

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**WAYNE GAMBRELL**  
8502 Larson Drive  
Overland Park, KS 66214

and

**ARTURO AYALA**  
9713 Woodson Drive  
Overland Park, KS 66207

**On behalf of themselves  
and all other persons similarly situated,**

**Plaintiffs,**

vs.

**WEBER CARPET, INC.**  
11400 Rogers Road  
Lenexa, KS 66215

and

**JOE'S CARPET SPRINGFIELD, LLC**  
11400 Rogers Road  
Lenexa, KS 66215

**Defendants.**

Service Instructions: Registered Agent for both:  
Mark M. Weber  
11496 Rogers Road  
Olathe, KS 66062

**Cause of Action No**

## **COMPLAINT**

### ***Collective and Class Action Claims***

COMES NOW, Plaintiffs, Wayne Gambrell and Arturo Ayala, on behalf of themselves, and all others similarly situated, by and through counsel, and hereby set forth their representative action for violation of the Fair Labor Standards Act under §216(b), and an alternative representative action for violation of the Kansas Minimum Wage and Maximum Hours Law (“KMWMHL”) under FED. R. CIV. P. 23, and a representative action under the Kansas Wage Payment Act (“KWPA”) under FED. R. CIV. P. 23 as follows:

### **PRELIMINARY STATEMENT**

1. Plaintiffs, on behalf of themselves and all others similarly situated, bring this action against Defendants for unpaid straight time and overtime compensation, and related penalties and damages. It is Defendants’ practice and policy to willfully fail and refuse to properly pay all straight time and overtime compensation due and owing to Plaintiffs, and all other similarly situated employees, and doing so is in direct violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*

2. Alternatively, for all pay periods and/or employees not governed by the FLSA, the Plaintiffs, on behalf of themselves and all others similarly situated, bring this action against Defendants for unpaid straight time and overtime compensation, and related penalties and damages for Defendants’ practice and policy of willfully failing and refusing to properly pay straight time and overtime compensation due and owing to Plaintiffs and all other similarly situated employees. Doing so is in direct violation of the KMWMHL, K.S.A. § 44-1201 *et seq.*

3. Defendants’ pay practices and policies are in direct violation of the FLSA, and the

KWPA, and/or the KMWMHL, and therefore Plaintiffs, on behalf of themselves and all others similarly situated, seek declaratory relief; unpaid straight time compensation; overtime premiums for all overtime work required, suffered, or permitted by Defendants; compensation for wages wrongfully withheld or deducted; liquidated and/or other damages as permitted by applicable law; and attorneys' fees, costs, and expenses incurred in this action

### **PARTIES**

4. Plaintiff Wayne Gambrell currently resides at 8502 Larson Drive, Overland Park, KS 66214.
5. Plaintiff Arturo Ayala currently resides at 9713 Woodson Drive , Overland Park, KS 66214.
6. Plaintiffs are/were employed as Flooring Installers for Defendants and worked at Defendants' place of business located at 11400 Rogers Road, Lenexa, KS 66216.
7. Plaintiffs worked at the above listed Lenexa, Kansas location.
8. The Putative Plaintiffs/Class Members are those employees, and former employees, of Defendants employed in the capacity of Flooring Installers in Kansas and Missouri, and who were suffered or permitted to work by Defendants while not being paid straight time and overtime compensation for all hours worked.
9. Defendant Weber Carpet, Inc. is a Kansas corporation registered and in good standing in the State of Kansas and in good standing with its principle place of business in Kansas located at 11400 Rogers Road, Lenexa, KS 66216, Johnson County, Kansas 66215.
10. Defendant Joe's Carpet Springfield, LLC is a Kansas corporation registered and in

good standing in the State of Kansas and in good standing with its' principle place of business in Kansas located at 11400 Rogers Road, Lenexa, KS 66216, Johnson County, Kansas 66215.

11. Service may be made on Defendants by serving its registered agent Mark Weber, 11496 Rogers Road, Olathe, KS 66215.

12. At all relevant times, Defendants were the employer of Plaintiffs, and all other similarly situated employees, and is thus liable to Plaintiffs, and all others similarly situated, as an employer, joint employer, single employer and/or otherwise according to statutory and common law.

### **JURISDICTION AND VENUE**

13. This Court has original federal question jurisdiction under 28 U.S.C. § 1311 for the claims brought under the FLSA, 29 U.S.C. § 201, *et seq.*

14. The United States District Court for the District of Kansas has personal jurisdiction because Defendants conduct business in Johnson County, Kansas, which is located within this District.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as Defendants have offices, conducts business, have substantial business contacts and can be found in the District of Kansas, and the causes of action set forth herein have arisen, in part, and occurred, in part, in the District of Kansas.

