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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DAVID PFIZENMEIER and
ROSA KAISER

Plaintiffs,

vs.

CITIFINANCIAL MANAGEMENT
CORPORATION; CITIFINANCIAL INC.
and DOES 1 through 50 inclusive,

Defendants.

FILED
Clerk of the Superior Court
MAY 29 2009
By: S. WEAVER, Deputy

NO. 37-2008-00084289-CU-OE-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT

- 1. Violation of Labor Code;
- 2. Violation of B & P § 17200, et seq;
- 3. Failure to Provide Mandated Meal Periods and Rest Breaks
- 4. Failure to Make Payments Within the Required Time

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FIRST CAUSE OF ACTION

COMES NOW, Plaintiffs, David Pfizenmeier and Rosa Kaiser (hereinafter "Plaintiffs") individuals over the age of eighteen (18), and brings this challenge to defendants' lucrative, repressive and unlawful business practices on behalf of themselves and a class of all others similarly situated and for a Cause of Action against defendants, CITIFINANCIAL MANAGEMENT CORPORATION, CITIFINANCIAL INC. (Hereinafter "defendants") and DOES 1-50, inclusive, (hereinafter defendants) and each of them, alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1.

This class action is brought pursuant to §382 of the California Code of Civil Procedure. The claims of individual class members, including Plaintiffs, are under the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been employed for a relatively brief period could never reasonably be expected to receive a recovery of \$75,000 or more. The total damages for the entire case does not exceed \$5,000,000.00. In addition, there is no federal question at issue, as all the issues related to payment wages alleged herein are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code.

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2.

Plaintiffs were employed in California as a Branch Managers and have worked for Defendants within four years prior to the filing of this Complaint.

3.

Plaintiffs bring this action against CITIFINANCIAL, for engaging in a uniform policy and systematic scheme of wage abuse against their salary paid employees in California. This scheme involved, inter alia, misclassifying the Branch Managers as "exempt" managerial/executive employees for purposes of the payment of overtime compensation when, in fact, they were "non-exempt" non-managerial employees according to California law. Further, CITIFINANCIAL, denied the Branch Managers mandated meal and rest breaks under California law. As a result of Defendant's systematic and clandestine scheme the salaried store employees throughout California were not paid all wages owed and were deprived of mandated meal periods and rest breaks. Accordingly, CITIFINANCIAL, has violated California common and statutory laws as described more particularly below.

4.

Defendants own/owned and operate/operated an industry, business and establishment within the State of California, including San Diego County, for the purpose of making and collecting on loans to customers under the name of CITIFINANCIAL. As such, and based upon all the facts and circumstances incident to defendants' business in California, defendants are subject to California Labor Code Sections 1194, et seq., 500, et seq., California Business and Professions Code Section 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission. At least some of the acts complained of herein occurred in San Diego County as defendants do business in the San Diego County area. Plaintiffs are informed and believe and thereon alleges that at all times herein mentioned

1 defendants are and were corporations licensed to do business and actually doing business in the
2 State of California.

3
4 5.

5 At all times herein mentioned Plaintiffs and the class identified herein worked for
6 defendants as Branch Managers at CITIFINANCIAL. These positions are not positions, which
7 involve work falling within any exception to the above-referenced Labor Code sections, the
8 Unfair Practices Act and/or California Industrial Welfare Commission orders applicable to
9 defendants' business.

10
11 6.

12 Plaintiffs do not know the true names or capacities, whether individual, partner or
13 corporate, of the defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
14 said defendants are sued under such fictitious names, and Plaintiffs pray leave to amend this
15 complaint when the true names and capacities are known. Plaintiffs are informed and believe
16 and thereon allege that each of said fictitious defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiffs and members of the class to be subject
18 to the illegal employment practices, wrongs and injuries complained of herein.

19
20 7.

21 At all times herein mentioned, each of said defendants participated in the doing of the
22 acts hereinafter alleged to have been done by the named defendants; and furthermore, the
23 defendants, and each of them, were the agents, servants and employees of each of the other
24 defendants, as well as the agents of all defendants, and at all times herein mentioned, were acting
25 within the course and scope of said agency and employment.

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8.

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

9.

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

10.

At all times herein mentioned, defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the defendants, and each of them, aided and abetted the acts and omissions of each and all of the other defendants in proximately causing the damages as herein alleged. Further, at all times mentioned herein, the wage and hour related compensation policies of stores in California are and were dictated by, controlled by, and ratified by the defendants herein and each of them.

FACTUAL ALLEGATIONS

11.

