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 9 *Attorneys for Plaintiffs*

10 IN THE UNITED STATES DISTRICT COURT  
 11 DISTRICT OF ARIZONA

12 Kelli Salazar, Wayne Carpenter, Rodney Lopez, )  
 13 and Gregory Hanna, individually and on behalf )  
 14 of other similarly situated individuals, )  
 15 Plaintiffs, )  
 16 v. )  
 17 Driver Provider Phoenix, LLC; Driver Provider )  
 Leasing, LLC; Innovative Transportation of )  
 18 Sedona, LLC; Innovative Transportation )  
 19 Solutions of Tucson, LLC; Innovative )  
 Transportation Solutions, Inc. (Arizona); )  
 20 Innovative Transportation Solutions, Inc. )  
 (Utah); Innovative Transportation Solutions, )  
 21 LLC; Driver Provider Management LLC; Jason )  
 Kaplan; Kendra Kaplan; Stephen Kaplan and )  
 22 Barbara Kaplan, husband and wife; Barry Gross )  
 23 and Jane Doe Gross, husband and wife; and )  
 Does 1-10. )  
 24 )  
 25 Defendants. )

Case No.: CV19-05760-SMB  
**PLAINTIFFS' CONTROVERTING  
 STATEMENT OF FACTS AND  
 ADDITIONAL FACTS THAT  
 PRECLUDE DEFENDANTS'  
 MOTION FOR SUMMARY  
 JUDGMENT**

1 Pursuant to LRCIV 56.1(b), Plaintiffs Kelli Salazar, Wayne Carpenter, Rodney Lopez,  
 2 and Gregory Hanna, individually and on behalf of other similarly situated individuals hereby  
 3 submit their Statement of Controverting Facts in response to Defendants’ Statement of Facts  
 4 (Part I) (“PSCF”) and Statement of Additional Facts that mandate denial of Defendants’  
 5 motion for summary judgment (Part II) (“PSAF”). This response is supported by the exhibits  
 6 hereto, Plaintiffs’ Statement of Facts in Support of Motion for Partial Summary Judgment  
 7 (“PSF”) (unredacted version lodged under seal at Doc. 504 and redacted version filed at 498),  
 8 the May 31, 2023 Declaration of Michael Licata and exhibits thereto (“Licata 5/31/23/23  
 9 Decl.”) (unredacted version lodged under seal at Doc. 505 and redacted version filed at 499),  
 10 and the record before the Court.

11 **I. PLAINTIFFS’ STATEMENT OF CONTROVERTING FACTS (“PSCF”)<sup>1</sup>**

12 **Plaintiffs’ Response to DSF ¶ 1:** Admitted.<sup>2</sup>

13 **Plaintiffs’ Response to DSF ¶ 2:** Admitted.

14 **Plaintiffs’ Response to DSF ¶ 3:** Admitted.

15 **Plaintiffs’ Response to DSF ¶ 4:** Disputed. Plaintiffs object to Decl. of Kendra Kaplan  
 16 (Ex. 1) ¶ 42 as hearsay and lacking foundation.

17 **Plaintiffs’ Response to DSF ¶ 5:** Disputed. PSAF ¶¶1-4; Plaintiffs also object to Decl.  
 18 of Kendra Kaplan ¶ 4 (Doc. 451-1) as hearsay, lacking foundation, and not a proper summary  
 19 under Fed. R. Evid. 1006. *See* discussion at Doc. 460-1 at 4.

20 **Plaintiffs’ Response to DSF ¶ 6:** Disputed. PSAF ¶ 20. Plaintiffs object to Kendra Kaplan  
 21 Decl. ¶ 5 (Doc. 451-1) as hearsay, lacking foundation and not a proper summary under Fed.  
 22 R. Evid. 1006. *See* discussion at Doc. 460-1 at 4.

24 <sup>1</sup> Defendants have several footnotes. Because they do not appear to be part of Defendants’  
 25 material facts and do not contain citations to the record, Plaintiffs are not responding to the  
 footnotes.

26 <sup>2</sup> Plaintiffs note that Defendants refer to Doc. 61-1, Decl. of Kendra Kaplan at ¶ 4, as  
 27 attached hereto as Exhibit 1 although there is a different declaration of Kendra Kaplan  
 28 attached to DP’s statement of facts as Exhibit 1. Except for DSF ¶ 1, Plaintiffs have  
 assumed Exhibit 1 is the Kaplan Declaration attached at 491-2.

1 **Plaintiffs’ Response to DSF ¶ 7:** Disputed, both as to DP considering its services to be  
2 retail and providing all services to the end-user. PSF ¶¶ 23-24. PSAF ¶¶ 1-4, 20.

3 **Plaintiffs’ Response to DSF ¶ 8:** Admitted.

4 **Plaintiffs’ Response to DSF ¶ 9:** Admitted as to some Drivers for some of their trips.  
5 PSF ¶ 17 (fixed routes).

6 **Plaintiffs’ Response to DSF ¶ 10:** Admitted as to SF ¶ 10. Disputed as to footnote 3  
7 which is offered without support and contradicts Ex. 5 at 52:13-53:1.

8 **Plaintiffs’ Response to DSF ¶ 11:** Admitted that Drivers receive tablets dispatch and  
9 assignments from dispatch. Disputed dispatch provides other supplies, which are in other  
10 physical locations. [Quinley Dep. Tr. at 27:5-30:8 34:6-35:2 (Ex. 3 hereto)].

11 **Plaintiffs’ Response to DSF ¶ 12:** Admitted except for the adjective “brief” with  
12 respect to the inspections and which Plaintiffs dispute and object to as argumentative, vague,  
13 and unsupported by the record citations. [Defs. Ex. 6 at 40:18-41:23 (491-4); Salazar Decl.  
14 at ¶ 9 (Doc. 38-2); Lopez Decl. ¶ 9 (Doc. 38-3); Hanna Decl. ¶ 9 (Doc. 38-4); Knitter Decl.  
15 ¶ 9 (Doc. 38-5); PSF ¶ 37(d)-(g)].

16 **Plaintiffs’ Response to DSF ¶ 13:** Admitted.

17 **Plaintiffs’ Response to DSF ¶ 14:** Disputed. [PSF ¶ 127-133, 37 (subparts d to z)]. Plaintiffs  
18 object to the Decl. of Kendra Kaplan ¶ 44 (Doc. 451-1) as hearsay and lacking foundation.

19 **Plaintiffs’ Response to DSF ¶ 15:** Disputed. [PSF ¶ 127-133, 37 (subparts d to z)].  
20 Plaintiffs also object that the purported statement of facts is not supported by DP’s citation  
21 to DP’s Ex. 6 at 53:12-54:6, 104:18-21 (Doc. 491-4); DP’s Ex. 2 at 27:11-29:23, 78:2-80:23  
22 (Doc. 491-2) and DP’s Ex. 4 at 54:18-55:19).

