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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ORANGE

15 Ken Cullum, Dennis Franks,  
16 Michael George, and Michael Hoch, in  
17 their individual and representative  
18 capacities,

19 Plaintiffs,

20 v.

21 Manheim Investments, Inc.; Manheim  
22 Remarketing, Inc.; and DOES 1  
23 through 10, inclusive,

24 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

**02/11/2015** at 01:45:18 PM

Clerk of the Superior Court  
By Sarah Loose, Deputy Clerk

30-2015-00772124-CU-OE-CXC

CASE NO.: Judge Thierry Patrick Colaw

1. **Representative Claim for Misclassification in Violation of Labor Code §226.8**
2. **Representative Claim for Advising Misclassification in Violation of Labor Code §2753**
3. **Representative Claim for Failure to Record Work Hours as Required by the Wage Order and Labor Code §1198**
4. **Representative Claim for Failure to Store Records as Required by the Wage Order and Labor Code §§226 and 1198**
5. **Representative Claim for Failure to Provide an Accurate Itemized Paystub in Violation of Labor Code §226**
6. **Representative Claim for Failure to Secure Payment of Workers' Compensation in Violation of Labor Code §3700**
7. **Representative Claim for Failure to Provide Injury Prevention Program in Violation of Labor Code §6401.7**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Ken Cullum, Dennis Franks, Michael George, and Michael Hoch  
2 (collectively, "Plaintiffs") allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this Complaint to recover penalties and damages owed to  
5 them and other past and present California employees as the result of Manheim  
6 Investments, Inc. and Manheim Remarketing, Inc.'s (collectively, "Manheim" or  
7 "Defendants") willful misclassification of its Auctioneer employees as independent  
8 contractors as well as other violations of the California Labor Code.

9 2. Plaintiffs bring this action as Private Attorney Generals on behalf of the  
10 State of California and other current and former Manheim employees pursuant to  
11 California Labor Code §2699 *et seq.*

12 3. With regard to the Fourth and Seventh Causes of Action, the group of  
13 aggrieved employees includes all individuals employed by Manheim as hourly employees  
14 in California. With regard to all other Causes of Action, the group of aggrieved  
15 employees is limited to Auctioneers whom Manheim employed and treated as  
16 independent contractors in California.

17  
18 **THE PARTIES**

19 4. Plaintiff Ken Cullum ("Cullum") is a citizen of the United States and a  
20 resident of Nevada County, California. From 1992 until May 2014, Defendants employed  
21 Cullum in Orange County, California. From 1993 until the present, Defendants employed  
22 Cullum in San Bernardino County, California. From 1964 until the present, Defendants  
23 employed Cullum in Los Angeles County, California. At all times during his employment  
24 with Manheim, Cullum held the position of Auctioneer.

25 5. Plaintiff Dennis Franks ("Franks") is a citizen of the United States and a  
26 resident of Orange County, California. From 1990 until February 2014, Defendants  
27 employed Franks in Orange County, California. At all times during his employment with  
28 Manheim, Franks held the position of Auctioneer.

1           6.       Plaintiff Michael George (“George”) is a citizen of the United States and a  
2 resident of Sonoma County, California. From 1985 until 2008, Defendants employed  
3 George in Fresno County. From 1986 until 2009, Defendant’s employed George in  
4 Orange County. From 1988 until May 2014, Defendants employed George in Riverside  
5 County, California. At all times during his employment with Manheim, George held the  
6 position of Auctioneer.

7           7.       Plaintiff Michael Hoch (“Hoch”) is a citizen of the United States and a  
8 resident of San Bernardino County, California. From 1981 to the present, Defendants  
9 employed Hoch in Orange County, California. At all times during his employment with  
10 Manheim, Hoch held the position of Auctioneer.

11           8.       Defendant Manheim Investments, Inc. is a corporation organized under the  
12 laws of the State of Nevada with its principal place of business in Atlanta, Georgia. It  
13 operates out of six locations in California, including the locations at which Plaintiffs work  
14 and/or worked.

