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Attorneys for Plaintiff
ADRIAN MORRIS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADRIAN MORRIS, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

FIDELITY INVESTMENTS, a legal entity of an
unknown form, FMR LLC, a Delaware Limited
Liability Company, FIDELITY BROKERAGE
SERVICES LLC, a Delaware Limited Liability
Company (collectively "FIDELITY"),

Defendants.

Case No.

CLASS AND COLLECTIVE ACTION

COMPLAINT

- (1) OVERTIME UNDER THE FLSA**
- (2) OVERTIME UNDER STATE LAW**
- (2) CALIFORNIA LABOR CODE 226**
- (3) WAITING TIME PENALTIES**
- (4) UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Plaintiff Adrian Morris, on behalf of similarly situated former and current employees,
complains as follows:

INTRODUCTION

1. Plaintiff brings this action against Defendants Fidelity Investments, FMR LLC,
and Fidelity Brokerage Services LLC (collectively "Fidelity") to recover damages, restitution,
penalties and other appropriate relief. Specifically, Fidelity does not include all of its non-exempt

1 employees' compensation in calculating the regular rate of pay for overtime purposes under either
2 state of federal law. Fidelity also does not provide its employees with wage statements that
3 comply with California law, making it exceedingly difficult to determine if Fidelity has paid
4 employees in accordance with the law. As it turns out, Fidelity has not.

5 2. Plaintiff brings this action pursuant to the Fair Labor Standards Act, the California
6 Labor Code, and the relevant IWC wage orders. As a matter of right, Plaintiff will amend this
7 Complaint to allege additional claims under the Private Attorneys General Act of 2004
8 (“PAGA”), Labor Code Section 2698 *et seq.*, upon the expiration of the appropriate notice period.

9 **PARTIES**

10 3. From approximately August 2015 to September 2017, Plaintiff Adrian Morris
11 worked for Fidelity as a Financial Representative at Fidelity’s Marin, California Investor Center.

12 4. On information and belief, Defendant Fidelity Investments is a privately-held
13 multinational financial services firm. It has offices in Northern California, including Marin
14 County. Plaintiff is currently unaware of its legal form.

15 5. Among other things, and according to its website, Fidelity Investments (which also
16 goes by Fidelity):

17 a. Provides financial planning and retirement options such as IRAs, annuities,
18 and managed accounts; brokerage and cash management products; college savings
19 accounts; and other financial services for millions of individual investors;

20 b. Works with employers to build benefit programs and provides
21 recordkeeping, investments, and administrative services for employer offerings.

22 c. Provides investment products, brokerage, and trading services to financial
23 firms.

24 d. Provides other asset management services to large financial firms.

25 Among other things, Fidelity has more than \$6,000,000,000,000 (trillion) in assets under
26 management.

27 6. On information and belief, Fidelity Investments employs more than 40,000
28 employees, thousands of them on an hourly basis.

1 following schedule:

AMOUNT	TIME FRAME SUPPOSEDLY EARNED	DATE PAID
\$850	9.21.15 to 12.27.16	2.26.16
\$1100	9.19.16 to 1.08.17	2.24.17

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8 21. Similarly, “Bonus Elig – NAJ” is apparently earned two times a year and also paid
9 three or more pay periods after it is earned. With respect to Plaintiff, for example, and according
10 to her wage statements, she supposedly earned and was paid the “Bonus Elig – NAJ” bonuses on
11 the following schedule:

AMOUNT	TIME FRAME SUPPOSEDLY EARNED	DATE PAID
\$250	8.25.15 to 10.04.15	12.04.15
\$950	12.14.15 to 4.03.16	6.03.16
\$950	6.13.16 to 10.02.16	12.02.16
\$1200	12.26.16 – 4.02.17	6.02.17

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20 22. Finally, “Base Comp-Retro” is, according to Fidelity’s wage statements, paid more
21 than two weeks after it is earned. With respect to Plaintiff, for example, she supposedly earned
22 and was paid the “Base Comp Retro” in part on the following schedule:

AMOUNT	TIME FRAME SUPPOSEDLY EARNED	DATE PAID
\$156.85	11.30.15 to 12.13.15	12.31.15
\$13.22	10.03.16 to 10.16.16	11.04.16

1 23. Fidelity does not consistently pay overtime on “Base Comp Retro” pay.

2 24. Fidelity does purport to pay “retroactive” overtime compensation for bonuses and,
3 occasionally, base compensation retro pay. In violation of Labor Code §§ 204 and 226, however,
4 Fidelity’s wage statements fail to set forth the applicable bonus/base comp. hourly rate in effect
5 during the pay period in which the “retroactive” overtime was earned. The wage statements also
6 fail to set forth the number of hours worked at each bonus/base comp. hourly rate for the
7 “retroactive” overtime. By refusing to provide this information on its wage statements, Fidelity
8 hides the fact that it is not paying employees the proper overtime rate on their bonus and base
9 compensation retro pay.

