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15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA**

17 ROBERT BURAKOFF, MATTHEW) No. CV 05-7584 CAS (SSx)

18 MOORE, individually and on behalf of)

19 all others similarly situated,) **FIRST AMENDED COMPLAINT**

20 Plaintiffs,) **[CLASS ACTION]**

21 vs.) 1. Restitution of overtime wages [B&P
22) 17200]

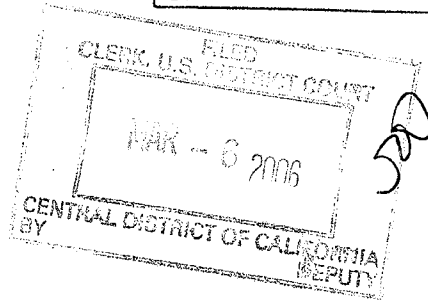
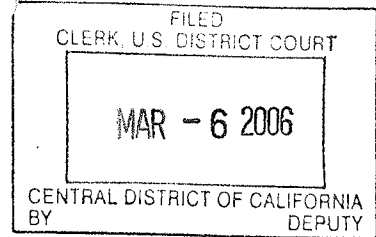
23 WM FINANCIAL SERVICES, INC.) 2. Restitution of overtime wages [B&P
24 and Does 1 through 50, inclusive,) 17200]

25) 3. Restitution of wage deductions [B&P
26) 17200]

27 Defendants.) 4. Waiting time penalties [Labor Code
28) 203]

) 5. Meal and rest breaks [Labor Code
) 226.7]

[JURY TRIAL DEMANDED]



1 GENERAL ALLEGATIONS

2 1. Plaintiffs ROBERT BURAKOFF and MATTHEW MOORE are
3 individuals residing in the State of California.
4

5 2. Defendant WM FINANCIAL SERVICES, INC. is an entity of
6 unknown form and origin doing business in the judicial district.
7

8 3. Plaintiffs are unaware of the names and capacities of those
9 defendants sued as DOES 1 through 50 but will amend this complaint when that
10 information becomes known. Plaintiffs are informed and believe and thereon
11 allege that, at all relevant times, each of the defendants, including the DOE
12 defendants, was the officer, director, employee, agent representative, alter ego, or
13 co-conspirator of each of the other defendants, and in engaging in the conduct
14 alleged herein, was acting in the course and scope of, and in furtherance of, such
15 relationship.
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19 4. Venue is proper as at least some of the acts complained of herein
20 occurred in Los Angeles County as Defendants conduct business in Los Angeles
21 County.
22

23 CLASS ACTION ALLEGATIONS

24 5. Class Definition. Plaintiffs worked for defendant as securities
25 brokers. Plaintiffs seek to bring this lawsuit as a class action pursuant to Code of
26 Civil Procedure section 382 and Federal Rule of Civil Procedure 23. The class
27 that plaintiffs seek to represent is defined as follows: "All individuals who were
28

1 employed by defendant as securities brokers or broker trainees in the State of
2 California at any time during the period commencing on the date that is four years
3 preceding the filing of the original complaint up to the time the case is certified as
4 a class action.” Plaintiffs further seek to subdivide the class into the following
5 subclasses:
6

7
8 A. “Subclass A” consists of all class members who were paid on
9 a commission-only basis and, during the Class Period, worked more than 40
10 hours in a week, but did not receive overtime pay.
11

12 B. “Subclass B” consists of all class members who were paid by
13 salary (including salary plus commission or salary plus bonus) and, during the
14 Class Period, worked more than 40 hours in a week or 8 hours in a day, but did
15 not receive overtime pay.
16

17
18 C. “Subclass C” consists of all class members who, during the
19 Class Period, were subject to at least one deduction from commissions or other
20 wages, which deduction was not the result of a dishonest, willful, or grossly
21 negligent act by the employee.
22

23 D. “Subclass D” consists of all members of Subclass A, Subclass
24 B, and/or Subclass C who, as of the date this lawsuit was filed, were no longer
25 employed by defendant.
26

27
28 6. Ascertainable Class. The proposed class and each subclass are

1 ascertainable in that their member can be identified and located using information
2 contained in defendant's payroll and personnel records.

3
4 7. Common Questions of Fact or Law. This lawsuit is suitable for class
5 treatment because common questions of fact and law predominate over individual
6 issues. Common questions include, but are not limited to, the following: (1)
7 whether the class members qualify for exempt status under the inside salesperson
8 exemption; (2) whether the class members qualify for exempt status under the
9 administrative exemption; (3) whether defendant's business qualifies as a "retail
10 or service establishment"; (4) the extent to which defendant analyzed the duties
11 and responsibilities of the class members before classifying them as exempt; (5)
12 the number of hours per week and per day class members are expected to work;
13 (6) defendant's expectations as to the duties and responsibilities of the class
14 members, and whether these expectations are reasonable under the circumstances;
15 and (7) defendant's policies and procedures for deducting from the commissions
16 or other wages was willful under the meaning of California Labor Code section
17 203.
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23 8. Numerosity. The plaintiff class is so numerous that the individual
24 joinder of all members is impractical under the circumstances of this case. While
25 the exact number of class members is unknown to plaintiffs at this time, the
26 number of class members can be readily determined by review of defendant's
27
28

1 personnel records.

