

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL HANSCOM, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CARTERET MORTGAGE
CORPORATION and DOES 1 through 10,
inclusive,

Defendants.

Civil Action No.

COLLECTIVE ACTION COMPLAINT

JURY TRIAL REQUESTED

Electronically Filed

Michael Hanscom (“Plaintiff”), on behalf of himself and all others similarly situated, alleges as follows:

INTRODUCTION

1. As explained herein, under applicable employment laws, a Loan Officer, as defined herein, is entitled to overtime compensation. In short, if a Loan Officer works overtime hours, they are entitled to overtime pay.

2. This is a nationwide collective action, on behalf of all “Loan Officers”, who are individuals who originated, sold and/or marketed residential home mortgage loans and/or other personal loans to consumers on behalf of Defendant (defined herein), including but not limited to employees with anyone of the following job titles: (i) Loan Officer, (ii) Mortgage Broker, (iii) Account Executive, (iv) Loan Representative, (v) Mortgage Advisor (vi) Loan Agent, and/or (vii) Loan Officer, who are or were employed by Carteret Mortgage Corporation (“Carteret”) or any other parent, subsidiary, related, or successor companies (collectively, the “Company”), to recover unpaid overtime

compensation pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA” or the “Act”).

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will seek leave to amend this complaint once their identities become known to Plaintiff. Upon information and belief, Plaintiff alleges that at all relevant times each defendant, including the DOE defendants 1 through 10, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein was in the course and scope of and in furtherance of such relationship. Unless otherwise specified, Plaintiff will refer to all defendants, including the Company, collectively as “Defendant” and each allegation pertains to each Defendant.

SUMMARY OF CLAIMS

4. Plaintiff brings this suit on behalf of a class of similarly situated persons composed of :

All current and former Loan Officers of Defendant who, are/were engaged in, or training to be in, the business of originating and selling residential mortgage loans, home equity loans, and/or other loan products, and elect to opt in to this action pursuant to FLSA, 29 U.S.C. § 216(b) (the “Nationwide Collective Class”).

5. Plaintiff alleges on behalf of the Nationwide Collective Class who elect to opt-in to this action that they are: (i) entitled to unpaid wages from Defendant for all hours worked in workweek for which they did not receive pay, as required by the Act; (ii) entitled to unpaid wages from Defendant for all hours worked in excess of forty in a

workweek for which they did not receive premium overtime pay, as required by the Act; and (iii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*

6. As a result of Defendant's violation of the FLSA, Plaintiff and the members of the Nationwide Collective Class were illegally under-compensated for their work.

FACTUAL ALLEGATIONS

7. Plaintiff and the other similarly situated members of the Nationwide Collective Class were inside sales people, and /or trainees to become sales people, engaged in the sale of residential home mortgage products, and / or other personal loan products on behalf of Defendant, without any premium for overtime pay as required by the Act.

8. Due to the nature of the job responsibilities and requirements of Defendant's Loan Officers, Plaintiff and the members of the Nationwide Collective Class were, and continue to be, required to work more than forty (40) hours a week during the course of their employment with Defendant.

9. Unless proven to be exempt from the protection of overtime laws, all employees are entitled to premium overtime pay for overtime work.

10. The duties of Loan Officers are set forth in uniform, company-wide policies and procedures promulgated by Defendant.

11. Pursuant to the Defendant's uniform employment policies, Loan Officers were paid principally on a commission basis, irrespective of the hours actually worked, and were unlawfully classified as exempt from overtime compensation.

12. Defendant's employment policies regarding Loan Officers did not require them to hold a specific degree.

13. Although the FLSA provides for certain exemptions to the mandates of paying overtime compensation, no exemption applies in the instant matter.

14. Plaintiff and members of the Nationwide Collective Class are not administratively exempt because, among other things, their primary duty is the sale or origination of loans and loan services.

