

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

MARLON ROBERTSON, individually, )  
and on behalf of all others similarly )  
situated, )  
 )  
Plaintiff, )  
v. )  
 )  
VVF INTERVEST, LLC, VVF KANSAS, )  
LLC, & VVF KANSAS SERVICES, LLC, )  
 )  
Defendants. )

Case No. 2:21-cv-02507

JURY TRIAL DEMANDED

**DEFENDANTS’ ANSWER**

Defendants VVF Intervest, LLC (“VVF Intervest”), VVF Kansas, LLC (“VVF Kansas”), and VVF Kansas Services, LLC (“VVF Kansas Services”) (collectively, “Defendants”) for their Answer to Plaintiff’s Class & Collective Action Complaint (“Complaint”), state the following:

**INTRODUCTION**

1. Defendants admit only that Plaintiff previously worked for VVF Kansas Services in Kansas. Defendants deny the remaining allegations in Paragraph 1.
2. Paragraph 2 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 2.
3. Paragraph 3 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 3, including subparts a, b, and c.
4. Paragraph 4 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 4.

5. Plaintiff purports to bring claims against Defendants under the FLSA, the KWPA, and common law. Defendants deny that they violated any of those laws and deny the remaining allegations in Paragraph 5.

#### JURISDICTION AND VENUE

6. Paragraph 6 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state that they do not contest that this Court has subject matter jurisdiction and supplemental jurisdiction.

7. Paragraph 7 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state that they do not contest that this Court has subject matter jurisdiction and supplemental jurisdiction.

8. Paragraph 8 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state that they do not contest that this Court has subject matter jurisdiction and supplemental jurisdiction.

9. Paragraph 9 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas and VVF Kansas Services each have their principal places of business within the District of Kansas. Defendants deny the remaining allegations of Paragraph 9.

10. Paragraph 10 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas and VVF Kansas Services are residents of the State of Kansas and that Robertson was employed by VVF Kansas Services in Kansas. Defendants deny the remaining allegations of Paragraph 10.

THE PARTIES

11. Defendants admit only that from on or about December 21, 2020 through on or about July 9, 2021, Plaintiff Robertson was employed by VVF Kansas Services as a nonexempt employee at its place of business located in Kansas City, Kansas, and that his consent appears to be attached as described. Defendants deny all remaining allegations of Paragraph 11.

12. Paragraph 12 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that Defendants are corporations organized under the State of Nevada, that Defendants are registered to do business in the State of Kansas, and that VVF Kansas and VVF Kansas Services each have their principal places of business within the District of Kansas. Defendants deny the remaining allegations of Paragraph 12.

13. Defendants admit only that Defendant Intervest, LLC is a parent company. Defendants deny the remaining allegations of Paragraph 13.

14. Defendants admit only VVF Intervest is a corporation organized under the laws of the State of Nevada, that it is registered to do business and does business in the State of Kansas. Defendants deny the remaining allegations of Paragraph 14.

15. Defendants admit only that VVF Kansas is a corporation organized under the laws of the State of Nevada, with its principal place of business located at 1705 Kansas Avenue, Kansas City, Kansas 66105, that it is registered to do business and does do business in the State of Kansas, and that it filed an annual report in the State of Kansas on March 3, 2021 which noted that VVF Intervest is a member owning 5% or more of capital, as shown in Exhibit 2. Defendants deny the remaining allegations of Paragraph 15.

16. Defendants admit only that VVF Kansas Services is a corporation organized under the laws of the State of Nevada, with its principal place of business located at 1705 Kansas Avenue, Kansas City, Kansas 66105, that it is registered to do business and does do business in the State of Kansas, and that it filed an annual report in the State of Kansas on November 5, 2020 which noted that VVF Intervest is a member owning 5% or more of capital, as shown in Exhibit 3. Defendants deny the remaining allegations of Paragraph 16.

