

No. A08-1993

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STATE OF MINNESOTA  
IN SUPREME COURT

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SARAH ERDMAN,  
individually and on behalf of  
others similarly situated,

Appellants,

vs.

LIFE TIME FITNESS, INC.,  
Respondent.

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RESPONDENT'S BRIEF AND ADDENDUM

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF THE LEGAL ISSUES

Question 1: Where a managerial employee enters an employment contract which promises he will be paid a set amount of annual salary, in semi-monthly installments, and he actually receives the full amount of that promised salary, both on a yearly basis and as the year goes along, is he “guaranteed a predetermined wage for each workweek” “through agreement with [his] employer,” in accordance with Minnesota Administrative Rule 5200.0211?

How the issue was raised: As explained in more detail, with record citations, in the Statement of the Facts which follows, the parties’ cross-motions for summary judgment filed with the district court focused on various issues related to this question.

How the trial court ruled: In its order of September 10, 2008, the district court failed to credit the undisputed material facts demonstrating that each Appellant had entered into an employment contract which promised they would receive – and on the basis of which they actually did receive – an annualized amount of base salary paid out in installments over the course of the year. Instead, the district court erroneously conflated “salary” and “bonus,” and held that because Appellants’ employment contracts also contained a bonus program which included a provision allowing Respondent to recover any *bonus* overpayments through paycheck

deductions, this meant their “base pay [read: salary] was always at risk for reduction [and] the employee could not have been assured a predetermined wage for each workweek.” (Appx. 8.)<sup>1</sup>

How the issue is preserved for appeal: On November 12, 2008, the district court granted Respondent’s motion of September 23, 2008 and certified as “important and doubtful” three questions presented in its September 10, 2008 order denying Respondent’s Motion for Summary Judgment, including the question stated above. (R.A. 93.) Respondent filed a notice of appeal on November 14, 2008. (R.A. 94-95.) The Court of Appeals reversed the district court, properly considering all undisputed material facts and finding that Appellants were “guaranteed a predetermined wage for each workweek” under Respondent’s practice of “designating and paying guaranteed base salaries.” (Appx. 10-21.) The Court of Appeals noted Respondent’s position that “deductions from paychecks to recover unearned bonus advances did not affect these guaranteed salaries,” and “agree[d] that [Appellants] were guaranteed a pre-determined amount for each work week.” (Appx. 19.) The Court of Appeals additionally observed that the Minnesota Fair Labor Standards Act, Minnesota Statutes section 177.21, *et seq.* (“MFLSA”), and its administrative regulations (including Rule 5200.0211) are

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<sup>1</sup> Citations herein to Appellants’ Appendix are designated as “Appx. \_\_\_.” Citations herein to Respondent’s Appendix are designated as “R.A. \_\_\_.”

“directed to the amounts of wages that must be paid” and do not “dictate *when* those wages must be paid”; the latter is addressed in Minnesota Statutes Chapter 181. (Appx. 19-20 (emphasis in original).) Finally, the Court of Appeals distinguished Rule 5200.0211, which provides that overtime-exempt employees be “*guaranteed* a predetermined wage *for* each workweek,” from an analogous federal administrative rule, which expressly requires that overtime-exempt employees “regularly *receive[] each pay period . . . a predetermined amount.*” (Appx. 20; additional emphasis added.) The Court of Appeals therefore reversed and remanded for entry of judgment in Respondent’s favor.

A petition for review identifying this issue was filed on September 24, 2009, and granted by this Court by order of November 17, 2009. (R.A. 240-46, 253.) If the Court resolves Question 1 by affirming the Court of Appeals, there is no need to reach either of the two additional questions identified below.

Apposite authority: Minnesota Rule 5200.0211; *Milner v. Farmers Ins. Exchange*, 748 N.W.2d 608 (Minn. 2008).

**Question 2:** Where an employer makes a paycheck deduction to recover “claimed indebtedness,” such as an overpayment of any sort, but fails to obtain prior written authorization for such deduction, is an affected employee’s remedy under Minnesota Statutes section 181.79 (which expressly

deals with such deductions from wages and specifies damages in double the amount of the improper deduction) or Minnesota Rule 5200.0211 (which deals with exemptions from overtime requirements)?

How the issue was raised: As explained in more detail, with record citations, in the Statement of the Facts which follows, Respondent's summary judgment papers filed with the district court raised this issue.

How the trial court ruled: The district court misconstrued the plain text of Minnesota Statutes section 181.79 in holding that paycheck deductions to recover overpaid bonus advances were not deductions to recover "claimed indebtedness running from employee to employer" within the meaning of section 181.79, and therefore that section 181.79 was not implicated by the facts. (Appx. 8.) The district court compounded its error by ignoring this Court's instruction in *Milner v. Farmers Insurance Exchange*, 748 N.W.2d 608 (Minn. 2008), that Minnesota's wage-and-hour laws must be construed in light of the overall legislative context, rather than in isolation.

How the issue is preserved for appeal: This was among the three questions certified for appeal by the district court's order of November 12, 2008. (R.A. 77-93, 103-04.) The Court of Appeals properly held that the deductions made by Respondent to recover bonus overpayments were among the type of deductions contemplated by Minnesota Statutes section 181.79, (Appx. 17.), and properly considered the interaction of section 181.79 and

Rule 5200.0211 in construing Rule 5200.0211, but concluded only that there was no “direct conflict” between the respective remedies outlined in section 181.79 and Rule 5200.0211 and did not otherwise discuss the nature of any Rule 5200.0211 remedy, because it found no Rule 5200.0211 violation. (Appx. 17-19.)

Review by this Court was conditionally sought. (See R.A. 252 (section titled “Conclusion and Conditional Request for Cross-Review”).) As explained more fully in Part II *infra*, this Court did not explicitly rule on Respondent’s Conditional Request for Cross-Review, but the issue is fairly included in the issue raised in Appellants’ petition which was granted by this Court.

Apposite authority: *Milner v. Farmers Ins. Exchange*, 748 N.W.2d 608 (Minn. 2008); Minnesota Statutes § 181.79; Minnesota Rule 5200.0211.

**Question 3:** If Minnesota Rule 5200.0211 is held to provide a remedy for deductions to recover “claimed indebtedness” as contemplated by Minnesota Statutes section 181.79, should that remedy be tailored to the time period of the actual deductions made and limited to the individuals who actually had deductions taken from their paychecks?

How the issue was raised: As explained in more detail, with record citations, in the Statement of the Facts which follows, Respondent’s summary judgment papers filed with the district court raised this issue.

How the trial court ruled: The district court held that the remedy under Minnesota Rule 5200.0211 is the broad destruction of exempt status for all individuals who “possib[ly]” could have had paychecks reduced at any time. The district court ignored the Minnesota legislature’s carefully chosen scheme under which the remedy for an improper pay deduction is narrowly tailored to redressing the actual improper deduction and, accordingly, is limited to the individuals who actually experienced the improper deductions and the time period of such deductions.

How the issue is preserved for appeal: This was among the three questions certified for appeal by the district court’s order of November 12, 2008. (R.A. 77-93, 103-04.) Although briefed to the Court of Appeals, the Court of Appeals chose not to address this issue, given its resolution of the meaning of “guaranteed a predetermined wage for each workweek” and its holding that Respondent’s pay practices fully complied with Rule 5200.0211. (Appx. 16.)

Review by this Court was conditionally sought. (R.A. 252.) As explained more fully in Part II *infra*, this Court did not explicitly rule on Respondent’s Conditional Request for Cross-Review, but the issue is fairly included in the issue raised in Appellants’ petition which was granted by this Court.

Apposite authority: *Milner v. Farmers Ins. Exchange*, 748 N.W.2d 608 (Minn. 2008); Minnesota Statutes § 181.79; Minnesota Rule 5200.0211.

## STATEMENT OF THE CASE AND OF THE FACTS

### A. Introduction.

The principal question this case presents is straightforward: Where a managerial employee enters an employment contract which promises he will be paid a set amount of annual salary, in semi-monthly installments, and he actually receives the full amount of that promised salary, both on a yearly basis and as the year goes along, is he “guaranteed a predetermined wage for each workweek” in accordance with Minnesota Administrative Rule 5200.0211?<sup>2</sup>

Appellants’ brief attempts to distort this uncomplicated question by injecting immaterial facts having no support in the record, and by failing to present all of the material facts. The sections which follow provide this Court with the relevant factual and procedural background.

### B. Statement Of The Case.

As is developed more fully in the Statement of the Facts *infra*, Appellants are a certified class of current and former executive and managerial employees who worked for Respondent Life Time Fitness, Inc.

