

1 Jahan C. Sagafi (Cal. Bar No. 224887)  
Relic Sun (Cal. Bar No. 306701)  
2 OUTTEN & GOLDEN LLP  
One Embarcadero Center, 38th Floor  
3 San Francisco, CA 94111  
Telephone: (415) 638-8800  
4 Facsimile: (415) 638-8810  
E-Mail: [jsagafi@outtengolden.com](mailto:jsagafi@outtengolden.com)  
5 E-Mail: [rsun@outtengolden.com](mailto:rsun@outtengolden.com)

6 Troy L. Kessler (*pro hac vice*)  
Marijana Matura (*pro hac vice*)  
7 SHULMAN KESSLER LLP  
534 Broadhollow Road, Suite 275  
8 Melville, New York 11747  
Telephone: (631) 499-9100  
Facsimile: (631) 499-9120  
9 E-Mail: [tkessler@shulmankessler.com](mailto:tkessler@shulmankessler.com)  
E-Mail: [mmatura@shulmankessler.com](mailto:mmatura@shulmankessler.com)

Jason C. Marsili (SBN 233980)  
POSNER & ROSEN LLP  
3600 Wilshire Boulevard, Suite 1800  
Los Angeles, CA 90010  
Telephone: (213) 389-6050  
Facsimile: (213) 389-0663  
E-Mail: [jmarsili@posner-rosen.com](mailto:jmarsili@posner-rosen.com)

10 *Attorneys for Plaintiff and proposed Collective and Class members*

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

13 RYAN GORDON, on behalf of  
himself, and all others similarly  
14 situated,

Plaintiff,

15 v.

16 MICHIGAN LOGISTICS, INC. d/b/a  
DILIGENT DELIVERY SYSTEMS,  
17 CALIFORNIA LOGISTICS, INC.  
d/b/a DILIGENT DELIVERY  
18 SYSTEMS, and INTERAMERICAN  
MOTOR  
19 CORPORATION,

Defendants.

Case No. 2:17-CV-01802

**COLLECTIVE ACTION**

**CLASS ACTION**

**FIRST AMENDED COMPLAINT  
FOR VIOLATIONS OF FLSA AND  
STATE WAGE AND HOUR  
LAWS**

**DEMAND FOR JURY TRIAL**

21

1 Plaintiff Ryan Gordon (hereinafter “Plaintiff”) alleges, on behalf of himself  
2 and classes of those similarly situated, as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has federal question jurisdiction over this action pursuant to  
5 28 U.S.C. § 1331 and section 16(b) of the Fair Labor Standards Act (“FLSA”),  
6 29 U.S.C. § 216(b).

7 2. Furthermore, this Court has federal question jurisdiction over  
8 Plaintiff’s declaratory judgment action brought pursuant to 28 U.S.C. § 2201.  
9 Plaintiff’s declaratory judgment action involves adjudication of federal issues,  
10 because the arbitration agreement at issue seeks to impair, and has the practical  
11 effect of impairing, Plaintiff’s substantive and procedural rights under the FLSA.

12 3. This Court also has original jurisdiction over this action under the  
13 Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in  
14 which: (1) there are 100 or more members in the proposed class; (2) at least some  
15 members of the proposed class have a different citizenship from Defendants; and  
16 (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate.

17 4. In addition, this Court has supplemental jurisdiction under 28 U.S.C.  
18 § 1367 over Plaintiff’s state wage and hour law claims because those claims derive  
19 from a common nucleus of operative fact.

20 5. This Court is empowered to issue a declaratory judgment pursuant to  
21 28 U.S.C. §§ 2201 and 2202.



1 assigned IMC location each workday and delivered automobile parts on behalf of  
2 Defendants.

3 12. Plaintiff and Class Members typical workweek consisted of arriving at  
4 an IMC location by approximately 7:00 a.m. and typically ended their workday at  
5 5:00 p.m., upon returning to their assigned IMC location after their last delivery  
6 stop in order to return invoices, checks, cash and/or returned parts on a Monday  
7 through Friday basis. Plaintiff and Class Members also worked on Saturdays from  
8 approximately 8:00 a.m. until 2:00 p.m., but generally were not required to return to  
9 their assigned IMC location after their last delivery on Saturdays.

10 13. In a typical workday, Defendants required Plaintiff and Class  
11 Members to complete approximately 10 routes or “runs” per day and each route  
12 consisted of approximately 3 to 8 separate delivery stops to different IMC  
13 customers. Plaintiff and Class Members drove approximately 300 to 400 miles per  
14 day in order to complete their deliveries for Defendants, resulting in up to 2,400  
15 miles per week and 124,000 miles per year.

16 14. IMC controls the day to day tasks and work of Plaintiff and Class  
17 Members through an IMC dispatcher, who is physically present at each IMC  
18 location, and controls Plaintiff and Class Members: fixed weekly schedule, order in  
19 which they completed deliveries, and rate at which they completed deliveries.

20 15. Diligent has the authority to discipline and terminate Plaintiff and  
21 Class Members, however, IMC also has the ability to remove Plaintiff and Class

1 Members from IMC locations and the ability to influence Diligent's decisions in  
2 terminating and disciplining.

3 16. Defendants unlawfully classified Plaintiff and Class Members  
4 nationwide as independent contractors, despite the fact that they were treated as  
5 employees, in order to avoid paying them overtime wages.

6 17. Plaintiff satisfied all applicable legal tests for employment status. In  
7 addition, Defendants cannot bear their burden of showing that Plaintiff fits within  
8 one of the narrow exemptions to the FLSA or applicable state wage and hour law.  
9 Therefore, Plaintiff and Class Members are employees under the FLSA and as such,  
10 are entitled to overtime pay as well as additional remedies available under  
11 applicable law.

12 18. Defendants have willfully refused to pay Plaintiff and Class Members  
13 the required overtime compensation for overtime hours worked, have failed to keep  
14 legally required time records, subjected Plaintiff and Class Members to unlawful  
15 deductions from their pay, late and inconsistent payment of wages, and required  
16 Plaintiff and Class Members to pay for insurance, gas, repairs, and maintenance of  
17 their own vehicles with no reimbursement by Defendants.

18 19. Defendants paid Plaintiff and Class Members approximately \$1,100 on  
19 a bi-monthly basis; however, in workweeks where Defendants failed to pay  
20 Plaintiff and Class Members on-time, Defendants occasionally provided Plaintiff  
21 and Class Members, who were surviving paycheck to paycheck, with gas cards so

1 that their Drivers could afford to, at a minimum, complete their assigned routes for  
2 Defendants.

3 20. Defendants' practices violate the FLSA and the state laws pled herein.  
4 Plaintiff seeks declaratory relief; overtime compensation for all overtime work  
5 required, suffered, or permitted by Defendants; liquidated and/or other damages and  
6 penalties as permitted by applicable law; benefits recoverable under applicable law  
7 and interest; and attorneys' fees and costs. Plaintiff also seeks declaratory relief  
8 regarding the unconscionability and inapplicability of Diligent's arbitration  
9 agreement.

10 **SUMMARY OF COLLECTIVE AND CLASS ACTION ALLEGATIONS**

11 21. Plaintiff brings this action on behalf of himself and all persons who  
12 have worked for Defendants in any location covered by the FLSA<sup>1</sup> as delivery  
13 drivers (the "Class Position"), at any time from March 6, 2014 (three years prior to  
14 the filing of the Complaint (ECF Doc. No. 1)) through the date of the final  
15 disposition of this action (the "Nationwide FLSA Period"). This group is  
16 hereinafter referred to as the "Nationwide FLSA Plaintiffs."

