

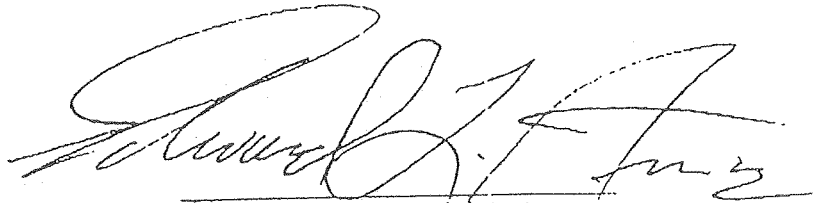
AFFIDAVIT

I, Edward Arcuri, being duly sworn affirm that the following is true to the best of my knowledge and belief.

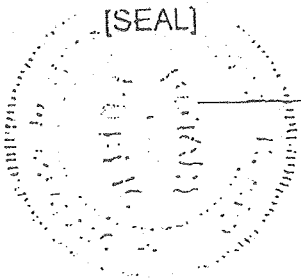
1. Since May of 2000, I have been the Administrator of the Labor Standards Unit, Colorado Department of Labor and Employment (DOLE) and am an attorney familiar with the Colorado Wage Act.
2. The Labor Standards Unit receives complaints from employees who are owed wages under the Colorado Wage Act.
3. As part of my duties as Administrator, I have reviewed DOLE's file concerning Bradley Petroleum, Inc and Sav-O-Mat, Inc. (collectively, Bradley).
4. The Labor Standards Unit has received wage complaints from many former employees of Bradley. Those complaints indicate a pattern of terminating employees without payment of the final paycheck. Where theft reports have been made to the local police, payment has been withheld pending the outcome of the police investigation.
5. Pursuant to the Colorado Wage Act, payment of the final paycheck becomes due if no charges are filed or upon acquittal. According to DOLE files, no charges have been filed in any of the complaints that were lodged with DOLE. Yet, Bradley has continued withholding the wages due to the former employees.
6. In 1996-97, after investigation of numerous complaints alleging failure to pay final paychecks, DOLE brought a compliance action against Bradley pursuant to the Colorado Wage Act entitled *In the Matter of Assessment of Penalties against Bradley Petroleum, Inc., Sav-O-Mat, Inc., Bradley Hobson Calkins, George William Calkins, and Kathryn Calkins*, Case No. LS 96-01.
7. The complaining employees in the 1996-97 case claimed that they had been terminated for alleged shortages, police reports had been filed against them and they had been denied their final paychecks at the conclusion of the police investigation even though no charges were filed.
8. Bradley subsequently reached a settlement in March of 1997, in which the named individuals were dismissed and the corporate defendants agreed to pay Twenty Thousand Dollars in penalties and establish procedures to abate the offending practices that gave rise to the penalties.

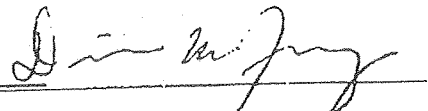
9. Bradley Hobson Calkins, as President and authorized agent for the corporate defendants and the then Executive Director of DOLE signed the Settlement Agreement *In the Matter of Assessment of Penalties against Bradley Petroleum, Inc., Sav-O-Mat, Inc., Bradley Hobson Calkins, George William Calkins, and Kathryn Calkins* Case No. LS 96-01.
10. DOLE's records reveal that approximately six months following the 1997 Settlement Agreement complaints filed with DOLE against Bradley resumed, with similar allegations. Complaints against Bradley have continued to be filed with this office.
11. Since March 1997, DOLE has received more than 200 complaints from former Bradley employees that allege the same behavior that Bradley agreed to abate under the terms of the Settlement Agreement.

FURTHER Affiant sayeth not.


Edward Arcuri, Administrator

Subscribed and sworn to before me in the County of Denver, State of Colorado, this 22nd day of March, 2002.




Notary Public

11/18/2005
my commission expires

COPY

Denver County, Colorado, District Court
1437 Bannock Street
Denver, CO 80202
720.865.8301

Plaintiffs: AMY OKAMOTO, ANGELA DAVIS,
STANLEY SCHAEFER, VALERIE
JUNE, CHRISTOPHER
RHOADES, BERNADETTE VALDEZ,
RUBY LOWE, BARBARA JACKSON
JEFFREY JOHNSTON, JOHN
ALLINDER, BRIAN MANDIGO,
MELINDA LOPEZ, JOE AGUERO,
PEARL JASSO, DARLA ORTEGA,
JOANN HUFFMAN, CRYSTAL
CORLEY, DORENE LOPEZ,
JAMES VINCENT GREEN, JESSICA
THOMPSON, FLOYD EARL, JR.,
CHANNELL ASHLEY, DAVID
TAYLOR and PAMELA TAYLOR,
individually and on
behalf of all others similarly
situated,

vs.

Defendants: BRADLEY PETROLEUM, INC., a
Colorado Corporation, SAV-O-
MAT, INC. a Colorado
Corporation, BRADLEY H.
CALKINS, individually, and
GEORGE CALKINS, individually.

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▲ ▲
COURT USE ONLY

Case Number: 2001 CV 5947

Courtroom 7

FOURTH AMENDED COMPLAINT

CC Client, Otto, 60501, 10/31/02

The Plaintiffs, by and through their attorney, LEE E. CHRISTIAN, P.C., respectfully allege as follows:

INTRODUCTION, CLASS ALLEGATIONS, PARTIES, JURISDICTION & VENUE

1. This is a class action for damages and declaratory relief against Bradley Petroleum, Inc., Sav-O-Mat, Inc., Bradley H. Calkins and George Calkins for nonpayment of wages and unlawful discharge. Plaintiffs claim that Defendants acted willfully and wantonly.

2. Plaintiff Amy Okamoto is a resident of the County of Morgan, State of Colorado.
3. Plaintiff Angela Davis is a resident of the County of Arapahoe, State of Colorado.
4. Plaintiff Stanley Schaefer is a resident of the County of Yuma, State of Colorado.
5. Plaintiff Valerie June is a resident of the County of Broomfield, State of Colorado.
6. Plaintiff Christopher Rhoades is a resident of the County of Logan, State of Colorado.
7. Plaintiff Bernadette Valdez is a resident of the County of Denver, State of Colorado.
8. Plaintiff Ruby Lowe is currently a resident of Indianapolis, Indiana.
9. Plaintiff Barbara Jackson is a resident of the County of Summit, State of Colorado.
10. Plaintiff Jeffrey Johnston is a resident of the County of Denver, State of Colorado.
11. Plaintiff John Allinder is a resident of the County of Weld, State of Colorado.
12. Plaintiff Brian Mandigo is a resident of the County of Denver, State of Colorado.
13. Plaintiff Melinda Lopez is a resident of the County of Adams, State of Colorado.
14. Plaintiff Joe Aguero is a resident of the County of Weld, State of Colorado.
15. Plaintiff Pearl Jasso is a resident of the County of Weld, State of Colorado.

16. Plaintiff Darla Ortega is a resident of the County of Weld, State of Colorado.

17. Plaintiff JoAnn Huffman is a resident of the County of Clear Creek, State of Colorado.

18. Plaintiff Crystal Corley is a resident of the County of Weld, State of Colorado.

19. Plaintiff Dorene Lopez is a resident of the City of Covina, State of California.

20. Plaintiff James Vincent Green is a resident of the County of Natrona, State of Wyoming.

21. Plaintiff Jessica Thompson is a resident of the County of Boulder, State of Colorado.

22. Plaintiff Floyd Earl, Jr. is a resident of the County of Arapahoe, State of Colorado.

23. Plaintiff Channell Ashley is a resident of the City of Glendale, State of Arizona.

24. Plaintiff David Taylor is a resident of the County of Evans, State of Colorado.

25. Plaintiff Pamela Taylor is a resident of the County of Evans, State of Colorado.

26. At all times referenced herein, Plaintiff Amy Okamoto was employed by Sav-O-Mat in its Fort Morgan service station. Plaintiff Okamoto is, and was at all pertinent times, a resident of the City of Brush, Colorado.

27. At all times referenced herein, Plaintiff Angela Davis was employed by Sav-O-Mat in its Fort Morgan service station. Plaintiff Davis is currently a resident of the City of Aurora, Colorado.

49. At all times referenced herein, Plaintiff Pamela Taylor was employed by Sav-O-Mat in its service station #6 in Greeley, Colorado. Ms. Taylor is currently a resident of Evans, Colorado.

50. The Plaintiffs are a class of individuals who were employed at Defendants' gas stations who had deductions from their pay for shortages of cash or product, for customer drive-offs, for robberies, for check stop-payment fees and/or for lock changes. Many in the class had a report filed against them in bad faith with a law enforcement agency in connection with accusations of theft; however, either (a) no criminal charges were filed against the accused person within ninety days of the filing of the report; (b) charges were brought and subsequently dismissed; or (c) the accused person was found not guilty.

51. Amy Okamoto is a member of a class of persons who were terminated from the Defendants for complaining about matters of public concern, for expressing public duties, rights and/or privileges and/or for refusing to commit illegal acts including, but not limited to, complaints about the wage treatment of workers, the safety of buildings, gasoline price and quality manipulation. The class of persons were then denied lawfully earned wages because of false accusations of theft.

52. This is hardly the first time such allegations have been made against Defendants. The Colorado Department of Labor and Employment, Labor Standards Unit (hereafter DOLE) has received hundreds of complaints from former employees of the Defendants. The head of Colorado's wage enforcement division states the complaints against Defendants indicate a pattern of terminating employees without payment of the final paycheck.

53. In 1996-97, DOLE took the extraordinary step of filing a compliance action against the Defendants' for their practice of terminating employees for alleged shortages, filing police

reports against the employees, and denying employees final paychecks even though charges were not filed. Defendants paid \$20,000.00 in penalties for the illegal practice in March, 1997.

54. Nevertheless, DOLE has received **more than 200 complaints** from former Bradley employees that allege the **same behavior** that Bradley agreed to abate under the terms of the Settlement Agreement.

55. The State of New Mexico Department of Labor, Labor and Industrial Division (NMDOL) is faced with the same repetitious outrageous conduct. NMDOL has logged 31 cases of failure to pay final wages in just two counties since August 1995.

56. Several cases were filed against Defendants with administrative agencies in Colorado and New Mexico even *after* this lawsuit was filed.

57. The Defendants' have a pattern and practice of refusing to pay final paychecks based on alleged shortages. The practice began in the *early 1990s*. The Defendants have a policy to deduct shortages from paychecks and/or terminate employees for shortages and/or refuse to issue final paychecks based on shortages.

58. Although numerous claims exist, the potential class is composed of persons demanding final paychecks for hourly work of \$6-\$9/hour, usually under \$1,000 per person.

59. Defendants Bradley Petroleum, Inc. and Sav-O-Mat, Inc. are Colorado Corporations maintaining a principal place of business at 105 South Cherokee Street, Denver, Colorado. At all times relevant in this Complaint, the Defendants were the employer of the Plaintiffs and others similarly situated.

60. Defendants Bradley H. Calkins and George Calkins, as the owners/officers of the corporations, are liable for unpaid wages.

CLASS ACTION ALLEGATIONS

61. Plaintiff Okamoto brings this action pursuant to Rule 23 of the Colorado Rules of Civil Procedure, on behalf of herself and as a representative of a class consisting of:

All individuals who were employed with Defendants' from October 25, 1998 to present who had deductions from their pay for mathematical errors, shortages of cash or product, for customer drive-offs, for robberies and burglaries, for losses assisted by an employee's violation of rules or procedures, for incorrectly processed credit card charges, for bad checks from customers, for check stop-payment fees and/or for lock changes. The individuals were either not paid their wages at all or not paid wages with interest and/or penalties as required by applicable law. Many in the class of individuals may have had a report filed against them in bad faith with a law enforcement agency in connection with accusations of theft; however, either (a) no criminal charges were filed against the accused person within ninety days of the filing of the report; (b) charges were brought and subsequently dismissed; or (c) the accused person was found not guilty.

62. Plaintiff Okamoto brings this action pursuant to Rule 23 of the Colorado Rules of Civil Procedure, on behalf of herself and as a representative of a class consisting of:

All individuals who were terminated from the Defendants for complaining about matters of public concern, for expressing public duties, rights and/or privileges and/or for refusing to commit illegal acts including, but not limited to, complaints about the wage treatment of workers, the safety of buildings, gasoline price and quality manipulation. The class of persons were then denied lawfully earned wages because of false accusations of theft.

63. Plaintiff, individually and on behalf of the Class, brings this action for compensatory damages pursuant to Colorado Rule of Civil Procedure 23. The Class members have suffered personal injury as a direct and proximate result of Defendants' actions for which an award of damages is appropriate.

64. Plaintiff, individually and on behalf of the Class, brings this action for other relief pursuant to Colorado Rule of Civil Procedure 23 asking for a declaration that the Defendants' acts are illegal, enjoining Defendants from continuing them.

65. The members of the class are so numerous that their individual joinder herein is impracticable. On information and belief, there are several hundred class members. The precise number of class members and their addresses are unknown to Plaintiff.

66. There are questions of fact and law common to all members of the Class including, but not limited to:

- a. Whether Defendants made deduction from paychecks for shortages of product or cash, for reimbursement for customer drive-offs, for robberies, for stop-payment fees, or for changing locks.
- b. Whether Defendants filed reports against them in bad faith with a law enforcement agency in connection with accusations of theft, wherein either (a) no criminal charges were filed against the accused person within ninety days of the filing of the report; (b) charges were brought and subsequently dismissed; or (c) the accused person was found not guilty.

- c. Whether the action caused Plaintiffs' personal injuries including pain and suffering and emotional damages.
- d. Whether deductions made by Defendants are illegal under the Colorado Wage Act and/or the Fair Labor Standards Act.

67. These and other questions of law and of fact are common to the Class and predominate over any questions affecting only individual class members.

68. The claims of Plaintiff Okamoto and the other Plaintiffs are typical of the claims of the class she seeks to represent.

69. Plaintiff will fairly and adequately represent and protect the interest of the Class she seeks to represent. Plaintiff has obtained counsel competent and experienced in wage/hour and employment litigation to represent her and the class. Ms. Okamoto is well-suited to address the policies Defendants have pursued for years. She is a stable, married, 50-year resident of Colorado. She is a fraud investigator for the Morgan County of Department Social Services. She has diligently searched for potential class members. She attests to the difficulty she had in getting counsel for this case and the apprehension that potential plaintiffs have had in joining the litigation.

70. Certification of the Class is appropriate pursuant to Colorado Rule of Civil Procedure 23 because the questions of law and fact common to the Class predominate over any questions affecting only individual members. This class action is superior to other available remedies for the fair and efficient adjudication of this controversy. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By

contrast, the class action device presents far fewer management difficulties, and provides the benefits of a single adjudication, economy of scale and comprehensive supervision by a single court.

71. All plaintiffs will cite identical clear, long held Colorado and Federal law prohibiting such conduct.

72. Alternatively, the prosecution of separate actions by or against individuals members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest.

FACTUAL BACKGROUND: AMY OKAMOTO

73. Ms. Okamoto was employed at Sav-O-Mat, a service station operated by Bradley Petroleum, in Fort Morgan from August, 1998 - December, 1999.

74. During the tenure of her employment, Ms. Okamoto was required to work several hours of overtime each week, yet she did not receive time-and-a-half amounts as required by the Fair Labor Standards Act.

75. Electrical and wiring problems within the store caused constant cash register failures, resulting in false cash shortages. Ms. Okamoto consistently reimbursed the till for these shortages out of fear of losing her job. This caused unjust enrichment to her employer.

76. Ms. Okamoto's final paycheck was wrongfully withheld. Defendants alleged that Ms. Okamoto had stolen from them. The Defendants filed charges of theft with the local law enforcement authorities. Even when she was cleared of all wrongdoing, her check was not released

to her. Yet she received a W-2 that included these wages. Wages were finally sent to undersigned counsel in July, 2001, fully 18 months post-termination. No interest, penalties or attorneys fees were paid.

77. The Defendants have a pattern and practice of terminations and similar failure to pay wages. The Colorado Department of Labor heavily the Defendant or Defendants for similar practices in 1997. Numerous complaints with governmental labor departments and several lawsuits have alleged actions similar to those taken against Ms. Okamoto.

78. Ms. Okamoto was terminated after months of complaints regarding matters of public concern including overtime, wages, safety issues and legal violations.

79. In addition, Plaintiff observed and regularly complained about fueling practices which were in violation of State and/or Federal law, about safety issues within the Sav-O-Mat and about her wages, hours and nonpayment of overtime.

FACTUAL BACKGROUND: ANGELA DAVIS

80. Ms. Davis was employed at Sav-O-Mat, a service station operated by Bradley Petroleum, in Fort Morgan from April 27, 1999 - December 29, 1999.

81. Ms. Davis was terminated by Defendants for alleged theft. However, no police report was ever filed. When Ms. Davis presented at the store on January 10, 2000 to pick up her final paycheck, Defendants' had her arrested and charged with trespassing.

82. Ms. Davis contacted the Colorado Department of Labor and on January 14, 2000, Ms. Davis sent a Formal Demand for Payment of Wages via certified mail. Defendants did not, and to date, have not, responded.

83. Ms. Davis is owed approximately \$300.00 plus interest, penalties and attorneys fees.

84. Despite the fact that Defendants did not tender Ms. Davis her final paycheck, these wages were reflected on her W2 statement as wages earned.

85. In addition, Ms. Davis observed fueling practices which were in violation of State and/or Federal law, cash register malfunctions resulting in false shortages, safety issues within the Sav-O-Mat and about her wages, hours and nonpayment of overtime.

86. Ms. Davis observed Plaintiff Okamoto's complaints regarding fueling practices which were in violation of State and/or Federal law, cash register malfunctions resulting in false shortages, safety issues within the Sav-O-Mat and about her wages, hours and nonpayment of overtime.

FACTUAL BACKGROUND: STANLEY SCHAEFER

87. Mr. Schaefer was employed at Sav-O-Mat, a service station operated by Bradley Petroleum, in Fort Morgan from February, 1999 - December, 1999.

88. Mr. Schaefer was aware of cash register malfunctions and believes they existed for four or five years.

89. Mr. Schaefer had to call a cash register company to come in and repair the machine. A new machine was placed in the store for approximately 2-3 weeks, during which time there were virtually no shortages. When the old machine was returned, the shortages resumed.

90. During the tenure of his employment, he was aware of company representatives from the Denver office coming into the store and making deposits to clear up shortages.

91. Mr. Schaefer was terminated by Defendants for alleged theft. However, no police report was ever filed. Further, Defendants threatened to sue Mr. Schaefer for alleged shortages.

92. Defendants wrongfully withheld Mr. Schaefer's final paycheck in contravention of State law. Mr. Schaefer is owed approximately \$438.00 plus interest, penalties and attorneys fees.

93. In addition, Mr. Schaefer observed unsafe conditions within the store. Complaints regarding these conditions were not acted upon by Defendants.

94. Despite the fact that Defendants did not tender Mr. Schaefer his final paycheck, these wages were reflected on his W2 statement as wages earned.

FACTUAL BACKGROUND: VALERIE JUNE

95. Ms. June was employed at Sav-O-Mat, a service station operated by Bradley Petroleum, at 104th and Washington in Thornton for three weeks commencing January 11, 2002.

96. When Ms. June began her employment, the store had been closed for one week due to the resignation of the prior manager.

97. Ms. June contacted the Thornton Fire Department and requested an inspection, as there was no emergency gasoline shut-off in the store.

98. Ms. June was to receive \$1,700.00 per month. However, her first payroll check reflected year-to-date gross income of \$2,300.00. She only netted \$616. The second payroll check

reflected year-to-date gross income of \$2,800.00. Ms. June complained to the payroll personnel about this discrepancy, yet it has never been corrected.

99. Prior to working for Sav-O-Mat, Ms. June was employed by 7-11 and Texaco. Industry standard did not dictate the termination of employees when customers filled their cars with gasoline and left without paying. However, one of Ms. June's employees, Tom Holzi, was terminated when a drive-off occurred.

100. Ms. June requested that she be permitted to post "pre-pay" signs on the gas pumps in an effort to stem drive-offs. Defendant Bradley Calkins refused this request.

101. Ms. June was afraid to answer the telephone at the store when working due to the barrage of verbal abuse she received from Defendant Bradley Calkins.

102. Ms. June was terminated by Defendants for alleged theft. However, no police report was ever filed. Additionally, Defendants wrongfully deducted \$91.94 from her final paycheck for "shortages."

103. Ms. June is owed approximately \$91.94 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: CHRISTOPHER RHOADES

104. Mr. Rhoades was employed at Sav-O-Mat, a service station operated by Bradley Petroleum in Castlerock, Colorado from February, 1999 - December, 1999.

105. Mr. Rhoades replaced the cash register in the store on two separate occasions in an attempt to remedy shortages caused by malfunctions in the register and/or pump meter.

106. Mr. Rhoades consistently reimbursed the till for these shortages out of fear of losing his job. This caused unjust enrichment to his employer.

107. Mr. Rhoades was constructively discharged from his employment with Defendants due allegations of theft. Defendants contacted the Castle Rock police department, which pursued an investigation against Mr. Rhoades. No criminal charges were ever filed.

108. Although Mr. Rhoades was cleared of any wrongdoing, he has never received his final paycheck. Mr. Rhoades traveled to the corporate office in Denver on several occasions and demanded payment. To date, he has still not been paid.

109. Despite the fact that Defendants did not tender Mr. Rhoades his final paycheck, these wages were reflected on his W2 statement as wages earned.

110. Mr. Rhoades is owed approximately \$588.00 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: BERNADETTE VALDEZ

111. Ms. Valdez was employed at the Bradley Petroleum service station located at 10th and Sheridan in Denver, Colorado for two weeks in June, 2001.

112. Ms. Valdez worked 12 hours per day for 12 days straight and has never received any wages from Defendants.

113. Ms. Valdez requested that she be permitted to post "pre-pay" signs on the gas pumps in an effort to stem drive-offs. Defendant Bradley Calkins refused this request.

114. Defendants accused Ms. Valdez of theft (which she denies). After being accused of theft, Ms. Valdez requested that Defendants produce a copy of the videotape from the camera in the store, which would show she had not stolen any money. Defendants advised that the cameras do not actually work, thus no tapes were available.

115. In addition, Defendants filed a police report regarding this incident; however, Ms. Valdez was cleared of all wrongdoing. The police investigating the claim advised Ms. Valdez that Defendants should release her pay within three months.

116. Despite the fact that Defendants never tendered Ms. Valdez any wages, they sent her a W-2 form reflecting wages paid.

117. Ms. Valdez is owed approximately \$783.64 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: RUBY LOWE

118. Ms. Lowe was employed at the Sav-O-Mat service station in Castlerock, Colorado from August, 2001 - November 23, 2001.

119. Despite the fact that Ms. Lowe was employed as a manager and was promised manager's wages, she only received clerk's wages (\$7.50/hour).

120. During the tenure of her employment, Ms. Lowe regularly reimbursed shortages to the cash register out of her own pocket because Defendant Brad Calkins threatened to fire her and/or withhold money from her paycheck to cover shortages.

121. Ms. Lowe never received her final paycheck. She filed a claim with the Colorado Department of Labor in an attempt to secure her wages. Defendants provided the Colorado

Department of Labor with a photocopy of check number 159290 payable to Ms. Lowe, **yet never actually sent the check** to Ms. Lowe.

122. Ms. Lowe is owed approximately \$626.00 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: BARBARA JACKSON

123. Ms. Jackson was employed as a manager at the Sav-O-Mat service station in Silverthorne, Colorado from 1992 - October, 1999.

124. Defendants instructed Ms. Jackson to fire other store managers for shortages. Defendant Brad Calkins further instructed Ms. Jackson to file police reports regarding shortages.

125. Defendant Brad Calkins was verbally abusive to Ms. Jackson. With respect to shortages, he threatened, "it's your job or their job" if shortages were not covered.

126. At Defendant Brad Calkins instructions, Ms. Jackson terminated approximately 12 employees due to shortages. He also instructed her to file police reports in each instance.

127. Ms. Jackson regularly reimbursed shortages out of her own pocket.

128. The shortages were attributable to tape errors, drive-offs and shoplifting.

129. After tendering her resignation and giving two weeks' notice, Defendants alleged that Ms. Jackson was responsible for shortages. This, despite the fact that Ms. Jackson's store had undergone two audits prior to her resignation with no shortages appearing.

130. Defendants filed a theft report against Ms. Jackson. Despite the fact that Ms. Jackson was cleared of those charges, Defendants withheld her final paycheck.

131. Ms. Jackson did not receive her final paycheck. Defendant Brad Calkins advised Ms. Jackson that it was company policy not to send final paychecks to people fired for shortages.

132. Even though Ms. Jackson did not receive her final check, the amount of pay was reflected on her W-2 statement as earned income.

133. Ms. Jackson is owed approximately \$1,000.00 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: JEFFREY JOHNSTON

134. Mr. Johnston was employed at the Bradley Petroleum station located at Mississippi and Wadsworth in Lakewood for one day - October 22, 2001.

135. Mr. Johnston was accused of stealing money (which he denies).

136. Defendants would not permit Mr. Johnston to take a break during his 12-hour shift.

137. The station where Mr. Johnston worked did not have a restroom and to use the restroom he had to go next door to a bowling alley.

138. After his first day of employment, Mr. Johnston called the corporate office and advised that if he had to work 12 hours, he would like to take a break. Defendants advised that he could not take a break and that if he did not like the way they operated he should not work there. He agreed and resigned.

139. At the end of November/early December, Mr. Johnston called inquiring as to the status of his paycheck. At that time, Defendants advised that there was a shortage the day he worked and he would not be paid until the money was found.

140. In an attempt to secure his wages, Mr. Johnston filed a claim with the Colorado Department of Labor. Defendants finally issued a check in the amount of \$9.00.

141. Despite the fact Defendants only tendered payment in the amount of \$9.00, they sent Mr. Johnston a W-2 form reflecting wages in the amount of \$86.25.

142. Mr. Johnston is owed approximately \$90.00 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: JOHN ALLINDER

143. Mr. Allinder worked in the Sav-O-Mat store located at 26th Street and 11th Avenue in Greeley from December, 2001 until the store was closed in February, 2002.

144. Defendants' summarily reduced one of Mr. Allinder's paychecks by 22 3/4 hours. Additionally, they over-withheld taxes on his paychecks.

145. Defendants' stopped payment on Mr. Allinder's final paycheck.

146. Mr. Allinder is owed approximately \$675.00 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: BRIAN MANDIGO

147. Mr. Mandigo worked in the Sav-O-Mat store located in Castlerock from approximately January, 2001 - August, 2001, initially as a clerk and then as a manager.

148. Mr. Mandigo complained regularly about the condition of the store, as it was unsuitable to work in due to flea/mite infestation.

149. When he complained, Defendant Bradley Calkins "cussed him out" for three hours stating that he did not "care what the customers needed."

150. Mr. Mandigo threatened to call the State Health Department due to unhealthy fumes venting into the building from the fuel vapor vent. The fumes were so bad at times that a prior manager, Laura, actually passed out due to inhalation and the fire department was called to revive her.

151. Due to the poor condition of the store, Mr. Mandigo resigned his employment.

152. Defendant George Calkins contacted Mr. Mandigo and requested that he return to the store. Mr. Mandigo agreed to come back only if Defendants cleaned the store and cured the flea problem.

153. Upon his return, it was obvious to Mr. Mandigo that the store was still infested. He, therefore, bought bug bombs with his own money in an attempt to sanitize the store. Following this, he resigned his employment once again and took the keys to the store to Al Lemke in Denver.

154. Following his resignation, Mr. Mandigo never received his final paycheck. He filed a complaint with the Department of Labor, yet Defendants refused to pay.

155. Mr. Mandigo called Defendants' corporate office on a daily basis to inquire as to the status of his paycheck. Eventually, Defendants advised that he was suspected of stealing 458 packs of cigarettes and thus would not be paid.

156. Defendants then filed a charge of theft with the Douglas County Sheriff, who investigated Mr. Mandigo and cleared him of all wrongdoing.

157. Mr. Mandigo believes the Defendants withheld his final paycheck and had him investigated for theft because of his threats to contact the State Health Department.

158. Mr. Mandigo is owed approximately \$675.00 plus interest, penalties and attorney fees.

FACTUAL BACKGROUND: MELINDA LOPEZ

159. Ms. Lopez worked at the Sav-O-Mat store located on 72nd Avenue in Commerce City on two separate occasions: January, 2000 - March, 2000 and again in September 2000.

160. Ms. Lopez was placed in the position of manager, though she received no training.

161. The cash register malfunctioned on a regular basis and shortages were a regular occurrence. Defendants advised that if Ms. Lopez did not reimburse shortages, they would be deducted from her paycheck.

162. At times, Ms. Lopez could not operate the station because the cash register drawer would not open. Ms. Lopez learned that Eaton Metal, who usually serviced the cash register, would no longer provide their services due to Defendants' non-payment of their invoices.

163. Ms. Lopez often reimbursed shortages out of her own pocket. On one occasion, she deposited her entire paycheck (approximately \$600.00) into the cash register to cover shortages.

164. Following her termination in March, 2000, Defendants withheld Ms. Lopez' final paycheck.

165. When Ms. Lopez was rehired in September, 2000, she was forced to write a letter stating she would pay Defendants \$500.00 to cover previous shortages. Defendants proceeded to withhold this sum from her paychecks.

166. Following her termination in October, 2000, Defendants withheld Ms. Lopez' final paycheck.

167. Ms. Lopez is owed approximately \$400.00 in unpaid wages, \$600.00 in reimbursements to the register, and \$500.00 in improper deductions from her paychecks plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: JOE AGUERO

168. Mr. Aguero worked in the Sav-O-Mat store located on 9th Street in Greeley from September, 2001 - March, 2002.

169. Mr. Aguero complained regularly about malfunctions with the gas pumps, i.e., the money would move but no gasoline would be dispensed.

170. Mr. Aguero complained regularly about false advertising - that the price on the sign would be lower than the price set on the gas pumps.

171. Mr. Aguero complained regularly about Defendants' practice of deducting money for alleged shortages from his paychecks.

172. Defendants terminated Mr. Aguero due to alleged shortages. Following his termination, Defendants refused to pay him his final paycheck.

173. Mr. Aguero is owed approximately \$400.00 plus interest, penalties and attorney fees.

FACTUAL BACKGROUND: PEARL JASSO

174. Ms. Jasso worked as a manager in the Sav-O-Mat store located on 9th Street in Greeley from June, 2001 - March, 2002.

175. Ms. Jasso was instructed by Defendants to terminate a clerk for a shortage. Ms. Jasso refused and paid the shortage out of her own pocket.

176. Ms. Jasso regularly reimbursed shortages out of her own pocket.

177. In an effort to stem drive-offs, Ms. Jasso requested permission to post "pre-pay" signs. Defendant Bradley Calkins verbally berated her for this request.

178. Ms. Jasso was instructed by Defendants to deduct money from Ranelle Navarette's paychecks because Ms. Navarette had three drive-offs over the course of one shift.

179. Ms. Jasso complained because the bathroom is the main office in the store.

180. Ms. Jasso resigned her employment with Defendants following a robbery. Defendant Bradley Calkins called Ms. Jasso at the store and asked "why didn't Vanessa [the clerk who was robbed] take a bullet" instead of handing over the money and that he "doesn't care about anybody's life, I only care about my money."

181. Following her resignation, Defendants stopped payment on Ms. Jasso's final paycheck. Ms. Jasso, who had cashed the check at a local grocery store, has subsequently been harassed by a collection company attempting to recover the funds for the grocery store.

182. Defendants further harassed Ms. Jasso following her resignation by calling her residence every 10 minutes from one Friday night through Sunday night accusing her of stealing \$4,000.00 (which she had deposited into Defendants bank account).

183. Ms. Jasso is owed her final paycheck plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: DARLA ORTEGA

184. Ms. Ortega worked in the Sav-O-Mat store number 5 in Greeley, Colorado for three days in 2001.

185. Ms. Ortega was terminated by Karen Roberts.

186. Ms. Ortega was advised by Bobbie Vigil in the corporate office that she would not be paid as she was accused of theft. A police report was filed with the Greeley Police Department.

187. Ms. Ortega denies stealing any money.

188. The case against Ms. Ortega was dismissed by the Weld County District Attorney.

189. Ms. Ortega is owed wages for three days' work plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: JOANN HUFFMAN

190. Ms. Huffman worked as a manager in Bradley Petroleum store number 71 located in Denver, Colorado for five years.

191. Ms. Huffman was working when the station was robbed. This reason was cited for her termination.

192. Ms. Huffman's July, 2001 paycheck had a miscellaneous deduction in the amount of \$285.00 for alleged theft.

193. Ms. Huffman was advised by Defendants' that if there were ever any shortages, she (and potentially her clerks) would be terminated.

