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11 IN THE UNITED STATES DISTRICT COURT

12 DISTRICT OF ARIZONA

13 Kelli Salazar, Wayne Carpenter, Rodney) Case No.: CV19-05760-SMB
 14 Lopez, and Gregory Hanna, individually and)
 15 on behalf of other similarly situated)
 individuals,) **FIFTH AMENDED CLASS**
 16) **ACTION AND COLLECTIVE**
 Plaintiffs,) **ACTION COMPLAINT**

17 v.)

18)
 19 Driver Provider Phoenix, LLC; Driver)
 Provider Leasing, LLC; Innovative)
 20 Transportation of Sedona, LLC; Innovative)
 Transportation Solutions of Tucson, LLC;)
 21 Innovative Transportation Solutions, Inc.)
 (Arizona); Innovative Transportation)
 22 Solutions, Inc. (Utah); Innovative)
 Transportation Solutions, LLC; Driver)
 23 Provider Management, LLC; Jason Kaplan;)
 24 Kendra Kaplan; Stephen Kaplan and Barbara)
 25 Kaplan, husband and wife; Barry Gross and)
 Donna Gross, husband and wife; and Does 1-)
 26 10.)

27 Defendants.)

28)

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2
3 1. This class action and collective action amended complaint is filed pursuant
4 to leave of court (Doc. 410) and seeks to redress violations of the Fair Labor Standards
5 Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), the Arizona Wage Act, A.R.S § 23-350, *et seq.*,
6 and the Arizona Minimum Wage Act, A.R.S. § 23-362, *et seq.*, on behalf Plaintiffs and
7 similarly situated persons who work or have worked for Defendants as “chauffeur” drivers
8 (“Class Members”).

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

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

16 4. To accomplish its business purpose, The Driver Provider employs
17 “chauffeur” drivers who transport Defendants’ customers in Defendants’ vehicles.

18 5. During some or all of the relevant timeframe, Defendants have operated in
19 six main markets: Phoenix, Arizona; Sedona, Arizona; Tucson, Arizona; Salt Lake City,
20 Utah; Park City, Utah; and Jackson, Wyoming.

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

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

27 8. For at least three years prior to the filing of the initial Complaint, but likely
28 much longer, Defendants knowingly and willfully failed to compensate Plaintiffs and Class

1 Members who worked in Arizona statutorily-required minimum wages in violation of the
2 Arizona Minimum Wage Act.

3 9. For at least three years prior to the filing of the initial Complaint, but likely
4 much longer, Defendants knowingly and willfully failed to maintain payroll records for
5 Plaintiffs and Class Members as required by the FLSA and applicable state law.

6 10. On information and belief, Defendants' failure to pay required overtime,
7 minimum wages, and straight-time wages has been a continuing course of conduct for
8 longer than three years prior to the filing of the initial Complaint.

9 11. On information and belief, Defendants' failure to maintain required payroll
10 records for Plaintiffs and Class Members has been a continuing course of conduct for
11 longer than three years prior to the filing of the initial Complaint.

12 12. Plaintiffs seek unpaid overtime compensation, liquidated damages, interest,
13 costs, and attorneys' fees under the FLSA (29 U.S.C. §§ 207, 216(b)).

14 13. Plaintiffs seek compensation for all hours worked, including unpaid straight
15 time and overtime compensation,¹ treble damages, attorneys' fees, and costs under the
16 Arizona Wage Act (A.R.S. §§ 23-351, 23-355).

17 14. Plaintiffs also seek unpaid minimum wages, interest, double damages, and
18 attorneys' fees and costs pursuant to the Arizona Minimum Wage Act (A.R.S. § 23-363,
19 23-364).

20 15. Plaintiffs assert their FLSA claims individually and on behalf of other
21 similarly situated persons (including employees in Arizona, Utah, and Wyoming) under
22 the collective action provisions of the FLSA, 29 U.S.C. § 216(b).

23 16. Plaintiffs assert their Arizona state law claims individually and on behalf of
24 other similarly situated persons who worked in Arizona pursuant to Rule 23 of the Federal
25 Rules of Civil Procedure.

26

¹¹ The Court granted judgment on the pleadings regarding the overtime claims alleged
27 under the Arizona Wage Act in Count II of the Fourth Amended Complaint but granted
28 leave to amend to include additional allegations in Count II for uncompensated straight
time. (Doc. 410). Plaintiffs continue to include reference to this component of their
damages claims to preserve the record.

JURISDICTION AND VENUE

1
2 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because
3 this is a civil action arising under the laws of the United States. Specifically, this action is
4 brought under 29 U.S.C. § 216(b) of the FLSA.

5 18. This Court has subject matter jurisdiction over Plaintiffs’ Arizona wage
6 claims pursuant to 28 U.S.C. § 1367 because these claims are related to Plaintiffs’ FLSA
7 claims.

8 19. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b)(1)
9 because multiple Defendants reside in this District for venue purposes and/or are subject
10 to the Court’s personal jurisdiction in that Defendants have substantial contacts with and
11 conduct business in this District.

12 20. Venue is also proper in the District of Arizona pursuant to 28 U.S.C. §
13 1391(b)(2) because a substantial part of the events giving rise to the claims stated herein
14 occurred in this District.

PARTIES

15
16 21. Plaintiff Kelli Salazar is resident of Maricopa County, Arizona.

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

19 23. At all relevant times, Plaintiff Salazar was Defendants’ “employee” within
20 the meaning of 29 U.S.C. § 203(e)(1), A.R.S. § 23-350, and A.R.S. § 23-362.

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

22 25. Plaintiff Carpenter worked as a chauffeur driver for Defendants in Arizona
23 from approximately October 2016 to April 2017.

24 26. At all times relevant, Plaintiff Carpenter was Defendants’ “employee” within
25 the meaning of 29 U.S.C. § 203(e)(1), A.R.S. § 23-350, and A.R.S. § 23-362.

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

27 28. Plaintiff Lopez worked as a chauffeur driver for Defendants in Arizona from
28 approximately February 2018 to January 2019.

