

1 Mark R. Thierman Cal SB# 72913
2 **THIERMAN LAW FIRM**
3 7287 Lakeside Drive
4 Reno, Nevada 89511
5 Tel: (775) 284-1500

6 H. Tim Hoffman SB# 49141
7 Arthur Lazear SB# 83603
8 **HOFFMAN & LAZEAR**
9 180 Grand Street, Suite # 1550
10 Oakland, CA 94612
11 Tel: (510) 763-5700

12 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15	LILIANA SOLIS, on behalf of herself, the	)	Case No.: C 05-03039 CRB
16	general public and as an “aggrieved)	
17	employee” under the California Labor Code)	)	CLASS, REPRESENTATIVE AND
18	Private Attorneys General Act,	)	PRIVATE ATTORNEY GENERAL ACTION
19)	
20	Plaintiff,	)	PLAINTIFF’S MEMORANDUM OF
21	v.	)	POINTS AND AUTHORITIES IN
22		)	SUPPORT OF PLAINTIFF’S MOTION
23	THE REGIS CORPORATION, et al.,	)	FOR SUMMARY JUDGMENT
24)	
25	Defendants.	)	Hearing Date: 11/9/07
26		)	Hearing Time: 10:00 a.m.
27		)	Courtroom: 8
28		)	Judge: Honorable Charles Breyer

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. SUMMARY OF ARGUMENT..... 1

II. FACTS/RELEVANT PROCEDURAL HISTORY 1

III. LEGAL ARGUMENT..... 4

 A. SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE DEFENDANTS
 CANNOT ESTABLISH A TRIABLE ISSUE OF MATERIAL FACT AS TO THEIR
 LIABILITY REGARDING THE OUT OF STATE CHECK CASHING CLASS..... 4

 B. LIABILITY UNDER CALIFORNIA LABOR CODE § 212 ARISES SOLELY FROM
 DEFENDANT’S ISSUING PLAINTIFF AND PLAINTIFF CLASS MEMBERS’
 PAYCHECKS ON AN OUT OF STATE BANK THAT IS NOT PAYABLE WITHOUT
 DISCOUNT ON DEMAND AT AN IN-STATE ESTABLISHMENT 6

 C. ASSUMING ARGUENDO THE STATUTE HAS SOME DISCRIMINATORY
 EFFECT ON OUT-OF-STATE INTERESTS, THE STATE HAS A LEGITIMATE
 LOCAL INTEREST IN PROTECTING ITS WORKERS’ ABILITY TO OBTAIN THEIR
 WAGES 8

 D. DEFENDANT IS LIABLE FOR VIOLATION OF CALIFORNIA LABOR CODE
 §2699, THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT 9

 E. BECAUSE THE COURT HAS LIMITED LIABILITY TO ONE YEAR AND ONLY AS
 TO EMPLOYEES OF DEFENDANTS REGIS AND SUPERCUTS CORPORATE
 STORES, MAXIMUM PENALTIES SHOULD APPLY..... 11

CONCLUSION.....12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)..... 4

Arias v. Superior Court, 153 Cal.App.4th, at 786-788..... 10

California Grape Etc. League v. Industrial Welfare Com., 268 Cal. App. 2d 692 (1969)..... 8

Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)..... 5

Fleming v. Dollar Tree Stores, Inc., 11 Wage & Hour Cas. 2d (BNA) 1633 (2006)..... 7

Gantt v. Sentry Ins., 1 Cal. 4th 1083, 1090 (1992)..... 8

Green v. Ralee Engineering Co., 19 Cal. 4th 66, 80 n.6 (1998)..... 8

Jessinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130-31 (9th Cir. 1994) 4

Lipscomb v. Simmons, 962 F.2d 1374, 1377-1378 (9th Cir. 1992) 9

People v. Turner, 154 Cal. App. 2d Supp. 883, 885-86, 316 P.2d 781 (1957)..... 7

Rhodes v. State Bar, 49 Cal.3d 50, 54, 260 Cal. Rptr. 266, 775 P.2d 1035 (1989)..... 7

RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1150 (9th Cir. 2004) 8

Sav-On Drug Stores v. Superior Court, 34 Cal. 4th 319, 340 (2004)..... 8

Wang v. Div. of Labor Standards Enforcement, 219 Cal. App. 3d 1152 (1990)..... 8

Statutes

California Labor Code § 212 passim

California Labor Code § 2699(f)(2)..... 2, 11

Labor Code § 2699(g)(1) 10

Labor Code §2699(a) 10

Labor Code §2699(f) 10

Labor Code §2699.3 10, 11

Labor Code §2699.3(a)(2)(B) 11

Labor Code §2699.5 10

Rules

Federal Rules of Civil Procedure, Rule 56(c)..... 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. SUMMARY OF ARGUMENT

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment under the legal principles that govern the case at issue. As set forth below, there are no genuine issues of material fact in dispute as to Defendant's liability to Plaintiff and Plaintiff class members under California Labor Code § 212. California Labor Code §212 requires all employers to provide notice on each paycheck or on a separate statement within the envelope of each paycheck of a place within the state of California where the paycheck may be cashed on demand at no charge and without any waiting period. For each paycheck that fails to conform literally to the requirements of Labor Code 212 the employees and the State of California are entitled to share in statutory penalties as well as the employees are entitled to restitution for all harm caused. Defendants paid Plaintiffs and Plaintiff class members with checks issued by an out of state bank with no in state address for presentation and no provision for negotiating such pay check in California at no cost to Plaintiff employees in violation of Labor Code Section 212. As such, Plaintiff and Plaintiff class are entitled to summary judgment as to Defendant's liability under California Labor Code § 212.

II. FACTS/RELEVANT PROCEDURAL HISTORY

Defendant Regis Corporation is a Minnesota Corporation doing business in California under the name of Supercuts. See Exhibit A to the Declaration of Mark R. Thierman (hereinafter "Thierman Dec."). Plaintiff and Plaintiff class members are, and at all relevant times were employed by Defendants Supercuts Corporate Stores, a subsidiary of Regis Corporation, to perform cosmetic services, including but not limited to, hair cutting and hair

1 styling. See, this Court's Order Granting in Part and Denying in Part Motion for Class
2 Certification dated October 12, 2006, at footnote 1. The class period for the check cashing
3 class is from June 22, 2004 until July, 2005. See, Exhibit C to the Thierman Dec.,
4 Defendant's Notice of Removal in this case. Defendants, and each of them, paid Plaintiffs
5 and Plaintiff class members with checks issued by an out of state bank with no in state
6 address for presentation and no provision for negotiating such pay check in California at no
7 cost in violation of Labor Code Section 212. See Exhibit B attached to the Thierman Dec.,
8 which is a true and correct copy of approximately 505 paychecks issued by Defendants'
9 bank, La Salle National Bank, located in Chicago, Illinois. These approximately 505
10 paychecks do not represent all of the out of state paychecks issued by Defendants to their
11 California employees. See, Exhibit C attached to the Thierman Dec., which are true and
12 correct copies of Defendants' Notices of Removal of Civil Action to the United States
13 District Court in this matter as well as another matter filed against the same Defendants by a
14 class member in this action. Defendants, in their Notices of Removal of Civil Action admit
15 that there are 2000+ class members in the check cashing class for Defendants Regis
16 Corporation and Supercuts Corporate Stores. The number of out of state checks, however, is
17 relevant only to the issue of damages, and not the issue of liability.
18
19
20

21 This Court certified the Plaintiff's check cashing class by its order of October 12, 2006.
22 Defendants, in their Notices of Removal of Civil Action admit that Plaintiff and Plaintiff
23 Class members are paid on a semi-monthly basis. See, Exhibit C attached to Thierman Dec.
24 Defendants, in their Notices of Removal admit that the maximum potential penalty for a
25 violation of Labor Code § 212, as provided for in California Labor Code § 2699(f)(2), is
26 \$100.00 for the initial violation as to each employee, and \$200.00 for each subsequent
27
28

