IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LOCITE SMITH, BARBARA JEAN MCGEE, BRIAN WILLIAMS, KANESHA SMITH, TREVONTE NEVILLE, TAMAL MILLER, MICHAEL CRAY, MICHELLE AYALA, CHARIDY YOUNG, DONALD LORICK, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

OVIDIU ASTALUS; GO LOGISTICS, INC.; ONESOURCE LOGISTICS, INC; 4TRANS, INC.; CROWN POINT LOGISTICS LLC; SYNY LOGISTICS INC.; CROWN POINT TRUCK AND TRAILER SALES INC.; ZUBA LOGISTICS LLC; CROWN POINT TRUCK AND TRAILER REPAIR CENTER INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 2024CH02855

Judge Pamela McLean Meyerson

Calendar 11

CLASS & COLLECTIVE ACTION

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1) Failure to Pay Minimum Wages in Violation of Illinois Minimum Wage Law (820 ILCS 105/1 *et seq.*)
2) Failure to Pay Overtime Wages in Violation of Illinois Minimum Wage Law (820 ILCS 105/4(a) *et seq.*)
3) Failure to Timely Pay All Wages Due and Owing in Violation of Wage Payment and Collection Act (820 ILCS 115 *et seq.*)
4) Conversion
5) Equitable Reformation of Contract
6) Violations of the Illinois Biometric Information Privacy Act ("BIPA"), (740 ILCS 14/1 *et seq.*)

FIRST AMENDED COLLECTIVE ACTION COMPLAINT FOR:

1) Failure to Pay Overtime Wages in Violation of the FLSA (29 U.S.C. § 207); and
2) Failure to Pay Minimum Wages in Violation of the FLSA (29 U.S.C. § 206).

JURY TRIAL DEMANDED

Plaintiffs LOCITE SMITH, BARBARA MCGHEE, BRIAN WILLIAMS, KANESHA SMITH, TREVONTE NEVILLE, TAMAL MILLER, MICHAEL CRAY, MICHELLE AYALA, CHARIDY YOUNG and DONALD LORICK individually and on behalf of all other persons similarly situated, by their undersigned attorneys as and for their Class Action and Collective Action allege as follows:

INTRODUCTION

1. This is a class and collective action First Amended Complaint for unpaid wages and overtime, theft of wages, unjust enrichment, equitable reformation of contract, liquidated damages, statutory fines, attorneys' fees and costs, and interest under the Illinois Compiled Statutes ("ILCS"), Illinois common law, and the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*

2. Specifically, Plaintiffs herein complain of (a) violations of the Illinois Minimum Wage Law (820 ILCS 105/1 *et seq.*) ("IMWL") by failure to pay minimum wages; (b) violations of the Illinois Minimum Wage Law (820 ILCS 105/4(a) *et seq.*) by failure to pay overtime wages; (c) violations of the Illinois Wage Payment and Collection Act (failure to timely pay wages due) (820 ILCS 115 *et seq*) ("IWPCA"); (d) conversion of Plaintiffs' property through wage theft; (e) violations of the Fair Labor Standards Act (29 U.S.C. § 207 *et seq.*) by failure to pay minimum wages; (f) violations of the Fair Labor Standards Act (29 U.S.C. § 207 *et seq.*) by failure to pay overtime wages; and for these reasons demand (g) equitable reformation of contract. Plaintiffs further complain of (h) violations of the Illinois Biometric Information Privacy Act ("BIPA") (40 ILCS 14/1 *et seq.*)

3. All allegations in this First Amended Complaint are based on information and belief except for those allegations pertaining specifically to each Plaintiff, which are based on that Plaintiff's personal knowledge. Each allegation in this First Amended Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

PARTIES

4. At all relevant times, Plaintiff LOCITE SMITH ("Plaintiff") was a natural person residing in Las Vegas, Nevada. She worked for Ovidiu Astalus ("Astalus") and Crown Point Logistics from July, 2022 to February 14, 2023.

5. At all relevant times, Plaintiffs BARBARA JEAN MCGHEE and BRIAN WILLIAMS were natural persons residing in Vernal, Utah. They were employed by Crown Point Logistics from July 1, 2022 until February 2, 2023.

6. At all relevant times, Plaintiffs KANESHA SMITH and TREVONTE NEVILLE were natural persons residing in Round Rock, Texas. Ms Smith was employed by Crown Point Logistics

from March 6, 2023 until April 14, 2023. Mr. Neville was employed by Crown Point Logistics from February 9, 2023 until April 14, 2023.

7. At all relevant times, Plaintiff TAMAL MILLER and Plaintiff CHARIDY YOUNG were natural persons residing in Spartansburg, South Carolina. Mr. Miller was employed by Crown Point Logistics from February 1, 2023 to March 24, 2023. Ms Young was employed by Crown Point from November 2022 until August 2023.

8. At all relevant times, Plaintiff MICHAEL CRAY was a natural person residing in Lake City Texas. Mr. Cray was employed by Crown Point Logistics from April 15, 2022 until February 15, 2023.

9. At all relevant times Plaintiff MICHELLE AYALA was a natural person residing in Bakersfield, California. She was employed by Crown Point Logistics from January 1, 2023 until February 1, 2023.

10. At all relevant times Plaintiff DONALD LORICK was a natural person residing in Bakersfield, California. He was employed by Crown Point Logistics from April 15, 2022 until December 22, 2023.

11. The ten Plaintiffs herein alleged are referred to in this First Amended Complaint as "Plaintiffs" and along with their similarly-situated co-workers subject to the class and collective action allegations of this First Amended Complaint, "Plaintiffs", "Drivers" "Plaintiffs and Class Members" or "Plaintiff Drivers".

