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9 **LEAD ATTORNEY IN CHARGE FOR**  
10 **PLAINTIFF AND CLASS MEMBERS**

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20 LOCAL COUNSEL:  
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28 Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Jordan Kerness, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

Wells Fargo Bank, N.A.,

Defendant.

No.:

**COLLECTIVE ACTION COMPLAINT**

**(JURY TRIAL REQUESTED)**

1 Plaintiff, Jordan Kerness, individually and on behalf of all other persons similarly  
2 situated, known and unknown, through his attorneys, complains against Defendant Wells  
3 Fargo Bank, N.A. (“Defendant”), as follows:

4 **NATURE OF PLAINTIFF’S CLAIMS**

5 1. This lawsuit arises under the Fair Labor Standards Act, 29 U.S.C. § 201  
6 *et seq.* (“FLSA”), for Defendant’s failure to pay Plaintiff and other similarly situated  
7 persons all overtime pay for all time worked in excess of forty (40) hours per week.

8 2. Defendant employs the telephone-dedicated workers who are the putative  
9 class members in this lawsuit.

10 3. Plaintiff worked as a telephone-dedicated employee in the position of  
11 handling credit card customer service telephone calls at Wells Fargo’s call center on  
12 Rose Garden Lane in Phoenix, Arizona from approximately May 2013 to October 2014.

13 4. Plaintiff and similarly situated employees had to be ready to handle a call  
14 at the start of their scheduled shift times. In order to be ready to handle a call, Plaintiff  
15 and similarly situated employees had to first boot up their computers and open various  
16 software programs necessary for handling a call.

17 5. Plaintiff and similarly situated employees had to be available to handle  
18 call until the end of their scheduled shift time.

19 6. Defendant knowingly required and/or permitted Plaintiff and other  
20 similarly situated telephone-dedicated employees to perform unpaid work before and  
21 after their scheduled shift times. This unpaid work includes but is not limited to booting  
22 up computers, initializing several software programs, reading company issued emails and  
23 instructions at the beginning of their shifts, and completing customer service calls, securing  
24 their workstations, locking their desk drawers, and securing any customer or proprietary  
25 information at the end of their shifts.

26 7. The amount of uncompensated time Plaintiff and those similarly situated to  
27 him spend or have spent on these unpaid work activities averages approximately 5-10  
28 minutes per day.



1 15. At all material times, Defendant has been an enterprise in commerce or in  
2 the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because  
3 it has had employees engaged in commerce. 29 U.S.C. § 203(s)(1).

4 16. Furthermore, Defendant has had, and continues to have, an annual gross  
5 business volume in excess of \$500,000.

6 17. At all relevant times, Defendant was an “employer” of Plaintiff and other  
7 similarly situated persons, as that term is defined by Section 203(d) of the FLSA, 29 U.S.C.  
8 § 203(d).

9 18. At all material times, Plaintiff and FLSA Class Members were individual  
10 employees who engaged in commerce or in the production of goods for commerce as  
11 required by 29 USC § 206-207.

12 19. Further, at all material times, Defendant has operated as a “single enterprise”  
13 within the meaning of 3(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1). That is, Defendant  
14 performs related activities through unified operation and common control for a common  
15 business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973); *Chao*  
16 *v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914–15 (9th Cir. 2003).

17 **FACTUAL ALLEGATIONS**

18 **A. *Defendant’s Practice of Requiring and/or Permitting Telephone-Based***  
19 ***Hourly Employees to Work Before the Start of and After the End of Their***  
20 ***Scheduled Shift Time***

21 20. Wells Fargo operates and has operated a “contact center” or “call center” on  
22 Rose Garden Lane in Phoenix, Arizona where telephone-dedicated employees similar to  
23 Plaintiff handle phone calls with Wells Fargo’s consumer credit card customers.

24 21. Plaintiff regularly worked 40 hours or more during his tenure at the call  
25 center operated by Wells Fargo on Rose Garden Lane in Phoenix, Arizona Wells Fargo  
26 paid Plaintiff an hourly rate of \$13.52 per hour and then approximately \$14.60 per hour.

1           22. Defendant's policy and practice permits and/or requires telephone-based  
2 employees to be logged into their phones by the employee's scheduled start time.

3           23. At the call center located on Rose Garden Lane in Phoenix, Arizona, Wells  
4 Fargo required Plaintiff and similarly situated phone-based employees to be ready to  
5 handle a call at the start of their scheduled shift time.

