



Portfolio Media. Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomediamedia.com

Class Cert Grant Prompts Mediation For Capital One

By **Ben James**

Law360, New York (October 21, 2008) -- A wage-and-hour case against Capital One Home Loan LLC is headed to mediation after the plaintiffs — a group comprising several hundred loan consultants, processors and closers — won class certification on federal and state law claims.

The certification rulings, which came down at the end of September, played a part in Capital One's decision to mediate, plaintiffs' counsel Brendan Donelon said on Tuesday. Donelon wasn't sure if mediation would resolve the case, but he was confident about the strength of the plaintiffs' claims.

"This is a case where they were pretty much caught dead to rights," Donelon said of Capital One.

A representative for Capital One declined to comment on Tuesday, citing a policy of not discussing ongoing litigation.

The plaintiffs in the case could include around 311 loan consultants, 97 loan processors and 34 loan closers, Donelon added.

Judge Thomas Marten of the U.S. District Court for the District of Kansas entered a text order on Sept. 30 granting a bid for class certification under Rule 23 with respect to claims asserted under the Kansas Wage Payment Act.

Judge Marten handed down an 11-page memorandum and order laying out the court's rationale for granting class certification on the state law claims on Oct. 16. The state law class is composed of loan consultants who allege that Capital One wrongfully deducted money from their wages.

Judge Marten held that although determining damages might require some degree of

individual inquiry, the question of whether Capital One's policies violated the KWPA was common to all loan consultants.

Any confusion that could arise from litigating an FLSA collective action alongside a class action can be clarified by class counsel, Judge Marten added.

On Sept. 24, Judge Marten signed off on a six-page memorandum and order granting the plaintiffs' bid for conditional class certification on their FLSA claims. The FLSA class is composed of consultants, processors and closers who claim Capitol One ran afoul of the FLSA by failing to pay them overtime.

Capital One argued that the court should apply a heightened standard to the plaintiffs' bid for certification under the FLSA because substantial discovery had already taken place, but Judge Marten wasn't persuaded.

The court held that since discovery in the case had not been completed, the more stringent standard that attaches at the end of discovery didn't apply.

The plaintiffs in this matter are represented by Brady & Associates and Donelon PC.

Capital One Home Loans is represented by Paul Hastings Janofsky & Walker LLP and Fisher & Phillips LLP.

All Content © 2003-2008, Portfolio Media, Inc.