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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES KRAWCZYK, et al., individually and on behalf of others similarly situated,

Plaintiff,

v.

DIRECTORY DISTRIBUTING ASSOCIATES, INC., AT&T CORP., AT&T INC., AT&T SERVICES, INC., AT&T ADVERTISING, LP, d/b/a AT&T ADVERTISING AND PUBLISHING, d/b/a AT&T ADVERTISING SOLUTIONS, d/b/a PACIFIC BELL DIRECTORY, d/b/a YP WESTERN DIRECTORY LLC, YP HOLDINGS LLC, and YP SHARED SERVICES, LP,

Defendants.

Case No. 3:16-cv-02531-VC

SECOND AMENDED COLLECTIVE ACTION COMPLAINT FOR VIOLATIONS OF FLSA

DEMAND FOR JURY TRIAL

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1. This is a collective action brought by James Krawczyk and David Estrada ("Plaintiffs"), on behalf of themselves and all others similarly situated. Plaintiffs and those similarly situated are or were jointly employed by Defendants Directory Distributing Associates, Inc. ("DDA"), AT&T Corp. and various other AT&T entities ("AT&T Defendants"), and YP Holdings LLC and YP Shared Services, LP ("YP Defendants"), and were denied proper compensation under federal wage and hour laws. These employees are similarly situated under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

2. As alleged in detail below, Defendants jointly employed Plaintiffs, and those similarly situated, to deliver AT&T telephone directories. Defendants misclassified Plaintiffs, and those similarly situated, as independent contractors. By using this misclassification, Defendants failed and/or refused to pay Plaintiffs, and those similarly situated, for all hours worked. Defendants further failed and/or refused to pay Plaintiffs, and those similarly situated, for all hours worked in excess of forty hours in a work week.

3. Employers must compensate employees for all work that employers suffer or permit employees to perform. *See* 29 C.F.R. §785.11. Employers may not accept the benefits of employees performing work without compensating the employees. *See* 29 C.F.R. §785.13.

4. The overtime requirements of the FLSA serve the purposes of compensating employees who work overtime and spreading out employment by placing financial pressure on the employer to hire additional workers rather than employ the same number of workers for longer hours.

I. PROCEDURAL HISTORY

5. This case began in the District Court of Texas in Houston, Texas before the Honorable Dan Hinde, Cause No. 2011-50578. After reviewing the parties' pleadings and hearing oral argument, on November 26, 2012, Judge Hinde, as permitted by 29 U.S.C. § 216(b), conditionally certified a nationwide collective action of workers hired by Defendant DDA to deliver AT&T telephone directories and who were paid as independent contractors any time during the period between June 25, 2009, and December 21, 2012.

6. Defendant Directory Distributing Associates was ordered to produce to Plaintiffs' counsel a list with contact information of all individuals who were paid as independent contractors and who were hired to deliver AT&T telephone directories during the class period.

7. On December 21, 2012, Judge Hinde approved the Collective Action Notice to be sent to those identified workers.

8. On January 11, 2013, Judge Hinde ordered that the Collective Action Notice be sent to potential opt-in class members no later than January 25, 2013. The identified workers had until March 29, 2013 to return their consent forms to participate in the collective action.

9. Following the opt-in period, on May 3, 2013, Defendants filed a motion to dismiss the "non-Texas plaintiffs," who were identified as those who did not live or work in the state of Texas. This motion was based on the Texas venue statute that applies to multi-party litigation; there is no analogous federal statute.

10. On August 16, 2013, Judge Hinde granted Defendants' motion to dismiss the non-Texas plaintiffs who did not meet the Texas venue statute requirements.

11. On September 19, 2013, Judge Hinde suspended the enforcement of the Order of Dismissal "for the duration of any appeals regarding the Order." *See* Exhibit 1, attached hereto.

12. The non-Texas plaintiffs appealed the decision to the state appellate court. On February 26, 2015, the Fourteenth Court of Appeals in Houston, Texas, affirmed the dismissal. The non-Texas plaintiffs further appealed to the Texas Supreme Court.

13. The Texas Supreme Court sought briefing on the issue, but ultimately denied review of the decision on April 1, 2016. The judgment of the Texas appellate court is now final on appeal.