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<sup>2</sup> For the Court’s convenience, Minnesota Rule 5200.0211 and Minnesota Statutes section 181.79 are set forth in their entirety in the attached Addendum at Add. A and Add. B.

("LTF") in Minnesota. During the time period relevant to this lawsuit, Appellants each had contracts which promised a set amount of annual salary, paid semi-monthly. In addition to this promised salary, their employment contracts also provided that they were eligible to receive monthly bonus advances pursuant to LTF's managerial bonus plan.

The crux of Appellants' claim is that the *bonus plan* component of their employment contracts violated Minnesota's wage-and-hour laws pertaining to *salaries* of overtime-exempt employees. Specifically, Appellants contend that, because their managerial employment contracts contained a provision reserving to LTF the right to recover bonus overpayments (*i.e.*, bonus payments advanced earlier in the year but not actually later earned) by deductions from future paychecks (rather than, for example, by requiring Appellants to write personal checks to LTF to repay those unearned amounts), this means they were *never* "guaranteed a predetermined wage for each workweek," in alleged violation of Minnesota Rule 5200.0211. (*See* Appellants' Brief 3-5.) They seek to recover retroactive overtime pay for all hours they worked over 48 in a workweek during the two-year class period.

On September 10, 2008, the Hennepin County District Court (the Honorable Marilyn Brown Rosenbaum) resolved the parties' cross-motions for summary judgment in Appellants' favor. (Appx. 1-9.) The district court ruled that LTF's bonus plans violated Minnesota Rule 5200.0211, and that, as a

result, Appellants had been improperly classified as overtime-exempt for the entire time period they were covered by such plans. (Appx. 7-8.) The court ruled that all Appellants were entitled to retroactive overtime pay for all hours worked over 48 in a workweek over the course of the entire 100-week class period. (*See id.*)

By motion made on September 23, 2008, LTF requested the district court to certify that order for interlocutory appeal as “important and doubtful” pursuant to Minn. R. Civ. App. P. 103.03(i). (R.A. 77-92.) Because of the importance of the questions presented, LTF also determined it would seek discretionary review of that order from the Court of Appeals.

Accordingly, when the 30-day period allowed for seeking such review was coming to an end without a ruling from the district court on the certification request, LTF filed a petition for discretionary review pursuant to Minn. R. Civ. App. P. 105 with the Court of Appeals on October 10, 2008, and also sent a letter on that date to the district court, apprising it of that filing and providing copies thereof.

Thereafter, on November 12, 2008, the district court certified its order for appeal under Rule 103.03(i), finding the questions presented to be important and doubtful.<sup>3</sup> (R.A. 93.) On November 14, 2008, LTF filed a

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<sup>3</sup> Although the district court did not set out in its November 12 order the text of the questions it certified, the Court of Appeals ruled on November 24,

Notice of Appeal (R.A. 94-95), and on November 26, 2008, the Court of Appeals denied LTF's Rule 105 petition on the grounds that the issues presented therein were already on appeal via the Rule 103.03(i) certification and the appeal perfected therefrom. (R.A. 105-06.)

On August 25, 2009, the Court of Appeals (Chief Judge Touissaint, Judge Halbrooks, and Judge Willis) issued a unanimous decision reversing the district court's grant of summary judgment in favor of Appellants and remanding with instruction to enter summary judgment in favor of LTF. (Appx. 10-21.) The Court of Appeals found the district court had erred in its application of Minnesota Rule 5200.0211 to the facts of this case. Specifically, the Court of Appeals agreed with LTF that "deductions from paychecks to recover unearned bonus advances" did not affect the fact that

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2008, that it would construe the district court's order as incorporating the three certified questions as presented in the proposed order LTF had submitted to the district court. (R.A. 103-04.) Those questions are set out *in haec verba* at page 84 of Respondent's Appendix. In summary, they are: (1) whether paycheck deductions to recover bonus overpayments are deductions made to recover "claimed indebtedness running from employee to employer," such that Minnesota Statutes section 181.79 applies; (2) where an employer makes a deduction to recover a bonus overpayment, but fails to obtain prior written authorization for such deduction, does an affected employee's remedy lie under section 181.79, which expressly provides a specific remedy for such an alleged wrong, or under Minnesota Rule 5200.0211, which deals with exemptions from overtime requirements; and (3) if Rule 5200.0211 provides a remedy for deductions contemplated by section 181.79, what is the scope of that remedy. (See R.A. 84.)

“the class members were guaranteed a predetermined amount [of salary] for each workweek.” (Appx. 19.)

The Court of Appeals also gave a partial answer to the second certified question, which had asked: Does the availability of a specific remedy under Minnesota Statutes section 181.79 preclude a remedy under Minnesota Rule 5200.0211? (Appx. 17-19.) The Court of Appeals responded to that question by concluding that section 181.79 and Rule 5200.0211 were not in “irreconcilable conflict” (Appx. 18; *see also* Appx. 19 (“we find no direct conflict between [them]”)), but then said no more about the nature of any possible remedy under Rule 5200.0211 (other than to say there could be no double recovery) because it found Rule 5200.0211 was not violated here. (Appx. 18-19.)

The Court of Appeals expressly declined to visit the third question, which asked: If Minnesota Rule 5200.0211 provides a remedy for the alleged wrongdoing, what is the scope of that remedy? Because the Court of Appeals properly found that Respondent’s employment contracts fully complied with Rule 5200.0211, there was no need to reach this question. (Appx. 16.)

Appellants filed a Petition for Review on September 24, 2009. (R.A. 240-46.) They asked this Court to review the Court of Appeals’ resolution of the meaning of the phrase “guaranteed a predetermined wage for each workweek,” as that phrase is used in Rule 5200.0211. (*Id.*)

On October 13, 2009, LTF filed its Response to Petition for Review, which outlined numerous reasons why LTF did not believe Appellants' petition was well-taken. (R.A. 247-52.) LTF's Response also included a Conditional Request for Cross-Review asking this Court to review all of the issues raised to the Court of Appeals if it were to grant Appellants' petition. (R.A. 252.)

On November 17, 2009, this Court granted the Petition for Review. (R.A. 253.) That Order neither expressly granted nor denied Respondent's Conditional Request for Cross-Review, but that procedural observation need be of no moment here, inasmuch as the same issues are also fairly included in the question presented by the Petition itself, and must be part of a proper analysis under this Court's *Milner* decision, as detailed in Part II *infra*.

**C. Statement Of The Facts.**

Appellants' presentation of the "facts" largely twists them upside down, attempting to suggest that LTF is a company bent on exploiting its workers. They misleadingly suggest, for example, that the bonus advance plan was adopted for a nefarious purpose: to force all employees covered by the plan to work "lots of overtime" out of a fear that they would not otherwise receive their salary payments. (Appellants' Brief 5.) They claim that their "salaries" were "conditional" and "always at risk." (*Id.*) All of that, however, is just rhetoric, contradicted by the record.

The undisputed record evidence developed by the parties and presented to the district court shows that none of the above is true, either in theory or in practice. First of all, the bonus advance plan involved *bonus*, not *salary*. It was a method to allow employees to enjoy receiving some of their bonus money “early,” before it was actually earned at year end. The amount of their annual *salary* was not affected. The terms of the plan make that very clear, and the record facts show that 100% of each employee’s promised annual salary was always paid out to that employee. Second, under the bonus advance plan, no employee was ever shorted on money due him or her, either at year’s end or as the year went along, nor could he or she be. The plan provided that if a bonus payment had been advanced – *i.e.*, already received by the employee – but was not eventually earned, the Company could have the employee pay that unearned advance back. The mechanism provided was a deduction from a future paycheck – rather than requiring the employee to make out a check of his or her own – but the employee was never “short” of the total amount of money due him or her at that point in the year, and was never at risk of that happening.

