

3. Plaintiff brings this lawsuit as an FLSA collective action on behalf of himself and similarly situated individuals (“Collective Action Members”) for Defendant’s failure to pay him time and one-half his regular rate of pay for all hours worked over 40 during each seven-day workweek. Specifically, Defendant failed to include all remuneration required by the FLSA in calculating Plaintiff and Collective Action Members’ regular rates of pay, and, consequently, their overtime rate of pay. Moreover, Defendant required Plaintiff and Collective Action Members to work time for which they were not compensated, and seek damages under the FLSA for that “off-the-clock” work that they performed.

4. In connection with his claims, Plaintiff and Collective Action Members seek all damages available under the FLSA, including back wages for the three year period prior to filing this lawsuit and forward, liquidated damages, legal fees, costs, and post-judgment interest.

5. Plaintiff also brings this lawsuit on behalf of himself and similarly situated and former Massachusetts employees of Defendant (putative “Class Members”) under Massachusetts State Law for Defendant’s failure to pay Plaintiff and Class Members time and one-half their regular rates of pay for all hours worked over 40 during each seven-day workweek. Defendant failed to include all remuneration required by the MFWA in calculating Plaintiff and Class Members’ regular rates of pay, resulting in a failure to pay all overtime wages which were owed. Furthermore, Defendant required Plaintiff and Class Members to work time without compensation, *i.e.*, “off-the-clock.” Defendant’s failure to timely pay all wages owed under the MFWA resulted in violations of the Wage Act. Plaintiff files this claim as a class action pursuant to Federal Rule of Civil Procedure 23. The relevant time period for the Massachusetts State Law claim is three years preceding the date this lawsuit was filed and forward.

6. Due to the scale of Defendant's operations in Massachusetts, the potential class is so numerous as to make joinder of all class members impracticable. Plaintiff does not know the exact size of the class since such information is in the exclusive control of the Defendant. On information and belief, however, the number of potential class members is estimated to be in excess of 50 individuals.

7. The scope of the class action claims in this lawsuit is limited to individuals who worked for Defendant's operations in Massachusetts for the time period of three years preceding the date of filing this lawsuit and forward.

8. Plaintiff and Massachusetts Class Members seek all damages available under Massachusetts State Law, including back wages, liquidated damages, legal fees, costs, and post-judgment interest. These employees are similarly situated under the class action provisions of Rule 23.

II. THE PARTIES, JURISDICTION, AND VENUE

A. Plaintiff Kirk Weingarten

9. Weingarten is a natural person who resides in Hampden County, Massachusetts. He has standing to file this lawsuit.

10. Weingarten is a former employee of Defendant.

11. Weingarten worked as a Home Mortgage Consultant ("HMC") for Defendant from approximately April 2012 to January 2016. Weingarten's job duties included generating sales leads for residential mortgage applications, taking applications and processing them through closing, and ensuring compliance with state and federal laws and regulations during the application process.

12. Weingarten was paid an hourly rate by Defendant of approximately \$12.00 per hour in addition to commission based on loan volume closed per month.

B. FLSA Collective Action Members

13. The putative FLSA Collective Action Members are all current and/or former hourly paid HMC employees of Defendant working in Massachusetts who, like Plaintiff, are/were not paid time and one-half their respective regular rates of pay for all hours worked over 40 during each seven-day workweek due to Defendant's failure to calculate the regular rates of pay in accordance with the FLSA.

14. While their precise job duties might vary somewhat as HMCs (*i.e.* they may have been responsible for various kinds of loans), those differences do not matter for purposes of determining their entitlement to overtime pay. Because Defendant did not pay all overtime premium compensation to its hourly HMC employees who routinely worked in excess of 40 hours per workweek, Plaintiff and the putative Collective Action Members are all similarly situated within the meaning of Section 216(b) of the FLSA.

15. The relevant time period for the claims of the putative Collective Action Members is three years preceding the date this lawsuit was filed and forward.

C. Massachusetts State Law Class Members

16. The putative Massachusetts State Law Class Members ("Class Members") are all current and former hourly paid HMC employees of Defendant who, like Plaintiff, worked for Defendant in the state of Massachusetts and were not paid all overtime wages owed pursuant to Massachusetts State Law as a result of Defendant's failure to calculate their respective regular rates of pay in accordance with MFWA and related regulations. As a result of that violation of

the MFWA, the Class Members were not timely paid all wages owed by Defendant within the deadlines set forth in the Wage Act.

