wells Fargo has also incorrectly and unlawfully treated the California class
3 members as exempt from the meal and rest period requirements established by California Labor
4 Code §§ 226.7 and 512 and §§ 11 and 12 of the applicable California Wage Orders. The
5 representative plaintiff and the California class members are and/or were unlawfully denied meal
6 breaks and rest periods required by law.

7 27. Moreover, California Labor Code §§ 201 and 202 require Wells Fargo to pay all
8 wages due to members of the California class immediately upon discharge. California Labor Code
9 § 203 provides that, if an employer willfully fails to timely pay such wages, the employer must, as
10 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
11 action is commenced, for a period not to exceed 30 days of wages.

12 28. Furthermore, despite its knowledge of the representative plaintiff's and the California
13 class members' entitlement to premium (overtime) pay for excess hours worked, Wells Fargo
14 violated California Labor Code § 1174[d] by failing to provide or require the use, maintenance or
15 submission of time records by members of the California class. Wells Fargo also failed to provide
16 the representative plaintiff and members of the California class with accurate semi-monthly itemized
17 wage statements of the total number of hours worked by each, and all applicable hourly rates in
18 effect during the pay period, in violation of California Labor Code § 226. In so doing, Defendant
19 has not only failed to pay its workers the full amount of compensation due, it has, until now,
20 effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the
21 magnitude (the full number of hours worked) and financial impact of its wrongdoing.

22 29. The representative plaintiff and all persons similarly situated in the California class
23 are entitled to unpaid compensation, yet, to date, have not received such compensation despite the
24 termination of many such class members' employment with Wells Fargo.

25 30. More than 30 days have passed since Representative Plaintiff Andrea Bulow and
26 numerous California class members have left Wells Fargo's employ.

27 31. As a consequence of Wells Fargo's willful conduct in not paying compensation for
28 all hours worked, numerous California class members are entitled to 30 days wages as penalty under

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1 Labor Code section 203, together with interest thereon and attorneys' fees and costs.

2 32. As a direct and proximate result of Wells Fargo's unlawful conduct, as set forth
3 herein, the representative plaintiff and class members have sustained damages, as described above,
4 including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be
5 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
6 forth herein, the representative plaintiff and many class members herein are entitled to recover
7 "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties for failure
8 to provide semi-monthly statements of hours worked and all applicable hourly rates (pursuant to
9 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate result
10 of Defendant's unlawful conduct, as set forth herein, the representative plaintiff and class members
11 are entitled to recover attorneys' fees and costs, pursuant to 29 U.S.C. § 216(b), California Labor
12 Code §§ 218.5 and 1194 and/or California Civil Code § 1021.5, among other authorities.

13
14 **FIRST CLAIM FOR RELIEF**
15 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
16 **(FLSA Class Only)**

17 33. The representative plaintiff incorporates in this cause of action each and every
18 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
19 herein.

20 34. At all relevant times hereto, Defendant has been, and is, an employer engaged in
21 commerce, as defined under 29 U.S.C. § 203(b) and (d). As such, Wells Fargo employed members
22 of the FLSA class as financial services representatives, employment positions which engaged the
23 employees in commerce, as defined under 29 U.S.C. §§ 203(b), (e), (g) and 29 U.S.C. § 207(a)(1).
24 At all times relevant hereto, Defendant has been an "enterprise engaged in commerce or in the
25 production of goods for commerce," as defined under 29 U.S.C. §203(s)(1).

26 35. The representative plaintiff is informed and believes and, based thereon, alleges that
27 Wells Fargo has required, or requires, the FLSA class members, as part of their employment, to work
28 without additional compensation, such as overtime, in excess of the forty hours per week maximum
under 29 U.S.C. § 207(a)(1). That Section provides the following:

1 Except as otherwise provided in this section, no employer shall
2 employ any of his employees...for a workweek longer than forty
3 hours unless such employee receives compensation for his
4 employment in excess of the hours above specified at a rate which
is not less than one and one-half times the regular rate at which he
is employed.

5 36. Indeed, in the performance of their duties for Defendant, members of the FLSA class
6 often did work well over forty hours per week, yet did not receive overtime compensation for the
7 work, labor and services they provided to Defendant, as required by the FLSA, 29 U.S.C. §§ 206 and
8 207. The precise number of unpaid overtime hours will be proven at trial.

