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13 IN THE UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

15 Kelli Salazar, Wayne Carpenter, and Rodney) Case No.: CV19-05760-SMB
16 Lopez, individually and on behalf of other)
17 similarly situated individuals,)
18) SECOND AMENDED CLASS ACTION
19 Plaintiffs,) AND COLLECTIVE ACTION
20 v.) COMPLAINT
21)
22 Driver Provider Phoenix, LLC; Driver)
23 Provider Management, LLC; Driver Provider)
24 Leasing, LLC; Innovative Transportation of)
25 Sedona, LLC; Innovative Transportation)
26 Solutions of Tucson, LLC; Innovative)
27 Transportation Solutions, Inc. (Arizona);)
28 Innovative Transportation Solutions, Inc.)
(Utah); Innovative Transportation Solutions,)
LLC (Wyoming); Jason Kaplan; Kendra)
Kaplan; Barry Gross and Donna Gross,)
husband and wife; and Does 1-10.)
Defendants.)

1 1. This class action and collective action lawsuit seeks to redress violations of
2 the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), the Arizona Wage Act,
3 A.R.S § 23-350, *et seq.*, and the Arizona Minimum Wage Act, A.R.S. § 23-362, *et seq.*, on
4 behalf Plaintiffs and similarly situated persons who work or have worked for Defendants
5 as chauffeur drivers (collectively referred to herein as “Plaintiffs” and/or “Class
6 Members”).

7 2. Defendants are privately owned companies operating in Arizona, Utah, and
8 Wyoming as “The Driver Provider” and its owners and officers, Jason Kaplan, Kendra
9 Kaplan, and Barry Gross (collectively referred to herein as “The Driver Provider” or
10 “Defendants”).

11 3. The Driver Provider is owned and operated by related individuals for a
12 common business purpose: providing chauffeured transportation services to Defendants’
13 customers.

14 4. To accomplish its business purpose, The Driver Provider employs
15 “chauffeur” drivers who, among other things, drive Defendants’ vehicles, pick up
16 Defendants’ customers at various locations, and drop off Defendants’ customers at various
17 locations.

18 5. Defendants operate in six main markets: Phoenix, Arizona; Sedona, Arizona;
19 Tucson, Arizona; Salt Lake City, Utah; Park City, Utah; and Jackson, Wyoming.

20 6. Plaintiffs and proposed Class Members are current and former employees of
21 Defendants who work or worked as chauffeur drivers.

22 7. For at least three years prior to the filing of this Complaint, Defendants
23 knowingly and willfully failed to compensate Plaintiffs and Class Members statutorily-
24 required overtime wages in violation of the FLSA and Arizona Wage Act.

25 8. For at least three years prior to the filing of this Complaint, but likely much
26 longer, Defendants knowingly and willfully failed to compensate Plaintiffs and Class
27 Members statutorily-required minimum wages in violation of the FLSA and Arizona
28 Minimum Wage Act.

1 9. On information and belief, Defendants' failure to pay required minimum
2 wages has been a continuing course of conduct for longer than three years prior to the filing
3 of this Complaint.

4 10. Plaintiffs seek unpaid overtime compensation, liquidated damages, interest,
5 costs, and attorneys' fees under the FLSA (29 U.S.C. §§ 207, § 216(b)) and unpaid
6 overtime compensation, treble damages, attorneys' fees, and costs under the Arizona Wage
7 Act (A.R.S. §§ 23-351, 23-355).

8 11. Plaintiffs also seek unpaid minimum wages, liquidated damages, interest,
9 costs, and attorneys' fees under the FLSA (29 U.S.C. § 206, § 216(b)) and unpaid minimum
10 wages, interest, double damages, and attorneys' fees and costs pursuant to the Arizona
11 Minimum Wage Act (A.R.S. § 23-363, 23-364(G)).

12 12. Plaintiffs assert these claims individually and on behalf of other similarly
13 situated persons under the collective action provisions of the FLSA, 29 U.S.C. § 216(b)
14 and Rule 23 of the Federal Rules of Civil Procedure.

