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# BofA Mortgage Loan Officers Get Conditional Cert. In OT Suit

By **Hayley Fowler**

Law360 (July 29, 2024, 8:18 PM EDT) -- A group of mortgage loan officers who accused Bank of America of misclassifying the employees as overtime-exempt has cinched conditional collective certification, with a North Carolina federal judge rejecting the bank's arguments that their job duties were too different to merit certification.

U.S. District Judge Kenneth D. Bell in an **order** Friday granted collective certification to a group of current and former Bank of America employees who sold mortgage products for the bank. Judge Bell specifically certified a collective action consisting of workers who held one of six job titles on or after July 26, 2021.

The named plaintiffs had initially sought to certify a collective action for employees dating back to Nov. 30, 2020, which Judge Bell rebuffed in favor of a narrower time parameter.

"In sum, the court finds that the putative members of this [Fair Labor Standards Act] collective are similarly situated with regard to their responsibilities for selling mortgages, their alleged exempt status, and defendants' policy and practice of not tracking their hours nor paying overtime for hours worked in excess of 40 hours per week," the judge said.

He noted, however, that "conditional certification does not prejudice whether a class will ultimately be certified if defendants pursue decertification and, at that time, the court will reconsider defendants' arguments."

Named plaintiffs Russell Pfeffer, David Dessner, Adam Sherman, Frank Cronin, Roger Rojas and Jason Auerbach **first sued** Bank of America in November claiming the bank has been misclassifying them and its other mortgage loan officers as overtime-exempt since at least 2016.

They subsequently amended their complaint in February and added named plaintiffs Grace Bozick and Muhamed Vrlaku.

The eight named plaintiffs said they didn't receive a salary or any sort of regular compensation from Bank of America. Instead, they alleged, the bank paid them on a commission basis based on a percentage of mortgage and loan products they sold to customers.

As a result of the misclassification, Bank of America didn't pay mortgage loan officers overtime even though they regularly worked overtime, nights and up to 60-hour weeks, generating "billions of dollars for Bank of America," the named plaintiffs said.

They accused the bank of violating the Fair Labor Standards Act as a result, and they have also asserted separate state law claims under New York, Connecticut, South Carolina and Florida wage and labor laws as putative class actions, according to Friday's order.

The workers moved in March for conditional certification of their FLSA claims, which Bank of America opposed. The bank had argued the various job titles for which the named plaintiffs sought certification varied too widely in their descriptions and duties, making discovery too individualized.

But Judge Bell disagreed on Friday, favoring what he described as the "lenient" governing standard for awarding conditional collective certification. He consequently agreed to grant certification to

several categories of Bank of America lending officers, including current and former enterprise lending officers, wealth management lending officers, financial center lending officers and PB wealth management lending officers.

"As for defendants' argument that the putative class is not 'manageable' because it will require individualized, fact-specific inquiries, the court finds that the putative collective is sufficiently manageable now that plaintiffs have limited the scope of their collective to specific job titles that were allegedly classified as exempt," Judge Bell said.

He noted the employees in the collective action were paid on the same commission basis, had similar job duties and all sold mortgages for the bank under the same policies and standards.

To be included, Judge Bell said, workers must have held one of the named job titles on or after July 26, 2021, or three years prior to the filing of the complaint for the named plaintiffs, or three years prior to the date of their consent to join for any plaintiffs who opted in before conditional certification was granted.

In seeking to notify potential members, Judge Bell noted the named plaintiffs had asked for work numbers and addresses. While he said they may send notices by mail and email, the judge ordered the named plaintiffs not to reach out to potential class members at their places of employment.

Judge Bell consequently ordered Bank of America to produce a list of all potential members, including their full names, last known addresses, personal phone numbers and email addresses, and the dates and location of their employment, within two weeks of his order.

In a statement to Law360 on Monday, counsel for the plaintiffs said they are "very happy with the court's decision and with how quickly it was rendered."

"This decision will result in all loan officers who are part of the FLSA collective that has been conditionally certified receiving notice of the litigation and will afford them with the opportunity to pursue their overtime claims against Bank of America in this action," said Matthew Plant of Lax & Neville LLP.

Counsel for Bank of America did not immediately respond Monday to a request for comment.

The workers are represented by Jacob H. Wellman and Daniel T. Strong of Teague Campbell Dennis & Gorham LLP, and Barry R. Lax, Matthew C. Plant and Robert R. Miller of Lax & Neville LLP.

Bank of America is represented by Meredith A. Pinson and Rebecca W. Lineberry of McGuireWoods LLP.

The case is *Pfeffer v. Bank of America Corp. et al.*, case number 3:23-cv-00813, in the U.S. District Court for the Western District of North Carolina.

--Additional reporting by Irene Spezzamonte. Editing by Lakshna Mehta.