

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TODD BURT, TERRY GRAYSON, JOHN MCCARTHY, KEITH WALKER, STEVEN WERNER and ANTHONY WESEMANN and individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WILMINGTON FINANCE, INC.,

Defendant.

CIVIL ACTION NO.:

COMPLAINT -- COLLECTIVE ACTION

**COLLECTIVE ACTION COMPLAINT**

Plaintiffs Todd Burt, Terry Grayson, John McCarthy, Keith Walker, Steven Werner and Anthony Wesemann (“Plaintiffs”), individually and on behalf of all other similarly situated employees who worked in Defendant Wilmington Finance, Inc.’s (“Defendant’s”), corporate headquarters located at 401 Plymouth Road, Suite 400, Plymouth Meeting, PA 19462, as well as two small satellite offices located at 630 West Germantown Pike, Plymouth Meeting, PA 19462 and 501 Office Center Drive, Suite 400, Fort Washington, PA 19034 (collectively, these three offices are referred to herein as the “Plymouth Meeting Office”), by and through their counsel of record, bring this Collective Action Complaint (the “Complaint”) against Defendant, and allege, upon personal belief as to themselves and their own acts, and as for all other matters upon information and belief, and/or based upon the investigation made by their counsel, as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this Complaint contending that Defendant has improperly failed to pay overtime compensation to its retail loan officers (also known as purchase loan officers, retention loan officers, account executives and other similarly-titled positions, and referred to herein as “retail loan officers”), who worked at its Plymouth Meeting Office, pursuant to the overtime requirements of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the “FLSA”).

2. Plaintiffs were employed by Defendant as retail loan officers.

3. During their employment with Defendant, Plaintiffs and similarly situated employees regularly worked more than forty (40) hours per week, but were not compensated for their overtime hours pursuant to the FLSA.

4. On May 17, 1999, and again on February 16, 2001, the United States Department of Labor, Wage and Hour Division, issued Opinion Letters concluding that retail loan officers such as Plaintiffs and their similarly situated employees are not exempt from the overtime requirements of the FLSA.

5. As a result of Defendant’s improper and willful failure to pay its retail loan officers in accordance with the overtime requirements of the FLSA, Plaintiffs have suffered damages.

6. Plaintiffs bring this action to seek redress for Defendant’s improper conduct.

**JURISDICTION AND VENUE**

7. The Court has subject-matter jurisdiction over this action pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA “may be maintained against any employer ... in any Federal or State court of competent jurisdiction.” *Id.*

8. In addition, the Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because Defendant resides in this District and does business here.

**PARTIES**

10. Plaintiff Todd Burt currently resides at 251 Abrams Road, King of Prussia, Pennsylvania 19406. Mr. Burt was employed by Defendant from approximately October 2005 to July 2006.

11. Plaintiff Terry Grayson currently resides at 548 Roosevelt Avenue, Glendora, New Jersey 08029. Mr. Grayson was employed by Defendant from approximately March 2005 to March 2006.

12. Plaintiff John McCarthy currently resides at 1110 Dogwood Circle, Blue Bell, Pennsylvania 19422. Mr. McCarthy was employed by Defendant from approximately June 2004 to September 2006.

13. Plaintiff Keith Walker currently resides at 3132 Essington Way, Bensalem, Pennsylvania 19020. Mr. Walker was employed by Defendant from approximately February 2005 to August 2006.

14. Plaintiff Steven Werner currently resides at 318 Harry Street, Conshohocken, Pennsylvania 19428. Mr. Werner was employed by Defendant from approximately December 2004 to April 2006.

15. Plaintiff Anthony Wesemann currently resides at 122 Prospect Avenue, Norristown, Pennsylvania 19403. Mr. Wesemann was employed by Defendant from approximately February 2005 to July 2006.

16. Defendant is incorporated in the State of Delaware and is registered to transact business in the Commonwealth of Pennsylvania. Defendant's corporate headquarters is located in this District, at 401 Plymouth Road, Suite 400, Plymouth Meeting, Pennsylvania 19462.

