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Attorneys for Plaintiff BARBARA SCROOC,
individually and on behalf of all others
similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
MARIN COUNTY

BARBARA SCROOC, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INCORPORATED, and Does 1
through 10, inclusive,

Defendants.

Case No. CIV 2001671

FIRST AMENDED COMPLAINT FOR:

1. California Labor Code §§ 1194, 1194.2
2. California Labor Code §§ 558, 1194
3. California Labor Code §§ 226.7, 512
and Cal. Code Reg. tit. 8, § 11040(11)
4. California Labor Code §§ 226, 1174
5. California Labor Code §§ 201-203
6. Bus. & Prof. Code § 17200
7. California Labor Code § 2699

INTRODUCTION

1. Plaintiff Barbara Scrooc (“Plaintiff”), by and through her attorneys, makes the following allegations upon personal knowledge as to herself and her own acts, and upon information and belief as to all other matters.

2. Plaintiff brings this lawsuit as a class action pursuant to California Code of Civil Procedure § 382 and California Labor Code § 2699, the Private Attorneys General Act of 2004, on behalf of current and former aggrieved employees of Defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated, (hereafter “Merrill” or “Defendant”), employed as Client Associates, or the functional equivalent, however titled, (which position includes the titles “Registered Client Associate,” “Registered Senior Client Associate,” “Investment Associate,” “Private Wealth Associate,” “Sales Assistant,” “Sales Associate,” “Account Associate,” “Brokerage Associate,” and/or any other non-exempt administrative support position at Merrill) (collectively referred to as “Client Associate”) who worked in California at any time within the last four years of the filing of this action and who suffered damages as a result of Defendant’s violations of California labor laws, including: (1) failure to pay minimum wage and overtime premium for off-the-clock work, (2) failure to accurately calculate overtime premium; (3) failure to provide accurate itemized wage statements; (4) failure to provide meal breaks; and (5) failure to pay all wages at time of termination.

PARTIES

3. Plaintiff Scrooc is a citizen of the State of California. Scrooc is a former Merrill Client Associate who worked within the three years preceding the filing of this action. Scrooc worked at Merrill’s Mill Valley, California, location in Marin County during the statutory period covered by this action.

4. During the statutory period covered by this action, Defendant was and is a Delaware corporation with its principal place of business in Charlotte, North Carolina. Merrill transacts business in this judicial district.

5. The true names and capacities of persons or entities, whether individual, corporate, associate, or otherwise, sued herein as Does 1 through 10, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure §
2 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to
4 herein. Plaintiff will seek leave of court to amend this complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as Does when such identities become known.
6 Hereinafter Defendant and the Doe Defendants shall be referred to collectively as “Defendant.”

7 6. All of Plaintiff’s claims stated herein are asserted against Defendant and any of its
8 owners, predecessors, successors, subsidiaries, and/or assigns.

9 **VENUE AND JURISDICTION**

10 7. Venue as to Defendant is proper in Marin County, pursuant to Code of Civil
11 Procedure §§ 395, 395.5. Merrill is a foreign corporation that has not designated a principal
12 business office in California. Defendant maintains branches, facilities and offices from which
13 Defendant transacts business in a variety of locations in Marin County, and Defendant is otherwise
14 within this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein
15 have a direct effect on Plaintiff and those similarly situated within the State of California and
16 within Marin County. Defendant employed Plaintiff and other Client Associates in Marin County
17 during the statutory period covered by this action.

18 **CLASS ALLEGATIONS**

19 8. Plaintiff brings this action on behalf of herself and on behalf of the class pursuant
20 to California Code of Civil Procedure § 382.

21 9. Plaintiff Scrooc seeks certification of the following class:

22 All individuals employed by Defendant as a Client Associate, or the functional
23 equivalent, however titled, which position includes the titles “Registered Client
24 Associate,” “Registered Senior Client Associate,” “Investment Associate,”
25 “Private Wealth Associate,” “Sales Assistant,” “Sales Associate,” “Account
26 Associate,” “Brokerage Associate,” and/or any other non-exempt administrative
support position at Merrill in California at any time from four years prior to the
filing of this complaint to the time the case is certified as a class action.

27 10. As a result of Defendant’s violation of California law, Plaintiff and the other
28 members of the class were unlawfully under-compensated for their work and damaged thereby.

11. Numerosity. Plaintiff is informed and believes and thereon alleges that the members of the class are so numerous that joinder is impractical.

