

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| KEVIN VAUGHAN, | § | |
| | § | |
| On Behalf of Himself And | § | |
| All Others Similarly Situated, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| vs. | § | CIVIL ACTION NO. _____ |
| | § | |
| COMPASS BANK, | § | JURY TRIAL DEMANDED |
| COMPASS BANCSHARES, INC. | § | |
| BBVA USA BANCSHARES, INC. | § | |
| | § | |
| Defendants. | § | |

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff, Kevin Vaughan, on behalf of himself and all others similarly situated, by and through counsel, for his Complaint against Defendants Compass Bank, Compass Bancshares, Inc., and BBVA USA Bancshares, Inc. (collectively as “BBVA” or “Defendants”) state as follows:

INTRODUCTION

1. Plaintiff brings this collective class action under 29 U.S.C. § 216(b) of the Fair Labor Standards Act (“FLSA”) on behalf of themselves and all other current and former Mortgage Banking Officers and other like mortgage origination jobs (collectively as “MBOs”) employed by Defendants in the last three years (the “Collective Action Class”).

2. Defendants’ policy and practice is to deny earned wages including overtime pay to its MBOs. In particular, Defendants require these employees to perform work which greatly exceeds forty (40) hours per week, but fails to pay them overtime by (1) illegally classifying

them as exempt from the Fair Labor Standards Act's ("FLSA") overtime requirements until around April 2011, and (2) not allowing them to record work time which exceeded forty hours per week once Defendants reclassified them to non-exempt, hourly employees.

3. Defendants' deliberate illegal classification of its MBOs as exempt from minimum wage and overtime requirements, and not allowing them to record overtime hours results in Defendants violating the FLSA.

JURISDICTION AND VENUE

4. This court has original federal question jurisdiction over Plaintiff's FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

5. The United States District Court for the Southern District of Texas, Houston Division has personal jurisdiction over Defendants because Defendants conduct business within this district.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 inasmuch as Defendants have offices, conduct business, and can be found in the Southern District of Texas, a substantial part of the events giving rise to the claims occurred in this district, and Plaintiff resides in this district.

PARTIES

7. Defendant Compass Bank is an Alabama financial institution with its principal place of business in Birmingham, Alabama. Compass Bank is a subsidiary of Defendant Compass Bancshares, Inc. which is a wholly owned subsidiary of Defendant BBVA USA Bancshares, Inc. BBVA Compass claims that it "is a leading U.S. banking franchise with operations throughout the Sunbelt Region and ranks among the top 20 largest U.S. commercial banks based on deposit market share. We operate 716 branches in Alabama, Arizona, California,

Colorado, Florida, New Mexico and Texas. BBVA Compass ranks among the largest banks in Alabama (3rd), Texas (4th) and Arizona (5th).” *See*, BBVA Compass website: <http://www.bbvacompass.com/compass/>

8. Plaintiff Keith Vaughan currently resides in Katy, Texas. Defendants employed Plaintiff Vaughan from approximately November 2010 until September 2011 as a MBO at several branch offices.

STATEMENT OF FACTS

9. Defendants offer personal financial services including mortgages to individual consumers across the world. Defendants claim that BBVA “is a financial services group with more than \$740 billion in total assets, 47 million clients, 7,400 branches and approximately 107,000 employees in more than 30 countries. BBVA ranks among the top 20 largest financial institutions in the world based on market capitalization and 21st in Global Finance magazine's list of the "World's 50 Safest Banks" for 2010.” *See* BBVA Compass website: <http://www.bbvacompass.com/compass/>

10. Defendants classified Plaintiff and its other MBOs nationwide as exempt employees not entitled to overtime until approximately April 2011.

11. Until approximately April 2011, Defendants compensated Plaintiff and its other MBOs nationwide under the same compensation plan which was a recoverable draw against commission payment plan.

