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Posted on Thu, May. 29, 2008

## NutriSystem named in overtime lawsuit

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NutriSystem Inc. failed to pay overtime to an estimated 400 sales associates, according to a lawsuit filed yesterday in U.S. District Court in Philadelphia by a former sales associate, Adrian E. Parker, of Philadelphia.

Parker is seeking class-action status on behalf of himself and an estimated 400 call center salespeople who, according to the suit, were paid a minimum rate of \$10 an hour, but could earn more, supplanting the base pay with a flat rate of \$18 to \$40 for every sale made. Class members would include all associates employed as salespeople as of May 28, 2005.

In its annual report, NutriSystem said sales associates are paid primarily on commission. Commissioned salespeople are typically not eligible for overtime under federal labor law.

"We feel the compensation plan is in accordance with applicable law, both state and federal," said NutriSystem's lawyer, Sarah E. Bouchard of Morgan Lewis in Philadelphia.

Company spokeswoman Sheri Keiles said NutriSystem just completed an employee satisfaction survey and received no complaints about the company's compensation structure.

The lawsuit said that because of the way the flat rate is paid, it is not actually a commission. The plaintiff's lawyer, Shanon Carson, of Berger and Montague in Center City, said the associates should be paid overtime according to a calculation based on their flat-rate compensation.


Plaintiff's co-counsel on the case is Daniel L. Cevallos, of Philadelphia.

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