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## **COUNTRYWIDE AND WELLS FARGO ACCUSED OF WAGE AND HOUR VIOLATIONS**

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Two of the country's largest mortgage lenders, Countrywide Home Loans, Inc. and Wells Fargo Home Mortgage, a division of Wells Fargo Bank, National Association, may soon experience the high cost of non-compliance with the Fair Labor Standards Act ("FLSA"). Both mortgage companies have been sued in federal court by current or former home mortgage consultants for allegedly willfully violating the FLSA's rules governing overtime pay.

The mortgage consultants seek to recover unpaid overtime compensation, liquidated damages, interest and attorneys' fees. This marks the second FLSA action brought against Countrywide. In the case of Wells Fargo, the suit has been certified as a class action and may involve as many as 25,000 home mortgage consultants.

The FLSA requires that all workers who are engaged in producing goods for interstate commerce or employed in certain enterprises in the United States be paid at least the current minimum wage of \$5.85 per hour; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. The FLSA also requires that all covered,

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nonexempt employees be paid at least one and one-half times their regular rate of pay for overtime hours.

An employee must be paid for all of the time considered to be hours worked, and all hours worked must be counted when determining overtime. The FLSA provides an exemption from overtime pay for valid executive, administrative, professional, outside sales employees, and certain computer employees. To qualify for the exemption, employees must meet certain job duty and salary tests – the job title assigned to employees is irrelevant in determining whether an employee is exempt.

The plaintiffs in both the Countrywide and the Wells Fargo cases allege that they were required to work more than 40 hours per week but were not paid the overtime premium rate. Wells Fargo asserts the duties performed by the home mortgage consultants render them exempt from the FLSA's overtime requirements, an argument that will likely be echoed by Countrywide. The plaintiffs assert that their duties do not fit within any of the overtime exemptions embodied in the FLSA. If the cases progress to verdict, the courts will decide which classification is correct.

Any employer who violates the minimum wage or overtime requirements of the FLSA is liable to any employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, and an additional equal amount as liquidated damages plus reasonable attorneys' fees and costs of the action. Exposure is limited to wages

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miscalculated over a two-year period, unless the shorting was willful, in which case a three-year limitation period applies.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each employee for each pay period in which a violation occurred.

Wells Fargo is no stranger to claims of wage and hour non-compliance FLSA. In 2006, Wells Fargo agreed to pay \$12.8 million to settle a lawsuit brought by its business systems consultants who alleged violations of the FLSA's overtime rules. This kind of claims experience makes a respondent more vulnerable to an award of liquidated damages.

An action to recover a wage payment insufficiency may be initiated against any employer (including a public agency) in federal or state court either (i) by any one or more employees on their own behalf and on behalf of other employees, or (ii) by the Wage and Hour Division of the U.S. Department of Labor. In the Countrywide and Wells Fargo, the claimants enlisted private counsel to litigate on their behalf. Private enforcement raises the specter of a sizeable attorney's fee award, permitted under the statute, should the employees prevail.

The Wage and Hour Division itself concluded 31,987 compliance actions in fiscal year 2006 and recovered more than \$171 million in back wages for more than 246,000

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employees. In 2006 the Wage and Hour Division launched a new web-based back wage employee locator to provide easy and secure access for employees to find and collect back wages due to them.

The new back wage employee locator guides employees through an online series of questions that helps them determine if they are owed back wages as a result of a Wage and Hour Division investigation. Those due back wages receive restitution upon verification of their identity. If the affected employee fails to claim the deficiency, the amount paid in remains in the U.S. Treasury.

Even after the Department of Labor completes its investigation and assesses liability, the affected business is not free from enforcement for subsequent violations. Recently, upon settling claims on behalf of several Chicago restaurants' employees, District Director Thomas A. Gauza of the Labor Department's Chicago Wage and Hour Division district office stated "each of these companies has assured us they will comply with the wage and hour requirements of the FLSA in the future. We have no reason to doubt their assurances, but we will not hesitate to take further action if follow-up investigations indicate non-compliance."

The Countrywide suit is pending in the United States District Court for the Southern District of Florida, while the Wells Fargo suit is before the United States District Court in San Francisco.