

2014 WL 10500991 (N.D.Ill.) (Trial Pleading)  
United States District Court, N.D. Illinois.

Dominik ZOLKOS, Dzianis Kliavets, James McCoy, Joe Wallace, Lionel Jones, Michael Karp, Karolyn Underwood, Ronita Foy, Jerry Anderson, Madi Vanessa Sutton, Norman Morse, John Robertson, Anthony Gray, Joseph Fenico, Alix Petithomme, Barry Madden, Glenn Bailey, Wendy Dobbins, Carrie-Ann Wise and John Fudurich, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

SCRIPTFLEET, INC., f/k/a Network Express, Partsfleet, Inc., Partsfleet II, Inc., Fleetgistics Holdings, Inc., and Medifleet, Inc., Defendants.

No. 12 Civ. 8230 (GF).  
December 2, 2014.

### Third Amended Class Action Complaint

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Hon. [Gary Feinerman](#).

1. Plaintiffs Dominik Zolkos, Dzianis Kliavets, James McCoy, Joe Wallace, Lionel Jones, Michael Karp, Karolyn Underwood, Ronita Foy, Jerry Anderson, Madi Vanessa Sutton, Norman Morse, John Robertson, Anthony Gray, Joseph Fenico, Alix Petithomme, Barry Madden, Glenn Bailey, Wendy Dobbins, Carrie-Ann Wise and John Fudurich, on behalf of themselves and on behalf of all others similarly situated, by and through undersigned counsel, allege as follows:

#### INTRODUCTION

2. This is a collective action under the Fair Labor Standards Act, [29 U.S.C. §§ 201 et seq.](#), (“FLSA”) and is brought to remedy widespread wage and hour violations by Fleetgistics Holdings, Inc., Partsfleet, Inc., Partsfleet II, Inc. (together with Partsfleet, Inc., “Partsfleet”), Scriptfleet, Inc., f/k/a Network Express (“Scriptfleet”), and Medifleet, Inc. (“Medifleet”) (collectively “Fleetgistics”), that have deprived Plaintiffs and all other current and former Fleetgistics drivers, couriers and delivery drivers throughout the United States of overtime and other wages to which they are entitled.

3. Plaintiffs Dominic Zolkos and Dzianis Kliavets also bring this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of themselves and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in Illinois, to remedy violations of the labor laws of Illinois.

4. Plaintiffs James McCoy, John Robertson, Anthony Gray and Joseph Fenico also bring this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of themselves and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in New York, to remedy violations of the labor laws of New York.

5. Plaintiff Joe Wallace also brings this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of himself and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in Kentucky, to remedy violations of the labor laws of Kentucky.

6. Plaintiff Lionel Jones also brings this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of himself and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in Connecticut, to remedy violations of the labor laws of Connecticut.

7. Plaintiffs Michael Karp, Carrie-Ann Wise and John Fudurich also bring this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of themselves and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in Pennsylvania, to remedy violations of the labor laws of Pennsylvania.

8. Plaintiffs Ronita Foy, Jerry Anderson, Madi Vanessa Sutton and Karolyn Underwood also bring this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of themselves and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in North Carolina, to remedy violations of the labor laws of North Carolina.

9. Plaintiff Norman Morse also brings this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of himself and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in New Jersey, to remedy violations of the labor laws of New Jersey.

10. Plaintiff Alix Petithomme also brings this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of himself and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics' Scriptfleet and Partsfleet divisions in Massachusetts, to remedy violations of the labor laws of Massachusetts.

11. Plaintiff Barry Madden also brings this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of himself and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in Maryland, to remedy violations of the labor laws of Maryland.

12. Plaintiff Glenn Bailey also brings this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#) on behalf of himself and all similarly situated current and former drivers, couriers and delivery drivers who worked for Fleetgistics in Ohio, to remedy violations of the labor laws of Ohio.

13. At all times material hereto, Fleetgistics misclassified its drivers as independent contractors, despite exercising extensive control over the manner in which they conducted their work.

14. Under federal law, as well as under the laws of Illinois, New York, Kentucky, Connecticut, Pennsylvania, North Carolina, New Jersey, Maryland, Ohio and Massachusetts, employees must be paid one and one-half times their regular rate of pay for all hours over 40 worked in a week, unless they qualify for a statutory exemption. Fleetgistics failed to pay Plaintiffs and other similarly situated drivers this overtime premium rate for the hours they worked in excess of 40 in various workweeks based upon its misclassification of Plaintiffs and other drivers as independent contractors.

15. Fleetgistics also made unlawful deductions from its drivers', couriers' and delivery drivers' wages for uniforms, equipment, insurance, and other expenses in violation of various state laws, as alleged herein.

16. Through the conduct described in this Third Amended Class Action Complaint, Fleetgistics has violated federal and state law. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, bring these claims and seek unpaid

compensation, liquidated damages, reasonable attorneys' fees and costs, and all other available and appropriate relief to which they and the other drivers, couriers and delivery drivers are entitled.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. §§ 1331 and 1337, and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1367.

18. Plaintiffs are diverse in terms of citizenship from Defendant Fleetgistics Holdings, Inc.

19. Upon information and belief, the amount in controversy in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

20. Defendants are subject to personal jurisdiction in Illinois.

21. Upon information and belief, the number of members of all proposed plaintiff classes in the aggregate is more than 100.

22. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because these claims are so related to the claims in the FLSA action that they form a part of the same case or controversy.

23. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the acts or omissions giving rise to claims in this Third Amended Class Action Complaint took place in this judicial district.

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

### **PARTIES**

#### ***Plaintiff Dominik Zolkos***

25. Plaintiff Dominik Zolkos ("Zolkos") is an individual residing in Oak Lawn, Illinois. He worked for Fleetgistics as a driver from approximately February 9, 2009 until approximately September 2012.

26. Zolkos' primary delivery routes included deliveries in Libertyville, Northbrook, Oak Lawn, and Palos Heights, Illinois. Zolkos made his deliveries primarily from locations in Woodridge and Bensonville, Illinois.

27. Fleetgistics did not pay Zolkos a premium when he worked in excess of 40 hours in a workweek.

28. Zolkos was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

29. Fleetgistics required Zolkos to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

30. Fleetgistics also deducted approximately \$100 from each of Plaintiff Zolkos' biweekly paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

31. For the first approximately 2½ (two and a half) years of his employment, Plaintiff Zolkos regularly worked approximately 48 hours per week, or more. He was never paid overtime premium pay.

32. Plaintiff Zolkos has consented to join this action and has completed a written consent form. *See* ECF No. 23-1.

***Plaintiff Dzianis Kliavets***

33. Plaintiff Dzianis Kliavets (“Kliavets”) is an individual residing in Mount Prospect, Illinois. He worked for Fleetgistics as a driver from approximately February 2008 until approximately November 13, 2011.

34. Kliavets' primary delivery route was in Chicago, Lombard, Streamwood, Arlington Heights and Skokie, Illinois. Kliavets made his deliveries primarily from a location in Chicago, Illinois.

35. Fleetgistics did not pay Kliavets a premium when he worked in excess of 40 hours in a workweek.

36. Kliavets was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

37. Fleetgistics required Kliavets to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

38. Fleetgistics deducted approximately \$50 from each of Kliavets' weekly paychecks for the rental of a scanner and insurance, which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

39. From approximately February 2008 to approximately November 2010, Kliavets regularly worked approximately 65 hours per week, or more. From approximately November 2010 to November 2011, Kliavets regularly worked approximately 50 hours per week, or more. He was never paid overtime premium pay.

40. Plaintiff Kliavets has consented to join this action and has completed a written consent form. *See* ECF No. 23-2.

***Plaintiff James McCoy***

41. Plaintiff James McCoy (“McCoy”) is an individual residing in Greece, New York. He worked for Fleetgistics as a driver from approximately August, 2010 until approximately April 30, 2011.

42. McCoy made his deliveries primarily from a location in Rochester, New York.

43. Fleetgistics did not pay McCoy a premium when he worked in excess of 40 hours in a workweek.

44. Fleetgistics required McCoy to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

45. Fleetgistics also deducted amounts from each of Plaintiff McCoy's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

46. Plaintiff McCoy regularly worked for Fleetgistics 80 hours per week, or more. He was never paid overtime premium pay.

47. Plaintiff McCoy has consented to join this action and has completed a written consent form. *See* ECF No. 23-3.

***Plaintiff Joe Wallace***

48. Plaintiff Joe Wallace (“Wallace”) is an individual residing in Memphis, Indiana. He worked for Fleetgistics as a driver from approximately Fall 2008 until 2009 and again from approximately June or July 2010 until approximately August 9, 2012.

49. Wallace made his deliveries primarily from a location in Louisville, Kentucky.

50. Fleetgistics did not pay Wallace a premium when he worked in excess of 40 hours in a workweek.

51. Wallace was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

52. Fleetgistics required Wallace to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

53. Fleetgistics also deducted amounts from each of Plaintiff Wallace's biweekly paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

54. Plaintiff Wallace regularly worked for Fleetgistics 70 hours a week, or more. He was never paid overtime premium pay.

55. Plaintiff Wallace has consented to join this action and has completed a written consent form. *See* ECF No. 23-4.

***Plaintiff Lionel Jones***

56. Plaintiff Lionel Jones (“Jones”) is an individual residing in Stratford, Connecticut. He worked for Fleetgistics as a driver from approximately Summer 2009 until approximately Summer 2011.

57. Jones made his deliveries primarily from a location in Bridgeport, Connecticut.

58. Fleetgistics did not pay Jones a premium when he worked in excess of 40 hours in a workweek.

59. Fleetgistics required Jones to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

60. Fleetgistics deducted amounts from each of Jones' weekly paychecks for uniform rentals, insurance, and the rental of a scanner, which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

61. Jones worked over 40 hours per week for one or more weeks since December 21, 2010. He was never paid overtime premium pay.

62. Plaintiff Jones has consented to join this action and has completed a written consent form. *See* ECF No. 23-5.

***Plaintiff Michael Karp***

63. Plaintiff Michael Karp (“Karp”) is an individual residing in Harrisburg, Pennsylvania. He has worked for Fleetgistics as a driver from approximately May 2010 to the present.

64. Karp makes his deliveries primarily from a location in Harrisburg, Pennsylvania.

65. At no time has Fleetgistics paid Karp a premium when he worked in excess of 40 hours in a workweek.

66. Fleetgistics required Karp to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

67. Karp was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

68. Fleetgistics also deducted amounts from each of Plaintiff Karp's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

69. Plaintiff Karp periodically worked for Fleetgistics for more than 40 hours a week. He was never paid overtime premium pay.

70. Plaintiff Karp has consented to join this action and has filed a written consent form. *See* ECF No. 41.

***Plaintiff Carrie-Ann Wise***

71. Plaintiff Carrie-Ann Wise ("Wise") is an individual residing in Georgetown, Pennsylvania. She worked for Fleetgistics as a driver from approximately January 2012 to June 2013.

72. Wise makes her deliveries to and from locations in Western Pennsylvania, including Heritage Valley Hospital in Beaver, Pennsylvania.

73. At no time has Fleetgistics paid Wise a premium when she worked in excess of 40 hours in a workweek.

74. Fleetgistics required Wise to pay for vehicle insurance coverage, and to pay to use and maintain her own vehicle to make deliveries for Fleetgistics.

75. Wise was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

76. Fleetgistics also deducted amounts from each of Wise's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

77. Plaintiff Wise regularly worked for Fleetgistics for approximately 60 hours a week, or more. She was never paid overtime premium pay.

***Plaintiff John Fudurich***

78. Plaintiff John Fudurich ("Fudurich") is an individual residing in Aliquippa, Pennsylvania. He worked for Fleetgistics as a driver from approximately February 2012 to May 2013.

79. Fudurich made his deliveries to and from locations in Western Pennsylvania, including Heritage Valley Hospital and Friendship Ridge nursing home in Beaver, Pennsylvania.

80. At no time has Fleetgistics paid Fudurich a premium when he worked in excess of 40 hours in a workweek.

81. Fleetgistics required Fudurich to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

82. Fudurich was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

83. Fleetgistics also deducted amounts from each of Plaintiff Fudurich's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

84. Plaintiff Fudurich regularly worked for Fleetgistics for approximately 50 hours a week, or more. He was never paid overtime premium pay.

***Plaintiff Madi Vanessa Sutton***

85. Plaintiff Madi Vanessa Sutton ("Sutton") is an individual residing in Fayetteville, North Carolina. She has worked for Fleetgistics as a driver from approximately February 2010 through the present.

86. Sutton makes her deliveries from Fayetteville and Laurinburg, North Carolina to locations in Wilmington and Myrtle Beach, North Carolina.

87. Fleetgistics does not pay Sutton a premium when she works in excess of 40 hours in a workweek.

88. Fleetgistics requires Sutton to pay for vehicle insurance coverage, and to pay to use and maintain her own vehicle to make deliveries for Fleetgistics.

89. Sutton is required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

90. Fleetgistics deducts amounts from each of Plaintiff Sutton's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

91. Plaintiff Sutton regularly works for Fleetgistics 60 hours per week, or more. She has never been paid overtime premium pay.

92. Plaintiff Sutton has consented to join this action and has filed a written consent form. *See* ECF No. 34.

***Plaintiff Ronita Foy***

93. Plaintiff Ronita Foy ("Foy") is an individual residing in Fayetteville, North Carolina. She worked for Fleetgistics as a driver from approximately July 2011 until approximately February 2012.

94. Foy made her deliveries from Laurinburg, North Carolina to locations in Wilmington and Myrtle Beach, North Carolina.

95. Fleetgistics did not pay Foy a premium when she worked in excess of 40 hours in a workweek.

96. Fleetgistics required Foy to pay for vehicle insurance coverage, and to pay to use and maintain her own vehicle to make deliveries for Fleetgistics.