23 **Plaintiffs’ Response to DSF ¶ 16:** Admitted with respect to the first sentence and the  
24 admitted with respect to the first part of the second sentence stating that “[w]hen this occurs,  
25 dispatchers will reach out to Drivers[.]” Disputed as to the last part of the second sentence  
26 that states that dispatchers ask Drivers if they are willing and/or able to take new assignments.  
27 [PSF ¶ 127-129, 132-133, 37(r); J. Kaplan Dep. Tr. at 214:9-216:18 (Licata 5/31/23 Decl. Ex.  
28 C, Doc. 499-1); Dep. Ex. 72 (Doc. 335, pt. 1 at Ex. I pg. 4/30); DriverProvider127848 (Doc.

1 335, pt. 2 at Ex. W pg. 42/45); (Doc. 335, pt. 4/5, Ex. Z at 6-7/13); Gross Dep. Tr. 193:3-  
2 15; 226:16-228:23 (Doc. 499-1 at Ex. J.); Dep. Ex. 15 (Doc. 501 pt. 1 at 74)]; Quinley Dep.  
3 Tr. at 140:15-146:11 (Doc. 513-1 at Ex. 2 pp. 140-46/79); [Dep. Ex. 234 (Doc. 501-9 ] Dep.  
4 Ex. 235 (Doc. 501-9); DriverProvider052009 (Doc. 513)]. Plaintiffs object to the Declaration  
5 of Kendra Kaplan ¶ 45 as hearsay and lacking foundation and object that the record citation  
6 to Defs' Ex. 6 at 68:7-69:7 does not support the statement of fact.

7 **Plaintiffs' Response to DSF ¶ 17:** Disputed. [PSF ¶ 127-129, 132-133; Salazar 6/14/23  
8 Decl.¶ 6 (Licata 6/14/23 Decl., Ex. 6, Doc. 513-1 at pg. 59/79); J. Kaplan Dep. Tr. at 214:9-  
9 216:18 (Licata 5/31/23/23 Decl., Ex. C, Doc. 499-1 at pg. 169-171/650); Dep. Ex. 72 (Licata  
10 9/21/22 Decl., Ex. I, Doc. 335); DriverProvider127848 (Licata 9/21/22 Decl., Ex. W, Doc.  
11 335-1); (Licata 9/21/22 Decl., Ex. Z, Doc. 335-3); Gross Dep. Tr. 193:3-15; 226:16-228:23  
12 (Licata 5/31/23/23 Decl., Ex. J., Doc. 499-1 at 407, 424-426/650); Dep. Ex. 15 (Licata  
13 5/31/23/23 Decl., Ex. 15, Doc. 501-1); Quinley Dep. Tr. at 140:15-146:11 (Licata 6/14/23  
14 Decl., Ex. 2, Doc. 513-1 at pg. 40-46/79); Dep. Ex. 234 (Licata 5/31/23/23 Decl., Ex. 234,  
15 Doc. 501-9); Dep. Ex. 235 (Licata 5/31/23/23 Decl., Ex. 235, Doc. 501-9);  
16 DriverProvider052009 (Licata 6/14/23 Decl., Ex. 3, Doc. 513)].

17 Plaintiffs object to the Declaration of Kendra Kaplan ¶ 46 as hearsay and lacking  
18 foundation and Plaintiffs object that Ex. 3 at 71:7-23 (Carpenter Deposition), which is not in  
19 the record but does not support the purported fact. [Carpenter Dep. at 71:7-23, Ex. 4 hereto).

20 **Plaintiffs' Response to DSF ¶ 18:** Disputed. [PSF ¶ 127-129, 132-133; Salazar 6/14/23  
21 Decl.¶ 6 (Licata 6/14/23 Decl., Ex. 6, Doc. 513-1 at pg. 59/79); J. Kaplan Dep. Tr. at 214:9-  
22 216:18 (Licata 5/31/23/23 Decl., Ex. C, Doc. 499-1 at pg. 169-171/650); Dep. Ex. 72 (Licata  
23 9/21/22 Decl., Ex. I, Doc. 335); DriverProvider127848 (Licata 9/21/22 Decl., Ex. W, Doc.  
24 335-1); (Licata 9/21/22 Decl., Ex. Z, Doc. 335-3); Gross Dep. Tr. 193:3-15; 226:16-228:23  
25 (Licata 5/31/23/23 Decl., Ex. J., Doc. 499-1 at 407, 424-426/650); Dep. Ex. 15 (Licata  
26 5/31/23/23 Decl., Ex. 15, Doc. 501-1); Quinley Dep. Tr. at 140:15-146:11 (Licata 6/14/23  
27 Decl., Ex. 2, Doc. 513-1 at pg. 40-46/79); Dep. Ex. 234 (Licata 5/31/23/23 Decl., Ex. 234,  
28 Doc. 501-9); Dep. Ex. 235 (Licata 5/31/23/23 Decl., Ex. 235, Doc. 501-9);

1 DriverProvider052009 (Licata 6/14/23 Decl., Ex. 3, Doc. 513)].

2 Plaintiffs object to the DP's Ex. 1 (Declaration of Kendra Kaplan) at ¶ 47 as hearsay and  
3 lacking foundation.

4 **Plaintiffs' Response to DSF ¶ 19:** Admitted except for the adjective "brief" with  
5 respect to the inspections and which Plaintiffs dispute and object to as argumentative, vague,  
6 and unsupported by the record citations. [Defs. Ex. 6 at 40:18-41:23 (491-4); Salazar Decl. at  
7 ¶ 9 (Doc. 38-2); Lopez Decl. ¶ 9 (Doc. 38-3); Hanna Decl. ¶ 9 (Doc. 38-4); Knitter Decl. ¶ 9  
8 (Doc. 38-5); PSF ¶ 37(d)-(g)].

9 **Plaintiffs' Response to DSF ¶ 20:** Admitted.

10 **Plaintiffs' Response to DSF ¶ 21:** Disputed. [PSF ¶ 37(n), (v)-(z).]

11 **Plaintiffs' Response to DSF ¶ 22:** Disputed as to the first sentence. Plaintiffs object to the  
12 first sentence as not material to Defendants' summary judgment motion, as argumentative  
13 and unsupported by the record. Admitted with respect to the second sentence.

14 **Plaintiffs' Response to DSF ¶ 23:** Disputed. [DP's Ex. 3 at 25:3-12 (Doc. 491-2);  
15 Carpenter Dep. at 50:19-51:2, (Ex. 4 hereto)].

16 **Plaintiffs' Response to DSF ¶ 24:** Disputed. [Hanna Dep. at 39:15-46:1 (Ex. 5 hereto);  
17 Hanna Decl. ¶ 9, 16-17 (Doc. 38-3)].

18 **Plaintiffs' Response to DSF ¶ 25:** Admitted.

19 **Plaintiffs' Response to DSF ¶ 26:** Admitted.

20 **Plaintiffs' Response to DFS ¶ 27:** Admitted.