1 29. At all relevant times, Plaintiff Lopez was Defendants’ “employee” within the
2 meaning of 29 U.S.C. § 203(e)(1), A.R.S. § 23-350, and A.R.S. § 23-362.

3 30. Plaintiff Gregory Hanna is a resident of Maricopa County, Arizona.

4 31. Plaintiff Hanna worked as a chauffeur driver for Defendants in Arizona from
5 approximately November 2016 to March 2020.

6 32. At all relevant times, Plaintiff Hanna was an “employee” within the meaning
7 of 29 U.S.C. § 203(e)(1), A.R.S. § 23-350, and A.R.S. § 23-362.

8 33. Defendants Driver Provider Phoenix, LLC, Driver Provider Leasing, LLC,
9 Innovative Transportation of Sedona, LLC, Innovative Transportation Solutions of Tucson,
10 LLC, and Driver Provider Management, LLC are limited liability companies organized
11 under the laws of Arizona.

12 34. Defendant Jason Kaplan is the owner, member, and manager of Driver
13 Provider Phoenix, LLC, Driver Provider Leasing, LLC, Innovative Transportation of
14 Sedona, LLC, and Driver Provider Management, LLC.

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

19 36. On information and belief, Defendant Jason Kaplan is the only shareholder
20 of Innovative Transportation Solutions, Inc.

21 37. Defendant Innovative Transportation Solutions, Inc. (Arizona) is the
22 member-owner of Innovative Transportation Solutions of Tucson, LLC.

23 38. Defendants Driver Provider Phoenix, LLC, Driver Provider Leasing, LLC,
24 Innovative Transportation of Sedona, LLC, Innovative Transportation Solutions of Tucson,
25 LLC, Innovative Transportation Solutions, Inc., and Driver Provider Management, LLC
26 have the same principal place of business: 3439 S. 40th St., Phoenix, AZ 85040.

27 39. Defendant Innovative Transportation Solutions, Inc. (Utah) is a Utah
28

1 corporation with its principal office located at 549 W 500 S., Salt Lake, UT 84101.²

2 40. Defendant Innovative Transportation Solutions, Inc. (Arizona) operates as
3 The Driver Provider in Utah and is registered to conduct business in Utah as a foreign
4 corporation.

5 41. Defendant Innovative Transportation Solutions, Inc. (Arizona) has operated
6 as The Driver Provider in Utah since 2016.

7 42. Innovative Transportation Solutions, LLC is a limited liability company
8 organized under the laws of Wyoming with a principal office located at 3970 S. Eagle View
9 Drive, Jackson, WY 830001, with a mailing address of 3439 S. 40th St., Phoenix, Arizona,
10 85040.

11 43. Jason Kaplan is the President and CEO of Innovative Transportation
12 Solutions, LLC.

13 44. Defendant Innovative Transportation Solutions, Inc. (Arizona) is the
14 member-owner of Innovative Transportation Solutions, LLC.

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

19 46. Defendant Jason Kaplan is a resident of Arizona and the founder, owner, and
20 principal officer of the business entities that operate as “The Driver Provider.” At all
21 relevant times, Defendant Jason Kaplan exercised operational control over Plaintiffs, Class
22 Members, and Defendants’ business operations, including, among other things, supervision
23 of Plaintiffs and Class Members, determining and enforcing employee policies, working
24

25 ² Defendants previously stated that this entity was dissolved and filed a Statement of
26 Correction with the State of Utah on April 28, 2020, after this lawsuit commenced.
27 Plaintiffs include this entity as a Defendant pursuant to Utah Code Ann. § 16-10a-
28 1405(2), which provides that dissolution of a corporation does not “prevent
commencement of a proceeding by or against the corporation in its corporate name;” or
“abate or suspend a proceeding pending by or against the corporation on the effective
date of dissolution.”

1 conditions, and standards, and control over scheduling, hiring and firing of employees,
2 payment of employees, vehicle purchases, and the contracts with third parties that form a
3 substantial part of the work performed by Plaintiffs and Class Members.

4 47. At all relevant times, Defendant Jason Kaplan was and is an “employer” of
5 Plaintiffs and Class Members under 29 U.S.C. § 203(d), A.R.S. § 23-350, and A.R.S. § 23-
6 362.

7 48. Defendant Kendra Kaplan is a resident of Arizona and the General Manager
8 of The Driver Provider. At all relevant times, Defendant Kendra Kaplan exercised
9 operational control over Plaintiffs, Class Members, and Defendants’ business operations,
10 including, among other things, supervision of Plaintiffs and Class Members, determining
11 and enforcing employee policies and standards, and control over scheduling, hiring and
12 firing of employees, payment of employees, vehicle purchases, and the contracts with third
13 parties that form a substantial part of the work performed by Plaintiffs and Class Members.

14 49. At all relevant times, Defendant Kendra Kaplan was and is an “employer” of
15 Plaintiffs and Class Members under 29 U.S.C. 203(d), A.R.S. 23-350, and A.R.S. § 23-
16 362.

17 50. Defendant Barry Gross is a resident of Arizona and the Executive Director
18 of The Driver Provider. At all relevant times, Defendant Gross exercised operational
19 control over Plaintiffs, Class Members, and Defendants’ business operations, including,
20 among other things, supervision of Plaintiffs and Class Members, determining and
21 enforcing employee policies and standards, and control over scheduling, hiring and firing
22 of employees, payment of employees, vehicle purchases, and the contracts with third
23 parties that form a substantial part of the work performed by Plaintiffs and proposed Class
24 Members.

25 51. At all relevant times, Defendant Gross was and is an “employer” of Plaintiffs
26 and Class Members under 29 U.S.C. 203(d), A.R.S. 23-350, and A.R.S. § 23-362.

27 52. Defendant Stephen Kaplan is a resident of Arizona and an officer of
28 Defendant Innovative Transportation Solutions, Inc. Most recently, he was identified as

1 Vice President of Innovative Transportation Solutions, Inc. in filings with the State of Utah
2 in April 2020. During some or all of the relevant timeframe, Defendant Stephen Kaplan
3 exercised operational control over Plaintiffs, Class Members, and Defendants' business
4 operations, including, among other things, supervision of Plaintiffs and Class Members,
5 training of Plaintiffs and Class Members, determining and enforcing employee policies and
6 standards, and control over scheduling, hiring and firing of employees, payment of
7 employees, vehicle purchases, and the contracts with third parties that form a substantial
8 part of the work performed by Plaintiffs and proposed Class Members.