194. Brad Calkins called Ms. Huffman "stupid" and stated that he hoped she "would get hit by a car."

195. Ms. Huffman is owed unpaid wages plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: CRYSTAL CORLEY

196. Ms. Corley worked in the Sav-O-Mat store located on 9th Street in Greeley for just over one week in June, 2002.

197. Ms. Corley was accused of theft (which she denies) and was subsequently terminated.

198. Defendants' filed a report with the Greeley Police Department, who then cleared Ms. Corley of all wrongdoing.

199. Defendants' have refused to issue Ms. Corley her paycheck. Ms. Corley is owed approximately \$500.00 plus interest, attorneys fees and costs.

FACTUAL BACKGROUND: DORENE LOPEZ

200. Ms. Lopez worked as a manager in the Bradley Petroleum store located at Alameda and Clay in Denver on two separate occasions: from September, 2000 - December, 2000 and from January, 2001 - March, 2001.

201. Ms. Lopez was directed by the corporate office to terminate employees if they had any shortages on their shifts. Ms. Lopez did fire two employees due to shortages, but did not file a police report in either instance.

202. Ms. Lopez complained regularly about malfunctions with the gas pumps. Defendants' stated they would send someone out to fix the problem, but never did.

203. Ms. Lopez was terminated from her employment in December, 2000 because she closed the store on Christmas day. She was subsequently rehired the following month.

204. Ms. Lopez was again terminated in March, 2001 following a robbery at the store. Ms. Lopez never received her final paycheck.

205. Ms. Lopez filed a complaint with the Colorado Department of Labor regarding payment of her wages.

FACTUAL BACKGROUND: JAMES VINCENT GREEN

206. Mr. Green worked in the Bradley Petroleum store located in Casper, Wyoming from March, 2001 - July, 2001.

207. Mr. Green regularly complained regarding a gas leak at the station. Bradley Calkins responded by accusing Mr. Green of gasoline theft.

208. During the tenure of his employment, only one other employee worked in the store with him. These two employees were expected to keep the store open 24 hours/day, 7 days/week and did not receive a day off.

209. The pumps at the station were very old. Mr. Green regularly complained about shortages caused by register and pump malfunctions. Following his separation from employment the store was closed for a month and then new pumps were installed.

210. Mr. Green was constructively discharged from his employment due to the manner in which he was treated by Bradley Calkins.

211. Defendants' wrongfully withheld monies from Mr. Green's final paycheck. Mr. Green is owed wages plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: JESSICA THOMPSON

212. Ms. Tompson worked in the Sav-O-Mat store located on Main Street in Longmont, Colorado.

213. Ms. Thompson was not properly trained by Defendants.

214. Ms. Thompson was accused of theft, which she denies.

215. Following her termination, Defendants advised Ms. Thompson that a police report had been filed. When Ms. Thompson contacted the police to discuss the case, she learned no case had been filed.

216. Defendants refused to issue Ms. Johnson her final paycheck. When Ms. Johnson called Defendants' corporate office to inquire as to payment, she was hung up on.

217. Ms. Thompson is owed her final wages, interest, penalties and attorneys fees.

FACTUAL BACKGROUND: FLOYD EARL, JR.

218. Mr. Earl was employed by Defendants for one week in December, 2001 in their service station located at 13700 East Quincy Avenue, Aurora, Colorado.

219. Mr. Earl was accused of theft (which he denies) and terminated. Defendants filed a report with the Aurora Police Department.

220. Mr. Earl filed a complaint with the Colorado Department of Labor. On February 5, 2002, in responding to the Department of Labor's request for information, Defendant representative Jerome Joiner advised the DOL that Mr. Earl's "check would be released if no charges are filed."

221. On May 21, 2002, Aurora Police Detective Elizabeth Hudson advised Defendant representative Al Lemke that no charges were being filed against Mr. Earl and Defendants should release his paycheck to him.

222. Defendants have refused to pay Mr. Earl. Mr. Earl is owed approximately \$400.00 plus interest, penalties and attorneys fees.

FACTUAL BACKGROUND: CHANNELL ASHLEY

223. Ms. Ashley worked in the Bradley Petroleum store located in Silverthorne, Colorado for a three week period in December, 1999 - January, 2000.

224. Ms. Ashley was accused of a shortage (which she denies). Defendants' filed a police report accusing Ms. Ashley of theft.

225. Despite the fact that no criminal charges were ever brought against Ms. Ashley, Defendants have refused to pay her wages owed for three weeks' work.

226. Ms. Ashley filed a Complaint with the Colorado Department of Labor and made a formal demand for payment of wages.

227. Ms. Ashley is owed approximately \$1,570.00 plus interest, attorneys fees and penalties.

FACTUAL BACKGROUND: DAVID TAYLOR

228. Mr. Taylor worked in at Sav-O-Mat #6 located in Greeley, Colorado as a manager from July - August, 2001.

229. Mr. Taylor was terminated due to an alleged shortage, and did not receive his final paycheck.

230. Defendants' filed a police report against Mr. Taylor. No criminal charges, however, were ever filed.

231. Mr. Taylor was told by Karen Roberts that Brad Calkins would rather pay his attorney "thousands of dollars" than to pay anyone with a shortage.

232. Mr. Taylor received a W2 that reflected income he never received.

233. Mr. Taylor is owed two weeks' wages, interest, penalties and attorneys fees.

FACTUAL BACKGROUND: PAMELA TAYLOR

234. Ms. Taylor worked in at Sav-O-Mat #6 located in Greeley, Colorado from July - August, 2001.

235. Ms. Taylor was terminated following her husband, David's, termination for an alleged shortage. Ms. Taylor did not receive any wages while employed by Defendants.

236. Defendants' filed a police report against Ms. Taylor. No criminal charges, however, were ever filed.

237. Ms. Taylor received a W2 that reflected income he never received.

238. Ms. Taylor is owed unpaid wages, interest, penalties and attorneys fees.

FIRST CLAIM FOR RELIEF
(WAGE ENTITLEMENT UNDER THE COLORADO WAGE ACT)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

239. Plaintiffs hereby incorporate paragraphs 1 through 238 of this Fourth Amended Complaint as though fully realleged herein.

240. Plaintiffs are owed reimbursement for cash register reimbursements, wages and penalties for the wrongful retention of their final paychecks. The wages are due and payable.

241. The Defendants, without good faith legal justification refused to pay such wages, and are therefore subject to a 50% penalty of wages under Colorado law.

242. The Defendants acted without good faith in filing reports with law enforcement agencies and therefore the accused employee Plaintiffs are entitled to an amount not to exceed treble the amount wrongfully withheld, attorneys fees and court costs.

243. Defendant Bradley Calkins, as an officer of the Defendant Bradley Petroleum, Inc., and Defendant George Calkins, as an officer of the Defendant Sav-O-Mat, Inc., are individually liable for unpaid compensation as set forth in this claim for relief.

SECOND CLAIM FOR RELIEF
(UNJUST ENRICHMENT-CASH REIMBURSEMENTS PAID INTO TILL)
(PLAINTIFFS OKAMOTO, RHOADES, JACKSON, LOPEZ AND JASSO
AGAINST DEFENDANTS BRADLEY PETROLEUM AND SAV-O-MAT)

244. Plaintiffs hereby incorporate paragraphs 1 through 243 of this Fourth Amended Complaint as though fully realleged herein.

245. Defendants engaged the services of Plaintiffs Okamoto, Rhoades, Jackson, Lopez and Jasso and Plaintiffs Okamoto, Rhoades, Jackson, Lopez and Jasso diligently performed said services.

246. Plaintiffs Okamoto, Rhoades, Jackson, Lopez and Jasso reimbursed the company for apparent cash shortages that may not have been real due to machine error.

247. Plaintiffs Okamoto, Rhoades, Jackson, Lopez and Jasso rendered services with the reasonable expectation that they would be paid the reasonable value of such services by the Defendants.

248. Defendants accepted such reimbursements and knew or should have known that Plaintiffs Okamoto, Rhoades, Jackson, Lopez and Jasso made several reimbursements.

249. Defendants were unjustly enriched in that they had the benefit of Plaintiffs Okamoto, Rhoades, Jackson, Lopez and Jasso's work and reimbursements.

**THIRD CLAIM FOR RELIEF
(BREACH OF CONTRACT)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

250. Plaintiffs hereby incorporate paragraphs 1 through 249 of this Fourth Amended Complaint as though fully realleged herein.

251. Plaintiffs and Defendants entered into an agreement for the payment of Plaintiffs for work performed.

252. Plaintiffs provided services to the Defendants.

253. Defendants have refused to pay wages owed.

**FOURTH CLAIM FOR RELIEF
(WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY)
(PLAINTIFFS OKAMOTO AND MANDIGO AGAINST
DEFENDANTS BRADLEY PETROLEUM AND SAV-O-MAT)**

254. Plaintiffs hereby incorporates paragraph 1 through 253 of this Fourth Amended Complaint as though fully restated herein.

255. Defendants prohibited Plaintiffs Okamoto and Mandigo from performing of a public duty or exercising an important job-related right or privilege.

256. The action of Defendants violate a specific statute relating to the public health, safety or welfare and would undermine a clearly expressed public policy relating to the Plaintiffs' basic responsibility as a citizen or the Plaintiffs' rights or privileges as workers.

257. The Defendants were aware, or reasonably should have been aware, that the Plaintiffs complaints were based on their reasonable belief that the actions of the Defendant was illegal, contrary to clearly expressed statutory policy relating to the Plaintiffs' duties as citizens and violative of their legal rights or privileges as workers.

**FIFTH CLAIM FOR RELIEF
(FLSA)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

258. Plaintiffs hereby incorporates paragraphs 1 through 257 of this Third Amended Complaint as through fully realleged herein.

259. At the times hereinafter mentioned, Defendants Bradley Petroleum, Inc. and Sav-O-Mat, Inc. were the employer of the Plaintiffs within the meaning of §3 (d) of the Fair Labor Standards Act, 29 USC 201, et seq.

260. Plaintiffs were employees of the Defendants within the meaning of §3 (e) of the Act.

261. At all times herein Defendants and Plaintiffs were engaged in commerce and Plaintiffs were employed by an enterprise engaged in commerce throughout the period of their employment by Defendants.

262. Defendants employed Plaintiffs for work weeks longer than forty hours and failed and refused to compensate Plaintiffs for such work in excess of forty hours at rates not less than one-and-one-half times the regular rates at which they were employed, contrary to the provisions of §7 (a) of the Act.

263. Defendants' failure to pay Plaintiffs' wages equates to the Plaintiffs not being paid a minimum wages as required by the Act.

264. Defendants Bradley Petroleum, Inc. and Sav-O-Mat, Inc. willfully violated the Act. Defendants' refusal to pay overtime or minimum wage was without good faith or reasonable ground to believe that the Defendants were in compliance with the Act, mandating an award of liquidated damages under the Act.

265. Defendants Bradley Petroleum, Inc. and Sav-O-Mat, Inc. have failed to pay compensation contrary to §7 (a) of the Act.

266. Plaintiffs are owed wages in an amount to be established at trial. Plaintiffs are also entitled to recover an additional equal amount as liquidated damages under the Act, plus attorneys fees, interest, costs and such other relief as appropriate and allowed by law.

267. Defendants Bradley Calkins and George Calkins, as officers of the corporate Defendants, are individually liable for unpaid compensation as set forth in this claim for relief.

**SIXTH CLAIM FOR RELIEF
(OUTRAGEOUS CONDUCT)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

258. Plaintiffs hereby incorporate paragraphs 1 through 257 of this Fourth Amended Complaint as though fully restated herein.

259. The Defendants engaged in extreme and outrageous conduct by attempting to have Plaintiffs charged with a crime, threatened unsupported civil and/or criminal charges or otherwise conspired to deprive Plaintiffs of lawful wages.

260. The Defendants engaged in the conduct recklessly or with the intent of causing the Plaintiff severe emotional distress.

261. The Plaintiffs incurred severe emotional distress which was caused by the Defendants' conduct.

**SEVENTH CLAIM FOR RELIEF
(DEFAMATION)**

**(PLAINTIFFS OKAMOTO, RHOADES, VALDEZ, JACKSON, MANDIGO, ORTEGA
CORLEY, LOPEZ, ASHLEY, EARL, TAYLOR AND TAYLOR
AGAINST ALL DEFENDANTS)**

262. Plaintiffs hereby incorporate paragraphs 1 through 261 of this Third Amended Complaint as though fully restated herein.

263. Defendants published or caused to be published a statement that the Plaintiffs were terminated for theft from the Defendants.

264. The statement caused Plaintiffs actual damages.

265. The substance or gist of the statement was false at the time it was published.

**EIGHTH CLAIM FOR RELIEF
(ABUSE OF PROCESS)**

**(PLAINTIFFS OKAMOTO, RHOADES, VALDEZ, JACKSON, MANDIGO, ORTEGA
CORLEY, LOPEZ, ASHLEY, EARL, TAYLOR AND TAYLOR
AGAINST ALL DEFENDANTS)**

266. Plaintiffs hereby incorporate paragraphs 1 through 265 of this Fourth Amended Complaint as though fully restated herein.

267. The Defendants intentionally caused police investigations to be conducted against Plaintiffs Okamoto, Rhoades and Valdez.

268. The principal reason for Defendants' action was other than to recover monies allegedly stolen by Plaintiffs. Rather, Defendants engaged in this action in order to withhold Plaintiffs' wages.

269. The action of the Defendants caused the Plaintiffs actual damages.

NINTH CLAIM FOR RELIEF
(MALICIOUS PROSECUTION)
(PLAINTIFFS OKAMOTO, RHOADES, VALDEZ, JACKSON, MANDIGO, ORTEGA
CORLEY, LOPEZ, ASHLEY, EARL, TAYLOR AND TAYLOR
AGAINST ALL DEFENDANTS)

270. Plaintiffs hereby incorporate paragraphs 1 through 269 of this Fourth Amended Complaint as though fully restated herein.

271. Defendants caused criminal cases to commence against the Plaintiffs.

272. The criminal cases were commenced by a complaint made by the Defendants.

273. The criminal cases ended in favor of the Plaintiffs.

274. The Defendants' complaints against the Plaintiffs were without probable cause.

275. The Defendants' complaints against the Plaintiffs were motivated by malice towards the Plaintiffs.

276. As a result of the criminal prosecution, the Plaintiffs incurred damages.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in their favor and against the Defendants, and grant:

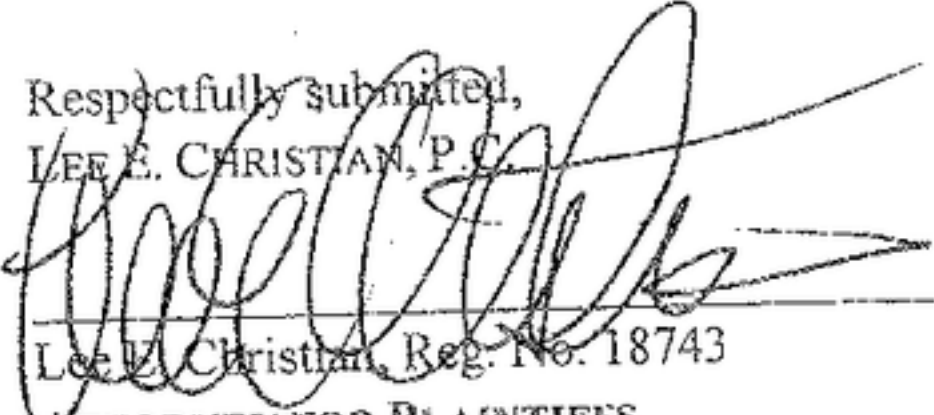
- (a) Declaratory and other injunctive and/or equitable relief;
- (b) Compensatory damages on all claims allowed by law in an amount to be determined at trial;
- (c) Back pay and front pay on all claims allowed by law, including lost benefits, bonuses, promotions, seniority and other employment compensations;

- (d) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (e) Damages for emotional distress, loss of reputation, humiliation, and other pain and suffering;
- (f) Attorneys fees and the costs of this action, including expert witness fees, on all claims allowed by law;
- (g) Pre- and post-judgment interest at the lawful rate;
- (h) Reinstatement; and
- (i) Any further relief that this court deems just and proper, and any other relief as allowed by law.

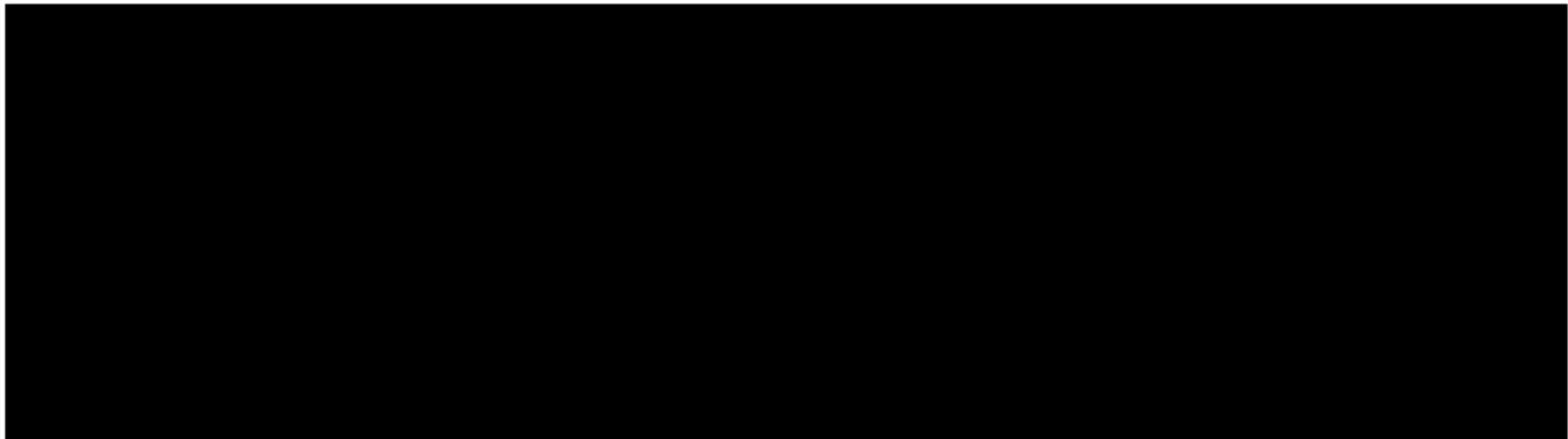
PLAINTIFFS REQUEST A JURY ON ALL MATTERS SO TRIABLE.

DATED this 31st day of October, 2002.

Respectfully submitted,
LEE E. CHRISTIAN, P.C.


Lee E. Christian, Reg. No. 18743

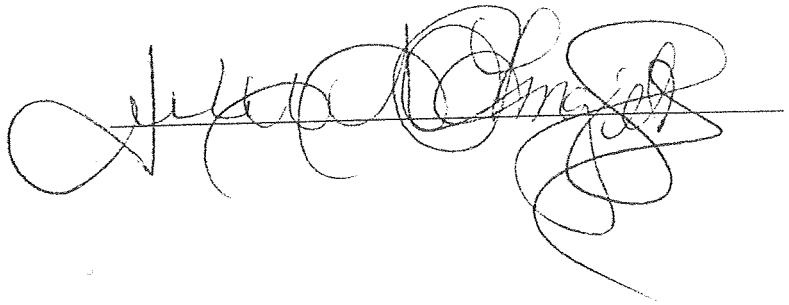
ATTORNEY FOR PLAINTIFFS



CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2002, I served a true and correct copy of the foregoing **FOURTH AMENDED COMPLAINT** by placing same in the U.S. Mail, postage pre-paid, addressed to the following:

Otto K. Hilbert, II, Esq.
ROBINSON WATERS & D'ORISIO, PC
1099 18th Street, Suite 2600
Denver CO 80202-1926

A handwritten signature in black ink, appearing to read "Otto K. Hilbert, II, Esq.", written over a horizontal line. The signature is highly stylized and cursive.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is entered into as of March _____, 2003 by and between BRADLEY PETROLEUM, INC., a Colorado corporation ("Bradley"), SAV-O-MAT, INC., a Colorado corporation, BRADLEY H. CALKINS, individually, GEORGE CALKINS, individually (collectively "Bradley" or the "Defendants"), AMY OKAMOTO, ANGELA DAVIS, STANLEY SCHAEFFER, VALERIE JUNE, CHRISTOPHER RHOADS, BERNADETTE VALDEZ, RUBY LOWE, BARBARA JACKSON, JEFFREY JOHNSTON, JOHN ALLINDER, BRIAN MANDIGO, MELINDA LOPEZ, JOE AGUERO, PEARL JASSO, DARLA ORTEGA, JOANN HUFFMAN, CRYSTAL CORELY, DORENE LOPEZ, JAMES VINCENT GREEN, JESSICA THOMPSON, FLOYD EARL JR., CHANNELL ASHLEY, PAMELA TAYLOR, DAVID TAYLOR, KEVIN WARD and LEANNA MILLER, individually and on behalf of all others similarly situated (collectively the "Employee Class").

RECITALS

- A. Bradley operates gasoline stations in Colorado, New Mexico and Wyoming.
- B. The Employee Class consists of individuals who were employed by Bradley from October 25, 1998 through February 13, 2003.
- C. A dispute has arisen between Bradley and the Employee Class with respect to the payment of wages upon termination. A Complaint was filed by Amy Okamoto, individually and on behalf of a purported Employee Class of persons, on or about October 22, 2001 in the District Court for the City and County of Denver, Colorado, Case No. 01-CV-5947 (hereinafter referred to as the "Action"). The Action alleged claims for (1) wage entitlement under the Colorado Wage Act, (2) unjust enrichment, (3) wrongful discharge, (4) Fair Labor Standards Act, (5) good faith and fair dealing, (6) outrageous conduct, and (7) defamation.
- D. Bradley denies that they have committed any violations of law or engaged in any wrongful acts alleged, or which could have been alleged, in this or any similar action. Nevertheless, the parties hereby agree that in consideration of the undertakings, promises and payments set forth in this Agreement and conditioned upon the entry of an Order approving the settlement and directing the implementation of the terms and conditions of this Agreement, the claims asserted or that could have been asserted in the Action shall be settled and compromised upon the terms and conditions set forth below.

DEFINITIONS

1. "Action" means the lawsuit filed on October 22, 2001 in the District Court for the City and County of Denver, Colorado, Case No. 01-CV-5947.
2. "Agreement" or "Settlement Agreement" means this Settlement Agreement.

3. "Employee Class" means (1) all individuals who are not Plaintiffs who were employed by Bradley or Sav-O-Mat from October 25, 1998 through February 13, 2003 who had deductions from their wages for mathematical errors, shortages of cash or product, customer drive-offs, robberies, burglaries, losses caused by an employee's violation of company procedures (except admitted, documented and agreed upon theft by or loan to an employee), incorrectly processed credit card charges, bad checks from customers, stop-payment fees due to lost or destroyed employee paychecks and/or for store lock changes, and (2) all terminated individuals who were either (a) not paid wages at all upon their termination or (b) not paid wages upon their termination with penalties as required by applicable law.

4. "Employee Class Counsel" means Plaintiffs' counsel of record.

5. "Employee Class Member" means a person who fits within the definition of Paragraph 3, supra.

6. "Fairness Hearing" means the settlement approval hearing to be conducted by the Court in connection with the final determination of the good faith, fairness, adequacy and reasonableness of this Agreement.

7. "Parties" means Plaintiffs, Employee Class members and Defendants.

8. "Plaintiffs" means the named Plaintiffs as set forth above.

9. "Released Claims" means any and all claims, rights (including rights to reimbursement or restitution), demands, actions, causes of action, suits, matters, issues, debts, liens, damages, attorneys' fees, obligations, contracts, liabilities, agreements, costs, expenses or losses of any nature, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, and whether under federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or subdivisions, parishes or municipalities, which are alleged or which could or might have been alleged in the Action or in any other action by any Employee Class Member, arising out of or related in any way to the allegations, factual assertions, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, embraced by, involved or set forth in, or otherwise related to the Action.

10. "Released Parties" means Bradley and Sav-O-Mat, and each of their predecessors, successors, parents and affiliated entities, and each of their past and present officers, directors, employees, agents, servants, attorneys, accountants, advisors, shareholders, insurers, representatives, partners and assigns. "Released Parties" also includes Bradley H. Calkins and George Calkins individually and in their capacity as officers and employees of Bradley and Sav-O-Mat. The term "Released Parties" also means any other person against whom any Employee Class Member has, had, or may have a claim arising out of or otherwise related to acts, representations, statements or omissions of any of the parties described in this paragraph.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **No Admission of Liability.** This Agreement is for settlement purposes only, and to the fullest extent permitted by law neither the fact of, nor any provision contained in this Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Released Party or admission by any Released Party, of the validity or lack thereof of any claim, allegation or defense asserted in this Action or in any other Action. Defendants maintain that they have consistently acted in accordance with governing laws at all times and deny that they have committed any violations of law or engaged in any wrongful acts alleged in the Action or otherwise.

2. **Contingent Certification of Employee Class Claims.** Defendants agree to certification of the Employee Class, for settlement purposes only, under Rule 23(b)(2) and (3) of the Colorado Rules of Civil Procedure. Defendants do not consent to the certification of an Employee Class for any purpose other than to effectuate the settlement of the Action. In the event the Agreement is terminated pursuant to its terms or for any reason the settlement set forth in this Agreement is not effectuated, the certification of the Employee Class shall be vacated and the Action shall proceed as though the Employee Class had never been certified.

3. **Non-monetary Relief.** The parties agree that:

- A) This Court shall retain continuing jurisdiction over this action for purposes of hearing future claims, if any, to ensure that Bradley complies with the terms of this Agreement, and cease making deductions from wages for mathematical errors, shortages of cash or product, customer drive-offs, robberies, burglaries, losses caused by an employee's violation of company procedures, incorrectly processed credit card charges, bad checks from customers, stop-payment fees due to lost or destroyed employee paychecks, and/or for store lock changes. Bradley will ensure full compliance with the Colorado Wage Claim Act and will not make miscellaneous deductions or withhold an employee's paycheck upon termination except as permitted by C.R.S. 8-4-101(7.5).
- B) Bradley will eliminate the acknowledgment paragraph following the references section in the application form, entitled "READ AND UNDERSTAND BEFORE SIGNING BELOW" and extending to the

bottom of the page where signature lines are provided to the extent it demands any waiver of rights under the Colorado Wage Act.

- C) Bradley will ensure that Fair Labor Standards Act and Colorado Wage Claim Act posters are posted at each of the stores.

4. Monetary Relief. The parties agree that:

- A) The total sum of \$65,000 will be paid to the Plaintiffs as identified in the Fifth Amended Complaint no later than 15 days after the settlement has been approved by the Court. Non-Plaintiff Employee Class Members will be paid as specified later in paragraph 4.
- B) The total sum of \$70,000 will be paid to Employee Class Counsel for payment of attorneys' fees and costs incurred in this matter for work up to and including December 5, 2002. This sum will be paid within 15 days of the approval of the settlement by the Court.
- C) Bradley agrees to pay Lindecrantz and Associates, 217 East 7th Avenue, Denver, Colorado a reasonable amount (calculated at the investigator's normal rates) not to exceed \$10,000 to investigate and attempt to locate additional Employee Class Members. The investigator will be paid within a reasonable amount of time of submitting periodic bills to the office of the Defendants' attorneys.
- D) Bradley agrees to place an initial sum of \$15,000 into the Defendants' attorneys' trust account. This deposit is designated to pay the initial claims for amounts owed to these Employee Class Members (hereinafter referred to as Employee Class Members) as defined in definitional paragraphs 3, 5 and 8 of this Agreement. This is not a total sum or cap on amounts to be paid to the unidentified class members. Defendants agree as a part of this settlement that all Employee Class Members who are located and who meet the definition of an Employee Class Member will be compensated within 15 days of being located by the investigator, approved by the parties, and/or ordered by the arbitrator.
- E) The parties agree to submit any disputes regarding amounts due to additional Employee Class Members who are not currently named to a neutral arbitrator, Mr. Carlos Leal, Yates and Leal, LLP, 700 17th St., 20th Floor, Denver, Colorado 80202. Bradley agrees to pay the reasonable expenses associated with such arbitrator not to exceed the total sum of \$10,000. The procedures for arbitration will be determined by the arbitrator at a later date. All parties agree to be bound by the decision of the arbitrator.

- 08
- F) The parties agree to create a list of all potential Employee Class Members which will indicate for each potential Employee Class Member (1) whether they received a final paycheck upon termination, (2) if they received a final paycheck and the date upon which they received such check, (3) whether any miscellaneous deductions were taken out of the paycheck, and (4) what amount, if any, is owed to that individual based upon the terms of this Agreement. Disagreements as to participants or members on this list will be submitted to the arbitrator.
- G) Employee Class Members who are contained on the joint parties' list, and who are located, and submit a claim orally or in writing to the investigator pursuant to the terms of this Agreement shall receive compensation as follows:
- (1) A Non-Plaintiff Employee Class Member who had a miscellaneous deduction taken from their paycheck will be reimbursed the amount of the deduction plus a fifty percent penalty;
 - (2) A Non-Plaintiff Employee Class Member who never received a final paycheck will be reimbursed the amount due as a final paycheck plus a one hundred percent penalty;
 - (3) A Non-Plaintiff Employee Class Member who received a final paycheck more than 180 days after their termination will receive fifty percent of the total amount of the final paycheck as compensation.
- H) All Employee Class Members must submit their claims pursuant to paragraph 4(G) no later than December 31, 2003. If an Employee Class Member is not located by December 31, 2003, Bradley agrees to calculate fifty percent of the amount due and owing to each remaining Employee Class Member and pay such amount to the trust account of Robinson Waters & O'Doriso, P.C. Such amounts will be paid from the trust account into a charitable account set up for the purposes of legal aid in civil rights cases through the University of Denver School of Law. Employee Class Counsel will receive an accounting of the calculations, transactions, trust deposits and disbursements. Any disagreements as to the calculation will be submitted to the arbitrator.

5. Attorneys' Fees and Costs. The Employee Class' counsel agrees to make, and Bradley agrees not to oppose, an application to the Court for attorneys' fees and costs in the amount of \$70,000 for work performed through the date of the tentative settlement, December 5, 2002. The Employee Class' counsel further agrees to make, and Bradley agrees not to oppose, an application to the Court for attorneys' fees in the amount of \$15,000 for future work in the matter since December 5, 2002 including attempts to identify additional Employee Class

Members and submit their claims to Bradley. No other request for attorneys' fees and costs from or against Bradley will be made in this Action or otherwise.

6. Notice to the Settlement Employee Class. Notice of this Settlement Agreement has occurred in a form agreed to by the parties and approved by the Court. The parties provided Notice by an ad in the local newspapers in the cities in Colorado, New Mexico and Wyoming where Bradley operates, which has already been published on three separate occasions. Bradley also agrees that it will submit a notice with mutually agreed upon language mailed to the last known address of all identified Employee Class Members in paragraph 4(F). Bradley will bear the costs of the notices.

7. Right To Be Excluded From The Employee Class. Any person who otherwise would be an Employee Class Member may request exclusion from the Employee Class up to and including two weeks after the Fairness Hearing of February 13, 2003. To exercise the exclusion right set forth in this section, the person must timely complete, sign and return a request for exclusion before the Opt Out Deadline. Employee Class Counsel designated to receive all Opt Out requests shall provide copies of all Opt Out requests to Defendants no later than 10 business days after the opt Out deadline. Except for those persons who timely and properly request exclusion, all persons within the definition of the Employee Class are deemed Employee Class Members for all purposes under this Agreement.

8. Releases. The settlement set forth in this Agreement shall be the sole and exclusive remedy for any and all Released Claims against the Released Parties. Each Employee Class Member shall be barred from initiating, asserting, or prosecuting Released Claims or any claims that are otherwise released by operation of this Agreement. The Employee Class and their respective agents, successors, heirs, assigns or any other person who can claim by or through them in any manner shall be deemed to have, and by operation of this Agreement, shall have fully, finally, and forever irrevocably released, relinquished and discharged with prejudice all Released Claims against the Released Parties.

9. Consummation of Settlement. Should this Settlement Agreement not receive final Court approval for any reason, or if this Settlement Agreement is cancelled or terminated, this Settlement Agreement shall be null and void, *ab initio*, and of no force and effect, and nothing herein shall be deemed to prejudice the position of any of the parties with respect to this Action or otherwise, and neither the existence of this Settlement Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Action or in any other litigation or proceeding, or be deemed a presumption, concession or admission by Bradley of any fault, liability or wrongdoing.

