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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 DANA GILBERT, on behalf of herself and  
11 all others similarly situated,

12 Plaintiff,

13 v.

14 CITIGROUP, INC., CITIBANK, N.A.,

15 Defendants.  
16

Case No. C-08-0385-SC

SECOND AMENDED COMPLAINT

[CLASS ACTION]

JURY TRIAL REQUESTED

17 Dana Gilbert on behalf of herself and all others similarly situated, alleges as follows:  
18

19 **INTRODUCTION**

20 1. This is a nationwide collective action, on behalf of all Business Banking  
21 Officers and trainees, or the functional equivalent however titled, who are, or were, employed  
22 by Citigroup, Inc., Citibank, N.A., or their parents, subsidiaries, divisions, related or successor  
23 companies (hereafter collectively "Defendants") to recover unpaid wages pursuant to the Fair  
24 Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA").  
25

26 2. Plaintiff also brings this action as a state-wide class action on behalf of all  
27 current and former Business Banking Officers and trainees within the State of California, who  
28 are or were employed by Defendant to recover unpaid wages due pursuant to the California

1 Labor Code, Industrial Welfare Commission Wage Orders, and the California Business &  
2 Professions Code.

3 3. Plaintiff is unaware of the names and capacities of all defendants who may have  
4 caused or contributed to the harms complained of herein, but will seek leave to amend this  
5 complaint once their identities become known to Plaintiff. Upon information and belief,  
6 Plaintiff alleges that at all relevant times each defendant was the officer, director, employee,  
7 agent, representative, alter ego, or co-conspirator of each of the other defendants, and in  
8 engaging in the conduct alleged herein was in the course and scope of and in furtherance of  
9 such relationship.  
10  
11

12 **SUMMARY OF CLAIMS**

13 4. Plaintiff brings this suit on behalf of a Nationwide Class defined as all current  
14 and former Business Banking Officers and trainees who worked for Defendants at any time in  
15 the United States of America from three years prior to the time this action was originally filed  
16 to the time the action is certified as a collective action. The Nationwide Class is comprised of  
17 two subclasses:  
18

19 a. Nationwide Subclass A is defined as all current and former salaried  
20 Business Banking Officers and trainees who worked for Defendants at any time in the United  
21 States of America from three years prior to the time this action was originally filed to the time  
22 the action is certified as a collective action.  
23

24 b. Nationwide Subclass B is defined as current and former hourly Business  
25 Banking Officers and trainees who worked for Defendants at any time in the United States of  
26 America from three years prior to the time this action was originally filed to the time the action  
27 is certified as a collective action.  
28

1           5.       Plaintiff also brings this suit on behalf of a California Class defined as all  
2 current and former Business Banking Officers and trainees who worked for Defendants at any  
3 time in California from four years prior to the time this action was originally filed to the time  
4 the action is certified as a class action. The California Class is comprised of two subclasses:  
5

6           a.       California Subclass A is defined as all current and former salaried  
7 Business Banking Officers and trainees who worked for Defendants at any time in California  
8 from four years prior to the time this action is filed to the time the action is certified as a class  
9 action.  
10

11           b.       California Subclass B is defined as current and former hourly Business  
12 Banking Officers and trainees who worked for Defendants at any time in California from four  
13 years prior to the time this action was originally filed to the time the action is certified as a  
14 class action.  
15

16           6.       The California Class and the Nationwide Collective Class are hereafter  
17 collectively referred to as the "Class."