17 22. The proposed FLSA class includes: all current and former Drivers  
18 who performed delivery services for Defendants nationwide and were or are  
19 classified as independent contractors and/or not classified as employees at any time  
20

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21 <sup>1</sup> The FLSA covers work performed in the fifty states, Washington, D.C., Guam, and other locations. 29 U.S.C. § 213(f).

1 since March 6, 2014 (three years prior to the filing of the Complaint).

2 23. Plaintiff Ryan Gordon (“the California Named Plaintiff”) also brings  
3 this action on behalf of all persons who have worked for Defendants in California  
4 in the Class Position (“the California Class”), at any time since March 6, 2013 (four  
5 years prior to the filing of the Complaint) through the date of the final disposition  
6 of this action (the “California Class Period”).

7 24. The California Class is hereinafter referred to as the “State Law  
8 Class.”

9 **THE PARTIES**

10 **I. Plaintiff**

11 **A. Ryan Gordon**

12 25. Plaintiff Ryan Gordon has worked for Defendants as a Driver from  
13 approximately 2006 to Present.

14 26. Specifically, he has worked for Defendants as a Driver during the  
15 following time periods:

16 a. From 2006 to 2013, he worked for Diligent out of various car  
17 dealerships in California.

18 27. Beginning in 2013 Mr. Gordon began working as a driver for  
19 Defendants at various IMC locations.

20 28. Mr. Gordon worked for Defendants as a supervisor from mid-2014 to  
21 the beginning of 2015 before being demoted to a driver in the beginning of 2015.

1           29. Mr. Gordon worked as a driver for Defendants exclusively working  
2 out of the IMC Canoga Park location in Los Angeles County until November 2016.

3           30. Mr. Gordon consents to sue for violations of the FLSA, pursuant to  
4 29 U.S.C. §§ 216(b) and 256. His consent to join form is attached to this First  
5 Amended Complaint.

6           31. Starting in approximately the beginning of 2015 through November  
7 2016, Mr. Gordon was required to report to work for Defendants at the IMC  
8 location in Canoga Park, California, at approximately 7:00 a.m. until approximately  
9 5:30 p.m. every Monday through Friday, and from approximately 8:00 a.m. until  
10 approximately 2:30 p.m. one Saturday per month.

11           32. From April through September, due to a higher volume of traffic in the  
12 Los Angeles County area during the summer months, Mr. Gordon's routes  
13 generally took more time to be completed, and on Mondays through Fridays, he  
14 frequently worked until 7:00 p.m. at night.

15           33. On the week of September 21, 2015, in addition to working his  
16 regularly scheduled hours that workweek, Mr. Gordon did not complete his  
17 workday until 8:30 p.m. on September 23, 2015.

18           34. During most workweeks between the beginnings of 2015 through  
19 November 2016, Mr. Gordon worked between 50 to 60 hours per week.

20           35. Defendants failed to provide Mr. Gordon with a meal or rest break  
21 throughout his employment with Defendants.



1           36. Starting in 2015 until November 2016, when Mr. Gordon was a driver  
2 for Defendants at IMC's Canoga Park location, the IMC dispatcher George (last  
3 name unknown) would call Mr. Gordon approximately 5 times per route, and up to  
4 15 times per day to check on the status of his deliveries, where he was located on  
5 his route, and inquire into how much longer it would take him to complete the  
6 deliveries.

7           37. The IMC Canoga Park dispatcher also complained to Mr. Gordon's  
8 Diligent supervisor regarding the amount of time Mr. Gordon and other Drivers  
9 took to complete deliveries. The Diligent supervisor would then either verbally  
10 discipline or transfer the Drivers to a different IMC location.

11           38. Defendants failed to compensate Mr. Gordon for all of the time  
12 worked in excess of 40 hours per week at a rate of at least 1 and ½ times his regular  
13 hourly rate, throughout the entire term of his employment with Defendants.

14           39. Defendants made unlawful deductions from Mr. Gordon's pay of  
15 \$3.00 per workday for "administrative fee" in order to offset Defendants'  
16 "compliance and administration" costs.

17           40. Defendants made unlawful deductions of approximately \$12.00 from  
18 Mr. Gordon's pay approximately 6 times per year of employment with Defendants  
19 in order to pay for Defendants' uniform shirts.

20           41. Defendants occasionally provided Mr. Gordon pre-paid gas cards in  
21 workweeks where Defendants failed to pay Mr. Gordon on time. Defendants would

1 later deduct these gas cards from Mr. Gordon’s bi-monthly pay.

2 42. Defendants made unlawful deductions from Mr. Gordon’s pay for  
3 missing or damaged IMC automobile parts.

4 43. Defendants failed to furnish Mr. Gordon with an accurate statement of  
5 wages listing hours worked, rates paid, gross wages, allowances and deductions  
6 taken, and net wages paid.

7 44. Upon information and belief, Defendants failed to keep accurate  
8 records of hours worked by Mr. Gordon.

9 **II. Defendants**

10 **A. Michigan Logistics, Inc. (“MLI”)**

11 45. Defendant Michigan Logistics, Inc. (“MLI”) is a corporation  
12 incorporated under the laws of Texas.

13 46. MLI does business as Diligent Delivery Systems.

14 47. MLI is headquartered at 333 N. Sam Houston Parkway East #1000,  
15 Houston, Texas 77060.

16 48. MLI lists on its website that it is engaged in the business of shipping  
17 and delivery. See <http://diligentusa.com/> (last visited Feb.15, 2017).

18 49. At all material times, MLI has been an “employer” within the meaning  
19 of the FLSA and California law. 29 U.S.C. §203(d) and Cal. Lab. Code §1171.

20 50. At all material times, MLI has been and remains an enterprise within  
21 the meaning of the FLSA by virtue of business it conducts as described herein. 29

1 U.S.C. § 203(r) & (s).

2 51. During the relevant time period, MLI has operated and continues to  
3 operate a business principally consisting of logistic management, namely furnishing  
4 Drivers to companies around the country.

5 **B. California Logistics, Inc. (“CAL, Inc.”)**

6 52. CAL, Inc. is a corporation incorporated under the laws of Texas.

7 53. CAL, Inc. does business as Diligent Delivery Systems.

8 54. CAL, Inc. was and still is a domestic corporation organized and  
9 existing pursuant to the laws of the State of California, and is headquartered at 333  
10 N. Sam Houston Parkway East, #1000, Houston, Texas 77060.

11 55. On information and belief, California Logistics, Inc. is a subsidiary of  
12 Michigan Logistics, Inc. and Michigan Logistics, Inc. does business in the State of  
13 California under California Logistics, Inc.

14 56. At all material times, CAL, Inc. has been an employer within the  
15 meaning of the FLSA and California law. 29 U.S.C. §203(d) and Cal. Lab. Code  
16 §1171.

17 57. At all material times, CAL, Inc. has been and remains an enterprise  
18 within the meaning of the FLSA by virtue of business it conducts as described  
19 herein. 29 U.S.C. § 203(r) & (s).

20 58. During the relevant time period, CAL, Inc. has operated and continues  
21 to operate a business principally consisting of logistic management, namely

1 furnishing Drivers for delivery companies in the State of California.