The following discussion details the actual record evidence material to this Court’s resolution of the instant appeal:

**1. LTF's Bonus Plans, Which Were Created By Some Of The Appellants, Were Designed To Provide More Frequent Payment Opportunities.**

LTF is headquartered in Chanhassen, Minnesota and owns and operates over 70 health and fitness clubs nationwide, including 25 within Minnesota. (R.A. 141-42.) Appellants are a certified class of 126 current and former executives and managers of LTF, occupying 83 different positions ranging from club-level managers of discrete departments all the way up to and including the senior executives of the Company, including its Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and General Counsel (for the Court's convenience, the entire group is hereinafter referred to collectively as "managerial employees").<sup>4</sup> These managerial employees are classified by LTF as exempt from the overtime requirements of the MFLSA and the federal Fair Labor Standards Act of 1938, 29 U.S.C. section 201, *et seq.* ("FLSA"), and they are paid a salary rather than by the hour. (R.A. 12.) As managerial employees, they are expected to work as many hours as necessary to satisfactorily perform their job responsibilities,

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<sup>4</sup> This case was certified as an opt-out class action on June 27, 2008, but, in light of the parties' then-pending cross-motions for summary judgment and this subsequent appeal of the district court's summary judgment order, the district court has not yet directed that notice be issued to class members. Accordingly, the opt-out choice has not yet been put to any of the putative class members.

and their salaries are intended to compensate them for all the hours they need to work. (*Id.*)

Attracting and retaining talented employees is important to LTF's continued success in the competitive health and fitness market, and the Company's managerial salary and bonus structure was created with this goal in mind. (R.A. 120-21.) By contract, in addition to receiving an annual salary paid out in installments twice per month, managerial employees are eligible for an annual bonus. That bonus is not finally determined until year's end, but, to provide employees with more frequent payment opportunities rather than merely a year-end lump-sum, its estimated amount is given out in advance in monthly installments, based on year-to-date results versus year-to-date goals.<sup>5</sup> (*See, e.g.,* Appx. 71-82, 126-37.) In other words,

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<sup>5</sup> Two general measures of results versus goals are used in calculating eligibility for monthly bonus advances: revenue and EBITDA (earnings before interest, taxation, depreciation, and amortization; in other words, revenue minus expenses, or a measure of profitability). (R.A. 111; Appx. 126, 130, 134.) These targeted goals vary depending on position. For example, the Spa Department Head bonus plans pursuant to which Named Plaintiff Erdman was eligible to receive bonus advances during the eight-month period she was in that position were based on the actual results versus goals of the Savage fitness center's spa department as a whole. (Appx. 126, 130, 134.) For General Managers, eligibility for bonus advances was based on the actual results versus goals of their club as a whole. (R.A. 112; Appx. 118.) For LTF's corporate officers, eligibility was based on the results versus goals of the entire enterprise. (Appx. 149.) Employees' actual results were influenced by several factors, including the size and location of the fitness center at which they were employed, fitness-center usage dynamics and seasonal variations, the budgeting process, the maturity of the fitness center, and the

LTF wanted to put more bonus money into its managers' pockets earlier in the year, rather than forcing them to receive their bonuses just once every 12 months.<sup>6</sup>

**2. The Salaries Contractually Promised To Appellants Were Always Fully Paid, And Were Not Affected By The Bonus Plans.**

The bonus plans at issue contained a written provision informing employees that LTF reserved the discretion to recover these advanced bonus installments (if it so chose) by deductions from future paychecks, if the bonus was not actually earned. (Appx. 126, 130, 134; R.A. 125-27.) As the plans make clear, only the amount of the bonus overpayments, if any, could be recovered by such deductions; the total amount of an employee's annual salary would always be fully paid, both on a yearly basis and as the year went along. (Appx. 126-37; R.A. 108, 125-27.)

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results of the particular fitness center as a whole; as to some of these, their individual efforts as managers could make a difference, and, as to others, not. (R.A. 111-12, 114, 116.) Because of this, a poor performer could receive a bonus advance by virtue of working at a high volume club, whereas a stellar performer might receive no bonus advance if she worked at a club with low customer-usage. (R.A. 111.)

<sup>6</sup> These bonus plans were not created by management and foisted upon lower-level employees, as falsely suggested in Appellants' recitation of "facts." They were created and administered by a group of senior managerial employees (including LTF's Chief Financial Officer, Chief Operating Officer, and General Counsel, all of whom are included amongst the certified class) and they applied to all managerial employees, including their creators. (R.A. 110-12, 163-66.)

Here is an example of how the contractual payment scheme worked in practice: Named Plaintiff Erdman was covered by a contract which promised that she would receive an “annual base salary” of \$33,000.00 for calendar year 2005. (Appx. 130.) That document also informed Erdman that she was eligible to receive an “annual target bonus” of \$10,000.00. The bonus amount was a “target” rather than a guaranteed amount because the bonus could (and would) vary based on her department’s actual performance versus its goals. (See, e.g., *id.* at 130-33.) For example, if her department’s revenue was 150% of its established goal, Erdman would be entitled to 200% of the “annual target bonus,” or \$20,000.00. If its revenue was below 90% of its established goal, Erdman would not be entitled to any bonus. (See *id.* at 131.) In contrast, Erdman’s salary was not a “target”; it would not go up or down. She was promised to receive it regardless of how she fared relative to her “annual target bonus.” (See *id.* at 130-33.) On a twice monthly basis, she was to receive a salary payment equivalent to 1/24 of her annual salary no matter what. And she did actually receive these salary payments. (See, e.g., R.A. 108, 143-59.)

Erdman was not contractually promised to receive *any* bonus payments. The bonus plan clearly communicated that, if her year-to-date performance versus goals reached a certain level, she might receive at the end of a given month a bonus advance based on her projected actual annual

bonus. (*E.g.*, Appx. 130-33.) For example, if at the end of June 2005 Erdman's department was at 100% of its year-to-date goal, then she would be eligible to receive at the end of the following month (July) a bonus advance payment equivalent to half of her "annual target bonus" (6 months' worth), or \$5,000.00. Her actual monthly bonus advance payment would be calculated by taking the year-to-date bonus "earned" and subtracting all bonus advances she had received earlier in the year. (*See id.*)

As the contract clearly states, any such payment was an advance that could be recovered by LTF if it turned out that she had been advanced more bonus money over the course of the year than she had actually earned at the end of the year or at any given point during the year. (Appx. 129, 130, 134; R.A. 125-27.) If Erdman had been advanced \$10,000.00 over the course of the first eight months of the year and it turned out that, at the end of the tenth month, she had only "earned" a \$9,000.00 bonus on a year-to-date basis, she was, at that point, overpaid \$1,000.00. Under the contract, LTF, if it so chose, could recover that overpaid and unearned amount by deducting it from some of her remaining paychecks in that calendar year. If this happened, it would not mean that LTF would be failing to pay her promised salary installment; rather, LTF would be paying her promised salary installment and, at the same time, deducting from her paycheck some or all of the

amount of the bonus overpayment that she had earlier received but did not earn.

The paycheck stubs given to Erdman and the other Appellants confirm this. For example, on December 9, 2005, Erdman was issued a paycheck that showed gross amounts of \$1,375.00 of “regular” pay (meaning “salary”), \$235.11 of “commissions,” and -\$500.00 of “performance” pay (meaning “bonus”). (R.A. 155.) Her promised salary installment payment, as communicated at the top of her paycheck stubs, was \$1,375.00 per pay period. (*See id.*). In other words, Erdman could see that she was being paid the full amount of her promised salary installment for that pay period. The fact her paycheck was being reduced by \$500.00 to recover an earlier bonus overpayment did not affect this salary installment payment.

**3. The Practical Operation Of The Bonus Plans Demonstrates That Appellants’ Salaries Were Truly Guaranteed For Each Workweek.**

Although from January 1, 2004 through March 3, 2006 the Company’s bonus plans contained a provision authorizing LTF to recover bonus overpayments (R.A.108, 127-28),<sup>7</sup> the only time LTF actually chose to

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<sup>7</sup> After LTF learned that an employee believed its bonus plans containing this proviso violated the “salary-basis” test contained in federal law (*see* discussion of federal lawsuit filed February 8, 2006, *infra* note 11), out of an abundance of caution (even though the Company believed the plans and this proviso were lawful, and still so believes (*see* R.A. 109, 115-16)), LTF decided to and did alter the plans so that no recovery of bonus overpayments would

exercise its right to recover this indebtedness was in November and December 2005, when 12 Minnesota managerial employees had deductions taken from certain of their paychecks to recover some of the amounts of bonus advances they had received, but had not earned. (R.A. 137-38.)<sup>8</sup>

Around summer of 2005, LTF noticed that several individuals had been advanced significantly greater bonus payments than they had earned on a year-to-date basis. (R.A. 117.) LTF decided to take a “wait-and-see” approach to see if the total of the bonus amounts actually earned would grow enough to get back in line with the advances that had been paid. (*Id.*) Thereafter, it became clear that the earned bonus amounts for certain employees would be unable to “catch-up” with the advances they had earlier been paid, and that the overpayments would thus not right themselves by year’s end. (*Id.* at 118.)

The Company provided advance notification to affected employees that it intended to deduct a portion of the overpaid bonus amounts from future paychecks. In late 2005, Named Plaintiff Erdman and 11 other Appellants then had deductions taken from certain of their paychecks to recover some of

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be deducted from paychecks. (R.A. 127-28.) These revised plans were rolled out on March 3, 2006. (*Id.*)

<sup>8</sup> LTF had the opportunity to make deductions to recover unearned bonus overpayments prior to these late 2005 deductions, but affirmatively chose not to. (R.A. 117-18.)

the amounts of bonus advances they had received, but had not earned. (R.A. 137-38.)

