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**LOS ANGELES  
SUPERIOR COURT**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

KENNETH JOHN LODGE and  
JUDSON LERTZMAN, individually  
and on behalf of all others  
similarly situated,

Plaintiffs,

v.

U. S. REMODELERS, INC., a  
corporation, U.S. HOME SYSTEMS,  
INC., a corporation, and DOES 1  
through 75, inclusive,

Defendants.

Case No. BC 373716

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF:**

1. FAILURE TO PAY WAGES IN  
VIOLATION OF LABOR CODE SECTIONS  
200, ET SEQ.;
2. VIOLATION OF LABOR CODE SECTION  
2802;
3. UNFAIR BUSINESS ACTS AND  
PRACTICES IN VIOLATION OF BUSINESS  
AND PROFESSION CODE SECTIONS 1700,  
ET SEQ.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs KENNETH JOHN LODGE and JUDSON LERTZMAN (hereinafter  
collectively referred to as "PLAINTIFFS") individually and on behalf of all others similarly  
situated, complain and allege as follows:

## INTRODUCTION

1  
2           1.       This class action arises from defendant U.S. Remodelers, Inc.'s  
3 unlawful wage and hour practice of requiring that its employees "insure" the company  
4 against business losses and alleged "overhead" expenses by deducting such losses and  
5 expenses from the employees' earned commissions.

6  
7           2.       U.S. Remodelers, which is in the business of home remodeling and  
8 refacing, requires its salespeople to visit the consumer's home, to establish a contract price,  
9 and to persuade the consumer to execute a contract at the contract price. Unbeknownst to the  
10 consumer, the contract price is based on an *estimated* measurement of the kitchen or other  
11 area being refaced. If, based on subsequent actual measurements, the company later  
12 establishes that the salesperson under-measured and that the consumer should have been  
13 charged a higher contract price, it deducts the difference from the salesperson's commission.  
14 In other words, the company transfers its loss directly to the salesperson and, thus, insures  
15 itself against sustaining any financial loss in the transaction.<sup>1</sup>

16  
17           3.       In addition to the foregoing, U. S. Remodelers typically also illegally  
18 deducts an "administration" fee of \$250.00 from each salesperson's commissions to cover  
19 any alleged "overhead" expenses incurred by the company.

20  
21           4.       Finally, U.S. Remodelers illegally forces its salespeople to incur various  
22 business expenses including purchasing various goods bearing The Home Depot insignia and  
23 logo from The Home Depot but refused to reimburse their employees for such expenditures.

24  
25  
26           <sup>1</sup> In the alternative, if it is determined that the salesperson over-measured and that the  
27 contract price charged to the consumer should have been lower, the company fails to disclose  
28 such discrepancy to the consumer and simply pockets the difference (failing to pay the  
salesperson any commission on the over-measurement). Either way, the company insures  
itself against sustaining any loss in the transaction.

1 These goods included The Home Depot uniforms, The Home Depot business cards, and The  
2 Home Depot Thank You Note Cards.

3  
4 **JURISDICTION AND VENUE**

5 5. The Court has personal jurisdiction over the defendants because they are  
6 residents of and/or doing business in the State of California.

7  
8 6. Venue is proper in this County in accordance with Section 395(a) of the  
9 California Code of Civil Procedure because Defendants entered into contracts with many of  
10 its sales force employees in this County. Venue is also proper in this County pursuant to  
11 California Code of Civil Procedure §395.5 because Defendants are corporations and a  
12 substantial portion of the underlying transactions and events complained of herein occurred  
13 in this County and Defendants have received substantial compensation from such  
14 transactions and business activity in this County.

15  
16 **PARTIES**

17 7. Plaintiff KENNETH JOHN LODGE is an individual who resides and, at  
18 all relevant times during the events alleged herein, resided in Los Angeles County. Plaintiff  
19 KENNETH JOHN LODGE was, at all relevant times mentioned herein, an “employee”  
20 (within the meaning of the California Labor Code) of Defendants.