2 C. **Interamerican Motor Corporation (“IMC”)**

3 59. IMC is a corporation incorporated under the laws of California.

4 60. IMC is headquartered at 8901 Canoga Avenue, Canoga Park,  
5 California 91304.

6 61. At all material times, IMC has been an “employer” within the meaning  
7 of the FLSA and California Law. 29 U.S.C. §203(d) and Cal. Lab. Code §1171.

8 62. At all material times, IMC has been and remains an enterprise within  
9 the meaning of the FLSA by virtue of business it conducts as described herein. 29  
10 U.S.C. § 203(r) & (s).

11 63. During the relevant time period, IMC has operated and continues to  
12 operate a business primarily consisting of retail sales and distribution of automobile  
13 parts.

14 D. **Joint Employment Relationship**

15 64. MLI, CAL Inc., and IMC formed a joint employment relationship with  
16 respect to Plaintiff and the Class Members in furtherance of their respective  
17 business purposes including, but not necessarily limited to delivery of auto parts to  
18 customers of IMC by work performed by Plaintiff and Class Members.

19 65. Defendants constitute a unified operation

20 66. Defendants constitute a common enterprise.

21 67. Defendants have interrelated operations.

1           68. Defendants have common management.

2           69. Defendants have a centralized control of labor relations.

3           70. Defendants have common ownership.

4           71. Diligent hires employees who are supervised by IMC.

5           72. IMC directs the day to day work of the Drivers who are hired by

6 Diligent.

7           73. Defendants share their Drivers between the IMC locations in

8 California.

9           74. Defendants commingled funds with each other.

10          75. Defendants Michigan Logistics, Inc. and California Logistics, Inc.

11 share the same physical addresses in the State of Texas.

12          76. Defendants constitute a single employer.

13          77. Defendants constitute an integrated enterprise.

14          78. As described herein, at all material times, Defendants have jointly

15 provided direction to Plaintiff and Class Members and have jointly maintained

16 communication with, and shared control of Plaintiff and Class Members with

17 regard to the assignment, method, manner and monitoring the progress of their

18 work and deliveries

19          79. As such, Defendants are each directly, jointly and severally liable for

20 violations in this case perpetrated against Plaintiff and Class Members.

21          80. All of IMC's store locations are advertised as a single integrated

1 enterprise on their website at: <http://www.imcparts.net/locations/index.shtml#>.

2 81. Defendant MLI employed employees, including Plaintiff herein, who  
3 regularly engaged in commerce or in the production of goods for commerce or in  
4 handling, selling or otherwise working on goods and materials which have moved  
5 in or been produced for commerce within the meaning of Section 3(b), (g), (i) and  
6 (j) of the FLSA, 29 U.S.C. §203(b), (i), (j), (r) & (s)(A)(i).

7 82. Defendant CAL, Inc. employed employees, including Plaintiff herein,  
8 who regularly engaged in commerce or in the production of goods for commerce or  
9 in handling, selling, or otherwise working on goods and materials which have  
10 moved in or been produced for commerce within the meaning of Section 3(b), (g),  
11 (i) and (j) of the FLSA, 29 U.S.C. §203(b), (i), (j), (r) & (s)(A)(i).

12 83. Defendant IMC employed employees, including Plaintiff herein, who  
13 regularly engaged in commerce or in the production of goods for commerce or in  
14 handling, selling, or otherwise working on goods and materials which have moved  
15 in or been produced for commerce within the meaning of Section 3(b), (g), (i) and  
16 (j) of the FLSA, 29 U.S.C. §203(b), (i), (j), (r) & (s)(A)(i).

17 84. Defendant MLI's annual gross volume of sales made or business done  
18 is not less than \$500,000 within the meaning of 29 U.S.C. §203(s)(A)(ii).

19 85. Defendant CAL, Inc.'s annual gross volume of sales made or business  
20 done is not less than \$500,000 within the meaning of 29 U.S.C. §203(s)(A)(ii).

21 86. Defendant IMC's annual gross volume of sales made or business done

1 is not less than \$500,000 within the meaning of 29 U.S.C. §203(s)(A)(ii).

2 87. At all times hereinafter mentioned, the activities of the Defendants  
3 constituted an “enterprise” within the meaning of Section 3(r) & (s) of the FLSA.  
4 29 U.S.C. §203(r) & (s).

5 88. At all relevant times hereinafter mentioned, Defendants employed  
6 employees including Plaintiff herein, who regularly engaged in commerce or in the  
7 production of goods for commerce or in handling, selling, or otherwise working on  
8 goods and materials which have moved in or been produced for commerce within  
9 the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. §203(b), (i), (j),  
10 (r) & (s)(A)(i).

11 89. At all relevant times, Defendants maintained control, oversight, and  
12 direction over Plaintiff and Class Members, including timekeeping, payroll and  
13 other employment practices that applied to them.

14 90. Defendants applied the same employment policies, practices, and  
15 procedures nationwide, including policies, practices, and procedures with respect to  
16 payment of overtime compensation.

## 17 FACTUAL BACKGROUND

### 18 I. Drivers’ Work

#### 19 A. Generally

20 91. Plaintiff and all Class Members were Drivers for Defendants.

21 92. Throughout the relevant period, all Drivers were consistently

1 misclassified by Defendants as independent contractors.

2 93. Diligent operates a business that's primary purpose is to partner with  
3 businesses as a transportation and logistics services provider. Specifically, they  
4 hire drivers for businesses.

5 94. IMC operates a business that's primary purpose is sourcing and  
6 delivering automobile parts.

7 95. Diligent offers an auto parts delivery service as a primary part of their  
8 business.

9 96. As Drivers, Plaintiff and Class Members performed services that are  
10 not outside the usual course of, but are in fact integral to, Defendants' business.

11 97. Defendants benefit greatly by misclassifying its Drivers as  
12 independent contractors. By treating their Drivers as independent contractors,  
13 Defendants operate a scheme to shift its business expenses to its employees.  
14 Defendants require Drivers to pay for insurance, gas, repairs, and maintenance of  
15 their own vehicles in order to receive work from Defendants.

16 98. By treating Drivers as independent contractors instead of employees,  
17 Defendants have engaged and continues to engage in a scheme to avoid workers'  
18 compensation and unemployment payments, social security, other payroll taxes  
19 owed by employers, and other benefits otherwise owed to employees.

20 99. By classifying their Driver workforce as independent contractors,  
21 Defendants are able to obtain a significant competitive advantage over similar



1 companies that operate within the confines of the law by shifting a significant  
2 portion of the cost of their business expenses to their employees. As a result,  
3 Defendants’ practices drive down wages, stifle competition, and undercut fair labor  
4 practices across the industry and in the economy generally. Diligent’s website  
5 boasts:

6           Between monthly vehicle payments, continual maintenance  
7           costs, fuel prices, and the expense of workers' wages,  
8           maintaining your own delivery fleet puts a huge dent in your  
9           profit margin. By outsourcing your recurring delivery needs,  
          you can save as much as 32% of your transportation budget,  
          allowing you to divert the finances to improve your specialty  
          services or products.

10           100. IMC operates a business enterprise consisting of ten auto parts stores  
11 throughout the State of California. IMC shares its Drivers throughout the  
12 California stores. IMC’s Drivers were all hired by Diligent; however, the Drivers  
13 day to day employment was and is controlled by IMC, who required and continues  
14 to require the Drivers to report to various IMC stores each workday in order to  
15 deliver necessary supplies.