10. Dismissal of Civil Action. Upon approval by the Court and within 15 days of the payments provided for in paragraphs 4(A)(B), Plaintiffs will dismiss the Action with prejudice subject to the Court's continuing jurisdiction to enforce the terms of this Agreement.

11. Amendment; Complete Agreement. All amendments and supplements to this Agreement must be in writing and executed by all of the parties hereto. This Agreement contains the entire agreement and understanding between the parties hereto concerning the

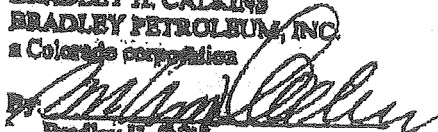
mutual set forth herein, and supersedes all prior Agreements, terms, understandings, conditions, representations and warranties, whether written or oral. This Agreement has been drafted through a joint effort of the parties and their counsel and, therefore, shall not be construed in favor of or against either of the parties.

12. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

13. **Severability.** If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

14. **Counterparts, Headings, and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Agreement. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement. This Agreement may be delivered by facsimile machine, and such facsimile signatures shall constitute an original signature for all purposes. Plaintiffs who do not execute the agreement by March 21, 2003 shall, nevertheless, be bound as a member of the Employees Class.

BRADLEY H. CALKINS
BRADLEY PETROLEUM, INC.
a Colorado corporation


Bradley H. Calkins

GEORGE CALKINS
SAV-O-MAT, INC.
a Colorado corporation

By: 
George W. Calkins

AMY OKAMOTO

STANLEY SCHAFER

CHRISTOPHER RHODES

RUBY LOWE

JEFFREY JOHNSON

ANGELA DAVIS

VALERIE JUNE

BERNADETTE VALDEZ

BARBARA JACKSON

JOHN ALLINDER

BRIAN MANDIGO

JOE AGUERO

DARLA ORTEGA

CRYSTAL CORLEY

JAMES VINCENT GREEN

FLOYD EARL, JR.

KEVIN WARD

DAVID TAYLOR

APPROVED AS TO FORM:

ROBINSON WATERS & O'DORISIO, P.C.

By: 

Otto K. Hilbert, II
Counsel for Defendants

MELINDA LOPEZ

PEARL JASSO

JOANN HUFFMAN

DORENE LOPEZ

JESSICA THOMPSON

CHANNEL ASHLEY

LEANNA MILLER

PAMELA TAYLOR

LEE. E. CHRISTIAN, P.C.

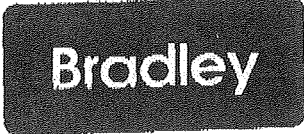
By: _____

Lee E. Christian
Counsel for Plaintiffs

KILLMER & LANE, LLP

By: _____

Darold W. Killmer
Counsel for Plaintiffs



Bradley Petroleum, Inc.

7268 S Tucson Way

Centennial, Colorado 80112-3290

(303) 733-4627

Fax (303) 777-9052

Date: _____

ENTERED

AUG 28 2007

Jennifer Lewis

I, Jennifer Lewis, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 14³³. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

dian't take a dime!

[Handwritten Signature]

Employee's Signature

BRADLEY PETROLEUM, Inc.

By: *[Handwritten Signature]*

Shortage occurred on 8/9/08

130 215.00 on 2.3.08



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9062

Date: 3/24/08

1742

I, Jennifer Marsch agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 20.38. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

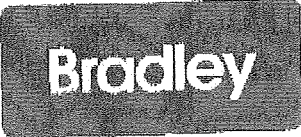
I didn't take anything I was short do not in my pocket!!

Jennifer Marsch
Employee's Signature
BRADLEY PETROLEUM, Inc.

By: [Signature]

#5

transferred on 3/24/08



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 12.21.08

I, Angelica Lovato, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 31.08. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

I DID NOT TAKE!

ENTERED
DEC 30 2008

[Signature]
Employee's Signature

Handwritten note: 30.00 on 12/21/08

BRADLEY PETROLEUM, Inc.

Assist. Mnggr
By: [Signature]

EARNINGS

DESCRIPTION	HOURS	RATE	CURRENT (\$)	YTD HOURS	YTD (\$)
REGULAR	40.00	7.5000	300.01	577.44	4335.83
OVERTIME	5.83	11.2500	66.71	58.44	994.98
GRAVEYARD				10.50	82.43
GRAVEYARD OT				4.13	48.63
GROSS	45.93		366.72	680.51	\$456.85

DEDUCTIONS

DESCRIPTION	CURRENT (\$)	YTD (\$)
MISC	48.26	152.01
TOTAL	48.26	152.01

WITHHOLDINGS

DESCRIPTION	CURRENT (\$)	YTD (\$)
FEDERAL WH	11.96	183.04
QASDI	22.74	336.33
MEDICARE	5.32	79.11
STATE WH CO	6.00	83.00
TOTAL	46.02	663.48

*This is NOT Right 48.26
And I want to see paper
WORK ON Storage Shortage*

PERSONAL AND CHECK INFORMATION

Soc Sec #: XXX-XX-XXXX Employee ID: 1157
 Hire Date: 03/12/07
 Status:
 Filing Status:
 Federal: Single, 3
 State: CO, Single, 3
 Dept: 24
 Pay Period: 07/15/07 to 07/21/07
 Check Date: 07/27/07 Check #: 105877
NET PAY ALLOCATIONS

DESCRIPTION	CURRENT (\$)	YTD (\$)
Check Amount	272.44	4621.36
Net Pay	272.44	4621.36

MESSAGES

W-2's will be sent to the address on your check, make sure it is correct. If needed make any changes AS SOON AS POSSIBLE.

Payrolls by Paychex, Inc.
 8465-0887 BRADLEY PETROLEUM INC ■ 7268 S TUCSON WAY ■ CENTENNIAL, CO 80112-3920 ■

NET PAY	CURRENT (\$)	YTD (\$)
	272.44	4621.36

Jennifer Lewis

Bradley

Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

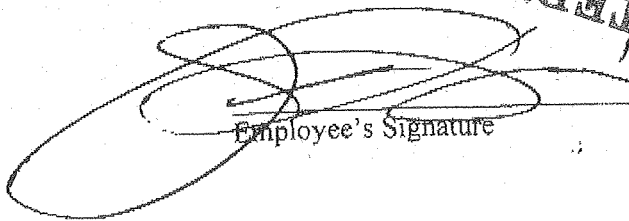
Date: 7.30.08

For June 30

I, Jennifer Lewis, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 21. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I ~~took~~ from Bradley Petroleum, Inc.

didn't take from register.

ENTERED
AUG - 8 2008

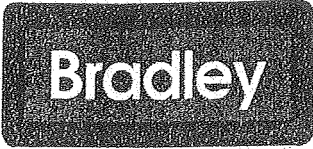

Employee's Signature

8/30/08 for sign on 8/30/08

BRADLEY PETROLEUM, Inc.

By: _____

Tommy Roman



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: Oct. 26, 2008

ENTERED
OCT 30 2008

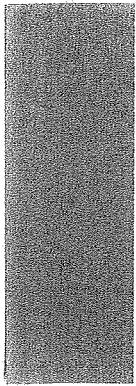
I, Tom Roman, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 1000. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property ~~from~~ from Bradley Petroleum, Inc.

Tommy Roman
Employee's Signature

BRADLEY PETROLEUM, Inc.

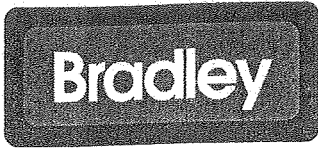
By: Maria Castells
Manager

Handwritten notes:
10/26/08
10/26/08



237

Kristie Maxwell



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 11/4/08

ENTERED

NOV 13 2008

I, KRISTIE MAXWELL, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 1500. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I ~~took~~ from Bradley Petroleum, Inc.

WAS A
DRIVE
OFF
NOTHING
WAS
TAKEN

Employee's Signature

BRADLEY PETROLEUM, Inc.

By:

Bradley

Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 10/24/08

Gas Shortage on 10/24/08

ENTERED

OCT 31 2008

I, SALVADOR MONTAÑA agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 20.00. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

Salvador Montaña
Employee's Signature

Store #605

BRADLEY PETROLEUM, Inc.

Laura Acosta
By: Manager



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 7/2/08

I, Ryan Keddy, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 24.50. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

for gas drive off on 6/3/08 of \$49.00

Ryan Keddy

Employee's Signature

11/7/08 check on 9/30/07

BRADLEY PETROLEUM, Inc.

By: *Cathy Kepling*



Brian Fair

Sav-O-Mat, Inc.

106 So. Cherokee P.O. Box 9354 Phone 744-1711
Denver, Colorado 80209

ENTERED
OCT 3 9 2009

Date: 10/21/08

I, Brian Fair, agree that Sav-O-Mat, Inc. may withhold from my paycheck the amount of \$ 36.45. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Sav-O-Mat, Inc.

Shortage
10/21/08

Drive-off

[Signature]
Employee's Signature

SAV-O-MAT, Inc.

[Signature]
By: _____

WELCOME TO
OUR STORE

1.008393889-001
601 MAIN ST

SAV-O-MAT 3
FT MORGAN CO

Descr.	qty	amount
UNLD CA #06	12.446G	36.45
	@ 2.929/ G	
Sub Total		36.45
Tax		0.00
TOTAL		36.45
CASH \$		36.45
Change \$		0.00

THANKS, COME AGAIN

REG# 0001 CASH 008 DR# 01 TRAM# 1214.1
10/21/08 16:32:12 ST# 3

Suene Anderson

1-970-522-6684

TO: 18005536209



Sav-O-Mat, Inc.

105 So. Cherokee

P.O. Box 9354

Phone 744-1711

Denver, Colorado 80209

Date: ~~4/8/08~~ 4/6/08

I, Suene Anderson, agree that Sav-O-Mat, Inc. may withhold from my paycheck the amount of \$ 10⁰⁰. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Sav-O-Mat, Inc. Drive off

Faint handwritten notes, possibly "SOM 10000"

Suene Anderson
Employee's Signature

ENTERED

APR 16 2008

SAV-O-MAT, Inc.

By: Josie Quany



Sav-O-Mat, Inc.

105 So. Cherokee P.O. Box 9354 Phone 744-1711
Denver, Colorado 80209

Date: 4/21/08

I, Luene Anderson, agree that Sav-O-Mat, Inc. may withhold from my paycheck the amount of \$ 20.00. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Sav-O-Mat, Inc.

\$ 20.00 gas drive off

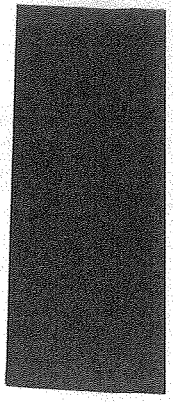
Luene Anderson
Employee's Signature

SAV-O-MAT, Inc.

By: Josie Beramy

EMERED

2008





Sav-O-Mat, Inc.

105 So. Cherokee

P.O. Box 9354

Phone 744-1711

Denver, Colorado 80209

Date: 6/30/08

I, Sever Anderson agree that Sav-O-Mat, Inc. may withhold from my paycheck the amount of \$ 10.00. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Sav-O-Mat, Inc.

Drive Off Motorcycle Brand new

Sever Anderson
Employee's Signature

SAV-O-MAT, Inc.

By: _____



Sav-O-Mat, Inc.

105 So. Cherokee

P.O. Box 9354

Phone 744-1711

Denver, Colorado 80209

Date: 8-17-08

I, Terri Outivores, agree that Sav-O-Mat, Inc. may withhold from my paycheck the amount of \$ 36⁰⁰. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or ^{Drive off} equipment or property I took from Sav-O-Mat, Inc.

Handwritten note: 10/18/08 8:00 AM [TX/RX NO 6898] # 7

Terri Outivores
Employee's Signature

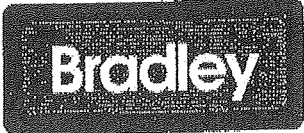
ENTERED

SAV-O-MAT, Inc.

AUG 19 2007

By: _____

Paula Mauer



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 3-19-08

#13

I, Paula Mauer, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 55.09. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

Please take out of two checks please
This date open order

Paula Mauer
Employee's Signature

BRADLEY PETROLEUM, Inc.

Draw off.

Dale Joy
By:

to draft on 3/19/08

ENTERED
MAR 23 2008

James Reeves



Bradley Petroleum, Inc.

7268 S Tucson Way

Centennial, Colorado 80112-3290

(303) 733-4627

Fax (303) 777-9052

Date: 4/11/08

I, JAMES REEVES
Release \$ 22.50 from my paycheck from Bradley Petroleum to
reimburse for cash and/or inventory shortages that I took.

Cash Shortage Amount: \$ 22.50

Inventory Shortage Amount: \$ _____

Employee Signature

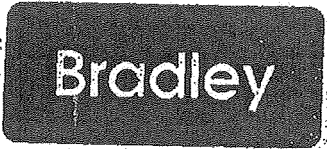
[Signature]
Bradley Representative

ENTERED

SPLIT SHORTAGE OF \$45.00 ON 3/25/08 FIRST SHIFT

#12, for short on 3/24/08

(P)



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

7-18-07 Posted

Date: 7-12-07

#24

I, Cheri Behnke
Release \$ 16.75 from my paycheck from Bradley Petroleum to
reimburse for cash and/or inventory shortages that I took and/or
unauthorized overtime owed to Bradley Petroleum.

Credit Card Shortage Amount:	\$ <u>16.75</u>
Inventory Shortage Amount:	\$ _____
Unauthorized Overtime:	\$ _____

cig shortage
5 pks
3.35 each

Cheri Behnke
Employee Signature

Jabana Castillo
Bradley Representative

ENTERED

||| 20 2007

7-11-07 Shortage for 5 packs @ 16.75

(P)

Bradley

Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

7-18-07 Posted

Date: 7-12-07

#24

I, Christi Behnke
Release \$ 16.75 from my paycheck from Bradley Petroleum to
reimburse for cash and/or inventory shortages that I took and/or
unauthorized overtime owed to Bradley Petroleum.

Credit Card Shortage Amount: \$ 16.75
Inventory Shortage Amount: \$ _____
Unauthorized Overtime: \$ _____

cig shortage
 5 pks
 3.35 each.

Christi Behnke
Employee Signature

Jabina Casuelo
Bradley Representative

ENTERED

||| 20 2007

7-11-07 shortage for 5 packs @ 16.75



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 9/1/08

ENTERED
SEP 03 2007

I, Susane, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 18.33. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

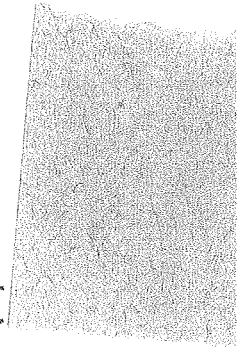
Cig & Shatage in drawer

Susane
Employee's Signature

30000 for 2008

BRADLEY PETROLEUM, Inc.

By: [Signature]



Jesse Muzzy



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 11/28/08

ENTERED
DEC 03 2008

I, Jesse Muzzy, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 32.40. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

For Carton of cig. taken on 11/27/08 at 2:05 AM.

Jesse Muzzy
Employee's Signature

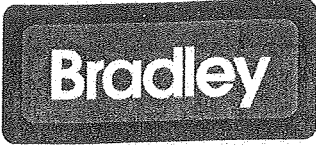
BRADLEY PETROLEUM, Inc.

BY: [Signature]

A. [Signature]

Bakhtiyor Beroiyev

651



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290

(303) 733-4627

Fax (303) 777-9052

Date: 8/21/08

ENTERED

OCT 01 2008

(Bakhtiyor Beroiyev)

I, Ben, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 94.00. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

For shortage
on 8/21/08

Sold 96.00 in lotto
and rang in 96.00

Sum #14, for short on 8/21/08

Employee's Signature

BRADLEY PETROLEUM, Inc.

By:

50117



Bradley Petroleum, Inc.

7268 S Tucson Way Centennial, Colorado 80112-3290 (303) 733-4627 Fax (303) 777-9052

Date: 7/2/08

ORIGINAL

I, Mark Bamberg, agree that Bradley Petroleum, Inc. may withhold from my paycheck the amount of \$ 10.00. I acknowledge and agree that the amount being withheld from my paycheck is a deduction for a good or equipment or property I took from Bradley Petroleum, Inc.

Counted third shift down and miss counted, which made 1st shift start drawer short.

1st shift start drawer short on 7/2/08

[Signature]
Employee's Signature

BRADLEY PETROLEUM, Inc.

[Signature]
By: _____

DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
Plaintiff: AMY OKAMOTO, et al. Defendant: BRADLEY PETROLEUM, INC., et al.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 01 CV 5947 Courtroom 5
For Plaintiff: Lee E. Christian, Reg. No. 18743 Lee E. Christian, P.C. 415 Mason Court, Building 2 Fort Collins, CO 80524 Phone: 970.484.0300 Fax: 970.484.1606 lchristian@frii.com For Defendant: Otto K. Hilbert, Reg. No. 18363 Robinson Waters & O'Dorisio PC 1099 18th Street, Ste. 2600 Denver, CO 80202 Phone: 303.2972600 Fax: 303.297.2750 ohilbert@rwolaw.com	
<p style="text-align: center;">The matter came on for hearing on Tuesday, April 7, 2009, before the HONORABLE ROBERT L. MCGAHEY. JR., Judge of the District Court, and the following proceedings were had.</p>	

The above-captioned parties appear in person.

This is a complete transcript of the proceedings held on this date in this matter.

I N D E X

STATUS CONFERENCE:

PAGE

Court's Findings and Orders:

Court's Orders 19

1 DENVER, COLORADO; TUESDAY, APRIL 7, 2009

2 -oOo-

3
4 (Call to Order of the Court at 1:13 p.m.)

5 THE COURT: Calling 01 CV 5947, Okamoto versus Bradley
6 Petroleum. Could I have entries of appearance, please?

7 MR. CHRISTIAN: Good afternoon, Your Honor. Lee
8 Christian appearing for the putative Plaintiffs, Amy Okamoto, et
9 al.

10 MR. HILBERT: Good afternoon, Your Honor. Otto
11 Hilbert on behalf of the Defendants.

12 THE COURT: This matter comes on today for a status
13 conference. The parties at -- parties were I believe back in
14 November. At that time I ordered that oversight continue.

15 I -- there were some additional complaints brought to
16 the attention of the Defendants by Plaintiffs' counsel. I asked
17 that the Defendant give me a status report by today, well by the
18 time of the conference.

19 There were also some issues concerning turning over
20 audit records, records for audit. As a result of a del -- of
21 the time it took it to get those, through nobody's fault, we
22 continued the January 21st status conference to today.

23 I have reviewed the materials submitted by -- I've
24 reviewed the Defendant's response concerning the additional
25 complaints and I presume that the things with the binder clips

1 are the audits, Mr. Hilbert; is that correct?

2 MR. HILBERT: Yes, Your Honor.

3 THE COURT: All right. All right. Let's figure out
4 where we're -- okay, Mister --

5 MR. HILBERT: Can I just give you the status report?

6 THE COURT: That's what I was about to ask. Bring me
7 up to speed, Mr. Hilbert, please.

8 MR. HILBERT: Thank you, Your Honor. Just a brief
9 synopsis of how this case has transpired.

10 Defendants' contention from the beginning of this suit
11 was that given the systems in place at its stations, the only
12 logically explanation for a shortage or a drive-off without a
13 license plate or a shortage of cigarettes or lottery tickets, or
14 pop, or anything else could only be logically explained by
15 employee theft. What this case has brought to my client's
16 attention is that they, you know, improperly papered that.

17 So what we tried to do, you know, during the pendency
18 of the settlement, is accurately reflect when monies were
19 missing, or cigarettes were missing or drive-offs were missing,
20 what happened. If there is a police report filed, if there is
21 no charges that come then after 90 days the paycheck is released
22 and we've tried to comply with that.

23 That wasn't quite enough. So as part of the settlement
24 -- and Mr. Christian doesn't recall approving the form --
25 Bradley and Save-O-Mat put together a form, that I believe

1 complies with the statute, Your Honor. And it's a very simple
2 form, copies of which I have for you if care to see them, but I
3 could just relay to you it's just a one sentence or two sentence
4 form.

5 It says: Date, I, blank, the employee agree that
6 Bradley Petroleum may withhold from my paycheck the amount of,
7 \$50 or whatever it is. I acknowledge and agree the amount being
8 withheld from my paycheck is a deduction for a good, or
9 equipment or property, I took from Bradley Petroleum. Signed by
10 the employee. So there were no deductions unless this sign,
11 unless this form was signed.

12 Now in, -- in, in a couple of instances, in a number
13 of instances we've not been able to locate all of these forms
14 where a deduction has taken place but we are finding them. What
15 you have before you though, is the complete audit of 2007 and it
16 says "2007" at the top.

17 THE COURT: I see it.

18 MR. HILBERT: And 2008, and it says "2008" at the top.
19 These are complete audit of every deduction made Bradley and
20 Save-O-Mat during 2007 and 2008 in compliance with the Court's
21 order.

22 To go further however, Bradley has taken those
23 shortages through 2008 beginning in December, and working
24 backwards on the third packet with the bigger horse clip. And
25 it shows what documents Bradley's been able unearth with respect

1 to each of these alleged shortages.

2 And in most cases you'll see new doc, on the first
3 page for instance, that indicates that the employee signed the
4 form that said, in that case it's a uniform, it says that we are
5 going to make a deduction for the uniform. If you give the
6 uniform back we give you your money back and if they don't then
7 they don't. And if there's a shortage, you'll see that there's
8 a doc or a no-doc question mark. The no dark -- doc question
9 marks are ones that we are still researching.

10 THE COURT: But what if says no doc with no question
11 mark? That means you just haven't got anything?

12 MR. HILBERT: If it's not no doc with no question mark
13 it means that that is still in investigation too.

14 THE COURT: Okay.

15 MR. HILBERT: We, we -- and the problem as I'm sure
16 you can ascertain, with having stores all over a multi-state
17 region is tracking all these documents to each of these files.
18 But we are in process of doing that but the audit that the Court
19 requesting indicating all shortages and deductions is before the
20 Court.

21 But I have some happy news. We feel and we've been
22 scratching our heads trying to figure out a better way to get
23 this done that the reflexive employee position on these "I took"
24 shortage memos, if they are ex-employees of Bradley, will
25 obviously be that I was forced to sign it under some kind of

1 duress.

2 In many cases that's been the case and in those cases,
3 those are the ones that we've had to resolve with Amanda Neal
4 and the Department of Labor. In most cases they don't come back
5 on us. But the new policy and I think this will obviate any
6 further oversight by the Court beyond, you know, the completion
7 of what we are doing here is this, Your Honor.

8 The new policy is if there is a shortage of \$10 or
9 more in anything, lottery tickets, gas, cigarettes, cash, the
10 employee is immediately suspended for ten days during an
11 investigation, an internal investigation of the shortage. If
12 the shortage is not properly explained or verified not to have
13 been the employee's wrongdoing, the employee is summarily
14 terminated.

15 That policy is articulated to the employee at the time
16 of hire. It is posted -- we are in the process of posting it,
17 each station and each district manager and each manager are
18 informed to remind the employees on a regular interval basis
19 that that is the policy. That it's zero tolerance. So then we
20 don't have the issue, Your Honor, of coming before you and
21 saying, you know, it's duress or it's not duress or there's a
22 paper or there isn't a paper and that sort of thing.

23 So I think going forward, for purposes of complying
24 with the terms of the settlement, this new policy will take care
25 of the problem and to the thesis that we've articulated since

1 the beginning of this case, that the only logical explanation
2 for any such shortage is employee misconduct. Since institution
3 of this policy we've had nominal shortages and we have no
4 pending cases with the Colorado Department of Labor. And we're
5 keeping much more meticulous and discrete files for each
6 employee.

7 Such that any questions by Amanda Neal or anyone at
8 the Department of Labor we are able to immediately address at
9 intake so that it doesn't become a formal complaint and again if
10 we're wrong, we're wrong, and we pay the check. If we are
11 right, we're right and Amanda Neal says so. And in each of
12 those files we have a letter from her saying you've satisfied,
13 you've satisfied, you've satisfied.

14 So I think this new policy is going to us in perfect
15 compliance and I think the papers before you demonstrate the
16 Herculean efforts made by Defendants to try and comply with the
17 Court's order and with the settlement agreement in this case.

18 And, and I've got Brad Packens (ph) here, who is the
19 Chairman of Bradley and the President of Save-O-Mat. I have
20 Buzz Hawkins here who is the President of Bradley. I have Mark
21 Schluder here who's the Director of HR, and I have Anna Secora
22 (ph) who's the Vice President of Operations of the two entities,
23 in case the Court has any questions, and just to make sure that
24 you understand the moving parts.

25 But to walk you through briefly the Bradley 2008

1 deductions explained, as I said on the first page the uniform
2 smock, there's a document and the document says that the
3 employee returns the smock or the deposit for the smock is
4 retained by Bradley and we have such a document. With respect
5 to the \$19 shortage under Lucy Acosta (ph) we're still searching
6 for that document.

7 And so it was, let's see, August of 2008, we believe
8 the document exists and we are looking for it. So all the
9 uniform ones, there's a uniform form that says exactly what we
10 just said. You'll be deducted the deposit for your uniform and
11 when you return the uniform you get the uniform (sic).

12 On the second page, for instance the shortages under
13 Fallon Alexander, we don't -- we have not found a doc yet for
14 the January 18, 25 and March 14 shortages. We do have signed
15 documents for the May, June, July and December shortages.

16 I'm also pleased to report that through this audit,
17 Your Honor, we have ascertained and -- again I will have
18 specific percentage for you, but these issues only arise in
19 between three and four percent of all Bradley's employees.

20 Bradley is obviously a major employer and as I've
21 mentioned to you before in this courtroom, has significant
22 turnover as an -- as a result of the nature of its business.
23 However, it is important I think to understand that these issues
24 relate to less than five percent of all of Bradley and Save-0-
25 Mat's employees.

1 And we are doing everything we can to fix this problem
2 in a way that takes this out of your courtroom, takes us out of
3 the Colorado of Department of Labor and treats these employees
4 fairly, which has been Bradley's and Defendants' goal from the
5 get-go.

6 So I appreciate that Your Honor. If you have any
7 questions?

8 THE COURT: Just one. I think I understand. Did you
9 say that what you're doing then when you are issuing a new
10 employee a uniform, or a hat or a shirt, that they're required
11 to wear, that that's in essence say -- it's like a deposit?

12 MR. HILBERT: Exactly.

13 THE COURT: All right.

14 MR. HILBERT: If, if I may approach, Your Honor?

15 THE COURT: Yeah.

16 MR. HILBERT: What I handed Mr. Christian earlier and
17 I hadn't made a copy for you because I figured you'd get enough
18 paper. This is that figure and it's a \$22 deposit for the
19 smock, a \$2 deposit for the nametag, a \$24 total deposit. Upon
20 return of the shirt and the name tag you get the \$24 back.

21 THE COURT: That's what I understood you to be telling
22 me. I just wanted to make sure that what -- that I understood
23 with the entry meant on the form. Thank you, Mr. Hilbert.

24 Mr. Christian?

25 MR. CHRISTIAN: Thank you, Your Honor.

1 There are few times as a lawyer in 20 years that I've
2 not been more outraged, Your Honor. They may have said that
3 this is all good and fine but it's the same thing that I've been
4 dealing with for 2001, and the same thing that the Government
5 has tried to stop them from doing for 20 year now, Judge, 20
6 years.

7 It may sound logical and he made a decent argument at
8 -- about it but it's not what the law is and it's not what these
9 guys have been told what the law is over and over again and it's
10 why we had you supervise this thing and why we had you bring
11 this audit together, which is not in compliance with your order.

12 They argued first that the only logical explanation
13 for disappearances of ten, 15, \$20 is because it's a shortage
14 and because it's theft. Most of the times, at least as I look
15 through these documents, Judge, which I got half an hour ago and
16 I got the 2008 explanation this morning, is a drive-off. How is
17 a drive-off when Guido takes gas away and just drives off, how
18 is that the employee's theft -- is ridiculous.

19 These -- the argument that the only logical
20 explanation for this shortage is theft is ridiculous and the law
21 presumes otherwise.

22 These people are mostly, many are immigrants. Most
23 don't have a high school education. They can't add or subtract
24 in a lot of ways, Judge. And so a shortage is most often going
25 to be due to neglect. It could be do to theft of a co-employee.

1 It could be an accident. It could be stupidity. It might be
2 drive-off. It might be -- I give you three packs of cigarettes
3 instead of two, and because of that the law requires when they
4 say it's theft, the Colorado Wage Act is very specific. If you
5 are going to make a deduction for theft, and this is the way
6 it's always been.

7 If you make a deduction for theft you must call the
8 cops. You can withhold it and then the cops do an
9 investigation, because presumably they are not as biased as the
10 employer and they can get to the bottom of it. And once the
11 police make the determination whether you are -- have taken the
12 money or not, then you are either charged and you don't have to
13 -- and convicted and then you, as the employee or the former
14 employee, don't get your money back or there is a payment of
15 money made to the employee with interest. That's what the law
16 says.

17 Now Mr. Hilbert says that for some reason I agreed --
18 and I'm looking back at my correspondence as we speak -- I
19 agreed to this new document that is going to be signed by the
20 employee where they say I agree that I took this.

21 THE COURT: The confession. Go ahead.

22 MR. CHRISTIAN: The confession, the written confession
23 if you will, if that's really what it what it is, but on most of
24 these confessions, at least the ones that I have, the guy says
25 this was a drive-off or it wasn't due to my shortage. And more

1 than likely they're signing these things to stay away from the
2 cops or they are signing them to keep their keep there jobs or
3 they are signing them because of the intimidation by their
4 supervisor. And that's what we found out, this was going on ten
5 years ago.

6 And now they are doing the same thing and have done it
7 hundreds of times, tens of thousands of dollars. The only
8 people that are stealing are Bradley Petroleum and Save-O-Mat
9 and they are stealing from their employees again.

10 Judge, I -- my -- I would ask that this case be set
11 over for a hearing for an order to show cause why this employer
12 should be held in contempt and --

13 THE COURT: Well, if you want to do that, file a
14 motion.

15 MR. CHRISTIAN: And my request is going to be, Judge,
16 that we go back to square one. We are going to have to find
17 these people. They are going to have -- because even if there
18 is a confession, Your Honor, and you find as matter of law that
19 is somehow binding on the employee, which there won't be. If
20 you look through the explanations of 2008, they don't even have
21 the confession.

22 Which means these people who this money has been taken
23 from need to be paid, and they need to be paid pursuant the
24 settlement agreement, which is pay plus 50 percent, and if we
25 can't find them, and most of them we aren't going to be able to

1 pay, we're are going to have to do another SIPRA (ph) fund and
2 that SIPRA fund is not going to go to Mr. Hilbert's CU box this
3 time. It's going to go to a Department of Labor or employee
4 organization.

5 I just -- I can't believe it. I really can't believe
6 that they're continuing to do this, Your Honor. I have to look
7 through these documents.

8 THE COURT: Well, you're not really prepared to
9 respond.

10 MR. CHRISTIAN: I'm not prepared --

11 THE COURT: Okay.

12 MR. CHRISTIAN: I -- well, I can say no matter what
13 he's --

14 THE COURT: Now part of that -- shush. Part of that
15 is, without making -- passing judgment on anything, is that I --
16 my orders required that those materials be provided no later
17 than the date of the hearing and that is -- Mr. Sil -- Mr.
18 Hilbert's not -- there's no -- there's nothing being played fast
19 and loose. He complied to that order to that extent.

20 But I can also understand that you haven't had a
21 chance to review them, counselor, given that the way my order
22 was framed.

23 MR. CHRISTIAN: Judge, and I have two --

24 THE COURT: So --

25 MR. CHRISTIAN: -- orders. I have one that's dated

1 the 3rd of December and I've one that's dated November --

2 THE COURT: Yeah. I noticed that.

3 MR. CHRISTIAN: -- 26th. And the November 26th one
4 says. the report shall detail the name, the address, the
5 telephone number, the current status of the deduction, attaching
6 pay stubs, disciplinary notices, all correspondence.

7 THE COURT: Those -- some -- one I think the first
8 order was the one that I signed. There was a second order that
9 somebody sent in that I may have entered that one inadvertently.
10 I'm not going to get too excited about that.

