

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (480) 304-3805
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Evonne Flores, Frankie Salinas, and** No.
14 **Gail Bradford**, individually, and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 **The Sales Staff LLC**, a Texas Limited
19 Liability Company, **David Balzen and**
20 **Jane Doe Balzen**, a married couple,
21 **Bryan Brorsen and Jane Doe Brorsen**, a
22 married couple,

23 Defendants.

24 **PLAINTIFFS' COLLECTIVE**
25 **ACTION COMPLAINT PURSUANT**
26 **TO THE FAIR LABOR STANDARDS**
27 **ACT, 29 U.S.C. § 201, ET SEQ.**

(Demand for Jury Trial)

28 Plaintiffs, Evonne Flores (“Plaintiff Flores”), Frankie Salinas (“Plaintiff Salinas”),
29 and Gail Bradford (“Plaintiff Bradford”) (collectively “Plaintiffs”), individually, and on
30 behalf of all other persons similarly situated, allege as follows:

31 **PRELIMINARY STATEMENT**

32 1. This is an action for equitable relief, overtime pay, liquidated damages,
33 attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), as
34
35
36
37

1 amended, 29 U.S.C. § 216(b). Plaintiffs bring this action on behalf of themselves and all
2 similarly-situated current and former Inside Sales Representatives¹ of Defendants.

3 2. Plaintiffs, individually, and on behalf of all others similarly-situated, bring
4 this action against Defendants² for their unlawful failure to pay minimum and overtime
5 wages in violation of the FLSA.
6

7 3. Plaintiff Flores, individually, and on behalf of all others similarly-situated,
8 bring this action against Defendants for their unlawful failure to pay minimum wage and
9 wages due and owing Plaintiffs and others similarly-situated in violation of Arizona
10 Wage Act, Arizona Revised Statutes (“A.R.S.”) §§ 23-350, et. seq., and the Arizona
11 Minimum Wage Act, A.R.S. § 23-363, et seq.
12

13 4. Plaintiffs bring a collective action under the FLSA to recover the unpaid
14 overtime wages owed to them individually and on behalf of all other similarly-situated
15 Inside Sales Representatives, current and former, of Defendants who did not receive one-
16 and-one-half times their regular rates of pay for time they spent working in excess of 40
17 hours in a given workweek. Members of the Collective Action are referred to as the
18 “Overtime Collective Members.”
19
20
21

22 _____
23 ¹ For the purposes of this Complaint, “Inside Sales Representative” is exclusively a
24 job title used for the purpose of classifying the putative class of similarly situated
25 individuals, is not necessarily the job title of the Plaintiffs and putative class, and does
26 not necessarily have a bearing or relation to any specialization, skill, education, training,
27 or other qualification that might otherwise be associated with such a job title.

² All Defendants to this action are collectively referred to as either “Sales Staff” or
“Defendants” unless specified otherwise.

1 5. Plaintiffs bring a collective action under the FLSA to recover the unpaid
2 minimum wages owed to them individually and on behalf of all other similarly-situated
3 employees, current and former, of Defendants who did not receive the applicable
4 minimum wage for time they spent working in a given workweek. Members of the
5 Collective Action are referred to as the “Minimum Wage Collective Members.”
6

7 6. Additionally, Defendants’ failure to compensate Plaintiffs and all other
8 non-exempt employees at a rate equal to Arizona’s required minimum wage violates the
9 Arizona Wage Act, A.R.S. § 23-350, et. seq., and the Arizona Minimum Wage Act,
10 A.R.S. § 23-363, et. seq. Plaintiffs, therefore, bring a class action pursuant to Rule 23 of
11 the Federal Rules of Civil Procedure to recover unpaid wages and other damages owed
12 under Arizona wage laws. Members of the Rule 23 Class Action are referred to as the
13 “Arizona Class Members.”
14

15 7. “Overtime Collective Members” describes each and every Inside Sales
16 Representative that worked for Defendants in the three year prior to the filing of this
17 Complaint through the present, inclusive of the Minimum Wage Collective Members and
18 the Arizona Class Members. “Minimum Wage Collective Members” describes each and
19 every employee who did not receive at least one paycheck for time that they worked for
20 Defendants between approximately April 1, 2017 through the present, inclusive of the
21 Arizona Class Members. “Arizona Class Members” describe each and every employee
22 who did not receive at least one paycheck for time that they worked for Defendants in the
23 State of Arizona between approximately April 1, 2017 through the present.
24
25
26
27

1 8. Plaintiffs and the Overtime Collective Members are current and former
2 employees of Defendants and bring this action on behalf of themselves and all similarly-
3 situated current and former Inside Sales Representatives to whom Defendants did not pay
4 and have not paid one-and-one-half times their regular rates of pay for all time they
5 worked in excess of 40 hours in a given workweek, in violation of 29 U.S.C. § 207.
6

7 9. Plaintiffs and the Minimum Wage Collective Members are current and
8 former employees of Defendants and bring this action on behalf of themselves and all
9 similarly-situated current and former Inside Sales Representatives to whom Defendants
10 did not pay minimum wages from approximately April 1, 2017, through the present, in
11 violation of 29 U.S.C. § 206.
12

13 10. Plaintiffs Flores and Salinas and the Arizona Class Members are current
14 and former employees of Defendants and bring this action on behalf of themselves and all
15 similarly-situated current and former Inside Sales Representatives to whom Defendants
16 did not pay the applicable Arizona minimum wage from approximately April 1, 2017,
17 through the present and also to whom Defendants did not pay and have not paid
18 additional wages due and owing since approximately April 1, 2017, in violation of A.R.S.
19 § 23-350, et. seq., A.R.S. § 23-363, et. seq.
20
21

22 11. The Overtime Collective Members are all current and former Inside Sales
23 Representatives who were employed by Defendants at any time starting three years
24 before this Complaint was filed, up to the present.
25
26
27

1 within the District of Arizona, and Defendants regularly conduct business in and have
2 engaged in the wrongful conduct alleged in the Complaint – and, thus, are subject to
3 personal jurisdiction in – this judicial district.

4 **PARTIES**

5
6 18. Plaintiffs reallege and incorporate by reference all allegations in all
7 preceding paragraphs.

8 19. At all times material to the matters alleged in this Complaint, Plaintiff
9 Flores was an individual residing in Maricopa County, Arizona, and is a former employee
10 of Defendants.

11
12 20. At all material times, Plaintiff Flores was a full-time employee of
13 Defendants who worked as an Inside Sales Representative from approximately November
14 1, 2015 through approximately July 15, 2017.

15
16 21. At all times material to the matters alleged in this Complaint, Plaintiff
17 Salinas was an individual residing in Maricopa County, Arizona, and is a former
18 employee of Defendants.

19 22. At all material times, Plaintiff Salinas was a full-time employee of
20 Defendants who worked as an Inside Sales Representative and other positions from
21 approximately October 1, 2013 through approximately July 12, 2017.

22
23 23. At all times material to the matters alleged in this Complaint, Plaintiff
24 Bradford was an individual residing in Sussex County, Delaware, and is a former
25 employee of Defendants.
26
27

1 24. At all material times, Plaintiff Bradford was a full-time employee of
2 Defendants who worked as an Inside Sales Representative from approximately February
3 1, 2016 through approximately October 31, 2016, and then again from approximately
4 March 1, 2017 through approximately July 18, 2017.

5
6 25. At all material times, Plaintiffs were employed by Defendants as inside
7 sales employees and on an hourly-plus-commission basis.

8 26. At all relevant times, Sales Staff were a business-to-business (“B2B”)
9 marketing company whose primary marketplace offering is contracting with their
10 customers, who are other businesses, to perform the inside sales functions of those
11 businesses. Sales Staff accomplishes this function by performing their clients’ business
12 development efforts, which means employing their Inside Sales Representatives—such as
13 Plaintiffs, the Overtime Collective Members, the Minimum Wage Collective Members,
14 and the Arizona Class Members—to perform various non-exempt, inside sales-based
15 duties, including, but not limited to, cold-calling and emailing potential customers of
16 Sales Staff’s clients with the goal of setting appointments between Sales Staff’s client
17 and those potential customers.
18
19

20
21 27. At all material times, Plaintiffs, the Overtime Collective Members, and the
22 Minimum Wage Collective Members were employees of Defendants as defined by the
23 FLSA, 29 U.S.C. § 203(e)(1).

