

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(BALTIMORE DIVISION)

JAMES SCHENNING
c/o Zipin, Amster & Greenberg, LLC
8757 Georgia Avenue, Suite 400
Silver Spring, Maryland 20910

*On Behalf of Himself and
All Others Similarly Situated*

PLAINTIFF,

v.

Case No.:

WELLS FARGO BANK, N.A.
7 St. Paul Street
Baltimore, Maryland 21202

SERVE:
CSC-Lawyers Incorporating Service Company
7 St. Paul Street, Suite 820
Baltimore, Maryland 21202

DEFENDANT.

COLLECTIVE ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff James Schenning (“Plaintiff”), individually and on behalf of all similarly situated individuals, bring this Collective Action lawsuit against Wells Fargo Bank, N.A. (“Defendant”), seeking recovery of unpaid overtime wages, statutory liquidated damages, and attorney’s fees and costs arising out of Defendant’s violations of the Federal Fair Labor Standards Act (“FLSA”), Maryland Wage Hour Law (“MWHL”), and Maryland Wage Payment Collection Law (“MWPCCL”). In support, Plaintiff alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an adult resident and domiciliary of Baltimore County, Maryland.

2. Plaintiff's signed consent form to participate as a plaintiff in this FLSA Collective Action seeking recovery of unpaid overtime wages and damages against Defendant under the FLSA is attached hereto as Exhibit 1.

3. Defendant is a National Association Bank entity.

4. At all times relevant, Plaintiff was employed by Defendant to perform employment duties for Defendant primarily out of Defendant's a business office in Baltimore City, Maryland, located at 7 St. Paul Street, Baltimore, Maryland 21202.

5. Defendant maintains a principal business office at 101 North Phillips Avenue, Sioux Falls, South Dakota 57104.

6. At all times relevant, Defendant qualified as an enterprise engaged in commerce as defined by the FLSA because it operated substantially and continuously in Baltimore City, Maryland, across the State of Maryland, and in each of the 50 States of the United States and realized gross annual sales or revenue exceeding \$500,000.00.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FLSA and properly confers supplemental jurisdiction over Plaintiff's alleged interrelated state law claims seeking recovery of unpaid wages and damages under Maryland law.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

9. At all times relevant, Defendant was Plaintiff's employer and the employer of all other similarly situated Internal Fraud Investigators, performing substantially similar job duties for Defendant's primary benefit in each of the 50 States of the United States within Defendant's Conduct Management Department under titles of and/or similar to (i) Intake Investigators; (ii)

Research Investigators; and (iii) Field Investigators (“hereinafter, “Fraud Investigators”) during the period February 2020, through the date of judgment in this case (“the Class Period”).

FACTS

10. During the relevant period of February 2020, through about January 13, 2023, Plaintiff was employed by Defendant as a Research Investigator, performing employment duties for Defendant’s primary benefit substantially within the State of Maryland and, as directed by Defendant, at Defendant’s business locations throughout the United States.

11. During the relevant period, Defendant paid Plaintiff as a salaried employee, at the most recent annual salary rate of \$82,500.00.

12. During the Class Period, Defendant paid all Fraud Investigators as salaried employees.

13. During the Class Period, Defendant commonly classified Plaintiff and all Fraud Investigators as exempt from the FLSA overtime requirement pursuant to the FLSA administrative exemption.

14. During the Class Period, Plaintiff and all Fraud Investigators’ primary job duties were (i) to receive a fraud investigation alerts and/or assignments from Defendant’s management level employees within Defendant’s Conduct Management Division related to a suspicion of potential fraud and/or related malfeasance by one of Defendant’s employees; (ii) to investigate the employee and/or event of potential fraud and/or related maleficence; and (iii) to present findings related to the investigation to Defendant’s Conduct Management Division.

15. During the Class Period, Plaintiff and all Fraud Investigators were subject to substantially similar work volume and quota requirements for performance and completion of job duties as set by Defendant’s Conduct Management Division.

16. During the Class Period, Plaintiff and all Fraud Investigators' primary job duties and responsibilities were substantially similar with common job duties and job requirements and subject to common supervision and evaluation by several levels management and decision makers within the multi-tiered hierarchy of Defendant's Conduct Management Department.