18           7.       Plaintiff alleges on behalf of the Nationwide Collective Class who elect to opt-in  
19 to this action that they are: (a) entitled to the minimum wage from Defendants for work for  
20 performed off-the-clock without any pay; (b) entitled to unpaid wages from Defendants for  
21 overtime work for which they did not receive overtime premium pay; and, (c) entitled to  
22 liquidated damages and penalties pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*  
23

24           8.       Plaintiff alleges on behalf of the California Class who do not opt-out that they  
25 are: (a) entitled to wages and penalties for work for performed off-the-clock without any pay;  
26 (b) entitled to wages and penalties for overtime work in excess of forty hours in any given  
27 workweek, and/or in excess of eight hours in a workday for which they did not receive  
28

1 premium pay at the rate of one and one-half times the employee's regular rate; (c) entitled to  
2 wages and penalties for overtime work in excess of twelve hours in any day or for work in  
3 excess of eight hours on the seventh day of any workweek at the rate of two times the  
4 employee's regular rate; (d) entitled to unpaid wages for Defendant's failure to provide  
5 required meal and rest breaks; (e) entitled to penalties for failing to properly and timely pay all  
6 wages due and owing at time of termination; (f) entitled to wages and penalties for  
7 impermissibly failing to reimburse for all business related expenses; and, (g) entitled to  
8 penalties for failing to retain and provide accurate records of actual hours worked and wages  
9 earned by Plaintiff and the California Class.  
10  
11

12 9. As a result of Defendants' willful violation of the FLSA and California law,  
13 Plaintiff and the Class were illegally under-compensated for their work.  
14

15 **FACTUAL ALLEGATIONS**

16 10. Plaintiff and the other similarly situated members of the Class with the title  
17 Business Banking Officer, Business Banking Officer in training, or the functional equivalent  
18 however titled, were inside salespeople, and/or trainees to become inside salespeople, engaged  
19 in the sale of financial products on behalf of Defendants, who regularly worked in excess of  
20 forty hours per workweek and/or in excess of eight hours per day without any pay and/or  
21 premium pay as required by law.  
22

23 11. Due to the nature of the job responsibilities and requirements of Defendants'  
24 Business Banking Officers, Plaintiff and the members of the Class were required to work more  
25 than forty hours a week and/or more than eight hours per day during the course of their  
26 employment with Defendants.  
27

1 12. Unless proven to be exempt from the protection of overtime laws, all employees  
2 are entitled to premium overtime pay for overtime work.

3 13. All employees must be paid the minimum wage regardless of their exemption  
4 classification.  
5

6 14. The duties of Business Banking Officers are set forth in uniform, company-wide  
7 policies and procedures promulgated by Defendants.

8 15. Pursuant to the Defendants' uniform employment policies, Business Banking  
9 Officers were, at certain times during the statutory coverage of this action, paid principally on a  
10 salary basis, irrespective of the hours actually worked, and were unlawfully classified as  
11 exempt from overtime compensation.  
12

13 16. Plaintiff is informed and believes and thereon alleges that on or about June  
14 2007, Defendants reclassified on a class-wide basis all of its Business Banking Officers from  
15 salaried exempt to hourly non-exempt status.  
16

17 17. Subsequent to Defendants' reclassification of all Business Banking Officers  
18 from exempt to non-exempt status, Defendants allowed, suffered and permitted Business  
19 Banking Officers to work off-the-clock without pay.  
20

21 18. Despite requiring its Business Banking Officers to work overtime hours during  
22 the time they were classified as salaried exempt, Defendants did not pay the back wages to the  
23 Business Banking Officers that continues to be due and owing.

24 19. In reclassifying the Business Banking Officers from exempt to non-exempt,  
25 Defendants did not change the duties and responsibilities of the position.  
26

27 20. In reclassifying the Business Banking Officers from exempt to non-exempt,  
28 Defendants treated the Business Banking Officers as a class.

1           21. In reclassifying the Business Banking Officers from exempt to non-exempt,  
2 Defendants revealed that its previous classification of the Business Banking Officers as exempt  
3 was illegal and without substantial justification.  
4

5           22. Defendants' employment policies regarding Business Banking Officers did not  
6 require them to hold any specific degree.

7           23. Although the FLSA and California law provide for certain exemptions to the  
8 mandates of paying overtime compensation, no exemption applies in the instant matter.  
9

10           24. Plaintiff and members of the Class were not administratively exempt because  
11 their primary duty was and is the sale of financial products. Plaintiff and the Class did not  
12 perform work directly related to the management policies or general business operations of  
13 Defendants or their customers.