24 28. At all material times, Plaintiffs, the Overtime Collective Members, and the
25 Minimum Wage Collective Members were non-exempt employees under 29 U.S.C. §
26 213(a)(1).
27

1 29. Plaintiffs have given their written consent to be party Plaintiffs in this
2 action pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
3 this Complaint as “**Exhibit A.**”

4 30. At all material times, Plaintiffs Flores and Salinas and the Arizona Class
5 Members were employees of Defendants as defined by A.R.S. § 23-350(2).
6

7 31. Plaintiffs bring this action on behalf of themselves and on behalf of all
8 other persons similarly situated who are current or former Inside Sales Representatives of
9 Defendants who did not receive overtime wages for time they spent working in excess of
10 40 hours in a given workweek for Defendants, including but not limited to those who
11 agree in writing to join this action seeking recovery under the FLSA.
12

13 32. Plaintiffs bring this action on behalf of themselves and on behalf of all
14 other persons similarly situated who are current or former employees of Defendants who
15 were not paid the applicable minimum wage for time they spent working in a given
16 workweek for Defendants between approximately April 1, 2017 and the present,
17 including but not limited to those who agree in writing to join this action seeking
18 recovery under the FLSA.
19

20 33. Plaintiffs Flores and Salinas bring this action on behalf of themselves and
21 on behalf of all other persons similarly situated who are current or former employees of
22 Defendants who were not paid the Arizona minimum wage for time they spent working
23 in a given workweek for Defendants in Arizona between approximately April 1, 2017.
24

25 34. Plaintiffs Flores and Salinas bring this action on behalf of themselves and
26 on behalf of all other persons similarly situated who are current or former employees of
27

1 Defendants who were not paid any wage whatsoever for time they spent working in a
2 given workweek for Defendants in Arizona between approximately April 1, 2017.

3 35. Defendant The Sales Staff LLC is a Texas corporation, authorized to do
4 business in the State of Arizona and was at all relevant times Plaintiffs' and the Overtime
5 Collective Members' and the Minimum Wage Collective Members' Employer as defined
6 by 29 U.S.C. § 203(d).

8 36. Defendant The Sales Staff LLC is a Texas corporation, authorized to do
9 business in the State of Arizona and was at all relevant times Plaintiffs Flores' and
10 Salinas' and the Arizona Class Members' Employer as defined by A.R.S. § 23-350(3).

12 37. Under the FLSA, Defendant The Sales Staff LLC is an employer. The
13 FLSA defines "employer" as any individual who acts directly or indirectly in the interest
14 of an employer in relation to an employee. At all relevant times, Defendant The Sales
15 Staff LLC had the authority to hire and fire employees, supervised and controlled work
16 schedules or the conditions of employment, determined the rate and method of payment,
17 and maintained employment records in connection with Plaintiffs' and the Overtime
18 Collective Members' and Minimum Wage Collective Members' employment with The
19 Sales Staff LLC. Having acted in the interest of The Sales Staff LLC in relation to their
20 employees, including Plaintiffs, The Sales Staff LLC is subject to liability under the
21 FLSA.

24 38. Defendant The Sales Staff LLC was at all relevant times Plaintiffs Flores'
25 and Salinas' and the Arizona Class Members' Employer as defined by A.R.S. § 23-
26 350(3).
27

1 39. Under the FLSA, Defendants David Balzen and Jane Doe Balzen are
2 employers. The FLSA defines “employer” as any individual who acts directly or
3 indirectly in the interest of an employer in relation to an employee. At all relevant times,
4 Defendants David Balzen and Jane Doe Balzen were the owners of The Sales Staff LLC.
5 At all relevant times, they had the authority to hire and fire employees, supervised and
6 controlled work schedules or the conditions of employment, determined the rate and
7 method of payment, and maintained employment records in connection with Plaintiffs’
8 and the Overtime Collective Members’ and Minimum Wage Collective Members’
9 employment with The Sales Staff LLC. As persons who acted in the interest of The Sales
10 Staff LLC’s in relation to The Sales Staff LLC’s employees, including Plaintiffs,
11 Defendants David Balzen and Jane Doe Balzen are subject to individual liability under
12 the FLSA.
13

14 40. Defendants David Balzen and Jane Doe Balzen were at all relevant times
15 Plaintiffs Flores’ and Salinas’ and the Arizona Class Members’ Employer as defined by
16 A.R.S. § 23-350(3).
17

18 41. Under the FLSA, Defendants Brian Brorsen and Jane Doe Brorsen are
19 employers. The FLSA defines “employer” as any individual who acts directly or
20 indirectly in the interest of an employer in relation to an employee. At all relevant times,
21 Defendants Brian Brorsen and Jane Doe Brorsen were the owners of The Sales Staff
22 LLC. At all relevant times, they had the authority to hire and fire employees, supervised
23 and controlled work schedules or the conditions of employment, determined the rate and
24 method of payment, and maintained employment records in connection with Plaintiffs’
25
26
27

1 and the Overtime Collective Members’ and Minimum Wage Collective Members’
2 employment with The Sales Staff LLC. As persons who acted in the interest of The Slaes
3 Staff LLC’s in relation to The Sales Staff LLC’s employees, including Plaintiffs,
4 Defendants Brian Brorsen and Jane Doe Brorsen are subject to individual liability under
5 the FLSA.
6

7 42. Defendants Brian Brorsen and Jane Doe Brorsen were at all relevant times
8 Plaintiffs Flores’ and Salinas’ and the Arizona Class Members’ Employer as defined by
9 A.R.S. § 23-350(3).
10

11 43. Plaintiffs are further informed, believe, and therefore allege that each of the
12 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as
13 alleged in this Complaint.
14

15 44. Defendants, and each of them, are sued in both their individual and
16 corporate capacities.
17

18 45. Defendants are jointly and severally liable for the injuries and damages
19 sustained by Plaintiffs and the Overtime Collective Members and Minimum Wage
20 Collective Members.
21

22 46. At all relevant times, Plaintiffs and the Overtime Collective Members and
23 Minimum Wage Collective Members were “employees” of Defendants as defined by the
24 FLSA, 29 U.S.C. § 201, *et seq.*
25

26 47. At all relevant times, Plaintiffs Flores and Salinas and the Arizona Class
27 Members were “employees” of Defendants as defined by A.R.S. § 23-350(2).

1 48. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
2 Defendants.

3 49. At all relevant times, Defendants were and continue to be “employers” as
4 defined by FLSA, 29 U.S.C. § 201, *et seq.*

5 50. At all relevant times, Defendants were and continue to be “employers” as
6 defined by A.R.S. § 23-350(3).

7 51. Defendants individually and/or through an enterprise or agent, directed and
8 exercised control over Plaintiffs’, the Overtime Collective Members’, Minimum Wage
9 Collective Members’, and the Arizona Class Members’ work and wages at all relevant
10 times.
11

12 52. At all relevant times, Plaintiffs, the Overtime Collective Members, the
13 Minimum Wage Collective Members, and the Arizona Class Members, in their work for
14 Defendants, were engaged in commerce or the production of goods for commerce.
15

16 53. At all relevant times, Plaintiffs, the Overtime Collective Members, the
17 Minimum Wage Collective Members, and the Arizona Class Members, in their work for
18 Defendants, were employed by an enterprise engaged in commerce that had annual gross
19 sales of at least \$500,000.
20

21 54. Defendants operate The Sales Staff LLC from Texas but employs Inside
22 Sales Representatives nationally in, for example, Arizona, Iowa, Florida, Nevada, and
23 Ohio.
24

25 55. At all relevant times, all Defendants were joint employers of Plaintiffs, the
26 Overtime Collective Members, the Minimum Wage Collective Members, and the Arizona
27

1 Class Members. At all relevant times: (1) Defendants were not completely disassociated
2 with respect to the employment of Plaintiffs, the Overtime Collective Members, the
3 Minimum Wage Collective Members, and the Arizona Class Members; and (2)
4 Defendants were under common control. In any event, at all relevant times, Defendants
5 were joint employers under the FLSA, 29 C.F.R. § 791.2(b), and *Chao v. A-One Med.*
6 *Servs., Inc.*, 346 F.3d 908, 917-918 (9th Cir. 2003), and employed Plaintiffs, the
7 Overtime Collective Members, the Minimum Wage Collective Members, and the Arizona
8 Class Members.
9

10 **FACTUAL ALLEGATIONS**

11
12 56. Plaintiffs reallege and incorporate by reference all allegations in all
13 preceding paragraphs.

