



FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CARMAX AUTO SUPERSTORES CALIFORNIA, LLC; and DOES 1 through 50, inclusive,

ORIGINAL FILED

JUL 10 2008

LOS ANGELES
SUPERIOR COURT

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LEENA ARESO, RICARDO FERNANDEZ, and WAHID ARESO on behalf of themselves and all others similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

LOS ANGELES COUNTY SUPERIOR COURT-UNLIMITED

111 NORTH HILL STREET, ROOM 102 600 S. COMMONWEALTH

LOS ANGELES, CA 90012-3117

CENTRAL DISTRICT

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

KINGSLEY & KINGSLEY, APC

GEORGE R. KINGSLEY, ESQ. SBN-38022

ERIC B. KINGSLEY, ESQ. SBN-185123

16133 VENTURA BL., #1200, ENCINO, CA 91436

DATE:

(Fecha)

JUL 10 2008

JOHN A. CLARKE, Clerk, by

(Secretario)

PARK ENG

Deputy

(Adjunto)

CASE NUMBER:

(Número del Caso): BC391477

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):



COPY

ORIGINAL FILED

JUL 10 2008

**LOS ANGELES
SUPERIOR COURT**

**KINGSLEY & KINGSLEY, APC
GEORGE R. KINGSLEY, ESQ. SBN-38022
ERIC B. KINGSLEY, ESQ. SBN-185123
DARREN M. COHEN, ESQ. SBN-221938
16133 VENTURA BLVD., SUITE 1200
ENCINO, CA 91436
(818) 990-8300, FAX (818) 990-2903**

**LAW OFFICES OF QAIS ZAFARI
QAIS ZAFARI, ESQ. SBN-231767
4129 MAIN STREET, SUITE B4
RIVERSIDE, CA 92501
TEL: (909) 240-4292, FAX: (951) 328-0501**

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LEENA ARESO, RICARDO	)	CASE NO.: BC391477
FERNANDEZ, and WAHID ARESO)	
behalf of themselves and	)	FIRST AMENDED CLASS ACTION
others similarly situated,	)	COMPLAINT FOR:
)	
Plaintiffs,	)	1. Failure to Pay Overtime
	)	2. Failure to Provide Meal
v.	)	Breaks Under Labor Code
	)	§226.7
CARMAX AUTO SUPERSTORES	)	3. Failure to Reimburse
CALIFORNIA, LLC;	)	Expenses Under Labor Code
and DOES 1 to 50, Inclusive,	)	§2802
	)	4. Penalties Pursuant to Labor
	)	Code §203
	)	5. Violation of Business &
Defendants.	)	Professions Code §17200
	)	6. Penalties Pursuant to Labor
	)	Code §2699

Plaintiffs **LEENA ARESO, RICARDO FERNANDEZ, and WAHID ARESO**
behalf of themselves and all others similarly situated, complain of
defendants, and each of them, as follows:

**I
INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil

1 Procedure §382, on behalf of plaintiffs and all individuals who hold
2 or held the position of Sales Consultant and/or Senior Sales
3 Consultant, who are employed by, or formerly employed by CARMAX AUTO
4 SUPERSTORES CALIFORNIA, LLC, and any subsidiaries or affiliated
5 companies (hereinafter referred to as "CARMAX" or "defendants")
6 within the State of California.

7 2. For at least four (4) years prior to the filing of this
8 action continuing to the present, defendants have had a consistent
9 policy of failing to pay overtime to all Sales Consultants and/or
10 Senior Sales Consultants for all work over eight (8) hours per day
11 or forty (40) per week.

12 3. For at least four (4) years prior to the filing of this
13 action and continuing to the present ("meal break liability
14 period"), defendants have had a consistent policy of requiring Sales
15 Consultants and/or Senior Sales Consultants within the State of
16 California, including plaintiffs, to work at least five (5) hours
17 without an uninterrupted meal period and failing to pay such
18 employees one (1) hour of pay at the employees regular rate of
19 compensation for each workday that the meal period is not provided
20 or provided after five (5) hours, as required by California state
21 wage and hour laws.

