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JAMES F. CLAPP (145814)
jclapp@clapplegal.com
MARITA MURPHY LAUNGER (199242)
mlaunger@clapplegal.com
CLAPP & LAUNGER LLP
701 Palomar Airport Road, Suite 300
Carlsbad, California 92011
Tel: 760-209-6565 ext. 101
Fax: 760-209-6565

EDWARD J. WYNNE (165819)
ewynne@wynnelawfirm.com
GEORGE R. NEMIROFF (262058)
gnemiroff@wynnelawfirm.com
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Blvd., Ste. 3-G
Larkspur, CA 94939
Tel: 415-461-6400
Fax: 415-461-3900
Attorneys for JOHN QUINN,
Representative and proxy for the
State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JOHN QUINN, as representative and proxy
of the State of California,

Plaintiff,

v.

AMERIPRISE FINANCIAL SERVICES,
INC., and Does 1 through 50, inclusive,

Defendants.

CASE NO. **HG 20050263**
**COMPLAINT FOR CIVIL PENALTIES
UNDER THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT**

ENDORSED
FILED
ALAMEDA COUNTY

JAN 14 2020

CLERK OF THE SUPERIOR COURT
By Roni Gil Deputy

Filed By Fax

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I. INTRODUCTION

1. Plaintiff John Quinn, as representative and proxy of the State of California, brings this action for recovery of penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, *et seq.* PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of the State of California and other current and former aggrieved employees to address an employer’s violations of the California Labor Code. For purposes of this lawsuit, “Aggrieved Employees” is defined as follows:

All individuals who worked in the State of California for Ameriprise Financial Services, Inc. (“Ameriprise”) as a Financial Advisor, or the functional equivalent thereof however titled (which position includes the titles of “Financial Consultant,” “Securities Broker,” “Stockbroker,” “Investment Advisor,” and/or “Investment Representative,” collectively referred to as “Financial Advisor”), from September 26, 2018 to the present.

II. PARTIES

2. Plaintiff John Quinn is a citizen of the State of California.

3. Defendant Ameriprise Financial Services, Inc. was and is a Delaware corporation with its principal places of business in Minnesota. Ameriprise transacts business in this judicial district. Ameriprise has not designated a principal business office in California.

4. The true names and capacities of persons or entities, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to plaintiff, who therefore sues them by such fictitious names under C.C.P. § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as a DOE defendant is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this complaint to reflect the true names and capacities of such other responsible parties when their identities become known. Plaintiff will refer to all defendants collectively as “defendant” or “Ameriprise.”

1 dishonest or willful act of Plaintiff or the Aggrieved Employees, but rather, are the result of
2 Plaintiff and the Aggrieved Employees performing their job duties as required by Defendant.

3 9. Labor Code § 223 provides: “Where any statute or contract requires an
4 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
5 wage while purporting to pay the wage designated by statute or by contract.”

6 10. Labor Code §§ 400 - 410 (“Employee Bond Law”) provide the limited
7 circumstances under which an employer can exact a cash bond from its employees. These
8 provisions are designed to protect employees against the very real danger of an employer
9 taking or misappropriating employee funds held by the employer in trust. IWC Wage Order
10 4-2001, Section 8 provides that the only circumstance under which an employer can make a
11 deduction from an employee's wages due to cash shortage, breakage, or loss of equipment is
12 if the employer can prove that the shortage, breakage, or loss was the result of the employee's
13 gross negligence or dishonest or willful act, which the above-referenced deductions were not.

14 11. Defendant has violated Cal. Labor Code §§ 221, 223, and 400 - 410, and IWC
15 Wage Order 4-2001, Section 8 by unlawfully taking deductions from Plaintiff and Aggrieved
16 Employees’ wages to cover certain ordinary business expenses of Defendant as identified
17 above. Because Defendant took unlawful deductions from Plaintiff and the Aggrieved
18 Employees’ was, it has violated Labor Code §§ 218.5, 221, 223, and 400 – 410, 1194 as well
19 as IWC Wage Order 4-2001, Section 8.

20 **B. Failure to Pay on Regular Paydays**

21 12. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person
22 in any employment are due and payable twice during each calendar month, on days
23 designated in advance by the employer as the regular paydays.” Pursuant to Labor Code §
24 204(d), these requirements are “deemed satisfied by the payment of wages for weekly,
25 biweekly or semimonthly payroll if the wages are paid not more than seven calendar days
26 following the close of the payroll period.”

27 13. Defendant failed to pay Plaintiff and the other Aggrieved Employees at least
28 twice per month in violation of Labor Code § 204. Defendant regularly and consistently

1 failed to designate days in advance as paydays of at least twice per month as required by
2 Labor Code § 204. In addition to failing to establish specific regular paydays for Plaintiff and
3 the other Aggrieved Employees, Defendant also failed to provide Plaintiff and the other
4 Aggrieved Employees with itemized wage statements and/or accurate itemized wage
5 statements when paying wages. The wage statements that Defendant did provide did not
6 comply with Labor Code § 226 because they do not reflect the correct amount of gross wages
7 earned, all deductions, and the net wages earned.

