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Los Angeles Superior Court

SEP 15 2005

John A. Clarke, Executive Officer/Clerk

By J. SUNGA, Deputy

15 **SUPERIOR COURT OF CALIFORNIA,**

16 **LOS ANGELES COUNTY**

17 ROBERT BURAKOFF, individually and on)
18 behalf of all others similarly situated,)

19 Plaintiff,)

20 vs.)

21 WACHOVIA CORPORATION and Does 1)
22 through 50, inclusive,)

23 Defendants.)

No. BC339914

COMPLAINT

[CLASS ACTION]

1. Restitution of overtime wages [B&P 17200]

2. Restitution of overtime wages [B&P 17200]

3. Restitution of wage deductions [B&P

17200]

4. Waiting time penalties [Labor Code 203]

5. Meal and rest breaks [Labor Code 226.7]

[JURY TRIAL DEMANDED]

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GENERAL ALLEGATIONS

1. Plaintiff ROBERT BURAKOFF is an individual residing in the State of California.

2. Defendant WACHOVIA CORPORATION is an entity of unknown form and origin doing business in the judicial district.

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship.

4. Venue is proper in Los Angeles County as at least some of the acts complained of herein occurred in Los Angeles County as Defendants conduct business in Los Angeles County.

CLASS ACTION ALLEGATIONS

5. Class Definition. Plaintiff worked for as a securities broker. Plaintiff seeks to bring this lawsuit as a class action pursuant to Code of Civil Procedure section 382. The class that plaintiff seeks to represent is defined as follows: "All individuals who were employed by defendant as securities brokers or broker trainees in the State of California at any time during the period commencing on the date that is four years preceding the filing of the original complaint up to the time the case is certified as a class action." Plaintiff further seeks to subdivide the class into the following subclasses:

A. "Subclass A" consists of all class members who were paid on a commission—

1 only basis and, during the Class Period, worked more than 40 hours in a week, but did not
2 receive overtime pay.

3 B. "Subclass B" consists of all class members were paid by salary (including
4 salary plus commission or salary plus bonus) and, during the Class Period, worked more than
5 40 hours in a week or 8 hours in a day, but did not receive overtime pay.
6

7 C. "Subclass C" consists of all class members who, during the Class Period, were
8 subject to at least one deduction from commissions or other wages, which deduction was not
9 the result of a dishonest, willful, or grossly negligent act by the employee.
10

11 D. "Subclass D" consists of all members of Subclass A, Subclass B, and/or
12 Subclass C who, as of the date this lawsuit was filed, were no longer employed by defendant.

13 6. Ascertainable Class. The proposed class and each subclass are ascertainable in
14 that their member can be identified and located using information contained in defendant's
15 payroll and personnel records.
16

17 7. Common Questions of Fact or Law. This lawsuit is suitable for class treatment
18 because common questions of fact and law predominate over individual issues. Common
19 questions include, but are not limited to, the following: (1) whether the class members qualify
20 for exempt status under the inside salesperson exemption; (2) whether the class members
21 qualify for exempt status under the administrative exemption; (3) whether defendant's business
22 qualifies as a "retail or service establishment"; (4) the extent to which defendant analyzed the
23 duties and responsibilities of the class members before classifying them as exempt; (5) the
24 number of hours per week and per day class members are expected to work; (6) defendant's
25 expectations as to the duties and responsibilities of the class members, and whether these
26 expectations are reasonable under the circumstances; and (7) defendant's policies and
27 procedures for deducting from the commissions or other wages was willful under the meaning
28

1 of Labor Code section 203.

2 8. Numerosity. The plaintiff class is so numerous that the individual joinder of all
3 members is impractical under the circumstances of this case. While the exact number of class
4 members is unknown to plaintiff at this time, the number of class members can be readily
5 determined by review of defendant's personnel records.
6

7 9. Typically and Adequately. Plaintiff's claims are typical of the claims of the
8 class members. Plaintiff suffered a similar injury as the other class members as a result of
9 defendant's common practices regarding the payment of wages. In addition, plaintiff will fairly
10 and adequately protect the interests of the members of the class. Plaintiff has no interests that
11 are adverse to the interests of the other class members.
12

13 10. Superiority. A class action is superior to other available means for the fair and
14 efficient adjudication of this controversy since individual joinder of all members of the calls is
15 impractical. Class action treatment will permit a large number of similarly situated persons to
16 prosecute their common claims in a single forum simultaneously, efficiently, and without the
17 unnecessary duplication of effort and expense that numerous individual actions would
18 engender. Furthermore, as the damages suffered by each individual member of the class may
19 be relatively small, the expenses and burden of individual litigation would make it difficult or
20 impossible for individual members of the class to redress the wrongs done to them, while an
21 important public interest will be served by addressing the manner as a class action. The cost to
22 the court system of adjudication of such individualized litigation would be substantial.
23 Individualized litigation would also present the potential for inconsistent or contradictory
24 judgments. Finally, the alternative of filing a claim with the California Labor Commissioner is
25 not superior, given the lack of discovery in such proceedings, the fact that there are fewer
26 available remedies, and the losing party has the right to a trial de novo in the Supreme Court.
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1 FIRST CAUSE OF ACTION

2 (Restitution of Overtime Wages – On Behalf of Subclass A)

3 11. Plaintiff incorporates the allegations contained in paragraphs 1 through 10.

