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Mortgage Lenders Of America Hit With FLSA Suit

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By **Erin Fuchs**

Law360, New York (August 21, 2009) -- Two loan originators have accused Mortgage Lenders of America LLC of bilking them out of overtime pay, in one of several similar putative collective actions filed by a Missouri plaintiffs lawyer accusing lenders of violating employment laws.

Mortgage Lenders employee Chad Carson and former employee Aaron Berding sued the lender Thursday in the U.S. District Court for the District of Kansas.

The complaint accuses Mortgage Lenders of violating the Fair Labor Standards Act by not paying loan originators, who sell loans over the phone, for hours in excess of 40 a week.

Mortgage Lenders didn't take commission into account when calculating overtime pay for the loan originators, who are nonexempt employees under FLSA, according to the suit.

Their lawyer, Brendan J. Donelon, described the pay scheme he said the lender used: Mortgage Lenders pays its loan originators minimum wage plus overtime but then deducts those amounts from the next month's commission.

“Under a pay scheme like that,” he said, “no matter how many hours the employee works they're going to make the same amount of money.”

Mortgage Lenders President Philip Kneibert acknowledged that the lender deducts hourly wage plus overtime from the loan originators' commissions. “But our understanding is that that's acceptable practice,” he said.

The company still guarantees that its loan originators make at least minimum wage, according to Kneibert. “Neither Mr. Carson nor Mr. Berding have looked at their pay stubs because we do pay overtime. We do pay minimum wage,” Kneibert said.

Kneibert also pointed out that the complaint itself does not describe a payment scheme that the plaintiffs' lawyer outlines wherein Mortgage Lenders deducts wages and overtime from commissions.

According to the complaint, Carson worked for Mortgage Lenders' Overland Park, Kan., office from

April 2009 through the present. The complaint said Berding worked for the lender from March 2008 through October 2008.

The suit is seeking designation as a collective action with Carson and Berding as class representatives. It seeks an award of damages for overtime compensation, including liquidated damages, as well as court costs and attorneys' fees.

Donelon has filed a number of other FLSA actions against lenders alleging that they use the same payment scheme of deducting wages and overtime from commission that he said Mortgage Lenders uses.

Those lenders include Bank Mortgage Solutions LLC, as well as two that have settled: Capital One Home Loans LLC and North American Savings Bank FSB.

“In the industry, several years ago courts concluded that people who sell loans over the phone are nonexempt employees and should get paid overtime,” Donelon said. “But what they (lenders) did was turn around and deduct it from their commission.”

Donelon PC and Dan Craig PC represent the plaintiffs.

Attorney information was not immediately available for the defendant.

The case is Chad Carson et al. v. Mortgage Lenders of America LLC, case number 09-cv-2437, in the U.S. District Court for the District of Kansas.



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