

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CHERI UHRINEK, individually and on  
behalf of all others similarly situated,  
Plaintiff,**

**v.**

**CONTINENTAL BANK,  
Defendant.**

Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COLLECTIVE / CLASS ACTION COMPLAINT**

Cheri Uhrinek (“Plaintiff”), by and through her undersigned counsel, hereby makes the following allegations against Continental Bank (“Defendant”) concerning her acts and status upon actual knowledge, and concerning all other matters upon information, belief and the investigation of her counsel:

**NATURE OF ACTION**

1. Plaintiff contends that Defendant violated the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and the Pennsylvania Minimum Wage Act of 1968, 43 P.S. §§ 333.101, *et seq.* (“MWA”), by knowingly misclassifying its Loan Officers as exempt employees and failing to pay its Loan Officers any wages for the overtime hours they worked. Plaintiff seeks to bring her FLSA claim as a collective action under 29 U.S.C. § 216(b). Plaintiff seeks to bring her MWA claim as a class action under Fed. R. Civ. P. 23(b)(3).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over Plaintiff’s FLSA claim pursuant to 29 U.S.C. §216(b), 28 U.S.C. §1331 (federal question jurisdiction) and 28 U.S.C. §1332(a)(1), because the

matter in controversy in this civil action exceeds \$75,000.00 exclusive of interest and costs and because the Parties are residents of different states.

3. This Court has supplemental jurisdiction over Plaintiff's MWA claim pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction), because this claim arises from the same occurrence or transaction as Plaintiff's FLSA claim, and is so related to Plaintiff's FLSA claim, as to form part of the same case or controversy.

4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because Defendant's headquarters is located in Plymouth Meeting, PA (Montgomery County), Defendant has significant business contacts within this District, and acts and omissions giving rise to Plaintiff's claims occurred within this District.

### **PARTIES**

5. Plaintiff is an adult citizen of the Commonwealth of Pennsylvania who resides in Gettysburg, PA. From April 2010 to December 2013, Plaintiff worked as a Loan Officer in Continental Bank's offices in Camp Hill, PA and Gettysburg, PA. Plaintiff's job duties principally consisted of finding new clients, discussing mortgages with borrowers and selling residential mortgage loans to borrowers. Although Plaintiff routinely worked more than 40 hours per week, Defendant did not pay any wages for her overtime hours because it classified her as an exempt employee.

6. Continental Bank is a community bank, headquartered in Plymouth Meeting, PA, that provides commercial and mortgage banking services to consumers in Pennsylvania from eight branch locations in Eastern Pennsylvania. See <https://www.thecontinentalbank.com/locations-hours.htm> (accessed Sept. 15, 2015).

## MATERIAL FACTS

7. Plaintiff and the Collective / Class members worked as Loan Officers at Defendant's branch locations in Pennsylvania.

8. The primary duty of Plaintiff and the Collective / Class members was to sell mortgage loans from inside Defendant's offices. They were, in essence, mortgage salespeople.

9. Plaintiff and the Collective / Class members were not primarily responsible for performing work directly related to the management or general business operations of Continental Bank or its customers, or for exercising discretion or independent judgment with respect to matters of significance to Defendant's business operations.

10. Regardless, Defendant maintained common, company-wide policies classifying Plaintiff and the Collective / Class members as employees exempt from the overtime requirements of federal and state law.

11. Pursuant to Defendant's common, company-wide policies, Plaintiff and the Collective / Class members were frequently suffered or permitted to arrive early for work, stay late at work and perform work-related tasks on weekends.

12. To increase their sales and meet production goals, Plaintiff and the Collective / Class members regularly worked well over 40 hours per week.

13. Although Defendant knew how many hours Plaintiff and the Collective / Class members worked, it did not require them to maintain accurate contemporaneous records of their actual work hours.

14. Because it classified Plaintiff and the Collective / Class members as exempt employees, Defendant did not pay them any wages for the overtime hours they worked.

15. Plaintiff was only paid commissions when she made a sale. Because Loan Officers routinely did not make a sale during pay periods, Defendant failed to pay its Loan Officers all minimum wages due to them.

16. On March 24, 2010, the United States Department of Labor's Wage and Hour Division issued its first ever "Administrator's Interpretation", No. 2010-1, addressing the exempt status of mortgage loan officers.