15 **JURISDICTION AND VENUE**

16 13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because
17 this is a civil action arising under the laws of the United States. Specifically, this action is
18 brought under 29 U.S.C. § 216(b) of the FLSA.

19 14. This Court has subject matter jurisdiction over Plaintiffs' Arizona wage
20 claims pursuant to 28 U.S.C. § 1367 because these claims are related to Plaintiffs' FLSA
21 claims.

22 15. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b)(1)
23 because multiple Defendants reside in this District for venue purposes and/or are subject
24 to the Court's personal jurisdiction in that Defendants have substantial contacts with and
25 conduct business in this District.

26 16. Venue is also proper in the District of Arizona pursuant to 28 U.S.C. §
27 1391(b)(2) because a substantial part of the events giving rise to the claims stated herein
28 occurred in this District.

PARTIES

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17. Plaintiff Kelli Salazar is resident of Clark County, Nevada.

18. Plaintiff Salazar worked as a chauffeur driver for Defendants from approximately November 2017 to June 2018.

19. At all relevant times, Plaintiff Salazar was an “employee” within the meaning of 29 U.S.C. § 203(e)(1) and A.R.S. § 23-350.

20. Plaintiff Wayne Carpenter is a resident of Maricopa County, Arizona.

21. Plaintiff Carpenter worked as a chauffeur driver for Defendants from approximately October 2016 to April 2017.

22. At all times relevant, Plaintiff Carpenter was an “employee” within the meaning of 29 U.S.C. § 203(e)(1) and A.R.S. § 23-350.

23. Plaintiff Rodney Lopez is a resident of Maricopa County, Arizona.

24. Plaintiff Lopez worked as a chauffeur driver for Defendants from approximately February 2018 to January 2019.

25. At all relevant times, Plaintiff Lopez was an “employee” within the meaning of 29 U.S.C. § 203(e)(1) and A.R.S. § 23-350.

26. Defendants Driver Provider Phoenix, LLC, Driver Provider Management, LCC, Driver Provider Leasing, LLC, Innovative Transportation of Sedona, LLC, and Innovative Transportation Solutions of Tucson, LLC are limited liability companies organized under the laws of Arizona. Defendant Jason Kaplan is the owner, member, and manager of each of these Defendants.

27. Defendant Innovative Transportation Solutions, Inc. (Arizona) is a corporation organized under the laws of Arizona. Defendant Jason Kaplan is the Director, President, CEO, and only shareholder with at least 20% ownership of this corporation.

28. Defendants Driver Provider Phoenix, LLC, Driver Provider Management, LCC, Driver Provider Leasing, LLC, Innovative Transportation of Sedona, LLC, Innovative Transportation Solutions of Tucson, LLC, and Innovative Transportation Solutions, Inc. (Arizona) have the same principal place of business: 3439 S 40th St.,

1 Phoenix, AZ 85040.

2 29. Defendant Innovative Transportation Solutions, Inc. (Utah) is a Utah
3 corporation with its principal office located at 549 W 500 S., Salt Lake, UT 84101.

4 30. Innovative Transportation Solutions, LLC is a limited liability company
5 organized under the laws of Wyoming with a principal office located at 940 W. Broadway,
6 Jackson, WY 83001. Jason Kaplan is identified in business filings with the Wyoming
7 Secretary of State as the President and CEO of Innovative Transportation Solutions, LLC.

8 31. The true names and capacities, whether individual, corporate, associate or
9 otherwise, of DOES 1 through 10 are unknown to Plaintiffs who therefore sue the DOE
10 Defendants by fictitious names. Plaintiffs will amend this Complaint to state their true
11 names and capacities when they have been ascertained.

