

WYNNE LAW FIRM

US BANK BBO OVERTIME NEWSLETTER JUNE 2009

JUDGMENT ENTERED AGAINST US BANK FOR NEARLY \$15 MILLION.

On May 20, 2009, a judgment against US Bank in the approximate amount of \$15 Million was entered in favor of a certified class action of Business Banking Officers (“BBOs”) who are owed earned and unpaid overtime compensation. The case, *Duran et al. v. US Bank N.A.* (Alameda County Superior Court Case 2001-035537) is a certified class action brought on behalf of current and former BBOs who were employed by US Bank in California at any time between December 26, 1997 and September 26, 2005.

US Bank claimed that the BBOs were exempt from overtime because they were “outside salesmen.” The Court rejected this defense in the liability phase of the trial finding that US Bank had misclassified the entire class as exempt when in fact they were nonexempt and owed overtime. After a second damages phase of trial to determine how much the class is owed, the Court found that US Bank owes \$14,959,565 as of May 15, 2009 in back overtime wages and prejudgment interest. This amount will continue to accrue interest at 10% per annum until paid. Plaintiffs will also be seeking their costs and attorneys’ fees from US Bank. US Bank has stated it will appeal the Judgment.

A copy of the Judgment and Statement of Decision for Phase I (liability) and Phase II (damages) can be viewed and downloaded at www.wynnelawfirm.com. The Statement of Decision for Phase I is particularly instructive for understanding the facts involved in that case and explaining why US Bank owes the BBOs back wages.

BBOs AT US BANK TODAY

Even though US Bank lost the trial, it is our understanding that US Bank has not reclassified the BBOs from salaried-exempt to hourly-nonexempt status. In other words, even though the Court made a judicial finding that US Bank was violating the law, it is our understanding that US Bank has continued to classify its BBOs as salaried-exempt and does not pay overtime compensation for overtime hours worked.

We are seeking information about your experience at US Bank as a BBO.

SECOND PUTATIVE OVERTIME CLASS ACTION FILED AGAINST US BANK ON BEHALF OF BBOs.

Because US Bank has failed to reclassify its BBOs as nonexempt, Wynne Law Firm is representing another plaintiff in a second putative class action against US Bank. We are seeking to recover overtime compensation for all BBOs at US Bank in California who started after September 26, 2007 to the present. The case has just been filed and has not been certified as a class action. We are in the preliminary stages of the litigation and seek to talk to you about your experience at US Bank.

It is our opinion, based on our investigation so far, that the duties and responsibilities of the BBOs at US Bank have remained substantially the same since the Court’s finding of liability in the *Duran* case. Based on this opinion, we believe that US Bank will be making the same arguments in this case as it did in the *Duran* case. If the outcome of the trial in *Duran* is any indication of the merit to those defenses here, we are of the opinion that US Bank has no legitimate reason for not paying its BBOs overtime compensation.

THE COMPLAINT ALLEGES THAT BBOs WERE NOT PAID ALL THEIR WAGES UNDER CALIFORNIA LAW

The complaint against US Bank alleges that BBOs who started after September 26, 2007 in California were misclassified as exempt and therefore owed overtime compensation. It is our opinion that US Bank will similarly claim that BBOs are not owed overtime because they are exempt under the “outside sales exemption.” We believe this claim has no merit.

Outside Sales Exemption

The outside sales exemption under California law is designed for employees who are primarily engaged (over 50% of their time) in making sales away from the employer’s place or places of business. (Think: traveling salesman.) Generally, this means that the employee spends most of his/her time at the customer’s place of business. However, if an employee spends most of his/her time inside the employer’s place or places of business, the employer will not be able to claim the

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outside sales exemption and overtime compensation will be owed for all overtime hours worked.

FREQUENTLY ASKED QUESTIONS

IF US BANK OR ITS ATTORNEYS ASK ME TO SIGN A STATEMENT, DO I HAVE TO?

No. No one, especially your employer or its attorneys, can involuntarily force you to sign a statement. We have found in these types of cases that employers frequently request signed statements from their current employees in an effort to stop the case from going forward as a class action and/or to defeat the claims for back wages.

IMPORTANT: This happened in the *Duran* case. There is evidence that attorneys from the law firm of Carlton, DiSante and Freudenberger who *only* represent the Bank obtained statements from BBOs at US Bank in a misleading manner and the attorneys later sought to use those very same statements against those BBOs in a failed effort to prevent the case from going forward as a class action and to prevent the BBOs from recovering their past due wages.

Be aware of who you are talking to and that employers in this type of case may have interests that are antagonistic to yours. Anything you testify to may be used against you. So, if you sign anything, make sure that every fact is the truth and that you understand every word in the statement. If you are approached to be interviewed, you may want to ask these types of questions:

- Who do you represent?
- Do you represent me and my interests?
- Do I have interests that are not the same as my employer's?
- Do I have to talk to you?
- What are my rights?
- Is this a confidential conversation?
- How are you going to use this statement?
- What facts determine whether I am entitled to overtime compensation?
- Can I have my own attorney present for any interview?
- Is there a pending case that concerns my legal rights?

These are just some examples of the types of questions you may consider asking anyone who approaches you for a statement.

WHAT IS A CLASS ACTION?

Class actions are lawsuits brought by one or a few individuals on behalf of all people who are similarly situated. One person can sue on behalf of a group of employees of a company who are all subject to the same alleged illegal policy or practice. The other employees can then share in the benefits of any settlement or judgment achieved by the class representative. Class actions help individual employees by providing strength in numbers and protection by attorneys skilled and knowledgeable in this area of the law.

WHAT IF THERE ARE NO RECORDS OF MY ACTUAL HOURS WORKED?

All that is needed is your best recollection. In the typical situation where the employer has not kept any accurate records of when its employees work, the law provides that the next best evidence is what the employee said they worked.

CAN I GET FIRED FOR BRINGING OR PARTICIPATING IN A CLASS ACTION?

It is against the law for an employer to take any retaliatory action against an employee in response to an employee exercising a legal right such as seeking overtime pay or even providing evidence as a witness in such a case. Such conduct by an employer can subject the employer to further legal action claims or proceedings.

PUBLISHER INFORMATION

We are prosecuting this case against US Bank N.A. on behalf of current and former BBOs. We are responsible for this Newsletter. We are seeking factual information from former and current employees of US Bank to assist us in our prosecution. All of the information in this Newsletter is our opinion based on information gathered to-date.

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