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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

M-07-94

United States District Court  
Southern District of Texas  
FILED

MAY 1 2007

Michael N. Milby, Clerk

CLIVE B HILGERT, AN  
INDIVIDUAL, 1-5,000 SIMILARY  
SITUATED. PRESENT AND PAST  
EMPLOYEES OF DEFENDANT  
PLAINTIFFS

CIVIL ACTION NUMBER  
M-07-94

JURY TRIAL DEMANDED  
CLASS ACTION

GEORGE S. MAY INTERNATIONAL  
COMPANY  
DEFENDANT

COMPLAINT

COUNT # 1

HOSTILE WORK ENVIRONMENT - TITLE VII  
CIVIL RIGHTS ACT OF 1964, 42 U.S.C.  
2000(e); FIRST AMENDMENT.

COUNT # 2

DEPRIVATION OF PROPERTY AND UNLAWFUL  
TAKING OF PROPERTY IN VIOLATION OF THE  
FIFTH AMENDMENT OF THE CONSTITUTION  
OF THE UNITED STATES OF AMERICA AND  
THE FAIR LABOR STANDARDS ACT

#729404

COUNT 3

BREACH OF IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING

COUNT 4

DIRECT DISCRIMINATION TO PLAINTIFF(S)  
BASED ON THE PLAINTIFF(S) COMPENSATION,  
TERMS, CONDITIONS OR PRIVILEGES OF  
EMPLOYMENT AS OUTSIDE SALES  
PEOPLE PAIDED BY COMMISSION ONLY.

COUNT 5

THIEFT OF SERVICES OF COMMISSION  
ONLY EMPLOYEES

COUNT 6

BREACH OF CONTRACT

COUNT 7

DESEPTIVE BUSINESS PRACTICES

COUNT 8

UNJUST ENRICHMENT FOR ARBITRARY  
NON-PAYMENT OF COMMISSIONS TO  
FIELD SERVICE EMPLOYEES.

COUNT 9  
DECLARATORY JUDGMENT

COUNT 10  
NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS

COUNT 11  
INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS

COUNT 12  
CLAIM AGAINST GEORGE S MAY INTERNATIONAL  
COMPANY FOR MONEY DAMAGES AND  
INDUCTION(S).

## JURISDICTION AND VENUE

1. THIS COURT HAS SUBJECT MATTER JURISDICTION IN THIS ACTION PURSUANT TO; FEDERAL QUESTION(S) JURISDICTION (28 U.S.C. §§ 1331 AND 1367); DIVERSITY JURISDICTION (28 U.S.C. § 1332(a)), AND THE PRINCIPLES OF PENDANT AND/OR ANCILLARY JURISDICTION. THE AMOUNT IN CONTROVERSY, EXCLUSIVE OF INTEREST AND COSTS, EXCEEDS \$75,000.

2. THE COURT HAS PERSONAL JURISDICTION OVER PLAINTIFF CLIVE B. HILBERT, PLAINTIFF, WHO IS A RESIDENT AT 2500 N 32 STREET, APT 2 MCALLEN TX.

3. THE COURT HAS PERSONAL JURISDICTION OVER DEFENDANT GEORGE S. MAY INTERNATIONAL COMPANY WHO HAS ENTERED INTO CONTRACTS OR AGREEMENTS IN THIS JURISDICTION.

4. VENUE IN THIS ACTION PROPERLY LIES IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, MCALLEN DIVISION PURSUANT TO 28 USC 1391 IN SO FAR AS (a) CONTRACTS, SERVICES AND AGREEMENTS BETWEEN CLIENTS AND EMPLOYEES (OR OTHERS) GIVING RISE

TO PLAINTIFFS' CLAIMS WERE ENTERED  
INTO IN THE SOUTHERN DISTRICT OF  
TEXAS; AND/OR (b) THE ACTS OR OMISSIONS  
OF GEORGE S MAY INTERNATIONAL COMPANY  
DEFENDANT, GIVING RISE TO PLAINTIFFS'  
CLAIMS TOOK PLACE IN THE RIO GRANDE  
VALLEY OF TEXAS.

## CLASS ACTION ALLEGATIONS

5. THIS ACTION IS BROUGHT AS A CLASS ACTION, PURSUANT TO FED R. CIV. P 23(b)(1)(2) AND (3), AND RULE FED. R. CIV. P 23

6. UPON INFORMATION AND BELIEF, THE SIZE OF THE CLASS IS IN EXCESS OF 5,000 INDIVIDUAL, PAST AND PRESENT EMPLOYEES OF DEFENDANT.

7. THE NAMED PLAINTIFF, CLIVE B HILGERT, CLAIMS ARE TYPICAL OF THE CLAIMS OF THE CLASS. PLAINTIFF HILGERT, BY SEPERATE MOTION, WILL REQUEST THAT A LOCAL (RIO GRANDE VALLEY OF TEXAS) ATTORNEY BE APPOINTED TO REPRESENT THE OTHER INDIVIDUALS IN THE CLASS

8. ALL CLASS MEMBERS HAVE AN IDENTICAL INTEREST IN SEEKING DAMAGES FOR THE UNLAWFUL ACTS OF DEFENDANT RESULTING IN THE HARM TO THE PLAINTIFFS COMPLAINED OF HEREIN. BECAUSE OF THE AMOUNTS DUE EACH ~~REGISTRANT~~<sup>PLAINTIFF</sup> ON AN INDIVIDUAL BASIS, IT WOULD BE IMPRACTICAL OR IMPOSSIBLE FOR EACH ~~REGISTRANT~~<sup>PLAINTIFF</sup> TO BRING THIS ACTION INDIVIDUALLY.