6           24. In order to be ready to handle a call, Plaintiff and similarly situated  
7 telephone-dedicated employees had to be logged into Wells Fargo's telephone systems and  
8 call queue. In order to be logged into Wells Fargo's telephone systems and call queue,  
9 Defendant required and/or permitted Plaintiff and similarly situated telephone-based  
10 employees to arrive at their work station prior to their scheduled shift time and boot up  
11 computers, initialize several software programs, and read company emails and/or  
12 instructions.

13           25. Defendant's policy and practice results in telephone-based employees,  
14 including the Plaintiff, booting up their computers, opening and initializing several  
15 software programs and/or reading company emails and instructions prior to their start of  
16 their scheduled shift time.

17           26. Defendant's policy and practice disciplines telephone-based employees if  
18 they are not logged into their phones and ready to handle calls by the start of their scheduled  
19 shift time.

20           27. Defendant did not instruct Plaintiff and similarly situated telephone-based  
21 employees to not log into their computers or telephone, or to not read company emails prior  
22 to the start of their scheduled shift time. Rather, Defendant required, permitted and/or  
23 allowed Plaintiff and the putative class members to work prior to and after their scheduled  
24 shift time.

25           28. At the end of their shift, Plaintiff and similarly situated phone-based  
26 employees at the call center located on Rose Garden Lane in Phoenix, Arizona were  
27 expected to be available to handle a call until the end of their scheduled shift time. As a  
28 result, Plaintiff and similarly situated telephone-based employees regularly worked past

1 the end of their scheduled shift times when logged off their software programs and  
2 computers and secured their work stations and Wells Fargo's customer and proprietary  
3 information pursuant to Wells Fargo's policies and practices.

4 29. Plaintiff and similarly situated phone-based employees at Wells Fargo's call  
5 center on Rose Garden Lane in Phoenix, Arizona had their pre- and/or post-shift work  
6 rounded away from their pay and were regularly not paid for some or all of their work  
7 activities prior to the beginning of their shifts or after the end of their shifts.

8 30. Prior to starting work on the call center floor, Plaintiff and other similarly  
9 situated telephone-based employees were and are interviewed by employees and managers  
10 of Wells Fargo.

11 31. Wells Fargo had the power to hire and fire Plaintiff and other persons  
12 similarly situated. Wells Fargo controlled and set the schedules for Plaintiff and similarly  
13 situated telephone-dedicated workers at the call center located on Rose Garden Lane in  
14 Phoenix, Arizona.

15 32. At the Wells Fargo call center where Plaintiff Kerness worked, Wells Fargo  
16 had managers on the floor of the call center during the workday, managing the work  
17 activities of the Plaintiff and other similarly situated persons.

18 33. Defendant does not allow telephone-based employees to use its phones and  
19 computers for any personal use. Additionally, Defendant generally prohibits and does not  
20 allow telephone-based employees to use their own personal cell phones on the call center  
21 floor. Under Defendant's policies and practices, telephone-based employees are required  
22 to store their personal cell phones during the work day and can generally only use them on  
23 breaks and off the call center floor.

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

25 34. Defendant monitored, directed and controlled the work activities of Plaintiff  
26 and other similarly situated persons, including the unpaid work at issue.

27 35. At the Wells Fargo call center on Rose Garden Lane in Phoenix, Arizona  
28 where Plaintiff worked, Wells Fargo's supervisors and team leads on the call center floor

1 could and did regularly see with their own eyes that Plaintiff and similarly situated  
2 telephone-based employees arrived at their work stations before the start of their scheduled  
3 shift time, logged into Wells Fargo's computers, and began working on their computers  
4 prior to the start of their scheduled shift time.

5 36. At the Wells Fargo call center where Plaintiff worked, Wells Fargo's  
6 supervisors and team leads on the call center floor could and did regularly see with their  
7 own eyes that Plaintiff and similarly situated telephone-based employees worked past the  
8 end of their scheduled shift time handling phone calls and securing their work stations.

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

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

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

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

28

1           41. Defendant knowingly required and/or permitted Plaintiff and those similarly  
2 situated to him to perform unpaid work before and after the start and end times of their  
3 shifts, including booting up computers, initializing several software programs, and reading  
4 company issued emails and instructions prior to the start of their scheduled shift time, as  
5 well as completing customer service calls, closing down the software programs, logging  
6 off the system, securing their workstations, locking their desk drawers, and securing any  
7 customer or proprietary information after the end of their scheduled shift times.