12. At all relevant times, Plaintiff Drivers were 'employees' for purposes of Plaintiffs' claims under Illinois Law and the FLSA in that Defendant suffered or permitted them to work. 820 ILCS 105/3(d); 20 U.S.C. § 203(g).

13. At all relevant times, Defendant CROWN POINT LOGISTICS LLC ("Crown Point") was a domestic limited liability company registered and licensed to do business under Illinois law. At all relevant times, Crown Point was in the business of freight hauling and local mail delivery. Crown Point was first registered on November 16, 2021.

14. At all relevant times, SYNY LOGISTICS INC ("Syny Logistics") was a domestic corporation registered and licensed to do business under Illinois law. Syny Logistics was first

registered on May 11, 2014.

15. At all relevant times, ZUBA LOGISTICS LLC ("Zuba Logistics") was a domestic limited liability company registered and licensed to do business under Illinois law. Zuba Logistics was first registered on February 10, 2023.

16. At all relevant times, upon information and belief, Defendant CROWN POINT TRUCK AND TRAILER REPAIR CENTER, INC. was under the same control as Crown Point.

17. At all relevant times, CROWN POINT TRUCK AND TRAILER SALES, INC. was in the business of repairing trucks and trailers and attendant services.

18. At all relevant times, Defendant GO LOGISTICS, INC. ("Go Logistics") was a domestic limited liability company registered and licensed to do business under Illinois law. Go Logistics was first registered on December 27, 2021. Defendant Go Logistics was and is an alter ego of Ovidiu Astalus and Crown Point.

19. At all relevant times, Defendant ONESOURCE LOGISTICS, INC. ("OneSource") was a domestic limited liability company registered and licensed to do business under Illinois law. OneSource was first registered and licensed to do business on December 4, 2014. Defendant OneSource was and is an alter ego of Ovidiu Astalus and Crown Point.

20. At all relevant times, Defendant 4TRANS, INC. ("4Trans") was a domestic limited liability company registered and licensed to do business under Illinois law. It was dissolved on February 9, 2024. 4Trans was an alter ego of Ovidiu Astalus and Crown Point.

21. Collectively, CROWN POINT LOGISTICS, CROWN POINT TRUCK AND TRAILER REPAIR CENTER, INC. and CROWN POINT TRUCK AND TRAILER SALES INC., GO LOGISTICS, 4TRANS, and ONESOURCE are referred to herein as "Corporate Defendants".

22. At all relevant times, Defendant OVIDIU ASTALUS was a natural person residing in Illinois who had sole ownership and operational control over all Defendants[1] ("Individual Defendant" or "Astalus").

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[1] *See Astalus v. Vill. of Morton Grove*, Case No. 20-CV-4907 (N.D. Ill. Feb. 24, 2021) (*noting* Ovidiu Astalus owns and controls various Crown Point entities, including Syny Logistics, Inc., Crown Point Truck & Trailer Sales, Inc. and Crown Point Truck & Trailer Repair Center, Inc.)

23. The identities of Does 1-50 ("Doe Defendants") are unknown at this time, and this First Amended Complaint will be amended at such a time when Plaintiff learns of their identities.

24. Corporate Defendants, Doe Defendants, and the Individual Defendant are collectively referred to herein as "Defendants" or the "Crown Point Defendants."

25. Plaintiff is informed and believes that each of the Defendants sued herein as "Doe" is responsible in some manner for the acts, omissions, or representations alleged in this First Amended Complaint, and any reference herein to "Doe," "Does," "Defendant," "Defendants," "Individual Defendant," "Corporate Defendants," "Doe Defendants," "Crown Point Defendants," shall mean "Defendants and each of them."

26. At all relevant times, Defendants were employers for purposes of Plaintiffs' claims under the FLSA and Illinois law because they are an individual or an organisation that acted directly or indirectly in the interest of an employer in relation to Plaintiffs. 820 ILCS 105/3(c); FLSA 29 U.S.C. § 203(d).

ALTER EGOS, AGENCY, and CONSPIRACY

27. At all relevant times, Corporate Defendants and the Individual Defendant shared the same business addresses at 7840, 7850 and 7860 Lehigh Ave, Morton Grove, Illinois 60053 and 8101 W. Courte Dr, #511 Niles, Illinois 60714. Corporate Defendants were all under the common ownership and control of Individual Defendant Astalus.

28. To the extent Corporate Defendants and Doe Defendants are or were business entities separate from Astalus, there exists such a unity of interest and commonality of control, including commingling of funds, lack of adequate capitalization, failure to maintain proper books and records, and additional omissions, that there truly is no separation or distinction between Astalus and the Corporate Defendants. As such, the business entities are and were mere instrumentalities, shells, and alter egos of Astalus such that adherence to the fiction of a separate business entity should be ignored and the entities treated as though they were one and the same as Astalus and vice versa.

29. At all relevant times, each of the Corporate Defendants was an agent, employee, joint-venturer, shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other Corporate Defendants, and at all times mentioned herein were acting within the scope and course

and in pursuance of their agency, joint venture, partnership, employment, common enterprise, or actual or apparent authority in concert with each other and the other Defendants.

30. At all relevant times, the acts and omissions of Defendants concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and damages alleged herein. At all relevant times, Defendants approved of, condoned, or otherwise ratified each and every one of the acts or omissions complained of herein. At all relevant times, Defendants aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages as herein alleged.

31. Defendants are jointly and severally liable for all injuries and damages alleged herein.

VENUE

32. Venue is proper in this Court because each named Defendant resides, maintains its principal place of business, or otherwise is found in this judicial district, and Defendants' acts or omissions giving rise to Plaintiffs' claims occurred in Cook County.