15. Loan Officers also do not fall under the retail exemption. Indeed, although the Act exempts certain employees of "retail or service establishments" from overtime compensation, *see* 29 U.S.C. § 207, Loan Officers do not qualify for this exemption, because, among other things, Defendant does not qualify as a retail establishment. Thus, Loan Officers do not qualify for an "inside sales" exemption under applicable law.

16. Further, the outside sales exemption enumerated in the Act does not apply in the instant matter because Loan Officers worked primarily in either Defendant's office or from the Loan Officer's home. As determined by the Department of Labor, in such circumstances, the home office is considered an extension of the corporation's place of business.

17. Moreover, Loan Officers do not qualify for the professional exemption described in the Act, *see* 29 U.S.C. § 213, because Loan Officers are not employed in a *bona fide* professional capacity, requiring a specific degree in a field of science or learning.

18. As such, Loan Officers, including Plaintiff and members of the Nationwide Collective Class, have been wrongfully classified by Defendant, and are not exempt from the requirement of premium overtime pay.

19. In violation of the Act, Plaintiff and the members of the Nationwide Collective Class are/were not paid overtime compensation at a rate not less than one and one-half times their regular rate or pay for work performed beyond the 40 hour work week.

20. Plaintiff alleges on behalf of the members of the Nationwide Collective Class that Defendant's failure to pay overtime was knowing and willful.

21. Evidence reflecting the precise number of overtime hours worked by Plaintiff and every other member of the Nationwide Collective Class, as well as the applicable compensation rates, is in the possession of Defendant. If these records are unavailable, Plaintiff and members of the Nationwide Collective Class may establish the hours they worked solely by their testimony and the burden of overcoming such testimony shifts to the employer. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

22. Each of the foregoing acts is in contravention of applicable employment laws.

JURISDICTION AND VENUE

23. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331.

24. In addition, this Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

25. Venue is proper pursuant to 28 U.S.C. § 1391, as a substantial part of the acts or omissions giving rise to the claims alleged herein occurred within this judicial district, and the Defendants are subject to personal jurisdiction in this district.

PARTIES

26. Plaintiff Michael Hanscom (“Plaintiff”) is a resident of Pennsylvania who was a Loan Officer employed by Defendant during the statutory time period covered by this complaint, who Defendant failed to compensate for all hours worked, including those over forty hours per week.

27. Plaintiff’s primary job duty for Defendant was to solicit home loan products. Plaintiff was employed in Defendant’s Owen Mill’s, Maryland office. In addition to working out of this office, Plaintiff also worked out of his home office, which was located within Pennsylvania.

28. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

29. Defendant Carteret is a Virginia corporation with its corporate office located at 6211 Centreville Road, Suite 800, Centreville, Virginia. At all relevant times during the applicable statutory period, Defendant has operated offices nationwide. Defendant employs, upon information and belief, hundreds of Loan Officers and various assistants at any one time, and Plaintiff estimates the Class far exceeds that amount in total number of potential participants during the relevant statute of limitations period.

COLLECTIVE ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of the Nationwide Collective Class as a collective action pursuant to the Fair Labor Standards Act, § 216(b).

31. Pursuant to 29 U.S.C. § 207, Plaintiff seeks to prosecute the FLSA claims as a collective action on behalf of:

All persons who: (i) are/were employed as Loan Officers with the Company; (ii) who are/were not paid for all the hours worked in a given workweek; and (iii) are/were not paid overtime compensation for work performed beyond the forty (40) hour work week; and (iv) who chose to opt-in to this action (the “Nationwide Collective Class”).

32. The members of the Nationwide Collective Class are so numerous that joinder of all members is impracticable. While the exact number of the members of the Nationwide Collective Class is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, hundreds of individuals in the Class.

33. Plaintiff will fairly and adequately protect the interests of the Nationwide Collective Class, and has retained counsel that is experienced and competent in class action and employment litigation. Plaintiff has no interests that are contrary to, or in conflict with, members of the Nationwide Collective Class.