21 **Plaintiffs' Response to DSF ¶ 28:** Disputed. [Dep Ex. 169 at Pltfs 001002 (Licata  
22 5/31/23/23 Decl., Dep. Ex. 169, Doc. 499-2, at pg. 11/33)]. Plaintiffs object to the citations  
23 to DP's Ex. 8 (Jason Kaplan Declaration) at ¶ 5 and testimony as lacking foundation.

24 **Plaintiffs' Response to DSF ¶ 29:** Admitted.

25 **Plaintiffs' Response to DSF ¶ 30:** Admitted.

26 **Plaintiffs' Response to DSF ¶ 31:** Disputed. PSAF ¶ 21.

27 **Plaintiffs' Response to DSF ¶ 32:** Admitted.

28 **Plaintiffs' Response to DSF ¶ 33:** Disputed. [PSF ¶ 52; Dep. Ex. 199 at

1 DriverProvider319883 (Licata 5/31/23/23 Decl. Ex. 199, Doc. 501-7); Dep. Ex. 200 (Licata  
2 5/31/23/23 Decl., Ex. 200, Doc. 501-7); Norton Dep. at 105:4-108:10 (Licata 5/31/23 Decl.  
3 Ex. N, Doc. 499-1 at pg. 514-517/650); Quinley Dep. Tr. at 238:22-239:21(Licata  
4 5/31/23/23 Decl. Ex. O, Doc. 499-1 at pg. 550-551/650); Gross Dep. Tr. at 180:16-23  
5 (Licata 5/31/23/23 Decl., Ex. J, Doc. 499-1 at pg. 401/650)].

6 Plaintiffs object to DP's Ex. 8 (the Declaration of Jason Kaplan) ¶ 10 as failing to provide a  
7 sufficient basis and/or factual detail to establish personal knowledge.

8 **Plaintiffs' Response to DSF ¶ 34:** Admitted.

9 **Plaintiffs' Response to DSF ¶ 35:** Disputed. [PSF ¶¶ 170-173; 147, 153, 157, 158,  
10 159, 160-164, 167, 168]. PSAF ¶ 21.

11 **Plaintiffs' Response to DSF ¶ 36:** Admitted that DP has classified all of its Drivers as  
12 exempt from the FLSA overtime and purports to pay them primarily on a commission basis.<sup>3</sup>

13 **Plaintiffs' Response to DSF ¶ 37:** Disputed, subject to caveat in footnote 3.

14 **Plaintiffs' Response to DSF ¶ 38:** Disputed. [Carpenter Dep. at 30:13-15 (Ex. 4 hereto);  
15 Simmons Dep. at 81:13-15, (Ex. 6 hereto); Drozdowski Dep. at 19:14 (Ex. 7 hereto);  
16 Declaration of Rodney Lopez ¶ 4-5 (Ex. 2 hereto; Salazar Dep. Vol. II at 10:1-25(Ex. 9  
17 hereto)].

18 **Plaintiffs' Response to DSF ¶ 39:** Admitted.

19 **Plaintiffs' Response to DSF ¶ 40:** Admitted.

20 **Plaintiffs' Response to DSF ¶ 41:** Disputed. PSF ¶ 52; [[Licata 5/31/23 Decl. Ex. 199 at  
21 DriverProvider319883 (Doc. 501); Licata 5/31/23 Decl. Ex. 200 (Doc. 501); Norton Dep.  
22 Tr. at 105:4-108:10 (Licata 5/31/23 Decl. Ex. N, Doc. 499-1); Quinley Dep. Tr. at 238:22-  
23 239:21(Licata 5/31/23 Decl. Ex. O, (Doc. 499-1); Gross Dep. Tr. at 180:16-23 (Licata  
24 5/31/23 Decl. Ex. J, Doc. 499-1)].

25 Plaintiffs object to the Kendra Kaplan Decl. ¶ 2 (DP's Ex. 1) because it does not

26 \_\_\_\_\_  
27 <sup>3</sup> Although Plaintiffs do not dispute that DP refers to all Driver payments as "commissions,"  
28 as set forth in the briefing in this case, Plaintiffs dispute and do not concede that DP maintains  
a bona fide commission plan or that its payments constitute bona fide commissions.

1 demonstrate a sufficient basis and/or factual detail to establish personal knowledge and  
2 because it is conclusory and vague as to time.

3 **Plaintiffs' Response to DSF ¶ 42:** Disputed. PSF ¶ 52-54; [Licata 5/31/23 Decl. Ex. 199  
4 at DriverProvider319883 (Doc. 501); Licata 5/31/23 Decl. Ex. 200 (Doc. 501); Norton Dep.  
5 Tr. at 105:4-108:10 (Licata 5/31/23 Decl. Ex. N, Doc. 499-1); Quinley Dep. Tr. at 238:22-  
6 239:21(Licata 5/31/23 Decl. Ex. O, (Doc. 499-1); Gross Dep. Tr. at 180:16-23 (Licata  
7 5/31/23 Decl. Ex. J, Doc. 499-1); Abbasy Dep. Tr. at 139:8-143:2 (Licata 5/31/23 Decl.  
8 Ex. F, Doc. 499-1); Dep. Ex. 162 (Licata 5/31/23 Decl. Ex. F, Doc. 501)].

9 Plaintiffs object to the Kendra Kaplan Decl. ¶ 13 (DP's Ex. 1) because it does not  
10 demonstrate a sufficient basis and/or factual detail to establish personal knowledge and  
11 because it is conclusory and vague as to time.

12 **Plaintiffs' Response to DSF ¶ 43:** Admitted.

13 **Plaintiffs' Response to DSF ¶ 44:** Admitted to the extent that Drivers' compensation was  
14 not based on the actual amount paid by the customer. Disputed as to the remainder of the  
15 sentence which is immaterial. Plaintiffs further object to the Kendra Kaplan Decl. ¶ 15 (DP's  
16 Ex. 1) because it does not demonstrate a sufficient basis and/or factual detail to establish  
17 personal knowledge.

18 **Plaintiffs' Response to DSF ¶ 45:** Admitted.

19 **Plaintiffs' Response to DSF ¶ 46:** Disputed. PSAF ¶ 22.

20 **Plaintiffs' Response to DSF ¶ 47:** Admitted.

21 **Plaintiffs' Response to DSF ¶ 48:** Admitted.

22 **Plaintiffs' Response to DFS ¶48:** Admitted.

23 **Plaintiffs' Response to DSF ¶ 50:** Disputed. PSF ¶ 55. Further disputed as not supported  
24 by admissible record evidence. Plaintiffs object to the Kendra Kaplan Decl. ¶ 22 (DP's Ex.  
25 1) because it does not demonstrate a sufficient basis and/or factual detail to establish  
26 personal knowledge.

27 **Plaintiffs' Response to DSF ¶ 51:** Admitted.

