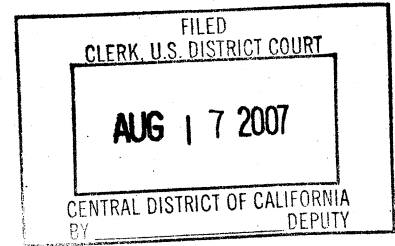


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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiffs,

vs.

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

Defendants.

CV07-05409 MRP (SSx)

CASE NO.: ***

**DEFENDANTS U.S.
REMODELERS, INC. AND U.S.
HOME SYSTEMS, INC.'S NOTICE
OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)
(DIVERSITY)**

DISCOVERY CUT-OFF: NONE
MOTION CUT-OFF: NONE
TRIAL DATE: NONE

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, TO ALL PARTIES
HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants U.S. REMODELERS, INC. &
U.S. HOME SYSTEMS, INC. ("Defendants"), through undersigned counsel, hereby
remove the above-captioned action from the Superior Court of the State of
California in and for the County of Los Angeles, to the United States District Court

1 for the Central District of California, pursuant to 28 U.S.C. §§1332, 1441, 1446
2 and 1453, and respectfully state:

3 1. On or about July 3, 2007, KENNETH JOHN LODGE and JUDSON
4 LERTZMAN, individually and on behalf of all others similarly situated (hereinafter
5 "Plaintiffs") commenced this putative class action against the Defendants by filing a
6 Class Action Complaint ("Complaint") in the Superior Court of the State of
7 California in and for the County of Los Angeles bearing case number BC 373716.
8 A first amended complaint was filed on August 2, 2007.

9 2. As more fully set out below, this case is properly removed to this Court
10 pursuant to 28 U.S.C. §1441 because Defendants has satisfied the procedural
11 requirements for removal and this Court has subject matter jurisdiction over this
12 action pursuant to 28 U.S.C. §1332.

13 **I. DEFENDANTS HAVE SATISFIED THE PROCEDURAL**
14 **REQUIREMENTS FOR REMOVAL.**

15 3. Defendants have obtained information that Plaintiffs assert they served
16 Defendants with the Complaint on July 20, 2007. For purposes of removal only,
17 Defendants will not object to Plaintiffs' assertion. Accordingly, this Notice of
18 Removal is timely filed pursuant to 28 U.S.C. §1446(b).

19 4. Pursuant to the recently enacted Class Action Fairness Act, Defendants
20 need not obtain the consent of any other Defendants to remove this action. *See* 28
21 U.S.C. 1453(b).

22 5. The Superior Court of the State of California in and for the County of
23 Los Angeles is located within the Central District of California. Therefore, venue is
24 proper pursuant to 28 U.S.C. §89(c) because it is the "district and division
25 embracing the place where such action is pending." *See* 28 U.S.C. §1441(a).

26 6. No previous application has been made for the relief requested herein.

27 7. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, and
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orders served upon the Defendants is attached. Defendants include a copy of the First Amended Complaint (FAC) with Summons, a copy of the Complaint with Summons, and a copy of the notice of Case Management Conference, attached as Exhibits "A", "B", and "C," respectively. Defendants also include a copy of the Order Denying Complex Designation, Objections thereto by Plaintiffs, attached as Exhibits "D" and "E," respectively. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served upon Plaintiffs' counsel as well as filing a copy with the clerk of the Superior Court of the State of California in and for the County of Los Angeles.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION UNDER 28 U.S.C. §§1332 AND 1441.

8. This case is subject to removal pursuant to the recently enacted Class Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.) ("CAFA").

9. As set forth below, this is a putative class action in which: (1) there are 100 or more members in the Plaintiffs' proposed class; (2) at least some members of the proposed class have a different citizenship from some Defendants; and (3) the claims of the proposed class members potentially could exceed the sum or value of \$5,000,000 in the aggregate. Thus, this court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d).