17. While their precise job duties may vary somewhat as hourly paid HMC employees (*i.e.*, they may have been responsible for various kinds of loans), those differences do not matter for purposes of determining their entitlement to overtime pay under Massachusetts State Law.

18. The relevant time period for the claims of the Class Members is three years preceding the date this lawsuit was filed and forward.

D. Defendant Wells Fargo Bank, N.A.

19. On information and belief, Defendant is a foreign corporation incorporated under the laws of the State of Delaware.

20. During all times relevant to this lawsuit, Defendant has done business in the State of Massachusetts.

21. Defendant operates numerous mortgage bank branches throughout Massachusetts, and across the United States, in which HMC employees provide mortgage loan application and financial services to customers.

22. At all times relevant to this lawsuit, Defendant has been an “enterprise engaged in commerce” as defined by the FLSA.

23. At all times relevant to this lawsuit, Defendant employed, and continues to employ, two or more employees.

24. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handled, sold, or otherwise worked on goods or materials that have been moved in or produced for commerce by any person.

25. For example, Defendant employed two or more employees who regularly engaged in commerce in their daily work. Examples of that commerce include providing financial services to customers located throughout the United States.

26. Furthermore, Defendant employed two or more employees who regularly handled, sold, or otherwise worked on goods and/or materials in their daily work that were moved in and/or produced for commerce. Examples of such goods and/or materials include financial products and services which are accessible in various states throughout the country.

27. On information and belief, at all times relevant to this lawsuit, Defendant has had annual gross sales or business volume in excess of \$500,000.

28. Defendant may be served with summons through the Massachusetts Secretary of the Commonwealth at One Ashburton Place, 17th Floor, Boston, Massachusetts 02108. *See* MASS. GEN. LAWS CH. 156D, § 15.10.

E. Jurisdiction and Venue

29. The Court has personal jurisdiction over Defendant based on both general and specific jurisdiction.

30. During all time relevant to this lawsuit, Defendant has done business in the State of Massachusetts and continues to do business in the State of Massachusetts.

31. The Court has subject matter jurisdiction over this case based on federal question jurisdiction, 28 U.S.C. § 1331, because Plaintiffs base their claims, in part, on federal law, namely the FLSA. The Court may properly exercise supplemental jurisdiction of the Massachusetts state law claim under 28 U.S.C. § 1367.

32. Venue is proper in the United States District Court for the District of Massachusetts because a substantial part of the events giving rise to the claims in this lawsuit occurred in this judicial district.

33. Venue is proper in the Boston Division of the United States District Court for the District of Massachusetts because a substantial part of the events giving rise to the claims in this lawsuit occurred in the Boston Division.

III. FACTUAL BACKGROUND

34. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section.

35. Plaintiff, FLSA Collective Action Members, and Class Members (“Plaintiff and Class Members”) provided mortgage banking services as hourly paid employees of Defendant. Plaintiff and Class Members’ primary job duties consisted of handling customer mortgage loan applications through the origination and closing process, meeting sales goals, generating leads for new mortgage loans, and ensuring compliance with state and federal laws and regulations. Plaintiff and Class Members worked in Defendant’s Massachusetts mortgage banking branches. During times relevant, Defendant operated up to approximately ten mortgage bank branches throughout Massachusetts.

36. Defendant paid Plaintiff and Class Members an hourly rate of pay. Defendant paid Plaintiff in the approximate amounts previously stated.

37. Plaintiff and Class Members were non-exempt employees under the FLSA and Massachusetts State Law. When they worked more than 40 hours per seven-day workweek, they were entitled to receive overtime premium compensation at the rate of one and one-half their regular rates of pay for all such hours worked over 40.

38. Due to the demands of their jobs, Plaintiff and Class Members were routinely required to work more than 40 hours per seven-day workweek.

39. In addition to receive hourly pay, Plaintiff and Class Members were also eligible for and received additional remuneration, including performance based commissions and bonuses for meeting the sales quotas required by Defendant.