17. Administrator's Interpretation No. 2010-1 concluded that employees who perform the typical job duties of a mortgage loan officer do not qualify as *bona fide* administrative employees within the meaning of FLSA, so are not exempt from the FLSA's overtime provisions.

18. The nature of the work done by Defendant's Loan Officers, and the circumstances under which they performed this work, are substantially similar to the facts evaluated in Administrator's Interpretation No. 2010-1.

19. Since Defendant employs dozens of Loan Officers, it knew or should have known about the DOL's Interpretation and should have re-assessed whether its classification of Loan Officers as exempt employees complied with the DOL's interpretation. As a result, after March 24, 2010, Defendant's failure to re-classify its Loan Officers as exempt employees and pay them overtime premium wages for hours worked beyond 40 each workweek constitutes an intentional, knowing and/or willful violation of the FLSA.

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

20. Plaintiff brings this collective action for herself and all other similarly-situated employees pursuant to 29 U.S.C. §216(b) to recover unpaid overtime compensation, liquidated damages, and other relief related to Defendant's violation of the FLSA.

21. Plaintiff seeks to maintain this suit as a collective action pursuant to 29 U.S.C §216(b) on behalf of the following FLSA Collective: “All individuals employed as Continental Bank Loan Officers at any time during the maximum limitations period who were not paid all overtime wages required by federal law.” Plaintiff reserves the right to amend this definition as necessary.

22. Plaintiff is a member of the FLSA Collective she seeks to represent because, during the relevant period, she was employed as a Continental Bank Loan Officer and regularly worked more than 40 hours per week without receiving any wages for her overtime hours.

23. Although Plaintiff and the FLSA Collective members may have worked in different branch locations, this action may be properly maintained on a collective basis because:

a. Defendant employed all of the FLSA Collective members in a small number of geographically-proximate branches;

b. All of the FLSA Collective members had the same job duties;

c. None of the FLSA Collective members were primarily responsible for performing work directly related to the management or general business operations of Defendant or their customers;

d. All of the FLSA Collective members performed their duties from inside Defendant’s offices.

e. None of the FLSA Collective members were primarily responsible for the exercise of discretion and independent judgment with respect to matters of significance to Defendant’s business operations;

f. Defendant uniformly classified all of the FLSA Collective members as exempt from federal overtime requirements;

g. The policies and procedures implicated by Plaintiff's claims were common to all of the putative FLSA Collective members;

h. Plaintiff and the FLSA Collective members regularly worked more than 40 hours per week;

i. Defendant did not maintain accurate contemporaneous records of the hours Plaintiff and the FLSA Collective members worked, or cause Plaintiff and the FLSA Collective members to maintain such records;

j. Defendant did not pay Plaintiff and the FLSA Collective members any overtime wages for the hours they worked beyond 40 each week;

k. Defendant maintained common timekeeping systems and policies with respect to Plaintiff and the FLSA Collective members;

l. Defendant maintained common payroll systems and policies with respect to Plaintiff and the FLSA Collective members; and

m. Defendant's labor relations and human resources systems were centrally-organized and controlled, and shared a common management team that controlled the policies at issue here.

24. Despite knowing that Plaintiff and the FLSA Collective members did not have primary job duties that justified their classification as exempt from federal overtime requirements and that they were routinely working more 40 hours per week, Defendant intentionally deprived Plaintiff and the FLSA Collective members of legally-mandated overtime wages, causing them to suffer significant financial damage.

25. Plaintiff estimates that the FLSA Collective, including both current and ex-employees over the relevant period, will include more than one hundred members. The precise

number of FLSA Collective members should be readily available from Defendant's personnel, scheduling, time and payroll records, and from input received from the FLSA Collective members as part of the notice and "opt-in" process provided by 29 U.S.C. §216(b).

### **MWA CLASS ACTION ALLEGATIONS**

26. Plaintiff brings her MWA claim as a class action pursuant to Fed. R. Civ. P. 23(b)(3) on behalf of the following Class: "All Pennsylvania residents employed as Continental Bank Loan Officers at any time during the maximum limitations period who were not paid all minimum and overtime wages required by Pennsylvania law." Plaintiff reserves the right to amend this definition as necessary.

27. Plaintiff is a member of the MWA Class she seeks to represent because, during the relevant period, she lived in Pennsylvania, was employed as a Continental Bank Loan Officer in Pennsylvania, regularly worked more than 40 hours per week without receiving any wages for her overtime hours, and has experience with the common policies and practices pled throughout this Complaint.

