

JUDGE ROBINSON

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U.S. DISTRICT COURT
S.D.N.Y.

Attorneys for Representative Plaintiffs
and the Plaintiff Classes

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JACK O'BRIEN, JOSHUA DENT,)
individually, and on behalf of all others)
similarly situated,)
)
Plaintiffs,)
)
vs.)
)
EDWARD D. JONES & CO., L.P.,)
)
Defendant.)
)
_____)

Case No.:

CLASS/COLLECTIVE ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Representative Plaintiffs, as and for their Complaint against Edward D. Jones & Co., L.P.,
allege as follows:

PRELIMINARY STATEMENT

1. This is a class/collective action, seeking unpaid wages, including unpaid overtime
compensation and interest thereon, liquidated damages and other penalties, injunctive and other

equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, the Fair Labor Standards Act §§ 6 and 7, 29 U.S.C. §§ 206 and 207. This action further invokes diversity jurisdiction and the supplemental jurisdiction of this Court to consider claims arising under New York law (e.g., the New York Wage Payment Act, the New York Minimum Wage Act, and 12 N.Y.C.R.R. Part 142).

2. Representative Plaintiffs bring this action on behalf of themselves and all other persons similarly situated (hereinafter referred to as the "Class Members," the "Plaintiff Classes" and/or, more specifically, the "FLSA Class" and/or the "New York Class") who are, or have been, employed by the Defendant to sell and/or assist in selling and/or to market and/or assist in marketing securities and other financial products to the public on their behalf within the applicable statutory periods..

3. The "New York Class" period is designated as the time from December 11, 2002 through the trial date, based upon the allegation that the violations of New York's wage and hour laws, as described more fully below, have been ongoing since that time. The "FLSA Class" period is designated as the time from December 11, 2003 through the trial date, based upon the allegation that the violations of the FLSA, as described more fully below, have been wilful and ongoing since at least this date. During these class periods, Edward Jones & Co., L.P., (hereinafter "Edward Jones" and/or "Defendant") have had a consistent policy of (1) permitting, encouraging, and/or requiring its allegedly-overtime exempt financial services representatives (including, but not necessarily limited to persons holding positions for defendant entitled "registered representatives" and/or "financial consultants"), including Representative Plaintiffs and members of both Classes, to work in excess of forty (40) hours per week without paying them overtime compensation as required by the FLSA and New York's wage and hour laws.

INTRODUCTION

4. The Fair Labor Standards Act of 1938, as amended, §§ 201 et seq., (hereinafter referred to as “the Act” or the “FLSA”) provides for minimum standards for both wages and overtime entitlement, and details administrative procedures by which covered work time must be compensated. The enactment of the provisions of the FLSA provide the Federal Courts with substantial authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well as the overtime pay provisions at issue in this Complaint.

5. According to Congressional findings, the existence of labor conditions detrimental to the maintenance of the minimum standard of living engenders unfair commercial competition, labor disputes, barriers to commerce and the free flow of goods in commerce, and interferes with the orderly and fair marketing of goods.

6. New York’s Wage Payment Act, Minimum Wage Act and 12 N.Y.C.R.R. Part 142 provide additional protections to hourly workers, including, but not necessarily limited to, entitlements to wages, including overtime pay.

7. Federal studies have linked long work hours to increased rates of accident and injury and a loss of family cohesion when either or both parents are kept away from home for extended periods of time, on either a daily or weekly basis.

8. Defendant has sold securities and financial products to the public. Representative Plaintiffs are informed and believe and, based thereon, allege that, within the Class Periods, Defendant has operated numerous facilities throughout the United States. In so doing, Defendant has employed hundreds, if not thousands, of individuals in recent years alone in allegedly-exempt financial services representative (as defined above) positions, employment positions which have not,

and currently do not, meet any test for exemption from the payment of overtime wages.

9. Representative Plaintiffs are informed and believe and, based thereon, allege that officers of Edward Jones knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

10. Despite Edward Jones's knowledge of the Plaintiff Classes' entitlement to premium (overtime) pay, expense reimbursement, and meal and/or rest periods for all applicable work periods, Edward Jones failed to provide the same to members of the Plaintiff Classes in violation of the FLSA and New York state statutes. This action is brought to redress and end this long-time pattern of unlawful conduct.

JURISDICTION AND VENUE

11. This Court has jurisdiction of this action pursuant to the provisions of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201 et seq., including under 29 U.S.C. §§ 207, 216, and 217. This Court also has jurisdiction in light of the existence of a controversy arising under the laws of the United States (28 U.S.C. §1331), diversity jurisdiction under 28 U.S.C. §1332, and supplemental jurisdiction to consider claims arising under New York state law, pursuant to 28 U.S.C. §1367.