Despite these deductions, every one of the 12 affected managerial employees received 100% of his or her promised 2005 yearly base salary (as they had every other year). (R.A. 108.) This was necessarily the case under the bonus plans, which authorized deductions only to recover the amounts of *bonus overpayments*. Every one of the 12 had earlier in the year been advanced bonus payments totaling at least the amount of the deductions.<sup>9</sup> In the case of Named Plaintiff Erdman, for example, even after LTF recovered \$1,000.00 of bonus payments it had previously advanced to her but she did not ultimately earn, she ended up keeping approximately \$200.00 in bonus she had already been paid but did not earn under the terms of her bonus plan. (Appx. 130, 134; R.A. 143-60.) As did all the others, she also received 100% of her annual base salary. (R.A. 108.)

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<sup>9</sup> Appellants' phrasing of the issue presented on appeal (*see* Appellants' Brief 1) thus does not comport with the record facts. As the record evidence catalogued above demonstrates, this is not a case where an employer "reduce[d] one paycheck" and "increase[d] another paycheck in the same amount later in the year" in an attempt to preserve overtime-exempt status. Rather, LTF put more money into managers' pockets early in the year by advancing them bonus payments. Under the express language of the contract, the amount of salary payments necessarily remained constant over the course of the year. *See* Part I.C *infra* (explaining why Appellants' "parade of horrors" argument is inaccurate and unpersuasive).

The undisputed record evidence further demonstrates that of the 126 managerial employees in the entire class of Appellants, 114 had no bonus overpayment deductions made. (R.A. 137-38.) Of the 12 who actually had a paycheck deduction in late 2005, four had one paycheck reduced, six others had two reduced, and two had deductions taken from three paychecks. (*Id.*) Collectively, there were a total of 22 paycheck deductions across four pay periods. (*Id.*)

No paycheck deductions occurred for anyone in at least 94 of the 100 weeks in the class period, including the first 82 weeks of the longest possible class period prior to the first deductions, which were made on November 9, 2005. (*Id.*) Notably, there has never been a claim from Appellants that they were somehow entitled to keep any bonus that they did not earn, or that they in fact earned the bonus advances that are at issue.<sup>10</sup>

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<sup>10</sup> Appellants have asserted additional so-called “facts” in an attempt to enhance the atmospherics of their theory. For example, Appellants contend that LTF’s bonus plans were intended as a corporate directive for employees to “put in lots of overtime” without receiving overtime pay. (*Cf.* Appellants’ Brief 5.). This contention, however, is based solely on an email from one Illinois employee to one other Illinois employee, dated almost two years after the bonus plans went into effect, explaining how, in her view, it was better to work harder earlier in the year to help insure she would stay eligible for a bonus. (*See* Appx. 195.) In addition to being misleading, unsupported by the record evidence, and very much in dispute, these and similar “facts” are not material to the Court’s resolution of the legal questions presented on appeal.

#### 4. Appellants' Lawsuit And The District Court's Denial Of LTF's Motion For Summary Judgment.

Named Plaintiff Erdman commenced this action on March 30, 2007, contending that LTF's bonus plans violated the MFLSA and seeking to represent an "opt out" class of all 126 Minnesota managerial employees covered by those plans during the class period.<sup>11</sup> (R.A. 2, 5.) Following its certification of Erdman's proposed class, the district court entertained the parties' cross-motions for summary judgment as to liability.

Appellants alleged the bonus recovery provision in the bonus plans violated Minnesota Rule 5200.0211, which provides, in relevant part: "A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek." They contended the *bonus* plan made their *salary* "conditional" rather than "guaranteed," because there was a possibility LTF could make paycheck reductions to recover the amounts of previously-advanced but unearned *bonus*. Appellants further contended that the proper remedy was retroactive overtime pay for all "overtime" hours – any hours in

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<sup>11</sup> The roots of this lawsuit can be traced back to February 2006, when the Ohio lawyers representing Appellants here filed a lawsuit in Ohio federal court under the federal FLSA, seeking to represent an "opt in" class action of approximately 350 managerial employees nationwide (including all 126 Appellants here). Only 26 individuals opted into the lawsuit, including just three of the 126 Appellants here. (See R.A. 37-38.)

excess of 48 per week – that any of these managerial employees worked over the course of those 100 weeks.

LTF, on the other hand, argued to the district court that LTF's method of compensating Appellants fully complied with Rule 5200.0211 because Appellants *were* "guaranteed a predetermined wage for each workweek" pursuant to their "agreement with" LTF (*i.e.*, their contracts). (R.A. 48.)<sup>12</sup> LTF additionally argued to the district court that this Court's recent decision in *Milner* required the district court to construe Rule 5200.0211 in light of the entire legislative scheme governing wage-and-hour laws in Minnesota, particularly Minnesota Statutes section 181.79. (R.A. 43-47, 63-65.) As LTF explained in its briefing, its deduction of unearned bonus advances from the 12 employees was explicitly contemplated by section 181.79, which allows for paycheck deductions to recover "claimed indebtedness running from employee to employer," provides a rule for making those deductions, and provides a specific remedy in the event that rule is not complied with. (R.A. 47, 64-65.) If the deductions here were improper, a remedy would lie under section 181.79 (if Appellants had sought that relief), which provides for damages of

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<sup>12</sup> Appellants accordingly greatly misstate the actual record when they claim that "[LTF] did not deny Plaintiffs' pay was not guaranteed" at either the "trial" or "appellate" level. (*Cf.* Appellants' Brief 5.)

double the amount of any improper deduction actually taken.<sup>13</sup> LTF also argued that if Rule 5200.0211 supplied a remedy, it must be tailored to the facts of the case, in accordance with the Minnesota Legislature's carefully chosen scheme set out in section 181.79, where the remedy for an improper deduction of this sort is limited to the individuals who actually experienced the improper deductions, and is narrowly tailored to redressing the actual improper deduction. This was in stark contrast to Appellants' assertion of a broad class-wide loss-of-exemption remedy, which, as LTF noted in its briefing to the district court, found absolutely no support in Minnesota law, ignored entirely the existence of section 181.79, and was even more expansive than the remedy provided under federal law (under which loss of exemption is limited to the weeks of any improper deductions actually made).

In a decision issued September 10, 2008, the district court granted Appellants' motion and denied LTF's cross-motion for summary judgment as to liability. Adopting Appellants' arguments, the district court found that LTF's *bonus plans* violated Minnesota Rule 5200.0211's *salary* rules because there was a "possibility" that some semi-monthly paychecks (which included salary payments) could be reduced, further found that the remedy was the total loss of overtime-exempt status for all 126 Appellants for the entire time

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<sup>13</sup> For whatever reason, Appellants chose not to allege a claim under section 181.79 in this action.

period they were covered by the bonus plans, and ordered that a trial be set to determine the amount of overtime damages and various related issues. (Appx. 7-8.)

**5. The Court Of Appeals Properly Reversed The District Court's Decision.**

After the district court certified its order denying LTF's summary judgment motion as presenting "important and doubtful" questions, the parties briefed their dispute to the Court of Appeals.<sup>14</sup> On August 25, 2009, the Court of Appeals issued a unanimous decision reversing the district court's grant of summary judgment in favor of Appellants and remanding with instruction to enter summary judgment in favor of LTF. (Appx. 10-21.)

The Court of Appeals found the district court had erred in its application of Minnesota Rule 5200.0211 to the facts of this case. Adopting a straightforward reading of the administrative rule, the Court of Appeals held that the rule was satisfied so long as a salary was guaranteed in writing, noting that the MFLSA, in contrast to the differently-worded federal regulation, does not require the receipt of a regularly-timed paycheck, and that the timing of paychecks is instead governed by Chapter 181 of the Minnesota Statutes, which Appellants had not alleged to be violated. (Appx.

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<sup>14</sup> In its briefing to the Court of Appeals, LTF again argued that, by contract, Appellants were "guaranteed a predetermined wage for each workweek." (R.A. 188-93, 231-33.)

