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**ORIGINAL FILED**

OCT 08 2004

**LOS ANGELES  
SUPERIOR COURT**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 BC322755

12 ALAN D. MCNAMARA, an individual; on  
13 his own behalf and on behalf of all others  
14 similarly situated, and as a private attorney  
15 general on behalf of the general public,

16 Plaintiff,

17 vs.

18 ANSCHUTZ ENTERTAINMENT GROUP,  
19 INC., a California corporation; and DOES 1  
20 through 100, inclusive,

21 Defendants.

CASE NO.

**CLASS ACTION**

**COMPLAINT FOR:**

1. **FAILURE TO PAY OVERTIME  
COMPENSATION IN  
VIOLATION OF CAL. LABOR  
CODE §§ 1194 AND 1198;**
2. **FAILURE TO PROVIDE REST  
BREAK PERIODS IN  
VIOLATION OF CAL. LABOR  
CODE §§226.7;**
3. **UNFAIR COMPETITION IN  
VIOLATION OF CAL. BUS. &  
PROF. CODE §17200 ET SEQ.;  
AND,**
4. **CONVERSION**

**DEMAND FOR JURY TRIAL**

1 All allegations in this Complaint are based upon information and belief except for those  
 2 allegations which pertain to the Plaintiff named herein and his counsel. Plaintiff's information and  
 3 belief are based upon, *inter alia*, the investigation conducted to date by Plaintiff and his counsel.  
 4 Each allegation in this complaint either has evidentiary support or is likely to have evidentiary  
 5 support after a reasonable opportunity for further investigation and discovery.  
 6

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over this action pursuant to C.C.P. §410.10. The action  
 9 is brought pursuant to C.C.P. §382, C.C.P. §1781 *et seq.*, the procedural provisions of Federal Rules  
 10 of Civil Procedure Rule 23 and Cal. Bus. & Prof. Code §§17200 *et seq.* Plaintiff brings this action  
 11 on his own behalf, on behalf of all persons within the class defined herein, and as a private attorney  
 12 general on behalf of the general public.  
 13

14 2. Venue is proper in this court pursuant to C.C.P. §§ 395 and 395.5 because the injuries  
 15 to the persons complained of herein occurred in the county of Los Angeles and because the  
 16 Defendant owned and operated ANSCHUTZ ENTERTAINMENT GROUP, INC. ("AEG"), in the  
 17 County of Los Angeles.

18 **CLASS DEFINITION**

- 19 3. The PLAINTIFF CLASS ("the CLASS") consists of the following persons:  
 20 "All current and/or former Team Leaders/Security Officers employed  
 21 by AEG who worked more than eight (8) hours in any given day  
 22 during the period October 6, 2000, to the present and who were not  
 23 paid overtime compensation pursuant to applicable *California Labor*  
*Code* requirements."  
 24 4. Plaintiff ALAN MCNAMARA was, at all time mentioned herein:  
 25 (a) An individual who resides in Glendale, County of Los Angeles, California;  
 26 (b) Employed by AEG as a Team Leader/Security Officer for various public  
 27 venues in California;  
 28 (c) Worked more than eight (8) hours in any given day and did not receive rest

1 break periods or overtime compensation.

2 5. The persons who comprise the CLASS are so numerous that joinder of all such  
3 persons is impracticable and the disposition of his claims will benefit the parties and the Court. The  
4 claims of the Plaintiff are typical of the claims of the CLASS which Plaintiff seeks to represent. The  
5 Plaintiff will fairly and adequately protect the interests of the CLASS which he seeks to represent.  
6 The Plaintiff does not have any interests which are antagonistic to the CLASS which he seeks to  
7 represent. Counsel for the Plaintiff are experienced, qualified and generally able to conduct complex  
8 CLASS action litigation.