9. COMMON QUESTIONS OF LAW AND FACT PREDOMINATE OVER INDIVIDUAL QUESTIONS, AND THEREFORE A CLASS ACTION IS SUPERIOR TO OTHER AVAILABLE METHODS FOR THE FAIR AND EFFICIENT ADJUDICATION OF THIS CONTROVERSY.

10. NO EXCEPTIONAL DIFFICULTIES ARE LIKELY TO BE ENCOUNTERED IN THE PROSECUTION OF THIS ACTION AS A CLASS ACTION.

11. PLAINTIFF(S) HAVE STANDING TO BRING THIS ACTION DUE TO THE FACT THAT DEFENDANT HAS USED UNLAWFUL MOTIVES AGAINST BOTH EMPLOYEES AND CLIENTS, WHICH HAS CREATED A HOSTILE AND UNPRODUCTIVE WORK ENVIRONMENT

12. PLAINTIFF(S) FORM A CLASS OF EMPLOYEES THAT ARE PAID SOLELY BASED ON PRODUCING A CLIENT THAT HAS SIGNED AN AGREEMENT (FORM 68) TO HAVE A SURVEY RUN BY DEFENDANT.

13. PLAINTIFF(S) ARE ALSO DESCRIBED AS SPECIAL REPRESENTATIVE (SR) DISTRICT MANAGERS (DM), ASSISTANT DISTRICT MANAGERS (ADM), ALL EMPLOYEES OF DEFENDANT BY COMMISSION

ONLY;

"CLASS ACTIONS" REQUIRE AT LEAST THREE PLAINTIFFS AND THERE ARE MANY MORE THAT, BOTH PRESENT AND PAST EMPLOYEES OF DEFENDANT, ARE READY TO JOIN THIS ACTION, BUT ARE AFRAID DUE TO FEAR OF RETALIATION OF DEFENDANT. THE OTHER PLAINTIFFS WISH TO "OPT-IN", AFTER THE FILING OF THIS COMPLAINT, AND BE CONSIDERED PART OF THE CLASS.

15. THIS COURT IS ASKED TO ISSUE NOTICE TO ALL POTENTIAL CLASS MEMBERS, BY COURT ORDER.

16. THE COURT ORDER, AS REQUESTED, SHOULD INCLUDE FROM WHAT DATE OR DATES BOTH THE FEDERAL AND STATE(S) STATUTORY DEADLINES APPLY TO PREVENT FORFEITURE OF POSSIBLE RIGHTS OF THE CLASS.



## THE PARTIES

17. PLAINTIFF, CLIVE B HILGERT IS A RESIDENT OF McALLEN TEXAS AND AN EMPLOYEE OF DEFENDANT SINCE MARCH 2005

18. PLAINTIFF(S), UNKNOWN, SIMILARLY SITUATED (1 THRU 5,000) ARE, OR WERE EMPLOYEES OF DEFENDANT. SAID PLAINTIFFS LIVE AND WORK, OR WORKED IN ALL (50) FIFTY STATES OF THE UNITED STATES OF AMERICA.

19. THIS COMPLAINT DOES NOT INCLUDE ANY FOREIGN EMPLOYEES OF DEFENDANT, THAT LIVE AND WORK IN CANADA OR MEXICO.

20. UPON INFORMATION AND BELIEF, DEFENDANT GEORGE S. MAY INTERNATIONAL COMPANY, IS A CORPORATION ORGANIZED UNDER THE LAWS OF DELAWARE, WITH ITS PRINCIPAL BUSINESS OFFICE AT 303 SOUTH NORTHWEST HIGHWAY, PARK RIDGE, ILLINOIS 60068-4255 PHONE # 847-825-8806

21. CLIENTS OF DEFENDANT HAVE THEIR OWN SEPERATE CAUSE OF ACTION(S) AGAINST DEFENDANT BUT ARE NOT INCLUDED IN THIS CLASS ACTION THAT IS LIMITED TO PAST AND PRESENT EMPLOYEES OF DEFENDANT.

22. PAST EMPLOYEES OF DEFENDANT AND PRESENT EMPLOYEES ARE SUBJECT TO THE STATUTE(S) OF LIMINATION, THAT IS DIFFERENT IN EACH STATE.

23. TO THE BEST OF PLAINTIFF HILGENT'S KNOWLEDGE THERE ARE PAST AND OR PRESENT EMPLOYEES OF DEFENDANT THAT LIVE IN ALL FIFTY STATES OF THE UNITED STATES OF AMERICA.

24. THE PLAINTIFFS INCLUDE, BUT NOT LIMITED TO, PAST OR PRESENT SPECIAL REPRESENTATIVES (SR) AND ASSISTANT DISTRICT MANAGERS (ADM) AND DISTRICT MANAGERS (DM).

25. PLAINTIFF HILGENT IS A SPECIAL REPRESENTATIVE (SR), OF DEFENDANT.

## FACTUAL BACKGROUND

26. THE PLAINTIFF(S) IN THIS CLASS ACTION ARE ALL "AT WILL" EMPLOYEES OF GEORGE S MAY INTERNATIONAL COMPANY, DEFENDANT.

27. ALL PLAINTIFF(S), EXCEPT FOR A NOMINAL CAR ALLOWANCE, ARE PAID COMMISSIONS ONLY

28. THE JOB OF THE PLAINTIFFS IS TO SELL TO ANY CLIENT THE MANAGEMENT SERVICES (MS) BY AND THROUGH THE RUNNING OF A SURVEY OF THE BUSINESS FOR A NOMINAL FEE OF \$200 TO \$350.