14 57. Defendants own and/or operate as The Sales Staff LLC, an enterprise
15 located in Fort Bend County, Texas.

16
17 58. Sales Staff is a B2B marketing company headquartered in Stafford, Texas,
18 that whose primary marketplace offering is contracting with their customers, who are
19 other businesses, to perform the inside sales functions of those businesses.

20
21 59. At all relevant times in their work for Defendants as Inside Sales
22 Representatives, Plaintiffs, the Overtime Collective Members, the Minimum Wage
23 Collective Members, and the Arizona Class Members performed and continue to perform
24 straightforward inside sales tasks.

25
26 60. At all relevant times in their work for Defendants, Inside Sales
27 Representatives had and have the primary job duty of cold-calling and emailing potential

1 customers of Sales Staff's clients with the goal of setting appointments between Sales
2 Staff's client and those potential customers.

3 61. At all relevant times in their work for Defendants, the Inside Sales
4 Representatives are and have been paid an hourly base compensation plus commissions
5 based entirely on sales performance.
6

7 62. On approximately November 1, 2015, Plaintiff Flores began employment
8 with Defendants as an Inside Sales Representative, working from home in Arizona, and
9 performing primarily non-exempt tasks, such as cold-calling and emailing potential
10 customers of Sales Staff's clients with the goal of setting appointments between Sales
11 Staff's client and those potential customers.
12

13 63. On approximately October 1, 2017, Plaintiff Salinas began employment
14 with Defendants as an Inside Sales Representative, working from home in Arizona, and
15 performing primarily non-exempt tasks, such cold-calling and emailing potential
16 customers of Sales Staff's clients with the goal of setting appointments between Sales
17 Staff's client and those potential customers.
18

19 64. On approximately February 1, 2016, Plaintiff Bradford began employment
20 with Defendants as an Inside Sales Representative, working from home in Arizona, and
21 performing primarily non-exempt tasks, such as cold-calling and emailing potential
22 customers of Sales Staff's clients with the goal of setting appointments between Sales
23 Staff's client and those potential customers.
24

25 65. Rather than paying their Inside Sales Representatives—including Plaintiffs
26 and the Overtime Collective Members—an overtime premium for time spent working in
27

1 excess of 40 hours in a given workweek, Defendants capped their hours at exactly 40,
2 even though Plaintiffs and the Overtime Collective Members generally worked more than
3 40 hours in a given workweek, in order to avoid their responsibilities under the FLSA.

4 66. During Plaintiffs' work for Defendants, they were paid a base hourly wage
5 with the potential for commission incentives.
6

7 67. Plaintiffs generally worked more than 40 hours per week in a given
8 workweek but had their hours "capped" at 40 hours per week by Defendants, and were
9 therefore paid for no more than 40 hours per week, pursuant to Defendants' policy and
10 practice of not paying an overtime premium to Plaintiffs for time they spent working in
11 excess of 40 hours per week.
12

13 68. In a given workweek, and during each and every workweek, of Plaintiffs'
14 employment with Defendants, they worked between five (5) and twenty (20) hours of
15 overtime without being compensated at one-and-one-half times their regular rates of pay
16 for such time worked.
17

18 69. In their work for Defendants, Plaintiffs and the Collective Members were
19 non-exempt employees.
20

21 70. At all relevant times, Defendants have required and require their Inside
22 Sales Representatives to be constantly available by phone and email and immediately
23 responsive to customers' needs, as well as in touch with each other to monitor ever-
24 changing customer needs.
25

26 71. At all relevant times, Sales Staff has required and requires their Inside Sales
27 Representatives to work continuously through the day, communicating with potential

1 customers by phone and email, cold-calling and emailing potential customers of Sales
2 Staff's clients with the goal of setting appointments between Sales Staff's client and
3 those potential customers.

4 72. Sales Staff also sets challenging sales quotas, enforces them harshly, and
5 fosters an intensely competitive culture.
6

7 73. These factors caused Plaintiffs and the Overtime Collective Members to
8 consistently work significant overtime, despite Defendants policy and practice of not
9 paying any wage whatsoever for time they worked in excess of 40 hours in a given
10 workweek.
11

12 74. Because of the nature of the work and demands placed by Sales Staff,
13 management is aware that Plaintiffs and the Overtime Collective Members consistently
14 worked more than 40 hours per week without receiving any compensation for time
15 worked in excess of 40 hours per week.
16

17 75. In addition, Plaintiffs and the Overtime Collective Members work extensive
18 time outside of normal business hours, through lunches, during mornings, evenings, and
19 weekends.
20

21 76. In their work for Defendants, Plaintiffs and the Overtime Collective
22 Members were not outside sales employees.

23 77. In their work for Defendants, Plaintiffs and the Overtime Collective
24 Members were not customarily and regularly engaged away from Sales Staff's place or
25 places of business in performing their primary duties.
26
27

1 78. In their work for Defendants, Plaintiffs and the Overtime Collective
2 Members were not commissioned sales employees half of whose total earnings consisted
3 of commissions.

4 79. At no point during any workweek during which Plaintiffs and the Overtime
5 Collective Members worked for Defendants did more than half of their total earnings
6 consist of commissions.

7 80. In their work for Defendants as Inside Sales Representatives, Plaintiffs' and
8 the Overtime Collective Members' primary duty was not managing the enterprise that is
9 Sales Staff, or managing a customarily recognized department or subdivision of the
10 enterprise that is Sales Staff.

11 81. In their work for Sales Staff as Inside Sales Representatives, Plaintiffs and
12 the Overtime Collective Members did not customarily and regularly direct the work of at
13 least two or more other full-time employees or their equivalent.

14 82. In their work for Defendants as Inside Sales Representatives, Plaintiffs and
15 the Overtime Collective Members did not have the authority to hire or fire other
16 employees, nor were their suggestions or recommendations as to the hiring, firing,
17 advancement, promotion, or any other change in status of other employees given
18 particular weight.

19 83. In their work for Defendants as Inside Sales Representatives, Plaintiffs' and
20 the Overtime Collective Members' primary duty was not the performance of office or
21 non-manual work directly related to the management or general business operations of
22 Sales Staff or Sales Staff's customers.

1 84. In their work for Defendants as Inside Sales Representatives Plaintiffs' and
2 the Overtime Collective Members' primary duty did not include the exercise of discretion
3 and independent judgment with respect to matters of significance.

4 85. From the beginning of Plaintiffs' and the Overtime Collective Members'
5 employment through the present day, Defendants failed to properly compensate Plaintiffs
6 and the Collective Members for any of their overtime hours. During each and every
7 workweek during which Plaintiffs and the Collective Members worked for Defendants,
8 they worked approximately forty-five (45) to sixty (65) hours per week, including
9 routinely working after regular business hours, and on weekends for which time
10 Defendants failed to accurately record Plaintiffs' and the Overtime Collective Members'
11 time worked while suffering or permitting them to work nonetheless.

12 86. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
13 and the Overtime Collective Members of their rights under the FLSA.

14 87. Defendants engaged in the regular practice of willfully failing to pay
15 Plaintiffs and the Overtime Collective Members one-and-one-half times their regular
16 rates of pay for all time that they suffered or permitted Plaintiffs and the Overtime
17 Collective Members to work in excess of forty (40) hours per workweek.