16. Venue is further proper under 29 U.S.C. § 1132(e)(2) because Defendants have substantial business contacts within the State of Kansas, because the named Plaintiffs resides in Johnson County, Kansas and because some of the unlawful acts alleged herein occurred in Johnson County, Kansas.

17. The claims for violations of the KMWMHL and the KWPA are based upon the

statutory law of the State of Kansas.

18. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 for the pendant state claims because they arise out of the same nucleus of operative facts as the FLSA claim.

19. All of the alleged causes of action can be determined in this judicial proceeding and will provide judicial economy, fairness and convenience for the parties.

20. The liability evidence establishing both causes of action will be similar and neither issue will predominate nor create confusion to a jury.

### **GENERAL COLLECTIVE/CLASS ACTION ALLEGATIONS**

21. This Complaint may be brought and maintained as an “opt-in” collective action pursuant to Section 16 of the FLSA, 29 U.S.C. § 216(b); in that the claims of Plaintiffs are similar to the claims of the Putative Plaintiffs. Alternatively, however, the claims arising under the KMWMHL as set forth below are properly maintainable as a class action under FED. R. CIV. P. 23.

22. Putative Plaintiffs/Class Members are those current and former Flooring Installers of Defendants who have, or have, the same, or substantially similar, job duties and who were suffered or permitted to work by Defendants, in Kansas or at Defendants’ various locations in Missouri, while not being paid straight time and overtime compensation for all hours worked.

23. At all relevant times, Defendants have had a policy and practice of failing and refusing to compensate its Flooring Installers straight time for all hours worked and overtime compensation for all hours worked in excess of forty hours per week (or forty-six hours per week for the claims brought pursuant to the KMWMHL).

24. The Plaintiffs and all Putative Plaintiffs/Class Members were subject to Defendants’

policies and practices of failing and refusing to compensate employees their regular or statutorily required rate of pay for all hours worked.

25. Common questions of law and fact predominate in this action because the claims of Plaintiffs, and all others similarly situated, are based on whether Defendants' policy and practice of failing and refusing to compensate its Flooring Installers for all straight time and overtime pay for all hours worked violates the FLSA and Kansas state wage and hour laws.

26. The Class size is believed to be sufficiently numerous to warrant treatment as a collective/class action.

27. The Plaintiffs will adequately represent the interests of the Putative Plaintiffs/Class Members because they are similarly situated to the Putative Plaintiffs/Class Members and their claims are typical of, and concurrent to, the claims of the other Putative Plaintiffs/Class Members.

28. There are no known conflicts of interest between the Plaintiffs and the other Putative Plaintiffs/Class Members.

29. The Class Counsel is qualified and able to litigate the Putative Plaintiffs'/Class Members' claims.

30. The Class Counsel concentrate their practice in employment litigation, and their attorneys are experienced in collective/class action litigation, including collective/class actions arising under federal and state wage and hour laws.

31. The collective/class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of this cause of action.

32. Proceeding as a collective/class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and judicial resources.

33. A collective/class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate.

34. Collective/class action treatment is the only realistic means by which Plaintiffs can effectively litigate against a large, well-represented corporate entity such as Defendants.

35. Numerous repetitive individual actions would also place an enormous burden on the courts as they would be forced to take duplicative evidence and decide the same issues relating to Defendants' conduct repeatedly.

36. Individual joinder of all Putative Plaintiffs/Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

37. Each Putative Plaintiffs /Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices of permitting, suffering and/or failing to compensate employees their regular or statutorily required rate of pay for all hours worked.

38. Collective/class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

39. Plaintiffs, on behalf of themselves and all others similarly situated, sets forth additional collective/class action allegations in the various counts set forth herein.

**FIRST CAUSE OF ACTION/COUNT I**  
*Fair Labor Standards Act*

40. As far as the factual allegations set forth above are applicable to the claims made in Count I, the Plaintiffs hereby incorporates all of the above paragraphs in this Complaint as if fully set forth in this Count.

41. Plaintiff Wayne Gambrell was employed by the Defendant Weber Carpet, Inc. from

approximately June, 2000 to September, 2009. During this time frame, Plaintiff performed work for Defendants in the position of a Flooring Installer.

42. Plaintiff Arturo Ayala was employed by the Defendant Weber Carpet, Inc. from approximately February, 2005 to Present. During this time frame, Plaintiff performed work for Defendants in the position of a Flooring Installer.