10 6. This Court should permit this action to be maintained as a CLASS action pursuant  
11 to Cal. Civ. Proc. Code §382 because:

12 (a) The questions of law and fact common to the CLASS predominate over any  
13 question affecting only individual members;

14 (b) A CLASS action is superior to any other available method for the fair and  
15 efficient adjudication of the claims of the members of the CLASS;

16 (c) The members of the CLASS are so numerous that it is impractical to bring  
17 all members of the CLASS before the Court;

18 (d) Plaintiff, and the other members of the CLASS, will not be able to obtain  
19 effective and economic legal redress unless the action is maintained as a CLASS action;

20 (e) There is a community of interest in obtaining appropriate legal and equitable  
21 relief for the common law and statutory violations and other improprieties, and in obtaining adequate  
22 compensation for the damages and injuries for which Defendant AEG is responsible in an amount  
23 sufficient to adequately compensate the members of the CLASS for the injuries sustained;

24 (f) Without CLASS certification, the prosecution of separate actions by  
25 individual members of the CLASS would create a risk of:

26 (i) Inconsistent or varying adjudications with  
27 respect to individual members of the CLASS

1 which would establish incompatible standards  
2 of conduct for Defendant AEG; and/or

3 (ii) Adjudications with respect to the individual  
4 members which would, as a practical matter,  
5 be dispositive of the interests of other  
6 members not parties to the adjudications, or  
7 would substantially impair or impede their  
8 ability to protect their interests, including but  
9 not limited to the potential for exhausting the  
10 funds available from those parties who are, or  
11 may be, responsible Defendants; and,

12 (g) Defendant AEG has acted or refused to act on grounds generally applicable  
13 to the CLASS, thereby making final injunctive relief appropriate with respect to the CLASS as a  
14 whole.

15 **DEFENDANTS**

16 7. Representative PLAINTIFF is informed and believes, and based upon that  
17 information and belief alleges, that Defendant AEG is, and at all times herein mentioned was:

18 (a) A California corporation with its principal place of business in the County of  
19 Los Angeles, State of California;

20 (b) The employer of the Representative Plaintiff and the current and/or former  
21 employer of the putative CLASS members;

22 (c) Paid the Plaintiff and all CLASS members an hourly rate; and,

23 (d) Failed to provide rest break periods and pay overtime compensation during  
24 the CLASS period.

25 8. The true names and capacities, whether individual, corporate, partnership, associate  
26 or otherwise of Defendant Does 1 through 100, inclusive, are unknown to the PLAINTIFF CLASS  
27 who therefore sue these DEFENDANTS by such fictitious names pursuant to California Code of  
28 Civil Procedure §474. The PLAINTIFF CLASS will seek leave to amend this complaint to allege  
the true names and capacities of Does 1 through 100, inclusive, when they are ascertained.

1           9.       The PLAINTIFF CLASS is informed and believes, and based upon that information  
2 and belief alleges, that the DEFENDANTS named in this complaint, including Does 1 through 100,  
3 inclusive, are responsible in some manner for one or more of the events and happenings that  
4 proximately caused the injuries and damages hereinafter alleged.

5           10.       The PLAINTIFF CLASS is informed and believes, and based upon that information  
6 and belief alleges, that each of the DEFENDANTS, including Does 1 through 100, inclusive, in  
7 performing or omitting to perform the acts alleged hereinafter, was, at various times, acting within  
8 the course and scope of his or her employment, authority, or apparent authority as an employee,  
9 agent and/or representative of the other DEFENDANTS. The PLAINTIFF CLASS is further  
10 informed and believes, and based upon that information and belief alleges, that at various other times  
11 said DEFENDANTS, in performing or omitting to perform the acts alleged hereinafter, acted outside  
12 the course and scope of said employment, authority, or apparent authority, did not utilize or operate  
13 through any corporations or businesses, and were not engaged in any business activities whatsoever,  
14 but rather, were acting outside the realm of any business individually liable for all damages alleged  
15 herein, jointly and severally.