21  
22 8. Plaintiff JUDSON LERTZMAN (hereinafter Plaintiffs JUDSON  
23 LERTZMAN and KENNETH JOHN LODGE are collectively referred to as: “MESSRS.  
24 LODGE AND LERTZMAN” or “PLAINTIFFS”) is an individual who resides and, at all  
25 relevant times during the events alleged herein, resided in Ventura County. Plaintiff JUDSON  
26 LERTZMAN was, at all relevant times mentioned herein, an “employee” (within the  
27 meaning of the California Labor Code) of Defendants.  
28

1           9.     PLAINTIFFS are informed and believe, and thereon allege, that  
2 defendant U. S. REMODELERS, INC. is and, at all times mentioned herein, was a  
3 corporation or other business entity qualified to and doing business in the State of California.  
4 PLAINTIFFS are further informed and believe, and thereon allege, that U. S.  
5 REMODELERS, INC. is and was, at all relevant times mentioned herein, an “employer”  
6 within the meaning of the California Labor Code.

7  
8           10.    PLAINTIFFS are informed and believe, and thereon allege, that  
9 defendant U.S. HOME SYSTEMS, INC. is and, at all times mentioned herein, was a  
10 corporation or other business entity qualified to and doing business in the State of California.  
11 PLAINTIFFS are further informed and believes and thereon allege, that defendant U.S.  
12 HOME SYSTEMS, INC. is and was, at all relevant times mentioned herein, an “employer”  
13 within the meaning of the California Labor Code.

14  
15           11.    PLAINTIFFS are informed and believe, and thereon allege, that  
16 defendant U. S. REMODELERS, INC. is either a wholly owned subsidiary or division of  
17 defendant U.S. HOME SYSTEMS, INC. and that defendants U.S. HOME SYSTEMS, INC.  
18 and U. S. REMODELERS, INC. have common management, centralized control of labor  
19 relations, common ownership and financial control, overlapping employees and interrelated  
20 operations such that these entities operated as a single, integrated enterprise with regard to  
21 the employment of PLAINTIFFS. Alternatively, PLAINTIFFS are informed and believe and  
22 thereon alleges defendants U. S. REMODELERS, INC. and U.S. HOME SYSTEMS, INC.  
23 were their joint employers. (For convenience, U. S. REMODELERS, INC. and U.S. HOME  
24 SYSTEMS, INC. shall hereinafter collectively be referred to as “DEFENDANTS” or the  
25 “COMPANY”).

26  
27           12.    The true names and capacities, whether corporate, associate, individual  
28 or otherwise of defendants DOES 1 through 75, inclusive, are unknown to PLAINTIFFS,

1 who therefore sue said defendants by such fictitious names. Each of the defendants  
2 designated herein as a DOE is negligently or otherwise legally responsible in some manner  
3 for the events and happenings herein referred to and caused injuries and damages  
4 proximately thereby to PLAINTIFFS, as herein alleged. PLAINTIFFS will file a Doe  
5 Amendment(s) and/or seek leave of Court to amend this Complaint to show the true names  
6 and capacities of the DOE defendants when the same have been ascertained.

7  
8 13. At all times mentioned herein, defendants, and each of them, were the  
9 agents, representatives, employees, successors and/or assigns, each of the other, and at all  
10 times pertinent hereto were acting within the course and scope of their authority as such  
11 agents, representatives, employees, successors and/or assigns.

### 12 13 ALLEGATIONS

14 14. The Home Depot contracted with DEFENDANTS to provide sales and  
15 installation services to home owners on a wide-variety of the products offered for sale by The  
16 Home Depot including, for example, kitchen cabinet refacing, bath cabinet refacing, acrylic  
17 bath tub/wall and shower surround refacing, and deck installation (the "Sales and Installation  
18 Services").