9 53. At all relevant times, Defendant Stephen Kaplan was and is an "employer"
10 of Plaintiffs and Class Members under 29 U.S.C. 203(d), A.R.S. 23-350, and A.R.S. § 23-
11 362.

12 54. Defendants operated as a single enterprise within the meaning of 29 U.S.C.
13 § 203(r)(1).

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

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

18 57. Defendants were and are as a matter of law Plaintiffs' "employer" and the
19 "employer" of proposed Class Members under the Fair Labor Standards Act, A.R.S. § 23-
20 350, and A.R.S. § 23-362. Alternatively, each Defendant is a joint employer of Plaintiffs
21 and proposed Class Members with one or more of the other Defendants.

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

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

27 60. Defendant Donna Gross is believed to be the spouse of Defendant Barry
28 Gross and is named for purposes of binding the Gross Marital Community pursuant to

1 applicable community property laws.

2 61. Defendant Barbara Kaplan is believed to be the spouse of Defendant Stephen
3 Kaplan and is named for purposes of binding the Stephen and Barbara Kaplan Martial
4 Community pursuant to applicable community property laws.

5 **COLLECTIVE ACTION AND CLASS ACTION ALLEGATIONS**

6 62. Plaintiffs bring Count I pursuant to the FLSA, 20 U.S.C. § 216(b), on behalf
7 of themselves and all similarly-situated persons who work or have worked for Defendants
8 as chauffeur drivers within the last 3 years preceding the filing of the initial Complaint and
9 who elect to opt-in to this action.

10 63. The proposed FLSA Class includes:

11 **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**
13 **commencement of this lawsuit. (“FLSA Class”).**

14 64. The FLSA Class includes employees who performed chauffeur services in
15 Arizona, Wyoming, and Utah.

16 65. Plaintiffs seek permission to give notice of this action pursuant to 29 U.S.C.
17 § 216(b) to all current and former employees of The Driver Provider who performed
18 chauffeur services at any time during the three (3) years prior to the filing of this action.

19 66. Counts II and III are properly maintainable as a class action under the Federal
20 Rules of Civil Procedure.

21 67. The Rule 23 Class includes:

22 **All current and former employees of The Driver Provider who performed**
23 **chauffeur services in Arizona at any time within the maximum applicable**
24 **statute of limitations preceding the commencement of this lawsuit. (“Rule 23**
25 **Class”).³**

26 ³ Plaintiffs have filed a Motion for Rule 23 Class Certification (Doc. 331) for a class
27 defined as: “All current and former employees of The Driver Provider who performed
28 chauffeur services in Arizona at any time from December 6, 2016 to the present. Excluded
from the class are all owners, managers, supervisors, dispatchers, or other employees

1 68. The FLSA Class Members and Rule 23 Class Members are referred to herein
2 collectively as “Class Members.”

3 69. The proposed Rule 23 Class is so numerous that joinder of all members is
4 impracticable. Upon information and belief, there are more than 460 members of the
5 proposed Rule 23 Class.

6 70. There are questions of law and fact common to Rule 23 Class Members that
7 predominate over any questions solely affecting individual members of the Class, including
8 but limited to:

- 9 a. Whether one or all of the Defendants were Plaintiffs’ and Rule 23 Class
10 Members’ employers;
- 11 b. Whether one or all of Defendants were required to and failed to pay Plaintiffs
12 and Rule 23 Class Members for all hours worked, including unpaid straight
13 time and overtime compensation for all hours worked in excess of 40 hours
14 per week;
- 15 c. Whether one or all of Defendants failed to pay Plaintiffs and Rule 23 Class
16 Members required minimum wages;
- 17 d. Whether one or all of Defendants failed to track and pay Plaintiffs and Rule
18 23 Class Members for all hours worked;
- 19 e. Whether one or all of Defendants failed to maintain payroll records of hours
20 worked as required by Arizona law;
- 21 f. The number of hours for which payments to Plaintiffs and Rule 23 Class
22 Members were intended to provide compensation;
- 23 g. The nature and extent of Plaintiffs’ and Rule 23 Class Members’ injuries and
24 the appropriate measure of damages; and
- 25 h. Whether certain exemptions to the FLSA’s overtime requirements apply to
26 Plaintiffs and Rule 23 Class Members and the extent of such exemptions.

27 _____
28 whose primary job responsibilities were not the provision of chauffeur services.”

1 71. The claims of Plaintiffs are typical of the claims of the Class they seek to
2 represent. Plaintiffs and Rule 23 Class Members work or have worked for Defendants,
3 performed the same or substantially similar job duties, and have been subjected to common
4 practices, policies, programs, procedures, protocols, and plans of failing to maintain payroll
5 records of all hours worked as required by Arizona and federal law, failing to pay at least
6 the applicable minimum wage for all hours worked, and failing to pay overtime to
7 employees in workweeks wherein employees worked more than 40 hours.

8 72. Plaintiffs each worked for The Driver Provider in Arizona.

9 73. Plaintiffs Salazar and Lopez also worked for The Driver Provider in Utah
10 and Wyoming for limited periods of time during the relevant timeframe.

11 74. Defendants acted or refused to act on grounds generally applicable to the
12 Rule 23 Class Members as a whole by engaging in the same violations of law with respect
13 to the Class Members, thereby making any final relief appropriate with respect to the Class
14 as a whole.

15 75. Plaintiffs will fairly and adequately protect the interests of the Class and do
16 not have interests antagonistic to the Class.

17 76. Plaintiffs have retained counsel competent and experienced in complex wage
18 and hour litigation and class action litigation.

19 77. The Rule 23 Class Members have been damaged and are entitled to recovery
20 as a result of Defendants' common and uniform policies, practices, and procedures.