16           11.       The PLAINTIFF CLASS is informed and believes, and based upon that information  
17 and belief alleges, that each Defendant named in this complaint, including Does 1 through 100,  
18 inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves  
19 and entered into a combination and systemized campaign of activity to *inter alia* damage the  
20 PLAINTIFF CLASS and to otherwise consciously and/or recklessly act in derogation of the  
21 PLAINTIFF CLASS' rights, and the trust reposed by the PLAINTIFF CLASS in each of said  
22 DEFENDANTS, said acts being negligently and/or intentionally inflicted. Said conspiracy, and  
23 DEFENDANT concerted actions, were such that, to the PLAINTIFF CLASS' information and  
24 belief, and to all appearances, DEFENDANTS, and each of them, represented a unified body so that  
25 the actions of one DEFENDANT were accomplished in concert with, and with knowledge,  
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1 ratification, authorization and approval of each of the other DEFENDANTS.

2           12. The PLAINTIFF CLASS is informed and believes, and based upon that information  
3 and belief alleges, that each of the DEFENDANTS named in this complaint, including Does 1  
4 through 100, inclusive, are, and at all times mentioned herein was, the agent, servant and/or  
5 employee of each of the other DEFENDANTS and that each DEFENDANT was acting within the  
6 course of scope of his, her or its authority as the agent, servant and/or employee of each of the other  
7 DEFENDANTS. Consequently, all of the DEFENDANTS are jointly and severally liable to the  
8 PLAINTIFF CLASS for the damages sustained as a proximate result of their conduct.

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10 **THE CONDUCT**

11           13. Defendant AEG, owns various public venues throughout southern California. These  
12 venues are primarily engaged in providing the general public with access to the arts, entertainment  
13 and sporting events. In all, and on information and belief, Defendant AEG owns and operates "The  
14 Staples Center," "The Kodak Theater," "HealthSouth Training Center," "The Home Depot Center,"  
15 and the "Nokia Theater." Defendant AEG provides security services at the various venues.

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17           14. Plaintiff was hired by Defendant AEG in September, 2000. He was hired as a Team  
18 Leader/Security Officer. The job classifications of Team Leaders and Security Officers are  
19 interchangeable, as Team Leaders and Security Officers are primarily engaged in the exact same job  
20 duties.

21           15. Plaintiff would work an 8-hour (or greater) work shift at a particular venue and  
22 plaintiff would receive a payroll check directly from the particular venue. Plaintiff would then be  
23 instructed by Defendant AEG, to proceed to another venue to work an additional 8-hour (or greater)  
24 work shift. Plaintiff would then receive a payroll check from this second venue. By way of  
25 example, Plaintiff's first payroll check would be issued by "Staples Center" (one of AEG's venues)  
26 and the second payroll check would be issued by "The Kodak Theatre" (another of AEG's venues).

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1           16.     So on numerous occasions, plaintiff, and other CLASS members, would work at, for  
2 example, Staples Center for an 8-hour (or greater) work shift and then proceed to the Kodak Theatre  
3 and work another 8-hour (or greater) work shift. When plaintiff, and others, complained that they  
4 were entitled to overtime compensation in situations like the above-referenced example, they were  
5 told that the second shift was like “working two jobs for two different employers” and they were not  
6 entitled to overtime compensation.  
7

8           17.     In addition, Plaintiff and the class members were told and instructed that they were  
9 not to take rest break periods. The policy of Defendant AEG was, and continues to be, that a  
10 Security Officer engages in a rest break period as they patrol the various areas of the venues.  
11

12           18.     When Plaintiff complained about these conditions, and other unlawful conduct to  
13 Defendant AEG, he was met with inaction and the refusal of Defendant AEG to “change the  
14 system.”  
15

16           19.     Put simply, Defendant AEG operates to maximize profits at the expense of its  
17 employees and through multiple schemes which:

- 18                   (a)     deprive its employees of mandated rest break periods; and,
- 19                   (b)     require its employees to work more than 8 hours in a work day without  
20 receiving overtime compensation.