17. According to Defendant's website, Defendant provides lending services to consumers to purchase and refinance real estate through its wholesale branches, retail call centers and correspondent lending centers throughout the country. Defendant engages in lending services in all states except for Vermont and the District of Columbia.

18. A related case to this action has already been filed against Defendant relating to its failure to pay proper overtime compensation to its retail loan officers in its Cincinnati, Ohio office, captioned Chabrier, et al. v. Wilmington Finance, Inc., Civil Action No. 06-4176 (E.D. Pa.) (J. Shapiro).

19. A second related case to this action has already been filed against Defendant relating to its failure to pay proper overtime compensation to its retail loan officers in its Greenwood Village, Colorado office, captioned Evansin, et al. v. Wilmington Finance, Inc., Civil Action No. 07-1559 (E.D. Pa.) (J. Shapiro).

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

20. This action is brought on behalf of the following class for purposes of the collective action provisions set forth in 29 U.S.C. § 216(b) of the FLSA:

All individuals who were employed by Defendant as retail loan officers (also known as purchase loan officers, retention loan

officers, account executives and other similarly-titled positions) during the past three years at its corporate headquarters office located at 401 Plymouth Road, Suite 400, Plymouth Meeting, PA 19462, as well as two satellite offices located at 630 West Germantown Pike, Plymouth Meeting, PA 19462 and 501 Office Center Drive, Suite 400, Fort Washington, PA 19034 (the "Class").

21. Plaintiffs bring this case as a collective action to recover unpaid overtime compensation, liquidated damages, unlawfully withheld wages, statutory penalties, attorneys' fees and costs, and damages owed to Plaintiffs and all similarly situated employees of Defendant, as well as its subsidiaries and affiliated companies.

22. Plaintiffs estimate that there are approximately 500 members of the Class who have been affected by Defendant's improper overtime policies and practices. The precise number of retail loan officers who worked at Defendant's Plymouth Meeting Office can be easily ascertained by Defendant. These retail loan officers can be identified and located using Defendant's payroll and personnel records. Given the composition and size of the class, potential opt-in class members may be informed of the pendency of this Collective Action by direct mail.

23. This action is properly maintained as a collective action because Plaintiffs are similarly situated to the collective action members they seek to represent. Plaintiffs and similarly situated retail loan officers were subject to the same uniform job descriptions, policies, manuals, guidelines, scripts, standards, and operational procedures. Further, Defendant's willful policy or practice, whereby it has failed to pay its retail loan officers overtime compensation for all hours worked over forty (40) hours in a week, has affected Plaintiffs and similarly situated retail loan officers in the exact same fashion.

24. Plaintiffs request the Court to authorize notice to the Class to inform them of the pendency of this action and their right to “opt-in” to this lawsuit pursuant to 29 U.S.C. § 216(b), for the purpose of seeking unpaid overtime compensation and liquidated damages under the FLSA.

**FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25. Plaintiffs and the Class are all former retail loan officers employed by Defendant at its Plymouth Meeting Office. All retail loan officers are paid a base salary of \$1,066.00 per month plus commission.

26. Regardless of the amount of days or hours actually worked by retail loan officers during a bi-monthly pay period, Defendant uniformly has paid each loan officer \$533.02 for 86.67 hours worked on a bi-monthly basis. Based on Defendant’s preset formula of 86.67 hours worked, \$533.02 equals \$6.15 per hour.

27. The primary job responsibility of a retail loan officer is to sell and produce residential mortgage loans. As part of their duties, retail loan officers call leads that are generated by Defendant; speak with prospective clients; collect client information; input client information into Defendant’s computer system; offer one of several pre-set Wilmington Finance loan programs; and sell the loan.

28. Throughout the relevant time period, Defendant’s corporate structure with respect to its retail lending business is and has been as follows: Jerry Schiano is the President and Chief Executive Officer; Jim Stamos is the Vice President of Retail Lending; Sales Managers report directly to Mr. Stamos; and each Sales Manager is responsible for a number of retail loan

officers. Some Sales Managers choose to appoint a small number of their retail loan officers as Team Leaders.