19  
20 15. As part of the contractual relationship between The Home Depot  
21 and DEFENDANTS, employees of DEFENDANTS were held out to the general public as  
22 employees of The Home Depot. Among other things, employees of DEFENDANTS were  
23 required to work out of The Home Depot stores, identify themselves as The Home Depot  
24 employees by, among other things, wearing The Home Depot clothing (clothing that they  
25 were required to buy from The Home Depot and for which they were not reimbursed in  
26 violation of Labor Code Sections 450 and 2802), hand out business cards with The Home  
27 Depot insignia and logo (business cards that they were required to buy from The Home  
28 Depot and/or off of a link on DEFENDANTS' website and for which they were not

1 reimbursed in violation of Labor Code Sections 450 and 2802), utilize The Home Depot  
2 materials during their sales presentations to consumers, enter into The Home Depot sales  
3 contracts with consumers, and sending out Thank You Note Cards with The Home Depot  
4 insignia and logo (Thank You Note Cards that they were required to buy from The Home  
5 Depot and/or off of a link on DEFENDANTS' website and for which they were not  
6 reimbursed in violation of Labor Code Sections 450 and 2802). In addition to the foregoing  
7 expenses, DEFENDANTS failed to reimburse PLAINTIFFS for many other expenses that  
8 they incurred as a direct consequence of discharging their duties and/or obeying the  
9 directions of DEFENDANTS.

10  
11           16. In connection with its sales and installation services, DEFENDANTS  
12 developed policies and practices requiring that its employees "insure" the company against  
13 business losses that might otherwise occur during such transactions by deducting such losses  
14 from the employees' earned commissions. These policies and practices meant that the Sales  
15 and Installation Services process began with an initial inquiry from a customer, followed by a  
16 home visit by one of DEFENDANTS' employees (the "Sales Associate"). During the home  
17 visit, the Sales Associate would assess the customer's needs by suggesting the appropriate  
18 products and taking measurements in order to, ostensibly, requisition the correct amount of  
19 product and provide a proper price for the Sales and Installation Services that were to be  
20 rendered by DEFENDANTS.

21  
22           17. The Sales Associate would generate a total sale amount, based in large  
23 part on the amount and type of product being sold. The amount of product would correlate to  
24 the measurements and assessments taken by the Sales Associate during the home visit.

25  
26           18. Upon agreement, the services to be rendered and the total amount of the  
27 sale would be contractually memorialized, signed and dated by the customer and the Sales  
28 Associate (the "Contract"). The customer would then be required to immediately tender a

1 deposit equivalent to approximately ten percent of the total sales price.

2  
3 19. Upon the customer's execution of the contract and his or her completion  
4 of any related documentation, the Sales Associate performed all duties necessary to earn his  
5 or her commission.

6  
7 20. Shortly after the Contract is signed, DEFENDANTS would dispatch  
8 another employee known as a Measurement Technician ("Measure Tech") to the customer's  
9 home. The Measure Tech's purpose is to verify and correct the measurements taken by the  
10 Sales Associate, ostensibly to ensure that the proper amount of product is being ordered and  
11 that any discrepancies can be corrected prior to commencement of the installment process.

12  
13 21. The remainder of the total amount of sale is due prior to the start of  
14 installation.

15  
16 22. Based upon the data provided by the Sales Associate and the Measure  
17 Tech, DEFENDANTS generate two sales prices. The first sales price, known as the  
18 "Contract Price," is the total amount of the sale as referenced in the Contract between  
19 Defendants and the customer. This amount is based on the Sales Associate's estimate of the  
20 total cost for the Sales and Installation Services. The Contract Price is the actual amount of  
21 money that the customer is contractually obligated to pay DEFENDANTS for the Sales and  
22 Installation Services. The second sales price, known as the "Target Selling Price" refers to  
23 the actual cost (including the profit that DEFENDANTS wanted to earn) for the Sales and  
24 Installation Services. The "Target Selling Price" is based on the Measure Tech's final  
25 determination of the cost necessary to complete the Sales and Installation Services.