11 I understand your concerns. Your concerns are most
12 substantive than procedural anyway, Mr. Christian.

13 MR. CHRISTIAN: I would --

14 THE COURT: Are they not?

15 MR. CHRISTIAN: -- agree, Your Honor. And I think
16 there needs to be a rather lengthy hearing and I will file a
17 motion to that extent.

18 THE COURT: All right. It's -- I'll wait. I'll have
19 to get that and then I'll wait to see to see Mr. Hilbert's
20 response.

21 When you say -- the -- let me -- the words that made
22 my neck tingle, Mr. Christian, were "lengthy hearing". All
23 right, define that for me that for me. And I'm not holding your
24 feet to the fire. I just --

25 MR. CHRISTIAN: Well, it depends on the burden. I

1 suspect that the burden -- I don't know who the burden is going
2 to be on. I would want to --

3 THE COURT: Well, if you are asking that they be held
4 in contempt --

5 MR. CHRISTIAN: I would probably want to examine or
6 cross-examine the -- well, I'm thinking out loud, Judge. I
7 think --

8 THE COURT: I know I'm not --

9 MR. CHRISTIAN: -- a couple of --

10 THE COURT: Let me tell you why I ask that. I have a
11 disastrous trial schedule for the remainder of this calendar
12 year. I have a five -- one five-week and one six-week jury
13 trial set between now and Christmas. If either of those --
14 either or both -- if both of those go, nothing's happening in
15 this courtroom. And I am likely to be in a different courtroom
16 by next winter, next January.

17 If you are going to file the motion, let's get it
18 filed. Let's get a response, Mr. Hilbert. When we'll -- then
19 what I'm suggest -- what I will probably do is have a status
20 conference with counsel only to see what we need to do with
21 regard to setting. It's just going to be hard to do.

22 I almost -- I had to a -- give you an example I was --
23 I had to hear the case for the 11 fired Denver sheriffs last
24 week, and initially because it was going to be during a jury
25 trial, I was going to hear it every afternoon between noon and

1 1:00, during a jury trial.

2 And I don't want to have to do that with a case like
3 this, but I'm just warning you. I want to be upfront with you,
4 depending on when we try to set this hearing, there may not be -
5 - when you say lengthy, I -- that always presumes a day, more
6 than a day to me and that's going to be hard to find but we'll
7 do, we'll do our best.

8 MR. CHRISTIAN: And I'll --

9 THE COURT: Okay.

10 MR. CHRISTIAN: You know, I --

11 THE COURT: And --

12 MR. CHRISTIAN: -- don't know it will take. I don't
13 know what I've here.

14 THE COURT: Well and because you --

15 MR. CHRISTIAN: I just know it's --

16 THE COURT: -- and, and the point, and the point's
17 also going be, counselor --

18 MR. CHRISTIAN: -- the same story.

19 THE COURT: -- you don't know whether you are
20 going to want to do discovery before that. And you've got
21 -- I mean, I'm not -- and I'm not saying I'm going to allow
22 you to do discovery before that. What you need to do is
23 file your motion. Mr. Hilbert needs to file a response.

24 Then the three of us need to sit down and talk
25 about what the parameters are of what we're -- of how we're

1 going to deal with this. You can come in and tell me "I
2 need to take depositions." Mr. Hilbert can raise his hands
3 to the sky and say "How long, Lord, how long?" And I'll
4 make a determination of what we're going to do.

5 One thing I do want make clear is I'm going to
6 make sure, and I'm not making judgments when I say this,
7 I'm going to make sure before I let go of this case that
8 that the law is being complied with. And I'm going to be
9 satisfied that it's being complied with, and that I'm going
10 to be able to sleep when I go home tonight that I say that.

11 And that, if I find -- and it doesn't necessarily
12 mean that I'm going to be thinking that anybody's venal if
13 there's not strict compliance with the law at this point.
14 There may be good faith efforts that aren't up to, up to
15 the mark. I don't know. I understand what the -- what the
16 Defendants say they've done. They've obviously done a lot
17 of work. Whether it's enough work or the right work, I
18 don't know that. All right.

19 And certainly I'm not going to ask you, Mr.
20 Christian, to listen to testify -- testimony of the
21 corporate officers of Bradley Petroleum today without the
22 ability to do -- intelligently and effectively -- cross-
23 examine them. That wouldn't be consistent with due process
24 of law.

25 So if you think you've got a contempt -- you read

1 the -- review that stuff. If you are going to file a
2 contempt citation -- why don't I put it -- can I put a
3 parameter on that, and give you ten days to decide to
4 whether to file it or not?

5 MR. CHRISTIAN: Why don't you give me 20, Your
6 Honor?

7 THE COURT: Why don't I give you 15?

8 MR. CHRISTIAN: Compromise.

9 THE COURT: All right.

10 MR. CHRISTIAN: Is that --

11 THE COURT: Hey, it's what --

12 MR. CHRISTIAN: -- and that's business days?

13 THE COURT: -- lawyers do.

14 UNIDENTIFIED SPEAKER: Fifteen days.

15 THE COURT: Fifteen days from today's date. If
16 you are going to file one it's got to be filed with that.

17 Mr. Hilbert, I presume you can file a response
18 within ten days, thereafter; can you do that?

19 MR. HILBERT: Yes, Your Honor.

20 THE COURT: All right. And after we get that you
21 can presume that you'll -- we'll be down talk -- having a
22 status conference deciding what happens next.

23 THE COURT: All right?

24 MR. CHRISTIAN: Thank you, Your Honor.

25 THE COURT: I appreciate counsel's candor and I'll

1 wait to see what comes in next.

2 MR. CHRISTIAN: Thank you, Your Honor.

3 MR. HILBERT: Thank you, Your Honor.

4 THE COURT: Thank you very much. We'll be in
5 recess.

6 (Proceedings concluded at 1:37 p.m.)

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CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

Janice Penfield
Janice Penfield

April 16, 2010

Western Deposition and Transcription, LLC
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3. I am aware that Defendants continue to make deductions from employees' wages for the following reasons:

- shortages of cash or product;
- customer drive-offs;
- robberies;
- burglaries;
- alleged theft

During my tenure as Deputy Director, the Division has advised the Defendants that these actions are in violation of the Colorado Wage Act.

4. Division records reflect that in 1996-1997, the Colorado Division of Labor sought to ensure compliance with the Colorado Wage Act after numerous complaints against Defendants alleging failure to pay final paychecks. The employees alleged that they were terminated for shortages, refused final pay checks, had police reports filed against them, and then not paid when charges were not filed. I am aware that Bradley Petroleum and Sav-O-Mat subsequently signed a Settlement Agreement in March, 1997, "In the Matter of Assessment of Penalties against Bradley Petroleum, Inc., Sav-O-Mat, Inc., Bradley Hobson Calkins, George William Calkins, and Kathryn V. Calkins", Case No. LS 96-01.

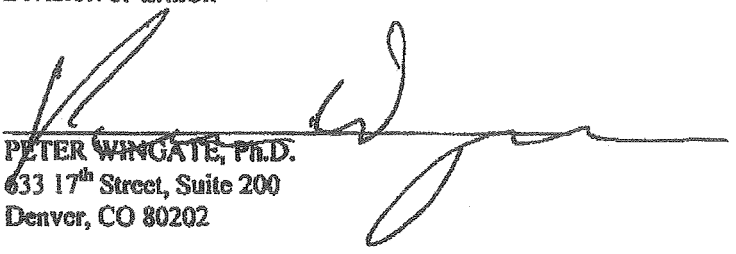
5. I am aware of the class action lawsuit filed by Mr. Christian and Mr. Killmer against the Defendants. Further, I have knowledge that since that settlement of that case in March 2003 there have been numerous instances of complaints against the Defendants for unlawful deductions of wages in violation of the Colorado Wage Act.

6. Although the Defendants have argued that they are entitled to withhold wages for alleged theft and/or other shortages, this is not allowed under the provisions of the Colorado Wage Act. If a criminal charge is not filed within 90 days, the Respondents are required by the Wage Act and the Settlement Agreement to pay those wages with interest. Treble damages are provided for in the Wage Act if the filing of a police report was made without good faith.

7. I am aware of the Defendants position that is permissible for them to make deductions from paychecks given the written consent of the employee. During my tenure as Deputy Director, the Division has repeatedly advised the Defendants that these actions are in violation of the Colorado Wage Act.

DATED this 16th day of September, 2009.

DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF LABOR



PETER WINGATE, Ph.D.
633 17th Street, Suite 200
Denver, CO 80202

I N D E X

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1 DENVER, COLORADO; FRIDAY, SEPTEMBER 18, 2009

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3
4 (Call to Order of the Court at 9:05 a.m.)

5 THE COURT: 01 CB 5947, Okamoto and others versus
6 Bradley Petroleum and others.

7 Entries of appearance please?

8 MR. CHRISTIAN: Good morning, Your Honor. Lee
9 Christian and Darold Killmer for the Plaintiffs.

10 MR. RAPSON: Good morning, Your Honor. William
11 Rapson, for the Defendants in this case. I'm with the law firm
12 of Welborn Sullivan Meck & Tooley.

13 THE COURT: Thank you.

14 This matter is here today for a hearing on continued -
15 - on issues raised by the need for continue -- apparent need for
16 continued enforcement of a previously entered settlement
17 agreement.

18 I'm going to ask counsel to give me any preliminary
19 matters that they want. But before we do that I'm going to
20 start with one. I want both the -- all the lawyers in the room
21 to listen very carefully to me. When I was a little boy my
22 grandmother would sometime say to me "Bobby, I don't like your
23 tone."

24 Well gentlemen, in reading over the last -- some of
25 the last batch of pleadings that have come in, in this case I

1 want to tell you something: I don't like your tone. There's
2 way too much snarkiness; way too much personal venom being
3 directed from counsel to counsel and that will stop right now.

4 For example in the Plaintiff's hearing brief on page 5
5 "the Defendant's new attorney has concocted a theory" referring
6 to the rule -- the written -- prohibition as "frivolous" when
7 there has been no finding of that. I understand that you are
8 going to tell me that it's argument. I don't care. It doesn't
9 move the ball forward and it doesn't help.

10 And on your part, Mr. Rapson, your ref -- your
11 reference -- your writ of prohibition seems more directed at Mr.
12 Christian than it does at me. This case is not about you, any
13 of you. This case is about your clients.

14 I was a trial lawyer for 25 years, I understand. Our
15 egos get invested, it's what we do. But you take your egos out
16 of this. The only -- this isn't about you. The only time in
17 life it's all about you is if you are a bride on her wedding day
18 and none of you are that. Don't put anything in a pleading you
19 give me that doesn't move the ball forward. You want to say
20 something snarky about your opponent, say it to your office
21 staff and then take it out of you pleadings. I don't want to
22 hear it.

23 Now having said that, anything preliminarily from the
24 Plaintiff before we get started?

25 MR. CHRISTIAN: I do apologize, Your Honor. The

1 motion has gotten out --

2 THE COURT: You don't owe me an apology, counselor.

3 MR. CHRISTIAN: Your Honor, I'll ask for some guidance
4 from you because I -- I'm not certain a we need a evidentiary
5 hearing. I think as a matter of law given, the pleadings that
6 you've received today, that you could make a ruling that the
7 Defendants have violated the law. They violated the settlement
8 agreement. They violated the court order that you issued in
9 November of 2008. They produced an audit that indicated that
10 they are making deductions in violation of the law --

11 THE COURT: Which by the way, just so you understand,
12 I haven't seen the audit. All right? So that piece of evidence
13 I need to at least see and consider, so I think we are going to
14 have to at least do that piece. But go ahead.

15 MR. CHRISTIAN: So I'm looking for guidance from you.
16 I mean today Judge, my -- what I had anticipated was calling my
17 witness from the Department of Labor to show some of the
18 correspondence back and forth between the Defendants and the
19 Department of Labor to show that they knew as early as the
20 middle of 2007 that what they were doing was against the law, at
21 least according to the Department of Labor.

22 I would call a couple of the Defendants' witnesses to
23 lay the foundation for the audit, the signature on the
24 settlement agreement. And then I'm not certain that the Court
25 needs to hear from every person who's had a deduction made. I

1 wanted to give you maybe a little bit of a flavor of this
2 through the witnesses but I'm not sure that it is necessary.

3 I think as a matter of law the deductions that have
4 been made don't need to be analyzed on a case-by-case basis and
5 that we can move to the issue of how to remedy what has been
6 done to them.

7 THE COURT: Here's what I want, I want to see some
8 evidence, all right? First place, I think, due process of law
9 makes me feel better about that if there's some process.

10 I think that Defense -- Defendants have a right to
11 present their side of the story if they have one. They have
12 the right to cross-examine witnesses and attempt and show either
13 directly or by inference that evidence doesn't stand for what
14 you show it -- say that it stand for.

15 The -- but, but I am not adverse nor do I think it's
16 inappropriate to use representative witnesses when we have a
17 large group of people. Particularly if, and I haven't seen the
18 evidence, if the documentary evidence is supportive of
19 violations and, and if it's deemed an admission then that's what
20 it is. But I haven't seen it, haven't heard it and haven't
21 heard the arguments about that, so I do want evidence in that
22 regard.

23 MR. CHRISTIAN: I'm prepared to move forward with
24 that, Your Honor.

25 THE COURT: All right. Mr. Rapson, anything before we

1 start?

2 MR. RAPSON: Yes, Your Honor. Just briefly.

3 THE COURT: And I just want to make sure everybody
4 understands. When I made the comments, Mr. Rapson, about your
5 writ of prohibition, I don't think it was necessarily frivolous.
6 I think if some -- you know, I'm not offended by your filing it.
7 If you think I made a mistake -- you have to represent your
8 clients zealously and in an appropriate manner. I wasn't
9 offended by the filing of the writ of prohibition. I also
10 wasn't surprised that the Court turned it down but that's -- I
11 never got one granted in 25 years. So --

12 MR. RAPSON: I don't know. It was pretty unusual to
13 have them granted.

14 THE COURT: So --

15 MR. RAPSON: But --

16 THE COURT: But I just want to make sure everybody
17 understands. I did not take any offense at that being done.

18 MR. RAPSON: I didn't think Your Honor, would. I
19 thought it was worth laying out our position as clearly --

20 THE COURT: And I understand, I understand. It was --

21 MR. RAPSON: -- as (indiscernible).

22 THE COURT: -- the language that you used that upset
23 me not the filing of the motion filed -- per the filing of the
24 motion.

25 MR. RAPSON: I --

1 THE COURT: So --

2 MR. RAPSON: I understand the Court's point. The, the
3 -- what I was trying to do, well, by what I did and, and I
4 understand that the Court doesn't like, doesn't appreciate it,
5 doesn't want to hear it again. But I was trying to emphasize
6 the fact that there aren't any Plaintiffs in this case -- there
7 aren't any claimants in this case, and --

8 THE COURT: Well I think, I think I've already dealt
9 with that in my last order that this is a matter of ongoing
10 supervision of an ongoing settlement agreement which I don't
11 believe relates only to the four or five people that were
12 originally Plaintiffs in this case. And I don't think that the
13 agreement reads that way now.

14 If I'm wrong some appellate court can tell me that I'm
15 wrong but I think there's the -- frankly I think the fact that
16 there's a -- there's inclusion of a need for ongoing supervision
17 in the settlement agreement itself is indicative that it's going
18 to have a broader scope than the -- simply the four people that
19 were originally class members. So -- but that's an argument you
20 guys can deal with when this case goes up. And notice I didn't
21 say "if". So --

22 MR. RAPSON: And I just want to make sure, Your Honor,
23 for the record that the, that the arguments and positions that I
24 asserted in the petition of --

25 THE COURT: And you're not and by part -- that's what

1 I wanted to say to you, Mr. Rapson. Your participation in this
2 hearing today whatever -- to whatever extent is not a waiver of
3 any of those arguments or any of those pleadings. Your, your
4 point right now is that I have no jurisdiction to do what we're
5 doing this morning and I understand that argument and I want it
6 made clear that your participation on behalf of your clients in
7 the hearing, as much as you want to participate is not any way,
8 shape or form a waiver of the argument that I am without
9 jurisdiction to conduct this hearing or any other arguments
10 related -- that you have advanced in your pleadings of late.

11 MR. RAPSON: Thank you, Your Honor.

12 THE COURT: All right?

13 MR. RAPSON: And the second thing I wanted to say is
14 that if this is hearing and -- I've been doing this for 40 years
15 and this is -- I consider this building my second home. If all
16 we are doing is having a hearing then I wouldn't expect the
17 Colorado Rules of Civil Procedure about endorsement of witnesses
18 and case management orders and all of those thing to apply to
19 just a hearing. I understand that --

20 THE COURT: It's not, it's not a trial. So --

21 MR. RAPSON: But, but, but I would feel that if there
22 were any substantive relief actually being contemplated like you
23 do in a trial that we would get more notice than getting a --
24 names of people several days ago.

25 And so if this is just a hearing where we here to kind

1 of figure what's going on and that sort of thing that's one
2 thing. But if there is any kind of substantive relief sought,
3 then I would take -- for the record at least, make objection and
4 hopefully I can do it across the board on a broad base objection
5 and not do have to do it with respect to each witness. But just
6 say it's not, it's not reasonable to have to deal with these
7 witnesses with three or four days notice.

8 THE COURT: I understand. I'll give you a standing
9 objection with regard to any -- on top of what else you've
10 objected to -- to any issues that may -- in which I may impose
11 substantive relief against you clients.

12 One thing I want to make sure everybody understands:
13 we're not dealing with contempt today. Okay. I'm just not.

14 UNIDENTIFIED SPEAKER: Okay.

15 THE COURT: All right? I'm not going to be finding
16 anybody in contempt at the end of this, at the end of this
17 hearing. Okay. I'm just not. But it may be the last time I
18 take that position. All right? I have heard enough evidence.
19 I haven't made any findings, haven't made any conclusions. I'm
20 not finding anybody in contempt. Nobody's going to jail today.
21 All right? Isn't going to happen today.

22 Let's go --

23 MR. RAPSON: Your Honor --

24 THE COURT: Let's go to work.

25 MR. RAPSON: Yes, Your Honor.

1 I have a suggestion to make if the Court -- I mean
2 it's a little bit of a different suggest but I'd be happy to
3 call Brad Calkins who's one of the principals with Bradley
4 Petroleum and also Save-O-Mat and kind of lay out sort of a
5 broad understanding of what they do, how they view the law and
6 how they administer it and it might give everybody kind of a
7 context within which to --

8 THE COURT: I think we'll do it -- the -- we'll let
9 the Plaintiffs go first. It's their motion and then we'll,
10 we'll hear from you folks.

11 I have to tell everybody I have a settlement
12 conference at one o'clock, one o'clock -- one-thirty this
13 afternoon. So we're going to do as much work as we can today.
14 If we don't get finished, we don't get finished and we'll reset
15 as we can.

16 I also have to tell you that Monday I start a three
17 week jury trial. So we'll get -- I want to be as efficient as
18 we can today and get as much work done as we can today. But if
19 we don't finish, we don't finish. And what I'm saying is I'm
20 not going to short-arm anybody's presentation. I'm not going to
21 put artificial time limitations on anybody in making sure that
22 they present their case. I've never thought that the due
23 process clause has a stop watch, so I'm going to listen to what
24 everybody has to say and I'll make a decision.

25 Counsel --

1 MR. CHRISTIAN: Yes, Your Honor.

2 THE COURT: -- let's proceed.

3 MR. CHRISTIAN: I wonder, would it be possible for
4 -- at least I'd like to give a brief opening statement because I
5 think it would give you an overview of what we anticipate --

6 THE COURT: I always wonder what lawyers mean when
7 they say "brief". But I will have -- we can -- I'll take an
8 opening statement. You want to make one? You want to make an
9 opening statement, counselor?

10 MR. CHRISTIAN: Given what you've said, Your Honor,
11 I'm ready to charge forward.

12 THE COURT: All right.

13 MR. RAPSON: Your Honor, I think --

14 THE COURT: Mr. Rapson, did you want to make anything
15 brief --

16 MR. RAPSON: Yes, Your Honor.

17 THE COURT: -- I emphasize, brief opening statement,
18 and then we'll proceed.

19 MR. RAPSON: Just so you know I assume that the Court
20 wants to take testimony and what we would do initially is to
21 acknowledge that we've had this wave -- wage deduction policy
22 for some time. It's actually different now in 2009 but this
23 hearing is directed at 2007, 2008.

24 And what we would say is that ever since the original
25 2003 settlement Bradley's made every effort to limit the wage

1 deductions for employees to the four statutory exceptions that
2 are set forth in eight -- I think 8-4.105.

3 The first category consists of deductions for loans,
4 equipment or property and these are express deduction to the
5 prohibition on wage deductions and we rely on that to deduct the
6 cost of uniforms.

7 The second category, the second statutory exception is
8 for theft and that consists of a considerable number of cases
9 where we refer cases to police agencies and then we're required
10 to return the money if they don't file a case within 90 days.
11 And as a matter of good faith, Bradley, if it learns in advance
12 of the 90 days that no case is going to be filed, returns the
13 money right away rather than waiting the full 90 days.

14 The third category and I think what is going to be at
15 issue in this case, refers to deductions that are authorized by
16 employees. That's what the statute says. The statute says if,
17 if deductions are authorized by employees then they are
18 statutorily accepted from the prohibition on wage deductions.

19 And Bradley relies on that to make deductions for
20 cigarettes, cash, gasoline and lottery tickets not burglaries,
21 not robberies, not the other things referred to in the pleadings
22 but to those four items. And they only do it where the employee
23 consents, after the fact, by signing a form saying I authorize
24 you or I consent to your deducting this from my wages.

25 Now these losses may be due to theft and they may be

1 due to negligence. Regardless, if the employee authorizes the
2 deduction it's permissible by statute. And that authorization
3 can be oral under the statute but as a practical matter, Bradley
4 goes the extra step and obtains it in writing 99 times out of
5 100.

6 And before it does it, Bradley goes to great lengths
7 to rule out other possible answers to a problem before it
8 pinpoints responsibility on the employee and it does so because
9 the reality is, is that Bradley does everything that it can to
10 curry favor with it's workforce, because it's better business to
11 have happy employees than it is to have unhappy employees. And
12 because it's very expensive, upwards of \$5,000 an employee to
13 get new employees.

14 So the last thing that this wage deduction corporate
15 policy is designed to do is either offend, alienate, or hurt
16 employees. It's simply a business method or policy of creating
17 a more productive, efficient workforce and the idea to the
18 extent that it's been suggested that this is a profit center for
19 Bradley, is simply wrong and the product of, you know, a mindset
20 that isn't sensitive to the reality of what's going on at
21 Bradley.

22 This third statutory exception, where as long as an
23 employee authorizes the deduction it's okay under the statute,
24 is identical to one that I've experienced as a lawyer in a law
25 firm. The policy of that firm was to deduct --

1 THE COURT: Hold on, hold on just a second.

2 (Court confers with Clerk)

3 THE COURT: I'm sorry Mr. Rapson, go ahead.

4 MR. RAPSON: Yeah. It was just like what I
5 experienced at a law firm where the law firm deducted from the
6 wages of a lawyer any litigation costs advanced by the firm for
7 a client that didn't ultimately pay it. And as an employee who
8 has had that happen to him, I didn't like the policy because it
9 costs me money. But I effectively consented to it in lieu of
10 losing my job.

11 And that was a situation where I wasn't at fault. It
12 was a client who hadn't paid the cost and yet I accepted that
13 corporate policy because that was what the job came with and
14 from the law firm's perspective that wage deduction cost me --
15 and that wage deduction could be upwards of five, \$10,000, --
16 caused me and other lawyers to be more productive when it comes
17 to collecting costs and accepting cases from clients.

18 But whether that policy was good or pleased me is
19 irrelevant because effectively under the statute, I had, I had
20 consented to it. I had authorized it and so it's permissible by
21 statute. And I think that that's what they are going to be
22 arguing about the most.

23 In fact you may hear Mr. Christian say, well the wage
24 loss --

25 THE COURT: Can we not talk about -- anticipate what

1 someone else is going to do?

2 MR. RAPSON: Okay.

3 THE COURT: An opening statement is what evidence
4 you're going to present.

5 MR. RAPSON: Okay.

6 THE COURT: And quite frankly with all due respect
7 this is getting awfully argumentative.

8 MR. RAPSON: Okay.

9 THE COURT: So if we're going to talk about evidence,
10 let's talk about evidence. If you want to talk about what
11 things mean then we'll until -- and let's do that at the end --

12 MR. RAPSON: Okay.

13 THE COURT: -- when we're doing closing.

14 MR. RAPSON: Well my only point here Your Honor, is if
15 I -- this corporate policy is no different than many other
16 corporate policies. You've got to show up at eight o'clock in
17 the morning. You can't wear flip-flops. People may not like
18 them but they effectively agree to the them. They authorize
19 them. They go along with them because of the term of
20 employment. And whether people want to do it or not, they -- by
21 agreeing to do it they authorize it, and that's what we are
22 rely, relying on for this third exception of the statute.

23 Now we're not saying that every so often some slippage
24 can't occur. We've got between Save-O-Mat and Bradley, 400
25 employees at any one time and it's conceivable that over the

1 course of a year there may be one or two or three or four
2 instances where a wage deduction is taken that doesn't come
3 within the four exceptions. For example no written consent or
4 oral consent to the deduction is obtained. And that's just
5 something that necessarily happens just because of the size of
6 the two companies.

7 But everything is done, everything is put in place by
8 Bradley and Save-O-Mat to make sure that that doesn't happen.
9 They go to great lengths to make sure that that kind of slippage
10 doesn't take place.

11 The reality is, is that Bradley acts in good faith in
12 all these cases. The one example being the one I pointed out
13 before, where they remit money when they learn that a case isn't
14 going to be filed even if the 90 days hasn't, hasn't expired.

15 A second example and we'll get into this with Amanda
16 Neal but I've written her three or four letters and she's
17 responded and she's been very nice about responding. But the
18 thrust of my letters is been: you tell me that this third
19 exception -- this authorization exception doesn't allow what we
20 we're doing. Tell me why?

21 And each time the Department of Labor comes back and
22 says that's our policy. That's the deal. You can't do it, it's
23 illegal. They never ever, ever, ever, ever once give me a
24 reason why that third authorization doesn't cover what we're
25 doing here, not once. And so it's just part of our good faith

1 to try to resolve this with the Department of Labor and we
2 haven't been able to do it.

3 Now finally, Your Honor, and I appreciate you're
4 giving me a chance just to talk a little bit here -- because of
5 this case, this case here in this courtroom in 2009, the
6 historic practice of making deductions for losses under the
7 third statutory exception for authorized deductions was
8 terminated. And now employees who are responsible certain kinds
9 of unexcused, unexplained losses are terminated. They no longer
10 have the choice of covering the loss. They're simply
11 terminated.

12 So it's now possible for an employee to lose his job
13 for an \$100 unexplained, unexcused absence because of this case,
14 where before he could keep his job by authorizing the deduction.
15 And I suggest to you that this lawsuit is being
16 counterproductive when it comes to what's in the best interests
17 of employees who want to preserve their jobs and livelihoods.
18 The bottom line is that we don't, as you know, we don't --

19 That's all I wanted to say Your Honor. Thank you.

20 THE COURT: Thank you.

21 First witness?

22 MR. CHRISTIAN: Amanda Neal, Your Honor.

23 THE COURT: Yeah, it's a maze to get up here. Raise
24 your right hand please? Do you solemnly swear or affirm?

25 MS. NEAL: I do.

1 THE COURT: Be seated please. Speak into the
2 microphone so that we can hear you. Now there's a -- you're
3 going to find the one problem; the chair doesn't move.

4 THE WITNESS: Okay.

5 THE COURT: All right. So make sure -- just pull the
6 microphone down so that it's pointed right at your mouth --

7 THE WITNESS: All right.

8 THE COURT: -- and talk into it. The microphone
9 slides around on the, the witness stand so if you have tom you
10 can move it.

11 THE WITNESS: Okay.

12

13

AMANDA NEAL

14 a witness, called by the Plaintiff, was examined and testified
15 as follows:

16

DIRECT EXAMINATION

17 BY MR. CHRISTIAN:

18 Q Ma'am, please state your name and spell your last name
19 for the record?

20 A My name is Amanda Neal. My last name is spelled N-e-
21 a-l.

22 Q And what do you do for a living?

23 A I'm a compliance officer for the Colorado Division of
24 Labor.

25 Q And how long have you been in that position?

1 A I've been there for three years. I've been a
2 compliance officer for two years.

3 Q And do you have knowledge of the Colorado Wage Act?

4 A I do.

5 Q And where is that knowledge from?

6 A The knowledge comes from one, working cases. I've
7 worked about 1700 plus cases in the past two years. That's
8 knowledge of the Colorado Wage Act, in addition to the Colorado
9 Minimum Wage Order.

10 Q And do you consult with your supervisors in regards to
11 learning what the law is about?

12 A I do.

13 Q And do you consult with the Attorney General's Office
14 as to the law?

15 A Yes, the Division does.

16 Q All right. Are you aware of history, a history of
17 complaints filed by employees of Bradley Petroleum and Save-O-
18 Mat?

19 A I am.

20 Q And how are you aware of that history?

21 A It's been my experience that -- I've have worked 35
22 cases that have been filed against Bradley Petroleum and Save-O-
23 Mat. Additionally the Division has received additional cases
24 since -- I'm aware of, since 1996, 1997.

25 Q Since 2008 have there been additional complaints filed

1 against Bradley Petroleum?

2 A Yes, there have been.

3 Q And you said 35 cases that you've worked on?

4 A Correct.

5 Q Is that -- how does that number compare to any other
6 business in the State of Colorado that's not bankrupt?

7 A It has been my experience that absent bankruptcy or --
8 MR. RAPSON: Your Honor, I object. This is
9 irrelevant.

10 THE COURT: Overruled.

11 THE WITNESS: Absent bankruptcy or companies failing
12 that I've received and worked on more complaint against Brad --
13 Bradley Petroleum than any other employer.

14 Q (By Mr. Christian) Any other employer.

15 And when you receive a complaint from an employee do
16 you send that complaint on to Bradley Petroleum?

17 A I do.

18 Q And Bradley Petroleum responds?

19 A They do.

20 Q And then to this, does Bradley Petroleum say why
21 they've done what they've done in that correspondence to you?

22 A Yes, they typically do.

23 Q And in your history of working with Bradley Petroleum
24 do you tell them why what they are doing is legal or illegal?

25 A We, we've -- I do. I give them -- mainly I name the

1 statute that they may be violating and indicate how they can
2 remedy the situation.

3 Q And does Bradley Petroleum upon your advising them of
4 the law end up almost always paying the employee?

5 A Yes, they do.

6 Q Okay. Do you remember the case of Tina Pope?

7 A I do.

8 Q And do you remember generally what Ms. Pope was
9 alleging?

10 A She was alleging that one -- deductions were making a
11 paycheck.

12 Q And you sent that onto Bradley Petroleum, correct?

13 A Correct.

14 Q And what was their response?

15 A You know I'm not directly aware of what their actual
16 response was.

17 Q Okay.

18 MR. CHRISTIAN: If I might approach?

19 THE COURT: Yes.

20 Q (By Mr. Christian) After you received a letter from
21 Bradley -- or from Ms. Pope did you send what I'll hand to you,
22 a letter of August 24th of 2007?

23 THE COURT: Before -- if we are going to start talking
24 about paper let's mark it, shall we?

25 THE COURT: Here, I've got stickers.

1 Do you want some Defendant sticker's, Mr. Rapson, I've
2 got those too?

3 MR. RAPSON: Thank you, Your Honor, yes.

4 And I guess I'd ask counsel to give me a copy of the
5 documents that he's --

6 THE COURT: That's, that would have happened before it
7 was admitted anyway, Mr. Rapson.

8 MR. RAPSON: Thank you, Your Honor.

9 THE COURT: And I -- and if -- sadly, I have even more
10 stickers if we need them.

11 UNIDENTIFIED SPEAKER: Okay.

12 Q (By Mr. Christian) That look like a letter you would
13 have sent to Bradley Petroleum?

14 A Yes, it does.

15 Q Regarding Ms. Pope on August 28th?

16 THE COURT: I'm sorry. Have we marked that and
17 identified it?

18 MR. CHRISTIAN: Yes. I'm sorry.

19 THE COURT: I didn't. I'd --

20 Q (By Mr. Christian) I'm handing to you -- I've handed
21 you what's been marked Plaintiff's Exhibit 1, correct?

22 A Yes.

23 Q And that is a letter from you to Bradley in August of
24 2007; is that right?

25 A That's correct.

1 Q And in that letter you indicate that you --

2 MR. RAPSON: I object, Your Honor. This hasn't been
3 introduced into evidence.

4 THE COURT: Yeah. It hadn't been introduced yet.

5 MR. CHRISTIAN: I would ask for the entry of Exhibit
6 1.

7 MR. RAPSON: Well --

8 THE COURT: Well the --

9 MR. RAPSON: I would object Your Honor.

10 THE COURT: Could I see a copy?

11 MR. CHRISTIAN: Yes, Your Honor.

12 MR. RAPSON: My objection is twofold. There hasn't
13 been a foundation.

14 THE COURT: Well, wait. Wait 'til I have one.

15 MR. RAPSON: Okay.

16 THE COURT: I can't tell whether it's even worth
17 objecting to until I have a copy.

18 Go ahead, Mr. Rapson. Go ahead.

19 MR. RAPSON: I just object that there hasn't been a
20 foundation laid, that it's relevant to the proceedings here.

21 But also I don't believe, and counsel may correct me
22 if I'm mistaken, because I could be mistaken, but I don't think
23 that this is a document I've seen before. And I know that we're
24 kind of stretching the rules just a wee bit here with this
25 particular hearing in terms of endorsing people, and everybody

1 else at the last minute. Where I don't have much of a chance to
2 find out what's going on but if I haven't seen this it makes it
3 even doubly difficult.