12 32. Defendant Jason Kaplan is a resident of Arizona and the founder, owner, and
13 principal officer of the business entities that operate as “The Driver Provider.” At all
14 relevant times, Defendant Jason Kaplan exercised operational control over Plaintiffs, Class
15 Members, and Defendants’ business operations, including, among other things, supervision
16 of Plaintiffs and Class Members, and control over scheduling, hiring and firing of
17 employees, payment of employees, vehicle purchases, and the contracts with third parties
18 that form a substantial part of the work performed by Plaintiffs and Class Members.

19 33. At all relevant times, Defendant Jason Kaplan was and is an “employer” of
20 Plaintiffs and Class Members under 29 U.S.C. 203(d) and A.R.S. 23-350.

21 34. Defendant Kendra Kaplan is a resident of Arizona and the General Manager
22 of The Driver Provider. At all relevant times, Defendant Kendra Kaplan exercised
23 operational control over Plaintiffs, Class Members, and Defendants’ business operations,
24 including, among other things, supervision of Plaintiffs and Class Members, and control
25 over scheduling, hiring and firing of employees, payment of employees, vehicle purchases,
26 and the contracts with third parties that form a substantial part of the work performed by
27 Plaintiffs and Class Members.

28 35. At all relevant times, Defendant Kendra Kaplan was and is an “employer” of

1 Plaintiffs and Class Members under 29 U.S.C. 203(d) and A.R.S. 23-350.

2 36. Defendant Barry Gross is a resident of Arizona and the Executive Director
3 of The Driver Provider. At all relevant times, Defendant Gross exercised operational
4 control over Plaintiffs, Class Members, and Defendants' business operations, including,
5 among other things, supervision of Plaintiffs and Class Members, and control over
6 scheduling, hiring and firing of employees, payment of employees, vehicle purchases, and
7 the contracts with third parties that form a substantial part of the work performed by
8 Plaintiffs and proposed Class Members.

9 37. At all relevant times, Defendant Gross was and is an "employer" of Plaintiffs
10 and Class Members under 29 U.S.C. 203(d) and A.R.S. 23-350.

11 38. Defendants operated as a single enterprise within the meaning of 29 U.S.C.
12 § 203(r)(1).

13 39. Upon information and belief, Defendants each grossed more than \$500,000
14 in each of the last six calendar years, individually and collectively.

15 40. All actions and omissions described in this Complaint were made by
16 Defendants directly or through their supervisory employees and agents.

17 41. Defendants were and are as a matter of law Plaintiffs' "employer" and the
18 "employer" of proposed Class Members under the Fair Labor Standards Act and A.R.S. §
19 23-350. Alternatively, each Defendant is a joint employer of Plaintiffs and proposed Class
20 Members with one or more of the other Defendants.

21 42. Each Defendant is directly, jointly, and severally liable for the unpaid wages
22 and damages as alleged herein.

23 43. On information and belief, Defendant Kendra Kaplan is married to
24 Defendant Jason Kaplan and is also named as a Defendant for purposes of binding the
25 Kaplan Marital Community pursuant to applicable community property laws.

26 44. Defendant Donna Gross is believed to be the spouse of Defendant Barry
27 Gross and is named for purposes of binding the Gross Marital Community pursuant to
28 applicable community property laws.

1 **COLLECTIVE ACTION AND CLASS ACTION ALLEGATIONS**

2 45. Plaintiffs bring Count I pursuant to the FLSA, 20 U.S.C. § 216(b), on behalf
3 of themselves and all similarly-situated persons who work or have worked for Defendants
4 as chauffeur drivers within the last 3 years preceding the commencement of this lawsuit
5 and who elect to opt-in to this action.

6 46. The proposed FLSA Class includes:

7 **All current and former employees of The Driver Provider who performed**
8 **chauffeur services at any time during the three (3) years prior to the**
9 **commencement of this lawsuit. (“FLSA Class”).**

10 47. Plaintiffs seek permission to give notice of this action pursuant to 29 U.S.C.
11 § 216(b) to all current and former employees of The Driver Provider who performed
12 chauffeur services at any time during the three (3) years prior to the filing of this action.