12. Defendants’ draw against commission payment plan did not pay overtime to MBOs.

13. In approximately April 2011, Defendants reclassified Plaintiff and its MBOs nationwide to non-exempt hourly employees and instituted a time tracking system.

14. Defendants refused and/or discouraged Plaintiff and its other MBOs from entering more than 40 hours per workweek in the timekeeping system so Defendants would not be required to pay overtime.

15. The primary job duty of Plaintiff and other MBOs nationwide is to sell mortgages to individual consumers.

16. MBOs (1) do not regularly supervise the work of two or more employees, (2) do not exercise discretion and independent judgment as to matters of significance or perform office work related to Defendants' general business operations or those of its customers, and (3) have no advanced knowledge in a field of science or learning which required specialized instruction that was required to perform their jobs.

17. All MBOs nationwide are similarly situated in that they share common duties and job descriptions, Defendants have paid and continue to pay them according to the same or a similar compensation plan, Defendants designated them all as exempt until approximately April 2011, and Defendants reclassified them as non-exempt, hourly at that time.

18. Further, all MBOs are similarly situated in that they worked significant amounts of overtime without being paid overtime compensation.

19. MBOs nationwide did not routinely sell mortgages at individual mortgage consumers' places of business or homes. Instead, MBOs nationwide sold mortgages to individual consumers who walked into Defendants' branch offices and to individual consumers who contacted Defendants' branches via telephone or internet.

20. Defendants fail to accurately record the work time of its MBOs nationwide. Defendants could easily and accurately record the work time of its MBOs nationwide.

21. MBOs including Plaintiff complained to Defendants regarding Defendants' failure to pay them overtime.

22. Defendants' policy and practice of (1) classifying their MBOs nationwide as exempt until approximately April 2011 and (2) discouraging and/or not allowing MBOs to enter their accurate overtime hours into the timekeeping system thereby denying MBOs overtime pay lacks good faith and willfully violates the FLSA.

23. Defendants are well aware of their overtime requirements under federal and state law because Defendants employ many hourly, overtime-eligible employees in their branch offices.

COLLECTIVE ACTION ALLEGATIONS

24. Plaintiff brings Count I, the FLSA claim, as an opt-in collective action pursuant to 29 U.S.C. § 216(b) on behalf of all persons who are or were formerly employed by Defendants in the last three years as Mortgage Banking Officers and other similar mortgage origination positions, and who were not paid their legally required overtime wages (the "Collective Action Members").

25. Plaintiff, on behalf of himself and all others similarly situated, seeks relief on a collective basis challenging Defendants' practice of failing to accurately pay its MBOs nationwide for all overtime hours worked. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from Defendants' records and potential Collective Action Members may easily and quickly be notified of the pendency of this action.

26. Plaintiff and the Collective Action Members performed the same or similar job duties as one another in that they sold Defendants' loan products and services to Defendants' potential clients, performed follow-up communications to gather additional information from

these potential clients in order to process their applications for various types of loans, and performed other clerical and nondiscretionary duties associated with selling Defendants' products and processing loan applications.

27. Plaintiff and the Collective Action Members were subjected to the same pay provisions in that they were paid on a recoverable draw plus commission basis which did not pay them overtime pay for their hours of work in excess of 40 hours per week. Thus, the Collective Action Members are owed unpaid overtime for the same reasons as Plaintiff.

28. Defendants' failure to compensate employees for hours worked in excess of 40 in a workweek as required by the FLSA results from a policy or practice of paying Plaintiff and the Collective Action Members on a recoverable draw plus commission basis which fails to pay for overtime work at overtime rates and from preventing and/or discouraging Plaintiff and the Collective Action members from accurately reporting their hours of work. These policies or practices are/were applicable to Plaintiff and the Collective Action Members. Application of these policies or practices does not depend on the personal circumstances of the Plaintiff or those joining this lawsuit. Rather, the same policies or practices which resulted in the non-payment of overtime to Plaintiff applied to all Collective Action Members.

29. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the Collective Action Members.

30. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938
BROUGHT AGAINST DEFENDANTS BY PLAINTIFF INDIVIDUALLY AND BEHALF
OF ALL OTHERS SIMILARLY SITUATED

31. Plaintiff, on behalf of himself and all Collective Action Members, re-asserts the allegations set forth in the above paragraphs.

32. Plaintiff brings Count I, the FLSA claim, as an opt-in collective action pursuant to 29 U.S.C. § 216(b) on behalf of himself and all others similarly situated.

33. Plaintiff's consent in writing to be a party to this action pursuant to 29 U.S.C. § 216(b) is attached.

34. Other former MBOs opt into this cause of action pursuant to 29 U.S.C. § 216(b) and their written consents to do so are attached.

35. The FLSA regulates, among other things, the payment of overtime by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

36. At all relevant times, Defendants have been, and continue to be, subject to the overtime pay requirements of the FLSA because they are engaged in commerce. 29 U.S.C. §§ 203(b), 203(s)(1).

37. At all relevant times, Plaintiff and all Collective Action Members have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

38. At all relevant times, Plaintiff and all Collective Action Members were employees of Defendants pursuant to 29 U.S.C. § 203(e).

39. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. Neither Plaintiff nor any Collective Action Member performed job duties or tasks or were paid in such a manner as to exempt them from overtime compensation as required by the FLSA. None of the FLSA exemptions apply to Plaintiff or any Collective Action Members.

40. The FLSA requires that employers, such as Defendants, compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek.

41. Defendants failed to compensate Plaintiff and all Collective Action Members at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek and, therefore, are in violation of the FLSA. 29 U.S.C. § 207(a)(1).

42. Plaintiff and all Collective Action Members are entitled to damages equal to the mandated overtime premium pay within the three years preceding the filing of this Complaint because Defendants acted willfully and knew, or showed reckless disregard of whether, their conduct was prohibited by the FLSA.

43. Defendants have acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and, as a result thereof, Plaintiff and all Collective Action Members are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described pursuant to Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b).

44. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, overtime compensation has been unlawfully withheld by Defendants from Plaintiff

and all Collective Action Members. Accordingly, Defendants are liable pursuant to 29 U.S.C. § 216(b) for overtime compensation, together with an additional amount as liquidated damages including the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and all other similarly situated Collective Action Members, respectfully requests that this Court grant the following relief:

- a. designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice of an FLSA opt-in class, pursuant to 29 U.S.C. § 216(b) to all similarly situated members, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling the statute of limitations;
- b. a declaratory judgment that the practices complained of herein are unlawful under the FLSA;
- c. an award of unpaid overtime compensation due under the FLSA;
- d. an award of liquidated damages pursuant to 29 U.S.C. § 216(b);
- e. an award of damages representing the Defendants' share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;
- f. an award of prejudgment and post-judgment interest;
- g. an award of costs and expenses of this action together with reasonable attorneys' fees and expert fees; and

h. any further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the Complaint.

Respectfully submitted,

/s/ Rowdy B. Meeks

Rowdy B. Meeks
KS Bar No. 16068
(*pro hac* motion pending)
Rowdy Meeks Legal Group LLC
435 Nichols Rd., Suite 200
Kansas City, Missouri 64112
Tel: (816) 977-2741
Fax: (816) 875-5069
Rowdy.Meeks@RMLegalGroup.com
www.rmlegalgroup.com
Attorney-in-charge

/s/ J. Derek Braziel

J. Derek Braziel
State Bar No. 00793380
S.D. Bar No. 21134
Lee & Braziel, LLP
1801 N. Lamar St., Suite 325
Dallas, Texas 75202
Tel: (214) 749-1400
Fax: (214) 749-1010
JDBraziel@L-B-Law.com

ATTORNEYS FOR PLAINTIFF