4 12. The Fair Labor Standards Act, 29 U.S.C. § 207(a)(1) (“FLSA”), states that an
5 employee must be paid overtime, equal to 1.5 times the employee’s regular rate of pay, for all
6 hours worked in excess of 40 per week. Subclass A members are not “exempt” under the
7 FLSA, because, *inter alia*, they are not paid on a salary basis, and defendant’s business does
8 not qualify as a “retail or service establishment” under 29 U.S.C. section 207(i) and 29 C.F.R.
9 sections 779.316 and 779.317.
10

11 13. Defendant has committed an act of unfair competition by not paying the
12 required overtime pay to the members of Subclass A.
13

14 14. Pursuant to Bus. & Prof. Code section 17203, plaintiff requests an order
15 requiring defendant to make restitution of all overtime wages due to Subclass A, in an amount
16 to be proved as trial.

17 SECOND CAUSE OF ACTION

18 (Restitution of Overtime Wages – On Behalf of Subclass B)

19 15. Plaintiff incorporates the allegations contained in paragraphs 1 through 14.

20 16. Wage Order 4-2001, 8 C.C.R. section 11040, states that an employee must be
21 paid overtime, equal to 1.5 times the employee’s regular rate of pay, for all hours worked in
22 excess of 40 per week or 8 per day. Subclass B members are not exempt because, *inter alia*,
23 they are production workers, they do not spend a majority of their time on exempt tasks and
24 they do not customarily and regularly exercise discretion and independent judgment in matters
25 of consequence to defendant’s business.
26

27 17. Defendant has committed an act of unfair competition by not paying the
28 required overtime pay to the members of Subclass B.

1 18. Pursuant to Bus. & Prof. Code section 17203, plaintiff requests an order
2 requiring defendants to make restitution of all overtime wages due to Subclass B, in an amount
3 to be proved at trial.

4
5 THIRD CAUSE OF ACTION

6 (Restitution of Wage Deductions – On Behalf of Subclass C)

7 19. Plaintiff incorporates the allegations contained in Paragraph 1 through 18.

8 20. Labor Code sections 221 and 2802, as well as various California Supreme Court
9 and appellate court decisions, generally state than an employer may not deduct from or reduce
10 an employee's wages for the purpose of shifting the employer's ordinary cost of doing business
11 to the employee.

12 21. Defendant has subjected the members of Subclass C to illegal deductions from
13 wages, which deductions were not the result of dishonest, willful, or grossly negligent acts by
14 those employees, but instead were ordinary costs of doing business.

15 22. Defendant has committed an act of unfair competition by illegally deducting
16 from the wages of Subclass C.

17 23. Pursuant to Bus. & Prof. Code section 17203, plaintiff requests an order
18 requiring defendant to make restitution of all unpaid wages due to Subclass C, in an amount to
19 be proved at trial.

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21 FOURTH CAUSE OF ACTION

22 (Labor Code Penalties – By and On Behalf of All Subclasses)

23 24. Plaintiff incorporates the allegations contained in paragraphs 1 through 23.

24 25. Plaintiff seeks to recover penalties on behalf of the members of Subclasses A, B,
25 and C pursuant to the following Labor Code provisions:
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1 A. Labor Code section 203 penalties for defendant's failure to pay the
2 members of Subclass D all wages they were due under the deadlines set forth in the Labor
3 Code sections 201 and 202;

4
5 B. Labor Code section 210 penalties for defendant's failure to pay the
6 members of Subclass A, B, and C all wages that were due as of the deadlines set forth in Labor
7 Code section 204;

8 C. Labor Code section 226.3 penalties for defendant's failure to provide the
9 members of Subclasses A, B, and C with proper wage statements pursuant to Labor Code
10 section 226;

11 D. Labor Code section 558 penalties for defendant's violation of Labor
12 Code sections 510 and 512, as well as the provisions regulating hours and days of work in
13 Wage Order 4-2001, with respect to the members of Subclasses A and B; and,
14

15 E. Labor Code section 1174.5 penalties, because defendant has failed to
16 maintain records showing the daily hours worked by the members of Subclasses A and B, in
17 violations of Labor Code section 1174(d).
18

19 FIFTH CAUSE OF ACTION

20 (Rest and Meal Breaks – By and On Behalf of Subclasses A and B)

21 26. Plaintiff incorporates the allegations contained in paragraphs 1 through 25.

22 27. Because defendant treated plaintiff and the members of Subclasses A and B as
23 exempt when they were really non-exempt, defendant failed to provide these individuals with
24 all of their required rest and meal breaks. As a result, under Labor Code section 226.7, plaintiff
25 and the members of Subclasses A and B are entitled to one additional hour's pay for each day a
26 rest or meal break was missed, in an amount to be proved at trial.
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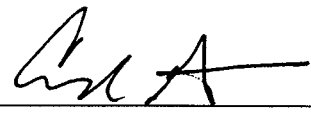
PRAYER

WHEREFORE, plaintiff prays for judgment against each defendant, jointly and severally, as follows:

1. For compensatory damages according to proof;
2. For an order requiring defendant to make restitution of all wages, including overtime wages, that were illegally withheld;
3. For interest according to proof;
4. For penalties as alleged herein
5. For reasonable attorney's fees; and,
6. For such other relief that the Court deems just and proper.

Dated: September 8, 2005

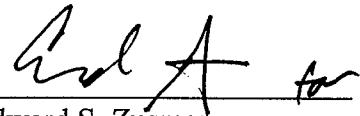
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Dated: September 8, 2005

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