

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

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PHILIP VASTO, ZAO YANG, ALEX )  
TORRES, and XIAOJ ZHENG, )  
individually and on behalf of all others )  
similarly situated, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
CREDICO (USA) LLC, CROMEX INC., )  
JESSE YOUNG, and MEIXI XU, )  
) )  
Defendants. )

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Civil Action No. 1:15-cv-6503

**JURY DEMANDED**

**FIRST AMENDED CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. This class and collective action is brought by Philip Vasto, Zao Yang, Alex Torres, and XiaoJ Zheng (collectively, "Plaintiffs"), who have worked for Credico (USA) LLC ("Credico"), Cromex Inc. ("CroMex"), Jesse Young, and Meixi Xu (collectively, "Defendants"), promoting their clients' cell phones and wireless service plans. Defendants have been operating as joint employers of Plaintiffs', and of all workers promoting Defendants' clients' cell phones and wireless service plans. Upon information and belief, Credico, from its headquarters in Chicago, Illinois, has perpetrated a nationwide pyramid scheme, whereby a network of over 100 companies across the country, including CroMex, operate as Credico's franchisees, and contract with workers who provide face-to-face sales and marketing services for Credico's clients. Credico exercises control over the day-to-day operations of the companies in its

network. For example, Credico's Regional Sales Director, controlled by its Chicago headquarters, has exercised his authority to terminate a worker from CroMex.

2. Defendants have misclassified these workers as independent contractors and, in so doing, have violated the federal Fair Labor Standard Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, New York Labor Law, Article 6 §§ 190 *et seq.*, Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, as well as the Arizona Wage Act, A.R.S. § 23-350, *et seq.*, and Arizona Minimum Wage Act, A.R.S. § 23-362 *et seq.*, and the supporting Industrial Commission of Arizona Regulations, by failing to pay them minimum wage for all hours worked, and overtime. As a precondition of their work with Defendants, the workers are required to participate in training that can last up to several weeks. Defendants' workers are not paid at all during this training period. Upon completion of their training, Defendants' workers are required to work twelve hour shifts, six days per week, are instructed in the details of their job performance, and are monitored and reviewed frequently. Defendants pay their workers solely on a commission basis—they earn \$10 for each qualified customer they sign up for their clients' services or products. As a result of Defendants' payment scheme, their workers have received an hourly rate that is less than the federal minimum wage, New York minimum wage, and Arizona minimum wage, and have not been paid overtime, although they consistently work over 40 hours in a week.

3. Plaintiffs bring their claims under the FLSA on behalf of similarly situated workers who have worked for Defendants in other states and nationwide, who may choose to opt-in to this action pursuant to 29 U.S.C. § 216(b). Additionally, Plaintiffs bring their New York and Arizona state law claims as class actions under Rule 23 of the

Federal Rules of Civil Procedure on behalf of workers who have worked for Defendants in those states. Plaintiffs seek restitution of all wages of which they were deprived, payment for their training time, and all other relief to which they are entitled.

4. Plaintiffs Vasto and Yang also bring individual claims for wrongful termination in retaliation for asserting their rights under the FLSA and New York Labor Law, in violation of the FLSA, 29 U.S.C. § 215(a)(3), and New York Labor Law, Article 20-C § 740.

## II. JURISDICTION AND VENUE

5. This Court has general federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the Plaintiffs have brought claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

6. This Court has supplemental jurisdiction over Plaintiffs' New York and Arizona state law claims pursuant to 28 U.S.C. § 1367 because these claims are so related to Plaintiffs' claims under the FLSA that they form part of the same case or controversy.

7. The Northern District of Illinois is the proper venue for this action pursuant to 28 U.S.C. § 1391(b)(2) because Defendant Credico is headquartered in Chicago, Illinois, where a substantial part of the events giving rise to Plaintiffs' claims occurred. Specifically, upon information and belief, from its headquarters at 525 W. Monroe Street, Suite 2350, Chicago, Illinois, Defendant Credico perpetrated a nationwide pyramid scheme, whereby a network of over 100 companies across the country, including CroMex, operate as Credico's franchisees, and contract with workers who provide face-to-face sales and marketing services for Credico's clients.