Plaintiffs and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as Branch Managers in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code Section 1194 and the applicable California Industrial Welfare Commission wage order(s). Plaintiffs and the other members of the class were improperly and illegally mis-classified by defendants as "exempt" managerial employees when, in fact, they were "non-exempt" non-

1 managerial employees according to California law. Plaintiffs and the other members of the class
2 have the right to be compensated by defendants at the appropriate compensatory wage rate for
3 said work heretofore performed, consisting of the straight time rate plus the appropriate overtime
4 premium as mandated by California law. Furthermore, Defendants failed to provide the
5 Plaintiffs and class members the required rest and meal periods during the relevant time period as
6 required under the IWC Wage Orders and thus are entitled to any and all applicable penalties.
7

8 12.

9 This complaint is brought by Plaintiffs pursuant to California Code of Civil Procedure
10 section 382 on behalf of a class. All claims alleged herein arise under California law for which
11 Plaintiffs seeks relief authorized under California law. The class is comprised of, and defined as:

12 All California based Branch Managers 1) who worked at any time during
13 the four years preceding the filing of this Complaint up until the date of
14 class certification for Defendants in the State of California.

15 The members of the class are so numerous that joinder of all members would be impractical, if
16 not impossible. The members of the class are readily ascertainable by a review of defendants'
17 records. Further, the subject matter of this action both as to factual matters and as to matters of
18 law, are such that there are questions of law and fact common to the class which predominate
19 over questions affecting only individual members including, among other things, the following:

20 a. Statistically, one hundred percent of the class members were paid on a salary basis
21 with no overtime compensation paid for work accomplished in excess of forty hours per week, or
22 eight hours per day. Plaintiffs are informed and believe and based thereon alleges that all class
23 members failed to meet the exemption requirements of California law. Thus, Plaintiffs and the
24 class members were not exempt from the overtime requirements of California law for that
25 reason;
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1 ended each work period, meal period, the total daily hours worked, and the total hours worked
2 per pay period and applicable rates of pay.

3 14.

4 There are predominant common questions of law and fact and a community of interest
5 amongst Plaintiffs and the claims of the absent class members concerning whether defendants'
6 regular business custom and practice of requiring substantial "overtime" work and not paying for
7 said work according to the overtime mandates of California law is, and at all times herein
8 mentioned was, in violation of California Labor Code Sections 1194 and 500, et seq., the Unfair
9 Practices Act and the applicable California Industrial Welfare Commission wage orders.
10 Defendants' employment policies and practices wrongfully and illegally failed to compensate
11 Branch Managers for substantial overtime compensation earned as required by California law.
12 For instance, questions of fact and/or law common to the members of the aforesaid class -- which
13 predominate over any questions which may affect only individual members -- are:

14
15 i. Whether defendants' California based Branch Managers were classified as
16 "exempt" in violation of California law;

17
18 ii. Whether defendants uniformly failed to pay overtime wages to its Branch
19 Managers by virtue of defendants' unlawful class wide designation of such employees as
20 "exempt" in violation of California law;

21
22 iii. Whether Plaintiffs and the class could waive the wage and hour laws
23 designed for their benefit under California law and whether such waivers were voluntary,
24 knowing and valid;

25
26 iv. Whether defendants' conduct constituted an illegal, or unfair, business
27 practice in violation of California law;

1 v. Whether Plaintiffs and the class are entitled to compensatory damages
2 pursuant to the California Labor Code;

3 vi. Whether Plaintiffs and the class are entitled to injunctive relief, including
4 restitution and/or disgorgement of profits pursuant to California law.

5 vii. What is the correct computation formula for the payment of overtime in
6 California?

7
8 viii. What work is customarily and regularly accomplished by class members in
9 defendants' – and what category (exempt or non-exempt) does that work properly fall into?

10 ix. What are the realistic requirements of the Branch Manager positions?

11 x. What are the expectations of defendants vis-à-vis the class members job
12 performance?

13 xi. Who has the burden of proof on the exemption issue?

14 xii. Can defendant rely on the "sole charge" or "primary duty" exemption
15 standards applicable under federal law, or must defendants comply with California's more strict
16 quantitative exemption standards?
17

18 xiii. Whether Defendants failed to provide Plaintiffs and class members rest
19 and
20 meal breaks in violation of California Labor Code and applicable IWC wage orders;

21 15.

22
23 The claims of Plaintiffs are typical of the claims of all members of the class. Plaintiffs, as
24 representative parties, will fairly and adequately protect the interests of the class by vigorously
25 pursuing this suit through attorneys who are skilled and experienced in handling civil litigation of
26 this type.
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16.

The California Labor Code and wage order provisions upon which Plaintiffs asserts these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with its vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

17.