14           25. Plaintiff and members of the Class were not exempt under the commissioned  
15 sales exemption because this exemption is unavailable to Defendants due to the fact that  
16 Defendants lack a retail concept. Additionally, the commissioned sales exemption under  
17 California law is not available to Defendants because Defendants' incentive pay program was  
18 not a true commission pay plan under the law and/or Class members did not make more than  
19 half of their total compensation through the incentive pay plan.  
20

21           26. Plaintiff and members of the Class were not exempt under the outside sales  
22 exemption under either the FLSA or California law because Business Banking Officers spent  
23 nearly all of their time inside one or more of Defendants' locations or traveling in between such  
24 locations.  
25

26  
27  
28

1 27. Plaintiff and the Class do not qualify for the professional exemption under the  
2 FLSA or under California law because Business Banking Officers are not employed in a *bona*  
3 *fide* professional capacity, requiring a specific degree in a field of science or learning.  
4

5 28. As such, Business Banking Officers, including Plaintiff and members of the  
6 Class, were wrongfully classified by Defendants and were not exempt from the requirement of  
7 premium pay.

8 29. In violation of the FLSA and California law, Plaintiff and the members of the  
9 Class have not been paid overtime compensation at a rate not less than one and one-half times  
10 their regular rate of pay for work performed over the 40 hour work week and/or over 8 hours in  
11 a day.  
12

13 30. In violation of the FLSA and California law, Plaintiff and the members of the  
14 Class have not been paid the minimum wage for all hours worked as a result of working off-  
15 the-clock.  
16

17 31. Plaintiff alleges on behalf of the members of the Class that Defendants' failure  
18 to pay overtime was knowing and willful.

19 32. Evidence reflecting the precise number of overtime hours worked by Plaintiff  
20 and every other member of the Class, as well as the applicable compensation rates, is in the  
21 possession of Defendants.  
22

23 33. Each of the foregoing acts is in contravention of applicable employment laws.

24 **JURISDICTION AND VENUE**

25 34. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 216(b) and  
26 28 U.S.C. §§ 1331, 1332(d).  
27

28 35. The amount in controversy exceeds \$5,000,000.

1 36. Further, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over  
2 Plaintiff's state law claims because those claims derive from a common nucleus of operative  
3 facts.  
4

5 37. In addition, this Court is empowered to issue a declaratory judgment pursuant to  
6 28 U.S.C. §§ 2201 and 2202.

7 38. Venue is proper pursuant to 28 U.S.C. § 1391, as a substantial part of the acts or  
8 omissions giving rise to the claims alleged herein occurred within this judicial district and the  
9 Defendants are subject to personal jurisdiction in this district.  
10

11 **PARTIES**

12 39. Plaintiff Dana Gilbert is a resident of the State of California and was employed  
13 by Defendants as both a salaried and hourly Business Banking Officer during the statutory time  
14 period covered by this Complaint who Defendants failed to compensate for all hours worked.  
15

16 40. Plaintiff was a Business Banking Officer who worked out of multiple branches  
17 of Defendants in the State of California, including but not limited to Defendants' branches  
18 operating in this judicial district.

19 41. For purposes of the Nationwide Class, Plaintiff consents in writing to be a party  
20 to this action, pursuant to 29 U.S.C. § 216(b).  
21

22 42. At all relevant times during the applicable class period, Defendants have  
23 operated nationwide and has maintained offices within this district and the state conducting  
24 business at those locations. Defendants employed, upon information and belief, hundreds of  
25 Business Banking Officers in the State of California at any one time and Plaintiff estimates the  
26 Nationwide Collective Class far exceeds that amount in total number of participants during the  
27 relevant statute of limitations period.  
28



1 **COLLECTIVE/CLASS ACTION ALLEGATIONS**

2 43. Plaintiff brings this action on behalf of the Nationwide Collective Class as a  
3 collective action pursuant to the Fair Labor Standards Act, § 216(b) and on behalf of the  
4 California Class as a class action for claims under California law pursuant to Federal Rule of  
5 Civil Procedure 23.