40. Defendant had a practice and policy to generally pay Plaintiff and Class Members for only 40 hours in a given seven-day workweek maximum, regardless of the amount of hours actually worked. In other words, Defendant would not allow Plaintiff to input overtime hours into Defendant's timekeeping system, but required them to work in excess of 40 hours in a given seven-day workweek.

41. Defendant had a policy and/or practice of pressuring, coercing, and punishing Plaintiff and Class Members into omitting overtime hours, despite routinely working over 40 hours a week in a given seven-day workweek. This resulted in Defendant failing to include all remuneration required by the FLSA and MFWA in calculating Plaintiffs' and Class Members' regular rates of pay. This resulted in Plaintiff not being paid all overtime compensation owed by Defendant pursuant to the FLSA and Plaintiff and Class Members being under compensated per the MFWA. Defendant's failure to pay all over time wages owed pursuant to the MFWA in the timelines required by the Wage Act resulted in Defendant also violating the Wage Act.

42. For example, Plaintiff and other hourly paid HMCs were required by mortgage banking management and regional management ("Management") of Defendant to work late into the evening on certain nights of the week to participate in mandatory "call nights" to generate new sales leads and mortgage applications. Defendant also had a policy or practice of not permitting overtime if Plaintiff and other hourly paid HMCs had less than 10 loans in their sales

pipeline, but required Plaintiff and other hourly paid HMCs to work late into the evenings and on weekends in order to generate mandatory sales numbers. However, Defendant's policy was not to pay Plaintiff and other hourly paid HMCs for hours worked over 40 in a given seven-day workweek. Plaintiff and other hourly paid HMCs were not allowed to input this additional time in their timesheets without prior approval, even if they were required to work.

43. Additionally, Plaintiff and other hourly paid HMCs were required to participate in "Open House Blitzes," a quarterly event, that required Plaintiff and other hourly paid HMCs to deliver special sales-pitching kits to area homes on Sundays. Since Plaintiff and other hourly paid HMCs were required to maintain their normal weekly schedule, these quarterly events would result in working more than 40 hours in a given seven-day workweek. However, it was Defendant's policy to not pay Plaintiff and other hourly paid HMCs for hours worked over 40 in a given seven-day workweek.

44. Defendant also had a policy and practice of reprimanding Plaintiff and other hourly paid HMCs for including overtime in their timesheets for hours worked over 40 in a given workweek. Defendant's policy and/or practice of reprimanding for working overtime hours resulted in leading Plaintiff and other hourly paid HMCs to believe that termination of employment was possible, Plaintiff and other hourly paid HMCs omitted most, if not all, hours worked over 40 in a given seven-day workweek. Even though they were still required to work those hours by Management, they omitted these overtime hours for fear of losing their job.

45. On information and belief, Plaintiff and other hourly paid HMCs were routinely required to work six or more days a week, and, on average, over ten hours a day, primarily to meet Defendant's sales goals. However, they were not allowed to input all hours worked on their timesheets. This resulted in the loss of significant overtime hours for all hours worked over 40 in

a given seven-day workweek. Plaintiff and other hourly paid HMCs were not permitted to record these hours on their timesheet despite Management requiring them to stay.

46. Defendant had notice of potential liability for unpaid overtime wages throughout the relevant time period pertaining to this lawsuit. Management had knowledge of the obligation to pay overtime compensation to Plaintiff and other hourly paid HMCs for all hours worked over 40 in a given workweek. Management also had knowledge that Plaintiff and other hourly paid HMCs regularly worked off-the-clock hours and were not paid time and one-half their full regular rates of pay for all overtime hours worked. Accordingly, this knowledge is imputed to Defendant.

47. On information and belief, Management knowingly encouraged, permitted, and required Plaintiff and other hourly paid HMCs to generally not claim compensation for work performed in excess of 40 hours in a given seven-day workweek. Management was routinely aware of and instituted mandatory “call nights” and “Open House Blitzes” where Plaintiff and other hourly paid HMCs worked without compensation. Management was also present or aware of Plaintiff and other hourly paid HMCs working over 40 hours in a given seven-day workweek based on email interactions at non-traditional work hours and over six to seven days a week. Management knew/had reason to believe that Plaintiff and other hourly paid HMCs were working more hours than reported on their time sheets/to payroll. Furthermore, Plaintiff and other hourly paid HMCs were encouraged, expected, and required to engage in generating customer sales leads after typical business hours and on weekends. Management knew/had reason to believe that those additional hours worked by Plaintiffs and other hourly paid HMCs were not paid.