17. Paragraph 17 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 17.

18. Defendants admit only that Plaintiff was a nonexempt laborer who worked for VVF Kansas Services in the United States. Defendant deny the remaining allegations of Paragraph 18.

#### VVF INTERVEST, LLC EMPLOYED EACH PLAINTIFF

19. Defendants deny the allegations of Paragraph 19.

20. Defendants deny the allegations of Paragraph 20.

21. Defendants deny the allegations of Paragraph 21, including subparts a, b, c, and d.

22. Paragraph 22 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 22.

#### OVERVIEW OF PLAINTIFF'S CLAIMS

23. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

24. Defendants deny the allegations of Paragraph 24.

#### Overview of Defendants' Rounding Policies, Practices, and/or Procedures

25. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

26. Defendants admit only that Kansas Services uses an application that tracks the time (accurate to one minute) that a nonexempt employee clocks in and clocks out of the timekeeping application. Defendants deny the remaining allegations in Paragraph 26.

27. Defendant admits only that Kansas Services uses a rounding practice in calculating its payroll. Defendants deny the remaining allegations in Paragraph 27.

28. Defendants deny the allegations in Paragraph 28.

29. Defendants deny the allegations in Paragraph 29.

30. Defendants deny the allegations in Paragraph 30.

Overview of Defendants' Workweek Manipulation to Avoid Overtime

31. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

32. Defendants deny the allegations in Paragraph 32.

33. Defendants admit only that Kansas Services defined its workweek as applicable to Plaintiff to run from 12:00 a.m. Sunday until 11:59 p.m. on Saturday. Defendants deny the remaining allegations in Paragraph 33.

34. Defendants deny the allegations in Paragraph 34.

35. Defendants deny the allegations in Paragraph 35.

Overview of Defendants' Auto Deduction of Non-Bona Fide Meal Periods

36. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

37. Defendants admit only that Kansas Services expected Plaintiff, during his employment, to stay on the worksite during his scheduled shifts and was expected to be ready and

able to work at all times during his scheduled shift. Defendants deny the remaining allegations of Paragraph 37.

38. Defendants admit only that Kansas Services would occasionally need Plaintiff, during his employment, to perform compensable work during meal breaks. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants admit only that Kansas Services relieved Plaintiff from his work duties during any uncompensated breaks during his employment. Defendants deny the remaining allegations of Paragraph 39.

40. Defendants deny the allegations in Paragraph 40.

41. Defendants deny the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42.

43. Defendants deny the allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

48. Defendants deny the allegations in Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

Example Overview of Damages

52. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

53. Defendants admit only that Plaintiff Robertson clocked in at VVF Kansas Services at 10:58 p.m. on Saturday, January 2, 2021, and clocked out at 7:30 a.m. on Sunday, January 3, 2021; 10:54 p.m. on Sunday, January 3, 2021, through 7:30 a.m. on Monday, January 4, 2021; 10:47 p.m. on Monday, January 4, 2021, through 7:30 a.m. on Tuesday, January 5, 2021; 10:53 p.m. on Tuesday, January 5, 2021, through 7:30 a.m. on Wednesday, January 6, 2021; 10:59 p.m. on Wednesday, January 6, 2021, through 7:31 a.m. on Thursday, January 7, 2021; 10:59 p.m. on Thursday, January 7, 2021, through 7:30 a.m. on Friday, January 8, 2021; and 11:05 p.m. on Friday, January 8, 2021 through 7:30 a.m. on Saturday, January 9, 2021. Defendants deny the remaining allegations of Paragraph 53, including subparts a, b, c, d, e, f, g, and h. As to footnote 1, Defendants admit only that Kansas Services' workweek for Plaintiff ran from Sunday through Saturday. Defendants deny the remaining allegations of footnote 1.

#### CLASS AND COLLECTIVE ACTION ALLEGATIONS

54. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

55. Plaintiff purports to bring claims against Defendants under the FLSA. Defendants deny that they violated the FLSA and deny the remaining allegations in Paragraph 55 and deny that Plaintiff's proposed collective class definition in the unnumbered paragraph following Paragraph 55 is appropriate.

