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23 **IN THE UNITED STATES DISTRICT COURT**  
24 **FOR THE DISTRICT OF ARIZONA**

25 THOMAS H. KOON and STEVEN J.  
26 ROSS, on behalf of themselves and all  
27 others similarly situated,

28 Plaintiffs,

vs.

ONEAZ CREDIT UNION, F/K/A  
ARIZONA STATE CREDIT UNION, a  
state-chartered credit union,

Defendants.

**Case No.**

**CLASS AND COLLECTIVE  
ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1    **CLASS ACTION AND COLLECTIVE ACTION COMPLAINT**

2            Plaintiffs Thomas H. Koon and Steven J. Ross, by and through undersigned  
3            counsel, on behalf of themselves and other similarly situated individuals (“Plaintiffs”)  
4            either currently or formerly employed in Arizona by Defendant OneAZ Credit Union,  
5            f/k/a Arizona State Credit Union (“Defendant” or “OneAZ”), as mortgage loan officers,  
6            for their Class and Collective Action Complaint against Defendant, allege upon  
7            information and belief, except as to the allegations that pertain to named Plaintiffs and  
8            their counsel, which are based upon personal knowledge, as follows:  
9

10    **INTRODUCTION**

11    1.        This is a class action brought pursuant to Federal Rule of Civil Procedure 23  
12    by Plaintiffs on behalf of themselves and all other similarly situated current and former  
13    mortgage loan officers employed by Defendant in Arizona for the purpose of obtaining  
14    relief under Arizona wage laws for among other things, unpaid wages pursuant to Arizona  
15    Revised Statutes (“A.R.S.”) §§ 23-350, *et seq.* and unjust enrichment.  
16    17

18    2.        The named Plaintiffs also bring a collective action against Defendant under  
19    federal law pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*,  
20    on behalf of themselves and all other similarly situated current and former mortgage loan  
21    officers employed by Defendant in Arizona for unpaid overtime wages, liquidated  
22    damages, and attorneys’ fees and costs.  
23

24    3.        This is a collective and class action complaint against OneAZ to challenge  
25    its policies and practices of failing to pay its mortgage loan officers at the proper overtime  
26    rate for all overtime hours worked. During the class period in this case, Defendant failed  
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1 to pay all overtime wages owing to Plaintiffs and similarly situated employees, a failure  
2 exacerbated by Defendant's payment system of commissions because such commissions  
3 are not included in the calculation of Plaintiffs and Class and Collective Members' regular  
4 rate and fail to account for overtime and premium pay owing to such employees as  
5 required by federal and state law.  
6

7 4. The unpaid overtime on commissions that Defendant OneAZ failed to pay  
8 its loan officers over the period of time addressed by the Complaint is substantial.  
9

10 5. As a result of these violations, Defendant is liable under the FLSA and  
11 Arizona law.

12 6. Plaintiffs seek full compensation for all unpaid wages, including unpaid  
13 overtime. Plaintiffs also seek declaratory and injunctive relief, including restitution.  
14 Finally, Plaintiffs seek reasonable attorneys' fees and costs.  
15

### 16 **JURISDICTION AND VENUE**

17 7. This Court has original jurisdiction over Plaintiffs' claims pursuant to 28  
18 U.S.C. § 1331 as the claims present a federal question under the FLSA.

19 8. This Court has supplemental jurisdiction over Plaintiffs' state law class  
20 claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus  
21 of operative facts.  
22

23 9. Venue is proper in this federal judicial district pursuant to 28 U.S.C. § 1391  
24 (a) and (c), because a substantial part of the events giving rise to these claims occurred  
25 within this judicial district, Defendant's corporate headquarters are located within this  
26 judicial district, and Defendant regularly conducts business within this judicial district.  
27  
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**PARTIES**

1  
2           10. Plaintiffs and Class Members in this action are current and former mortgage  
3 loan officers employed by Defendant in Arizona.

4  
5           11. Thomas H. Koon resides in Maricopa County, Arizona. Koon worked for  
6 OneAZ as a mortgage loan officer from approximately March 21, 2012 until April 14,  
7 2015. Pursuant to 29 U.S.C. § 216(b), he has consented in writing to being a Plaintiff in  
8 this action. His FLSA Opt-in Consent Form is submitted herewith as **Exhibit 1**.