20.) Applying this ruling to the facts of this case, the Court of Appeals agreed with LTF's position that "deductions from paychecks to recover unearned bonus advances did not affect the[] guaranteed salaries" set forth in the employment contracts, and that therefore Appellants were properly classified as overtime-exempt. (*Id.* at 19-20.) As the Court of Appeals properly observed, whether any paycheck deductions may be taken, and whether they are done properly, are the province of Chapter 181, not the province of the MFLSA, under which Appellants chose solely to pursue this action. (*See id.*) Finally, the Court of Appeals properly distinguished Rule 5200.0211, which provides that overtime-exempt employees be "*guaranteed* a predetermined wage *for* each workweek," from a partly analogous federal administrative rule, which expressly requires that overtime-exempt employees "regularly *receive*[] each pay period . . . a predetermined amount." (Appx. 20; emphases in original.) The Court of Appeals therefore reversed and remanded for entry of judgment in LTF's favor.

### STANDARD OF REVIEW

In deciding questions arising from summary judgment, this Court applies the familiar Rule 56 standard and reviews the record to determine whether any genuine issues of material fact exist and whether the law was correctly applied. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Because there are no issues of material fact here, the Court will review the

questions, which relate to the proper construction of Minnesota's wage-and-hour laws, under a *de novo* standard, asking whether the Court of Appeals erred in its application of the law. *Milner*, 748 N.W.2d at 613.

Appellants allege that LTF improperly classified them as exempt from the overtime provisions of the MFLSA. For an employee to be properly classified as exempt, three conditions must be satisfied: the duties test, the salary amount test, and the salary method-of-payment test. Minn. R. 5200.0180-.0211. Appellants' sole allegation is that LTF's bonus plans violated the salary method-of-payment requirement defined in Rule 5200.0211, which requires that an employee, "through agreement with [his] employer," be "guaranteed a predetermined wage for each workweek" that "does not vary based on productivity or weather." Minn. Rule 5200.0211; Minnesota Dep't of Labor & Industry, "A Guide to Minnesota's Overtime Laws" (2005) (R.A. 161-62). In other words, Appellants acknowledge, as they must, that they meet the duties test and the amount test: the duties they performed were exempt managerial duties and the amounts they earned were more than enough salary for them to properly be classified as exempt from receiving overtime premium pay.

With respect to the test that is at issue, LTF bears the burden of proving, by a preponderance of the evidence, that its method of compensating Appellants was consistent with Rule 5200.0211, and that they were thus

properly classified as exempt from the overtime provisions of the MFLSA. *E.g., Becker v. F&H Restaurant Group, Inc.*, 413 N.W.2d 202, 205 (Minn. Ct. App. 1987). As detailed below, when the undisputed material facts are considered under the proper legal standards, it is clear that LTF's bonus plans did not affect Appellants' exempt status under the MFLSA. By contract, they were "guaranteed a predetermined wage for each workweek."

## ARGUMENT

### **I. This Court Should Affirm The Court of Appeals' Straightforward Application Of Minnesota Rule 5200.0211.**

Appellants mischaracterize the Court of Appeals' decision as holding that, so long as an employee is promised to receive a certain amount of payment "on an annual basis," that is enough to meet Rule 5200.0211. (*See* Appellants' Brief 8.) Thus framing the Court of Appeals' decision, Appellants contend it must be reversed because it "would lead to absurd results," namely, allowing employers to "cut workers' paychecks at will" but still "avoid paying overtime" "so long as [employers] get the money back to the employee at some point later on." (*See id.* at 11.)

This "parade of horrors" argument finds no support in the actual facts of this case or in the Court of Appeals' actual decision. That decision follows two obvious guideposts: (1) the language of Rule 5200.0211 itself and (2) differences between this Minnesota administrative rule and a partly

analogous (but not identical) federal rule. Following these guideposts, the Court of Appeals rejected Appellants' argument that they were not "guaranteed a predetermined wage for each workweek" because some of their *paychecks* (as opposed to salary payments) could have had deductions taken from them to recover *bonus* overpayments which Appellants admittedly never earned. (Appx. 19-21.) The Court of Appeals properly construed the plain language of Rule 5200.0211, and its decision dismissing Appellants' claims should be affirmed.

**A. LTF's Method Of Compensating Appellants Satisfied The Plain Language Of Rule 5200.0211.**

As this Court recently reiterated in *Milner* and as the Court of Appeals properly observed, analysis of whether a given set of facts complies with a statute or administrative rule must begin with the text of the provision at issue. 748 N.W.2d at 614; Appx. 14-15. Rule 5200.0211, titled "Salary," provides, in full:

Subpart 1. Predetermined weekly wage. A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

Subp. 2. Weeks of no work. Complete weeks in which an employee performs no work may be deducted from salary.

The parties' dispute in this lawsuit concerns only the second full sentence of subpart 1. The legal question that must be answered here, therefore, is whether Appellants, "through agreement with [LTF]," were "guaranteed a predetermined wage for each workweek."

Appellants contend that "none of [their] paychecks . . . were 'guaranteed'" because the managerial bonus plans contained language reserving to LTF the right to recover overpaid amounts of previous *bonus* advances by deductions from future paychecks. (Appellants' Brief 11.) Appellants argue that the bonus recovery language made their salaries "always at risk" and "conditional," and therefore never "guaranteed," because there was a "possibility" that their semi-monthly paychecks could have deductions taken from them. (*Id.* at 10.) In other words, Appellants' argument hinges on a finding that the bonus recovery language contained in the bonus plan somehow meant they were not contractually "guaranteed a predetermined wage for each workweek."

The Court of Appeals rejected Appellants' argument and the district court's analysis built thereon, rooting its decision in the language of Rule 5200.0211 and the actual facts underlying this case. As the Court of Appeals correctly observed, the undisputed facts here show there was an "agreement"

between LTF and Appellants which promised Appellants that they would receive a certain amount of annual salary. Appellants were promised they would receive – and they did receive – these designated salaries through semi-monthly salary-installment payments made over the course of the year. (*See, e.g.*, R.A. 108, 143-59.)

The bonus plan at issue and the deductions authorized thereunder do not affect this undisputed fact. As noted above, the mechanism adopted in LTF's bonus plan ensured, both in theory and in practice, that each and every employee received 100% of his or her promised salary, and not just at year end – they were never behind in the amount of money received as the year went along. (*See, e.g.*, Appx. 126-37; R.A. 108.) There was no “threat” of any variation in salary. As the language of the plan made clear, it was only the *bonus advances* that were in any sense “conditional” – that is, they were advanced with the understanding they may have to be repaid if not actually earned. This cannot conceivably violate the “salary” test, which has nothing to do with the payment of *bonuses*. (*See, e.g.*, Appx. 126-37; R.A. 108.)

This conclusion is corroborated by the record evidence pertaining to the only actual deductions made during the class period. Under the plain terms of the bonus plan, each individual who had a paycheck deduction in late 2005 had received the full promised amount of salary at the time of the deductions and continued to receive the full promised amount of salary thereafter. (*See,*

*e.g.*, Appx. 130-37; R.A. 108.) Although bonus advances and salary installment payments were both communicated to employees through a common paycheck stub, those paycheck stubs clearly showed employees that they were receiving the full amount of their promised semi-monthly salary payment. For those Appellants who had deductions made, in late 2005, both the promised regular salary installments and the deductions are shown. (*E.g.*, R.A. 155.)

As literally every employee in the United States is aware, the fact that you are promised – and actually paid – a certain amount of wages in a pay period does not mean that you will take home that amount in your pocket. Various federal and state laws result in numerous deductions from gross pay, including federal and state income tax, Social Security, and others. *See, e.g.*, I.R.C. §§ 3101 *et seq.*, 3401 *et seq.*; Minn. Stat. § 290.92, Subd. 2a. Other types of possible deductions include health insurance, 401(k) contributions, and parking reimbursement. These deductions all obviously result in lower paychecks, but they do not mean that an individual fails to receive his promised salary for a pay period, or that because of them his salary is not guaranteed. There is no practical difference between the bonus overpayment deductions and these other examples. In fact, as explained in Part III *infra*, the type of deductions authorized by LTF's bonus plans are expressly contemplated by a Minnesota statute. Similarly, Appellants do not dispute

that LTF could have, for example, required an overpaid individual to write a personal check to LTF in the amount of the bonus advance he had received but had not earned. The paycheck deductions made in late 2005 were functionally identical: they reduced employees' take-home pay for the pay period, but they did not affect the fact that employees actually were both promised and paid their promised salary installments.

The Court of Appeals properly held that the *bonus* recovery language contained in the bonus plans did not affect LTF's payment of *salary* installments to Appellants. This Court should reject Appellants' urging to conflate "bonus" and "salary" like the district court did.