43. Plaintiffs, while in the employ of Defendant Weber Carpet, Inc. installed flooring for Defendant Joe's Carpet Springfield, LLC, but was paid by and through Defendant Weber Carpet, Inc.

44. Prior to, during, and after the Plaintiffs' employment with the Defendants, Defendants employed, in Kansas and Missouri, numerous other individuals who had the same job duties and compensation structure as Plaintiffs (the Putative Plaintiffs/Putative Representative Action Plaintiffs).

45. Plaintiffs brings this Complaint as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who were, are, or will be employed by the Defendants as Flooring Installers within three years from the commencement of this action who have not been paid straight time for all hours worked and overtime compensation, at one-and-one-half times the regular rate of pay, for all work performed in excess of forty hours per week.

46. This Complaint may be brought and maintained as an "opt-in" collective action pursuant to Section 16 of the FLSA, 29 U.S.C. § 216(b), for all claims asserted by the Putative Representative Action Plaintiffs because the claims of Plaintiffs are similar to the claims of the Putative Plaintiffs of the representative action.

47. Plaintiffs and the Putative Representative Action Plaintiffs are similarly situated, have substantially similar job requirements and pay provisions, and are subject to Defendants' common

practice, policy, or plan of refusing to pay straight time and overtime in violation of the FLSA.

48. The names and addresses of the putative members of the representative action are available from Defendants. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

49. At all relevant times, Defendants have been, and continues to be, an “employer” engaged in interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. § 203.

50. At all relevant times, Defendants have employed, and/or continues to employ, “employee[s],” including each of the putative members of the FLSA representative action.

51. At all times relevant herein, Defendants have had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).

52. The FLSA requires each covered employer, such as Defendants, to compensate all non-exempt employees straight time for all hours worked and overtime compensation, at a rate of not less than one-and-one-half the regular rate of pay, for work performed in excess of forty hours in a work week.

53. Plaintiffs and the putative members of the FLSA representative action are not exempt from the right to receive overtime pay under the FLSA and are not exempt from the requirement that their employer pay them overtime compensation under the FLSA.

54. Plaintiffs, and the putative members of the FLSA representative action, are entitled to be paid overtime compensation for all overtime hours worked.

55. At all relevant times, Defendants have had a policy and practice of failing and refusing to pay to its Flooring Installers straight time for all hours worked and overtime pay at a rate

of not less than one-and-one-half the regular rate of pay for work performed in excess of forty hours in a work week.

56. The Defendants' failure to compensate Plaintiffs, and all others similarly situated, straight time for all hours worked and overtime compensation, at a rate of not less than one-and-one-half times the regular rate of pay, for work performed in excess of forty hours in a work week constitutes a violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. § 207(a)(1).

57. Defendants' violation of the FLSA is continual in nature; as Defendants continues to pay its Flooring Installers under the same unlawful policies and procedures that are set forth in detail herein.

58. The foregoing conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

59. The Plaintiffs, on behalf of themselves and all others similarly situated, seeks damages in the amount of all respective unpaid straight time and overtime compensation at a rate of one-and-one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, recovery of all attorneys' fees, costs, and expenses incurred in this action, to be paid as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.

**WHEREFORE**, Plaintiffs, on behalf of themselves and all proposed putative members of the FLSA representative action, prays for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action and permitting them

to assert timely FLSA claims in this action by filing individual Consents To Sue pursuant to U.S.C. § 216(b); and

b. Designation of Plaintiffs, Wayne Gambrell and Arturo Ayala, as Representative Plaintiffs of the proposed putative members of the FLSA representative action; and

c. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees; and

d. An award of damages for overtime compensation due for the Plaintiffs and the putative members of the Class, including liquidated damages, to be paid by Defendants; and/or

e. Pre-Judgment and Post-Judgment interest, as provided by law; and

f. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

**SECOND CAUSE OF ACTION/ COUNT II**  
***Kansas Minimum Wage Maximum Hours Law***

60. As far as the factual allegations set forth above are applicable to the claims made in Count II, the Plaintiffs hereby incorporates all of the above paragraphs in this Complaint as if fully set forth in this Count.

61. The Plaintiffs, on behalf of themselves and all others similarly situated, alternatively bring Count II under the KMWMHL for all pay periods and/or Flooring Installers that are located within the State of Kansas not governed by the FLSA.

62. At all relevant times, Defendants have been, and will continue to be, an "employer" within the meaning of the KMWMHL, K.S.A. § 44-1202(d).

63. At all relevant times, Defendants have employed, and/or continues to employ, “employee[s],” within the meaning of the KMWMHL, K.S.A. § 44-1202(e); including the Plaintiffs and all others similarly situated.