12. Venue as to Defendant is proper in this judicial district, pursuant to 28 U.S.C. §1391. Edward Jones maintains offices in the Northern District of New York and transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiffs and those similarly situated within the State of New York and within this judicial district. Edward Jones operates said

facilities and has employed numerous Class Members in this judicial district as well as throughout the State of New York.

PLAINTIFFS

13. Representative Plaintiff Jack O'Brien is a natural person and is, during the relevant time period identified herein, employed by Edward Jones in New York as financial services representative.

14. Representative Plaintiff Joshua Dent is a natural person and is, during the relevant time period identified herein, employed by Edward Jones in New York as financial services representative.

15. In said position, the Representative Plaintiffs were repeatedly paid a substandard wage insofar as they were denied full pay for all hours worked, including overtime pay, denied reimbursement for expenses made on behalf of their employer, and were frequently permitted to work, and did work during the Class Periods, shifts exceeding four hours or a major fraction thereof (of at least three and one-half hours) without being afforded ten minute rest periods and without being afforded mandatory meal periods. The Representative Plaintiffs are informed and believe, and based thereon, allege that this conduct of Edward Jones is/was commonplace at every location owned and operated thereby.

16. As used throughout this Complaint, the terms "Class Members" and/or "Plaintiff Classes" refer to the named plaintiffs herein as well as each and every person eligible for membership in the Plaintiff Classes, as further described and defined below.

17. At all times herein relevant, the Representative Plaintiffs were, and now are, persons

within each of the Classes of persons further described and defined herein.

DEFENDANT

18. At all times herein relevant, defendant Edward Jones & Co., L.P. (hereinafter “Edward Jones” and/or “Defendant”) was, and is, a corporation doing business as a NASD registered securities brokerage firm with offices located in New York state and elsewhere.

19. Representative Plaintiffs are informed and believe and, on that basis, allege that Defendant has, and does, directly and/or indirectly employed and/or exercised control over the wages, hours and working conditions of the Representative Plaintiffs and the Class Members.

CLASS ACTION ALLEGATIONS

20. Representative Plaintiffs bring this action individually and as a class action on behalf of all persons similarly situated and proximately damaged by Edward Jones’s conduct, including, but not necessarily limited to, the following Plaintiff Classes:

FLSA Class:

All persons who are, or have been, employed by defendant Edward Jones & Co., L.P. in the United States to sell and/or assist in selling and/or to market and/or assist in marketing securities and other financial products on their behalf to the public within the applicable statutory period(s).

New York Class:

All persons who are, or have been, employed by defendant Edward Jones & Co., L.P. in the State of New York to sell and/or assist in selling and/or to market and/or assist in marketing securities and other financial products on their behalf to the public within the applicable statutory period(s).

21. Defendant, its officers and directors are excluded from each of these Classes.

22. This action has been brought and may properly be maintained as a class/collective action under FRCP, Rule 23 and 29 U.S.C. § 216 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

- a. **Numerosity**: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that the total number of Class Members exceeds hundreds of individuals. Membership in the Plaintiff Classes will be determined upon analysis of employee and payroll, among other, records maintained by Defendant.
- b. **Commonality**: The Representative Plaintiffs and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under FRCP Rule 23(b)(3) and 29 U.S.C. § 216(b). These common questions include, but are not necessarily limited to:
 - i. Whether Defendant violated the FLSA and/or New York laws by failing to pay overtime compensation to Edward Jones financial services representatives who worked in excess of 40 hours per week;
 - ii. Whether Defendant failed to post or keep posted a notice explaining the overtime pay rights provided by the FLSA in any area where Plaintiffs and Collective Action Members are/were employed, in violation of C.F.R. § 516.4;
 - iii. Whether Defendant unlawfully failed to pay overtime compensation in violation of the New York Minimum Wage Act, New York Labor Law § 650, *et seq.*, the Wage Payment Act, *New York Labor Law § 190, et seq.*, and the supporting New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 142;

- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of the Plaintiff Classes. The Representative Plaintiffs and all members of the Plaintiff Classes sustained injuries and damages arising out of and caused by Edward Jones's common course of conduct in violation of state and federal law, as alleged herein.

- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests. Moreover, the Representative Plaintiffs are informed and believe, and based thereon allege, that Defendant, in refusing to pay overtime to the FLSA Class Members and the New York Class Members, has acted and refused to act on grounds generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of each class. Consequently, Class certification is proper under FRCP Rule 23(b)(2) and 29 U.S.C. § 216(b).