9  
10           12. Steven J. Ross resides in Yavapai County, Arizona. Ross worked for OneAZ  
11 as a mortgage loan officer from June 9, 2014 until January 26, 2016. Pursuant to 29  
12 U.S.C. § 216(b), he has consented in writing to being a Plaintiff in this action. His FLSA  
13 Opt-in Consent Form is submitted herewith as **Exhibit 2**.

14  
15           13. Defendant OneAZ, established in 1972, is a state-chartered credit union  
16 owned by its 138,000 members. It provides banking, loan and credit card services to its  
17 members who enjoy more favorable interest rates and lower fees based upon Defendant's  
18 profitability.

19  
20           14. On or about February 29, 2016, Defendant finalized its name change from  
21 Arizona State Credit Union to OneAZ Credit Union.

22           15. Defendant operates twenty branch offices solely within Arizona, and  
23 employs approximately 424 full-time employees and 46 part-time employees.

24  
25           16. Defendant has assets of approximately \$1.8 billion and liabilities of \$164  
26 million, and its annual gross business volume exceeds \$500,000.

27           17. Furthermore, Defendant's employees regularly engage in work that involves  
28

1 them in interstate commerce.

2 18. Of the 424 full-time employees, approximately 25 to 30 are employed as  
3 mortgage loan officers at any given time, none of whom have any duties related to the  
4 internal management or general business operations of OneAZ. During the period of time  
5 relevant to the Complaint, OneAZ employed in excess of forty mortgage loan officers.  
6

7 19. At all relevant times, Defendant was Plaintiffs' "employer" within the  
8 meaning of the FLSA and Arizona law.  
9

10 **CLASS DEFINITIONS**

11 20. Plaintiffs bring this lawsuit pursuant to 29 U.S.C. § 216(b) as an FLSA  
12 collective action on behalf of the following class of potential opt-in litigants: all current  
13 and former mortgage loan officer employees of OneAZ Credit Union who performed  
14 work for Defendant in Arizona during the time period three years prior to the filing of the  
15 complaint, November 9, 2013, to the present (the "FLSA Class").  
16

17 21. Plaintiffs bring this lawsuit for Counts II and III as a class action pursuant to  
18 Federal Rule of Civil Procedure 23 on behalf of themselves and the following class: all  
19 current and former mortgage loan officer employees of OneAZ Credit Union who  
20 performed work for Defendant in Arizona during the time period three years prior to the  
21 filing of the complaint, November 9, 2013, to the present (the "Arizona Class").  
22

23 22. The FLSA Class and the Arizona Class are together referred to as the  
24 "Classes."  
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**FACTUAL ALLEGATIONS**

1  
2 23. Plaintiffs and Class Members worked or work for Defendant as mortgage  
3 loan officers, and all shared similar job titles, pay and incentive plans, job descriptions,  
4 job duties and hours of work. Plaintiffs and Class members are full-time employees  
5 worked or work forty hours per week, and their job duties included or include, but are not  
6 limited to the following: originate loan applications; pull credit reports and determine  
7 which loan programs applicants qualify for; assist with loan servicing questions; refer  
8 business to appropriate business partners; marketing, and assist with loan closing and  
9 closing on borrowers' real property purchases and refinance loans.  
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11

12 24. Defendants classified Plaintiffs and Class Members as non-exempt under  
13 the FLSA and Arizona state law, and paid Plaintiffs and Class Members at an hourly rate.  
14

15 25. As mortgage loan officers, Plaintiffs and Class Members are assigned to a  
16 specific branch office, while other loan officers "float" among multiple branches or are  
17 assigned to service incoming phone calls from potential borrowers.  
18

19 26. Defendant pays Plaintiffs and Class Members an hourly rate of  
20 approximately \$17.50 per hour, with no eligibility for annual merit increases.

21 27. In addition, Defendant pays Plaintiffs and Class Members commissions. The  
22 details of Defendant's commission payment structure is set forth in a written policy  
23 entitled "Home Loan Originator Performance and Incentive Plan" ("PIP"). As set forth in  
24 the PIP, commissions are calculated as basis points ("BPS") on the total amount of loan  
25 volume closed by Plaintiffs and Class Members above a monthly base volume  
26 requirement. The BPS used to calculate commissions are stepped-up at various increased  
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1 levels of monthly closed loan volume. Further, commissions are paid at higher rates for  
2 new business originated by a loan officer (“Outside Volume”) versus company-referred  
3 business (“Closed Volume”).  
4

5 28. Plaintiffs’ and Class Members’ commissions comprise a significant portion  
6 of their total monthly earnings. Indeed, their monthly commissions often exceed their  
7 total hourly income by multiples of two or three.