48. In short, on information and belief, Defendant's Management knew/had reason to believe that Plaintiff and other hourly paid HMCs were encouraged, permitted, and required to work overtime hours for which they were not paid corresponding overtime compensation in order to boost sales quota numbers while keeping labor costs to a minimum.

49. Plaintiff worked with numerous other hourly paid HMC employees of Defendant at Massachusetts mortgage branches. Like Plaintiff, these employees, before, during, and after Plaintiff's dates of employment routinely work/worked in excess of 40 hours per workweek, are/were entitled to overtime premium compensation at one and one-half times their respective regular rates of pay for all overtime hours worked, are/were paid additional remuneration, including performance based commissions for meeting sales quotas required as part of their job duties, in addition to their hourly rate, and did not/do not receive all overtime compensation owed by Defendant due to Defendant not including all remuneration and hours worked as required by the FLSA and the MFWA in their respective regular rates of pay. For the same reasons as Plaintiffs, this also resulted in violations of the Wage Act.

50. During times relevant, Defendant operates/operated numerous other mortgage banking branches throughout Massachusetts, and across the United States, at/from/through which it conducted mortgage banking services for its customers. On information and belief, Defendant employed, and continues to employ, hourly paid HMC employees at/from/through those mortgage banking branches in Massachusetts who are similarly situated to Plaintiff and who, despite being entitled to overtime premium compensation at one and one-half times their regular rates of pay for all hours worked over 40 in a workweek as FLSA non-exempt employees, were not paid all overtime compensation owed due to Defendant's failure to compensate them for all hours they worked and Defendant's failure to include all remuneration required by

Massachusetts State Law in their respective regular rates of pay. Such remuneration includes performance based commissions for meeting sales quotas required as part of their job duties.

51. On information and belief, Defendant continues to employ hourly paid HMCs who are subject to the aforementioned practices/policies to not include all hours worked and all remuneration required by Massachusetts State Law in their respective regular rates of pay when calculating the overtime wages owed to them.

IV. FIRST CLAIM FOR RELIEF: FLSA CLAIM

52. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section.

A. Controlling Legal Rules

53. The FLSA generally requires that an employer employing an employee for a workweek exceeding 40 hours must compensate the employee for hours worked over 40 “at a rate not less than one and one-half times the regular rate of pay.” 29 U.S.C. § 207(a)(1).

54. “Employ” includes to suffer or permit work. 29 U.S.C. § 203(g).

55. “[I]t is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.” 29 C.F.R. § 785.13; *accord Chao v. Gotham Registry, Inc.*, 514 F.3d 280, 288 (2nd Cir. 2008) (same).

56. Federal law requires employers to make and keep accurate and detailed payroll data for non-exempt employees. 29 U.S.C. § 211(c); 29 C.F.R. § 516.2. Amongst other things, the regulations require employers to make and keep payroll records showing data such as the

employee's name, social security number, occupation, time of day and day of week which the workweek begins, regular hourly rate of pay for any week in which overtime pay is due, hours worked each workday and total hours worked each workweek, total daily or weekly straight time earnings, total premium pay for overtime hours, total wages paid each pay period and date of payment and pay period covered by the payment, and records of remedial payments. 29 C.F.R. § 516.2(a)&(b). Employers are required to maintain the foregoing data for a minimum of three years. 29 C.F.R. § 516.5.

57. The FLSA defines the "regular rate" as including "all remuneration for employment paid to, or on behalf of, the employee" 29 U.S.C. § 207(e). With a few limited exceptions, all remuneration given to an employee must be included in the employee's regular rate calculation. 29 U.S.C. § 207(e); 29 C.F.R. § 778.108; *accord Allen v. Board of Pub. Educ. For Bibb Cnty.*, 495 F.3d 1306, 1311 (11th Cir. 2007); *see also Johnson v. Big Lots Stores, Inc.*, 604 F. Supp. 2d 903, 927 (E.D. La. 2009).

58. Failing to pay the required overtime premium for hours worked over 40 in a workweek is a violation of the FLSA. 29 U.S.C. § 216.

B. FLSA Claims

59. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section.