14. In light of the refusal of the Texas Supreme Court to review the decision, the non-Texas plaintiffs filed this Collective Action in the U.S. District Court for the Northern District of California.[1]

[1] All non-Texas plaintiffs' consents were filed along with the Original Complaint on May 10, 2016. *See* Dkt. No. 1-1 through 1-72. They are incorporated herein by reference.

II. JURISDICTION

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and §216(b) of the Fair Labor Standard Acts, 29 U.S.C. 216(b). The amount in controversy exceeds this Court's minimum jurisdictional requirements. Plaintiff Krawczyk filed his signed consent to join this lawsuit prior to the dismissal of the non-Texas plaintiffs, which consent is attached hereto as Exhibit 2 and as part of Exhibit 3. Plaintiff Krawczyk reaffirms his consent to participate in this action. *See* Exhibit 2.

16. Plaintiff David Estrada filed his consent to join the original suit, which consent is attached hereto as Exhibit 4; *see also* Exhibits 5-6 (consents of other Estrada family members); . In addition, Plaintiff Estrada now asserts claims against Defendants for a later class period than the period at issue in the state court suit. His consent to this new action is attached as Exhibit 7; *see also* Exhibits 8-9 (consents of other Estrada family members); and Exhibit 42 (consent of Ben Bibb, individual hired to delivery telephone books by Defendants in California, including the Northern District of California, Arkansas and Texas for several years.)

17. This action is timely filed with respect to the original claim of Plaintiff Krawczyk as the order dismissing the non-Texas plaintiffs was suspended for the duration of any appeals regarding the Order of dismissal and this action was filed prior to the final order denying the non-Texas plaintiffs' appeal issued. *See* Exhibit 1, attached hereto. The U.S. Supreme Court has long recognized that when a federal complaint is filed in state court and dismissed for improper venue, "the limitation provision is tolled until the state court order dismissing the state action becomes final by the running of the time during which an appeal may be taken or the entry of a final judgment on appeal." *Burnett v. New York Central R. Co.*, 380 U.S. 424, 434-35 (1965).

18. This action is timely filed with respect to the new claim of Plaintiffs Krawczyk and Estrada based on violations of the FLSA between August 30, 2013 and August 30, 2016. Under the FLSA, the applicable limitations period is two years prior to the filing of the complaint, extended to three years in cases of willful violations of the Act.

III. VENUE

19. Venue is proper in the Northern District of California because a substantial portion of the events forming the basis of this suit occurred in the Northern District of California. Specifically, Plaintiff Krawczyk engaged in covered work in this district.

IV. INTRADISTRICT ASSIGNMENT

20. A substantial part of the events or omissions that give rise to the claims occurred in counties in the San Francisco and Oakland Divisions, so this action is properly assigned to either the San Francisco or Oakland Division. *See N.D. Cal. Local Rule 3-2(c),(d) & (e).*

V. PARTIES

21. Plaintiff James Krawczyk is an individual jointly employed by Defendants to deliver telephone directories. Krawczyk delivered AT&T telephone directories and was paid as an independent contractor throughout the relevant time period. Krawczyk currently resides in Westminster, California.

22. Plaintiff David Estrada is an individual jointly employed by Defendants to deliver telephone directories. He delivered AT&T telephone directories and was paid as an independent contractor throughout the relevant time period. He currently resides in San Antonio, Texas.

23. Defendant, Directory Distributing Associates, Inc. (DDA), a foreign corporation organized and existing under the laws of the State of Missouri, whose principal office is located at 1324 Clarkson Center 0310, Suite 348, Ellisville, Missouri, 63011, has done business in California until at least 2013. DDA has been served and has appeared in this action.

24. Defendant, AT&T Corp., is a subsidiary of AT&T, Inc., a corporation that is publicly traded on the New York stock exchange, and authorized to do business in California. AT&T Corp. has been served and has appeared in this action.

25. Defendant, AT&T Inc., is a Delaware corporation doing business in California. AT&T, Inc. maintains corporate headquarters in Dallas, Texas at One AT&T Plaza, 208 South Akard Street. AT&T Inc. has been served and has specially appeared in this action for purposes of contesting personal jurisdiction.