17. During the Class Period, Plaintiff and all Fraud Investigators' primary job duties and responsibilities were substantially similar, regardless of the State or region Plaintiff or any other Fraud Investigator was based and/or performed his or her job duties.

18. During the Class Period, in the performance of their primary job duties, Plaintiff and the Fraud Investigators did not hold or have the right or ability to use independent discretion or independent judgment in determining what events and/or which of Defendant's employees should be the subject of an investigation for potential fraud and/or related malfeasance and/or what events and/or which of Defendant's employees should not be the subject of an investigation. Instead, Plaintiff and the Fraud Investigators were required to commence and perform any investigation assigned by Defendant as independently determined at the management level by Defendant's Conduct Management Division.

19. During the Class Period, in the performance of their primary job duties, Plaintiff and the Fraud Investigators did not hold or have the right or ability to use independent discretion or independent judgment in determining how to investigate the employee and/or event of potential fraud and/or related malfeasance. Instead, all investigations by Plaintiff and the Fraud Investigators were performed pursuant to a strictly defined investigation script, protocols, inquires, and check lists established, set, supervised, and delegated by Defendant's Conduct Management Division.

20. During the Class Period, in the performance of their primary job duties, Plaintiff and the Fraud Investigators did not hold or have the right or ability to use independent discretion or independent judgment in the determination of the outcome of their investigation. Instead, Plaintiff and the Fraud Investigators' duties and responsibilities were limited to presenting the findings of their investigations and, thereafter, all decisions arising from and/or related to the same were made independently at the management level by Defendant's Conduct Management Division.

21. During the relevant period, Plaintiff regularly and customarily performed forty (40) to fifty (50) or more hours of work duties per week for Defendant's primary benefit.

22. During the Class Period, the Fraud Investigators typically and customarily performed more than forty (40) hours of work duties per week for Defendant's primary benefit.

23. During the Class Period, Defendant closely managed and supervised all job duties performed by Plaintiff and the Fraud Investigators and had actual or constructive knowledge that Plaintiff and all other Fraud Investigators regularly and customarily worked overtime over forty (40) hours per week and suffered or permitted Plaintiff and the other Fraud Investigators to work overtime over forty (40) hours per week.

24. Arising from Defendant's common and class-wide classification Plaintiff and the Fraud Investigators as exempt from the FLSA overtime compensation mandate under the administrative exemption, at no time did Defendant pay Plaintiff, or the Fraud Investigators overtime wages at the time-and-one-half rate for overtime worked over forty (40) hours per week.

25. At no time during the relevant period did Plaintiff's primary job duties make Plaintiff exempt from the FLSA or Maryland time-and-one-half overtime compensation requirement.

26. At no time during the Class Period did the Fraud Investigators' primary job duties performed for Defendant's primary benefit make the Fraud Investigators exempt from the FLSA time-and-one-half overtime compensation requirement.

27. At all times relevant, Defendant had actual knowledge of the FLSA time-and-one-half overtime compensation requirement.

28. During the Class Period, Defendant had actual knowledge that Plaintiff and the Fraud Investigators did not perform primary job duties sufficient to make Plaintiff or the Fraud Investigators exempt from the FLSA time-and-one-half overtime compensation requirement.

29. During the Class Period, Defendant had actual knowledge that it was obligated to pay Plaintiff and the Fraud Investigators at the time-and-one-half rate for overtime Plaintiff and the Fraud Investigators worked over forty (40) hours each week.

30. During the Class Period, Defendant had actual knowledge that its failure to pay Plaintiff and the Fraud Investigators overtime wages at the time-and-one-half rate for overtime Plaintiff and the Fraud Investigators worked over forty (40) hours each week was in direct violation of Defendant's FLSA and applicable state law overtime wage payment obligations.

FLSA COLLECTIVE ACTION ALLEGATIONS

31. Plaintiff brings his Count for violations of the FLSA as a Collective Action pursuant to 29 U.S.C. § 216(b), on behalf of himself and all Fraud Investigators employed by Defendant within the United States during the Class Period.

32. During the Class Period, Plaintiff and more than one hundred (100) Fraud Investigators performed substantially similar job duties for Defendant's primary benefit.

33. Plaintiff and more than one hundred (100) Fraud Investigators worked overtime in excess of forty (40) hours in at least one (1) week during the Class Period.

