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**9th CIRCUIT RULES THAT UNLICENSED ACCOUNTANTS
SEEKING OVERTIME WAGES MUST PROVE NO EXEMPTIONS
APPLY AT TRIAL**
by
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Two-thousand unlicensed junior accountants filed a wage-and-hour class action against their employer, PricewaterhouseCoopers LLP (PWC). The accountants claim PWC failed to pay them mandatory overtime under California Labor Code 510(a). The district court granted partial summary judgment in favor of the Plaintiff Class accountants, finding as a matter of law that PWC could not exempt them from California's overtime requirements. PWC filed an appeal.

On June 15, 2011, the 9th Circuit reversed and remanded, finding that the district court ruled erroneously because it rejected triable defenses. The 9th Circuit found that PWC has viable defenses under the professional exemption, Cal. Code Regs. tit. 8, § 11040(1)(A)(3), and the administrative exemption, *id.* § 11040(1)(A)(2). Neither exemption is categorically inapplicable to unlicensed accountants as a matter of law. Further, the exemption defenses must be resolved at trial and not by a motion for summary judgment.

Under the California Labor Code, employers must generally pay mandatory overtime to any employee who works more than eight hours a day or forty hours a week. Cal. Lab. Code § 510(a). However, the Industrial Welfare Commission (IWC), promulgates exemptions to overtime in "wage orders" which are enforced by the California Division of Labor Standards and Enforcement (DLSE). The current IWC wage order is Wage Order No. 4-2001. The 2001 Wage Order establishes three overtime exemptions: (1) the professional exemption, (2) the executive exemption, and the (3) administrative exemption. (Cal. Code Regs. tit. 8, § 11040(1)(A)(1)-(3).)

In the district court, the parties cross-moved for partial summary judgment on whether Plaintiffs fell under any of these three overtime exemptions. The district court ruled for Plaintiffs, finding as a matter of law that PWC could not exempt them under the 2001 Wage Order. IN making its decision, the court concluded that (1) unlicensed accountants are categorically ineligible for the



professional exemption; and (2) PWC had not established a triable fact issue on whether Plaintiffs' work was performed "under only general supervision," an essential element of the administrative exemption.

California statute and professional accounting standards both require that unlicensed accountants be subject to control, supervision, and review by licensed CPAs. (Cal. Bus. & Prof. Code § 5053; American Institute of Certified Public Accountants (AICPA) Professional Standards § 311.12). Although these two provisions provide that unlicensed accountants must be supervised, they say nothing about whether that supervision must exceed mere "general" supervision, and neither provision distinguishes general supervision from any other kind of supervision. For that reason, the 9th Circuit court could not conclude, as a matter of law, that all unlicensed accountants are necessarily subject to more than general supervision.

Plaintiffs and Defendants introduced a wealth of evidence about the nature and scope of the unlicensed accountants' job duties, and PWC's supervision of them. Although the record contained evidence that Plaintiffs may do some work affecting PWC's own management and operations — e.g., participating in internal committees — the Court found that that work was not the bulk of an associate's responsibilities. The more important question, and the one the jury will need to resolve, is whether Plaintiffs' work for PWC's clients during audit engagements is of "substantial importance" to the management or operations of the clients' businesses. This inquiry will be fact-intensive: "It is not possible to lay down specific rules that will indicate the precise point at which work becomes of substantial importance to the management or operation of a business."

While the Court recognized that the Plaintiffs were on the low end of PWC's hierarchy, it saw no reason why they should be found, as a matter of law, characterized as non-exempt employees such as bookkeepers, secretaries, messengers, and other "clerks of various kinds."

The Appellate Court stated that

"Resolution of these factual disputes will then affect whether Plaintiffs are "primarily engaged" in exempt work. If the jury determines Plaintiffs' work during audit engagements is not of



substantial importance" to the clients' management or operations, it will likely be difficult for PWC to establish that Plaintiffs spend more than 50% of their time on administratively exempt work. If the jury determines to the contrary, PWC will have a much stronger case. Either way, on the record before us, the district court erred in disposing of this issue as a matter of law. The question is intensely factual and is one for the jury, not the court at summary judgment."

The case is *Campbell v. PriceWaterhouseCoopers*, 09-16370 9th Cir. 6-15-2011. A Link to the Court's Opinion can be found at: <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=115>.