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1 MATTHEW RIGHETTI, ESQ. {121012}  
2 JOHN GLUGOSKI, ESQ. {191551}  
3 RIGHETTI LAW FIRM, P.C.  
4 456 Montgomery Street, Suite 1400  
5 San Francisco, CA 94104  
6 Telephone: (415) 983-0900  
7 Facsimile: (415) 397-9005

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OF ORIGINAL FILED  
Los Angeles Superior Court

JUL 03 2008

John A. Clarke, Executive Officer/Clerk  
BY MARY GARCIA, Deputy

8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 RON DE LEON,

NO. BC393826

12 Plaintiff,

CLASS ACTION

13 vs.

COMPLAINT

14  
15 CAMPAIGNERS, MARKETWIDE  
16 ADVANTAGE, ARCHCO EMPLOYMENT  
17 SERVICES, ADVANTAGE SALES AND  
18 MARKETING and DOES 1 through 50 inclusive,

1. Violation of Labor Code;
2. Violation of B & P § 17200, et seq;
3. Failure to Provide Mandated Meal Periods and Rest Breaks
4. Failure to Indemnify Employees for Expenditures and/or Losses Expenses
5. Failure to Make Payments Within the Required Time

19 Defendants.

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**FIRST CAUSE OF ACTION**

COMES NOW, Plaintiff, Ron De Leon (Plaintiff herein after) an individual over the age of eighteen (18), and brings this challenge to defendant's lucrative, repressive and unlawful business practices on behalf of himself and a class of all others similarly situated and for a Cause of Action against defendants, CAMPAIGNERS, MARKETWIDE ADVANTAGE, ARCHCO EMPLOYMENT SERVICES, ADVANTAGE SALES AND MARKETING and DOES 1-50, inclusive, (hereinafter defendants) and each of them, alleges as follows:

**THE PARTIES, JURISDICTION AND VENUE**

1.

This class action is brought pursuant to §382 of the California Code of Civil Procedure. The claims of individual class members, including Plaintiff, are under the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been employed for a relatively brief period could never reasonably be expected to receive a recovery of \$75,000 or more. The total damages for the entire case does not exceed \$5,000,000.00. In addition, there is no federal question at issue, as all the issues related to payment wages alleged herein are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code.

2.

Plaintiff, Ron De Leon ("Plaintiff") was employed in California as a Field Service Representative (aka "delegate") of CAMPAIGNERS, MARKETWIDE ADVANTAGE, ARCHCO EMPLOYMENT SERVICES, ADVANTAGE SALES AND MARKETING. Mr. De Leon has worked for defendants within four years prior to the filing of this Complaint.

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3.

Plaintiff brings this action against Defendants, for engaging in a uniform policy and systematic scheme of wage abuse against their salary paid employees in California. This scheme involved, inter alia, misclassifying the delegates as "exempt" managerial/executive employees for purposes of the payment of overtime compensation when, in fact, they were "non-exempt" non-managerial employees according to California law. Further, Defendants denied the delegates mandated meal and rest breaks under California law. As a result of Defendant's systematic and clandestine scheme the delegates throughout California were not paid all wages owed and were deprived of mandated meal periods and rest breaks and not reimbursed for all business expenses incurred as required under the law. Accordingly, the Defendants, have violated California common and statutory laws as described more particularly below.

4.

Defendants own/owned and operate/operated an industry, business and establishment in within the State of California, including Los Angeles County, for the purpose of assisting customer store owners with sales campaign and merchandising to increase sales of products at the store level under the name of CAMPAIGNERS, MARKETWIDE ADVANTAGE, ARCHCO EMPLOYMENT SERVICES, ADVANTAGE SALES AND MARKETING. As such, and based upon all the facts and circumstances incident to defendant's business in California, defendants are subject to California Labor Code Sections 1194, et seq., 500, et seq., California Business and Professions Code Section 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission. At least some of the acts complained of herein occurred in Los Angeles County as defendants do business in Los Angeles County area. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned defendants are

1 and were corporations licensed to do business and actually doing business in the State of  
2 California.

3  
4 5.

5 At all times herein mentioned Plaintiff and the class identified herein worked for  
6 defendants as delegates for Defendants. These positions are not positions, which involve work  
7 falling within any exception to the above-referenced Labor Code sections, the Unfair Practices  
8 Act and/or California Industrial Welfare Commission orders applicable to defendant's business.

9  
10 6.

