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CECIL B. BYERS, on behalf of himself and
all others similarly situated,

PLAINTIFF

v.

WELLS FARGO ADVISORS, LLC,

DEFENDANT

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL CLASS ACTION PETITION

TO THE HONORABLE COURT:

Plaintiff Cecil B. Byers (“Plaintiff” or “Byers”), on behalf of himself and all others similarly situated, brings this class action against Defendant Wells Fargo Advisors, LLC (“Defendant” or “WFA”), and respectfully states the following:

NATURE OF THE CASE

1. This is a class action against WFA for failing to pay the full amount of compensation owed to Byers and all other similarly situated current and former WFA financial advisors, registered representatives, and other employees (*i.e.*, the “Class Members”) under the WFA Broker Payout Grid, from 2011 through 2014 (the “Relevant Period”).

2. Byers, on behalf of himself and Class Members, asserts claims for violation of the Texas Payday Act, breach of contract, breach of implied contract, negligence/gross negligence, unjust enrichment, quantum meruit, and assumpsit, and seeks to recover (i) unpaid compensation, (ii) punitive damages, and (iii) attorneys’ fees, litigation expenses, and costs.

DISCOVERY PLAN

3. Plaintiff, on behalf of himself and Class Members, intends to seek entry of a Level 3 order requiring discovery to be conducted under a discovery control plan tailored to the specific circumstances of this action. TEX. R. CIV. P. 190.4.

PARTIES

4. Plaintiff Byers is a citizen and resident of Jefferson County, Texas, who was employed by WFA as a financial advisor and registered representative in its Beaumont, Texas office, from December 2010 through July 2015. During the Relevant Period, WFA failed to properly pay Byers the full amount of compensation owed him under the WFA Broker Payout Grid.

5. Defendant WFA is a Delaware limited liability company with its principal place of business in St. Louis, Missouri. WFA, a subsidiary of Wells Fargo & Co., is the third largest retail securities brokerage firm in the United States, with over 15,000 financial advisors and \$1.4 trillion of client assets under management. At all relevant times, WFA was qualified to conduct, conducted, and continues to conduct business in the State of Texas, including Jefferson County, Texas. WFA may be served with Citation and a copy of this Original Class Action Petition by serving its registered agent for service of process, Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Ste. 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this case pursuant to TEX. GOVM'T CODE 24.007(b). This Court has personal jurisdiction over WFA because at all relevant times, WFA conducted (and continues to conduct) business in Jefferson County, Texas.

7. Venue is proper in Jefferson County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) or, in the alternative, TEX. CIV. PRAC. & REM. CODE § 15.002(a)(4).

FACTS

8. Byers is a financial advisor and registered representative with over 43 years of experience in the financial services industry. He started his career with Merrill Lynch. Prior to working for WFA, he worked for Smith Barney/Morgan Stanley.

9. In late 2010, WFA recruited Byers away from Smith Barney/Morgan Stanley to work as a financial advisor and registered representative in its Beaumont, Texas branch office.

10. Byers moved his book of business to WFA in December 2010. As a WFA financial advisor and registered representative, Byers' monthly compensation was paid according to the WFA Broker Payout Grid. The 2011 Broker Payout Grid, for example, provided for monthly compensation equal to 22% of the first \$10,000 of revenue a financial advisor generated plus 50% of the revenue a financial advisor generated over and above \$10,000.

11. WFA, however, unilaterally changed the Broker Payout Grid every year during which Byers was employed as a financial advisor.

12. For example, the 2012 Broker Payout Grid provided for monthly compensation equal to 22% of the first \$11,000 of revenue a financial advisor generated plus 50% of the revenue a financial advisor generated over and above \$11,000.

13. The 2013 Broker Payout Grid provided for monthly compensation equal to 22% of the first \$12,000 of revenue a financial advisor generated plus 50% of the revenue a financial advisor generated over and above \$12,000.

14. The 2014 Broker Payout Grid provided for monthly compensation equal to 22% of the first \$13,250 of revenue a financial advisor generated plus 50% of the revenue a financial advisor generated over and above \$13,250.

15. Thus, the monthly compensation for Byers and the Class Members provided for by the Broker Payout Grid steadily decreased over time as WFA unilaterally changed its terms—to the financial benefit of WFA, and the financial detriment of Byers and Class Members.

16. And, adding insult to injury, not only did WFA systematically reduce Byers' and Class Members' compensation under the Broker Payout Grid every year, WFA consistently underpaid Byers and the Class Members the compensation owed them under the Broker Payout Grid formulas in effect during the Relevant Period. This case has resulted.

CLASS ACTION ALLEGATIONS

17. Pursuant to TEX. R. CIV. P. 42, Plaintiff brings this action as a class action on behalf of himself and all members of the following Class of similarly situated persons:

All current and former Wells Fargo Advisors, LLC financial advisors, registered representatives, and other employees who, from 2011 through 2014, received less compensation than they should have received under the Wells Fargo Advisors, LLC Broker Payout Grid.

