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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

OCT 17 2014

Sherri R. Carter, Executive Officer/Clerk
By Myrna Beltran, Deputy

**LOS ANGELES COUNTY SUPERIOR COURT
STATE OF CALIFORNIA**

KENNETH HOWELL, SAMARRIE
HENRY, KARLISSA HARVEY, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

FRIENDLY CALL, INC., FARID "FRED"
MAGID aka FARID GUSEYNOVIC SR.,
FARID MEDZHIDOV, SR., FARID
ALIGUSEYN, and Does 1 through 50,
inclusive,

Defendants.

Case No.

BC 5 6 1 1 1 8

COMPLAINT

[CLASS ACTION]

1 KENNETH HOWELL, SAMARRIE HENRY, and KARLISSA HARVEY
2 (collectively, "Plaintiffs") on behalf of themselves and all others similarly situated, alleges as
3 follows:

4 **GENERAL ALLEGATIONS**

5 1. Plaintiff Kenneth Howell was an employee for defendants Friendly Call, Inc.
6 and Farid "Fred" Magid (collectively "Defendants") in Sherman Oaks, California between
7 approximately May 2014 and August 2014. Kenneth Howell worked as a "fund raiser" for
8 Defendant.

9 2. Plaintiff Samarrie Henry was an employee for Defendants in Sherman Oaks,
10 California during the month of June 2014. Samarie Henry worked as a "verifier" for
11 Defendant.

12 3. Plaintiff KarliSSa Harvey was an employee for Defendants in Sherman Oaks,
13 California between June 2014 and July 2014. Samarie Henry worked as a "verifier" for
14 Defendant.

15 4. Defendant Friendly Call, Inc. is a California corporation of unknown ownership
16 with its principal place of business in Los Angeles County, California. Friendly Call, Inc.
17 operates as a telemarketing company with offices in this judicial district and in the state of
18 California.

19 5. Defendant Farid "Fred" Magid is an individual residing in Sherman Oaks,
20 California. Upon information and belief, Farid "Fred" Magid is the owner of Friendly Call,
21 Inc. Farid "Fred" Magid has also gone by the following names: Farid Guseynovic Sr., Farid
22 Medzhidov, Sr., and Farid Aliguseyn.

23 6. Venue is proper in Los Angeles County as at least some of the acts complained
24 of herein occurred in Los Angeles County as Defendants' offices and principal place of
25 business is in Los Angeles County.

26 7. At all times herein mentioned, Plaintiffs and the class identified herein worked
27 as employees for Defendant. At all times herein mentioned, Plaintiffs and the class have been,
28 and continue to be, domiciled in the state of California.

1 8. At all times herein mentioned Defendant and Does 1 through 50 are and were
2 corporations, business entities, individuals and partnerships, doing business in the State of
3 California.

4 9. Defendants own and operate an industry, business and establishment in a
5 number of separate geographic locations within the State of California, including within Los
6 Angeles County, for the purpose of engaging in telemarketing. As such, and based upon all the
7 facts and circumstances incident to Defendants' business in California, Defendants are subject
8 to California Labor Code §§ 1194 *et seq.*, California Business and Professions Code § 17200 *et*
9 *seq.*, (Unfair Practices Act) and the applicable Industrial Welfare Commission Wage Orders.

10 10. Plaintiffs do not know the true names or capacities, whether individual, partner
11 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
12 reason, said Defendants are sued under such fictitious names, and Plaintiffs pray leave to
13 amend this complaint when the true names and capacities are known. Each of said fictitious
14 Defendants was responsible in some way for the matters alleged herein and proximately caused
15 Plaintiffs and members of the class to be subject to the illegal employment practices, wrongs
16 and injuries complained of herein.

17 11. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
19 Defendants, and each of them, were the agents, servants and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
21 acting within the course and scope of said agency and employment.

22 12. At all times herein mentioned, Defendants, and each of them, were members of,
23 and engaged in, a joint venture, partnership and common enterprise, and acting within the
24 course and scope of, and in pursuance of, said joint venture, partnership and common
25 enterprise.

26 13. At all times herein mentioned, the acts and omissions of various Defendants, and
27 each of them, concurred and contributed to the various acts and omissions of each and all of the
28 other Defendants in proximately causing the injuries and damages as herein alleged.