26. Defendant, AT&T Services, Inc., is a Delaware corporation and a subsidiary of AT&T, Inc. doing business in California. AT&T Services, Inc. maintains corporate headquarters in Dallas, Texas at One AT&T Plaza, 208 South Akard Street. AT&T Services, Inc. has been served and has appeared in this action.

27. Defendant, AT&T Advertising, LP, d/b/a AT&T Advertising and Publishing, also d/b/a AT&T Advertising Solutions, also d/b/a Pacific Bell Directory, also d/b/a YP Western Directory LLC (collectively, AT&T Advertising) was previously a segment of AT&T, Inc. On information and belief, Plaintiffs state that in May 2012, Defendant AT&T Inc. transferred the equity interests of AT&T Advertising to a subsidiary of Defendant YP Holdings LLC as part of the acquisition of AT&T Advertising Solutions from AT&T Inc. On information and belief, subsequent to May 2012, AT&T Advertising was reincorporated in Delaware as YP Western Directory LLC and is now a Delaware limited liability company doing business in California. AT&T Advertising maintains corporate headquarters in Tucker, Georgia at 2247 Northlake Parkway, 10th Floor, Tucker, Georgia 30084. AT&T Advertising has been served. YP Advertising & Publishing LLC has appeared herein as the purported successor to AT&T Advertising, L.P., advising that AT&T Advertising, L.P. has been incorrectly named herein as AT&T Advertising, LP, d/b/a AT&T Advertising and Publishing, d/b/a AT&T Advertising Solutions, d/b/a Pacific Bell Directory, d/b/a YP Western Directory LLC.

28. Defendant, YP Holdings LLC, is a Delaware limited liability company doing business in California. YP Holdings LLC maintains corporate headquarters in Tucker, Georgia at 2247 Northlake Parkway, 10th Floor, Tucker, Georgia 30084. Defendant YP Holdings LLC has been served and has appeared in this action.

29. Defendant, YP Shared Services, LLC, is a Delaware limited liability company doing business in California. YP Shared Services, LLC maintains corporate headquarters in Tucker, Georgia at 2247 Northlake Parkway, 10th Floor, Tucker, Georgia 30084. YP Shared Services LLC has been served. YP LLC has appeared herein as the purported successor to YP Shared Services, LLC.

30. Collectively, the AT&T Defendants will be referred to as "AT&T" and the YP Defendants will be referred to as "YP." At this time, Plaintiffs are unable to state with precision which AT&T entity and/or YP entity engaged in the conduct at issue, but their allegations are set forth specifically with reference to particular AT&T or YP entities when Plaintiffs have a factual basis to do so.[2]

VI. FACTUAL ALLEGATIONS

JOINT EMPLOYER ALLEGATIONS

31. Defendant Directory Distributing Associates, Inc. (hereinafter "DDA") is a telephone directory distributor whose primary business includes the hiring of delivery workers to deliver AT&T telephone directories to AT&T's residential and business customers.

32. At all relevant times, DDA contracted with and delivered telephone directories for and on behalf of AT&T. AT&T relied on, approved and benefited from the policies and practices engaged in by DDA, and DDA acted with the knowledge and consent of AT&T.

33. Defendants jointly employed individual workers, such as Plaintiffs, to deliver the AT&T telephone directories throughout the United States and Canada. Plaintiff Krawczyk details his experience delivering AT&T telephone directories in Exhibit 11.

34. Under the FLSA, the term "employer" "includes any person acting directly or indirectly in the interest of an employer in relation to an employee ...."[3] Two or more employers may jointly employ one employee, and all joint employers are responsible for compliance with the FLSA.[4] Joint employer situations include business relationships in which one employer acts "'directly or indirectly in the interest of the other employer'" as well as situations in which multiple employers "'may be deemed to share control of the employee, directly or indirectly, by

[2] *See Guitierrez v. Carter Bros. Sec. Services, LLC*, No. 2:14-CV-00351-MCE, 2014 WL 5487793, at *3 (E.D. Cal. Oct. 29, 2014) (finding a broad pleading against AT&T and an intermediary employer collectively as "Defendants" to be sufficient in a FLSA joint employer case).

[3] 29 U.S.C. § 203(d).