34. During the Class Period, Plaintiff and more than one hundred (100) Fraud Investigators were commonly misclassified by Defendant as exempt from the FLSA overtime compensation mandate.

35. During the Class Period, arising from Defendant's common and class-wide misclassification of Plaintiff and the Fraud Investigators as exempt from the FLSA overtime compensation mandate, Defendant paid Plaintiff and more than one hundred (100) Fraud Investigators straight wages at their regular salary rate for all hours worked each week, including overtime worked for Defendant's primary benefit over forty (40) hours per week.

36. During the Class Period, arising from Defendant's common and class-wide misclassification of Plaintiff and the Fraud Investigators as exempt from the FLSA overtime compensation mandate, Defendant failed to pay Plaintiff and more than one hundred (100) Fraud Investigators overtime wages at the FLSA required time-and-one-half rate for overtime Plaintiff and the Fraud Investigators worked for Defendant's primary benefit over forty (40) hours per week.

37. Arising from Defendant's common and class-wide misclassification of Plaintiff and the Fraud Investigators as exempt from the FLSA overtime compensation mandate, Defendant now commonly owes Plaintiff and more than one hundred (100) Fraud Investigators unpaid overtime premium wages and damages arising from Defendant's failure to pay Plaintiff and the Fraud Investigators FLSA required overtime wages for overtime worked for Defendant's primary benefit over forty (40) hours per week.

38. The Court's determination of Defendant's FLSA liability in this action and corresponding FLSA damages due and owing to Plaintiff and more than one hundred (100) Fraud Investigators in this action arises from a singular finding by the Court as to whether the primary job duties performed by Plaintiff and the Fraud Investigators made or make Plaintiff and the Fraud Investigators exempt or not exempt under the FLSA administrative exemption.

39. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the FLSA claims of Plaintiff and more than one hundred (100) similarly situated Fraud Investigators, each paid by Defendant on a salary basis and performing substantially similar job duties for Defendant's benefit across the United States.

40. Plaintiff's FLSA claims in this matter are substantially similar to the claims of more than one hundred (100) Fraud Investigators, paid by Defendant on a salary basis, that perform or performed substantially similar employment duties for Defendant within the Class Period such that it is proper for Plaintiff to serve as representative on behalf of those who consent to participate in this action, and that this action be conditionally certified as a Collective Action under the FLSA pursuant to 29 U.S.C. § 216(b).

CAUSES OF ACTION

COUNT I

Violation of the FLSA Overtime Compensation Mandate

41. Plaintiff incorporates by reference all preceding paragraphs as if the same were repeated here verbatim.

42. Pursuant to the FLSA, Defendant was required to pay non-exempt employees such as Plaintiff and the Fraud Investigators at the rate of one-and-one-half times (1.5x) their regular hourly rate for all overtime worked over forty (40) hours per week.

43. As set forth above, arising from their substantially similar work duties, Plaintiff and the Fraud Investigators were non-exempt employees of Defendant and were therefore entitled to overtime wages pursuant to the FLSA at the rate of one-and-one-half (1½) times their regular hourly rate for all overtime worked over forty (40) hours per week.

44. As set forth above, during the Class Period, Defendant failed to pay Plaintiff and the Fraud Investigators at the FLSA required rate of one-and-one-half times (1.5x) their regular hourly rate for all overtime Plaintiff and the Fraud Investigators worked over forty (40) hours per week.

45. During the Class Period, Defendant had actual knowledge that its failure to pay Plaintiff and the Fraud Investigators at the FLSA required rate of one-and-one-half times (1.5x) their regular hourly rate for all overtime worked over forty (40) hours per week was in direct violation of Plaintiff and the Fraud Investigators' FLSA overtime compensation rights.

46. Defendant's FLSA violations, as alleged above, constitutes willful violations of the FLSA which permits the recovery of unpaid overtime wages for up to three (3) years, rather than two (2) years.

47. Plaintiff and the Fraud Investigators seek to recover the following damages from Defendant:

- a. Unpaid wages due and owing for compensable overtime work duties performed over forty (40) hours per week;
- b. Statutory liquidated damages;
- c. Attorneys' fees and costs; and
- d. All other legal and equitable relief as the Court deems just and proper.

