

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARCUS D’ADDIO and MICHAEL  
SILVESTRO, individually and on behalf of all  
others similarly situated, )

Plaintiffs, )

vs. )

WELLS FARGO CLEARING SERVICES, LLC  
(formerly known as WELLS FARGO  
ADVISORS LLC), d/b/a WELLS FARGO  
ADVISORS, )

Defendant. )

Cause No. 4:21-CV-00054-SEP

JURY TRIAL DEMANDED

**SECOND AMENDED COLLECTIVE ACTION COMPLAINT**

COME NOW Plaintiffs Marcus D’Addio and Michael Silvestro, individually and on behalf of all others similarly situated, by and through their attorneys Brown, LLC and Engelmeyer & Pezzani, LLC, pursuant to Fed. R. Civ. P. 15(a)(2), and for their Second Amended Collective Action Complaint against Defendant Wells Fargo Clearing Services, LLC (formerly known as Wells Fargo Advisors LLC), doing business as Wells Fargo Advisors, state and aver as follows:

**INTRODUCTION**

1. This is a collective action brought pursuant to 29 U.S.C. § 216(b) by Plaintiffs Marcus D’Addio and Michael Silvestro, individually and on behalf of all similarly situated persons employed by Defendant who worked in Florida, Missouri, New York, and Pennsylvania, arising from Defendant’s willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*

2. Defendant offers nationwide financial advisory, brokerage, asset management and other financial services.

3. Plaintiffs and other client associates and operations liaisons in Florida, Missouri, New York, and Pennsylvania were hourly-paid, non-exempt employees of Defendant and regularly worked over 40 hours per week, but did not receive overtime compensation for all such hours due to Defendant's common unlawful policies that violate the FLSA, including causing hourly-paid employees to report fewer hours on their timesheets than they actually worked.

4. Plaintiffs bring their FLSA claims (Count I) on a collective basis pursuant to 29 U.S.C. § 216(b) on behalf of themselves and all other similarly situated hourly-paid, non-exempt client associates and operations liaisons employed by Defendant who worked in Florida, Missouri, New York, and Pennsylvania at any time within the three years preceding the commencement of this action through the date of judgment, and seeks declaratory relief and unpaid overtime pay, liquidated damages, fees and costs, and any other remedies to which they may be entitled.

### **THE PARTIES**

5. Plaintiff Marcus D'Addio is an adult individual who resides in St. Charles County, State of Missouri.

6. Plaintiff Marcus D'Addio was employed by Defendant as a client associate from approximately March 2011 to May 2020 and worked in Defendant's office in Frontenac, Missouri.

7. Plaintiff Michael Silvestro is an adult individual who resides in Gloucester County, New Jersey.

8. Plaintiff Michael Silvestro was employed by Defendant as an operations liaison from approximately January 2007 through August 2020 and worked in Defendant's office in Philadelphia, Pennsylvania.

9. Plaintiff Michael Silvestro was classified as an hourly-paid, non-exempt employee until approximately January 2020.

10. Defendant Wells Fargo Clearing Services, LLC (formerly known as Wells Fargo Advisors LLC) is Delaware limited liability company registered in Missouri with its principal place of business at 1 North Jefferson Street, St. Louis, Missouri 63103.

11. Defendant does business as "Wells Fargo Advisors" and offers financial advisory, brokerage, asset management and other financial services.

#### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331.

13. The Court has personal jurisdiction over Defendant because it is domiciled in Missouri and because Plaintiff Marcus D'Addio's claims arise out of Defendant's presence in Missouri.

14. Venue is proper under 28 U.S.C. § 1391(b) because Defendant resides in this District and because a substantial part of the events or omissions giving rise to Plaintiff Marcus D'Addio's claim occurred in this District.

#### **FACTUAL ALLEGATIONS**

15. Defendant has and continues to employ client associates and operations liaisons.

16. Client associates and operations liaisons are responsible for providing support and assistance for the processing of securities transactions.

17. Client associates and operations liaisons were non-exempt employees under the FLSA.

18. Client associates and operations liaisons were paid an hourly rate of pay.

19. Defendant paid client associates and operations liaisons based on the number of hours they report in Defendant's electronic timekeeping system.

20. Client associates and operations liaisons are scheduled to work at least 5 shifts in most weeks, with most if not all shifts lasting at least 8 hours.

21. Client associates and operations liaisons regularly work more hours in a day and/or week than the hours for which they are scheduled.

22. Client associates and operations liaisons regularly work in excess of 8 hours in a day and/or 40 hours in a week.

23. Defendant maintains a *de facto* policy of prohibiting client associates and operations liaisons from reporting more hours in a day and/or week than the hours for which they are scheduled.