26  
27 23. Notwithstanding the actual amount of the Contract Price, the Sales  
28 Associate only receives a commission for the Sales and Installation Services performed by

1 DEFENDANTS based on a portion of the lower amount of the Contract Price versus the  
2 Target Selling Price.

3  
4 24. In the event that the Target Selling Price is more than the Contract Price,  
5 the DEFENDANTS typically took an unlawful deduction from the Contract Price *prior to*  
6 computing the Sales Associate's commission and then the DEFENDANTS took another  
7 unlawful deduction after determining the commission amount. By this policy and practice,  
8 DEFENDANTS made the Sales Associates "insure" the company against business losses by  
9 deducting such losses from the employees' earned commissions. For example, if the  
10 Contract Price is \$10,000.00 and the Target Selling Price is \$10,200.00, DEFENDANTS  
11 compute the Sales Associate's commission as follows:

- 12 A. First, DEFENDANTS take the \$10,000.00 Contract Price and  
13 unlawfully subtract a \$250.00 "Administration" or "Permit" Fee.  
14 This yields \$9,750.00.
- 15 B. Second, DEFENDANTS multiply the \$9,750.00 by the  
16 commission percentage (typically 9%). This yields a  
17 Commission of \$877.50.
- 18 C. Third, DEFENDANTS deduct from the \$877.50 Commission the  
19 difference between the Contract Price and the Target Selling  
20 Price (\$200.00) to yield a commission to the Sales Representative  
21 of \$677.50.
- 22 D. In this case, DEFENDANTS unlawfully required that its Sales  
23 Associate "insure" the company against a \$200.00 business loss  
24 by deducting the \$200.00 loss from the Sales Associate's earned  
25 commission.

26  
27 25. In the event that the Target Selling Price is the same as or less than the  
28 Contract Price, the DEFENDANTS typically took an unlawful deduction from the Contract



1 Price *prior to* computing the Sales Associate's commission. That is, prior to calculating the  
2 Sales Associates' commissions, DEFENDANTS typically deducted \$250.00 – referred to as  
3 an "Administration" or "Permit" fee. For example, if the Contract Price is \$10,000.00 and  
4 the Target Selling Price is \$10,000.00 or more, DEFENDANTS compute the Sales  
5 Associate's commission as follows:

6                   A.     First, DEFENDANTS take the \$10,000.00 Contract Price and  
7                             then unlawfully subtract a \$250.00 "Administration" or "Permit"  
8                             Fee. This yields \$9,750.00.

9                   B.     Second, DEFENDANTS multiply the \$9,750.00 by the  
10                            commission percentage (typically 9%). This yields a  
11                            Commission to the Sales Representative of \$877.50.

12  
13                   26.     Despite having calculated the exact amount that the Sales  
14     and Installation Services will cost, DEFENDANTS fail to modify the Contract Price or  
15     implement a change order. Instead, DEFENDANTS routinely either (a) over-charge the  
16     customer for services that are not being rendered (DEFENDANTS do not inform their  
17     customers of any difference between the Contract Price and the Target/Actual Selling Price,  
18     nor do they refund such difference to the customer); or (b) illegally deduct the difference  
19     between the lower Contract Price and the higher Target/Actual Selling Price from the Sales  
20     Associate's Commission and thereby make the Sales Associate the "insurer" against business  
21     losses. A true and correct copy of DEFENDANTS' "Sales Associate Commission  
22     Compensation Plan-All Home Depot Markets – All Products" is attached hereto as Exhibit  
23     "A."

24  
25                                   **PLAINTIFF'S FACTUAL ALLEGATIONS**

26                   27.     On or about August 14, 2006, plaintiff LODGE began employment with  
27     DEFENDANTS as a Sales Representative.

1           28. As a condition of employment, plaintiff LODGE was required to sign a  
2 Sales Associate Commission Compensation Plan that, as detailed above, contained  
3 provisions that violated California's labor laws. Among other things, DEFENDANTS made  
4 unlawful deductions – typically referred to as “Administration” or “Permit” fees – from the  
5 Contract Price and/or the Target Selling Price used to calculate his commissions. In an  
6 additional effort to insure themselves against any business losses, DEFENDANTS also  
7 unlawfully deducted the difference between the lower Contract Price and the higher  
8 Target/Actual Selling Price from his commissions.

