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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

DAVID WOODS, on behalf of himself and all)
others similarly situated,)

Plaintiff,)

v.)

BANK OF AMERICA, N.A.,)

Defendant.)

CLASS ACTION

No. 05-2-39938-4 SEA

**AMENDED CLASS ACTION
COMPLAINT FOR FAILURE TO PAY
OVERTIME IN VIOLATION OF THE
WASHINGTON MINIMUM WAGE
ACT**

Plaintiff brings this action in an individual capacity and on behalf of a class of persons defined below and for his complaint alleges as follows:

NATURE OF ACTION

1. This is a proposed class action brought on behalf of persons employed by Defendant Bank of America, N.A., ("Bank of America") as Mortgage Retail Lending Account Executives.
2. Plaintiff alleges that Defendant violated Washington's Minimum Wage Act ("MWA"), RCW 49.46.005 *et seq.*, by failing to pay Mortgage Retail Lending Account Executives employed in Washington overtime pay at a rate not less than one and one-half times their regular rate of pay for all hours worked over forty in a work week as required by the MWA.
3. Plaintiff brings this action in an individual capacity and on behalf of a class of persons similarly situated, as defined below.

1 8. Venue is proper in King County Superior Court pursuant to RCW 4.12.025
2 because Defendant transacts business in this county and has an office to transact business in
3 this county.

4 **FACTUAL ALLEGATIONS**

5 9. Defendant is the nation's largest consumer bank, the largest provider of
6 checking account services and the nation's number one debit card provider. Bank of America's
7 Global Consumer and Small Business business line includes the nation's fastest-growing major
8 credit card company, the number five provider of consumer first mortgages and number two
9 provider of home equity lines of credit.

10 10. Plaintiff, and other Class Members, worked for Defendant as Mortgage Retail
11 Lending Account Executives for part or all of the time period material to this litigation.

12 11. Defendant's Mortgage Retail Lending Account Executives originate and process
13 residential real estate loans. The Mortgage Retail Lending Account Executive position carries
14 the job code SM0009 within Bank of America.

15 12. Plaintiff and other Class Members were not paid one and one-half times their
16 regular rates of pay as overtime pay for all hours worked over 40 hours in a work week while
17 employed as Mortgage Retail Lending Account Executives.

18 13. On October 18, 2005, the Honorable Arthur J. Boylan of the United States
19 District Court, District of Minnesota, approved a settlement between the Bank of America and
20 a certified opt-in class of Mortgage Retail Lending Account Executives ("FLSA Opt-in
21 Plaintiffs"). The settlement resolved the Fair Labor Standards Act claims of the class members
22 who chose to opt in to that class. The released and dismissed claims of the FLSA Opt-in
23 Plaintiffs are set forth in the complaint in Graham v. Bank of America, N.A., No. 04-cv-02951-
24 FLN (D. Minn) ("Graham Litigation").

25 14. On December 20, 2004, Timothy Franklin filed a California statewide class
26 action lawsuit in state court that was removed to the United States District Court of Northern
27 California, *Franklin v. Bank of America, N.A.*, No. C-05-00519 CRB (N.D. Cal.) ("*Franklin*").

AMENDED CLASS ACTION COMPLAINT FOR
FAILURE TO PAY OVERTIME - 3

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1 The class action suit alleged that Bank of America failed to pay overtime to a statewide class of
2 Mortgage Retail Lending Executives as required by California labor law and California's law
3 regarding unfair competition.

4 15. On December 9, 2005, Federal District Court Judge Charles R. Breyer approved
5 a preliminary settlement of claims between Bank of American and a statewide class Mortgage
6 Retail Lending Account Executives in the *Franklin* case. The class is defined as:

7 All current and former employees of Bank of America, N.A. ("Bank") who were
8 employed by the Bank in the State of California as Mortgage Retail Lending
9 Account Executives (Job Code SM009) during all or part of the period from
10 December 20, 2000 through December 9, 2005 who did not participate in the
11 *Raquib Abdulllah et al. v. Bank of America, N.A.* action in Minnesota District
12 Court, Case No. 04-2951 JMR/FLN

13 16. The preliminary settlement contains a release of claims by class members for
14 claims under California's labor laws, wage orders of the California Industrial Welfare
15 Commission and California's unfair competition law. The persons covered by the *Franklin*
16 preliminary settlement include all employees of Bank of American who worked in the position
17 of Mortgage Retail Lending Account Executive Position (job code SM009) in the State of
18 California. The settlement covers any claims by class members from December 20, 2000,
19 through December 9, 2005. A final settlement hearing in *Franklin* is scheduled for June 16,
20 2006.