8. Upon information and belief, it is from its Chicago headquarters that Credico determined to classify its workers as independent contractors. As a result of this misclassification, Defendants have failed to pay these workers minimum wage and overtime pursuant to federal and state law.

9. Upon information and belief, it is from its Chicago headquarters that Credico provides its network of franchisees with financial and legal support, and controls and manages the finances for the companies in its network.

10. Upon information and belief, it is from its Chicago headquarters that Credico determines the criteria by which a worker can create his own business in the Credico network.

11. Upon information and belief, it is from its Chicago headquarters that Credico created and implemented its "Management Training Program," which provides the methods by which each company in its network, including Defendant CroMex, must train its workers to provide face-to-face sales and marketing services for its clients.

12. Upon information and belief, it is from its Chicago headquarters that Credico issues each company in its network the tablets required to provide face-to-face sales and marketing services for its clients.

13. Upon information and belief, it is from its Chicago headquarters that Credico conducts background checks on each prospective worker who interviews to provide face-to-face sales and marketing services to Defendants' clients.

14. Credico's Regional Sales Director, who is controlled by its Chicago headquarters, terminated one of the workers providing Defendants' clients with face-to-face sales and marketing services through CroMex.

**III. PARTIES**

15. Plaintiff Philip Vasto is an adult resident of New York. Mr. Vasto worked for Defendants promoting their clients' cell phones and wireless service plans in New York, New York, from March 2015 through May 2015.

16. Plaintiff Zao Yang is an adult resident of New York. Mr. Yang worked for Defendants promoting their clients' cell phones and wireless service plans in New York, New York, from February 2015 through April 2015.

17. Plaintiff Alex Torres is an adult resident of New York. Mr. Torres worked for Defendants promoting their clients' cell phones and wireless service plans in New York, New York from January 2015 through March 2015, and Phoenix, Arizona, from March 2015 through June 2015.

18. Plaintiff Xiaoj ("John") Zheng is an adult resident of New York. Mr. Zheng has worked for Defendants promoting their clients' cell phones and wireless service plans in New York, New York from February 2015 to the present.

19. The above named Plaintiffs bring their claims for failure to pay minimum wage and failure to pay overtime in violation of the FLSA on behalf of all similarly situated workers nationwide, who may choose to "opt-in" to this action pursuant to the FLSA, 29 U.S.C. § 216(b).

20. The above named Plaintiffs also bring their claims for failure to pay minimum wage and failure to pay overtime in violation of the New York Labor Law, and the supporting New York State Department of Labor Regulations, as a Rule 23 class action, pursuant to the Federal Rules of Civil Procedure.

21. Plaintiff Alex Torres brings his claim for violation of the Arizona Wage Act and Arizona Minimum Wage Act, and the supporting Industrial Commission of Arizona Regulations, as a Rule 23 class action, pursuant to the Federal Rules of Civil Procedure.

22. Defendant Credico (USA) LLC (“Credico”), is a Delaware corporation with its principal place of business located at 525 W. Monroe Street, Suite 2350, Chicago, Illinois 60661.

23. Defendant Cromex Inc. (“CroMex”), is a New York corporation with its principal place of business located at 40 Exchange Place, Suite 600, New York, New York 10005.

24. Defendant Jesse Young is an adult resident of New York. Mr. Young is the president of Credico (USA) LLC.

25. Defendant Meixi (“Corona”) Xu is an adult resident of New York. Ms. Xu is the owner and manager of CroMex. Ms. Xu supervises the workers who promote Defendants’ clients’ cell phones and wireless service plans.

#### **IV. STATEMENT OF FACTS**

##### **A. Credico Operates a Nationwide Network of Face-to Face Sales and Marketing Companies from its Chicago Headquarters**

26. Defendant Credico contracts with companies in the telecommunications, financial services, and energy industries, as well as charitable organizations, to provide face-to-face sales and marketing services through its network of workers located throughout the country.

27. Credico’s clients include six Fortune 500 companies, including Verizon Communications Inc., as well as Sprint Nextel Corp.