9 37. The representative plaintiff proposes to undertake appropriate proceedings to have
10 such FLSA class members aggrieved by Defendant's unlawful conduct notified of the pendency of
11 this action and join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents
12 to joinder with the Court.

13 38. Defendant's violations of the FLSA were willful violations of the FLSA, within the
14 meaning of 29 U.S.C. § 255(a).

15 39. As a result of the foregoing, the representative plaintiff seeks judgment against
16 Defendant on her own behalf, and on behalf of those FLSA class members similarly situated who
17 file written consents of joinder in this action, for all unpaid wages, including overtime wages owed
18 by Defendant to the representative plaintiff and the FLSA class, pursuant to 29 U.S.C. §§ 206 and
19 207, together with an award of an additional equal amount as liquidated damages, and costs, interest,
20 and reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

21
22 **SECOND CLAIM FOR RELIEF**
23 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
(California Class Only)

24 40. The representative plaintiff incorporates in this cause of action each and every
25 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
26 herein.

27 41. During the California class period, the representative plaintiff and the California class
28 members worked, on many occasions, in excess of eight (8) hours in a workday and/or forty (40)

1 hours in a workweek. The precise number of overtime hours will be proven at trial.

2 42. During said time period, Wells Fargo refused to compensate the representative
3 plaintiff and/or the California class members for all of the overtime wages earned in violation of
4 applicable Wage Order(s) and the provisions of the California Labor Code.

5 43. At all relevant times, Defendant was aware of, and was under a duty to comply with,
6 the overtime provisions of the California Labor Code, including, but not limited to, the following:

- 7 a. Labor Code § 510: “Any work in excess of eight hours in one workday
8 and any work in excess of 40 hours in any one workweek and the first eight
9 hours worked on the seventh day of work in any one workweek shall be
10 compensated at the rate of no less than one and one-half times the regular rate
11 of pay for an employee” (*effective at all times herein relevant*);
- 12 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
13 wage, any employee receiving less than the legal minimum wage or the legal
14 overtime compensation applicable to the employee is entitled to recover in
15 a civil action the unpaid balance of the full amount of this minimum wage or
16 overtime compensation, including interest thereon, reasonable attorney’s fees,
and costs of suit. (*effective at all times herein relevant*);
- 17 c. Labor Code § 1198: “[t]he maximum hours of work and the standard
18 conditions of labor fixed by the commission shall be the maximum hours of
19 work and the standard conditions of labor for employees. The employment
20 of any employee for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful.” (*effective at all times
22 herein relevant*).

23 44. By refusing to compensate the representative plaintiff and the California class
24 members for overtime wages earned, Defendant violated those California Labor Code provisions
25 cited herein, as well as various California Industrial Welfare Commission Wage Orders.

26 45. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
27 the representative plaintiff and the California class members have sustained damages, including loss
28 of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at
trial, and are entitled to recover attorneys’ fees and costs of suit.

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THIRD CLAIM FOR RELIEF
FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND
(California Class Only)

46. The representative plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

47. During the California class period, Defendant required the representative plaintiff and the California class members to pay additional sums for items and services necessary to perform the duties required of financial services representatives, as well as other normal business expenses.

48. Thus, the representative plaintiff and the California class members had expenditures and losses which were incurred in direct consequence of the discharge of their duties and/or of their obedience to the directions of their employer which have not yet been reimbursed by Defendant.

49. At all relevant times, Defendant was aware of and was under a duty to comply with various provisions of California Labor Code §§ 406, 407 and 2802(a).

50. California Labor Code § 406 provides:

Any property put up by an employee, or applicant as a part of the contract of employment, directly or indirectly, shall be deemed to be put up as a bond and is subject to the provisions of this article whether the property is put up on a note or as a loan or an investment and regardless of the wording of the agreement under which it is put up.

51. California Labor Code § 407 provides:

Investments and the sale of stock or an interest in a business in connection with the securing of a position are illegal as against the public policy of the State and shall not be advertised or held out in any way as a part of the consideration for any employment.

52. California Labor Code § 407 provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

53. By requiring the representative plaintiff and the California class members to incur uncompensated expenses in direct consequence of the discharge of their duties, the representative plaintiff and members of the California class were forced and/or brought to contribute to the capital

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1 and expenses of the Defendant's business which is legally a cash bond and which must be refunded
2 by Defendant to each California class member.