60. All conditions precedent to this suit, if any, have been fulfilled.

61. At relevant times, Defendant is/was an eligible and covered employer under the FLSA. 29 U.S.C. § 203(d).

62. At relevant times, Defendant is/has been an enterprise engaged in commerce under the FLSA. 29 U.S.C. § 203(s)(1)(A).

63. Plaintiff and putative Collective Action Members work/worked at a Massachusetts mortgage bank branch as employees of Defendant. 29 U.S.C. § 203(e).

64. Plaintiff and putative Collective Action Members are/were paid an hourly rate of pay by Defendant.

65. Plaintiff and putative Collective Action Members regularly work/worked in excess of 40 hours per seven-day workweek as employees of Defendant during the time period relevant to this lawsuit.

66. Defendant is/was required to pay Plaintiff and putative Collective Action Members time and one-half their regular rate of pay for all hours worked over 40 in a seven-day workweek. 29 U.S.C. § 2017(a)(1).

67. Defendant failed to pay Plaintiff and putative Collective Action Members overtime compensation at one and one-half times their regular rate of pay for all hours worked over 40 in each and every seven-day workweek during the time period relevant to this lawsuit.

68. Defendant did not make and keep an accurate record of all hours worked by Plaintiff and putative Collective Action Members as required by the FLSA. 29 U.S.C. § 211(c); 29 C.F.R. § 516.2. Namely, Defendant did not make and keep a record of the exact number of hours worked by Plaintiff and putative Collective Action Members for time worked before and after the branch was closed to generate sales and meet sales goals.

69. Defendant's violations of the FLSA are/were willful within the meaning of 29 U.S.C. § 255(a). For example, and as described above in detail, Defendant required, permitted, and/or encouraged under payment of actual hours worked by Plaintiff and putative Collective Action Members. Defendant was aware that Plaintiff and putative Collective Action Members were not paid for all hours worked over 40 in a workweek. Defendant was aware that time spent

outside normal business hours was not being compensated. Plaintiff and the putative Collective Action Members specifically plead recovery for the time period of three years preceding the date this lawsuit was filed forward for their FLSA claims.

70. Plaintiff and the putative Collective Action members seek all damages available for Defendant's failure to timely pay all overtime wages owed.

V. FLSA COLLECTIVE ACTION ALLEGATIONS

71. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section.

72. Plaintiff seeks to represent a collective action under 29 U.S.C. § 216(b) on behalf of himself and all current and former hourly paid HMCs who are/were employed by Defendant in Massachusetts and who are/were not paid all overtime compensation owed for all hours worked over 40 in each and every workweek due to Defendant's failure to include all remuneration required by the FLSA in their respective regular rates of pay. The relevant time period for this collective action is three years preceding the date this lawsuit was filed and forward, or such other time period deemed appropriate by the Court.

73. Plaintiff reserves the right to establish sub-classes and/or modify class notice language as appropriate in any collective action certification motion or other proceeding.

74. Plaintiff further reserves the right to amend the definition of the putative class, or sub classes therein, if discovery and further investigation reveal that the putative class should be expanded or otherwise modified.

VI. SECOND CLAIM FOR RELIEF: MASSACHUSETTS STATE LAW CLAIMS

A. Controlling Legal Rules

75. Employers employing employees in the state of Massachusetts are generally required to pay those employees time and one-half their respective regular rates of pay for all hours worked over 40 in a seven day workweek. MASS. GEN. LAWS CH. 151, § 1A.

76. “Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or to within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week, . . . and any employee discharged from such employment shall be paid in full on the day of his discharge The word ‘wages’ shall include any holiday or vacation payments due an employee under an oral or written agreement.” MASS. GEN. LAWS CH. 149, § 148.

77. “An employee so aggrieved who prevails [pursuant to MASS. GEN. LAWS CH. 149, § 148; CH. 151, § 1A] shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys’ fees.” MASS. GEN. LAWS CH. 149, § 150; CH. 151, § 1B.

B. Massachusetts State Law Claims

78. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section.

79. At relevant times, Defendant is/was an eligible and covered employer of Plaintiff and Class Members under Massachusetts State Law.

80. Plaintiff and Class Members are/were paid an hourly rate of pay by Defendant in addition to other remuneration, including performance based bonuses such as commissions and customer service “scorecard” survey bonuses, also known as the “Incentive Compensation Plan.”