FACTUAL ALLEGATIONS

Not Independent Contractors

33. Astalus used Go Logistics, OneSource Logistics, 4Trans, SYNY Logistics, Crown Point Logistics and ZUBA Logistics to provide trucking services in the forty-eight contiguous United States through his and their terminal, machine shop and headquarters in Morton Grove, Illinois.

34. All Plaintiffs signed contracts with Crown Point Logistics.

35. The Department of Transportation Federal Motor Carrier Safety Administration ("Administration") website reports that Crown Point is "not authorized" to provide interstate freight services by the Department of Transportation. (emphasis in original)

36. The Administration website further reports that SYNY Logistics is OUT OF SERVICE since March 20, 2022. (emphasis in original)

37. All the Plaintiffs worked as drivers for Defendants for different but overlapping periods between April 2022 and August 2023.

38. This is, in part, an action for relief from Defendants' unlawful misclassification of former and current drivers as 'independent contractors.'

39. Plaintiffs and class members were all required to sign a Drivers Services Agreement with Defendant Crown Point Logistics ("DSA") on Docusign without changing one word in order to get any work at all from Defendants. The ten DSAs of the class representatives are attached as **Exhibit A**.

40. Some Plaintiffs were forced to sleep in the cabs of the trucks they would eventually drive until they had signed the DSA.

41. All trucks used by Drivers were owned by and provided by Defendants.

42. Astalus literally stood over some Plaintiffs saying, "sign, sign, get out there."

43. No Plaintiff recalls everything that they signed.

44. No Plaintiff was provided with a copy of their documentation when their counsel requested that documentation from Defendants.

45. All Plaintiffs frequently heard Astalus brag that he had 'good lawyers' in order to intimidate Plaintiffs into submitting to his adverse and illegal actions.

46. The DSA is the product of Astalus' intimidation and control of his Drivers.

47. The DSA is an unconscionable contract of adhesion designed by his 'good lawyers' to mislead the Illinois Department of Labor and other authorities, including this court.

48. Clause 4 (c) of the DSA was an intentional and malicious misrepresentation of the state of the Drivers' relationship with Defendants. It states:

> DRIVER has been given an option and the right to perform services for COMPANY as a statutory employee. However, DRIVER has elected to operate as an independent contractor and to assume the obligations in this Agreement as an independent contractor, and not as an employee.

49. No Plaintiff was given the option to perform services for Defendants as a statutory employee.

50. All Plaintiffs would have dearly preferred to "assume their obligations" under the DSA as employees if this were a real choice and not an intentional and malicious misrepresentation.

51. In truth, Plaintiffs and Drivers were employees because, *inter alia*, they were (a) provided the trucks by Defendants; (b) under constant scrutiny and control of Defendants; (c) required to conform exactly to the schedule demanded by Defendants.

52. Instead of compensating Drivers with wages and overtime, Drivers were compensated solely by miles driven, subject to the wage theft alleged below.

Wage Theft, Overtime and Final Pay Deductions

53. Defendants made illegal deductions from Plaintiffs' pay and withheld their final pay checks as more fully described *infra*.

54. Under the DSA, Defendants made deductions of at least $250 per pay period for an "escrow" up to $2500.

55. Such "escrow" deductions were made against all Plaintiffs' pay for the sole benefit of the Defendants.

56. The "escrow" deductions were not legally authorized.

57. The "escrow" deductions were not voluntarily authorized by Plaintiffs.

58. The "escrow" deductions were not returned to Plaintiffs in the final pay period.

59. On information and belief, the "escrow" deductions were sometimes larger than what was written in Drivers' pay stubs.

60. Defendants made illegal deductions for "Occupational Accident Insurance".

61. The amount of the deduction was usually $165 per pay period per Driver.

62. No 'insurance' provided by Defendants covered Drivers.

63. Drivers were not provided any payment by Defendants when they were ill or injured in accidents.

64. The Occupational Accident Insurance deductions were made against all Plaintiffs' pay for the sole benefit of the Defendants.

65. The 'insurance' deductions were not legally authorized.

66. The 'insurance' deductions were not voluntarily authorized by Plaintiffs.

67. The 'insurance' deductions were not returned to Plaintiffs in their final pay period.

68. Not under the DSA, upon information and belief, the deductions were made in larger amounts wrongfully and arbitrarily by Astalus, sometimes in retaliation for Plaintiffs defying Astalus and resting or taking a different route.

69. Plaintiffs do not have the information required to allege such deductions with

particularity but will be able to amend this First Amended Complaint to conform with the evidence.

Uncompensated Time

70. Under the DSA, the Plaintiffs and their class members had extensive responsibilities that required hours of unpaid labor. Those responsibilities were set out in Appendix B of the DSA and included:

a. Loading and unloading each shipment

b. Communicating with the dispatcher and the pickup location

c. Filling out logbooks "accurately, legibly and neatly"

d. Inspecting each shipment

e. Securing each load

f. Inspection of trailer between loads

g. Preparing bill of lading

h. Preparing vehicle and trailer Inspection Reports every week.

71. Plaintiffs and Drivers performed their Appendix B responsibilities.

72. Additionally, from time-to-time Defendants would assign Drivers work within a locality that was intrastate and involved many stops to load and unload mail (Intrastate Work).

73. Plaintiffs and Drivers performed their additional loading and unloading duties during their Intrastate Work.

74. Plaintiffs and Drivers were not compensated for their Appendix B and Intrastate Work.

75. Plaintiffs and Drivers had no discretion over the time and manner in which they performed their Appendix B and Intrastate Work.

Not at all Free from Direction and Control

76. Clause 4(d) of the DSA was another intentional and malicious misrepresentation designed to mislead future authorities: "Driver does and will perform all services free from direction or control over the means and manner of providing those services, subject only to the right of COMPANY … to specify the desired result."