29. THE PLAINTIFF(S) RECEIVE ONLY A COMMISSION FOR SELLING THE SURVEY.

30. WHEN THE SURVEY IS RUN BY THE SURVEY DEPARTMENT ADDITIONAL SERVICES ARE THEN OFFERED TO THE CLIENT, WHICH THE CLIENT MAY BUY OR NOT BUY.

31. DEFENDANTS IN THEIR EMPLOYEE AGREEMENT WITH PLAINTIFF(S) HAVE ARTIFICIALLY WORDED WHAT MAKES A "QUALIFIED SALE".

32. THE STATISTICAL DEPARTMENT OF DEFENDANT IS VESTED WITH, IN ALL CASES, "WHETHER A SALE CONSTITUTES

A "QUALIFIED SALE" AND THEIR DECISION IS FINAL, WITH NO POSSIBILITY OF A RECONSIDERATION OR REVIEW.

33. THE STATISTICAL DEPARTMENT USES A SYSTEM OF CLASSIFICATIONS, RATINGS AND DESIGNATIONS TO DETERMINE WHAT IS OR IS NOT A "QUALIFIED SALE."

34. PLAINTIFF(S) HAVE ALLEGED THAT DEFENDANT, IN THIS CLASS ACTION, USE THE SYSTEM OF RATINGS, DESIGNATIONS, AND CLASSIFICATION, TO UNLAWFULLY DISCRIMINATE AGAINST CERTAIN CLASSES OF PEOPLE, DUE TO THEIR RACE, ETHNIC, NATIONAL ORIGIN; WHICH RESULTS IN DISCRIMINATION AGAINST PLAINTIFF(S) BY DENYING THE PLAINTIFF(S) THEIR COMMISSIONS AND AGAINST THE CLIENTS IN DENYING THEM THE RIGHT TO HAVE A SURVEY RUN ON THEIR BUSINESS AND THE OPPORTUNITY TO PURCHASE FROM DEFENDANT SERVICES THAT MIGHT IMPROVE THE BUSINESS OF THE CLIENT.

35. DEFENDANT HAS A PATTERN AND PRACTICE OF NOT PAYING PLAINTIFF(S) IF THE DEFENDANT CAN FIND ANY PRETEXT(S) TO ALLEDGE THAT THE CLIENT WAS BELOW MINIMUM STANDARDS (BMS.), EVEN WHEN THE CLIENT AGREES TO BUY THE MANAGEMENT SERVICES (MS) FROM DEFENDANT FOR THOUSANDS OF DOLLARS.

36. DEFENDANT HAS A PATTERN AND PRACTICE OF "CHERRY PICKING" WHAT CLIENTS DEFENDANTS WANTS INSPIRE OF THE FACT THAT THE SURVEY AUTHORIZATION CLEARLY STATES THAT "WE AGREE THIS AUTHORIZATION IS NONCANCELABLE."

37. THE "WE" REFERS TO THE CLIENT AND TO THE DEFENDANT GEORGE S MAY INTERNATIONAL COMPANY.

38. BY NOT PAYING COMMISSIONS TO SOME EMPLOYEE, THAT ARE COMMISSION ONLY, DEFENDANT IS UNJUSTLY ENRICHES THE COMPANY AND HAS A LARGER AMOUNT TO PAY THOSE EMPLOYEES THAT ARE PAIDED SOLELY BASED ON THE PROFITS OF DEFENDANT.

39. DEFENDANT, BY THE USE OF PRETEXTS) HAS A PATTERN AND PRACTICE OR NOT SHOWING UP TO RUN A SURVEY FOR SOME CLIENTS THAT HAVE "NOT PASSED THE TEST" BASED ON DEFENDANTS' USE OF THE SYSTEM OF RATINGS, DESIGNATIONS AND CLASSIFICATIONS.

40. THE SYSTEM OF RATINGS, DESIGNATIONS AND CLASSIFICATIONS ALLOWS DEFENDANT TO UNLAWFULLY USE THE SYSTEM TO DISCRIMINATE AGAINST SOME CLIENTS DIRECTLY OR INDIRECTLY RESULTING IN THE DIRECT DISCRIMINATION AGAINST EMPLOYEES (COMMISSION ONLY)

41. DEFENDANT HAS REFUSED TO TIMELY ADDRESS AND ALL OF THE ALLEGATIONS AT ISSUE IN THIS COMPLAINT.

42. PLAINTIFF(S) ALLEDGE THAT THE METHODS USED BY DEFENDANT IN TREATING ITS CLIENTS AND FIELD SERVICE EMPLOYEES IS HARASSMENT THAT RESULTS IN A HOSTILE WORK ENVIRONMENT FOR PLAINTIFF(S).

43. DEFENDANT HAS A CORPORATE CULTURE OF DISCRIMINATION AGAINST CLIENTS THAT ALSO RESULTS IN DISCRIMINATION AGAINST THE EMPLOYEES THAT ARE COMMISSION ONLY OUTSIDE SALES PEOPLE.

44. DEFENDANT HAS FAILED TO TIMELY PAY TO PLAINTIFF(S) THEIR COMMISSIONS.

45. DEFENDANT USES A SYSTEM OF "CHERRY PICKING" WHAT CLIENTS DEFENDANT WILL DEAL WITH AND WHAT CLIENTS THAT DEFENDANT WILL NOT DEAL WITH.

46. DEFENDANT IN USING THE "CHERRY PICKING" PROCESS CAN ALSO USE THE SYSTEM TO PUNISH EMPLOYEES.

47. THE "WE AGREE THIS AUTHORIZATION IS NONCANCELABLE" ON FORM 68; MEANS THAT NEITHER THE CLIENT OR DEFENDANT MAY UNILATERALLY CANCEL THE SURVEY.