16           101. Defendants control Drivers’ work and limits their freedom and  
17 discretion through various mechanisms, including (a) policies set forth in the  
18 Owner Operator Agreement (e.g., the Diligent Owner Operator Agreement (“OOA”  
19 or “Agreement”)), (b) close supervision by direct supervisors and other Diligent  
20 managers, (c) day to day supervision by IMC dispatchers.

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1           **B. Defendants' Supervision And Control Over Drivers**

2           102. Defendants closely supervise their Drivers. Defendants retain the right  
3 to control and does control nearly every aspect of their Drivers' work. Such control  
4 includes, but is not limited to, the following:

5           a. Plaintiff and Class Members were required to report to a specific  
6 IMC store by either 7:00 a.m. or 7:30 a.m. each work day on  
7 Mondays through Fridays, at which time, IMC provided  
8 Plaintiff and Class Members with their initial round of deliveries  
9 that needed to be immediately completed;

10          b. Plaintiff and Class Members were required to return to their  
11 assigned IMC stores at the completion of their last delivery at  
12 approximately 5:00 p.m. on Mondays through Fridays of each  
13 workweek and were not afforded meal or rest breaks throughout  
14 the day;

15          c. Plaintiff and Class Members were required to report to a specific  
16 IMC store by either 8:00 a.m. or 8:30 a.m. 1 to 4 Saturdays a  
17 month, and typically finished their last route at approximately  
18 2:00 p.m. and were not afforded meal or rest breaks.

19          d. Plaintiff and Class Members were not permitted to engage in  
20 other employment during their regularly scheduled hours with  
21 Defendants;

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- e. IMC controlled the method, manner, and time that Plaintiff and Class Members deliver automobile parts to IMC’s customers through a dispatcher that was located at each IMC store. Each workday, IMC assigned to Plaintiff and the Class Members: the number of stops that Plaintiff and Class Members make, the number of locations parts must be delivered to, how many parts must be delivered to each location, the order in which the deliveries were made, and the time of day each part must be delivered;
- f. Plaintiff and Class Members did not negotiate regarding the rates charged for their services;
- g. Plaintiff and Class Members were disciplined by all Defendants, with termination recommendations typically originating with IMC and executed by Diligent;
- h. Plaintiff and Class Members’ deliveries were monitored by IMC. Plaintiff and Class Members were required to be in contact with IMC’s dispatchers regarding the status of deliveries throughout the day. For each delivery stop, Plaintiff and Class Members were required to confirm with IMC that the delivery was made. If Drivers encountered any problems with a delivery, they were required to notify IMC; and

1 i. IMC required Plaintiff and Class Members to get signatures  
2 from customers when deliveries were made.

3 **C. Defendants' Control Over Drivers' Schedules and Assignments**

4 103. All of the work performed by Class Members was assigned by IMC,  
5 and Defendants were aware of all the overtime work that Plaintiff and Class  
6 Members performed.

7 104. IMC provides the assignments to Drivers and determines how many  
8 drivers are needed at each IMC store. Diligent assigns their Drivers to a set  
9 schedule, while IMC dispatchers communicate with Drivers in order to issue  
10 specific delivery instructions that Plaintiff and Class Members are required to  
11 follow each workday.

12 105. Diligent told Plaintiff and Class Members they could delegate their  
13 work to other drivers, but any substitution was typically completed by Diligent  
14 upon Drivers requesting a day off.

15 106. Plaintiff and Class Members could not engage in an independent  
16 business given the full-time nature of their work for Defendants.

17 107. Plaintiff and Class Members are dependent upon Defendants for their  
18 work and are unable to offer delivery services to other companies during their  
19 workday.

20 **D. Drivers' Standard Training And Testing**

21 108. Defendants did not provide Plaintiff and Class Members with any

1 training in order to complete their duties as drivers.

2 109. Defendants did not require Plaintiff and Class Members have any  
3 specific skills or take any independent initiative to perform their duties.

4 **E. Drivers' Hours**

5 110. Plaintiff and Class Members have been victims of Defendants'  
6 common policy and plan that has violated their rights under the FLSA and  
7 applicable state law by requiring Drivers to work in excess of 40 hours per week  
8 and denying them overtime compensation for all overtime worked.

9 111. At all times relevant, Defendants' unlawful policy and pattern or  
10 practice of denying their Drivers overtime compensation has been willful.

11 **F. Pay Structure**

12 112. Upon hiring, as set forth in Diligent's OOA, Drivers were paid a  
13 predetermined, fixed sum at a bimonthly rate.

14 113. Plaintiff and Class Members were not given an opportunity to  
15 negotiate the rates charged for their services.

16 114. Plaintiff and Class Members payment was subject to fees and  
17 deductions and payments were rarely made on schedule by Diligent. For example,  
18 Plaintiff and Class Members were subject to a daily deduction for an  
19 "administrative fee" of \$3 per day as well as a uniform fee where Diligent deducted  
20 approximately \$12 from their pay stubs on multiple occasions to pay for T-shirts  
21 required as part of their uniform.

1 115. Pay stubs would not reflect any time records of work or basis for  
2 deductions.

3 **II. Misclassification**

4 116. Defendants misclassified their Drivers as so-called “independent  
5 contractors.” However, the Drivers should have been classified as nonexempt  
6 employees, as defined by the FLSA and applicable state law.

7 **A. Independent Contractor Misclassification**

8 117. Drivers should have been classified as employees, not independent  
9 contractors.

10 118. **Dependence.** As a matter of economic reality, the Drivers are  
11 economically dependent on Defendants as opposed to being in business for  
12 themselves. Drivers are practically unable to promote themselves or their alleged  
13 businesses while on assignment for Defendants. Plaintiff and Class Members are  
14 not allowed and do not exercise independent judgment or discretion regarding their  
15 work for Defendants. All independent judgment and discretion is subsumed by  
16 adherence to Defendants’ scheduling requirements and route micromanagement.

17 119. **Time period.** Drivers are engaged for lengthy periods of time –  
18 usually more than a year – under periodic contracts called OOAs. OOAs typically  
19 set forth a period of twelve months. OOAs are generally automatically extended  
20 unless there is a performance or personnel problem that warrants a change in  
21 assignment or termination of the Driver. For all practical purposes, Diligent

1 renews Drivers' OOAs so fluidly that there is little disruption, if any, in their  
2 employment period with Diligent. This arrangement typically results in a de facto  
3 employment period of multiple years for Drivers.

4       120. **Control.** Defendants exercise significant control over Drivers' work.  
5 Drivers are required to report to and IMC location at a set time each day, and are  
6 required to adhere to a preplanned delivery schedule. Diligent required drivers to  
7 wear a uniform identifying them as a Diligent driver, and were required to follow  
8 to a dress code policy. Multiple times throughout the year, Diligent would hold  
9 group meetings to instruct Drivers regarding new accounts and delivery locations.  
10 In effect, Drivers are told how to do their jobs, told when to do their jobs and told  
11 where to do their jobs.

12       121. **Supervision.** Defendants maintains close supervision of their Drivers'  
13 work. An IMC dispatcher serves as a point of contact throughout the work day,  
14 and monitors Drivers' efficiency in making deliveries. IMC calls drivers while en  
15 route if there are complaints that a delivery is made late.