**B. Minnesota Rule 5200.0211 Concerns How Wages Are Determined, Not How They Are Paid Out, Which Is The Subject Of Other Laws.**

Appellants repeatedly chastise the Court of Appeals for "holding" that the relevant time period to determine compliance with Rule 5200.0211 is "on an annual basis" rather than a "workweek" basis. But the Court of Appeals held no such thing. The Court of Appeals' decision is entirely consistent with the alleged "workweek" focus of Rule 5200.0211 and other provisions of the MFLSA. The key here is that Rule 5200.0211 is concerned with how wages are "determined" – by guaranteed salary or otherwise – not with how they are paid out, which is the subject of other laws.

The Court of Appeals scrutinized the language of Rule 5200.0211 and observed that it does not say anything about when any salary payments must be *received* – it only requires that an employee be “*guaranteed a predetermined wage for each workweek.*” (Appx. 20.) In other words, so long as an employer, by agreement, promises an employee that he will get a set amount of pay to compensate him for any work performed during the workweek, that Rule is satisfied. Rule 5200.0211 does not govern how that set amount is actually paid out.

As additional support for this conclusion, the Court of Appeals first noted that other Minnesota laws govern the timing of payments, citing Minnesota Statutes section 181.101. (Appx. 19-20.) The Court of Appeals also pointed out that Rule 5200.0211 contains different requirements than an otherwise analogous federal regulation, which expressly requires that an overtime-exempt employee *receive* a set amount each pay period:

An employee will be considered to be paid on a “salary basis” within the meaning of *these regulations* if the employee regularly *receives each pay period* on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

29 C.F.R. § 541.602(a) (emphasis added). As the Court of Appeals observed, Rule 5200.0211 contains no similar requirement that an employee “receive[]

each pay period” a set amount of salary payment. (Appx. 20.) This is despite the fact that the Minnesota Rule became effective in 1986, at which point the federal rule excerpted above had already been in place for over 40 years. *See* 69 Fed. Reg. 22,122, 22,176 (Apr. 23, 2004) (noting history of federal rule). Minnesota could have adopted the same “receipt” requirement as federal law, but it did not. The Court of Appeals properly distinguished the state provision from the federal and interpreted the two differently-worded provisions differently, and in light of related provisions of Minnesota law. *Milner*, 748 N.W.2d at 614.

**C. The Court Of Appeals’ Decision Does Not “Lead To Absurd Results,” In This Case Or Otherwise.**

Instead of grounding their arguments in the actual facts of *this* case, Appellants abstractly argue that the Court of Appeals’ decision “would lead to absurd results.” In Appellants’ words:

Under the Court of Appeals’ opinion, employers can cut worker’s paychecks at will, and so long as they get the money back to the employee at some point later on, the employer can avoid paying overtime.

(Appellants’ Brief 11.)

To begin with, the Court of Appeals did not rule that employers can avoid overtime liability by “[s]imply classify[ing] a worker as ‘salary,’ wait[ing] months to pay them and retroactively designat[ing] the money as

applying to ‘each workweek.’” (Appellants’ Brief 11.) Rather, the Court of Appeals straightforwardly read the text of Minnesota Rule 5200.0211, which makes clear that an employee must be “guaranteed a predetermined wage for each workweek” (rather than be paid by the piece or the hour), and does not purport to address other issues. As the Court of Appeals properly observed, when pay must be received and how deductions may properly be done are the province of Chapter 181 (and the various tax laws), not the province of the MFLSA, under which Appellants chose solely to pursue this action.

The undisputed facts of this case, moreover, confirm that LTF did not cavalierly “cut worker’s paychecks at will” during the year and then issue them a lump-sum payment later in the year to “avoid paying overtime.” As described above, LTF promised employees they would receive a set amount of salary both by the end of the year and as the year went along. Employees also were eligible to receive, and did receive, bonus advances. At every given point of a year, they had received the amount they had been promised to receive through that point of the year.

Put simply, this is not a case of an employer trying “to play fast and loose with how [it] designate[s] pay and when [it] pay[s] it.” (See Appellants’ Brief 12.) LTF designed its bonus plans to provide Appellants more frequent

bonus payment opportunities, even though it would not be determined until year's end how much bonus was actually earned, in an effort to provide Appellants use and enjoyment of bonus money earlier in the year instead of later. In the meantime, employees were free to do whatever they wished with these bonus advances. The important point is that they knew, by contract, that if they did not ultimately earn these advanced bonus amounts, they might be required to repay such amounts (and only such amounts) to LTF. None of that had anything to do with their salaries.

## **II. Other Important Considerations Lead To The Same Result.**

The question directly presented by Appellants' petition is whether the Court of Appeals was correct in its interpretation of the meaning of the requirement of Rule 5200.0211 that overtime-exempt employees be "guaranteed a predetermined wage for each workweek." For the reasons discussed above, the Court can and should affirm the Court of Appeals' interpretation of that term based on the plain language of the Rule. If it were to determine that the "plain language" does not provide a clear answer, however, the Court should then look to "other related statutes for guidance," since it has recognized that "statutes that address the same subject" should be "read as a whole" with each other. *Milner*, 748 N.W.2d at 617. In the context of interpreting a Rule which is itself an interpretation of a provision

of the MFLSA,<sup>15</sup> this Court looks to the provisions of Chapter 181 of the Minnesota Statutes. *Id.* Together, these “provide a comprehensive statutory scheme for wages and payment in Minnesota and should be interpreted in light of each other.” *Id.*<sup>16</sup> Accordingly, if the plain language of the Rule is not clear, questions as to the proper interpretation of the Rule in light of related Chapter 181 provisions must be answered. Thus, if the Court thinks the Rule’s plain language is not itself clear, the other two questions certified by the district court as “important and doubtful” must also be addressed here.<sup>17</sup>

In summary form, those questions are: (1) whether a remedy under Rule 5200.0211 should be created here, where the bonus recovery deductions at issue are expressly contemplated by Minnesota Statutes section 181.79,

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<sup>15</sup> See Add. A (recognizing that Rule 5200.0211 was promulgated by the Minnesota Department of Labor & Industry pursuant to its power to make rules to implement the MFLSA, as conferred by Minnesota Statutes section 177.28, subdivision 1).

<sup>16</sup> It may be noted that, as did the Court of Appeals here, this Court in *Milner* “decline[d] to look to the federal FLSA, as it is structured differently from the MFLSA.” 748 N.W. at 617.

<sup>17</sup> Such questions which are “essential to analysis” of the decision below or “to the correct disposition” of the issues raised are treated as fairly included within the grant of review in the analogous context of U.S. Supreme Court review. See, e.g., *Procunier v. Navarett*, 434 U.S. 555, 559-60 n. 6 (1978); *City of Sherrill, N.Y. v. Oneida Nation of N.Y.*, 544 U.S. 197, 214 n. 8 (2005) (question of whether certain considerations limited available relief is “inextricably linked” to presented question). See also Minn. R. Civ. App. P. 103.04.

which already provides a specifically-tailored remedy if such deductions are improperly taken; and (2) if a remedy were created under Rule 5200.0211, what would be the proper scope of that remedy in these circumstances, in light of other related statutory provisions. Despite this Court's directive in *Milner* that relevant provisions of Chapter 181 must be considered, Appellants have chosen not to address these points in their argument to this Court. As shown below, however, consideration of those questions provides additional support for the Court of Appeals' conclusion that there is no violation of Rule 5200.0211 here.<sup>18</sup>

**III. Because The Paycheck Deductions To Recover Bonus Overpayments Are Expressly Contemplated by Minnesota Statutes Section 181.79, Appellants Cannot Create A Remedy Under Rule 5200.0211.**

If this Court disagrees with the rationale adopted by the Court of Appeals, that the plain language of the Rule resolves this case, the result reached by the Court of Appeals should still be affirmed on an alternative ground: The deductions authorized under LTF's bonus plans did not violate Rule 5200.0211 because those deductions were expressly contemplated by a Minnesota statute, section 181.79, which provides a specific remedy for the

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<sup>18</sup> Alternatively, should this Court for whatever reason decline to reach these two additional questions but nonetheless decline to affirm the Court of Appeals' ruling on the first threshold question, it should remand this case to the Court of Appeals for consideration of these questions, which were certified to it by the district court.

wrong alleged by Appellants. As such, Appellants should be limited to a remedy under that statute, and precluded from the Draconian remedy they seek to create under Rule 5200.0211.

**A. Rule 5200.0211 Must Be Construed In Light Of Section 181.79.**

Appellants contended below that because they chose to pursue a claim under Rule 5200.0211 and not section 181.79, section 181.79 is entirely irrelevant.<sup>19</sup> That is incorrect for several reasons, foremost of which is the fact that it ignores this Court's instruction in *Milner* that Minnesota's wage-and-hour laws must be read as part of a whole rather than in isolation.

