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Attorneys for Plaintiff  
ANDREW HUTCHESON

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

ANDREW HUTCHESON, as  
representative and proxy of the State of  
California,

Plaintiff,

v.

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

Defendants.

**FILED BY FAX**  
ALAMEDA COUNTY  
February 22, 2019  
CLERK OF  
THE SUPERIOR COURT  
By Milagros Cortez, Deputy  
CASE NUMBER:  
**RG19008003**

**INTRODUCTION**

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

8                         All individuals who were employed by defendant UBS Financial  
9 Services Inc. ("UBS") in California as Financial Advisors, or the  
10 functional equivalent thereof however titled (which position  
11 includes the titles of "Financial Consultant," "Securities Broker,"  
12 "Stockbroker," "Investment Advisor," and/or "Investment  
13 Representative") (collectively referred to as "Financial Advisor"),  
14 during the applicable statute of limitations.

13           2.     Plaintiff Hutcheson is a citizen of the State of California.

14           3.     Defendant UBS was and is a Delaware corporation with its principal place of  
15 business in New Jersey. UBS transacts business in this judicial district. UBS has not designated  
16 a principal business office in California.

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

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1 **FIRST CAUSE OF ACTION**

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

3 5. Plaintiff incorporates the allegations contained in the foregoing paragraphs as  
4 though repeated here.

5 6. Plaintiff and the Aggrieved Employees routinely incur reasonable and  
6 necessary business expenses without reimbursement by UBS. For example, plaintiff and the  
7 Aggrieved Employees incur travel, parking, mileage, education, client and prospect  
8 entertainment, and marketing expenses, as well as ticket charges, equipment costs, licensing  
9 fees, subscriptions, losses due to trading errors, and wages paid to support staff, without  
10 reimbursement by UBS. Many of these expenses are paid through deductions from the  
11 Financial Advisors' wages. Section 2802(a) requires a California employer to indemnify an  
12 employee for "all necessary expenditures or losses incurred by the employee in direct  
13 consequence of the discharge of his or her duties...." In addition, Labor Code sections 221-  
14 224, 400-410 and 1198 (which incorporates Wage Order 4-2001, section 8) prevent an  
15 employer from taking unauthorized or improper deductions from wages. UBS's conduct  
16 violates these Labor Code sections.

17 7. Labor Code section 204 establishes deadlines for paying wages to employees  
18 like plaintiff and the Aggrieved Employees. For labor performed between the 1st and 15th of  
19 the month, wages are due no later than the 26th of the month, and for labor performed between  
20 the 16th and the end of the month, wages are due no later than the 10th of the following month.  
21 Section 5.2.5 of the DLSE Enforcement Policies and Interpretations Manual states that  
22 commission wages are "due and payable when they are reasonably calculable." Because UBS  
23 pays Financial Advisors commissions according to a fixed grid rate, commissions are  
24 reasonably calculable when the trade closes. However, UBS does not pay the commissions  
25 within 10 days of the close of the pay period, in violation of Labor Code section 204.

26 8. UBS does not pay its quitting or terminated employees all of the wages they are  
27 owed by the deadlines set forth in Labor Code sections 201 and 202, nor does it pay waiting  
28 time penalties as required under Labor Code section 203.

1 9. Based on the foregoing violations to plaintiff and the Aggrieved Employees,  
2 plaintiff seeks recovery of civil penalties accruing during the applicable limitations period,  
3 including without limitation all penalties that may be authorized under Labor Code sections  
4 2699(f)(2), 210, 225.5, 558, and 2802(d).

5 10. On April 18, 2018, plaintiff Andrew Hutcheson served notice via online  
6 submission to the LWDA and via certified mail to UBS of plaintiff's intent to file a complaint  
7 against UBS under PAGA. At that time, plaintiff also paid the filing fee to the LWDA pursuant  
8 to Labor Code § 2699.3. Plaintiff did not receive a response to his notice within the time  
9 proscribed by Labor Code § 2699.3.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, plaintiff prays for judgment against defendant, as follows:

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

15 Dated: February 22, 2019

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