1 14. At all times herein mentioned, Defendants, and each of them, ratified each and
2 every act or omission complained of herein. At all times herein mentioned, the Defendants,
3 and each of them, aided and abetted the acts and omissions of each and all of the other
4 Defendants in proximately causing the damages as herein alleged. Further, at all times
5 mentioned herein, the wage and hour related compensation policies were dictated by, controlled
6 by, and ratified by the Defendants herein and each of them.

7 **FACTUAL ALLEGATIONS**

8 15. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiffs may bring
9 a civil action for wages directly against the employer without first filing a claim with the
10 California Division of Labor Standards Enforcement and may recover such wages, together
11 with interest thereon, penalties, attorney fees and costs.

12 16. Defendants own and operate a telemarketing company. The telemarketing
13 company engages in solicitations to the general public in order to obtain monetary donations
14 for, *inter alia*, an alleged “burn center” on behalf of “paramedics” and “firefighters.”

15 17. Defendants employed Plaintiffs and other Class Members to solicit the
16 donations. Plaintiffs and the Class worked at Defendants’ locations off of lead lists provided
17 by Defendants. Defendants’ telephone system is set up in such a way that telephone calls are
18 automatically placed by the system.

19 18. Defendants assign some of their employees to make the initial call and obtain a
20 commitment from the prospective donor. These employees are referred to as “fund raisers.”
21 Defendants also assign some of their employees to make follow-up calls to the individual
22 donors who have made a commitment in order to obtain their credit card information in order to
23 finalize the deal. These employees are referred to as “verifiers.”

24 19. There are no minimum qualifications needed to perform any of these roles aside
25 from an ability to speak passable English. As a custom and practice, Defendants require all
26 new employees to “audition” for the job. However, the auditions consist of the employees
27 making actual calls to live prospective donors which in some cases generate revenue for
28 Defendants. The “auditions” last for two hours or more. It is Defendants’ company-wide

1 policy and practice not to compensate employees for the time they spend "auditioning."

2 20. Defendants utilize an auto-dialer telephone system. The telephone system tracks
3 the amount of time that employees are taking calls referred to as being "logged in." Defendants
4 use this system to determine the number of hours employees work. Employees are only paid
5 when they are "logged into" the system. Employees are considered "logged out" of the system
6 when they are engaged in any activity that is not taking an incoming call. Some of those other
7 activities include, but are not limited to, the following: (1) placing out-bound calls; (2) in
8 training; (3) in between calls; (4) in meetings; (5) using the restroom; and (6) on any form of
9 break, if at all. It is Defendants' company-wide policy and practice to only pay employees for
10 time they are "logged in" and to not pay for any time they are "logged out."

11 21. Defendants' employees are paid an hourly rate. No matter how many hours they
12 work in a day or week, Defendants only pay a straight-time rate for hours that are "logged in"
13 even if those hours exceed 8 in a day or 40 in a week.

14 22. Defendants controlled how their employees worked. Defendants dictated how
15 the calls were to be made, when they were to be made, and where the calls were to be made.
16 Defendants closely monitored the calls that were made in terms of the manner of the call, the
17 amount of time spent on each call, and the result achieved in each call. Defendants controlled
18 the hours of operation and provided both the tools necessary to complete the work and the place
19 of work where the calls were made. Defendants frequently reviewed, evaluated and criticized
20 employees based on the quantity and quality of their work. Defendants employed supervisors
21 to closely monitor the activities of the employees. Defendants retained the right to discharge
22 their employees without cause and, in fact, frequently exercised that right. Defendants hired
23 their employees for an indeterminate amount of time. Defendants paid their employees an
24 hourly rate. The work the employees performed was the production work of Defendants and
25 central to Defendants' business. The employees, Defendants and Defendants' supervisors
26 acted and believed that the relationship between employees and Defendants was that of
27 employer-employee. Notwithstanding, Defendants characterized their employees as
28 independent contractors for purposes of payroll and did not make the required withholdings and

1 tax payment obligations.

2 23. Plaintiffs are former employees of Defendants. Plaintiffs have never been paid
3 all of their wages that are due and owing as alleged herein. Additionally, the final paychecks
4 that Plaintiffs did receive were not paid within the times set forth in Labor Code §§ 201 and
5 202. Plaintiffs did not secret or absent themselves from payment of their final paychecks.
6 Defendants willfully did not timely and properly pay Plaintiffs their final paychecks.
7 Defendants' failure to timely and properly pay Plaintiffs their final paychecks was without
8 substantial justification. Defendants' failure to timely and properly pay Plaintiffs their final
9 paychecks was consistent with Defendants' company-wide policy and practice of paying final
10 paychecks late.

