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BDO SEIDMAN, LLP
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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 NAM NGUYEN,

21 Plaintiff,

22 vs.

23 BDO SEIDMAN, LLP, a Limited
24 Liability Partnership; and DOES 1-
25 10, inclusive,
Defendants.

Case No.: SACV07-1352 JVS MJGx

JOINT RULE 26(f) REPORT

Scheduling Conference: April 28, 2008
Time: 11:30 a.m.

1 Pursuant to this Court's March 31, 2008 Order Setting Scheduling
2 Conference, the parties, by and through their counsel of record, submit the
3 following Joint Rule 26(f) Report in advance of the Scheduling Conference
4 scheduled for April 28, 2008, at 11:30 a.m. before The Honorable James V. Selna.

5 A. SYNOPSIS

6 This is a class action lawsuit alleging that BDO Seidman, LLP ("BDO" or
7 "Defendant") improperly classifies its California non-licensed associate accountants
8 as exempt employees. Plaintiff seeks the payment of overtime and other remedies
9 associated with the Defendant's alleged misclassification of these employees.

10 BDO avers that it properly classified the employees that Plaintiff purports to
11 represent, defined by Plaintiff as BDO's "California non-licensed associate
12 accountants," as exempt under California law, including but not limited to, the
13 California Labor Code and California's Industrial Welfare Commission's Wage
14 Order 4-2001. BDO's California non-licensed associate accountants are exempt
15 under the administrative exemption, the professional exemption, or both. *See* IWC
16 Wage Order 4-2001 (1)(A)(2), (1)(A)(3). Because these employees were properly
17 classified as exempt, BDO was not required to provide meal and rest period breaks
18 to them. Additionally, Plaintiff and the class he purports to represent received
19 accurate itemized wage statements and were not entitled to waiting time penalties
20 because they were paid properly as exempt employees. Finally, due to the
21 individualized inquiry that must be conducted to determine if each of the purported
22 class members was properly classified as exempt, class certification is not
23 appropriate in this action.

24 B. LEGAL ISSUES

25 The primary legal issue presented is whether each of BDO's California
26 unlicensed associate accountants was properly classified as exempt under California
27 law and, therefore, not eligible for overtime pay. The other remedies that Plaintiff
28 seeks on behalf of the purported class for BDO's alleged failure to provide meal

1 and rest breaks, accurate itemized wage statements, and waiting time penalties will
2 depend on whether each of these employees were properly classified. An additional
3 legal issue is whether class certification is appropriate given the facts of this case.

4 C. DAMAGES

5 With regard to the realistic range of provable damages, Plaintiff cannot
6 render an informed estimate at this time. Among other factors, such an estimate
7 depends on the size of the representative class under Cal. Bus. and Prof. Code
8 § 17200, the duration of each putative class member's employment, and their
9 respective compensation data and hours worked. Plaintiff does not yet have this
10 information.

11 D. INSURANCE

12 BDO does not have insurance coverage applicable to wage claims.

13 E. MOTIONS

14 Plaintiff intends to file its motion for class certification on or before January
15 15, 2009. The parties do not anticipate any motions seeking to add new parties or
16 claims, amending the pleadings, or transferring venue at this time.

17 F. DISCOVERY AND EXPERTS

18 At this point, the parties do not believe that any alteration of the discovery
19 limitations imposed by the Federal Rules is necessary. The parties have agreed to
20 exchange Rule 26 disclosures on or before April 24, 2006. BDO's discovery will
21 be focused on Plaintiff and any other purported class members identified by him,
22 and will include both written and deposition discovery. Subject to the identification
23 of additional class members, the parties do anticipate taking more than 6
24 depositions. No formal discovery has been conducted to date. Depending upon
25 the scope of discovery, there may or may not be a need for protective orders
26 under Rule 26(c) or any other orders under Rule 16(b)-(c). The parties have
27 agreed to expert witness disclosures as set forth below.

28

1 G. DISPOSITIVE MOTIONS

2 Following class certification, Plaintiff intends to file Motions for Summary
3 Adjudication to seek rulings on issues of law affecting the outcome of this case.
4 Specifically, Plaintiff intends to file a motion that seeks rulings on the following
5 issues:

- 6 1. Whether, as a matter of law, associate accountants must obtain
7 a CPA license in order to be properly classified as exempt
8 under the “professional exemption;”
- 9 2. Whether, as a matter of law, no unlicensed associate
10 accountant employed by the defendant could qualify for the
11 “administrative exemption” since the professional rules of
12 accountancy and the California Business and Professions Code
13 expressly prohibit unlicensed associates working for CPAs
14 from giving the type of advice to clients that would qualify for
15 this exemption; and
- 16 3. Whether, as a matter of law, no unlicensed associate
17 accountant employed by the defendant could qualify for either
18 the “administrative” or “professional” exemption since the
19 professional rules of accountancy and the California Business
20 and Professions Code expressly prohibit unlicensed associates
21 working for a CPA from “customarily and regularly exercising
22 independent judgment and discretion on matters of
23 significance.”