18 88. As a result of Defendants' willful failure to pay Plaintiffs and the Overtime
19 Collective Members one-and-one-half times their regular rates of pay for all work in
20 excess of forty (40) hours per workweek, Defendants paid Plaintiffs and the Overtime
21 Collective Members less than the applicable overtime wage rate for such work that
22
23
24
25
26
27

1 Plaintiffs and the Collective Members performed in excess of forty (40) hours per
2 workweek.

3 89. Defendants engaged in the regular practice of failing to accurately, if at all,
4 record the time during which Defendants suffered or permitted Plaintiffs and the
5 Overtime Collective Members to work. As such, Plaintiffs' and the Overtime Collective
6 Members' time records understate the duration of time each workweek that Defendants
7 suffered or permitted Plaintiffs and the Overtime Collective Members to work.

8
9 90. As a result of Defendants' willful failure to compensate Plaintiffs and the
10 Overtime Collective Members the applicable overtime wage rate for such hours worked,
11 Defendants have violated 29 U.S.C. § 207(a).

12
13 91. Defendants knew that – or acted with reckless disregard as to whether –
14 their failure to pay to Plaintiffs and the Overtime Collective Members one-and-one-half
15 times their regular rates of pay for all work in excess of forty (40) hours per workweek,
16 would violate federal and state law, and Defendants were aware of the FLSA overtime
17 wage requirements during Plaintiffs' and the Overtime Collective Members'
18 employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

19
20 92. Defendants have and continue to willfully violate the FLSA by not paying
21 Plaintiffs and the Overtime Collective Members one-and-one-half times their regular
22 rates of pay for all work in excess of forty (40) hours per workweek.

23
24 93. Defendants individually and/or through an enterprise or agent, directed and
25 exercised control over Plaintiffs' and the Collective Members' work and wages at all
26 relevant times.
27

1 94. In a given workweek, and during each and every workweek of Plaintiffs’
2 and the Collective Members’ employment with Defendants, Plaintiffs and the Overtime
3 Collective Members worked for Defendants for more than 40 hours and were not paid the
4 applicable overtime wage premium of one and one-half times their regular rates of pay
5 under the FLSA 29, U.S.C. § 207(a).
6

7 95. Defendants also did not pay any wage whatsoever to Plaintiffs and the
8 Minimum Wage Collective Members from approximately April 1, 2017 through the
9 present, in violation of 29 U.S.C. § 206(a).
10

11 96. Defendants also did not pay any wage whatsoever to Plaintiffs Flores and
12 Salinas and the Arizona Class Members from approximately April 1, 2017 through the
13 present, in violation of A.R.S. §§ 23-350, et. seq., and § 23-363, et seq.
14

15 97. Plaintiffs and the Overtime Collective Members are covered employees
16 within the meaning of the Fair Labor Standards Act (“FLSA”).
17

18 98. Plaintiffs and the Minimum Wage Collective Members are covered
19 employees within the meaning of the Fair Labor Standards Act (“FLSA”).
20

21 99. Plaintiffs Flores and Salinas and the Arizona Class Members are covered
22 employees within the meaning of A.R.S. §§ 23-350, et. seq., and § 23-363, et seq.
23

24 100. Defendants wrongfully withheld wages from Plaintiffs, the Overtime
25 Collective Members, and the Minimum Wage Collective Members by failing to pay all
26 wages due for hours they worked.
27

 101. Due to Defendants’ illegal wage practices, Plaintiffs and the Overtime
Collective Members are entitled to recover from Defendants compensation for unpaid

1 overtime wages, an additional amount equal amount as liquidated damages, interest, and
2 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

3 102. Due to Defendants' illegal wage practices, Plaintiffs and the Minimum
4 Wage Collective Members are entitled to recover from Defendants compensation for
5 unpaid minimum wages, an additional amount equal amount as liquidated damages,
6 interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

7 103. Due to Defendants' illegal wage practices, Plaintiffs Flores and Salinas and
8 the Arizona Class Members are entitled to recover from Defendants compensation for
9 unpaid minimum wages, an additional amount equal to twice the amount of unpaid wages
10 as liquidated damages, interest, and reasonable attorney's fees and costs of this action
11 under A.R.S. § 23-364.

12 104. Due to Defendants' illegal wage practices, Plaintiffs Flores and Salinas and
13 the Arizona Class Members are entitled to recover from Defendants compensation for an
14 amount that is treble their unpaid wages, interest, and costs of this action under A.R.S. §
15 23-355.

16
17
18 **FLSA COLLECTIVE ACTION ALLEGATIONS**

19 **A. FLSA OVERTIME COLLECTIVE MEMBERS:**

20
21 105. Plaintiffs reallege and incorporate by reference all allegations in all
22 preceding paragraphs.

23
24 106. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
25 behalves and as representatives of individuals similarly situated who are current or
26 former Inside Sales Representatives of Defendants.
27

1 107. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
2 behalves and as representatives of individuals similarly situated who are current and
3 former Inside Sales Representatives of Defendants, who are not or were not paid one-
4 and-one-half times their regular rates of pay for all time in excess of forty (40) hours per
5 workweek that Defendants suffered or permitted them to work, in violation of pursuant to
6 29 U.S.C. § 207(a), who agree in writing to join this lawsuit seeking recovery under the
7 FLSA.
8

9 108. At all relevant times, Plaintiffs and the Overtime Collective Members are
10 and have been similarly situated, have had substantially similar job requirements and pay
11 provisions, and are and have been subject to Defendants' decision, policy, plan, and
12 common programs, practices, procedures, protocols, routines, and rules of willfully
13 failing and refusing to pay and one-and-one-half times Plaintiffs' and the Overtime
14 Collective Members' regular rates of pay for all time in excess of forty (40) hours per
15 workweek that Defendants suffered or permitted them to work. Plaintiffs' claims stated
16 herein are essentially the same as those of the Overtime Collective Members. This action
17 is properly maintained as a collective action because in all pertinent aspects the
18 employment relationship of individuals similarly situated to Plaintiffs are identical.
19
20
21

22 109. Plaintiffs and the Overtime Collective Members worked more than forty
23 (40) hours in a given workweek without being compensated for the hours worked in
24 excess of forty (40) during that workweek. Further, Plaintiffs and the Overtime
25 Collective Members worked more than forty (40) hours in a given workweek without
26 being compensated for the overtime hours worked during that workweek.
27

1 110. The Overtime Collective Members perform or have performed the same or
2 similar work as the Plaintiffs.

3 111. The Overtime Collective Members regularly work or have worked in
4 excess of forty (40) hours during a given workweek.

5 112. The Overtime Collective Members are not exempt from receiving overtime
6 pay.

7 113. As such, the Overtime Collective Members are similar to Plaintiffs in terms
8 of job duties, pay structure, and/or the denial of overtime.

9 114. Defendants' failure to pay overtime compensation required by the FLSA
10 results from generally applicable policies or practices, and does not depend on the
11 personal circumstances of the Overtime Collective Members.

12 115. The experiences of Plaintiffs, with respect to their pay, are typical of the
13 experiences of the Overtime Collective Members.

14 116. The specific job titles or precise job responsibilities of each Overtime
15 Collective Member does not prevent collective treatment.

16 117. All Overtime Collective Members, irrespective of their particular job
17 requirements, are entitled to compensation for hours worked in excess of forty (40)
18 during a given workweek.

19 118. Although the exact amount of damages may vary among the Overtime
20 Collective Members, the damages for the Overtime Collective Members can be easily
21 calculated by a simple formula. The claims of all Overtime Collective Members arise
22

23
24
25
26
27

1 from a common nucleus of facts. Liability is based on a systematic course of wrongful
2 conduct by the Defendants that caused harm to all of the Overtime Collective Members.

3 119. As such, Plaintiffs bring their FLSA overtime claims as a collective action
4 on behalf of the following class:

5
6 **The FLSA Overtime Collective Members are all of Defendants’
7 current and former Inside Sales Representatives who earned an hourly
8 wage with commission incentives, who worked for Defendants at any
9 time starting three years before this lawsuit was filed up to the present.**

10 120. Defendants’ unlawful conduct, as described in this Collective Action
11 Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by
12 manipulating and/or failing to properly record the hours the employees work.