The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (1) inconsistent or varying adjudications with respect to individual class members against the defendants and which would establish potentially incompatible standards of conduct for the defendants, and/or (2) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interests of the other class members not parties to the adjudications or which would substantially impair or

1 impede the ability of the class members to protect their interests. Further, the claims of the
2 individual members of the class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses.

4 18.

5 Such a pattern, practice and uniform administration of corporate policy regarding illegal
6 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
7 by the Plaintiffs and the class identified herein, in a civil action, for the unpaid balance of the full
8 amount of the straight time compensation and overtime premiums owing, including interest
9 thereon, willful penalties, reasonable attorneys fees, and costs of suit according to the mandate of
10 California Labor Code Section 1194, et seq.

11 19.

12 Proof of a common business practice or factual pattern, of which the named Plaintiffs'
13 experiences are representative, will establish the right of each of the members of the Plaintiffs'
14 class to recovery on the causes of action alleged herein.

15 20.

16 The Plaintiffs' class is entitled in common to a specific fund with respect to the overtime
17 compensation monies illegally and unfairly retained by defendants. The Plaintiffs' class is
18 entitled in common to restitution and disgorgement of those funds being improperly withheld by
19 defendants. This action is brought for the benefit of the entire class and will result in the creation
20 of a common fund.

21 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class,
22 prays for judgment as hereinafter set forth.

23 **SECOND CAUSE OF ACTION**

1 COME NOW, Plaintiffs, individually and on behalf of both the class and as a second,
2 separate and distinct cause of action against defendants, and each of them, alleges as follows:

3 21.

4 Plaintiffs herein repeats and re-alleges as though fully set forth at length each and every
5 paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause
6 of action for relief regarding defendants' violations of Business and Professions Code 17200 et
7 seq. (Unfair Practices Act).
8

9 22.

10 Defendants, and each of them, have engaged in unfair business practices in California by
11 practicing, employing and utilizing the employment practices outlined in Paragraphs 11 through
12 14, inclusive, to wit, by requiring their Branch Managers to perform the labor services
13 complained of herein without overtime compensation. Defendants' utilization of such unfair
14 business practices constitutes unfair competition and provides an unfair advantage over
15 defendants' competitors. Plaintiffs -- and members of the class -- seek full restitution and
16 disgorgement of monies, as necessary and according to proof, to restore any and all monies
17 withheld, acquired and/or converted by the defendants by means of the unfair practices
18 complained of herein. Plaintiffs seek, on their own behalf and on behalf of the class, the
19 appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part,
20 within the last four (4) years preceding the filing of the original complaint in this action.
21

22 23.

23 Plaintiffs are informed and believe and on that basis allege that at all times herein
24 mentioned defendants have engaged in unlawful, deceptive and unfair business practices, as
25 proscribed by California Business and Professions Code section 17200, including those set forth
26 in Paragraphs 11 through 14 herein thereby depriving Plaintiffs and other members of the class
27

1 minimum working condition standards and conditions due to them under the California labor
2 laws and Industrial Welfare Commission wage orders as specifically described herein.

3
4 **24.**

5 Plaintiffs, and all persons similarly situated, are further entitled to and do seek a both a
6 declaration that the above-described business practices are unfair, unlawful and/or fraudulent and
7 injunctive relief restraining defendants from engaging in any of such business practices in the
8 future. Such misconduct by defendants, unless and until enjoined and restrained by order of this
9 Court, will cause great and irreparable injury to all members of the class in that the defendants
10 will continue to violate these California laws, represented by labor statutes and IWC Wage
11 Orders, unless specifically ordered to comply with same. This expectation of future violations
12 will require current and future employees to repeatedly and continuously seek legal redress in
13 order to gain compensation to which they are entitled under California law. Plaintiffs have no
14 other adequate remedy at law to insure future compliance with the California labor laws and
15 wage orders alleged to have been violated herein.
16

17 **THIRD CAUSE OF ACTION**

18 COME NOW, Plaintiffs, individually and on behalf of a class and as a third, separate and
19 distinct cause of action against defendants, and each of them, allege as follows:

20
21 **25.**

22 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
23 preceding paragraphs.

24
25 **26.**

26 Cal. Lab. Code §226.7(a) provides, "No employer shall require any employee to work
27 during any meal or rest period mandated by an applicable order of the Industrial Welfare
28 Commission."

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27.

Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part, "Unless the employees is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

28.

Industrial Welfare Commission Order No. 7-2001 (12)(A) authorizes employees to take rest periods based on the total hours worked daily at the rate of ten minutes rest per four hours or major fraction thereof.

29.