28. In order to provide services for Credico, workers must associate with one

of the companies in its nationwide network.

29. Credico determines the criteria a worker must meet in order to start his own company in the Credico network. These criteria include the number of other workers whom the potential business owner has recruited for Credico, and the amount of money the potential business owner has to start his company. Upon information and belief, once Credico determines that a worker can create his own company, it has control over the location in which the company will operate, and which Credico client its workers will provide services for.

30. Upon information and belief, Credico receives a portion of the commissions that each of the companies in its network earn for signing up new customers for Credico's clients.

31. Each of the companies in Credico's network must train its workers according to Credico's "Management Training Program." This program dictates the manner in which the companies train their workers, and the manner in which the workers can approach potential customers.

32. Upon information and belief, Credico's Management Training Program also dictates the number of hour that Defendants' workers must work each week, and the manner in which Defendants' workers must be paid.

**B. CroMex is Controlled by Credico**

33. Defendant CroMex is one of the face-to-face sales and marketing companies in Credico's nationwide network.

34. Defendant Meixi "Corona" Xu is the owner and manager of CroMex.

35. CroMex operates its own network of companies that provide Credico's

clients with face-to-face sales and marketing services through its team of workers located in New York, Maryland, Michigan, Arizona, and Nevada.

36. CroMex is required to train its workers according to Credico's "Management Training Program." Upon information and belief, Credico's Management Training Program also dictates the number of hours that CroMex's workers must work each week, and the manner in which its workers must be paid.

37. Upon information and belief, both Credico and Ms. Xu receive a portion of commissions that each of CroMex's workers earn for signing up new customers for Defendants' clients.

38. Credico Regional Sales Director, Tommy Smith, works out of the same office space as CroMex, at 40 Exchange Place, New York, New York.

39. Upon information and belief, Mr. Smith reports to Credico's headquarters in Chicago, Illinois.

40. Mr. Smith frequently participates in meetings with workers contracted with CroMex in New York.

41. Mr. Smith has exercised his authority to terminate workers contracted with CroMex.

**C. Defendants' Failure to Pay Minimum Wage or Overtime Pursuant to the FLSA**

42. Each of Defendants' workers is assigned to promote the products or services of a specific client. Defendants' workers approach potential customers in attempt to promote their clients' cell phones and wireless service plans.

43. Defendants' workers perform core work that is necessary to Defendants' business, namely providing face-to-face sales and marketing services.



44. Defendants' workers are supervised closely by their agents. They are instructed in the details of their job performance, hours and location worked, and are monitored and reviewed frequently. Defendants set weekly sales targets for their workers, who can be terminated for failure to meet these goals.

45. By virtue of the extensive control Defendants exert over them, and the nature of their relationship with Defendants, these workers are not independent contractors, as Defendants have classified them, but rather, all of Defendants' workers who provide face-to-face sales and marketing services on behalf of Defendants are jointly employed by Defendants.

46. As a precondition of employment, Defendants require that their workers participate in a training period.

47. Defendants' workers are not paid during this training period.

48. During this required training period, Defendants' trainees shadow Defendants' workers in order to learn Defendants' standards and practices.

49. The initial required training period is different for each of Defendants' workers. Training may take up to several weeks to complete.

50. During the training period, the workers learn Defendants' sales strategies, which they are required to employ once working for Defendants. Defendants also provide the workers with a script for use when speaking with potential customers.

51. The workers are encouraged to sign up new customers for Defendants' clients' cell phones and wireless service plans during their training period.

52. Once the workers complete their training, they begin working for Defendants. The workers are required to work 12 hours per day, Monday through Saturday.

53. Defendants require their workers to report to their offices at a certain time each morning for required team meetings and training sessions. At the conclusion of these meetings, Defendants provide their workers with a tablet, which they must use to sign up new customers for Defendants' clients. Defendants then assign their workers the location to which they must report for their required shift, also referred to as a "Ride-out."

54. Defendants' workers are often accompanied during their Ride-out by a more experienced worker, who has achieved the status of "Leader." These Leaders supervise the workers during their shift.

