

Class of state Wells Fargo salespeople sue over wages

By Matthew Blake
Daily Journal Staff Writer

Wells Fargo owes its mortgage salespeople “tens of millions” of dollars, according to a plaintiffs’ attorney who filed a proposed class action saying they are not guaranteed a minimum wage.

The bank, though, says it pays sales workers who get commissions on top of wages and rejects the allegations.

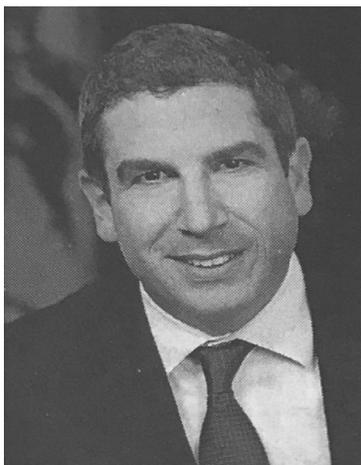
Joshua H. Haffner of Haffner Law PC sued Friday on behalf of what he said are some 4,500 Wells Fargo employees in California who sell mortgages. He is suing the company for failing to pay minimum wage and overtime, not providing all money due, and not giving allotted vacation time. *Kang et al. v. Wells Fargo Bank, N.A.* 17-CV6220 (N.D. Cal., Filed Oct. 27, 2017).

The class action marks a new litigation front for Wells Fargo Bank N.A.’s mortgage lending practice, which has primarily encountered private and public consumer lawsuits.

The South Dakota-headquartered financial institution settled an employment lawsuit earlier this year for \$12.7 million with bank managers who said company didn’t pay overtime or provide meal and rest breaks.

Haffner said the labor code treats sales workers similar to other non-exempt employees.

Wells Fargo sharply disputes his al-



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legations.

“We disagree with the allegations in this lawsuit and will be prepared to defend the claims in court,” said company spokesman Tom Goyda. “Wells Fargo’s retail Home Mortgage Consultants earn an hourly wage and overtime, as well as commissions, and are instructed to record all hours worked. Wells Fargo pays its mortgage loan officers consistent with its written compensation plans, which will comply with all applicable laws and allow our mortgage loan officers to earn competitive, performance-based, compensation.”

Bryan A. Schwartz of Bryan Schwartz Law has filed class actions against banks, said plaintiffs could meet resistance with their legal theory. Schwartz noted a 2009 U.S. 9th Circuit Court of Appeals decision that found mortgage salespeople might be exempt from overtime. The *Kang* lawsuit

makes broader contentions.

Named plaintiff James C. Kang worked at Wells Fargo’s Palo Alto branch for 15 years. He said that he was paid entirely on commission save for an advance provided at the start of each month.

Wells Fargo “failed to pay plaintiff and class members for all hours worked, including but not limited to, mandatory meetings, loan processing, training and coaching sessions, loan tracking, customer surveys, attending open houses, attending events and galas, and working on certain nights or weekends,” per the complaint.

Further, plaintiffs were paid 50 percent of the hourly rate for overtime instead of the legally required time-and-a-half, with Wells Fargo using their \$12-an-hour advance as the base pay, according to the lawsuit. Plus, the complaints alleges Wells Fargo violated a section of the labor code mandating all employees are paid for unused vacation time.

Haffner and Stevens have sued Bank of America over a similar sales commission model in a case before U.S. District Judge Michael Fitzgerald in Central District of California. *Fernandez et al. v. Bank of America N.A. et al.*, 17-CV6104 (C.D. Cal., filed Aug. 17, 2017).

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