6  
7 44. The claims under the FLSA may be pursued by those who opt-in to this case  
8 pursuant to 29 U.S.C. § 216(b). The claims under California law may be pursued by all  
9 similarly-situated persons who choose not to opt-out of the California Class pursuant to Federal  
10 Rule of Civil Procedure 23.

11 **Allegations Applicable To All Classes**

12  
13 45. The members of the classes are so numerous that joinder of all members is  
14 impracticable. The exact number of the members of the classes can be determined by  
15 reviewing Defendants' records. Plaintiff is informed and believes and thereon alleges that there  
16 are hundreds of individuals in both the Nationwide and California classes.

17  
18 46. Plaintiff will fairly and adequately protect the interests of the Class and has  
19 retained counsel that is experienced and competent in class action and employment litigation.  
20 Plaintiff has no interests that are contrary to, or in conflict with, members of the Class.

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

27  
28 48. A class and collective action is, therefore, superior to other available methods  
for the fair and efficient adjudication of the controversy. Absent these actions, the members of

1 the Class likely will not obtain redress of their injuries and Defendants will retain the proceeds  
2 of their violations of the FLSA and applicable California law.

3 49. Even if any member of the Class could afford individual litigation against  
4 Defendants, it would be unduly burdensome to the judicial system. Concentrating this  
5 litigation in one forum will promote judicial economy and parity among the claims of  
6 individual members of the Class and provide for judicial consistency.

7 50. There is a well-defined community of interest in the questions of law and fact  
8 affecting the Class as a whole. Questions of law and fact common to each of the Class  
9 predominate over any questions affecting solely individual members of the action. Among the  
10 common questions of law and fact are:  
11

- 12 a. Whether Business Banking Officers were properly classified as exempt  
13 by Defendants from overtime compensation;
- 14 b. Whether Defendants lack a retail concept;
- 15 c. Whether Plaintiff and members of the Class were expected to, and/or did  
16 as a matter of corporate policy and practice, regularly work hours in excess of forty per week  
17 and/or in excess of eight hours per day;
- 18 d. Whether Defendants allowed, suffered and permitted the Class to work  
19 off-the-clock;
- 20 e. Whether Defendants paid the Class the minimum wage;
- 21 f. The manner in which Plaintiff and members of the Class were  
22 compensated;
- 23 g. The amounts and types of wage deductions Plaintiff and members of the  
24 Class were subject to; and,  
25  
26  
27  
28

1 h. Whether Plaintiff and the Class have sustained damages and, if so, what  
2 is the proper measure of damages.

3 **Allegations Specific To The Nationwide Collective Class**

4  
5 51. Pursuant to 29 U.S.C. § 207, Plaintiff seeks to prosecute the FLSA claims as a  
6 collective action on behalf of:

7 All current and former Business Banking Officers and trainees  
8 who worked for Defendants at any time in the United States of  
9 America from three years prior to the time this action was  
10 originally filed to the time the action is certified as a collective  
11 action.

12 52. Notice of the pendency and any resolution of this action can be provided to  
13 Nationwide Collective Class by mail, print, and/or internet publication.

14 **Allegations Specific To The California Class**

15 53. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
16 Procedure 23(a) and (b) of on behalf of herself and the following persons similarly situated:

17 All current and former Business Banking Officers and trainees  
18 who worked for Defendants at any time in California from four  
19 years prior to the time this action was originally filed to the time  
20 the action is certified as a class action.