13 48. Counts II and III are properly maintainable as a class action under the Federal
14 Rules of Civil Procedure.

15 49. The Rule 23 Class includes:

16 **All current and former employees of The Driver Provider who performed**
17 **chauffeur services in Arizona at any time within the maximum applicable**
18 **statute of limitations preceding the commencement of this lawsuit. (“Rule 23**
19 **Class”).**

20 50. The FLSA Class Members and Rule 23 Class Members are referred to herein
21 collectively as “Class Members.”

22 51. The proposed Rule 23 Class is so numerous that joinder of all members is
23 impracticable. Upon information and belief, there are more than 250 members of the
24 proposed Rule 23 Class.

25 52. There are questions of law and fact common to Class Members that
26 predominate over any questions solely affecting individual members of the Class, including
27 but limited to:

- 28 a. Whether one or all of Defendants were Plaintiffs’ and Class Members’

- 1 employers;
- 2 b. Whether one or all of Defendants were required to and failed to pay Plaintiffs
- 3 and Class Members overtime compensation for all hours worked in excess
- 4 of 40 hours per week;
- 5 c. Whether one or all of Defendants failed to pay Plaintiffs and Class Members
- 6 required minimum wages;
- 7 d. Whether one or all of Defendants failed to track and pay Plaintiffs and Class
- 8 Members for all hours worked;
- 9 e. The number of hours for which payments to Plaintiffs and Class Members
- 10 were intended to provide compensation;
- 11 f. The nature and extent of Plaintiffs' and Class Members' injuries and the
- 12 appropriate measure of damages; and
- 13 g. Whether certain exemptions under the FLSA apply to Plaintiffs and Class
- 14 Members and the extent of such exemptions.

15 53. The claims of the Named Plaintiffs are typical of the claims of the Class they

16 seek to represent. The Named Plaintiffs and Class Members work or have worked for

17 Defendants, performed the same or substantially similar job duties, and have been

18 subjected to common practices, policies, programs, procedures, protocols, and plans of

19 failing to pay overtime to employees in workweeks wherein employees worked more than

20 40 hours.

21 54. Defendants acted or refused to act on grounds generally applicable to the

22 Class Members as a whole by engaging in the same violations of law with respect to the

23 Class Members, thereby making any final relief appropriate with respect to the Class as a

24 whole.

25 55. The Named Plaintiffs will fairly and adequately protect the interests of the

26 Class and do not have interests antagonistic to the Class.

27 56. The Named Plaintiffs have retained counsel competent and experienced in

28 complex wage and hour litigation and class action litigation.

1 57. The Class Members have been damaged and are entitled to recovery as a
2 result of Defendants' common and uniform policies, practices, and procedures.

3 58. A class action is superior to other available methods for the fair and efficient
4 adjudication of this litigation, particularly in the context of wage litigation such as the
5 instant case where individual workers lack the financial resources to vigorously prosecute
6 the lawsuit in federal court against a large transportation company with substantially
7 greater resources. Although the relative damages suffered by individual members of the
8 Class are not *de minimis*, such damages are small compared to the expense and burden of
9 individual prosecution of this litigation.

10 59. Furthermore, class treatment is superior because it will obviate the need for
11 unduly duplicative litigation that might result in inconsistent judgments about Defendants'
12 business practices and policies.

13 60. The Named Plaintiffs and the Class Members have been equally affected by
14 Defendants' failure to pay proper wages.

15 61. Moreover, Class Members still employed by Defendants may be reluctant to
16 raise individual claims for fear of retaliation.

17 **FACTUAL ALLEGATIONS**

18 62. Section 13(b)(1) of the FLSA provides an exemption to overtime
19 requirements for employees who are within the authority of the Secretary of Transportation
20 to establish qualifications and maximum hours of service pursuant to Section 204 of the
21 Motor Carrier Act of 1935 (the "MCA Exemption").