COUNT II

Violation of the Maryland Wage Hour Law Overtime Compensation Mandate

48. Plaintiff incorporates by reference all preceding paragraphs as if the same were repeated here verbatim.

49. Pursuant to the MWHL, Defendant was required to pay non-exempt employees such as Plaintiff at the rate of one-and-one-half times (1.5x) his regular hourly rate for all overtime worked over forty (40) hours per week.

50. As set forth above, arising from his work duties during the relevant period, Plaintiff was a non-exempt employee of Defendant and was therefore entitled to overtime wages pursuant to the MWHL at the rate of one-and-one-half (1½) times his regular hourly rate for all overtime worked over forty (40) hours per week.

51. As set forth above, during the relevant period, Defendant failed to pay Plaintiff at the MWHL required rate of one-and-one-half times (1.5x) his regular hourly rate for all overtime Plaintiff worked over forty (40) hours per week.

52. Defendant had actual knowledge that its failure to pay Plaintiff at the MWHL required rate of one-and-one-half times (1.5x) his regular hourly rate for all overtime work performed by Plaintiff substantially within the State of Maryland was in direct violation of Plaintiff's MWHL overtime compensation rights.

53. Plaintiff seeks to recover the following damages from Defendant:

- a. Unpaid wages due and owing for compensable overtime work duties performed over forty (40) hours per week;
- b. Statutory liquidated damages;
- c. Attorneys' fees and costs; and
- d. All other legal and equitable relief as the Court deems just and proper.

COUNT III

Violation of the Maryland Wage Payment Collection Law Wage Payment Mandate

54. Plaintiff incorporates by reference all preceding paragraphs as if the same were repeated here verbatim.

55. Pursuant to the MWPCCL, Defendant was required to fully and timely pay Plaintiff all earned wages when due and owing wages each pay period.

56. As set forth above, during the relevant period, Defendant failed to fully and timely pay Plaintiff earned wages as required by Maryland law at the rate of one-and-one-half times (1.5x) his regular hourly rate for all overtime Plaintiff worked over forty (40) hours per week each pay period.

57. During the relevant period, Defendant had actual knowledge that its failure to pay Plaintiff earned wages as required by Maryland law at the Maryland required rate of one-and-one-half times (1.5x) his regular hourly rate for all overtime worked over forty (40) hours per week each pay period was in direct violation of Plaintiff's MWPCCL wage payment rights.

58. Defendant's failure to fully and timely pay Plaintiff all earned overtime wages due and owing to Plaintiff pursuant to Maryland law for work performed by Plaintiff within the relevant period substantially within the State of Maryland was with actual knowledge of illegality and was therefore willful and intentional, was not the result of any *bona fide* dispute between Plaintiff and Defendant and was not in good faith.

59. Plaintiff seeks to recover the following damages from Defendant:

- a. Unpaid earned wages due and owing under Maryland law;
- b. Statutory liquidated damages;
- c. Attorneys' fees and costs; and
- d. All other legal and equitable relief as the Court deems just and proper.

RELIEF SOUGHT

WHEREFORE, Plaintiff prays this Honorable Court:

1. Issue an Order certifying this case as a Collective Action under the FLSA, and designate Plaintiff as the representative of all similarly situated Fraud Investigators employed by Defendant in all States of the United States during the Class Period;
2. Award Plaintiff and the Fraud Investigators actual damages in the amount of all unpaid overtime wages found due to Plaintiff and the Fraud Investigators for overtime work performed for Defendant during the Class Period as required under the FLSA and an award each liquidated damages as provided by the FLSA;
3. Award Plaintiff actual damages in the amount of all unpaid wages found due to Plaintiff under the MWHL and MWPCCL for work duties performed for Defendant during the relevant period and award Plaintiff liquidated damages as provided by the MWHL and MWPCCL;
4. Award Plaintiff and all Fraud Investigators pre- and post-judgment interest at the statutory rate;
5. Award Plaintiff and all Fraud Investigators attorneys' fees, costs, and disbursements;
and
6. Award Plaintiff and all Fraud Investigators further legal and/or equitable relief as this Court deems necessary, just and proper.

JURY DEMAND

Plaintiff requests a jury trial on all issues so triable.

Dated: January 25, 2023

Respectfully submitted,

ZIPIN, AMSTER & GREENBERG, LLC

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