22 4. For at least four (4) years prior to the filing of this
23 action continuing to the present, defendants have had a consistent
24 policy of not reimbursing Sales Consultants and/or Senior Sales
25 Consultants for uniforms required as a condition of employment in
26 the course of defendants' business.

27 5. Plaintiffs, on behalf of themselves and all proposed class
28 members, bring this action pursuant to Labor Code §§201, 202, 203,

1 226.7, 510, 512, 1194, 1197, 1199, 2802, and 2699 seeking unpaid
2 overtime, meal period compensation, reimbursement of expenses,
3 injunctive and other equitable relief, and reasonable attorneys'
4 fees and costs.

5 6. Plaintiffs, on behalf of themselves and all proposed class
6 members, pursuant to Business & Professions Code §§17200-17208, also
7 seek injunctive relief, restitution, and disgorgement of all
8 benefits defendants enjoyed from their failure to provide overtime,
9 meal period compensation, and uniform reimbursement.

10 II

11 PARTIES

12 A. Plaintiffs

13 7. Venue as to each defendant is proper in this judicial
14 district, pursuant to Code of Civil Procedure §395. Defendants
15 operate several locations within Southern California. The unlawful
16 acts alleged herein have a direct effect on plaintiffs and those
17 similarly situated within the State of California.

18 8. Plaintiffs LEENA ARESO, RICARDO FERNANDEZ, and WAHID ARESO
19 are residents of California.

20 9. As Sales Consultants and/or Senior Sales Consultants,
21 plaintiffs were regularly required to:

22 (1) Work over eight (8) hours per day or forty (40) per
23 week without being provided premium overtime pay rates;

24 (2) Work in excess of five (5) hours per day without
25 being provided a meal period and not being compensated one (1) hour
26 of pay at the regular rate of compensation for each workday that a
27 meal period was not provided or provided after five (5) hours, all
28 in violation of California labor laws, regulations, and Industrial

1 Welfare Commission Wage Orders; and

2 (3) Required to purchase and maintain uniforms without
3 being reimbursed by defendant.

4 10. Defendants willfully failed to compensate them for wages
5 at the termination of their employment with defendants.

6 **B. Defendants**

7 11. Defendant CARMAX is believed to be a California Limited
8 Liability Company operating in California. They own and operate
9 several locations in the State of California. The defendant's
10 corporate address is 12800 Tuckahoe Creek Pkwy, Richmond, VA 23238.
11 Defendants employed plaintiffs and similarly situated persons as
12 Sales Consultant and/or Senior Sales Consultants within California.

13 12. The true names and capacities, whether individual,
14 corporate, associate, or otherwise, of defendants sued herein as
15 DOES 1 to 50, inclusive, are currently unknown to plaintiffs, who
16 therefore sue defendants by such fictitious names under Code of
17 Civil Procedure §474. Plaintiffs are informed and believe, and
18 based thereon allege, that each of the defendants designated herein
19 as a DOE is legally responsible in some manner for the unlawful acts
20 referred to herein. Plaintiffs will seek leave of court to amend
21 this Complaint to reflect the true names and capacities of the
22 defendants designated hereinafter as DOES when such identities
23 become known.

24 13. Plaintiffs are informed and believe, and based thereon
25 allege, that each defendant acted in all respects pertinent to this
26 action as the agent of the other defendants, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto,
28 and the acts of each defendant are legally attributable to the other

1 defendants. Furthermore, defendants in all respects acted as the
2 employer and/or joint employer of plaintiffs and the proposed class.

3 **III**

4 **FACTUAL BACKGROUND**

5 14. Plaintiffs and the Class are, and at all times pertinent
6 hereto, have been non-exempt employees within the meaning of the
7 California Labor Code, and the implementing rules and regulations
8 of the IWC California Wage Orders. Defendants hire employees who
9 work as "Sales Consultant and/or Senior Sales Consultant."

10 15. Plaintiffs and the Class were not compensated for all
11 hours that they worked. Plaintiffs and the Class worked without the
12 proper overtime compensation for all hours worked and have not been
13 provided wages accordingly. Plaintiffs and the Class were paid a
14 flat fee for each vehicle sold. As such, defendant's characterized
15 this as a commission. However, since the amount is fixed per
16 vehicle, plaintiffs and the Class were not actually paid
17 commissions.