Excluded from the Class are WFA senior executives, and the immediate family members of Court personnel.

18. On information and belief, the proposed Class consists of hundreds of geographically dispersed individuals, the joinder of which in one action is impracticable. The precise number and identities of the Class Members are currently unknown to Plaintiff, but can easily be derived from WFA's internal employment and compensation records.

19. WFA violated the rights of each Class Member in the same manner by its above-described uniform wrongful actions—to wit, failing to pay them the full amount of their compensation under the WFA Broker Payout Grid.

20. Common questions of law and fact predominate over any questions affecting individual Class Members including, *inter alia*:

- (i) whether WFA's above-described wrongful actions constitute breach of contract;
- (ii) whether WFA's above-described wrongful actions breach of an implied contract;
- (iii) whether WFA's above-described wrongful actions constitute negligence/gross negligence;
- (iv) whether WFA's should be compelled to refund (or disgorge) the amounts by which it has been unjustly enriched or compelled to make restitution under the common law equitable doctrine of assumpsit;
- (v) whether WFA's should be compelled to refund (or disgorge) the amounts by which it has been unjustly enriched or compelled to make restitution under the common law equitable doctrine of quantum meruit;
- (vi) whether WFA's above-described wrongful actions directly or proximately caused Plaintiff and Class Members to suffer damages;
- (vii) whether Plaintiff and Class Members are entitled to recover actual damages, punitive damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amount of the recovery; and
- (viii) whether Plaintiff and Class Members are entitled to injunctive relief.

21. Plaintiff's claims are typical of Class Members' claims because Plaintiff and Class Members are all victims of WFA's above-described wrongful actions.

22. Plaintiff and his counsel will fairly and adequately represent the interests of Class Members. Plaintiff has no interests antagonistic to, or in conflict with, those of any of the Class Members. Plaintiff's counsel is experienced in leading and prosecuting class actions and complex commercial litigation, including class actions against securities brokerage firms on behalf of financial advisors to recover underpaid compensation.

23. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiff's and Class Members' claims. Plaintiff and Class Members have been harmed as a direct and proximate result of WFA's above-described wrongful actions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the

corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Class Members to intervene as parties-plaintiff in this action, (iii) it will allow numerous persons with claims too small to adjudicate on an individual basis because of prohibitive litigation costs to obtain redress for their injuries, and (iv) it will provide court oversight of the claims process once WFA's liability is adjudicated.

24. Certification, therefore, is appropriate under TEX. R. CIV. P. 42(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

25. Certification also is appropriate under TEX. R. CIV. P. 42(b)(2) because WFA has acted (or refused to act) on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

26. Certification also is appropriate under TEX. R. CIV. P. 42(b)(1) because the prosecution of separate actions by individual Class Members would create a risk of establishing incompatible standards of conduct for WFA. For example, one court might decide that the challenged actions are wrongful and enjoin WFA, while another court might rule differently. Individual actions also could be dispositive of the interests of other Class Members who are not parties to such actions, thereby substantially impairing or impeding their ability to protect their interests.

27. WFA's above-described wrongful actions are applicable to the Class as a whole, for which Plaintiff seeks, *inter alia*, damages, equitable remedies, and injunctive relief.

28. Absent a class action, WFA will retain the benefits of its wrongdoing despite violating the law and inflicting substantial damages, injury, and harm on Plaintiff and Class Members.

CLAIMS FOR RELIEF/ CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

29. The preceding factual statements and allegations are incorporated by reference.

30. Plaintiff and Class Members, on the one hand, and WFA, on the other hand, mutually intended to form and, in fact, entered into valid and enforceable contracts arising from, and evidenced by, the Parties' acts and conduct. Such contracts governed certain aspects of the Parties' employment relationships. Plaintiff, Class Members, and WFA entered into the contracts at the time Plaintiff's and Class Members' employment with WFA commenced. Under the terms of the contracts, in exchange for Plaintiff's and Class Members' toil and labor as WFA employees generating substantial revenue and profits for WFA, WFA promised to, *inter alia*, pay them monthly compensation according to the WFA Broker Payout Grid.

31. Plaintiff and Class Members have performed all conditions precedent to WFA's liability for the unpaid compensation under these contracts by, *inter alia*, performing all of their assigned job responsibilities and obligations as WFA financial advisors, registered agents, and employees. WFA, however, repeatedly and systematically breached its contracts with Plaintiff and Class Members by knowingly, willfully, wantonly, negligently, or wrongfully failing to pay them the full amount of compensation WFA owed them under the Broker Payout Grid.

32. WFA's wrongful actions directly and proximately caused Plaintiff and Class Members to suffer damages in the form of, *inter alia*, unpaid compensation income. WFA's wrongful actions constitute breach of contract at common law.