11 Plaintiff does not know the true names or capacities, whether individual, partner or  
12 corporate, of the defendants sued herein as DOES 1 through 50, inclusive, and for that reason,  
13 said defendants are sued under such fictitious names, and Plaintiff prays leave to amend this  
14 complaint when the true names and capacities are known. Plaintiff is informed and believes and  
15 thereon alleges that each of said fictitious defendants was responsible in some way for the  
16 matters alleged herein and proximately caused Plaintiff and members of the class to be subject to  
17 the illegal employment practices, wrongs and injuries complained of herein. Plaintiff originally  
18 filed a complaint alleging the acts alleged in this case with the Division of Labor Standards  
19 Enforcement, the filing of which tolled the statute of limitations as to the claims alleged herein.

20  
21 7.

22 At all times herein mentioned, each of said defendants participated in the doing of the  
23 acts hereinafter alleged to have been done by the named defendants; and furthermore, the  
24 defendants, and each of them, were the agents, servants and employees of each of the other  
25 defendants, as well as the agents of all defendants, and at all times herein mentioned, were acting  
26 within the course and scope of said agency and employment.

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28 8.

1 At all times herein mentioned, defendants, and each of them, were members of, and  
2 engaged in, a joint venture, partnership and common enterprise, and acting within the course and  
3 scope of, and in pursuance of, said joint venture, partnership and common enterprise.  
4

5 9.

6 At all times herein mentioned, the acts and omissions of various defendants, and each of  
7 them, concurred and contributed to the various acts and omissions of each and all of the other  
8 defendants in proximately causing the injuries and damages as herein alleged.

9 10.

10 At all times herein mentioned, defendants, and each of them, ratified each and every act  
11 or omission complained of herein. At all times herein mentioned, the defendants, and each of  
12 them, aided and abetted the acts and omissions of each and all of the other defendants in  
13 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the  
14 wage and hour related compensation policies as they relate to delegates in California are and  
15 were dictated by, controlled by, and ratified by the defendants herein and each of them.  
16

17 FACTUAL ALLEGATIONS

18 11.

19 Plaintiff and all members of the class identified herein were regularly scheduled as a  
20 matter of uniform company policy to work and in fact worked as delegates in excess of eight  
21 hours per workday and/or in excess of forty hours per workweek without receiving straight time  
22 or overtime compensation for such overtime hours worked in violation of California Labor Code  
23 Section 1194 and the applicable California Industrial Welfare Commission wage order(s).  
24 Plaintiff and the other members of the class were improperly and illegally mis-classified by  
25 defendants as "exempt" managerial employees when, in fact, they were "non-exempt" non-  
26 managerial employees according to California law. Plaintiff and the other members of the class  
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1 have the right to be compensated by defendants at the appropriate compensatory wage rate for  
2 said work heretofore performed, consisting of the straight time rate plus the appropriate overtime  
3 premium as mandated by California law. Furthermore, Defendants failed to provide the Plaintiff  
4 and class members the required rest and meal periods during the relevant time period as required  
5 under the IWC Wage Orders and thus are entitled to any and all applicable penalties.  
6

7 **12.**

8 This complaint is brought by Plaintiff pursuant to California Code of Civil Procedure  
9 section 382 on behalf of a class. All claims alleged herein arise under California law for which  
10 Plaintiff seeks relief authorized under California law. The class is comprised of, and defined as:

11 All California based delegates who worked at any time during the four  
12 years preceding the filing of this Complaint up until the date of class  
13 certification for Defendants in the State of California.

14 The members of the class are so numerous that joinder of all members would be impractical, if  
15 not impossible. The members of the class are readily ascertainable by a review of defendant's  
16 records. Further, the subject matter of this action both as to factual matters and as to matters of  
17 law, are such that there are questions of law and fact common to the class which predominate  
18 over questions affecting only individual members including, among other things, the following:

19 a. Statistically, one hundred percent of the class members were paid on a salary basis  
20 with no overtime compensation paid for work accomplished in excess of forty hours per week, or  
21 eight hours per day. Plaintiff is informed and believes and based thereon alleges that all class  
22 members failed to meet the exemption requirements of California law. Thus, Plaintiff and the  
23 class members were not exempt from the overtime requirements of California law for that  
24 reason;  
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1 ended each work period, meal period, the total daily hours worked, and the total hours worked  
2 per pay period and applicable rates of pay.

3  
4 14.