48. DEFENDANT IS REQUIRED TO DEAL

IN GOOD FAITH AND DEAL FAIRLY  
WITH BOTH EMPLOYEES AND CLIENTS

49. THAT THE USE OF CLASSIFICATIONS,  
RATINGS, AND DESIGNATIONS IS  
DESIGNED SOLELY TO PRODUCE PROFIT  
FOR DEFENDANT.

50. THAT THE MAJOR, IF NOT THE ONLY,  
SOURCE OF PROFITS FOR DEFENDANT  
COMES FROM THE SALE OF DEFENDANTS'  
MANAGEMENT SERVICES (MS).

51. THAT IF DEFENDANT CAN REDUCE  
ITS EXPENSES, SUCH AS FINDING A REASON  
NOT TO PAY COMMISSIONS, DEFENDANT  
HAS MORE PROFIT AND CAN PAY  
THOSE EMPLOYEES THAT ARE PAID ON  
PROFIT ONLY, MORE MONEY.

52. PLAINTIFF(S) HAVE NO CONTROL  
OVER THE CLASSIFICATIONS, RATINGS,  
OR DESIGNATIONS OF CLIENTS; WHICH  
IS TOTALLY CONTROLLED BY THE SURVEY  
DEPARTMENT IN CHICAGO



53. DEFENDANT, FOR WHAT EVER REASON(S), HAS CHOSEN NOT TO PROVIDE ITS SERVICES TO SOME CLIENTS THAT ARE HISPANIC, ARAB AND/OR ASIAN

54. PLAINTIFF(S) HAVE A PROPERTY RIGHT IN THEIR OCCUPATION OF BEING COMMISSION ONLY OUTSIDE SALES PEOPLE.

55. DEFENDANT, EVEN AFTER ALLEGING THAT A CLIENT IS BELOW MINIMUM STANDARDS (BMS), STILL SELLS DEFENDANTS MANAGEMENT SERVICES (MS).

56. DEFENDANT REFUSES TO PAY ANY COMMISSIONS ON ANY CLIENT THAT DEFENDANT ALLEGES TO BE BELOW MINIMUM STANDARDS (BMS).

COUNT # 1

HOSTILE WORK ENVIRONMENT  
TITLE VII CIVIL RIGHTS ACT OF  
1964, 42 USC. 2000(e); FIRST AMENDMENT

57. PARAGRAPHS 1 THROUGH 56 OF THE COMPLAINT ARE HEREBY INCORPORATED BY REFERENCE AND REALLEGED AS THOUGH FULLY SET FORTH. WITHOUT PREJUDICE TO ANY OTHER AVERMENT OR COUNT SET FORTH HEREIN, THIS COUNT IS PLED AS AN INDEPENDENT AND ALTERNATIVE COUNT THERE TO.

58. DEFENDANT HAS CREATED A HOSTILE WORK ENVIRONMENT IN THE FIELD SERVICES DEPARTMENT, WHICH IS ALL THOSE EMPLOYEES THAT WORK SOLELY ON COMMISSIONS AND ~~ARE~~ WHO'S OCCUPATION IS THAT OF OUTSIDE SALESPEOPLE.

59. DEFENDANT'S ACTIONS ARE SEVERE AND PERVASIVE DUE TO THE FACT THAT IT IS ONLY THE SURVEY DEPARTMENT OF DEFENDANTS THAT SOLEY DETERMINES IF PLAINTIFF(S) WILL OR WILL NOT BE

PAID THEIR COMMISSIONS.

60. DEFENDANTS ACTIONS ARE DEMEANING, ABUSIVE, REPREENSIBLE, WHICH OF COURSE CREATES A CHILLY ENVIRONMENT ON PLAINTIFF(S)

61. PLAINTIFF(S) WHEN ASKING AS TO WHY THEY WERE NOT PAID THEIR COMMISSIONS ARE JUST TOLD "THAT IT IS JUST POLICY" AND TO "GET OVER IT"

62. PLAINTIFF(S) ARE NEVER GIVEN ANY WRITTEN OR ORAL NOTIFICATION AS TO EXACTLY WHAT THE ALLEGED REASON(S) ARE FOR NOT RECEIVING THEIR PAY; FURTHER THE CHILLING EFFECT, AND EMOTIONAL DISTRESS ON COMMISSION ONLY PLAINTIFF(S)

63. DEFENDANT PAY ALL OF ITS HOURLY, WEEKLY AND MONTHLY EMPLOYEES AND ALL OF THE MANAGEMENT LEVEL EMPLOYEES THAT ARE PAID, BASED ON PROFITS; BUT NOT THOSE EMPLOYEES WHO'S SOURCE OF INCOME IS ONLY COMMISSIONS, LIKE PLAINTIFFS

WHO ARE DISCRIMINATED IN TERMS, CONDITIONS AND PRIVILEGES OF EMPLOYMENT.

64. DEFENDANTS CREATE A TOXIC WORK ENVIRONMENT FOR PLAINTIFFS BY APPLYING A UNLAWFUL SYSTEM OF CLASSIFICATIONS, RATINGS AND DESIGNATIONS TO CLIENTS OF DEFENDANT THAT THEN "ALLOWS" DEFENDANT TO ALLEGED THAT NO COMMISSION IS OWED BECAUSE CLIENT FAILED TO "PASS" ALL THE CLASSIFICATIONS, RATINGS AND DESIGNATIONS.

65. DEFENDANT'S OFFICIAL CONDUCT OF REFUSING TO PAY PLAINTIFF(S) OR EVEN DISCUSS WITH PLAINTIFF(S) WHY THE PLAINTIFF(S) SHOULD SUFFER FOR THE PLAINTIFF(S) ALLEGED UNLAWFUL ACTIONS OF DEFENDANT, RESULTING IN THE LOSS OF PRODUCTIVITY OF PLAINTIFF(S).