56. Plaintiff purports to bring claims against Defendants under the FLSA. Defendants deny that they violated the FLSA and deny the remaining allegations in Paragraph 56 and deny that Plaintiff's proposed collective class definition in the unnumbered paragraph following Paragraph 56 is appropriate.

57. Plaintiff purports to bring claims against Defendants under the FLSA. Defendants deny that they violated the FLSA and deny the remaining allegations in Paragraph 57 and deny that Plaintiff's proposed collective class definition in the unnumbered paragraph following Paragraph 57 is appropriate.

58. Paragraph 58 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 58.

59. Paragraph 59 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 59.

60. Plaintiff purports to bring claims against Defendants under the KWPA. Defendants deny that they violated the KWPA and deny the remaining allegations in Paragraph 60 and deny that Plaintiff's proposed class definition in the unnumbered paragraph following Paragraph 60 is appropriate.

61. Plaintiff purports to bring claims against Defendants under the KWPA. Defendants deny that they violated the KWPA and deny that Plaintiff's proposed class definition in the unnumbered paragraph following Paragraph 61 is appropriate.

62. Plaintiff purports to bring claims of unjust enrichment against Defendants. Defendants deny any such alleged claim and deny the remaining allegations in Paragraph 62 and deny that Plaintiff's proposed class definition in the unnumbered paragraph following Paragraph 62 is appropriate.

63. Plaintiff purports to bring claims of unjust enrichment against Defendants. Defendants deny any such alleged claim and deny that Plaintiff's proposed class definition in the unnumbered paragraph following Paragraph 63 is appropriate.



64. Plaintiff purports to bring claims of unjust enrichment against Defendants. Defendants deny any such alleged claim and deny the remaining allegations in Paragraph 64 and deny that Plaintiff's proposed class definition in the unnumbered paragraph following Paragraph 64 is appropriate.

65. Paragraph 65 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 65.

66. Paragraph 66 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 66.

67. Paragraph 67 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 67, including subparts a, b, and c.

68. Paragraph 68 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 68.

69. Paragraph 69 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 69.

70. Paragraph 70 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 70.

71. Paragraph 71 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 71.

72. Paragraph 72 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 72.

ALLEGATIONS APPLICABLE TO ALL FLSA CLAIMS

73. Defendants admit only that, during his employment with VVF Kansas Services, Plaintiff was an employee within the meaning of the FLSA. Defendants deny the remaining allegations of Paragraph 73.

74. Paragraph 74 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that the FLSA has provisions regarding minimum wage and overtime pay for some employers. Defendants deny the remaining allegations of Paragraph 74.

75. Paragraph 75 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas Services is subject to the minimum wage and overtime pay requirements of the FLSA. Defendants deny the remaining allegations of Paragraph 75.

76. Paragraph 76 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas Services employed Plaintiff. Defendants deny the remaining allegations of Paragraph 76.

77. Paragraph 77 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas Services employed Plaintiff. Defendants deny the remaining allegations of Paragraph 77.

78. Paragraph 78 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that when employed by VVF Kansas Services, Plaintiff was non-exempt and was eligible to be paid overtime wages. Defendants deny the remaining allegations of Paragraph 78.

79. Defendants admit only that at times, when employed by VVF Kansas Services, Plaintiff worked more than forty hours in a workweek. Defendants deny the remaining allegations of Paragraph 79.

80. Paragraph 80 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that nonexempt employees performing work in excess of 40 hours in a workweek are to be compensated at a rate of at least 1.5 times the regular hourly rate. Defendants deny the remaining allegations of Paragraph 80.

81. Paragraph 81 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas Services employed Plaintiff as a nonexempt employee. Defendants deny the remaining allegations of Paragraph 81.