- e. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of the Plaintiff Classes, in that the Representative Plaintiffs' claims are typical of those of the Plaintiff Classes and the Representative Plaintiffs have the same interests in the litigation of this case as the Class Members. The Representative Plaintiffs are committed to vigorous prosecution of this case, and have retained competent counsel, experienced in litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Class as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

- 23. As described herein, Edward Jones has, for years, knowingly failed to

adequately compensate those financial services representatives within the class definitions identified above for wages, including premium (overtime) wages due, under the FLSA (29 U.S.C. §§ 206 and 207), the New York Wage Payment Act, Labor Law § 190, et seq., the New York Minimum Wage Act, Labor Law § 650, et seq., and New York Department of Labor Regulations, 12 N.Y.C.R.R. Part 142. Moreover, Edward Jones has knowingly failed to provide said workers with mandatory meal and rest periods, thereby enjoying a significant competitive edge over other securities brokerage firms. Among other means, Edward Jones engaged in unlawful business practices requiring financial services representatives to work numerous hours of overtime on a daily and/or weekly basis.

24. As a direct and proximate result of Edward Jones' unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members have sustained damages, as described above, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are entitled to recover attorneys' fees and costs, pursuant to 29 U.S.C. § 216(b) and/or New York Labor laws, among other authorities.

FIRST CLAIM FOR RELIEF
UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(FLSA Class)

25. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

26. At all relevant times hereto, Defendant has been, and is, an employer engaged in commerce, as defined under 29 U.S.C. § 203(b) and (d). As such, Edward Jones employed members of the FLSA Class as financial services representatives, employment positions which engaged the employees in commerce, as defined under 29 U.S.C. §§ 203(b), (e), (g) and 29 U.S.C. § 207(a)(1). At all times relevant hereto, Defendant has been an “enterprise engaged in commerce or in the production of goods for commerce,” as defined under 29 U.S.C. §203(s)(1).

27. Representative Plaintiffs are informed and believe, and thereon allege, that Edward Jones has required, or requires, the FLSA Class Members as part of their employment to work without additional compensation, such as overtime, in excess of the forty hours per week maximum under 29 U.S.C. § 207(a)(1). That Section provides the following:

Except as otherwise provided in this section, no employer shall employ any of his employees...for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate which is not less than one and one-half times the regular rate at which he is employed.

28. Indeed, in the performance of their duties for Defendant, members of the FLSA Class often did work over forty hours per week, yet did not receive overtime compensation for the work, labor and services they provided to Defendant, as required by the FLSA, 29 U.S.C. §§ 206 and 207. The precise number of unpaid overtime hours will be proven at trial.

29. Representative Plaintiffs propose to undertake appropriate proceedings to

have such FLSA Class Members aggrieved by Defendant's unlawful conduct notified of the pendency of this action and join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the Court.

30. Defendant's violations of the FLSA were willful violations of the FLSA, within the meaning of 29 U.S.C. § 255(a).

31. As a result of the foregoing, Representative Plaintiffs seek judgment against Defendant on their own behalf, and on behalf of those FLSA Class Members similarly situated who file written consents to joinder in this action, for all unpaid wages, including overtime wages owed by Defendant to the Representative Plaintiffs and the FLSA Class, pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
UNLAWFUL FAILURE TO PAY OVERTIME WAGES PURSUANT TO NEW YORK LABOR LAW § 190, et seq., § 650, et seq. and 12 N.Y.C.R.R. PART 142 (New York Class)

32. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

33. The foregoing conduct, as alleged, violates the New York Wage Payment Act, Labor Law § 190, et seq., the New York Minimum Wage Act, Labor Law § 650, et seq., and the supporting Department of Labor Regulations, 12 N.Y.C.R.R. Part 142

(collectively referred to as the “New York Labor Laws”).

34. At all relevant times, Edward Jones has been, and continues to be, an “employer” within the meaning of New York Labor Law § 651. At all relevant times, Edward Jones has employed, and continues to employ, employees, including the Representative Plaintiffs and each of the New York Class members, within the meaning of the New York Labor Laws.

35. The New York Labor Laws require an employer, such as defendant Edward Jones, to pay overtime compensation to all non-exempt employees. The Representative Plaintiffs and the New York Class members are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

36. At all relevant times, Edward Jones had a policy and practice of failing and refusing to pay overtime pay to the Representative Plaintiffs and to New York Class members for their hours worked in excess of forty hours per week.

37. As a result of Edward Jones’ failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Representative Plaintiffs and New York Class members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, Edward Jones has violated, and continues to violate, the New York Labor Laws.