10 25. For example, according to Plaintiff’s wage statements, the “Bonus Elig – NAJ”
11 bonus, the “PrYr BonEli – NAJ” bonus, and the Base Comp. Retro pay have overlapping time
12 frames. However, the total compensation earned during these overlapping time frames was not
13 included in calculating the regular rate of pay for overtime purposes.

14 26. Even ignoring Fidelity’s failure to include bonus and base compensation retro pay
15 earned during overlapping time frames in Plaintiff’s overtime rate of pay, Fidelity still underpays
16 bonus overtime compensation to its employees in violation of accepted formula for calculating
17 such overtime.

18 *Student Loan Repayments*

19 27. Another form of compensation that Fidelity pays to its non-exempt employees is
20 student loan repayments pursuant to its “Step Ahead Student Loan Program.” Through this
21 program, Fidelity pays up to \$2,000 a year towards its employees’ student loans.

22 28. In order to be eligible for this program, employees must work for Fidelity for more
23 than six months, must work more than 20 hours a week, and they must have a satisfactory work
24 performance. According to Fidelity, more than 5,000 of its employees participate in this
25 program.

26 29. Plaintiff was eligible for this program and participated in it. Fidelity paid \$166.67
27 towards Plaintiff’s student loans every month. The entire amount of these monthly payments was
28 imputed to Plaintiff as wages on her wage statements

1 California-based employees, including Plaintiff. This violation is not isolated or unintentional. It
2 is systematic.

3 **PLAINTIFF’S SEPARATION FROM FIDELITY**

4 38. In September 2017, Plaintiff separated from Fidelity. Upon her separation,
5 Fidelity – willfully -- did not pay her all wages owed. Among other things, and as detailed above,
6 it did not include all her overtime.

7 39. Moreover, upon her separation, Plaintiff was harmed by Fidelity’s failure to
8 comply with Labor Code § 246(i). Upon ending her employment, Fidelity advised her that *she*
9 supposedly owed *it* money for taking too much PTO. Moreover, because Plaintiff had received a
10 raise from Fidelity, Fidelity claimed that *she* owed *it* money at the increased PTO rate, even
11 though she was paid a lesser amount when she (supposedly) took the PTO.

12 40. Had Fidelity provided PTO information to Plaintiff on a timely or ongoing basis,
13 as required by Labor Code § 246(i), she would have been in a position to challenge this claim. In
14 the alternative, she could have arranged her PTO so that she did not allegedly “fall into arrears”
15 with Fidelity.

16 **COLLECTIVE ACTION ALLEGATIONS**

17 41. Plaintiff brings her First Cause of Action for violation of the FLSA as a
18 nationwide collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b). The
19 collective action is brought on behalf of herself and all former and current non-exempt employees
20 of Fidelity who file consents to join this collective action, and:

21 a. Whose overtime rate of pay was miscalculated because it failed to
22 accurately calculate and/or include all bonus compensation or base pay retro
23 compensation.

24 b. Whose overtime rate of pay was miscalculated because it did not include
25 student loan repayments.

26 c. Whose overtime rate of pay was miscalculated because it did not include
27 fitness reimbursements.
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1 further investigation and discovery.

2 50. Plaintiff's claims should be resolved on a class-wide basis, and there is a well-
3 defined community of interest with respect to the litigation.

4 51. The Class is sufficiently numerous and joinder of all putative class members is
5 impracticable.

6 52. The Class is ascertainable.

7 53. Plaintiff's claims are typical and/or similar to the claims of the Class she seeks to
8 represent.

9 54. Plaintiff will fairly and adequately represent and protect the interests of the Class.
10 Plaintiff does not have interests which are adverse to the interests of absent class members.

11 55. Class counsel is experienced, qualified and capable. They have litigated numerous
12 class and collective action cases.

13 56. There are common questions of law and fact. These include:

14 a. Did Fidelity accurately calculate the Class's regular rate of pay in
15 purporting to pay overtime on non-discretionary bonuses and base compensation retro
16 pay?

17 b. Must Fidelity's student loan repayments for employees be included in the
18 regular rate of pay for overtime purposes?

19 c. Must Fidelity's fitness reimbursement payments to employees be included
20 in the regular rate of pay for overtime purposes?

21 d. Was Fidelity's conduct willful and/or lack good faith?

22 e. Did Fidelity's wage statements allow the Class to promptly and easily
23 determine, from the wage statements alone, their total hours worked and/or all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked
25 at each hourly rate?

26 f. Did Fidelity's wage statements violate the California Labor Code?

27 b. Was Fidelity's conduct in failing to pay the Class all wages owed at the
28 time of separation willful?

SECOND CAUSE OF ACTION

OVERTIME
ON BEHALF OF
THE CLASS

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4 66. Plaintiff incorporates paragraphs 1 through 65 of this Complaint as if fully set
5 forth here.

6 67. Under California law, employers must pay employees overtime based upon their
7 regular rate of pay for time worked in excess of 8 hours in a day.

8 68. Fidelity did not include required compensation in calculating the overtime rate of
9 Plaintiff or the Class. Defendants also miscalculated Plaintiff's and the Class's overtime rates
10 when they did include such compensation.