12. Typicality and Adequacy. There are questions of law and fact common to Plaintiff and the other members of the proposed class she represents, and therefore, Plaintiff is similarly situated to the other members of the proposed class she represents and is an adequate representative of the class. Plaintiff's claims are typical of the claims of the other members of the class she represents. Plaintiff suffered similar injuries as those suffered by the other members of the class as a result of Defendant's common policies and practices regarding the reimbursement of business expenses. In addition, Plaintiff will fairly and adequately protect the interests of the members of the class. Plaintiff has no interest that is adverse to the interests of the other class members. Plaintiff has retained attorneys who are competent and experienced in the prosecution of wage and hour class action litigation.

13. Ascertainability. The class is ascertainable in that its members can be identified and located using information contained in Defendant's payroll and personnel records.

14. Commonality. There are common questions of law and fact that predominate over questions which may affect only individual members of the class, including, but not limited to, the following:

a. Whether the nature of the Client Association position and the demands placed upon it by Defendant caused Client Associates to work overtime hours;

b. Whether Defendant had constructive or actual knowledge that its Client Associates worked off-the-clock;

c. whether Defendant's calculation of Client Associates' premium pay was lawful;

d. whether Defendant did not provide its Client Associates with legally compliant meal breaks; and,

e. whether Defendant's wage statements complied with California law.

15. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the proposed

1 class is impractical. Class action treatment will permit a large number of similarly situated persons
2 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
3 unnecessary duplication of effort and expense that numerous individual actions would engender.
4 Furthermore, as the damages suffered by each individual member of the proposed class may be
5 relatively small, the expenses and burden of individual litigation would make it difficult or
6 impossible for individual members of the class to redress the wrongs done to them while an
7 important public interest will be served by addressing the manner as a class action. The cost to the
8 court system of adjudication of such individualized litigation would be substantial. Individualized
9 litigation would also present the potential for inconsistent or contradictory judgments.

10 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

11 16. Defendant sells securities and other financial products with offices nationwide and
12 in this judicial district.

13 17. Plaintiff and other Client Associates were employed by Defendant to serve in a
14 support role to Defendant's Financial Advisors.

15 18. Plaintiff and other Client Associates were classified as non-exempt and eligible for
16 overtime compensation. Plaintiff and other Client Associates were paid an hourly rate by
17 Defendant and also received additional compensation diverted from the Financial Advisors to the
18 Client Associates. The additional compensation was paid either as a percent of the Financial
19 Advisor's production if the Client Associate was licensed with FINRA or a flat sum if the Client
20 Associate was not licensed with FINRA. The additional compensation allocated to Client
21 Associates was approved by Defendant and administered through Defendant's payroll system.

22 19. Defendant has a policy and practice of not paying overtime compensation to its
23 Client Associates unless the Client Associate has received preapproval to work overtime.
24 Defendant has stated that it discourages overtime work and will not approve overtime unless it is
25 an exceptional circumstance. Nevertheless and because of the demands of the position, Client
26 Associates are compelled to work overtime without prior approval because if they do not complete
27 their assignments, they will be disciplined, up to, and including termination. As such, the Client
28 Associates customarily and regularly work off-the-clock.

1 20. Defendant knew or should have known that its Client Associates were working off-
2 the-clock. The time records that the Client Associates self-report each week customarily and
3 regularly show no overtime hours worked notwithstanding the Client Associates' heavy workload.
4 Defendant knew or should have known that the hours reported by Client Associates were not
5 accurate because the time reports do not match the contemporaneous records showing when the
6 Client Associates are actually working which is significantly longer than 8 hours in a day and/or
7 40 hours in a week. Such contemporaneous records include computer log-in and log-off records,
8 emails sent to supervisory personnel after hours, and key card swipe records. These records are in
9 addition to the knowledge that Client Associates' direct supervisors have of the Client Associates
10 where the supervisors witnessed Client Associates arriving prior to, and staying later than, the
11 times recorded on the Client Associates' time records.

12 21. Defendant did not pay, or properly pay, Client Associates their premium pay on the
13 additional allocation they were paid.