As discussed above, in *Milner* this Court looked to Chapter 181 when analyzing the plaintiffs' loss-of-exemption claim under the MFLSA (Chapter 177). Although the two provisions are housed in different chapters, *Milner* noted that they are related because both pertain to "employment and wages" and are enforced by the Commissioner of Labor & Industry. 748 N.W.2d at 617.

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<sup>19</sup> Appellants presumably brought a claim under Rule 5200.0211 and not section 181.79 because they realized section 181.79 expressly limits its remedy to the individuals who actually had deductions taken from their paychecks without authorization (in this case, 12 individuals) and to the amounts of the actual deductions (which are paid back in doubled amount as a remedy). This means that, under section 181.79, there could be no "opt out" class action like the one pursued by Appellants in this case, consisting in large part of managerial employees who had no deductions taken.

Here, section 181.79 (also housed in Chapter 181) and Rule 5200.0211 (also interpreting a provision of Chapter 177) are likewise related. Both address aspects of Minnesota law regarding the pay of employees, and together they form the heart of that law. Section 181.79, for its part, allows employers to make deductions for certain enumerated categories of items. Rule 5200.0211, on the other hand, makes clear that certain kinds of deductions are prohibited from exempt employees' *salaries*, those being deductions "based on productivity or weather." See Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime Laws" (2005) (R.A. 162). Although they "do" different things, they clearly form "a comprehensive statutory scheme for wages and payment in Minnesota and should be interpreted in light of each other." 748 N.W.2d at 617. Here, this means that Rule 5200.0211 must be construed in light of section 181.79, which had existed for nine years at the time the Rule was enacted. Cf. Minn. Stat. § 645.16 (legislative intent may be ascertained by considering, among other things, "the former law, if any, including other laws upon the same or similar subjects").

**B. Section 181.79 Clarifies That The Deductions At Issue Were Not Inconsistent With Rule 5200.0211.**

As LTF explained to the district court and the Court of Appeals, section 181.79 generally contemplates that employers may legally make paycheck deductions for certain enumerated categories of items, including for “claimed indebtedness running from employee to employer.” Minn. Stat. § 181.79, Subd. 1. If, however, an employer fails to obtain written authorization within a particular window – prior to the deduction but after the indebtedness has arisen – an employee whose paycheck was actually reduced for such a deduction can bring a claim and recover double the amount of such deductions as the remedy. *Id.* at Subd. 2.

As is evident from the text of the statute, section 181.79 provides a precise remedy for the precise wrong alleged by Appellants in this lawsuit. Deductions to recover earlier advanced but ultimately unearned bonus overpayments are deductions made to recover “claimed indebtedness”: the employer claims the employee holds money owed back to the employer because, under the terms of a contract, the money was not actually earned.<sup>20</sup>

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<sup>20</sup> The district court, at Appellants’ insistence, sidestepped the issue of the interaction between section 181.79 and Rule 5200.0211 by erroneously holding that deductions made to recover previously-advanced bonus overpayments were not deductions to recover “claimed indebtedness” under section 181.79, and thus the statute was not at issue. (Appx. 8.) At Appellants’ urging, the district court misconstrued the statute as requiring a written authorization before the statute could apply at all, even to supply the

Rule 5200.0211, on the other hand, does not itself address deductions to recover bonus overpayments or any other “claimed indebtedness.” Thus, when Rule 5200.0211 is properly read in light of section 181.79, it is clear that Appellants’ proffered absolutist interpretation of “guaranteed a predetermined wage for each workweek” – under which *any possibility* of a paycheck deduction for *any reason* results in loss of exempt status – fails.<sup>21</sup>

In their previous briefing, Appellants argued that adopting LTF’s position would “render the salary test completely meaningless.” (R.A. 211.) To the contrary, reading the administrative rule in light of the existing statute would uphold the Minnesota Legislature’s chosen scheme for resolving disputed paycheck deductions by making clear that the remedy for

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remedy for having failed to obtain a written authorization. (*Id.*) As LTF pointed out in its briefing to the Court of Appeals, the district court’s reasoning betrayed the plain language of the statute, which only requires that the indebtedness be “claimed,” not “acknowledged.” (R.A. 185-87.) The Court of Appeals summarily held that the bonus overpayment deductions authorized by LTF’s bonus plans were within the scope of section 181.79 (Appx. 17), thus implicating the interaction between the administrative rule and the statute.

<sup>21</sup> As the Court of Appeals noted (*see* Appx. 17), LTF candidly acknowledges that, although it made deductions contemplated by section 181.79, it failed to comply with the written authorization requirement thereof, and would have been liable in an action brought thereunder by any employees who actually had deductions taken from their paychecks. As described above, LTF obtained employees’ agreement to make the deductions as part of the employment contract which the employees accepted. LTF also gave these employees notice before making any actual deductions. The Company did not, however, have the overpaid employees acknowledge their agreement again, in writing, after that notice and before LTF made the deductions.

certain deductions – including those to recover any “claimed indebtedness running from employee to employer” – allegedly made without the form of authorization required by section 181.79 would be that provided in section 181.79. The “salary” test in Rule 5200.0211 could still do its job of protecting Minnesota’s employees by defining the standard by which a salaried wage is to be determined and by preventing attempts to evade that definition through deductions from that salary based on “productivity or weather.” Each regulation would thus be performing its proper office, since, as this Court noted in *Milner*, “[w]hile the MFLSA addresses minimum wage and hour standards, [Chapter 181] addresses *how* often wages must be paid *and establishes penalties* for wages that are [not paid properly].” 748 N.W.2d at 617 (emphasis added).

Until the district court’s order adopting Appellants’ interpretation, Minnesota employers reasonably expected that they would not be exposed to massive potential overtime liability because of deductions specifically authorized by statute to recover claimed indebtedness from the paychecks of exempt employees. Rather, Minnesota employers could confidently consult section 181.79, which expressly contemplates such deductions, to determine their obligations and possible liability if they failed to comply therewith. The remedy provided by the legislature in section 181.79 is specific and narrowly tailored, providing employees who experience actual deductions with

damages equal to double the amount of the deductions taken, in the event those deductions are not taken properly. Apart from the district court, no court has ever held that a different remedy for such deductions might be available under Rule 5200.0211, or otherwise.<sup>22</sup>

If this Court were to adopt Appellants' interpretation, it would change that legal landscape, unexpectedly and dramatically. For example, under the legislature's chosen scheme, if an employer makes a \$250.00 deduction from an employee's paycheck to recover the cost of a company laptop computer the employee was loaned and lost, or some other claimed indebtedness running from the employee to the company, the employer knows that, if it fails to

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<sup>22</sup> Perhaps because Appellants' interpretation has not been adopted by any court other than the district court in this case, it appears that there has been only one Minnesota appellate decision even citing Rule 5200.0211 during the twenty-two years since the rule's promulgation in 1986. That unreported decision, *Wiebusch v. City of Champlin*, 2003 Minn. App. LEXIS 648 (Minn. Ct. App. May 29, 2003), did not involve any of the issues presented in this case. The issue in *Wiebusch* was whether an employer that had communicated to an employee that he was paid at an hourly rate and that had openly acknowledged that the employee's pay would have varied based on the number of hours he worked truly intended to pay the employee a salary, rather than an hourly wage. Several documents and other evidence suggested that the City actually treated Wiebusch as hourly-paid even though he was classified as salaried. *Id.* at \*2-3. The City's representatives also testified that if Wiebusch "worked less than 80 hours and had no sick, vacation, or comp[ensatory] time to make up the difference, he would be paid less." *Id.* at \*6. This, the court determined, was "a true indicia of an hourly-wage employee," and thus created an issue of material fact as to whether Wiebusch "was a true salaried employee." *Id.* at \*6-7. There was no real analysis of Rule 5200.0211.

obtain prior written authorization, its maximum exposure will be \$500.00. *See* Minn. Stat. § 181.79, Subd. 2. If the employer obtains prior written authorization, then there can be no potential liability. *Id.* Under Appellants' interpretation, on the other hand, the simple fact that the employer had a policy under which employees' paychecks could have deductions taken from them to recover the cost of lost computers or some other claimed indebtedness converts all employees to non-exempt for the entire time period the policy is in existence, whether or not all (or, in theory, even any) of those employees' paychecks actually have deductions taken from them. Thus, despite the well-established and widely-relied-upon legislative remedy defined in section 181.79, under Appellants' reading Minnesota employers following section 181.79 are exposing themselves to massive potential liability (up to three years of retroactive overtime pay for all employees subject to the policy) under an administrative rule, Rule 5200.0211, that has never been applied in this context.