66. DEFENDANTS' ACTS ARE REPETITIVE AND CONSTITUTE THE CONTINUING

INJURY OF HARASSMENT TO ALL COMMISSION ONLY OUTSIDE SALESPEOPLE, WHICH HAS RESULTED IN INSTITUTIONAL DISCRIMINATION ON THE PART OF DEFENDANTS TOWARDS PLAINTIFF(S),

67. PLAINTIFF HILGERT REASONABLY BELIVES THAT THE CONDUCT OF DEFENDANT IS HARASSMENT AND CREATES A HOSTILE WORK ENVIRONMENT, THUS HARMING THE PRODUCTIVITY OF ALL THOSE PLAINTIFFS THAT ARE PAID COMMISSION ONLY

68. THE ABOVE DETAILED ALLEGATIONS BY PLAINTIFF(S) SHOW DISCRIMINATORY INTENT ON THE PART OF DEFENDANT.

69. PLAINTIFF HILGERT REASONABLY BELIVES THAT THE CONDUCT OF DEFENDANT IS INTIMIDATING AND OFFENSIVE TO HIMSELF AND ALL OTHER PLAINTIFFS.

## COUNT #2

DEPRIVATION OF PROPERTY AND  
UNLAWFUL TAKING OF PROPERTY  
IN VIOLATION OF THE FIFTH  
AMENDMENT TO THE CONSTITUTION  
OF THE UNITED STATES OF AMERICA.

AND THE FAIR LABOR STANDARDS ACT  
70. PARAGRAPHS 1 THROUGH 69 OF THE COMPLAINT ARE  
HEREBY INCORPORATED BY REFERENCE AND  
REALLEGED AS THOUGH FULLY SET FORTH. WITH-  
OUT PREJUDICE TO ANY OTHER AVERMENT OR  
COUNT SET FORTH HEREIN, THIS COUNT IS  
PLED AS AN INDEPENDENT AND ALTERNATIVE  
COUNT HERETO.

71. THE FIFTH AMENDMENT OF THE UNITED  
STATES CONSTITUTION MAKES UNLAWFUL  
THE DEPRIVATION OF PROPERTY WITHOUT  
DUE PROCESS OF LAW.

72. ALL THE FIELD SERVICE EMPLOYEES OF  
DEFENDANT ARE PAID BY COMMISSION  
ONLY; EXCEPT FOR A NOMINAL CAR ALLOWANCE.

73. BY THE USE OF DECEPTIVE WORDING

IN THE EMPLOYMENT AGREEMENTS),  
DEFENDANT HAS USED A SYSTEM OF  
CLASSIFICATIONS, RATINGS AND  
DESIGNATIONS THAT UNLAWFULLY  
DENYS INDIRECTLY CLIENTS A SURVEY  
BASED ON THE CLIENTS ETHNIC, RACE.  
AND NATIONAL ORIGINS.

74. PLAINTIFF(S) HAVE A PROPERTY  
INTEREST IN THEIR LABORS (WORK);  
BUT ARE DENIED COMMISSIONS DUE TO  
THE ACTIONS OF DEFENDANT; RESULTING  
IN NO COMMISSION BEING PAID AND  
THE UNLAWFUL TAKING OF PLAINTIFF(S)  
PROPERTY

75. UNDER THE FAIR LABOR STANDARDS  
ACT, COMMISSION ONLY EMPLOYEES ARE  
CLASSIFIED AS EXEMPT AND DO NOT  
HAVE MANAGERIAL OR EXECUTIVE  
RESPONSIBILITIES.

76. THE FAIR LABOR STANDARDS ACT  
ASSUMES A HIGHER DEGREE OF FAIR  
DEALING AND GOOD FAITH BETWEEN  
EMPLOYER AND COMMISSION ONLY EMPLOYEES

77. DEFENDANT HAS DEALT IN BAD FAITH WITH PLAINTIFF(S) IN VIOLATION OF THE FAIR LABOR STANDARDS ACT

78. DEFENDANTS' REFUSAL TO PAY COMMISSIONS TO PLAINTIFF(S) WAS WILLFUL AND INTENTIONAL AND HAS RESULTED IN DAMAGES TO PLAINTIFF(S).

79. DEFENDANTS' HAVE VIOLATED TEXAS WAGE LAWS, PLUS MANY OTHER STATES, BY REFUSING TO PAY COMMISSIONS TO PLAINTIFF(S).

80. DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE PRACTICES AND PATTERNS DESCRIBED IN THIS ACTION ARE UNLAWFUL.

81. EVEN WHEN DEFENDANT ALLEGES THAT A CLIENT IS BELOW MINIMUM STANDARDS (BMS), DEFENDANT CONTINUES TO ATTEMPT TO SELL ITS MANAGEMENT SERVICES (MS).

82. DEFENDANT WAVES ANY AND ALL



ALLEGED DEFECTS IN A CLIENTS  
ALLEGED STANDARDS, WHEN IN  
FACT, THE CLIENT AGREES TO BUY  
THE MANAGEMENT SERVICES (MS)  
OF DEFENDANT.

83. AFTER THE DEFENDANT ALLEGES  
THAT A CLIENT IS B.M.S.; BUT THE  
CLIENT PURCHASES MANAGEMENT  
SERVICES (MS); THE DEFENDANT  
MUST PAY THE COMMISSIONS DUE  
TO PLAINTIFF(S).

