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11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF ARIZONA**

14 **Gabriel Scales**, Individually and on  
15 Behalf of All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 **Information Strategy Design, Inc.**, an  
19 Arizona limited liability company; **Steven**  
20 **Losefsky**, an Arizona resident; and  
21 **Michele Losefsky**, an Arizona resident,

22 Defendants.

23 **Case No.**

24 **COLLECTIVE ACTION COMPLAINT**  
25 **FOR COMPENSATION UNDER 29**  
26 **U.S.C. § 201, ET SEQ.**

27 Plaintiff Gabriel Scales, individually, and on behalf of all other persons similarly  
28 situated, alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff and the Collective Members are current and former computer help  
desk workers employed by Defendants. They bring this action on behalf of themselves and  
all similarly-situated current and former computer help desk workers who were

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1 compensated on a salary or hourly basis, and who were not paid one-and-one-half times  
2 their regular rates of pay for all time worked in excess of 40 hours in a given workweek.

3  
4 2. Plaintiff and the Collective Members bring this action against Defendants for  
5 their unlawful failure to pay overtime in violation of the Fair Labor Standards Act, 29  
6 U.S.C. § 201-219 (hereinafter “**FLSA**”).

7  
8 3. This is an action for equitable relief, overtime wages, unpaid wages,  
9 liquidated damages, interest, attorneys’ fees, and costs under the FLSA.

10 4. The FLSA was enacted “to protect all covered workers from substandard  
11 wages and oppressive working hours.” Under the FLSA, employers must pay all non-  
12 exempt employees one-and-one-half times their regular rates of pay for all time spent  
13 working in excess of 40 hours per workweek. *See* 29 U.S.C. § 207(a).

#### 14 **JURISDICTION AND VENUE**

15  
16 5. This Court has jurisdiction over the subject matter and the parties hereto  
17 pursuant to 29 U.S.C. § 201, *et seq.* and 28 U.S.C. § 1331.

18  
19 6. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because  
20 acts giving rise to the claims of Plaintiff and the Collective Members occurred within the  
21 District of Arizona, and Defendants regularly conduct business in and have engaged in the  
22 wrongful conduct alleged herein - and, thus, are subject to personal jurisdiction in - this  
23 judicial district.

#### 24 **PARTIES**

25  
26 7. At all relevant times to the matters alleged herein, Plaintiff Gaberiel Scales  
27 resided in the District of Arizona.

28 8. Plaintiff was a full-time, non-exempt employee of Defendants from in or

1 around January of 2015 until on or about October 19, 2017.

2 9. At all relevant times, Plaintiff and Collective Members were employees of  
3 Defendants as defined in 29 U.S.C. § 203(e)(1), and were non-exempt employees under 29  
4 C.F.R. § 213(a)(1).  
5

6 10. Defendant Information Strategy Design, Inc. is a corporation authorized to  
7 do business in Arizona, and was at all relevant times Plaintiff's and the Collective  
8 Members' employer as defined by 29 U.S.C. § 203(d).  
9

10 11. Defendants Steven Losefsky and Michele Losefsky are, upon information  
11 and belief, husband and wife. They have caused events to take place giving rise to this  
12 action to which their marital community is fully liable.  
13

14 12. Defendant Steven Losefsky is an Arizona resident. He has directly caused  
15 events to take place giving rise to this action. Steven Losefsky is the President and a  
16 Director of Information Strategy Design, Inc. and was at all relevant times Plaintiff's and  
17 the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
18

19 13. Defendant Michele Losefsky is an Arizona resident. She has directly caused  
20 events to take place giving rise to this action. Michele Losefsky is the Secretary and a  
21 Director of Information Strategy Design, Inc. and was at all relevant times Plaintiff's and  
22 the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
23

24 14. Under the FLSA, Defendants Steven Losefsky and Michele Losefsky are  
25 employers. The FLSA defines "employer" as any individual who acts directly or indirectly  
26 in the interest of an employer in relation to an employee. Defendants Steven Losefsky and  
27 Michele Losefsky had the authority to hire and fire employees, determined the method and  
28 rate of payment, and maintained records in connection with Plaintiff's and the Collective

1 Members’ employment with Defendants. As persons who acted in the interest of  
2 Information Strategy Design, Inc. in relation to the company’s employees, Steven Losefsky  
3 and Michele Losefsky are subject to individual and personal liability under the FLSA.  
4

5 15. Plaintiff is further informed, believes, and thereon alleges that each of the  
6 Defendants herein gave consent to, ratified, and authorized the acts of all other Defendants,  
7 as alleged herein.  
8

9 16. Defendants, and each of them, are sued in both their individual and corporate  
10 capacities.  
11