8 29. Further, as mortgage loan officers employed by Defendant, Plaintiffs and  
9 Class Members routinely worked or work overtime. Plaintiffs and Class Members worked  
10 or work upwards of forty hours of overtime per month. In that regard, Plaintiffs and Class  
11 Members typically worked or work five to six days per week, and sometimes seven.  
12 Plaintiffs and Class Members typically worked or work eight to eleven hours per day on  
13 weekdays, but something less than that if working a weekend day. This equated or  
14 equates to approximately, on average, one to ten hours of overtime per week. Plaintiffs’  
15 and Class Members’ job tasks during overtime hours worked are no different than their  
16 job tasks while working straight time hours.  
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19 30. Specifically, Defendant suffered and permitted Plaintiffs and Class  
20 Members to regularly work more than 40 hours per week without full overtime  
21 compensation as required by law.  
22

23 31. Although Defendant compensates Plaintiffs and Class Members for  
24 overtime at a rate of one-and-a-half times their hourly rate, Defendant does not pay  
25 Plaintiffs and Class Members an overtime rate calculated based on the commissions they  
26 earn.  
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1           32. Defendant fails to properly pay overtime compensation calculated based on  
2 the commissions earned by Plaintiffs and Class Members.

3           33. As a consequence of the compensation system established and maintained  
4 by Defendant, Plaintiffs and the Classes are not fully and properly compensated for the  
5 overtime they work.  
6

7           34. Defendant's practice and policy is accordingly in violation of the FLSA and  
8 Arizona law.

9           35. Despite its knowledge that commission-based earnings must be included in  
10 a mortgage loan officer's overtime earnings calculation, Defendant has refused to fully  
11 compensate its mortgage loan officers.  
12

13                                   **COLLECTIVE ACTION ALLEGATIONS**  
14

15           36. Plaintiffs bring the First Count (the FLSA claim) as an opt-in collective  
16 action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b) on behalf of the FLSA  
17 Class, as defined above.

18           37. Plaintiffs, individually and on behalf of other similarly situated persons  
19 defined above, seek relief on a collective basis challenging Defendant's policies and  
20 practices of failing to properly pay Plaintiffs and FLSA Class Members overtime  
21 compensation. The number and identity of other similarly situated persons yet to opt-in  
22 and consent to be party-plaintiffs may be determined from Defendant's records, and  
23 potential opt-ins may be easily and quickly notified of the pendency of this action.  
24

25           38. Plaintiffs' claims for violations of the FLSA may be brought and maintained  
26 as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, for all claims  
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28



1 asserted by Plaintiffs for the Classes, because Plaintiffs' claims are similar to the claims of  
2 Class Members.

3 39. Class Members are similarly situated, as they have substantially similar job  
4 requirements and provisions and are subject to a common practice, policy or plan that  
5 requires or permits them to perform work, in the form of spending time or conducting  
6 activities for the benefit of Defendant, which is not fully compensated. In particular, the  
7 FLSA Class Members are similarly situated in that they were paid commissions via the  
8 same corporate system that failed to account for such commissions when calculating the  
9 overtime rate owed to them.  
10

11 40. Plaintiffs are representative of the FLSA Class Members and are acting on  
12 behalf of their interests as well as Plaintiffs' own interests in bringing this action.  
13

14 41. Plaintiffs will fairly and adequately represent and protect the interests of the  
15 FLSA Class Members. Plaintiffs have retained counsel competent and experienced in  
16 employment and wage and hour class action and collective action litigation.  
17

18 42. Defendant's failure to pay Plaintiffs and Class Members their lawful wages  
19 was and is willful. Defendant knew or should have known that its conduct was unlawful  
20 and/or showed reckless disregard for the matter of whether its above-described conduct  
21 was prohibited by law. Despite its knowledge that Plaintiffs' and Class Members'  
22 overtime compensation must be calculated to include overtime on earned commissions,  
23 Defendant has refused to fully compensate its mortgage loan officers in that regard.  
24 Plaintiffs contemplate providing a notice or notices to all of the employees, as approved  
25 by the Court, to be delivered through the United States mail. The notice or notices shall,  
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1 among other things, advise each of the FLSA employees that they shall be entitled to “opt  
2 in” to the FLSA Action if they so request by the date specified within the notice, and that  
3 any judgment on the FLSA Action, whether favorable or not, entered in this case will bind  
4 all FLSA collective members who timely request inclusion in the class.  
5