77. In deep contrast to the words of Clause 4(d), Astalus treated Drivers like his indentured servants.

78. Astalus was in constant contact with Drivers on the phone or through his dispatchers or via the DashCam installed in the trucks.

79. Astalus controlled the routes that Drivers took and directed them to take longer routes to avoid tolls.

80. Astalus phoned Drivers when their GPS system or Dashcam showed that the Driver had parked the truck to rest, use a restroom or eat for more than fifteen minutes.

81. Astalus would tell them to get going and threaten to withhold money from that Drivers' pay or make similar statements, or make such statements through his dispatchers.

82. Astalus told Drivers to keep driving when they were too tired, and cajoled them into taking extra jobs, working sixteen-hour days and putting themselves in physical danger.

83. If Drivers sought to rest, take a more efficient route or anything else Astalus disagreed with, he would intimidate them by raising his voice and threatening to withhold money from their pay. Astalus and Defendants quite often did withhold money from Drivers' pay on specious grounds.

84. Even when Drivers begged Astalus for a day off in accordance with safety regulations, Astalus would turn them down.

85. Astalus would order Drivers to turn off the Motive (formerly KeepTruckin) Dashcam and/or other GPS connections to circumvent tracking of his violations of safety regulations and keep driving.

86. Drivers were not at any time 'free from direction or control'.

87. All Drivers regularly worked in excess of 40 hours per week throughout their employment, all regularly worked well in excess of 80, yet because they were fraudulently classified as independent contractors under their DSAs, the Drivers never received overtime pay.

88. Under the Agreement, Crown Point Defendants reserved the right to determine the locations where the Drivers pick up and drop off the freight assigned to them. It specified the exact process, required the Drivers to follow certain work methods related to inspecting freight and required extensive daily and episodic reporting.

89. At all relevant times, Drivers were not an independent contractor for purposes of Illinois or Federal law.

90. At all relevant times, Defendants had the right to control the means and manner in which Plaintiffs performed their work.

91. At all relevant times, Defendants supplied the equipment and materials required for Plaintiffs' work.

92. At all relevant times, Defendants solely determined Plaintiffs' work schedule, rates of pay, and method of payment.

93. At all relevant times, Plaintiffs were expected to work much more than 40 hours per week for Defendants and were intimidated and their pay threatened if they did not.

94. At all relevant times, Defendants could and did discharge the Plaintiffs from their employment at will, never complying with the two weeks' notice period.

95. By misclassifying the Delivery Drivers as 'independent contractors', Defendants have sought to avoid various duties and obligations owed to employees under the federal Fair Labor Standards Act ("FLSA"), the IWPCA, and the IMWL, including: the duty to pay minimum wages and overtime compensation as required by the FLSA (20 U.S.C. § 201 *et. seq*); the duty to maintain workers' compensation insurance covering all employees, the duty to pay compensation to injured workers, the duty to provide meal breaks and rest breaks, the duty to comply with ODRISA, and other legal obligations.

96. Employers like Defendant may not lawfully avoid these legal obligations by labelling workers "independent contractors" who by their true terms and conditions of engagement, are employees. Crown Point Logistics and all Crown Point Defendants through Astalus exercise pervasive, perpetual control over its operations and have retained the right to control the manner and means of the Drivers' work, such that they are in fact Crown Point Logistics employees under the FLSA and Illinois law.

97. Because Defendants have willfully deprived Plaintiffs and similarly situated Drivers of the rights and protections guaranteed by the FLSA and Illinois law to all employees, as described above, Defendants' classification of the Drivers as "independent contractors" and the attendant deprivation of substantial rights and benefits of employment are part of an ongoing unfair and/or unlawful business practice by Defendants.

98. Defendants' myriad cruelties, theft, control and misconduct make the irony of the DSA, which stated that Plaintiffs had chosen to be independent contractors when they could have been employees, an unbearable injustice that the State of Illinois has an interest in addressing.

Withholding Final Pay Checks

99. Astalus made working conditions so difficult for Drivers that they frequently quit. No matter how each individual Plaintiff quit or was fired, Astalus uniformly withheld whatever pay he had not yet paid at the end of the employment.

100. Defendants have not paid Plaintiffs their final pay, which means Plaintiffs were not compensated at all for their last weeks of driving.

MotiveApp DriverID

101. At all relevant times, Defendants required Drivers to use the Motive App (formerly KeepTruckin) to automatically log their miles.

102. Defendants had Motive dual-facing dashcams installed in some portion of their trucks.

103. Motive dashcams are enabled with DriverID which measures and retains the facial geometry of the driver (*See* helpcenter.gomotive.com) ("It helps you identify drivers easily").

104. Upon information and belief, Defendants used DriverID.

105. Defendants did not provide written notice of DriverID.

106. Defendants did not explain to or warn their Drivers of their use of DashCams and DriverID.

107. Defendants did not give Plaintiffs an opportunity to give their written consent (or object) to the use of Motive's DriverID.

108. Plaintiffs were not provided with a retention schedule by Defendants explaining how long their facial geometry would be retained.

109. On information and belief, no Driver was given an opportunity to give their written consent to the use of Motive's DriverID. No Driver was presented with a retention schedule by Defendants.

110. By tracking employees and storing their data without the consent of their drivers, Defendant has avoided its obligations owed to employees under the Illinois Biometric Privacy Act.

Knowledge, Ability, and Willfulness

111. Defendants had the duty, as well as the financial ability, to compensate Plaintiffs and their similarly-situated Drivers for all hours worked under state and federal laws, but willfully, knowingly, and intentionally failed to do so in order to save money and increase Defendants' profitability.

112. Upon information and belief, Defendants continue to maintain an unlawful company-wide policy of misclassifying non-exempt employees as exempt and depriving non-exempt employees of their full wages and overtime.