18 16. Plaintiffs and the Class have not been provided meal
19 periods for work days in excess of five (5) hours and were not
20 compensated one hours wages in lieu thereof.

21 17. Plaintiffs and the Class have not been properly reimbursed
22 expenses associated with the purchase and maintenance of their
23 uniforms as a requirement of employment.

24 18. Plaintiffs and the proposed class are, and at all times
25 pertinent hereto, have been non-exempt employees within the meaning
26 of the California Labor Code, and the implementing rules and
27 regulations of the IWC California Wage Orders.

28 19. Defendants have failed to comply with Industrial Welfare

1 Commission ("IWC") Wage Order 4-2001(7) by failing to maintain time
2 records showing when the employee begins and ends each work period,
3 meal periods, and total daily hours worked by itemizing in wage
4 statements all deductions from payment of wages and accurately
5 reporting total hours worked by plaintiffs and the members of the
6 proposed class.

7 20. Plaintiffs and the class are covered by California
8 Industrial Welfare Commission Occupational Wage Order No. 4-2001,
9 California Industrial Welfare Commission in No. 4 (Title 8 Cal. Code
10 of Reg. §§11040)

11 IV

12 **CLASS ACTION ALLEGATIONS**

13 21. Plaintiffs bring this action on behalf of themselves and
14 all others similarly situated as a Class Action pursuant to §382 of
15 the Code of Civil Procedure. Plaintiffs seek to represent a class
16 composed of and defined as follows:

17 All persons who are employed or have been
18 employed as Sales Consultant and/or Senior Sales
19 Consultant by defendants in the State of
California and from at least four (4) years
prior to the filing of this action.

20 22. Plaintiffs reserve the right under Rule 1855(b),
21 California Rules of Court, to amend or modify the class description
22 with greater specificity or further division into subclasses or
23 limitation to particular issues.

24 23. This action has been brought and may properly be
25 maintained as a class action under the provisions of §382 of the
26 Code of Civil Procedure because there is a well-defined community
27 of interest in the litigation and the proposed class is easily
28 ascertainable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. Numerosity

24. The potential members of the proposed class as defined are so numerous that joinder of all the members of the proposed class is impracticable. While the precise number of proposed class members has not been determined at this time, plaintiffs are informed and believe that defendants currently employ, and during the relevant time periods employed, over 100 Sales Consultants and/or Senior Sales Consultants.

25. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiffs allege defendants' employment records would provide information as to the number and location of all proposed class members. Joinder of all members of the proposed class is not practicable.

B. Commonality

26. There are questions of law and fact common to the proposed class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

(1) Whether defendants failed to pay overtime compensation as required by the Labor Code and Wage Orders;

(2) Whether defendants violated Labor Code §§226.7 and 512, IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by failing to provide meal periods on days they worked in excess of five (5) hours and failing to compensate said employees one (1) hours wages in lieu of meal periods;

(3) Whether defendants violated Labor Code §2802 and/or Wage Order 5-2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for uniforms purchased and

1 maintained as a requirement of employment;

2 (4) Whether defendants violated §§201-203 of the Labor
3 Code by failing to pay compensation due and owing at the time that
4 any proposed class member's employment with defendants terminated;

5 (5) Whether defendants violated §17200 et seq. of the
6 Business & Professions Code by failing to provide wages and
7 compensation to Sales Consultants and/or Senior Sales Consultants;

8 (6) Whether plaintiffs and the members of the proposed
9 class are entitled to equitable relief pursuant to Business &
10 Professions Code §17200, et. seq.; and

11 (7) Whether plaintiffs and the members of the proposed
12 class are entitled to penalties pursuant to Labor Code §2699.

13 **C. Typicality**

14 27. The claims of the named plaintiffs are typical of the
15 claims of the proposed class. Plaintiffs and all members of the
16 proposed class sustained injuries and damages arising out of and
17 caused by defendants' common course of conduct in violation of laws,
18 regulations that have the force and effect of law and statutes as
19 alleged herein.