55. At the end of their Ride-out, the workers are required to report back to Defendants' offices by a certain time, where they must participate in additional training sessions.

56. Defendants set weekly sales targets for their workers, and track their sales numbers on a weekly basis. Defendants' workers can be terminated for failure to meet Defendants' sales targets in a given week.

57. Defendants' workers are paid solely on a commission basis. They are paid \$10 for each qualified customer they sign up for clients' cell phone and wireless service plans. Defendants only pay their workers a commission if the customer ultimately qualifies for the cell phone and wireless service plan.

58. Plaintiffs worked for Defendants in New York, New York and Phoenix,

Arizona.

59. As a result of Defendants' payment scheme, their workers routinely earn an hourly rate that is less than the federal minimum wage, New York minimum wage, and Arizona minimum wage.

60. Defendants' workers are typically required to work 72 hours per week. As a result of Defendants' payment scheme, the workers have not been paid time-and-a-half for hours worked over 40 in a single week.

**D. Plaintiff Vasto's Termination in Retaliation for Exercising his Rights under the FLSA**

61. Plaintiff Philip Vasto worked for Defendants from March 2015 through May 2015, promoting Sprint Assurance Wireless cell phones and wireless services to potential new customers.

62. While working for Defendants, Mr. Vasto was closely supervised by Defendants' agents, who required him to report to their office at a certain time each day, participate in required training sessions and meetings, report to a specific location to make sales, and use Defendants' sales methods when attempting to sign up new customers.

63. According to Defendants' sales methods, Mr. Vasto was required to approach every potential customer on his assigned street corner, regardless of whether Mr. Vasto had been previously unsuccessful in signing up that customer. Mr. Vasto was not permitted to leave his assigned street corner during his shift.

64. In April 2015, Mr. Vasto approached Defendant Xu, CroMex's owner and manager, to discuss his desire to take a different approach to signing up new customers. When Ms. Xu denied his request, Mr. Vasto informed her that he did not

feel he was properly classified as an independent contractor because he did not have the ability to choose his own methods for signing up customers.

65. During one of his Ride-outs, Mr. Vasto left his assigned street corner to speak with a potential customer further down the street. One of Defendants' supervisors called Mr. Vasto to question why he had left his post, but he did not answer because he was speaking with the potential customer. Mr. Vasto then left the Ride-out earlier than scheduled, as he felt he had the ability to do so as an independent contractor.

66. Mr. Vasto was subsequently reprimanded by Ms. Xu and Credico Regional Sales Director, Tommy Smith, for leaving his Ride-out and "complaining" about his treatment by Defendants. Mr. Smith then terminated Mr. Vasto, in retaliation for voicing and acting on his concerns about his misclassification as an independent contractor.

**E. Plaintiff Yang's Termination in Retaliation for Exercising his Rights under the FLSA**

67. Plaintiff Zao Yang worked for Defendants from February 2015 through April 2015, promoting Sprint Assurance Wireless cell phones and wireless services to potential new customers.

68. While working for Defendants, Mr. Yang was closely supervised by Defendants' agents, who required him to report to their office at a certain time each day, participate in required training sessions and meetings, report to a specific location to make sales, and use Defendants' sales methods when attempting to sign up new customers.

69. According to Defendants' sales methods, Mr. Yang was required to approach every potential customer on his assigned street corner, regardless of whether he had been previously unsuccessful in signing up that customer.

70. Mr. Yang's supervisors repeatedly assigned him to a desolate area, where he was unsuccessful in signing up customers.

71. Mr. Yang approached Defendant Xu, CroMex's owner and manager, to discuss his desire to take a different approach to signing up new customers, and report to a location of his choosing. When Ms. Xu denied his request, Mr. Yang informed her that he did not feel he was properly classified as an independent contractor, because he did not have the ability to choose his own methods for making sales.

72. Mr. Yang was subsequently reprimanded by Ms. Xu for "complaining" about his treatment by Defendants. Ms. Xu then terminated Mr. Yang, in retaliation for voicing his concerns about his misclassification as an independent contractor.