8 14. Labor Code § 210 provides that “in addition to, an entirely independent and
9 apart from, any other penalty provided in this article, every person who fails to pay the wages
10 of each employee as provided in Sections...204...shall be subject to a civil penalty as
11 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
12 employee; (2) For each subsequent violation, or any willful or intentional violation, two
13 hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount
14 unlawfully withheld.” As a result of the illegal compensation policies and practices described
15 in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties
16 under Labor Code § 210 through PAGA.

17 **C. Wage Statement Violations**

18 15. Labor Code § 226 obligates employers, semi-monthly or at the time of each
19 payment, to furnish an itemized wage statement in writing showing, *inter alia*, the gross
20 wages earned, all deductions, net wages earned, the name of the employer, and all applicable
21 hourly rates in effect. The wage statements that Defendant provided to Plaintiff and other
22 Aggrieved Employees do not contain the information required by Labor Code § 226.
23 Defendant’s failure to provide the required information on the pay statements was knowing
24 and intentional. Due to Defendant’s knowing and intentional failure to issue itemized wage
25 statements as required by California law to Plaintiff and the Aggrieved Employees,
26 Defendant violated Labor Code § 226(a), 226(e), and 226.3.

27 **D. Waiting Time Penalties**

28 16. Plaintiff and other formerly employed Aggrieved Employees were discharged

1 by Defendant or voluntarily quit. Defendant, in violation of California Labor Code §§ 201
2 and 202, has a consistent and uniform policy, practice and procedure of willfully failing to
3 timely pay the final wages to its former employees. Plaintiff and other formerly employed
4 Aggrieved Employees did not secret or absent themselves from Defendant nor refuse to
5 accept the earned and unpaid wages from Defendant. As a result of Defendant's violations of
6 Labor Code §§ 201-202, Defendant should have paid Plaintiff and other formerly employed
7 Aggrieved Employees waiting time penalties under Section 203. This failure triggers civil
8 penalties that are recoverable under PAGA.

9 **E. Aggrieved Employees are Employees and not Independent Contractors**

10 17. Plaintiff and the Aggrieved Employees are "employees" and not "independent
11 contractors." Plaintiff and the Aggrieved Employees do not perform work outside the
12 Defendant's normal course of business, as Defendant is in the business of providing financial
13 products and services to its clients, and Plaintiff and the Aggrieved Employees are engaged
14 in the same business on behalf of the same clients. Plaintiff and the Aggrieved Employees are
15 not engaged in an independently established trade, occupation or business. Instead, they
16 provide financial products and services and are required to hold themselves out to the public
17 as being affiliated with Defendant. Plaintiff and other Aggrieved Employees are not
18 permitted to work for any other broker-dealer while employed by Defendant.

19 18. Defendant retains all necessary control over Plaintiff and the other Aggrieved
20 Employees' work. Plaintiff and other Aggrieved Employees work under the close supervision
21 of Defendant. Plaintiff and the Aggrieved Employees do not operate distinct businesses, but
22 are integrated into Defendant's business; Defendant closely monitors the work of their
23 Financial Advisors; Defendant provides marketing, products, back-office support, forms and
24 documents which have the Ameriprise logo on it, representing the tools of work; Defendant
25 pays Plaintiff and the Aggrieved Employees a draw and commission which is consistent with
26 an employer-employee relationship; and Financial Advisors often stay with Defendant for
27 years. Under applicable standards of law, Plaintiff and the Aggrieved Employees are, or were
28 during their employment with Defendants, employees and not independent contractors.

1 19. Defendant retains the right to control the method and manner of how Plaintiff
2 and Aggrieved Employees perform their job duties. Among other things, Plaintiff and
3 Aggrieved Employees are required to follow detailed requirements imposed on them by
4 Defendants governing their interactions with clients, recommendations, sales, marketing,
5 continuing education, licensing, internal and external communications, financial relationships
6 with other employees, the personal financial dealings, and personal conduct among other
7 areas.

8 20. On April 30, 2018, the California Supreme Court published its opinion in
9 *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, which announced a new test
10 for employment status called the “ABC test.” The ABC tests asks: (A) *Is the worker free*
11 *from the control and direction of the hiring entity in the performance of the work, both under*
12 *the contract for the performance of the work and in fact?*(B) *Does the worker perform work*
13 *that is outside the usual course of the hiring entity's business? and (C) Is the worker*
14 *customarily engaged in an independently established trade, occupation, or business of the*
15 *same nature as the work performed for the hiring entity?* For an individual to be properly
16 classified as an independent contract under California law, the contracting entity must show
17 that the individual meets all three parts of the test. If the contracting entity is not able to meet
18 all three prongs of the ABC test, the individual is not an independent contractor.

