

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

DAVID WOOD, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

No. 05-2-39938-4 SEA

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT**

TO: All Retail Mortgage Lending Account Executive employees of Bank of America in Washington State who worked in this position during the time period of December 9, 2002 through December 20, 2006 and who have not participated in the settlements in *Graham v. Bank of America, N.A.*, No. 04-cv-02951-FLN (D. Minn.) (*Graham* litigation) or *Franklin v. Bank of America, N.A.*, No. C-05-00519 CRB (N.D. Cal) (*Franklin* litigation).

**READ THIS NOTICE CAREFULLY! IT MAY AFFECT YOUR LEGAL RIGHTS!
A WASHINGTON STATE SUPERIOR COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION.**

Bank of America has agreed to settle an alleged class action wage and hour lawsuit now pending in King County Superior Court. The lawsuit, which was brought by David Woods, a former Retail Mortgage Lending Account Executive ("Account Executive") who worked for Bank of America, claimed that Bank of America wrongfully failed to pay overtime wages for all hours worked after 40 in a work week. Bank of America denied the claims, but nevertheless has agreed to a settlement which will allow it to focus on its continuing commitment to providing high quality banking services and fair treatment of its employees.

The Purpose Of This Notice Is To Inform You Of:

- **The Status Of The Lawsuit, Including A Statement Of Rights You May Have With Respect To A Proposed Settlement Of The Case;**
- **The Opportunity To File A Claim Form Requesting A Monetary Award;**
- **The Opportunity To File With The Court Any Objections You May Have To The Settlement; And**
- **The Opportunity To Exclude Yourself From The Proposed Settlement By Opting Out.**

The brief and general summary of the Settlement Agreement in this notice does not include all of the terms and conditions of the proposed settlement. The only complete statement of the terms of the proposed settlement is found in the actual Settlement Agreement provisionally approved by the Court. That Settlement Agreement may be reviewed on the following website: www.woodssettlement.com.

1. **The Affected Class.** Pursuant to Civil Rule 23, the Court has provisionally certified a Settlement Class for purposes of monetary relief to be provided under the proposed Settlement Agreement. The Settlement Class is defined as those individuals who, during the period December 9, 2002 through December 20, 2006, worked as Retail Mortgage Lending Account Executives (Job Code SM009) for Bank of America, N.A. in Washington State. However, you are not a member of the Settlement Class if you already participated in the settlements in either *Graham v. Bank of America, N.A.*, No. 04-cv-02951-FLN (D. Minn.) (*Graham* litigation) or *Franklin v. Bank of America, N.A.*, No. C-05-00519 CRB (N.D. Cal) (*Franklin* litigation). Any individual within this class definition can exclude himself or herself from the Class by "opting out" as described below.

If you are included in the Settlement Class defined above, the proposed settlement may affect your rights. Additionally, you may be eligible to receive the benefits of the proposed settlement in the form of an individual monetary award.

2. **Reasons for Settlement.** After extensive investigation and negotiation with counsel for Bank of America, counsel for Plaintiff ("Class Counsel") believe that this lawsuit should be settled because the terms and conditions of the settlement are fair, reasonable, adequate, and provide substantial benefits to the Settlement Class. In reaching this conclusion, Class Counsel have analyzed the benefits of the settlement, the risks involved with further litigation of this case, as well as the expense and length of continued proceedings necessary to prosecute this action through a trial and possible appeals. Bank of America has agreed to these settlement terms because it wishes to avoid

costly, disruptive, and time-consuming litigation and desires to obtain complete and final settlement of the claims of Plaintiff and Settlement Class members in order to focus on its continuing commitment to providing high quality banking services and the fair treatment of its employees. Bank of America does not, however, admit any wrongdoing or liability by entering into this settlement.

3. Telephone Number. If you have any questions about the proposed settlement, you may call Class Counsel, Mark A. Griffin at 800-246-9834.

4. Choices You May Make Now.

a. If you wish to remain in the proposed Settlement Class and be considered for a monetary award, then you must file a Claim form under Paragraph 8 below, postmarked no later than February 28, 2007. Claim forms which are received after March 2, 2007 will not be accepted.

b. If you wish to object to the proposed Settlement Agreement, you must follow the procedures in Paragraph 11 below, putting your objections in writing and sending them to the Court, Class Counsel and Counsel for Bank of America, postmarked no later than February 28, 2007. Objections received after March 2, 2007 may not be considered by the Court.

c. If you wish to remove yourself from the monetary benefits of this proposed settlement, you must submit a "Request to Opt Out" statement to the Court, with a copy to counsel for the parties, under the procedures in Paragraph 10, postmarked no later than February 28, 2007. Requests to Opt Out statements received after March 2, 2007 may not be accepted by the Court. If you opt out, you will have no right to file a Claim Form requesting a monetary award.

d. If you do nothing, then you will remain in the proposed Settlement Class but will not receive a monetary award.