16       122. **Profit / loss.** Drivers do not have an opportunity to make a profit or  
17 loss in any real sense, like true independent contractors do. Diligent pays the  
18 Drivers a fixed sum bimonthly, as opposed to by commission or based on  
19 productivity. Furthermore, Defendants prohibit Drivers from engaging in other  
20 meaningful work or independent business while performing services for  
21 Defendants because their mandated scheduling effectively render it impossible for

1 Drivers to engage in other business opportunities.

2 123. **Employment relationship.** IMC – and not the Drivers themselves –  
3 negotiates and obtains the automobile parts orders and delivery contracts between  
4 their clients. Drivers are simply the labor used by Defendants to meet their  
5 contractual obligations with their clients. Drivers are an integral part of  
6 Defendants business. Without the Drivers, IMC could not fulfill its contracts with  
7 their clients. Plaintiff and Class Members performed services that were not  
8 outside the usual course of Defendants’ business and are essential to their business.

9 124. **Termination.** Diligent’s OOA reserves to Diligent the right to  
10 terminate the relationship with Drivers at any time before the end of the term if  
11 done with seven days’ written notice.

12 125. **No subordinates.** Drivers do not supervise other individuals. Drivers  
13 do not hire their own employees to facilitate their assignments. While Drivers were  
14 told they could delegate work to other drivers, any substitution of a Driver was  
15 typically completed by Diligent upon Drivers requesting a day off.

16 **B. Exemption Misclassification**

17 126. **Salary.** Diligent’s OOA provides for Drivers to be paid on a salary  
18 basis. Where Diligent’s OOA provides for salary pay, Diligent cannot satisfy the  
19 FLSA’s or applicable state laws’ salary basis test because Diligent has a policy and  
20 practice of making improper compensation deductions that violate the salary basis  
21 test. Specifically, OOAs provide that when a Driver will be charged “a fee of \$3.00



1 for each day Owner Operator accepts and completes a client-engagement  
2 opportunity.” Furthermore, pay stubs would often reflect a payment less than the  
3 agreed upon fixed payment, based on deductions made without explanation.

4 127. **Nonexempt.** Drivers do not fit within any exemption to the FLSA or  
5 applicable state law.

6 **III. Benefits Available To Defendants’ Employees**

7 128. Because they should properly be considered employees, Drivers are  
8 entitled to the same benefits to which properly classified Defendants’ employees  
9 are entitled.

10 129. On information and belief, all full-time Defendants’ employees are  
11 entitled to the following benefits: (1) medical, (2) dental, (3) vision, (4) group  
12 legal, (5) life, (6) short- and long-term disability, (7) accidental death and  
13 dismemberment, (8) paid time off, and (9) 401(k). These benefits were not  
14 provided to Plaintiff or Class members.

15 **COLLECTIVE ACTION ALLEGATIONS**

16 130. Plaintiff brings the First Claim for Relief for violation of the FLSA as  
17 a collective action pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b), on  
18 behalf of the Nationwide FLSA Plaintiffs.

19 131. Plaintiff and Nationwide FLSA Plaintiffs are similarly situated in that  
20 they have substantially similar job requirements and pay provisions, and are subject  
21 to Defendants’ common practice, policy, or plan of unlawfully characterizing them

1 as independent contractors and refusing to pay them overtime pay in violation of  
2 the FLSA.

3 132. The First Claim for Relief for violations of the FLSA may be brought  
4 and maintained as an “opt-in” collective action pursuant to section 16(b) of the  
5 FLSA, 29 U.S.C. § 216(b), since the claims of Plaintiff are similar to the claims of  
6 the Nationwide FLSA Plaintiffs.

7 133. The contact information (including names, addresses, phone numbers,  
8 e-mail addresses, and other identifying information) of the Nationwide FLSA  
9 Plaintiffs are available from Defendants’ records. Notice should be provided to the  
10 Nationwide FLSA Plaintiffs via first class mail, e-mail, and posting in the offices  
11 where they have worked as soon as practicable, to allow the Drivers to make  
12 informed decisions regarding their rights to seek overtime pay and other remedies.

13 **CALIFORNIA CLASS ACTION ALLEGATIONS**

14 134. The California Named Plaintiff (Mr. Gordon) brings the Second,  
15 Third, Fourth, Fifth, Sixth, and Seventh Claims for Relief for violation of  
16 California’s wage and hour, unfair competition, and private attorney general laws as  
17 a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all  
18 California Class members, defined in paragraph 17.

19 135. **Numerosity** (Fed. R. Civ. P. 23(a)(1)) – The California Class is so  
20 numerous that joinder of all members is impracticable. The California Named  
21 Plaintiff is informed and believes, and on that basis alleges, that during the

1 California Class Period, Defendants have employed at least fifty persons who  
2 satisfy the definition of the California Class.

3 136. **Commonality** (Fed. R. Civ. P. 23(a)(2)) – Common questions of law  
4 and fact exist as to members of the California Class, including, but not limited to,  
5 the following:

- 6 a. Whether Defendants unlawfully classified the California Class  
7 members as independent contractors;
- 8 b. Whether the California Class members are nonexempt  
9 employees entitled to overtime compensation for overtime hours  
10 worked under the overtime pay requirements of California law;
- 11 c. Whether Defendants unlawfully failed to pay overtime  
12 compensation in violation of the California Unfair Competition  
13 Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and the  
14 California Labor Code and related regulations, Cal. Labor Code  
15 §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, Cal. Wage  
16 Order No. 4-2001;
- 17 d. Whether Defendants’ policy and practice of classifying the  
18 California Class as independent contractors exempt from  
19 overtime entitlement under California law and Defendants’  
20 policy and practice of failing to pay overtime to California Class  
21 members violate applicable provisions of California law,

- 1 including applicable statutory and regulatory authority;
- 2 e. Whether Defendants unlawfully failed to keep and furnish
- 3 California Class members with records of hours worked, in
- 4 violation of Labor Code §§ 226 and 1174;
- 5 f. Whether Defendants unlawfully failed to provide California
- 6 Class members with meal and rest breaks, in violation of Labor
- 7 Code §§ 226.7 and 512;
- 8 g. Whether Defendants’ policy and practice of failing to pay its
- 9 employees all wages due within the time required by law after
- 10 their employment ended violates California law; and
- 11 h. The proper measure of damages sustained and the proper
- 12 measure of restitution recoverable by members of the California
- 13 Class.

14 137. **Typicality** (Fed. R. Civ. P. 23(a)(3)) – The California Named

15 Plaintiff’s claims are typical of California Class’ claims. The California Named

16 Plaintiff, like the California Class, was subjected to Defendants’ policy and practice

17 of refusing to pay overtime in violation of California law. The California Named

18 Plaintiff’s job duties were typical of those of the California Class.

19 138. **Adequacy** (Fed. R. Civ. P. 23(a)(4)) – The California Named Plaintiff

20 will fairly and adequately represent and protect the interests of the California Class.

21 139. **Adequacy of counsel** (Fed. R. Civ. P. 23(g)) – The California Named

1 Plaintiff has retained counsel competent and experienced in complex class actions,  
2 the FLSA, and state labor and employment litigation. Plaintiff's counsel has  
3 litigated numerous class actions on behalf of employees asserting overtime  
4 misclassification claims under the FLSA and state law. Plaintiff's counsel intend to  
5 commit the necessary resources to prosecute this action vigorously for the benefit  
6 of all Class members.