84 REFUSAL TO PAY TO PLAINTIFF(S)  
TIMELY THEIR COMMISSIONS HAS CAUSED  
PLAINTIFF(S) EMOTIONAL DISTRESS AND  
FINANCIAL STRESS

85 DEFENDANT HAS FAILED TO PAY  
PLAINTIFF(S) KNOWINGLY, WILLFULLY,  
INTENTIONALLY AND UNLAWFULLY.

### COUNT #3

#### BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

§6. PARAGRAPHS 1 THROUGH 5 OF THE COMPLAINT ARE HEREBY INCORPORATED BY REFERENCE AND REA LIEGE AS THOUGH FULLY SET FORTH. WITHOUT PREJUDICE TO ANY OTHER AVERMENT OR COUNT SET FORTH HEREIN, THIS COUNT IS PLED AS AN INDEPENDENT AND ALTERNATIVE COUNT THERETO.

§7. MANY OF THE 50 STATES IN THE UNITED STATES OF AMERICA HAVE LAWS THAT IMPLY A COVENANT OF GOOD FAITH AND FAIR DEALING IN ALL CONTRACTS BETWEEN PARTIES ENTERED INTO IN EACH STATE.

§8. PLAINTIFF(S) IN THE FIELD SERVICES DIVISIONS OF DEFENDANT, AS AGENTS AND EMPLOYEES OF DEFENDANT, AT ALL TIMES ACTED IN GOOD FAITH AND FAIR DEALING TOWARDS ALL PROSPECTS AND CLIENTS.

§9. AFTER A CLIENT SIGNED THE FORM 68A (REV 03/07/2006) AKA

SURVEY AUTHORIZATION FORM," WHICH WAS THEN SENT TO DEFENDANT BY FAX AND U.S. MAIL AND CONFIRMED BY PHONE

90. FORM 68 CLEARLY STATES ON ITS FACE THAT "WE AGREE THIS AUTHORIZATION IS NONCANCELABLE."

91. CLIENTS MAY HAVE A COMPLAINT AGAINST DEFENDANTS, WHICH IS NOT PART OF ANY ALLEGATIONS IN THIS COMPLAINT.

92. THE SURVEY DEPARTMENT OF DEFENDANT USES A SYSTEM OF CLASSIFICATIONS, RATINGS AND DESIGNATIONS, ALL UNKNOWN TO CLIENT, THAT IS DESIGNED TO PREDETERMINE IF CLIENTS IN THE SAME RACE, ETHNIC OR NATIONAL ORIGINS, BUSINESS TYPE WILL OR WILL NOT BUY FURTHER SERVICES FROM DEFENDANT, AKA AS MANAGEMENT SERVICES (MS).

93. BY USING THE SYSTEM OF THE STATISTICAL DEPARTMENT OF DEFENDANT THE DEFENDANT CAN CANCEL, BY JUST NOT SHOWING UP TO RUN THE SURVEY, AND NOT PAY THE COMMISSION ONLY SALESPeOPLE THAT SPENT THEIR TIME AND MONEY IN OBTAINING THE CLIENTS, FOR DEFENDANT.

94. DEFENDANT BREACH THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING BY THE USE OF THEIR "SYSTEM" AND THEN JUST NOT SHOWING UP TO RUN THE SURVEY.

95. PLAINTIFF(S) ARE DAMAGED BY NOT RECEIVING THEIR COMMISSIONS AND FURTHER DAMAGED BY THE HOSTILE WORK ENVIRONMENT THAT IS CREATED BY THE NONPAYMENT OF COMMISSIONS.

96. DEFENDANT HAS IN BAD FAITH AND NOT DEALING FAIRLY WITH EITHER PLAINTIFF(S) OR CLIENTS KNOWINGLY, WILLFULLY, INTENTIONALLY AND UNLAWFULLY

CAUSED PLAINTIFF(S) TO SUFFER EMOTIONAL  
DISTRESS BY REFUSING TO PAY TO PLAINTIFF(S)  
TIMELY THEIR COMMISSIONS, EVEN  
WHEN A CLIENT AGREES TO PURCHASE  
THOUSANDS OF DOLLARS OF DEFENDANTS'  
MANAGEMENT SERVICES (MS).

## COUNT # 4

DIRECT DISCRIMINATION TO PLAINTIFF(S) BASED ON THE PLAINTIFF(S) COMPENSATION, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT AS OUTSIDE SALES PEOPLE PAID BY COMMISSION ONLY.

97. PARAGRAPHS 1 THROUGH 96 OF THE COMPLAINT ARE HEREBY INCORPORATED BY REFERENCE AND REALLEGED AS THOUGH FULLY SET FORTH. WITHOUT PREJUDICE TO ANY OTHER AVERMENT OR COUNT SET FORTH, THIS COUNT IS PLED AS AN INDEPENDENT AND ALTERNATIVE COUNT THERETO.

98. DEFENDANT HAVE DEVELOPED A SYSTEM OF CLASSIFICATIONS, RATINGS, AND DESIGNATIONS THAT DEFENDANTS ALLEDGE ALLOWS THEM NOT SHOW-UP TO RUN THE SURVEY OF THE CLIENTS BUSINESS ON THE SCHEDULED TIME AND DATE.

99. DEFENDANTS ACTIONS ARE DONE IN BAD FAITH AND FOR UNLAWFUL REASONS ~~WHICH~~ WHICH HAS THE DIRECT

RESULT OF CHANGING THE COMPENSATION, TERMS, CONDITIONS AND PRIVILEGES OF EMPLOYMENT, WITH DEFENDANT, BY PLAINTIFF(S), WHO ARE OUTSIDE SALES PEOPLE, PAID BY COMMISSION ONLY.

100. PLAINTIFF(S) ARE REQUIRED TO SELL THE SERVICES OF DEFENDANT TO ANY AND ALL CLIENTS THAT HAVE A MINIMUM OF SEVEN EMPLOYEES AND AT LEAST \$500,000 IN YEARLY SALES.

