

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROSEMARIE TROY and MIKKI COBB,
individually, and as class representatives,

Plaintiffs,

v.

KEHE FOOD DISTRIBUTORS, INC.

Defendant.

No. C09-0785 JLR

NOTICE OF LAWSUIT

TO: CURRENT AND FORMER FULL-TIME MERCHANDISERS WHO WERE EMPLOYED BY KEHE FOOD DISTRIBUTORS, INC. IN WASHINGTON STATE AT ANY TIME BETWEEN MAY 22, 2006 AND JUNE 21, 2010; AND

TO: CURRENT AND FORMER FULL-TIME SALES REPRESENTATIVES WHO WERE EMPLOYED BY KEHE FOOD DISTRIBUTORS, INC. IN WASHINGTON STATE AT ANY TIME BETWEEN MAY 22, 2006 AND SEPTEMBER 19, 2011;

INTRODUCTION

The purpose of this Notice is to inform you of a pending lawsuit in which you are similarly situated to the named plaintiffs, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure to participate in the lawsuit if you choose to do so.

DESCRIPTION OF THE ACTION

On May 22, 2009, the named plaintiffs, Rosemary Troy and Mikki Cobb, filed a lawsuit against Defendant Kehe Food Distributors, Inc. ("Kehe") on behalf of all other individuals who were employed by Kehe as full-time merchandisers servicing any Kehe

account throughout the United States, and as full-time sales representatives primarily servicing Alberstons stores in the Intermountain Region (referred to here as the “similarly situated group”). The lawsuit alleges that these individuals are owed overtime pay under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207 for their hours worked in excess of forty (40) per week. The lawsuit makes similar allegations under the Washington Minimum Wage Act (“MWA”), RCW 49.46, for employees based in Washington State.

This lawsuit contains two separate but related claims: the federal law (FLSA) claim and the state law (MWA) claim. Both claims allege that the affected employees were unlawfully treated as exempt from overtime pay requirements, and that employees are owed overtime pay. However, each claim has a different procedure for you to follow in order to participate. These procedures are described below.

Kehe denies that it has violated the FLSA or the MWA. Kehe asserts that the affected employees were lawfully and properly classified as exempt employees, and that no overtime pay is owed.

COMPOSITION OF THE SIMILARLY SITUATED GROUP

The similarly situated group is comprised of Kehe full-time merchandisers servicing any Kehe account throughout the United States between May 22, 2006 and June 21, 2010, and of Kehe full-time sales representatives primarily servicing Alberstons stores in the Intermountain Region between May 22, 2006 and September 19, 2011

You are receiving this Notice because Kehe records show that you are part of this “similarly situated” group, and because you worked in Washington State.

YOUR RIGHT TO PARTICIPATE IN THE FEDERAL (FLSA) CLAIM

If you wish to participate in the federal law (FLSA) claim, you must communicate your desire to do so by checking the appropriate box on the attached Election Form, and then mailing, faxing, or emailing the completed Election Form to plaintiffs’ counsel for filing with the Court:

Martin S. Garfinkel & Adam J. Berger
Attn: Sheila Cronan, paralegal
SCHROETER, GOLDMARK & BENDER
810 Third Avenue, Suite 500
Seattle, WA 98104
Phone: (800) 809-2234
Fax: (206) 682-2305
Email: cronan@sgb-law.com

The Consent Form must be postmarked (in the case of mail) or received (in the case of email or fax) by plaintiffs’ counsel on or before XXXX, 2012 (45 days after mailing of this Notice) for you to participate in the federal law (FLSA) claim. **If you have already**

filed a Consent to join the federal law (FLSA) claim, you do not need to file this Election Form.

If you do not wish to participate in the federal law (FLSA) claim, you should not check that box on the Election Form.

YOUR RIGHT TO PARTICIPATE IN THE STATE LAW (MWA) CLAIM

If you wish to participate in the state law (MWA) claim, you may do so without taking any further action.

If you do not wish to participate in the state law (MWA) claim, you must communicate your desire by checking the appropriate box on the attached Election Form, and then mailing, faxing, or emailing the completed Election Form to plaintiffs' counsel for filing with the Court:

Martin S. Garfinkel & Adam J. Berger
Attn: Sheila Cronan, paralegal
SCHROETER, GOLDMARK & BENDER
810 Third Avenue, Suite 500
Seattle, WA 98104
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Fax: (206) 682-2305
Email: cronan@sgb-law.com

This Election Form must be postmarked (in the case of mail) or received (in the case of email or fax) by plaintiffs' counsel on or before XXXX, 2012 (45 days after mailing of this Notice) for you to exclude yourself from this state law (MWA) claim.

EFFECT OF JOINING OR NOT JOINING THIS ACTION

If you join this action, you and Kehe will be bound by any ruling, judgment, award, or settlement, whether favorable or unfavorable. Also, if you join this action, you will not be responsible to pay attorneys' fees or costs associated with the case. Such fees and costs will only be paid if the lawsuit is successful, and in that event will either come out of any recovery by settlement or judgment, or directly from defendant Kehe. Before payment of fees and costs is made, there will be notice to the similarly situated group and approval by the Court.

If you do not join this action, you will not be bound by any ruling, judgment, or settlement, whether favorable or unfavorable, and you will not share in any recovery obtained for the employees by settlement or judgment in the case. Further, if you do not join this action, you are free to take action on your own or to do nothing at all.

MERITS NOT DETERMINED

On September 19, 2011, the Court ruled that the action can proceed as a collective action under federal law and, with respect to Washington-based employees, as a class action under state law.

The Court has not yet ruled on the merits of plaintiffs' claims or Kehe's defenses.

EFFECT OF PRIOR RELEASES

Some former employees may have signed releases in connection with the termination of their employment with Kehe. The parties dispute the effectiveness of those releases as applied to the claims in this case, and the Court has not yet ruled on that issue. Therefore, you may participate in this lawsuit (by filing a Consent Form) even if you signed such a release.

NO RETALIATION PERMITTED

The law prohibits retaliation against employees for exercising their rights under the FLSA and under the MWA. Therefore, Kehe is prohibited from taking adverse employment actions against you because you choose to participate in this action.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this action by filing a Consent Form, your interests will be represented by plaintiffs' counsel. If you have questions, you can contact them:

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berger@sgb-law.com
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THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE U.S. DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, HON. JAMES L. ROBERT.