7       140. **Predominance and superiority** (Fed. R. Civ. P. 23(b)(3)) – Class  
8 certification of the Second, Third, Fourth, Fifth, and Sixth Claims for Relief is  
9 appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact  
10 common to the California Class predominate over any questions affecting only  
11 individual members of the California Class, and because a class action is superior to  
12 other available methods for the fair and efficient adjudication of this litigation.  
13 Defendants' common and uniform policies and practices unlawfully treat the  
14 California Class as independent contractors exempt from overtime pay  
15 requirements. The damages suffered by individual California Class members are  
16 small compared to the expense and burden of individual prosecution of this  
17 litigation. In addition, class certification is superior because it will obviate the need  
18 for unduly duplicative litigation that might result in inconsistent judgments about  
19 Defendants' practices.

20       141. **Notice** (Fed. R. Civ. P. 23(c)(2)(B)) – The California Named Plaintiff  
21 intends to send notice to all California Class members consistent with the

1 requirements of Fed. R. Civ. P. 23.

2 **FIRST CLAIM FOR RELIEF**  
3 **(Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.,**  
4 **Brought by Plaintiff on Behalf of Himself and the Nationwide FLSA Plaintiffs)**

5 142. Plaintiff, on behalf of himself and all Nationwide FLSA Plaintiffs,  
6 realleges and incorporates by reference all other paragraphs as if they were set forth  
7 again herein.

8 143. At all relevant times, Defendants have been, and continues to be, an  
9 “employer” engaged in interstate “commerce” and/or in the production of “goods”  
10 for “commerce,” within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant  
11 times, Defendants have employed, and continues to employ, “employee[s],”  
12 including Plaintiff and the Nationwide FLSA Plaintiffs. At all relevant times,  
13 Defendants have had gross operating revenues in excess of \$500,000.

14 144. Plaintiff’s signed Consent to Sue form has been filed, pursuant to  
15 section 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256. It is likely that other  
16 similarly situated individuals will sign consent forms and join as Plaintiff in  
17 asserting this claim in the future.

18 145. The FLSA requires each covered employer, including Defendants, to  
19 compensate all nonexempt employees at a rate of not less than one and one-half  
20 times the regular rate of pay for work performed in excess of forty hours in a  
21 workweek.

22 146. Under the FLSA, the Nationwide FLSA Plaintiffs are employees who

1 are entitled to be paid overtime compensation for all overtime hours worked.

2 147. At all relevant times, Defendants, pursuant to their policies and  
3 practices, failed and refused to pay overtime premiums to the Nationwide FLSA  
4 Plaintiffs for their hours worked in excess of forty hours per week.

5 148. By failing to compensate Plaintiff and the Nationwide FLSA Plaintiffs  
6 at a rate not less than one and one-half times the regular rate of pay for work  
7 performed in excess of forty hours in a workweek, Defendants have violated, and  
8 continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C.  
9 § 207(a)(1) and § 215(a).

10 149. By failing to record, report, and/or preserve records of hours worked  
11 by Plaintiff and the Nationwide FLSA Plaintiffs, Defendants have failed to make,  
12 keep, and preserve records with respect to each of their employees sufficient to  
13 determine their wages, hours, and other conditions and practice of employment, in  
14 violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 211(c) and  
15 § 215(a).

16 150. The foregoing conduct, as alleged, constitutes a willful violation of the  
17 FLSA within the meaning of 29 U.S.C. § 255(a).

18 151. Plaintiff, on behalf of himself and the Nationwide FLSA Plaintiffs,  
19 seeks recovery of attorneys' fees and costs of action to be paid by Defendants, as  
20 provided by the FLSA, 29 U.S.C. § 216(b).

21 152. Plaintiff, on behalf of himself and the Nationwide FLSA Plaintiffs,

1 seeks damages in the amount of unpaid overtime compensation, liquidated damages  
2 as provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and  
3 equitable relief as the Court deems just and proper.

4 **SECOND CLAIM FOR RELIEF**  
5 **(Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 510, 1194,**  
6 **Brought by the California Named Plaintiff on Behalf of Himself and the**  
7 **California Class)**

8 153. Plaintiff, on behalf of himself and all members of the California Class,  
9 realleges and incorporates by reference all other paragraphs as if they were set forth  
10 again herein.

11 154. California law requires an employer, such as Defendants, to pay  
12 overtime compensation to all nonexempt employees for all hours worked over forty  
13 per week, or over eight per day.

14 155. Under California law, Plaintiff and the California Class are nonexempt  
15 employees entitled to be paid overtime compensation for all overtime hours  
16 worked.

17 156. Throughout the California Class Period, and continuing through the  
18 present, Plaintiff and the California Class worked in excess of eight hours in a  
19 workday and/or forty hours in a workweek.

20 157. During the California Class Period, Defendants misclassified Plaintiff  
21 and the California Class as independent contractors, exempt from overtime pay  
entitlement, and failed and refused to pay them overtime premium pay for their



1 overtime hours worked.

2 158. As a direct and proximate result of Defendants' unlawful conduct, as  
3 set forth herein, Plaintiff and the California Class have sustained damages,  
4 including loss of earnings for hours of overtime worked on behalf of Defendants in  
5 an amount to be established at trial, prejudgment interest, and costs and attorneys'  
6 fees, pursuant to statute and other applicable law.

7 **THIRD CLAIM FOR RELIEF**  
8 **(California Wage Payment Provisions, Cal. Labor Code §§ 201, 202, & 203,**  
9 **Brought by the California Named Plaintiff on Behalf of Himself and the**  
10 **California Class)**

11 159. Plaintiff, on behalf of himself and the California Class, realleges and  
12 incorporates by reference all other paragraphs as if they were set forth again herein.

13 160. California Labor Code sections 201 and 202 require Defendants to pay  
14 its employees all wages due within the time specified by law. California Labor  
15 Code section 203 provides that if an employer willfully fails to timely pay such  
16 wages, the employer must continue to pay the subject employees' wages until the  
17 back wages are paid in full or an action is commenced, up to a maximum of thirty  
18 days of wages.

19 161. Plaintiff and all California Class members who ceased employment  
20 with Defendants are entitled to unpaid compensation, but to date have not received  
21 such compensation.

22 162. More than thirty days have passed since Plaintiff and certain California

1 Class members left Defendants' employ.

2 163. As a consequence of Defendants willful conduct in not paying  
3 compensation for all hours worked, Plaintiff and California Class members whose  
4 employment ended during the class period are entitled to thirty days' wages under  
5 Labor Code section 203, together with interest thereon and attorneys' fees and  
6 costs.

7 **FOURTH CLAIM FOR RELIEF**  
8 **(California Wage Payment Provisions, Cal. Labor Code §§ 226(a) and 1174(d)**  
9 **Brought by the California Named Plaintiff on Behalf of Himself and the**  
10 **California Class)**

11 164. Plaintiff, on behalf of himself and the California Class, realleges and  
12 incorporates by reference all other paragraphs as if they were set forth again herein.

13 165. Defendants knowingly and intentionally failed to provide timely,  
14 accurate, itemized wage statements including, *inter alia*, hours worked, to Plaintiff  
15 and the California Class in accordance with Labor Code section 226(a) and the  
16 IWC Wage Orders. Such failure caused injury to Plaintiff and the California Class,  
17 by, among other things, impeding them from knowing the amount of wages to  
18 which they are and were entitled. At all times relevant herein, Defendants have  
19 failed to maintain records of hours worked by Plaintiff and the California Class as  
20 required under Labor Code section 1174(d).