## **COUNT I**

### **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF FLSA**

73. During many weeks, Plaintiffs and other workers promoting cell phones and wireless service plans for Defendants' clients fail to earn the federal minimum wage for all hours worked, particularly at the beginning of their employment when they are required to participate in unpaid training. Defendants' knowing and willful failure to pay Plaintiffs and other similarly situated individuals minimum wage violates the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* This claim is brought by Plaintiffs on behalf of a class of similarly situated individuals, i.e. individuals who have worked for Defendants promoting their clients' cell phones and wireless service plans from July 2012 to present, who may

choose to “opt-in” to this case, pursuant to 29 U.S.C. § 216(b).

## **COUNT II**

### **FAILURE TO PAY OVERTIME IN VIOLATION OF FLSA**

74. Every week, Plaintiffs and other workers promoting cell phones and wireless service plans for Defendants’ clients are required to work over 40 hours. Plaintiffs and these similarly situated workers are not compensated time-and-a-half for those hours worked over 40 in one week. Defendants’ knowing and willful failure to pay Plaintiffs and other similarly situated individuals overtime compensation to which they are entitled violates the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* This claim is brought on behalf of a class of similarly situated individuals, i.e. individuals who have worked for Defendants promoting their clients’ cell phones and wireless service plans from July 2012 to present, who may choose to “opt-in” to this case, pursuant to 29 U.S.C. § 216(b).

## **COUNT III**

### **RETALIATION IN VIOLATION OF FLSA**

75. Defendants terminated Plaintiff Philip Vasto in retaliation for his assertion that he had been misclassified as an independent contractor. Defendants’ termination of Plaintiff Vasto in retaliation for his assertion of his rights under the FLSA, violates 29 U.S.C. § 201, *et seq.* This claim is brought individually on behalf of Plaintiff Vasto.

## **COUNT IV**

### **RETALIATION IN VIOLATION OF FLSA**

76. Defendants terminated Plaintiff Zao Yang in retaliation for his assertion that he had been misclassified as an independent contractor. Defendants’ termination

of Plaintiff Yang in retaliation for his assertion of his rights under the FLSA, violates 29 U.S.C. § 201, *et seq.* This claim is brought individually on behalf of Plaintiff Yang.

### **COUNT V**

#### **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF NEW YORK LABOR LAW**

77. During many weeks, Plaintiffs and other workers promoting cell phones and wireless service plans in New York for Defendants' clients fail to earn the New York state minimum wage for all hours worked, particularly at the beginning of their employment when they are required to participate in unpaid training. Defendants' knowing and willful failure to pay Plaintiffs and other similarly situated individuals minimum wage violates NYLL, Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

78. Plaintiffs bring this claim as a class action on behalf of similarly situated individuals, i.e. individuals who have worked for Defendants in New York promoting their clients' cell phones and wireless service plans from July 2009 to present, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

79. The members of the New York Rule 23 class are readily ascertainable, because the number and identity of the New York Rule 23 class members are determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a)-(b).

80. The New York Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. There are more than 40 New York Rule 23 Class Members.

81. Plaintiffs' claims are typical of those claims which could be alleged by any New York Rule 23 class member, and the relief sought is typical of the relief which would be sought by each New York Rule 23 class member in separate actions. All the New York Rule 23 class members were subject to the same corporate practices of Defendants, as alleged herein, of misclassification as independent contractors and failure to pay minimum wage.

82. Plaintiffs and other New York Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendants' misclassification, and failure to pay minimum wage in compliance with the New York Labor Law. Plaintiffs and the New York Rule 23 class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all New York Rule 23 class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the New York Rule 23 class members.

83. Plaintiffs are able to fairly and adequately protect the interests of the New York Rule 23 class members and have no interests antagonistic to the New York Rule 23 class members. Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.



84. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants, and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

85. Common questions of law and fact exist as to the New York Rule 23 class members that predominate over any questions only affecting Plaintiffs and the New York Rule 23 class members individually. These questions include whether Defendants misclassified Plaintiffs and the New York Rule 23 class members as independent contractors, and whether they paid Plaintiffs and the New York Rule 23 class members at the proper minimum wage rate for all hours worked.