22 63. However, Congress enacted the Technical Corrections Act ("TCA") in 2008,
23 which amended the scope of the MCA Exemption by providing that overtime
24 compensation *must be paid* to "covered employee[s]" despite the provisions of the MCA
25 Exemption. See SAFETEA—LU Technical Corrections Act of 2008, PL 110–244, June 6,
26 2008, 122 Stat. 1572.

27 64. Specifically, the TCA provides that "Section 7 of the [FLSA] ... shall apply
28 to a covered employee notwithstanding [the MCA exemption]." See *id.* at § 306(a).

1 65. Section 306(c) of the TCA defines the term “covered employee,” in relevant
2 part, as an individual—

3 (1) who is employed by a motor carrier or motor private carrier ...;

4 (2) whose work, in whole or in part, is defined—

5 (A) as that of a driver...; and

6 (B) as affecting the safety of operation of motor vehicles weighing
7 10,000 pounds or less in transportation on public highways in
8 interstate or foreign commerce...; and

9 (3) who performs duties on motor vehicles weighing 10,000 pounds or less.

10 *Id.* This provision of the TCA is known as the “Small Vehicle Exception” which excludes
11 covered employees from application of the MCA Exemption.

12 66. Pursuant to the Small Vehicle Exception, the overtime provisions of Section
13 7 of the FLSA apply to employees of a motor carrier in any workweek that an employee
14 works, “in whole or part,” as a driver affecting the safety of operation of vehicles weighing
15 10,000 pounds or less. The MCA Exemption does not apply to an employee in such
16 workweeks even though the employee’s duties may also affect the safety of operation of
17 motor vehicles weighing more than 10,000 pounds (or other vehicles not included in the
18 Small Vehicle Exception) in the same workweek.¹

19 67. Accordingly, for each workweek in which Plaintiffs and Class Members
20 operated vehicles that weigh 10,000 pounds or less, and which are designed to transport 8
21 passengers or less,² Plaintiffs and Class Members were required to be paid 1 ½ times their
22 regular rate of pay for all hours worked in excess of 40 in any workweek.

23 68. As part of their employment with Defendants, Plaintiffs and Class Members
24 routinely operated vehicles that weigh 10,000 pounds or less (and/or vehicles with a gross
25

26 ¹ See, e.g. Department of Labor, Wage and Hour Division *Fact Sheet # 19*
27 (<https://www.dol.gov/whd/regs/compliance/whdfs19.pdf>).

28 ² The Small Vehicle Exception does not include vehicles “designed or used to transport more than 8 passengers (including the driver).” TCA, Section 306(c)(2)(B)(i).

1 vehicle weight ratings (GVWRs) of 10,000 or less), and which are designed to transport 8
2 passengers or less.

3 69. On information and belief, The Driver Provider has a fleet of at least 137
4 vehicles.

5 70. Some of these vehicles are shuttle buses, executive vans, and coaches that
6 weigh more than 10,000 pounds and are designed to carry more than 8 passengers.

7 71. On information and belief, however, at least 64 of Defendants' vehicles are
8 sedans and sport utility vehicles (SUVs) that have gross vehicle weights and/or GVWRs
9 of 10,000 pounds or less and which are designed to carry 8 passengers or less.

10 72. For example, Defendants' website states that its fleet includes sedans such as
11 the Toyota Prius, Lincoln Continental, Lincoln Town Car, and SUVs (which Defendants'
12 website states seat up to 7 passengers including the driver). On information and belief, each
13 of these vehicles has a gross vehicle weight of 10,000 pounds or less, a GVWR of 10,000
14 pounds or less, and are designed to carry 8 passengers or less.

15 73. On information and belief, these types of vehicles are driven by Plaintiffs or
16 proposed Class Members in each of Defendants' operating locations (Phoenix, AZ;
17 Tucson, AZ; Sedona, AZ; Salt Lake City, UT; Park City, UT; and Jackson, WY).