34. A collective action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Nationwide Collective Class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Nationwide Collective Class to individually seek redress for the wrongs done to them.

35. A collective action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent these actions, the members

of the Nationwide Collective Class likely will not obtain redress of their injuries, and Defendant will retain the proceeds of their violations of the FLSA.

36. Furthermore, even if any member of the Nationwide Collective Class could afford individual litigation against the Company, it would be unduly burdensome to the judicial system. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual members of the Nationwide Collective Class and provide for judicial consistency.

37. There is a well-defined community of interest in the questions of law and fact affecting the Nationwide Collective Class as a whole. The questions of law and fact common to each of the Nationwide Collective Class predominate over any questions affecting solely individual members of the action. Among the common questions of law and fact are:

- a. Whether the Defendant employed the members of the Nationwide Collective Class within the meaning of the applicable statutes, including the FLSA;
- b. Whether Loan Officers were uniformly, willfully and wrongfully classified by Defendant as exempt from overtime compensation;
- c. Whether Defendant failed to pay Plaintiff and members of the Nationwide Collective Class all premium overtime compensation due to them by virtue of their uniform designation as exempt;
- d. Whether Plaintiff and members of the Nationwide Collective Class were expected to, and/or mandated to, regularly work hours in excess of forty (40) per week;

e. Whether Defendant violated any other statutory provisions regarding compensation due to Plaintiff and members of the Nationwide Collective Class; and

f. Whether Plaintiff and the Nationwide Collective Class have sustained damages and, if so, what is the proper measure of damages.

38. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its continued maintenance.

39. Notice of the pendency and any resolution of this action can be provided to National Collective Class by mail, print, and/or internet publication

COUNT ONE

40. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

41. At all relevant times, Defendant has been and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

42. At all relevant times, Defendant employed, and/or continues to employ, Plaintiff and each member of the Nationwide Collective Class within the meaning of the FLSA.

43. As stated above, Defendant has a policy and practice of refusing to pay overtime compensation to its Loan Officers for the hours worked in excess of forty hours per week.

44. Defendant's failure to pay Plaintiff and all other members of the Nationwide Collective Class for all hours worked in a given workweek, and failure to pay overtime compensation at a rate not less than one and one-half times the rate at which

they are employed for work performed beyond the 40 hour workweek, violates 29 U.S.C. §§ 206, 207.

45. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning 29 U.S.C. § 255(a).

46. Due to the Defendant's FLSA violations, Plaintiff, on behalf of the members of the Nationwide Collective Class, is entitled to recover from Defendant, their unpaid overtime compensation, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b)

COUNT TWO

47. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

48. As stated herein and pursuant to Defendant's policy, Loan Officers were paid primarily on a commission basis irrespective of the number of actual hours worked during a work week.

49. Pursuant to Defendant's compensation policies, Plaintiff and members of the Nationwide Collective Class would not receive any compensation unless they closed a loan on behalf of Defendant, irrespective of the actual hours worked.

50. Pursuant to Section 16(c) of the Act, Plaintiff and the members of the Nationwide Collective Class are entitled to liquidated damages equal in amount to the unpaid compensation for the hours worked in which did not receive compensation equal to the federal minimum wage in an amount to be proven at trial, together with interest, costs, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

- A. A Declaration that Defendant has violated the FLSA;
- B. An Order designating Nationwide Collective Class as a collective action and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);
- C. An Order appointing Plaintiff and their counsel to represent the Nationwide Collective Class;
- D. Imposition of a Constructive Trust on any amount by which Defendant was unjustly enriched at the expense of the Nationwide Collective Class as the result of the actions described above;
- E. An Order enjoining Defendant from any further violations of the FLSA;
- F. For compensatory and punitive damages and all other statutory remedies permitted;
- G. Prejudgment interest;
- H. An Order awarding attorneys' fees and costs; and
- I. For all other relief as the Court deems just.

JURY DEMAND

Plaintiff hereby requests a jury trial on all issues so triable.

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