81. At material times, Plaintiff and Class Members regularly work/worked in excess of 40 hours per seven-day workweek as employees of Defendant.

82. Defendant is/was required to pay Plaintiff and Class Members time and one-half their respective regular rates of pay for all hours worked over 40 in each relevant seven-day workweek.

83. Defendant failed to pay Plaintiff and Class Members overtime compensation at one and one-half times their regular rates of pay for all hours worked over 40 in each and every seven-day workweek during the time period relevant to this lawsuit.

84. By failing to timely pay the overtime wages owed to Plaintiff and Class Members pursuant to the MFWA within the deadlines required by the Wage Act, Defendant also violated the Wage Act as to Plaintiff and Class Members.

85. Defendant’s violations of Massachusetts State Law are/were willful. At all material times, Defendant was aware that Plaintiff and Class Members were not paid time and one-half their respective regular rates of pay for all hours worked over 40 in a seven-day workweek as required by the MFWA, and were not timely paid all wages owed as required by the Wage Act. Plaintiffs and Class Members specifically plead recovery for the time period of three years preceding the date this lawsuit was filed forward for their Massachusetts State Law Claims.

86. Plaintiff filed a complaint with the Massachusetts Attorney General, pursuant to MASS. GEN. LAWS CH. 149, § 150 on November 11, 2016, which is sufficient to grant this Court

jurisdiction in this matter. *MacDonald v. J. Brown, Inc.*, No. 15-13252-MLW, 2016 WL 5024196, at *1 (D. Mass. Sept. 16, 2016); *Depianti v. Jan-Pro Franchising Int'l, Inc.*, 990 N.E.2d 1054, 1062 (Mass. 2013).

87. On November 16, 2016, The Office of the Attorney General issued Plaintiff a “private right of action” letter authorizing a civil lawsuit in this matter pursuant to MASS. GEN. LAWS CH. 149, § 150. The letter is attached as **Exhibit A**.

88. Plaintiff and Class Members seek all damages available for Defendant’s violations of the MFWA and the Wage Act.

VII. MASSACHUSETTS STATE LAW CLASS ACTION ALLEGATIONS

89. Plaintiff incorporates the preceding paragraphs by reference as if set forth fully in this section.

90. Plaintiff brings his Massachusetts State Law Claims as a class action under Federal Rule of Civil Procedure 23(a), (b)(1), and (3).

91. Plaintiff seeks to represent a Class initially defined as: “All hourly paid Home Mortgage Consultant employees who work/worked for Defendant in Massachusetts and who are/were not paid all overtime wages required by the MFWA within the deadlines set forth in the Wage Act.” Plaintiff requests the opportunity to expand, narrow, or modify the class definition pursuant to a motion for class certification and/or amended pleading to the extent discovery reveals that the class definition should be modified.

92. Plaintiff’s claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action.

93. On information and belief, there are over 50 Class Members, and joinder is therefore impracticable. The precise number of Massachusetts State Law Class Members and their addresses are readily determinable from Defendant's records.

94. There are common questions of fact and law as to the class that predominate over any questions affecting only individual class members. The questions of law and fact common to the class arising from Defendant's actions/omissions include, but are not limited to, the following:

- a. Whether Defendant paid all wages owed to the Massachusetts State Law Class Members as required by the MFWA;
- b. Whether Defendant's pay practices as to the Massachusetts State Law Class Members violated the Wage Act; and
- c. The appropriate method to calculate damages under the MFWA and Wage Act for the Massachusetts State Law Class Members.

95. The questions above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of Massachusetts State Law Claims.

96. A class action is the superior method for the fair and efficient adjudication of this controversy. Defendant has acted or refused to act on grounds generally applicable to the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of class members to protect their interests.

97. Plaintiff is an affected former employee of Defendant who was not paid all overtime wages as required by the MFWA within the deadlines set forth in the Wage Act.

Plaintiff is, therefore, a member of the putative class. Plaintiff is committed to pursuing this action and has retained counsel with extensive experience in prosecuting complex wage, employment, and class action litigation. Accordingly, Plaintiff is an adequate representative of the putative class and has the same interests as of its members. Further, Plaintiff's claims are typical of the claims of the Class Members, and Plaintiff will fairly and adequately protect the interests of the absent members of the putative class. Plaintiff and his counsel do not have claims or interests that are adverse to the Class Members.