113. Upon information and belief, Defendants continue to mask their activities under a DSA.

114. Upon information and belief, Defendants continue to use DriverID.

115. To date, Plaintiffs and other current and former Drivers have not been paid all wages, overtime wages, or other compensatory and liquidated damages owed by Defendants.

116. Despite written demands sent to Defendants for Plaintiffs' wages, Defendants continue to refuse to pay Plaintiffs and other similarly situated employees all wages and damages due and owing within the applicable limitations period.

117. Due to the three-year statute of limitations governing their FLSA and IMWL claims, Plaintiffs seek damages that they have accrued or will accrue at any time from the three years prior to the filing of this Compliant through the date of final judgment. Plaintiffs seek damages resulting from Defendants' violations of the IMWL (First and Second Causes of Action) that have accrued or will accrue at any time from three years prior to the filing of this First Amended Complaint through the date of final judgment. Plaintiffs seek damages resulting from Defendants' violations of the IWPCA (Third Cause of Action) that have accrued or will accrue at any time from ten years prior to the filing of this First Amended Complaint through the date of final judgment.

118. Despite Crown Point Defendants' pervasive control over all aspects of its logistics services, including details of the Drivers' work and biometric monitoring of Drivers' position, Defendant has classified and treated the Drivers as "Independent Contractors."

119. Crown Point's classification and treatment of the Drivers as "independent contractors"

rather than as "employees" is and during all relevant times has been unlawful.

120. As a result of Defendants' misclassification of the Drivers as "independent contractors," Defendant has required and/or knowingly permitted them to work hours considerably in excess of eight hours per day, twelve hours per day, and/or 40 hours per week. Plaintiffs are informed and believe and on that basis allege, that it has been Defendants' policy and practice to require and/or knowingly and willfully permit (indeed pressure) Drivers to work such overtime hours without paying them overtime compensation required by the FLSA and the IMWL.

121. By fraudulently labelling their employees "independent contractors" – rather than employees – Defendants denied Plaintiff Drivers the most basic protections of state and federal labor laws, including minimum wages and overtime pay.

122. Defendants knew or should have known that Plaintiffs and all Drivers were entitled to receive wages for all time worked, including Appendix B duties loading and unloading during intrastate work.

123. At all relevant times, Defendants did not pay regular or minimum wages for each and every hour worked by Plaintiff Drivers.

124. At all relevant times, Plaintiff Drivers were paid by the mile without overtime regardless of the number of hours worked per day or per workweek.

125. At all relevant times, Defendants converted Plaintiffs' property through wage theft of escrow amounts, 'insurance deductions', and unmarked deductions.

126. Defendants knew or should have known that these deductions were theft of wages.

127. At all relevant times, Plaintiff Drivers were deprived of their final pay.

128. Defendants knew or should have known that depriving Plaintiffs of their final pay was a violation of IWPCA.

129. At all relevant times, Plaintiff Drivers did not consent to the collection of their facial geometry pursuant to Motive's DriverID.

130. At no time did Crown Point Defendants provide Plaintiffs or any person a retention schedule for the biometric information they had taken from Plaintiffs.

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CLASS AND COLLECTIVE ACTION ALLEGATIONS

131. Plaintiffs incorporate and reallege all paragraphs above.

132. Plaintiff Drivers bring this action as both a collective action pursuant to 29 U.S.C. § 216(b) and as a class action pursuant to Section 2-801 of the Code of Civil Procedure, 735 ILCS 5/2-801 for numerous pay violations under the FLSA and IMWL and IWPCA, conversion and equitable reformation and violations of the Biometric Information Privacy Act.

First Class: BIPA

1. Plaintiff Drivers Michael Cray and Donald Lorick bring a nationwide class action on behalf of themselves and all other similarly situated members of the Class who have had their facial geometry recorded by DriverID without their written consent and without being provided a retention schedule for the five years preceding the filing of this First Amended Complaint. The Class that Plaintiffs seek to represent is composed of and defined as:

> All persons who are or have operated as a Driver for Defendant in the United States who have had their facial geometry recorded by Driver ID during the period commencing five (5) years prior to the filing of the First Amended Complaint through trial in this action.

Second Class: IMWL and IWPCA Claims, Conversion, Equitable Reformation

2. Plaintiff Drivers bring a nationwide class action on behalf of themselves and all other similarly situated members of the Class who have been similarly deprived of rights under Illinois law by Defendants in the manner described in this First Amended Complaint. The Class that Plaintiffs seek to represent is composed of and defined as:

> All persons who are or have operated as a Driver for Defendant in the United States under a Driver Service Agreement or similar written contract that they entered into on behalf of themselves or entities in which they have an ownership interest ("Drivers") during the period commencing three (3) years prior to the filing of the First Amended Complaint through trial in this action.

3. These actions have been brought and may properly be maintained as a class action under Illinois Code of Civil Procedure 735 ILCS 5/Art. II Pt. 8 because there are two well-defined communities of interest in this litigation, the proposed classes are easily ascertainable and Plaintiffs are proper representatives of each Class.

a. Numerosity: The potential members of the Class are so numerous that their individual joinder in a single action is impossible and/or impracticable. Plaintiffs are informed and believe, and on that basis allege, that Crown Point Defendants have employed at least 300 Drivers who fall within the Wage Claims Class and whose identities may be ascertained from Defendants' records. Plaintiffs are informed and believe, and on that basis allege, that Crown Point Defendants have used DriverID for their most expensive trucks, fewer than the number of total drivers but more than thirty.

