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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

The Honorable Helen Halpert

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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

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

Plaintiff,)

v.)

BANK OF AMERICA, N.A.,)

Defendant.)

No. 05-2-39938-4-SEA

ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT

Named Plaintiff in the above captioned action has alleged that Defendant Bank of America failed to pay overtime in violate of Washington's Minimum Wage Act, RCW 49.46.005 *et seq.* Named Plaintiff contends that approximately 230 Retail Mortgage Lending Account Executives (the proposed class members) employed by Bank of America in Washington between December 9, 2002, and December 31, 2006, may have been adversely affected by Bank of America's overtime payment practices. Bank of America denied all of Named Plaintiff's allegations.

The parties, through their respective counsel, consulted with each other and have participated in mediation with Judge Terrence Carroll (Ret.) of Judicial Dispute Resolution, LLC, who is an experienced mediator, and have engaged in negotiations in an attempt to settle

ORDER PRELIMINARILY APPROVING PROPOSED
SETTLEMENT AGREEMENT - 1

SEA 1905993v2 4900000-000740

ORIGINAL

Davis Wright Tremaine LLP
LAW OFFICES
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1 the disputes underlying this action. Those negotiations have been successful. The parties agree
2 to the entry of the proposed Settlement Agreement (Exhibit 1) as a full settlement of this legal
3 action, subject to this Court's final approval thereof. By entering into the proposed Settlement
4 Agreement, Bank of America continues to deny all allegations of unlawful failure to pay
5 overtime.

6 The monetary settlement of this case should proceed as a CR 23 class action in order
7 that this settlement will constitute a full and complete adjudication of the parties' and class
8 members' rights, liabilities and obligations as set forth in the proposed Settlement Agreement.
9 Pursuant to CR 23(e), the parties, through their counsel, move that the Court enter an order as
10 follows:

11 1. For purposes of settlement, this case shall proceed as a class action pursuant to
12 CR 23(b)(3) due to monetary relief granted therein. The class represented by Named Plaintiff
13 ("the Settlement Class") shall be as follows:

14 Those who, during the period December 9, 2002, through
15 Dec 20, 2006 (the date of the Court's preliminary
16 approval of the Settlement Agreement) worked as Mortgage
17 Retail Lending Account Executives (Job Code SM009) for Bank
18 of America, N.A. in Washington State and who have not
19 participated in the settlements in *Graham v. Bank of America,*
20 *N.A.*, No. 04-cv-02951-FLN (D. Minn.) (*Graham* litigation) or
21 *Franklin v. Bank of America, N.A.*, No. C-05-00519 CRB (N.D.
22 Cal) (*Franklin* litigation).

23 2. Should this Court or any reviewing court on direct appeal refuse to approve this
Settlement Agreement or require modifications to this Agreement, the Agreement shall be null
and void, inadmissible and unusable in any future proceeding and shall not be considered a
binding settlement agreement, unless Named Plaintiff and Bank of America expressly and
voluntarily approve in writing any such modification by this court or the reviewing court.

BASED ON THE ABOVE STIPULATIONS, STATEMENTS OF COUNSEL FOR
THE PARTIES, AND THE ENTIRE RECORD BEFORE THE COURT, THE COURT FINDS
AS FOLLOWS:

ORDER PRELIMINARILY APPROVING PROPOSED
SETTLEMENT AGREEMENT - 2

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1 The parties have conditionally agreed to a proposed settlement. It appears to the Court
2 that the proposed Settlement Agreement of Class Action Claims is the result of comprehensive
3 arms-length negotiations between the parties after extensive investigations, other informal
4 exchanges of information, discussions in mediation and in subsequent communications
5 between the parties. After reviewing the terms of the proposed Settlement Agreement, in the
6 context of this action and the controlling legal authority, the Court finds that the proposed
7 Settlement Agreement is sufficiently reasonable, adequate and fair, and consistent with relevant
8 state law, to warrant notice thereof to members of the Settlement Class and a full hearing on the
9 fairness thereof.

10 IT IS THEREFORE ORDERED THAT:

11 1. The Settlement Agreement is PRELIMINARILY APPROVED. Final approval
12 and entry of the Settlement Agreement is subject to the hearing of any objections of members
13 of the Settlement Class to the proposed settlement embodied in the Settlement Agreement.

14 2. Pending the determination of the fairness of the Settlement Agreement, all
15 further discovery in this action is hereby STAYED.

16 3. For purposes of settlement, as set forth in the Settlement Agreement, the Court
17 hereby provisionally CERTIFIES this action as a class action pursuant to CR 23(b)(3) for
18 purposes of monetary relief and hereby DESIGNATES the Settlement Class as follows:

19 Those who, during the period December 9, 2002, through
20 Dec. 20, 2006 (the date of the Court's preliminary
21 approval of the Settlement Agreement) worked as Mortgage
22 Retail Lending Account Executives (Job Code SM009) for Bank
23 of America, N.A. in Washington State 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).

