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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Rafiqzada <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> U.S. Bank National Association <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>2001035537</u> Order Motion for Summary Judgment Granted
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The Motion for Summary Judgment was set for hearing on 05/23/2006 at 02:00 PM in Department 20 before the Honorable Robert Freedman. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of plaintiffs Sam Duran and Matt Fitzsimmons, as representatives of the Plaintiff Class, for Summary Adjudication of the affirmative defenses raised by defendant U.S. Bank National Association ("Defendant") is ruled on as follows:

1) This motion came on originally for hearing on December 16, 2005 in this court. On February 17, 2006 the Court issued an interim order (a) permitting separate adjudication of the affirmative defenses of the "administrative exemption" and the "commissioned sales exemption" under the rule set forth in *Lilienthal & Fowler v. Sup. Ct.* (1993) 12 Cal.App.4th 1848; (b) granting summary adjudication of the commissioned sales exemption affirmative defense on the basis that the compensation paid to class members under Defendant's Sales Incentive Plans does not meet the definition of "commission"; and (c) granting a Code of Civil Procedure section 437c(h) continuance with respect to the administrative exemption Affirmative defense. The Court also declined to find that the "tacking" concept, as reflected in the federal tacking regulation (29 C.F.R. section 541.708) can be applied to the exempt status under California law. Defendant's petition for writ of mandate/prohibition and request for stay with respect to this interim order were denied by the Court of Appeal on May 10, 2006.


2) On April 24, 2006, Defendant filed its supplemental opposition, and on May 4, 2006, Plaintiff filed its supplemental reply. Defendant's submission was comprised of a supplemental brief and responsive separate statement, as well as evidence in the form of excerpts from the depositions of class members Nick Sternad and Danny Pham, together with exhibits to both of those depositions. Defendant asserts that this additional evidence demonstrates that Defendant "will clearly be able to establish that at least some [Business Banking Officers ("BBOs")] were properly classified as exempt based on the administrative exemption during some, most or all of their workweeks in the BBO position." The Court disagrees.

As correctly pointed out by Plaintiff, the supplemental evidence shows nothing more than that one employee performed duties and activities not listed on Defendant's BBO job description nor remotely similar to Defendant's own expectations of duties and activities for the BBO position, and that one other employee may have spent between 2 or 3 days traveling to and from and touring a loan center to assist

BBOs in learning how to streamline their sales efforts. The Court also notes that Plaintiff has submitted excerpts from the depositions of all nine employees who were deposed, each of whom confirmed that the expectations of the class members is that they be primarily engaged in sales and sales-related activities.

In its February 17, 2006 interim order the Court indicated that is was inclined to find that Defendant's own characterizations of class members' duties preclude any assertion that they were truly exempt as administrative employees. Nothing in Defendant's supplemental opposition serves to change the Court's mind. Defendant has failed to raise a triable issue. Summary adjudication of Defendant's administrative exemption affirmative defense is granted in Plaintiff's favor, and the February 17, 2006 interim order is affirmed in all respects.

Dated: 05/23/2006

A handwritten signature in black ink, appearing to read "R. Freedman", with the word "facsimile" written in small text to the right of the signature.

Judge Robert Freedman