4 THE COURT: The objection's overruled. Exhibit 1's
5 admitted. Let's proceed.

6 (Plaintiff's Exhibit Number 1 admitted)

7 Q (By Mr. Christian) Generally, what did you tell
8 Bradley Petroleum?

9 A I notified them that our office considers them to be
10 in violation of the Colorado Wage Law specifically Statute 8-
11 4.105.

12 Q Okay. Do you recall receiving and then a --

13 MR. CHRISTIAN: Well, let me mark it. It's a two page
14 document.

15 (Plaintiff's Exhibit Number 2 marked for identification)

16 Q (By Mr. Christian) Do you remember receiving a
17 response from Bradley's attorney Otto Hilbert on September 6th,
18 2007?

19 A Yes, I do.

20 Q And I've marked the Plaintiff's Exhibit 2. Is that
21 the letter that Mr. Hilbert sent you regarding Ms. Pope?

22 A Yes, it is.

23 MR. CHRISTIAN: And I would ask for the entry of
24 Exhibit 2.

25 MR. RAPSON: No objection, Your Honor.

1 THE COURT: Now you've given me -- there -- what I've
2 got up here is two pages. There's a fax cover sheet and letter
3 which -- is the letter Exhibit 2?

4 MR. CHRISTIAN: The letter and then the fax, correct.

5 THE COURT: The fax sheet is --

6 MR. CHRISTIAN: There's actually (indiscernible).

7 THE COURT: The fax sheet, so it's actually two pages,
8 correct?

9 MR. CHRISTIAN: That's correct.

10 THE COURT: You've no objection to either page, Mr.
11 Rapson?

12 MR. RAPSON: That's correct, Your Honor.

13 THE COURT: All right. Exhibit 2 is admitted in its
14 entirety.

15 (Plaintiff's Exhibit Number 2 admitted)

16 Q (By Mr. Christian) And if you could read what Mr.
17 Hilbert said to you?

18 A "Dear Ms. Neal, thank you for your correspondence of
19 August 28th, 2007.

20 "I represent Bradley Petroleum. Attached to this
21 letter please find a document executed by Ms. Pope
22 indicating that she is not owed any further monies by
23 Bradley Petroleum. According to the document executed
24 by Ms. Pope, she took cigarettes in an amount equal to
25 what she now contends she is owed. If you have any

1 questions or concerns regarding this matter, please
2 contact me. Sincerely, Otto K. Hilbert, II."

3 Q And the document that is attached is a --

4 MR. CHRISTIAN: I'd refer to as, and Judge, we'll
5 refer to these I think today as an "I took" document.

6 Q (By Mr. Christian) Is that a document that was signed
7 by Ms. Pope presumably and signed by a Bradley representative?

8 A Yes.

9 Q And did she scratch out "I took"?

10 A Yes. It appears that she did or someone did.

11 Q All right. So did you respond to Mr. Hilbert?

12 A I'm sure I did.

13 Q And why are you sure that you did?

14 A Because typically it is Division's policy to respond
15 to additional claims when the Division feels that monies are
16 still owed.

17 Q And you felt that even with this waiver that their
18 action was illegal, correct?

19 A Correct.

20 Q And did you write Bradley Petroleum back and tell them
21 that?

22 A I'm sure I did.

23 Q All right.

24 MR. CHRISTIAN: If I might approach?

25 THE COURT: All right.

1 MR. CHRISTIAN: I'm marking for Ms. Neal, Plaintiff's
2 Exhibit 3.

3 (Plaintiff's Exhibit Number 3 marked for identification)

4 THE COURT: Thank you.

5 Q (By Mr. Christian) Is that the letter you wrote back?

6 A Yes, it is.

7 Q And are your part -- are you explaining to Bradley
8 Petroleum in very clear language why the "I took" letter is
9 illegal?

10 THE COURT: Excuse me. With all due respect, Mr.
11 Christian, do you think you could ask that question in a
12 slightly less argumentative way?

13 MR. CHRISTIAN: You bet.

14 Q (By Mr. Christian) What have you written back to them
15 generally or specifically in regards to the "I took" letter?

16 A Basically I indicated that there is a, there is a way
17 to deduct for theft and that that is under 8-4.105 § (1)(c) --
18 or here I indicated (c) which is -- basically says that it's a
19 deduction necessary to cover the replacement cost of a shortage
20 due to theft by an employee, if a report has been filed with the
21 proper law enforcement agency.

22 Q All right. So it's the Department of Labor's position
23 --

24 THE COURT: That's it's the world's most -- you're
25 going to find out, counsel, that the world most inefficient

1 tripod. I'm telling you right now.

2 MR. CHRISTIAN: I'm right with you, Your Honor.

3 THE COURT: It's -- you --

4 MR. CHRISTIAN: It's slowly destructing. So --

5 THE COURT: And we won't talk about how times I've
6 asked to have to have it replaced either. But it's useless.

7 MR. KILLMER: That is something.

8 Q (By Mr. Christian) The Department of Labor's position
9 is that if there is a deduction for shortage, what is the
10 employer to do?

11 A If they believe it's theft by the employee, that they
12 file a proper -- or a police report, a report with proper the
13 law enforcement agency and a couple things can occur.

14 One, if criminal charges are not filed or if 90 days
15 go by and nothing actually occurs then the employer's required
16 to pay the employee the deduction. Additionally the Division of
17 Labor actually requires that the employee be paid at least
18 minimum wage as well, regardless of whether or not the
19 deductions for theft occurs.

20 Q Do you know what the result of Ms. Pope's case was?

21 A I do believe that they indicated that the employer
22 ended up paying Ms. Pope.

23 Q Okay. Do you remember the case of a Lisa Hughes, H-u-
24 g-h-e-s?

25 A I do remember there was a case against --

1 Q What do you --

2 A -- for a Lisa Hughes.

3 Q What do you recall as the complaint of Ms. Hughes?

4 A I do believe deductions were involved.

5 Q And did you again, if you recall, send a letter to
6 Bradley Petroleum?

7 A I did. It is the Division's policy to send a letter
8 when we receive a complaint.

9 MR. CHRISTIAN: Judge, I'm going to ask for the
10 admission of Exhibit's 1 through 3, if we haven't already done
11 that?

12 THE COURT: I think we've admitted 1 through 3. There
13 was an objection to 1. There was no objection to 2.

14 I'm sorry, did -- was there any objection to 3, Mr.
15 Rapson?

16 MR. RAPSON: No, Your Honor.

17 THE COURT: All right 3 is admitted.

18 (Plaintiff's Exhibit Number 3 admitted)

19 THE COURT: 1, 2, 3 have all been admitted, 1 over
20 objection, 2 and 3 without objection. Go ahead.

21 Q (By Mr. Christian) So again with Ms. Hughes was there
22 correspondence back and forth in regards to whether the
23 deduction from her paycheck was legal or not?

24 A Yes, I believe there was.

25 Q And do you recognize that letter in October of 2007

1 being your response to another deduction case?

2 A Yes.

3 THE COURT: If we -- are we identifying that as
4 Exhibit 4?

5 MR. CHRISTIAN: That's correct, Your Honor.

6 THE COURT: Okay. Gentlemen, I'm not trying to be
7 difficult with this but if we're -- seriously if were going to
8 throw a lot of paper around we've got to make sure the record's
9 clear.

10 MR. CHRISTIAN: And I'm sorry, Your Honor. I'm all
11 clear (indiscernible; off microphone).

12 THE COURT: And I want to, I -- just so everybody
13 knows, I'm putting the stickers on up here and I'm writing
14 Exhibit 1, 2, 3, 4, but next to that in parenthesis I'm putting
15 the date of the hearing. Because there have been other hearings
16 and other exhibits tendered at various times in this case.

17 And I want to make sure when this case gets appealed
18 that we understand -- that people farther up the food chain from
19 me understand what we are talking about.

20 Back to you, Mr. Christian.

21 MR. CHRISTIAN: Your Honor, I would ask for the
22 admission of Exhibit 4.

23 THE COURT: Any objection to 4, Mr. Rapson?

24 MR. RAPSON: Well, none other than the fact that I
25 don't believe this before. I've been given no notice that

1 anything regarding this would be taken up at this hearing. I
2 don't believe, anyway.

3 I could be mistaken -- possibly as part of that
4 documents Defense Counsel -- or Plaintiff's counsel gave me but
5 I don't believe it is. And so just to back to the, you know,
6 objection based on lack of due process and discovery process.

7 THE COURT: All right. Now, this isn't a -- this
8 letter was sent to your client. I don't know that there is any
9 debate about that. There's sufficient foundation for its
10 admission. Exhibit 4 is admitted. The objection's overruled.

11 (Plaintiff's Exhibit Number 4 admitted)

12 THE COURT: Mr. Christian.

13 Q (By Mr. Christian) Let's talk about that briefly.
14 Has Mr. Rapson ever interviewed you in the last couple of weeks
15 in regards to what your testimony would be today?

16 A No.

17 Q You, you start to seem a little frustrated in this
18 letter; is that true?

19 A No. I'm basically stating the Division's policy.

20 Q And again explaining why the deduction is illegal?

21 A Correct.

22 Q And you also wrote something in all caps?

23 A I did.

24 Q And what did you write?

25 A If -- "This letter serves as official notice" then in

1 all caps "but if such violations are occurring they must cease
2 immediately".

3 Q And by "such violations", what are we speaking of?

4 A Typically when -- this is actually a letter that's for
5 minimum wage violations. It's been altered. We do have
6 standard letters that we do send.

7 Q Okay. Do you -- and do you remember the results of
8 Ms. Hughes' case?

9 A They ended up paying the employee.

10 Q Now do you remember at some point Mr. Hilbert writing
11 you a letter requesting assistance from the Department of Labor,
12 in drafting some sort document that would be permissible by the
13 Department of Labor?

14 A I do.

15 Q All right.

16 MR. CHRISTIAN: If I might approach?

17 THE COURT: Yes.

18 Q (By Mr. Christian) I'm handing to you Exhibit 5.
19 What does that look like to you?

20 A This is a letter to me from Otto Hilbert.

21 Q And in that letter what is Mister --

22 THE COURT: Can I have a copy please?

23 MR. CHRISTIAN: Yes, I'm looking for one right now.

24 Q (By Mr. Christian) In that letter what is Mr. Hilbert
25 asking?

1 MR. RAPSON: Wait, Your Honor.

2 THE COURT: I mean let's not talk about it until it's
3 admitted, shall we, about the content?

4 MR. CHRISTIAN: I ask for the entrance of Exhibit 5.

5 THE COURT: Any objection to 5?

6 MR. RAPSON: I don't understand the relevance of this.
7 Yeah, I think we are here --

8 THE COURT: If the objection -- just so you
9 understand, Mr. Rapson, I don't permit speaking objections. I
10 understand your objection is relevance. Any other objection?

11 MR. RAPSON: No, Your Honor.

12 THE COURT: Overruled on relevance. You can proceed.

13 (Plaintiff's Exhibit Number 5 admitted)

14 Q (By Mr. Christian) What is Mr. Hilbert asking from
15 you?

16 A That Bradley would appreciate our assistance in
17 preparing a form acceptable to the Department of Labor and
18 Employment for use, I'm reading directly from his letter, sorry,
19 "for use in circumstances where employees had admitted taking
20 inventory or cash".

21 Q Well, what is your feeling about that?

22 A Well one, basically employers are not allowed to
23 deduct from their employees' wages. 8-4.105 outlines a very
24 narrow area where employers may deduct employees wages. Using a
25 form for things such as shortages and theft, it's Division's

1 perspective it's not in compliance with the Colorado Wage Act.

2 Q And why is that?

3 A Mainly because there is a statute that allows for it
4 which is 8-4.105(1)(c) which specifies that a proper -- or a
5 police report has to be filed essentially.

6 Q All right. And did you respond back to Mr. Hilbert's
7 request?

8 A I did.

9 Q Would you seek assistance from your supervisors or
10 from the Attorney General in determining whether you were going
11 to do anything that Mr. Hilbert had asked in drafting the
12 documents?

13 A I did. I spoke with Mike Micardo (ph), the Director
14 of the Division and in addition to Peter Wingate (ph), the
15 Deputy Director.

16 Q And that's the letter you wrote back to Mr. Hilbert?

17 A That's correct.

18 MR. CHRISTIAN: And I'd ask for the entrance of
19 Exhibit 6.

20 THE COURT: Any objection to 6?

21 MR. RAPSON: No, Your Honor.

22 THE COURT: 6 is admitted.

23 (Plaintiff's Exhibit Number 6 admitted)

24 Q (By Mr. Christian) Generally what are you telling Mr.
25 Hilbert about his request that there be a written waiver?

1 A I basically told him that according to Colorado
2 Revised Statute 8-4-12 -- 121 that an employee cannot waive
3 their rights to their wages. I additionally noted that they may
4 deduct for theft under 8-4.105(1)(c) which again is the
5 deduction that allows for theft if there is a report filed with
6 the proper law enforcement agency.

7 Q Did they pay Ms. Lintz (ph)?

8 A They did.

9 Q What's the date of that letter?

10 A That is dated November 20th, 2007.

11 Q And have you received additional complaints about
12 Bradley Petroleum wage practices since that date?

13 A Yes, I have.

14 Q Okay. You have heard the initial argument this
15 morning that Bradley doesn't know why the "I took" letter
16 doesn't work, would you agree with that sentiment?

17 A But that he did say that that was why or --

18 Q Well --

19 A -- that he explained that?

20 Q That was a bad question. Do you think Bradley
21 Petroleum, given the correspondence that I've presented to you
22 today and other correspondence, understands why the "I took"
23 letter does not work?

24 MR. RAPSON: Objection, Your Honor; it's perfectly
25 impermissible for this witness to try to get in the mind of

1 Bradley Petroleum based on the question asked.

2 THE COURT: If you're -- if the objection is
3 speculation --

4 MR. RAPSON: Yes.

5 THE COURT: -- then the objection is sustained.

6 Q (By Mr. Christian) Has Mr. Rapson corresponded with
7 you in regards to the same thing, whether a written document can
8 serve as a consent to deduct wages?

9 A Yes, he has sent several correspondences.

10 Q And have you responded to that?

11 A I have made one response to Mr. Rapson.

12 Q And are you aware of me sending you a letter to give
13 to Mr. Rapson as well?

14 A Yes.

15 Q And that was months ago?

16 A Correct.

17 MR. CHRISTIAN: If I might just have a moment, Your
18 Honor?

19 THE COURT: Certainly.

20 (Brief pause in proceedings)

21 MR. CHRISTIAN: I have nothing further.

22 THE COURT: Cross-examination?

23 MR. CHRISTIAN: Which I'd ask for the admission of
24 Exhibit 6, if I haven't already.

25 MR. KILLMER: It's admitted.

1 THE COURT: Yes, I think we admitted --

2 MR. RAPSON: No objection, Your Honor.

3 THE COURT: We admitted 6, I believe.

4 MR. CHRISTIAN: Thank you.

5 THE COURT: 6 is admitted.

6 CROSS-EXAMINATION

7 BY MR. RAPSON:

8 Q Good morning, Ms. Neal.

9 A Good morning.

10 Q And you're really intimately familiar with 81 -- 8-
11 4.105, are you not?

12 A I would say yes.

13 Q Because you work with it on a regular basis?

14 A Yes.

15 Q And it has -- it's set -- it has a general broad
16 prohibition on any employer wage deductions, right?

17 A It's not that it has a prohibition. It's that
18 employers are not allowed to deduct and 8-4.105 basically
19 outlines the narrow span of what they are allowed to deduct.

20 Q Okay. It says -- the first sentence says "no employer
21 shall make a deduction from the wages of compens -- or
22 compensation of an employee except as follows" and that's kind
23 of a probation, isn't it?

24 A I'm --

25 Q You disagree that that's a prohibition?

1 A It's saying that it's --

2 THE COURT: You know what guys? I'm really
3 uncomfortable with asking the witness to interpret the law. I
4 mean she sent -- I under -- I see the letters that she's sending
5 out, all right, and I can understand that.

6 But asking her questions where you're asking her -- to
7 tell her what statute means; that makes me uncomfortable. But
8 with all due respect, and I'm not trying to say this to be
9 egoistical, there's one person in this room who can decide what
10 a statute means.

11 MR. RAPSON: I understand, Your Honor.

12 THE COURT: That would be me.

13 MR. RAPSON: I promise you, I promise you, Your Honor,
14 I'm not going to ask --

15 THE COURT: All right.

16 MR. RAPSON: -- what the statute means.

17 THE COURT: All right. If it's foundation, it's
18 foundational I'm okay, Mr. Rapson. But I'm just -- I just sort
19 of want to make sure everybody understands what the parameters
20 are here.

21 MR. RAPSON: Okay. I understand. I'm not going to --
22 I'm not interested -- well, I won't ask her that.

23 Q (By Mr. Rapson) But the first sentence is a
24 prohibition. "No employer shall make a deduction from the wages
25 or compensation of an employee, except" -- that's a prohibition,

1 right?

2 A Yes.

3 Q Okay. And then it has four exceptions, right?

4 A I believe it has five.

5 Q Okay. Maybe it has a fifth. The first one is
6 deductions mandated -- deductions for loans, advances, goods or
7 services, and equipment or property --

8 A That's actually --

9 Q -- provided by --

10 A -- the second.

11 Q That's the second one. The first one has to do
12 with --

13 A Taxes.

14 Q Taxes, okay. I've been characterizing it as four but
15 you're right, it's five.

16 The third one, or what I've characterized as the
17 second one, is the theft situation where an employer reports to
18 a police agency a suspected theft and the police agency takes
19 the case and then decides -- investigates and decides whether to
20 file a theft case; is that right?

21 A Yeah. That's 8-4.105(1)(c), yes.

22 Q And that's the one where if no case is filed then the
23 employer is required to return the money within 90 days, right?

24 A Correct.

25 Q Now the fourth one, or what I refer to as the third

1 one says any deduction -- and this is not listed in the prior
2 ones -- any deduction which is authorized by an employee, does
3 it not?

4 A It does.

5 Q Okay. And that's one of the reasons we're today, to
6 talk about that and what that means. Okay?

7 A Okay.

8 Q Now I'm not going to ask what you think it means, but
9 isn't it true that you have taken issue with Bradley because
10 Bradley says, has said historically as long as an employee
11 consents or authorizes a deduction, then it's okay. It fits
12 within the statute and you've said no; isn't that correct?

13 A That's correct.

14 Q Okay. Now I wrote you -- let me hand --

15 MR. RAPSON: I'll have this marked for identification
16 as Exhibit --

17 UNIDENTIFIED SPEAKER: Seven.

18 MR. CHRISTIAN: No, A.

19 MR. RAPSON: A.

20 Now I'll hand this to the Court and then I'll hand
21 this to you.

22 May I approach the bench, Your Honor?

23 THE COURT: Yes.

24 Q (By Mr. Rapson) Exhibit A consists of several
25 letters; does it not?

1 A Yes, it does.

2 Q The first one is a letter from me to you dated June
3 30th; is that correct?

4 A Yes, it is.

5 Q And then you responded to me on July 1?

6 A That I did.

7 Q And then I wrote back to you on July 15 and then again
8 on July 30?

9 A Okay. Yeah. I do have one from July 15th and July
10 30th. That's correct.

11 MR. RAPSON: I would move for admission of Exhibit A,
12 Your Honor.

13 MR. CHRISTIAN: No objection.

14 THE COURT: Any objection to A?

15 MR. CHRISTIAN: No, sir.

16 THE COURT: A's admitted.

17 (Defendant's Exhibit Number A admitted)

18 Q (By Mr. Rapson) And isn't it -- isn't it true that in
19 all three of my letter I tee it up by saying, I know that you
20 think that employees authorizing a deduction doesn't come within
21 the (d) part of the (d) exception under the statute and in each
22 one of the letters I say "why".

23 What is it, what law, what authority, what in the
24 world basis do you have for saying that if an employee expressly
25 authorizes a deduction that that's not legal. And isn't it

1 true, and isn't that true that what I -- the thrust of those
2 letters?

3 A Yes, it is.

4 Q And isn't it true that the only response you come back
5 with and I don't mean to, you know, take issue with you
6 personally, but you just -- all you said was that's our policy.
7 That's what it is. You never once provided a reason or a
8 rationale of why I'm wrong and why you're right?

9 A I did say what deductions are permissible.

10 Q Well, but my question, well what's wrong with (d), why
11 can't we under (d), if an employee consents, what's wrong with
12 that? That's what the statute says. And isn't it true that you
13 never, ever, ever provided a rationale of why I'm wrong. You
14 never said anything other than that's our position. That's the
15 way it is.

16 MR. CHRISTIAN: Many objections. First it's asking
17 for --

18 THE COURT: Just why don't you start with
19 argumentative and we can stop it at that.

20 MR. CHRISTIAN: Argumentative, and conclusion, as well
21 as asking too many questions.

22 THE COURT: It's argumentative. And also, Mr. Rapson
23 there were about five questions in there.

24 MR. CHRISTIAN: Yeah.

25 THE COURT: Which one did you want her to answer?

1 MR. RAPSON: Okay.

2 THE COURT: All right. And that's what the whole
3 thing argumentative --

4 MR. RAPSON: Okay.

5 THE COURT: -- is that it's just a series of
6 statements. So one question at a time, please.

7 MR. RAPSON: Okay.

8 Q (By Mr. Rapson) Has there been any time in your
9 correspondence or otherwise when you provided a rationale or any
10 explanation for why it's the Department of Labor that (d)
11 doesn't allow was what Bradley does?

12 A No. The Division of Labor did not -- I did not
13 provide that response to you.

14 Q Okay. At no point in time orally or in writing has
15 the Department of Labor explained why it is that you feel that
16 what Bradley does, doesn't come within (d)?

17 A Are you asking whether or not we have anything in
18 writing or what's, what's the question?

19 Q Yeah.

20 A Okay.

21 Q Do you have anything in writing?

22 A No. We don't currently have anything in writing that
23 specifically a direct -- addressing (d) as it pertains to this
24 case, no.

25 Q Okay. And so it's your policy that it doesn't apply

1 but there is no reason or rationale for that policy?

2 A But there is reason and rationale.

3 Q What's the reason and rationale?

4 A It is the Division's prospective that 8-4.105(1)(d) is
5 one, revocable, and it applies in circumstances where the
6 deduction actually benefits the employee such as insurance,
7 stock options.

8 Q Well, but the language here -- you wouldn't disagree
9 with me that the language says that an exception to the
10 prohibition is any deduction which is authorized by any -- an
11 employee if the authorization is revocable, right?

12 A I believe it does say that. I don't have it in front
13 of me, but yes.

14 Q And the revocability would come into play if the
15 employee, on being employed, gave the employer carte blanche to
16 deduct whatever wage deductions they wanted, way ahead of time.
17 You'd want to make sure that in order to comply with (d) that
18 that consent, an advance consent was revocable; that they
19 weren't stuck with that to make it qualify under (d), right?

20 A Typically (d) is not a blank check for an employer.
21 It does -- I mean, it allows for those deductions that benefit
22 the employee like insurance, stock options. I mean shortages
23 due to theft typically aren't listed or one of the examples
24 under 8-4.105(1)(d).

25 Q The revocability requirement really doesn't apply,

1 don't you agree, once there has been an after-the-fact consent.
2 In other words the employee knows all of the facts, this is what
3 were going to deduct, you can either consent or not. I mean the
4 revocability requirement applies when you pre-approve it, but
5 not when you have all of the facts in front of you and then go
6 ahead and approve it. Would you agree?

7 A I don't know.

8 Q Okay. Now going back to your testimony you said that
9 you had some 35 cases with Bradley?

10 A That's correct.

11 Q And did you work out a resolution in those cases that
12 was acceptable to you and to Bradley?

13 A Yeah. Most of the cases were closed. It was either
14 paid or resolved. There were two cases that I'm aware of that
15 were closed as non-compliant.

16 Q Okay. So the bulk, with the exception of two cases,
17 you were able to solve by a back and forth dialogue with
18 Bradley?

19 A Correct, yes.

20 Q You didn't need to come through this litigation to get
21 that -- those cases resolved, did you?

22 A No, we did not.

23 Q Counsel refers to these documents that express the
24 employees' consent to wage deductions, as "I took" documents but
25 we referred to them as just simple authorizations from an

1 employee. We're not accepting counselor's characterization of
2 the documents. Do you understand that?

3 A Yes, I can understand that.

4 Q Now dealing, last question -- in Exhibit 5, I think we
5 characterized this an effort by counsel for Bradley to work with
6 you to come up with a form that would be acceptable to the
7 Department and acceptable to Bradley, right?

8 A Correct.

9 Q And would you consider that to be a good faith effort
10 on the part of Bradley to try to come up with some win/win deal
11 between the Department and Bradley?

12 A I mean they had responded to everything that we've so
13 far requested, with the exception of the two non-compliant
14 claims.

15 Q And that would include this November 12th, 2007, as a
16 good faith effort, let's get together, let's try to work
17 something out, just a win/win deal for all of us. Is that a
18 fair statement?

19 A I suppose, yes.

20 Q And I understand that the Department about the --
21 wasn't able to do that?

22 A No. Actually we did respond to them, in addition to
23 the letter that was I think Exhibit 6, another letter was
24 actually sent out informing them -- I don't believe it had a
25 claim number on it so I'm not sure if I'm allowed to talk about

1 it.

2 But it did inform them that basically what I had
3 indicated in previous testimony which was we determined that it
4 was not in compliance with the law.

5 Q So there wasn't any follow-up effort to that to
6 resolve --

7 A There was.

8 Q Oh, there was. So you did sit down and try to work
9 out a form?

10 A Not the form. We told them that a form was not in
11 compliance with the law to deduct for shortages for theft.

12 Q Okay. Thank you very much.

13 MR. RAPSON: No further questions.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. CHRISTIAN:

17 Q You had 35 cases in which you worked in good faith
18 with Bradley; is that correct?

19 A Yes.

20 Q Did the Department of Labor know that there hundreds
21 of other deductions being made?

22 MR. RAPSON: Your Honor, I object to that. There's no
23 evidence to that in the record at this point and I ask that that
24 question be struck.

25 THE COURT: Let's see if we can rephrase the question,

1 counsel.

2 Q (By Mr. Christian) Have you received information from
3 me via a audit conducted by Bradley Petroleum that shows that
4 they've made hundreds of deductions from paychecks?

5 MR. RAPSON: Your Honor, this is all hearsay.

6 THE COURT: It's also beyond the scope of re -- cross-
7 examination. If you wanted to ask her that you should have
8 asked her that during direct.

9 MR. CHRISTIAN: Your Honor, it goes to the good faith.
10 You know, he said they're acting in good faith, Your Honor. I
11 don't have a copy of this, Your Honor. I'm marking it as
12 Plaintiff's Exhibit --

13 THE COURT: You don't have a copy?

14 MR. CHRISTIAN: No. It's in response to --

15 THE COURT: Give it to Mr. Shay, he'll go make the
16 copies.

17 Three please, Scott.

18 (Brief pause in proceedings)

19 THE COURT: Pass them.

20 MR. CHRISTIAN: Thank you.

21 May I approach Your Honor?

22 THE COURT: Yes.

23 Q (By Mr. Christian) You received a packet of
24 correspondence from Defendant's counsel that was marked as
25 Exhibit A, correct?

1 A Yes.

2 Q There was a letter in this series of letters that
3 missing; is that right?

4 Well let me ask you this: Do you remember receiving a
5 letter from me on July 24th, 2009, in relation to this Mr.
6 Fairros, F-a-i-r-o-s?

7 A Yes.

8 Q And is that Plaintiff's Exhibit 7, that I've handed to
9 you? And it's a rather lengthy description as to why we
10 acknowledge an "I took" letter. It does not work it's matter of
11 fact of law; isn't it?

12 THE COURT: She's not entitled to tell me that. So
13 you --

14 Q (By Mr. Christian) You received --

15 THE COURT: Don't answer that question. You can't
16 answer.

17 Q (By Mr. Christian) You received this letter from,
18 from me?

19 A I did.

20 Q All right.

21 MR. CHRISTIAN: I'd ask for the introduction of
22 Plaintiff's Exhibit 7?

23 THE COURT: Any objection to 7?

24 MR. RAPSON: Yes, Your Honor. All it simply
25 represents counsel's view of the law and I think that that's

1 something that's going to be at the heart of ultimate argument
2 here. I'm going to be taking the position the Court knows, and
3 counsel's going to be taking his position but I don't think
4 that's an evidentiary matter.

5 THE COURT: It's not being offered for that purpose.
6 It's being offered to refute testimony elicited during redirect
7 (sic), so I'm going to allow it for that limited purpose.

8 I under -- understand that it makes an argument about
9 the law which I'm bound to hear again before this is over, but
10 I'll admit it for this purpose.

11 (Plaintiff's Exhibit Number 7 admitted)

12 MR. CHRISTIAN: I have nothing further, Your Honor.

13 THE COURT: Recross?

14 MR. RAPSON: Yes, Your Honor.

15 RE CROSS-EXAMINATION

16 BY MR. RAPSON:

17 Q Now that this in -- show me -- first of all I had
18 asked you about the series of correspondence between you and me,
19 you and I, right?

20 A Correct.

21 Q And this is not part of the correspondence between the
22 two of us, is it?

23 A No, it's not.

24 Q All right. Show me in this letter, show me in one
25 place in the letter where there's a reference to the language in

1 8-4.105(d), to the effect that any deduction which is authorized
2 by an employee is deductible? Show me any place where he talks
3 about that language in that letter?

4 THE COURT: And he doesn't. We understand that.

5 MR. RAPSON: Okay.

6 THE COURT: Next question.

7 MR. RAPSON: Okay. No further questions.

8 THE COURT: Thank you.

9 You can step down, Ms. Neal.

10 We're going to take about a ten minute recess, all
11 right.

12 MR. CHRISTIAN: All right.

13 THE COURT: Thank you. If anybody needs to use the
14 restroom you are welcome to use the one back in the jury room as
15 well as the ones out in the hall. Thank you. About ten
16 minutes.

17 (Recess was taken from 10:06 to 10:23)

18 THE COURT: We're back on the record on 01 CV 5947 and
19 the record should reflect that counsel and the parties are
20 present and as are counsel.

21 Next witness.

22 MR. CHRISTIAN: Mark Schlueter, Your Honor.

23 THE COURT: Mr. Shooter (sic).

24 Raise your right hand please? Do you solemnly swear
25 or affirm?

1 MR. SCHLUETER: Yes, I do.

2 THE COURT: Make sure you speak right into the
3 microphone so that we can hear you.

4 MR. SCHLUETER: You have to speak into it?

5 THE COURT: Counselor.

6

7

MARK SCHLUETER

8 a witness, called by the Plaintiff, was examined and testified
9 as follows:

10

DIRECT EXAMINATION

11

BY MR. CHRISTIAN:

12

Q Sir, can you spell your name for the record, please?

13

A S-c-h-l-u-e-t-e-r

14

Q And that's pronounced Schlueter?

15

A Schlueter, yes.

16

Q And is it safe, is it safe to assume that you are the

17

Human Resources Coordinator for Bradley Petroleum?

18

A That's my title, yes.

19

Q And what do you do in that regard?

20

A I conduct, as human resources, many things. One of

21

which is working with Amanda Neal. I hire people. I could go

22

on -- the human resources department is basically what I do.

23

Q And how long have you been at Bradley Petroleum?

24

A Since September of 2006.