14 22. Because of the demands of the position, Defendant failed to provide legally
15 compliant uninterrupted duty-free meal breaks of no less than 30 minutes. Defendant knew or
16 should have known that its Client Associates were not receiving legally compliant duty-free
17 uninterrupted meal breaks of no less than 30 minutes because of the contemporaneous records
18 showing Client Associates working without a break and due to the knowledge of the Client
19 Associates' supervisors. The nature of the Client Associates' work did not prevent Client
20 Associates from being relieved of all duties and Client Associates have not signed on-duty meal
21 period waivers.

22 23. Defendant willfully, intentionally and knowingly did not provide Plaintiff and other
23 Client Associates with accurate itemized statements showing all of the information required
24 pursuant to Labor Code §§ 226 and 1174 and Plaintiff and other Client Associates were injured
25 thereby.

26 24. Defendant willfully, intentionally and knowingly did not properly and timely pay
27 Plaintiff and other Client Associates all of their earned compensation at time of termination and
28 Plaintiff and other Client Associates were injured thereby.

1 **FIRST CAUSE OF ACTION**

2 **Labor Code §§ 1194 and 1194.2**

3 **(Minimum Wage)**

4 25. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
5 though repeated here.

6 26. California Labor Code §§ 1182.11 and 1182.12 set forth the minimum wages that
7 must be paid to California employees.

8 27. Defendant failed to pay its Client Associates the statutory minimum wage by not
9 paying any compensation for the hours the Client Associates worked off-the-clock. Because
10 Defendant had constructive, if not actual knowledge, of the off-the-clock work, Defendant's failure
11 to pay for the off-the-clock work was neither in good faith nor reasonable.

12 28. Defendant's failure to pay the statutory minimum wage permits Plaintiff to bring
13 this action pursuant to California Labor Code § 1194. Plaintiff and the Class seek the unpaid
14 balance of the minimum wage, including interest thereon, attorneys' fees and costs.

15 29. Defendant's failure to pay the statutory minimum wage entitles Plaintiff and the
16 Class to an award of liquidated damages pursuant to California Labor Code § 1194.2.

17 **SECOND CAUSE OF ACTION**

18 **Labor Code §§ 558 and 1194**

19 **(Overtime)**

20 30. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
21 though repeated here.

22 31. Defendant failed to pay its Client Associates the statutory premium wage by not
23 paying any compensation for the hours the Client Associates worked off-the-clock in violation of
24 Labor Code § 510. Defendant failed to pay, or properly pay, its Client Associates the correct
25 premium wage on the additional allocation Client Associates were paid also in violation of Labor
26 Code § 510.

27 32. Defendant's failure to pay the statutory overtime wage permits Plaintiff to bring
28 this action pursuant to Labor Code § 1194. Plaintiff and the Class seek the unpaid balance of the

1 overtime wage, including interest thereon, attorneys' fees and costs.

2 **THIRD CAUSE OF ACTION**

3 **Labor Code §§ 226.7, 512 and Cal. Code Reg. tit. 8, § 11040(11)**

4 **(Meal Breaks)**

5 33. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
6 though repeated here.

7 34. In violation of Labor Code § 512 and Cal. Code Reg. tit. 8, § 11040(11), Defendant
8 failed to provide and document meal periods for Client Associates in the number, length and
9 manner as required. At no time has Plaintiff or the other Client Associates entered into any written
10 agreement with Defendant expressly or impliedly waiving their right to their meal breaks. Plaintiff
11 and the Class have been injured by Defendant's failure to comply with Labor Code § 512 and Cal.
12 Code Reg. tit. 8, § 11040(11) IWC Wage Order 4-2001 and are thus entitled to the wages set forth
13 in Labor Code § 226.7 and Cal. Code Reg. tit. 8, § 11040(11).

14 **FOURTH CAUSE OF ACTION**

15 **Labor Code §§ 226, 226.3 and 1174**

16 **(Record Keeping)**

17 35. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
18 though repeated here.

19 36. Defendant, as a matter of corporate policy did not maintain or provide accurate
20 itemized pay statements in violation of Labor Code §§ 226, 226.3 and 1174.

21 37. Defendant did not state or did not accurately state, *inter alia*, the gross wages
22 earned, the total hours worked, net wages earned, the correct inclusive dates for which the
23 employees were paid, and, the correct hourly rates earned.

24 38. Defendant's failure to maintain accurate itemized statements was willful, knowing,
25 intentional, and the result of Defendant's custom, habit, pattern and practice. Defendant's failure
26 to maintain accurate itemized statements was not the result of isolated, sporadic or unintentional
27 behavior. Due to Defendant's failure to comply with the requirements of Labor Code §§ 226, 226.3
28 and 1174, Plaintiff and other Client Associates were injured thereby.