### 6 CLASS ACTION ALLEGATIONS

7 43. Plaintiffs bring the Second through Third Counts (the Arizona state law  
8 claims) as an opt-out class action pursuant to Federal Rule of Civil Procedure 23 on behalf  
9 of themselves and the members of the Arizona Class, as defined above.  
10

11 44. **Numerosity.** The members of the Arizona Class are so numerous that  
12 joinder of all members is impracticable. Plaintiffs believe that the Class exceeds 40 Class  
13 Members, both current and former mortgage loan officers.  
14

15 45. **Typicality.** The claims of Plaintiffs Koon and Ross are typical of the claims  
16 of the Arizona Class in the following ways: 1) Plaintiffs are members of the Class; 2)  
17 Plaintiffs’ claims arise out of the same policies, practices and course of conduct that forms  
18 the basis of the Class; 3) Plaintiffs’ claims are based upon the same legal and remedial  
19 theories as those of the Class and involve similar factual circumstances; 4) there are no  
20 conflicts between the interests of the named Plaintiffs and the putative Class Members; 5)  
21 the injuries suffered by the named Plaintiffs are similar to the injuries suffered by the  
22 putative Class Members. Plaintiffs’ claims are thereby representative of and co-extensive  
23 with the claims of the Class.  
24  
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26 46. **Adequacy.** The named Plaintiffs will adequately and fairly represent the  
27 Class because there is no conflict between the claims of the Plaintiffs and those of the  
28

1 Class, Plaintiffs' claims are typical of the claims of the Class Members, and Plaintiffs  
2 have retained counsel who are skilled and experienced in wage and hour cases and class  
3 actions, and who will vigorously prosecute this litigation.  
4

5 47. **Existence and Predominance of Common Questions.** Common questions  
6 of law and fact exist as to Plaintiffs and the Class and predominate over any questions that  
7 affect only individual class members. Defendant's illegal conduct affected all current and  
8 former class members. Common questions include the following without limitation:  
9

- 10 a. Whether the work performed by Plaintiffs and the Class is included in the  
11 type of work Defendant employed Plaintiffs and the Class to perform;
- 12 b. Whether Defendant maintains a common policy and practice of unlawfully  
13 failing to pay Plaintiffs and the Class all overtime compensation owing to  
14 them;
- 15 c. Whether Defendant has fully compensated Plaintiffs and the Class for all of  
16 the overtime work they performed for the benefit of Defendant;
- 17 d. Whether Defendant has violated the Arizona Wage Act, A.R.S. §§ 23-350,  
18 *et seq.*, through its policy and practice of not paying employees overtime  
19 calculated on earned commissions;
- 20 e. Whether Defendant has been unjustly enriched by its failure to pay Plaintiffs  
21 and the Class for all hours worked; and
- 22 f. The proper formula for calculating restitution, damages, and penalties owed  
23 to Plaintiffs and the Class Members as alleged herein.
- 24
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27 48. **Superiority.** Class action treatment is superior to the alternatives for the fair  
28

1 and efficient adjudication of the controversy alleged herein. Such treatment will permit a  
2 large number of similarly situated persons to prosecute their common claims in a single  
3 forum simultaneously, efficiently, and without the duplication of effort and expense that  
4 numerous individual actions would entail. No difficulties are likely to be encountered in  
5 the management of this class action that would preclude its maintenance as a class action,  
6 and no superior alternative exists for the fair and efficient adjudication of this controversy.  
7 The Class is readily identifiable from Defendant's own employment records. Prosecution  
8 of separate actions by individual members of the Class would create the risk of  
9 inconsistent or varying adjudications with respect to individual members of the Class that  
10 would establish incompatible standards of conduct for Defendant.  
11  
12

13           49. A class action is superior to other available methods for adjudication of this  
14 controversy because joinder of all members is impractical. Furthermore, the amounts at  
15 stake for many of the class members, while substantial, are not great enough to enable  
16 them to maintain separate suits against Defendant.  
17

18           50. Without a class action, Defendant will likely retain the benefit of its  
19 wrongdoing and will continue an illegal course of action, which will result in further  
20 damages to Plaintiffs and the Class. Plaintiffs envision no difficulty in the management of  
21 this action as a class action.  
22