13 121. Defendants are aware or should have been aware that federal law required
14 them to pay employees performing non-exempt duties an overtime premium of not less
15 than one-and-one-half times their regular rates of pay for hours worked in excess of forty
16 (40) per workweek.

17 122. Defendants’ unlawful conduct has been widespread, repeated, and
18 consistent.

19 123. This action is properly brought under and maintained as an opt-in collective
20 action pursuant to 29 U.S.C. § 216(b).

21 124. The Overtime Collective Members perform or have performed the same or
22 similar work as Plaintiffs.

23 125. Upon information and belief, the individuals similarly situated to Plaintiffs
24 include more than one hundred (100) employees currently and/or formerly employed by
25
26
27

1 Defendants, and Plaintiffs are unable to state the precise number of similarly-situated
2 employees because that information is solely in Defendants' possession or control, but it
3 can be readily ascertained from their employment records and the records of its payroll
4 processor.

5
6 126. Notice can be provided to the Overtime Collective Members via first class
7 mail to the last address known to Defendants, via email at the last known email address
8 known to Defendants, and via text message at the last known telephone number known to
9 Defendants.

10
11 127. Plaintiffs' claims stated in this complaint are essentially the same as those
12 of the Overtime Collective Members. This action is properly maintained as a collective
13 action because in all pertinent aspects the employment relationship of individuals
14 similarly situated to Plaintiffs is identical or substantially similar.

15
16 **B. FLSA MINIMUM WAGE COLLECTIVE MEMBERS:**

17 128. Plaintiffs reallege and incorporate by reference all allegations in all
18 preceding paragraphs.

19 129. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
20 behalves and as representatives of individuals similarly situated who are current or
21 former Inside Sales Representatives of Defendants.

22
23 130. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
24 behalves and as representatives of individuals similarly situated who are current and
25 former Inside Sales Representatives of Defendants, who are not or were not paid a wage
26 or paycheck during any workweek between approximately April 1, 2017 and the present
27

1 that Defendants suffered or permitted them to work, in violation of pursuant to 29 U.S.C.
2 § 206(a), who agree in writing to join this lawsuit seeking recovery under the FLSA.

3 131. At all relevant times, Plaintiffs and the Minimum Wage Collective
4 Members are and have been similarly situated, have had substantially similar job
5 requirements and pay provisions, and are and have been subject to Defendants' decision,
6 policy, plan, and common programs, practices, procedures, protocols, routines, and rules
7 of willfully failing and refusing to pay a wage or paycheck during any workweek
8 between approximately April 1, 2017 and the present that Defendants suffered or
9 permitted them to work. Plaintiffs' claims stated herein are essentially the same as those
10 of the Minimum Wage Collective Members. This action is properly maintained as a
11 collective action because in all pertinent aspects the employment relationship of
12 individuals similarly situated to Plaintiffs are identical.

13
14
15
16 132. Plaintiffs and the Minimum Wage Collective Members worked during at
17 least one workweek between April 1, 2017 and the present without receiving a wage or
18 paycheck, despite Defendants' having suffered or permitted them to work. Further,
19 Plaintiffs and the Minimum Wage Collective Members worked in a given workweek
20 between April 1 2017 and the present without being compensated for any hours worked
21 during that workweek.

22
23 133. The Minimum Wage Collective Members perform or have performed the
24 same or similar work as the Plaintiffs.

25
26 134. The Minimum Wage Collective Members regularly work or have worked
27 for Defendants in a given workweek between April 1, 2017 and the present.

1 135. The Minimum Wage Collective Members are not exempt from receiving
2 minimum wage.

3 136. As such, the Minimum Wage Collective Members are similar to Plaintiffs
4 in terms of job duties, pay structure, and/or the denial of minimum wage between April 1,
5 2017 and the present.
6

7 137. Defendants' failure to pay minimum wage compensation required by the
8 FLSA results from generally applicable policies or practices, and does not depend on the
9 personal circumstances of the Minimum Wage Collective Members.
10

11 138. The experiences of Plaintiffs, with respect to their pay, are typical of the
12 experiences of the Minimum Wage Collective Members.

13 139. The specific job titles or precise job responsibilities of each Minimum
14 Wage Collective Member does not prevent collective treatment.
15

16 140. All Minimum Wage Collective Members, irrespective of their particular job
17 requirements, are entitled to minimum wage compensation for hours worked during a
18 given workweek.

19 141. Although the exact amount of damages may vary among the Minimum
20 Wage Collective Members, the damages for the Minimum Wage Collective Members can
21 be easily calculated by a simple formula. The claims of all Minimum Wage Collective
22 Members arise from a common nucleus of facts. Liability is based on a systematic course
23 of wrongful conduct by the Defendants that caused harm to all of the Minimum Wage
24 Collective Members.
25
26
27

1 142. As such, Plaintiffs bring their FLSA minimum wage claims as a collective
2 action on behalf of the following class:

3 **The FLSA Minimum Wage Collective Members are all of**
4 **Defendants' current and former employees who did not receive**
5 **at least one paycheck for work performed at any time starting**
6 **April 1, 2017 through the present.**

7 143. Defendants' unlawful conduct, as described in this Collective Action
8 Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by
9 manipulating and/or failing to properly record the hours the employees work.

10 144. Defendants are aware or should have been aware that federal law required
11 them to pay employees performing non-exempt duties the applicable minimum wage for
12 all hours worked in a given workweek.

13 145. Defendants' unlawful conduct has been widespread, repeated, and
14 consistent.
15

16 146. This action is properly brought under and maintained as an opt-in collective
17 action pursuant to 29 U.S.C. § 216(b).
18

19 147. The Minimum Wage Collective Members perform or have performed the
20 same or similar work as Plaintiffs.

21 148. Upon information and belief, the individuals similarly situated to Plaintiffs
22 include more than one hundred (100) employees currently and/or formerly employed by
23 Defendants, and Plaintiffs are unable to state the precise number of similarly-situated
24 employees because that information is solely in Defendants' possession or control, but it
25
26
27

1 can be readily ascertained from their employment records and the records of its payroll
2 processor.

3 149. Notice can be provided to the Minimum Wage Collective Members via first
4 class mail to the last address known to Defendants, via email at the last known email
5 address known to Defendants, and via text message at the last known telephone number
6 known to Defendants.
7

8 150. Plaintiffs' claims stated in this complaint are essentially the same as those
9 of the Minimum Wage Collective Members. This action is properly maintained as a
10 collective action because in all pertinent aspects the employment relationship of
11 individuals similarly situated to Plaintiffs is identical or substantially similar.
12

13 **ARIZONA RULE 23 CLASS ACTION ALLEGATIONS**

14 151. Plaintiffs reallege and incorporate by reference all allegations in all
15 preceding paragraphs.
16

17 152. Plaintiffs bring their Arizona wage claims as a Rule 23 class action on
18 behalf of the following Arizona Class Members:

19 **The Arizona Class Members are all of Defendants' current and**
20 **former Arizona employees who did not receive at least one**
21 **paycheck for work performed at any time starting April 1, 2017**
22 **through the present.**

23 153. Numerosity. The number of Class Members is believed to be at least fifty
24 (50). This volume makes bringing the claims of each individual Arizona Class Member
25 before this Court impracticable. Likewise, joining each individual Arizona Class
26 Member as a plaintiff in this action is impracticable. Furthermore, the identity of the
27

1 Arizona Class Members will be determined from Defendants' records, as will the
2 compensation paid to each of them. As such, a class action is a reasonable and practical
3 means of resolving these claims. To require individual actions would prejudice the
4 Arizona Class Members and Defendants.

5
6 154. Typicality. Plaintiffs Flores' and Salinas' claims are typical of the Arizona
7 Class Members because like the Arizona Class Members, Plaintiffs Flores and Salinas
8 were subject to Defendants' uniform policies and practices and was compensated in the
9 same manner as the other Arizona Class Members. Defendants did not pay any wage
10 whatsoever to Plaintiffs Flores or Salinas or the Arizona Class Members the applicable
11 minimum wage or their regular rates of pay, in violation of A.R.S. § 23-350, et. seq.,
12 A.R.S. § 23-363, et. seq.