1 39. Such a pattern and practice as alleged herein is unlawful and creates an entitlement
2 to recovery by Plaintiff and the members of the Class for all damages and penalties pursuant to
3 Labor Code §§ 226, 226.3 and 1174 including interest thereon, penalties, attorneys' fees and costs.

4 **FIFTH CAUSE OF ACTION**

5 **Labor Code §§ 201-203**

6 **(Waiting Time Penalties)**

7 40. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
8 though repeated here.

9 41. Plaintiff and other formerly employed Client Associates were discharged by
10 Defendant or voluntarily quit. Defendant, in violation of California Labor Code §§ 201 and 202,
11 has a consistent and uniform policy, practice and procedure of willfully failing to timely pay the
12 wages to its former employees. Plaintiff and other formerly employed Client Associates did not
13 secret or absent themselves from Defendant nor refuse to accept the earned and unpaid wages from
14 Defendant.

15 42. As a result of Defendant's violations of Labor Code §§ 201-202, Defendant is liable
16 for waiting time penalties to Plaintiff and other formerly employed Client Associates.

17 **SIXTH CAUSE OF ACTION**

18 **Bus. & Prof. Code § 17200**

19 **(Unfair Business Practices)**

20 43. Plaintiff incorporates the allegations contained in the foregoing paragraphs as
21 though repeated here.

22 44. Defendant has committed an act of unfair competition by: not paying its Client
23 Associates the minimum wage for all hours worked, not paying its Client Associates overtime for
24 all hours worked, failing to properly calculate the premium rate on the Client Associates additional
25 compensation, failing to provide legally compliant meal breaks, failing to provide legally
26 compliant wage statements, and failing to timely and properly pay all wages at time of termination.

27 45. Pursuant to Business & Professions Code § 17203, Plaintiff requests an order
28 requiring Defendant to make restitution of all unpaid wages including interest thereon in an amount

1 to be proven at trial. Plaintiff also requests injunctive and declaratory relief to prevent such illegal
2 practices in the future.

3 **SEVENTH CAUSE OF ACTION**

4 **(Labor Code § 2699 et seq.)**

5 **(PAGA)**

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

8 47. As alleged above, Defendant failed to comply with the California Labor Code. As
9 such, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). Pursuant to Labor
10 Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this action
11 on behalf of herself and other current and former Client Associates against Merrill Lynch, Pierce,
12 Fenner & Smith, Incorporated and seeks recovery of applicable civil penalties as follows:

13 a. where civil penalties are specifically provided in the Labor Code for each
14 of the violations alleged herein, Plaintiff seeks recovery of such penalties;

15 b. where civil penalties are not established in the Labor Code for each of the
16 violations alleged herein, Plaintiff seeks recovery of the penalties established in § 2699(e) of the
17 Labor Code Private Attorneys General Act of 2004, and in accordance with § 200.5 of the Labor
18 Code.

19 48. On June 17, 2020, Plaintiff caused to be served written notice via electronic
20 submission to the Labor and Workforce Development Agency and via certified mail to Defendant
21 Merrill Lynch, Pierce, Fenner & Smith, Incorporated of Plaintiff’s intent to amend the complaint
22 to add a cause of action pursuant to Labor Code § 2699 *et seq.*

23 49. The LWDA did not respond to the notice within the time provided by Labor Code
24 § 2699.3.

25
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

28 1. For an order certifying the proposed Class and designating this action as a

1 class action pursuant to C.C.P. § 382;

2 2. For an order appointing Plaintiff and her counsel to represent the proposed
3 class as defined herein;

4 3. For compensatory damages according to proof;

5 4. For an order requiring Defendant to make restitution of all unpaid wages;

6 5. For an order requiring Defendant to provide an accounting of all unpaid
7 wages;

8 6. For interest according to proof;

9 7. For penalties and liquidated damages alleged herein;

10 8. For reasonable attorneys' fees and costs; and,

11 9. For such other relief the Court deems just and proper.

12 DATED: August 25, 2020

13 WYNNE LAW FIRM
14 CLAPP & LAUINGER LLP

15 

16 By: Edward J. Wynne

17 Attorneys for Plaintiff BARBARA SCROOC
18 individually and on behalf of all others similarly
19 situated