25

Q And do you deal with payroll?

1 A Payroll is in my department, yes.

2 Q And is part of your role to make deductions from
3 paychecks or enter them into payroll?

4 A Yes, sir.

5 Q And was it your task, given the Court's order of
6 November of 2008 to put together an audit of payroll at Bradley
7 Petroleum and Save-O-Mat?

8 A Yes, sir.

9 Q And can you tell me the difference between Bradley
10 Petroleum and Save-O-Mat?

11 A In what manner (indiscernible)?

12 Q Well, you -- when I say Bradley Petroleum, do you also
13 work for Save-O-Mat?

14 A Yes, sir.

15 Q And you deal with Save-O-Mat's payroll and you dealt
16 with the Save-O-Mat documents, correct?

17 A Yes, sir.

18 MR. CHRISTIAN: If I may approach, Your Honor?

19 THE COURT: Certainly. Thank you.

20 Q (By Mr. Christian) Sir, I've tendered to you a stack
21 of documents, Exhibit's 8, 9, 10, and 11. Can you tell the
22 Court what those are?

23 THE COURT: And before we do that let me make sure
24 that I have the documents -- the right document marked with the
25 number, just so that there is some identifier. Exhibit 8 would

1 be the packet that has handwritten "'07 Save-O-Mat deductions
2 explained"; is that correct? So that's Exhibit --

3 MR. KILLMER: No, there's three more beside it.

4 THE COURT: I understand that. That's Exhibit 8.
5 Exhibit 9, it says "Bradley" in the upper-left hand corner and
6 then has the handwritten "2007" in the middle.

7 MR. CHRISTIAN: Yes, sir.

8 THE COURT: Okay. Again this is just for
9 identification purposes. Exhibit 10 has printed at the top
10 "Bradley 2008 deductions explained" and 11 is "Save-O-Mat 2000",
11 actually there's three zeroes, "deductions explained".

12 MR. CHRISTIAN: That should be 2008, Your Honor.

13 THE COURT: Yeah. I'm sorry Mister -- again I want
14 the record to be clear. Go ahead.

15 Q (By Mr. Christian) And how did you go about -- did
16 you put together these documents, 8, 9, 10, and 11?

17 A Yes, I did.

18 MR. CHRISTIAN: I would ask for the entry of Exhibit's
19 8 through 11?

20 THE COURT: Any objection?

21 MR. RAPSON: No, Your Honor.

22 THE COURT: No object -- Exhibit 8, 9, 10 and 11 are
23 admitted.

24 (Plaintiff's Exhibit Numbers 8, 9, 10, 11 admitted)

25 Q (By Mr. Christian) Mr. Schlueter, tell the Court how

1 you went about the composing of the deductions explained in the
2 documents that are in front of you?

3 A Well, to make sure -- to make sure that I wasn't going
4 to miss any I printed out all the payroll records.

5 THE COURT: Mr. Schlueter, I can tell you right now.
6 In the mic -- I know.

7 THE WITNESS: I'm sorry.

8 THE COURT: It's real problem with you not being able
9 to -- we've actually had witnesses -- if it's more comfortable
10 hold the microphone in your hands --

11 THE WITNESS: Okay.

12 THE COURT: -- in your lap and then you can -- that's
13 a --

14 THE WITNESS: Thank you.

15 THE COURT: -- we've had a lot of witnesses find
16 that's much more comfortable. Go ahead.

17 THE WITNESS: Okay. To make sure I didn't miss, any I
18 printed out all of the payroll records. We use Paychex as our
19 payroll company and it's a secure accounting system.

20 And I printed out 2007, all departments, meaning each
21 store as a department and then inter -- and everybody in the
22 offices department. And for 2007 for both Bradley and Save-O-
23 Mat. And I -- then I printed out the same thing for Bradley
24 and Save-O-Mat for 2008.

25 Then I went line item by line item from the printed

1 copy and any time there was a miscellaneous deduction I checked
2 to see whether it was uniform or a -- from one of our authorized
3 sheets. And 99 percent of the time that's all there was for
4 those miscellaneous deductions, was either a uniform or an
5 authorized.

6 And that sometimes, very small -- once in a while I
7 came upon where we've overpaid somebody one week, and then we
8 took it back. Like I said 99 percent was -- that's what the
9 miscellaneous deductions were. I was instructed by the Court to
10 explain all miscellaneous deductions.

11 Q All right. And so -- and do you establish a policy,
12 are you part of a -- well, do you know of Bradley and Save-O-
13 Mat's policy in regards to make a deduction from the paycheck's
14 for shortages?

15 A Yes, sir.

16 Q And the Defendants have a policy to make deductions
17 from paycheck for shortages due to mathematical errors, correct?

18 A No, not mathematical.

19 Q If an employee gives too much money back to a customer
20 and it shows a shortage at the end of the day, is that the type
21 of money reduced from their paycheck?

22 A You mean as a shortage because we gave money -- too
23 much money back?

24 Q Yes.

25 A If there is a shortage that we can't account for that

1 would fall under that category.

2 Q And the end of each shift the employees reconcile
3 their drawers, correct?

4 A That's correct.

5 Q And if there is a shortage in the drawer, the defend -
6 - the Bradley and Save-O-Mat's policy is to make that deduction
7 from an employee paycheck, correct?

8 A It's a more lengthy process. I mean, it's
9 investigated. It might take a week to decide if that's in fact
10 the case.

11 Q All right. And the Defendant's policy is to make
12 those deductions even if the employee denies that they are
13 responsible for the shortage or took the money, correct?

14 A I disagree because if they deny the -- if they don't
15 believe they did it then they are free to quit.

16 Q But the money would still be taken out of their check,
17 right?

18 A Not if they don't sign the authorization form.

19 Q All right. The -- is there instances in these
20 Exhibits 8, 9, 10, and 11 where there is no authorization form
21 and there is no "I took" document, yet the money has still been
22 taken from the employee's paycheck?

23 A Yes, I did find some.

24 Q Dozens, correct?

25 A There is an area in January of 2008 until March of

1 2008 where we lost the documents.

2 Q All right.

3 A I myself was the payroll person at the time. I
4 entered them and when I switched over to the new payroll person
5 she didn't realize that they were to be (indiscernible).

6 Q Well, but you haven't found those persons and issued
7 them paychecks reimbursing them for the deduction though, have
8 you?

9 A No, sir.

10 Q And the far right columns show three things: no doc,
11 at least on Exhibit 8, it says "no doc", "old doc" and "new
12 doc". Can you explain to the Court what that is?

13 A The old doc -- can you say that again, old doc, new
14 doc, what?

15 Q It says: "no doc" --

16 A Okay.

17 Q -- d-o-c, "old doc", d-o-c, and "new doc", d-o-c.

18 A Okay.

19 Q And that's true as to Exhibit 8, 10, and 11. What are
20 those categories?

21 A "No doc" would mean I cannot produce the document.

22 Q "Old doc"?

23 A Would mean that it's a document where we listed four
24 categories of which we felt came under our choices to have a
25 deduction --

1 Q And --

2 A -- which means cigarettes, cash. And "new doc" what
3 we felt was a more clear statement that released -- that they
4 said that I did allow -- that the shortage occurred.

5 Q Are you saying that the old doc is not a clear -- is
6 something that's not used anymore?

7 A Well, neither one are used anymore.

8 Q All right. The -- is the --

9 THE COURT: I mean let's make sure we're talking about
10 -- because I realize we are talking about a timeline here.

11 MR. CHRISTIAN: Correct.

12 THE COURT: What you are telling me is that neither
13 old doc or new doc is currently, currently the policy of
14 Bradley? I mean you don't use either one of those documents at
15 the present time?

16 THE WITNESS: At the -- (indiscernible) February,
17 2009. Do you want to know the difference to what --

18 THE COURT: Well the --

19 Q (By Mr. Christian) The old doc --

20 THE COURT: If I do, I will. But go ahead.

21 Q (By Mr. Christian) The old doc is a -- you call it an
22 acknowledgment that the employee signed saying that you could
23 take out of their paycheck -- what I -- do you recall?

24 A Sure.

25 Q What are those items?

1 A Well right off the top, you can like -- well, it would
2 be I can't tell you -- there was a couple versions that, that
3 what happened was some people kept the original body in the top,
4 so there has been three or four different version of that older
5 document. There's not just one old document but it is -- it
6 might say "cash". It might say "cigarettes" and I'm not sure
7 what the other thing was.

8 Q And --

9 A I'd have to look.

10 Q -- drive-offs?

11 A I don't know if drive-offs was a part of that, that --

12 Q Well you would agree with me that it's the Defendant's
13 -- was the Defendant's policy to make deductions from wages for
14 drive-offs, correct?

15 A No. It's our policy that they follow our company
16 policy as to how we monitor drive-offs.

17 Q And if the employee does not follow the company policy
18 as to how a drive-off is monitored that drive-off amount is
19 deducted from their paycheck, correct?

20 A Only if they allow it, and -- or they can leave the
21 job.

22 Q So you -- the Defendant's policy is sign this document
23 that allows the deduction to be made or be fired?

24 A Not correct. If you follow the policy we have -- any
25 pumps that we -- the cashier cannot see the license plate, we

1 make those prepay, any pump, I mean -- yeah, prepay. Anytime
2 that the plates are visual it's their job to write down the
3 license plate. If they write down the license plate before they
4 authorize the pump, because our pumps don't come on
5 automatically -- they're not, you know, you have to authorize
6 them. If they can't see them then wait until they come up and
7 pay. If you can see the license plate and you didn't write
8 down, you authorize it. At that point we do not charge them.
9 If they drive-off and they've written down the plate. That's
10 good faith and we have something to give to the police.

11 Q If I'm busy and someone drives off and I didn't get
12 the plate number down I am going to be asked to sign a document
13 that permits you take that drive-off amount out of my paycheck
14 or I will be fired, correct?

15 A Or you can quit.

16 Q Or I can quit.

17 THE COURT: Let me make sure I understand. Is that
18 policy still in place as we sit here today?

19 MR. RAPSON: Not in 2009, Your Honor.

20 THE COURT: Okay. So that stopped as of February 2009
21 as well?

22 MR. RAPSON: Yes. And now you're not given the
23 choice. Before you had the choice of (indiscernible).

24 THE COURT: I've got it. No, no, no. Don't tell me,
25 Mr. Rapson. Just answer my question. Thank you.

1 Q (By Mr. Christian) So --

2 THE COURT: That helps me. Thank you.

3 Q (By Mr. Christian) -- since February of 2009, the
4 Defendant's policy is terminate the individual if there is a
5 shortage that is unexplained or a customer drive-off?

6 A That is not following the company policy, writing
7 license plates down --

8 Q Okay.

9 A And monitoring your job.

10 Q And the reason that these people are being fired
11 instead of being given the acknowledgment is this litigation?

12 A I don't think I can personally answer that.

13 Q All right. Has it been discussed that this, just the
14 shortages of customer drive-offs simply become a cost of doing
15 business for Bradley Petroleum and Save-O-Mat?

16 A I don't know if I could personally could answer that.

17 Q With each of these Exhibits, 8 through 11, there was
18 also a corresponding stack of documents, correct?

19 A That's correct.

20 Q All right. And on here is also a uniform deduction;
21 do you see those?

22 A Yes.

23 Q And how from these documents, would the Judge know
24 whether the -- well explain what a uniform deduction is first of
25 all.

1 A Okay. When I came to work we had smocks, when I first
2 came to work. And the de -- the uniform deposit was \$30 per
3 smock, if they returned the smock, we returned them \$30.

4 And in the middle of 2007 we started -- we changed and
5 moved, slowly moved from smocks to uniform shirts and name tags,
6 and the basic uniform deposit was \$22 for the shirt and \$2 for a
7 name tag. If you wanted a hat it was \$6 and when returned, we
8 returned the money.

9 Q And but this -- the "deductions explained" document
10 does not show whether the person received their uniform deposit
11 back or not?

12 A It does not.

13 Q But you have those records though?

14 A I could produce those records. I don't have them with
15 me.

16 Q All right.

17 MR. CHRISTIAN: May I have just a moment, Your Honor?

18 THE COURT: Yes.

19 (Brief pause in proceedings)

20 Q (By Mr. Christian) Sir, have you tallied up the
21 amounts of deductions that are shown in these documents and the
22 amount of money that is involved?

23 A Yes.

24 Q Do you have any reason to disagree with three hun --
25 1,373 deductions totaling \$52,366.55?

1 department because it's part of -- it reports to you as the
2 human resources' person --

3 A Correct.

4 Q -- is that correct?

5 And is it the policy of -- to have in hand a consent,
6 an authorization document before any deduction is taken always,
7 under all circumstances, every time, 100 percent of the time?

8 A That's our policy, yes, sir.

9 Q Okay. And so when you say that there was a period of
10 time from January to the end of March where you couldn't find
11 the documents, right?

12 A I haven't found them yet.

13 Q Right. But that, does that mean that they don't exist
14 or that they weren't done?

15 A Actually at that point in time, we lost our payroll
16 clerk and I entered them in from December of -- 20th of 2007
17 until Diane Heel (ph) came in, and -- at the first of April, so
18 I physically saw them and physically entered them in.

19 Q So you know that there were authorizations for those
20 three months as well as the rest of the time even though you
21 can't find the documents themselves?

22 A Correct. I did the work.

23 Q So every time you look at a deduction you've got an
24 authorization from the employee that they signed authorizing
25 that deduction, every single time?

1 A Not every time.

2 Q Well there might be an exception here and there but --

3 A Right. Yeah. But I mean we have a lot employees and
4 you know, and I was going to tell Mr. Christian that I've gained
5 on some of those "no documents" since the report that he had,
6 but you know --

7 Q But this was the policy and 99 percent of the time you
8 got a document, right?

9 A Yes. That's -- I always -- that's the -- that's where
10 I was -- I was going for a hundred percent.

11 Q Now going back to the drive-offs. Apparently there
12 are some times when a teller is unable to read a license a
13 plate; is that correct? Just because of the configuration of
14 the gas station, right?

15 A Yeah. Some pumps are not --

16 Q And, and --

17 A -- visual.

18 Q And where that's the case then the pumps are set so
19 that they are prepay, so that people have to pay before they get
20 the gas?

21 A Correct.

22 Q Okay. Now in other cases, they are not prepaid the
23 teller or the cashier is able to see the license plate of the
24 car that's seeking to get gas, right?

25 A Yes, sir. We have them binoculars.

1 Q And that person cannot get gas until the employee in
2 the shop says okay and pushes the button, right?

3 A Correct.

4 Q And if that employee writes down the license plate on
5 that car, and then the car books up and takes off without
6 paying, do you hold the employee accountable?

7 A No.

8 Q Okay. You only hold the account -- or the employee
9 accountable when he doesn't follow the company policy to write
10 down the license plate; is that correct?

11 A If he approves the -- a deduction.

12 Q But I'm -- I mean you go to him and say, look you
13 know, we are going to have to take a deduction, do you want to
14 consent or not, or those times when he hasn't followed --

15 A Correct.

16 Q -- the corporate policy?

17 A Correct.

18 Q And then he's given the opportunity of either
19 approving the deduction or not; is that correct?

20 A Correct.

21 Q And today, does he get the choice?

22 A And since -- you mean today as in --

23 Q Since February 2009?

24 A No. If it's an unexplained deduction we terminate
25 them. And that way --

1 Q And that's because --

2 A -- and that would be -- well, or breaking company
3 policy, yes.

4 Q And that's because of this case, because of this wage
5 deduction case?

6 A I'm -- again I'm not the person who'd make that
7 determination.

8 Q Now with respect to the uniform deduction, do you see
9 a lot of uniform deductions in here where you deduct the cost of
10 uniform from the employee's salary when they first came on
11 board, right?

12 A That's generally -- you know, within a week or two, we
13 get a signed document back from when they started.

14 Q And once in a while you forgot and didn't actually
15 deduct for a uniform when it was given to an employee, right?

16 A Yes, sir. But I actually stamped them entered when we
17 actually didn't enter them.

18 Q Well, where this reflects that there's a uniform
19 deduction did, did you always, one hundred percent of the time,
20 without exception return that money whenever the uniform was
21 returned, and as long as it was in a destroyed or compromised
22 situation.

23 A Once again, I was always shooting for a hundred
24 percent. The only way they would not have got it back was if it
25 was it was somebody who returned their uniform, the manager

1 didn't tell me and nobody requested it. But if they've ever
2 requested it I've gone lengthy -- I know what checks went out
3 and in --

4 Q So the answer to my -- to ask my question again --

5 THE COURT: Well, why don't we let the witness finish
6 his answer.

7 THE WITNESS: So you know to ans -- you know, to make
8 it shorter is that I have to you know, verify -- when somebody
9 requests that their uniform be paid back or deposit, I should
10 say, I have to request -- I have to check out first if we ever
11 took it out, and I found out there's a couple of times that
12 we've never, ever taken it out. so I did not return their money
13 and they were disappointed and then I would send them a copy of
14 their payroll records in the mail to show that there no
15 deduction for them and -- or Amanda Neal, if that was a question
16 from her.

17 Q (By Mr. Rapson) Let me rephrase the question. This
18 calls for a yes or no answer.

19 A Good.

20 Q Is it true in virtually all instances, almost a
21 hundred percent of the time, when you took a deduction from an
22 employee for a uniform, and they then returned it an the end in
23 a condition that was not destroyed or severely compromised that
24 you paid them back for it?

25 A Yes, sir.

1 MR. RAPSON: No further questions, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT-EXAMINATION

4 BY MR. CHRISTIAN:

5 Q You corresponded with the Department of Labor,
6 correct?

7 A Yes, sir.

8 Q And you're aware since at least the middle of 2007
9 that the Department of Labor has said this authorization is
10 illegal?

11 A Okay. Not illeg -- well I -- okay -- I'm not sure.
12 It's that they -- they contest it, they disagree with it.

13 Q Yes. They say it's illegal, don't they?

14 A Well, I don't know if they used that term "illegal".

15 Q All right.

16 A They might.

17 Q Well what they -- you've seen the correspondence back
18 from them. If they aren't saying that this illegal, what are
19 they saying?

20 A That they don't disagree (sic) with our policy.

21 Q All right.

22 A They don't agree with our policy.

23 Q Okay. And yet the Defendant has continue to make
24 those deductions from paychecks, correct?

25 A Us, yes.

1 Q Did you know that this case about the Court having
2 continuing jurisdiction pursuant to a settlement agreement?

3 A Do I know about it?

4 Q Yes.

5 MR. RAPSON: Your Honor, I objection to the question,
6 on the basis that that calls for a legal conclusion, in number
7 one, in number two it's irrelevant.

8 THE COURT: Let's see if we can -- the objection is
9 overruled on relevance.

10 Let's see if we can rephrase the question with regard
11 to the first objection.

12 MR. CHRISTIAN: Was it over -- I -- I'm sorry?

13 THE COURT: I overruled the objection with regard to
14 relevance but I'd like to you rephrase the question with regard
15 to asking for a legal conclusion.

16 Q (By Mr. Christian) Did you know that this litigation
17 is in regards to violations of a -- alleged violations of a
18 settlement agreement back in 2003?

19 A Yes.

20 Q Did anyone tell you that the settlement agreement in
21 2003 was to ensure that Bradley would cease making deductions
22 from wages for example, customer drive-offs?

23 MR. RAPSON: Your Honor, this is argumentative.

24 THE COURT: I'll sustain that objection.

25 MR. RAPSON: Yeah.

1 Q (By Mr. Christian) Did you know that the Defendants
2 had agreed not make deductions for customer drive-offs?

3 A I knew about the agreement. I don't say -- I don't
4 think I could be an expert on the agreement.

5 Q Okay. So you knew that the Defendants had agreed not
6 to make deductions for customer drive-offs?

7 A I don't know that.

8 Q All right. No one had told you that?

9 A Not about drive-offs, no. I always thought we were
10 talking about shortages.

11 Q Okay. You knew that the Defendants had agreed in a
12 settlement agreement not to make deductions for shortages of
13 cash or product, correct?

14 MR. RAPSON: I object, Your Honor. The question is
15 misleading. The -- some of the documents speak for itself --

16 THE COURT: Mr. Rapson, no speaking objections. The
17 objection's overruled.

18 THE WITNESS: I questioned and spoke with Otto
19 Hilbert, our attorney, and so I did have an idea of why we were
20 sending letters back and forth to Amanda Neal.

21 Q (By Mr. Christian) All right. Did Mr. Hilbert tell
22 you that there had been a settlement agreement in which his
23 client, Bradley Petroleum, had agreed to cease making deductions
24 from wages for shortages of cash or product?

25 A Otto Hilbert told me that you had agreed to the

1 document, that -- the final version of the "I took" document and
2 that you had agreed to it.

3 Q Oh, fascinating. This isn't a -- these authorizations
4 aren't vocal, are they? I can't, after you've taken the money
5 out of my paycheck, come back and say you know what, I don't
6 like that, I would like my money back.

7 A I've never had anybody ask me.

8 Q Well when someone goes to the Department of Labor and
9 says, you know what, they took money out of my paycheck
10 illegally. Did you say, seems revocable to me I'm going to give
11 them their money back?

12 A I'm not sure. Otto Hilbert handled all the times
13 that, that it would get to that specifically. On most of the
14 things that I handle with Amanda had to do with time cards.
15 There's a -- you know if we accidentally didn't pay somebody as
16 in the first witness -- the first one you talked about Tina
17 Pope.

18 The main thrust of the twenty-one-fifty was for --
19 that we didn't pay her -- she worked too many hours, went -- of
20 overtime and when the dispute was all said and done, there was a
21 uniform deduction for \$30. \$20 was the deduction for a shortage
22 she agreed to and the settlement was \$279 which I had to work
23 out. And so, I mean Otto dealt more with the shortages that I
24 did.

25 Q All right. So when -- you knew that Ms. Pope

1 disagreed with the deduction for the shortage of \$20, when she
2 wrote the Department of Labor and said I would like my money
3 back, correct?

4 A She did.

5 Q Yet you and Mr. Hilbert fought the Department of Labor
6 on that, correct?

7 A Contested.

8 Q Contested it, right?

9 A Uh-huh.

10 Q Even though it's -- she seems like she's revoking it,
11 you still contested it, right?

12 A I know Otto Hilbert did contest it, yes.

13 Q All right. You indicated that Save-O-Mat and Bradley
14 Petroleum does not make deductions for burglaries; is that
15 right?

16 A I'm not aware that we've ever done that.

17 Q Okay.

18 MR. CHRISTIAN: If I can approach?

19 THE COURT: Sure.

20 Q (By Mr. Christian) Do you remember taking \$113 out
21 Linda Builta's check for a burglary?

22 THE COURT: Can we -- if that's an exhibit --

23 MR. CHRISTIAN: I know --

24 THE COURT: -- let's --

25 MR. CHRISTIAN: I'm not making it just --

1 THE COURT: All right.

2 MR. CHRISTIAN: -- asking a question (indiscernible)

3 --

4 THE WITNESS: Actually Mr. Christian, I do not
5 remember (indiscernible) -- I'm not familiar with that document.

6 I mean I made copies of it but I don't know that --

7 Q (By Mr. Christian) Right. This, this came from you
8 to me, correct?

9 A Well there was five or six of us, so not -- I mean I
10 didn't see every document. We had a --

11 Q All right.

12 A -- quite a group of people.

13 Q Would you agree with me that this document from July
14 of 2009 --

15 MR. RAPSON: Your Honor, I think it's improper to
16 cross-examining somebody --

17 THE COURT: Yeah. This is not proper impeachment.

18 MR. RAPSON: -- that not in --

19 THE COURT: Or any -- or use of the -- of a statement.
20 If we are going to talk about a document I want it marked and I
21 want it admitted as an exhibit.

22 MR. RAPSON: In addition, Your Honor, this goes way
23 beyond the scope of proper cross-examination.

24 THE COURT: Well I understand the -- I don't think
25 that it does. The objection's overruled.

1 MR. CHRISTIAN: Judge, I need copies, I'm afraid.

2 THE COURT: To Mr. Shay.

3 (Brief pause in proceedings)

4 THE WITNESS: Can I help the (indiscernible).

5 THE COURT: We just sit here and twiddle our thumbs,
6 yes.

7 (Brief pause in proceedings)

8 Q (By Mr. Christian) I've tendered to you Exhibit 12.
9 Is that a Save-O-Mat Incorporated company document that you
10 recognize, at least as to form?

11 A Oh, sure. No, I recognize, I recognize the manager
12 I'm not -- I know the manager well, but I do not know Brenda
13 that well.

14 Q Is this old doc, new doc?

15 A This would be what I consider old doc. It has a cash
16 shortage, a credit card shortage, inventory shortage and
17 unauthorized overtime.

18 Q All right. And so this -- whenever it appears "old
19 doc" on the audit, this is the document that was in place?

20 A No. This is one form of it. With, you know, new
21 computers, people change those three little bits. Sometimes it
22 didn't have the bottom one but the basic form at the top is the
23 same until you get you get to the part about cash shortage.

24 Q And this document then comes to you and you make the
25 deduction from the person's paycheck?

1 A No. It goes to the auditors first.

2 Q Who are the auditors?

3 A Every -- there's an auditor for every group of store,
4 that if there is a shortage the inside auditor is the first one
5 to help the manager try and find it if the manager can't find
6 it.

7 If the inside auditor, and which we have three, cannot
8 find it for their designated stores then Shawn Popowich (ph) is
9 involved, which our lead auditor. And if Shawn can't reconcile
10 it or we're still having problems, the controller is involved.

11 Q All right. Did Mr. Hilbert ever tell you or show you
12 written correspondence -- or talk about discussions that he had
13 with me where I told him that any written authorization was
14 illegal under the law?

15 MR. RAPSON: Irrelevant, Your Honor. The conversation
16 is between Otto Hilbert --

17 THE COURT: Mr. Rapson. Not -- I'm not telling you
18 again. No speaking objections. The objection's overruled.

19 MR. RAPSON: Also hearsay, Your Honor.

20 THE COURT: That I'll sustain.

21 THE WITNESS: Do I answer?

22 THE COURT: No.

23 THE WITNESS: Okay.

24 MR. CHRISTIAN: Nothing further. Can I move --

25 THE COURT: Redirect --

1 MR. CHRISTIAN: -- to admit --

2 THE COURT: -- or recross. Pardon me, did you have
3 something else?

4 MR. CHRISTIAN: Admit Exhibit 12, please?

5 THE COURT: Sure.

6 MR. CHRISTIAN: Thank you.

7 THE COURT: Any objection to Exhibit 12?

8 MR. RAPSON: Yes, Your Honor. Just like every other
9 document I've seen so far. I've never seen them before and I
10 know nothing about this and I haven't a chance to investigate
11 it. I haven't had a chance to talk to the clients. I have no
12 idea what this involves and so for those reasons I would object
13 to its induction.

14 THE COURT: The objection's overruled.

15 It appears to be a document from Save-O-Mat which is
16 part of the Bradley, Bradley Enterprises. It is -- the witness
17 identified it as a form of document used by the corporation and
18 stated that he recognized the signature of the manager on it.
19 It's a corporate document. It may constitute an admission
20 against interest. The objection's overruled.

21 (Plaintiff's Exhibit Number 12 admitted)

22 RE-CROSS-EXAMINATION

23 BY MR. RAPSON:

24 Q Now Mr. Schlueter, directing your attention to 8-
25 4.105, it says "No employer shall make a deduction from wages or

1 compensation of employee except as follows"; and then the (d)
2 part says "any deduction which is authorized by an employee;
3 such deduction is revocable." Do you understand that language?

4 A Yes.

5 Q And have you had -- can you understand the Department
6 of Labor takes that the position that that means that even
7 though an employee authorizes a deduction that it's no good; is
8 that correct? That's the position they take?

9 A Correct.

10 Q Okay. And have you had Otto Hilbert and me tell you a
11 million times until this tell Court or somebody else with some
12 authority says that this statute doesn't mean what it says --

13 MR. CHRISTIAN: Object --

14 Q (By Mr. Rapson) -- that you can continue to do what
15 you've been doing --

16 MR. CHRISTIAN: Objection; hearsay.

17 THE WITNESS: It was listening --

18 MR. CHRISTIAN: I mean if I don't --

19 THE COURT: The objection -- the question is
20 argumentative in the extreme. The objection is sustained.

21 MR. RAPSON: Well, you were asking --

22 THE COURT: Are you asking -- is the question -- have
23 you been advised by your attorneys, both Mr. Rapson and Mr.
24 Hilbert, that the documentation that you're using complies with
25 the law?

1 THE WITNESS: Yes. Because if I was, then I wouldn't
2 break the law.

3 THE COURT: Next question, Mr. Rapson.

4 MR. RAPSON: Well, I think that there is a caveat and
5 that unless this Court or some other court --

6 THE COURT: No. I -- it doesn't --

7 MR. RAPSON: -- says that --

8 THE COURT: Yeah. But nobody has yet. I know that
9 and you know that. The question --

10 MR. RAPSON: Okay.

11 THE COURT: -- is has he been relying on advice of
12 counsel up to now and the answer was yes.

13 Q (By Mr. Rapson) And are you also relying on the plain
14 language of the statute as you read it?

15 A Actually I have read it many times and I actually have
16 talked with Amanda on the phone and in correspondence. And I do
17 feel that my attorneys are -- I agree with it. I agree with the
18 -- the attorneys' advice to me. She has a (indiscernible)
19 lawyer.

20 Q And, and did you at one time, have, some years ago a
21 document that all employees signed where they gave carte blanche
22 authority in advance to deduct cash shortages and losses that
23 were their responsibility?

24 A No. I'm not that familiar with the old lawsuit. The
25 only things that I really knew in detail was when Otto Hilbert

1 and I were working with Amanda Neal. I'm really not that
2 familiar with the old lawsuit.

3 Q But I'm just saying there were some old forms,
4 application forms --

5 A Yeah.

6 Q -- right, that --

7 A Right.

8 Q -- included that language, right?

9 A Correct, yes.

10 Q And the problem with those, that the preapproval, is
11 that they didn't say that they were revocable?

12 A Correct, yes.

13 Q But here all of the approvals take place after the
14 fact, after the exact nature and amount and character and taste
15 and smell of the loss is made available to the employee, right?

16 A That's correct.

17 Q And if somebody came back to you and said I consented
18 to your taking out a \$100 from my paycheck, you know, a week or
19 two ago, but you know, I've changed my mind and I don't want to
20 consent. I don't want to be with the company anymore would you
21 return that \$100?

22 MR. CHRISTIAN: Asked and answered, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Can you repeat that question?

25 Q (By Mr. Rapson) Yeah. You know, when an employee

1 comes to you, either you go to the employee and you say, "Look
2 we've investigated everything under the sun and the only thing
3 we can determine that somehow or another, you were responsible
4 for this \$100 loss. And so will you sign an authorization form
5 that we deduct it from your wages?" And they agree to do it.

6 And then a week later they said, "You know, I don't
7 feel comfortable with that I'd just as soon lose my job, will
8 you give my the \$100 back?" Would you do that?

9 A I think I would do it. I -- like I said before to Mr.
10 Christian, it just hasn't happened.

11 MR. RAPSON: Nothing further, Your Honor.

12 THE COURT: Thank you.

13 I've got a question here, too.

14 THE WITNESS: Okay.

15 THE COURT: Have you got a copy -- find Exhibit 2 in
16 there, would you please?

17 THE WITNESS: Okay.

18 MR. CHRISTIAN: I have it here if you want me to bring
19 it up there?

20 THE COURT: It's okay.

21 MR. CHRISTIAN: Okay.

22 THE COURT: He'll find one up here.

23 Got it?

24 THE WITNESS: Got it.

25 THE COURT: Turn to the second page which is the form

1 signed by Ms. Pope.