21 17. Although at one time David Woods had opted-in to the class certified in the
22 Graham Litigation, he subsequently removed himself from that class in accordance with the
23 provisions of the Graham Litigation settlement and was not a member of the FLSA Opt-in
24 Plaintiff Class whose claims were dismissed on October 18, 2005.

25 18. David Woods worked as a Mortgage Retail Lending Account Executive for
26 Bank of America between June of 2001 and December of 2002.

27 19. Defendant has acted willfully and with intent to deprive Plaintiff and members
of the Class of their wages required by the MWA.

1 **CLASS ACTION ALLEGATIONS**

2 20. This class action is brought and may be maintained pursuant to CR 23(b)(3).
3 Plaintiff seeks to represent a Class comprised of:

4 All persons who have been employed by Bank of America, N.A., in the
5 state of Washington as a Mortgage Retail Lending Account Executive at
6 any time during the relevant statute of limitations period. Excluded from
7 the Class is any Mortgage Retail Lending Account Executive who opted-
8 in to the settlement class in Graham v. Bank of America, N.A., No. 04-
9 cv-02951-FLN (D. Minn).

10 21. This action is properly brought as a class action under CR 23(b)(3) for the
11 following reasons:

12 (a) Upon information and belief, Plaintiff alleges Defendant employed
13 several thousand persons as Mortgage Retail Lending Account Executives during the Class
14 period. Considerably less than one thousand of these Mortgage Retail Lending Account elected
15 to opt in to the Graham Litigation settlement class. Therefore, the Class is so numerous that
16 joinder of all members is impracticable.

17 (b) There are questions of law or fact common to the Class which
18 predominate over any questions affecting any individual member, including:

- 19 (i) Whether Defendant violated the MWA when employing
20 Mortgage Retail Lending Account Executives without the
21 payment of overtime pay for hours worked over forty hours in a
22 work week;
- 23 (ii) Whether Plaintiff and members of the Class are entitled to
24 damages for unpaid wages under the MWA; and
- 25 (iii) Whether Plaintiff and members of the Class are entitled to double
26 damages under the MWA, RCW 49.52.070.

27 (c) The claims asserted by Plaintiff are typical of the claims of the members
of the Class.

1 (d) Plaintiff will fairly and adequately protect the interests of the Class.
2 Plaintiff's claims are typical of the members of the Class and Plaintiff seeks no relief that is
3 antagonistic or adverse to other members of the Class.

4 (e) Plaintiff has retained counsel competent and experienced in class and
5 wage/hour litigation and has no conflict of interest with other Class members in the
6 maintenance of this class action. Plaintiff will vigorously pursue the claims of the Class.

7 (f) A class action is superior to any other available means for the
8 adjudication of this controversy. This action will cause an orderly and expeditious
9 administration of the Class's claims; economies of time, effort and expense will be fostered;
10 and uniformity of decisions will be ensured at the lowest cost and with the least expenditure of
11 judicial resources.

12 (g) Plaintiff does not anticipate any difficulty in management of this action
13 because the evidence proving Defendant's violation of the statutes is ascertainable through
14 discovery. The identities of the Class members are known by Defendant, and damages should
15 be able to be calculated from Defendant's records. This action poses no unusual difficulties
16 that would impede its management by the Court as a class action.

17
18 **CLAIM FOR VIOLATION**
19 **OF THE WASHINGTON MINIMUM WAGE ACT**
20 **(RCW 49.46.130)**

21 22. Plaintiff restates and alleges the allegations set forth in paragraphs 1 through 19
22 above.

23 23. Defendant employed Plaintiff and other Class Members for more than forty
24 hours per work week without paying compensation at a rate not less than one and one-half
25 times the regular rate of pay at which they were employed, in violation of RCW 49.46.130.

26 24. As a result of said conduct, Plaintiff and members of the Class have sustained
27 damages.

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