97. Foy was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

98. Fleetgistics deducted amounts from each of Plaintiff Foy's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

99. Plaintiff Foy regularly worked for Fleetgistics more than 40 hours per week. She was never paid overtime premium pay.

100. Plaintiff Foy has consented to join this action and has filed a written consent form. *See* ECF No. 31.

***Plaintiff Jerry Anderson***

101. Plaintiff Jerry Anderson (“Anderson”) is an individual residing in Fayetteville, North Carolina. He worked for Fleetgistics as a driver from approximately July 2009 until approximately March 2012.

102. Anderson made his deliveries primarily from Fayetteville and Laurinberg, North Carolina to locations in Wilmington, Myrtle Beach, Fayetteville, Lumberton, Laurinburg, Elizabethtown, Whiteville, Leland, Shalotte, and Southport, North Carolina, as well as Lois and Little River, South Carolina.

103. Fleetgistics did not pay Anderson a premium when he worked in excess of 40 hours in a workweek.

104. Fleetgistics required Anderson to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

105. Anderson was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

106. Fleetgistics deducted amounts from each of Plaintiff Anderson's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

107. Plaintiff Anderson regularly worked for Fleetgistics more than 40 hours per week. He was never paid overtime premium pay.

108. Plaintiff Anderson has consented to join this action and has filed a written consent form. *See* ECF No. 37.

***Plaintiff Karolyn Underwood***

109. Plaintiff Karolyn Underwood (“Underwood”) is an individual residing in Linwood, North Carolina. She worked for Fleetgistics as a driver from approximately July 2012 until approximately January 2013.

110. Underwood made her deliveries primarily from a location in Winston-Salem, North Carolina.

111. Fleetgistics did not pay Underwood a premium when she worked in excess of 40 hours in a workweek.

112. Fleetgistics required Underwood to pay for vehicle insurance coverage, and to pay to use and maintain her own vehicle to make deliveries for Fleetgistics.

113. Underwood was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

114. Fleetgistics deducted amounts from each of Plaintiff Underwood's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

115. Plaintiff Underwood regularly worked for Fleetgistics over 60 hours per week. She was never paid overtime premium pay.

116. Plaintiff Underwood has consented to join this action and has filed a written consent form. *See* ECF No. 48.

***Plaintiff Norman Morse***



117. Plaintiff Norman Morse (“Morse”) is an individual residing in Westfield, New Jersey. He worked for Fleetgistics as a driver from approximately November 2010 to August 2011 and from approximately July to December 2012.

118. Morse made his deliveries primarily from a location in Edison, New Jersey.

119. Fleetgistics did not pay Morse a premium when he worked in excess of 40 hours in a workweek.

120. Fleetgistics required Morse to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

121. Morse was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

122. Fleetgistics deducted amounts from each of Plaintiff Morse's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

123. Plaintiff Morse regularly worked for Fleetgistics approximately 55 hours per week. He was never paid overtime premium pay.

124. Plaintiff Morse has consented to join this action and has filed a written consent form. *See* ECF No. 54.

***Plaintiff John Robertson***

125. Plaintiff John Robertson (“Robertson”) is an individual residing in Yonkers, New York. He worked for Fleetgistics as a driver from approximately August 2008 until approximately April 2011.

126. McCoy made his deliveries primarily from a location in Yonkers, New York to facilities in Yonkers and New York City.

127. Fleetgistics did not pay Robertson premium when he worked in excess of 40 hours in a workweek.

128. Fleetgistics required Robertson to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

129. Fleetgistics also deducted amounts from each of Plaintiff Robertson's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

130. Plaintiff Robertson regularly worked for Fleetgistics approximately 50 to 60 hours per week, or more. He was never paid overtime premium pay.

131. Plaintiff Robertson has consented to join this action and has completed a written consent form. *See* ECF No. 8.

***Plaintiff Anthony Gray***

132. Plaintiff Anthony Gray (“Gray”) is an individual residing in Ridgewood, New York. He worked for Fleetgistics as a driver from approximately September 2008 to approximately June 2010.

133. Gray's delivery route included deliveries in Manhattan, Brooklyn, Queens, Staten Island and Rye Brook, New York, as well as Union, New Jersey. He delivered to and from locations in Manhattan, Westchester County, and Union, New Jersey.

134. Fleetgistics did not pay Gray a premium when he worked in excess of 40 hours in a workweek.

135. Fleetgistics required Gray to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

136. Gray was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

137. Fleetgistics deducted amounts from each of Plaintiff Gray's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

138. Plaintiff Gray regularly worked for Fleetgistics approximately 85 (or more) hours per week. He was never paid overtime premium pay.

***Plaintiff Joseph Fenico***

139. Plaintiff Joseph Fenico ("Fenico") is an individual residing in Flushing, New York. He worked for Fleetgistics as a driver from approximately 2005 to approximately 2012.

140. Fenico made his deliveries primarily from facilities in New York City, Long Island and Northern New Jersey.

141. Fleetgistics did not pay Fenico a premium when he worked in excess of 40 hours in a workweek.

142. Fleetgistics required Fenico to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

143. Fenico was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

144. Fleetgistics deducted amounts from each of Plaintiff Fenico's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

145. Plaintiff Fenico regularly worked for Fleetgistics approximately 60 hours per week. He was never paid overtime premium pay.

146. Plaintiff Fenico has consented to join this action and has completed a written consent to join form. *See* ECF No. 79-1.

***Plaintiff Alix Petithomme***

147. Plaintiff Alix Petithomme ("Petithomme") is an individual residing in Norwood, Massachusetts. He has worked for Fleetgistics as a driver from approximately 2009 to the present.

148. Petithomme makes his deliveries primarily from a facility in Brockton, Massachusetts, to other locations in Massachusetts, including Norwood, Wooster, Falmouth, Newton, West Newton, Marlborough, Dedham, and West Roxbury.

149. Fleetgistics does not pay Petithomme a premium when he works in excess of 40 hours in a workweek.

150. Fleetgistics requires Petithomme to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

151. Petithomme is required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

152. Fleetgistics deducts amounts from each of Plaintiff Petithomme's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics has required its drivers to obtain from it, and to maintain at the drivers' own expense.

153. Plaintiff Petithomme has regularly worked for Fleetgistics for up to 50 hours per week. He has never been paid overtime premium pay.

154. Plaintiff Petithomme has consented to join this action and has completed a written consent form. *See* ECF No. 49.

***Plaintiff Barry Madden***

155. Plaintiff Barry Madden (“Madden”) is an individual residing in Gwyn Oak, Maryland. He has worked for Fleetgistics as a driver from approximately 2002 through the present.

156. At all relevant times, Madden has made his deliveries primarily from a location in Baltimore, Maryland.

157. Fleetgistics has never paid Madden a premium when he works in excess of 40 hours in a workweek.

158. Madden is required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

159. Fleetgistics requires Madden to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

160. Fleetgistics deducts amounts from each of Madden's weekly paychecks for the rental of a scanner and insurance, which Fleetgistics requires its drivers to obtain from it, and to maintain at the drivers' own expense.

161. At all relevant times, Madden regularly worked approximately 60 hours per week, or more. He has never been paid overtime premium pay.

162. Plaintiff Madden has consented to join this action and has completed a written consent form. *See* ECF No. 51.

***Plaintiff Glenn Bailey***

163. Plaintiff Glenn Bailey (“Bailey”) is an individual residing in Columbus, Ohio. He has worked for Fleetgistics as a driver from approximately April 2009 to the present.

164. Bailey's delivery routes included deliveries in Newark, Coshocton, Cambridge and Marietta, Ohio. He delivered from locations in Worthington, Ohio.

165. Fleetgistics did not pay Bailey a premium when he worked in excess of 40 hours in a workweek.

166. Fleetgistics required Bailey to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

167. Bailey was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

168. Fleetgistics deducted amounts from each of Plaintiff Bailey's paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

169. Plaintiff Bailey regularly worked for Fleetgistics approximately 53 (or more) hours per week. He was never paid overtime premium pay.

***Plaintiff Wendy Dobbins***

170. Plaintiff Wendy Dobbins ("Dobbins") is an individual residing in Kingsport, Tennessee. She worked for Fleetgistics as a driver in Florida from approximately August 2007 until approximately July 2011.

171. Dobbins' delivery routes included deliveries in Manatee County, Florida.

172. Fleetgistics did not pay Dobbins a premium when she worked in excess of 40 hours in a workweek.

173. Dobbins was required to pay for a uniform from Fleetgistics and to wear it while making deliveries for Fleetgistics.

174. Fleetgistics required Dobbins to pay for vehicle insurance coverage, and to pay to use and maintain his own vehicle to make deliveries for Fleetgistics.

175. Fleetgistics also deducted amounts from each of Plaintiff Dobbins' bi-weekly paychecks for uniform rentals, insurance, and the rental of a scanner, all of which Fleetgistics required its drivers to obtain from it, and to maintain at the drivers' own expense.

176. Dobbins regularly worked more than 40 hours a week for Fleetgistics, but was never paid overtime premium pay.

177. Plaintiff Dobbins has consented to join this action and has completed a written consent to join form. *See* ECF No. 79-2

***Defendants***

178. Defendant Fleetgistics Holdings, Inc. is a corporation organized and existing under the laws of Delaware.

179. Fleetgistics Holdings, Inc. has three divisions: Scriptfleet, Medifleet, and Partsfleet. *See* <http://fleetgistics.com> (last visited December 11, 2012).

180. Fleetgistics Holdings, Inc. moves its employees among its divisions.

181. Fleetgistics Holdings, Inc. employs managers who manage drivers from more than one division.

182. Through its own activities in Illinois and those of its agents, subsidiaries and divisions, Fleetgistics Holdings, Inc. has subjected itself to the jurisdiction of the state of Illinois.

183. Defendant Partsfleet, Inc. is a corporation organized and existing under the laws of the state of Florida. Its principal office is located in St. Louis, Missouri.

184. Through its own activities in Illinois and through the activities of Partsfleet II, Inc., Partsfleet, Inc. has subjected itself to the jurisdiction of the state of Illinois.

185. Defendant Partsfleet II, Inc. is a corporation organized and existing under the laws of the state of Florida. Its principal office is located in St. Louis, Missouri. It is registered to do business in Illinois and retains a registered agent within Illinois.

186. Defendant Scriptfleet, Inc. is a corporation organized and existing under the laws of the state of Florida. Its principal office is located in St. Louis, Missouri. It is registered to do business in Illinois and retains a registered agent within Illinois.

187. On information and belief, until 2009, Scriptfleet, Inc. was known as Network Express.

188. Defendant Medifleet, Inc. is a corporation organized and existing under the laws of the state of Connecticut. Its principal office is located in West Haven, Connecticut. It is registered to do business in Illinois and retains a registered agent within Illinois.

189. On information and belief, until 2009, Medifleet, Inc. was known as Express Courier Systems, Inc.

190. In this Third Amended Complaint, “Fleetgistics” refers (unless otherwise stated) to Defendants and all successor, predecessor, subsidiary and related entities to which these allegations pertain.

191. Defendants, which are subject to FLSA requirements, are employers within the meaning of the FLSA.

192. Fleetgistics, Scriptfleet, Partsfleet and Medifleet jointly employed Plaintiffs and drivers across the country.

193. Defendants are part of a single integrated enterprise that jointly employed Plaintiffs and similarly situated drivers at all times relevant.

194. Defendants' operations are interrelated and unified.

195. During all relevant times, Defendants centrally controlled the labor relations of all locations for which drivers worked.

196. During all relevant times, Defendants exercised operational control over drivers including, but not limited to, control over: compensation; recruiting and training of workers; recruiting and training of drivers' supervisors; sales and marketing programs; advertising campaigns; driver dispatch; appearance and conduct standards for workers; and inventory controls.

### **COLLECTIVE ACTION ALLEGATIONS**

197. Plaintiffs sue on behalf of themselves and all other Fleetgistics drivers, couriers and delivery drivers across the country (the “FLSA Collective”). This is an appropriate collective or representative action under [29 U.S.C. § 216\(b\)](#).

198. Plaintiffs and the other drivers, couriers and delivery drivers are similarly situated in that they are all subject to Fleetgistics' common plan or practice of improperly designating them as independent contractors (when in fact their work and the extent of control Fleetgistics exerted over them rendered them employees), failing to pay them overtime compensation, requiring them to provide and maintain their own vehicles and fuel, and making unlawful deductions from their paychecks.

### **CLASS ALLEGATIONS**

#### **The Illinois Class**

199. Plaintiffs Zolkos and Kliavets (“Illinois Plaintiffs”) bring the Second and Third Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of themselves and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Illinois between October 12, 2009 and the date of final judgment in this matter (the “Illinois Class”).

200. Excluded from the Illinois Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Illinois Class.

201. The persons in the Illinois Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

202. Upon information and belief, there are at least 225 members of the Illinois class.

203. Defendants acted or refused to act on grounds generally applicable to the Illinois Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Illinois Class as a whole.