38. The Representative Plaintiffs, on behalf of themselves and the New York Class members, seek recovery of attorneys’ fees and costs of this action to be paid by Edward Jones, as provided by New York Labor Law § 663(1).

39. The Representative Plaintiffs, on behalf of themselves and the New York

Class members, seek the amount of their underpayments based on Edward Jones' failure to pay one and one half times the regular rate of pay for work performed in excess of forty hours, as provided by New York Labor Law § 663(1), as well as liquidated damages, and such other legal and equitable relief from Edward Jones' unlawful and willful conduct as the Court deems just and proper.

THIRD CLAIM FOR RELIEF
SPREAD OF HOURS COMPENSATION
(Pursuant to New York Labor Law, Article 19 § 650, et seq., and Supporting New
York State Department of Labor Regulations
(New York Class)

40. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

41. The Representative Plaintiffs and the New York Class members worked shifts of greater than ten hours without receiving additional "spread-of-hours" compensation from defendant Edward Jones.

42. The foregoing conduct, as alleged herein, violates the New York Minimum Wage Act, Labor Law Article 19 § 650, *et seq.* ("MWA"), 12 N.Y.C.R.R. §§ 142-2.4, 142-3.4, and the supporting New York State Department of Labor regulations, specifically the MWA's provisions requiring "spread-of-hours" pay, which require an employer, such as defendant Edward Jones, to pay additional "spread-of-hours" compensation to employees who work shifts of greater than ten hours.

43. At all relevant times, defendant Edward Jones had a policy and practice of failing and refusing to pay “spread of hours” compensation to the Representative Plaintiffs and to New York Class members for their shifts of greater than 10 hours.

44. As a result of Edward Jones’ failure to pay “spread of hours” compensation to the Representative Plaintiffs and to New York Class members for their shifts of greater than 10 hours, defendant Edward Jones has violated, and continues to violate, the MWA.

45. The Representative Plaintiffs, on behalf of themselves and the New York Class members, seek recovery of attorneys’ fees and costs of this action to be paid by Edward Jones, as provided by New York Labor Law § 663(1).

46. The Representative Plaintiffs, on behalf of themselves and the New York Class members, seek the amount of underpayments based on defendant Edward Jones’ failure to pay “spread of hours” compensation to the Representative Plaintiffs and to New York Class members for their shifts of greater than 10 hours and relief from defendant Edward Jones’ unlawful and willful conduct, as the Court deems just and proper.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the Plaintiff Classes, prays for judgment and the following specific relief against defendant Edward Jones & Co., L.P. as follows:

1. That the Court declare, adjudge and decree that this action is a proper class/collective action and certify the proposed FLSA Class, the New York Class and/or

any other appropriate subclasses under FRCP Rule 23 and/or 29 U.S.C. § 216;

2. That the Court declare, adjudge and decree that Defendant violated the overtime provisions of the FLSA and New York state laws as to the Representative Plaintiffs and the Plaintiff Classes;

3. That the Court declare, adjudge and decree that Defendant willfully violated its legal duties to pay overtime under the FLSA and New York state law;

4. That the Court declare, adjudge and decree that (a) the Representative Plaintiffs and the FLSA Class Members were at all times relevant hereto, and are, entitled to be paid overtime for work beyond 40 hours in a week; and (b) the amounts to which Representative Plaintiffs and the FLSA Class Members are entitled is to be doubled as liquidated damages and awarded thereto;

5. That the Court make an award to Representative Plaintiffs, the FLSA Class and the New York Class of damages and/or restitution for the amount of unpaid overtime compensation, including interest thereon, and penalties in an amount to be proven at trial;

6. That the Court make an award to the Representative Plaintiffs and the New York Class of reimbursement for all employer related expenses;

7. For all other Orders, findings and determinations identified and sought in this Complaint;

8. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

9. For reasonable attorneys' fees, pursuant to 29 U.S.C. § 216(b) and as

otherwise provided by law; and

10. For costs of suit and any and all such other relief as the Court deems just and proper.

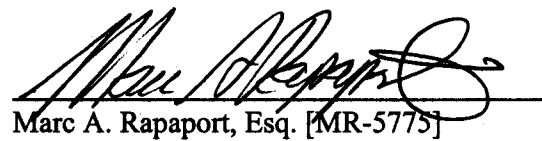
JURY DEMAND

Representative Plaintiffs and the Plaintiff Classes hereby demand trial by jury on all issues triable of right by jury.

Dated: December 11, 2006

LAW OFFICES OF MARC RAPAPORT

By:



Marc A. Rapaport, Esq. [MR-5775]
Attorney for the Representative Plaintiffs
and the Plaintiff Classes