29. At the beginning of the relevant time period, all of Defendant's retail loan officers employed in the Commonwealth of Pennsylvania worked at its corporate headquarters office located at 401 Plymouth Road, Suite 400, Plymouth Meeting, PA 19462. However, in late 2004, Defendant moved a small division of its retail loan officers to a satellite office located at 630 West Germantown Pike, Plymouth Meeting, PA 19462; in the summer of 2005, moved this same division to another satellite office located at 501 Office Center Drive, Suite 400, Fort Washington, PA 19034; in January 2006, moved them back to the 630 West Germantown Pike address; and in April 2006, moved them back to the corporate headquarters office. The Sales Managers who supervised these retail loan officers remained the same throughout this time period and reported directly to Jim Stamos at Defendant's corporate headquarters office. These satellite offices, when utilized, operated jointly and as one unit together with the corporate headquarters office.

30. Jerry Schiano, Jim Stamos and Defendant's Sales Managers exercised direct oversight and authority over the Plymouth Meeting Office during the past three years.

31. Until in or around March 2006, Defendant maintained a very lax policy or practice in its Plymouth Meeting Office with respect to accurately recording the number of hours worked by its retail loan officers. During many months, Defendant did not even collect monthly time-sheets. During other months, retail loan officers were instructed simply to turn in a time-sheet indicating that they had worked their pre-set schedule of 40 hours per week, regardless of the number of hours they actually worked.

32. In or around March 2006, Defendant instituted its Kronos time-keeping system at the Plymouth Meeting Office. After this system was implemented, retail loan officers continued to work the same overtime hours that they had previously worked, but were instructed by Defendant to “clock out” if they were going to work late or on weekends. Thus, all of the overtime hours worked by the retail loan officers during the time period that Kronos was in effect were approved by Defendant.

33. Retail loan officers at the Plymouth Meeting Office generally worked a preset 40 hour work-week schedule. However, Plaintiffs and the Class routinely worked in excess of 40 hours per week without overtime compensation during the relevant statutory period.

34. Plaintiffs estimate that they worked an average of 50-60 hours per week with the knowledge of their managers but never received any overtime compensation.

35. There are several reasons that explain the large number of overtime hours worked by Defendant’s retail loan officers, including, without limitation:

a. retail loan officers had to handle “leads” that were generated by customers residing in the Midwest and Pacific Time Zones. Thus, retail loan officers often had to stay late in order to be able to contact these customers after they got home from work;

b. it was Defendant’s policy or practice that all retail loan officers had to be available for all of the loan closings that they generated, in case the consumer had any questions. Regardless of where the customer resided, many closings did not take place during business hours because the customers were at work, and instead, took place during evenings, in which case, the loan officer had to be available;



c. many retail loan officers gave their cell phone numbers to their customers in order to be available to field their customers' calls after business hours;

d. retail loan officers were often responsible for completing a large amount of paperwork, including, without limitation, recording calls that were unsuccessful ("turn-down sheets");

e. some retail loan officers routinely worked through their lunch breaks;

f. Defendant's retail loan officers had to meet certain quotas set by Defendant. Defendant disciplined loan officers who failed to meet these quotas, and consequently, loan officers often worked overtime to meet their quotas, especially if they were behind in a given week or month; and

g. perhaps most importantly, retail loan officers earned much of their compensation based on commissions on the loans they sold, and worked overtime to generate as much revenue for Defendant as possible, which was encouraged by Defendant.

36. Defendant knew and was aware at all times that its retail loan officers in the Plymouth Meeting Office routinely worked more than 40 hours per week without overtime compensation.

37. This practice violates the provisions of the FLSA, see 29 U.S.C. § 207(a)(1). As a result of Defendant's unlawful practice, Plaintiffs and all similarly situated employees have suffered a loss of wages.

38. Defendant knew or showed reckless disregard for the fact that its failure to pay its retail loan officers overtime compensation was in violation of the FLSA.