9  
10           29. As a further condition of employment, DEFENDANTS required  
11 plaintiff LODGE, in violation of Labor Code Sections 450 and 2802, to purchase clothing  
12 with The Home Depot logo on it from The Home Depot and DEFENDANTS did not  
13 reimburse plaintiff LODGE for such expenditures. DEFENDANTS also failed to reimburse  
14 plaintiff Lodge for other expenses that he incurred as a direct consequence of discharging his  
15 duties and/or obeying the directions of DEFENDANTS.

16  
17           30. On or about February 3, 2007, plaintiff LODGE ceased employment  
18 with DEFENDANTS.

19  
20           31. In violation of Labor Code Section 203, DEFENDANTS did not pay  
21 plaintiff LODGE his total wages and unreimbursed expenses owed following the termination  
22 of his employment. Hence, a waiting time penalty, in addition to the wages owed, in the  
23 amount equal to thirty days' of his total wages is due to plaintiff LODGE.

24  
25           32. On or about April 2004, plaintiff LERTZMAN began employment with  
26 DEFENDANTS as a Sales Representative.

27 ///

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1           33. As a condition of employment, plaintiff LERTZMAN was required to  
2 sign a Sales Associate Commission Compensation Plan that, as detailed above, contained  
3 provisions that violated California's labor laws. Among other things, DEFENDANTS made  
4 unlawful deductions – typically referred to as “Administration” or “Permit” fees – from the  
5 Contract Price and/or the Target/Actual Selling Price used to calculate his commissions. In  
6 an additional effort to insure themselves against any business losses, DEFENDANTS also  
7 unlawfully deducted the difference between the lower Contract Price and the higher  
8 Target/Actual Selling Price from his commissions.

9  
10           34. As a further condition of employment, plaintiff LERTZMAN was  
11 required, in violation of Labor Code Sections 450 and 2802, to purchase clothing with The  
12 Home Depot logo on it from The Home Depot and DEFENDANTS did not reimburse  
13 plaintiff Lodge for such expenditures. DEFENDANTS also failed to reimburse plaintiff  
14 LERTZMAN for other expenses that he incurred as a direct consequence of discharging his  
15 duties and/or obeying the directions of DEFENDANTS.

16  
17           35. On or about December 2006, plaintiff LERTZMAN ceased employment  
18 with DEFENDANTS.

19  
20           36. In violation of Labor Code Section 203, DEFENDANTS did not pay  
21 plaintiff LERTZMAN his total wages and unreimbursed expenses owed following the  
22 termination of his employment. Hence, a waiting time penalty, in addition to the wages  
23 owed, in the amount equal to thirty days' of his total wages is due to plaintiff LERTZMAN.

24  
25                           **CLASS ACTION ALLEGATIONS**

26           37. MESSRS. LODGE AND LERTZMAN bring this action on behalf of  
27 themselves and all others similarly situated as a class action pursuant to California Code of  
28 Civil Procedure Section 382. The class that MESSRS. LODGE AND LERTZMAN seek to

1 represent is composed of and defined as follows: (a) All current and former California  
2 employees of DEFENDANTS who were paid pursuant to the Companies' Sales Associate  
3 Commission Compensation Plan; and (b) All current and former California employees of  
4 DEFENDANTS whom DEFENDANTS failed to reimburse for the expenses they incurred as  
5 a direct consequence of discharging their duties and/or obeying the directions of  
6 DEFENDANTS.

7  
8 38. The members of the class are so numerous that joinder of all members  
9 would be unfeasible and not practicable. The membership of the entire class is unknown to  
10 PLAINTIFFS at this time, however, it is estimated that the entire class is greater than 100  
11 individuals, but the identity of such membership is readily ascertainable via inspection of the  
12 personnel records and other documents maintained by DEFENDANTS.