13
14 155. Adequacy. Plaintiffs Flores and Salinas are representative parties who will
15 fairly and adequately protect the interests of the Arizona Class Members because it is in
16 their interest to effectively prosecute the claims in this Complaint in order to obtain the
17 unpaid wages and penalties required under Arizona law. Plaintiffs Flores and Salinas
18 have retained an attorney who is competent in both class actions and wage and hour
19 litigation. Plaintiffs Flores and Salinas do not have any interests that may be contrary to
20 or in conflict with the claims of the Arizona Class Members they seeks to represent.

21
22 156. Commonality. Common issues of fact and law predominate over any
23 individual questions in this matter. The common issues of fact include, but are not
24 limited to:
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- a. Whether and to what extent Defendants compensated Plaintiffs Flores and Salinas and the Arizona Class Members for work performed from April 1, 2017 through the present;
- b. Plaintiff Flores' and Salinas' and the Arizona Class Members' regular rates of pay.

157. Common issues of law include, but are not limited to:

- a. Whether Defendants properly paid all minimum wages due and owing to Plaintiffs Flores and Salinas and the Arizona Class Members;
- b. Whether Defendants properly paid all wages due and owing to Plaintiffs Flores and Salinas and the Arizona Class Members;
- c. Whether Plaintiffs Flores and Salinas and the Arizona Class Members are entitled to compensatory damages;
- d. Whether Plaintiffs and the Arizona Class Members are entitled to liquidated damages;
- e. The proper measure of damages sustained by Plaintiffs Flores and Salinas and the Arizona Class Members; and
- f. Whether Plaintiffs Flores and Salinas and the Arizona Class Members are entitled to their reasonable attorneys' fees and costs;

158. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this lawsuit. Even in the event any of the Arizona Class Members could afford to pursue individual litigation against companies the size of

1 Defendants, doing so would unduly burden the system. Individual litigation would
2 magnify the delay and expense to all parties and burden the court system with duplicative
3 lawsuits. Prosecution of separate actions by individual Arizona Class Members would
4 create the risk of inconsistent or varying judicial results and establish incompatible
5 standards of conduct for Defendants.
6

7 159. A class action, by contrast, presents far fewer management difficulties and
8 affords the benefits of uniform adjudication of the claims, financial economy for the
9 parties, and comprehensive supervision by a single court and Judge. By concentrating
10 this litigation in one forum, judicial economy and parity among the claims of individual
11 Class Members are promoted. Additionally, class treatment in this matter will provide
12 for judicial consistency. The identities of the Arizona Class Members are readily
13 identifiable from Defendants' records.
14

15 160. This type of case is well-suited for class action treatment because: (1)
16 Defendants' practices, policies, and/or procedures were uniform; (2) the burden is on
17 each Defendant to prove it properly compensated its employees; (3) the burden is on each
18 Defendant to accurately record hours worked by employees; and (4) the burden is on each
19 Defendant to prove it properly imposed the tip credit upon its employees.
20
21

22 161. Ultimately, a class action is a superior forum to resolve the Arizona state
23 law claims set forth in this Complaint because of the common nucleus of operative facts
24 centered on the continued failure of Defendants to pay Plaintiffs Flores and Salinas and
25 the Arizona Class Members according to applicable Arizona laws.
26
27

1 166. Plaintiffs Flores and Salinas and the Arizona Class Members are entitled to
2 recover minimum wage compensation for the hours they worked for Defendants in any
3 given workweek from April 1, 2017 through the present for which they were not paid at
4 least the Arizona minimum wage—i.e., Plaintiffs Flores and Salinas and the Arizona Class
5 Members are entitled to the Arizona minimum wage for all hours worked from April 1,
6 2017 through the present; an additional amount equal to twice the unpaid minimum
7 wages; and their reasonable attorneys’ fees and costs pursuant to A.R.S. § 23-364.
8

9 167. Plaintiffs Flores and Salinas and the Arizona Class Members are entitled to
10 recover treble their unpaid wages at their regular rates of pay for the hours they worked
11 for Defendants in any given workweek from April 1, 2017 through the present for which
12 they were not paid at least their regular rates of pay—i.e., Plaintiffs Flores and Salinas and
13 the Arizona Class Members are entitled to a treble amount of their regular rates of pay for
14 all hours worked from April 1, 2017 through the present; interest, and costs pursuant to
15 A.R.S. § 23-355.
16
17

18 **COUNT ONE: FAIR LABOR STANDARDS ACT**
19 **UNPAID OVERTIME**

20 168. Plaintiffs reallege and incorporate by reference all allegations in all
21 preceding paragraphs.
22

23 169. Defendants operated pursuant to their policy and practice of not paying
24 Plaintiffs and the Overtime Collective Members one and one-half times their regular rates
25 of pay for all time spent working in excess of 40 hours per workweek.
26
27

1 170. While employed by Defendants, Plaintiffs and the Overtime Collective
2 Members worked tens of hours of overtime per week each and every workweek for which
3 they worked for Defendants, and Defendants did not pay to Plaintiffs and the Overtime
4 Collective Members one-and-one-half times their regular rate of pay for such time, in
5 violation of 29 U.S.C. § 207(a).
6

7 171. As a result, Defendants have intentionally failed and/or refused to pay
8 Plaintiffs and the Overtime Collective Members overtime according to the provisions of
9 the FLSA.
10

11 172. Defendants further have engaged in a widespread pattern and practice of
12 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiffs and the
13 Overtime Collective Members in accordance with 29 U.S.C. § 207.
14

15 173. Plaintiffs and the Overtime Collective Members believe and therefore aver
16 that Defendants owe them unpaid overtime wages for each and every pay period for the
17 duration of their employment.
18

19 174. As a result, Defendants have intentionally failed and/or refused to pay
20 Plaintiffs and the Overtime Collective Members overtime according to the provisions of
21 the FLSA.
22

23 175. Defendants further have engaged in a widespread pattern and practice of
24 violating the provisions of the FLSA by failing to pay Plaintiffs and the Overtime
25 Collective Members in accordance with 29 U.S.C. § 207.
26

27 176. Defendants knew that – or acted with reckless disregard as to whether –
their refusal or failure to properly compensate Plaintiffs and the Overtime Collective

1 Members over the course of their employment would violate federal and state law, and
2 Defendants were aware of the FLSA minimum wage and overtime requirements during
3 Plaintiffs' and the Overtime Collective Members' employment. As such, Defendants'
4 conduct constitutes a willful violation of the FLSA.

5
6 177. Defendants have and continue to willfully violate the FLSA by not paying
7 Plaintiffs and the Overtime Collective Members a wage equal to one and one-half times
8 their regular rates of pay for all time spent performing labor for Defendants in excess of
9 their regular 40-hour workweek.

10
11 178. As a result of Defendants failure or refusal to pay Plaintiffs and the
12 Overtime Collective Members a wage equal to one and one half times Plaintiffs' and the
13 Overtime Collective Members' regular rates of pay for work they performed for
14 Defendants in excess of their regular 40-hour workweek, Defendants violated 29 U.S.C. §
15 207(a). Plaintiffs and the Overtime Collective Members are therefore entitled to
16 compensation of one-and-one-half times their regular rates of pay, to be proven at trial,
17 plus an additional equal amount as liquidated damages, together with interest, reasonable
18 attorney's fees, and costs.