18 74. A substantial portion of Plaintiffs' and Class Members' work involves
19 regularly driving vehicles with gross vehicle weights of 10,000 pounds or less, GVWRs of
20 10,000 pounds or less, and which are designed to transport 8 passengers or less. Upon
21 information and belief, Plaintiffs and Class Members drove such vehicles in every
22 workweek while employed by Defendants.

23 75. On information and belief, most of the work performed by Plaintiffs and
24 Class Members included driving vehicles with gross vehicle weights of 10,000 pounds or
25 less, GVWRs of 10,000 pounds or less, and which are designed to transport 8 passengers
26 or less.

27 76. Throughout their employment, Plaintiffs and Class Members regularly and
28 consistently worked more than 40 hours a week for Defendants.

1 77. Despite no applicable exemption from the overtime requirements of the
2 FLSA, Defendants failed to compensate Plaintiffs and Class Members for overtime in
3 workweeks in which Plaintiffs and Class Members worked more than 40 hours and
4 operated vehicles with gross vehicle weights of 10,000 pounds or less (and/or GVWRs of
5 10,000 pounds or less), and which are designed to transport 8 passengers or less.

6 78. On information and belief, Defendants also failed to track all hours worked
7 by Plaintiffs and Class Members.

8 79. In addition to transporting passengers, Plaintiffs' and Class Members' work
9 time includes on call time, standby time, travel time to pick up passengers, travel time back
10 the Driver Provider locations to return vehicles, waiting for passengers, greeting passengers
11 outside the vehicle at pick up locations, checking out vehicles, inspecting vehicles,
12 checking-in vehicles, entering vehicle and ride information into software programs,
13 swapping vehicles, fueling vehicles, performing simple maintenance (like refilling washer
14 fluid), stocking vehicles with amenities before trips, cleaning out vehicles after trips,
15 picking up and dropping off equipment used during work time (e.g. computer tablets),
16 among other things which Defendants did not count as hours worked and for which
17 Plaintiffs and Class Members were not properly compensated.

18 80. Regardless of the applicability of the MCA Exemption, Defendants are
19 required, and have always been required, to pay chauffeur drivers no less than minimum
20 wages under federal and state law.

21 81. During the relevant time frame, however, Plaintiffs and Class Members did
22 not receive pay for certain compensable hours including, *inter alia*, time drivers are
23 engaged to wait, travel time, and non-driving work time as set forth in Paragraph 79.

24 82. In some weeks, Defendants failed to pay Plaintiffs and Class Members at
25 least the applicable minimum wage for each hour worked, including compensable hours
26 for which no compensation was paid.

27 83. On information and belief, Defendants' failure to pay no less than the
28 applicable minimum wages for each hour worked, including compensable hours for which

1 no compensation was paid, has been longstanding and continuous.

2 84. Plaintiffs and Class Members have been victims of Defendants' common
3 policy and plan that has violated their rights under the FLSA and state law by requiring
4 them to work in excess of 40 hours per week and denying them overtime compensation for
5 all overtime hours worked and failing to pay required minimum wages. At all times
6 relevant, Defendants' unlawful policy and pattern or practice has been willful.

7 85. Upon information and belief, Defendants apply the same unlawful policies
8 and practices in every state in which they operate.

9 86. All the work performed by Plaintiffs and Class Members was assigned by
10 Defendants and/or Defendants were aware of and suffered and permitted all work including
11 overtime and uncompensated work that Plaintiffs and Class Members performed.

12 87. As part of its regular business practice, Defendants intentionally, willfully,
13 and repeatedly engaged in a pattern, practice, and/or policy that violates the FLSA and state
14 wage laws. Defendants' policy and pattern or practice includes but is not limited to:
15 willfully failing to record all of the time that its employees, including Plaintiffs and Class
16 Members, worked for the benefit of Defendants; willfully failing to keep accurate payroll
17 records as required by the FLSA; and willfully failing to pay its employees, including
18 Plaintiffs and Class Members, all wages due at the statutorily-required rates of pay,
19 including overtime wages and no less than the applicable minimum wages.

