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Wells Fargo Mortgage Sellers Get Cert. In Unpaid Wages Suit

By **Matt Fair**

Law360 (March 16, 2021, 4:56 PM EDT) -- A Pennsylvania federal judge on Monday agreed to conditionally certify a class of Wells Fargo mortgage consultants who allege the banking and lending giant forced them to work off the clock for overtime hours in violation of the Fair Labor Standards Act.

U.S. District Judge Robert Colville rejected arguments from Wells Fargo that the seven plaintiffs in the case had failed to adequately show that the bank maintained an overarching policy that shortchanged them on overtime pay.

"Plaintiffs have met their modest showing that their claims and circumstances of employment are similar," the judge said, adding that Wells Fargo would have an opportunity to try and dissolve the class following further discovery.

"Once discovery is completed, plaintiffs will have the burden of meeting the greater standard in the final certification stages, and Wells Fargo may reassert its arguments at that procedural juncture," he said.

The lawsuit, which was brought two years ago on behalf of seven Wells Fargo loan officers, alleges that managers at Pennsylvania, New Jersey and Virginia offices made a policy of ordering the officers to not record overtime hours.

The workers also accuse Wells Fargo of docking their paychecks if the commissions they earned during their first four weeks of employment were less than what they earn in hourly pay, and of failing to take commissions and other bonuses into account when calculating overtime pay.

In opposing the bid for conditional certification, Wells Fargo argued that the workers constituted outside sales staff who should be exempt from overtime rules under the FLSA.

Judge Colville rejected the bank's claims, however, saying further discovery was needed on the issue.

Instead, he invited the bank to bring the defense back to the table as part of a potential decertification motion.

"It would be premature to make determinations on defendant's arguments at this stage," the judge said. "The court will address any such fact-specific arguments and merits-based defenses when and if decertification is requested."

According to Monday's opinion, the class would include mortgage officers with Wells Fargo employed at any point from May 2016 to the present.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

The class is represented by Brian Schaffer and Dana Cimera of Fitapelli & Schaffer LLP, and John Linkosky of John Linkosky & Associates.

Wells Fargo is represented by Anshel Joel Kaplan, Timothy Watson, John Phillips and Gina Merrill of Seyfarth Shaw LLP.

The case is Sandra Bruno v. Wells Fargo Bank NA, case number 2:19-cv-00587, before the U.S. District Court for the Western District of Pennsylvania.

--Editing by Regan Estes.

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