A. Class Action Consisting of More Than 100 Members

10. In their Complaint, Plaintiffs purport to represent a statewide class of "(a) all current and former California employees of Defendants who were paid pursuant to Companies' Sales Associate Commission Compensation Plan; and (b) all current and former California employees of Defendants whom Defendants failed to reimburse for the expenses they incurred as a direct consequence of discharging their duties and/or obeying the directions of Defendants." (FAC, ¶37.)

1 11. Plaintiffs assert that the class is so numerous and estimated to be
2 greater than "100 individuals." (FAC, ¶38.) Based on these and other allegations,
3 the aggregate number of class members of all proposed Plaintiffs classes is
4 obviously greater than 100 for purposes of 28 U.S.C. 1332(d)(5)(B).

5 **B. Diversity of Citizenship**

6 12. Plaintiffs are residents of the State of California. (FAC, ¶8.) Plaintiffs
7 do not allege any alternative state of residence. Accordingly, upon information and
8 belief, California is the state in which Plaintiffs are domiciled and, therefore, the
9 state of which Plaintiffs are citizens.

10 13. Defendants are, and were at the time Plaintiffs commenced this action,
11 corporations organized under the laws of the State of Delaware with their principal
12 place of business at 405 State Highway 121 Bypass, Building A, Suite 250,
13 Lewisville, Texas 75067, and therefore, are citizens of the United States for
14 purposes of determining diversity. 28 U.S.C. §1332(c)(1). (See FAC, proof of
15 service).

16 14. Thus, at least one proposed class member and one Defendant are
17 diverse, such that diversity exists to invoke federal jurisdiction.

18 **C. The Amount-In-Controversy Requirement Is Satisfied.**

19 15. Plaintiffs in this case allege that Defendants failed to properly
20 compensate its sales associates according to state law and also failed to reimburse
21 them for expenses incurred as a result of the sales associates' discharge of their
22 duties. This practice allegedly resulted in an unjust enrichment to Defendants and a
23 competitive advantage over all others. Plaintiffs fail to specifically allege the
24 particular amount that each potential class member may have lost as a result of the
25 alleged conduct, but Plaintiffs seek the recovery of general damages, punitive
26 damages, waiting time penalties, attorneys fees', interest, and injunctive relief
27 including restitution. (FAC, Prayer, pp. 20-21).

1 16. Plaintiffs allege three separate claims: Failure to Pay Wages In
2 Violation of Labor Code, Sections 200 et seq. (First Cause of Action), violation of
3 Labor Code, Section 2802 (Second Cause of Action), and Unfair Business Acts and
4 Practices In Violation of Business and Professions Code Sections 17200, *et seq.*
5 (Third Cause of Action). Based on these allegations, Plaintiffs seek several forms
6 of relief, including: compensatory damages, injunctive relief, attorneys' fees,
7 prejudgement interest, and "such other relief as the Court deems proper." (FAC,
8 Prayer, pp. 20-21).

9 17. The claims of the individual class members in a class action are
10 aggregated to determine if the amount in controversy exceeds the sum of value of
11 \$5,000,000. *See* 28 U.S.C. 1332(d)(6). Under this standard, Plaintiffs' claims sum
12 up to meet this jurisdictional threshold.

13 18. First, Plaintiffs allege that Defendants' conduct would entitle the class
14 to punitive damages which may multiply any reasonable figure to more than
15 \$50,000 per class member. On this ground alone, the \$5 million threshold is
16 satisfied. As an additional punitive request, Plaintiffs' seek waiting time penalties
17 pursuant to Labor Code, Section 203. Even assuming that the class members made
18 only \$8 per hour, they could potentially be entitled to up to an additional \$1,920.00
19 each simply for not being deprived of \$1 in actual calculable compensation at the
20 time of separation.

21 19. Second, Plaintiffs in this action seeks compensatory damages,
22 including but not limited to interest and attorneys' fees. The value of these
23 damages in the aggregate could be extensive for class action litigation.