2 THE WITNESS: Okay.

3 THE COURT: Is this -- would call this an old doc or a
4 new doc?

5 THE WITNESS: Very old doc, yes.

6 THE COURT: Okay. Where 'on that document does it tell
7 Ms. Pope that she can revoke what she's signing?

8 THE WITNESS: I don't see that, sir.

9 THE COURT: Thank you. Any questions based on my
10 question, counsel? Mr. Christian?

11 MR. CHRISTIAN: No, sir.

12 THE COURT: Mr. Rapson?

13 MR. RAPSON: No, Your Honor.

14 THE COURT: Thank you. You can step down.

15 MR. CHRISTIAN: Surene Anderson, Your Honor.

16 THE COURT: Ms. Anderson. Raise your right hand
17 please? Do you solemnly swear or affirm?

18 MS. ANDERSON: I do, sir.

19 THE COURT: Be seated, please. Make sure you speak
20 right into the microphone so that we can hear you.

21 THE WITNESS: I (indiscernible) the microphone. Can
22 you hear me?

23 THE COURT: It's also connected to the recording
24 system --

25 THE WITNESS: Oh, okay.

1 THE COURT: So you need to speak to it.

2 THE WITNESS: All right.

3 THE COURT: I like to think my voice is loud enough to
4 carry too but if you don't speak into the microphone it doesn't
5 go into the record.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

8 Counselor?

9

10 SURENE ANDERSON

11 a witness, called by the Plaintiff, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. CHRISTIAN:

15 Q Ma'am, can you spell both your names for the record,
16 please?

17 A Surene Anderson, S-u-r-e-n-e, A-n-d-e-r-s-o-n.

18 Q Ma'am, what do you do for a living right now?

19 A I'm a -- work for the Colorado Department of
20 Corrections as a correctional sergeant.

21 Q You're a sergeant at the DOC?

22 A That's correct, sir.

23 Q Have you had occasion to work for Save-O-Mat or
24 Bradley Petroleum?

25 A I have. I worked there in 2006 through 2008, on and

1 off.

2 Q What did you do for the Defendants?

3 A I was a clerk. I worked my days off at the prison,
4 (indiscernible) clerk for them.

5 Q What did you -- what did you do as a cashier?

6 A I ran the register. I stocked the items that needed
7 to be stocked, took out the trash, just the general cleanness of
8 the store.

9 Q Did you have occasions to have deductions made from
10 your wages?

11 A Yes, sir.

12 Q Generally speaking --

13 (Coughing)

14 THE COURT: Excuse me. This one please remember saw
15 Miss -- saw Secretary Sebelius this morning. Thank you. Cough
16 into your arm. She corrected one of the Whitehouse -- one the
17 MVC White Correspondent for sneezing into his hand at the last
18 press conference.

19 Q (By Mr. Christian) What generally were those
20 deductions made for?

21 A Drive-offs and shortages.

22 Q Do you remember the number and total amount?

23 A I don't remember how many but there was a lot in
24 income, a little, little over, about \$600.

25 Q Okay. I'm going to hand you a packet of documents

1 listed as Exhibit 13. Do you see your name on the front page
2 there?

3 A I do.

4 Q And then take a skim through those documents and see
5 if you recognize them.

6 A Those are my --

7 Q Go through them all. Those -- are those all the
8 deductions made from paycheck by Bradley and Bradley Petroleum
9 or Save-O-Mat?

10 A That's correct.

11 MR. CHRISTIAN: I'd ask for the introduction of the
12 packet that is Exhibit 13.

13 THE COURT: Any objection to 13?

14 MR. RAPSON: You know, I wouldn't be able to do that
15 Your Honor, I don't have the ability to have a -- haven't been
16 tendered that.

17 THE COURT: The objection's overruled.

18 MR. RAPSON: Your Honor, could I, could I possibly see
19 the document?

20 THE COURT: Oh I'm sorry. I thought he'd given you a
21 copy.

22 MR. CHRISTIAN: Yeah.

23 MR. RAPSON: This?

24 MR. CHRISTIAN: Yeah.

25 MR. RAPSON: This is 13 because this is the same thing

1 as 8.

2 MR. CHRISTIAN: Well it's a part of 8 --

3 THE COURT: Well, no. It's, it contains documents --

4 MR. RAPSON: Okay.

5 THE COURT: -- that are identical to exhibits found in
6 8 but there are -- there's highlighting --

7 MR. RAPSON: Okay.

8 THE COURT: -- with regard to this specific witness.

9 MR. CHRISTIAN: And I'm sorry Mr. Rapson, are you
10 saying that those were not sent to you by my office?

11 MR. RAPSON: I'm not saying that at all.

12 MR. CHRISTIAN: Okay.

13 MR. RAPSON: I'm just saying I didn't know what 13
14 was, that's fine.

15 Q (By Mr. Christian) Well, what would happen in these
16 drive-offs?

17 MR. RAPSON: Your Honor, if I could just have a second
18 --

19 THE COURT: Just let Mr. Rapson take a look at them.
20 We haven't admitted 13 yet.

21 MR. RAPSON: I don't think I'm going to have a problem
22 but I'd like to finish them.

23 THE COURT: Just give him a chance to look at them.
24 Take your time, Mr. Rapson.

25 MR. RAPSON: I have no objection, Your Honor.

1 THE COURT: All right. 13 is admitted.

2 (Plaintiff's Exhibit Number 13 admitted)

3 THE COURT: You can proceed, Mr. Christian.

4 Q (By Mr. Christian) Tell the Court about the drive-
5 offs. What generally was happening?

6 A We were busy. Most of them is we were busy. We had -
7 - when I worked there we were a very busy store and if you have
8 two or three cars piled up and you are the only one there, you
9 are not able to see the drivers, the license plates. Sometimes
10 you're lucky if you see them. Sometimes you don't.

11 Q If you saw the license plate and got it down would
12 there be a deduction made from your paycheck?

13 A As long as we had license plate there wouldn't be a
14 deduction.

15 Q But if there was no license plate seen, a deduction
16 was made from you paycheck?

17 A That's correct. To make your drawer come correct.

18 Q Now you signed these documents, correct?

19 A I did.

20 Q Why?

21 A Because it was shortage on my shift which means that I
22 would have to come up with it one way or another for my drawer
23 to come out correct. And if my -- my thought was if I didn't
24 sign the papers I might -- I probably wouldn't have a job the
25 next day.

1 Q Were you ever -- was it ever presented to you by a rep
2 -- by a Save-O-Mat employee you need to sign this or you'll be
3 fired?

4 A Not in those words. But by the manager, she said,
5 "You need to sign one of these so they can take it out of your
6 check."

7 Q The manager said that they could do that?

8 A They could do that.

9 Q Did you question the legality of this?

10 A I didn't think it was right, but I liked my job.

11 Q You wanted to keep your job?

12 A I wanted to keep my job. I liked that extra money
13 every week and so it was sign the paper and they could take it
14 out of my check.

15 Q Did this impact you in any way, them taking this money
16 out of your check?

17 A It did at the end of the week. But if you -- one way
18 or another you were going to have to pay for it.

19 Q That's what they told you?

20 A Yeah. Not in as many words, but that how you felt.

21 Q All right. What happened to those shortages that you
22 incurred here? We talked about the drive-offs -- so the
23 shortages?

24 A The shortages, if giving money back -- too much money
25 back to them, at the end of the day when your drawer wasn't --

1 came out right then you just paid it or signed a paper so they
2 could take it out, to make the drawers correct.

3 Q You've heard the discussion here today about this
4 being a revocable document, that you could have changed your
5 mind. Did you feel ma'am, that you could have changed your mind
6 and gotten your money back?

7 A No. I was never told that I could revoke that.

8 Q Did you steal money from the -- Bradley Petroleum?

9 A No, sir. I did not. I never --

10 Q And you never --

11 A -- I liked my job at the Department of Corrections.

12 Q Yeah. And, and -- but they never accused of theft?

13 A No.

14 MR. CHRISTIAN: May I have a moment, Your Honor?

15 THE COURT: Certainly.

16 MR. CHRISTIAN: I have nothing further on this, Your
17 Honor.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. RAPSON:

21 Q Good morning, ma'am.

22 A Good morning, sir.

23 Q And you're a correctional officer?

24 A That is correct.

25 Q So you're pretty comfortable with the laws and the

1 rules and regulations, and following procedure?

2 A The -- could you rephrase, could you -- I don't
3 understand what you mean, sir.

4 Q Well, within the correctional system there are a
5 number of rules and regulations and procedures that are required
6 to be followed?

7 A That's correct.

8 Q And you have to follow that?

9 A That's correct.

10 Q And the Sheriff's Department expects real compliance
11 because of the problems that could result if that didn't happen.

12 A The Department of Corrections?

13 Q Right.

14 A I work for the Department of Corrections.

15 Q Okay. But that would be true of the Department of
16 Corrections?

17 A That's correct.

18 Q And you tell me if I'm mistaken, but Mr. Calkins tells
19 me that the Sterling pumps are set up in such away that you can
20 see the license plates pretty easily?

21 A No if they are back-to-back, sir. The store is -- the
22 pump's set this way and if you are busy you're not going to be
23 able to see all of the pumps. You can see the pumps closest the
24 windows, but if there a -- two vehicles you're not going to be
25 able to see the pumps on the other side or the ones closest to

1 the street.

2 Q Okay. And every day when you wake up in the morning
3 and go to that job, you know that you are going to have
4 deduction for a drive-off if you don't write down the license
5 plate number; isn't that true?

6 A That was not presented to me when I started in 2006.

7 Q Well, as time went on it became clear that if you
8 didn't drive -- write to down the license plate number on the
9 car and that car took off, then if -- you would be held
10 accountable?

11 A That was never told to me in the two years that I was
12 there.

13 Q But you knew that because you had these deductions for
14 drive-offs?

15 A That's correct.

16 Q So you some -- one way or another you learned about
17 that policy, right?

18 A That's correct.

19 Q And once you learned about the policy, then every
20 single morning when you got up out of bed, and went to that
21 store, you knew that if you didn't write down a license plate,
22 and that person took off you would be held accountable?

23 A But if you are busy, you weren't able to write down
24 the license plates.

25 Q But you knew what the consequences were if the drive-

1 off took place, right?

2 A That's correct.

3 Q And I think you said that you signed the authorization
4 documents because there had been a shortage and because you
5 liked your job at that time?

6 A That's correct.

7 Q Now do you have a second job like that now?

8 A No, sir. I do not.

9 Q Would you like one?

10 A No, sir. I do not.

11 Q So were you better off before with that job or are you
12 better off now?

13 A It's a 50/50.

14 Q Did you ever after signing one of these documents and
15 consenting to the authorization, approach anybody and say "Hey,
16 can I take that back? Can I ask to rescind my authorization?"

17 A Nothing. No, I did not.

18 Q So you don't know how the employer would have
19 responded had you done that, do you?

20 A No.

21 MR. RAPSON: No further questions, Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. CHRISTIAN:

25 Q If you had received at the beginning of your

1 employment, and during your employment a notice had posted
2 explaining to you the law, would that have helped you out in
3 this scenario?

4 A It would have.

5 Q And do you think that the burden of you being busy and
6 missing a drive-off should be on you or on the company?

7 MR. RAPSON: Your Honor, I object; I think that's up
8 to -- her desire one way or another is not the issue in this
9 case. It's a question of what's lawful and what isn't.

10 THE COURT: Objection sustained.

11 MR. CHRISTIAN: I have nothing further.

12 THE COURT: Thank you.

13 You can step down ma'am, thank you.

14 Next witness?

15 MR. CHRISTIAN: Brad Calkins, Your Honor.

16 THE COURT: Mr. Calkins. Do you solemnly swear or
17 affirm?

18 MR. CALKINS: I do.

19 THE COURT: Thank you. Be seated. Make sure you
20 speak into the microphone so that we can hear you.

21 MR. CALKINS: Okay.

22

23 BRADLEY H. CALKINS

24 a witness, called by the Plaintiff, was examined and testified
25 as follows:

DIRECT EXAMINATION

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BY MR. CHRISTIAN:

Q Sir, can you state your name and spell it for the record?

A Bradley H. Calkins.

Q Sir, what do you do for a living?

A I own and operate Bradley Petroleum and Save-O-Mat Inc.

Q And how long have you operated Bradley Petroleum and Save-O-Mat?

A Well, there are two different timeframes. I started Bradley Petroleum in 1975, and I purchased 50 percent of Save-O-Mat in the early '80s.

Q And you and I have met, correct?

A Yes, sir.

Q And do you recall the litigation that started this case?

A Yes, I do.

Q And do you remember entering into a settlement agreement that's part of --

A Yes. Yes, I do.

Q All right.

MR. CHRISTIAN: Copies, Your Honor. And I apologize.

THE COURT: It's all right.

(Brief pause in proceedings)

1 THE COURT: Thank you.

2 MR. CHRISTIAN: May I approach, Your Honor?

3 THE COURT: I'm ready.

4 Q (By Mr. Christian) Mr. Calkins, I've handed you
5 Exhibit 14. Do you recognize that document?

6 A Well, not without going through it.

7 THE COURT: Then do it. Then go through it.

8 (Witness reviews document)

9 THE WITNESS: I believe this is the original document.

10 Q (By Mr. Christian) All right. And is that your
11 signature on page 7?

12 A One of them, yes.

13 Q And the one next to it is your father's, right, George

14 --

15 A My father, yes, sir.

16 Q All right. And you recognize his signature?

17 A It looks familiar.

18 MR. CHRISTIAN: Okay. I'd ask for the introduction of
19 Exhibit 14, Your Honor.

20 MR. RAPSON: No objection, Your Honor.

21 THE COURT: 14's admitted. Although I think frankly I
22 probably take judicial notice of it since it's already part of
23 the court record. But we'll admit it for purposes of this
24 hearing and it's admitted as 14.

25 (Plaintiff's Exhibit Number 14 admitted)

1 Q (By Mr. Christian) Sir, you were present for the
2 testimony of Mr. Schlueter?

3 A Yes.

4 Q And would you agree with him -- well, do you set
5 policy for Bradley Petroleum?

6 A Many people set policy for Bradley and Save-O-Mat.

7 Q All right. Would you agree with Mr. Schlueter's
8 testimony that Bradley has a policy for making deductions from
9 wages or customer drive-offs if a license plate is not -- if
10 policy is not followed and an authorization to deduct that
11 amount is signed?

12 A Would you like me to explain the policy that we used
13 previously?

14 Q No. I would like to know whether you had the policy
15 before February of 2009 that permitted the deduction that I
16 stated?

17 A In some instances.

18 Q All right. And would you agree with me that Bradley
19 Petroleum also, between 2003 and February of 2009, had a policy
20 to make deductions from wages for shortages of cash or product
21 if an authorization is signed?

22 A What do you mean by product?

23 Q Cigarettes, lottery?

24 A Cash, cigarettes, and lottery, period; nothing else.

25 Q But did you have that -- had that policy?

1 A We have that policy, yes.

2 Q Would you agree with me that over the years on -- the
3 United States Department of Labor, the Colorado Department of
4 Labor, and me said that that policy is illegal?

5 A I know you have said that. I don't know that the
6 Department of Labor has said it's by definition illegal.

7 Q Okay. Have you heard the testimony --

8 A I did.

9 Q -- today from -- are you familiar with the testimony
10 from Ms. Neal? Do you have any reason to disagree that she sent
11 letters to your agency saying this is illegal?

12 A No, I don't disagree with that.

13 Q All right.

14 A Well, I don't -- you know, let me take back. I don't
15 know what she said was illegal. She said they did not agree
16 with our policy as far as I can remember and I was not involved
17 in those letters. They were Mr. Schlueter and he handled them
18 with the payroll department or the attorneys.

19 Q The policy since February of 2009 is that a person who
20 has -- an employee who has a shortage will be terminated?

21 A Of more than \$10.

22 Q Is the option still given to employee to repay the
23 shortage and keep their job?

24 A No.

25 Q So based upon this litigation Bradley Petroleum and

1 Save-O-Mat have made the decision to terminate employees for
2 shortages?

3 A That's right.

4 MR. CHRISTIAN: I have nothing further.

5 THE COURT: Cross?

6 MR. RAPSON: Yes, Your Honor. I could do one of two
7 things. I could ask Mr. Calkins all the question I would
8 normally ask but just limit him to --

9 THE COURT: Well --

10 MR. RAPSON: -- the direct examination --

11 THE COURT: -- I'm a big fan of efficiency and since
12 we've only go about 45 minutes left this morning, subject -- I
13 mean, it's not a trial anyway. But let's remember that it -- a
14 judge is presumed to ignore irrelevant or inadmissible evidence
15 in making findings of fact and conclusions of law when the judge
16 is the fact finder.

17 So in other words I'm going to let you ahead and ask
18 your question -- the questions you would otherwise ask of Mr.
19 Calkins rather than go through the charade of you asking your
20 cross-examination questions and then bringing him back on the
21 stand later to question him.

22 MR. RAPSON: I just wanted to make sure that it was
23 acceptable.

24 THE COURT: Not a problem. Go ahead.

25 ///

CROSS-EXAMINATION

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BY MR. RAPSON:

Q Now just briefly Mr. Calkins, indicate what the nature of Bradley Petroleum and Save-O-Mat are -- is?

A The two companies consist of gasoline and convenience stores that operate the majority in Colorado, the Western Slope, majority in Denver, New Mexico and Wyoming.

Q And do those store have cash, money and cigarettes on a regular basis that are handled by employees?

A Yes.

Q And is there, in your opinion, some temptation occasionally for employees to either purposefully take either the cash or cigarettes, or at least be negligent with respect to what happens to the cash or cigarettes?

A Yes.

Q And as the result of that concern have you developed a -- an historic policy of having the employees pay for losses experienced during their shift where they are responsible for their losses?

A After that loss had been reported to our office, after the manager had an opportunity to research it, after the district manager then was brought and then after the auditors analyzed the shortage or loss and it was put through our computer system, we made a determination as to whether we felt it was innocent mistake or whether it was negligence, or

1 possibly theft.

2 Q And -- but you go through a number of safeguards
3 before you go to the employee and say we think you are
4 responsible for the shortage and we expect you to cover it by
5 way of a wage deduction?

6 A Yes.

7 Q And that deals with both purposeful misconduct, as
8 well as negligent misconduct?

9 A Yes.

10 Q What, what was the purpose, historically, of having
11 that policy?

12 A Well, in our business with the number of gallons that
13 we sell in most units, the amount of cash and credit cards that
14 go through there, there is a tendency for people to maybe not
15 steal it, but borrow it until their next paycheck and been the
16 history of our industry. I've been involved in this industry
17 since I was 14 years old and this has evolved over that time.

18 Q Do other companies in your industry also have employee
19 wage deduction policies?

20 A Yes.

21 Q So you're not unique?

22 A No, we're not the only ones.

23 Q It -- is it your belief that without the policies in
24 place the losses you would experience would be considerably
25 higher?

1 A Yes.

2 Q Is there any element of trying to punish employees in
3 this policy of making deductions from wages?

4 A No. We -- you know, the whole thing involving this is
5 we don't want to lose employees. It's hard enough and expensive
6 enough to have to keep replacing employees, so we do everything
7 in our power to make sure that isn't some innocent thing that
8 happened and we won't have to lose that employee.

9 There was a period of time in the '80s, early '90s
10 when the labor pool was so small we had to close 13 stores
11 because we didn't have employees to -- that could keep them
12 open. So we're not trying to punish, but we're trying to have a
13 policy that everybody abides by and does their best to live
14 with.

15 Q And do -- is the workforce greatly more productive and
16 efficient because of this policy than it would otherwise be?

17 A I believe it is.

18 Q Apparently the focus, as I get it, and I could be
19 mistaken in this case, on the years 2007 and 2008 that -- and
20 you're familiar with the Bradley wage deduction policy during
21 that period of time?

22 A Yes.

23 Q And it's different now in 2009?

24 A Yes.

25 Q Explain to the Court what the drive-off policy was and

1 why you had it?

2 A The drive-off policy was in each location there was a
3 different setup with the pumps and the visibility by the cashier
4 or the manager of those pumps. And where, where the cashier had
5 a hard time seeing a license plate, either front or back or a
6 temporary tag, we posted that with a, with a prepaid sign which
7 forced the employee -- or the customer to come into the store
8 and pay first.

9 The policy was never to authorize a pump a until you
10 had the plate number in one, one manner or another. Now some
11 stores have been designed to face the car, either in or out, so
12 that it was easier for the cashier or the employees there to see
13 that license plate.

14 As far as the drive-off was concerned, if they had a
15 license plate we took the license plate and ran it through the
16 Department of Motor Vehicles and sent that person a letter. And
17 we found that probably half the reported drive-offs with license
18 plates were falsified. That's why this urgency on getting the
19 license plate.

20 Q Falsified by whom?

21 A By that employee.

22 Q In other words they just write down whatever number
23 came up?

24 A Sure. And, and there are times, as the lady said,
25 that it gets busy and they might write down the wrong license

1 plate but I've worked in these stores. I wrote down every
2 license plate.

3 Q You've personally --

4 A Personally.

5 Q -- had that job?

6 A I have.

7 Q Are you familiar with the statute at issue here, this
8 8-4.105?

9 A Somewhat.

10 Q You've read it a number of times?

11 A Yes.

12 Q And you've seen the four, arguably five, when you add
13 on the tax one in (a), those exceptions to the statute?

14 A Yes.

15 Q And has it been -- what kind of an effort have you
16 made since settlement in this case to comply with those four
17 exceptions?

18 A Well, that's where these authorization forms were
19 generated with the people in our company that set policy and
20 with our legal advisors with --

21 Q And --

22 A -- and in order to comply with the settlement
23 agreement.

24 Q And have you followed for example the correspondence
25 between me and Amanda Neal where I've said for -- this section

1 about authorized deductions looks pretty clear on its face to
2 me. I mean, I can read, and it says that we can do what we're
3 doing. Explain to me why I'm wrong and have you ever seen her
4 or anybody else explain why I'm wrong?

5 A No, I haven't.

6 Q Now are there occasions where situations can slip
7 thorough the cracks despite your efforts to keep that from
8 happening?

9 A Sure. With the number of employees we have, the
10 different departments, things happen. We make mistakes,
11 everybody make mistakes.

12 Q Do you have system set up to keep the mistakes to an
13 absolute minimum?

14 A We hope so.

15 Q And with respect to those mistakes, have you ever seen
16 any reason why they couldn't be resolved either through the
17 employee contacting you and talking to you about it, or the
18 employee going to the Department of Labor or the employee filing
19 a lawsuit if nothing else worked? Would that resolve
20 everything?

21 A Yes, we would. And in addition to that, I think, is
22 Ms. O'Neal or Ms. Neal referred to 35 cases and I believe all
23 but two of those were resolved with the Department of Labor and
24 that was from an employee coming back and say -- I don't feel
25 that this right or going to the Department of Labor and we've

1 resolved those.

2 We would sit down and analyze the situation again, in
3 some cases we'd have legal counsel, and then several of us,
4 including Mr. Schlueter would make the determination as to what
5 to do.

6 Q And have you ever felt that you -- there was any need
7 for this litigation to help you take care of the problems that
8 were brought your attention?

9 A No.

10 Q Now I think you alluded in your examination with
11 counsel to the change that took place in February 2009?

12 A Yes.

13 Q And can you explain that, what's your new policy?

14 A Well, because of this case and the difficulties in
15 policing this and the fact that we felt that people were
16 stealing it or borrowing until the next paycheck, that we had to
17 adopt a new policy. And one that has been tried in the industry
18 or has come up recently is to pick a limit for a shortage, a
19 reasonable shortage, and then terminate that employee with no
20 deduction.

21 Q And there -- so at this point if there is a loss or
22 shortage that's unexcused, you can't find any other explanation
23 other than the employee, then if the loss over \$10 and they're
24 not giving them the opportunity to cover the shortage, they are
25 just fired?

1 A That's right. We suspend them when the shortage is
2 discovered until it's properly investigated, and if we can't
3 find a reason or give them the benefit of the doubt then they
4 are terminated.

5 Q And has that policy been effective?

6 A Yes. We've eliminated 95 percent of our shortages.

7 Q And why do you think that has been the case?

8 A People don't want to lose their job and they know that
9 they can't borrow anymore or take the money until their next
10 paycheck.

11 Q You'd think that was a lot of -- previously there was
12 lot of, I'm going to take it now and pay it back, ten days later
13 or I'm going to take it, they'll deduct it from my salary and
14 then I'll be even and I got to use the bank of Calkins to get by
15 for two weeks?

16 A I think that's what's, what has happened.

17 Q What was the percentage approximately of the workforce
18 in 2000, 2008 that had wage deductions for losses or shortages
19 in excess of say \$100 a year?

20 A Well I, I couldn't, I couldn't begin to give you a
21 percent. However I believe that compared to the total number of
22 people that work for this company every year, it's very small.

23 Q There's been a claim in the pleadings that hasn't been
24 made here today, but somehow or another this wage deduction area
25 is a profit center for Bradley. Is there any truth in that?

1 A Absolutely not. It costs us more to terminate a
2 person because of a shortage than it takes to retrain and find
3 that next employee.

4 Q I identified one of the -- as an example for your good
5 faith in this area, the fact that you returned money in advance
6 of the 90 days that you are allowed, if you learn that the
7 police are going to not file a case, say after 30 days. Is that
8 your policy?

9 A Our policy on a shortage that has a police case number
10 and an active investigation, we have a head of loss prevention
11 for our two companies. And he provides us a report and we meet,
12 meet once a week to discuss the status of that held check per
13 the 90 days.

14 We go through every one and then we make the
15 determination whether the 90 days is up and needs be release and
16 even if a police, a policemen calls and says "We're not going to
17 pursue this case," that check is released; that's our policy.

18 Even if the employee calls and says "The police is not
19 actively investigating this anymore, I need my check," we go to
20 the district manager and have him go to that police department,
21 whether it be in Sterling or Fort Collins or Longmont and verify
22 that they will not further pursue this case and that check is
23 released.

24 Q And the practice of bringing to the attention of the
25 various police departments situations where you believe that

1 there is some possibility of theft, has that generated
2 restitution in the 50- to \$70,000 area for Bradley in the last
3 year?

4 A We are presently receiving restitution from cases
5 brought and employees charged and convicted I think in the
6 neighborhood of 70 some thousand dollars right now.

7 Q Can you give me a single example of any time in the
8 last two, there, four years where anybody at Bradley has
9 purposefully or knowingly failed to comply with 8-4.105?

10 A Well, I know of one instance that I discovered after
11 our February 1st policy of an employee being asked to pay it
12 back and he did pay it back. And when I found out through Mr.
13 Schlueter and Amanda Neal, he was immediately paid back because
14 that's a violation of our policy.

15 I also this morning saw the exhibit that said money
16 was deducted because of a burglary. I'm not familiar with that
17 but I can tell you emphatically that we do not make deductions
18 for burglaries or robberies or never did. And so if someone did
19 it, they made a mistake or they didn't understand the policy.
20 But those are the kind of things that sometimes slip up.

21 Q Outside of those accidental and mistaken situations
22 are you aware of anyone at Bradley purposely flouting 8-4.105 or
23 is the corporate policy to do everything that you can to be in
24 compliance with 8-4.105?

25 A Yes. We strive for that all time.

1 MR. RAPSON: Nothing further, Your Honor.

2 THE COURT: Cross (sic)?

3 REDIRECT EXAMINATION

4 BY MR. CHRISTIAN:

5 Q You're always trying to comply with 8-4.105, no matter
6 what; is that correct, sir?

7 A Yes.

8 Q All right. Why don't you follow the law as the
9 Department of Labor sees it?

10 A Because my attorney advised me that they don't believe
11 that's the law.

12 Q Okay. Now is there any, any doubt in your mind what
13 this lawsuit was about back 2001?

14 A No.

15 Q You understand that the lawsuit is all about making
16 the Bradley Petroleum stop making deductions from paychecks for
17 shortages, burglaries, robberies, et cetera, correct?

18 A Not for burglaries, robberies, et cetera.

19 Q The lawsuit in 2001 was all about stopping Bradley
20 Petroleum from making illegal deductions from paychecks, right?

21 A Making deductions from paychecks.

22 Q All right. And you agreed that the Court would have
23 continuing jurisdiction so that Bradley would cease making
24 deductions from wages for mathematical errors, shortages of cash
25 or product, customer drive-offs, robberies, burglaries, losses

1 caused an employees violation of company procedures, incorrectly
2 processed credit card charges, bad checks from the customers,
3 stop payment fees due to lost or destroyed employee paycheck
4 and/or for stock lock changes.

5 MR. RAPSON: Objection, Your Honor; this is
6 argumentative, as --

7 THE COURT: I didn't hear a question.

8 MR. CHRISTIAN: They --

9 THE COURT: I heard a -- if the question was does the
10 settlement agreement say this, then the agree -- then the
11 appropriate objection is that the object -- that the document
12 speaks for itself.

13 MR. CHRISTIAN: Let me rephrase.

14 Q (By Mr. Christian) Did you agree in the settlement
15 agreement when you said the parties agree that the Court shall
16 have continuing jurisdiction to ensure that Bradley complies
17 with the terms of this agreement and cease making deductions for
18 all of those things?

19 MR. RAPSON: Your Honor, the document does speak for
20 itself. What he agreed to is --

21 THE COURT: The doc --

22 MR. RAPSON: -- evident in the document.

23 THE COURT: The document speaks for itself.

24 MR. CHRISTIAN: Well --

25 THE COURT: Sustained.

1 these employees; is that right?

2 A That's right.

3 Q Do you think taking mon -- most of these people make
4 close to minimum wage, correct?

5 A No. Whatever you mean you mean close, they don't make
6 minimum wage.

7 Q They make less than minimum wage?

8 A More.

9 Q All right. Between seven and ten \$10 an hour, would
10 you say?

11 A Seven and \$12 an hour.

12 Q Would you say that taking 20 to 30 --

13 A Actually 7.50 to \$8 an hour or \$12 an hour.

14 Q Okay. Would you say that taking the 30 to \$40 out of
15 that person's paycheck is punishing them?

16 A Yes, I would to a degree. But you also have to
17 understand that any company, any -- this courthouse has to have
18 policies and regulations. We -- our people show up at eight
19 o'clock in the morning. They know that they can't be short and
20 the equipment, the technology today provides them with a way not
21 to be short.

22 Q Well since February of 2009, you've decided not to
23 take deductions for shortages anymore, right?

24 A That's right.

25 Q Is that because I caught you?

1 MR. CHRISTIAN: Well --

2 THE COURT: His signature is on the document.

3 Q (By Mr. Christian) Since 2007 you agree with me that
4 Bradley Petroleum is making deductions from wages for shortages
5 of cash or product, right?

6 A Yes.

7 Q And --

8 A But legally.

9 UNIDENTIFIED SPEAKER: We'll see --

10 Q (By Mr. Christian) And since 2007 you would --

11 MR. RAPSON: I'd ask that that be struck, Your Honor.

12 THE COURT: Yeah. It -- I didn't hear him say "We'll
13 see," okay?

14 Q (By Mr. Christian) And this is -- you would agree
15 that basis of the settlement of this case was to get Bradley
16 Petroleum to stop making illegal deductions for cash, product,
17 et cetera?

18 A And to make our policies legal.

19 Q All right. And since the time of the settlement
20 agreement you have been told that your policy is illegal by the
21 Colorado Department of Labor and me, right?

22 A Well, I believe you say that. I haven't -- haven't
23 heard the Department of Labor say that. They just didn't agree
24 with what our legal counsel advised us.

25 Q And you're saying that you don't really want punish

1 A When did you catch me?

2 Q I caught --

3 THE COURT: What did you --

4 Q (By Mr. Christian) -- you in 2008 --

5 THE COURT: You, counselor, you didn't do anything.

6 Shall we talk, shall we -- do we need to go over that again?

7 MR. CHRISTIAN: Mister --

8 THE COURT: This is not a contest between you and Mr.
9 Calkins.

10 Q (By Mr. Christian) Mr. Calkins, would you agree with
11 me that your policy has changed since February in 2009 because
12 the Court ordered you to do an audit of deductions?

13 A I wouldn't say completely. I'd say our policies have
14 evolved and changed since this settlement agreement in 2003.

15 Q And it's changed to what extent?

16 A To try and not do anything illegal and live within our
17 settlement agreement. That's where the authorization forms came
18 from.

19 Q Do you remember making, as part of the agreement, a
20 specific agreement that you would not -- that you would
21 eliminate a release that asked for an employee to make a waiver
22 of their rights under the Colorado Wage Act?

23 A No, I don't remember that.

24 Q And you agree with me that there has been 1300
25 deductions in 2007 and 2008 for over \$52,000?

1 A I don't know that.

2 Q Bradley Petroleum has made \$52,000 that might have
3 gone into an employee paycheck?

4 A Well, I think Mr. Schlueter agreed with that amount.
5 I'm not familiar with it. But he would know more about that
6 than I would.

7 Q But, that, that stays with Bradley Petroleum and Save-
8 O-Mat, correct?

9 A That what?

10 Q That money stays with Bradley Petroleum and Save-O-
11 Mat, correct?

12 A Yes.

13 Q Now, you said our policy as to thefts has worked.
14 You've received restitution?

15 A You mean the latest policy?

16 Q Well, is that always been the policy that once you
17 suspect someone of theft that you file a police report,
18 determine if the police make a finding of probable cause and
19 then if a case is brought or if there is a plea that then you
20 are awarded restitution?