b. Commonality and Predominance of Common Questions: the central questions of law and fact involved in this action are of a common or general interest and those common legal and factual issues predominate over any questions affecting only individual members of the Classes. These common questions of law and fact include, without limitation, the following:

   i. Whether class members have been misclassified as independent contractors pursuant to Crown Point Defendants' Driver Service Agreements;

   ii. Whether class members are entitled to the protection of various provisions of the IMWL and the IWPCA as detailed below;

   iii. Whether Crown Point Defendants converted property of Plaintiffs.

   iv. Whether class members are entitled to injunctive and declaratory relief and an equitable reformation of the Driver Services Agreement

   v. Whether Crown Point Defendants violated the privacy rights of the class members storing, transferring, using and obtaining biometric information in a negligent manner without disclosure, consent or a plan for deletion in violation of 740 ILCS 15;

c. Adequacy of Representation: The Named Plaintiffs will fairly and adequately represent and protect the interests of the class members. Their interests are the same as those who are not joined, they have no conflicts of interest with other class members, and they will prosecute the case vigorously on behalf of the Class. They have retained competent and experienced counsel who specialize in class action, privacy and

employment litigation to represent themselves and the proposed class.

d. Appropriateness: The class action is an appropriate method for adjudication of this controversy. The class action can best secure the economics of time, effort, and expense and promote uniformity of decision and can accomplish the other ends of equity and justice that class actions seek to obtain. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal practices of misclassifying its employees as independent contractors and failing to compensate those employees in accordance with Illinois wage and hour law. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Furthermore, the prosecution of individual lawsuits by each Class Member would present the risk of inconsistent and contradictory judgments, along with the potential for establishing inconsistent standards of conduct for Defendants and other employers. Consequently, an important public interest will be served by addressing this matter as a class action.

FLSA COLLECTIVE ALLEGATIONS

130. Plaintiffs incorporate and reallege all paragraphs above.

131. Plaintiffs bring their FLSA claims (the Sixth and Seventh Causes of Action) pursuant to 29 U.S.C. § 216(b) on behalf of themselves and other similarly situated employees ("Collective Members") who give consent in writing to join.

132. With regard to conditional certification of the FLSA Collective, Plaintiffs are similarly situated to the Collective Members under 29 U.S.C. § 216(b) based on the same facts enumerated above that also establish commonality and predominance under Section 2-801 of the Code of Civil Procedure.

133. At all relevant times, Plaintiffs and each member of the FLSA Collective was an "employee" within the meaning of the FLSA (see 29 U.S.C. § 203(e), (g)).

134. At all relevant times, each Defendant was an "employer" within the meaning of the FLSA (see 29 U.S.C. § 203(d), (g)) with respect to Plaintiffs and Collective Members.

135. Upon information and belief, Defendants employ, or have employed, over 300 putative members of the FLSA Collective during the FLSA Period.

136. For purposes of providing notice to putative members, the names, addresses, email addresses, and phone numbers of FLSA Collective Members are readily available from Defendants. Timely notice of the pendency of this collective action along with a consent to join form can be provided to Collective Members by mail, email, and/or text message, along with posting and distributing copies at Defendants' offices and worksites.

137. Plaintiffs and Collective Members are entitled to damages in the amount of their respective unpaid wages, including minimum wages, unpaid overtime compensation, and liquidated damages as provided by the FLSA. See 29 U.S.C. § 206, 207(a), 216(b).

138. Plaintiffs hereby consent to sue for violations of the FLSA and become a member of the FLSA Collective. See 29 U.S.C. §§ 216(b), 256.) Plaintiffs' consents to sue are attached hereto as **Exhibit B**.

139. Plaintiffs are informed, believe, and thereon allege that hundreds of putative Collective Members will sign and file consents to join this FLSA collective action.

140. Despite written demands sent to Defendants on August 25, 2023, Defendants continue to refuse to pay Plaintiffs, Class Members, and Collective Members all wages due and owing within the applicable limitations period.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of 820 ILCS 105/1 *et seq*

(On Behalf of Plaintiffs and the Class)

141. Plaintiffs incorporate and reallege all paragraphs above.

142. The IMWL declares "it is against public policy for an employer to pay to his employees an amount less than that fixed by this Act. Payment of any amount less than herein fixed is an unreasonable and oppressive wage, and less than sufficient to meet the minimum cost of living necessary for health. Any contract, agreement or understanding for or in relation to such unreasonable and oppressive wage for any employment covered by this Act is void." 820 ILCS 105/2.

143. Section 12a of the IWML states: "If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this Act, the employee may recover in a civil action treble the amount of any such underpayments together with costs and such reasonable attorney's fees as may be allowed by the Court, and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid."

144. By failing to pay Plaintiffs and Class Members any wages whatsoever for otherwise compensable work time, Defendants failed to pay Plaintiffs and Class Members at least minimum wage as required by 820 ILCS 105 *et seq.*

145. By failing to pay Plaintiffs and Class Members an insufficient hourly rate, Defendants failed to pay Plaintiffs and Class Members at least minimum wage as required by 820 ILCS 105 *et seq.*

WHEREFORE, Plaintiffs and Class Members demand payment by Defendants at the regular hourly pay rate for Drivers or the minimum wage rate, trebled and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid together with attorney's fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

Failure to Pay Overtime in Violation of 820 ILCS 105/4(a)

(On Behalf of Plaintiffs and the Class)

146. Plaintiffs incorporate and reallege all paragraphs above.

147. 820 ILCS 105/4(a) provides that "no employer shall employ any of his employees for a workweek of more than 40 hours unless such employee receives compensation for his employment . . . at a rate not less than 1 ½ times the regular rate at which he is employed."

148. Defendants avoided their IMWL obligations to pay overtime by misclassifying and treating Plaintiffs and Class Members as "independent contractors."