5 There are predominant common questions of law and fact and a community of interest  
6 amongst Plaintiff and the claims of the absent class members concerning whether defendant's  
7 regular business custom and practice of requiring substantial "overtime" work and not paying for  
8 said work according to the overtime mandates of California law is, and at all times herein  
9 mentioned was, in violation of California Labor Code Sections 1194 and 500, et seq., the Unfair  
10 Practices Act and the applicable California Industrial Welfare Commission wage orders.  
11 Defendant's employment policies and practices wrongfully and illegally failed to compensate  
12 Pre-sale representative for substantial overtime compensation earned as required by California  
13 law. For instance, questions of fact and/or law common to the members of the aforesaid class --  
14 which predominate over any questions which may affect only individual members -- are:

15  
16 i. Whether defendant's California based delegates were classified as  
17 "exempt" in violation of California law;

18 ii. Whether defendants uniformly failed to pay overtime wages to its  
19 delegates by virtue of defendant's unlawful class wide designation of such employees as  
20 "exempt" in violation of California law;

21 iii. Whether Plaintiff and the class could waive the wage and hour laws  
22 designed for their benefit under California law and whether such waivers were voluntary,  
23 knowing and valid;

24 iv. Whether defendant's conduct constituted an illegal, or unfair, business  
25 practice in violation of California law;  
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1 v. Whether Plaintiff and the class are entitled to compensatory damages  
2 pursuant to the California Labor Code;

3 vi. Whether Plaintiff and the class are entitled to injunctive relief, including  
4 restitution and/or disgorgement of profits pursuant to California law.

5 vii. What is the correct computation formula for the payment of overtime in  
6 California?

7 viii. What work is customarily and regularly accomplished by class members in  
8 defendant's – and what category (exempt or non-exempt) does that work properly fall into?

9 ix. What are the realistic requirements of the delegate positions?

10 x. What are the expectations of defendants vis-à-vis the class members job  
11 performance?

12 xi. Who has the burden of proof on the exemption issue?

13 xii. Can defendant rely on the "sole charge" or "primary duty" exemption  
14 standards applicable under federal law, or must defendants comply with California's more strict  
15 quantitative exemption standards?

16 xiii. Whether Defendants failed to provide Plaintiff and class members rest and  
17 meal breaks in violation of California Labor Code and applicable IWC wage orders;

18 **15.**

19 The claims of Plaintiff are typical of the claims of all members of the class. Plaintiff, as a  
20 representative party, will fairly and adequately protect the interests of the class by vigorously  
21 pursuing this suit through attorneys who are skilled and experienced in handling civil litigation of  
22 this type.

23 **16.**



1 individual members of the class are not sufficiently large to warrant vigorous individual  
2 prosecution considering all of the concomitant costs and expenses.

3  
4 **18.**

5 Such a pattern, practice and uniform administration of corporate policy regarding illegal  
6 employee compensation, as described herein, is unlawful and creates an entitlement to recovery  
7 by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance of the full  
8 amount of the straight time compensation and overtime premiums owing, including interest  
9 thereon, willful penalties, reasonable attorneys fees, and costs of suit according to the mandate of  
10 California Labor Code Section 1194, et seq.

11  
12 **19.**

13 Proof of a common business practice or factual pattern, of which the named Plaintiff's  
14 experiences are representative, will establish the right of each of the members of the Plaintiff  
15 class to recovery on the causes of action alleged herein.

16  
17 **20.**

18 The Plaintiff class is entitled in common to a specific fund with respect to the overtime  
19 compensation monies illegally and unfairly retained by defendants. The Plaintiff class is entitled  
20 in common to restitution and disgorgement of those funds being improperly withheld by  
21 defendants. This action is brought for the benefit of the entire class and will result in the creation  
22 of a common fund.

23 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class,  
24 prays for judgment as hereinafter set forth.

25 **SECOND CAUSE OF ACTION**

26 COME NOW, Plaintiff, individually and on behalf of both the class and as a second,  
27 separate and distinct cause of action against defendants, and each of them, alleges as follows:  
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21.

Plaintiff herein repeats and re-alleges as though fully set forth at length each and every paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause of action for relief regarding defendant's violations of Business and Professions Code 17200 et seq. (Unfair Practices Act).

22.