21           20.     Plaintiff, and other similarly situated employees, are entitled to unpaid overtime  
22 compensation and additional compensation for the failure of Defendant AEG to provide rest break  
23 periods, plus penalties, interest, and attorneys fees. In addition, treble damages are appropriate under  
24 Cal. Bus. & Prof. Code §17082.

25                   **FIRST CAUSE OF ACTION IN VIOLATION OF CAL. LABOR CODE**  
26                   **§§1194 AND 1198 FAILURE TO PAY OVERTIME COMPENSATION**

27                   **(By The PLAINTIFF CLASS and Against Defendant)**

28           21.     The PLAINTIFF CLASS realleges and incorporates by reference, as though fully set

1 forth herein, paragraphs 1 through 20, inclusive, of this complaint.

2 22. Cal. Labor Code §§1194 and 1198 provide that employees in California shall not be  
3 employed more than eight hours in any workday unless they receive additional compensation beyond  
4 their regular wages in amounts specified by law.

5 23. Cal. Labor Code §§1194 provides that an employee who has not been paid overtime  
6 compensation as required by Section 1198 may recover the unpaid balance of the full amount of such  
7 overtime compensation, together with costs of suit, penalties, interest thereon, and attorneys fees in  
8 a civil action.

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10 24. At all times relevant hereto, Plaintiff, and the member of the CLASS, have worked  
11 more than eight hours in a workday, as employees of Defendant AEG. Further, at all times relevant  
12 hereto, Plaintiff, and the members of the CLASS, have been paid on an hourly basis.

13 25. At all times relevant hereto, Defendant AEG, failed to pay to the PLAINTIFF CLASS  
14 overtime compensation for the hours they have worked in excess of the maximum hours permissible  
15 by law as required by Cal. Labor Code §§1194 and 1198.

16 26. By virtue of the DEFENDANTS unlawful failure to pay additional compensation  
17 to the PLAINTIFF CLASS for their overtime hours, the PLAINTIFF CLASS has suffered, and will  
18 continue to suffer, damages in amounts which are presently unknown to the PLAINTIFF CLASS  
19 but which exceed the jurisdictional limits of this Court, and which will be ascertained according to  
20 proof at trial.

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22 27. The PLAINTIFF CLASS are also entitled to seek and recover interest, penalties and  
23 reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§ 218.5 and 1194.

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25 **SECOND CAUSE OF ACTION FOR**

26 **FAILURE TO PROVIDE REST PERIODS**

27 **(By The PLAINTIFF CLASS and Against Defendant)**

28 28. The PLAINTIFF CLASS realleges and incorporates by reference, as though fully set

1 forth herein, paragraphs 1 through 27, inclusive, of this Complaint.

2 29. California law, as set forth in Cal. Labor Code §§226.7 and as refined by the IWC  
3 Wage Orders of the Industrial Welfare Commission, provides:

4 “(a) No employer shall require any employee to work during any . .  
5 . meal or rest period mandated by an applicable order of the Industrial  
6 Welfare Commission.

7 (b) If an employer fails to provide an employee a . . . rest period in  
8 accordance with an applicable order of the Industrial Welfare  
9 Commission, the employer shall pay the employee one additional  
hour of pay at the employee’s regular rate of compensation for each  
workday that the . . . rest period is not provided.”

10 See also, IWC Orders 4-2000, 4-2001, 4-2002, and 4-2003.

11 30. Plaintiff, and members of the CLASS, were not allowed to take rest break periods  
12 during their shifts. As far as Defendant AEG was concerned, the rest break periods were to be taken  
13 while Plaintiff, and members of the CLASS, were patrolling the venues at which they were working.  
14 This alternative violates the applicable IWC Wage Order.

