

JUL 18 2007

**LOS ANGELES  
SUPERIOR COURT**

*JB*

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7 ATTORNEYS FOR PLAINTIFFS

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

11 TOBY HARRIS, KEVIN O'CONNOR, )  
12 MICHAEL SANDERCOCK, ALEX LANE )  
13 and MICHAEL BEY, on behalf of )  
14 themselves, the general public, and all others )  
15 similarly situated, )

14 Plaintiffs, )

15 vs. )

16 INVESTOR'S BUSINESS DAILY, INC., a )  
17 California Corporation; DIRECT )  
18 MARKETING SPECIALISTS, INC., a )  
19 California corporation, et al., )

18 Defendants. )

Case No. BC269313  
R/T Case No. BC274964  
(Assigned to Elizabeth A. Grimes, Dept. 30)

**NOTICE OF PENDENCY OF CLASS  
ACTION**

21 NOTICE TO ALL INDIVIDUALS WHO WERE EMPLOYED BY INVESTOR'S BUSINESS  
22 DAILY, INC., AND/OR DIRECT MARKETING SPECIALISTS, INC., IN THE STATE OF  
23 CALIFORNIA, AS INSIDE TELEPHONE SALES AGENTS, TELEMARKETERS, AND/OR SALES  
24 REPRESENTATIVES SELLING SUBSCRIPTIONS TO INVESTOR'S BUSINESS DAILY  
25 (HEREINAFTER COLLECTIVELY REFERRED TO AS "SALES REPRESENTATIVES") FOR ANY  
26 TIME PERIOD FROM NOVEMBER 20, 1997 TO THE PRESENT WHO WERE "CHARGED

1 BACK” COMMISSIONS<sup>1</sup> AND/OR WHO WORKED MORE THAN 8 HOURS A DAY AND/OR  
2 40 HOURS A WEEK AND WHO WERE NOT PAID OVERTIME COMPENSATION.

3 You may be a member of the plaintiff class in the above entitled class action concerning the  
4 lawfulness of commissions charged back by the Defendant under California Labor Code § 221  
5 (hereinafter also referred to as the chargeback class); AND/OR

6 You may be a member of the plaintiff class in the above-entitled class action concerning whether  
7 you should be paid overtime compensation at one and one half times your regular rate of pay for hours  
8 worked more than 8 hours in a day and/or 40 hours in a week, and double your regular rate of pay for  
9 hours worked in excess of 12 hours in a day (hereinafter referred to as the “overtime class”).

10 If you are a member of the plaintiff class, you should read this notice because it will affect your  
11 rights.

12 THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE  
13 COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES  
14 ASSERTED BY EITHER SIDE IN THIS LITIGATION. THE SOLE  
15 PURPOSE OF THIS NOTICE IS TO INFORM YOU OF THE LAWSUIT  
16 SO THAT YOU MAY MAKE AN INFORMED DECISION AS TO  
17 WHETHER YOU SHOULD REMAIN IN OR OPT OUT OF THIS CLASS  
18 ACTION.

19 **BACKGROUND OF CASE**

20 Toby Harris, Michael Sandercock, Alex Lane, Kevin O’Connor and Michael Bey, filed this action  
21 on March 1, 2002, in the Superior Court of Los Angeles County, California. It was brought  
22 representatively on behalf of all individuals employed as sales representatives by Investor’s Business  
23 Daily, Inc.,<sup>2</sup> from the period 101 days prior to March 1, 1998 (which is November 20, 1997), to the  
24 present, who were charged back commissions, as well as for all individuals employed as sales  
25 representatives by Investor’s Business Daily, from the period of November 20, 1997, to the present, who

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27 <sup>1</sup> As used herein, the term “commission” is defined as the compensation received during your employment for  
28 selling subscriptions to the Investors Business Daily.

<sup>2</sup> As used herein, Investor’s Business Daily includes Direct Marketing Specialists, Inc.