82. Defendants deny the allegations of Paragraph 82.

83. Defendants deny the allegations of Paragraph 83.

84. Defendants deny the allegations of Paragraph 84.

85. Defendants deny the allegations of Paragraph 85.

ALLEGATIONS APPLICABLE TO ALL KWPA CLAIMS

86. Defendants admit only that, during his employment with VVF Kansas Services, Plaintiff was an employee within the meaning of the KWPA. Defendants deny the remaining allegations of Paragraph 86.

87. Paragraph 87 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that the KWPA has provisions regarding the payment of wages for some employers. Defendants deny the remaining allegations of Paragraph 87.

88. Paragraph 88 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas Services is subject to the minimum wage and overtime pay requirements of federal law. Defendants deny the remaining allegations of Paragraph 88.

89. Paragraph 89 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that VVF Kansas Services employed Plaintiff. Defendants deny the remaining allegations of Paragraph 89.

90. Paragraph 90 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that, during his employment with VVF Kansas Services, Plaintiff was an employee within the meaning of the KWPA. Defendants deny the remaining allegations of Paragraph 90.

91. Paragraph 91 of the Complaint states a legal conclusion, to which no response is required. To the extent a response is required, Defendants admit only that when employed by VVF Kansas Services, Plaintiff was entitled to straight time and also to overtime, consistent with state and federal law. Defendants deny the remaining allegations of Paragraph 91.

92. Defendants deny the allegations of Paragraph 92.

93. Defendants deny the allegations of Paragraph 93.

94. Defendants deny the allegations of Paragraph 94.

95. Defendants deny the allegations of Paragraph 95.

FIRST CAUSE OF ACTION

Violation of the Fair Labor Standards Act

Arising Out of Defendants' Unlawful Rounding Policy

Asserted Against All Defendants

96. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

97. Defendants admit only that VVF Kansas Services formerly employed Plaintiff as a nonexempt employee at a location in the United States, and that his compensation and hours worked were determined in accordance with VVF Kansas Services' policies, practices, and procedures, and the law. Defendants deny the remaining allegations of Paragraph 97.

98. Defendants deny the allegations of Paragraph 98.

99. Defendants deny the allegations of Paragraph 99.

100. Defendants deny the allegations of Paragraph 100.

101. Defendants deny the allegations of Paragraph 101.

102. Defendants deny the allegations of Paragraph 102.

103. Defendants deny the allegations of Paragraph 103.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 103, including subparts a, b, c, d, e, and f.

SECOND CAUSE OF ACTION

Violation of the Fair Labor Standards Act

Arising Out of Defendants' Workweek Manipulation Policy

Asserted Against All Defendants

104. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

105. Defendants admit only that VVF Kansas Services formerly employed Plaintiff as a nonexempt employee at a location in the United States, and that his compensation and hours worked were determined in accordance with VVF Kansas Services' policies, practices, and procedures, and the law, and that the workweek applicable to Plaintiff ran from Sunday through Saturday. Defendants deny the remaining allegations of Paragraph 105.

106. Defendants deny the allegations of Paragraph 106.

107. Defendants deny the allegations of Paragraph 107.

108. Defendants deny the allegations of Paragraph 108.

109. Defendants deny the allegations of Paragraph 109.

110. Defendants deny the allegations of Paragraph 110.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 110, including subparts g, h, i, j, k, and l.

THIRD CAUSE OF ACTION

Violation of the Fair Labor Standards Act

Arising Out of Defendants' Automatic Deduction Policy

Asserted Against All Defendants

111. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

112. Defendants admit only that VVF Kansas Services formerly employed Plaintiff as a nonexempt employee at a location in the United States, and that his compensation and hours worked were determined in accordance with VVF Kansas Services' policies, practices, and procedures, and the law. Defendants deny the remaining allegations of Paragraph 112.