15 31. During his employment with Defendant AEG, and within the applicable statute of  
16 limitations, Defendant AEG failed and refused to authorize, permit and provide Plaintiff, and the  
17 members of the CLASS, with rest periods as required by law. By virtue of the Defendants’ unlawful  
18 failure to authorize, permit and provide Plaintiff, and members of the CLASS, with rest break  
19 periods as required by law, the PLAINTIFF CLASS has suffered, and will continue to suffer,  
20 damages in amounts which are presently unknown to the PLAINTIFF CLASS but which exceed the  
21 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

22 **THIRD CAUSE OF ACTION FOR VIOLATION OF**

23 **CAL. BUS. & PROF. CODE §17200 ET SEQ.**

24 **(By the Plaintiff and Against Defendant)**

25 32. The PLAINTIFF CLASS realleges and incorporates by reference, as though fully set  
26 forth herein, paragraphs 1 through 31, inclusive, of this complaint.  
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1           33. This claim is brought by the Plaintiff, on behalf of himself, all persons similarly  
2 situated, and the general public.

3           34. Defendant AEG, is a "person" as that term is defined under Cal. Bus. & Prof.  
4 Code §17021.

5           35. Since October 6, 2000 and at all times relevant hereto, by and through the conduct  
6 described herein, Defendant AEG has engaged in unfair and unlawful practices, in violation of Cal.  
7 Bus. & Prof. Code §§17200 *et seq.*, and has thereby deprived the PLAINTIFF CLASS and all  
8 persons similarly situated, of fundamental rights and privileges guaranteed to all employees under  
9 the Cal. Labor Code.

10           36. By and through the unfair and unlawful business practices described herein,  
11 Defendant AEG has obtained valuable property, money and services from the Plaintiff and all  
12 persons similarly situated, and have deprived the Plaintiff, and all persons similarly situated, of  
13 valuable rights and benefits guaranteed by the law, all to his detriment.

14           37. All of the acts described herein as violations of, among other things, the *California*  
15 *Labor Code* and *Industrial Welfare Commission Wage Orders*, are unlawful and in violation of  
16 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby  
17 constitute unfair and unlawful business practices in violation of Cal. Bus. & Prof. Code §17200 *et*  
18 *seq.*

19           38. The Plaintiff, and all persons similarly situated, are entitled to, and do, seek such  
20 relief as may be necessary to restore to them the money and property which Defendant AEG has  
21 acquired, or of which the Plaintiff has been deprived, by means of the above-described unfair and  
22 unlawful business practices.

23           39. The Plaintiff, and all persons similarly situated, are further entitled to, and do, seek  
24 a declaration that the above-described business practices are unfair and unlawful and that an  
25 injunctive relief should be issued restraining Defendant AEG, from engaging in any of the above-

1 described unfair and unlawful business practices in the future.  
 2 40. The Plaintiff, and all persons similarly situated, have no plan, speedy, and/or adequate  
 3 remedy at law to redress the injuries which he has suffered as a consequence of the unfair and  
 4 unlawful business practices of Defendant AEG. As a result of the unfair and unlawful business  
 5 practices described above, the Plaintiff, and all persons similarly situated, have suffered and will  
 6 continue to suffer irreparable harm unless Defendant AEG, is restrained from continuing to engage  
 7 in these unfair and unlawful business practices. In addition, Defendant AEG should be required to  
 8 disgorge the unpaid moneys to Plaintiff, and all persons similarly situated.  
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10 **FOURTH CAUSE OF ACTION FOR CONVERSION**  
 11 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§ 3294 and 3336**

12 **(By The PLAINTIFF CLASS and Against Defendant)**

13 41. The PLAINTIFF CLASS, realleges and incorporates by this reference, as though fully  
 14 set forth herein, paragraphs 1 through 40 of this Complaint.  
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16 42. By and through the conduct described above, the PLAINTIFF CLASS has been  
 17 deprived of their rights to receive rest break periods and to be paid wages and overtime  
 18 compensation earned by virtue of their employment with Defendant AEG at regular intervals, in  
 19 accordance with the requirements of Sections 204, 226.7, 1197 and 1198 of the California Labor  
 20 Code.  
 21

22 43. Pursuant to statute, including but not limited to the Cal. Labor Code and the Cal.  
 23 Penal Code, it is a violation of law to fail to pay earned wages on the next payday after they are  
 24 earned.