101. PLAINTIFF(S) DO NOT DISCRIMINATE AGAINST ANY CLIENT(S) BASED ON THE CLIENTS ETHNIC, RACE, OR NATIONAL ORIGINS, OR ANY OTHER REASONS.

102. DEFENDANT, IN A LEVEL ABOVE THAT OF PLAINTIFFS, HAVE DEVELOPED A PATTERN AND PRACTICE OF INDIRECTLY DISCRIMINATING AGAINST CERTAIN CLIENTS DUE TO THEIR ETHNIC, RACE, OR NATIONAL ORIGINS; WHICH IN TURN AND AS A RESULT OF DEFENDANTS ACTIONS, DIRECTLY DISCRIMINATES AGAINST

PLAINTIFF(S) AND RESULTS IN NOT BEING PAID FOR THE SERVICES RENDERED BY PLAINTIFF(S) AND CHANGES THE TERMS, CONDITIONS AND PRIVILEGES OF EMPLOYMENT OF PLAINTIFF(S).

103. PLAINTIFF HILGENT'S PERSONAL EXPERIENCE WITH DEFENDANT NOT SHOWING UP AT ALL FOR THE SCHEDULED APPOINTMENT TO RUN THE SURVEY IS AS FOLLOWS:

A. E.C. TRADING, DBA JOY DOLLAR.  
#534668

B. CHAVEZ AUTOMATED DESIGN  
#352918-3

C. R.L. ABATEMENT # 534527T

D. EMERGENCY MEDICAL TRANSPORT RGV

E. T-SHIRT EXPRESS # 538882T

F. STAR FREIGHT # 538920T

104. PLAINTIFF HILGENT WAS NOT PAID ANY COMMISSION FOR ANY OF THE CLIENTS (A THROUGH F ABOVE), IN SPITE OF THE FACT THAT THE SURVEY AUTHORIZATION AGREEMENT HAS A NONCANCELABLE CLAUSE.



105. DEFENDANT HAS DEVELOPED A SYSTEM THAT IS A PATTERN AND PRACTICE OF NOT RUNNING A SURVEY IF THE CLIENT FAILS TO "PASS"; WHICH HAS A DIRECT DISCRIMINATIONARY EFFECT ON PLAINTIFF(S) COMPENSATION, TERMS OF EMPLOYMENT, CONDITIONS OF EMPLOYMENT AND PRIVILEGES OF EMPLOYMENT AS OUTSIDE, COMMISSION ONLY EMPLOYEES.

106. AS A DIRECT RESULT OF THE UNLAWFUL PATTERN AND PRACTICES AGAINST THE CLIENTS OF DEFENDANT, THE DEFENDANT HAS ALSO AND AS A DIRECT RESULT OF THE DEFENDANT ACTIONS DISCRIMINATED AGAINST PLAINTIFF(S); IN REFUSING TO PAY COMMISSIONS.

107. THE FAIR LABOR STANDARDS ACT CLASSIFIES COMMISSION ONLY EMPLOYEES AS EXEMPT; BUT INFERS A HIGHER DEGREE OF FAIR DEALING AND GOOD FAITH BETWEEN EMPLOYER (DEFENDANT) AND ALL PLAINTIFF(S).

108. DEFENDANT VIOLATES THE FAIR STANDARDS ACT WHEN DEFENDANT, IN FACT, DEALS IN BAD FAITH WITH PLAINTIFF(S).

109. DEFENDANTS' REFUSAL TO PAY TO PLAINTIFF(S) COMMISSIONS WAS WILLFUL AND INTENTIONAL AND PLAINTIFF(S) ARE INTITLED TO DAMAGES.

110. DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THEIR PATTERN AND PRACTICE OF NOT PAYING PLAINTIFF(S) THEIR COMMISSIONS WHEN THE DEFENDANT CHOSE NOT TO SHOW-UP TO RUN THE SURVEY AND/OR WHEN THE CLIENT PURCHASED THOUSANDS OF DOLLARS OF MANAGEMENT SERVICES (MS) WAS AND IS UNLAWFUL UNDER BOTH FEDERAL AND STATE(S) LAWS.

## COUNT #5

### THEFT OF SERVICES OF COMMISSION ONLY EMPLOYEES

111. PARAGRAPHS 1 THROUGH 110 OF THE COMPLAINT ARE HEREBY INCORPORATED BY REFERENCE AND REALLED AS THOUGH FULLY SET FORTH, WITHOUT PREJUDICE TO ANY OTHER AVERMENT OR COUNT SET FORTH HEREIN, THIS COUNT IS PLED AS AN INDEPENDENT AND ALTERNATIVE COUNT HERETO.

112. DEFENDANT USES A SYSTEM OF CLASSIFICATIONS, RATINGS AND DESIGNATIONS THAT UNLAWFULLY DENYS INDIRECTLY THE CLIENTS OF DEFENDANT A SURVEY OF THE CLIENTS' BUSINESS. THE CLIENTS' ETHNIC, RACE AND NATIONAL ORIGINS ARE USED AS A MAJOR FACTOR IN THE SYSTEM OF CLASSIFICATIONS, RATINGS AND DESIGNATIONS IN VIOLATION OF BOTH STATE(S) AND FEDERAL LAWS.