5. Monetary Relief. Pursuant to the proposed Settlement Agreement, Bank of America has established a \$1,134,000.00 Settlement Fund, a portion of which may be paid directly to qualified Settlement Class members, minus withholding and other lawful deductions. Bank of America has also agreed to pay Class Counsel's attorneys' fees, costs, and expenses, as well as certain fees, costs and expenses incurred by Class Counsel in administering the Settlement out of the Settlement Fund.

The Settlement Fund will be allocated to pay the claims of Settlement Class members who are not Class Representatives, who do not become timely Opt Outs, and who file valid claims in a timely fashion pursuant to the procedure set forth in Paragraph 8 below. The exact amount of individual monetary awards will be determined by the number of claims filed, the claims procedure, award eligibility requirements, and other limitations set forth in the Settlement Agreement pursuant to the procedure described in paragraph 6 below.

6. Individual Recovery. Each individual class member who files a timely claim form will recover a proportionate amount of the Settlement Fund net of expenses and fees (as described in paragraph 7 below) based upon the number of weeks worked as an Account Executive between December 9, 2002 and December 20, 2006. No Settlement Class member shall receive less than \$250 regardless of the number of weeks worked. Attached as Exhibit A to this Notice is a spreadsheet which represents the anticipated recovery of each Class Member based upon Bank of America's records of weeks worked by each member of the Settlement Class and estimates of the amount of expenses and attorneys fees awarded by the Court. Your individual recovery may deviate from this sum if either you, or some other class member, disputes the number of weeks worked for Bank of America. In addition your recovery may increase (but cannot decrease) if either the Court awards a lesser amount of attorney fees or if some class members either choose to opt out of the Settlement Class or fail to make a claim as a member of the Class.

7. Attorneys Fees and Other Payments. The law firm of Keller Rohrback L.L.P. as well as George Hunter and Timothy Pauley have been provisionally appointed by the Court as counsel to represent the class in this matter ("Class Counsel"). These lawyers will file a motion with the Court for reimbursement of money they have paid out of their own pockets to advance the case and to administer the Settlement and for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 25% of the Settlement Fund net of expenses. Bank of America has agreed that Class Counsel will be paid up to \$50,000 in costs. Bank of America reserved the right to contest the amount of fees sought by Class Counsel. The actual amount of costs reimbursed and fees awarded shall be determined by the Court and may be less than the amount sought by counsel.

The Named Plaintiff in this action shall be paid separately an amount to be approved by the Court. Class Counsel intend to seek a payment of \$15,000 for David Woods to compensate him for his time and effort in pursuing this matter on behalf of the Class, but the Court may elect to award less than this.

8. Filing a Request for Monetary Award. If you wish to receive any monetary award to which you are entitled as a Settlement Class member in this case you must complete the attached claim form fully and sign it under oath, then return the claim form to the Claims Administrator, Poorman-Douglas, at the address below, postmarked on or before February 28, 2007. Claim forms received after March 2, 2007 will not be accepted.

Poorman-Douglas
Attn: BOA/Woods Settlement
P.O. Box 5053
Portland, OR 97208-5053

If you believe you may be a Settlement Class member and want additional information of any sort, you may write or call Class Counsel at the following address or telephone number:

Mr. Mark A. Griffin
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
800-246-9834

Bank of America has agreed and continues to agree that it will not retaliate in any way against any person who submits a claim. Bank of America management cannot, however, assist you in filing a claim under this settlement.

9. Binding Effect. The proposed Settlement Agreement, if finally approved by the Court, will be binding on all members of the Settlement Class and will bar any person who is a member of the Settlement Class from seeking relief from Bank of America, other than any relief provided for in the Settlement Agreement, for any and all claims of alleged failure to pay overtime from December 9, 2002 through December 20, 2006, unless they exclude themselves from the class pursuant to the following "opt out" procedures.

10. Opt Out Procedure. If you wish to exclude yourself from the Settlement Class, you must file a written "Request to Opt Out" statement with the Office of the Clerk of King County Superior Court, 516 Third Ave., Rm E-609, Seattle, Washington 98104. You must also send copies of your "Request to Opt Out" statement to Class Counsel and counsel for Bank of America, addressed as follows:

Mr. Mark A. Griffin
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Mr. Michael Reiss
Ms. Holly M. Hearn
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101

Your Opt Out statement should be postmarked no later than February 28, 2007. It will not be effective unless it is received by the Clerk on or before March 2, 2007. You should note the name of the case, *Woods v. Bank of America, N.A.*, Case No. 05-2-39938-4 SEA, on both your Request to Opt Out statement and on your envelope.