**C. The Court Of Appeals' Statement Regarding The Relationship Between Rule 5200.0211 And Section 181.79 Should Be Clarified.**

Although the Court of Appeals properly found that LTF's compensation method complied with Rule 5200.0211 and thus did not have to reach the remedies question, it nevertheless opined that there was no "irreconcilable conflict" between Rule 5200.0211 and section 181.79, reasoning that "[t]hey

address different issues and are not inconsistent; it is possible to comply with both.” (See Appx. 18.) While that is true as far as it goes, in that it is possible to *comply* with both, that does not answer the question of whether making deductions contemplated by section 181.79 could or should result in massive unanticipated liability under Rule 5200.0211. LTF submits that, at the very least, the term of art “guaranteed” contained in Rule 5200.0211 must, under *Milner*, be read in light of section 181.79; it must be read to permit the categories of deductions explicitly contemplated by the statute, and as leaving to that statute the remedy for the violations of those categories of deductions. Any other reading would upset the legislative scheme which makes the remedy match the violation at issue.

**IV. If This Court Were To Permit Appellants To Seek A Remedy Under Minnesota Rule 5200.0211, That Remedy Must Be Narrowly Tailored To The Actual Deductions.**

As noted above, in light of its ruling on the threshold question, the Court of Appeals did not reach LTF’s arguments regarding the proper scope of any available remedy under Rule 5200.0211. If this Court were to decide that Appellants are entitled to a remedy under that rule, it should heed the Minnesota Legislature’s stated preference and limit the remedy to the loss of exempt status for the 12 Appellants whose pay was actually reduced, and to the pay periods in late 2005 during which such actual deductions occurred.

In their briefing to the district court and the Court of Appeals, Appellants argued, without citation to any legal authority, that the proper remedy for a violation of Rule 5200.0211 was loss of exemption for all 126 Appellants for all of the 100 weeks in the class period. They claimed this was the proper remedy because “deductions occurred multiple times to multiple members of the Plaintiff class” and they were “always [] working under the threat of losing their base pay.” (R.A. 205, 216.) Without analysis, the district court adopted Appellants’ broad proposed remedy, finding the “destruction” of exempt status to result in an award of retroactive overtime pay for all hours worked over 48 in a workweek during the entire time period deductions theoretically could have been made, whether any were actually made or not. (Appx. 7-9.)

Appellants’ argument and the district court’s ruling based thereupon find no support in the factual record or the applicable law. First, the factual predicate of Appellants’ claim is contradicted by the undisputed record evidence. As noted above, the contract *guaranteed* Appellants they would receive all of their promised base pay no matter what, and the facts confirm they all did indeed receive 100% of their promised annual salary throughout the entire class period. There was no “threat” or risk that Respondents could ever “los[e] their base pay.” (See R.A. 216.) The only thing “conditional”

about any of their pay was their eligibility for bonus advances, and possible repayment thereof if unearned, which does not implicate Rule 5200.0211.

Moreover, although the Company's plans contained the written repayment provision from January 1, 2004 through March 3, 2006 (R.A. 108, 127-28), the only time LTF actually chose to exercise its right to recover this indebtedness was across four consecutive pay periods in November and December 2005 (R.A. 137-38).<sup>23</sup> As a practical matter, despite these deductions, every one of the 12 affected managerial employees received 100% of his or her promised 2005 yearly salary (as they had every other year). (R.A. 108.) In fact, even after the limited deductions, some of the affected employees ended up keeping bonus they did not earn under the terms of the plan. (Appx. 130, 134; R.A. 143-60.) The record also shows that of the 126 managerial employees constituting the entire class of Appellants, 114 never had any bonus overpayment deductions made. (R.A. 137-38.) Moreover, no paycheck deductions were made for anyone in at least 92 of the 100 weeks in the maximum possible class period, including the first 82 weeks thereof prior

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<sup>23</sup> These were not the only pay periods in which LTF could have recovered bonus overpayments. The Company affirmatively decided to allow employees to keep bonus advances they did not earn and not to make deductions to recover advances prior to November 9, 2005. (R.A. 117-18.) Appellants' contention that "it was a definite" that deductions would occur if employees had been advanced more bonus than they had actually earned (Appellants' Brief 4) thus is contrary to the record evidence.

to the first deductions. (*Id.*) These facts do not support the district court's legal conclusion that the salaries of all 126 employees were somehow "always at risk for reduction" for all 100 consecutive weeks of the class period.

Second, Appellants' proposed remedy is also legally untenable. As LTF explained to the district court, although no Minnesota court has defined the parameters of the scope of an overtime exemption lost due to allegedly improper deductions, there are three salient provisions of Minnesota law which require a narrow remedy. The first is the text of Rule 5200.0211 itself, which focuses on each individual "employee." See Minn. R. 5200.0211.<sup>24</sup> The second salient provision is the widely-relied-upon section 181.79, which, under *Milner*, must inform the analysis of the proper remedy for the deductions at issue here. Section 181.79 makes clear the Minnesota Legislature's direction that remedies for pay deductions should be narrowly

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<sup>24</sup> The Rule's one example (dealing with the "salary amount" requirement) shows the remedial focus is on individual employees, actual deductions, and actually affected workweeks:

*An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.*

Minn. Rule 5200.0211, Subd. 1 (emphasis added).

tailored to the actual challenged deductions themselves. *See* Minn. Stat. § 181.79. Here, this would mean that the destruction of exempt status should be limited to the individuals who actually had deductions taken from their salaries in late 2005 and to the pay periods during which such deductions occurred. The third salient provision is the Minnesota Department of Labor & Industry's emphasis on the "workweek" as the standard used for determining compliance with the MFLSA, which similarly communicates that the effect of violations of the MFLSA should be temporally tailored to the actual facts. *See* Minn. R. 5200.0170; *see also* Appellants' Brief 8-9 (heralding the "workweek" as the standard for determining compliance with Minnesota's wage-and-hour laws). Here, this would limit the maximum loss of exemption to the eight workweeks subsumed within the four pay periods during which some individuals had actual pay deductions taken.

Put simply, nothing in Minnesota law supports a finding that deductions taken from just 12 of 126 individuals, across a total of four consecutive pay periods, corresponding to eight weeks out of a possible 100 weeks, converts the entire class to "non-exempt" employees more akin to hourly-paid workers than salaried employees, let alone that it does so for the entire time period such individuals were covered by a bonus plan. At the very least, the loss of exempt status should be confined temporally to the four consecutive pay periods in late 2005, and to the 12 Appellants who had

paycheck deductions taken. This is the only result that makes sense here, both under the law and the facts.

Accordingly, in the event this Court finds that Rule 5200.0211 applies and provides a loss-of-exemption remedy for the allegedly improper deductions, this Court should properly limit any such remedy to the loss of exempt status for the 12 Appellants whose pay was actually reduced, and to the pay periods during which such actual deductions occurred. This remedy properly tracks the Minnesota Legislature's intention that remedies for allegedly improper pay deductions should be narrowly tailored to the actual deductions themselves.

### CONCLUSION

LTF respectfully requests that this Court affirm the Court of Appeals' ruling that Appellants were paid according to the requirements of Rule 5200.0211. If this Court does not affirm the Court of Appeals' decision on the grounds articulated therein, then LTF requests that this Court rule for LTF on the alternative grounds discussed above. Should this Court disagree and decide to reverse the Court of Appeals' decision, then it should either reach the two additional certified questions itself or remand those questions to the Court of Appeals for consideration in light of this Court's opinion.

Dated: February 12, 2010

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**No. A08-1993**

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**STATE OF MINNESOTA  
IN SUPREME COURT**

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**SARAH ERDMAN,**  
individually and on behalf of  
others similarly situated,

Appellants,

vs.

**LIFE TIME FITNESS, INC.,**  
Respondent.

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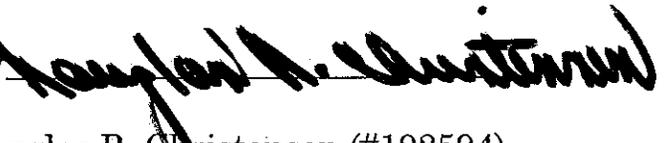
**CERTIFICATE OF COMPLIANCE  
WITH MINNESOTA RULE OF CIVIL  
APPELLATE PROCEDURE 132.01**

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The undersigned hereby certifies that Respondent's Brief And Addendum conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132.01, Subds. 1 and 3(b). This brief (exclusive of the table of contents, the table of authorities, the addendum, and any certificates of counsel), contains 12,757 words, as ascertained by using the word count feature of the Microsoft® Office Word 2003 word-processing software used to prepare the brief, and conforms to the typeface and type style requirements of the Rules by being in 13-point Century Schoolbook format.

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