23           51. Plaintiffs know of no difficulty that would be encountered in the  
24 management of this litigation that would preclude its maintenance as a class action.  
25

26           52. Plaintiffs intend to send notice to all Class Members to the extent required  
27 under applicable class action procedures. Plaintiffs contemplate providing a notice or  
28

1 notices to the Arizona Class, as approved by the Court, to be delivered through the United  
2 State mail. The notice or notices shall, among other things, advise the Arizona Class that  
3 they shall be entitled to “opt out” of the class certified for the Arizona Action if they so  
4 request by a date specified within the notice, and that any judgment on the Arizona  
5 Action, whether favorable or not, entered in this case will bind all Class Members except  
6 those who affirmatively exclude themselves by timely opting out.  
7

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **Violation of the Fair Labor Standards Act**  
11 **29 U.S.C. §§ 201 *et seq.***  
12 **(By Plaintiffs and the FLSA Class)**

13 53. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set  
14 forth herein.  
15

16 54. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 207, Defendant was  
17 and is obligated to pay employees at a rate equal to one and one-half times their Regular  
18 Rate of pay, which as a matter of law includes commission earnings, for all time spent  
19 performing compensable work in excess of 40 hours per week.  
20

21 55. At all times material herein, Plaintiffs and the FLSA Class Members are  
22 covered employees entitled to the rights, protections, and benefits provided under the  
23 FLSA.  
24

25 56. Defendant is a covered employer required to comply with the FLSA’s  
26 mandates.  
27

28 57. Defendant has violated the FLSA by failing to pay employees the required

1 amount of overtime at the statutory rate. Defendant has also violated the FLSA by failing  
2 to keep required, accurate records of all hours worked by Plaintiffs and the FLSA Class  
3 Members. 29 U.S.C. § 211(c).  
4

5 58. Plaintiffs and the FLSA Class Members are victims of a uniform and  
6 company-wide compensation policy. This uniform policy, in violation of the FLSA, has  
7 been applied to current and former non-exempt, hourly employees of Defendant, working  
8 in as mortgage loan officers throughout Arizona.  
9

10 59. Plaintiffs and the FLSA Class Members are entitled to damages equal to the  
11 mandated pay, including overtime premium pay, within the three years preceding the  
12 filing of the original complaint, plus periods of equitable tolling, because Defendant has  
13 acted willfully and knew or showed reckless disregard for whether the alleged conduct  
14 was prohibited by the FLSA.  
15

16 60. Defendant has acted neither in good faith nor with reasonable grounds to  
17 believe that its actions and omissions were not a violation of the FLSA, and as a result  
18 thereof, Plaintiffs and the FLSA Class Members are entitled to recover an award of  
19 liquidated damages in an amount equal to the amount of unpaid overtime pay and/or  
20 prejudgment interest at the applicable rate. 29 U.S.C. § 216(b).  
21

22 61. As a result of the aforesaid violations of the FLSA's provisions, pay,  
23 including overtime compensation, has been unlawfully withheld by Defendant from  
24 Plaintiffs and the FLSA Class Members. Accordingly, Defendant is liable for unpaid  
25 overtime wages, together with an amount equal as liquidated damages, attorneys' fees,  
26 and costs of this action.  
27  
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**SECOND CAUSE OF ACTION**

**Violation of the Arizona Wage Act  
A.R.S. §§ 23-350, *et seq.*  
(By Plaintiffs and the Arizona Class)**

1  
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3  
4 62. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set  
5 forth herein.

6  
7 63. The foregoing conduct, as alleged, violated the Arizona Wage Act, A.R.S. §  
8 23-350., *et seq.*

9  
10 64. At all relevant times, Defendant has been, and continues to be, an  
11 “employer” within the meaning of A.R.S. § 23-350(3). Plaintiffs and members of the  
12 Class are “employees” within the meaning of A.R.S. § 23-350(2).

13 65. “Wages,” as defined by A.R.S. § 23-350(6), means “nondiscretionary  
14 compensation due an employee in return for labor or services rendered by an employee for  
15 which the employee has a reasonable expectation to be paid whether determined by a  
16 time, task, piece, commission or other method of calculation.”