[4] *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1469 (9th Cir. 1983) (citation omitted); *see also* 29 C.F.R. § 791.2(a) (discussing this standard).

reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.'"[5]

35. This status "is not limited by the common law concept of 'employer,' and is to be given an expansive interpretation in order to effectuate the FLSA's broad remedial purposes."[6] It turns not on "'isolated factors but rather upon the circumstances of the whole activity.'"[7]

36. "The touchstone is 'economic reality.'"[8] To fully appreciate the scope of this test, it is important to appreciate the history and purpose of the FLSA.

37. The Department of Labor "regularly encounters situations where more than one business is involved in the work being performed and where workers may have two or more employers."[9] Emphasizing that "[t]he growing variety and number of business models and labor arrangements have made joint employment more common,"[10] the DOL has issued specific guidance on this issue.

38. In its official guidance, the DOL recounts the history of the FLSA and its broad definition of "employment."[11] The FLSA defines the term "employ" as "to suffer or permit to work." 29 U.S.C. 203(g). In the words of Sen. Hugo Black, a supporter of the FLSA at the time

[5] *Id.* (citing 29 C.F.R. § 791.2(b)(2)-(3).

[6] *Id.*; *see also Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997) (same).

[7] *Id.* (citation omitted).

[8] *Id.* (citation omitted); *see also Torres-Lopez*, 111 F.3d at 639 (same).

[9] U.S. Dep't of Labor, Wage and Hour Division, Administrator's Interpretation No. 2016-1 at 1 (January 20, 2016) (interpretive guidance concerning joint employment under the FLSA) (hereinafter "DOL Interpretation No. 2016-1") (Ex. 10).

[10] *Id.*

[11] *Id.* at 3-4.

of its enactment, this definition of employment is the "'broadest definition that has ever been included in any one act.'"[12]

39. Prior to the FLSA, the phrase "suffer or permit" was used in state laws to regulate child labor; it was "'designed to reach businesses that used middlemen to illegally hire and supervise children.'"[13] A "key rationale" for this formulation "was that an employer should be liable . . . if it had the opportunity to detect work being performed illegally and the ability to prevent it from occurring."[14]

40. Thus, the "suffer or permit" formulation was specifically designed to "prevent employers from using 'middlemen' to evade the laws' requirements."[15] In 1938, Congress adopted this language when it enacted the FLSA.

41. As the DOL explains, this language broadens the scope of the FSLA: "Unlike the common law control test, which analyzes whether a worker is an employee based on the employer's control over the worker and not the broader economic realities of the working relationship, the 'suffer or permit' standard broadens the scope of employment relationships covered by the FLSA."[16] In sum, "the expansive definition of 'employ' as including 'to suffer or

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[12] *Id*. at 3 (quoting *United States v. Rosenwasser*, 323 U.S. 360, 363 n.3 (1945) (quoting Sen. Hugo Black, 81 Cong. Rec. 7657 (1938)).

[13] *Id*. at 4 (quoting *Antenor v. D & S Farms*, 88 F.3d 925, 929 n.5 (11th Cir. 1996)).

[14] *Id*.

[15] *Id*.

[16] *Id*.; *see also Walling v. Portland Term. Co*., 330 U.S. 148, 150-51 (1947) ("[I]n determining who are 'employees' under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.") (internal citation omitted); *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992) (FLSA "suffer or permit" standard for employment "stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles."); *Antenor*, 88 F.3d at 933 ("Indeed, the 'suffer or permit to work' standard was developed to assign responsibility to businesses that did not directly supervise putative employees.").

permit to work' rejected the common law control standard and ensures that the scope of employment relationships and joint employment under the FLSA . . . is as broad as possible."[17]

42. The DOL defines a situation in which one employer uses another to employ workers through an intermediary as "vertical joint employment":

> Vertical joint employment exists where the employee has an employment relationship with one employer (typically a staffing agency, subcontractor, labor provider, or other intermediary employer) and the economic realities show that he or she is economically dependent on, and thus employed by, another entity involved in the work. This other employer, who typically contracts with the intermediary employer to receive the benefit of the employee's labor, would be the potential joint employer. Where there is potential vertical joint employment, the analysis focuses on the economic realities of the working relationship between the employee and the potential joint employer.[18]

43. Vertical joint employment ordinarily arises when an employee who is formally employed by one party is "economically dependent on another employer" with regard to the work in question.[19] According to the Ninth Circuit, this situation may arise when "a company has contracted for workers who are directly employed by an intermediary company."[20] The inquiry is whether "the economic realities of the relationships" between intermediary employers and potential joint employers demonstrate that "the employees are economically dependent on those potential joint employers and are thus their employees."[21]

44. Vertical joint employment situations often arise when an employer contracts with a staffing company or labor provider for its employment needs:

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[17] *Id*.