113. Defendants deny the allegations of Paragraph 113.

114. Defendants deny the allegations of Paragraph 114.

115. Defendants deny the allegations of Paragraph 115.

116. Defendants deny the allegations of Paragraph 116.

117. Defendants deny the allegations of Paragraph 117.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 117, including subparts m, n, o, p, q, and r.

FOURTH CAUSE OF ACTION

Violation of the Kansas Wage Payment Act

A rising Out of Defendants' Unlawful Rounding Policy

Asserted Against All Defendants

118. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

119. Defendants admit only that VVF Kansas Services formerly employed Plaintiff as a nonexempt employee at a location in the State of Kansas, and that his compensation and hours worked were determined in accordance with VVF Kansas Services' policies, practices, and procedures, and the law. Defendants deny the remaining allegations of Paragraph 119.

120. Defendants deny the allegations of Paragraph 120.

121. Defendants deny the allegations of Paragraph 121.

122. Defendants deny the allegations of Paragraph 122.

123. Defendants deny the allegations of Paragraph 123.

124. Defendants deny the allegations of Paragraph 124.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 124, including subparts a, b, c, d, and e.

#### FIFTH CAUSE OF ACTION

##### Violation of the Kansas Wage Payment Act

##### Arising Out of Defendants' Automatic Timeclock Deduction Policy

##### Asserted Against All Defendants

125. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

126. Defendants admit only that VVF Kansas Services formerly employed Plaintiff as a nonexempt employee at a location in the State of Kansas, and that his compensation and hours worked were determined in accordance with VVF Kansas Services' policies, practices, and procedures, and the law. Defendants deny the remaining allegations of Paragraph 126.

127. Defendants deny the allegations of Paragraph 127.

128. Defendants deny the allegations of Paragraph 128.



129. Defendants deny the allegations of Paragraph 129.

130. Defendants deny the allegations of Paragraph 130.

131. Defendants deny the allegations of Paragraph 131.

132. Defendants deny the allegations of Paragraph 132.

133. Defendants deny the allegations of Paragraph 133.

134. Defendants deny the allegations of Paragraph 134.

135. Defendants deny the allegations of Paragraph 135.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 135, including subparts a, b, c, d, and e.

SIXTH CAUSE OF ACTION

Unjust Enrichment / Quantum Meruit

Arising Out of Defendants' Unlawful Rounding Policy

Asserted Against All Defendants

136. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

137. Defendants deny the allegations of Paragraph 137.

138. Defendants deny the allegations of Paragraph 138.

139. Defendants deny the allegations of Paragraph 139.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 139, including subparts a, b, c, d, and e.

SEVENTH CAUSE OF ACTION

Unjust Enrichment / Quantum Meruit

Arising Out of Defendants' Unlawful Workweek Manipulation Policy

Asserted Against All Defendants

140. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

141. Defendants deny the allegations of Paragraph 141.

142. Defendants deny the allegations of Paragraph 142.

143. Defendants deny the allegations of Paragraph 143.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 143, including subparts a, b, c, d, and e.

EIGHTH CAUSE OF ACTION

Unjust Enrichment / Quantum Meruit

Arising Out of Defendants' Unlawful Automatic Deduction Policy

Asserted Against All Defendants

144. Defendants re-answer and incorporate by reference the answers to the allegations set forth above.

145. Defendants deny the allegations of Paragraph 145.

146. Defendants deny the allegations of Paragraph 146.

147. Defendants deny the allegations of Paragraph 147.

Defendants deny the allegations of the unnumbered paragraph following Paragraph 147, including subparts a, b, c, d, and e.

DEMAND FOR JURY TRIAL

Defendants also hereby request a trial by jury of all issues so triable.

REQUEST FOR PLACE OF TRIAL

Defendants request that the trial of this matter take place in Kansas City, Kansas.