24 Plaintiff contends that rulings on these legal theories will narrow the issue to
25 be decided at trial to that of determining the extent of the class’ damages.

26 BDO anticipates filing a Motion for Summary Judgment as to all of
27 Plaintiff’s claims. Specifically, BDO anticipates moving for summary judgment on
28 the issue of whether Plaintiff was an exempt employee under the administrative

1 exemption, the professional exemption, or both under California's Industrial
2 Welfare Commission's Wage Order 4-2001. See IWC Wage Order 4-2001
3 (1)(A)(2), (1)(A)(3).

4 H. SETTLEMENT AND SETTLEMENT MECHANISM

5 The parties believe that private mediation is appropriate at the conclusion of
6 discovery. The parties agree to use Settlement Procedure No. 3 per Local Rule 16-
7 15.4.

8 I. TRIAL ESTIMATE

9 The parties estimate that if the class is certified, the trial of the case would
10 exceed 8 days. If the class is not certified, trial would be less than 8 days.

11 J. TIMETABLE

12 The parties have agreed that Plaintiff will file his motion for class
13 certification on or before January 15, 2009. To the extent Plaintiff utilizes or
14 intends to utilize experts in connection with his motion, he shall: (i) identify any
15 such expert 21 days before filing his motion for class certification; and (ii) make
16 such experts available for deposition within 14 days following the filing of his
17 motion. Defendant shall file its opposition to Plaintiff's motion no later than 60
18 calendar days following the date Plaintiff files his motion. Plaintiff's reply shall be
19 filed no later than 45 calendar days following the defendant's opposition. To the
20 extent Defendant submits expert testimony to oppose Plaintiff's motion, it shall
21 make such experts available for deposition no later than 14 days following the date
22 it files its opposition. The hearing on the Plaintiff's motion for class certification
23 shall be set for a date that is at least 10 calendar days after the date Plaintiff's reply
24 is due to be filed.

25 With respect to the overall schedule in this case, the parties have agreed on
26 November 17, 2009 as a trial date and have attached their proposed schedule as
27 Exhibit A.

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- K. OTHER ISSUES
There are no other issues that need to be addressed.
- L. CONFLICTS
There are no conflicts that need to be addressed in this case.
- M. PATENT CASES
This is not a patent case.
- N. MAGISTRATES
The parties do not consent to a magistrate.

Dated: April 21, 2008.

KERSHAW, CUTTER, & RATINOFF, LLP

By: 
WILLIAM A. KERSHAW
Attorneys for Plaintiff

Dated: April 21, 2008.

MORGAN, LEWIS & BOCKIUS, LLP

By: _____ /s/ _____
JOHN S. BATTENFELD
Attorneys for Defendant

**JUDGE JAMES V. SELNA
PRESUMPTIVE SCHEDULE OF PRETRIAL DATES**

Matter	Time	Weeks before trial	Plaintiff's Request (Fill in specific date)	Defendant's Request (Fill in specific date)	Court Order
Trial date (jury) (court) Estimated length: _____ days	8:30 a.m. (Tuesday)		11/17/09	11/17/09	
[Court trial:] File Findings of Fact and Conclusions of Law and Summaries of Direct Testimony		-1	11/10/09	11/10/09	
Final Pretrial Conference: Hearing on Motions in Limine; File Agreed Upon Set of Jury Instructions and Verdict Forms and Joint Statement re Disputed Instructions and Verdict Forms; File Proposed <i>Voir Dire</i> Qs and Agreed-to Statement of Case	11:00 a.m. (Mondays)	-2	11/2/09	11/2/09	
Lodge Pretrial Conf. Order File Memo of Contentions of Fact and Law; Exhibit List; Witness List; Status Report re Settlement		-3	10/27/09	10/27/09	
Last day for hand-serving Motions in Limine		-5	10/13/09	10/13/09	
Last day for hearing motions	1:30 p.m. (Mondays)	-7	9/28/09	9/28/09	
Last day for hand-serving motions and filing (other than Motions in Limine)		-11	9/1/09	9/1/09	
Non-expert Discovery cut-off		-15	8/4/09	8/4/09	

ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING CONFERENCE

L.R. 16-14 Settlement Choice: (1) CT/USMJ (2) Atty (3) Outside ADR (4) Settlement Panel

Expert discovery cut-off			8/31/09	8/31/09	
Rebuttal Expert Witness Disclosure			8/10/09	8/10/09	
Opening Expert Witness Disclosure [See F.R.Civ.P. 26(a)(2)]			6/29/09	6/29/09	
Last day to conduct Settlement Conference					
Last day to amend pleadings or add parties					

EXHIBIT A