[18] *Id*. at 3.

[19] *Id*. at 5 (citing 29 C.F.R. § 500.20(h)(5).

[20] *Chao v. A-One Med. Servs., Inc*., 346 F.3d 908, 917 (9th Cir. 2003) (citied with approval in DOL Interpretation No. 2016-1 at 5).

[21] DOL Interpretation No. 2016-1 at 5; *see also id*. at 10 ("the vertical joint employment analysis must be an economic realities analysis and cannot focus only on control") (citing authorities).

> In vertical joint employment situations, the other employer typically has contracted or arranged with the intermediary employer to provide it with labor and/or perform for it some employer functions, such as hiring and payroll. There is typically an established or admitted employment relationship between the employee and the intermediary's employer. That employee's work, however, is typically also for the benefit of the other employer.[22]

45. The existence of a contract that purports to disclaim any employment relationship between the employee and the potential joint employer is immaterial. "The contract between the potential joint employer and the intermediate employer may purport to disclaim or deny any responsibility by the potential joint employer as an employer. However, that type of contractual provision is not relevant to the economic realities of the working relationship between the potential joint employer and the employee."[23]

46. Nor is it necessary or appropriate to compare the employee's relationship with the two employers. "It is not necessary for the employee to be more economically dependent on the potential joint employer than the intermediary employer . . . ."[24]

47. Instead, the vertical employer analysis must maintain a sharp focus on "the core question of whether the employee is economically dependent on the potential joint employer who, via an arrangement with the intermediary employer, is benefitting from the work."[25]

48. In applying the "economic reality" test of the FLSA, the Ninth Circuit has placed particular emphasis on four factors (known as the "*Bonnette* factors"):

(1) whether the alleged employer had the power to hire and fire employees;

(2) whether the alleged employer supervised and controlled employee work schedules or conditions of employment;

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[22] *Id*. at 9.

[23] *Id*. at 10 n. 14.

[24] *Id*. at 11 n.17 (citing authority).

[25] *Id*. at 11.

(3) whether the alleged employer determined the rate and method of payment; and

(4) whether the alleged employer maintained employment records.[26]

49. The *Bonnette* factors "are not etched in stone and will not be blindly applied."[27] Far from it: "The ultimate determination must be based 'upon the circumstances of the whole activity.'"[28] "A court should consider all those factors which are 'relevant to [the] particular situation' in evaluating the 'economic reality' of an alleged joint employment relationship under the FLSA."[29]

50. Likewise, the DOL emphasizes that the factors listed in *Bonnette* "address only or primarily the potential joint employer's control (power to hire and fire, supervision and control of conditions or work schedules, determination of rate and method of pay, and maintenance of employment records)."[30] "This approach is not consistent with the breadth of employment under the FLSA," because under that broad definition, "any vertical joint employment analysis must look at more than the potential joint employer's control over the employee."[31]

51. Given this overriding focus on economic reality, the *Bonnette* factors may be most important to the analysis in certain circumstances,[32] but they are not exclusive. In addition, the Ninth Circuit has identified eight other factors to be considered:

(1) whether the work done by the employee was analogous to a specialty job on the production line;

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[26] *Bonnette*, 704 F.2d at 1470;

[27] *Bonnette*, 704 F.2d at 1470.

[28] *Id*. (quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947)).

[29] *Torres-Lopez*, 111 F.3d at 639 (quoting *Bonnette*, 704 F.2d at 1470).

[30] *Id*. at 13.

[31] *Id*. at 13-14; *see also id.* at 5-6 ("Regardless of the exact factors, the FLSA and MSPA require application of the broader economic realities analysis, not a common law control analysis, in determining vertical joint employment.").

[32] *Moreau v. Air France*, 356 F.3d 942, 952 (9th Cir. 2004).