204. The Second and Third Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Illinois Class that predominate over any questions solely affecting individual members of the Illinois Class, including but not limited to:

(a) whether Defendants violated the Illinois Minimum Wage Law (“IMWL”), 820 Ill. Comp. Stat. 105, the Illinois Wage Payment and Collection Act (“IWPCA”), 820 Ill. Comp. Stat. 115, and supporting Illinois Department of Labor (“IDOL”) regulations, 56 Ill. Admin. Code 210 and 56 Ill. Admin. Code 300, as alleged herein;

(b) whether Illinois Plaintiffs and the members of the Illinois Class were employees of Defendants pursuant to [820 Ill. Comp. Stat. 105/3\(d\)](#) and [820 Ill. Comp. Stat. 115/2](#) and supporting IDOL regulations;

(c) whether Defendants failed and/or refused to pay Illinois Plaintiffs and the Illinois Class for all hours worked;

(d) whether Defendants failed and/or refused to pay Illinois Plaintiffs and the Illinois Class overtime pay for hours worked in excess of 40 hours per workweek;

(e) whether Defendants have had a policy of failing to pay workers for time that they worked;

(f) whether Defendants' policy of failing to pay workers was instituted willfully or in reckless disregard of the law;

(g) whether it was Defendants' policy or practice to make deductions from the wages of Illinois Plaintiffs and the Illinois Class in violation of [820 Ill. Comp. Stat. 115/9](#) and supporting IDOL regulations;

(h) whether it was Defendants' policy or practice to require Illinois Plaintiffs and the Illinois Class to provide and maintain their own vehicles and fuel in violation of the IMWL, IWPCA and supporting IDOL regulations;

(i) whether it was Defendants' policy or practice to fail to keep true and accurate time and pay records for all hours worked by its employees, and other records required by the IMWL;

(j) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(k) whether it was Defendants' policy or practice to fail to comply with the posting and notice requirements of the IMWL;

(l) the nature and extent of class-wide injury and the measure of damages for those injuries.

205. Illinois Plaintiffs' claims are typical of the claims of the Illinois Class. Illinois Plaintiffs and the members of the Illinois Class work or have worked for Fleetgistics and have been subjected to its policy and pattern or practice of misclassifying them as independent contractors and failing to pay overtime wages for hours worked in excess of 40 hours per week.

206. Illinois Plaintiffs and the members of the Illinois Class have been subject to Fleetgistics' policy and pattern or practice of making unlawful deductions to their pay. Illinois Plaintiffs and the Illinois Class members enjoy the same statutory rights under the IMWL and IWPCA to be paid for all hours worked, and to be paid overtime wages. Illinois Plaintiffs and the members of the Illinois Class all have sustained similar types of damages as a result of Fleetgistics' failure to comply with the IMWL and IWPCA. Illinois Plaintiffs and the members of the Illinois Class all have been injured in that they have been uncompensated or under-compensated due to Fleetgistics' common policies, practices, and patterns.

207. Defendants acted and refused to act on grounds generally applicable to the Illinois Class, thereby making declaratory relief with respect to the Illinois Class appropriate.

208. Illinois Plaintiffs will fairly and adequately represent and protect the interests of the Illinois Class. Illinois Plaintiffs understand that, as the class representatives, they assume a fiduciary responsibility to the Illinois Class to represent its interests fairly and adequately. Illinois Plaintiffs recognize that as the class representatives, they must represent and consider the interests of the Illinois Class just as they would represent and consider their own interests. Illinois Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the Illinois Class. Illinois Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Illinois Class. Illinois Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and at trial.

209. Illinois Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.

210. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Illinois Class have been damaged and are entitled to recovery as a result of Fleetgistics' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Illinois Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Fleetgistics' practices.

### **The New York Class**

211. Plaintiffs McCoy, Robertson, Gray and Fenico ("New York Plaintiffs") bring the Fourth, Fifth and Sixth Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of themselves and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in New York between October 12, 2006 and the date of final judgment in this matter (the "New York Class").

212. Excluded from the New York Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

213. The persons in the New York Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

214. Upon information and belief, the size of the New York class is at least 650 workers.

215. Defendants acted or refused to act on grounds generally applicable to the New York Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the New York Class as a whole.

216. The Fourth, Fifth and Sixth Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the New York Class that predominate over any questions solely affecting individual members of the New York Class, including but not limited to:

(a) whether Defendants violated New York Labor Law (“NYLL”), Articles 6 and 19, and the supporting New York State Department of Labor regulations;

(b) whether Defendants failed and/or refused to compensate New York Plaintiffs and the New York Class members for all hours worked;

(c) whether Defendants failed and/or refused to pay New York Plaintiffs and the New York Class members overtime pay for hours worked in excess of 40 hours per workweek;

(d) whether Defendants failed to keep true and accurate time and pay records for all hours worked by New York Plaintiffs and the New York Class, and other records required by the NYLL;

(e) whether it was Defendants' policy or practice to make unlawful deductions from the wages of New York Plaintiffs and the New York Class;

(f) whether it was Defendants' policy or practice to fail to furnish New York Plaintiffs and the New York Class with an accurate statement of wages, hours worked, rates paid, and gross wages as required by the NYLL;

(g) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and

(h) the nature and extent of class-wide injury and the measure of damages for those injuries.

217. New York Plaintiffs' claims are typical of the claims of the New York Class. New York Plaintiffs and the members of the New York Class work or have worked for Fleetgistics and have been subjected to its policy and pattern or practice of misclassifying them as independent contractors and failing to pay overtime wages for hours worked in excess of 40 hours per week.

218. New York Plaintiffs and the members of the New York Class have been subject to Fleetgistics' policy and pattern or practice of making unlawful deductions to their pay. New York Plaintiffs and the New York Class members enjoy the same statutory rights under the NYLL to be paid for all hours worked, and to be paid overtime wages. New York Plaintiffs and the members of the New York Class all have sustained similar types of damages as a result of Fleetgistics' failure to comply with the NYLL. New York Plaintiffs and the members of the New York Class all have been injured in that they have been uncompensated or under-compensated due to Fleetgistics' common policies, practices, and patterns.

219. Defendants acted and refused to act on grounds generally applicable to the New York Class, thereby making declaratory relief with respect to the New York Class appropriate.



220. New York Plaintiffs will fairly and adequately represent and protect the interests of the New York Class. New York Plaintiffs understand that, as the class representatives, they assume a fiduciary responsibility to the New York Class to represent its interests fairly and adequately. New York Plaintiffs recognize that as the class representatives, they must represent and consider the interests of the New York Class just as they would represent and consider their own interests. New York Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the New York Class. New York Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New York Class. New York Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and at trial.

221. New York Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.

222. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the New York Class have been damaged and are entitled to recovery as a result of Fleetgistics' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the New York Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Fleetgistics' practices.

### **The Kentucky Class**

223. Plaintiff Wallace ("Kentucky Plaintiff") brings the Seventh and Eighth Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Kentucky between October 12, 2007 and the date of final judgment in this matter (the "Kentucky Class").

224. Excluded from the Kentucky Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Kentucky Class.

225. The persons in the Kentucky Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

226. Upon information and belief, the size of the Kentucky Class is at least 200 workers.

227. Defendants acted or refused to act on grounds generally applicable to the Kentucky Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Kentucky Class as a whole.

228. The Seventh and Eighth Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Kentucky Class that predominate over any questions solely affecting individual members of the Kentucky Class, including but not limited to:

(a) whether Defendants failed to keep true and accurate time records for all hours worked by the Kentucky Plaintiff and the Kentucky Class;

- (b) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- (c) whether Kentucky Plaintiff and the members of the Kentucky Class were employees of Defendants pursuant to [Ky. Rev. Stat. § 337.010](#);
- (d) whether it was Defendants' policy or practice to make deductions from the wages of Kentucky Plaintiff and the Kentucky Class in violation of [Ky. Rev. Stat. §§ 337.010 et seq.](#);
- (e) whether it was Defendants' policy or practice to fail to keep true and accurate time records for all hours worked by the Kentucky Plaintiff and the Kentucky Class;
- (f) whether Defendants failed and/or refused to pay the Kentucky Plaintiff and the Kentucky Class overtime pay for hours worked in excess of 40 hours per workweek within the meaning of [Ky. Rev. Stat. §§ 337.010 et seq.](#), and the supporting Kentucky State Department of Labor Regulations, [803 Ky. Admin. Regs. 1:075](#);
- (g) whether Defendants failed and/or refused to pay the Kentucky Plaintiff and the Kentucky Class overtime pay for hours worked on a consecutive seventh day in a workweek within the meaning of [Ky. Rev. Stat. §§ 337.010 et seq.](#), and the supporting Kentucky State Department of Labor Regulations, [803 Ky. Admin. Regs. 1:075](#);
- (h) the nature and extent of Kentucky Class-wide injury and the appropriate measure of damages for the Kentucky Class;
- (i) whether Defendants have a policy of misclassifying workers as independent contractors exempt from coverage of the overtime provisions of the FLSA and Kentucky Wage Laws; and
- (j) whether Defendants' policy of misclassifying workers was done willfully or with reckless disregard of the statute.

229. The claims of Kentucky Plaintiff are typical of the claims of the Kentucky Class he seeks to represent. Kentucky Plaintiff and the Kentucky Class members work or have worked for Defendants and have been subjected to their policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week and on the seventh consecutive work day in a workweek. Defendants acted and refused to act on grounds generally applicable to the Kentucky Class, thereby making declaratory relief with respect to the Kentucky Class appropriate.

230. Kentucky Plaintiff will fairly and adequately represent and protect the interests of the Kentucky Class. Kentucky Plaintiff understands that, as a class representative, he assumes a fiduciary responsibility to the Kentucky Class to represent its interests fairly and adequately. Kentucky Plaintiff recognizes that as a class representative, he must represent and consider the interests of the Kentucky Class just as he would represent and consider his own interests. Kentucky Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the Kentucky Class. Kentucky Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Kentucky Class. Kentucky Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and at trial.

231. Kentucky Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

232. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Kentucky Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the

relative damages suffered by individual members of the Kentucky Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

### The Connecticut Class

233. Plaintiff Jones ("Connecticut Plaintiff") brings the Ninth, Tenth and Eleventh Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Connecticut between October 12, 2010 and the date of final judgment in this matter (the "Connecticut Class").

234. Excluded from the Connecticut Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Connecticut Class.

235. The persons in the Connecticut Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

236. Upon information and belief, there are at least 450 members of the Connecticut class.

237. Defendants acted or refused to act on grounds generally applicable to the Connecticut Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Connecticut Class as a whole.

238. The Ninth, Tenth and Eleventh Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Connecticut Class that predominate over any questions solely affecting individual members of the Connecticut Class, including but not limited to:

(a) whether Defendants violated Connecticut's Wage Payment Laws, [Conn. Gen. Stat. §§ 31-58 et seq.](#), and supporting Connecticut Department of Labor ("CDOL") regulations as alleged herein;

(b) whether Connecticut Plaintiff and the members of the Connecticut Class were employees of Defendants pursuant to [Conn. Gen. Stat. §§ 31-58\(f\), 31-71\(a\)\(2\), 31-76 \(b\)\(3\)](#) and supporting CDOL regulations;

(c) whether Defendants failed and/or refused to pay Connecticut Plaintiff and the Connecticut Class for all hours worked;

(d) whether Defendants failed and/or refused to pay Connecticut Plaintiff and the Connecticut Class overtime pay for hours worked in excess of 40 hours per workweek;

(e) whether Defendants have a policy of failing to pay workers for time that they worked;

(f) whether Defendants' policy of failing to pay workers was instituted willfully or in reckless disregard of the law;

(g) whether it was Defendants' policy or practice to make deductions from the wages of Connecticut Plaintiff and the Connecticut Class in violation of [Conn. Gen. Stat. §§ 31-71\(e\), 31-73](#) and supporting CDOL regulations;

(h) whether it was Defendants' policy or practice to require Connecticut Plaintiff and the Connecticut Class to provide and maintain their own vehicles and fuel in violation of [Conn. Gen. Stat. §§ 31-71\(e\), 31-73](#) and supporting CDOL regulations;

- (i) whether it was Defendants' policy or practice to fail to keep true and accurate time and pay records for all hours worked by its employees, and other records required by [Conn. Gen. Stat. §§ 31-66, 31-71\(f\)](#) and supporting CDOL regulations;
- (j) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- (k) whether it was Defendants' policy or practice to fail to comply with the posting and notice requirements of [Conn. Gen. Stat. §§ 31-66, 31-71\(f\)](#) and supporting CDOL regulations;
- (l) the nature and extent of class-wide injury and the measure of damages for those injuries.

239. Connecticut Plaintiff's claims are typical of the claims of the Connecticut Class. Connecticut Plaintiff and the members of the Connecticut Class work or have worked for Fleetgistics and have been subjected to its policy and pattern or practice of misclassifying them as independent contractors and failing to pay overtime wages for hours worked in excess of 40 hours per week.

240. Connecticut Plaintiff and the members of the Connecticut Class have been subject to Fleetgistics' policy and pattern or practice of making unlawful deductions to their pay. Connecticut Plaintiff and the Connecticut Class members enjoy the same statutory rights under [Conn. Gen. Stat. §§ 31-58 et seq.](#) to be paid for all hours worked, and to be paid overtime wages. Connecticut Plaintiff and the members of the Connecticut Class all have sustained similar types of damages as a result of Fleetgistics' failure to comply with [Conn. Gen. Stat. §§ 31-58 et seq.](#) Connecticut Plaintiff and the members of the Connecticut Class all have been injured in that they have been uncompensated or under-compensated due to Fleetgistics' common policies, practices, and patterns.

241. Defendants acted and refused to act on grounds generally applicable to the Connecticut Class, thereby making declaratory relief with respect to the Connecticut Class appropriate.

242. Connecticut Plaintiff will fairly and adequately represent and protect the interests of the Connecticut Class. Connecticut Plaintiff understands that, as the class representative, he assumes a fiduciary responsibility to the Connecticut Class to represent its interests fairly and adequately. Connecticut Plaintiff recognizes that as the class representative, he must represent and consider the interests of the Connecticut Class just as he would represent and consider his own interests. Connecticut Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the Connecticut Class. Connecticut Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Connecticut Class. Connecticut Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and at trial.

243. Connecticut Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

244. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Connecticut Class have been damaged and are entitled to recovery as a result of Fleetgistics' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Connecticut Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Fleetgistics' practices.

### The Pennsylvania Class

245. Plaintiffs Karp, Wise, and Fudurich (“Pennsylvania Plaintiffs”) bring the Twelfth and Thirteenth Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of themselves and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Pennsylvania between October 12, 2009 and the date of final judgment in this matter (the “Pennsylvania Class”).