28. The members of the MWA Class are so numerous that their joinder would be impracticable. Over the relevant period, Defendant is believed to have employed several hundred people as Loan Officers in its branch locations in Pennsylvania.

29. There are material and common questions of law or fact affecting the MWA Class members, because Defendant engaged in a common course of conduct that violated their right to overtime pay. Any individual questions that Plaintiff's claims present will be far less central to this litigation than the numerous common questions of law and fact, including:

- a. Whether Defendant conducted any analysis of the MWA Class members' duties before classifying them as exempt;

b. Whether the MWA Class members' primary job duties support their exempt status;

c. Whether the MWA Class members are entitled to receive overtime premium wages for working more than 40 hours in a week;

d. Whether Defendant suffered or permitted Plaintiff and the Class members to perform more than *de minimis* overtime work;

e. Whether Defendant maintained accurate contemporaneous records of the MWA Class members' work time;

f. Whether Defendant's compensation systems properly paid Plaintiff and the Class members for the overtime work they performed;

g. Whether Defendant violated the MWA by failing to pay Plaintiff and the Class members all required overtime wages; and

h. Whether Defendant should be required to pay compensatory damages, liquidated damages, interest, or attorneys' fees and costs.

30. Plaintiff's claims are typical of the claims belonging to the MWA Class members because she worked as a Loan Officer for Defendant, was classified as exempt from state overtime requirements and was subjected to the same timekeeping, work and compensation policies and practices described above, regularly worked more than 40 hours per workweek and was never paid overtime premium wages for those hours.

31. Plaintiff will fairly and adequately assert and protect the interests of the proposed MWA Class members pursuant to Rule 23(a)(4) because :

a. There is no apparent conflict of interest between Plaintiff and the MWA Class members;



b. Plaintiff's attorneys have significant experience in the litigation of complex civil and class action matters in this Court, and will adequately represent the interests of the Class; and

c. Plaintiff has adequate financial resources to assure that the interests of the Class will not be harmed because Plaintiff's counsel have agreed to advance the costs and expenses of this litigation contingent upon the outcome of the case consistent with the Pennsylvania Rules of Professional Conduct.

32. Allowing this action to proceed as a class action will provide a fair and efficient method for adjudication of the issues presented by this controversy because:

a. Common questions of law or fact predominate over any questions affecting only individual members, as Plaintiff seeks to remedy a common legal grievance – Defendant's failure to pay all overtime premium wages owed – on behalf of a Class of similarly-situated employees;

b. No difficulties are likely to be encountered in the management of this litigation as a class action, given that Defendant's time and pay records will assist in identifying the Class members and assessing their claims;

c. This forum is particularly appropriate for adjudicating these claims as this Court has significant experience with class action litigation; and

d. The claims addressed in this Complaint are not too small to justify the expenses of class-wide litigation, nor are they likely to be so substantial as to require the litigation of individual claims.

33. Given the material similarity of claims belonging to members of the MWA Class members, even if each Class member could afford to litigate a separate claim, this Court should

not countenance or require the filing of hundreds of identical actions. Individual litigation of the legal and factual issues raised by Defendant's conduct would cause unavoidable delay, a significant duplication of efforts, and an extreme waste of resources.

34. Alternatively, proceeding by way of a class action will permit the efficient supervision of these claims, give rise to significant economies of scale for the Court and the Parties and result in a binding, uniform adjudication on all issues.

35. Allowing Plaintiff's claims to proceed on a class basis is also appropriate because Pennsylvania law expressly permits private civil lawsuits to recover unpaid overtime wages.

**COUNT I**  
**Violation of Fair Labor Standards Act**  
**Minimum Wage and Overtime Requirements**  
**(for all FLSA Collective members)**

36. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

37. Defendant is engaged in "Commerce" as defined by 29 U.S.C. § 203(b).

38. Defendant is an "Employer" as defined by 29 U.S.C. § 203(d).

39. Plaintiff and the FLSA collective members are "Employees" as defined by 29 U.S.C. § 203(e)(1), and were in the "Employ" of Defendant as defined by 29 U.S.C. § 203(g).