8           42. The amount of uncompensated time Plaintiff and those similarly  
9 situated to him spend or have spent on these required and unpaid work activities  
10 averages approximately 5-10 minutes per day and frequently more.

11           ***C. Defendant's Failure to Pay Overtime Wages to Its Telephone-Based***  
12           ***Hourly Employees***

13           43. Defendant determined the rate of pay for Plaintiff and other similarly situated  
14 persons.

15           44. Defendant's managers and supervisors reviewed and approved Plaintiff and  
16 other similarly situated persons' time records prior to receiving their paychecks.

17           45. Defendant supervised and controlled the work schedule of Plaintiff and other  
18 similarly situated persons.

19           46. Plaintiff and those employees similarly situated are individuals who were, or  
20 are, employed by Defendant in customer service, sales, and similar phone-based  
21 positions at Wells Fargo's Rose Garden Lane call center and who had their pre- and/or  
22 post-shift work rounded away from their pay and were not paid for some or all of their work  
23 activities prior to the beginning of their shifts or after the end of their shifts.

24           47. Plaintiff and the other employees are also similar because Defendant did not  
25 pay them for all time they actually worked.

26           48. The net effect of Defendant's policies and practices, instituted and approved  
27 by company managers and supervisors, is that Defendant willfully failed to pay overtime  
28



1 compensation to Plaintiff and others similarly situated, and willfully failed to keep accurate  
2 time records to save payroll costs. Defendant thus enjoyed ill-gained profits at the expense  
3 of its hourly employees.

4 49. Plaintiff and others similarly situated at times work or worked in excess of  
5 forty hours per week for Defendant in a given workweek.

6 50. Defendant's policy and practice of requiring and/or permitting its employees,  
7 including Plaintiff and other non-exempt, hourly employees, to perform work without pay  
8 for such work performed, violates Section 6 of the FLSA, 29 U.S.C. § 206.

9 51. Defendant's policy and practice of requiring its employees to perform work  
10 without pay in many instances has caused and continues to cause Plaintiff and certain other  
11 similarly situated hourly employees to work in excess of forty hours per week, without  
12 being properly compensated at a wage of 1.5 times their respective hourly rate for such  
13 work performed, as required by Section 7 of the FLSA, 29 U.S.C. § 207.

14 52. Defendant's failure to compensate its non-exempt, hourly call center  
15 employees with the full amount of the applicable regular wage or overtime wage has caused  
16 Plaintiff and other similarly situated non-exempt call center employees to suffer harm.

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

19 **COLLECTIVE ACTION ALLEGATIONS**

20 54. Plaintiff brings Count I of this Complaint as a collective action on behalf of  
21 himself and all other current and former hourly employees of Defendant at its Rose Garden  
22 Lane call center in Phoenix, Arizona who Defendant required and/or permitted to perform  
23 the work described herein without pay at any time during the three years prior to the  
24 commencement of the action to present at call centers owned by Wells Fargo.

25 55. Plaintiff has actual knowledge that FLSA Class Members have also been  
26 denied overtime pay for hours worked over forty hours per workweek. That is, Plaintiff  
27 worked with other telephone dedicated employees who worked at the call center on Rose  
28

1 Garden Lane in Phoenix, Arizona. As such, he has first-hand personal knowledge that the  
2 same pay violations occurred to other class members.

3 56. Other employees similarly situated to Plaintiff work or have worked at Wells  
4 Fargo call centers, but were not paid overtime at the rate of one and one-half their regular  
5 rate when those hours exceeded forty hours per workweek.

6 57. Although Defendant required and/or permitted the FLSA Class Members to  
7 work in excess of forty hours in a workweek, Defendant has denied them full compensation  
8 for their hours worked over forty. Defendant has also denied them full compensation at  
9 the federally mandated minimum wage rate.

10 58. FLSA Class Members perform or have performed the same or similar work  
11 as Plaintiff.

12 59. FLSA Class Members regularly work or have worked in excess of forty hours  
13 during a workweek.

14 60. FLSA Class Members are not exempt from receiving overtime pay at the  
15 federally mandated wage rate under the FLSA.

16 61. As such, FLSA Class Members are similar to Plaintiff in terms of job duties,  
17 pay structure, and the denial of overtime wages.

18 62. Defendant's failure to pay the overtime compensation wage rate required by  
19 the FLSA results from generally applicable policies or practices, and does not depend on  
20 the personal circumstances of the FLSA Class Members.