11 **CLASS ALLEGATIONS**

12 24. This complaint is brought by Plaintiffs pursuant to California Code of Civil
13 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
14 which Plaintiffs seek relief authorized under California law. The class is comprised of, and
15 defined as:

16 All current and former California based employees, including anyone who
17 "auditioned" for employment, of Friendly Call, Inc. and/or Farid "Fred"
18 Magid who worked at any time during the statutory coverage of this action
19 up to the time the class is certified.

20 25. The members of the classes are so numerous that joinder of all members is
21 impracticable. The exact number of the members of the classes can be determined by
22 reviewing Defendant's records.

23 26. Plaintiffs will fairly and adequately protect the interests of the Class and have
24 retained counsel that is experienced and competent in class action and employment litigation.
25 Plaintiffs have no interests that are contrary to, or in conflict with, members of the Class.

26 27. A class action suit, such as the instant one, is superior to other available means
27 for fair and efficient adjudication of this lawsuit. The damages suffered by individual members
28 of the Class may be relatively small when compared to the expense and burden of litigation,

1 making it virtually impossible for members of the Class to individually seek redress for the
2 wrongs done to them.

3 28. A class action is, therefore, superior to other available methods for the fair and
4 efficient adjudication of the controversy. Absent these actions, the members of the Class likely
5 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations
6 of California law.

7 29. Even if any member of the Class could afford individual litigation against
8 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
9 in one forum will promote judicial economy and parity among the claims of individual
10 members of the Class and provide for judicial consistency.

11 30. There is a well-defined community of interest in the questions of law and fact
12 affecting the Class as a whole. Questions of law and fact common to each of the Class
13 predominate over any questions affecting solely individual members of the action. Among the
14 common questions of law and fact are:

15 a. Whether Defendants' policy and practice of not paying for "audition"
16 time is legal;

17 b. Whether Defendants' policy of not paying for any time their employees
18 are not "logged into" the system is legal;

19 c. Whether Defendants' policy and practice of not paying the premium rate
20 for all overtime hours worked is legal;

21 d. Whether Defendants' policy and practice of classifying its employees as
22 independent contractors is legal.

23 31. The answers to these predominant common questions are equally applicable to
24 all Class Members and are answers that will drive resolution of this litigation.

25 **COUNT ONE**

26 (Labor Code § 1194)

27 32. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
28 Complaint as if fully set forth herein.

1 overtime wage in violation of California Labor Code § 510.

2 41. Defendants' failure to pay the statutory overtime wage permits Plaintiffs to
3 bring this action pursuant to California Labor Code § 1194. Plaintiffs and the Class seek the
4 unpaid balance of the overtime wage, including interest thereon, attorneys' fees and costs.

5 42. Defendants' failure to pay the statutory overtime rate entitles Plaintiffs and the
6 Class to an award of penalties pursuant to California Labor Code § 558.

7 **COUNT THREE**

8 (Labor Code § 226.7)

9 43. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
10 Complaint as if fully set forth herein.

11 44. As a result of Defendants' company-wide policies and practices of not paying
12 for all hours worked and of not paying for any time employees are "logged out" of Defendants'
13 telephone system, Defendants failed to authorize and permit their employees to take paid rest
14 breaks in violation of Labor Code §§ 226.7 and IWC Wage Order 4-2001 § 12.

15 45. Defendants' failure to provide paid rest breaks entitles Plaintiffs and the Class to
16 additional wages of one of pay for every rest break not provided per IWC Wage Order 4-2001
17 § 12(B).

18 **COUNT FOUR**

19 (Labor Code § 226)

20 46. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
21 Complaint as if fully set forth herein.

22 47. As a result of Defendants' company-wide policies and practices of not paying
23 for all hours worked and of not paying the required premium rate, Defendants failed to
24 maintain and provide employees with accurate and detailed records of wages earned in
25 violation of Labor Code §§ 226 and 1174.

26 48. As a result of Defendants' violations of Labor Code §§ 226 and 1174, Plaintiffs
27 and the Class are entitled to damages as provided by statute, penalties pursuant to Labor Code
28 §§ 226, 226.3, 1174.5, attorney fees and costs pursuant to Labor Code § 218.5, and interest

1 pursuant to Labor Code § 218.6.