12 17. Defendants are jointly and severally liable for the injuries and damages  
13 sustained by Plaintiff and the Collective Members.  
14

15 18. Plaintiff and Collective Members, in their work for Defendants, were  
16 employed by an enterprise engaged in commerce that had annual gross sales made or  
17 business done of at least \$500,000.  
18

### 19 FACTUAL ALLEGATIONS

20 19. Defendants own and operate Information Technology Strategy Design, Inc.,  
21 which provides IT support and solutions to its customers.  
22

23 20. In or around January 2015, Plaintiff commenced employment with  
24 Defendants as a computer help desk worker.  
25

26 21. As a computer help desk worker, Plaintiff’s primary job duties included the  
27 following repetitive tasks: (a) providing support in response to help desk inquiries or  
28 “tickets”; (b) monitoring client’s system alerts and notifications; (c) providing recovery  
support solutions; (d) providing basic technical support at the network IT level; (e) and  
providing basic IT remote access solution implementation and support.

1           22.     At all relevant times in his capacity as a computer help desk worker, Plaintiff  
2 was a non-exempt employee and was paid a salary of \$47,500 per year.

3           23.     In his capacity as a computer help desk worker, Plaintiff routinely worked in  
4 excess of 40 hours per week while “on call”, and was not provided with the required one  
5 and one-half times pay premium as required by the FLSA for all his overtime hours.

6           24.     Pursuant to 29 CFR § 785.17, “An employee who is required to remain on  
7 call on the employer’s premises or so close thereto that he cannot use the time effectively  
8 for his own purposes is working while “on call.””

9           25.     Plaintiff was required to work designated “on call” shifts as a condition of  
10 his employment and was not paid the premium overtime rate accordingly.

11           26.     Defendants customarily and regularly maintained “on call” hours from:

- 12           a.     6:00am – 7:00am; Monday through Friday;
- 13           b.     5:00pm – 10:00pm; Monday through Friday;
- 14           c.     7:00am – 7:00pm; Saturday;
- 15           d.     9:00am – 5:00pm; Sunday;
- 16           e.     9:00am – 5:00pm; Holidays.

17           27.     During weeks when Plaintiff was “on call”, he was required to work the “on  
18 call” hours above in addition to his regular forty (40) hours per week schedule.

19           28.     Plaintiff worked approximately 80-90 hours per week that he was “on call”  
20 and was not paid the overtime premium for such hours worked over forty in each applicable  
21 workweek.

22           29.     Over the course of his employment, Plaintiff worked a total of  
23 approximately 1200 “on call” hours, all of which were worked in addition to Plaintiff’s  
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1 regular forty (40) hours per week schedule.

2 30. While working “on call”, Plaintiff was required to perform similar—if not  
3 identical—job duties and responsibilities as he was required to perform during his regular  
4 workweek.

5  
6 31. Plaintiff’s “on call” work was performed remotely, whereas his regular  
7 workweek was performed at the physical office of Information Strategy Design.

8  
9 32. While working “on call”, Plaintiff was required to monitor and respond to  
10 emails with critical alert notifications.

11 33. While working “on call”, Plaintiff was required to monitor and respond to  
12 Afterhours Emergency voicemails.

13  
14 34. While working “on call”, Plaintiff was required to promptly respond to  
15 emails in order to ensure that all afterhours inquiries were addressed within one hour.

16 35. While working “on call”, Plaintiff was required to promptly respond to  
17 voicemails in order to ensure that all afterhours voicemail messages were addressed within  
18 fifteen minutes.

19  
20 36. As such, Plaintiff was unable to use his personal time effectively for his own  
21 purposes while he was “on call”.

22 37. Plaintiff was not a manager.

23 38. Plaintiff did not exercise discretion or independent judgment with respect to  
24 matters of significance.

25  
26 39. Plaintiff did not have authority to formulate, affect, interpret, or implement  
27 Defendants’ management policies or operating practices.

28 40. Plaintiff did not carry out major assignments in conducting the operations of

1 Defendants’ business.

2 41. Plaintiff did not perform work that affects business operations to a substantial  
3 degree.

4  
5 42. Plaintiff did not have the authority or discretion to commit the Defendants in  
6 matters of significant financial importance.

7 43. Plaintiff did not have authority to waive or otherwise deviate from  
8 Defendants’ established policies and procedures without prior approval.

9  
10 44. Plaintiff did not provide consultation or expert advice to management.

11 45. Plaintiff was not involved in planning long-term or short-term business  
12 objectives.

13 46. Plaintiff did not investigate and/or resolve matters of significance on behalf  
14 of Defendants.

15  
16 47. Plaintiff did not represent Defendants in handling complaints, arbitrating  
17 disputes, or resolving grievances.