17  
18 66. Section 23-351(A) of The Arizona Wage Act, A.R.S. § 23-351(A),  
19 provides:

20 Each employer in this state shall designate two or more days in each  
21 month, not more than sixteen days apart, as fixed paydays for payment of  
22 wages to the employees.

23 67. Section 23-351(C) of The Arizona Wage Act, A.R.S. § 23-351(C), provides,  
24 in pertinent part:

25 Each employer shall, on each of the regular paydays, pay to the  
26 employees all wages due the employees up to such date, except...  
27 [o]vertime or exception pay shall be paid no later than sixteen days after  
28 the end of the most recent pay period.

68. Section 23-352 of The Arizona Wage Act, A.R.S. § 23-352, prohibits

1 employers from “withhold[ing] or divert[ing] any portion of an employee’s wages,”  
2 unless certain circumstances apply.

3           69. Section 23-353(A) and (B) of The Arizona Wage Act, A.R.S. § 23-353(A)  
4 and (B), provide, in pertinent part:  
5

6           (A) When an employee is discharged from the service of an employer,  
7 he shall be paid wages due him within seven working days or the  
8 end of the next regular pay period, whichever is sooner.

9           (B) When an employee quits the service of an employer he shall be  
10 paid in the usual manner all wages due him no later than the  
11 regular payday for the pay period during which the termination  
12 occurred.

13           70. As a result of Defendant’s policy and practice of unlawfully failing to  
14 include commission earnings in the calculation of Plaintiffs’ and Class Members’  
15 overtime compensation, Defendant failed to timely pay all overtime wages owed to  
16 Plaintiffs and the Class in violation of A.R.S. §§ 23-351(C) and 23-252. For this same  
17 reason, Defendant failed to timely pay all overtime wages owed to Plaintiffs and members  
18 of the Class who were discharged from or quit their employment with Defendant during  
19 the statutory period in violation of A.R.S. § 23-353(A) and (B).

20           71. By intentionally failing to include commission earnings in the calculation of  
21 Plaintiffs’ and Class Members’ overtime compensation, Defendant willfully failed and  
22 refused to timely pay all overtime compensation due to Plaintiffs and the Classes in  
23 violation of A.R.S. §§ 23-351 - 23-353.

24           72. As a result of Defendant’s unlawful acts, Plaintiffs and the Class are  
25 entitled to the statutory remedies provided by A.R.S. § 23-355(A), including treble  
26 damages.  
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**THIRD CAUSE OF ACTION**

**Unjust Enrichment in Violation of Arizona State Law  
(By Plaintiffs and the Arizona Class)**

73. Plaintiff re-alleges and incorporates the above paragraphs as though fully set forth herein.

74. The allegations of this Third Cause of Action are made to the extent and/or in the event the Court finds that Plaintiffs have failed to otherwise state a valid claim for relief.

75. Through their employment with Defendant, Plaintiffs and the Class conferred upon Defendant the benefit of their services.

76. At all relevant times hereto, Defendant devised, implemented and maintained a plan to increase their earnings and profits by fostering a scheme of securing uncompensated work from Plaintiffs and Class Members. In particular, Defendant intentionally failed to include commission earnings in the calculation of Plaintiffs' and Class Members' overtime compensation, thereby willfully failing and refusing to pay to Plaintiffs and Class Members the full value of those services.

77. By reason of having secured the work and efforts of Plaintiff and Class Members without full compensation, Defendant realized reduced overhead and operation costs, and therefore realized additional earnings and profits to its own benefit and to the detriment of Plaintiffs and Class Members.

78. Defendant retained and continues to retain such benefits contrary to the fundamental principles of justice, equity, and good conscience.

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79. Therefore, Defendant’s acceptance of this benefit without paying Plaintiffs and the Class for the full value of their services is inequitable under the circumstances detailed herein.

80. Plaintiffs and the Class are entitled to recover the reasonable value of their services, including all wages owed, and all other damages arising out Defendant’s failure to pay Plaintiff and the Class for the full value of their services.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

- a. Enter a declaratory judgment that Defendant violated Plaintiffs’, the FLSA Class’s and the Arizona Class’s rights under the FLSA and Arizona’s state wage laws;
- b. Enjoin Defendant to comply with all applicable federal and state wage laws;
- c. Award to Plaintiffs and Class Members their respective unpaid wages, including overtime wages, plus liquidated damages or treble damages, in accordance with the FLSA and Arizona state wage laws;
- d. Award damages corresponding to the reasonable value of the services rendered by Plaintiffs and Class Members to Defendant, whereby Defendant was unjustly enriched;
- e. Award to Plaintiffs their costs and attorneys’ fees incurred in this action, as provided by 29 U.S.C. § 216(b) and state law; and
- f. Grant such other and further relief as the Court may deem just and proper.