21 63. The experiences of Plaintiff, with respect to his pay, are typical of the  
22 experiences of the FLSA Class Members.

23 64. The specific job titles or precise job responsibilities of each FLSA Class  
24 Member do not prevent collective treatment.

25 65. All FLSA Class Members, irrespective of their particular job requirements,  
26 are entitled to overtime compensation for hours worked in excess of forty during a  
27 workweek.

28

1           66. Although the exact amount of damages may vary among FLSA Class  
2 Members, the damages for the FLSA Class Members can be easily calculated by a simple  
3 formula. The claims of all FLSA Class Members arise from a common nucleus of facts.  
4 Liability is based on a systematic course of wrongful conduct by Defendant that caused  
5 harm to all FLSA Class Members.

6           67. As such, Plaintiff brings his FLSA overtime as a collective action on behalf  
7 of the following class, and Plaintiff's Counsel seek to send notice of this lawsuit to the  
8 following described persons:

9                   All persons who worked for Defendant as telephone-dedicated  
10 employees, however titled, who were compensated, in part or  
11 in full, on an hourly basis at the Wells Fargo Rose Garden Lane  
12 call center at any time between three years preceding the filing  
13 of this Complaint and the present who did not receive the full  
amount of overtime wages earned and owed to them.

14           68. There are questions of law or fact common to the employees described in  
15 paragraph 67.

16           69. Plaintiff is similarly situated to the employees described in paragraph 67, as  
17 Plaintiff's claims are typical of the claims of those persons.

18           70. Plaintiff's claims or defenses are typical of the claims or defenses of the  
19 persons described in paragraph 67.

20           71. This is not a collusive or friendly action. Plaintiff has retained counsel  
21 experienced in complex employment litigation, and Plaintiff and his counsel will fairly and  
22 adequately protect the interests of the persons described in paragraph 67.

23           72. A collective action is the most appropriate method for the fair and efficient  
24 resolution of the matters alleged in Count I.

25           73. At all relevant times, Defendant employed Plaintiff and the persons described  
26 in paragraph 67.

1           74.    At all relevant times, Defendant paid Plaintiff and the persons described in  
2 paragraph 67 to work.

3           75.    At all relevant times, Defendant has been an “employer” of Plaintiff and the  
4 persons described in paragraph 67, as the term “employer” is defined by Section 3(d) of  
5 the FLSA, 29 U.S.C. § 203(d).

6           76.    At all relevant times, Plaintiff and the persons described in paragraph 67 have  
7 been “employees” of Defendant as defined by Section 3(e) of the FLSA, 29 U.S.C. §  
8 203(e).

9   **COUNT I – FLSA**

10   **(Failure to Pay Overtime Wages)**

11           77.    Plaintiff re-alleges and incorporates by reference paragraphs 1 through 76  
12 as paragraph 77 of this Count I.

13           78.    Plaintiff, individually and on behalf and the members of the class described  
14 in paragraph 67, asserts claims for unpaid overtime pursuant to the FLSA.

15           79.    At any and all times relevant hereto, Defendant was an “enterprise engaged  
16 in commerce” within the meaning of Section 3(s) of the FLSA, 29 U.S.C. § 203(s).

17           80.    At any and all times relevant hereto, Defendant was an “employer” of the  
18 Plaintiff and the members of the class described in paragraph 67 within the meaning of  
19 Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

20           81.    At any and all times relevant hereto, Plaintiff and the members of the class  
21 described in paragraph 67 were “employees” of Defendant as defined by Section 3(e) of  
22 the FLSA, 29 U.S.C. § 203(e).

23           82.    Plaintiff and the members of the class described in paragraph 67 were not  
24 paid for all time worked in excess of 40 hours in a week during the applicable statutory  
25 time period, in violation of the maximum hours provisions of the FLSA, 29 U.S.C. § 207.

26           83.    At all times relevant hereto, Defendant’s failure to pay Plaintiff and the  
27 members of the class described in paragraph 67 premium pay for all time worked over 40  
28 hours in a week was willful in that, among other things:

- 1 a. Defendant knew that the FLSA required it to pay time and one-half
- 2 for all time worked over 40 hours in a week;
- 3 b. Defendant failed to maintain true and accurate time records; and
- 4 c. Defendant encouraged Plaintiff and other similarly situated
- 5 employees to not record all time worked.