2 9. Typically and Adequately. Plaintiffs' claims are typical of the
3
4 claims of the class members. Plaintiffs suffered similar injuries as the other class
5 members as a result of defendant's common practices regarding the payment of
6 wages. In addition, plaintiffs will fairly and adequately protect the interests of the
7 members of the class. Plaintiffs have no interests that are adverse to the interests
8 of the other class members.
9

10 10. Superiority. A class action is superior to other available means for
11 the fair and efficient adjudication of this controversy since individual joinder of
12 all members of the class is impractical. Class action treatment will permit a large
13 number of similarly situated persons to prosecute their common claims in a single
14 forum simultaneously, efficiently, and without the unnecessary duplication of
15 effort and expense that numerous individual actions would engender.
16 Furthermore, as the damages suffered by each individual member of the class
17 may be relatively small, the expenses and burden of individual litigation would
18 make it difficult or impossible for individual members of the class to redress the
19 wrongs done to them, while an important public interest will be served by
20 addressing the manner as a class action. The cost to the court system of
21 adjudication of such individualized litigation would be substantial.
22 Individualized litigation would also present the potential for inconsistent or
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1 contradictory judgments. Finally, the alternative of filing a claim with the
2 California Labor Commissioner is not superior, given the lack of discovery in
3 such proceedings, the fact that there are fewer available remedies, and the losing
4 party has the right to a trial de novo in the Supreme Court.
5

6
7 FIRST CAUSE OF ACTION

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

9 11. Plaintiffs incorporate the allegations contained in paragraphs 1
10 through 10.

11 12. The Fair Labor Standards Act, 29 U.S.C. § 207(a)(1) (“FLSA”),
12 states that an employee must be paid overtime, equal to 1.5 times the employee’s
13 regular rate of pay, for all hours worked in excess of 40 per week. Subclass A
14 members are not “exempt” under the FLSA, because, *inter alia*, they are not paid
15 on a salary basis, and defendant’s business does not qualify as a “retail or service
16 establishment” under 29 U.S.C. section 207(i) and 29 C.F.R. sections 779.316
17 and 779.317.
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21 13. Defendant has committed an act of unfair competition by not paying
22 the required overtime pay to the members of Subclass A.
23

24 14. Pursuant to California Bus. & Prof. Code section 17203, plaintiffs
25 request an order requiring defendant to make restitution of all overtime wages due
26 to Subclass A, in an amount to be proved as trial.
27

28 SECOND CAUSE OF ACTION

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

15. Plaintiffs incorporate the allegations contained in paragraphs 1 through 10.

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

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

18. Pursuant to California Bus. & Prof. Code section 17203, plaintiffs request an order requiring defendant to make restitution of all overtime wages due to Subclass B, in an amount to be proved at trial.

THIRD CAUSE OF ACTION

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

19. Plaintiffs incorporate the allegations contained in Paragraph 1 through 18.

20. California Labor Code sections 221 and 2802, as well as various California Supreme Court and appellate court decisions, generally state that an

1 employer may not deduct from or reduce an employee's wages for the purpose of
2 shifting the employer's ordinary cost of doing business to the employee.
3

4 21. Defendant has subjected the members of Subclass C to illegal
5 deductions from wages, which deductions were not the result of dishonest,
6 willful, or grossly negligent acts by those employees, but instead were ordinary
7 costs of doing business.
8

9 22. Defendant has committed an act of unfair competition by illegally
10 deducting from the wages of Subclass C.
11

12 23. Pursuant to California Bus. & Prof. Code section 17203, plaintiffs
13 request an order requiring defendant to make restitution of all unpaid wages due
14 to Subclass C, in an amount to be proved at trial.
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16 FOURTH CAUSE OF ACTION

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

18 24. Plaintiffs incorporate the allegations contained in paragraphs 1
19 through 23.
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21 25. Plaintiffs seek to recover penalties on behalf of the members of
22 Subclasses A, B, and C pursuant to the following California Labor Code
23 provisions:
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25 A. California Labor Code section 203 penalties for defendant's
26 failure to pay the members of Subclass D all wages they were due under the
27 deadlines set forth in the California Labor Code sections 201 and 202;
28

1 B. California Labor Code section 210 penalties for defendant's
2 failure to pay the members of Subclass A, B, and C all wages that were due as of
3
4 the deadlines set forth in California Labor Code section 204;

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

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

15 E. California Labor Code section 1174.5 penalties, because
16 defendant has failed to maintain records showing the daily hours worked by the
17 members of Subclasses A and B, in violations of California Labor Code section
18 1174(d).
19
20

21 FIFTH CAUSE OF ACTION

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

23 26. Plaintiffs incorporate the allegations contained in paragraphs 1
24 through 18.

25 27. Because defendant treated plaintiff and the members of Subclasses A
26 and B as exempt when they were really non-exempt, defendant failed to provide
27 these individuals with all of their required rest and meal breaks. As a result,
28

1 under California Labor Code section 226.7, plaintiffs and the members of
2 Subclasses A and B are entitled to one additional hour's pay for each day a rest or
3
4 meal break was missed, in an amount to be proved at trial.

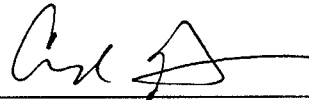
5 PRAYER

6 WHEREFORE, plaintiffs pray for judgment against each defendant, jointly
7 and severally, as follows:

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

15
16 Dated: March 3, 2006

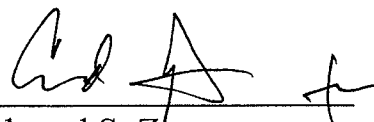
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21 Dated: March 3, 2006

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