39. Defendant also intentionally and willfully failed to pay overtime wages and other benefits to Plaintiffs as evidenced by its directing them to record, falsely, a maximum of 40 hours of work time per week even though they actually worked in excess of 40 hours per week.

40. Defendant failed to maintain accurate records for each employee of their hours actually worked as required by the law. See 29 C.F.R. §516.2 (a)(7).

41. Defendant managed Plaintiffs' work, including the amount of overtime required to be worked, and dictated, controlled and ratified the wage and hour and all related employee compensation policies of Defendant's offices at issue in this lawsuit. Defendant's wage and hour practices and policies are uniform and disseminated by senior management in its corporate headquarters, which is located in this District.

**COUNT I**  
**FAIR LABOR STANDARDS ACT**  
**29 U.S.C. § 201 *et seq.***  
**UNPAID WAGES/OVERTIME**

42. Plaintiffs reallege and incorporate by reference, all preceding paragraphs.

43. Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 hours per week. Plaintiffs and similarly situated retail loan officers regularly worked more than 40 hours per week, but were not paid overtime. Defendant failed to pay overtime wages to Plaintiffs and similarly situated retail loan officers.

44. Defendant also willfully failed to pay overtime wages and other benefits to Plaintiffs by requiring them to falsify their own time records by recording only forty (40) hours per week even though they regularly worked in excess of forty (40) hours per week to avoid paying them overtime wages and other benefits.

45. Defendant willfully failed to accurately record actual hours worked by its retail loan officers through the following practices: a) failing to record any time-sheets reflecting hours actually worked by loan officers; b) directing retail loan officers to record a maximum of 40 hours worked on their time-sheets each week, regardless of the number of actual hours worked by such loan officers in excess of 40 hours each week; and c) manipulating retail loan officer time-sheets to reflect 40 or less hours worked each week even though such loan officers actually worked in excess of 40 hours during such workweek.

46. The foregoing actions of Defendant violate the FLSA.

47. Defendant's actions were willful and not in good faith.

48. Defendant is liable to Plaintiffs and similarly situated retail loan officers for actual damages, liquidated damages and equitable relief, pursuant to 29 U.S.C. § 216(b), as well as reasonable attorney's fees, costs and expenses.

#### **JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court enter an order:

a. certifying this action as a collective action pursuant to 29 U.S.C. § 216(b), and certifying the Class set forth above;

b. ordering Defendant to file with this Court and furnish to counsel a list of all names and addresses of all retail loan officers who have worked for Defendant at its Plymouth Meeting Office during the past three (3) years, and authorizing Plaintiffs' counsel to issue notice at the earliest possible time to these individuals, informing them that this action has

been filed, of the nature of the action, and of their right to opt-in to this lawsuit if they worked hours in excess of forty (40) hours in a week during the liability period, but were not paid overtime as required by the FLSA;

c. adjudicating and declaring that Defendant's conduct as set forth above is in violation of the FLSA;

d. adjudicating and declaring that Plaintiffs and similarly situated retail loan officers are entitled to overtime compensation for hours worked in excess of forty hours per week;

e. adjudicating and declaring that Defendant violated the FLSA by failing to pay Plaintiffs and similarly situated retail loan officers for their hours worked in excess of forty hours per week;

f. awarding Plaintiffs and similarly situated retail loan officers overtime wages in an amount consistent with the FLSA;

g. awarding Plaintiffs and similarly situated retail loan officers liquidated damages in accordance with the FLSA;

h. awarding Plaintiffs reasonable attorneys' fees and all costs of this action, to be paid by Defendant, in accordance with the FLSA;

i. awarding pre and post-judgment interest and court costs as further allowed by law;

j. granting Plaintiffs and the Class leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and

k. for all additional general and equitable relief to which Plaintiffs and the Class may be entitled.

Dated: April 20, 2007

Respectfully submitted,

BERGER & MONTAGUE, P.C.

/s/ Shanon J. Carson

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