18 48. In his capacity as a computer help desk worker, Plaintiff’s primary duty was  
19 not the management of Defendants in which he was employed.

20  
21 49. In his capacity as a computer help desk worker, Plaintiff did not customarily  
22 and/or regularly direct work of two or more employees.

23 50. In his capacity as a computer help desk worker, Plaintiff did not have the  
24 authority to, nor did he, hire or fire other employees.

25  
26 51. At all relevant time during Plaintiff’s employment, Defendants failed to  
27 properly compensate Plaintiff for all his overtime hours.

28 52. Defendants were aware that Plaintiff’s working hours routinely exceeded 40

1 hours, and required him to work overtime as a condition of his employment.

2 53. Defendants also required Plaintiff to work “on call” as a condition of his  
3 employment and failed to compensate him accordingly.

4 54. Defendants wrongfully withheld wages from Plaintiff by failing to pay all  
5 wages due for on call and overtime hours Plaintiff worked.

6 55. Defendants refused and/or failed to properly disclose or apprise Plaintiff of  
7 his rights under the FLSA.

8 56. Defendants’ failure and/or refusal to compensate Plaintiff at the rates and  
9 amounts required by the FLSA were willful.

10 **COLLECTIVE ACTION ALLEGATIONS**

11 57. Plaintiff Scales brings this action on behalf of himself and all other similarly  
12 situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiff and the similarly situated  
13 individuals worked as computer help desk workers (or in positions with similar job titles  
14 or job duties) for Defendants. The proposed collective class for the FLSA claims is defined  
15 as follows:

16 **All persons who worked as computer help desk workers (or in other  
17 positions with similar job titles or job duties) for Defendants at any time  
18 from three years prior to the filing of this Complaint through the entry  
19 of judgment (the “Collective Members”).**

20 58. Plaintiff has given his written consent to be a party Plaintiff in this action  
21 pursuant to U.S.C. § 216(b). Plaintiff’s signed consent form is attached as “Exhibit 1”. As  
22 this case proceeds, it is likely that other individuals will file consent forms and join as “opt-  
23 in” plaintiffs.

24 59. At all relevant times, Plaintiff and the Collective Members are and have been  
25 similarly situated, have had substantially similar job requirements and pay provisions, and  
26  
27  
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1 are and have been subject to Defendants’ decision, policy, plan, and common programs,  
2 practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay  
3 one-and-one-half times Plaintiff’s and the Collective Members’ regular rates of pay for all  
4 time in excess of forty (40) hours per workweek that Defendants suffered or permitted them  
5 to work. Plaintiff’s claims stated herein are essentially the same as those of the Collective  
6 Members. This action is properly maintained as a collective action because in all pertinent  
7 aspects the employment relationship of individuals similarly situated to Plaintiff are  
8 identical or substantially similar.  
9

10  
11 60. When Plaintiff was not “on call” one of his similarly situated peers—the  
12 Collective Members—were required to cover the additional work hours.

13  
14 61. Defendants improperly classified Plaintiff and the Collective Members as  
15 exempt from the FLSA’s overtime pay requirements.

16  
17 62. Plaintiff and the Collective Members routinely worked over forty (40) hours  
18 in a workweek and were not compensated by Defendants with overtime pay for the hours  
19 they worked over forty in a workweek.

20  
21 63. Plaintiff and the Collective Members were required to work designated “on  
22 call” shifts as a condition of their employment, and were not paid the premium overtime  
23 rate accordingly.

24  
25 64. Defendants’ failure to pay overtime compensation required by the FLSA  
26 results from generally applicable policies or practices, and does not depend on the personal  
27 circumstances of the Collective Members.

28  
65. The experiences of Plaintiff, with respect to his pay, are typical of the  
experiences of the Collective Members.

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1 66. All class members, irrespective of their particular job requirements and job  
2 titles, are entitled to compensation for hours worked in excess of forty (40) during a given  
3 workweek.  
4

5 67. Although the exact amount of damages may vary among the Collective  
6 Members, the damages for the Collective Members can be easily calculated by a simple  
7 formula. The claims of all Collective Members arise from a common nucleus of facts.  
8 Liability is based on a systematic course of wrongful conduct by the Defendants that caused  
9 harm to all of the Collective Members.  
10

11 68. Defendants uniformly misrepresented to Plaintiff and other computer help  
12 desk workers (and/or those in a position with similar job titles or job duties) that they were  
13 exempt employees and therefore ineligible to receive overtime pay. In reality, Plaintiff and  
14 other similarly situated employees are, and were, non-exempt employees who are, and  
15 were, entitled to overtime pay.  
16

17 69. Notice of this action should be sent to all similarly situated computer help  
18 desk workers and/or those in a position with similar job titles or job duties.  
19

20 70. There are numerous similarly situated current and former employees of  
21 Defendants who have been denied appropriate compensation in violation of the FLSA, who  
22 would benefit from a Court supervised notice of the lawsuit and the opportunity to join the  
23 case. Those similarly stated employees are known to Defendants and are readily  
24 identifiable through Defendants’ records.  
25

26 **COUNT I**  
27 **(FAILURE TO PAY OVERTIME WAGES – FLSA – 29 U.S.C. § 207)**

28 71. Plaintiff, on behalf of himself and the Collective Members, realleges and  
incorporates by reference all allegations in all preceding paragraphs.