3 54. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
4 judgment rate of 10% simple interest per annum from the date of the expenditure, plus attorneys'
5 fees to secure reimbursement.

6 55. As a result of the foregoing, the representative plaintiff seeks judgment against
7 Defendant on her own behalf, and on behalf of those California class members similarly situated for
8 reimbursement for expenditures or losses incurred by members of this class in direct consequence
9 of the discharge of his/her/their duties and/or of his/her/their obedience to the directions of the
10 employer. The representative plaintiff further demands the return of all cash bonds or other coerced
11 investments in the business of the employer, with interest at the statutory rate and attorneys' fees.

12
13 **FOURTH CLAIM FOR RELIEF**
14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(California Class Only)**

16 56. The representative plaintiff incorporates in this cause of action each and every
17 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
18 herein.

19 57. California Labor Code § 226(a) provides:

20 Each employer shall semimonthly, or at the time of each payment of
21 wages, furnish each of his or her employees either as a detachable
22 part of the check, draft or voucher paying the employee's wages, or
23 separately when wages are paid by personal check or cash, an
24 itemized wage statement in writing showing: (1) gross wages earned;
25 (2) total number of hours worked by each employee whose
26 compensation is based on an hourly wage; (3) all deductions;
27 provided, that all deductions made on written orders of the employee
28 may be aggregated and shown as one item; (4) net wages earned;
(5) the inclusive date of the period for which the employee is paid; (6)
the name of the employee and his or her social security number; and
(7) the name and address of the legal entity which is the employer.

29 58. Moreover, California Labor Code § 226(e) provides:

30 An employee suffering injury as a result of a knowing and intentional
31 failure by an employer to comply with subdivision (a) is entitled to
32 recover the greater of all actual damages or fifty dollars (\$50) for the

1 initial pay period in which a violation occurs and one hundred dollars
2 (\$100) per employee for each violation in a subsequent pay period,
3 not exceeding an aggregate penalty of four thousand dollars (\$4,000),
4 and is entitled to an award of costs and reasonable attorney's fees.

59. Finally, California Labor Code § 1174 provides:

5 Every person employing labor in this state shall: (d) Keep, at a central
6 location in the state...payroll records showing the hours worked daily
7 by and the wages paid to...employees.... These records shall be kept
8 in accordance with rules established for this purpose by the
9 commission, but in any case shall be kept on file for not less than two
10 years.

60. The representative plaintiff seeks to recover actual damages, costs and attorneys' fees
11 under these provisions on behalf of herself and on behalf of the California class.

61. Wells Fargo failed to provide timely, accurate itemized wage statements to the
12 representative plaintiff and the California class in accordance with Labor Code § 226(a) and the IWC
13 Wage Orders. None of the statements provided by Defendant has accurately reflected actual gross
14 wages earned, net wages earned, or the appropriate deductions of such class members.

62. As a direct and proximate result of Defendant's unlawful conduct, as set forth
15 herein, the representative plaintiff and the California class members have sustained damages in an
16 amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

17
18 **FIFTH CLAIM FOR RELIEF**
19 **FAILURE TO PAY WAGES ON TERMINATION**
20 **(California Class Only)**

63. The representative plaintiff incorporates in this cause of action each and every
21 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
22 herein.

64. California Labor Code § 203 provides that:

23 "If an employer willfully fails to pay, without abatement or reduction,
24 in accordance with Sections 201, 201.5, 202, and 205.5, any wages of
25 an employee who is discharged or who quits, the wages of the
26 employee shall continue as a penalty from the due date thereof at the
27 same rate until paid or until an action therefor is commenced; but the
28 wages shall not continue for more than 30 days."

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1 65. The representative plaintiff and numerous California class members were employed
2 by Wells Fargo during the class period and were thereafter terminated or resigned from their
3 positions, yet they were not paid all premium (overtime) wages due upon said termination or within
4 seventy-two (72) hours of said resignation of employment therefrom. Said non-payment was the
5 direct and proximate result of a willful refusal to do so by Defendant.

6 66. More than thirty days has elapsed since the representative plaintiff and numerous
7 California class members were involuntarily terminated or voluntarily resigned from Defendant's
8 employ.