21 166. Plaintiff and the California Class are entitled to and seek injunctive  
relief requiring Defendants to comply with Labor Code sections 226(a) and

1 1174(d), and further seek the amount provided under Labor Code sections 226(e)  
2 and 1174.5, including the greater of all actual damages or fifty dollars (\$50) for the  
3 initial pay period in which a violation occurred and one hundred dollars (\$100) per  
4 employee for each violation in a subsequent pay period.

5 **FIFTH CLAIM FOR RELIEF**  
6 **(California Meal And Rest Period Provisions,**  
7 **Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 226.7 & 512,**  
8 **Brought by The California Named Plaintiff on Behalf of Himself and the**  
9 **California Class)**

10 167. Plaintiff, on behalf of himself and the California Class, realleges and  
11 incorporates by reference all other paragraphs as if they were set forth again herein.

12 168. Plaintiff and the California Class regularly work and have worked in  
13 excess of five-hour shifts without being afforded at least a half-hour meal break in  
14 which they were relieved of all duty and more than ten-hour shifts without being  
15 afforded a second half-hour meal break in which they were relieved of all duty, as  
16 required by Labor Code sections 226.7 and 512 and Wage Order No. 4-2001,  
17 section 11(a).

18 169. In addition, Plaintiff and the California Class regularly work and have  
19 worked without being afforded at least one ten-minute rest break, in which they  
20 were relieved of all duty, per four hours of work performed or major fraction  
21 thereof, as required by Labor Code section 226.7 and Wage Order No. 4-2001,  
section 12.

170. As a result of Defendants' failure to afford proper meal periods, they

1 are liable to Plaintiff and the California Class for one hour of additional pay at the  
2 regular rate of compensation for each workday that the proper meal periods were  
3 not provided, pursuant to Labor Code section 226.7 and Wage Order No. 4-2001,  
4 section 11(b).

5 171. As a result of Defendants' failure to afford proper rest periods, they are  
6 liable to Plaintiff and the California Class for one hour of additional pay at the  
7 regular rate of compensation for each workday that the proper rest periods were not  
8 provided, pursuant to Labor Code section 226.7 and Wage Order No. 4-2001,  
9 section 12(b).

10 **SIXTH CLAIM FOR RELIEF**  
11 **(California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.,**  
12 **Brought by The California Named Plaintiff on Behalf of Himself and the**  
13 **California Class)**

14 172. Plaintiff, on behalf of himself and all members of the California Class,  
15 realleges and incorporates by reference all other paragraphs as if they were set forth  
16 again herein.

17 173. The foregoing conduct, as alleged, violates the California Unfair  
18 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq. Section  
19 17200 of the Cal. Bus. & Prof. Code prohibits unfair competition by prohibiting,  
20 *inter alia*, any unlawful or unfair business acts or practices.

21 174. Within the four years before the filing of this action, Defendants  
committed, and continue to commit, acts of unfair competition, as defined by the

1 UCL, by, among other things, engaging in the acts and practices described herein.  
2 Defendants' conduct as herein alleged has injured Plaintiff and the California Class  
3 by wrongfully denying them earned wages, and therefore was substantially  
4 injurious to Plaintiff and the California Class.

5 175. Defendants engaged in unfair competition in violation of the UCL by  
6 violating, *inter alia*, each of the following laws. Each of these violations  
7 constitutes an independent and separate violation of the UCL:

- 8 a. The Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*;
- 9 b. California Labor Code § 1194;
- 10 c. California Labor Code §§ 201, 202, 203, 226, 226.7, and 512;
- 11 d. California Labor Code § 1174; and
- 12 e. California Labor Code § 510, which provides in relevant part:  
13 Any work in excess of eight hours in one workday and any work  
14 in excess of 40 hours in any one workweek and the first eight  
15 hours worked on the seventh day of work in any one workweek  
16 shall be compensated at the rate of no less than one and one-half  
17 times the regular rate of pay for an employee. Any work in  
18 excess of 12 hours in one day shall be compensated at the rate of  
19 no less than twice the regular rate of pay for an employee. In  
20 addition, any work in excess of eight hours on any seventh day  
21 of a workweek shall be compensated at the rate of no less than

1 twice the regular rate of pay of an employee.

2 176. Defendants course of conduct, acts, and practices in violation of the  
3 California laws mentioned in the above paragraph constitute a separate and  
4 independent violation of the UCL. Defendants' conduct described herein violates  
5 the policy or spirit of such laws or otherwise significantly threatens or harms  
6 competition.

7 177. The unlawful and unfair business practices and acts of Defendants,  
8 described above, have injured California Class members in that they were  
9 wrongfully denied the payment of earned overtime wages.

10 178. Plaintiff, on behalf of himself and the California Class, seeks  
11 restitution in the amount of the respective unpaid wages earned and due at a rate of  
12 at least one and one-half times the regular rate of pay for work performed in excess  
13 of forty hours in a workweek, or eight hours in a day, and double the regular rate of  
14 pay for work performed in excess of twelve hours per day.

15 179. Plaintiff, on behalf of himself and the California Class, seeks recovery  
16 of attorneys' fees and costs of this action to be paid by Defendants, as provided by  
17 the UCL and California Labor Code §§ 218, 218.5, and 1194.

18 **SEVENTH CLAIM FOR RELIEF**  
19 **(California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-**  
20 **2699.5,**  
21 **Brought by the California Named Plaintiff**  
**on Behalf of Himself and All Aggrieved Employees)**  
**(Notice of Future Claim)**

21 180. Plaintiff, on behalf of himself and all aggrieved employees, as well as

1 on behalf of the general public of California, realleges and incorporates by  
2 reference all other paragraphs as if they were set forth again herein.

3 181. Under the California Private Attorneys General Act (“PAGA”) of  
4 2004, Cal. Lab. Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself  
5 and other current or former employees as well as the general public, may bring a  
6 representative action as a private attorney general to recover penalties for an  
7 employer’s violations of the California Labor Code and IWC Wage Orders. These  
8 civil penalties are in addition to any other relief available under the California  
9 Labor Code, and must be allocated 75% to California’s Labor and Workforce  
10 Development Agency (“LWDA”) and 25% to the aggrieved employee, pursuant to  
11 California Labor Code § 2699.

12 182. Plaintiff alleges, on behalf of himself and all aggrieved employees, as  
13 well as the general public, that Defendants have violated the following provisions  
14 of the California Labor Code and the following provisions of the IWC Wage Orders  
15 that are actionable through the California Labor Code and PAGA, as previously  
16 alleged herein: Cal. Lab. Code §§ 201-03, 218.5, 226, 226.7, 226.8, 510, 512, 1174,  
17 1174.5, and 1194, and IWC Wage Order No. 4-2001. Each of these violations  
18 entitles Plaintiff, as a private attorney general, to recover the applicable civil  
19 penalties on his own behalf, on behalf of all aggrieved employees, and on behalf of  
20 the general public.

21 183. California Labor Code § 2699(a), which is part of PAGA, provides in

1 pertinent part:

2           Notwithstanding any other provision of law, any provision of  
3           this code that provides for a civil penalty to be assessed and  
4           collected by the Labor and Workforce Development Agency or  
5           any of its departments, divisions, commissions, boards,  
6           agencies, or employees, for a violation of this code, may, as an  
7           alternative, be recovered through a civil action brought by an  
8           aggrieved employee on behalf of themselves or himself and  
9           other current or former employees pursuant to the procedures  
10          specified in § 2699.3.