13  
14 39. There are common questions of law and fact as to the class which  
15 predominate over questions affecting only individual members including, without, limitation:

- 16  
17 A. Whether DEFENDANTS' policy and practice of deducting an  
18 "administration fee" from the sales price *prior* to calculating its Sales  
19 Representatives' commissions is a unlawful;  
20  
21 B. Whether DEFENDANTS' policy and practice of deducting a "permit  
22 fee" from the sales price *prior* to calculating its Sales Representatives'  
23 commissions is unlawful;  
24  
25 C. Whether DEFENDANTS' policy and practice of subtracting the  
26 difference between the Contract Price and Target Selling Price (if the  
27 Contract Price is lower than the Target Selling Price) from its Sales  
28 Representatives' commissions is unlawful;

1 D. Whether DEFENDANTS' policy and practice of failing to reimburse its  
2 Sales Representatives for the expenses they incurred as a direct  
3 consequence of discharging their duties and/or obeying the directions of  
4 DEFENDANTS is unlawful;

5  
6 E. Whether DEFENDANTS' conduct is unlawful and/or unfair in violation  
7 of California Business and Professions Code Section 17200 *et. seq.*; and  
8

9 F. The appropriate measure of damages/restitution.  
10

11 40. The claims of MESSRS. LODGE AND LERTZMAN pled as class  
12 action claims are typical of the claims of all members of the class. MESSRS. LODGE AND  
13 LERTZMAN, as representative parties, will fairly and adequately protect the interests of the  
14 class by vigorously pursuing this suit through their attorneys who are skilled and experienced  
15 in handling matters of this type.  
16

17 41. A class action is superior to other available means for the fair and  
18 efficient adjudication of this dispute. The damages suffered by each individual class member  
19 likely will be relatively small, especially given the burden and expense of individual  
20 prosecution of the complex litigation necessitated by DEFENDANTS' conduct. Thus, it  
21 would be virtually impossible for the class members individually to effectively redress the  
22 wrongs done to them. Moreover, even if the class members could afford individual actions,  
23 it would still not be preferable to class wide litigation. Individualized actions present the  
24 potential for inconsistent or contradictory judgments. By contrast, a class action presents far  
25 fewer management difficulties and provides the benefits of single adjudication, economies of  
26 scale, and comprehensive supervision by a single court.

27 ///

28 ///

1           42.     PLAINTIFFS reserve the right to modify or amend the class definition  
2 as appropriate, including for the purpose of conforming with discovery, and/or to seek  
3 certification of subclasses and or limited issues pursuant to California Rule of Court  
4 3.765(b).

5  
6                                   **FIRST CAUSE OF ACTION**

7     **FAILURE TO PAY WAGES IN VIOLATION OF LABOR CODE SECTIONS 200 ET.**

8                                   **SEQ**

9                                   (Against All Defendants)

10  
11           43.     PLAINTIFFS reallege and incorporates by reference paragraphs 10  
12 through 35, as though set forth in full.

13  
14           44.     As alleged herein and in violation of California Labor Code §§ 200 *et.*  
15 *seq.*, DEFENDANTS, and each of them, violated California law by:

- 16  
17           A.     Deducting an “administration fee” from the sales price *prior* to  
18 calculating its Sales Representatives’ commissions;  
19  
20           B.     Deducting a “permit fee” from the sales price *prior* to calculating its  
21 Sales Representatives’ commissions;  
22  
23           C.     Deducting the difference between the Contract Price and Target Selling  
24 Price (if the Contract Price is lower than the Target Selling Price) from  
25 its Sales Representatives’ commissions; and  
26  
27           D.     Requiring its Sales Representatives to purchase uniforms and not  
28 reimbursing its Sales Representatives for such purchases.

1 E. Requiring its Sales Representatives to purchases goods from off of a  
2 link on its website and/or from The Home Depot and not reimbursing its  
3 Sales Representatives for such purchases.

4  
5 F. Failing to pay waiting time penalties to those Sales Representatives who  
6 did not receive their full commissions and/or the reimbursement of their  
7 expenses on or before the date their employment was terminated as  
8 required by Labor Code Section 203.

9  
10 45. By the aforesaid acts and omissions of DEFENDANTS, and each of  
11 them, PLAINTIFFS have been directly and legally caused to suffer actual damages including,  
12 but not limited to, loss of earnings, attorneys' fees, costs of suit and other pecuniary loss not  
13 presently ascertained.

