

The Law Office of Arkady I. Itkin

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May 12, 2009

VIA FACSIMILE: (xxx) xxx-xxxx

John Smith
Smith & Jones
1000 Taylor Avenue
Palo Alto, CA 94000

RE: Jane Doe / Amco Technologies Matter

Dear Mr. Smith:

Please be advised that this office has been retained to represent Jane Doe in her claims for overtime compensation against Amco. Please forward any and all communication regarding this matter to my attention. This letter addresses your correspondence of April 13, 2009, to Ms. Doe's former counsel, in which you argued that Ms. Doe is not entitled to overtime compensation under California law as her duties were primarily "executive" and therefore she is exempt from overtime wage laws.

As you know, under FLSA and other laws regulating wages, the employer bears the burden of proving an employee's exempt status. Corning Glass Works v. Brennan, 417 U.S. 188, 196-7. (1974). Neither federal nor state agencies, when interpreting regulations relating to exempt status, nor courts hearing such matters, place any reliance on the job title, but focus on the *actual job duties performed*. "Titles can be had cheaply and are of no determinative value." 29 C.F.R. §541.201(b). Thus, the fact that Ms. Doe was hired to a position of a Director of Financial Reporting plays no significant role in determining her exempt status.

Generally, administrative exempt work must be (1) non-manual, (2) related to management policies or general business operations of the employer, and (3) must involve customarily and regular exercise of discretion and independent judgment. Thus, a determination of exempt status requires a careful investigation of the actual work performed by the employee in question. The California courts have been interpreting the "directly related to management" statutory language by holding that it refers to the duties related to "running of the business itself" and not "... the day-to-day carrying out of the ordinary operations of that business. Bratt v. County of Los Angeles, 912 F.2d 1066 (9th Cir. 1990), cert. den. 498 U.D. 1086 (1991). In Harris v. Superior Court, 64 Cal.Rptr.3d 547 2nd Dist. 2007), the court reiterated the same distinction by holding that the administrative exemption does not apply to insurance adjusters because, even though they make certain important decisions in the scope of their work, such as allocating reserves



for claims, negotiating and evaluating settlements, etc., these decisions affect “day-to-day operations” rather than running the company itself.

Further, high compensation alone does not create exempt status, as to be exempt, the employee must meet the higher salary threshold *and* the primary duties requirement. 29 C.F.R. §541.214. Thus, the fact that Ms. Doe’s annual salary was \$100,000.00, does not alone and in itself makes her exempt from overtime compensation. During her employment at Amco, Ms. Doe spent approximately 50% of her work time on a routine work of preparing invoices and contacting customers who did not pay on their outstanding invoices. The rest of the time she performed data entry, revenue reconciliation, updated a list of contracts, inputted payroll information from ADP to Quickbooks, assisted her supervisors in filling out government forms, and engaged in other routine tasks, typical to lower-level accountants and bookkeepers. Ms. Doe did not have any authority to give discounts to customers or write off invoices. She did not have authority to sign checks or close the accounts, and her responsibilities concerning banking transactions revolved around filling out forms. Ms. Doe did not have any other authority or engaged in any other duties that could be considered as directly related to the management of the company. Thus, it is highly unlikely that Ms. Doe was correctly classified as an exempt employee, and therefore she is entitled to overtime compensation for the hours worked in excess of forty hours per week and eight hours per day.

During the period of time between February 2008 and March 2009, Ms. Doe has worked 301.5 hours of overtime. Her salary was \$100,000 per year or \$48/hour. Ms. Doe’s outstanding wages can be calculated as follows: \$48/hour times 1.5 (overtime multiplier) times 301.5 equals \$21,708.00, exclusive of interest and any applicable penalties.

SETTLEMENT OFFER

In light of the above, Ms. Doe offers to resolve her wage claims in the amount of \$21,708.00 in full settlement. Ms. Doe agrees to waive her statutory rights to prejudgment interest and attorneys fees should this claim be resolved short of litigation. This offer shall remain open for a period of 14 days from the date of this letter, after which it will automatically expire. Please feel free to contact the undersigned, if you wish to discuss this matter.

I thank you for your attention, and look forward to a prompt resolution of this matter without the need of filing a court action.

Sincerely,

Arkady Itkin