2 **COUNT FIVE**

3 (Business & Professions Code § 17200)

4 49. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
5 Complaint as if fully set forth herein.

6 50. Defendants' policies and practices have caused their employees not to receive
7 their statutory minimum wage, have caused their employees not to receive their statutory
8 overtime compensation, and have caused their employees not to receive their statutory rest
9 breaks – all in violation of the California Labor Code.

10 51. As a result of the foregoing, Defendants have engaged in unlawful, unfair and
11 fraudulent conduct and committed acts of unfair competition in violation of California Bus. &
12 Prof. Code § 17200 *et seq.*

13 52. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring
14 Defendants to make restitution of all wages due and interest thereon in an amount to be proven
15 at trial.

16 53. Plaintiffs, and all persons similarly situated, are further entitled to and do seek a
17 both a declaration that the above-described business practices are unfair, unlawful and/or
18 fraudulent and injunctive relief restraining Defendants from engaging in any of such business
19 practices in the future. Such misconduct by Defendants, unless and until enjoined and
20 restrained by order of this Court, will cause great and irreparable injury to all members of the
21 Class in that the Defendants will continue to violate state and federal law unless specifically
22 ordered to comply with same. This expectation of future violations will require current and
23 future employees to repeatedly and continuously seek legal redress in order to gain
24 compensation to which they are entitled under California law. Plaintiffs have no other
25 adequate remedy at law to insure future compliance with the laws alleged to have been violated
26 herein.

27 **COUNT SIX**

28 (California Labor Code § 203)

1 54. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
2 Complaint as if fully set forth herein.

3 55. Defendants willfully and intentionally failed to pay Plaintiffs other former
4 employees all the wages they were due and/or by the deadlines imposed under Labor Code §§
5 201 and 202 upon cessation of the Class Members' employment with Defendants. Plaintiffs
6 and the other Class Members did not secret or absent themselves from Defendants nor refuse to
7 accept the earned and unpaid wages from Defendants. Accordingly, Plaintiffs and other former
8 employees are entitled to waiting time penalties per Labor Code § 203 of up to thirty (30) days'
9 pay, in an amount to be proven at trial.

10 **COUNT SEVEN**

11 (Conversion)

12 56. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
13 Complaint as if fully set forth herein.

14 57. At the time Defendants failed to pay the wages due to Plaintiffs and the Class, as
15 alleged herein, Plaintiffs and the class owned and had the right to possess the withheld wages.
16 Defendants willfully and without legal justification interfered with the rights of Plaintiffs and
17 the Class to own and possess their wages. The amount of those wages is capable of being made
18 certain from a review of the information of Plaintiffs and Class Members and from the records
19 of Defendants and their agents.

20 58. In failing to pay wages to Plaintiffs and the Class, Defendants unlawfully and
21 intentionally caused the property of Plaintiffs and the Class to be taken and converted to
22 Defendants' own use. At the time the conversion took place, Plaintiffs and the Class were
23 entitled to immediate possession of the amounts of wages payable. This conversion was
24 oppressive, malicious and fraudulent. This conversion was concealed by the Defendants from
25 Plaintiffs and the Class.

26 59. Plaintiffs and the Class have been injured by this conversion and are entitled to:
27 (a) all monies converted by Defendants with interest thereon; (b) any and all profits whether
28 direct or indirect, Defendants acquired by their conversion; and, (c) punitive and exemplary

1 damages.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for:

- 4 1. For an order certifying the proposed class;
- 5 2. For compensatory and punitive damages and all other statutory remedies
- 6 permitted;
- 7 3. For an injunction and declaratory relief;
- 8 4. For penalties as alleged herein;
- 9 5. For prejudgment interest;
- 10 6. For an order awarding attorneys' fees and costs pursuant to Labor Code §§
- 11 218.5, 1194, and Code of Civil Procedure § 1021.5 and any other statutory or equitable basis;
- 12 7. For equitable restitution of all wages improperly withheld; and,
- 13 8. For all other relief as the Court deems just.

14

15 Dated: October 16, 2014

WYNNE LAW FIRM

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17 By: /s/Edward J. Wynne

18 Edward J. Wynne

19 *Counsel for Plaintiffs*

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