COUNT II

BREACH OF IMPLIED CONTRACT

33. The preceding factual statements and allegations are incorporated by reference.

34. In the alternative, Plaintiff and Class Members, on the one hand, and WFA, on the other hand, mutually intended to form and, in fact, formed and entered into valid and enforceable implied contracts arising from, and evidenced by, the Parties' acts and conduct. Such implied contracts governed certain aspects of the Parties' employment relationships. Plaintiff, Class Members, and WFA entered into the implied contracts at the time Plaintiff's and Class Members' employment with WFA commenced. Under the terms of the implied contracts, in exchange for Plaintiff's and Class Members' toil and labor as WFA's employees generating substantial revenue and profits for WFA, WFA promised to, *inter alia*, pay them according to the Broker Payout Grid.

35. All conditions precedent to WFA's liability under these implied contracts have been performed by Plaintiff and Class Members. Plaintiff and Class Members performed all of their obligations under the implied contracts by, *inter alia*, performing all of their assigned responsibilities and obligations as as WFA financial advisors, registered agents, and employees. WFA, however, breached its implied contracts with Plaintiff and Class Members by knowingly, maliciously, fraudulently, willfully, wantonly, negligently or wrongfully failing to pay them the full amount of their compensation under the Broker Payout Grid.

36. WFA's wrongful actions directly and/or proximately caused Plaintiff and Class Members to suffer damages in the form of, *inter alia*, unpaid compensation income. WFA's wrongful actions constitute breach of implied contract at common law.

COUNT III

COMMON LAW DEBT ACTION FOR UNPAID COMPENSATION

37. The preceding factual statements and allegations are incorporated by reference.

38. Plaintiff and Class Members performed all of their obligations as WFA financial advisors, registered agents, and employees under their above-described agreements with WFA. WFA, however, did not. WFA knowingly, maliciously, fraudulently, willfully, wantonly, negligently or wrongfully failed and refused to pay them the full amount of their compensation under the Broker Payout Grid.

39. WFA's wrongful actions directly and/or proximately caused Plaintiff and Class Members to suffer damages in the form of, *inter alia*, unpaid compensation income. Plaintiff and Class Members are entitled to recover their unpaid compensation at common law.

COUNT IV

NEGLIGENCE/GROSS NEGLIGENCE

40. The preceding factual statements and allegations are incorporated by reference.

41. As Plaintiff's and Class Members' employer, WFA owed them the duty to exercise reasonable care in properly paying them the full amount of their compensation under the Broker Payout Grid.

42. During the Relevant Period, however, WFA breached its duties to Plaintiff and Class Members by knowingly, maliciously, fraudulently, willfully, intentionally, wantonly, recklessly, negligently, or wrongfully failed to pay them the full amount of their compensation under the Broker Payout Grid in complete disregard for Plaintiff's and Class Members' rights and interests and the consequences of its actions. The underpayment of Plaintiff's and Class Members' compensation under the Broker Payout Grid was the reasonably foreseeable consequence of

WFA's wrongful actions, inaction, negligence, and gross negligence.

43. As a direct and proximate result of WFA's above-described negligence or gross negligence in administering the Broker Payout Grid, Plaintiff and Class Members have suffered damages to their businesses and property, and other injury and harm, in the form of, *inter alia*, unpaid compensation. WFA's wrongful actions constitute negligence or gross negligence at common law.

COUNT V

UNJUST ENRICHMENT/ASSUMPSIT/QUANTUM MERUIT

44. The preceding factual statements and allegations are incorporated by reference.

45. Plaintiff pleads this Count in the alternative to his contract claims (Counts I and II) because he cannot recover under this Count and under Counts I and II.

46. Plaintiff and Class Members conferred a benefit on WFA in the form of valuable services performed for the benefit of WFA. As WFA financial advisors, registered agents, and employees, Plaintiff and Class Members performed all of their assigned job responsibilities and obligations, generating substantial revenue and profits for WFA in the process. As Plaintiff's and Class Members' employer, WFA knew they expected to be paid the full amount of their compensation under the Broker Payout Grid that, in fact, WFA established and unilaterally changed every year during the Relevant Period for its further financial benefit.

47. Although WFA accepted the valuable services Plaintiff and Class Members performed, as well as the substantial revenue and profits generated by their services, WFA failed and refused to pay them the full amount of their earned compensation under the Broker Payout Grid. As such, WFA has been (and continues to be) unjustly enriched by, *inter alia*, (i) the unpaid compensation owed to Plaintiff and Class Members under the Broker Payout Grid, (ii) the revenue and profits

generated for WFA by Plaintiff and Class Members during the time they were not fully compensated for their toil and labor under the Broker Payout Grid, and (iii) the return on investment generated by WFA on the amounts described in (i) and (ii).

