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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

TOBY HARRIS et al.,

Plaintiffs and Appellants,

v.

INVESTOR'S BUSINESS DAILY, INC.,  
et al.,

Defendants and Respondents.

B185606

(Los Angeles County  
Super. Ct. No. BC269313)

COURT OF APPEAL - SECOND DIST.

**FILED**

AUG 14 2006

JOSEPH A. LANE Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Rodney E. Nelson and Jerry Fields, Judges. Reversed.

Eric M. Epstein, Thierman Law Firm, Mark R. Thierman, Law Offices of  
Roxanne Huddleston and Roxanne Huddleston for Plaintiffs and Appellants.

No appearance for Defendants and Respondents.

Appellants Toby Harris, Kevin O'Connor, Michael Sandercock, Alex Lane, and Michael Bey were employed as telemarketers selling subscriptions to a financial newspaper, Investor's Business Daily, Inc., through marketing companies Direct Sales Management, Inc., and Data Analysis, Inc. Appellants are the five named class representatives in a class action lawsuit against Investor's Business Daily, the marketing companies, and William O'Neil & Co., Incorporated (collectively IBD), alleging that IBD's employment practices violate federal and state labor laws. In that case, the trial court ruled in favor of IBD by sustaining a demurrer on one cause of action and granting summary adjudication on several other causes of action. In *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, we reversed that judgment. While that appeal was pending, the trial court awarded \$528,483.50 in attorney fees and \$20,005 in costs against appellants.

This appeal was filed on February 14, 2006. Our opinion in the underlying matter was filed on March 29, 2006. Respondents concede that the effect of our reversal in the underlying matter is that IBD was not the prevailing party and therefore is not entitled to attorney fees and costs. Thus, we reverse the judgment awarding attorney fees and costs. Appellants invite us to decide other issues for the guidance of the trial court. We decline to do so.

**DISPOSITION**

The judgment awarding attorney fees and costs is reversed. Appellants are to recover their costs on appeal.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.

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