21 A Yes.

22 Q And that has worked, it sounds like, correct?

23 A Well I've done that since I started the company in
24 1975.

25 Q And your testimony is that you think most of the time

1 there's been these shortages, it's really been due to theft, you
2 just couldn't prove it?

3 A Well I don't -- I wouldn't say it's all theft. I
4 think there is some theft involved and I think because of our
5 new policy that there's borrowing going on too, until the next
6 paycheck.

7 Q Which is theft, right? I mean you aren't allowing
8 them to borrow the money from you, correct?

9 A Right.

10 Q All right. So the question again is and I believe
11 this was your testimony that the vast majority of the shortages
12 that occur, you really believe occur due to theft?

13 A I can't say the vast majority. I don't know what the
14 amount is. The only time that I know it's theft was when they
15 admit that they stole the money and they're convicted and then
16 they pay restitution. That's the only time that I know.

17 Q And you suspect the majority of shortages are actually
18 due to theft, not negligence?

19 MR. RAPSON: Your Honor --

20 THE WITNESS: I don't know how to --

21 MR. RAPSON: -- this has been asked and answered.

22 THE COURT: I'm sorry. What was that objection, Mr.
23 Rapson?

24 MR. RAPSON: It's been asked and answered. He's asked
25 the same question --

1 THE COURT: Yes.

2 MR. RAPSON: -- several times.

3 THE COURT: And continued to ask the same question
4 over and over again. It doesn't really give me any more
5 information to make a decision. So let's move on to something
6 else.

7 Q (By Mr. Christian) Are you going to find the person
8 who the deduction made from a burglary and repay them the money
9 taken from their check?

10 A I certain would.

11 Q Are you going to terminate the Save-O-Mat
12 representative that made the illegal deduction from Ms. Builta,
13 B-u-i-l-t-a's paycheck?

14 A I don't know. I'd have to -- you know, there are a
15 lot of things that enter in to what a -- what if she was the one
16 that burglarized it. I don't know that from that statement. I
17 haven't seen her file. Was her boyfriend in there and he
18 burglarized it? I don't know.

19 There are a lot of circumstances that can come up and
20 without being able to investigate that and look at it, I can't
21 make that determination.

22 MR. CHRISTIAN: I have no further questions.

23 THE COURT: Redirect -- recross?

24 MR. RAPSON: Yes, Your Honor.

25 ///

RECROSS EXAMINATION

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BY MR. RAPSON:

Q Mr. Calkins, you already identified this \$52,000 figure as the amount of money that was deducted Safeway (sic) and Bradley for the last two years or roughly that amount. I think it's amount that came from Mr. Schlueter. How does that figure compare to the administrative costs of operating this wage loss system and all the associated time and everything else is involved in it? How would you quantify that investment?

A Very small.

Q The 52,000 very small compared to the --

A Compared to the costs of lawsuits, of trying to hire new people. If you figure \$5,000 a person and our company, I believe Mr. Schlueter said last, last week that we issued 1300 hundred paychecks to 1300 different employees. I'd say it's very small.

Q So the \$52,000 is very small compared to the kind of efforts it took to monitor this program?

A Right.

MR. RAPSON: Nothing further, Your Honor.

THE COURT: Thank you.

You can step down Mr. Calkins, thank you.

Next witness?

MR. CHRISTIAN: Judge, can I ask for a clarification?

You say that you have a settlement conference this afternoon

1 which means at noon, we're done, right?

2 THE COURT: That's what it means and then we at -- at
3 noon we stop this hearing, so I can do my other business of the
4 day. And then we will reset this hearing for whatever remains
5 to be done with it.

6 That's what I was saying at the beginning of the
7 hearing. I don't want anybody shortening their presentation or
8 not giving me all of the evidence they think I need to make a
9 decision because of time constraints. Unfortunately today's
10 hearing is subject to Bertuzzi's law; it is what it is.

11 MR. CHRISTIAN: May I have a moment, Your Honor?

12 THE COURT: Sure. Get me the calendar.

13 MR. CHRISTIAN: Judge --

14 THE COURT: Get me the calendar now.

15 MR. CHRISTIAN: Just let me inquire. We have -- and I
16 don't think this is necessary because again my position is that
17 you don't need to parse out each individual claim. I wanted to
18 give you a flavor of that.

19 We have certain individuals available via phone and I
20 appreciate that the Court's order in permitting me to do that
21 and we have other individuals that could be here at a later
22 date. These individuals have signed also affidavits and I could
23 make an offer of proof as to what these individuals have said to
24 us but it is, it is essentially the same thing the Ms. Anderson
25 has said and I don't think it's necessary that I call 1300

1 people to say the same thing.

2 THE COURT: No. I don't either. I told you, you can
3 use representative witnesses.

4 However having said that I'm not, not willing to take
5 affidavits, since Mr. Rapson can't cross-examine a piece of
6 paper. I don't think that's fair. I don't think on the other
7 hand that -- I'm not going to require you to call 1300 people to
8 go through it a line at a time.

9 The documents that have been submitted were admitted
10 without objection and are clearly, are clearly business records
11 of Bradley Petroleum. I mean there is no question about that
12 but to -- if you want additional -- I guess what I'm saying a
13 nicely as I know how is I'm not going to tell you how to run
14 your case.

15 MR. CHRISTIAN: I understand.

16 THE COURT: You decide, you and Mr. Killmer have to
17 decide what's -- if you have other evidence if you want to put
18 on and even then Mr. Rapson's still got an opportunity to
19 present other evidence if he chooses to do so. We -- we're
20 efficient by having him examine Mr. Calkins during your part of
21 the case. But it doesn't mean he hasn't got other evidence he
22 wants to put on.

23 I mean, my suggestion, quite frankly, gentlemen, is we
24 get the calendar out here and see when we can have you come
25 back.

1 MR. CHRISTIAN: I guess that's cutting to the chase.

2 THE COURT: Yeah.

3 MR. RAPSON: Your Honor, may I make suggestion?

4 THE COURT: Sure, Mr. Rapson.

5 MR. RAPSON: You know clearly we are not going to
6 finish today so I think that Your Honor's idea is good one.

7 But I have another suggestion too that I'd like the
8 Court and counsel to consider and that is it seems to me that
9 the one really, really, really critical legal issue that -- the
10 determination of that could go a long ways towards narrowing
11 this case and making it go way, or causing it to settle or
12 whatever, and that the determination from this Court as to
13 whether or not the authorizations that we've been taking under
14 that part (d) are legal or not.

15 THE COURT: You want me to rule on that?

16 MR. RAPSON: A --

17 THE COURT: Because I'll do it. Right now if you want
18 me to.

19 MR. RAPSON: Your Honor, I think if you ruled on the
20 jurisdictional issue and on whether the deduct --

21 THE COURT: I already ruled on that in my earlier --
22 earlier order.

23 MR. RAPSON: I'm asking --

24 THE COURT: If you want -- if you're asking me for a
25 ruling, Mister -- on whether those document -- whether the old

1 docs, and new docs and so forth fit within the parameter of 8-
2 4.105(1)(d), I'm prepared to do that.

3 MR. CHRISTIAN: Yes.

4 MR. RAPSON: Based on -- I guess I see the direction
5 this is going --

6 THE COURT: You asked for it.

7 MR. RAPSON: Your Honor, I think it is important to
8 this to case to know -- to get a legal ruling on that.

9 But I also think it's important, I've filed three
10 other motions and it's important to get a ruling on those and I
11 haven't seen them, Your Honor.

12 THE COURT: All right. I'm not even sure what motions
13 those are, Mr. Rapson.

14 MR. RAPSON: One was that -- and these were filed by
15 back in July. One was a motion in limine and one -- and the
16 other two were motions to dismiss. The motion to dismiss was --

17 THE COURT: I did rule on the -- I ruled on those.

18 MR. RAPSON: They never came up on Lexis-Nexis. Is
19 that that (indiscernible) --

20 THE COURT: Well, I've got -- if I -- I thought I'd
21 entered an order on that.

22 MR. RAPSON: Well, counsel haven't seen it, Your
23 Honor.

24 THE COURT: Well, that's okay. Then that might be my,
25 my fault. Just a minute. Just let me get it called up here. I

1 have to do it that way. Just a minute.

2 Let me put it this way. I have that order ready rule
3 on -- I have that order in a position to rule on and I thought I
4 had already entered it and in fact it was my intention to enter
5 it before you got here today --

6 MR. RAPSON: Okay.

7 THE COURT: -- and if I didn't do that, that's my
8 error.

9 All right. One of the thing I did I ruled on
10 continuing jurisdiction, that I had it. I denied your motions
11 to dismiss.

12 MR. RAPSON: I also filed a motion to dismiss the two
13 individuals because --

14 THE COURT: And I've just denied that as -- I'm
15 prepared to deny that as well. They signed the agree -- they
16 signed the agreement as individuals.

17 I can -- you know, if you want me to read -- I can go
18 a copy of the order off my desk and read it to you.

19 MR. RAPSON: No, I --

20 THE COURT: I mean, I'm embarrassed. I thought that I
21 had that I had entered that order. In fact I'll enter it this
22 afternoon if I haven't.

23 MR. RAPSON: We can wait.

24 THE COURT: It would be --

25 MR. RAPSON: We can wait and read that, Your Honor.

1 THE COURT: All right.

2 MR. RAPSON: What about the motion in limine?

3 THE COURT: I denied, I denied your motions.

4 MR. RAPSON: On the attorneys' fees too?

5 THE COURT: Yes.

6 MR. RAPSON: And okay.

7 THE COURT: Oh no, we granted that. I granted the
8 motion in limine on the attorneys' fees. I'm sorry.

9 MR. RAPSON: Okay. Would that also be going out on
10 Lexis-Nexus.

11 THE COURT: Yeah. I mean as I said I have a copy of
12 the order sitting on my desk and I thought that I had entered
13 it; that's my fault. As I said usually I'm more on top of my
14 game than that. It's been a busy week. My intention was and --
15 was to have that order entered before you got here. So that we
16 knew what field we were playing on and that is absolutely and
17 utterly my fault if I didn't get that done. That order is ready
18 to go out.

19 MR. RAPSON: Okay.

20 THE COURT: And my reasoning behind each order -- each
21 motion --

22 MR. RAPSON: Okay.

23 THE COURT: -- each of those motions will be set forth
24 in the order.

25 MR. RAPSON: Thank you.

1 THE COURT: But that's shorthorn (sic) what we've
2 done. And if, again if you want me to rule on --

3 MR. RAPSON: Well, I think so, Your Honor. I think we
4 --

5 THE COURT: All right.

6 MR. RAPSON: -- need to know.

7 THE COURT: Okay. Here --

8 MR. RAPSON: It doesn't mean that we will necessarily
9 accept Your Honor's ruling, but --

10 THE COURT: Oh, Mr. Rap --

11 MR. RAPSON: -- I mean you know what --

12 THE COURT: Mr. Rapson, have you noticed how many
13 times I've said during this hearing "when this case gets
14 appealed"?

15 MR. RAPSON: Right.

16 THE COURT: Not if this case appealed.

17 MR. RAPSON: No, I think it would be helpful to --

18 THE COURT: I mean I, it's --

19 MR. RAPSON: -- the parties and maybe it might help a
20 settlement or whatever to --

21 THE COURT: Quite frankly, I can -- I -- this is one
22 of those cases as a judge I'm a speed bump on the road to
23 justice. I understand that.

24 But let's talk about 8-4.105. With all due respect, I
25 do not think that the documents that you -- that your clients

1 were using complied with the law.

2 I do not think that they were drafted in bad faith.
3 Let's start with that. All right. I think that the Defendants
4 relied on the advice of counsel, which I believe was incorrect
5 as to compliance, but I'm not finding that what the Defendants
6 did was in and of itself in bad faith. I am finding that those
7 documents did not comply with 8-4.105(d).

8 And let's talk about two reasons for that. The first
9 one is the one that's been brought up in this hearing and in
10 fact the one that I brought up when I cross -- when I asked a
11 question of Mr. Schlueter. There's eight -- to comply with 8-
12 4.105(1)(d), an authorization must be revocable, or revocable.
13 It has to be revocable.

14 There is nothing on these documents that say they are
15 revocable. Indeed they are not -- they are considered -- they
16 are treated as if they are irrevocable, both by the company and
17 by the employee. It's -- once I've signed it, that's it. And
18 quite clearly the statute requires that those documents be
19 revocable. There was no information given to the employees that
20 they are revocable, nor is there any information on the document
21 itself that says you can revoke this at any time. It's that
22 simple. I don't need to go any farther than that. This
23 document simply didn't comply with the law.

24 With all due respect they were -- almost seemed to be
25 sort of an attempt to meld 8-4.105(1)(d) and 1(c) sort of

1 because they were quasi-theft documents too, but they're not --
2 they don't -- they don't fit that either clearly. But they
3 don't comply with (d).

4 I'll tell you the other reason that I doubt that those
5 documents complied with (d). With all due respect, I know what
6 the -- I can read what the legislature wrote in this statute and
7 I'm going to read it. I usually don't read all of statutes but
8 I want to read it for a purpose.

9 "Any deduction not listed in paragraph (a), (b), or
10 (c) of this (1) which is authorized by an employee, if
11 such authorization is revocable, including but not
12 limited to deductions for hospitalization and medical
13 insurance; other insurance; savings plans; stock
14 purchases; voluntary pension plans; charities; and
15 deposits to financial institutions."

16 With all due respect to the Defendant, I don't think
17 the legislature meant to include in that section cigarettes,
18 candy bars, and diet soda. It's clearly talking about
19 financial, either instruments, or from monies being placed
20 toward what might be called "investments" for the employees.

21 We're not talking about sundries, which is what the
22 issues are here or cash. And I know that the statute says "but
23 not limited to", legislatures write that way. But I just don't
24 find -- I cannot find that that's -- that that statute was
25 intended to cover the kinds of things that are being dealt with

1 here.

2 With all due respect to the Defendants, and the
3 Defendants have run a business that has benefited Colorado in a
4 whole lot of ways for a whole of years; I'm not disputing that.
5 But the stuff they're talking about here is the cost of doing
6 business and to take that out on your employees is unfair.

7 So I haven't decided -- made a decision on what we're
8 going to do or whether I'm going to grant a remedy but if you
9 want -- but I just interpreted that statute for you. And I
10 specifically find that because the stat -- the documents, the
11 old docs and the new docs did not deal with revoc -- were not on
12 their face or by explanation for the employees, revocable, they
13 did not comply with the statute.

14 And I'm not even getting into the fact that under case
15 law, the Department of Labor's interpretation of things like
16 this is supposed to be given great weight. I don't need to do
17 that.

18 And I would suggest, with all due respect again, not
19 that it makes -- not it changes my mind, but Bradley has decided
20 since February of 2009 simply not to use these documents.
21 Whether they're legal or not, it's easier if they don't use
22 them. Maybe tougher on employees, but that's life too.

23 So that's my ruling, gentlemen. I'll get that written
24 order out this afternoon. Again, I'm humiliated that I didn't
25 get it out -- no, I'm -- as I said, it's sitting on my desk and

1 I'd really thought that'd entered it. Even I make mistakes with
2 Lexis-Nexus, but I'll get it out to you this afternoon.

3 Let's take a look at -- can you get me the calendar?
4 Let's take a look at when we can reschedule to come back. As I
5 said it's going to be a bit dicey finding time, guys. I've got
6 a -- I'm starting a three week jury trial on Monday.

7 How much time do we think we need and I'm not, I'm not
8 holding anybody's feet to the fire, it's just more a matter of
9 trying to figure out what day works.

10 MR. RAPSON: Your Honor, I think it was actually
11 helpful to have the Court's ruling on that issue because it now
12 --

13 THE COURT: Are we now thinking we may need much less
14 time because we did before?

15 MR. RAPSON: Yes, exactly. We can't -- and also, I
16 mean, really the Court made two indications that I think they're
17 very important from our point of view. One is the Court's ruled
18 against on the authorization but the Court's also ruled in our
19 favor on the good faith. So I won't need to call --

20 THE COURT: Yeah.

21 MR. RAPSON: Wait a sec -- I've got a number of
22 witnesses used here, who are -- who are prepared to testify
23 about good faith and --

24 THE COURT: Okay. Let me put it to you this way.

25 MR. RAPSON: I don't think I need to do that.

1 THE COURT: I wish Bradley hadn't kept doing this over
2 time and had to keep going toe-to-toe with the Division of
3 Labor.

4 Having said that, with all due respect and I'm not
5 picking on either Mr. Hilbert or Mr. Rapson, lawyers make
6 mistakes. Judges do too. But I don't find that there was any
7 bad faith involved. No one had ever -- as I look at the case in
8 retrospect it might have been nice if someone had asked if we --
9 someone had asked the Court to interpret that statute before
10 now. It might have saved everybody a whole lot of brain injury,
11 but it didn't.

12 So let's see, assuming that my trial only takes as
13 long as it's supposed to -- it's a construction case, so we'll
14 see -- we're looking at the week of October 12th, although the
15 12th is a holiday since we still celebrate Columbus Day in
16 Colorado. How about Wednesday the 14th of October at nine
17 o'clock? I can give you pretty much the rest of the day that
18 day.

19 MR. RAPSON: That works, Your Honor.

20 THE COURT: Work for everybody?

21 MR. CHRISTIAN: Yes, Your Honor.

22 THE COURT: All right. We'll resume at when -- we'll
23 resume Wednesday October 14th at nine o'clock in the morning.

24 I will get the order on those pending motions to you
25 today. Again my -- I'm embarrassed. I will issue a written

1 ruling on my interpretation of eight-four -- 8-4.105(1)(d).
2 It'll be short but I'll issue it. And, but there won't -- the
3 time for appealing that ruling, and I'll put this in the order,
4 will not run until we complete this hearing. All right? But
5 I'll enter a written ruling so that it's clear where we're going
6 -- coming from for that. All right.

7 Gentlemen, thank you very much. I appreciate
8 everybody keeping their tempers in check. Let's remember that
9 we need to do that. All right.

10 MR. RAPSON: Thank you, Your Honor.

11 THE COURT: Thank you, gentlemen.

12 MR. CHRISTIAN: Have a good weekend.

13 THE COURT: We're in recess. Thank you.

14 (Proceedings concluded 12:07 p.m.)

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CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

Janice Penfield
Janice Penfield

April 26, 2010

Western Deposition and Transcription, LLC
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**DISTRICT COURT
CITY AND COUNTY OF DENVER, COLORADO**

**1437 Bannock Street
Denver, CO 80202**

Plaintiff:

AMY OKAMOTO, et al.

Defendant:

BRADLEY PETROLEUM, INC., et al.

For Plaintiff:

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▲ COURT USE ONLY ▲

Case Number:

01 CV 5947

Courtroom 5

The matter came on for hearing on Monday, November 10, 2008, before the HONORABLE ROBERT L. MCGAHEY, JR., Judge of the District Court, and the following proceedings were had.

The above-captioned parties appear in person.

This is a complete transcript of the proceedings held on this date in this matter.

I N D E X

STATUS CONFERENCE:

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1 DENVER, COLORADO; MONDAY, NOVEMBER 10, 2008

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3
4 (Call to Order of the Court at 10:49 a.m.)

5 THE COURT: All right. 01 CV 5947, Okamoto versus
6 Bradley Petroleum. Entries of appearance, please?

7 MR. CHRISTIAN: Good morning, Your Honor. Lee
8 Christian appearing for the Plaintiff.

9 MR. HILBERT: And Otto Hilbert on behalf of the
10 Defendants.

11 THE COURT: This matter is on for a status conference
12 this morning. Mr. Hilbert, have you had a chance to read the
13 last motion for continued court supervision filed by the
14 Plaintiff?

15 MR. HILBERT: Yes, Your Honor.

16 THE COURT: Have any response to that?

17 MR. HILBERT: We, we have addressed each of the
18 claimed shortages and we're continuing to do so with Mr.
19 Christian.

20 Additionally with respect to each of those that have
21 gone before the Department of Labor they've been resolved to the
22 Department of Labor's satisfaction. I have various
23 correspondences from Amanda Neal. She's dealing with Mark
24 Schluder at Bradley Petroleum. And any inquires that Mr.
25 Christian has of me I get the file, research it, figure out if

1 any payment is owed and make such payment.

2 THE COURT: I have a question for you Mister --

3 MR. HILBERT: Yes.

4 THE COURT: -- inquiry -- Mister -- what is about the
5 law that your clients don't get?

6 MR. HILBERT: I don't know.

7 THE COURT: Well you can tell them that they better
8 start stopping. And in fact I want you -- I'll tell you what we
9 are going to do. Mister -- how, how is Bradley told its
10 employees about these orders? What has it done to make this,
11 this case and the orders about it known to its employees. In
12 other words, what have they done to say we can't do what we're
13 doing? Tell me about that, I want to hear that.

14 MR. HILBERT: They have been advised of the law and,
15 and, Your Honor --

16 THE COURT: No, no, no. Not what Bradley's done. I
17 want to know what they've told their employees.

18 MR. HILBERT: Well --

19 THE COURT: I want to know what notice they've given
20 their employees that they can't do this?

21 MR. HILBERT: What they've, what they've told their
22 employees is that they've changed the employment forum, Your
23 Honor, so that shortages, drive-offs, cannot be deducted.

24 THE COURT: Then why do they keep doing it?

25 MR. HILBERT: Well, they -- honestly, Your Honor, I

1 haven't found one where they have. I know that Mr. Christian's
2 files differ from my mine but when, as we go through these and I
3 have examples of the ones in his latest motion and
4 correspondences to me.

5 A perfect example is a Mr. Munoz (ph) who allegedly
6 was underpaid. There was a case filed against him for theft.
7 There was a judgment against him in Bradley Petroleum's favor
8 for \$1,806.50. The checks were held in accordance with the law.
9 He ultimately, Your Honor, was then paid after the 90 days,
10 despite the fact that Bradley Petroleum prevailed against him in
11 a criminal case and has restitution for \$1800.

12 THE COURT: Well then Mr. Christian, how come you're
13 telling me there was no case filed against Mr. Munoz?

14 MR. CHRISTIAN: Judge, this is the first I've learned
15 of this response regarding Mr. Munoz. Mr. Munoz would be the
16 exception rather than the rule.

17 Judge, this has been going on for going on 30 years.
18 I think the only reason that Bradley Petroleum even looks into
19 these files and tries to comply with the law is because you are
20 supervising this case.

21 THE COURT: Well, I'm going to keep supervising it.
22 You don't have to worry about that, Mr. Christian. The mere
23 fact that there continue to be allegations and with all due
24 respect to Mr. Hilbert, where he admits they have to go to --
25 when he is admitting that they continue to have to go the

1 Department of Labor to resolve stuff, it means that Mister -- it
2 means that Bradley doesn't get it.

3 MR. HILBERT: I, I --

4 THE COURT: I mean somebody doesn't get it.

5 MR. HILBERT: Respectfully, Your Honor, I disagree.

6 It means that there is a contest, that's true. But it
7 -- Mr. Munoz is a perfect example of where the contest is
8 resolved. He's been paid.

9 I have a number of others too that I'll go through for
10 you. I understand you've got a trial here, but I have not found
11 one of the people that Mr. Christian alleges was underpaid or
12 was charged for drive-offs or was charged for shortages. I have
13 not been able to verify any of those people being underpaid.

14 Another perfect example, Your Honor, is Eric Glimmer.
15 Mr. Christian alleges that he was underpaid. He was not. We
16 have cashed checks from Mr. Glimmer on April 28th, of '08 for
17 179.52, 159.52.

18 And, and so Your Honor, and another one where Mister,
19 Mr. Christian alleges that there were deductions with respect to
20 a Lisa Hughes. Our research indicates that Mrs. Hughes was
21 repaid for her uniform deposit, was repaid \$20 for a shortage
22 deduction and Your Honor, she was on salary but worked more
23 hours than if -- if you did the analysis of her salary, she was
24 not paid minimum wage. So Bradley Petroleum paid her more than
25 her salary because she worked harder.

1 So you, you know, the fact there's, there's obviously
2 a contention here, Your Honor, that Bradley's not acting in good
3 faith and I really --

4 THE COURT: I'm going to --

5 MR. HILBERT: -- take umbrage with that. We're trying
6 hard. There's a lot of turn-over. There's a lot of velocity in
7 this business but we are trying hard to make sure that we are in
8 compliance with that order.

9 THE COURT: Nobody's, nobody except Mr. Hilbert has
10 uttered the words "bad faith", including me and that's not
11 necessarily what I said. I said I don't understand why Bradley
12 continues to not comply with the law. That doesn't necessarily
13 mean that it's -- there's somebody in Bradley's headquarters
14 who is in charge of being venal.

15 MR. HILBERT: What I'm saying --

16 THE COURT: And just -- let me finish --

17 MR. HILBERT: I'm sorry, Your Honor.

18 THE COURT: -- Mr. Hilbert. What I don't -- and so I
19 don't care why it's happening. I just care that people continue
20 to allege it and that's what worries me.

21 It tells me that even if there is no deliberate bad
22 faith on the part of Bradley, I still have substantial concerns
23 that somehow the corporation or its minions don't get it, that
24 they are not -- that the people on the ground who have to
25 enforce this rule, these rules at the point of attack are still

1 doing the same old stuff. Pardon me, I almost got in trouble
2 there. And that's the problem I have Mr. Hilbert. I'm not
3 saying you haven't resolved problems. I, I -- that's
4 commendable. The question is why do they keep coming up?

5 And I understand that there's a contention with some
6 of this stuff but when you're telling me that people get
7 reimbursed for de -- for things and they've resolved it through
8 the Department of Labor, it means someone's still filing a
9 complaint. And if there is -- I'm glad they resolved to the
10 happiness of the Department of Labor. I'm not the Department of
11 Labor and I'm not going to give up -- this case up for the time
12 being.

13 I'll tell you what would me a whole lot happier is if
14 somewhere in the -- and you know this wasn't to start with,
15 because it got transferred here.

16 MR. HILBERT: Right.

17 THE COURT: I don't know why there hasn't been an
18 order requiring Bradley to inform its employees of stuff that
19 Bradley can't do. In other words, why isn't there a notice on
20 the notice board at every Bradley Petroleum station saying that
21 we can't deduct stuff from your paycheck.

22 MR. HILBERT: There is.

23 THE COURT: Is there?

24 MR. HILBERT: Yes.

25 THE COURT: Okay. Is that true, that true, counsel?

1 MR. HILBERT: It's part of our settlement.

2 MR. CHRISTIAN: I think it is part of the settlement.

3 I, I don't know if they are in compliance --

4 THE COURT: Have you seen a copy of --

5 MR. CHRISTIAN: -- or not.

6 THE COURT: -- the notice?

7 MR. CHRISTIAN: I have not, Judge. And I don't know
8 if they -- they're required by law to post the Colorado Wage Act
9 poster. I don't know if that's what we are dealing with, but I
10 agree with Your Honor. It just keeps coming up.

11 I'm certain that there's under-reporting. Most of
12 these individuals have less than a high school education, and
13 they probably don't even know what the Department of Labor is
14 and they probably just expect that when the deductions are made,
15 they have to live with them. So --

16 THE COURT: Is the only thing that's posted that
17 standard Colorado Wage Act poster, Mr. Hilbert? Is that what
18 they've got?

19 MR. HILBERT: Yes. There's nothing that has been
20 specifically tailored to this case. But we're --

21 THE COURT: Go ahead.

22 MR. HILBERT: But the settlement agreement requires
23 that we post that in each of our places and we have.

24 THE COURT: Okay.

25 MR. HILBERT: But their employment agreement says

1 that, you know, we have to abide by the law and deductions
2 and --

3 THE COURT: Yeah.

4 MR. HILBERT: -- and shortages --

5 THE COURT: Yeah. Okay. And it tells them
6 specifically that they can't be -- does it say that we can't
7 deduct for shortages, we can't -- does it say that in the
8 employment agreement?

9 MR. HILBERT: I can't --

10 THE COURT: I bet it doesn't.

11 MR. HILBERT: I can't specifically say that.

12 THE COURT: Okay. Because that would make me happier.
13 I want to see, I want the two of you to talk about
14 some form of notice that can be given to Bradley's employees
15 because maybe that'll stop this. The employees need to know
16 what their rights are and the Colorado Wage Act poster does not
17 -- is not specific enough given the issues in this case that
18 continue to be alleged.

19 What we are going to do is we are going to set this
20 case over for about 90 days, and when you come back I want to
21 see some proposal for some kind of notice to be given to the
22 employees either by mail or as an attachment to the employment
23 contract or to be posted along with the Wage Act form about --
24 that deals with the specifics that are barred by this case.

25 MR. CHRISTIAN: Your Honor, if I must also request

1 that Bradley do an audit of their books to determine all the
2 miscellaneous deductions that have taken place since the
3 beginning of 2007, with notice to me as to whether the
4 individual -- what they were for and what the individuals --
5 whether they have been paid for those, and so that I can --

6 Rather than the individual having to go to the
7 Department of Labor about this, I would like to know what has
8 occurred in the last two years at Bradley Petroleum as far as
9 miscellaneous deductions that occurred, that have occurred and
10 what they've done about them if anything.

11 Miscellaneous deductions is an entry that I notice on
12 paychecks going to the Department of Labor and that's why we've
13 come back here. It's an entry just like a tax line or FICA (ph)
14 and they are almost always a leap --

15 THE COURT: I think that's a reasonable request given
16 the history of this case. Now I don't know that they can
17 complete that in 90 days.

18 MR. CHRISTIAN: That's -- we may want six months
19 Judge.

20 THE COURT: Well let's just -- I'm going to order it.
21 I'll order it no later than six months to be produced and I'll
22 want a status report in 90 days on how they are doing with it.

23 If you'd draft up an order, Mr. Christian, outlining
24 what we've talked about today --

25 MR. CHRISTIAN: Thank you, Your Honor.

1 THE COURT: -- and submit it to me.

2 Mr. Hilbert, I'd appreciate it if you would approve
3 that to form. I know you won't approve it as to content but I
4 would appreciate it if you would approve it as to form, please.

5 MR. HILBERT: Certainly, Your Honor.

6 THE COURT: And then I'll -- that order will be nun
7 pro tunc today. Everybody knows, I, I -- you guys have been in
8 here enough, it will take you at least ten working days after
9 you file it. It will probably take seven to ten working days
10 after you file it, Mr. Christian, for it to reach my desk but
11 I'll sign it nun pro tunc today. All right?

12 MR. CHRISTIAN: Thank you, Your Honor. Thank you for
13 your time.

14 THE COURT: Thank you.

15 MR. HILBERT: Do we want to set a time for that
16 hearing?

17 THE COURT: Oh, yeah. I'm glad one of us is awake,
18 too bad it isn't me, Mr. Hilbert. I'm -- I'm already moving on
19 to my next --

20 THE CLERK: Do we need a hearing in 90 days or a
21 hearing --

22 THE COURT: No. No. I want a status conference, just
23 what we are doing here. Just the three -- we're just going to
24 talk.

25 MR. HILBERT: Okay.

1 THE COURT: All right. And Mr. Hilbert, it would help
2 me if at the time that you come back -- for example you were
3 able to deal with two or three, two or three of the people that
4 are mentioned in today's motion. If you could just give a
5 status report. I'll take a written status report. I'd like to
6 have some idea of how Bradley processes these when they get the
7 complaints. All right?

8 MR. HILBERT: I'll address each of them.

9 THE COURT: Again, because it wasn't my case to start
10 with and --

11 MR. HILBERT: Certainly.

12 THE COURT: -- that would help me.

13 All right, 90 days what's that February. Wow, no
14 January. Oh good, I'm duty judge that week. How about Thursday
15 the 15th of January at one o'clock in the afternoon? We can do
16 that?

17 MR. HILBERT: I'm out of town that --

18 MR. CHRISTIAN: I'm as well, Your Honor.

19 THE COURT: All right. That's too bad. That's my
20 duty week, it easy, easy to set that week. January 21st at one
21 o'clock?

22 MR. HILBERT: Fine with me, Your Honor.

23 MR. CHRISTIAN: What time, Your Honor?

24 THE COURT: At 1:00, 1:00 p.m.

25 MR. CHRISTIAN: That would be fine.

1 THE COURT: All right. January 21st at one o'clock.
2 Thank you, gentlemen. I appreciate you're coming over here this
3 morning.

4 MR. HILBERT: Thank you for taking us during your
5 trial.

6 THE COURT: That's all right.

7 MR. CHRISTIAN: Thank you, Your Honor.

8 THE COURT: Thank the lawyers, there the ones,
9 actually you should thank the jury but that -- we won't be able
10 to do that. All right.

11 (Proceedings concluded at 11:03 a.m.)

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CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

Janice Penfield
Janice Penfield

April 26, 2010

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