246. Excluded from the Pennsylvania Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Pennsylvania Class.

247. The persons in the Pennsylvania Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

248. Upon information and belief, there are at least 750 members of the Pennsylvania Class.

249. Defendants acted or refused to act on grounds generally applicable to the Pennsylvania Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Pennsylvania Class as a whole.

250. The Twelfth and Thirteenth Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Pennsylvania Class that predominate over any questions solely affecting individual members of the Pennsylvania Class, including but not limited to:

(a) whether Defendants failed to keep true and accurate time records for all hours worked by the Pennsylvania Plaintiffs and the Pennsylvania Class;

(b) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(c) whether Pennsylvania Plaintiffs and the members of the Pennsylvania Class were employees of Defendants pursuant to the Pennsylvania Minimum Wage Act (“PMWA”);

(d) whether it was Defendants' policy or practice to make deductions from the wages of Pennsylvania Plaintiffs and the Pennsylvania Class in violation of [34 Pa. Code § 231.22](#).

(e) whether it was Defendants' policy or practice to fail to keep true and accurate time records for all hours worked by the Pennsylvania Plaintiffs and the Pennsylvania Class;

(f) whether Defendants failed and/or refused to pay the Pennsylvania Plaintiffs and the Pennsylvania Class overtime pay for hours worked in excess of 40 hours per workweek within the meaning of the PMWA, 43 Pa. Cons. Stat. §§ 333.101 *et seq.*, and the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 Pa. Cons. Stat. §§ 260.1 *et seq.*;

(g) the nature and extent of Pennsylvania Class-wide injury and the appropriate measure of damages for the Pennsylvania Class;

(h) whether Defendants have a policy of misclassifying workers as independent contractors exempt from coverage of the overtime provisions of the FLSA and PMWA; and

(i) whether Defendants' policy of misclassifying workers was done willfully or with reckless disregard of the statute.

251. The claims of Pennsylvania Plaintiffs are typical of the claims of the Pennsylvania Class they seek to represent. Pennsylvania Plaintiffs and the Pennsylvania Class members work or have worked for Defendants and have been subjected to their policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week. Defendants acted and refused to act on grounds generally applicable to the Pennsylvania Class, thereby making declaratory relief with respect to the Pennsylvania Class appropriate.

252. Pennsylvania Plaintiffs will fairly and adequately represent and protect the interests of the Pennsylvania Class. Pennsylvania Plaintiffs understand that, as class representatives, they assume a fiduciary responsibility to the Pennsylvania Class to represent its interests fairly and adequately. Pennsylvania Plaintiffs recognize that as class representatives, they must represent and consider the interests of the Pennsylvania Class just as they would represent and consider their own interests. Pennsylvania Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the Pennsylvania Class. Pennsylvania Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Pennsylvania Class. Pennsylvania Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and at trial.

253. Pennsylvania Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.

254. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Pennsylvania Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Pennsylvania Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

### **The North Carolina Class**

255. Plaintiffs Foy, Anderson, Sutton and Underwood ("North Carolina Plaintiffs") bring the Fourteenth and Fifteenth Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of themselves and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in North Carolina between October 12, 2010 and the date of final judgment in this matter (the "North Carolina Class").

256. Excluded from the North Carolina Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the North Carolina Class.

257. The persons in the North Carolina Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

258. Upon information and belief, there are at least 600 members of the North Carolina class.

259. Defendants acted or refused to act on grounds generally applicable to the North Carolina Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the North Carolina Class as a whole.

260. The Fourteenth and Fifteenth Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the North Carolina Class that predominate over any questions solely affecting individual members of the North Carolina Class, including but not limited to:

(a) whether Defendants violated the North Carolina Wage and Hour Act (“NCWHA”), [N.C. Gen. Stat. §§ 95-25.1 et seq.](#), and supporting regulations [13 N.C. Admin. Code 12.0100 et seq.](#), as alleged herein;

(b) whether North Carolina Plaintiffs and the members of the North Carolina Class were employees of Defendants pursuant to [N.C. Gen. Stat. § 95-25.2](#) and supporting regulations;

(c) whether Defendants failed and/or refused to pay North Carolina Plaintiffs and the North Carolina Class for all hours worked;

(d) whether Defendants failed and/or refused to pay North Carolina Plaintiffs and the North Carolina Class overtime pay for hours worked in excess of 40 hours per workweek within the meaning of the NCWHA, [N.C. Gen. Stat. §§ 95-25.1 et seq.](#), and supporting North Carolina implementing regulations;

(e) whether Defendants have had a policy of failing to pay workers for time that they worked;

(f) whether Defendants' policy of failing to pay workers was instituted willfully or in reckless disregard of the law;

(g) whether it was Defendants' policy or practice to make deductions from the wages of North Carolina Plaintiffs and the North Carolina Class in violation of [N.C. Gen. Stat. § 95-25.8](#) and supporting regulations, [13 N.C. Admin Code 12.0304 -- 12.0305](#);

(h) whether it was Defendants' policy or practice to require North Carolina Plaintiffs and the North Carolina Class to provide and maintain their own vehicles and fuel in violation of [N.C. Gen. Stat. § 95-25.8](#) and supporting regulations, [13 N.C. Admin Code 12.0304 - 12.0305](#).

(i) whether it was Defendants' policy or practice to fail to keep true and accurate time and pay records for all hours worked by its employees, and other records required by [N.C. Gen. Stat. §§ 95-25.13, 95-25.15, 95-25.19](#) and supporting regulations, [13 N.C. Admin. Code. 12.0800 et seq.](#);

(j) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(k) whether it was Defendants' policy or practice to fail to comply with the posting and notice requirements of [N.C. Gen. Stat. §§ 95-9, 95-25.13](#) and supporting regulations;

(l) the nature and extent of class-wide injury and the measure of damages for those injuries.

261. North Carolina Plaintiffs' claims are typical of the claims of the North Carolina Class. North Carolina Plaintiffs and the members of the North Carolina Class work or have worked for Fleetgistics and have been subjected to its policy and pattern or practice of misclassifying them as independent contractors and failing to pay overtime wages for hours worked in excess of 40 hours per week.

262. North Carolina Plaintiffs and the members of the North Carolina Class have been subject to Fleetgistics' policy and pattern or practice of making unlawful deductions to their pay. North Carolina Plaintiffs and the North Carolina Class members enjoy the same statutory rights under [N.C. Gen. Stat. §§ 95-25.1 et seq.](#) to be paid for all hours worked, and to be paid overtime wages. North Carolina Plaintiffs and the members of the North Carolina Class all have sustained similar types of damages as a result of Fleetgistics' failure to comply with [N.C. Gen. Stat. §§ 95-25.1 et seq.](#) North Carolina Plaintiffs and the members of

the North Carolina Class all have been injured in that they have been uncompensated or under-compensated due to Fleetgistics' common policies, practices, and patterns.

263. Defendants acted and refused to act on grounds generally applicable to the North Carolina Class, thereby making declaratory relief with respect to the North Carolina Class appropriate.

264. North Carolina Plaintiffs will fairly and adequately represent and protect the interests of the North Carolina Class. North Carolina Plaintiffs understand that, as the class representatives, they assume a fiduciary responsibility to the North Carolina Class to represent its interests fairly and adequately. North Carolina Plaintiffs recognize that as the class representatives, they must represent and consider the interests of the North Carolina Class just as they would represent and consider their own interests. North Carolina Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the North Carolina Class. North Carolina Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the North Carolina Class. North Carolina Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and at trial.

265. North Carolina Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.

266. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the North Carolina Class have been damaged and are entitled to recovery as a result of Fleetgistics' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the North Carolina Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Fleetgistics' practices.

### **The New Jersey Class**

267. Plaintiff Morse ("New Jersey Plaintiff") brings the Sixteenth Cause of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in New Jersey between October 12, 2010 and the date of final judgment in this matter; and the Seventeenth Cause of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in New Jersey between October 12, 2006 and the date of final judgment in this matter (together, the "New Jersey Class").

268. Excluded from the New Jersey Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New Jersey Class.

269. The persons in the New Jersey Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

270. Upon information and belief, there are at least 450 members of the New Jersey class.

271. Defendants acted or refused to act on grounds generally applicable to the New Jersey Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the New Jersey Class as a whole.



272. The Sixteenth and Seventeenth Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the New Jersey Class that predominate over any questions solely affecting individual members of the New Jersey Class, including but not limited to:

(a) whether Defendants failed to keep true and accurate time records for all hours worked by the New Jersey Plaintiff and the New Jersey Class;

(b) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(c) whether New Jersey Plaintiff and the members of the New Jersey Class were employees of Defendants pursuant to the New Jersey State Wage and Hour Law (“NJSWHL”), [N.J. Stat. Ann. §§ 34:11-56a et seq.](#) and the New Jersey Wage Payment Law, [N.J. Stat. Ann. § 34:11-4.1 et seq.](#) (“NJWPL”) and supporting regulations;

(d) whether it was Defendants' policy or practice to make deductions from the wages of New Jersey Plaintiff and the New Jersey Class in violation of [N.J. Stat. Ann. § 34:11-4.4](#).

(e) whether it was Defendants' policy or practice to fail to keep true and accurate time records for all hours worked by the New Jersey Plaintiff and the New Jersey Class;

(f) whether Defendants failed and/or refused to pay the New Jersey Plaintiff and the New Jersey Class overtime pay for hours worked in excess of 40 hours per workweek within the meaning of the NJSWHL, [N.J. Stat. Ann. §§ 34:11-56a et seq.](#);

(g) the nature and extent of New Jersey Class-wide injury and the appropriate measure of damages for the New Jersey Class;

(h) whether Defendants have a policy of misclassifying workers as independent contractors exempt from coverage of the overtime provisions of the FLSA and NJSWHL; and

(i) whether Defendants' policy of misclassifying workers was done willfully or with reckless disregard of the statute.

273. The claims of New Jersey Plaintiff are typical of the claims of the New Jersey Class he seeks to represent. New Jersey Plaintiff and the New Jersey Class members work or have worked for Defendants and have been subjected to their policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week. Defendants acted and refused to act on grounds generally applicable to the New Jersey Class, thereby making declaratory relief with respect to the New Jersey Class appropriate.

274. New Jersey Plaintiff will fairly and adequately represent and protect the interests of the New Jersey Class. New Jersey Plaintiff understands that, as a class representative, he assumes a fiduciary responsibility to the New Jersey Class to represent its interests fairly and adequately. New Jersey Plaintiff recognizes that as a class representative, he must represent and consider the interests of the New Jersey Class just as he would represent and consider his own interests. New Jersey Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the New Jersey Class. New Jersey Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New Jersey Class. New Jersey Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and at trial.

275. New Jersey Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

276. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the New Jersey Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the New Jersey Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

### **The Massachusetts Class**

277. Plaintiff Petithomme ("Massachusetts Plaintiff") brings the Eighteenth and Nineteenth Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics' Scriptfleet and Partsfleet divisions as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Massachusetts between October 12, 2009 and the date of final judgment in this matter (the "Massachusetts Class").

278. Excluded from the Massachusetts Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Massachusetts Class.

279. The persons in the Massachusetts Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

280. Upon information and belief, the size of the Massachusetts Class is at least 350 workers.

281. Defendants acted or refused to act on grounds generally applicable to the Massachusetts Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Massachusetts Class as a whole.

282. The Eighteenth and Nineteenth Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Massachusetts Class that predominate over any questions solely affecting individual members of the Massachusetts Class, including but not limited to:

(a) whether Defendants failed to keep true and accurate time records for all hours worked by the Massachusetts Plaintiff and the Massachusetts Class;

(b) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(c) whether Massachusetts Plaintiff and the members of the Massachusetts Class were employees of Defendants pursuant to [Mass. Gen. Laws ch. 149, §§ 1 & 148B](#);

(d) whether it was Defendants' policy or practice to make deductions from the wages of Massachusetts Plaintiff and the Massachusetts Class in violation of [Mass. Gen. Laws ch. 149, §§ 148, 150](#), the Massachusetts Minimum Fair Wage Law, [Mass. Gen. Laws ch. 151](#), and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00;

(e) whether it was Defendants' policy or practice to fail to keep true and accurate time records for all hours worked by the Massachusetts Plaintiff and the Massachusetts Class;

(f) whether Defendants failed and/or refused to pay the Massachusetts Plaintiff and the Massachusetts Class overtime pay for hours worked in excess of 40 hours per workweek within the meaning of the Massachusetts Minimum Fair Wage Law, Mass. Gen. Laws ch. 151, and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00;

(g) the nature and extent of Massachusetts Class-wide injury and the appropriate measure of damages for the Massachusetts Class;

(h) whether Defendants have a policy of misclassifying workers as independent contractors exempt from coverage of the overtime provisions of the FLSA and Massachusetts Wage Laws, including [Mass. Gen. Laws ch. 149, § 148B](#); and

(i) whether Defendants' policy of misclassifying workers was done willfully or with reckless disregard of the statute.

283. The claims of Massachusetts Plaintiff are typical of the claims of the Massachusetts Class he seeks to represent. Massachusetts Plaintiff and the Massachusetts Class members work or have worked for Defendants and have been subjected to their policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week. Defendants acted and refused to act on grounds generally applicable to the Massachusetts Class, thereby making declaratory relief with respect to the Massachusetts Class appropriate.

284. Massachusetts Plaintiff will fairly and adequately represent and protect the interests of the Massachusetts Class. Massachusetts Plaintiff understands that, as a class representative, he assumes a fiduciary responsibility to the Massachusetts Class to represent its interests fairly and adequately. Massachusetts Plaintiff recognizes that as a class representative, he must represent and consider the interests of the Massachusetts Class just as he would represent and consider his own interests. Massachusetts Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the Massachusetts Class. Massachusetts Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Massachusetts Class. Massachusetts Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and at trial.

285. Massachusetts Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

286. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Massachusetts Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Massachusetts Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

### **The Maryland Class**

287. Plaintiff Madden ("Maryland Plaintiff") brings the Twentieth and Twenty-First Causes of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Maryland between October 12, 2009 and the date of final judgment in this matter (the "Maryland Class").