21 54. In addition to the common issues of fact described above, the Class Members  
22 have numerous common issues of fact, including whether Defendants: (a) failed to compensate  
23 adequately the members of the California Class for overtime hours worked as required by  
24 California Wage Order 4-2001, 8 C.C.R. § 11040 and California Labor Code §§ 510 and 515;  
25 (b) failed to pay members of the California Class the minimum wage as required by California  
26 Labor Code § 1197.1; (c) committed an act of unfair competition under Business & Professions  
27 Code § 17200 *et seq.*, by not paying the required minimum wage and overtime pay as required  
28 by applicable law; (d) failed to provide all required meal and rest breaks in violation of

1 California Labor Code § 226.7; (e) failed to maintain and provide members of the California  
2 Class with accurate and detailed records of hours worked and wages earned, pursuant to  
3 California Labor Code § 226 and 1174; (f) improperly failed to reimburse California Class  
4 members for business related expenses in violation of California Labor Code § 2802; and (g)  
5 damaged members of the California Classes, and if so, the extent of the damages.  
6

7 **COUNT ONE**

8 55. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
9 Complaint as if fully set forth herein.  
10

11 56. At all relevant times, Defendants have been and continue to be employers  
12 engaged in interstate commerce and/or the production of goods for commerce within the  
13 meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

14 57. At all relevant times, Defendants employed, and/or continue to employ, Plaintiff  
15 and each member of the Nationwide Collective Class within the meaning of the FLSA.  
16

17 58. As stated above, Defendants had a policy and practice of refusing to pay  
18 overtime compensation to its Business Banking Officers for the hours worked in excess of forty  
19 hours per week.

20 59. Defendants' failure to pay Plaintiff and all other members of the Nationwide  
21 Collective Subclass A for all hours worked in a given workweek, and failure to pay overtime  
22 compensation at a rate not less than one and one-half times their regular rate for work  
23 performed beyond the 40 hour workweek, is in violation of 29 U.S.C. §§ 206, 207.  
24

25 60. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA  
26 within the meaning 29 U.S.C. § 255(a).  
27

28 61. Due to the Defendants' FLSA violations, Plaintiff, on behalf of the members of  
the Nationwide Collective Subclass A, is entitled to recover from Defendants unpaid overtime

1 compensation, an additional amount equal as liquidated damages, additional liquidated  
2 damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs  
3 pursuant to 29 U.S.C. § 216(b).  
4

5 **COUNT TWO**

6 62. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
7 Complaint as if fully set forth herein.

8 63. As alleged above, Defendants have a policy and practice of allowing, suffering  
9 and permitting the Class to work off-the-clock.

10 64. Defendants' failure to pay Plaintiff and all other members of the Nationwide  
11 Collective Subclass B for all hours worked and failure to pay the minimum wage is in violation  
12 of 29 U.S.C. §§ 206, 207.  
13

14 65. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA  
15 within the meaning 29 U.S.C. § 255(a).  
16

17 66. Due to the Defendants' FLSA violations, Plaintiff, on behalf of the members of  
18 the Nationwide Collective Subclass B, is entitled to recover from Defendants unpaid wages, an  
19 additional amount equal as liquidated damages, additional liquidated damages for unreasonably  
20 delayed payment of wages, reasonable attorneys' fees, and costs pursuant to 29 U.S.C. §  
21 216(b).  
22

23 **COUNT THREE**

24 67. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
25 Complaint as if fully set forth herein.

26 68. The FLSA, mandates that an employee must be paid overtime compensation in  
27 an amount equal to one and one-half times the employee's regular rate of pay for all hours  
28 worked in excess of forty per week.

1 69. Plaintiff and members of the California Subclass A regularly worked more than  
2 forty hours per week, but were not paid overtime compensation in an amount equal to one and  
3 one-half times the employee's regular rate of pay.  
4

5 70. Plaintiff and members of the California Subclass A did not meet the tests for  
6 exemption under the FLSA.

7 71. Defendants have committed an act of unfair competition under Bus. & Prof.  
8 Code § 17200 *et seq.* by not paying the required FLSA overtime pay to the members of the  
9 California Subclass A.  
10

11 72. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring  
12 Defendants to make restitution of all FLSA overtime wages due to the California Subclass A in  
13 an amount to be proved at trial.  
14

15 **COUNT FOUR**

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

18 74. The FLSA, mandates that an employee must be paid the minimum wage for all  
19 hours worked.  
20

21 75. Plaintiff and members of the California Subclass B regularly worked hours for  
22 which they received no pay.