19 21. In response to *Dynamex*, the California Legislature passed, and the Governor
20 signed into law, Assembly Bill 5, which codified the ABC test into the California Labor
21 Code at Section 2750.3. Labor Code § 2750.3 became effective January 1, 2020. While
22 codifying *Dynamex*, Labor Code § 2750.3 has two significant exceptions relevant here. First,
23 Labor Code § 2750.3 exempts a number of occupations from the ABC test, including
24 individuals who are securities broker-dealers or investments advisors and their agents and
25 representatives who are registered with the SEC, FINRA or licensed by the State of
26 California as a broker-dealer. Labor Code § 2750.3(b)(4). Second, the exemptions are
27 expressly retroactive. Labor Code § 2750.3(i)(2).

1 22. Plaintiff alleges that Labor Code §§ 2750.3(b)(4) and (i)(2) violate the
2 California Constitution. because they deprive Plaintiff and similarly situated Aggrieved
3 Employees of due process and equal protection under the law.

4 23. Specifically, Labor Code § 2750.3(b)(4) is unconstitutional because it
5 improperly exempts certain individuals who work in the securities industry from the
6 protections of *Dynamex* and the ABC test that other individuals, both inside and outside of
7 the securities industry, enjoy. California law provides employees with safeguards and
8 protections in the areas of wages, hours and working conditions that independent contractors
9 do not have. The Legislature’s decision to adopt the more lenient *Borello* test instead of the
10 ABC test for agents and representatives in the securities industry (like Plaintiff and the other
11 Aggrieved Employees) was unreasonable, arbitrary, and irrational; it has the effect of
12 interfering with the agents’ and representatives’ fundamental right to pursue a lawful
13 occupation; and it ignores the holding of *Dynamex* that adopting the more stringent ABC test
14 is necessary to protect the wages and working conditions of all employees, which is a
15 fundamental public policy of the State. No good cause exists to deprive individuals in the
16 securities industry from the minimum protections set forth in the Labor Code and IWC Wage
17 Orders, and the State has an insufficient basis to exempt such individuals from those
18 protections.

19 24. Labor Code § 2750.3(i)(2) is unconstitutional because it is an *ex post facto*
20 law that deprives Plaintiff and other Aggrieved Employees of vested rights to wages that
21 arose as a result of the *Dynamex* decision. Plaintiff and similarly situated Aggrieved
22 Employees are employees under the ABC test and, upon issuance of *Dynamex*, had the right
23 to recover their wages and other employee-related benefits that should have been paid to
24 them as employees. Notwithstanding, Labor Code § 2750.3(i)(2) has the effect of
25 retroactively denying Plaintiff and other similarly situated Aggrieved Employees their right
26 to recover their vested wages and other benefits. The retroactive application of Labor Code §
27 2750.3(i)(2) for the specified occupations that are exempted from the protections of *Dynamex*
28 is arbitrary and capricious, not reasonably related to any legitimate purpose, and not

1 necessary to protect the health, safety, morals or general welfare of individuals falling within
2 the exemptions. There is no reasonable or rational basis for making Labor Code §
3 2750.3(i)(2) retroactive for the enumerated exceptions. Plaintiff reasonably relied on the law
4 as it existed before Section 2750.3(i)(2) went into effect by asserting his legal rights under
5 PAGA.

6 25. Based on the foregoing violations suffered by Plaintiff and the Aggrieved
7 Employees, Plaintiff seeks recovery of civil penalties including, without limitation, all
8 penalties that may be authorized under Labor Code sections 2699(f)(2), 203, 210, 226, and
9 558(a).

10 26. On September 26, 2018, plaintiff John Quinn served notice via online
11 submission to the LWDA and via certified mail to Ameriprise of Plaintiff's intent to file a
12 complaint against Ameriprise under PAGA. At that time, Plaintiff also paid the filing fee to
13 the LWDA pursuant to Labor Code § 2699.3. Plaintiff did not receive a response to his notice
14 within the time proscribed by Labor Code § 2699.3.

15 **IV. PRAYER FOR RELIEF**

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

- 17 1. For penalties according to proof;
- 18 2. For reasonable attorneys' fees and costs; and,
- 19 3. For such other relief the Court deems just and proper.

20 Dated: January 14, 2020

WYNNE LAW FIRM

21 
22 _____
EDWARD J. WYNNE
GEORGE R. NEMIROFF

23 CLAPP & LAUINGER LLP
24 JAMES F. CLAPP
MARITA MURPHY LAUINGER

25 Attorneys for Plaintiff
26 JOHN QUINN