24 20. Third, Plaintiffs seek unspecified injunctive relief, including an
25 accounting and restitution. As CAFA's legislative history makes clear, the value of
26 any injunctive relief sought by the Plaintiffs is calculated from the perspective of
27 the Plaintiffs *or the Defendants*. *See, e.g.,* S. REP. 109-14, at 42 (2005) ("the
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1 Committee intends that a matter be subject to federal jurisdiction under [28 U.S.C.
2 1332(d)(6)] if the value of the matter in litigation exceeds \$5,000,000 either from
3 the viewpoint of the Plaintiffs or the viewpoint of the Defendants, and regardless of
4 the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)").
5 Moreover, since CAFA explicitly requires the aggregation of claims in class actions
6 for determining the amount in controversy, the pre-CAFA concern "that assessing the
7 amount in controversy from the defendant's perspective was tantamount to aggregating damages":
8 is no longer relevant. *Id.* at 43. Here, it is clear given the size of the proposed class
9 that any injunctive relief would cost the Defendants more than \$5 million.
10 Accordingly, the jurisdictional threshold is satisfied on this ground as well.

11 21. Finally, CAFA's legislative history also makes clear that doubts
12 regarding the maintenance of interstate class actions in state or federal court should
13 be resolved in favor of federal jurisdiction. *See, e.g.,* S. REP. 109-14, at 43
14 ("Overall, new section 1332(d) is intended to expand substantially federal court
15 jurisdiction over class actions. Its provisions should be read broadly, with a strong
16 preference that interstate class actions should be heard in a federal court if properly
17 removed by any Defendants."), *Id.* at 35 (The intent of CAFA "is to strongly favor
18 the exercise of federal diversity jurisdiction over class actions with interstate
19 ramifications."); *Id.* at 27 ("The Committee believes that the federal courts are the
20 appropriate forum to decide most interstate class actions because these cases
21 usually involve large amounts of money and many Plaintiffs, and have significant
22 implications for interstate commerce and national policy.").

23 **III. EVEN IF CAFA DOES NOT APPLY, REMOVAL IS PROPER**
24 **BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION**
25 **PURSUANT TO 28 U.S.C. §§1332 AND 1441.**

26 22. Should the Court hold that this action is not removable pursuant to
27 CAFA, the action is still removable based on simple diversity between the Plaintiffs
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1 and Defendants. Plaintiffs are residents of the State of California. (FAC, ¶8.)
2 Plaintiffs do not allege any alternative state of residence. Accordingly, upon
3 information and belief, California is the state in which Plaintiffs are domiciled and,
4 therefore, the state of which Plaintiffs are citizens.

5 23. Defendants are, and were at the time Plaintiffs commenced this action,
6 corporations organized under the laws of the State of Delaware with their principal
7 place of business at 405 State Highway 121 Bypass, Building A, Suite 250,
8 Lewisville, Texas 75067, and therefore, are citizens of the United States for
9 purposes of determining diversity. 28 U.S.C. §1332(c)(1); FAC, Proof of Service.

10 24. Thus, for purposes of removal based on diversity of the parties, the
11 Plaintiffs and Defendants are from different states and are, thus, diverse.

12 25. Based on the number of potential class members alleged to be included
13 in the action and the claims asserted as forth in greater detail above, it is reasonable
14 to assume that the amount in controversy exceeds \$75,000. Accordingly, the
15 jurisdictional threshold is satisfied.

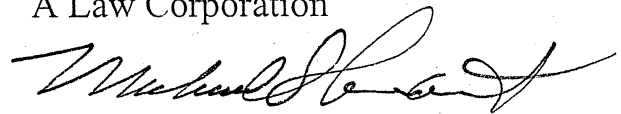
16 WHEREFORE, Defendants respectfully removes this action from the
17 Superior Court of the State of California in and for the County of Los Angeles,
18 bearing number BC 373716 to this Court pursuant to 28 U.S.C. §1441.

19
20 Respectfully Submitted,

21 DATED: August 16, 2007

LANDEGGER | BARON | LAVENANT
A Law Corporation

22
23 By:



24 MICHAEL S. LAVENANT
25 Attorneys for Defendants
U.S. REMODELERS, INC. and
26 U.S. HOME SYSTEMS, INC.
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