64. The Plaintiffs, on behalf of themselves and all others similarly situated, brings a claim for Defendants’ violation of the KMWMHL, K.S.A. § 44-1202 *et seq.*

65. The Plaintiffs, and all others similarly situated, have substantially similar job requirements and pay provisions, regularly work in excess of 46 hours per week, and are subject to Defendants’ common practice, policy, or plan of refusing to pay overtime in violation of the KMWMHL.

66. The KMWMHL requires each covered employer, such as Defendants, to compensate all non-exempt employees at a rate of not less than one-and-one-half the regular rate of pay for work performed in excess of forty-six hours in a work week as set forth in K.S.A. § 44-1204 and straight time for all hours worked.

67. The Plaintiffs and the respective putative members of the KMWMHL representative action are not exempt from the right to receive overtime pay under the KMWMHL and are not exempt from the requirement that their employer pay them overtime compensation under the KMWMHL.

68. The Plaintiffs, and the putative members of the KMWMHL representative action, are entitled to be paid straight time for all hours worked and overtime compensation for all overtime hours worked.

69. At all relevant times, Defendants has had a policy and practice of failing and refusing to pay its Flooring Installers straight time for all hours worked and overtime compensation, at a rate of not less than one-and-one-half the regular rate of pay, for work performed in excess of forty-six

hours in a work week.

70. Defendants' pay practices and policies stated herein are in violation of the KMWMHL, K.S.A. § 44-1202, *et seq.*, including K.S.A. § 44-1204(a).

71. Defendants' violation of the KMWMHL is continual in nature; as Defendants continues to pay its Flooring Installers under the same unlawful policies and procedures that are set forth in detail herein.

72. Class certification for claims under the KMWMHL is appropriate pursuant to Fed. R. Civ. P. 23(a) in that:

a. There are questions of law and fact arising in this action which are common to Plaintiffs and putative members of the Class, including: (i) Whether Defendants' pay plan and pay policies for the employees who work as Flooring Installers violate the rights to overtime compensation afforded under the KMWMHL, K.S.A. § 44-1202 *et seq.*; (ii) Whether Defendants' conduct violated the KMWMHL; (iii) Whether Plaintiffs and other members of the respective classes have suffered damages as a result of Defendants' violation of the KMWMHL; and (iv) the respective class-wide measure of damages; and

b. For all other relevant reasons set forth in this Complaint.

73. This class action is brought by the Plaintiffs, on behalf of themselves and all others similarly situated, for Defendants' failure to properly pay straight time and overtime compensation under the KMWMHL, and is being brought pursuant to FED. R. CIV. P. 23 (b)(2) and (b)(3).

74. Class certification of the respective Class is appropriate under FED. R. CIV. P. 23(b)(3) because a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that:

a. There is minimal interest of members of this class in individually controlling their prosecution of claims under the KMWMHL in that all claims will be similar in nature under the Court's analysis of Defendants' pay plan and its compliance with these laws;

b. There is no known prior litigation being prosecuted against Defendants by this class of employees for violations of the KMWMHL;

c. It is desirable to concentrate all the litigation of these claims in this form within this Court since all class members work in Kansas and all class members will have the same legal claims for violations of the KMWMHL;

d. There are no unusual difficulties likely to be encountered in the management of this case as a class action and Plaintiffs and their counsel are not aware of any reason why this case should not proceed as a class action on the claim that Defendants violated the KMWMHL; and

e. Class members can be easily identified from Defendants' business records, enabling class members to have their claims fairly adjudicated by the court or enabling them to opt-out of this class.

75. Class certification is appropriate under FED. R. CIV. P. 23(b)(2) because Defendants have acted and refused to act on grounds generally applicable to the respective class members covered by the KMWMHL, thereby making class relief appropriate.

76. In the absences of a class action, Defendants would be unjustly enriched because it would be able to retain the benefits and fruits of the wrongful violation of the KMWMHL.

77. The Plaintiffs has met the requirements of FED. R. CIV. P. 23(a), 23(b)(2) and 23(b)(3).

**WHEREFORE**, Plaintiffs, on behalf of themselves and all proposed Class Members, prays for relief as follows:

- a. Declaring and certifying this action as a proper class action under FED. R. CIV. P. 23 for the claim that Defendants violated the KMWMHL and naming Plaintiffs Wayne Gambrell and Arturo Ayala, as the proper class representative;
- b. Declaring and determining that Defendants violated the KMWMHL by failing to properly pay overtime compensation and compensation due the Plaintiffs and other members of the Class;
- c. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- d. An award of damages for overtime compensation due for the Plaintiffs and the putative members of the Class;
- e. Pre-Judgment and Post-Judgment interest, as provided by law; and
- f. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

**THIRD CAUSE OF ACTION/ COUNT III**  
**Kansas Wage Payment Act (KWPA)**

78. As far as the factual allegations set forth above are applicable to the claims made in Count III, the Plaintiffs hereby incorporates all of the above paragraphs in this Complaint as if fully set forth in this Count.