20 **D. Adequacy of Representation**

21 28. Plaintiffs will fairly and adequately represent and
22 protect the interests of the members of the proposed class. Counsel
23 who represents plaintiffs is competent and experienced in litigating
24 large employment class actions.

25 **E. Superiority of Class Action**

26 29. A class action is superior to other available means for
27 the fair and efficient adjudication of this controversy. Individual
28 joinder of all proposed class members is not practicable, and

1 questions of law and fact common to the proposed class predominate
2 over any questions affecting only individual members of the proposed
3 class. Each member of the proposed class has been damaged and is
4 entitled to recovery by reason of defendants' illegal policy and/or
5 practice of failing to compensate class members at the legal
6 overtime rates, denying class members meal periods without legal
7 compensation.

8 30. Class action treatment will allow those similarly situated
9 persons to litigate their claims in the manner that is most
10 efficient and economical for the parties and the judicial system.
11 Plaintiffs are unaware of any difficulties that are likely to be
12 encountered in the management of this action that would preclude its
13 maintenance as a class action.

14 V

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME**

17 31. Plaintiffs incorporate paragraphs 1 through 30 as though
18 fully set forth herein.

19 32. Plaintiffs and others were forced to work on a regular and
20 consistent basis, more than eight (8) hours a day and/or forty (40)
21 hours per week. Plaintiffs were not compensated for said work at
22 premium rates. Defendant had a consistent policy of paying
23 plaintiffs and members of the class, a fixed fee for each vehicle
24 sold.

25 33. By their policy of requiring plaintiffs to work in excess
26 of eight (8) hours in a workday and/or forty (40) hours in a
27 workweek without compensating plaintiffs at the rate of time and
28 one-half (1 1/2), defendant wilfully violated the provisions of

1 Labor Code §1194.

2 34. As a result of the unlawful acts of defendants, plaintiffs
3 and the Class have been deprived of overtime in amounts to be
4 determined at trial, and are entitled to recovery of such amounts,
5 plus interest and penalties thereon, attorneys' fees, and costs.

6 VI

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL BREAK PER LABOR CODE §226.7**

9 35. Plaintiffs incorporate paragraphs 1 through 34 as though
10 fully set forth herein.

11 36. Labor Code §226.7 requires an employer to pay an
12 additional hour of compensation for each meal period the employer
13 fails to provide. Employees are entitled to a meal period of a
14 least thirty (30) minutes per five (5) hour work period. Plaintiffs
15 and the class consistently worked over five (5) hour shifts.
16 Pursuant to the Code, plaintiffs and the class are entitled to a
17 meal period of not less than thirty (30) minutes prior to exceeding
18 five (5) hours of employment.

19 37. Defendants failed to provide plaintiffs and others with
20 timely meal breaks of not less than thirty (30) minutes as required
21 by the Labor Code during the relevant class period.

22 38. Pursuant to Labor Code §226.7, plaintiffs are entitled to
23 damages in an amount equal to one (1) hour of wages per missed meal
24 break, in a sum to be proven at trial.

25 VII

26 **THIRD CAUSE OF ACTION**

27 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE §2802**

28 39. Plaintiffs incorporate paragraphs 1 through 38 as though

1 fully set forth herein.

2 40. Plaintiffs and the Class are entitled to uniform
3 reimbursement when they purchased uniforms that were required for
4 their employment. When uniforms are required by the employer to be
5 worn by the employee as a condition of employment, such uniforms
6 shall be provided and maintained by the employer. See Wage Orders
7 4-2001(9).

8 41. Defendants have failed to reimburse plaintiffs and others
9 the cost of purchasing and maintaining uniforms which are a
10 requirement of the employment.

11 42. As a result of the unlawful acts of defendants, plaintiffs
12 and the Class they seek to represent have been deprived of uniform
13 reimbursement in the amounts to be determined at trial, and are
14 entitled to recovery of such amounts, plus interest and penalties
15 thereon, attorneys' fees, and costs.

16 **VIII**

17 **FOURTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES UNDER LABOR CODE §203**

19 43. Plaintiffs incorporate paragraphs 1 through 42 as though
20 fully set forth herein.

21 44. Numerous members of the proposed class including
22 plaintiffs are no longer employed by defendants. They were either
23 fired or quit defendants employ.