20 88. Defendants were or should have been aware that the FLSA required it to pay
21 Plaintiffs and Class Members premium overtime pay for all hours worked in excess of 40
22 hours per workweek. Defendants' failure to pay Plaintiffs and Class Members overtime
23 wages for their work in excess of 40 hours per workweek was willful, intentional, and in
24 bad faith.

25 89. Defendants were or should have been aware that the FLSA and Arizona law
26 required it to pay Plaintiffs and Class Members minimum wages for all hours worked.
27 Defendants' failure to pay Plaintiffs and Class Members minimum wages was willful,
28 intentional, and in bad faith.

1 90. Defendants' unlawful conduct has been widespread, continuous, repeated,
2 and consistent.

3 **CAUSES OF ACTION**

4 **COUNT I**

5 **Failure to Pay Overtime and Minimum Wages in Violation of the FLSA**

6 **(On behalf of Plaintiffs and FLSA Class Members)**

7 91. Plaintiffs re-allege and incorporate by reference all allegations in all
8 preceding paragraphs.

9 92. Plaintiffs and members of the FLSA Class are non-exempt employees
10 entitled to be paid overtime compensation for all overtime hours worked.

11 93. In workweeks in which Plaintiffs worked more than 40 hours, Defendants
12 willfully failed to compensate Plaintiffs for all of the time worked in excess of 40 hours
13 and at a rate of at least 1 and ½ times their regular hourly rate in violation of the
14 requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

15 94. Defendants failed to pay minimum wages to Plaintiffs and Class Members in
16 violation of the Fair Labor Standards Act, 29 U.S.C. § 206 *et seq.* and its implementing
17 regulations, by failing to pay anything for certain hours worked and/or by failing to pay at
18 least the minimum wage for each hour worked per work week.

19 95. Defendants failed to make a good faith effort to comply with the FLSA with
20 respect to its compensation to Plaintiffs and the FLSA Class.

21 96. Because Defendants' violations of the FLSA were intentional, willful, and
22 repeated, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

23 97. As a consequence of the willful underpayment of wages alleged above,
24 Plaintiffs and FLSA Class Members have incurred damages and Defendants are indebted
25 to them in the amount of the unpaid overtime compensation, unpaid minimum wages,
26 together with interest, liquidated damages, attorneys' fees, and costs in an amount to be
27 determined at trial.

28 98. Plaintiffs have expressed their consent to make these claims against the

1 Defendants by filing written consent forms pursuant to 29 U.S.C. § 216(b). Consent to Sue
2 Forms have been filed and appear at Docs. 1-2, 8-1, 9-1, 10-1, and 21-1.

3 **COUNT II**

4 **Violation of Arizona’s Wage Act – A.R.S. § 23-350, et. seq.**

5 **(On Behalf of Plaintiffs and Rule 23 Class Members)**

6 99. Plaintiffs reallege and incorporate by reference all allegations in all
7 preceding paragraphs.

8 100. Ariz. Rev. Stat. § 23-351 provides in relevant part:

9 A. Each employer in this State shall designate two or more days
10 in each month, not more than sixteen days apart, as fixed paydays
11 for payment of wages to the employees . . .

12 C. Each employer shall, on each of the regular paydays, pay to
13 the employees . . . all wages due the employee up to such a date...

14 (3) Overtime or exception pay shall be paid no later than
15 sixteen days after the end of the most recent pay period.

16 101. Ariz. Rev. Stat. § 23-355 provides in relevant part:

17 [I]f an employer, in violation of this chapter fails to pay wages due any
18 employee, the employee may recover in a civil action against an
19 employer or former employer an amount that is treble the amount of the
20 unpaid wages.