28 **Plaintiffs' Response to DSF ¶ 52:** Admitted as to Drivers receiving hourly amounts for

1 certain tasks. Disputed that DP treated hourly compensation paid to Drivers for the Four  
2 Seasons or other assignments, like the Intel Shuttle, as anything “other” than  
3 “commissions.” PSF ¶¶ 51, 99-103.

4 **Plaintiffs’ Response to DSF ¶ 53:** Admitted. *See* PASF 23-24.

5 **Plaintiffs’ Response to DSF ¶ 54:** Admitted.

6 **Plaintiffs’ Response to DSF ¶ 55:** Admitted to the extent that DP did not pay Drivers  
7 overtime.

8 **Plaintiffs’ Response to DSF ¶ 56:** Admitted that Ms. Gabriel advised DP that its Drivers  
9 were exempt under the 7(i) exemption. Disputed as to the rest of the paragraph and the  
10 footnote as unsupported by any record evidence. [PSF ¶ 174; Gabriel Dep. Tr. at 18:24-19:23  
11 (Licata 5/31/23 Decl. Ex. I, Doc. 499-1)]. Plaintiffs object to DP’s footnote 5 as immaterial  
12 to issues in this case.

13 **Plaintiffs’ Response to DSF ¶ 57:** Admitted that the Wage and Hour Division (“WHD”)  
14 conducted an investigation of DP’s Wyoming operation in 2012.

15 **Plaintiffs’ Response to DSF ¶ 58:** The first sentence is disputed as lacking any evidentiary  
16 support and as vague and argumentative. Admitted with respect to the second sentence.  
17 Plaintiffs object to Ex. 8 (the Declaration of Jason Kaplan) ¶ 13 as failing to establish  
18 sufficient basis and/or factual detail to establish personal knowledge.

19 **Plaintiffs’ Response to DSF ¶ 59:** Disputed. [PSF ¶ 51-52, 54]; PSAF ¶ 27. Plaintiffs  
20 object to Ex. 8 (the Declaration of Jason Kaplan) ¶ 13 as failing to establish sufficient basis  
21 and/or factual detail to establish personal knowledge.

22 **Plaintiffs’ Response to DSF ¶ 60:** Admitted.

23 **Plaintiffs’ Response to DSF ¶ 61:** Admitted.

24 **Plaintiffs’ Response to DSF ¶ 62:** Disputed that Drivers were paid differently in 2002.  
25 PSAF ¶ 28. Admitted that this is Mr. Kaplan’s explanation for why he made no mention of  
26 the investigation to his counsel or the DOL in 2012.

27 **Plaintiffs’ Response to DSF ¶ 63:** Admitted.

28 **Plaintiffs’ Response to DSF ¶ 64:** Disputed. Plaintiffs object to DSF ¶ 64 and Ex. 8 at ¶



1 19 and Ex. 9 at 42:14-17; 45:25-46:5 as hearsay not subject to any exception.

2 **Plaintiffs' Response to DSF ¶ 65:** Admitted with respect to the first sentence. Disputed  
3 with respect to the second sentence which is not supported by any admissible evidence.  
4 Plaintiffs object to Ex. 8 at ¶ 20 as hearsay.

5 **Plaintiffs' Response to DSF ¶ 66:** Disputed. PSF ¶ 157-158; PSAF ¶ 29. Plaintiffs object  
6 to DP Ex. 8 at ¶ 21 and Ex. 9 at 42:14-17; 45:25-46:5 and DP's Exhibit 10 (sentence  
7 beginning "on the phone..." at DriverProvider028515) as hearsay not subject to any  
8 exception.

9 **Plaintiffs' Response to DSF ¶ 67:** Plaintiffs object to DSF ¶ 66 and to DP Ex. 8 at ¶ 22  
10 as hearsay.

11 **Plaintiffs' Response to DSF ¶ 68:** Disputed. [PSF ¶¶ 162, 166, 172; Gabriel Dep. Tr. at  
12 129:21-130:25; 135:2-25 (5/31/23 Licata Decl. Ex. I, Doc. 499-1)].

13 **Plaintiffs' Response to DSF ¶ 69:** Admitted that the investigator stated that DP "pays  
14 Chauffeur [sic] a commission based on the percentage of the base billable rate charged to  
15 the customer." Disputed as to the claim the DOL expressed an opinion as to whether the  
16 commission was "bona fide." (Doc. 499-2 at 21/33). Further disputed because DP has  
17 defined the term "Drivers" to mean all of all of their chauffeur Drivers and the Driver  
18 Provider to refer "collectively to the named corporate entity Defendants." The quoted  
19 portion is from the DOL's internal report regarding the Jackson Hole location and addresses  
20 DP's Wyoming Drivers only.

21 **Plaintiffs' Response to DSF ¶ 70:** Admitted that the quoted portion of the statement is  
22 in the DOL's internal report. Disputed as to the remainder of the statement of fact as it  
23 takes the quote of out context. Disputed because DP has defined the term Driver Provider  
24 to refer "collectively to the named corporate entity Defendants."

25 **Plaintiffs' Response to DSF ¶ 71:** Disputed because DP has defined the term "Drivers"  
26 to mean all of all of their chauffeur Drivers. Admitted that this is the finding solely with  
27 respect to the 19 Drivers at the Jackson Hole location at the time of the investigation.

28 **Plaintiffs' Response to DSF ¶ 72:** Disputed. [Ex. 14 at DriverProvider000013, referencing

1 a single employee]. Plaintiffs object to the characterization of the investigator's finding as  
2 argumentative and hearsay and the alteration in the quote to include the plural when the  
3 investigator uses the word in the singular.

4 **Plaintiffs' Response to DSF ¶ 73:** Disputed as not supported by the record citation. [PSF  
5 ¶ 168-169].

6 **Plaintiffs' Response to DSF ¶ 74:** Admitted.

7 **Plaintiffs' Response to DSF ¶ 75:** Disputed as lacking any evidentiary support and as  
8 vague and argumentative. [Compare Chauffer Compensation Plan provided to WHD  
9 investigator at Licata 5/31/23 Decl. Dep. Ex. 182 (Doc. 501-7) with Commission Plan at  
10 Doc. 38-4 Ex. B]. Plaintiffs object to Ex. 8 (the Declaration of Jason Kaplan) ¶ 13 and Ex.  
11 9 at 83:19-84:3; 85:2-6 as failing to establish sufficient basis and/or factual detail to establish  
12 personal knowledge.

13 **Plaintiffs' Response to DSF ¶ 76:** Plaintiffs admit that Defendants assert they have relied  
14 on the advice of their counsel and the 2012 investigation in classifying Drivers as exempt  
15 under the 7(i) exemption. Plaintiffs object to the Declaration of Jason Kaplan, Ex. 8 ¶ 23, as  
16 lacking foundation.

17 **Plaintiffs' Response to DSF ¶ 77:** Disputed. [PSAF ¶ 34-35]; Salazar Dep. Vol 2 at 38:8-  
18 39:18 (Ex. 9 hereto); Lopez Dep. at 75:7-76:10 (Ex. 10 hereto)]. Plaintiffs object to  
19 Defendants' citation of their own brief (Doc. 381) as support.