1 violation as to each employee, for each of the approximately 2000 class members. See,
2 Exhibit C attached to Thierman Dec. Barbara Muellerleile, Director of Payroll for Regis
3 Corporation, stated in her deposition that Defendant Regis uses the same payroll process for
4 both Supercuts employees and Regis employees, paying them all the same way from the
5 same bank account. See, Exhibit D to Thierman Dec., Deposition of Murellerleile p. 14, ll.
6 3-25. The only difference between Supercuts and the other Regis entities is the formula for
7 calculation of the amount paid to the employee and the paper stock used to print the check.
8 See, Exhibit D, Deposition of Murellerleile p. 31 ll. 22-25. There is no question that Regis is
9 the entity responsible for Supercuts payroll. Ms. Vickie Langan, CEO, a Regis employee,
10 states that Regis is the only entity that makes the decision. See, Exhibit E to Thierman Dec.,
11 Deposition of Vickie Langan , p. 58, ll. 4-21. The Supercuts employee manual says the
12 employees may transfer between Regis and Supercuts. See, Exhibit E to Thierman Dec.,
13 Deposition of Vickie Langan, p. p.61, ll. 4-17. This Court already noted in its Order
14 Granting in Part and Denying in Part Motion for Class Certification, dated October 12, 2006
15 that: "It is, however, undisputed that Supercuts Corporate Shops, Inc. was Plaintiff's direct
16 employer and was in effect a subsidiary of Regis."
17
18
19

20 There was no place on the check or anywhere in the pay envelope received by Plaintiff
21 and Plaintiff class members from Defendants that indicated where they could cash their
22 checks for free in the state of California. See, Declaration of Liliana Solis filed herewith
23 (hereinafter "Solis Dec.") at ¶ 2 and Exhibit F to Thierman Dec., Deposition of Liliana Solis,
24 p. 27, ln. 23 - p. 29, ln. 23; p. 99, ln. 1 – p. 100, ln. 8; p. 145, ln. 23 – p. 153, ln. 21. Plaintiff
25 and Plaintiff class members incurred both check cashing fees and delays in accessing the
26 funds in their paychecks as a result of their paychecks being drawn on an out of state check.
27
28

1 See, Solis Dec. filed herewith at ¶ 3 and Exhibit F to Thierman Dec., Deposition of Liliana
2 Solis, p. 27, ln. 23 - p. 29, ln. 23; p. 99, ln. 1 – p. 100, ln. 8; p. 145, ln. 23 – p. 153, ln. 21.
3 Every Supercuts store had a separate local bank at which receipts were deposited. See,
4 Exhibit H to Thierman Dec., Declaration of Vickie Langan previously filed herein at ¶ 11
5 and Exhibit G to Thierman Dec., Affidavit of John R. Britt previously filed herein at ¶ 16. In
6 spite of this fact, Regis Corporation chose to pay its Supercuts California employees from a
7 Chicago based bank. See, Exhibit B to Thierman Dec. and Exhibit G to Thierman Dec. at ¶
8 17. Thus, the California Supercuts employees were all forced to present their Supercuts'
9 paycheck to their a California bank or check cashing store. This resulting in having such
10 paycheck be subject to a five day or more, uncollected funds hold, and would often require
11 the employee to pay a fee to have the check cashed at a check cashing service. See, Exhibit G
12 to Thierman Dec. at ¶ 17.

15 III. LEGAL ARGUMENT

16 A. SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE 17 DEFENDANTS CANNOT ESTABLISH A TRIABLE ISSUE OF 18 MATERIAL FACT AS TO THEIR LIABILITY REGARDING THE OUT 19 OF STATE CHECK CASHING CLASS

20 Summary judgment is proper if there are no genuine issues of material fact and the
21 moving party is entitled to judgment under the legal principles that govern the case at issue.
22 Federal Rules of Civil Procedure, Rule 56(c); *Jessinger v. Nevada Fed. Credit Union*, 24
23 F.3d 1127, 1130-31 (9th Cir. 1994). A genuine issue of material fact exists only if “the
24 evidence is such that a reasonable jury could return a verdict for the nonmoving party.”
25 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Issues of fact do not preclude
26 summary judgment unless they are material to the substantive claim at issue; that is, unless
27 they “might affect the outcome of the suit under the governing law.” *Id.* A motion for
28

1 summary judgment “pierces” the pleadings and places the opponent to the test of
2 affirmatively coming forward with sufficient evidence for its claims or defenses to create a
3 genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). “A complete
4 failure of proof concerning an essential element of the non-moving party’s case necessarily
5 renders all other facts immaterial.” *Id.* At 323. Summary judgment must be entered
6 “against a party who fails to make a showing sufficient to establish the existence of an
7 element essential to that party’s case, and on which that party will bear the burden of proof
8 at trial.” *Id.* at 322.

