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10 Attorneys for Plaintiff ANKIT SAHU

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **ALAMEDA COUNTY**

13 ANKIT SAHU, as representative and proxy of
the State of California,

14 Plaintiff,

15 v.

16 UBS FINANCIAL SERVICES, INC. and Does
17 1 through 50, inclusive,

18 Defendants.
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Case: RG 16837082

FIRST AMENDED COMPLAINT
[Labor Code § 2698, et seq.]

BY FAX

ENDORSED
FILED
ALAMEDA COUNTY

NOV 30 2016

CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS Deputy

1 **INTRODUCTION**

2 1. Plaintiff Anki Sahu (“Plaintiff”), as representative and proxy of the State of
3 California, alleges as follows:

4 2. This is an action for recovery of penalties under the California Labor Code
5 Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698, *et seq.* PAGA permits
6 an "aggrieved employee" to bring a lawsuit on behalf of the State of California and other current
7 and former aggrieved employees to address an employer's violations of the California Labor
8 Code.

9 3. Plaintiff brings this lawsuit on behalf of the State of California as well as all
10 current and former aggrieved employees of Defendant UBS Financial Services Inc. (“UBS” or
11 “Defendant”) employed as Financial Advisors, or the functional equivalent, however titled,
12 (which position includes the titles “Financial Consultant,” “Securities Broker,” “Stockbroker,”
13 “Investment Advisor,” and/or “Investment Representative”) (collectively referred to as
14 “Financial Advisor”) who worked in California and who were harmed as a result of Defendant’s
15 violations of California labor laws.

16 **PARTIES**

17 4. Plaintiff Sahu is a citizen of the State of California. Sahu is a former UBS
18 Financial Advisor who worked in San Francisco, California, within the last year preceding the
19 filing of this action.

20 5. Defendant UBS was and is a Delaware corporation with its principal place of
21 business in New Jersey. UBS transacts business in this judicial district.

22 6. The true names and capacities of persons or entities, whether individual,
23 corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently
24 unknown to Plaintiff, who therefore sues Defendant by such fictitious names under C.C.P. § 474.
25 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
26 designated herein as a DOE defendant is legally responsible in some manner for the unlawful
27 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
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1 true names and capacities of such other responsible parties when their identities become known.

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3 7. All of Plaintiff's claims stated herein are asserted against Defendant and any of its
4 owners, predecessors, successors, subsidiaries, and/or assigns.

5 **VENUE AND JURISDICTION**

6 8. Venue is proper in this Court because Plaintiff was employed in this judicial
7 district and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred
8 in this judicial district.

9 **FIRST CAUSE OF ACTION**

10 **(PAGA, Labor Code § 2698, et seq.)**

11 9. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
12 though repeated here.

13 10. California Labor Code § 2802 states that an employer must reimburse its
14 employees for all reasonable and necessary business expenses incurred during the course of the
15 employees' duties.

16 11. Defendant's Financial Advisors paid reasonable and necessary business expenses
17 that were not reimbursed by Defendant. These expenses included, without limitation, the costs
18 of settlements, judgments, awards, trading errors, the wages of Client Service Associates and
19 other support staff, licensing fees, ticket charges, and marketing and sales expenses. Defendant's
20 policy and practice of having Financial Advisors pay these expenses violated Labor Code §
21 2802, which in turn triggers civil penalties under the Labor Code, including § 2699.

22 12. Labor Code § 204 establishes deadlines for paying wages to employees like
23 Plaintiff and the other California Financial Advisors. For labor performed between the 1st and
24 15th of the month, wages are due no later than the 26th of the month, and for labor performed
25 between the 16th and the end of the month, wages are due no later than the 10th of the following
26 month. Section 5.2.5 of the DLSE Enforcement Policies and Interpretations Manual states that
27 commission wages are "due and payable when they are reasonably calculable." Because UBS
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1 pays Financial Advisors commissions according to a fixed grid rate, commissions are reasonably
2 calculable when the trade closes. However, UBS does not pay the commissions within 10 days of
3 the close of the pay period, in violation of Labor Code § 204. This triggers civil penalties under
4 the Labor Code, including §§ 210 and 2699.

5 13. Defendant, as a matter of corporate policy did not maintain or provide accurate
6 itemized pay statements in violation of Labor Code § 226. For instance, Defendant's wage
7 statements did not state, or did not accurately state, *inter alia*, gross wages earned, all deductions,
8 and net wages earned. Defendant's failure to provide accurate and complete itemized statements
9 was willful, knowing, intentional, and the result of Defendant's custom, habit, pattern and
10 practice; it was not the result of isolated, sporadic or unintentional behavior. Defendant's failure
11 to comply with the requirements of Labor Code § 226 triggers civil penalties under the Labor
12 Code, including §§ 226 and 2699.

13 14. On August 16, 2016, Plaintiffs served notice via online submission to the
14 California Labor Workforce Development Agency ("LWDA") and via certified mail to
15 Defendant UBS Financial Services Inc. ("UBS") of Plaintiff's intent to file a complaint against
16 UBS pursuant to Labor Code § 2698, *et seq.* At that time, Plaintiff also paid the filing fee to the
17 LWDA pursuant to Labor Code § 2699.3. Plaintiff did not receive a response to his notice within
18 the time proscribed by Labor Code § 2699.3.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

- 21 1. For penalties according to proof;
 - 22 2. For reasonable attorneys' fees and costs; and,
 - 23 3. For such other relief the Court deems just and proper.
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DATED: November 30, 2016

WYNNE LAW FIRM
CLAPP & LAUINGER LLP



By: Edward J. Wynne

Attorneys for Plaintiff ANKIT SAHU