21 78. A class action is superior to other available methods for the fair and efficient
22 adjudication of this litigation, particularly in the context of wage litigation such as the
23 instant case where individual workers lack the financial resources to vigorously prosecute
24 the lawsuit in federal court against a large transportation company with substantially
25 greater resources. Although the relative damages suffered by individual members of the
26 Class are not *de minimis*, such individual damages are relatively small compared to the
27 expense and burden of individual prosecution of this litigation.

28 79. Furthermore, class treatment is superior because it will obviate the need for

1 unduly duplicative litigation that might result in inconsistent judgments about Defendants’
2 business practices and policies.

3 80. Plaintiffs and the Rule 23 Class Members have been equally affected by
4 Defendants’ failure to pay proper wages and maintain required payroll records.

5 81. Moreover, Rule 23 Class Members still employed by Defendants may be
6 reluctant to raise individual claims for fear of retaliation.

7 **FACTUAL ALLEGATIONS**

8 **Defendants’ Business**

9 82. The Driver Provider advertises as providing “luxury” and “executive”
10 transportation services.

11 83. On information and belief, during the relevant time period, The Driver
12 Provider has had a fleet of over 140 vehicles.

13 84. Some of Defendants’ vehicles are shuttle buses and full-size coaches that
14 weigh more than 10,000 pounds (and have gross vehicle weight ratings (“GVWRs”) of
15 more than 10,000 pounds) and are designed to carry more than 8 passengers.

16 85. Other vehicles in Defendants’ fleet are sedans and sport utility vehicles
17 (SUVs) that have gross vehicle weights of 10,000 pounds or less (and GVWRs of 10,000
18 pounds or less) and which are designed to carry 8 passengers or less.

19 86. Defendants’ fleet has included sedans such as the Toyota Prius, Lincoln
20 Continental, Lincoln Town Car, and SUVs (which seat up to 7 passengers including the
21 driver). On information and belief, each of these vehicles has a gross vehicle weight of
22 10,000 pounds or less, a GVWR of 10,000 pounds or less, and are designed to carry 8
23 passengers or less.

24 87. Defendants’ sedans, vans, sport utility vehicles, shuttle buses, and coaches
25 are driven by Plaintiffs or proposed Class Members in each of Defendants’ operating
26 locations (Phoenix, AZ; Tucson, AZ; Sedona, AZ; Salt Lake City, UT; Park City, UT; and
27 Jackson, WY).

28 88. A substantial portion of Plaintiffs’ and Class Members’ work involves

1 regularly driving vehicles with gross vehicle weights of 10,000 pounds or less, GVWRs of
2 10,000 pounds or less, and which are designed to transport 8 passengers or less.

3 89. Upon information and belief, Plaintiffs and Class Members drove such
4 vehicles in every workweek while employed by Defendants.

5 90. Where Plaintiffs and Class Members drove vehicles that weighed more than
6 10,000 pounds and/or which are designed to transport more than 8 passengers, the vast
7 majority of such driving in any regular workweek was entirely intrastate.

8 91. The Driver Provider's services include, *inter alia*, fixed routes, local
9 charters, shuttles, and point to point ground transportation for groups and individuals.

10 92. During the relevant time period, Plaintiffs and Class Members (collectively,
11 "Drivers") drove a variety of vehicles in any given workweek.

12 93. The Driver Provider offers its services on a prearranged basis.

13 94. The vast majority, if not all, of the trips driven by Drivers are prearranged.

14 95. The amounts charged to The Driver Provider's customers are determined in
15 advance by The Driver Provider, usually on a flat-rate basis, and on occasion, on an
16 hourly basis.

17 96. The Driver Provider advertises as offering transportation for corporate
18 events, weddings, personal travel, and transportation for a "night out on the town," prom,
19 formals, and more.

20 97. The Driver Provider offers National Park Tours where Defendants provide
21 a tour guide to accompany customers (and Drivers) in a variety of vehicles.

22 98. The Driver Provider offers errand services, including, for instance, picking
23 up groceries or dry cleaning for customers.

24 99. The Driver Provider maintains contractual relationships with luxury resorts,
25 corporations, municipalities, school districts, and religious organizations, among other
26 third parties.

27
28

1 100. On information and belief, The Driver Provider’s contracts with third
2 parties to provide chauffeur services can be valued at \$1 million or more for a single
3 contract.

4 101. On information and belief, most of The Driver Provider’s business revenue
5 has been derived from contracts with third parties.

6 102. During the relevant time period, The Driver Provider has provided fixed
7 route daily bus transportation for the Teton Science School in Jackson, Wyoming.

8 103. During the relevant time period, The Driver Provider has provided fixed
9 route shuttle bus services at Intel’s campus in Chandler, Arizona.

10 104. During the relevant time period, The Driver Provider has provided fixed
11 route shuttle service to and from The Phoenix Open golf tournament held annually in
12 Scottsdale, Arizona.

13 105. During the relevant time period, The Driver Provider has contracted with
14 the Four Seasons Resort to provide transportation services to Four Seasons Resort guests.

15 106. Customers of The Driver Provider who are guests at certain resorts,
16 including the Four Seasons, can pay for transportation services provided by The Driver
17 Provider through billing and payment completed through the resort.

18 107. For example, certain resorts charge resort guests for services provided by
19 The Driver Provider through charges to the resort guest’s room.

20 108. None of the vehicles operated by Drivers have taximeters.

21 109. None of the vehicles operated by Drivers have vacancy lights.

22 110. None of the vehicles operated by Drivers have markings that identify the
23 vehicle as a “taxi.”

24 111. Drivers are not permitted to pick up random passengers who “hail” them on
25 the street.

26 112. Drivers are not permitted and do not cruise for passengers.

27 113. Drivers often transport more than one passenger at a time.

28

1 114. Drivers are required to wait for passengers at prearranged locations and
2 times provided to the Driver by The Driver Provider.

3 115. Fare rates are not posted on or inside The Driver Provider's vehicles.

4 116. Drivers work pursuant to a weekly schedule.

5 117. Upon information and belief, the amounts charged by The Driver Provider
6 greatly exceed rates charged by licensed taxicab companies.

7 **Drivers' Job Duties**

8 118. Drivers' main job duty was and is transporting Defendants' customers in
9 Defendants' vehicles.