79. The Plaintiffs, on behalf of themselves and all others similarly situated, brings a claim for Defendants' violation of the Kansas Wage Payment Act (KWPA), K.S.A. §44-313 *et seq.*

80. At all relevant times, Defendants have been, and will continue to be an, "employer" within the meaning of the KWPA, K.S.A. §44-313(a).

81. At all relevant times, Defendants have employed, and/or continues to employ, “employee[s],” within the meaning of the KWPA §44-313(b) including Plaintiffs and all others similarly situated.

82. At all relevant times, Defendants have a policy and practice of failing and refusing to pay its Flooring Installers for work performed by inappropriately deducting monies from their compensation earned, including but not limited to ancillary fees in conjunction with the processing of mortgages, such as appraisal fees, in violation of the KWPA K.S.A. §44-314.

83. Defendants have violated, and continues to violate, the KWPA.

84. Class certification for claims under the KWPA is appropriate pursuant to Fed. R. Civ. P. 23(a) in that:

a. There are questions of law and fact arising in this action which are common to Plaintiffs and putative members of the Class, including: (i) Whether Defendants’ pay plan and pay policies for the employees who work as Flooring Installers violate their compensation rights afforded under the KWPA, K.S.A. §44-313 *et seq.*; (ii) Whether Defendants’ conduct violated the KWPA; (iii) Whether Plaintiffs and other members of the class have suffered damages as a result of Defendants’ violation of the KWPA; and (iv) the class-wide measure of damages; and

b. For all other relevant reasons set forth in this Complaint.

85. This class action is brought by the Plaintiffs, on behalf of themselves and all others similarly situated, for Defendants’ failure to pay wages due under the KWPA, and is being brought pursuant to FED. R. CIV. P. 23 (b)(2) and (b)(3) .

86. Class certification of the respective Class is appropriate under FED. R. CIV. P.

23(b)(3) because a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that:

a. There is minimal interest of members of this class in individually controlling their prosecution of claims under the KWPA in that all claims will be similar in nature under the Court's analysis of Defendants' pay plan and its' compliance with these laws;

b. There is no known prior litigation being prosecuted against Defendants by this class of employees for violations of the KWPA;

c. It is desirable to concentrate all the litigation of these claims in this form within this Court since all class members work in Kansas and all class members will have the same legal claims for violations of the KWPA;

d. There are no unusual difficulties likely to be encountered in the management of this case as a class action and Plaintiffs and their counsel are not aware of any reason why this case should not proceed as a class action on the claim that Defendants violated the KWPA; and

e. Class members can be easily identified from Defendants' business records, enabling class members to have their claims fairly adjudicated by the court or enabling them to opt-out of this class.

87. Class certification is appropriate under FED. R. CIV. P. 23(b)(2) because Defendants have acted and refused to act on grounds generally applicable to the respective class members covered by the KWPA, thereby making class relief appropriate.

88. In the absence of a class action, Defendants would be unjustly enriched because it would be able to retain the benefits and fruits of the wrongful violation of the KWPA.

89. The Plaintiffs has met the requirements of FED. R. CIV. P. 23(a), 23(b)(2) and 23(b)(3).

**WHEREFORE**, Plaintiffs, on behalf of themselves and all proposed Class Members, prays for relief as follows:

a. Declaring and certifying this action as a proper class action under FED. R. CIV. P. 23 for the claim that Defendants violated the KWPA and naming Plaintiffs Wayne Gambrell and Arturo Ayala, as the proper class representatives;

b. Declaring and determining that Defendants violated the KWPA by failing to properly pay compensation due the Plaintiffs and other members of the Class;

c. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;

d. An award of damages for compensation due for the Plaintiffs and the putative members of the Class;

e. Pre-Judgment and Post-Judgment interest, as provided by law; and

f. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

**Demand for Jury Trial**

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they and all members of the proposed representative action have a right to jury by trial.

**Designated Place of Trial**

COMES NOW, Plaintiffs, by and through their counsel of record, and hereby designate

the place of trial as follows: Kansas City, Kansas.

Respectfully submitted,

s/ Barry R. Grissom  
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**ATTORNEY FOR PLAINTIFFS**