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**JURY DEMAND**

Plaintiffs demand a trial by jury of all issues triable.

Date: November 14, 2016

Respectfully submitted,

/s/ Jeffrey R. Finley

Patrick J. Van Zanen, AZ Bar No. 021371  
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*Attorneys for Plaintiffs, the FLSA Class and  
Putative Class*

# **EXHIBIT 1**

**OPT-IN CONSENT FORM**

***Thomas H. Koon, et al. v. OneAZ Credit Union, f/k/a Arizona State Credit Union***  
**United States District Court, District of Arizona**

**Complete And Submit To:**

Carolyn Hunt Cottrell, Esq.  
Nicole N. Coon, Esq.  
SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608

OR

Jeffery R. Finley, Esq.  
Patrick J. Van Zanen, Esq.  
SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608

Name: Thomas H. Koon <u>Thomas H Koon</u> (Please Print)	Date of Birth: [REDACTED]
Address: [REDACTED]	Phone No. 1: [REDACTED] Phone No. 2: [REDACTED] E-mail Address: [REDACTED]

**CONSENT TO JOIN COLLECTIVE ACTION**

**Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.***

- I consent and agree to pursue my claims relating to and arising from Defendant (OneAZ Credit Union, f/k/a Arizona State Credit Union) alleged violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* in connection with the above-referenced litigation.
- I have worked as a mortgage loan officer for Defendant in Maricopa County, Arizona from approximately on or about March 21, 2012 to approximately on or about April 14, 2015.
- I understand that this litigation has been filed as a proposed collective action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* I hereby consent, agree, and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
- I specifically authorize my attorneys, Schneider Wallace Cottrell Konecky Wotkyns to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendant in this litigation.

<u>11-08-2016</u> (Date Signed)	<u>Thomas H Koon</u> (Signature)
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**\*\*IMPORTANT NOTE\*\***

**Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.**

# **EXHIBIT 2**

**OPT-IN CONSENT FORM**

***Thomas H. Koon, et al. v. OneAZ Credit Union, f/k/a Arizona State Credit Union***  
**United States District Court, District of Arizona**

**Complete And Submit To:**

Carolyn Hunt Cottrell, Esq.  
Nicole N. Coon, Esq.  
SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608

OR


Jeffery R. Finley, Esq.  
Patrick J. Van Zanen, Esq.  
SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608

Name: Steven J. Ross _____ (Please Print)	Date of Birth: [REDACTED]
Address: [REDACTED]	Phone No. 1: [REDACTED] Phone No. 2: [REDACTED] E-mail Address: [REDACTED]

**CONSENT TO JOIN COLLECTIVE ACTION**

**Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.**

1. I consent and agree to pursue my claims relating to and arising from Defendant (OneAZ Credit Union, f/k/a Arizona State Credit Union) alleged violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. in connection with the above-referenced litigation.
2. I have worked as a mortgage loan officer for Defendant in Yavapai County, Arizona from approximately on or about June 9, 2014 to approximately on or about January 26, 2016.
3. I understand that this litigation has been filed as a proposed collective action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, et seq. I hereby consent, agree, and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
4. I specifically authorize my attorneys, Schneider Wallace Cottrell Konecky Wotkyns to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendant in this litigation.

11/08/16 _____ (Date Signed)	 _____ (Signature)
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**\*\*IMPORTANT NOTE\*\***

**Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.**

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.**

**Thomas H. Koon ; Steven J. Ross, on  
Plaintiff(s): behalf of themselves and all others  
similarly situated**

**OneAZ Credit Union, f/k/a Arizona  
Defendant(s): State Credit Union, a state chartered  
credit union**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Jeffrey R. Finley  
Schneider Wallace Cottrell Konecky Wotkyns LLP  
8501 N Scottsdale Rd., Ste 270  
Scottsdale, Arizona 85253  
480-315-3840**

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:                    **29 U.S.C. Section 201 et. seq.; Failure to pay proper overtime  
compensation**

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.



**Signature: Jeffrey R. Finley**

**Date: 11/14/2016**

**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: [OneAZ Faces Wage and Hour Class Action](#)

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