Defendants, and each of them, have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in Paragraphs 11 through 14, inclusive, to wit, by requiring their delegates to perform the labor services complained of herein without overtime compensation. Defendant's utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over defendant's competitors. Plaintiff -- and members of the class -- seek full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the defendants by means of the unfair practices complained of herein. Plaintiff seeks, on his own behalf and on behalf of the class, the appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the original complaint in this action.

23.

Plaintiff is informed and believes and on that basis alleges that at all times herein mentioned defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code section 17200, including those set forth in Paragraphs 11 through 14 herein thereby depriving Plaintiff and other members of the class

1 minimum working condition standards and conditions due to them under the California labor  
2 laws and Industrial Welfare Commission wage orders as specifically described herein.

3  
4 24.

5 Plaintiff, and all persons similarly situated, are further entitled to and do seek a both a  
6 declaration that the above-described business practices are unfair, unlawful and/or fraudulent and  
7 injunctive relief restraining defendants from engaging in any of such business practices in the  
8 future. Such misconduct by defendants, unless and until enjoined and restrained by order of this  
9 Court, will cause great and irreparable injury to all members of the class in that the defendants  
10 will continue to violate these California laws, represented by labor statutes and IWC Wage  
11 Orders, unless specifically ordered to comply with same. This expectation of future violations  
12 will require current and future employees to repeatedly and continuously seek legal redress in  
13 order to gain compensation to which they are entitled under California law. Plaintiff has no other  
14 adequate remedy at law to insure future compliance with the California labor laws and wage  
15 orders alleged to have been violated herein.

16  
17 **THIRD CAUSE OF ACTION**

18 COME NOW, Plaintiff, individually and on behalf of a class and as a third, separate and  
19 distinct cause of action against defendants, and each of them, alleges as follows:

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21 25.

22 Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the  
23 preceding paragraphs.

24 26.

25 Cal. Lab. Code §226.7(a) provides, "No employer shall require any employee to work  
26 during any meal or rest period mandated by an applicable order of the Industrial Welfare  
27 Commission. "  
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27.

Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part, "Unless the employees is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

28.

Industrial Welfare Commission Order No. 7-2001 (12)(A) authorizes employees to take rest periods based on the total hours worked daily at the rate of ten minutes rest per four hours or major fraction thereof.

29.

Cal. Lab. Code Section 512, which provides in relevant part:

Meal periods

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

30.

As alleged herein, defendants routinely interrupted and/or failed to permit, authorize and/or provide Plaintiff's and Class members' meal and rest breaks. By these actions, defendants violated Cal. Lab. Code §226.7(a) and is liable to Plaintiff and the Class.

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31.

As a result of the unlawful acts of defendants, Plaintiff and Class members have been deprived of meal and rest breaks, and are entitled to recovery under Cal. Lab. Code §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work day that a meal or rest period was not provided.

WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class prays for judgment as follows:

**FOURTH CAUSE OF ACTION  
(Failure to Indemnify Employees for  
Expenditures: California Labor Code Sections 2802)**

32.

Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

33.

California Labor Code Section 2802 provides in relevant part, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

34.

As alleged herein, Defendants failed to indemnify Plaintiff and the class members for all business expenses and/or losses as required under Labor Code Section 2802 and *Gattuso v. Harte-Hanke Shoppers, Inc.* incurred while working under the direction of Defendants.

35.

1 As a result of the unlawful acts of Defendants, Plaintiff and the Class members have been  
2 deprived of compensation in amounts to be determined at trial, and are entitled to recovery of  
3 such amounts, including interest thereon, attorneys' fees, costs, and any other damages as set  
4 forth under California Law.

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10 **FIFTH CAUSE OF ACTION**  
11 **(Failure to Make Payment Within the Required Time: California**  
12 **Labor Code Sections 201, 202, 203)**

13 36.

14 Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the  
15 preceding paragraphs.

16 37.

17 California Labor Code Section 201 provides in relevant part, "[i]f an employer discharges  
18 an employee, the wages earned and unpaid at the time of discharge are due and payable  
19 immediately."

20 38.

21 California Labor Code Section 202 provides in relevant part, "[i]f an employee not having  
22 a written contract for a definite period quits his or her employment, his or her wages shall  
23 become due and payable not later than 72 hours thereafter, unless the employee has given 72  
24 hours previous notice of his or her intention to quit, in which case the employee is entitled to his  
25 or her wages at the time of quitting."