24 4. Should this Court or any reviewing court on direct appeal refuse to approve this
25 Settlement Agreement or require modifications to this Agreement, the Agreement shall be null
26 and void, inadmissible and unusable in any future proceeding and shall not be considered a

ORDER PRELIMINARILY APPROVING PROPOSED
SETTLEMENT AGREEMENT - 3

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1 binding settlement agreement, unless Plaintiff and Bank of America each expressly and
2 voluntarily approve in writing any such modifications by this Court or the reviewing court.

3 5. Notice Procedures.

4 a. Notice will be accomplished by means of mailing to all Class Members
5 the form of Notice of Proposed Class Action Settlement (“Notice”) (Exhibit 1 to the Settlement
6 Agreement), a Claim Form (Exhibit 2 to the Settlement Agreement), and a pre-addressed and
7 stamped envelope to return the Claim Form. The Notice shall be mailed within 30 days from
8 the date of the Court’s preliminary approval of the Settlement Agreement by first class mailing
9 to the most current address known to Bank of America of all individuals known by Bank of
10 America to be members of the Settlement Class.

11 b. The notice and all accompanying documents shall be mailed to the
12 individuals identified on Exhibit A to the Notice by Douglas-Poorman, a third party Claims
13 Administrator mutually agreed to by the parties. For the purposes of receiving undeliverable
14 Notices, the return address on this mailing shall be Class Counsel’s business address. Counsel
15 for the parties shall be provided a list of Class Members who were sent the Notice and
16 accompanying documents by the Claims Administrator, including their names, addresses, and
17 phone numbers, along with a certificate attesting to the mailing of the Notices.

18 c. Class Members will have thirty (30) days from the date Notice is mailed
19 to respond by returning the completed Claim Form to the Claims Administrator. If the original
20 Notice is forwarded by the post office, then claimant will be provided with an additional ten
21 (10) days to respond.

22 6. The manner and forms of Notice, the Claim Form and instructions (Exhibits 1
23 and 2 to the Settlement Agreement) are hereby found to constitute the most effective and
practicable notice under the circumstances of the pendency of the class action, proposed
settlement, and fairness hearing to all class members who can be identified through reasonable
effort, and constitutes due and sufficient notice for all other persons entitled to receive the

1 notice by due process and Civil Rule 23. Pursuant to the Settlement Agreement, Bank of
2 America shall pay costs of the Notice Process including the costs of preparing and mailing the
3 Notices as required by Paragraph 5.

4 7. The deadlines for eligible members of the Settlement Class to complete and file
5 their claim form are set forth in Paragraph 5(c), and the deadline to respond shall appear on the
6 claim form itself. All completed claim forms must be received by the Claims Administrator on
7 the earlier of the date set forth on the claim form or March 2, 2007 (the Final Claims
8 Filing Deadline). Such claims will be filed with the Claims Administrator, Douglas Poorman at
9 the following address:

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

14 Claim forms will be deemed filed on the postmark date shown on the envelope in which
15 the completed claim form is mailed to the Claims Administrator, and such envelopes shall be
16 retained by the Claims Administrator. Failure to properly postmark and mail a completed
17 claim form by the earlier of the deadlines set forth in Paragraph 5(c) or the Final Claims Filing
18 Deadline shall bar the Settlement Class member from having his or her claim considered or
19 from receiving any award pursuant to the proposed Settlement Agreement. Settlement Class
20 members who do not file timely and valid claim forms shall nonetheless be bound by the
21 judgment and release in this action as set forth in the proposed Settlement Agreement.

22 8. It shall be the sole responsibility of each member of the Settlement Class who
23 seeks a monetary award to notify Class Counsel or the Claims Administrator if the class
member changes his or her address. Failure of a Settlement Class member to keep Class
Counsel or the Claims Administrator apprised of his or her address may result in his or her
claim being denied or forfeited. Settlement Class members shall also be required to provide to
the Claims Administrator any available documentation supporting their claim.

1 9. A hearing (the "Fairness Hearing") shall be held at 1:30 p. m. on
2 4-20, 2007 at the King County Superior Courthouse, 516 Third Ave., Rm. E-~~847~~¹²⁰¹,
3 Seattle, Washington 98104, at which time the Court shall consider the fairness of the
4 Settlement Agreement and whether it should be approved and entered by the Court.