1 72. At all relevant times, Plaintiff and the Collective Member were employed by  
2 Defendants within the meaning of the FLSA.

3 73. Plaintiff and the Collective Members were non-exempt employees entitled  
4 to the statutorily mandated overtime wage.  
5

6 74. While employed by Defendants, Plaintiff and the Collective Members  
7 routinely worked "on call" for the Defendants, as defined by 29 CFR § 785.17.  
8

9 75. Plaintiff and the Collective Members were not paid their premium overtime  
10 rate for hours worked over forty while "on call".

11 76. As a result, Defendants have intentionally failed and/or refused to pay  
12 Plaintiff and the Collective Members overtime according to the provisions of the FLSA.

13 77. 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 Plaintiff and the  
15 Collective Members overtime wages in accordance with 29 U.S.C. § 207.  
16

17 78. As a result of Defendants failure or refusal to pay Plaintiff and the Collective  
18 Members a wage equal to one-and-one-half times Plaintiff's and the Collective Members'  
19 regular rates of pay for work they performed "on call" in excess of their regular 40 hour  
20 workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff and the Collective Members  
21 are therefore entitled to compensation of one-and-one-half times their regular rates of pay,  
22 to be proven at trial, plus an additional equal amount as liquidated damages, together with  
23 interest, reasonable attorney's fees, and costs.  
24  
25

26 **CONCLUSION AND PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff, individually, and on behalf of all other similarly situated  
28 persons, respectfully requests that this Court grant the following relief in Plaintiff's and the

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Collective Members’ favor, and against Defendants:

- A. Designation of this action as a collective action on behalf of the FLSA Collective Members (asserting FLSA claims) and prompt issuance of 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);
- B. For the Court to declare and find that the Defendants committed one or more of the following acts:
  - i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing to pay overtime wages;
  - ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest;
- E. For the Court to award Plaintiff’s reasonable attorneys’ fees and costs pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth herein;
- F. For the Court to provide reasonable incentive awards to each named Plaintiff to compensate them for the time they spent attempting to recover wages for the Collective Members and for the risks they took in doing so; and
- G. Such other relief as this Court shall deem just and proper.

**JURY DEMAND**

Plaintiff and the Collective Members hereby demand a trial by jury of all issues so

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triable.

RESPECTFULLY SUBMITTED January 9, 2018.

**ZOLDAN LAW GROUP, PLLC**

By: /s/ Jason Barrat  
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11 Attorneys for Plaintiff  
12 Gabriel Scales

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF ARIZONA**

15 **Gabriel Scales**, Individually and on  
16 Behalf of All Others Similarly Situated,

17 **Case No.**

18 Plaintiffs,

19 v.

20 **PLAINTIFF GABRIEL SCALES'S  
21 CONSENT TO JOIN COLLECTIVE  
22 ACTION AS NAMED PLAINTIFF**

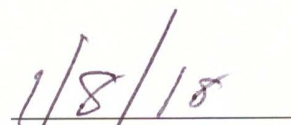
23 **Information Strategy Design, Inc.**, an  
24 Arizona limited liability company; **Steven  
25 Losefsky**, an Arizona resident; and  
26 **Michele Losefsky**, an Arizona resident,

27 Defendants.

28 I, Gabriel Scales, do hereby consent to be a party plaintiff to the above entitled  
action. I have read the complaint to be filed in the United States District Court for the  
District of Arizona, Phoenix Division, and authorize my attorneys, Zoldan Law Group,  
PLLC to file the complaint on my behalf and for other employees similarly situated.



Gabriel Scales

  
Date

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): Gabriel Scales**

**Defendant(s): Information Strategy Design, Inc. ;  
Steven Losefsky ; Michele Losefsky**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Michael Zoldan (Gabriel Scales )  
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**Jason Barrat (Gabriel Scales )  
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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:

**Fair Labor Standards Act, 29 U.S.C. § 201-219**

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

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**Signature: Jason Barrat**

**Date: 01/09/2018**

**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: [Former Employee Claims Information Strategy Design Owes Unpaid OT for 'On Call' Hours](#)

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