20 **Plaintiffs' Response to DSF ¶ 78:** Admitted.

21 **Plaintiffs' Response to DSF ¶ 79:** Admitted.

22 **Plaintiffs' Response to DSF ¶ 80:** Disputed. [PSAF ¶ 34-35.; Salazar Dep. Vol 2 at 38:8-  
23 39:18 (Ex. 9 hereto); Lopez Dep. at 75:7-76:10 (Ex. 10 hereto)].

24 **Plaintiffs' Response to DSF ¶ 81:** Admitted.

25 **Plaintiffs' Response to DSF ¶ 82:** Admitted.

26 **Plaintiffs' Response to DFS ¶ 83:** Admitted.

27 **Plaintiffs' Response to DSF ¶ 84:** Admitted.

28 **Plaintiffs' Response to DSF ¶ 85:** Admitted.

1 **Plaintiffs’ Response to DSF ¶ 86:** Disputed. [PSF ¶ 52; Dep. Ex. 199 at  
2 DriverProvider319883 (Licata 5/31/23 Decl. Ex. 199 at Doc. 501-7); Dep. Ex. 200 (Licata  
3 5/31/23 Decl. Ex. 200, Doc. 501-7); Norton Dep. Tr. at 105:4-108:10 (Licata 5/31/23 Decl.  
4 Ex. N, Doc. 499-1); Quinley Dep. Tr. at 238:22-239:21 (Licata 5/31/23 Decl. Ex. O, (Doc.  
5 499-1); Gross Dep. Tr. at 180:16-23 (Licata 5/31/23 Decl. Ex. J, Doc. 499-1)]. Plaintiffs  
6 object to Ex. 1 (the Declaration of Kendra Kaplan) ¶ 3, 4 as failing to establish sufficient  
7 basis and/or factual detail to establish personal knowledge.

8 **Plaintiffs’ Response to DSF ¶ 87:** Disputed. Doc. 38-2 at 67; PSF ¶ 51;

9 **Plaintiffs’ Response to DSF ¶ 88:** Admitted

10 **Plaintiffs’ Response to DSF ¶ 89:** Admitted.

11 **Plaintiffs’ Response to DSF ¶ 90:** Disputed. PSAF ¶ 22.

12 **Plaintiffs’ Response to DSF ¶ 91:** Admitted.

13 **Plaintiffs’ Response to DSF ¶ 92:** Admitted.

14 **Plaintiffs’ Response to DSF ¶ 93:** Disputed. PSF ¶ 55. Further disputed as not supported  
15 by admissible record evidence. Plaintiffs object to the Kendra Kaplan Decl. ¶ 22 (DP’s Ex.  
16 1) because it does not demonstrate a sufficient basis and/or factual detail to establish  
17 personal knowledge.

18 **Plaintiffs’ Response to DSF ¶ 94:** Admitted.

19 **Plaintiffs’ Response to DSF ¶ 95:** Disputed. [DriverProvider354577, (Licata 5/31/23  
20 Decl. Dep. Ex. 110, Doc. 501) (submitted under seal) (DP’s Regional Director saying “in-  
21 times are a challenge because chauffeurs do not get paid for that time.”); see also Licata  
22 5/31/23 Decl. Dep. Ex. 135, Doc. 501), (previously submitted under seal) (DP’s Billing  
23 Manager email to DP’s Executive Director reporting that a Driver was angry when he was  
24 required to report at 7 am, five hours before his pickup time and stating that DP “did not  
25 pay” the Driver for the three hours that he was required to work prior to the trip); Dep.  
26 Ex. 158 (Ex. 21 hereto) (Kendra Kaplan email stating stated that chauffer commissions are  
27 paid “only when they are driving.”); DriverProvider249757 (Licata 5/31/23 Decl. Dep. Ex.  
28 6, Doc. 501); Ex. 19 hereto (ads)]. Plaintiffs object to DP’s Ex. 1 (Declaration of Kendra

1 Kaplan) ¶ 8, DP's Ex. 19 at 155:9-20; Ex. 20 at 66:21-67:1 as impermissible opinion  
2 testimony and lacking foundation as to intent. PSAF ¶ 7. PSF ¶¶ 96-109.

3 **Plaintiffs' Response to DSF ¶ 96:** Disputed. PSF ¶¶ 51; PSAF ¶ 23-24.

4 **Plaintiffs' Response to DSF ¶ 97:** Disputed. [PSAF ¶¶ 5-6, 8-13, 24, 36]; Lopez Dep. at  
5 38:15-39:15, 71:19 (Ex. 10 hereto); Hanna Dep., at 24:2-8; 33:15-34:1 (Ex.5 hereto); Salazar  
6 Dep. Vol. 1 at 13:2-15:23, 17:20-18:8, 20:4 to 24:17( Ex. 8 hereto)]; Salazar Dep. Vol. 2 at  
7 54:17-55:20 (Ex. 9 hereto); Simmons Dep., at 62:23-63:5 (Ex. 6 hereto); Drozdowski Dep.  
8 at 21:11-22:19 (Doc. 491-4, Ex. 7)].

9 **Plaintiffs' Response to DSF ¶ 98:** Disputed. [PSAF ¶¶ 5-6, 8-13, 24, 36] ; Lopez Dep. at  
10 29:24-30:2; 38:24 - 39:15, 71:19 - 71:25, 91:13 to 91:20 (Ex. 10 hereto); Hanna Dep. at 24:2-  
11 8, 33:15-34:1, 58:13-19 (Ex. 5 hereto); Salazar Dep. Vol. 1 at 13:2-15:23, 17:20-18:8, 20:4 to  
12 24:17( Ex. 8 hereto)]; Salazar Dep. Vol. 2 at 54:17-55:20 (Ex. 9 hereto); Simmons Dep. at  
13 62:23-63:5 (Ex. 6 hereto); Carpenter Dep. at 16:24-17:12, 29:11-14, 30:2-7, 33:22-34:2, 36:4-  
14 24, 39:12-15, 37:7-11 (Ex. 4 hereto)].

15 **Plaintiffs' Response to DSF ¶ 99:** Admitted.

16 **Plaintiffs' Response to DSF ¶ 100:** Disputed. [PSAF ¶¶ 5-6, 8-13, 24, 36] ; Lopez Dep. at  
17 29:24-30:2; 38:24 - 39:15, 71:19 - 71:25, 91:13 to 91:20 (Ex. 10 hereto); Hanna Dep. at 24:2-  
18 8, 33:15-34:1, 58:13-19 (Ex. 5 hereto); Salazar Dep. Vol. 1 at 13:2-15:23, 17:20-18:8, 20:4 -  
19 24:17 (Ex. 8 hereto)]; Salazar Dep. Vol. 2 at 54:17-55:20 (Ex. 9 hereto); Simmons Dep. at  
20 62:23-63:5 (Ex. 6 hereto); Carpenter Dep. at 16:24-17:12, 29:11-14, 30:2-7, 33:22-34:2, 36:4-  
21 24, 39:12-15, 37:7-11, Ex. 4 hereto)].