21 102. As a result of Defendants’ violations of Ariz. Rev. Stat. § 23-351, Plaintiffs
22 and Rule 23 Class Members have been harmed, have suffered substantial losses, and have
23 been deprived of compensation to which they were entitled and therefore are entitled to an
24 award of the unpaid wages, with prejudgment interest thereon, and treble the amount of
25 such wages, together with attorneys’ fees and costs.

26 **COUNT III**

27 **Violation of the Arizona Minimum Wage Act – A.R.S. § 23-362, et seq.**

28 **(On Behalf of Plaintiffs and Rule 23 Class Members)**

103. Plaintiffs reallege and incorporate by reference all allegations in all
preceding paragraphs.

1 104. A.R.S. § 23-363 requires employers to “pay employees no less than the
2 minimum wage.”

3 105. A.R.S. § 23-364(G) provides that an employer who fails to pay required
4 minimum wages “shall be required to pay the employee the balance of the wages...,
5 including interest thereon, and an additional amount equal to twice the underpaid wages[.]”

6 106. As a result of Defendants’ violation of A.R.S. § 23-363, Plaintiffs and Rule
7 23 Class Members have been harmed, have suffered substantial losses, and have been
8 deprived of compensation to which they were entitled and, therefore, are entitled to an
9 award of the unpaid wages, double the amount of such wages, and prejudgment interest,
10 together with attorneys’ fees and costs.

11 107. Defendants’ violation of A.R.S. § 23-363 was willful.

12 108. Pursuant to A.R.S. 23-364(H), because Defendants’ violations were part of
13 a continuing course of conduct, Count III includes all violations regardless of date.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
16 seek the following relief:

17 A. A declaration that Defendants are joint employers of Plaintiffs and the Class
18 Members;

19 B. A declaration that Plaintiffs and the FLSA are non-exempt employees of
20 Defendants for purposes of the FLSA in workweeks in which they are not subject to the
21 MCA Exemption;

22 C. A declaration that Defendants have violated and are violating the FLSA;

23 D. A declaration that Defendants have violated and are violating Arizona’s
24 Wage Act;

25 E. A declaration that Defendants have violated and are violating the Arizona
26 Minimum Wage Act;

27 F. A declaration that Defendants’ violations of the FLSA, Arizona Wage Act,
28 and Arizona Minimum Wage Act are willful;

1 G. Awarding Plaintiffs and Class Members minimum wages and overtime
2 wages due to them for their hours worked without proper compensation by Defendants;

3 H. Awarding Plaintiffs and Class Members statutory, compensatory, and
4 liquidated damages, appropriate statutory penalties, and treble damages, to be paid by
5 Defendants.

6 I. Awarding Plaintiffs and Class Members' attorneys' fees and costs of suit;

7 J. That, at the earliest possible time, Plaintiffs be allowed to give notice to the
8 FLSA Class, or that the Court issue such notice, to all persons who are presently, or have
9 at any time during the three years immediately preceding the filing of this suit, up through
10 and including the date of this Court's issuance of court-supervised notice, been employed
11 by Defendants as chauffeur drivers or similarly situated positions. Such notice shall inform
12 them that this civil action has been filed, the nature of the action, and of their right to join
13 this lawsuit if they believe they were denied proper wages.

14 K. Certification of an opt-in class pursuant to the FLSA, 29 U.S.C. § 201, *et*
15 *seq.*;

16 L. Certification of this case as a class action pursuant to Rule 23 of the Federal
17 Rules of Civil Procedure;

18 M. Designations of Named Plaintiffs Salazar, Carpenter, and Lopez as
19 representatives of the Rule 23 Class, and the law firm of Martin & Bonnett, PLLC as Class
20 Counsel;

21 N. Reasonable incentive awards for Named Plaintiffs to compensate them for
22 the time they spent attempting to recover wages for the Class and for the risks they took in
23 doing so; and

24 O. Any other relief to which Plaintiffs and Class Members may be entitled.

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26 Respectfully submitted this 8th day of January, 2020.

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MARTIN & BONNETT, P.L.L.C.

By: s/ Daniel L. Bonnett

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