10 119. In addition to transporting Defendants' customers, Drivers' job duties
11 include, among other things:

- 12 a. arriving at The Driver Provider location prior to their first trip of the
13 day based on an assigned "in-time" (which was generally given to
14 the Driver the day before); the assigned "in-time" was usually an
15 hour prior to the scheduled pickup time of the Driver's first trip, but
16 was often more than an hour in advance of the first scheduled pickup
17 time;
- 18 b. checking-out or signing out vehicles at The Driver Provider
19 locations at the beginning of their assigned shift;
- 20 c. retrieving equipment used during work time (e.g., coolers, computer
21 tablets);
- 22 d. performing pre-trip inspections, including checking fluid levels,
23 belts, tires, air conditioning/heating, fuel level, lights, and other
24 items relevant to the safe operation of the vehicle;
- 25 e. completing a pre-trip inspection report on a tablet (iPad);
- 26 f. traveling to assigned customer pick-up locations;
- 27 g. waiting for passengers;
- 28 h. entering vehicle and ride information in software applications;

- 1 i. traveling to The Driver Provider's locations to exchange assigned
- 2 vehicles in between scheduled trips, which generally required
- 3 Drivers to travel to a gas station to fuel the first vehicle, travel back
- 4 to the Driver Provider location, perform a post-trip inspection, post-
- 5 trip inspection report, return the first vehicle's keys to dispatch,
- 6 obtain the second vehicle's keys, perform a pre-trip inspection of the
- 7 second vehicle, pre-trip inspection report for the second vehicle, and
- 8 travel to their next pickup location;
- 9 j. performing simple maintenance;
- 10 k. fueling vehicles before returning them to The Driver Provider
- 11 locations;
- 12 l. traveling to The Driver Provider location after the last trip of the day
- 13 to return vehicles;
- 14 m. checking-in vehicles;
- 15 n. performing post-trip inspections of the interior and exterior of the
- 16 vehicle;
- 17 o. reporting any damage or missing items found in post-trip
- 18 inspections;
- 19 p. cleaning the vehicle;
- 20 q. stocking the vehicle with amenities;
- 21 r. monitoring flight time arrivals;
- 22 s. greeting passengers, including, for instance, inside the airport with
- 23 appropriate signage;
- 24 t. assisting passengers with luggage;
- 25 u. being on-call or stand-by for passenger pickups or other driving
- 26 duties;
- 27 v. communicating with managers and dispatchers via telephone and/or
- 28 e-mail;

- 1 w. remaining in uniform and with their vehicles or in close proximity to
- 2 their vehicles;
- 3 x. being required to accept additional trips dispatched to them during
- 4 the work day;
- 5 y. arriving at each pick-up location at least 15 minutes early;
- 6 z. running “errands” at the request of managers;
- 7 aa. running “errands” for customers; and
- 8 bb. traveling to work at Driver Provider locations in other states.

9 120. Throughout the relevant time period, Plaintiffs and Class Members
10 performed services at Defendants’ direction and for the benefit of Defendants for which
11 Plaintiffs and Class Members reasonably expected to be paid.

12 121. The performance of services at the direction of and for the benefit of
13 Defendants created contracts of employment pursuant to which Plaintiffs and Class
14 Members were entitled to be paid for all of their working time and in accordance with
15 law in exchange for the services provided to Defendants at Defendants’ direction and for
16 the benefit of Defendants.

17 122. Plaintiffs and Class Members’ working time for which they were not and
18 have not been paid include, but is not limited to, all pre-and post-trip activities, and time
19 during which Plaintiffs and Class Members were engaged to wait, including, *inter alia*,
20 time between assignments.

21 123. In addition to Defendants’ practices, throughout the relevant time period,
22 Defendants had stated policies regarding employee compensation.

23 124. For example, throughout the relevant time period, Defendants had stated
24 policies, *inter alia*, that employees would not have to work “off the clock.”

25 125. Plaintiffs and Class Members reasonably expected to be compensated
26 pursuant to Defendants’ stated policies and practices.

27 126. Plaintiffs and Class Members reasonably expected that all work assigned to
28 them by The Driver Provider would be tracked and compensated.

1 127. In addition, at all relevant times, Plaintiffs and Class Members had a
2 reasonable expectation that their employer would comply with the law and pay them all
3 nondiscretionary compensation that Plaintiffs were entitled to under law.

4 128. At all relevant times, Plaintiffs and Class Members had a reasonable
5 expectation that Defendants would pay them all nondiscretionary compensation when it
6 was due under law.

7 129. The work that Defendants directed Plaintiffs and Class Members to
8 perform, including the tasks identified in ¶ 119, was performed in the interest of and for
9 the benefit of Defendants.

10 130. Plaintiffs and Class Members, as Defendants' employees, reasonably
11 expected their employer to pay them for their labor and work performed at Defendants'
12 direction and for Defendants' benefit.

13 131. Drivers are relatively low wage employees who were not volunteering their
14 services to Defendants; rather, Plaintiffs and Class Members reasonably expected to be
15 paid for all the time that they worked.

16 132. Each of the tasks identified above in ¶ 119 constitute the performance of
17 work Defendants directed, suffered or permitted Drivers to perform, and accordingly is
18 work time for which Plaintiffs and Class Members were entitled to be paid.

19 133. Defendants agree that tasks set forth above constitute work for which
20 Drivers are entitled to be paid if it was performed at Defendants' direction.

21 134. Under Arizona law governing employment contracts, the provisions for
22 payment for all hours worked are terms of the Drivers' contracts of employment with
23 Defendants.

24 135. Defendants failed to keep accurate contemporaneous records of all hours
25 worked by Plaintiffs and Class Members.

26 136. Defendants failed to compensate Plaintiffs and Class Members for all hours
27 worked.

28 137. The time from when a Driver arrives at a Driver Provider office until

1 completing all pre-trip tasks and departing The Driver Provider location to the first
2 assigned location typically takes 15 to 30 minutes, but can take as long as an hour or
3 more depending on the particular make, model and condition of the vehicle the Driver is
4 assigned to operate.

5 138. Drivers are all required to arrive at each pickup location at least 15 minutes
6 ahead of the scheduled passenger pick-up time.

