



Section 1738.10 is the premise of an important law protecting reps, called the Independent Wholesale Sales Representatives Contractual Relations Act. The Act requires a principal who is a manufacturer or distributor to enter into a signed written contract with independent reps who exclusively sell wholesale. The contract must make clear: (1) the rate and method by which the commission is computed; (2) the time when commissions will be paid; (3) the territory assigned to the rep; (4) all exceptions to the assigned territory and customers; and (5) what chargebacks will be made against the commissions. Also, when paying commissions, the principal must provide the rep with an accounting of the orders, the rate of commission on each order, and any chargeback information. The Act allows reps to file a lawsuit if the principal knowingly fails to enter into a written contract or fails to pay commissions as provided in the written contract.

The Act applies to all principals who are producing, importing, or shipping products, both tangible and intangible, with the intent to resell in California. The principal must intend that some of the products involved will eventually be resold or used by a California consumer. The Act applies only when a rep sells exclusively wholesale on a commission basis. An important limitation is that the Act does not apply if the rep (1) places orders for his/her own account for resale or (2) sells or takes orders for direct sale to an ultimate consumer. Any sales by the rep to an end-user may preclude the protections of the Act.

Reps are so highly valued in California that a successful claim for violation of the Act allows the rep to recover three times actual damages. In *Reilly v. Inquest Technology* the jury found unpaid commissions of just over \$2 million and the final judgment against the principal became nearly \$6.2 million. And attorney fees are available to the successful claimant. But a word of caution: Reps considering bringing claims for violation of the Act should consult with an experienced attorney to assess the claim, because a principal who wins can also recover attorney fees from the rep.



**Eric S. Engel** of **Conkle, Kremer & Engel**, Professional Law Corporation, was the lead trial attorney in *Reilly v. Inquest Technology*, is an **ERA SoCal Member**, and has been recognized as a "rep savvy attorney" by MANA. Reach him at [e.engel@conklelaw.com](mailto:e.engel@conklelaw.com) or **310-998-9100**.

*This article provides only general information for educational purposes, is not legal advice for any particular circumstance and does not create any attorney-client relationship.*