288. Excluded from the Maryland Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s)

to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Maryland Class.

289. The persons in the Maryland Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

290. Upon information and belief, the size of the Maryland Class is at least 200 workers.

291. Defendants acted or refused to act on grounds generally applicable to the Maryland Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Maryland Class as a whole.

292. The Twentieth and Twenty-First Causes of Action are properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Maryland Class that predominate over any questions solely affecting individual members of the Maryland Class, including but not limited to:

(a) Whether Fleetgistics unlawfully failed to pay overtime compensation to the Maryland Plaintiff and Maryland Class members in violation of the Maryland Wage and Hour Law, Md. Code Ann. [Labor & Employment §§ 3-401 et seq.](#) and the Maryland Wage Payment and Collection Law, Md. Code Ann. [Labor & Employment §§ 3-501 et seq.](#);

(b) Whether Fleetgistics unlawfully failed to keep records of the hours worked by the Maryland Plaintiff and Maryland Class members in violation of the Maryland Wage and Hour Law, Md. Code Ann. [Labor & Employment § 3-424](#);

(c) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(d) whether Maryland Plaintiff and the members of the Maryland Class were employees of Defendants pursuant to Md. Code Ann. [Labor & Employment § 3-101\(c\)](#);

(e) whether it was Defendants' policy or practice to make deductions from the wages of Maryland Plaintiff and the Maryland Class in violation of Md. Code Ann. [Labor & Employment § 3-503](#);

(f) Whether Fleetgistics unlawfully failed to pay the Maryland Plaintiff and Maryland Class members all wages due within the time required by law after their employment ended in violation of the Maryland Wage Payment and Collection Law, Md. Code Ann. [Labor & Employment § 3-505](#); and

(g) the nature and extent of Maryland Class-wide injury and the appropriate measure of damages sustained by members of the Maryland Class.

293. The claims of Maryland Plaintiff are typical of the claims of the Maryland Class he seeks to represent. Maryland Plaintiff and the Maryland Class members work or have worked for Defendants and have been subjected to their policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week. Defendants acted and refused to act on grounds generally applicable to the Maryland Class, thereby making declaratory relief with respect to the Maryland Class appropriate.

294. Maryland Plaintiff will fairly and adequately represent and protect the interests of the Maryland Class. Maryland Plaintiff understands that, as a class representative, he assumes a fiduciary responsibility to the Maryland Class to represent its interests fairly and adequately. Maryland Plaintiff recognizes that as a class representative, he must represent and consider the interests of the Maryland Class just as he would represent and consider his own interests. Maryland Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the

Maryland Class. Maryland Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Maryland Class. Maryland Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and at trial.

295. Maryland Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

296. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Maryland Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Maryland Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

### **The Ohio Class**

297. Plaintiff Glenn Bailey ("Ohio Plaintiff") brings the Twenty-Second Cause of Action under [Rule 23 of the Federal Rules of Civil Procedure](#), on behalf of himself and all persons who work or have worked for Fleetgistics as drivers, couriers or delivery drivers (or in comparable roles with different titles) in Ohio between October 12, 2010 and the date of final judgment in this matter (the "Ohio Class").

298. Excluded from the Ohio Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Ohio Class.

299. The persons in the Ohio Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

300. Upon information and belief, the size of the Ohio Class is at least 400 workers.

301. Defendants acted or refused to act on grounds generally applicable to the Ohio Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Ohio Class as a whole.

302. The Twenty-Second Cause of Action is properly maintainable as a class action under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). There are questions of law and fact common to the Ohio Class that predominate over any questions solely affecting individual members of the Ohio Class, including but not limited to:

(a) Whether Fleetgistics unlawfully failed to pay overtime compensation to the Ohio Plaintiff and Ohio Class members in violation of the Ohio Rev. Code Ann. § 4111 *et seq.*;

(b) Whether Fleetgistics unlawfully failed to keep records of the hours worked by the Ohio Plaintiff and Ohio Class members in violation of Ohio Rev. Code Ann. §§ 4109 and [4111.14](#);

(c) what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

(d) whether Ohio Plaintiff and the members of the Ohio Class were employees of Defendants pursuant to [Ohio Rev. Code Ann. §§ 4111.03 & 4111.14\(B\)](#);

(e) Whether Fleetgistics unlawfully failed to pay the Ohio Plaintiff and Ohio Class members all wages due within the time required by law after their employment ended in violation of [Ohio Rev. Code Ann. §§ 4113.15](#); and

(f) the nature and extent of Ohio Class-wide injury and the appropriate measure of damages sustained by members of the Ohio Class.

303. The claims of Ohio Plaintiff are typical of the claims of the Ohio Class he seeks to represent. Ohio Plaintiff and the Ohio Class members work or have worked for Defendants and have been subjected to their policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week. Defendants acted and refused to act on grounds generally applicable to the Ohio Class, thereby making declaratory relief with respect to the Ohio Class appropriate.

304. Ohio Plaintiff will fairly and adequately represent and protect the interests of the Ohio Class. Ohio Plaintiff understands that, as a class representative, he assumes a fiduciary responsibility to the Ohio Class to represent its interests fairly and adequately. Ohio Plaintiff recognizes that as a class representative, he must represent and consider the interests of the Ohio Class just as he would represent and consider his own interests. Ohio Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the Ohio Class. Ohio Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Ohio Class. Ohio Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and at trial.

305. Ohio Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

306. A class action is superior to other available methods for the fair and efficient adjudication of this litigation -- particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Ohio Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Ohio Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

## FACTS

307. At all relevant times, Plaintiffs and other members of the Illinois, New York, Kentucky, Connecticut, Pennsylvania, North Carolina, New Jersey, Massachusetts, Maryland and Ohio Classes and the FLSA Collective (collectively "Class Members") worked as drivers for Fleetgistics.

308. Fleetgistics boasts a network of delivery operations in over 100 major markets and more than 35 states. *See* <http://fleetgistics.com/who-we-are/> (last visited January 3, 2014).

309. Fleetgistics' business is to provide same-day delivery and logistics services to its clients.

310. In order to conduct this business, Fleetgistics engaged drivers, couriers and delivery drivers, such as Plaintiffs and the Class Members, to pick up the items to be delivered and deliver them to their designated recipients.

311. Plaintiffs and the Class Members shared common job duties -- performing deliveries for Fleetgistics' customers.

312. Fleetgistics designated Plaintiffs and the Class Members as independent contractors.

313. Upon information and belief, the decision to classify Plaintiffs and the Class Members as independent contractors was made centrally, and not on a person-by-person basis. This classification applies to all Fleetgistics drivers throughout the United States.

314. Fleetgistics controlled and directed the performance of Plaintiffs' and the Class Members' work.

315. Plaintiffs and the Class Members were not in an independently established trade, occupation, profession or business.

316. Plaintiffs and the Class Members were not in business for themselves, but rather depended on Fleetgistics' business for the opportunity to render services to the long-term care pharmacies, nursing homes, auto parts stores and medical laboratories they served.

317. Plaintiffs had no opportunity for profit or loss without Fleetgistics.

318. Plaintiffs and the Class Members could not deal directly with Fleetgistics' clients to offer their delivery services.

319. Plaintiffs and the Class Members were required to work for Fleetgistics to provide delivery services.

320. Plaintiffs' and the Class Members' relationship with Fleetgistics was neither temporary nor sporadic.

321. Plaintiff Zolkos worked for Fleetgistics for approximately 3½ (three and a half) years.

322. Plaintiff Kliavets worked for Fleetgistics for almost 4 (four) years.

323. Plaintiff McCoy worked for Fleetgistics for approximately 9 (nine) months.

324. Plaintiff Wallace worked for Fleetgistics for approximately 3 (three) years.

325. Plaintiff Jones worked for Fleetgistics for approximately 2 (two) years.

326. Plaintiff Karp worked for Fleetgistics for approximately 3 ½ (three and a half) years.

327. Plaintiff Underwood worked for Fleetgistics for approximately 7 (seven) months.

328. Plaintiff Foy worked for Fleetgistics for approximately 8 (eight) months.

329. Plaintiff Anderson worked for Fleetgistics for approximately 2 (two) years, 9 (nine) months.

330. Plaintiff Sutton has worked for Fleetgistics for approximately 4 ½ (four and a half) years.

331. Plaintiff Morse worked for Fleetgistics for approximately 1 ½ (one and a half) years.

332. Plaintiff Gray worked for Fleetgistics for approximately 1 (one) year, 9 (nine) months.

333. Plaintiff Fenico worked for Fleetgistics for approximately 7 (seven) years.

334. Plaintiff Petithomme has worked for Fleetgistics for approximately 5 (five) years.

335. Plaintiff Dobbins worked for Fleetgistics for approximately 4 (four) years.
336. Plaintiff Madden has worked for Fleetgistics for approximately 13 (thirteen) years.
337. Plaintiff Bailey has worked for Fleetgistics for approximately 5 ½ (five and one half) years.
338. Plaintiff Wise worked for Fleetgistics for approximately 1 ½ (one and a half) years.
339. Plaintiff Fudurich worked for Fleetgistics for approximately 1 (one) year, 3 (three) months.
340. Plaintiffs and the Class Members were required to adhere to a particular delivery schedule and could not come and go as they pleased.
341. Plaintiff Zolkos worked a regular schedule for Fleetgistics six days a week, Monday through Saturday. He worked a 1:00 p.m. route Monday through Saturday, a 1:00 a.m. route Mondays, Tuesday, Thursdays and Saturdays, and a 10:00 p.m. route Wednesdays and Fridays.
342. Plaintiff Kliavets worked a regular schedule for Fleetgistics seven days a week from the beginning of his employment until approximately November 2010. During this time he worked from approximately 8:15 a.m. until approximately 6:30 p.m. Mondays through Fridays, and from approximately 8:15 a.m. until approximately 3:30 p.m. Saturdays and Sundays.
343. From approximately November 2010 to approximately November 2011, Plaintiff Kliavets worked a regular schedule for Fleetgistics five days a week. During this time he worked from approximately 8:15 a.m. until approximately 6:30 p.m. Mondays through Fridays.
344. Plaintiff McCoy worked a regular schedule for Fleetgistics, Mondays through Fridays from 12:15 p.m. to at least 11:30 p.m., and Saturdays and Sundays from 2:00 p.m. to at least 8:00 p.m.
345. Plaintiff Wallace worked a regular schedule for Fleetgistics five or six days a week, from 6:00 p.m. to 6:00 a.m. He was regularly required to work up to four hours a day in addition to this twelve-hour shift.
346. Plaintiff Jones worked a regular schedule for Fleetgistics five days a week, from 10:30 a.m. until as late as 8:00 p.m. Mondays through Fridays.
347. Plaintiff Underwood worked a regular schedule for Fleetgistics five days a week, approximately 12 to 14 hours a day, Mondays through Saturdays.
348. Plaintiff Morse worked a regular schedule for Fleetgistics six days a week, from approximately 8:30 a.m. to 7 p.m. Mondays through Fridays, and every other Saturday from approximately 9 a.m. to 5 p.m.
349. Plaintiff Robertson worked a regular schedule for Fleetgistics five days a week, from approximately 10 a.m. to at least 2 p.m. and again from 6:30 p.m. to at least 11:30 p.m., Mondays through Fridays.
350. Plaintiff Gray worked a regular schedule for Fleetgistics seven days a week, from approximately 8:45 a.m. to 1 a.m. the following morning Mondays through Fridays, and from approximately 4 p.m. to 9 p.m. Saturdays and Sundays.
351. Plaintiff Fenico worked a regular schedule for Fleetgistics five days a week, from approximately 3:30 p.m. to 1 a.m. the following morning Mondays through Fridays. He also worked for approximately 12 to 17 hours on Saturdays.



352. Plaintiff Glenn Bailey worked a regular schedule for Fleetgistics five to six days a week. From approximately April 2009 to April 2012, he worked from approximately 8:30 p.m. to 3 a.m. the following mornings Monday through Friday, from approximately 5 p.m. to 11 p.m. on Saturdays. From approximately April 2012 to the present, he has worked from approximately 9 a.m. to 5 p.m., Mondays through Saturdays, and works an additional approximate 1.5 hours approximately 2 to 3 days a week.

353. In order to perform their jobs, Plaintiffs and the Class Members used Fleetgistics' equipment, including a scanner and other necessary equipment.

354. Plaintiffs and the Class Members were required to use their own vehicles for their work.

355. Plaintiffs and the Class Members were not reimbursed for maintaining their vehicles or for most of their gasoline expenses, or for other legitimate business expenses, including cellular telephone use.

356. Fleetgistics sometimes paid Plaintiffs and Class Members a gasoline premium, which covered only a small portion of their gasoline costs.

357. Fleetgistics maintained a policy of requiring Plaintiffs and Class Members to rent or purchase a uniform from Fleetgistics, and to wear the uniform when picking up and making deliveries. Fleetgistics deducted an amount from Plaintiffs' and Class Members' pay for the uniforms.

358. Fleetgistics did not pay New York Plaintiffs and members of the New York Class spread-of-hours pay for shifts worked of 10 hours or more.

359. Fleetgistics did not pay Kentucky Plaintiff and the members of the Kentucky Class an overtime premium for hours worked on the seventh consecutive day in a workweek.

360. Fleetgistics required Plaintiffs and Class Members to use a specialized scanner, which they were required to rent from Fleetgistics.

361. Fleetgistics deducted amounts from Plaintiffs' and Class Members' pay for the specialized scanner.

362. Fleetgistics required Plaintiffs and Class Members to obtain specialized occupational insurance from Fleetgistics.

363. Fleetgistics deducted amounts from Plaintiffs' and Class Members' pay for the occupational insurance.

364. Plaintiffs' and Class Members' work was performed for the benefit of Fleetgistics, in the normal course of Fleetgistics' business and was integrated into Fleetgistics' business.