23 76. Defendant allowed, suffered and permitted the members of California Subclass  
24 B to work off-the-clock.

25 77. Defendants have committed an act of unfair competition under Bus. & Prof.  
26 Code § 17200 *et seq.* by not paying the required minimum wage pursuant to the FLSA to the  
27 members of the California Subclass B.  
28

1 78. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring  
2 Defendants to make restitution of all FLSA wages due to the California Subclass B in an  
3 amount to be proved at trial.  
4

5 **COUNT FIVE**

6 79. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
7 Complaint as if fully set forth herein.

8 80. California Wage Order 4-2001, 8 C.C.R. § 11040 and Labor Code § 510(a) state  
9 that an employee must be paid overtime, equal to one and one-half times the employee's  
10 regular rate of pay, for all hours worked in excess of forty per week, and/or eight per day,  
11 unless the employee falls under one of the enumerated exemptions.  
12

13 81. California Labor Code § 510(a) further states that any work in excess of twelve  
14 (12) in one day or in excess of eight (8) hours on the seventh day in one workweek shall be  
15 compensated at a rate of no less than twice the employee's regular rate of pay.  
16

17 82. Plaintiff and members of the California Subclass A regularly worked more than  
18 40 hours per week, and/or 8 hours per day, and received no premium pay for these hours.

19 83. During the statutory time period covered by this action, Plaintiff and members  
20 of the California Subclass A did not meet the tests for exempt status under the California Wage  
21 Orders and California Labor Code.  
22

23 84. Defendants have committed an act of unfair competition under Bus. & Prof.  
24 Code § 17200 *et seq.* by not paying the required state law overtime pay to the members of the  
25 California Subclass A.  
26

27 85. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring  
28 Defendants to make restitution of all state law overtime wages due to the California Subclass A  
in an amount to be proved at trial.

**COUNT SIX**

1  
2 86. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
3 Complaint as if fully set forth herein.

4  
5 87. California Labor Code § 1197.1 states that an employee must be paid the  
6 required minimum wage for all hours worked.

7  
8 88. Plaintiff and members of the California Subclass B regularly worked hours for  
9 which they received no pay.

10  
11 89. Defendants allowed, suffered and permitted the members of California Subclass  
12 B to work off-the-clock.

13  
14 90. Defendants have committed an act of unfair competition under Bus. & Prof.  
15 Code § 17200 *et seq.* by not paying the required state law minimum wage to the members of  
16 the California Subclass B.

17  
18 91. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring  
19 Defendants to make restitution of all state law minimum wages due to the California Subclass  
20 B in an amount to be proved at trial.

**COUNT SEVEN**

21  
22 92. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
23 Complaint as if fully set forth herein.

24  
25 93. Pursuant to California Labor Code Section 1194, Plaintiff and members of the  
26 California Class are entitled to recover their wages, premium pay, plus interest, attorney's fees,  
27 and costs, in amounts to be proven at trial.

**COUNT EIGHT**

28  
94. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
Complaint as if fully set forth herein.



1 95. Pursuant to California Labor Code Section 1194.2, Plaintiff and members of the  
2 California Subclass B are entitled to liquidated damages for failure to pay the minimum wage  
3 in amounts to be proven at trial.  
4

5 **COUNT NINE**

6 96. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
7 Complaint as if fully set forth herein.

8 97. California Labor Code § 2802, as well as applicable case law, states that an  
9 employer shall reimburse its employees for all business related expenses reasonably incurred  
10 by the employee in the furtherance of his/her duties and responsibilities.  
11

12 98. Defendant, pursuant to its Company-wide policy, illegally required members of  
13 the California Class to incur business related expenses in order to carry out their duties and  
14 responsibilities yet did not reimburse its employees for such expenses which were incurred at  
15 the employee's expense for the benefit of Defendant.  
16

17 99. Defendant has committed an act of unfair competition by illegally failing to  
18 reimburse business related expenses to members of the California Class.