If you opt out of this lawsuit, (a) you will have no right to file a claim form requesting an award or to receive any money at all under the settlement of this case; (b) you will not be bound by the individual monetary relief of the settlement in this lawsuit; and (c) you may bring a separate lawsuit against Bank of America if you so desire. If you opt out of this lawsuit and bring a separate lawsuit, however, it may take several years to resolve your individual lawsuit, you may lose your case and receive nothing, or you may win your case and receive more or less than you would have received if you had filed a claim under the Class Settlement procedures outlined in the Settlement Agreement.

To opt out of this lawsuit, you must submit your full name, address, the last four digits of your Social Security number, and a signed and dated copy of the following statement:

"I am a Settlement Class member in the lawsuit of Woods v. Bank of America, N.A., Civil Action No. 05-2-39938-4 SEA. I wish to opt out of the monetary settlement of this case. I understand that by requesting to be excluded from the Class monetary settlement, I will receive no money whatsoever from Bank of America under the Settlement Agreement entered into by the Plaintiff and Bank of America, and preliminarily approved as fair and reasonable on December 20, 2006. I understand that I may bring a separate lawsuit, in which I will not be represented by Class Counsel; however, I understand that in any separate lawsuit I may receive nothing, or I may receive more or less than I would have received if I had filed a claim under the Class Settlement procedures outlined in the Settlement Agreement."

11. Objections to the Settlement Agreement. If you believe that the proposed Settlement Agreement should not be finally approved by the Court for any reason, you may object to the proposed Settlement Agreement. If you want to object to the proposed Settlement Agreement, you must file any objections in writing with the Office of the Clerk of King County Superior Court, 516 Third Ave., Rm E-609, Seattle, Washington 98104, on or before March 2, 2007, in which you state fully the basis for your objection. You must also send copies of your objection to Class Counsel and counsel for Bank of America, addressed as follows:

Mr. Mark A. Griffin
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Mr. Michael Reiss
Ms. Holly M. Hearn
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101

In addition to filing your objection, you may also appear at the hearing to be held on April 20, 2007, at 1:30 p.m., at King County Superior Court, in the courtroom of The Honorable Helen Halpert, Room E-1201, Seattle, Washington, to have your objection heard by the Court. Objections not previously filed in writing before the March 2, 2007 deadline will not be considered. Any attorney who will represent an individual objecting to the Settlement Agreement must file a notice of appearance with the Court and serve a copy on counsel for all parties on or before March 2, 2007. All objections or other correspondence must state the name and number of the case, which is Woods v. Bank of America, N.A., Civil Action No. 05-2-39938-4 SEA.

12. Obtaining Copies of the Settlement Agreement. YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT AT YOUR EXPENSE FROM THE OFFICE OF THE CLERK AT THE ADDRESS SET FORTH IN PARAGRAPH 10 ABOVE. ALTERNATIVELY, YOU MAY OBTAIN A COPY OF THE SETTLEMENT AGREEMENT FROM THE FOLLOWING WEBSITE: WWW.WOODSSETTLEMENT.COM OR FROM CLASS COUNSEL AT THE ADDRESS SET FORTH IN PARAGRAPH 8 ABOVE.

13. Address Changes. It is your responsibility to keep Class Counsel and the Claims Administrator updated with your address and phone number. If you do not keep Class Counsel and the Claims Administrator informed of your correct address, any potential entitlement that you may have to receive an individual monetary award may be forfeited. Please mail any change of address along with your signature, Social Security number, date of birth, former address and new address to Class Counsel at the address set forth in Paragraph 8 above, or to the Claims Administrator at:

Poorman-Douglas
Attn: BOA/Woods Settlement
P.O. Box 5053
Portland, OR 97208-5053

14. If the Settlement Agreement is Not Approved. If the Settlement Agreement is not approved by the Court, the conditional settlement will be voided, no money will be paid, and the case will proceed to trial. However, if that happens there is no assurance: (a) that a class will be certified so that a class action trial is held; (b) that any decision at trial would be in favor of class members; (c) that a favorable trial decision, if any, would be as favorable to the class members as this settlement; or (d) that any such favorable trial decision would be upheld if any appeal was filed.

Dated this 20th day of December, 2006.

The Honorable Helen Halpert