365. The work performed by Plaintiffs and the Class Members required little or no skill.

366. Plaintiffs' and Class Members' duties did not include managerial responsibilities or the exercise of independent judgment.

367. Plaintiffs and Class Members were not engaged in making sales.

368. Plaintiffs and Class Members did not drive vehicles weighing over 10,000 pounds.

369. Fleetgistics exerted a great deal of control over Plaintiffs' and Class Members' work.

370. Fleetgistics required Plaintiffs and Class Members to arrive at their designated location to pick up items for delivery at a certain time, and to wait at the location if the items intended for delivery were not ready.

371. Fleetgistics required Plaintiffs and Class Members to check in for work using their scanners at a certain time before each route time.

372. Fleetgistics' violations have been willful and intentional in that it has known all along that Plaintiffs and other drivers, couriers and delivery drivers were employees, worked more than forty hours per week, and the requirements of the law.

373. Fleetgistics has settled other similar lawsuits on behalf of drivers it has misclassified as independent contractors, but has not changed its practices, thereby demonstrating that its actions are willful and not in good faith

### ***FIRST CAUSE OF ACTION***

#### **Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* On behalf of Plaintiffs and the FLSA Collective**

374. Plaintiffs, on behalf of themselves and all FLSA Collective members (“Collective Members”), re-allege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

375. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Third Amended Collective Action Complaint.

376. At all times relevant, Plaintiffs and the Collective Members were employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 203(e), (m), and 206(a), and/or they were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 203(e), (m), and 206(a).

377. At all times relevant, Plaintiffs and the Collective Members were or have been employees within the meaning of 29 U.S.C. §§ 203(e), (m) and 206(a).

378. At all times relevant, Defendants have been employers of Plaintiffs and the Collective Members, engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 203(e) and 206(a).

379. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 210 *et seq.*, and supporting federal regulations apply to Defendants and protect Plaintiffs and the Collective Members.

380. At all times relevant, Defendants have been an enterprise within the meaning of 29 U.S.C. § 203(s).

381. Defendants have failed to pay Plaintiffs and the Collective Members overtime wages for hours that they worked in excess of 40 hours in a workweek.

382. Each Defendant directly and indirectly acted in the interest of an employer toward Plaintiffs, Collective Members, and Class Members at all material times including, without limitation, controlling the terms of employment and compensation of Plaintiffs, Collective Members, and Class Members.

383. Defendants were each joint employers of Plaintiffs, Collective Members, and Class Members because each acted directly or indirectly in the interest of the other in relation to Plaintiffs, Collective Members, and Class Members.

384. Defendants each commonly controlled the terms of compensation and employment of Plaintiffs, Collective Members, and Class Members and are associated with one another with respect to the terms of compensation and employment of Plaintiffs, Collective Members, and Class Members.

385. Based on the foregoing, Defendants' conduct in this regard was a willful violation of the FLSA and entitles Plaintiffs and all other similarly situated drivers, couriers, and delivery drivers who opt into this litigation to compensation for all overtime hours worked, liquidated damages, attorneys' fees and court costs.

### ***SECOND CAUSE OF ACTION***

#### **820 Ill. Comp. Stat. 105/4a; 56 Ill. Admin. Code § 210.400 *et seq.* -- Unpaid Overtime On behalf of Illinois Plaintiffs and the Illinois Class**

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

387. At all relevant times, Defendants have been, and continue to be, employers within the meaning of the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. 105 (“IMWL”); the Illinois Wage Payment and Collection Act, 820 Ill. Comp. Stat. 115 (“IWPCCL”) and related regulations, 56 Ill. Admin. Code § 210 and 56 Ill. Admin. Code § 300 (collectively the “Illinois Wage Laws”). At all relevant times, Defendants employed employees, including Illinois Plaintiffs and each of the Illinois Class members, within the meaning of the Illinois Wage Laws.

388. Illinois law requires employers, such as Defendants, to pay overtime compensation to all non-exempt employees for all hours worked over forty per workweek.

389. Plaintiffs and the Illinois Class members were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

390. Throughout the Illinois Class period, and continuing through the present, Plaintiffs and the Illinois Class members regularly worked in excess of forty hours in a workweek.

391. Defendants have engaged in a widespread pattern, policy, and practice of violating the overtime provisions of the Illinois Minimum Wage Law, 820 Ill. Comp. Stat. 105/4a, and supporting IDOL regulations, 56 Ill. Admin. Code § 210.400 *et seq.*, as detailed in this Third Amended Class Action Complaint.

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

### ***THIRD CAUSE OF ACTION***

#### **820 Ill. Comp. Stat. 115/9; 56 Ill. Admin. Code § 300.700 *et seq.* -- Unlawful Deductions On behalf of Illinois Plaintiffs and the Illinois Class**

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

394. Defendants have engaged in a widespread pattern, policy, and practice of violating 820 Ill. Comp. Stat. 115/9, as detailed in this Third Amended Class Action Complaint.

395. At all times relevant, Illinois Plaintiffs and the Illinois Class members have been employees within the meaning of 820 Ill. Comp. Stat. 105/3(d) and 820 Ill. Comp. Stat. 115/2 and supporting IDOL regulations.

396. At all times relevant, Defendants have been employers within the meaning of 820 Ill. Comp. Stat. 105/3(c) and 820 Ill. Comp. Stat. 115 and supporting IDOL regulations.

397. The Illinois Wage Payment and Collection Act and supporting IDOL regulations apply to Defendants and protect the Illinois Plaintiffs and the Illinois Class members.

398. By conduct described herein, Defendants made unlawful deductions from Illinois Plaintiffs' and the Illinois Class members' wages in violation of 820 Ill. Comp. Stat. 115/9 and 56 Ill. Admin. Code § 300.700 *et seq.*

399. In addition, Defendants have required Illinois Plaintiffs and the members of the Illinois Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Illinois Plaintiffs and the members of the Illinois Class for the benefit of Defendants were unlawful deductions from the wages of Illinois Plaintiffs and the Illinois Class members, in violation of 820 Ill. Comp. Stat. 115/9 and 56 Ill. Admin. Code § 300.700 *et seq.*

400. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Illinois Plaintiffs and the Illinois Class members have sustained damages, including loss of earnings in the form of unlawful deductions and expenses incurred on behalf of Defendants in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

#### ***FOURTH CAUSE OF ACTION***

##### **New York Labor Law Article 19 -- Unpaid Overtime On behalf of New York Plaintiffs and the New York Class**

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

402. At all relevant times, Defendants have been, and continue to be, employers of New York Plaintiffs and the New York Class members, and New York Plaintiffs and the New York Class members have been employees of Defendants, within the meaning of the NYLL §§ 190, 651(5), 652 and supporting New York State Department of Labor (“NYSDOL”) regulations.

403. NYLL Article 19 requires employers, such as Defendants, to pay overtime compensation at a rate of one and one-half times the regular rate of pay to all non-exempt employees for all hours worked over forty per workweek.

404. New York Plaintiffs and the New York Class members were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

405. Throughout the New York Class period, and continuing through the present, New York Plaintiffs and the New York Class members regularly worked in excess of forty hours in a workweek.

406. Defendants have engaged in a widespread pattern, policy, and practice of violating the overtime provisions of NYLL Article 19, §§ 650 *et seq.*, and supporting NYSDOL regulations, as detailed in this Third Amended Class Action Complaint.

407. Through their knowing and intentional failure to pay New York Plaintiffs and the members of the New York Class overtime for hours worked in excess of 40 in a workweek, Defendants have willfully violated the NYLL Article 19, §§ 650 *et seq.*, and supporting NYSDOL regulations.

408. Defendants failed to post, in a conspicuous place in their establishments, a notice issued by the NYSDOL summarizing minimum wage and overtime provisions, in violation of the NYLL and supporting NYSDOL regulations including but not limited to [12 NYCRR § 137-2.3](#).

409. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, New York Plaintiffs and the New York Class members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

### ***FIFTH CAUSE OF ACTION***

#### **New York Labor Law Article 6 -- Record-Keeping Violations On behalf of New York Plaintiffs and the New York Class**

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

411. Defendants have willfully failed to supply New York Plaintiffs and the members of the New York Class notice as required by NYLL Article 6, § 195, in English or the language identified by New York Plaintiffs and the members of the New York Class as their primary language, containing New York Plaintiffs' and the New York Class members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL Article 6, § 191; the name of the employer, and "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer.

412. Defendants have willfully failed to supply New York Plaintiffs and the members of the New York Class with an accurate statement of wages as required by NYLL Article 6, § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer, rate or rates of pay and basis thereof; whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

413. Due to Defendants' violation of the NYLL, New York Plaintiffs and the New York Class members are each entitled to recover from Defendants one hundred dollars for each workweek that the violations occurred or continue to occur, or a total of twenty-five hundred dollars each, as provided for by NYLL Article 6, § 198(1)-d, fifty dollars for each workweek that the violations occurred or continue to occur, or a total of twenty-five hundred dollars each, as provided for by NYLL Article 6, § 198(1)-b, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

### ***SIXTH CAUSE OF ACTION***

#### **New York Labor Law Article 6 -- Unlawful Deductions On behalf of New York Plaintiff and the New York Class**

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

415. The provisions of NYLL Article 6, § 193 apply to Defendants and protect New York Plaintiffs and the members of the New York Class.

416. Defendants have willfully reduced the wages of New York Plaintiffs and the members of the New York Class by making unlawful deductions from their wages.

417. In addition, Defendants have required New York Plaintiffs and the New York Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by New York Plaintiffs and the members of the New York Class for the benefit of Defendants were unlawful deductions from the wages of New York Plaintiffs and the New York Class members, in violation of NYLL Article 6, § 193.

418. Due to these violations, New York Plaintiffs and the members of the New York Class are entitled to recover from Defendants deductions from their wages, expenses incurred for Defendants' benefit, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

### ***SEVENTH CAUSE OF ACTION***

#### **Kentucky Wage Laws, [Ky. Rev. Stat. §§ 337.010 et seq.](#), - Unpaid Overtime On behalf of Kentucky Plaintiff and the Kentucky Class**

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

420. Defendants have engaged in a widespread pattern, policy, and practice of violating the Kentucky Wage Laws, as detailed in this Class Action Complaint.

421. The foregoing conduct, as alleged, violates [Ky. Rev. Stat. §§ 337.010 et seq.](#), (collectively, “Kentucky Wage Laws”).

422. At all relevant times, Defendants have been, and continue to be, “employer[s]” within the meaning of the Kentucky Wage Laws. At all relevant times, Defendants have employed, and/or continue to employ, “employee[s],” including the Kentucky Plaintiff, and each of the members of the Kentucky Class, within the meaning of the Kentucky Wage Laws.

423. Kentucky Wage Laws require an employer, such as Defendants, to pay all non-exempt employees overtime wages of one and one-half times the regular rate of pay for all hours worked over 40 in a workweek and for all hours worked on the seventh consecutive day in a workweek.

424. The Kentucky Plaintiff and the Kentucky Class members are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

425. At all relevant times, Defendants have had a policy and practice of failing and refusing to pay overtime pay to the Kentucky Plaintiff and the Kentucky Class members for their hours worked in excess of 40 hours per week.

426. At all relevant times, Defendants have had a policy and practice of failing and refusing to pay overtime pay to the Kentucky Plaintiff and the Kentucky Class members for their hours worked on the seventh consecutive day of a workweek.

427. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Kentucky Plaintiff and the Kentucky Class members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendants have violated, and continue to violate, the Kentucky Wage Laws.

428. As a result of Defendants' failure to record, report, credit, and furnish to each of the Kentucky Plaintiff and the Kentucky Class members their respective wage and hour records showing all wages earned and due for all work performed, Defendants have failed to make, keep, preserve, and furnish such records, in violation of [Ky. Rev. Stat. Ann. § 337.320](#).

429. Due to Defendants' violations of the Kentucky Wage Laws, Kentucky Plaintiff and the members of the Kentucky Class are entitled to recover from Defendants their unpaid wages, liquidated damages, reasonable attorneys' fees and costs of the action,

and pre-judgment and post-judgment interest and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

#### ***EIGHTH CAUSE OF ACTION***

##### **Kentucky Wage Laws, *Ky. Rev. Stat. §§ 337.010 et seq.*, - Unlawful Deductions On behalf of Kentucky Plaintiff and the Kentucky Class**

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

431. The provisions of *Ky. Rev. Stat. § 337.060* apply to Defendants and protect Kentucky Plaintiff and the members of the Kentucky Class.

432. Defendants have willfully reduced the wages of Kentucky Plaintiff and the members of the Kentucky Class by making deductions from their wages in violation of *Ky. Rev. Stat. § 337.060*.

433. In addition, Defendants have required Kentucky Plaintiff and the Kentucky Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Kentucky Plaintiff and the members of the Kentucky Class for the benefit of Defendants were unlawful deductions from the wages of Kentucky Plaintiff and the Kentucky Class members, in violation of *Ky. Rev. Stat. § 337.060*.

434. Due to Defendants' violations of the Kentucky Wage Laws, Kentucky Plaintiff and the members of the Kentucky Class are entitled to recover from Defendants their unlawfully withheld wages, expenses incurred for the benefit of Defendants, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

#### ***NINTH CAUSE OF ACTION***

##### **Connecticut Wage Payment Laws - Unpaid Overtime On behalf of Connecticut Plaintiff and the Connecticut Class**

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

436. Defendants have engaged in a widespread pattern, policy, and practice of violating *Conn. Gen. Stat. §§ 31-58 et seq.* ("Connecticut Wage Payment Laws"), as detailed in this Class Action Complaint.

437. At all relevant times, Defendants have been, and continue to be, "employer[s]" within the meaning of the Connecticut Wage Payment Laws. At all relevant times, Defendants have employed, and/or continue to employ, "employee [s]," including the Connecticut Plaintiff, and each of the members of the Connecticut Class, within the meaning of the Connecticut Wage Payment Laws.