15           9.       Defendant Manheim Remarketing, Inc. is a corporation organized under the  
16 laws of the State of Delaware with its principal place of business in Atlanta, Georgia. It  
17 operates out of six locations in California, including the locations at which Plaintiffs work  
18 and/or worked.

19           10.      Plaintiffs refer to the Defendants herein collectively as “Defendants” or  
20 “Manheim.”

21           11.      Defendants employ individuals throughout the State of California, and,  
22 therefore, are subject to the provisions of the California Labor Code; specifically, Labor  
23 Code §226.8.

24           12.      Plaintiffs are currently unaware of the true names and capacities of the  
25 Defendants sued herein as Does 1 through 10 (the “Doe Defendants”) and therefore sue  
26 the Doe Defendants by such fictitious names. Plaintiffs will amend this Complaint to  
27 allege the true names and capacities of the Doe Defendants when they are ascertained.  
28





1           27.    At all times relevant hereto, Manheim employed and exercised control over  
2 the wages, hours, and working conditions of Auctioneers.

3           28.    The job of each Auctioneer is identical: serve as the Auctioneer in  
4 automobile auctions.

5           29.    At all times relevant hereto, Manheim has had a uniform policy of  
6 classifying all of these Auctioneers as independent contractors rather than employees.

7           30.    The degree of Manheim’s right to control how car sales are achieved is  
8 identical for all Auctioneers.

9           31.    Manheim controls the time, place, manner and means by which the  
10 Auctioneers perform their job duties.

11          32.    Manheim assigns its Auctioneers to work at particular auction locations  
12 owned by Manheim. The Auctioneers resell automobiles at these auctions on behalf of  
13 Manheim.

14          33.    Manheim has a number of written and unwritten policies and procedures  
15 that it communicates to its Auctioneers, and that the Auctioneers are required to follow in  
16 their work. When Auctioneers do not follow these policies, Manheim retains the right to  
17 discipline or terminate such Auctioneers for failure to comply with Manheim’s policies.

18          34.    The Auctioneers provide a service that is an integral part of Manheim’s  
19 business enterprise, and have no separate or distinct occupation or business.

20          35.    Manheim provides the location of the auctions, the items to be auctioned,  
21 and all other equipment necessary for the Auctioneers’ work.

22          36.    Manheim controls the times of the auctions and the times at which the  
23 Auctioneers must report to and leave work.

24          37.    Manheim retains the exclusive right to assign an Auctioneer to work at a  
25 particular auction of Manheim’s choosing. The Auctioneers have no authority over which  
26 Auctioneer works at a particular Manheim location.

27          38.    Within a location, Manheim sells cars in sets called “lanes.” Manheim  
28 retains the exclusive right to determine the lane at which an Auctioneer will work.







1 **THIRD CAUSE OF ACTION**

2 **(Failure to Record Work Hours as Required by**  
3 **the Operative Wage Order and California Labor Code §1198)**

4 58. Plaintiffs reallege and incorporate herein by this reference the allegations of  
5 Paragraphs 1 through 57 hereof, inclusive.

6 59. Paragraph 7(a) of the operative Wage Order requires Manheim to record  
7 when an employee begins and ends each work period.

8 60. Labor Code §1198 requires Manheim to comply with all of the terms and  
9 conditions of the operative Wage Order.

10 61. Because Manheim does not record the work hours of Auctioneers in any  
11 way, it violated the operative Wage Order and Labor Code §1198 on every pay period that  
12 an Auctioneer worked.

13  
14 **FOURTH CAUSE OF ACTION**

15 **(Failure to Store Records Required by**  
16 **the Operative Wage Order and California Labor Code §§226 and 1198)**

17 62. Plaintiffs reallege and incorporate herein by this reference the allegations of  
18 Paragraphs 1 through 61 hereof, inclusive.