9 67. As a direct and proximate result of Defendant's willful conduct in failing to pay said
10 class members for all hours worked, the representative plaintiff and numerous California class
11 members are entitled to recover "waiting time" penalties of thirty days' wages pursuant to Labor
12 Code § 203, in an amount to be established at trial, together with interest thereon and attorneys' fees
13 and costs.

14
15 **SIXTH CLAIM FOR RELIEF**
16 **UNFAIR BUSINESS PRACTICES**
(California Class Only)

17 68. The representative plaintiff incorporates in this cause of action each and every
18 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
19 herein.

20 69. The representative plaintiff further brings this cause of action seeking equitable and
21 statutory relief to stop the misconduct of Wells Fargo, as complained of herein, and to seek
22 restitution from Defendant of amounts acquired through the unfair, unlawful and fraudulent business
23 practices described herein.

24 70. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
25 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
26 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
27 cited herein.

28 ////

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71. Defendant’s knowing failure to adopt policies in accordance with and/or to adhere to these laws, all of which are binding upon and burdensome to Defendant’s competitors, engenders an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as set forth in California Business & Professions Code §§ 17200-17208.

72. Wells Fargo has clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to the representative plaintiff and to class members herein alleged, as incidental to its business operations, rather than accept the alternative costs of full compliance with fair, lawful and honest business practices ordinarily borne by responsible competitors of Defendant and as set forth in legislation and the judicial record.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, on behalf of herself and the plaintiff classes, prays for judgment and the following specific relief against **defendant Wells Fargo Investments, LLC, as follows:**

1. That the Court declare, adjudge and decree that this action is a proper class/collective action and certify the proposed FLSA class, the California class and/or any other appropriate subclasses under FRCP Rule 23 and/or 29 U.S.C. § 216;

2. That the Court declare, adjudge and decree that Defendant violated the overtime provisions of the FLSA, the California Labor Code and any applicable California Industrial Wage Commission Wage Orders as to the representative plaintiff and the plaintiff classes;

3. That the Court declare, adjudge and decree that Defendant willfully violated its legal duties to pay overtime under the FLSA, the California Labor Code and any applicable California Industrial Wage Commission Wage Orders;

4. That the Court declare, adjudge and decree that (a) the representative plaintiff and the FLSA class members were, at all times relevant hereto, and are still, entitled to be paid overtime for work beyond 40 hours in a week, and (b) the amounts to which the representative plaintiff and the FLSA class members are entitled is to be doubled as liquidated damages and awarded thereto;

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1 5. That the Court make an award to the representative plaintiff, the FLSA class and the
2 California class of damages and/or restitution for the amount of unpaid overtime compensation,
3 including interest thereon, and penalties in an amount to be proven at trial;

4 6. That the Court make an award to the representative plaintiff and the California class
5 of reimbursement for all employer-related expenses;

6 7. That the Court make an award to the representative plaintiff and the California class
7 of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
8 period was not provided;

9 8. That the Court make an award to the representative plaintiff and the California class
10 of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
11 period was not provided;

12 9. That the Court order Defendant to pay restitution to the representative plaintiff and
13 the California class due to Defendant's unlawful activities, pursuant to California Business and
14 Professions Code §§ 17200-08;

15 10. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful
16 activities in violation of California Business and Professions Code §§ 17200 et seq.;

17 11. For all other Orders, findings and determinations identified and sought in this
18 Complaint;

19 12. For interest on the amount of any and all economic losses, at the prevailing legal rate;

20 13. For reasonable attorneys' fees, pursuant to 29 U.S.C. § 216(b), California Labor Code
21 § 1194 and/or California Civil Code § 1021.5; and

22 14. For costs of suit and any and all such other relief as the Court deems just and proper.

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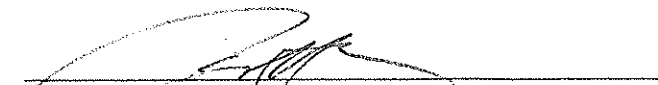
JURY DEMAND

The representative plaintiff and the plaintiff classes hereby demand trial by jury on all issues triable of right by jury.

Dated: December 28, 2006

SCOTT COLE & ASSOCIATES, APC

By:



Scott Edward Cole, Esq.
Attorneys for the Representative Plaintiff
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