438. Defendants failed or refused to pay Connecticut Plaintiff and members of the Connecticut Class overtime, at a rate equal to or greater than one and one half times their regular hourly rate, for hours worked in excess of forty hours a week, in violation of *Conn. Gen. Stat. §§ 31-60 and 31-76c*.

439. As a result of Defendants' refusal or failure to pay overtime, Connecticut Plaintiff and the members of the Connecticut Class suffered a loss of wages owed.

440. Defendants' failure or refusal to pay Connecticut Plaintiff and the members of the Connecticut Class overtime when due was knowing, intentional, done in bad faith and evidences a willful disregard for the rights of Connecticut Plaintiff and the members of the Connecticut Class under the Connecticut Wage Payment Laws.

441. As a result of Defendants' failure to record, report, credit, and furnish to the Connecticut Plaintiff and the Connecticut Class members their respective wage and hour records showing all wages earned and due for all work performed, Defendants have failed to make, keep, preserve, and furnish such records, in violation of [Conn. Gen. Stat. §§ 31-66](#) and [31-71f](#).

442. Due to Defendants' violations of the Connecticut Wage Laws, Connecticut Plaintiff and the members of the Connecticut Class are entitled to recover from Defendants their unpaid wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

#### ***TENTH CAUSE OF ACTION***

##### **Connecticut Wage Payment Laws -- Unlawful Deductions On behalf of Connecticut Plaintiff and the Connecticut Class**

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

444. The provisions of [Conn. Gen. Stat. §§ 31-71e](#) and [31-73](#) apply to Defendants and protect Connecticut Plaintiff and the members of the Connecticut Class.

445. Defendants have willfully reduced the wages of Connecticut Plaintiff and the members of the Connecticut Class by making deductions from their wages in violation of [Conn. Gen. Stat. §§ 31-71e](#) and [31-73](#).

446. In addition, Defendants have required Connecticut Plaintiff and the Connecticut Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Connecticut Plaintiff and the members of the Connecticut Class for the benefit of Defendants were unlawful deductions from the wages of Connecticut Plaintiff and the Connecticut Class members, in violation of [Conn. Gen. Stat. §§ 31-71e](#) and [31-73](#).

447. Defendants' willful reduction of the wages of Connecticut Plaintiff and the members of the Connecticut Class and resulting failure to pay all moneys due and/or all wages due, in a timely manner, was knowing, intentional, done in bad faith and evidences a willful disregard for the rights of Connecticut Plaintiff and the members of the Connecticut Class under the Connecticut Wage Payment Laws.

448. Due to Defendants' violations of the Connecticut Wage Laws, Connecticut Plaintiff and the members of the Connecticut Class are entitled to recover from Defendants their unpaid wages, unreimbursed expenses, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

#### ***ELEVENTH CAUSE OF ACTION***

##### **Connecticut Wage Payment Laws -- Failure to Pay All Monies and Wages Due On behalf of Connecticut Plaintiff and the Connecticut Class**

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



450. As a result of their policies and practices, Defendants did not pay all moneys due weekly to Connecticut Plaintiff and the members of the Connecticut Class, in violation of [Conn. Gen. Stat. § 31-71b](#).

451. The paychecks that were issued to Connecticut Plaintiff and the members of the Connecticut Class did not include all wages due for each pay period worked, as required by [Conn. Gen. Stat. § 31-71b](#), as a result of Defendants' policy of treating Connecticut Plaintiff and the members of the Connecticut Class as independent contractors.

452. The paychecks that were issued to Connecticut Plaintiff and the members of the Connecticut Class did not include all wages due for each pay period worked, as required by [Conn. Gen. Stat. § 31-71b](#), as a result of Defendants' policy of not paying overtime when Connecticut Plaintiff and the members of the Connecticut Class worked in excess of 40 hours in a given workweek.

453. The paychecks that were issued to Connecticut Plaintiff and the members of the Connecticut Class did not include all wages due for each pay period worked, as required by [Conn. Gen. Stat. § 31-71b](#), as a result of Defendants' policy of making unlawful deductions from the paychecks of Connecticut Plaintiff and the members of the Connecticut Class.

454. As a result of the policies and practices described herein, Defendants did not pay all wages due at the time of discharge or voluntary termination to Connecticut Plaintiff and the members of the Connecticut Class, in violation of [Conn. Gen. Stat. § 31-71c](#).

455. Defendants' failure or refusal to pay Connecticut Plaintiff and the members of the Connecticut Class all moneys due and/or all wages due, in a timely manner, was knowing, intentional, done in bad faith and evidences a willful disregard for the rights of Connecticut Plaintiff and the members of the Connecticut Class under the Connecticut Wage Payment Laws. Due to Defendants' violations of the Connecticut Wage Laws, Connecticut Plaintiff and the members of the Connecticut Class are entitled to recover from Defendants their unpaid wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

#### ***TWELFTH CAUSE OF ACTION***

##### **43 Pa. Cons. Stat. §§ 333.101 *et seq.*; 34 Pa. Code ch. 231; 43 Pa. Cons. Stat. §§ 260.1 *et seq.* Unpaid Overtime on behalf of Pennsylvania Plaintiff and the Pennsylvania Class**

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

457. At all relevant times, Defendants have been, and continue to be, employers within the meaning of the Pennsylvania Minimum Wage Act, 43 Pa. Cons. Stat. §§ 333.101 *et seq.* (“PMWA”) and supporting regulations, 34 Pa. Code ch. 231; and the Pennsylvania Wage Payment and Collection Law (“PWPCCL”), 43 Pa. Cons. Stat. §§ 260.1 *et seq.* (collectively the “Pennsylvania Wage Laws”). At all relevant times, Defendants employed employees, including Pennsylvania Plaintiff and each of the Pennsylvania Class members, within the meaning of the Pennsylvania Wage Laws.

458. Pennsylvania law requires employers, such as Defendants, to pay overtime compensation to all non-exempt employees for all hours worked over forty per workweek.

459. Pennsylvania Plaintiff and the Pennsylvania Class members were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

460. Throughout the Pennsylvania Class period, and continuing through the present, Pennsylvania Plaintiff and the Pennsylvania Class members regularly worked in excess of forty hours in a workweek.

461. Defendants have engaged in a widespread pattern, policy, and practice of violating the overtime provisions of the PMWA, 43 Pa. Cons. Stat. §§ 333.101 *et seq.* (“PMWA”) and supporting regulations, 34 Pa. Code ch. 231; as detailed in this Third Amended Class Action Complaint.

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

### ***THIRTEENTH CAUSE OF ACTION***

#### **43 Pa. Cons. Stat. §§ 333.101 *et seq.*; 34 Pa. Code ch. 231; 43 Pa. Cons. Stat. §§ 260.1 *et seq.* Unlawful Deductions on behalf of Pennsylvania Plaintiff and the Pennsylvania Classes**

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

464. Defendants have engaged in a widespread pattern, policy, and practice of violating 34 Pa. Code §§ 9.1 and 231.22, as detailed in this Third Amended Class Action Complaint.

465. At all times relevant, Pennsylvania Plaintiff and the Pennsylvania Class members have been employees within the meaning of 43 Pa. Cons. Stat. §§ 333.101 *et seq.*; 34 Pa. Code ch. 231; 43 Pa. Cons. Stat. §§ 260.1 *et seq.* and supporting regulations, 34 Pa. Code ch. 9.

466. At all times relevant, Defendants have been employers within the meaning of 43 Pa. Cons. Stat. §§ 333.101 *et seq.*; 34 Pa. Code ch. 231; 43 Pa. Cons. Stat. §§ 260.1 *et seq.* and supporting regulations, 34 Pa. Code ch. 9.

467. The Pennsylvania Wage Laws and supporting regulations apply to Defendants and protect the Pennsylvania Plaintiff and the Pennsylvania Class members.

468. By conduct described herein, Defendants made unlawful deductions from Plaintiffs' and the Pennsylvania Class members' wages in violation of 34 Pa. Code §§ 9.1 and 231.22.

469. In addition, Defendants have required Pennsylvania Plaintiffs and the members of the Pennsylvania Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Pennsylvania Plaintiff and the members of the Pennsylvania Class for the benefit of Defendants were unlawful deductions from the wages of Pennsylvania Plaintiff and the Pennsylvania Class members, in violation of the PMWA and 34 Pa. Code § 231.22; and the PWCL and 34 Pa. Code § 9.1.

470. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Pennsylvania Plaintiff and the Pennsylvania Class members have sustained damages, including loss of earnings for deductions from their pay and expenses incurred for the benefit of Defendants, in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

### ***FOURTEENTH CAUSE OF ACTION***

#### **N.C. Gen. Stat. §§ 95-25.1 *et seq.*; 13 N.C. Admin. Code 12.0100 *et seq.* - Unpaid Overtime On behalf of North Carolina Plaintiffs and the North Carolina Class**

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

472. At all relevant times, Defendants have been, and continue to be, employers within the meaning of the North Carolina Wage and Hour Act (“NCWHA”), *N.C. Gen. Stat. §§ 95-25.1 et seq.*, and supporting regulations, 13 N.C. Admin. Code 12.0100 *et seq.* At all relevant times, Defendants employed employees, including North Carolina Plaintiffs and each of the North Carolina Class members, within the meaning of the NCWHA.

473. North Carolina law requires employers, such as Defendants, to pay overtime compensation to all non-exempt employees for all hours worked over forty per workweek.

474. North Carolina Plaintiffs and the North Carolina Class members were nonexempt employees entitled to be paid overtime compensation for all overtime hours worked.

475. Throughout the North Carolina Class period, and continuing through the present, North Carolina Plaintiffs and the North Carolina Class members regularly worked in excess of forty hours in a workweek.

476. Defendants have engaged in a widespread pattern, policy, and practice of violating the overtime provisions of the North Carolina Wage and Hour Act (“NCWHA”), *N.C. Gen. Stat. §§ 95-25.1 et seq.*, and supporting regulations 13 N.C. Admin. Code 12.0100 *et seq.*, as alleged herein, as detailed in this Third Amended Class Action Complaint.

477. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, North Carolina Plaintiffs and the North Carolina Class members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

### ***FIFTEENTH CAUSE OF ACTION***

#### **N.C. Gen. Stat. § 95-25.8; 13 N.C. Admin Code 12.0304-12.0305 -- Unlawful Deductions On behalf of North Carolina Plaintiffs and the North Carolina Classes**

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

479. Defendants have engaged in a widespread pattern, policy, and practice of violating *N.C. Gen. Stat. § 95-25.8* and supporting regulations, 13 N.C. Admin. Code 12.0304-12.0305, as detailed in this Third Amended Class Action Complaint.

480. At all times relevant, North Carolina Plaintiffs and the North Carolina Class members have been employees within the meaning of *N.C. Gen. Stat. § 95-25.2* and supporting regulations.

481. At all times relevant, Defendants have been employers within the meaning of *N.C. Gen. Stat. § 95-25.2* and supporting regulations.

482. The NCWHA and supporting regulations apply to Defendants and protect the North Carolina Plaintiffs and the North Carolina Class members.

483. By conduct described herein, Defendants made unlawful deductions from North Carolina Plaintiffs' and the North Carolina Class members' wages in violation of *N.C. Gen. Stat. § 95-25.8* and supporting regulations, 13 N.C. Admin. Code 12.0304-12.0305.

484. In addition, Defendants have required North Carolina Plaintiffs and the members of the North Carolina Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by North Carolina Plaintiffs and the members of the North Carolina Class for the benefit of Defendants were unlawful deductions from the wages of North Carolina Plaintiffs and the North Carolina Class members, in violation of [N.C. Gen. Stat. § 95-25.8](#) and supporting regulations, [13 N.C. Admin. Code 12.0304-12.0305](#).

485. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, North Carolina Plaintiffs and the North Carolina Class members have sustained damages, including amounts of deductions from their pay and expenses incurred for the benefit of Defendants, in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

#### **SIXTEENTH CAUSE OF ACTION**

##### **N.J. Stat. Ann. § 34:11-56a et seq.; N.J. Admin. Code § 12:56 et seq. -- Unpaid Overtime On behalf of New Jersey Plaintiff and the New Jersey Class**

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

487. At all relevant times, Defendants have been, and continue to be, employers within the meaning of the New Jersey State Wage and Hour Law, [N.J. Stat. Ann. § 34:11-56a et seq.](#) (“NJSWHL”) and related regulations, [N.J. Admin. Code § 12:56 et seq.](#) At all relevant times, Defendants employed employees, including New Jersey Plaintiff and each of the New Jersey Class members, within the meaning of the NJSWHL.

488. New Jersey law requires employers, such as Defendants, to pay overtime compensation to all non-exempt employees for all hours worked over forty per workweek.

489. New Jersey Plaintiff and the New Jersey Class members were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

490. Throughout the New Jersey Class period, and continuing through the present, New Jersey Plaintiff and the New Jersey Class members regularly worked in excess of forty hours in a workweek.

491. Defendants have engaged in a widespread pattern, policy, and practice of violating the overtime provisions of the NJSWHL and supporting regulations, [N.J. Admin. Code § 12:56 et seq.](#), as detailed in this Third Amended Class Action Complaint.

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

#### **SEVENTEENTH CAUSE OF ACTION**

##### **N.J. Stat. Ann. § 34:11-4.1 et seq.; N.J. Admin. Code § 12:55 et seq. -- Unlawful Deductions On behalf of New Jersey Plaintiff and the New Jersey Classes**

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

494. Defendants have engaged in a widespread pattern, policy, and practice of violating [N.J. Stat. Ann. § 34:11-4.4](#) and [N.J. Admin. Code. § 12:55-2.1](#), as detailed in this Third Amended Class Action Complaint.

495. At all times relevant, New Jersey Plaintiff and the New Jersey Class members have been employees within the meaning of the New Jersey Wage Payment Law, *N.J. Stat. Ann. § 34:11-4.1 et seq.* (“NJWPL”) and supporting regulations.