19 63. Paragraph 7(C) of the operative Wage Order requires Manheim to store  
20 employee records require by Paragraph 7 at the place of employment or at a central  
21 location within the State of California.

22 64. Labor Code §1198 requires Manheim to comply with all of the terms and  
23 conditions of the operative Wage Order.

24 65. Labor Code §226 requires Manheim to store copies of itemized statements  
25 at the place of employment or at a central location within the State of California.

26 66. Manheim stores all employee records at a location outside the State of  
27 California and does not maintain the records at the place of employment or a central  
28 location within California.

1 **FIFTH CAUSE OF ACTION**

2 **(Failure to Provide an Accurate Itemized Paystub**  
3 **in Violation of California Labor Code §226)**

4 67. Plaintiffs reallege and incorporate herein by this reference the allegations of  
5 Paragraphs 1 through 66 hereof, inclusive.

6 68. California Labor Code §226(a) requires that each pay period Manheim must  
7 provide each employee with an itemized statement of wages that includes, among other  
8 things, the name and address of the legal entity that is the employer, the inclusive dates of  
9 the period for which the employee is paid, all hourly rates applicable to work performed in  
10 that pay period, the hours worked by the employee, the gross wages earned by the  
11 employee and the net wages earned by the employee.

12 69. At all times relevant hereto, Manheim violated Labor Code §226(a) by  
13 failing to provide Auctioneers any itemized statement at all.

14  
15 **SIXTH CAUSE OF ACTION**

16 **(Failure to Secure Payment of Worker's Compensation**  
17 **in Violation of Labor Code §3700)**

18 70. Plaintiffs reallege and incorporate herein by this reference the allegations of  
19 Paragraphs 1 through 69 hereof, inclusive.

20 71. California Labor Code §3700 requires that every employer secure payment  
21 of workers' compensation through insurance or approved self-insurance.

22 72. Since at least 2010, Manheim has failed to secure payment of workers'  
23 compensation with regard to Auctioneers. Specifically, Manheim has excluded  
24 Auctioneers from its workers' compensation insurance coverage in violation of Labor  
25 Code §3700.

1 **SEVENTH CAUSE OF ACTION**

2 **(Representative Claim for Failure to Provide Injury Prevention Program in**  
3 **Violation of Labor Code §6401.7 Against All Defendants)**

4 73. Plaintiffs reallege and incorporate herein by this reference the allegations of  
5 Paragraphs 1 through 72 hereof, inclusive.

6 74. Since at least 2010, Manheim has failed to maintain an effective written  
7 injury prevention program.

8 75. Manheim has failed to implement or maintain a written injury prevention  
9 program that identifies the person or persons responsible for implementing the program.

10 76. Manheim has failed to implement or maintain a written injury prevention  
11 program that identifies a system for identifying and evaluating workplace hazards,  
12 including scheduled periodic inspections to identify unsafe conditions and work practices.

13 77. Manheim has failed to implement or maintain a written injury prevention  
14 program that provides methods and procedures for correcting unsafe or unhealthy  
15 conditions and work practices in a timely manner.

16 78. Manheim has failed to implement or maintain a written injury prevention  
17 program that provides an occupational health and safety training program designed to  
18 instruct employees in general safe and healthy work practices and to provide specific  
19 instruction with respect to hazards specific to each employee's job assignment.

20 79. Manheim has failed to implement or maintain a written injury prevention  
21 program that provides a system for communicating with employees on occupational  
22 health and safety matters, including provisions designed to encourage employees to  
23 inform the employer of hazards at the worksite without fear of reprisal.

24 80. Manheim has failed to implement or maintain a written injury prevention  
25 program that provides a system for ensuring that employees comply with safe and healthy  
26 work practices.

27 81. Manheim has failed to train all employees on an effective injury prevention  
28 program.