24 45. The defendant's failure to pay wages, as alleged above was
25 willful in that defendants and each of them knew wages to be due but
26 failed to pay them, thus entitling plaintiffs and the proposed class
27 to penalties under Labor Code §203, which provides that an
28 employee's wages shall continue as a penalty until paid for a period

1 of up to thirty (30) days from the time they were due.

2 46. Defendants have failed to pay plaintiffs and others a sum
3 certain at the time of termination or within seventy-two (72) hours
4 of their resignation, and have failed to pay those sums for thirty
5 (30) days thereafter. Pursuant to the provisions of Labor Code
6 §203, plaintiffs and the proposed class entitled to penalties in the
7 amount of plaintiffs' and others daily wage multiplied by thirty
8 (30) days.

9 IX

10 FIFTH CAUSE OF ACTION

11 UNFAIR COMPETITION PURSUANT TO

12 BUSINESS & PROFESSIONS CODE §17200

13 47. Plaintiffs incorporate paragraphs 1 through 46 as though
14 fully set forth herein.

15 48. This is a Representative Private Attorney General Action
16 and Class Action for Unfair Business Practices. **LEENA ARESO,**
17 **RICARDO FERNANDEZ,** and **WAHID ARESO** on their own behalf and on behalf
18 of the general public, and on behalf of others similarly situated,
19 brings this claim pursuant to Business & Professions Code §17200,
20 et seq. The conduct of all defendants as alleged in this Complaint
21 has been and continues to be unfair, unlawful, and harmful to
22 plaintiffs, the general public, and the proposed class. Plaintiffs
23 seek to enforce important rights affecting the public interest
24 within the meaning of Code of Civil Procedure §1021.5.

25 49. Plaintiffs are "persons" within the meaning of Business &
26 Professions Code §17204, and therefore have standing to bring this
27 cause of action for injunctive relief, restitution, and other
28 appropriate equitable relief.

1 50. Business & Profession Code §17200, et seq. prohibits
2 unlawful and unfair business practices.

3 51. Wage and hour laws express fundamental public policies.
4 Providing employees with meal and/or rest breaks and paying overtime
5 are fundamental public policies of this State and of the United
6 States. Labor Code §90.5(a) articulates the public policies of this
7 State to enforce vigorously minimum labor standards, to ensure that
8 employees are not required or permitted to work under substandard
9 and unlawful conditions, and to protect law-abiding employers and
10 their employees from competitors who lower their costs by failing
11 to comply with minimum labor standards.

12 52. Defendants have violated statutes and public policies.
13 Through the conduct alleged in this Complaint, defendants, and each
14 of them, have acted contrary to these public policies, have violated
15 specific provisions of the Labor Code, and have engaged in other
16 unlawful and unfair business practices in violation of Business &
17 Profession Code §17200, et seq., depriving plaintiffs, and all
18 persons similarly situated, and all interested persons of rights,
19 benefits, and privileges guarantees to all employees under law.

20 53. Defendants' conduct, as alleged hereinabove, constitutes
21 unfair competition in violation of §17200 et. seq. of the Business
22 & Professions Code.

23 54. Defendants by engaging in the conduct herein alleged,
24 either knew or in the exercise of reasonable care should have known
25 that the conduct was unlawful. As such it is a violation of §17200
26 et. seq. of the Business & Professions Code.

27 55. As a proximate result of the above mentioned acts of
28 defendants, plaintiffs and others similarly situated have been

1 damaged in a sum as may be proven.

2 56. Unless restrained by this Court, defendants will continue
3 to engage in the unlawful conduct as alleged above. Pursuant to
4 Business & Professions Code this Court should make such orders or
5 judgments, including the appointment of a receiver, as may be
6 necessary to prevent the use or employment, by defendants, their
7 agents or employees, of any unlawful or deceptive practice
8 prohibited by the Business & Professions Code, and/or, including but
9 not limited to, disgorgement of profits which may be necessary to
10 restore plaintiffs and the proposed class members to the money
11 defendants have unlawfully failed to pay.

