

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

**JUSTIN WEST** )  
9300 W. 111<sup>th</sup> Terrace )  
Overland Park, KS 66210 )

**JURY TRIAL DEMANDED**

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

Plaintiff, )

Case No.: 09-CV-2542 EFM/KMH

vs. )

**CITYWIDE MORTGAGE** )  
**ASSOCIATES, INC.** )

Please Serve: )

Terry C. Pilgreen )

229 E. William, 5<sup>th</sup> Floor )

Wichita, Kansas 67202 )

Defendant. )

**COMPLAINT**  
**Collective Action Under the FLSA**

**COMES NOW** the Plaintiff Justin West and hereby sets forth this representative action for violation of the Fair Labor Standards Act under 29 U.S.C. §216(b) as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action against Defendant Citywide Mortgage Associates, Inc. (“Citywide”) 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 Plaintiff, and all other similarly situated employees, in the position of Loan Officer. In particular, Defendant has policies in place that (i) fail to pay Loan Officers 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 Officers 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. Plaintiff seeks 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 Justin West currently resides at 9300 W. 111<sup>th</sup> Terrace, Overland Park, Johnson County, Kansas. Plaintiff was employed as a Loan Officer at Defendant's facility located in Overland Park, Johnson County, Kansas.
4. Defendant Citywide Mortgage Associates, Inc. ("Citywide") is a corporation registered to do business and in good standing in the state of Kansas. Citywide operates business locations at Corporate Woods, Bldg. 55, 9300 W. 110<sup>th</sup> Street, Ste. 250, and at Corporate Woods, Bldg. 75, 10800 Farley Street, Ste. 300, Overland Park, Johnson County, Kansas. Citywide also operates offices located in Wichita, Kansas; Springfield, Missouri; Omaha, Nebraska; West Des Moines, Iowa; Dallas, Texas; and Mansfield, Texas.
5. 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**

6. 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.*
7. 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.
8. 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**

9. Plaintiff Justin West was employed as a Loan Officer for the Defendant at its Overland Park, Johnson County, Kansas office from on or about \_\_\_\_\_ through \_\_\_\_\_.
10. Within the past three years, Plaintiff, along with numerous other Loan Officers, worked at Defendant’s branch(es) located in Overland Park, Kansas; Wichita, Kansas; Springfield, Missouri; Omaha, Nebraska; West Des Moines, Iowa; Dallas, Texas; and Mansfield, Texas. Hereafter, this group is referred to as the “putative representative action plaintiffs.”
11. Like the Plaintiff, the Defendant employs numerous other Loan Officers 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.

12. Defendant classifies its Loan Officers as non-exempt employees under the FLSA entitled to receive overtime pay for hours worked in excess of forty per work week.
13. The Defendant has the same compensation plan for its Loan Officers at its Overland Park, Kansas; Wichita, Kansas; Springfield, Missouri; Omaha, Nebraska; West Des Moines, Iowa; Dallas, Texas; and Mansfield, Texas locations.
14. Under the Defendant's compensation plan for its Loan Officers, said Loan Officers earn the same amount of compensation regardless of the hours they work, therefore, Defendant fails to pay any premium to Loan Officers for hours worked in excess of forty in a given workweek in violation of the FLSA.
15. Under the Defendant's compensation plan for its Loan Officers, Defendant fails to correctly calculate the overtime rate of pay due to Loan Officers 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. Plaintiff brings 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 Officers 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 Plaintiff because their claims are similar to the claims of the putative representative action plaintiff.
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 Plaintiff 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 Plaintiff 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 Officers 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 Plaintiff, on behalf of himself and all similarly situated employees of Defendant who compose the putative representative action plaintiffs, seeks 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 liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.

24. The Plaintiff, on behalf of himself 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**, Plaintiff, on behalf of himself 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 Plaintiff Justin West as Representative Plaintiff of the putative representative action plaintiffs of Loan Officers 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 Plaintiff 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**

Plaintiff hereby demands 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**

COMES NOW the Plaintiff by and through his 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](http://www.donelonpc.com)

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**ATTORNEYS FOR PLAINTIFF**