1 **ON THE SECOND CAUSE OF ACTION:**

- 2 1. For declaratory judgment that Defendants have violated the California Labor  
3 Code and public policy as alleged herein and are jointly and severally liable for  
4 all violations described herein;
- 5 5. For temporary, preliminary, and permanent injunctive relief prohibiting  
6 Defendants, their officers, agents and all those acting in concert with them,  
7 from committing in the future those violations of law herein alleged and  
8 specifically requiring that Defendant classify and treat Auctioneers as  
9 employees and cease their practice of advising misclassification;
- 10 2. For civil penalties on behalf of current and former Auctioneers pursuant to  
11 Labor Code §2699; and
- 12 3. For attorney fees and costs reasonably incurred in accordance with California  
13 Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure  
14 §1021.5.

15  
16 **ON THE THIRD CAUSE OF ACTION:**

- 17 1. For temporary, preliminary and permanent injunctive relief against Defendants’  
18 ongoing violations of the Labor Code and specifically requiring that Defendants  
19 track Auctioneer work hours as required by the operative Wage Order and the  
20 Labor Code;
- 21 2. For civil penalties pursuant to Labor Code §2699; and
- 22 3. For attorney fees and costs reasonably incurred, in accordance with California  
23 Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure  
24 §1021.5.
- 25  
26  
27  
28

1 **ON THE FOURTH CAUSE OF ACTION:**

- 2 1. For temporary, preliminary and permanent injunctive relief against Defendants’  
3 ongoing violations of the Labor Code and specifically requiring that Defendants  
4 maintain records regarding California employees in accordance with Labor  
5 Code §226 and the operative Wage Order;
- 6 2. For penalties pursuant to Labor Code §§226, 226.3 and 2699;
- 7 3. For attorney fees and costs reasonably incurred, in accordance with California  
8 Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure  
9 §1021.5.

10  
11 **ON THE FIFTH CAUSE OF ACTION:**

- 12 1. For temporary, preliminary and permanent injunctive relief against Defendants’  
13 ongoing violations of the Labor Code and specifically requiring that Defendants  
14 issue separate statements to Auctioneers in accordance with Labor Code §226  
15 and the operative Wage Order;
- 16 2. For penalties pursuant to Labor Code §226.3; and
- 17 3. For attorney fees and costs reasonably incurred, in accordance with California  
18 Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure  
19 §1021.5.

20  
21 **ON THE SIXTH CAUSE OF ACTION:**

- 22 1. For temporary, preliminary and permanent injunctive relief against Defendants’  
23 ongoing violations of the Labor Code and specifically requiring that Defendants  
24 maintain workers compensation insurance covering Auctioneers in California;
- 25 2. For penalties pursuant to Labor Code §3700.5(a) with regard to one Auctioneer  
26 and Labor Code §3700.5(b) with regard to all other Auctioneers.
- 27 3. For attorney fees and costs reasonably incurred, in accordance with California  
28 Labor Code §§218.5, 2699, 1194, and CCP §1021.5.

1 **ON THE SEVENTH CAUSE OF ACTION:**

- 2 1. For temporary, preliminary and permanent injunctive relief against Defendants'  
3 ongoing violations of the Labor Code requiring that Defendants implement and  
4 maintain an Injury and Illness Prevention Program for All California employees  
5 as required by Labor Coded §6401.7;  
6 2. For civil penalties pursuant to Labor Code §2699; and  
7 3. For attorney fees and costs reasonably incurred, in accordance with California  
8 Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure  
9 §1021.5.


10  
11 **ON ALL CAUSES OF ACTION:**

- 12 1. For costs of suit, to the extent not otherwise prayed for above; and  
13 2. For such other and further relief as this Court deems just and proper.

14  
15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby demand a jury trial.

17  
18 DATED: February 11, 2015 THE GRAVES FIRM

19  
20 By: 

21 ALLEN GRAVES  
22 Attorney for Plaintiffs  
23 Ken Cullum, Dennis Franks,  
24 Michael George, and Michael Hoch