7 139. The travel time to any given pick up location can take anywhere from 10
8 minutes to over an hour and varies depending on the starting point, the pick-up location,
9 traffic, available routes, and road conditions.

10 140. It is also common for Drivers to have to wait for passengers who do not
11 show up at the scheduled pick-up time.

12 141. The travel time back to The Driver Provider location (at the end of the day
13 and between trips) also varies depending on the starting point, traffic, available routes,
14 and road conditions.

15 142. It is common for Drivers to have to exchange multiple vehicles during the
16 course of a workday.

17 143. For instance, the first scheduled trip may require a sedan, the second trip an
18 SUV, the third trip a van, etc.

19 144. Drivers are required to follow the check-in and check-out procedures each
20 time they exchange vehicles during the day.

21 145. Drivers also refuel vehicles throughout the day, including in between trips
22 as needed, and before returning the vehicle to a Driver Provider location to exchange it
23 for another vehicle.

24 146. Drivers are directed to ensure the vehicle is clean, inside and outside,
25 throughout the workday.

26 147. Drivers often clean vehicles in between trips.

27 148. Drivers also have to restock the vehicle with amenities (like bottled water
28 or newspapers, etc.) in between trips.

1 149. After the last trip of the day, drivers are required to return to The Driver
2 Provider office location where they picked up their vehicle at the start of the day.

3 150. On the way back to the office location, Drivers are required to stop at a gas
4 station to refuel the vehicle. This usually takes from 5 to 30 minutes depending on the
5 type of vehicle, fuel level, and other factors, like whether Drivers have to wait for an
6 available gas pump.

7 151. When Drivers return to The Driver Provider location, each time they
8 perform required post-trip duties, including cleaning the vehicle, inspecting the vehicle
9 for damage and lost items, completing a post-trip inspection checklist on a software
10 application, and returning equipment used during the day, including, e.g. a computer
11 tablet and cooler.

12 152. Each day, post-trip duties, including refueling, can take anywhere from 20
13 minutes to an hour or more.

14 153. Drivers' workdays begin when they first arrive at the Driver Provider
15 location to check out a vehicle and perform pre-trip duties and end when they arrive back
16 at the Driver Provider location at the end of the day and complete all post-trip duties.

17 154. The work performed each workday in addition to transporting passengers can
18 be up to multiple hours per day, resulting in substantial untracked and unpaid hours each
19 workweek, which varies depending on the number of trips, locations, waiting time, number
20 of different vehicles a Driver was assigned, etc.

21 155. On occasion, Drivers may work based out of Driver Provider locations in
22 different states. For instance, Plaintiff Salazar has worked for limited periods from The
23 Driver Provider locations in Utah and Wyoming.

24 156. Upon information and belief, Defendants apply the same policies and
25 practices in every state in which they operate, including, but not limited to, the same
26 compensation structure and policies, and Driver job duties.

27 **Drivers' Compensation**

28 157. Except in very limited circumstances, The Driver Provider does not

1 compensate Drivers on a per hour basis.

2 158. Instead, Drivers are paid a percentage of the “base rate” or amount billed to
3 the customer for each trip.

4 159. According to The Driver Provider, the amount paid to the Driver for each
5 trip purportedly depends on the Driver’s “level ranking” and “commission percentage”
6 which are determined by The Driver Provider in its sole discretion. Drivers frequently do
7 not know which level ranking they are assigned or how the ranking is determined.

8 160. When asked by customers if tipping is permitted, Drivers are required to
9 tell customers that a “gratuity” is included in the amount The Driver Provider charged to
10 the customer. As a result, Drivers rarely receive any tips despite The Driver Provider
11 charging its customers “gratuities.”

12 161. On information and belief, The Driver Provider retains 100% of a
13 mandatory “gratuity” charged to customers. No portion of the mandatory “gratuity”
14 charged to customers is passed to Drivers. Instead, Drivers’ pay is determined as a
15 percentage of the “base rate” charged to customers.

16 162. Only in the rare occasion where a customer insists on paying more than the
17 “gratuity” charged by The Driver Provider does that amount get paid to Drivers.

18 **Defendants’ Failure to Keep Records of Hours Worked**

19 163. During the relevant timeframe, Defendants did not track hours worked by
20 Drivers for purposes of ensuring Drivers were paid at least the minimum wage for all
21 hours worked or for determining Drivers’ regular hourly rate or premium rate of pay,
22 including with respect to the tasks identified above in ¶ 119.

23 164. For employees subject to minimum wage and overtime provisions of the
24 FLSA, the FLSA requires employers to keep records of, *inter alia*, employees’ hours
25 worked each workday and total hours worked each workweek; the employees’ regular
26 hourly rate of pay for any workweek in which overtime compensation is due; the total
27 daily or weekly straight-time earnings or wages due for hours worked during the work-
28 day or workweek; and total premium pay for overtime hours. 28 U.S.C. § 211(c); 29

1 C.F.R. § 516.2.

2 165. Defendants did not maintain records of Drivers' hours worked each
3 workday and total hours worked each workweek; Drivers' regular hourly rate of pay for
4 any workweek in which straight time and/or overtime compensation is due; the total daily
5 or weekly straight-time earnings or wages due for all hours worked during the workday
6 or workweek; and total premium pay for overtime hours.

7 166. Arizona law provides that "Employers shall maintain payroll records
8 showing the hours worked for each day worked..." A.R.S. § 23-364(D).

9 167. Defendants did not maintain payroll records showing hours worked for
10 Plaintiffs and Class Members as required by A.R.S. § 23-364(D).

11 168. On information and belief, Defendants instituted a new timekeeping
12 procedure in 2020, after this lawsuit was commenced. That policy directed Drivers to,
13 among other things, "clock-in" using the "Driver Schedule app" when they arrived to the
14 Driver Provider location for their assigned "in-time" and to "clock-out" after Drivers
15 refueled their vehicle and returned company property to dispatch.

16 169. Defendants' new timekeeping procedures also required Drivers to "clock-
17 out" between trips, despite Drivers continuing to work between trips.