10 As set forth below, it is undisputed that Defendants paid their employees with checks
11 drawn on an out of state bank account with no in state establishment for cashing said check
12 without discount or delay. It is undisputed that Plaintiff and Plaintiff class members were
13 employees of Defendants in California. It is undisputed that Defendants issued Plaintiff
14 and Plaintiff class members checks drawn on an out of state bank that had no indication of
15 an in state establishment where Defendants’ employees could cash it without discount or
16 delay. It is further undisputed that Plaintiff and Plaintiff class members were injured as a
17 result of Defendants’ issuing them paychecks drawn on an out of state bank account with
18 no in estate establishment for cashing said check in the form of check cashing fees and/or
19 delays in accessing their funds, To the extent that Defendant argues there was no injury,
20 the penalties of Labor Code 212 and 2699 are for deterrent effect and/or the legislature has
21 presumed harm, but in any event, the statute does not require any proof of actual harm.
22 Thus, summary judgment is appropriate here.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. LIABILITY UNDER CALIFORNIA LABOR CODE § 212 ARISES SOLELY FROM DEFENDANT’S ISSUING PLAINTIFF AND PLAINTIFF CLASS MEMBERS’ PAYCHECKS ON AN OUT OF STATE BANK THAT IS NOT PAYABLE WITHOUT DISCOUNT ON DEMAND AT AN IN-STATE ESTABLISHMENT

California Labor Code §212 requires all employers to provide notice on each paycheck or on a separate statement within the envelope of each paycheck of a place within the state of California where the paycheck may be cashed on demand at no charge and without any waiting period. California Labor Code § 212 provides in full as follows:

212. (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank’s address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

1 It is undisputed that Defendants issued Plaintiff and Plaintiff class members checks
2 drawn on an out of state bank that had no indication of an in state establishment where
3 Defendants' employees could cash it without discount or delay. The liability ends right
4 there. There is no other requirement within Labor Code § 212 required to find liability on
5 the part of Defendants. In short, the provisions of section 212(a)(1) forbid an employer from
6 issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3)
7 on demand, (4) without discount, (5) at an established place of business in the State, (6) the
8 name and address of which appears on the instrument, and (7) which place of business has
9 been prepared, by the deposit of funds, the establishment of credit, or by some arrangement
10 or understanding, to pay the money called for by the instrument. *People v. Turner*, 154 Cal.
11 App. 2d Supp. 883, 885-86, 316 P.2d 781 (1957). Defendant violated Labor Code 212 by
12 paying its California employees with non-California checks, with no provision for free in
13 state check cashing. As expert witness John Britt said, the essence of corporate cash flow
14 management is to collect quickly and pay slowly. Labor Code 212 is designed to prevent
15 that economic incentive from being applied to employees who must live on their pay checks
16 as soon as they are distributed.
17
18
19

20 In a case identical to the instant action, *Fleming v. Dollar Tree Stores, Inc.*, 11 Wage
21 & Hour Cas. 2d (BNA) 1633 (2006), the defendant employer attempted to assert that
22 California Labor Code § 212 was outside the context of the employer/employee relationship.
23 The *Dollar Tree* Court relied, to the contrary, on the available authority and legislative
24 history which consistently indicates that section 212 applies to regulate the conduct of
25 employers, and not some other class of individuals. See, e.g., *Rhodes v. State Bar*, 49 Cal.3d
26 50, 54, 260 Cal. Rptr. 266, 775 P.2d 1035 (1989) (regarding employer); *Wang v. Div. of*
27
28

1 *Labor Standards Enforcement*, 219 Cal. App. 3d 1152, 1159, 268 Cal. Rptr. 669 (1990)

2 (stating Labor Code section 212 penalizes an employer.); Enrolled B. Rep. S.B. 496, at 1-2.