## **COUNT VI**

### **FAILURE TO PAY OVERTIME IN VIOLATION OF NEW YORK LABOR LAW**

86. Every week, Plaintiffs and other workers promoting cell phones and wireless service plans in New York for Defendants' clients are required to work over 40 hours. Plaintiffs and these similarly situated workers are not compensated time-and-a-half for those hours worked over 40 in one week. Defendants' knowing and willful failure to pay

Plaintiffs and other similarly situated individuals overtime to which they are entitled violates NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

87. Plaintiffs bring this claim as a class action on behalf of similarly situated individuals, i.e. individuals who have worked for Defendants in New York promoting their clients' cell phones and wireless service plans, from July 2009 to the present, pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a)-(b).

88. The members of the New York Rule 23 class are readily ascertainable, because the number and identity of the New York Rule 23 class members are determinable from the Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Rule 23.

89. The New York Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. There are more than 40 New York Rule 23 Class Members.

90. Plaintiffs' claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the New York Rule 23 class members were subject to the same corporate practices of Defendants, as alleged herein, of misclassification as independent contractors and failure to pay time-and-a-half for those hours worked over 40 in one week.

91. Plaintiffs and other New York Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendants' misclassification and failure to pay time-and-a-half for those hours worked over 40 in one week, in compliance with the New York Labor Law. Plaintiffs and the New York Rule 23 class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all New York Rule 23 class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the New York Rule 23 class members.

92. Plaintiffs are able to fairly and adequately protect the interests of the New York Rule 23 class members and have no interests antagonistic to the New York Rule 23 class members. Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

93. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants, and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court

can, and is empowered to, fashion methods to efficiently manage this action as a class action.

94. Common questions of law and fact exist as to the New York Rule 23 class members that predominate over any questions only affecting Plaintiffs and the New York Rule 23 class members individually. These questions include whether Defendants misclassified Plaintiffs and the New York Rule 23 class members as independent contractors, and paid Plaintiffs and the New York Rule 23 class members time-and-a-half for those hours worked over 40 in one week.

#### **COUNT VII**

##### RETALIATION IN VIOLATION OF NEW YORK LABOR LAW

95. Defendants terminated Plaintiff Philip Vasto in retaliation for his assertion that he had been misclassified as an independent contractor. Defendants' termination of Plaintiff Vasto in retaliation for his assertion of his rights under the New York Labor Law violates NYLL, Article 20-C § 740. This claim is brought individually on behalf of Plaintiff Vasto.

#### **COUNT VIII**

##### RETALIATION IN VIOLATION OF NEW YORK LABOR LAW

96. Defendants terminated Plaintiff Zao Yang in retaliation for his assertion that he had been misclassified as an independent contractor. Defendants' termination of Plaintiff Yang in retaliation for his assertion of his rights under the New York Labor Law violates NYLL, Article 20-C § 740. This claim is brought individually on behalf of Plaintiff Yang.

## COUNT IX

### FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF THE ARIZONA MINIMUM WAGE ACT

97. During many weeks, Plaintiff Alex Torres and other workers promoting cell phones and wireless service plans in Arizona for Defendants' clients fail to earn the Arizona minimum wage for all hours worked, particularly at the beginning of their employment when they are required to participate in unpaid training. Defendants' knowing and willful failure to pay Plaintiffs and other similarly situated individuals minimum wage violates the Arizona Minimum Wage Act, A.R.S. § 23-362 *et seq.*, and the supporting Industrial Commission of Arizona Regulations.

98. Plaintiff Torres brings this claim as a class action on behalf of similarly situated individuals, i.e. individuals who have worked for Defendants in Arizona promoting their clients' cell phones and wireless service plans, from July 2012 to present, pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a)-(b).

99. The members of the Arizona Rule 23 class are readily ascertainable, because the number and identity of the Arizona Rule 23 class members are determinable from the Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Rule 23.

100. The Arizona Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

101. Plaintiff Torres's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Arizona Rule 23 class members were subject to the same corporate practices of Defendants, as alleged herein, of misclassification as independent contractors and failure to pay minimum wage.