40. The damages sought by this claim include "Wages" as defined by 29 U.S.C. § 203(m).

41. Defendant is "engaged in commerce or in the production of goods for commerce" within the meaning of 29 U.S.C. § 203(s)(1)(A).

42. 29 U.S.C. § 206(a)(1) requires covered employees to be paid a legally-mandated minimum wage of at least \$7.25 per hour.

43. 29 U.S.C. § 207(a)(1) requires covered employees to be paid an overtime premium rate, equal to at least 1½ times their regular rate of pay, for all hours worked in excess of 40 hours per week.

44. 29 U.S.C. § 211(c) requires covered employers to keep all payroll and time records for at least three years, including all basic timecards and daily start/stop times for each employee.

45. Plaintiff and the FLSA collective members are similarly-situated individuals within the meaning of the FLSA, 29 U.S.C. § 216(b).

46. Throughout the relevant period, Defendant was obligated to comply with the FLSA's requirements, Plaintiff and the FLSA Collective members were covered employees entitled to the FLSA's protections and Plaintiff and the FLSA Collective members were not exempt from receiving wages required by the FLSA for any reason.

47. Throughout the relevant period, Defendant violated the FLSA by intentionally misclassifying Plaintiff and the FLSA Collective members as exempt from the FLSA's overtime provision meaning that, when Defendant suffered or permitted Plaintiff and the FLSA Collective members to work more than 40 hours per week, it did not pay them an overtime premium rate of at least 1½ times their regular rate of pay for any of their overtime hours.

48. Throughout the relevant period, Defendant violated the FLSA by intentionally paying Plaintiff and the FLSA Collective members on a commission-only basis, meaning that they did not receive any wages unless they sold a mortgage. As a result, Plaintiff and the FLSA Collective members were not paid the required minimum wage for all of their hours worked.

49. Throughout the relevant period, Defendant violated the FLSA by intentionally failing to accurately track or record the actual overtime hours worked by Plaintiff and the FLSA Collective members.

50. Plaintiff and the FLSA Collective members have been harmed as a direct and proximate result of Defendant's unlawful conduct, because they have been deprived of wages owed for overtime work they performed and from which Defendant derived a direct and substantial benefit.

51. Defendant has no good faith justification or defense for failing to pay Plaintiff and the FLSA Collective members all wages mandated by the FLSA, or for failing to keep accurate payroll and time records for Plaintiff and the FLSA Collective members.

52. By engaging in the conduct alleged herein, Defendant has acted willfully and/or with reckless disregard for the FLSA Collective members' rights under the FLSA.

WHEREFORE, Plaintiff respectfully prays for an Order:

- a. Granting conditional certification to Plaintiff's FLSA claim;
- b. Appointing David J. Cohen of Kolman Ely, P.C., Erik Langeland of Erik H. Langeland, P.C. and Jon Tostrud of Tostrud Law Group, P.C. as FLSA Collective Counsel;
- c. Requiring Defendant to provide FLSA Collective Counsel with a list of the names, addresses, phone numbers and e-mail addresses of all FLSA Collective members;
- d. Authorizing FLSA Collective Counsel to issue an approved form of notice informing the FLSA Collective members of the nature of the action and their right to join this lawsuit;
- e. Finding that Defendant intentionally violated the applicable overtime provisions of the FLSA by failing to pay all required overtime wages to Plaintiff and the FLSA Collective members;

f. Granting judgment in favor of Plaintiff and the FLSA Collective members on their FLSA claim;

g. Awarding Plaintiff and the FLSA Collective members all compensatory damages owed under the FLSA;

h. Awarding liquidated damages to Plaintiff and the FLSA Collective members equal to their compensatory damages;

i. Awarding declaratory and injunctive relief that includes: requiring Defendant to properly classify all of its Loan Officers as non-exempt employees, requiring Defendant to properly track its Loan Officers' overtime hours, and requiring Defendant to pay overtime premium wages to its Loan Officers for each of their overtime hours worked;

j. Awarding all costs and a reasonable attorney's fee for the work required to prosecute this claim; and

k. Awarding any further relief the Court deems just, equitable and proper.