3 As a result, the Court in *Dollar Tree* found that section 212 regulates the conduct of
4 employers, like Defendant. In the instant action, it is undisputed that the Defendants issued
5 Plaintiff and Plaintiff class members out of state checks that violate California Labor Code §
6 212. Thus, there can be no dispute that Defendants are liable to Plaintiff and Plaintiff class
7 members for violating California Labor Code § 212.
8

9 **C. ASSUMING ARGUENDO THE STATUTE HAS SOME**
10 **DISCRIMINATORY EFFECT ON OUT-OF-STATE INTERESTS, THE**
11 **STATE HAS A LEGITIMATE LOCAL INTEREST IN PROTECTING**
12 **ITS WORKERS' ABILITY TO OBTAIN THEIR WAGES**

13 Even if there were some disparate impact on employers that use out-of-state banks,
14 California has a legitimate purpose in enforcing §212. Generally, wage protections for
15 workers are a legitimate and well-accepted state interest. See *RUI One Corp. v. City of*
16 *Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004) (heightened minimum wage laws are valid
17 use of state's police power); *Sav-On Drug Stores v. Superior Court*, 34 Cal. 4th 319, 340
18 (2004) (discussing California's express public policy to protect workers' wages); *California*
19 *Grape Etc. League v. Industrial Welfare Com.*, 268 Cal. App. 2d 692, 703 (1969); *Gantt v.*
20 *Sentry Ins.*, 1 Cal. 4th 1083, 1090 (1992) (wage and hour laws promote not just the welfare
21 of the worker but of the public as a whole), *overruled in part on other grounds by*, *Green v.*
22 *Ralee Engineering Co.*, 19 Cal. 4th 66, 80 n.6 (1998). The in-state check cashing location
23 requirement serves as a rational protection against the delay associated with cashing an out-
24 of-state paycheck and allows employees to obtain their wages when they need them. The
25 statute does not violate the Commerce Clause. Nor does Labor Code §212 offend the Equal
26 Protection Clause because plausible reasons exist for the in-state location requirement and
27
28

1 any resulting classification. *RUI One Corp.* at 1155 (a person attacking a statute on Equal
2 Protection grounds must negate “every conceivable basis which might support” the
3 classification). The instate location requirement provides relief from the multiple days an
4 employee must wait to receive cash when negotiating an out-of-state paycheck. It also
5 provides a way for an employee, particularly one without a bank account, to cash her check
6 without being forced to use third party banks or check cashing companies that take fees from
7 the wages. The statute takes into consideration that all California workers are entitled to
8 obtain 100% of their wages in cash when they negotiate their paychecks.
9

10 The statute is not held to a standard of perfection but need only have a rational basis
11 and be free of “invidious discrimination.” *Id*; see also, *Lipscomb v. Simmons*, 962 F.2d
12 1374, 1377-1378 (9th Cir. 1992). Labor Code §212 makes a legitimate effort to provide
13 California workers with a local place to cash their paychecks in full on demand and requires
14 compliance from all employers. Thus, California Labor Code § 212 is a valid state statute
15 that does not violate the Equal Protection Clause.
16

17 In sum, employers must satisfy the all of the requirements of §212. The employer is
18 responsible for providing the protections set forth in §212(a)(1), including the in-state check
19 cashing location requirement. There is nothing in §212’s language, case law or legislative
20 history that implies the employer’s burden to satisfy §212(a)(1) shifts to the drawee bank.
21

22 **D. DEFENDANT IS LIABLE FOR VIOLATION OF CALIFORNIA LABOR**
23 **CODE §2699, THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
24

25 Labor Code §2699 *et seq.* constitute the Labor Code Private Attorneys General Act of
26 2004 (“PAGA”). PAGA authorizes individual aggrieved employees to bring claims of
27 certain Labor Code violations on their own behalf and for other current or former employees
28 similarly situated:

1 Notwithstanding any other provision of law, any provision of this code that
2 provides for a civil penalty to be assessed and collected by the Labor and
3 Workforce Development Agency or any of its departments, divisions,
4 commissions, boards, agencies, or employees, for a violation of this code, may,
5 as an alternative, be recovered through a civil action brought by an aggrieved
6 employee on behalf of himself or herself and other current or former employees
7 pursuant to the procedures specified in Section 2699.3.

8 Labor Code §2699(a).

9 Plaintiff is an “aggrieved employee,” as defined by §2699(c), because she is a person
10 who was employed by the alleged violator and against whom one or more of the alleged
11 violations was committed. Prior to bringing this action, Plaintiff exhausted the administrative
12 remedies set forth in Labor Code §2699.3.