1 worked more than 8 hours in a day and/or 40 hours a week and who did not receive overtime  
2 compensation at one and one half times their regular rate of pay (or two times their regular rate of pay  
3 after working 12 hours in a day). Initially, the Defendants prevailed on a motion for summary judgment  
4 that the chargebacks were lawful and secured a ruling that overtime was not due. Plaintiffs filed an  
5 appeal and a decision was issued by the Court of Appeal on March 29, 2006, and reported as *Harris v.*  
6 *Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, which reversed the opinion of the trial court  
7 and remanded the case back to the trial court for further proceedings.

8 On September 19, 2003, the court entered an order certifying the cause of action for chargebacks  
9 to be maintained as a class action, and on July 9, 2007, the court entered an order certifying the cause  
10 of action for overtime compensation to be maintained as a class action under California Business &  
11 Professions Code, Section 17200. Certification of a class is not a ruling on the merits of the claim, but  
12 a procedural device to bring all claims before the court in a single action against the same defendant.

### 13 NATURE OF CLAIMS

14 Plaintiffs assert that they are entitled to reimbursement for charged back commissions and unpaid  
15 overtime, attorneys' fees, penalties, and interest. Plaintiffs seek restitution and a declaration that all  
16 class members are entitled to reimbursement of charged back commissions and overtime compensation.  
17 Defendants deny liability on the grounds that chargebacks were not unlawful and that overtime was not  
18 due because the compensation paid to the sales representatives was a bone fide commission thereby  
19 exempting the employees from overtime requirements. The Court has certified a plaintiff class for all  
20 sales representatives who were employed by Defendants within the State of California from the period  
21 of November 20, 1997 to the present who were charged back commissions (hereinafter also referred to  
22 as the "chargeback class") and has certified a second class of all sales representatives who worked over  
23 8 hours a day and/or 40 hours a week, who did not receive overtime compensation (also known as the  
24 overtime class).

25 Defendants have denied liability and have denied the allegations in the complaint.

### 26 THIS LITIGATION MAY AFFECT YOU SIGNIFICANTLY

27 If you were or are employed by Investor's Business Daily, Inc. and/or Direct Marketing Specialists,  
28 Inc., in the State of California, as a sales representative at any time from November 20, 1997 to the

1 present you will be included in the class, unless you request exclusion according to the procedures set  
2 forth herein. If you remain a member of the class, you will be bound by the judgment whether favorable  
3 or adverse to Plaintiffs. If there is a recovery, you may be entitled to share in the proceeds less  
4 Plaintiffs' costs, expenses, and attorneys' fees that the Court may allow to be reimbursed out of any such  
5 recovery. You will not be responsible for any Court Costs to the Defendants.

6 If you do not request exclusion, you may enter an appearance in the action personally or through  
7 your own counsel at your own expense. Otherwise, you will be represented by Plaintiffs' counsel and  
8 the named Plaintiffs, TOBY HARRIS, KEVIN O'CONNOR, MICHAEL SANDERCOCK, ALEX  
9 LANE and MICHAEL BEY. You will not incur liability for Plaintiffs' attorneys' fees or expenses if  
10 you remain a member of the class, except to the extent that the Court may award them to the attorneys  
11 to be paid out of the recovery, if any.

12 To request exclusion you must submit the form entitled "Election to be Excluded" enclosed  
13 herewith to the Clerk of the Court at the address listed below no later than August 31, 2007. If you do  
14 request exclusion in accordance with the terms herein, the court will exclude you from the class and you  
15 will not be bound by the judgment, whether favorable or adverse to Plaintiffs, and if there is a recovery,  
16 you will **not** be entitled to share in the proceeds.

17 **NOTICE OF ATTORNEYS OF RECORD**

18 Copies of all documents filed with the clerk of the court should be sent to the following counsel:

19 **Attorneys for Plaintiffs**

20 Mark R. Thierman, Esq.  
21 THIERMANN LAW FIRM, PC  
22 7287 Lakeside Drive  
23 Reno, NV 89511  
24 Telephone: 775/284-1500  
25 Fax: 775/703-5027

26 Eric M. Epstein, Esq.  
27 Eric M. Epstein, APC  
28 1901 Avenue of the Stars, #1100  
Los Angeles, CA 90067  
Telephone: 310/552-5366  
Fax: 310/556-8021

H. Tim Hoffman, Esq.  
Hoffman & Lazear  
180 Grand Avenue, #1550  
Oakland, CA 94612

**Attorneys for Defendants**

Belle C. Mason, Esq.  
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Los Angeles, CA 90067  
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Fax: 310/556-0832