149. Plaintiffs and Class Members received the same rate of pay regardless of the number of hours they worked in a given workweek, and regardless whether their workweeks exceeded 40 hours, which it always did by a significant number of hours, for all Plaintiffs and Class Members.

WHEREFORE, Plaintiffs and Class Members demand payment by Defendants at one and a half times the hourly pay rate for Drivers or the minimum wage rate, trebled, and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid together with attorney's fees, costs, and interest as provided by law.

THIRD CAUSE OF ACTION

Failure to Timely Pay All Wages Due and Owing in Violation of 820 ILCS 115/5

(On Behalf of Plaintiffs and the Class)

150. Plaintiffs incorporate and reallege all paragraphs above.

151. 820 ILCS 115/5 states that "every employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee." Further, 820 ILCS 115/2 states that "final compensation" includes all "wages, salaries … and all other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties.

152. Defendants avoided the IWPCA obligations by nonpayment of final wages, nonreturn of 'escrowed' amounts, and 'insurance' deductions.

WHEREFORE Plaintiffs and Class Members demand payment by Defendants of their final compensation, including return of 'escrow', 'insurance' and other illegal deductions, plus damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid together with attorney's fees, costs, and interest as provided by law.

FOURTH CAUSE OF ACTION

CONVERSION

(On Behalf of Plaintiffs and the Class)

153. Plaintiffs incorporate and reallege all paragraphs above.

154. Plaintiffs have a right to the wages retained by Defendants, including specifically Plaintiffs' "escrow" payments, 'Occupational Accident Insurance', and other good and valuable pay.

155. Defendants have charged Plaintiffs for using toll roads, taking amounts out of their

pay.

156. Defendants have used Plaintiffs for uncompensated labor, including set-up time and mail delivery and have benefitted from Plaintiffs' labor without compensating them.

157. All such retention of funds and possessions and benefitting from labor wrongfully deprived Plaintiffs of wages that they had earned and which had become their property at the end of the pay period in which the wages were earned.

158. Defendants have retained Plaintiffs' final pay and thus converted Plaintiffs' property when they did not make payment to Plaintiffs after the end of their employment.

159. Defendants converted Plaintiffs' property through payroll processing at or near their operations in Morton Grove, Illinois.

160. Plaintiffs have an absolute and unconditional right to the property converted by Defendants and Defendants have exercised unlawful and unauthorized control over that property.

161. Plaintiffs made demand on Defendants for their property on or near September 20, 2023 through their counsel.

162. Defendants' conversion was effected in their business accounts which can be more specifically identified in the course of this proceeding, and this First Amended Complaint will be amended at such a time when Plaintiff learns of the name of the bank and the accounts wherein the funds were converted.

WHEREFORE, Plaintiffs and Class Members demand payment by Defendants of their $2500 "escrow", "insurance" and all other wages converted by Defendants, as restitution together with punitive damages, attorney's fees, costs, and interest as provided by law.

FIFTH CAUSE OF ACTION

Equitable Reformation of Contract

(On Behalf of Plaintiffs and the Class)

163. Plaintiffs incorporate and reallege all paragraphs above.

164. Plaintiffs and Class Member Drivers entered into Driver Service Agreements intending to be bound.

165. The Driver Service Agreements states that "DRIVER has been given an option and the

right to perform services for COMPANY as a statutory employee."

166. All Drivers were wrongfully denied this 'right' by Astalus and the Crown Point Defendants.

167. Astalus and the Crown Point Defendants knew that no such option had been given.

168. Astalus and the Crown Point Defendants intended to rely on this fraud for future scrutiny of their employment practices by regulators, commissions and courts.

169. The inclusion of this term is fraud, meant to deprive Plaintiffs of that right and the attendant minimum wage, overtime and employee protections that term implies.

170. The inclusion of this term is fraud, meant to insulate Astalus and all Defendants from the just consequences of their illegal conduct.

171. Equity demands that the Court reform the Driver Services Agreements so that Defendants are liable for Drivers damages as if they were statutory employees paid an hourly rate appropriate for the work they were doing.

WHEREFORE Plaintiffs and Class Members seek reformation of the Drivers Services Agreement in equity and the imposition of damages as if Drivers were statutory employees and punitive damages for the fraudulent behaviour evidenced by the contrast between the DSA and the actions of Defendants.

SIXTH CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of the FLSA, 29 U.S.C § 206

(On Behalf of Plaintiff and the FLSA Collective)

172. Plaintiffs incorporate and reallege all paragraphs above.

173. Under the FLSA, "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the [federal minimum wage rate]…." 29 U.S.C. § 206(a)(l).

174. By failing to pay Plaintiff and Collective Members any wages whatsoever for otherwise compensable work time, Defendants failed to pay Plaintiff and Class Members at least federal minimum wage as required by the FLSA.

175. Defendants' misclassification of employees and violation of the FLSA has been willful, and Defendants knew or should have known that their policies and practices have been unlawful.

WHEREFORE, Plaintiffs and Collective Members demand payment by Defendants at their regular pay rate or the federal minimum wage rate, whichever is higher, for all hours worked during the FLSA Period, plus an additional equal amount as liquidated damages, together with attorney's fees, costs, and interest as provided by law.

SEVENTH CAUSE OF ACTION

Failure to Pay Overtime in Violation of the FLSA, 29 U.S.C § 207

(On Behalf of Plaintiffs and the FLSA Collective)

176. Plaintiffs incorporate and reallege all paragraphs above.

177. The FLSA provides that "[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C § 207(a)(1).

178. At all relevant times, Defendants failed to pay one and one-half times the applicable regular rate of pay for all hours worked by Plaintiffs and Collective Members in excess of 40 hours in any given workweek.