13 There is no requirement that Plaintiff obtain class certification in order to proceed
14 with her Labor Code §2699 claims made on behalf of other Supercuts employees. “Both the
15 language of the PAGA and the express intent of the Legislature indicate that an aggrieved
16 employee may bring an action on behalf of other employees without complying with the
17 requirements of a class action.” *Arias v. Superior Court*, 153 Cal.App.4th, at 786-788.
18 Because there is no class certification hurdle and the paychecks on their face reveal Labor
19 Code §212 violations, there is little doubt that Plaintiff will be successful in litigating the
20 claims for penalties under Labor Code §2699 *et seq.*

21 PAGA’s statutory penalties are available for violations of Labor Code §212, as stated
22 in Labor Code §2699.5. Labor Code §2699(f) provides that employers who have more than
23 one employee are subject to civil penalties of “one hundred dollars (\$100) for each aggrieved
24 employee per pay period for the initial violation and two hundred dollars (\$200) for each
25 aggrieved employee per pay period for each subsequent violation.” In addition, the statute
26 provides that “[a]ny employee who prevails in any action shall be entitled to an award of
27 reasonable attorney's fees and costs.” Labor Code § 2699(g)(1).

28 Significantly, these penalties apply regardless of whether an employee has actually
incurred a check-cashing fee or had a hold placed on his or her check. The fact that the

1 paycheck fails to comply with Labor Code § 212 is, by itself, sufficient to trigger the penalty
2 provision of § 2699(f).

3 The statute of limitations for the §2699 penalties is one year under California Code of
4 Civil Procedure §340(a), which applies to any “action upon a statute for a penalty.” *See*
5 Labor Code §2699.3(a)(2)(B). Thus, Defendant is responsible for penalties for improper
6 paychecks issued in the one year prior to the filing of the initial complaint herein.

7
8 **E. BECAUSE THE COURT HAS LIMITED LIABILITY TO ONE YEAR**
9 **AND ONLY AS TO EMPLOYEES OF DEFENDANTS REGIS AND**
10 **SUPERCUTS CORPORATE STORES, MAXIMUM PENALTIES**
11 **SHOULD APPLY**

12 In its original Notice of Removal of Civil Action filed in this action, before the
13 removal of all Defendants except Regis and Supercuts Corporation, Defendants indicated
14 that there were 8000 plus employees in the class. In its notice of Removal of Civil Action in
15 the *Miller v. Regis* case, Defendants indicate that there are 2000 plus employees in the class
16 in that case against Regis and Supercuts Corporation. Thus, the class size in this matter has
17 already been cut down to a quarter of its original size. The proper class period for the check
18 cashing class is from June 22, 2004 until July, 2005, with a semi-monthly pay cycle, so there
19 are 24 potential violations per class member. The maximum penalty of \$100.00, as provided
20 for in California Labor Code § 2699(f)(2) should be applied for each initial violation as to
21 each employee, for each of the approximately 2,000 class members. Further, the maximum
22 penalty of \$200.00, as provided for in California Labor Code § 2699(f)(2) should be applied
23 for each initial violation as to each employee, for each of the approximately 2,000 class
24 members. Finally, full restitution should be made under California Labor Code § 212 to each
25 class member for all costs incurred in cashing their paychecks.
26
27
28

1 Plaintiff properly requests restitutionary relief under Labor Code §212. The return of
2 wages taken at the time the paycheck was negotiated constitutes restitutionary relief given
3 that Defendant directly benefited by saving the costs of complying with §212 and
4 Defendant's failure caused Plaintiff and class members to have a portion of their wages taken
5 when trying to negotiate their paychecks. Plaintiff has also properly requested penalties
6 under Labor Code §2699 *et seq.* which expressly applies to §212 violations. Labor Code
7 §§2699, 2699.5.
8

9 **CONCLUSION**

10 Based upon the above facts and analysis, there are no genuine material issues of fact
11 in dispute as to Defendant's liability under California Labor Code § 212 and 2699 to the
12 check cashing class and as such, Plaintiff's motion for summary judgment should be granted.
13

14 DATED: October 1, 2007

THIERMAN LAW FIRM

15
16 By: /s/Mark R. Thierman
17 Mark R. Thierman
18 Attorney for Plaintiff
19
20
21
22
23
24
25
26
27
28