25 44. From that payday forward, pursuant to Cal. Labor Code §216, it is a misdemeanor  
 26 for the employer to keep the wages and not pay them to the employee. On the next payday after the  
 27 wages are earned they become the property of the employee as a matter of law. On that date, the  
 28 amount is specific and certain based on the work performed and the calculated hourly rate.

1           45. By failing to pay the wages on that payday and retaining the sums earned by the  
2 employee, the employer thereby wrongfully exercised dominion over the property of the  
3 PLAINTIFF CLASS. Further, once the Employer thereafter applies the monies to its own use the  
4 conversion is complete.

5           46. By failing to pay the earned wages when due, and retaining the monies for its own  
6 use, Defendant AEG has converted the property of the Plaintiff, and the members of the CLASS.

7           47. Plaintiff, and the CLASS, by the acts and omissions of Defendant AEG, have been  
8 denied the possession, use and enjoyment of said monies and have been damaged in an amount  
9 according to proof. Additionally, each CLASS PLAINTIFF has been required to expend time and  
10 money recovering the converted funds and therefore are entitled to be compensated for these efforts.

11           48. The PLAINTIFF CLASS further alleges that Defendant AEG, intentionally and or  
12 negligently misrepresented to Plaintiff and other members of the CLASS their true non-exempt  
13 status under the law, and their statutory right to receive rest break periods and overtime  
14 compensation. In justifiable reliance thereon, the CLASS members worked unpaid regular and  
15 overtime hours.

16           49. In failing to the pay these monies to Plaintiff, and other members of the CLASS, and  
17 retaining these monies for their own use, Defendant AEG has acted with malice, oppression and or  
18 conscious disregards for the statutory rights of the Plaintiff and members of the CLASS. Such  
19 conduct was wrongful and intentional, and given the number of victims and the number of acts  
20 involved justifies the awarding to the PLAINTIFF CLASS of punitive damages pursuant to Civil  
21 Code §3294 et. al. Such award will serve to punish Defendant AEG and set an example to other  
22 companies who may also be in violation of such statutes and wage orders.

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PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. ON THE FIRST CAUSE OF ACTION:

- a. For compensatory damages, including lost wages, bonuses, and other losses, according to proof;
- b. For general damages, according to proof;
- c. For waiting time penalties;
- d. For an award of interest, including prejudgment interest at the legal rate; and,
- e. For other applicable statutory damages and penalties, including reasonable attorneys' fees and costs of suit.

2. ON THE SECOND CAUSE OF ACTION:

- a. For one hour of pay at the correct hourly wage rate, for each day CLASS members were not provided an appropriate rest break period;
- b. For waiting time penalties and interest according to proof; and,
- c. For other applicable statutory damages and penalties including reasonable attorneys' fees and costs of suit.

3. ON THE THIRD CAUSE OF ACTION:

- a. For restitution;
- b. For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper; and,
- c. For other injunctive relief ordering Defendant AEG to notify CLASS members that they have not been paid the proper amounts required in accordance with the *California Labor Code*.

4. ON THE FOURTH CAUSE OF ACTION:

- a. For compensatory damages according to proof at trial;

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- b. For interest on compensatory damages;
- c. For punitive and exemplary damages as designated; and
- d. For interest on punitive and exemplary damages.

5. ON ALL CAUSES OF ACTION:

- a. For reasonable attorneys' fees;
- b. For costs of suit;
- c. For prejudgment interests; and
- d. For such other and further relief as this Court may deem just and proper.

Date: October 8, 2004

ARIAS, OZZELLO & GIGNAC, LLP

By:   
MIKE ARIAS  
MARK A. OZZELLO  
Attorneys for Class Plaintiff


DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Date: October 8, 2004

ARIAS, OZZELLO & GIGNAC, LLP

By:

  
\_\_\_\_\_  
MIKE ARIAS  
MARK A. OZZELLO  
Attorneys for Class Plaintiff

ARIAS, OZZELLO & GIGNAC, LLP

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