48. WFA, therefore, as a matter of justice, equity, and good conscience, should be compelled to refund (or disgorge) such wrongfully unpaid compensation, its corresponding revenue and profits, and its corresponding return on investment under the common law doctrines of unjust enrichment and quantum meruit, and the duty to make restitution under the common law equitable doctrine of assumpsit.

COUNT VI

INJUNCTIVE RELIEF

49. The preceding factual statements and allegations are incorporated by reference.

50. The Court has broad authority to restrain acts, such as WFA's above-described wrongful actions.

51. An actual controversy exists regarding WFA's duty and obligation to pay Plaintiff and Class Members the full amount of their compensation under the Broker Payout Grid. On information and belief, WFA continues to underpay Class Members the full amount of their compensation under the Broker Payout Grid while, at the same time, accepting their valuable services and the revenue and profits they generate—thereby inflicting further damages on them. Such irreparable harm will not cease unless and until enjoined by this Court.

52. Those Class Members who continue to be employed by WFA, therefore, also are entitled to injunctive relief and other appropriate affirmative relief in the form of an order compelling WFA to immediately (i) discontinue its above-described wrongful actions, (ii) institute policies and procedures to insure they are paid the full amount of their compensation under the Broker

Payout Grid going forward, and (iii) pay them the full amount of their compensation under the Broker Payout Grid going forward.

53. The financial hardship to the Class Members who continue to be employed by WFA if an injunction does not issue (*i.e.*, a substantial amount of money) exceeds the hardship to WFA if an injunction is issued (*i.e.*, none). Setting aside the fact that WFA has a pre-existing legal obligation to pay Class Members the full amount of their compensation under the Broker Payout Grid, the cost to WFA of complying with an injunction requiring it to actually pay the compensation it is already required to pay is nonexistent. Issuance of the requested injunction will serve—not disserve—the public interest.

RELIEF REQUESTED

54. The preceding factual statements and allegations are incorporated by reference.

55. ACTUAL DAMAGES. As a direct and proximate result of WFA's above-described wrongful actions, Plaintiff and Class Members have sustained (and will continue to sustain) actual damages and other injury and harm, in the form of, *inter alia*, unpaid compensation under the WFA Broker Payout Grid—which Plaintiff and Class Members are entitled to receive. Alternatively, Plaintiff and Class Members are entitled to equitable relief in the form of (i) the unpaid compensation owed to them under the Broker Payout Grid, (ii) the revenue and profits generated for WFA by Plaintiff and Class Members during the time they were not fully compensated for their toil and labor under the Broker Payout Grid, (iii) the return on investment generated by WFA on the amounts described in (i) and (ii), and (iv) and all other amounts by which WFA has been unjustly enriched. All of the damages, injuries, and harm sustained by Plaintiff and Class Members were reasonably foreseeable by WFA. All conditions precedent to Plaintiff's and Class Members' claims for relief have been performed or occurred.

56. PUNITIVE DAMAGES. WFA's wrongful actions were committed intentionally, willfully, wantonly, and with reckless disregard for Plaintiff's and Class Members' rights and interests. Accordingly, Plaintiff and Class Members are entitled to recover punitive damages from WFA as punishment, and to discourage such wrongful conduct in the future. All conditions precedent to Plaintiff's and Class Members' claims for relief have been performed or occurred.

57. INJUNCTIVE RELIEF. Plaintiffs and Class Members also are entitled to the above-described injunctive relief. All conditions precedent to Plaintiff's and Class Members' claims for relief have been performed or occurred.

58. ATTORNEYS' FEES, LITIGATION EXPENSES AND COSTS. Plaintiff and Class Members also are entitled to recover their attorneys' fees, litigation expenses, and court costs. All conditions precedent to Plaintiff's and Class Members' claims for attorneys' fees, litigation expenses, and court costs have been performed or occurred.

WHEREFORE, Byers, for himself and Class Members, respectfully requests that (i) WFA be cited to appear and answer this lawsuit, (ii) this action be certified as a class action, (iii) Byers be designated the Class Representative, and (iv) Byers' counsel be appointed Class Counsel. Byers, for himself and Class Members, further requests that upon final trial or hearing, judgment be awarded against WFA for:

- (i) actual damages (as set forth above) in an amount to be determined by the trier of fact;
- (ii) punitive damages;
- (iii) injunctive relief (as set forth above);
- (iv) pre- and post-judgment interest at the highest legal rates;
- (v) attorneys' fees and litigation expenses;
- (vi) costs of suit; and

(vii) such other and further relief to which Byers is justly entitled.

Date: August 30, 2016.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Richard L. Coffman", written over a horizontal line.

Richard L. Coffman
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**ATTORNEYS FOR PLAINTIFF
CECIL B. BYERS AND THE
PUTATIVE CLASS**