18 170. However, rather than using records of all hours actually worked or
19 Defendants' new timekeeping procedure to determine Drivers' work time and
20 compensation owed, Defendants have continued to compensate Plaintiffs and Class
21 Members based on Defendants' estimates that do not include all hours worked.

22 171. Defendants' work time estimates result in Defendants' continued failure to
23 accurately record and compensate Drivers for all work time.

24 172. Drivers reasonably expected to be paid for their actual work time, not
25 estimates unilaterally determined by their employer without their knowledge.

26 **The Failure to Pay Straight Time, Overtime & Minimum Wages**

27 173. Plaintiffs and Class Members regularly and consistently worked more than
28 40 hours per week.

1 174. By way of example only, Plaintiff Salazar worked more than 40 hours in
2 each of the workweeks of March 10 to 16, 2018; April 21 to 27, 2018; and May 5 to 11,
3 2018.⁴ Plaintiff Salazar reasonably estimates that she worked at least 70 hours the weeks
4 of March 10 and April 21, 2018, and at least 65 hours the week of May 5, 2018 and was
5 not paid wages she was due for all hours worked in these and all other weeks.

6 175. By way of example only, Plaintiff Lopez worked more than 40 hours in the
7 workweek of March 10 to 16, 2018 and was not paid all wages he was due for all hours
8 worked in this and all other weeks.

9 176. By way of example only, Plaintiff Carpenter worked more than 40 hours
10 for the workweek of January 28 to February 3, 2017 and was not paid all wages he was
11 due for all hours worked in this and all other weeks.

12 177. By way of example only, Plaintiff Hanna worked more than 40 hours for
13 the workweek of February 10 to 16, 2018. Plaintiff Hanna reasonably estimates that he
14 worked no less than 50 hours the workweek of February 10, 2018 and was not paid all
15 wages he was due for all hours worked in this and all other weeks.

16 178. Despite no applicable exemption from the overtime requirements of the
17 FLSA, Defendants failed to compensate Plaintiffs and Class Members for overtime in
18 workweeks in which Plaintiffs and Class Members worked more than 40 hours.

19 179. At no point during the three years preceding the filing of this lawsuit did
20 Defendants pay Plaintiffs or Class Members any overtime compensation.

21 180. Defendants are required, and have always been required, to pay Drivers
22 working in Arizona no less than the applicable minimum wage under Arizona law for all
23 hours worked.

24 181. When considering the untracked, uncompensated worktime as set forth in ¶
25 119, in some workweeks during the relevant time frame, Defendants failed to pay Plaintiffs
26 and Class Members working in Arizona at least the applicable minimum wage for each

27
28 ⁴ On information and belief, Defendants considered workweeks to run from Saturday through Friday.

1 hour worked and failed to compensate Drivers straight-time wages due in every workweek.

2 182. Defendants failed to pay compensation due to Plaintiffs and Class Members
3 working in Arizona for all hours worked and for which Plaintiffs and Class Members
4 reasonably expected to be compensated.

5 183. Pursuant to Arizona law, Defendants' failure to "maintain payroll records
6 showing the hours worked for each day worked... shall raise a rebuttable presumption that
7 the employer did not pay the required minimum wage rate[.]" A.R.S. § 23-364(D). In other
8 words, Defendants' failure to maintain required payroll records as alleged herein places the
9 burden on Defendants to establish that Plaintiffs and the proposed Rule 23 Class Members
10 working in Arizona during the relevant timeframe were paid no less than the required
11 Arizona minimum wage for all hours worked in Arizona.

12 184. Defendants are required, and have always been required, to pay Drivers no
13 less than the applicable minimum wage under the FLSA.

14 185. When considering the untracked, uncompensated worktime as set forth in ¶
15 119, in some workweeks during the relevant time frame, Defendants failed to pay Plaintiffs
16 and Class Members at least the applicable minimum wage for each hour worked.

17 186. By way of example only, Defendants failed to pay Plaintiff Salazar required
18 minimum wages for each hour worked for the workweeks of December 2, 2017 to
19 December 8, 2017; December 9, 2017 to December 15, 2017; December 23, 2017 to
20 December 29, 2017; December 30, 2017 to January 5, 2018; January 27, 2018 to February
21 2, 2018, and February 3, 2018 to February 9, 2018.

22 187. By way of example only, Defendants failed to pay Plaintiff Carpenter
23 required minimum wages for the workweeks of December 30, 2016 to January 6, 2017;
24 January 14, 2017 to January 20, 2017; January 21, 2017 to January 27, 2017, and February
25 11, 2017 to February 17, 2017.

26 188. By way of example only, Defendants failed to pay Plaintiff Lopez required
27 minimum wages for the workweek of May 26, 2018 to June 1, 2018.

28 189. By way of example only, Defendants failed to pay Plaintiff Hanna required

1 minimum wages for the workweek of September 8, 2018 to September 14, 2018.

2 190. On information and belief, Defendants' failure to pay no less than the
3 applicable minimum wages for each hour worked has been longstanding and continuous.

4 191. Plaintiffs and Class Members have been victims of Defendants' common
5 policy and plan that has violated their rights under the FLSA and state law by requiring
6 them to work in excess of 40 hours per week denying them wages for all hours worked,
7 including straight time and overtime compensation for all overtime hours worked.

8 192. Plaintiffs and Class Members working have been victims of Defendants'
9 common policy and plan that has violated their rights under the FLSA and Arizona law by
10 failing to pay required minimum wages and failing to pay for all hours worked. At all times
11 relevant, Defendants' unlawful policy and pattern or practice has been willful.

12 193. All the work performed by Plaintiffs and Class Members was assigned by
13 Defendants and/or Defendants were aware of and suffered and permitted all work including
14 overtime and the untracked, uncompensated work identified in ¶ 119.

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

24 195. Defendants were or should have been aware that the FLSA and Arizona law
25 required them to accurately track all hours worked by Drivers and pay Plaintiffs and Class
26 Members premium overtime pay for all hours worked in excess of 40 hours per workweek
27 and wages at not less than the required minimum rates for all hours worked. Defendants'
28 failure to pay Plaintiffs and Class Members overtime wages for their work in excess of 40

1 hours per workweek and at least the required minimum wage for all hours worked was
2 willful, intentional, and in bad faith.