VIII. JURY DEMAND

98. Plaintiff requests a trial by jury with respect to all claims.

IX. DAMAGES AND PRAYER

99. Plaintiff, on behalf of himself and all others similarly situated persons, prays for the following relief as against Defendant:

- a. An order certifying the Massachusetts State Law Claims as a Rule 23 class action, and naming Allen R. Vaught, Melinda Arbuckle, and Farsheed Fozouni as class counsel;
- b. All damages allowed by the FLSA, MFWA, and Wage Act, including back overtime wages;
- c. Liquidated damages in an amount equal to back FLSA mandated wages;
- d. Liquidated damages on a class-wide basis pursuant to Massachusetts State Law;
- e. Legal fees;
- f. Costs;
- g. Post-judgment interest; and
- h. All other relief to which Plaintiff, FLSA Collective Action Members, and Massachusetts State Law Class Members are entitled.

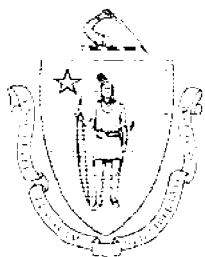
Respectfully submitted,

By: /s/ Kesler T. Roberts
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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

TEL: (617) 727-2200
www.mass.gov/ago

November 16, 2016

Mr. Kirk Weingarten
1

RE: Wells Fargo Bank, N.A.

Dear Kirk Weingarten:

Thank you for contacting the Office of the Attorney General's Fair Labor Division. The Fair Labor Division of the Attorney General's Office receives and reviews thousands of complaints each year and must make difficult decisions regarding which cases it will pursue. If the Office determines that it will not pursue a particular case, it may issue a "private right of action" to the employee-complainant. This "private right of action" gives the employee the ability to pursue the case privately through the court system.

This letter is the "private right of action" letter for your case. We have carefully reviewed your complaint, and we are authorizing you to pursue this matter through a civil lawsuit. This is not a determination of the merits of your case. It does mean, however, that this Office will not be taking any further action on your complaint.

The private right of action arises under Massachusetts General Laws Chapter 149, § 150, and Chapter 151, §§ 1B and 20. It permits employees who believe they are victims of certain violations of the state wage laws, to sue in civil court on their own behalf and on behalf of other similarly situated employees. If you prevail in court, you are entitled to obtain triple damages for any loss of wages and other benefits, injunctive relief (for example, the court can order the employer to change its employment practices), as well as the costs of litigation and reasonable attorneys' fees.

You should also be aware that strict time restrictions, called the statute of limitations, apply to the filing of claims under the Massachusetts wage laws. You can recover damages only for the two or three year time period prior to the date that you file a case in court, depending on the type of claim you are bringing. Therefore, you should determine what statute of limitations applies to your claims as it may be important to file quickly to avoid the possibility that part or all of your claims are no longer within the relevant time period.

For further information about the Massachusetts Wage and Hour laws, and exercising your "private right of action", including a list of attorney referral services, please visit the Attorney General's website at www.mass.gov/ago/pr and select workplace rights.

Sincerely,
Fair Labor Division
617-727-3465

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KIRK WEINGARTEN

(b) County of Residence of First Listed Plaintiff Hampden, Massachusetts (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Kesler T. Roberts P.O. Box 20803, Worcester, MA 01602, (774) 262-1699; Allen R. Vaught, Baron & Budd, P.C., 3102 Oak Lawn Ave #1100 Dallas, TX 75219, (214) 521-3605

DEFENDANTS

WELLS FARGO BANK, N.A.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S. §§ 201-219; 29 U.S.C. §§ 251-262, et al.

Brief description of cause: Class action complaint for unpaid wages and other relief under the FLSA and other provisions of law.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE November 22, 2016 SIGNATURE OF ATTORNEY OF RECORD s/ Kesler T. Roberts

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Kirk Weingarten v. Wells Fargo Bank, N.A.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kesler T. Roberts

ADDRESS P.O. Box 20803, Worcester, MA 01602

TELEPHONE NO. 774-262-1699

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Wells Fargo Owes Overtime Pay](#)
