

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY**

CHAD CARSON)
21103 W. 56th Street)
Shawnee, KS 66218)

JURY TRIAL DEMANDED

AARON BERDING)
17172 Jennifer Street)
Gardner, KS 66030)

On Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiff,)

Case No.: 09-CV-2437 CM/DJW

vs.)

**MORTGAGE LENDERS OF)
AMERICA, L.L.C.**)

Please Serve:)
Philip L. Kneibert)
8400 W. 110th Street, Ste. 500)
Overland Park, Kansas 66210)

Defendant.)

**COMPLAINT
Collective Action Under the FLSA**

COME NOW the Plaintiffs Chad Carson and Aaron Berding and hereby set forth this representative action for violation of the Fair Labor Standards Act under 29 U.S.C. §216(b) as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action against Defendant Mortgage Lenders of America, L.L.C. (“MLA”) for unpaid compensation and overtime compensation and related penalties and damages. Defendant’s practice and policy is to willfully fail and refuse to properly pay overtime compensation due Plaintiffs, and all other similarly situated employees, in the

position of Loan Originator. In particular, Defendant has policies in place that (i) fail to pay Loan Originators overtime compensation for hours worked in excess of forty per week; and (ii) fail to correctly calculate the overtime rate of pay due to Loan Originators by failing to properly include commission compensation in said calculation. These policies are in direct violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA).

2. Plaintiffs seek injunctive and declaratory relief; overtime premiums for all overtime work required, suffered, or permitted by Defendant; liquidated and/or other damages as permitted by applicable law; and attorney's fees, costs, and expenses incurred in this action.

PARTIES

3. Plaintiff Chad Carson currently resides at 21103 W. 56th Street, Shawnee, Johnson County, Kansas. Plaintiff was employed as a Loan Originator at Defendant's facility located in Overland Park, Johnson County, Kansas.
4. Plaintiff Aaron Berding currently resides at 17172 Jennifer Street, Gardner, Kansas. Plaintiff was employed as a Loan Originator at Defendant's facility located in Overland Park, Johnson County, Kansas.
5. Defendant Mortgage Lenders of America, L.L.C. ("MLA") is a limited liability corporation registered to do business and in good standing in the state of Kansas. MLA operates a business location at 8400 W. 110th Street, Ste. 500 and at 7500 College Blvd., Ste. 500, Overland Park, Johnson County, Kansas. MLA also operates offices located in Greenville, South Carolina and Brentwood, Tennessee.

6. At all relevant times, Defendant has been, and continues to be, an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendant has employed, and/or continues to employ, “employee[s],” including each of the putative representative action plaintiffs. At all times relevant herein, Defendant has had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).

JURISDICTION AND VENUE

7. This Court has original federal question jurisdiction under 28 U.S.C. §1331 for the claims brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*
8. The United States District Court for the District of Kansas at Kansas City has personal jurisdiction because Defendant conducts business within this District and division.
9. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendant has offices, conducts business and can be found in the District of Kansas, and the cause of action set forth herein has arisen and occurred in part in the District of Kansas at Kansas City. Venue is also proper under 29 U.S.C. §1132(e)(2) because Defendant has substantial business contacts within the state of Kansas.

COUNT I – FLSA CLAIM

10. Plaintiff Chad Carson was employed as a Loan Originator for the Defendant from on or about April 6, 2009 through the present. Plaintiff, along with other Loan Originators, worked at Defendant’s branch(es) located in Overland Park, Johnson County, Kansas.
11. Plaintiff Aaron Berding was employed as a Loan Originator for the Defendant from on or about March 3, 2008 through on or about October 31, 2008. Plaintiff, along with other

12. Like the Plaintiffs, the Defendant employs numerous other Loan Originators who are similarly situated in that they perform essentially the same job functions and they are all governed by the same, or similar, pay policy and plan.
13. Defendant classifies its Loan Originators as non-exempt employees under the FLSA entitled to receive overtime.
14. Under the Defendant's compensation plan for its Loan Originators, said Loan Originators earn the same amount of compensation regardless of the hours they work, therefore, Defendant fails to pay any premium to Loan Originators for hours worked in excess of forty in a given workweek in violation of the FLSA.
15. Defendant fails to correctly calculate the overtime rate of pay due to Loan Originators by failing to properly include commission compensation in said calculation as required by the Federal Regulations, thereby, denying them overtime compensation as required under the FLSA.
16. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by the Defendant as Loan Originators within three years from the commencement of this action who have not been correctly compensated for overtime under the FLSA.
17. This Complaint may be brought and maintained as an "opt-in" collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Representative Plaintiffs because their claims are similar to the claims of the putative representative action plaintiffs.

18. The names and addresses of the putative representative action plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.
19. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
20. The Plaintiffs and the putative representative action plaintiffs are not exempt from the right to receive overtime pay under the FLSA and are not exempt from the requirement that their employer pay them overtime compensation under the FLSA. The Plaintiffs and the putative representative action plaintiffs are entitled to be paid overtime compensation for all overtime hours worked.
21. At all relevant times, Defendant had a policy and practice of failing and refusing to pay Loan Originators at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week, and therefore, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§201, *et seq.*
22. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
23. The Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant who compose the putative representative action plaintiffs, seek damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus

24. The Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

WHEREFORE, Plaintiffs, on behalf of themselves and all proposed putative representative action plaintiffs, prays for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all putative representative action plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);
- b. Designation of Plaintiffs Chad Carson and Aaron Berding as Representative Plaintiffs of the putative representative action plaintiffs of Loan Originators and designation of Donelon, P.C. as class counsel;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, *et seq.*;
- d. An injunction against Defendant and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

- e. An award of damages for overtime compensation due for the Plaintiffs and the putative representative action plaintiffs, including liquidated damages, to be paid by Defendant;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and Post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

Demand for Jury Trial

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which he, and all members of the proposed representative action, have a right to jury trial.

Designated Place of Trial

COME NOW the Plaintiffs by and through their counsel of record and hereby designate the place of trial as follows: **Kansas City, Kansas.**

Respectfully submitted,

the law office of **DONELON, P.C.** www.donelonpc.com

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