179. Defendants' misclassification of employees and violation of the FLSA has been willful, and Defendants knew or should have known that their policies and practices have been unlawful.

WHEREFORE, Plaintiffs and Collective Members demand payment by Defendants at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours a week during the FLSA period, plus an additional equal amount as liquidated damages, together with attorney's fees, costs, and interest as provided by law.

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EIGHTH CAUSE OF ACTION

Violation of 740 ILCS 14/15(b) – Biometric Information Privacy Act, Failure to Obtain Informed Written Consent and Release Before Obtaining Biometric Identifiers or Information

(On Behalf of Plaintiffs and the Class)

180. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

181. BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information unless [the entity] first (1) informs the subject … in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject … in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored and used; **and** (3) receives a written release executed by the subject of the biometric identifier or biometric information …" 740 ILCS 14/15(b) (emphasis added)

182. Defendants failed to comply with these BIPA mandates.

183. Corporate Defendants are a company registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS 14/10.

184. Plaintiffs and the Class are individuals who have had their "biometric identifiers" and/or "biometric information" collected and/or captured by Defendants, as explained in detail above. *See* 740 ILCS 14/10.

185. Plaintiffs' and the Class's biometric identifiers and/or biometric information were used to identify them and therefore constitute "biometric information" as defined by BIPA. *See* 740 ILCS 14/10.

186. Defendant systematically and automatically collected, captured, used, and stored Plaintiffs' and the Class's biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

187. Defendants never informed Plaintiffs, and never informed any member of the Class in writing that their biometric identifiers and/or biometric information were being collected, captured, stored and/or used, nor did Defendants inform Plaintiffs and the Class in writing of the specific

purpose(s) and length of term for which their biometric identifiers and/or biometric information were being collected, stored, used and disseminated as required by 740 ILCS 14/15(b)(1)-(2).

188. By collecting, capturing, storing, and/or using Plaintiffs' and the Class's biometric identifiers and/or biometric information as described herein, Defendants violated Plaintiffs' and the Class's rights to privacy in their biometric identifiers and/or biometric information as set forth in BIPA. *See* 740 ILCS 14/1 *et seq.*

WHEREFORE, on behalf of themselves and the Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendants to comply with BIPA's requirements for the collection, capture, storage, use and dissemination of biometric identifiers and biometric information as described herein; (3) statutory damages of $5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or in the alternative, statutory damages of $1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

NINTH CAUSE OF ACTION

Violation of 740 ILCS 14/15(a) – Biometric Information Privacy Act, Failure to Institute, Maintain and Adhere to Publicly Available Retention Schedule

(On Behalf of Plaintiffs and the Class)

189. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

190. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention – and critically, deletion – policy. Specifically, those companies must (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (at most three years after the company's last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

191. Defendants fail to comply with these BIPA mandates.

192. Defendants are registered to do business in Illinois and thus qualify as "private entit[ies]" under BIPA. *See* 740 ILCS 14/10.

193. Plaintiffs are individuals who had their "biometric identifiers" and/or "biometric information" captured and/or collected by Defendants, as explained in detail above. *See* 740 ILCS 14/10.

194. Plaintiffs' biometric identifiers and/or biometric information were used to identify Plaintiffs and, therefore, constitute "biometric information" as defined by BIPA. *See* 740 ILCS 14/10.

195. Defendants failed to provide a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS 14/15(a).

196. Upon information and belief, Defendants lacked retention schedules and guidelines for permanently destroying Plaintiffs' and the Class's biometric data and have not and will not destroy Plaintiffs' and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual's last interaction with the company.

WHEREFORE, on behalf of themselves and the Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendants to comply with BIPA's requirements for the collection, capture, storage and use of biometric identifiers and biometric information as described herein; (3) statutory damages of $5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or in the alternative, statutory damages of $1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

ADDITIONAL PRAYER FOR RELIEF

WHEREFORE Plaintiffs, individually and on behalf of Class and Collective Members and all others similarly situated, pray for additional relief as follows:

1. For an order certifying this action as a class action under 735 ILCS 5/2-801 *et seq.* on behalf of the Class of Drivers;

2. For an order conditionally certifying this action as a collective action under the FLSA on behalf of the Collective Class;

3. For an order appointing Plaintiffs as representatives and their counsel as class counsel

for the Class and FLSA Collective;

4. For damages, according to proof for the regular rate of pay under applicable state or federal law for all hours worked;

5. For treble damages according to proof for the minimum wage rate under 820 ILCS 105/1 *et seq.* for all hours worked;

6. For treble damages according to proof for overtime compensation at one and one-half the regular rate of pay under 820 ILCS 105/4(a) for all hours worked over 40 in a week;

7. For punitive damages according to proof for conversion and the fraudulent behavior of the Crown Point Defendants with respect to the DSA;

8. For liquidated damages, pursuant to 29 U.S.C. § 216(b);

9. For reformation of the Drivers Services Agreement in equity;

10. For damages pursuant to 740 ILCS 14/20(2), or in the alternative, damages pursuant to 740 ILCS 14/20(1).

11. For reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

12. For interest as provided by law at the maximum legal rate;

13. For reasonable attorneys' fees authorized by Federal law, 820 ILCS 105/12, 820 ILCS 115/14, common law, or equity;

14. For costs of suit incurred herein;

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15. For pre-judgment and post-judgment interest at the maximum legal rate;

16. For such other relief as the Court may deem just and proper.

DATED: July 25, 2024

By: /s Rachel Mariner
One of the Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on the July 25, 2024, I caused service of a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** to be made by Odyssey E-file & Serve program, upon all parties registered to use this service, and listed as electronic service recipients herein, Email and/or via U.S. mail.

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/s/ Michelle Peredia
An employee of RAFII & ASSOCIATES, P.C.