11          184. California Labor Code § 2699(f), which is part of PAGA, provides in  
12          pertinent part:

13           For all provisions of this code except those for which a civil  
14           penalty is specifically provided, there is established a civil  
15           penalty for a violation of these provisions, as follows: . . . (2) If,  
16           at the time of the alleged violation, the person employs one or  
17           more employees, the civil penalty is one hundred dollars (\$100)  
18           for each aggrieved employee per pay period for the initial  
19           violation and two hundred dollars (\$200) for each aggrieved  
20           employee per pay period for each subsequent violation.

21          185. Plaintiff is entitled to civil penalties, to be paid by Defendants and  
22          allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for  
23          Defendants' violations of the California Labor Code and IWC Wage Orders for  
24          which violations a civil penalty is already specifically provided by law.  
25          Furthermore, Plaintiff is entitled to civil penalties, to be paid by Defendants and  
26          allocated as PAGA requires, pursuant to California Labor Code § 2699(f) for  
27          Defendants' violations of the California Labor Code and IWC Wage Orders for  
28          which violations a civil penalty is not already specifically provided.



1 186. On March 6, 2017, Plaintiff provided written notice by certified mail  
2 to the LWDA of the legal claims and theories of this case. Plaintiff simultaneously  
3 provided a copy of that notice by certified mail to Defendants. If the LWDA does  
4 not provide notice “within 65 calendar days of the postmark date of” Plaintiff’s  
5 notice, Plaintiff will be entitled to assert this claim. Cal. Labor Code §  
6 2699.3(a)(2).

7 187. Under PAGA, Plaintiff and the State of California are entitled to  
8 recover the maximum civil penalties permitted by law for the violations of the  
9 California Labor Code and IWC Wage Order No. 4-2001 that are alleged in this  
10 First Amended Complaint.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of himself and all Class members  
13 nationwide, prays for relief as follows:

14 A. Declaratory judgment that Diligent’s arbitration clause is  
15 unenforceable.

16 WHEREFORE, Plaintiff, on behalf of himself and all members of the  
17 Nationwide FLSA Class, prays for relief as follows:

18 B. Designation of this action as a collective action on behalf of the  
19 Nationwide FLSA Plaintiffs (asserting FLSA claims) and prompt issuance of notice  
20 pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Opt-  
21 In Class, apprising them of the pendency of this action, and permitting them to

1 assert timely FLSA claims in this action by filing individual Consent to Sue forms  
2 pursuant to 29 U.S.C. § 216(b);

3 C. Designation of Plaintiff as Representative of the Nationwide  
4 FLSA Plaintiffs;

5 D. A declaratory judgment that the practices complained of herein  
6 are unlawful under the FLSA;

7 E. An award of damages, according to proof, including liquidated  
8 damages, to be paid by Defendants;

9 F. Costs of action incurred herein, including expert fees;

10 G. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

11 H. Post-judgment interest, as provided by law; and

12 I. Such other legal equitable relief as this Court deems necessary,  
13 just, and proper.

14 WHEREFORE, Plaintiff, on behalf of himself and the California  
15 Class, prays for relief as follows:

16 J. Certification of this action as a class action on behalf of the  
17 California Class;

18 K. Designation of Plaintiff as Representative of the California  
19 Class;

20 L. Designation of Plaintiff's counsel of record as Class Counsel for  
21 the California Class;

1 M. A declaratory judgment that the practices complained of herein  
2 are unlawful under applicable state law;

3 N. Appropriate injunctive and equitable relief, including an order  
4 enjoining Defendants from continuing their unlawful practices;

5 O. Appropriate statutory penalties;

6 P. Appropriate civil penalties;

7 Q. An award of damages, liquidated damages, and restitution to be  
8 paid by Defendants according to proof;

9 R. Pre-judgment and post-judgment interest, as provided by law;

10 S. Such other injunctive and equitable relief as the Court may  
11 deem just and proper; and

12 T. Attorneys' fees and costs of suit, including expert fees and costs.

13 Plaintiff hereby demands a jury trial on all causes of action and claims with  
14 respect to which he has a right to jury trial.

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Respectfully submitted,

Dated: April 13, 2017

By: /s/ Marijana Matura  
Marijana Matura

Jahan C. Sagafi (Cal. Bar No. 224887)  
Relic Sun (Cal. Bar No. 306701)  
OUTTEN & GOLDEN LLP  
One Embarcadero Center, 38th Floor  
San Francisco, CA 94111  
Telephone: (415) 638-8800  
Facsimile: (415) 638-8810  
E-Mail: [jsagafi@outtengolden.com](mailto:jsagafi@outtengolden.com)  
E-Mail: [rsun@outtengolden.com](mailto:rsun@outtengolden.com)

Troy L. Kessler (*pro hac vice*)  
Marijana Matura (*pro hac vice*)  
SHULMAN KESSLER LLP  
534 Broadhollow Road, Suite 275  
Melville, New York 11747  
Telephone: (631) 499-9100  
Facsimile: (631) 499-9120  
E-Mail: [tkessler@shulmankessler.com](mailto:tkessler@shulmankessler.com)  
E-Mail: [mmatura@shulmankessler.com](mailto:mmatura@shulmankessler.com)

Jason C. Marsili (SBN 233980)  
POSNER & ROSEN LLP  
3600 Wilshire Boulevard, Suite 1800  
Los Angeles, CA 90010  
Telephone: (213) 389-6050  
Facsimile: (213) 389-0663  
E-Mail: [jmarsili@posner-rosen.com](mailto:jmarsili@posner-rosen.com)

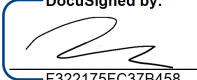
*Attorneys for Plaintiff and proposed  
Collective and Class members*

# **EXHIBIT A**

**CONSENT FORM**

- 1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer Michigan Logistics, Inc. d/b/a Diligent Delivery Systems (“Diligent”), to secure any relief that may be awarded, including overtime pay, liquidated damages, attorneys’ fees, costs and other relief arising out of my employment with Diligent.
- 2. During the past 3 years, there were occasions when I worked more than 40 hours in a week for Diligent, and I did not receive proper overtime compensation for those hours.
- 3. I authorize Shulman Kessler LLP to represent me in this case.

Date: 12/14/2016

DocuSigned by:  
  
 F322175FC37B458...  
 Signature  
 Ryan Gordon  
 Print Name

**FORMULARIO DE CONSENTIMIENTO**

- 1. Consiento para afirmar reclamaciones por violaciones del Acto de Estándares de Trabajo Justo, 29 Congreso de los Estados Unidos § 201, *et seq.*, contra mi empleador actual/anterior, Michigan Logistics, Inc. d/b/a Diligent Delivery Systems (“Diligent”), para asegurar cualquier ayuda que podrá concederse, incluyendo pago de horas extras, daños y perjuicios, honorarios de abogados, gastos y cualquier otra reparación que surja de mi empleo con Diligent.
- 2. Durante los últimos 3 años, había ocasiones en que he trabajado más de 40 horas a la semana para Diligent, y no recibí compensación adecuada por aquellas horas.
- 3. Consiento a Shulman Kessler LLP para representarme en este pleito.

Fecha: \_\_\_\_\_

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Nombre en Letra