Cal. Lab. Code Section 512, which provides in relevant part:

Meal periods

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

30.

As alleged herein, defendants routinely interrupted and/or failed to permit, authorize and/or provide Plaintiffs' and Class members' meal and rest breaks. By these actions, defendants violated Cal. Lab. Code §226.7(a) and is liable to Plaintiffs and the Class.

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31.

As a result of the unlawful acts of defendants, Plaintiffs and Class members have been deprived of meal and rest breaks, and are entitled to recovery under Cal. Lab. Code §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work day that a meal or rest period was not provided.

WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class pray for judgment as follows:

**FOURTH CAUSE OF ACTION
(Failure to Make Payment Within the Required Time: California
Labor Code Sections 201, 202, 203, 226)**

32.

Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

33.

California Labor Code Section 201 provides in relevant part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

34.

California Labor Code Section 202 provides in relevant part, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

35.

As alleged herein, Defendants failed to pay earned wages to Plaintiffs and the Class who are former employees of Defendants at the time they became due and payable. Thus, Defendants

1 violated Cal. Labor Code Sections 201 and 202. Accordingly, Plaintiffs seek recovery of waiting
2 time penalties as provided under Labor Code Section 203.

3
4 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class
5 pray for judgment as follows:

- 6 1. Determining that this action may proceed and be maintained as a class action;
- 7 2. For the First Cause of Action:
- 8 a. A declaratory judgment that Defendants have violated Labor Code Sections 1194,
9 1194.2 and 1197;
- 10 b. An award to Plaintiffs and the Classes of damages for the balance of unpaid
11 compensation, including interest thereon, and penalties subject to proof;
- 12 c. An award to Plaintiffs and the Classes of reasonable attorneys' fees and costs
13 pursuant to Labor Code Section 1194;
- 14 d. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the
15 date that the wages were due and payable at the interest rate specified in
16 subdivision (b) or Section 3289 of the Civil Code; and
- 17 3. For the Second Cause of Action:
- 18 a. Ordering Defendants, their agents, servants and employees, and all persons acting,
19 directly or indirectly, in concert with them, to restore and disgorge all funds to
20 each member of the Class acquired by means of any act or practice declared by
21 this Court to be unlawful, unfair or fraudulent and therefore constitute unfair
22 competition under Section 17200 *et. seq.* of the Business and Professions Code;
- 23 b. For injunctive relief pursuant to Business and Professions Code Section 17203,
24 consisting of *inter alia*: (1) a declaration that Defendants have engaged in
25 unlawful and unfair and fraudulent business acts and practices in violation of
26 California Business and Professions Code Section 17200 *et. seq.*; (2) a
27 preliminary and/or permanent injunction enjoining Defendants and their
28 respective successors, agents, servants, officers, directors, employees and all
persons acting in concert with them from pursuing the policies, acts and practices
complained of herein and prohibiting Defendants from continuing such acts of
unfair and illegal business acts and practices; and
- c. Restitution, including, but not limited to, the relief permitted by the California
IWC Order Nos. 7-1997 through 7-2001 *et. seq.*

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4. For the Third Cause of Action:

- a. A declaratory judgment that Defendants have violated Labor Code Sections 226.7, 512, and the IWC Order Nos. 7-1997 *et seq.* through 7-2001 *et seq.*;
- b. Pursuant to Labor Code Section 226.7, an award to Plaintiffs and the Class of an additional hour of pay at the rate of the employee's regular rate of compensate for each work day that a meal and/or rest break was not provided;
- c. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code; and
- d. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Labor Code Section 218.5; and
- e. For punitive damages.

5. For the Fourth Cause of Action:

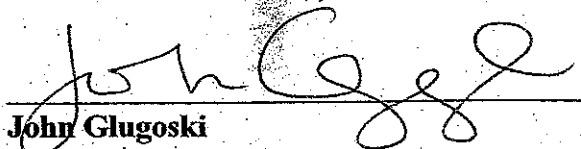
- a. A declaratory judgment that Defendants have violated Labor Code Sections 201 and 202;
- b. An award to Plaintiffs and the Classes who are former employees of continuing wages as a penalty from the due date thereof at the same rate until paid or until this action was commenced; but for no more than 30 days;
- c. Pursuant to Labor Code Section 226, an award to Plaintiffs and the Class of actual damages as well as an award of costs and reasonable attorneys' fee; and

6. Awarding Plaintiffs and the Class their attorneys' fees and costs of suit to the extent permitted by law; and

7. All other relief as this Court may deem proper.

DATED: May 18, 2009

RIGHETTI LAW FIRM, P.C.


John Glugoski
Counsel for Plaintiff
and the Class