19
20
21 WHEREFORE, Plaintiffs, Evonne Flores, Frankie Salinas, and Gail Bradford
22 individually, and on behalf of all other similarly situated persons, requests that this Court
23 grant the following relief in Plaintiffs' and the Overtime Collective Members' favor, and
24 against Defendants:

- 25
26 A. For the Court to declare and find that the Defendants committed one or
27 more of the following acts:

THE BENDAU LAW FIRM PLLC
P.O. Box 97066
Phoenix, AZ 85060

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- i. violated the overtime provisions of the FLSA, 29 U.S.C. § 207, by failing to pay proper overtime wages; and
 - ii. willfully the violated overtime wage provisions of the FLSA, 29 U.S.C. § 207;
- B. For the Court to award damages in the amounts of all unpaid overtime wages due and owing to Plaintiffs and the Overtime Collective Members;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest on any damages awarded;
- E. For the Court to award Plaintiffs’ and the Overtime Collective Members’ reasonable attorneys’ fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth in this Complaint;
- F. For the Court to provide reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for the Overtime Collective Members and for the risks they took in doing so; and
- G. Such other relief as this Court deems just and proper.

//

//

COUNT TWO: FAIR LABOR STANDARDS ACT
UNPAID MINIMUM WAGES

1
2
3 179. Plaintiffs reallege and incorporate by reference all allegations in all
4 preceding paragraphs.

5 180. Between approximately April 1, 2017 and the present, Defendants have not
6 paid Plaintiffs or the Minimum Wages Collective Members the applicable minimum
7 wage for all time they spent working for Defendants in a given workweek.

8
9 181. As a result, Defendants have intentionally failed and/or refused to pay
10 Plaintiffs and the Minimum Wage Collective Members minimum wage according to the
11 provisions of the FLSA.

12
13 182. Defendants further have engaged in a widespread pattern and practice of
14 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiffs and the
15 Minimum Wage Collective Members in accordance with 29 U.S.C. § 206.

16
17 183. Plaintiffs and the Minimum Wage Collective Members believe and
18 therefore aver that Defendants owe them unpaid minimum wages for each and every pay
19 period between approximately April 1, 2017 and the present.

20
21 184. As a result, Defendants have intentionally failed and/or refused to pay
22 Plaintiffs and the Minimum Wage Collective Members minimum wage according to the
23 provisions of the FLSA.

24
25 185. Defendants further have engaged in a widespread pattern and practice of
26 violating the provisions of the FLSA by failing to pay Plaintiffs and the Minimum Wage
27 Collective Members in accordance with 29 U.S.C. § 206.

1 186. Defendants have and continue to willfully violate the FLSA by not paying
2 Plaintiffs and the Minimum Wage Collective Members a wage equal to the applicable
3 minimum wage rate for all time spent performing labor for Defendants in a given
4 workweek.

5
6 187. As a result of Defendants failure or refusal to pay Plaintiffs and the
7 Minimum Wage Collective Members a wage equal to the applicable minimum wage for
8 work they performed for Defendants in a given workweek, Defendants violated 29 U.S.C.
9 § 206(a). Plaintiffs and the Minimum Wage Collective Members are therefore entitled to
10 compensation of the applicable minimum wage, to be proven at trial, plus an additional
11 equal amount as liquidated damages, together with interest, reasonable attorney's fees,
12 and costs.

13
14 WHEREFORE, Plaintiffs, Evonne Flores, Frankie Salinas, and Gail Bradford
15 individually, and on behalf of all other similarly situated persons, requests that this Court
16 grant the following relief in Plaintiffs' and the Minimum Wage Collective Members'
17 favor, and against Defendants:

18
19 H. For the Court to declare and find that the Defendants committed one or
20 more of the following acts:

21
22 iii. violated the minimum wage provisions of the FLSA, 29 U.S.C. §
23 206, by failing to pay proper overtime wages; and

24 iv. willfully the violated minimum wage provisions of the FLSA, 29
25 U.S.C. § 206;
26
27

THE BENDAU LAW FIRM PLLC
P.O. Box 97066
Phoenix, AZ 85060

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- I. For the Court to award damages in the amounts of all unpaid minimum wages due and owing to Plaintiffs and the Minimum Wage Collective Members;
- J. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at trial;
- K. For the Court to award prejudgment and post-judgment interest on any damages awarded;
- L. For the Court to award Plaintiffs’ and the Minimum Wage Collective Members’ reasonable attorneys’ fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth in this Complaint;
- M. For the Court to provide reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for the Minimum Wage Collective Members and for the risks they took in doing so; and
- N. Such other relief as this Court deems just and proper.

COUNT THREE: ARIZONA WAGE LAW
FAILURE TO PAY MINIMUM WAGE

188. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

1 189. Between approximately April 1, 2017 and the present, Defendants have not
2 paid Plaintiffs or the Arizona Class Members the Arizona minimum wage for all time
3 they spent working for Defendants in a given workweek.

4 190. As a result, Defendants have intentionally failed and/or refused to pay
5 Plaintiffs and the Arizona Class Members minimum wage according to Arizona law.
6

7 191. Defendants further have engaged in a widespread pattern and practice of
8 violating the Arizona Minimum Wage Act by failing and/or refusing to pay Plaintiffs and
9 the Arizona Class Members in accordance with A.R.S. § 23-363, *et seq.*
10

11 192. Plaintiffs and the Arizona Class Members believe and therefore aver that
12 Defendants owe them unpaid Arizona minimum wages for each and every pay period
13 between approximately April 1, 2017 and the present.

14 193. As a result, Defendants have intentionally failed and/or refused to pay
15 Plaintiffs and the Arizona Class Members minimum wage according to the provisions of
16 the A.R.S. § 23-363, *et seq.*
17

18 194. Defendants further have engaged in a widespread pattern and practice of
19 violating the provisions of the Arizona Minimum Wage Act by failing to pay Plaintiffs
20 and the Arizona Class Members in accordance with A.R.S. § 23-363, *et seq.*
21

22 195. Defendants have and continue to willfully violate the Arizona Minimum
23 Wage Act by not paying Plaintiffs and the Arizona Class Members a wage equal to the
24 applicable minimum wage rate for all time spent performing labor for Defendants in a
25 given workweek.
26
27

1 196. As a result of Defendants failure or refusal to pay Plaintiffs and the Arizona
2 Class Members a wage equal to the Arizona minimum wage for work they performed for
3 Defendants in a given workweek, Defendants violated A.R.S. § 23-363, *et seq.* Plaintiffs
4 and the Arizona Class Members are therefore entitled to compensation of the applicable
5 minimum wage, to be proven at trial, plus an additional amount equal to twice the unpaid
6 minimum wages as liquidated damages, together with interest, reasonable attorney's fees,
7 and costs.

8
9 WHEREFORE, Plaintiffs, Evonne Flores and Frankie Salinas individually, and on
10 behalf of all Arizona Class Members, requests that this Court grant the following relief in
11 Plaintiffs' and the Arizona Class Members' favor, and against Defendants:
12

- 13 A. For the Court to declare and find that the Defendants committed one or
14 more of the following acts:
15 v. violated minimum wage provisions of A.R.S. § 23-363 by failing to
16 pay proper minimum wages;
17 vi. willfully violated minimum wage provisions of A.R.S. § 23-363 by
18 failing to pay proper minimum wages;
19
20 B. For the Court to award compensatory damages, including liquidated
21 damages in an amount equal to twice the underpaid wages pursuant to
22 A.R.S. § 23-364(G), in amounts to be determined at trial;
23
24 C. For the Court to award prejudgment and post-judgment interest on any
25 damages awarded;
26
27

1 D. For the Court to award Plaintiffs' and the Class Members' reasonable
2 attorneys' fees and costs of the action pursuant to A.R.S. § 23-364(G) and
3 all other causes of action set forth in this Complaint;

4 E. For the Court to provide reasonable incentive awards for each named
5 Plaintiff to compensate them for the time they spent attempting to recover
6 wages for the Class Members and for the risks they took in doing so; and
7

8 F. Such other relief as this Court deems just and proper.

9
10 **COUNT FOUR: ARIZONA WAGE LAW**
FAILURE TO PAY WAGES DUE

11 197. Plaintiffs reallege and incorporate by reference all allegations in all
12 preceding paragraphs.

13
14 198. Between approximately April 1, 2017 and the present, Defendants have not
15 paid Plaintiffs or the Arizona Class Members their regular rates of pay for all time they
16 spent working for Defendants in a given workweek.