12 X

13 **SIXTH CAUSE OF ACTION**

14 **PENALTIES PURSUANT TO LABOR CODE §2699**

15 57. Plaintiffs incorporate paragraphs 1 through 56 as though
16 fully set forth herein.

17 58. As a result of the acts alleged above, plaintiffs seek
18 penalties under Labor Code §§2698 and 2699 because of defendants'
19 violation of Labor Code §§§201, 202, 203, 226.7, 510, 512, 1194,
20 1197, and 1199 which call for civil penalties.

21 59. For each such violation, plaintiffs and the proposed class
22 are entitled to penalties in an amount to be shown at the time of
23 trial subject to the following formula:

- 24 a. For \$100 for the initial violation per employee per
25 pay period
26 b. For \$200 for each subsequent violation per employee
per pay period

27 60. These penalties shall be allocated 75% to the Labor and
28

1 Workforce Development Agency and 25% to the affected employees.

2 61. Plaintiffs sent a certified letter to the LDWA and
3 defendants as prescribed by the code postmarked June 2, 2008. As
4 thirty-three calendar days has passed since receipt of the letter
5 without response by the LDWA, plaintiffs are entitled to commence
6 a civil action seeking penalties as though the LDWA decided not to
7 investigate pursuant to Labor Code §2699.3(a)(2)(A).

8 **RELIEF REQUESTED**

9 **WHEREFORE**, plaintiffs pray for the following relief:

10 1. For compensatory damages in the amount of unpaid overtime
11 not paid to plaintiff and each other member of the Class from at
12 least four (4) years prior to the filing of this action to the
13 present as may be proven;

14 2. For compensatory damages in the amount of plaintiff's and
15 each class members' hourly wage for each meal period missed or taken
16 late from at least four (4) years prior to the filing of this action
17 to the present as may be proven;

18 3. For compensatory damages in the amount of plaintiff's and
19 each class members' out of pocket expense for uniforms purchased
20 and/or maintained as a requirement of employment;

21 4. For penalties pursuant to Labor Code §203 for all
22 employees who quit or were fired equal to their daily wage times
23 thirty (30) days;

24 5. For penalties pursuant to Labor Code §2699;

25 6. An award of prejudgment and post judgment interest;

26 7. An order enjoining defendant and its agents, servants, and
27 employees, and all persons acting under, in concert with, or for it
28 from providing plaintiffs with proper overtime, meal breaks, and

1 reimbursement of expenses pursuant to Labor Code §§ 226.7, 510, 512,
2 2802, and IWC 4-2001;

3 8. For restitution for unfair competition pursuant to
4 Business & Professions Code §17200, including disgorgement or
5 profits, in an amount as may be proven;

6 9. An award providing for payment of costs of suit;

7 10. An award of attorneys' fees; and

8 11. Such other and further relief as this Court may deem
9 proper and just.

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demands trial of their claims by jury to the
13 extent authorized by law.

14
15 Dated: July 7, 2008

KINGSLEY & KINGSLEY, APC

16 By: Elana R. Levine
17 ELANA R. LEVINE
18 ATTORNEY FOR PLAINTIFFS
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On JULY 7, 2008, I served all interested parties in this action the following documents described as SUMMONS ON FIRST AMENDED CLASS ACTION COMPLAINT, FIRST AMENDED CLASS ACTION COMPLAINT by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

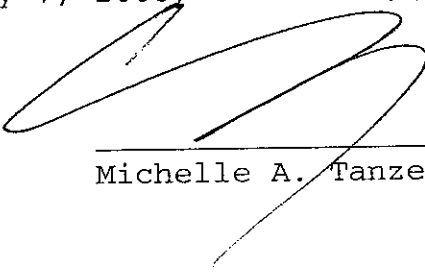
MARCUS A. McDANIEL
CHRISTOPHER W. DECKER
OLGETREE DEAKINS NASH SMOAK & STEWART
633 W 5th St 53rd Fl
Los Angeles, CA, 90071

(BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY FACSIMILE) A copy of which was placed in our inter-office fax machine and faxed to SEE FAX NUMBER ABOVE, after which I received a facsimile confirmation sheet indicating that all pages went through successfully.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 7, 2008, at Encino, California.


Michelle A. Tanzer