22 **Plaintiffs' Response to DSF ¶ 101:** Disputed. [PSF ¶ 77-82]. Plaintiffs object to DP's cite  
23 to Ex. 4 in that that Named Plaintiff Mr. Lopez does not have foundation to establish how  
24 DP was tracking Driver time.

25 **Plaintiffs' Response to DSF ¶102:** Disputed. [PSF ¶ 77-82, 86; DP's Ex. 5 at 64:8-10  
26 (Doc. 491-3); 30(b)(6) Dep. Vol. 1, at 68:1-69:5 (Ex. 11 hereto)] [PSAF ¶ 30].

27 **Plaintiffs' Response to DSF ¶ 103:** Admitted. *See* PSAF ¶ 33.

28 **Plaintiffs' Response to DSF ¶ 104:** Admitted.

1 **Plaintiffs’ Response to DSF ¶ 105:** Admitted that DP has never compensated Drivers for  
 2 any time between trips. Disputed as to the remainder. PSF ¶¶ 77-82, 85-86; 127-139.

3 **Plaintiffs’ Response to DSF ¶ 106:** Disputed. PSF ¶ 85 (Licata 5/31/23 at ¶ 85).

4 **Plaintiffs’ Response to DSF ¶ 107:** Admitted as to reducing wages to what DP termed  
 5 “minimum wage.” See PSF ¶ 42, 98, 126.

6 **II. Plaintiffs’ Statement of Additional Facts that Preclude Judgment in**  
 7 **Defendants’ Favor (“PSAF”).**

8 1. DP’s “Revenue Performance Summary” (provides \$ [REDACTED] in total revenue, with  
 9 selected business segments that provide the following:

Selected Business Segment	Amount	Percent of Total
Corporate	[REDACTED]	37.5%
Affiliates	[REDACTED]	17.7%
Wholesale	[REDACTED]	12.1%
Retail <sup>4</sup>	[REDACTED]	11.1%
DMC	[REDACTED]	8.1%
Hotel	[REDACTED]	7.5%
Credit Card (otherwise unspecified)	[REDACTED]	2.6%
Individual	[REDACTED]	1.1%
Schools	[REDACTED]	0.8%
Weddings	[REDACTED]	0.5%
Broker (Dept. of Defense)	[REDACTED]	0.4%
Shuttle (Teton Village)	[REDACTED]	0.17%
Cash (Otherwise Unspecified)	[REDACTED]	0.0015%
<b>Total</b>	[REDACTED]	

19 [DriverProvider474204] (Ex. W-29 to 5/31/23 Licata Decl. Doc. 502-2).]

20 2. In the same “Revenue Performance Summary,” the following are the ten  
 21 largest customers by revenue (where there are multiple entries for a single customer, those  
 22 entries have been combined):

Customer	Revenue	% of Total	Business Segment
[REDACTED]	[REDACTED]	7.4%	Corporate

25 \_\_\_\_\_  
 26 <sup>4</sup> The majority of revenue within the “retail” category are also large corporate clients, e.g.,  
 27 [REDACTED], a destination management company (\$ [REDACTED]M), [REDACTED]  
 28 (transport for crew members) (\$ [REDACTED]); [REDACTED] Resort and Spa (\$ [REDACTED]I), and revenue from  
 DP’s public Yellowstone National Park tours (\$5 [REDACTED]). (DriverProvider474204) (Ex. W-  
 29 to 5/31/23 Licata Doc. 502 pt. 2/2).

			4.8%	Corporate
			4.0%	Affiliate
			3.4%	Hotel
			3.0%	Affiliate
			2.9%	DMC
			2.7%	Wholesale
			2.5%	Retail (DMC/Tour Co.)
		7	2.4%	Corporate
			2.8%	Wholesale
	<b>Total</b>	<b>1</b>	<b>35.9%</b>	

[DriverProvider474204] (Ex. W-29 to 5/31/23 Licata Decl. Doc. 502-2).]

3. In the same “Revenue Performance Summary” [DriverProvider474204] (Ex. W-29 to 5/31/23 Licata Decl. Doc. 502-2), the following are the ten largest customers by number of trips:

Customer	# of Trips	% of Total	Business Segment
	24,752	7.6%	Corporate
	17,307	5.3%	Corporate
	16,693	5.1%	Affiliate
	11,839	3.6%	Retail (DMC/Tour Co.)
	10,921	3.3%	Affiliate
	10,055	3.0%	Corporate
	12,233	3.7%	Corporate
	9,055	2.8%	DMC
	8,777	2.7%	Retail (Resort Hotel)
	7,798	2.4%	Wholesale
<b>Total</b>	<b>129,430</b>	<b>39.5%</b>	

4. In response to an interrogatory, DP identified third parties for whom it has “performed services pursuant to a written agreement,” [DP Resp. to Interrogatory No. 8 (Ex. W-33 to 5/31/23 Licata Decl. Doc. 502-2)]. DP also produced several other written contracts for corporations not included in that response, including Hoffman Construction [DriverProvider451643] (Ex. W-26 to 5/31/23 Licata Decl. Doc. 502-2), Intel [DriverProvider096431] (Ex. 24 hereto) . DP’s revenue report for 12/6/2016 through

1 12/31/2022 shows that even including a subset of the revenue from the third parties with  
 2 contracts listed in their interrogatory response, along with the Intel and Hoffman contracts,  
 3 the revenue received exceeds 30% of the total revenue.

Customer	Revenue	% of Total
[REDACTED]	\$ [REDACTED]	7.4%
[REDACTED]	\$ [REDACTED]	4.8%
[REDACTED]	\$ [REDACTED]	3.4%
[REDACTED]	\$ [REDACTED]	3.0%
[REDACTED]	\$ [REDACTED]	2.5%
[REDACTED]	\$ [REDACTED]	2.4%
[REDACTED]	\$ [REDACTED]	0.8%
[REDACTED]	\$ [REDACTED]	0.27%
[REDACTED]	\$ [REDACTED]	1.0%
[REDACTED]	\$ [REDACTED]	0.8%
[REDACTED]	\$ [REDACTED]	0.2%
[REDACTED]	\$ [REDACTED]	0.2%
[REDACTED]	\$ [REDACTED]	0.3%
[REDACTED]	\$ [REDACTED]	1.8%
[REDACTED]	\$ [REDACTED]	0.4%
[REDACTED]	\$ [REDACTED]	0.4%
[REDACTED]	\$ [REDACTED]	0.3%
[REDACTED]	\$ [REDACTED]	0.6%
[REDACTED]	\$ [REDACTED]	0.3%
<b>Total</b>	<b>\$ 2 [REDACTED]</b>	<b>30.87%</b>

