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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 05 2010

ALAN CARLSON, Clerk of the Court

BY J. HAINES, DEPUTY

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8 **SUPERIOR COURT OF CALIFORNIA**

9 **ORANGE COUNTY**

10 **30-2010**

11 Benjamin Paparella, individually and on behalf
12 of other members of the general public
13 similarly situated,

Case No.: **00370146**

COMPLAINT

[CLASS ACTION]

14 Plaintiff,

15 vs.

16 JPMorgan Chase Bank, National Association
17 and DOES 1 through 50, inclusive,

- 1. Labor Code § 1194
- 2. B&P § 17200 - Overtime
- 3. B&P § 17200 - Meal and Rest Breaks
- 4. B&P 17200 - Injunction/Dec. Relief
- 5. Labor Code § 203

18 Defendant.

JUDGE RONALD L. BAUER
DEPT. CX103

THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO RULE 308 OF THE LOCAL RULES
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

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GENERAL ALLEGATIONS

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2 1. Plaintiff Benjamin Paparella was a Business Banker for defendant JPMorgan
3 Chase Bank, National Association (“Chase Bank”) in the state of California within the last
4 three years of the filing of the original complaint in this action.

5 2. Defendant Chase Bank is a wholly owned subsidiary of JPMorgan Chase &Co.
6 Defendant is a bank that owns and operates retail banks in this judicial district and in the state
7 of California. Defendant has employees with the title “Business Banker.”

8 3. Venue is proper in Orange County as at least some of the acts complained of
9 herein occurred in Orange County as Defendant owns and operates banks in Orange County.

10 4. At all times herein mentioned, Plaintiff and the class identified herein worked as
11 employees for Defendant in salaried positions in Defendant’s branch and retail locations under
12 the business name “Chase.” At all times herein mentioned, Plaintiff and the class have been,
13 and continue to be, domiciled in the state of California. Plaintiff is informed and believes and
14 thereon alleges that there are less than 100 members in the proposed class. The amount in
15 controversy including damages, restitution, attorney fees, penalties, and value of injunctive
16 relief sought does not exceed \$5,000,000. The amount in controversy for the named plaintiff
17 including damages, restitution, pro rata share of attorney fees, penalties, and pro rata value of
18 injunctive relief sought does not exceed \$75,000.

19 5. At all times herein mentioned Defendant and Does 1 through 50 are and were
20 corporations, business entities, individuals and partnerships, licensed to do business and
21 actually doing business in the State of California, Orange County. Defendant owns and
22 operates an industry, business and establishment in a number of separate geographic locations
23 within the State of California, including within Orange County, for the purpose of selling
24 banking services and products. As such, and based upon all the facts and circumstances
25 incident to Defendant’s business in California, Defendant is subject to California Labor Code
26 §§ 1194 *et seq.*, California Business and Professions Code § 17200 *et seq.*, (Unfair Practices
27 Act) and the applicable Industrial Welfare Commission Wage Orders.
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1 6. Plaintiff does not know the true names or capacities, whether individual, partner
2 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
3 reason, said Defendants are sued under such fictitious names, and Plaintiff prays leave to
4 amend this complaint when the true names and capacities are known. Each of said fictitious
5 Defendants was responsible in some way for the matters alleged herein and proximately caused
6 Plaintiff and members of the class to be subject to the illegal employment practices, wrongs and
7 injuries complained of herein.

8 7. At all times herein mentioned, each of said Defendants participated in the doing
9 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
10 Defendants, and each of them, were the agents, servants and employees of each of the other
11 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
12 acting within the course and scope of said agency and employment.

13 8. At all times herein mentioned, Defendants, and each of them, were members of,
14 and engaged in, a joint venture, partnership and common enterprise, and acting within the
15 course and scope of, and in pursuance of, said joint venture, partnership and common
16 enterprise.

17 9. At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged.

20 10. At all times herein mentioned, Defendants, and each of them, ratified each and
21 every act or omission complained of herein. At all times herein mentioned, the Defendants,
22 and each of them, aided and abetted the acts and omissions of each and all of the other
23 Defendants in proximately causing the damages as herein alleged. Further, at all times
24 mentioned herein, the wage and hour related compensation policies of Defendant's branch
25 locations in California are and were dictated by, controlled by, and ratified by the Defendants
26 herein and each of them.
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1 **FACTUAL ALLEGATIONS**

2 11. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiff may bring
3 a civil action for overtime wages directly against the employer without first filing a claim with
4 the California Division of Labor Standards Enforcement and may recover such wages, together
5 with interest thereon, penalties, attorney fees and costs.

6 12. On or about September 25, 2008, JPMorgan Chase & Co. purchased the
7 deposits, assets and certain liabilities of Washington Mutual Bank's banking operations from
8 the Federal Deposit Insurance Corporation. Washington Mutual Bank had branch locations in
9 California. After the purchase, JPMorgan Chase & Co. began operating the former Washington
10 Mutual bank branches under the name "Chase."

11 13. Plaintiff and all members of the class identified herein were regularly scheduled
12 as a matter of uniform company policy to work and in fact worked as salaried bank employees
13 in excess of eight hours per workday and/or in excess of forty hours per workweek without
14 receiving straight time or overtime compensation for such overtime hours worked in violation
15 of California Labor Code § 1194 and California Industrial Welfare Commission Wage Order 4-
16 2001. Defendant has failed to meet the requirements for establishing the exemption because all
17 class members (a) regularly spent more than 50% of their time performing nonexempt work,
18 (b) did not customarily and regularly exercise discretion and independent judgment on matters
19 of significance, (c) did not have the authority to hire or fire or make meaningful
20 recommendations regarding same, (d) did not customarily and regularly supervise at least two
21 employees or the equivalent, (e) did not perform work directly related to the management
22 policies or the general business operations of Defendant or Defendant's customers, (f) did
23 perform nonexempt production and/or sales work a majority of their time (i.e., in excess of
24 50%) consistent with Defendant's realistic expectations, (g) did not customarily and regularly
25 spend more than 50% of their time away from the Defendant's places of business selling or
26 obtaining orders or contracts, and (h) did not earn more than 50% of their compensation in a
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1 bona fide commission plan. Thus, Plaintiff and the class members were not exempt from the
2 overtime requirements of California law for these reasons.