3 196. Defendants were or should have been aware that Arizona law required them
4 to maintain payroll records for Drivers and pay Plaintiffs and Class Members the applicable
5 minimum wages for all hours worked. Defendants' failure to maintain such records and
6 pay Plaintiffs and Class Members minimum wages was willful, intentional, and in bad
7 faith.

8 197. Defendants' unlawful conduct has been widespread, continuous, repeated,
9 and consistent.

10 CAUSES OF ACTION

11 COUNT I

12 **Failure to Pay Overtime and Minimum Wages in Violation of the FLSA** 13 **(On behalf of Plaintiffs and FLSA Class Members)**

14 198. Plaintiffs re-allege and incorporate by reference all allegations in all
15 preceding paragraphs.

16 199. Plaintiffs and members of the FLSA Class are non-exempt employees
17 entitled to be paid overtime compensation for all overtime hours worked.

18 200. In workweeks in which Plaintiffs and the FLSA Class members worked more
19 than 40 hours, Defendants willfully failed to compensate Plaintiffs and FLSA Class
20 Members for all of the time worked in excess of 40 hours and at a rate of at least 1 and ½
21 times their regular hourly rate in violation of the requirements of Section 7 of the FLSA,
22 29 U.S.C. § 207(a)(1).

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

27 202. Defendants failed to make a good faith effort to comply with the FLSA with
28 respect to its recordkeeping obligations and required compensation to Plaintiffs and the
FLSA Class.

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

3 204. As a consequence of the willful underpayment of wages alleged above,
4 Plaintiffs and FLSA Class Members have incurred damages and Defendants are each
5 indebted to them, jointly and severally, in the amount of the unpaid overtime compensation
6 and unpaid minimum wages, together with interest, liquidated damages, attorneys' fees,
7 and costs in an amount to be determined at trial.

8 205. Plaintiffs have expressed their consent to make these claims against the
9 Defendants by filing written consent forms pursuant to 29 U.S.C. § 216(b).

10 **COUNT II**⁵

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

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

13 206. Plaintiffs re-allege and incorporate by reference all allegations in all
14 preceding paragraphs.

15 207. Ariz. Rev. Stat. § 23-351 provides in relevant part:

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

19 C. Each employer, on each of the regular paydays, shall pay to
20 the employees all wages due the employee up to such a date except:

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

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

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

28 209. At all relevant times, Plaintiffs and Rule 23 Class Members had contracts of
employment with Defendants pursuant to which they had a reasonable expectation that

⁵ See footnote 1, *supra*.

1 Defendants would timely pay them all nondiscretionary compensation they were entitled
2 to receive for all hours worked.

3 210. Without legal justification or good faith dispute, Defendants failed and
4 refused to fully and lawfully compensate Plaintiffs and Rule 23 Class Members for all labor
5 and services performed for or on Defendants' behalf for which Plaintiffs and Rule 23 Class
6 Members had a reasonable expectation to be paid.

7 211. Defendants violated Ariz. Rev. Stat. §§ 23-351 & 23- by failing to pay
8 Plaintiffs and Rule 23 Class Members all nondiscretionary compensation for all hours
9 worked.

10 212. As a result of Defendants' violations of Ariz. Rev. Stat. §§ 23-351 & 23-255,
11 Plaintiffs and Rule 23 Class Members have been harmed, have suffered substantial losses,
12 and have been deprived of the full amount of overtime compensation and straight time
13 compensation for all hours worked to which they were entitled and therefore are entitled
14 to an award of the unpaid wages, with prejudgment interest thereon, and treble the amount
15 of such wages, together with attorneys' fees and costs.

16 **COUNT III**

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

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

19 213. Plaintiffs reallege and incorporate by reference all allegations in all
20 preceding paragraphs.

21 214. A.R.S. § 23-363 requires employers to “pay employees no less than the
22 minimum wage.”

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

26 216. As a result of Defendants' violation of A.R.S. § 23-363, Plaintiffs and Rule
27 23 Class Members have been harmed, have suffered substantial losses, and have been
28 deprived of compensation to which they were entitled and, therefore, are entitled to an
award of the unpaid wages, double the amount of such wages, and prejudgment interest,

1 together with attorneys' fees and costs.

2 217. Defendants' violation of A.R.S. § 23-363 was willful.

3 218. Pursuant to A.R.S. § 23-364(H), because Defendants' violations were part of
4 a continuing course of conduct, Count III includes all violations of Arizona minimum wage
5 laws regardless of date of Defendants' failure to pay Plaintiffs and Rule 23 Class Members
6 the applicable minimum wage.

7 219. Pursuant to A.R.S. § 23-364(D), for each workweek where Defendants failed
8 to "maintain payroll records showing the hours worked for each day worked," Plaintiffs
9 and Rule 23 Class Members are entitled to "a rebuttable presumption that [Defendants] did
10 not pay the required minimum wage rate[.]" A.R.S. § 23-364(D).

11 **PRAYER FOR RELIEF**

12
13 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
14 seek the following relief:

15 A. A declaration that Defendants are joint employers of Plaintiffs and the Class
16 Members;

17 B. A declaration that Plaintiffs and the FLSA are non-exempt employees of
18 Defendants for purposes of the FLSA;

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

20 D. A declaration that Defendants have violated and are violating Arizona's
21 Wage Act;

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

24 F. A declaration that Defendants' violations of the FLSA, Arizona Wage Act,
25 and Arizona Minimum Wage Act are willful;

26 G. Awarding Plaintiffs and Class Members straight time wages, minimum
27 wages and overtime wages due to them for their hours worked without proper
28 compensation by Defendants;

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

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

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

12 K. Certification of Count I as an opt-in class pursuant to the FLSA, 29 U.S.C. §
13 201, *et seq.*;

14 L. Certification of Counts II and III as a class action pursuant to Rule 23 of the
15 Federal Rules of Civil Procedure;

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

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

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

23
24 Respectfully submitted this 26th day of January, 2023.

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

26 By: s/ Daniel L. Bonnett

27 Daniel L. Bonnett

28 Susan Martin

Jennifer Kroll

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