17
18 199. As a result, Defendants have intentionally failed and/or refused to pay
19 Plaintiffs and the Arizona Class Members wages according to Arizona law.

20 200. Defendants further have engaged in a widespread pattern and practice of
21 violating the Arizona Wage Act by failing and/or refusing to pay Plaintiffs and the
22 Arizona Class Members in accordance with A.R.S. § 23-350, *et seq.*

23
24 201. Plaintiffs and the Arizona Class Members believe and therefore aver that
25 Defendants owe them unpaid wages for each and every pay period between
26 approximately April 1, 2017 and the present.
27

1 202. As a result, Defendants have intentionally failed and/or refused to pay
2 Plaintiffs and the Arizona Class Members wage due and owing according to the
3 provisions of the A.R.S. § 23-350, *et seq.*

4 203. Defendants further have engaged in a widespread pattern and practice of
5 violating the provisions of the Arizona Wage Act by failing to pay Plaintiffs and the
6 Arizona Class Members in accordance with A.R.S. § 23-350, *et seq.*

7 204. Defendants have and continue to willfully violate the Arizona Wage Act by
8 not paying Plaintiffs and the Arizona Class Members a wage equal to their regular rates
9 of pay for all time spent performing labor for Defendants in a given workweek.
10

11 205. As a result of Defendants failure or refusal to pay Plaintiffs and the Arizona
12 Class Members a wage equal to their regular rates of pay for work they performed for
13 Defendants in a given workweek, Defendants violated A.R.S. § 23-350, *et seq.* Plaintiffs
14 and the Arizona Class Members are therefore entitled to compensation of treble their
15 unpaid wages, to be proven at trial, together with interest and costs.
16

17 WHEREFORE, Plaintiffs, Evonne Flores and Frankie Salinas individually, and on
18 behalf of all Arizona Class Members, requests that this Court grant the following relief in
19 Plaintiffs' and the Arizona Class Members' favor, and against Defendants:
20

21 G. For the Court to declare and find that the Defendants committed one or
22 more of the following acts:
23

24 vii. violated the provisions of A.R.S. § 23-350, *et seq.* by failing to pay
25 wages;
26

27

THE BENDAU LAW FIRM PLLC
P.O. Box 97066
Phoenix, AZ 85060

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- viii. willfully violated minimum wage provisions of A.R.S. § 23-350, *et seq.* by failing to pay wages;
 - H. For the Court to award compensatory damages, including treble damages pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
 - I. For the Court to award prejudgment and post-judgment interest on any damages awarded;
 - J. For the Court to award Plaintiffs’ and the Arizona Class Members’ reasonable attorneys’ fees and costs of the action and all other causes of action set forth in this Complaint;
 - K. For the Court to provide reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for the Class Members and for the risks they took in doing so; and
206. Such other relief as this Court deems just and proper.

REQUEST FOR COLLECTIVE ACTION CERTIFICATION

As to Counts I and II of this Complaint, Plaintiffs request that the Court designate this action as a collective action on behalf of the FLSA Overtime Collective Members and Minimum Wage Collective Members and promptly issue a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to timely assert FLSA claims in this action by filing individual Consent to Sue Forms pursuant to 29 U.S.C. § 216(b).

//
//

REQUEST FOR CLASS ACTION CERTIFICATION

1
2 As to Counts III and IV of this Complaint, Plaintiffs Flores and Salinas request
3 that the Court certify this action as a class action pursuant to Fed. R. Civ. P. 23(b)(3) and
4 designate Plaintiffs Flores and Salinas as class representative and their counsel as class
5 counsel.
6

JURY TRIAL DEMAND

7
8 Plaintiffs demand a trial by jury on all issues so triable.
9

10 RESPECTFULLY SUBMITTED this 25th day of July, 2017.

11 THE BENDAU LAW FIRM, PLLC

12
13 By: /s/ Clifford P. Bendau, II
14 Clifford P. Bendau, II
15 Christopher J. Bendau
16
17
18
19
20
21
22
23
24
25
26
27

THE BENDAU LAW FIRM PLLC
P.O. Box 97066
Phoenix, AZ 85060

THE BENDAU LAW FIRM, PLLC

Exhibit A

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (480) 304-3805
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Evonne Flores, Frankie Salinas, and Gail**
14 **Bradford**, individually, and on behalf of
15 all others similarly situated,

16 Plaintiffs,

17 v.

18 **The Sales Staff LLC**, a Texas Limited
19 Liability Company, **David Balzen and**
20 **Jane Doe Balzen**, a married couple, **Bryan**
21 **Brorsen and Jane Doe Brorsen**, a married
22 couple,

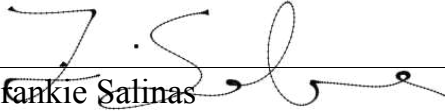
23 Defendants.

No.

**PLAINTIFF FRANKIE SALINAS’
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

24 I, Frankie Salinas, do hereby consent to be a party plaintiff to the above-entitled
25 action. I have read the complaint to be filed in the United States District Court for the
26 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
27 associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other
employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
(40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly

1 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
2 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
3 share of any reasonable costs incurred by the Attorneys on my behalf.

4 
5 _____
Frankie Salinas

7/25/2017

Date

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (480) 304-3805
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Evonne Flores, Frankie Salinas, and Gail**
14 **Bradford**, individually, and on behalf of
15 all others similarly situated,

16 Plaintiffs,

17 v.

18 **The Sales Staff LLC**, a Texas Limited
19 Liability Company, **David Balzen and**
20 **Jane Doe Balzen**, a married couple, **Bryan**
21 **Brorsen and Jane Doe Brorsen**, a married
22 couple,

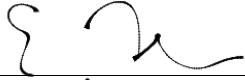
23 Defendants.

No.

**PLAINTIFF EVONNE FLORES’
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

24 I, Evonne Flores, do hereby consent to be a party plaintiff to the above-entitled
25 action. I have read the complaint to be filed in the United States District Court for the
26 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
27 associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other
employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
(40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly

1 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
2 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
3 share of any reasonable costs incurred by the Attorneys on my behalf.

4 

5 Evonne Flores

7/25/2017

_____ Date

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (480) 304-3805
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Evonne Flores, Frankie Salinas, and Gail**
14 **Bradford**, individually, and on behalf of
15 all others similarly situated,

16 Plaintiffs,

17 v.

18 **The Sales Staff LLC**, a Texas Limited
19 Liability Company, **David Balzen and**
20 **Jane Doe Balzen**, a married couple, **Bryan**
21 **Brorsen and Jane Doe Brorsen**, a married
22 couple,

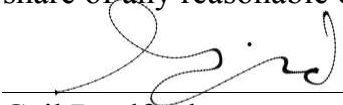
23 Defendants.

No.

**PLAINTIFF GAIL BRADFORD'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

24 I, Gail Bradford, do hereby consent to be a party plaintiff to the above-entitled
25 action. I have read the complaint to be filed in the United States District Court for the
26 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
27 associated attorneys ("the Attorneys"), to file the Complaint on my behalf and for other
employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
(40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly

1 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
2 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
3 share of any reasonable costs incurred by the Attorneys on my behalf.

4 
5 _____
Gail Bradford

7/25/17

Date

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

**Plaintiff(s): Evonne Flores ; Frankie Salinas ;
Gail Bradford**

**Defendant(s): The Sales Staff LLC ; David Balzen
; Brian Brorsen**

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Clifford Phillip Bendau II, Managing Attorney
The Bendau Law Firm PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5176**

**Christopher Jacob Bendau , Managing Attorney
The Bendau Law Firm PLLC
P.O. Box 97066
Phoenix, Arizona 85060
480-382-5033**

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit: **710 Fair Labor Standards Act**

VI. Cause of Action: **Action for unpaid overtime and minimum wages under 29 U.S.C. § 201, et seq., and action for unpaid wages and minimum wage under Arizona Revised Statutes §§ 23-363 and 23-350, et seq.**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/ Clifford P. Bendau, II

Date: 7/25/17

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: The Sales Staff Illegally Caps Employees' Wages](#)