5 10. Any member of the Settlement Class may object to the proposed Settlement
6 Agreement by filing an objection and, if he or she so desires, appearing at the Fairness Hearing.
7 To be considered by the court, however, any objections to the final approval of the Settlement
8 Agreement must state the basis for the objection and must be timely filed in writing, along with
9 all other papers or briefs the Settlement Class wishes for the Court to consider, with the Office
10 of the Clerk of King County Superior Court, 516 Third Ave., Rm E-609, Seattle, Washington
11 98104, with a true and correct copy thereof served upon counsel for all parties on or before the
12 earlier of the deadline set forth in the Notice or March 2, 2007 (the "Cut-Off Date"). If any
13 attorney will be representing an individual objecting to the Settlement Agreement, the attorney
14 shall file a notice of appearance with the Court and serve counsel for all parties with a true and
15 correct copy thereof on or before the Cut-Off Date. Any member of the Settlement Class who
16 does not timely file and serve such a written objection shall not be permitted to raise such
17 objection, except for good cause shown, and any member of the Settlement Class who fails to
18 object in the manner prescribed herein shall be deemed to have waived, and shall be foreclosed
19 from waiving, any objection.

20 11. If objections are filed, counsel for the parties may engage in discovery
21 concerning the filed objections prior to the Fairness Hearing. Counsel for the parties shall
22 serve on each other and file with the Court on or before three (3) days prior to the Fairness
23 Hearing any further documents in support of the proposed Settlement Agreement, including
24 responses to any papers filed by Settlement Class members.

25 12. Consistent with Section I of the proposed Settlement Agreement stipulating to
26 the provisional certification of the Settlement Class under Civil Rule 23(b)(3) for purposes of

1 monetary relief, any potential Settlement Class member may request exclusion from the class,
2 but only for purposes of individual relief.

3 a. Potential class members who wish to exclude themselves from
4 membership in the Settlement Class for purposes of participating in the monetary settlement
5 must do so in writing, by filing with the Court a signed and dated handwritten Request to Opt
6 Out statement. Requests to Opt Out shall be mailed to the Office of the Clerk of King County
7 Superior Court, 516 Third Ave., Rm E609, Seattle, Washington 98104, with a copy mailed to
8 counsel for the parties, on or before the earlier of the deadline set forth in the potential class
9 member's Notice or the Cut-Off Date of March 2, 2007. Requests to Opt Out shall
10 contain the following language:

11 I am a Settlement Class member in the lawsuit of Woods v. Bank
12 of America, N.A., Civil Action No. 05-2-39938-4-SEA. I wish to
13 opt-out of the monetary settlement of this case. I understand that
14 by requesting to be excluded from the Class monetary settlement,
15 I will receive no money whatsoever from Bank of America under
16 the Settlement Agreement entered into by the Plaintiff and Bank
17 of America, and preliminarily approved as fair and reasonable on
18 12-26-04. I understand that I may bring a separate
19 lawsuit, in which I will not be represented by Class Counsel;
20 however, I understand that in any separate lawsuit I may receive
21 nothing, or I may receive more or less than I would have received
22 if I had filed a claim under the Class Settlement procedures
23 outlined in the Settlement Agreement.

16 Only those Settlement Class members who request exclusion in the time and manner set
17 forth herein shall be excluded from the Settlement Class for monetary relief purposes. Pursuant
18 to Civil Rule 23(b)(3) and (c)(2), the terms and provisions of the Settlement Agreement
19 concerning monetary relief shall have no binding effect on any person who makes a timely
20 request for exclusion in the manner required by this Order.

21 b. In the event that more than twelve (12) Settlement Class members
22 become Timely Opt Outs as defined in the Settlement Agreement, then Bank of America shall
23 have the unilateral right to abrogate this Settlement Agreement by delivering notice of its
abrogation to Class Counsel and the Court within fifteen (15) days following the Court-

ORDER PRELIMINARILY APPROVING PROPOSED
SETTLEMENT AGREEMENT - 7

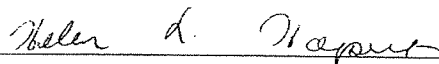
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1 established Cut-Off Date for Settlement Class members to submit a timely Request to Opt Out.
2 The deadline for Bank of America to abrogate the Settlement Agreement will be extended
3 further to fifteen (15) days following the fairness hearing established by the Court if the Court
4 permits any Settlement Class member to be deemed a Timely Opt Out even though that
5 Settlement Class member failed to submit a timely Request to Opt Out.

6 c. In the event that Bank of America exercises its right to abrogate this
7 Settlement Agreement, then all aspects of the Settlement Agreement and the settlement
8 underlying it, including but not limited to the provisional certification of the Settlement Class
9 for settlement purposes only, shall be altogether null and void, and no aspect thereof shall serve
10 either as any legal precedent or as any basis for legal or factual argument, in this or any other
11 case.

12 DONE IN OPEN COURT this 20 day of Dec. 2006.

13 
14 Helen Halpert
15 King County Superior Court Judge
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