11 69. Fidelity's conduct was willful and not done in good faith.

12 70. Plaintiff and the Class were harmed as a result. They did not receive all the wages
13 to which they were entitled.

THIRD CAUSE OF ACTION

LABOR CODE § 226
ON BEHALF OF
THE CLASS

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18 71. Plaintiff incorporates paragraphs 1 through 70 of this Complaint as if fully set
19 forth here.

20 72. Under California law, an employer must provide employees with an accurate wage
21 statement. Among other things, the wage statement must include the gross wages earned, the
22 total hours worked, and the wage rate worked for each hour. An employee suffers injury when
23 this law is violated if the employee cannot (among other things) easily determine from the wage
24 statement the gross or net wages paid or earned, the hours worked, or the applicable hourly rates.
25 The penalties for violating this law are set by statute. See California Labor Code sections 226.

26 73. As set forth above, Fidelity knowingly and intentionally failed to provide Plaintiff
27 and the Class with accurate wage statements.

28 74. Plaintiff and the Class suffered injury as a result of Fidelity's conduct.

1 **FOURTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **ON BEHALF OF**
4 **THE SUBCLASS**

5 75. Plaintiff incorporates paragraphs 1 through 74 of this Complaint as if fully set
6 forth here.

7 76. Under California law, an employer must pay an employee all wages due upon
8 termination or resignation. The willful failure to do so results in waiting time penalties equal to
9 30 days of an employee's wage. See Labor Code section 203.

10 77. Fidelity did not pay Plaintiff and other members of the Subclass all wages due and
11 owing upon their separation from Fidelity's employ.

12 78. This conduct by Fidelity was willful. It knew or should have known of the
13 overtime wages incurred and not paid to Plaintiff and the Subclass.

14 79. As a result, Fidelity is liable to Plaintiff and the Subclass for waiting time
15 penalties.

16 **FIFTH CAUSE OF ACTION**

17 **UNFAIR BUSINESS PRACTICES**
18 **ON BEHALF OF THE CLASSES**

19 80. Plaintiff incorporates paragraphs 1 through 79 of this Complaint as if fully set
20 forth here.

21 81. California law prohibits any unlawful, unfair, or fraudulent business practice. See
22 California Business and Professions Code section 17200.

23 82. Through its actions (as described above), Fidelity has violated a variety of
24 California and federal wage and hour laws, including the California Labor Code and the FLSA.
25 Plaintiff and the Class have been harmed by Fidelity's conduct. They have not been paid all
26 wages earned. They have not been paid on a timely basis. They are entitled to restitution and an
27 injunction.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays individually and on behalf of other persons similarly situated, for judgment against Defendants as follows:

1. An Order that this action may proceed on a collective and class-wide basis;
2. Appropriate injunctive relief, including restitution;
3. An award of reasonable attorneys' fees and costs;
4. Damages in the form of statutory penalties, unpaid wages, and other damages, according to proof;
5. Pre-judgment and post-judgment interest as provided by law; and
6. Such other and further relief that the Court may deem just and proper.

Dated: October 20, 2017 BAKER CURTIS & SCHWARTZ, P.C.

By: -----S-----
Chris Baker
Attorneys for Plaintiff
ADRIAN MORRIS

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: October 20, 2017 BAKER CURTIS & SCHWARTZ, P.C.

By: -----S-----
Chris Baker
Attorneys for Plaintiff
ADRIAN MORRIS

CONSENT TO SUE UNDER

FAIR LABOR STANDARDS ACT (29 U.S.C. § 216(b))

I worked for Fidelity from approximately August 2015 to September 2017 as a financial representative in Defendants' Marin, California investor center.

I consent to be a party plaintiff in a lawsuit alleging that Fidelity Investments, FMR LLC and Fidelity Brokerage Services LLC (collectively "Fidelity") violated the Fair Labor Standards Act and California labor laws. I understand that this lawsuit seeks unpaid overtime, related damages and other compensation that may be owed to me and other current and former employees of Fidelity.

I understand that I have the right to choose other counsel and to pursue my claims solely on my own behalf, and I choose to be represented in this matter by class counsel Baker Curtis & Schwartz, P.C. and other attorneys with whom they may associate.

Dated: October 20, 2017

Signature: Adrian Morris

Print Name: Adrian Morris

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ADRIAN MORRIS, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Alameda (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Chris Baker, SBN 181557, Baker Curtis & Schwartz, P.C. 44 Montgomery St., Suite 3520, San Francisco, CA 94104 Ph.: 415.433.1064

DEFENDANTS

FIDELITY INVESTMENTS, a legal entity of an unknown form, FMR LLC, a Delaware Limited Liability Company, FIDELITY BROKERAGE SERVICES LLC, a Delaware Limited Liability Company

County of Residence of First Listed Defendant Suffolk (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 201 et seq. Brief description of cause: Wage and hour class action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/20/2017 SIGNATURE OF ATTORNEY OF RECORD //S// Chris Baker

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fidelity Hit with Former Employee's Wage and Hour Suit](#)