113. PLAINTIFF(S) HAS NO CONTROL OR INPUT AS TO ANY OF THE CLASSIFICATIONS, RATINGS, OR DESIGNATIONS;

ONLY THE TOP MANAGERS AND THOSE OF THE SURVEY DEPARTMENT OF DEFENDANT HAVE TOTAL CONTROL,

114. DEFENDANTS HAVE A POLICY, PRACTICE, PATTERN AND PROCEDURE TO DENY THE CLIENT A SURVEY DUE TO THE CLIENT'S ETHNIC, RACE, OR NATIONAL ORIGINS; WHICH IS UNLAWFUL, BY BOTH STATE(S) AND FEDERAL LAWS.

115. PLAINTIFF(S), COMMISSION ONLY OUTSIDE SALES PEOPLE, HAVE COMPLETED THEIR JOBS WHEN THEY GOT A SIGNED, BY CLIENT, AUTHORIZATION FOR SURVEY (AKA FORM 68) AND FAX AND MAILED TO DEFENDANT THE FORM.

116. DEFENDANT USES UNREASONABLE, UNREALISTIC, UNLAWFUL AND DISCRIMINATION, TO PLAINTIFF(S) IN REFUSING TO TIMELY PAY THE COMMISSION TO PLAINTIFF(S), RESULTING IN THE THIEF OF SERVICES OF PLAINTIFF(S) IN VIOLATION OF BOTH STATE(S) AND FEDERAL LAWS.

117. PLAINTIFF HILGERT MADE THE FOLLOWING SALES WHERE THE SURVEY DEPARTMENT OF DEFENDANT TOTALLY FAILED TO SHOW UP TO RUN THE SURVEY

A. E. C. TRADING DBA JOY DOLLAR STONES; OWNED BY EDMUND CHUN BELIEVED TO BE FROM KOREA.

B. CHAVEZ AUTOMATED DESIGN, A HISPANIC, NAMED ARIEL CHAVEZ II

C. R. L. ABATEMENT, OWNED BY ROBERTO VALADARES JR, A HISPANIC

D. EMERGENCY MEDICAL TRANSPORT RGV, OWNED BY A HISPANIC HUSBAND AND WIFE.

E T-SHIRT EXPRESS OWNED BY EDDIE SANDOVAL, A HISPANIC

F. STARFREIGHT INC OWNED BY JOSE C. GARZA CORDOVA AND PANTNER, BOTH HISPANICS.

118. ~~DEFENDANT~~ HAS A PATTERN AND PRACTICE OF "CHERRY PICKING" JUST WHAT CLIENTS WILL OR WILL NOT RECEIVE A SURVEY.

119. PART OF THE DECISION FACTOR THAT IS USED TO MAKE THE DECISION

IS THE RACE, ETHNIC AND NATIONAL ORIGIN OF THE CLIENTS.

120. DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE USE OF ANY FACTORS THAT INCLUDED THE CLIENTS RACE, ETHNIC AND NATIONAL ORIGIN OF CLIENTS, IS UNLAWFUL DISCRIMINATION.

121. PLAINTIFF(S) DO NOT DISCRIMINATE IN SIGNING THE CLIENTS FOR A SURVEY.

122. WHEN THE ~~COMPANY~~ DEFENDANTS HAVE A PATTERN AND PRACTICE OF DISCRIMINATING AGAINST CLIENTS THE DEFENDANTS STILL MUST PAY ALL THEIR EMPLOYEES THEIR WAGES, INCLUDING THE COMMISSIONS TO PLAINTIFFS.

123. BY FAILING TO PAY PLAINTIFF(S) TIMELY THEIR COMMISSIONS, DEFENDANT HAS KNOWING, WILLFULLY AND UNLAWFULLY STOLEN THE SERVICES OF PLAINTIFF(S) IN VIOLATION OF BOTH STATE(S) AND FEDERAL LAWS.

## COUNT #6

### BREACH OF CONTRACTS

124. PARAGRAPH 1 THROUGH 123 OF THE COMPLAINT ARE HEREBY INCORPORATED BY REFERENCE AND REALLEGED AS THOUGH FULLY SET FORTH. WITHOUT PREJUDICE TO ANY OTHER AVERMENT OR COUNT SET FORTH HEREIN, THIS COUNT IS PLED AS AN INDEPENDENT AND ALTERNATIVE COUNT HERETO.

125. PLAINTIFF(S) ENTERED INTO THE EMPLOYMENT AGREEMENT IN GOOD FAITH

126. THERE IS AN IMPLIED CONTRACT, UPON THE CLIENTS SIGNING THE AUTHORIZATION FOR SURVEY (FORM 68) AND PLAINTIFF(S) AND DEFENDANTS OF GOOD FAITH AND FAIR DEALING.

127. DEFENDANT HAS A SYSTEM OF CLASSIFICATION, RATINGS, AND DESIGNATIONS THAT DEFENDANTS ALLEDGE ALLOW THE DEFENDANTS,

AFTER THE CLIENT HAS SIGNED THE AUTHORIZATION FOR SURVEY (FORM 68), TO UNILATERALLY CANCEL THE SCHEDULED APPOINTMENT.

128. THE AUTHORIZATION FOR SURVEY, CLEARLY ON ITS FACE, SAYS "WE AGREE THIS AUTHORIZATION IS NONCANCELABLE."

129. THE NONCANCELABILITY APPLIES TO BOTH THE CLIENT AND TO THE DEFENDANT.

130. DEFENDANT KNOWINGLY, WILLFULLY AND UNLAWFULLY BREACHED THE CONTRACT (AKA AUTHORIZATION FOR SURVEY FORM 68)

131. DEFENDANT'S ACTIONS IN BREACHING THE CONTRACT, AS IT APPLIES BETWEEN PLAINTIFF(S) AND DEFENDANT, HAS CAUSED PLAINTIFF(S) LOSS OF COMMISSIONS EARNED AND EMOTIONAL DISTRESS FOR NOT BEING PAID THE COMMISSION(S)