14  
15 46. PLAINTIFFS are informed and believes and thereon alleges that the  
16 DEFENDANTS, and each them, by engaging in the aforementioned acts and/or in  
17 authorizing and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive  
18 and despicable and acted with wilful and conscious disregard of the rights, welfare and safety  
19 of PLAINTIFFS, thereby justifying the award of punitive and exemplary damages in an  
20 amount to be determined at trial.

21  
22 47. As a result of defendants' failure to pay her wages/fringe benefits as  
23 alleged herein, PLAINTIFFS are entitled to interest on their unpaid wages from the date they  
24 were due as provided in Section 218.6 of the California Labor Code

25  
26 48. As a result of DEFENDANTS' conduct as alleged herein, PLAINTIFFS  
27 are entitled to reasonable attorneys' fees and costs of suit as provided in Section 218.5 of the  
28 California Labor Code and California Code of Civil Procedure Section 1021.5.

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violation of Labor Code Sections 450 and 2802).

- D. **Fax Machine and Laser/Ink Jet Cartridges** - employees of DEFENDANTS were required to purchase a fax machine and laser/ink jet cartridges so that they could use the fax machine to communicate with DEFENDANTS. DEFENDANTS did not reimburse the employees for this expense.
- E. **Copy Machine/Ink Cartridges and/or Copying Costs** - employees of DEFENDANTS were required to either purchase a copy machine and/or spend money to make copies of documents so that they could use it to make copies for DEFENDANTS. DEFENDANTS did not reimburse the employees for either the expense of the copy machine purchase (or the ink cartridges) or the expenses incurred in making the copies.
- F. **Computer and Internet Connection** - employees of DEFENDANTS were required to purchase a computer and maintain an internet connection so that they could use it to communicate with DEFENDANTS. DEFENDANTS did not reimburse the employees for this expense.
- G. **Cell Phone and Cellular Service** - employees of DEFENDANTS were required to purchase a cell phone and use the cell phone to communicate with DEFENDANTS and DEFENDANTS' customers. DEFENDANTS did not reimburse the employees for these expenses.
- H. **Overnight Delivery Service Costs** - employees of DEFENDANTS used overnight delivery services such as FedEx in completing their job duties and responsibilities. DEFENDANTS did not reimburse the employees for this expense.
- I. **Pens, Paper, Envelopes, and Other Office Supplies** - employees of DEFENDANTS were required to purchase pens, paper, envelopes, and other offices supplies for use in completing their job duties and

responsibilities. DEFENDANTS did not reimburse the employees for these expenses.

51. By the aforesaid acts and omissions of defendants, and each of them, PLAINTIFFS have been directly and legally caused to suffer actual damages including, but not limited to, unreimbursed expenditures, attorneys' fees, and costs of suit.

52. PLAINTIFFS are informed and believes and thereon alleges that the DEFENDANTS, and each them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and acted with wilful and conscious disregard of the of PLAINTIFFS, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

53. Pursuant to Labor Code Section 2802, PLAINTIFFS are entitled to reasonable attorneys' fees and costs of suit.

**THIRD CAUSE OF ACTION**  
**UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF BUSINESS AND**  
**PROFESSION CODE SECTIONS 17200 ET. SEQ.**

(Against All Defendants)

54. PLAINTIFFS reallege and incorporate by reference paragraphs 8 through 26, 28, 34, 40, 46, 52, 58, 62, and 65 through 68 as though set forth in full.

55. DEFENDANTS' unlawful and unfair practices as alleged herein violate California law and constitute ongoing and continuous unfair business practices within the meaning of Business and Professions Code §17200. Such practices include, but are not

1 limited to, DEFENDANTS' unlawful and/or unfair policy and practice of: (1) deducting an  
2 "administration fee" from the sales price prior to calculating its Sales Representatives'  
3 commissions; (2) deducting a "permit fee" from the sales price prior to calculating its Sales  
4 Representatives' commissions; (3) subtracting the difference between the Contract Price and  
5 Target Selling Price (if the Contract Price is lower than the Target Selling Price) from its  
6 Sales Representatives' commissions; (4) requiring its Sales Representatives to purchase  
7 various goods (including uniforms, business cards, and Thank You Note Cards) from The  
8 Home Depot and/or off of a link on DEFENDANTS' website in violation of Labor Code  
9 Section 450 et. seq.; and (5) failing to reimburse its Sales Representatives for the expenses  
10 they incurred as a direct consequence of discharging their duties and/or obeying the  
11 directions of DEFENDANTS in violation of Labor Code Section 2802.