3 **CLASS ALLEGATIONS**

4 14. This complaint is brought by Plaintiff pursuant to California Code of Civil
5 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
6 which Plaintiff seeks relief authorized under California law. The class is comprised of, and
7 defined as:

8 All current and former California based employees of JPMorgan Chase
9 Bank, National Association, with the title "Business Banker" who worked at
10 any time from September 25, 2008 up to the time the class is certified.

11 15. The members of the classes are so numerous that joinder of all members is
12 impracticable. The exact number of the members of the classes can be determined by
13 reviewing Defendant's records.

14 16. Plaintiff will fairly and adequately protect the interests of the Class and has
15 retained counsel that is experienced and competent in class action and employment litigation.
16 Plaintiff has no interests that are contrary to, or in conflict with, members of the Class.

17 17. A class action suit, such as the instant one, is superior to other available means
18 for fair and efficient adjudication of this lawsuit. The damages suffered by individual members
19 of the Class may be relatively small when compared to the expense and burden of litigation,
20 making it virtually impossible for members of the Class to individually seek redress for the
21 wrongs done to them.

22 18. A class action is, therefore, superior to other available methods for the fair and
23 efficient adjudication of the controversy. Absent these actions, the members of the Class likely
24 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations
25 of California law.

26 19. Even if any member of the Class could afford individual litigation against
27 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
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1 in one forum will promote judicial economy and parity among the claims of individual
2 members of the Class and provide for judicial consistency.

3 20. There is a well-defined community of interest in the questions of law and fact
4 affecting the Class as a whole. Questions of law and fact common to each of the Class
5 predominate over any questions affecting solely individual members of the action. Among the
6 common questions of law and fact are:

7 a. Whether the class has been properly classified as exempt by Defendant
8 from overtime compensation;

9 b. Whether the class is expected to regularly work hours in excess of forty
10 per week and/or in excess of eight hours per day;

11 c. How class is compensated; and,

12 d. Whether the class has sustained damages and, if so, what the proper
13 measure of damages is.
14

15 **FIRST CAUSE OF ACTION**

16 **(Labor Code § 1194)**

17 21. Plaintiff incorporates the allegations contained in the previous paragraphs of this
18 Complaint as if fully set forth herein.

19 22. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
20 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
21 for all hours worked in excess of 40 per week and/or 8 per day.

22 23. Class members regularly work more than 40 hours per week and/or 8 hours per
23 day but are not paid overtime.

24 24. Class members do not meet any of the tests for exempt status under the
25 California Wage Orders and/or the California Labor Code.
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1 32. Plaintiff, and all persons similarly situated, are further entitled to and do seek a
2 both a declaration that the above-described business practices are unfair, unlawful and/or
3 fraudulent and injunctive relief restraining Defendant from engaging in any of such business
4 practices in the future. Such misconduct by Defendant, unless and until enjoined and restrained
5 by order of this Court, will cause great and irreparable injury to all members of the class in that
6 the Defendant will continue to violate California law, represented by labor statutes and IWC
7 Wage Orders, unless specifically ordered to comply with same. This expectation of future
8 violations will require current and future employees to repeatedly and continuously seek legal
9 redress in order to gain compensation to which they are entitled under California law. Plaintiff
10 has no other adequate remedy at law to insure future compliance with the California labor laws
11 and wage orders alleged to have been violated herein.

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13 **FIFTH CAUSE OF ACTION**

14 **(Labor Code § 203)**

15 33. Plaintiff incorporates the allegations contained in the previous paragraphs of this
16 Complaint as if fully set forth herein.

17 34. Plaintiff and the class were discharged by Defendant or voluntarily quit, and did
18 not have a written contract for employment. The Defendant, in violation of California Labor
19 Code §§ 201 and 202 *et seq.* had a consistent and uniform policy, practice and procedure of
20 willfully failing to pay the earned and unpaid wages of all such former employees. The
21 Defendant has willfully failed to pay the earned and unpaid wages of such individuals,
22 including, but not limited to, straight time, overtime, vacation time, meal and rest wages, and
23 other wages earned and remaining uncompensated according to amendment or proof. Plaintiff
24 and the class did not secret or absent themselves from Defendant nor refuse to accept the
25 earned and unpaid wages from Defendant. Accordingly, Defendant is liable for waiting time
26 penalties for the unpaid wages pursuant to California Labor Code § 203.
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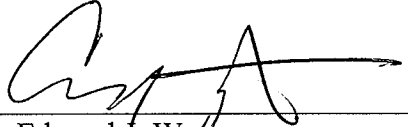
PRAYER FOR RELIEF

WHEREFORE, representative Plaintiff, on his own behalf and on behalf of the members of the class, prays for judgment as follows:

1. For an order certifying the proposed class;
2. For damages, restitution, attorney fees under the Labor Code and/or CCP § 1021.5, penalties per Labor Code § 203, and injunctive relief, as the amount in controversy not in excess of \$5,000,000 for the class and not in excess of \$75,000 for the named plaintiff; and,
3. For prejudgment interest.

Dated: May 4, 2010

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