5. Drivers testified that they were hired based on hourly rates or equivalents and  
 understood they were being paid based on hourly rates or equivalents. [Hanna Dep., at 24:2-  
 8; 33:15-34:1 (Ex. 5 hereto) (Mr. Hanna told he would be paid \$12-13 an hour when hired;  
 when he first started working he did not understand that Defendants were not paying him an  
 hourly rate and when he found out he was being paid on a commission, he could not ascertain  
 how those commissions were calculated); Salazar Dep., Vol. 1 at 13:2-15:23, 17:20-18:8 ( Ex.  
 8 hereto)] (Ms. Salazar was “always paid hourly” and repeatedly questioned her pay because  
 she could not understand the pay rates), 24:5-17 (Ms. Salazar was not told that she was paid  
 on a commission basis, just that she was paid hourly) Salazar Dep., Vol 2, at 10:9-25 (Ex. 9  
 hereto) (Ms. Salazar did not receive commission plan from DP), 55:15-20 (Ms. Salazar had  
 no understanding that commissions were meant to cover pre-trip and post-trip work); Lopez

1 Dep. at 38:15-39:22 (Ex. 10 hereto) (when he received offer from DP, Mr. Lopez understood  
2 that his pay “was completely an hourly rate” with “no mention of any kind of extra percentage  
3 or compensation or any of that nature.”); Howard Dep., at 12:7-13:12, 16:19-23 (Ex. 12  
4 hereto) (when hired, DP told Ms. Howard that “it would be \$18 an hour salary, or hourly”  
5 and that “it was \$18 an hour”); Simmons Dep., at 21:8-15, 27:13-25, 62:23-64:2 (Ex. 6 hereto)  
6 (when hired, Mr. Simmons was told that he would receive hourly pay for errands, sedan and  
7 van work, would receive commission and hourly pay as a motor coach operator); 62:23-63:5  
8 (Mr. Simmons understood he “was being paid from the time I got there to the time I finished”  
9 and that he believed he would be paid for his pre-trip and post-trip work as “part of my  
10 hourly compensation or added on.”)].

11 6. DP’s managers themselves didn’t understand what was covered and not  
12 covered by DP’s commission plans. For example, Katy Quinley, DP’s Regional Director,  
13 asked in November 2017 “Do we currently pay for pre/post trips?” and Jim Mayor, DP’s  
14 Director of Operations responded: “Since we are not on hourly pay rates all the time, I am  
15 not sure we are capturing the pre and post trip time to pay the drivers.” [Dep. Ex. 6 at  
16 DriverProvider249757 (Licata 5/31/23/23 Decl. Ex. 6, Doc. 501-1)].

17 7. Drivers do not get paid for pre-trip or post-trip time. [PSF ¶¶ 95-109; 5/31/23  
18 Declaration of Michael Licata (Doc. 504) ¶¶ 95-109; Dep. Ex. 110 at DriverProvider345677,  
19 (Licata 5/2/23 Decl. Ex. 2 (Doc. 481) (DP’s Regional Director saying “in-times are a  
20 challenge because chauffeurs do not get paid for that time. Which team is Kaity playing on?”);  
21 Dep. Ex. 135 (Licata 5/31/23 Decl. Ex. 135, Doc. 501-5) (DP’s Billing Manager email to  
22 DP’s Executive Director reporting that a Driver was angry when he was required to report at  
23 7 am, five hours before his pickup time and stating that DP “did not pay” the Driver for the  
24 three hours that he was required to work prior to the trip); Dep. Ex. 158 (Ex. 21 hereto)  
25 (Kendra Kaplan email stating stated that chauffer commissions are paid “only when they are  
26 driving.”)].

27 8. The record and testimony establish that DP consistently advertised and  
28 solicited Drivers without ever mentioning commissions, instead offering specific pay by the



1 hour or so-called hourly rate equivalents which any reasonable employee would expect to  
2 cover all hours worked. [*See, e.g.*, Ex. 19 hereto including DriverProvider007859 (shuttle  
3 driver ad: “\$18/hr., FULL TIME”); DriverProvider007860 (shuttle driver  
4 overnight/graveyard shift ad: “\$16.50/hr., FULL-TIME”); DriverProvider007823 (Tucson  
5 Driver ad: “\$15-18/hr equivalent for non-CDL plus gratuities, \$15-24/hr equivalent for CDL  
6 plus gratuities”); DriverProvider007828 (Phoenix Driver ad: “\$15.55-17.87/hr equivalent”);  
7 DriverProvider007832 (Tucson Driver ad: “\$18.74 - \$22.81/hr. equivalent”);  
8 DriverProvider007833 (“\$18/hr., equivalent, FULL-TIME”)].

9 9. Mr. Lopez did not understand until approximately a year after he started  
10 working for The Driver Provider that he was not being paid for his pre-trip and post-trip  
11 duties. [Lopez Dep. at 29:24-30:2; 38:24 -39:15, 71:19 to 71:25, 91:13 – 91:20 (Ex. 10 hereto)].

12 10. Mr. Hanna testified he was told by the Driver Provider when he was hired that  
13 he would be paid \$12-13 an hour, did not understand Defendants were not paying him an  
14 hourly rate and when he found out he was being paid on a commission, he could not ascertain  
15 how those commissions were calculated. [Hanna Dep. at 24:2-8, 33:15-34:1, 58:13-19 (Ex. 5  
16 hereto)].

17 11. Ms. Salazar testified that she was paid hourly and that the way the payments  
18 were made by DP, “Nobody understood it. They could never explain it, so nobody ever  
19 knew how we were paid.” [Salazar Dep. Vol. 1 at 13:2-15:23, 17:20-18:8, 20:4 -24:17 (Ex. 8  
20 hereto)]; Salazar Dep. Vol. 2 at 54:17-55:20 (Ex. 9 hereto)].

21 12. Driver Rory Simmons testified he was led to believe he “was being paid from  
22 the time I got there to the time I finished and that he believed he would be paid for his pre-  
23 trip and post-trip work as “part of my hourly compensation or added on.” [Simmons Dep. at  
24 62:23-63:5 (Ex. 6 hereto)].

25 13. Mr. Carpenter testified that when he was hired, he understood that he would  
26 be paid an hourly rate but couldn’t recall the exact amount. [Carpenter Dep. at 16:24-17:12,  
27 29:11-14, 30:2-7 (Ex. 4 hereto)]. He further testified he did not know he was not being paid  
28 for his pre-trip time until a few months after he was employed and he and other drivers

1 “started figuring out our hours, based on the time sheets and based on what we know we  
2 worked and the actual checks and what we were being paid.” [Carpenter Dep. at 33:22-34:2,  
3 37:7-11 (Ex. 4 hereto)]. When he asked DP management about his pay, he was not given any  
4 sort of answer as to whether he was being paid for his pre-trip hours. [Carpenter Dep. at  
5 36:4-24, 39:12-15 (Ex. 4 hereto)].