William H. Lancaster, Esq.  
Seyfarth Shaw LLP  
2029 Century Park East, 33<sup>rd</sup> Floor  
Los Angeles, CA 90067  
Telephone: 310/277-7200  
Fax: 310/201-5219

1 Telephone: 510/763-5700

2 **CHANGE OF ADDRESS**

3 If you move after receiving this notice or if it was misaddressed, you should supply your name  
4 and correct address to:

5 Mark R. Thierman, Esq.  
6 Thierman Law Firm, PC  
7 7287 Lakeside Drive  
8 Reno, NV 89511  
9 Telephone: 775/284-1500  
10 Fax: 775/703-5027

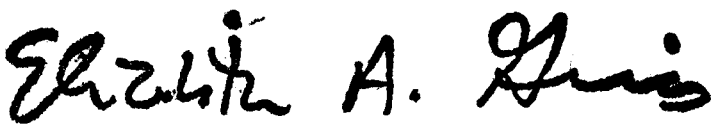
Clerk of the Court  
Los Angeles Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

11 **THIS IS IMPORTANT SO THAT FUTURE NOTICES REACH YOU**

12 The pleadings and all other records of this litigation may be examined and copied at any time  
13 during regular office hours in the office of the Clerk at the above listed address.

14 **DO NOT CALL OR WRITE TO THE COURT OR THE CLERK OF THE COURT. ADDRESS  
15 ALL INQUIRIES IN WRITING TO THE ATTORNEYS FOR THE CLASS.**

16 Dated: 7-18-07




Elizabeth A. Grimes, Judge  
Los Angeles Superior Court

17 Submitted by:

18 Dated: July 18, 2007

**THIERMAN LAW FIRM  
ERIC M. EPSTEIN, A Professional Corporation**

19 By:   
Eric M. Epstein  
Attorney for Plaintiffs

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES

3  
4 TOBY HARRIS, KEVIN O'CONNOR, )  
MICHAEL SANDERCOCK, ALEX LANE )  
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themselves, the general public, and all others )  
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**ELECTION TO BE EXCLUDED**

14 **ELECTION TO BE EXCLUDED**

15 The undersigned \_\_\_\_\_ (print name) hereby elects to be excluded  
16 from the class in accordance with the provisions of the Notice of Class Action.

17 I wish to be excluded from (check which apply):

18 \_\_\_\_\_ 1) the charge back class

19 \_\_\_\_\_ 2) the overtime class

20 \_\_\_\_\_ 3) both

21 Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

22 Name: \_\_\_\_\_

23 Address: \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_

26 Telephone: \_\_\_\_\_

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behalf of the class.

- 2. You will receive notice of any ruling affecting the size of the class and notice of any proposed settlement or dismissal of class claims or any judgment rendered. However, you may enter an appearance through an attorney by mailing a Notice of Appearance to the clerk of the court at the address for the clerk set forth below.
- 3. You will be bound by any judgment or any other final disposition of the class lawsuit, whether that disposition is favorable or unfavorable.
- 4. You will participate, upon proof of membership in the class and the filing of a proper claim form in a distribution of any damages recovered in the litigation.

**YOU SHOULD RETAIN ALL RECORDS AND DOCUMENTS PERTAINING TO  
THE SUBJECT MATTER OF THIS CASE**

If you elect to be excluded from the class:

- 1. You will not be bound by any disposition of the class action and you will retain any claims you may have against the Defendants.
- 2. You will not share in any recovery which might be paid to class members if the class representatives are successful in trial or from any settlement.

In determining whether you want to be excluded from the class, you are advised to consult your own attorney as there are legal issues which require consideration.

WHAT TO DO

**If you wish to be a member of the class in this case, you need to do nothing further except keep the attorneys aware of your address. If you wish to be excluded from the class, you must complete the "Election To Be Excluded" and return it to the following address so that it is received on or before August 31, 2007.**

Clerk of the Court  
Los Angeles Superior Court  
111 N. Hill Street  
Los Angeles, CA 90012

The Sender (you) bears the responsibility for any delay in delivery and the risk of non-delivery.