6 84. As a direct and proximate result thereof, Plaintiff and the members of the  
7 class described in paragraph 67 are due unpaid back wages and liquidated damages,  
8 pursuant to 29 U.S.C. § 216.

9 **DAMAGES SOUGHT**

10 85. Plaintiff and the FLSA Class Members are entitled to recover compensation  
11 for the hours they worked for which they were not paid at the federally mandated overtime  
12 wage rate.

13 86. Plaintiff and the FLSA Class Members are also entitled to an amount equal  
14 to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

15 87. Plaintiff and FLSA Class Members are entitled to recover their attorneys'  
16 fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

17 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,  
18 by and through his attorneys, demands judgment against Defendant and in favor of Plaintiff  
19 and all others similarly situated, for a sum that will properly, adequately and completely  
20 compensate them for the nature, extent and duration of their damages, the costs of this  
21 action and as follows:

22 A. Conditionally certify the class described in paragraph 67, and grant Plaintiff's  
23 counsel leave to send notice of this lawsuit to the members of the class and allow  
24 them the opportunity to opt-in as party plaintiffs pursuant to Section 16 of the FLSA,  
25 29 U.S.C. § 216;

26 B. Declare and find that the Defendant committed one or more of the following acts:

27 i. Violated provisions of the FLSA for Plaintiff and all persons who opt-in as  
28 party plaintiffs; and

1  
2 ii. Willfully violated provisions of the FLSA for Plaintiff and all persons who  
3 opt-in as party plaintiffs.

4 C. Award compensatory damages, including all wages and overtime pay owed, in  
5 an amount according to proof;

6 D. Award liquidated damages on all wages and overtime compensation due to Plaintiff  
7 and all persons who opt-in as party plaintiffs;

8 E. Award all costs and reasonable attorneys' fees incurred prosecuting this claim;  
9

10 F. Grant leave to amend to add claims under applicable state and federal laws to  
11 conform with the proofs at trial;

12 G. Grant leave to add additional plaintiffs by motion or any other method approved by  
13 the Court to conform with the proofs at trial; and

14 H. Grant such further relief as the Court deems just and equitable.  
15

16 DATED this 27<sup>th</sup> day of July 2017  
17

18 Respectfully submitted,  
19 JORDAN KERNESS, individually and on behalf  
20 of a class of persons similarly situated.

21 /s/ James X. Bormes  
22 One of Plaintiff's Attorneys

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# **Exhibit 1**



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jordan Kerness, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

Wells Fargo Bank, N.A.

Defendant.

No.:


CONSENT TO BECOME A PARTY  
PLAINTIFF

CONSENT TO BECOME PARTY PLAINTIFF

Now comes Kenneth Harris, Jr., pursuant to the Fair Labor Standards Act and 29 U.S.C. § 216(b), and files his consent to become a party plaintiff in the above-captioned matter.

I hereby consent to make a claim under the Fair Labor Standards Act to recover overtime pay. I hereby consent to be a party plaintiff in this lawsuit and specifically authorize the Law Office of James X. Bormes, P.C., Law Office of Thomas M. Ryan, P.C. and Matheson & Matheson PLC to represent me in this lawsuit.

7/25/17  
Date

  
Signature

Jordan Kerness  
Print Name

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff**      **Jordan Kerness**  
(s):

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

**Defendant**      **Wells Fargo Bank, N.A.**  
(s):

County of Residence: Outside the State of Arizona

Plaintiff's Atty(s):

**Michelle Ray Matheson , Attorney  
Matheson & Matheson, PLC  
15300 N 90th St, Ste. 550  
Scottsdale, Arizona 85260  
480-889-8951**

Defendant's Atty(s):

II. Basis of Jurisdiction:                      **1. U.S. Government Plaintiff**

III. Citizenship of Principal Parties  
(Diversity Cases Only)

Plaintiff:- N/A  
Defendant:- N/A

IV. Origin :                                      **1. Original Proceeding**

V. Nature of Suit:                            **710 Fair Labor Standards Act**

VI. Cause of Action:                        **29 U.S.C. § 201-219 Overtime Wage Claim**

VII. Requested in Complaint

Class Action: **Yes**  
Dollar Demand:  
Jury Demand: **Yes**

VIII. This case is not related to another case.

**Signature: /s Michelle R. Matheson**

**Date: 7/27/2017**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Call Center Employee Sues Wells Fargo Over Unpaid Wage Allegations](#)

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