6 14. Only one Named Plaintiff, Gregory Hanna, received a commission plan while  
7 employed by DP and he received that commission plan two years after he started  
8 employment; other Arizona Drivers likewise were not provided with copies of any  
9 commission plans during their employment. [Carpenter Dep. at 30:13-15 (Ex. 4 hereto);  
10 Simmons Dep. at 81:13-15 (Ex. 6 hereto); Drozdowski Dep. at 19:14 (Ex. 7 hereto); (6/26/23  
11 Decl. of Rodney Lopez ¶ 4-5 (Ex. 2 hereto); Salazar Dep. Vol. 2 at 10:1-25 (Ex. 9 hereto)].

12 15. Most of DP’s vehicle fleet (63%) are larger vehicles, including 73 buses (35  
13 “city” buses, 21 “mini” buses, 17 full coach buses, & 3 shuttle buses) and 3 “Textron Tugs”  
14 (think Disneyland tram) with 10 tug trailers, and 16 sprinter vans. [PSF ¶ 14].

15 16. Mr. Hanna requested and received a reduced work schedule based on a note  
16 from his doctor and did not work what the “average” Driver works. [Hanna Dep. at 108:4-  
17 25; 110:3-111:13 (Doc. 513-1, Ex. 7 at pg. 75-76/110)].

18 17. Wayne Carpenter testified that his pre-trip duties typically took 20-30 minutes  
19 if everything went fine and post-trip duties took around 45 minutes if everything was perfect.  
20 [DP’s Ex. 3 at 25:3-12 (Doc. 491-2); Carpenter Dep. at 50:19-51:2 (Ex. 4 hereto)].

21 18. At the time of the 2002/2003 DOL investigation DP was paying its Drivers “a  
22 designated amount of monies per trip.” [Dep Ex. 169 (Licata 5/31/23/23 Decl. Ex. 169  
23 Doc. 499-2 at pg. 11/33)].

24 19. The commission plans have changed significantly over time. For example, the  
25 commission plan provided to the DOL in 2012 stated a minimum wage guarantee while the  
26 commission plan provided to Mr. Hanna did not. [Compare Chauffer Compensation Plan  
27 provided to WHD investigator (Dep. Ex. 182 (Doc. 501-7) with Commission Plan dated  
28 November 2018 (Doc. 38-4 Ex. B)].

1           20. DP was often unable to provide transport services to members of the public  
2 because of DP's commitments to its corporate clients, including clients with whom DP  
3 maintained contracts and recurrent business, in which case it would "farm out" the trip to  
4 other companies. [DriverProvider361377-361383, at DriverProvider361381 (. Ex. 28 hereto)  
5 ("I did not have any available DP chauffeurs due to the school runs, the CITI program, and  
6 the RMC group runs for the morning. I had to farm this..."); [DriverProvider044633 (Ex. 18  
7 hereto)] ("we will have to farm" because available chauffeurs are assigned to Intel and CAE);  
8 [DriverProvider041140] ("10 sedan and SUV runs farmed" because Boston Coach had  
9 "approximately 100 runs in Phoenix")].

10           21. Stacy Gabriel advised Defendants that the 7(i) exemption had multiple  
11 requirements, including revenue requirements, recordkeeping requirements, and  
12 compensation requirements. [Licata 5/31/23 Decl. (Doc. 504) ¶ 166]; [Dep. Ex. 184(Licata  
13 5/31/23 Decl. Ex. 184, Doc. 501-7)].

14           22. The amount of so-called "commission" a Driver would receive for a particular  
15 run was predetermined based on the Driver's assigned "level." "The percentage rate assigned  
16 to the Chauffeur is a function of the Chauffeur level ranking as compared to his/her  
17 peers...Both the percentage rates and level rankings assigned to the Chauffeur [are]  
18 determined by The Driver Provider in its sole discretion." [Doc. 335 at pt. 5/5, Ex. AA, pg.  
19 5/62]. Drivers who were already assigned at the highest "level" had no ability to increase their  
20 commission percentages through being promoted to a higher level. [*Id.*]

21           23. The written document titled "Chauffeur Compensation Additional Items" was  
22 not created until February 2019, after all three of the four Named Plaintiffs had already left  
23 employment with the Driver Provider and long after Plaintiff Hanna began employment.  
24 (Doc. 413 ¶¶ 22, 25, 28, 31). [DriverProvider131086-094 (Ex. 25 hereto)]. Creating the  
25 document and took substantial back and forth between managers because many did not  
26 understand how or whether DP even compensated for certain tasks. [*Id.*]

27           24. Compensation for the "stand" is not set forth in any written document was  
28 paid to Drivers as "commission," even though it was an hourly rate paid a minimum wage

1 and only for the time the Driver was assigned to be at the hotel. [PSF ¶ 97; Hanna Decl. Ex.  
2 C (Doc. 38-4 pg. 64/69)].

3 25. When DP would bill the Four Seasons, it would submit invoices for each trip  
4 performed in the billing period, which could be tens of thousands of dollars of trips.  
5 [DriverProvider330972 (Ex. 27 hereto)].

6 26. For some single corporate events, The Driver Provider charges as much as  
7 \$145,000. [DriverProvider278793-99 (Ex. 26 hereto)].

8 27. In 2012, most of the Driver's compensation was 15% gratuity and a smaller  
9 amount of "commission on the base rate." [Dep. Ex. 184 at DriverProvider005961-  
10 DriverProvider005962 (Licata 5/31/23 Decl. Ex. 184, Doc. 501-7) ("the commission  
11 percentage is always lower than the gratuity percentage")].

12 28. The January 29, 2003 Compliance Action Report states that DP "paid drivers  
13 by the billable hours thus did not record actual hours worked" and that "the investigation  
14 findings show that drivers receive a designated amount of monies per trip. The amount paid  
15 per trip depends on the vehicle the chauffeur drives, experience, and the run done. The set  
16 rate per run depends on the location." [Dep. Ex. 169 (Doc. 499-2 at 11/33)].

17 29. In 2012 the DOL requested that DP produce records of Drivers' hours  
18 worked. Instead, DP produced trip records that did not capture pre- and post-trip work time,  
19 and Jason Kaplan explained that "[t]ypically, drivers are expected to arrive at the work site  
20 approximately one hour before the scheduled pick up time and continue to work for  
21 approximately 30-60 minutes after the drop off to return and clean the vehicle."  
22 [DriverProvider029953-DriverProvider029954 (Ex.17 hereto)].

23 30. Defendants produced zero Limo Log entries for Plaintiff Carpenter, two  
24 entries for Plaintiff Salazar, one entry for Plaintiff Lopez, and eight entries for Plaintiff Hanna.  
25 [DriverProvider001335 (Ex. 16 hereto)].

26 31. Jason Kaplan testified that he did not know whether Limo Logs were ever used  
27 for payroll purposes. [J. Kaplan Dep. Tr. at 99:1-100:6 (Ex. 13 hereto)].  
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