24. Defendant's *de facto* policy causes client associates and operations liaisons to only report their scheduled hours, despite working additional hours.

25. As a result, in many weeks client associates and operations liaisons have not been paid for all hours worked, including hours in excess of 40 in a workweek.

26. Defendant knew and/or recklessly disregarded that its client associates and operations liaisons were working hours in addition to those for which they were scheduled and/or reported in the timekeeping system.

#### **COLLECTIVE ACTION ALLEGATIONS**

27. Plaintiffs repeat and re-allege all preceding paragraphs of the Complaint inclusive, as if fully set forth herein.

28. Plaintiff brings this claim for relief for violation of the FLSA, both individually and as a collective action pursuant to Section 216(b) of the FLSA, 29 U.S.C. § 216(b). The proposed collective is defined as follows:

All hourly paid, non-exempt WFA Private Client Group (“PCG”) Client Associates and Operations Liaisons employed by Wells Fargo Advisors who worked in these positions in Florida, Missouri, New York, and Pennsylvania at any time within the three years preceding the mailing of notice, but excluding those Client Associates and Operations Liaisons subject to arbitration agreements, including without limitation the arbitration agreements with class and collective action waivers that Wells Fargo implemented for newly hired employees on or about December 11, 2015, but specifically not including FINRA Form U4 arbitration agreements. .

(the “FLSA Collective”).

29. Plaintiff Marcus D’Addio has filed his consent in writing pursuant to section 216(b). *See* ECF No. 1-1.

30. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because the employees described above are “similarly situated” to Plaintiffs under 29 U.S.C. § 216(b). The collective of employees on behalf of whom Plaintiffs bring this collective action are similarly situated because: (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policy, or plan (i.e. Defendant causing hourly-paid employees to report fewer hours on their timesheets than they actually worked); and (c) their claims are based upon the same factual and legal theories.

31. The employment relationships between Defendant and every FLSA Collective member are the same and differ only by name and rate of pay. The key issues—the amount of uncompensated time owed to each FLSA Collective member—do not vary substantially among the FLSA Collective members.

32. Plaintiffs estimate the FLSA Collective, including both current and former employees over the relevant period, will include several hundred members. The precise number of FLSA Collective members should be readily available from a review of Defendant's personnel and payroll records.

**COUNT I**  
**(Brought on an Individual and Collective Basis)**  
**VIOLATION OF THE FAIR LABOR STANDARDS ACT,**  
**29 U.S.C. § 201, et seq. -- FAILURE TO PAY OVERTIME**

33. Plaintiffs re-allege and incorporate all previous paragraphs herein.

34. 29 U.S.C. § 207(a)(1) provides:

[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

35. At all times relevant to this action, Defendant was an employer under 29 U.S.C. § 203(d) of the FLSA, subject to the provisions of 29 U.S.C. § 201, *et seq.*

36. Defendant is an enterprise whose annual gross volume of sales made or business done exceeds \$500,000.

37. Defendant is an enterprise that has had employees engaged in commerce or in the production of goods for commerce, and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

38. At all times relevant to this action, Defendant "suffered or permitted" Plaintiffs and other FLSA Collective members to work and thus "employed" them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

39. Plaintiffs and other FLSA Collective members worked many workweeks in excess of 40 hours within the last three years.

40. Defendant caused Plaintiffs and other members of the FLSA Collective to not report all of the hours they worked in excess of forty (40) in a workweek.

41. At all times relevant to this action, Defendant failed to pay Plaintiffs and other FLSA Collective members for all hours worked in excess of 40 in a workweek.

42. Defendant's management knew or should have known that the Plaintiffs and other members of the FLSA Collective were working hours in excess of 40 hours per week, without overtime compensation of one-and-one-half (1.5) their pay for hours worked in excess of 40 per week.

43. Defendant's violations of the FLSA were knowing and willful. *See* 29 U.S.C. § 255(a) (“[A] cause of action arising out of a willful violation [of the FLSA] may be commenced within three years....”).

44. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or his unpaid wages (and unpaid overtime if applicable) plus an additional equal amount in liquidated damages (double damages), plus costs and reasonable attorneys' fees.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs Marcus D'Addio and Michael Silvestro, individually and on behalf of all others similarly situated, by and through their attorneys, request an entry of an Order the following relief:

- a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);
- b. Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all



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*Local Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served via ECF e-mail notification upon all parties and/or attorneys of record to the above cause herein at their respective addresses as disclosed on the pleadings on June 28, 2021.

/s/ Nicholas Conlon

Nicholas Conlon, *admitted pro hac vice*