26 39.  
27  
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1 As alleged herein, Defendants failed to pay earned wages to Plaintiff and the Class who  
2 are former employees of Defendants at the time they became due and payable. Thus, Defendants  
3 violated Cal. Labor Code Sections 201 and 202. Accordingly, Plaintiff seeks recovery of waiting  
4 time penalties as provided under Labor Code Section 203.  
5

6 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class  
7 prays for judgment as follows:

- 8
- 9 1. Determining that this action may proceed and be maintained as a class action;
  - 10 2. For the First Cause of Action:
    - 11 a. A declaratory judgment that Defendants have violated Labor Code Sections 1194,
    - 12 1194.2 and 1197;
    - 13 b. An award to Plaintiff and the Classes of damages for the balance of unpaid
    - 14 compensation, including interest thereon, and penalties subject to proof;
    - 15 c. An award to Plaintiff and the Classes of reasonable attorneys' fees and costs
    - 16 pursuant to Labor Code Section 1194;
    - 17 d. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the
    - 18 date that the wages were due and payable at the interest rate specified in
    - 19 subdivision (b) or Section 3289 of the Civil Code; and
  - 20 3. For the Second Cause of Action:
    - 21 a. Ordering Defendants, their agents, servants and employees, and all persons acting,
    - 22 directly or indirectly, in concert with them, to restore and disgorge all funds to each
    - 23 member of the Class acquired by means of any act or practice declared by this
    - 24 Court to be unlawful, unfair or fraudulent and therefore constitute unfair
    - 25 competition under Section 17200 *et. seq.* of the Business and Professions Code;
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- 1 b. For injunctive relief pursuant to Business and Professions Code Section 17203,  
2 consisting of *inter alia*: (1) a declaration that Defendants have engaged in  
3 unlawful and unfair and fraudulent business acts and practices in violation of  
4 California Business and Professions Code Section 17200 *et. seq.*; (2) a  
5 preliminary and/or permanent injunction enjoining Defendants and their  
6 respective successors, agents, servants, officers, directors, employees and all  
7 persons acting in concert with them from pursuing the policies, acts and practices  
8 complained of herein and prohibiting Defendants from continuing such acts of  
9 unfair and illegal business acts and practices; and  
10  
11 c. Restitution, including, but not limited to, the relief permitted by the California  
12 IWC Order Nos. 7-1997 through 7-2001 *et. seq.*  
13

14 4. For the Third Cause of Action:

- 15 a. A declaratory judgment that Defendants have violated Labor Code Sections  
16 226.7, 512, and the IWC Order Nos. 7-1997 *et seq.* through 7-2001 *et seq.*;  
17  
18 b. Pursuant to Labor Code Section 226.7, an award to Plaintiff and the Class of an  
19 additional hour of pay at the rate of the employee's regular rate of compensate  
20 for each work day that a meal and/or rest break was not provided;  
21  
22 c. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the  
23 date that the wages were due and payable at the interest rate specified in  
24 subdivision (b) or Section 3289 of the Civil Code; and  
25  
26 d. An award to Plaintiffs and the Class members of reasonable attorneys' fees and  
27 costs pursuant to Labor Code Section 218.5; and  
28  
29 e. For punitive damages.

30 5. For the Fourth Cause of Action:

- 31 a. A declaratory judgment that Defendants have violated Labor Code Section 2802;

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b. An award to Plaintiff and the Class of compensatory damages to be paid by Defendant for failure to indemnify Plaintiff and the Class for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

c. An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to Labor Code Section 2802;

d. An award of all accrued interest from the date that the compensation was due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code; and

6. For the Fifth Cause of Action:

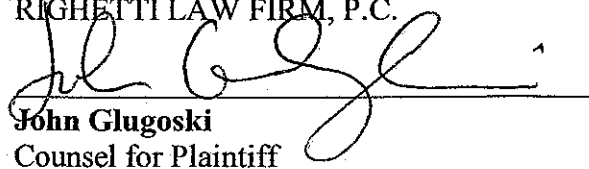
a. A declaratory judgment that Defendants have violated Labor Code Sections 201 and 202;

b. An award to Plaintiff and the Classes who are former employees of continuing wages as a penalty from the due date thereof at the same rate until paid or until this action was commenced; but for no more that 30 days;

7. Awarding Plaintiffs and the Class their attorneys' fees and costs of suit to the extent permitted by law;

8. All other relief as this Court may deem proper.

DATED: July 2, 2008

RIGHETTI LAW FIRM, P.C.  
  
John Glugoski  
Counsel for Plaintiff  
and the Class