12  
13           56. By engaging in the aforementioned unfair business acts and  
14 practices, DEFENDANTS enriched themselves at the expense of PLAINTIFFS and gained  
15 an unfair advantage over their competitors.

16  
17           57. California Business and Professions Code §17200 prohibits unfair  
18 competition and unfair business practices, including, "any unlawful, unfair or fraudulent  
19 business act or practice . . . ." DEFENDANTS' conduct as specified herein, constitutes a  
20 violation of California Business and Professions Code §17200, et seq.

21  
22           58. As a result of DEFENDANTS' unfair business practices,  
23 DEFENDANTS' have reaped unfair benefits and illegal profits at the expense of  
24 PLAINTIFFS, the PLAINTIFF CLASS and members of the public. DEFENDANTS should  
25 be made to disgorge their ill-gotten gains and restore such monies to PLAINTIFFS and the  
26 PLAINTIFF CLASS.

27 \\\

28 \\\

1                   59.     DEFENDANTS' unfair business practices entitle PLAINTIFFS and the  
2 PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but not  
3 limited to, orders that the DEFENDANTS account for, disgorge and restore to PLAINTIFFS  
4 and the PLAINTIFF CLASS the compensation unlawfully withheld from them.  
5 Accordingly, PLAINTIFFS seek disgorgement of all profits resulting from these unlawful,  
6 unfair, and fraudulent business practices, restitution, and other appropriate relief as provided  
7 for by Business & Professions Code §17203. unfair business practices entitle PLAINTIFFS  
8 and the PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including  
9 but not limited to, orders that the DEFENDANTS account for, disgorge and restore to  
10 PLAINTIFFS and the PLAINTIFF CLASS the compensation unlawfully withheld from  
11 them. Accordingly, PLAINTIFFS seek disgorgement of all profits resulting from these  
12 unlawful, unfair, and fraudulent business practices, restitution, and other appropriate relief  
13 as provided for by Business & Professions Code §17203.

14  
15                                   **PRAYER FOR RELIEF**  
16

17                   WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS. and  
18 each of them, as follows:

- 19                   1.     That causes of action one through three may be maintained as a class  
20 action  
21                   2.     General damages in an amount to be proved at trial;  
22                   3.     For injunctive and equitable relief as to the Third Cause of Action,  
23 including an accounting of profits and restitution based on DEFENDANTS' unjust  
24 enrichment and unfair practices, according to proof;  
25                   4.     Punitive damages in an amount appropriate to punish DEFENDANTS  
26 and to make an example of them to the community;  
27                   5.     Pursuant to Labor Code Section 203, a waiting time penalty, in addition  
28 to the wages owed, in the amount equal to thirty days' of PLAINTIFFS' total wages;

1                   6.     Injunctive relief pursuant to Labor Code Section 1194.5 and/or as  
2 otherwise appropriate;

3                   7.     Reasonable attorneys fees pursuant to Labor Code Section 218.5, Labor  
4 Code Section 2802, and California Code of Civil Procedure Section 1021.5 and other  
5 applicable provisions of law;

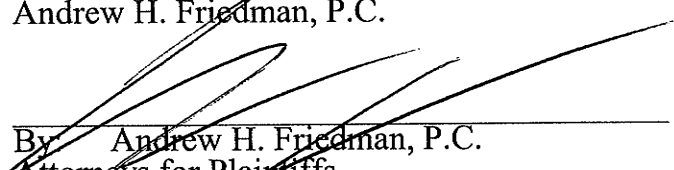
6                   8.     Costs of suit;

7                   9.     Interest; and

8                   10.    For such other relief as the Court deems proper.

9  
10 DATED: August 2, 2007

11  
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demand a trial by jury.

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