496. At all times relevant, Defendants have been employers within the meaning of the NJWPL and supporting regulations.

497. The NJWPL and supporting regulations, *N. J. Admin. Code § 12:55 et seq.*, apply to Defendants and protect the New Jersey Plaintiff and the New Jersey Class members.

498. By conduct described herein, Defendants made unlawful deductions from New Jersey Plaintiff's and the New Jersey Class members' wages in violation of *N.J. Stat. Ann. § 34:11-4.4* and *N.J. Admin. Code. § 12:55-2.1*.

499. In addition, Defendants have required New Jersey Plaintiff and the members of the New Jersey Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by New Jersey Plaintiffs and the members of the New Jersey Class for the benefit of Defendants were unlawful deductions from the wages of New Jersey Plaintiff and the New Jersey Class members, in violation of *N.J. Stat. Ann. § 34:11-4.4* and *N.J. Admin. Code. § 12:55-2.1*.

500. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, New Jersey Plaintiff and the New Jersey Class members have sustained damages, including loss of earnings for amounts unlawfully deducted from their pay and unreimbursed expenses incurred on behalf of Defendants, in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

### ***EIGHTEENTH CAUSE OF ACTION***

#### **Massachusetts Wage Laws -- Unpaid Overtime On behalf of Massachusetts Plaintiff and the Massachusetts Class**

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

502. At all relevant times, Defendants have been, and continue to be, employers within the meaning of the Massachusetts Minimum Fair Wage Law, *Mass. Gen. Laws Ch. 151 §§ 1A, et seq.*; *Mass Gen. Laws Ch. 149, §§ 148, 148B and 150*, and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00; (collectively, the “Massachusetts Wage Laws”). At all relevant times, Defendants employed employees, including Massachusetts Plaintiff and each of the Massachusetts Class members, within the meaning of the Massachusetts Wage Laws.

503. Massachusetts law requires employers, such as Defendants, to pay overtime compensation to all non-exempt employees for all hours worked over forty per workweek.

504. Massachusetts Plaintiff and the Massachusetts Class members were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

505. Throughout the Massachusetts Class period, and continuing through the present, Massachusetts Plaintiff and the Massachusetts Class members regularly worked in excess of forty hours in a workweek.

506. Defendants have engaged in a widespread pattern, policy, and practice of violating the overtime provisions of the Massachusetts Wage Laws, *Mass. Gen. Laws Ch. 151 §§ 1A, et seq.*; *Mass Gen. Laws Ch. 149, §§ 148 and 150*, and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00, as detailed in this Third Amended Class Action Complaint.

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

### *NINETEENTH CAUSE OF ACTION*

#### **Massachusetts Wage Laws -- Unlawful Deductions On behalf of Massachusetts Plaintiff and the Massachusetts Classes**

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

509. Defendants have engaged in a widespread pattern, policy, and practice of violating [Mass. Gen. Laws ch. 149, § 148](#), [Mass. Gen. Laws ch. 151](#), and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00, as detailed in this Third Amended Class Action Complaint.

510. At all times relevant, Massachusetts Plaintiff and the Massachusetts Class members have been employees within the meaning of [Mass Gen. Laws Ch. 149, §§ 1, 148, 148B and 150](#), and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00.

511. At all times relevant, Defendants have been employers within the meaning of [Mass Gen. Laws Ch. 149, §§ 1, 148, 148B and 150](#), and supporting regulations.

512. The Massachusetts Wage Laws and supporting regulations apply to Defendants and protect the Massachusetts Plaintiff and the Massachusetts Class members.

513. By conduct described herein, Defendants made unlawful deductions from Massachusetts Plaintiff's and the Massachusetts Class members' wages in violation of [Mass. Gen. Laws ch. 149, § 148](#), the Massachusetts Minimum Fair Wage Law, [Mass. Gen. Laws ch. 151](#), and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00.

514. In addition, Defendants have required Massachusetts Plaintiff and the members of the Massachusetts Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Massachusetts Plaintiff and the members of the Massachusetts Class for the benefit of Defendants were unlawful deductions from the wages of Massachusetts Plaintiff and the Massachusetts Class members, [Mass. Gen. Laws ch. 149, § 148](#), the Massachusetts Minimum Fair Wage Law, [Mass. Gen. Laws ch. 151](#), and supporting Massachusetts Department of Labor Standards Regulations, 455 C.M.R. ch. 2.00.

515. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Massachusetts Plaintiff and the Massachusetts Class members have sustained damages, including loss of earnings for amounts unlawfully deducted from their pay and unreimbursed expenses incurred on behalf of Defendants, in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

### *TWENTIETH CAUSE OF ACTION*

#### **Maryland Wage Laws, Md. Code Ann. Labor & Employment §§ 3-401 et seq. and Maryland Wage Payment and Collection Law, Md. Code Ann. Labor & Employment §§ 3-501 et seq., On Behalf of Maryland Plaintiff and the Maryland Class**

516. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

517. The foregoing conduct, as alleged, violates the Maryland Wage and Hour Law, Md. Code Ann. [Labor & Employment §§ 3-401, et seq.](#) and Maryland Wage Payment and Collection Law, Md. Code Ann. [Labor & Employment §§ 3-501, et seq.](#) (collectively, the “Maryland Wage Laws”).

518. At all relevant times, Fleetgistics has been, and continues to be, an “employer” within the meaning of the Maryland Wage Laws, [§§ 3-401\(b\) and 3-501\(b\)](#). At all relevant times, Fleetgistics has employed, and/or continues to employ, “employee[s],” including the Maryland Plaintiff, and each of the members of the prospective Maryland Class, as that term is defined and interpreted pursuant to Md. Code Ann. [Labor & Employment §§ 3-101, et seq., 3-401, et seq. and 3-501, et seq.](#)

519. The Maryland Wage Law requires that an employer, such as Fleetgistics, pay overtime compensation to all nonexempt employees. The Maryland Plaintiff and members of the Maryland Class are not exempt from overtime pay requirements under the Maryland Wage Laws.

520. At all relevant times, Fleetgistics had a policy and practice of failing and refusing to pay overtime pay to the Maryland Plaintiff and the Maryland Class members for their hours worked in excess of forty hours per workweek.

521. As a result of Fleetgistics' failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Maryland Plaintiff and the Maryland Class members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, Fleetgistics has violated, and continues to willfully violate the Maryland Wage and Hour Law, Md. Code Ann. [Labor and Employment §§ 3-415 & 3-420](#), and the Maryland Wage Payment and Collection Law, Md. Code Ann. [Labor & Employment, § 3-501, et seqi.](#)

522. The Maryland Plaintiff, on behalf of himself and members of the Maryland Class, seeks damages in the amount of the respective unpaid wages earned and due at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, as provided by the Maryland Wage and Hour Law, Md. Code Ann. [Labor and Employment § 3-427](#) and the Maryland Wage Payment and Collection Law, Md. Code Ann. [Labor and Employment § 3-507.2\(a\)](#); punitive damages; treble damages; and such other legal and equitable relief as the Court deems just and proper.

523. As a result of Fleetgistics' failure to record, report, credit, and furnish to the Maryland Plaintiff and Maryland Class members their respective wage and hour records showing all wages earned and due for all work performed, Fleetgistics has failed to make, keep, preserve, and furnish such records in violation of the Maryland Wage and Hour Law, Md. Code Ann. [Labor and Employment § 3-424](#).

524. The Maryland Plaintiff, on behalf of himself and the Maryland Class members, seeks recovery of attorneys' fees, costs, and expenses of this action to be paid by Fleetgistics, as provided by Md. Code Ann. [Labor and Employment §§ 3-427\(c\) and 3-507.2\(b\)](#).

### ***TWENTY-FIRST CAUSE OF ACTION***

#### **Md. Code. Ann. Lab & Empl. § 3-503 -- Unlawful Deductions On Behalf of Maryland Plaintiff and the Maryland Class**

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

526. Defendants have engaged in a widespread pattern, policy, and practice of violating the Maryland Wage Payment and Collection Law, Md. Code Ann. [Labor & Employment, § 3-501, et seq.](#), as detailed in this Third Amended Class Action Complaint.

527. At all relevant times, Fleetgistics has been, and continues to be, an “employer” within the meaning of the Maryland Wage Laws, §§ 3-401(b) and 3-501(b). At all relevant times, Fleetgistics has employed, and/or continues to employ, “employee[s],” including the Maryland Plaintiff, and each of the members of the prospective Maryland Class, as that term is defined and interpreted pursuant to Md. Code Ann. Labor & Employment §§ 3-101, *et seq.*, 3-401, *et seq.* and 3-501, *et seq.*

528. The Maryland Wage Laws and supporting regulations apply to Defendants and protect the Maryland Plaintiff and the Maryland Class members.

529. By conduct described herein, Defendants have made unlawful deductions from Maryland Plaintiff's and the Maryland Class members' wages in violation of Md. Code Ann. Labor & Employment, § 3-503.

530. In addition, Defendants have required Maryland Plaintiff and the members of the Maryland Class to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Maryland Plaintiffs and the members of the Maryland Class for the benefit of Defendants were unlawful deductions from the wages of Maryland Plaintiff and the Maryland Class members, in violation of Md. Code Ann. Labor & Employment, § 3-503.

### **TWENTY-SECOND CAUSE OF ACTION**

#### **Ohio Wage and Hour Claims, Ohio Rev. Code Ann. §§ 4111.01 *et seq.*, & 4113.01 *et seq.* Unpaid Overtime On Behalf of Ohio Plaintiff and the Ohio Class**

531. Plaintiffs incorporate by reference all of the allegations of all prior paragraphs as though fully set forth herein.

532. The foregoing conduct, as alleged, violates Ohio Rev. Code Ann. §§ 4111.01 *et seq.*, and § 4113.01 *et seq.* (collectively, the “Ohio Wage Laws”).

533. At all relevant times, Fleetgistics has been, and continues to be, an “employer” within the meaning of the Ohio Wage Laws, Ohio Rev. Code Ann. §§ 4111.03 & 4111.14(B). At all relevant times, Fleetgistics has employed, and/or continues to employ, “employee[s],” including the Ohio Plaintiff, and each of the members of the prospective Ohio Class, as that term is defined and interpreted pursuant to Ohio Rev. Code Ann. §§ 4111.03 & 4111.14(B).

534. Ohio Wage Laws require the payment of overtime compensation at one and one half times the regular rate for all hours worked in excess of forty (40) hours a week to nonexempt employees. Ohio Rev. Code Ann. §§ 4111.01 *et seq.*, and § 4113.15.

535. Fleetgistics has and had no good faith basis for failing to pay members of the Ohio Class overtime as provided by law. Fleetgistics' failure to pay members of the Ohio Class is willful.

536. Therefore, Ohio Plaintiff demands that he and all other members of the Ohio Class be paid overtime compensation as required by the overtime laws of Ohio, including, without limitation, Ohio Rev. Code Ann. §§ 4111.01 *et seq.*, and § 4113.15, for every hour of overtime worked in any workweek during the Ohio Class Period for which they were not so compensated, plus interest and attorneys' fees as provided by law.

537. In addition, Ohio Plaintiff and all of the members of the Ohio Class also demand reasonable attorneys' fees and costs and any additional amount as liquidated damages of the total amount of the wages found to be due, pursuant to the Ohio wage and hour laws.

### **DEMAND FOR RELIEF**

1. WHEREFORE, Plaintiffs claim:



- a. Designation of this action as a collective action pursuant to the FLSA and prompt issuance of notice pursuant to [29 U.S.C. § 216\(b\)](#);
- b. Certification of the state law claims in this action as a class action pursuant to [Federal Rule of Civil Procedure 23](#);
- c. Designation of Plaintiffs as Class Representatives;
- d. A declaratory judgment that the practices complained of herein are unlawful under appropriate state law;
- e. Appropriate equitable and injunctive relief to remedy Defendants' violations of state law, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;
- f. Unpaid overtime wages under the Fair Labor Standards Act, the Illinois Wage Laws, the NYLL, the Kentucky Wage Laws, the Connecticut Wage Payment Laws, the Pennsylvania Wage Laws, the North Carolina Wage and Hour Act, the New Jersey Wage Laws, the Massachusetts Wage Laws, the Maryland Wage Laws and the Ohio Wage Laws;
- g. Liquidated damages under the Fair Labor Standards Act, the Illinois Wage Laws, the NYLL, the Kentucky Wage Laws, the Connecticut Wage Payment Laws, the Pennsylvania Wage Laws, the North Carolina Wage and Hour Act, the New Jersey Wage Laws, the Massachusetts Wage Laws, the Maryland Wage Laws and the Ohio Wage Laws;
- h. Punitive damages under the Illinois Wage Laws, the NYLL, the Kentucky Wage Laws, the Connecticut Wage Payment Laws, the Pennsylvania Wage Laws, the North Carolina Wage and Hour Act, the New Jersey Wage Laws, the Massachusetts Wage Laws, the Maryland Wage Laws and the Ohio Wage Laws;
- i. Reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for Class Members and for the risks they took in doing so;
- j. Appropriate statutory penalties;
- k. Restitution;
- l. Pre-Judgment and Post-Judgment interest, as provided by law;
- m. Attorneys' fees and costs under the Fair Labor Standards Act, the Illinois Wage Laws, the NYLL, the Kentucky Wage Laws, the Connecticut Wage Payment Laws, the Pennsylvania Wage Laws, the North Carolina Wage and Hour Act, the New Jersey Wage Laws; the Massachusetts Wage Laws, the Maryland Wage Laws and the Ohio Wage Laws, including expert fees and costs; and
- n. Such other injunctive and equitable relief as the Court may deem just and proper.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury.

Dated: December 2, 2014

New York, NY

Respectfully submitted,

/s/ Justin M. Swartz

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