19 100. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendant make  
20 restitution of all unpaid expenses due to the California Class, in an amount to be proven at trial.  
21

22 **COUNT TEN**

23 101. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
24 Complaint as if fully set forth herein.

25 102. Defendant willfully and intentionally failed to pay Plaintiff and the other  
26 members of the California Class, who are no longer employed by Defendant, all the wages they  
27 were due and/or by the deadlines imposed under Labor Code §§ 201 and 202 upon cessation of  
28 the class members' employment with Defendant. Plaintiff and the other members of the

1 California Class did not secret or absent themselves from Defendant nor refuse to accept the  
2 earned and unpaid wages from Defendant. Accordingly, Plaintiff and members of the  
3 California Class no longer employed by Defendant are entitled to waiting time penalties per  
4 Labor Code § 203 of up to thirty (30) days' pay, in an amount to be proven at trial.  
5

6 **COUNT ELEVEN**

7 103. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
8 Complaint as if fully set forth herein.

9 104. In violation of Labor Code § 512 and IWC Wage Order 4, Defendant failed to  
10 provide and document meal and rest period breaks in the number, length and manner as  
11 required. At no time have Plaintiff and the California Subclass A entered into any written  
12 agreement with Defendant expressly or impliedly waiving their right to their meal and rest  
13 breaks. Plaintiff and the class have been injured by Defendant's failure to comply with Labor  
14 Code § 512 and IWC Wage Order 4 and are thus entitled to the wages set forth in Labor Code §  
15 226.7.  
16

17 105. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendant make  
18 restitution of all wages due to the California Subclass A under this Count, in an amount to be  
19 proven at trial.  
20

21 **COUNT TWELVE**

22 106. Plaintiff incorporates the allegations contained in the previous paragraphs of this  
23 Complaint as if fully set forth herein.

24 107. Due to Defendant's illegal classification of Plaintiff and members of the  
25 California Subclass A as exempt when they were non-exempt and due to Defendant allowing,  
26 suffering and permitting members of the California Subclass B to work off-the-clock,  
27

1 Defendant knowingly and intentionally failed to provide Plaintiff and members of the  
2 California Class with accurate and detailed records of hours worked and wages earned required  
3 by Labor Code § 226(a).  
4

5 108. Therefore, Plaintiff, on behalf of the California Class, requests all such relief  
6 that this Court deems appropriate pursuant to Labor Code § 226(a).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for:

9 A. A Declaration that Defendant has violated the FLSA and other applicable  
10 employment laws;  
11

12 B. An Order designating Nationwide Collective Class as a collective action and  
13 issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with  
14 instructions to permit them to assert timely FLSA claims in this action by filing individual  
15 Consents to Join pursuant to 29 U.S.C. § 216(b);  
16

17 C. An Order designating the California Class as a class action pursuant to Federal  
18 Rule of Civil Procedure 23;

19 D. An Order appointing Plaintiff and her counsel to represent the Class;

20 E. Imposition of a Constructive Trust on any amount by which Defendant was  
21 unjustly enriched at the expense of the Classes as the result of the actions described above;  
22

23 F. An Order enjoining Defendant from any further violations of the FLSA or  
24 California law related thereto;

25 G. For compensatory and punitive damages and all other statutory remedies  
26 permitted;  
27

28 H. Prejudgment interest;

I. An Order awarding attorneys' fees and costs;

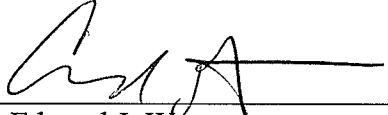
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J. An Order for equitable restitution of all wages improperly withheld, deducted or not reimbursed by Defendant; and

K. For all other relief as the Court deems just.

June 4, 2008

**WYNNE LAW FIRM**

By: 

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100 Drakes Landing Road, Suite 275  
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*Counsel for Plaintiff*

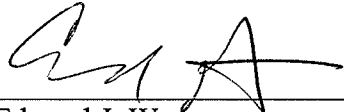
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**JURY DEMAND**

Plaintiff hereby requests a jury trial on all issues so triable.

June 4, 2008

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