ADDITIONAL DEFENSES

1. Plaintiff's Complaint fails, in whole or in part, may fail to state a claim upon which relief may be granted.
2. Plaintiff's Complaint fails to state a claim upon which relief may be granted with respect to some or all putative collective action members.
3. Some Defendants do not constitute an enterprise or an enterprise engaged in commerce within the meaning of the FLSA.
4. Defendants VVF Invest and VVF Kansas are improper defendants, did not employ Plaintiff, are not employers under the FLSA or KWPA, and are not subject to liability under the claims made.
5. Defendants made good faith efforts to comply with state and federal laws and, therefore, cannot be held liable for liquidated damages or pre-judgment or post-judgment interest.
6. Because Defendants' actions cannot be considered "willful" within the meaning 29 U.S.C. § 255(a), Plaintiff's request for liquidated damages should be dismissed.
7. Defendant VVF Kansas Services did not engage in unlawful rounding, manipulation of the FLSA workweek to avoid overtime, or the deduction of untaken/interrupted lunch breaks.
8. Defendants did not act toward Plaintiff with malice or in reckless indifference of his rights. Therefore, Plaintiff's request for liquidated damages must be dismissed.

9. Plaintiff may have failed to mitigate his alleged damages, may have failed to take reasonable action to avoid damages, and may not be entitled to some or all of the relief demanded. Plaintiff has not yet provided Defendants with a calculation of alleged damages and Defendants have not yet obtained discovery from Plaintiff (including Plaintiff's deposition) to determine what efforts Plaintiff made to report time worked or to otherwise avoid harm. Facts pertaining to Plaintiff's efforts to mitigate his damages and otherwise avoid harm are within Plaintiff's control and will become known during discovery.

10. Plaintiff's alleged damages, if any, are not of the nature or extent alleged.

11. Plaintiff's alleged damages, if any, were not caused by any actions of Defendants but by other factors.

12. The damages, if any, incurred by Plaintiff and/or any of the putative collective action members must be reduced or eliminated by any setoffs and credits for (1) all overpayments of compensation to Plaintiff, (2) sums which Plaintiff received during the course of employment with VVF Kansas Services for reasons other than for work performed for VVF Kansas Services, and (3) all other amounts that may lawfully be deducted from any amount awarded to Plaintiff under the FLSA and/or applicable state law.

13. Even if Plaintiff and/or any of the putative collective action members are owed payment for prior overtime (which Defendant denies), the payment of any amounts due should be calculated at no more than one-half of their regular rate of pay for the workweek in which the time was worked.

14. Some or all of Plaintiff's claims may be pre-empted by statutory provisions.

15. Plaintiff is not entitled to certification pursuant to 29 U.S.C. § 216(b) because he is not similarly situated to the members of the collective action whom he purports to seek to represent and cannot identify a group of similarly situated employees or former employees of Defendant.

16. Certification of a collective action based upon the criteria set forth in Plaintiff's Complaint would violate due process.

17. Plaintiff is not entitled to class action certification because his claims do not meet any or all of the prerequisites for certification set forth in or otherwise required under Rule 23 of the Federal Rules of Civil Procedure, including, but not limited to, those prerequisites described in Rule 23, Sections (a) and (b).

18. Plaintiff may not pursue his claims under the FLSA on behalf of any individual who has not signed and filed a written consent to become a party in this lawsuit.

19. The putative collective class described in Plaintiff's Complaint may not be suitable for certification.

20. Defendants reserves the right to amend their Answer to add additional defenses as may be disclosed during discovery in this matter.

WHEREFORE, Defendants request that Plaintiff take nothing by his Complaint and that Plaintiff's Complaint be dismissed with prejudice; for its costs incurred and expended; for reasonable attorneys' fees; and for such other relief as the Court deems just and proper.

Respectfully submitted,

STINSON LLP

/s/ Emily N. K. Monroe

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2022, I electronically filed the foregoing with the Clerk of the Court by using the ECM/ECF system, which will send notification of such filing to the following:

MATTHEW E. OSMAN, ESQ.  
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ATTORNEY FOR PLAINTIFF

/s/ Emily N. K. Monroe

Attorney for Defendants