**COUNT II**  
**Violation of Pennsylvania Minimum Wage Act**  
**Minimum Wage and Overtime Requirements**  
**(for members of the Pennsylvania Class)**

53. The preceding paragraphs are incorporated by reference as though set forth fully herein.

54. The unpaid wages at issue in this litigation are "Wages" as defined by MWA § 3(d).

55. Defendant is an "Employer" as defined in MWA § 3(g).

56. Plaintiff and the putative Class members are "Employees" as defined by MWA § 3(h).

57. MWA § 4(a) and the applicable enabling Regulations found at 34 Pa. Code § 231.21 state that employees shall be paid at least the legally-mandated minimum wage (presently \$7.25 per hour) for all of their hours worked.

58. MWA § 4(c) and the applicable enabling Regulations found at 34 Pa. Code § 231.42 state that employees shall be paid for all hours worked in excess of 40 hours per week at a rate not less than 1½ times their regular rate of pay.

59. MWA § 8 requires employers to keep a true and accurate record of the hours worked by each employee.

60. MWA § 13 expressly allows private plaintiff to bring a civil action to enforce an employers' failure to comply with the MWA's requirements.

61. MWA § 13 expressly provides that an agreement between the employer and employee to work for less than the required minimum wage is not a defense to an action seeking to recover unpaid minimum wages.

62. Throughout the relevant period, Defendant was obligated to comply with the MWA's requirements, Plaintiff and the Class members were covered employees entitled to the MWA's protections, and Plaintiff and the Class members were not exempt from receiving wages required by the MWA for any reason.

63. Throughout the relevant period, Defendant violated the MWA by intentionally misclassifying Plaintiff and the MWA Class members as exempt from the MWA's overtime provision meaning that, when Defendant suffered or permitted Plaintiff and the MWA Class members to work more than 40 hours per week, it did not pay them an overtime premium rate of at least 1½ times their regular rate of pay for any of their overtime hours.

64. Throughout the relevant period, Defendant violated the MWA by intentionally paying Plaintiff and the MWA Class members on a commission-only basis, meaning that they did not receive any wages unless they sold a mortgage. As a result, Plaintiff and the MWA Class members were not paid the required minimum wage for all of their hours worked.

65. Throughout the relevant period, Defendant violated the MWA by intentionally failing to accurately track or record the actual overtime hours worked by Plaintiff and the MWA Class members.

66. Plaintiff and the MWA Class members have been harmed as a direct and proximate result of Defendant's unlawful conduct, because they have been deprived of wages owed for overtime work they performed and from which Defendant derived a direct and substantial benefit.

67. In failing to ensure that Plaintiff and the MWA Class members actually received the applicable overtime wages owed, Defendant acted knowingly and with reckless disregard of clearly applicable MWA provisions.

68. Defendant has no good faith justification or defense for failing to pay Plaintiff and the MWA Class members all wages mandated by the MWA

WHEREFORE, Plaintiff respectfully prays for an Order:

- a. Granting class certification to Plaintiff's MWA claim;
- b. Appointing David J. Cohen of Kolman Ely, P.C., Erik Langeland of Erik H. Langeland, P.C. and Jon Tostrud of Tostrud Law Group, P.C. as MWA Class Counsel;
- c. Requiring Defendant to provide MWA Class Counsel with a list of the names, addresses, phone numbers and e-mail addresses of all MWA Class members;

d. Authorizing MWA Class Counsel to issue an approved form of notice informing the MWA Class members of the nature of the action and their right to opt-out of this lawsuit;

e. Finding that Defendant willfully violated the applicable overtime provisions of the MWA by failing to pay all required overtime wages to Plaintiff and the MWA Class members;

f. Granting judgment in favor of Plaintiff and the MWA Class members on their MWA claim;

g. Awarding Plaintiff and the MWA Class members all compensatory damages owed under the MWA;

h. Awarding all available prejudgment interest to Plaintiff and the MWA Class members;

i. Awarding declaratory and injunctive relief that includes: requiring Defendant to properly classify all of its Loan Officers as non-exempt employees, requiring Defendant to pay its Loan Officers at least the mandatory minimum wage for each hour they work; requiring Defendant to properly track its Loan Officers' overtime hours, and requiring Defendant to pay overtime premium wages to its Loan Officers for each of their overtime hours worked;

j. Awarding all costs and a reasonable attorney's fee for the work required to prosecute this claim; and

k. Awarding any further relief the Court deems just, equitable and proper.



**JURY DEMAND**

Plaintiff hereby demands a trial by jury in the above-captioned matter.

Respectfully Submitted,

Dated: September 21, 2015

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