102. Plaintiff Torres and other Arizona Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendants' misclassification and failure to pay minimum wage in compliance with the Arizona Minimum Wage Act. Plaintiff Torres and the Arizona Rule 23 class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Arizona Rule 23 class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Arizona Rule 23 class members.

103. Plaintiff Torres is able to fairly and adequately protect the interests of the Arizona Rule 23 class members and has no interests antagonistic to the Arizona Rule 23 class members. Plaintiff Torres is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

104. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously

prosecute a lawsuit against corporate defendants, and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

105. Common questions of law and fact exist as to the Arizona Rule 23 class members that predominate over any questions only affecting Plaintiff Torres and the Arizona Rule 23 class members individually. These questions include whether Defendants paid Plaintiff Torres and the Arizona Rule 23 class members were misclassified as independent contractors, and paid at the proper minimum wage rate for all hours worked.

### **COUNT X**

#### **FAILURE TO TIMELY PAY WAGES IN VIOLATION OF THE ARIZONA WAGE ACT**

106. During many weeks, Defendants failed to pay all wages due to Plaintiff Alex Torres and other workers promoting cell phones and wireless service plans in Arizona for Defendants' clients, including minimum wages and overtime wages. Defendants' knowing and willful failure to pay Plaintiff Torres and other similarly situated individuals all wages due violates the Arizona Wage Act, A.R.S. § 23-350, *et seq.*

107. Plaintiff Torres brings this claim as a class action on behalf of similarly situated individuals, i.e. individuals who have worked for Defendants in Arizona

promoting their clients' cell phones and wireless service plans, from July 2012 to present, pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a)-(b).

108. The members of the Arizona Rule 23 class are readily ascertainable, because the number and identity of the Arizona Rule 23 class members are determinable from the Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Rule 23.

109. The Arizona Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

110. Plaintiff Torres's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Arizona Rule 23 class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay all wages due, including minimum wages and overtime wages, as required by the Arizona Wage Act.

111. Plaintiff Torres and other Arizona Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendants' failure to pay all wages due, including minimum wages and overtime wages, in compliance the Arizona Wage Act. Plaintiff Torres and the Arizona Rule 23 class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide



policies and practices affected all Arizona Rule 23 class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Arizona Rule 23 class members.

112. Plaintiff Torres is able to fairly and adequately protect the interests of the Arizona Rule 23 class members and has no interests antagonistic to the Arizona Rule 23 class members. Plaintiff Torres is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

113. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants, and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

114. Common questions of law and fact exist as to the Arizona Rule 23 class members that predominate over any questions only affecting Plaintiff Torres and the Arizona Rule 23 class members individually. These questions include whether Defendants misclassified Plaintiffs and the Arizona Rule 23 class members as

independent contractors, and paid Plaintiff Torres and the Arizona Rule 23 class members all wages due, including minimum wages and overtime wages, as required by the Arizona Wage Act.

### **JURY DEMAND**

Plaintiffs request a trial by jury on all of their claims.

WHEREFORE, the Plaintiffs request that this Court enter the following relief:

1. Permission for plaintiffs to notify fellow workers of their right to opt-in to this action to pursue a claim under the FLSA, pursuant to 29 U.S.C. § 216(b);
2. Restitution for the federal minimum wage;
3. Restitution for the federal overtime;
4. Permission to pursue their state claims as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
5. Restitution for the New York minimum wage;
6. Restitution for the New York overtime;
7. Restitution for the Arizona minimum wage;
8. Restitution for unpaid wages owed under the Arizona Wage Act;
9. Restitution for Plaintiff Vasto of all back pay, front pay and lost benefits, plus pre- and post-judgment interest;
10. Restitution for Plaintiff Yang of all back pay, front pay and lost benefits, and damages for emotional distress, plus pre- and post-judgment interest;
11. Liquidated damages;
12. Treble damages;
13. Attorneys' fees and costs;
14. Any other relief to which the plaintiffs and class members may be entitled.

Respectfully submitted,

PHILIP VASTO, ZAO YANG, ALEX TORRES,  
and XIAOJ ZHENG, individually and on behalf  
of all other similarly situated,

By their attorneys,

/s/ James B. Zouras

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