(2) whether the responsibility under the contract was standard for the industry and could be passed from one contractor to another without material change and little negotiation;

(3) whether the purported joint employer owned or had an interest in the premises and equipment used for the work;

(4) whether the employees had a business organization that could shift as a unit from one worksite to another;

(5) whether the services rendered were piecework and did not require special skill, initiative or foresight;

(6) whether the employee had an opportunity for profit or loss depending upon the employee's managerial skill;

(7) whether there was permanence in the working relationship; and

(8) whether the service rendered was an integral part of the alleged joint employer's business.[33]

52. These eight factors overlap with seven additional factors identified by the DOL (which also overlap with the *Bonnette* factors) to focus on the core issue of economic reality[34]

53. Regardless of the particular factors considered, the DOL emphasizes that all tests "should not be considered mechanically or in a vacuum; rather, they are guides for resolving the ultimate inquiry whether the employee is economically dependent on the potential joint employer."[35]

***BONNETTE* FACTORS**

54. A plaintiff asserting a joint employer relationship must plead facts that explain how the defendants are related and how the conduct in question is attributable to each defendant,

[33] *Torres-Lopez*, 111 F.3d at 640.

[34] DOL Interpretation No. 2016-1 at 11; *see also* 29 C.F.R. § 500.20(h)(5)(iv) (listing factors). The Ninth Circuit approach, which allows courts to examine a variety of factors in determining an employee's economic dependence on a potential joint employer, has been approved by DOL. *See* DOL Interpretation No. 2016-1 at 13 (citing authorities and concluding that this approach is "consistent with the broad scope of employment under the FLSA").

[35] *Id.* at 11; *see also id.* at 12 (stating that although precise formulations may vary among courts, "any formulation must address the 'ultimate inquiry' of economic dependence").

but in doing so, the plaintiff "need only allege facts demonstrating some of the *Bonnette* or *Torres-Lopez* factors to survive."[36] Plaintiffs do so now.

55. *Power to hire and fire*. Even if a defendant did not directly exercise the formal authority to hire and fire, a joint employer relationship may exist if the defendant exercised indirect "power over the employment relationship by virtue of [its] control over the purse strings."[37] Such evidence may reveal that the defendant actually had "complete economic control over the relationship."[38]

56. AT&T exercised such control over the staffing of its delivery workers, placing its imprimatur on the hiring process and retaining the power to terminate any workers who failed to perform in accordance with the expectations of AT&T.

57. First, the delivery workers widely believed that they were working for AT&T. Plaintiff Krawczyk certainly had that understanding,[39] which was consistent with the views of other workers in San Francisco[40] as well as delivery workers across the nation.[41]

58. This is no surprise, because many of the delivery workers responded to advertisements that identified AT&T—not DDA—as their potential employer. Here is just one illustrative advertisement (from another geographic area):

[36] *Johnson v. Serenity Transp., Inc.*, 2016 WL 270952, *11 (N.D. Cal. Jan. 22, 2016).

[37] *Bonnette*, 704 F.2d at 1470; *see also Johnson*, 2016 WL 270952 at *11 (indirect firing power).

[38] *Bonnette*, 704 F.2d at 1470; *see also* DOL Interpretation No. 2016-1 at 12 (same).

[39] Declaration of James Krawczyk at ¶ 3 (August 29, 2016) (Ex. 11).

[40] Declaration of Katherine Pullium at ¶ 3 (August 25, 2016) (Ex. 12) ("I was contacted to deliver AT&T phone books and I understood that I was being contacted by AT&T to work for AT&T.").

[41] *E.g.*, Letter from Lawrence Poindexter to AT&T CEO Randall Stephenson (Sept. 18, 2010) (Ex. 13); Declarations of Ervin Walker, Donald Walker, Eric Allen, Regina Coutee, Justin Cooper, Brian Mathis, and Trent Jedkins at ¶ 3(m) (July 29, 2012) (Ex. 14-20).

[42]

59. One delivery worker has advised counsel that she began delivering phone books when she saw an advertisement to work for AT&T delivering phone books, and she was told that "AT&T has some job openings" delivering telephone books at various locations.

60. Second, AT&T had the power to terminate delivery workers. Plaintiff Krawczyk has recounted his experience with an "AT&T woman" who monitored the delivery workers on multiple delivery jobs, and he knew of at least one occasion on which an AT&T representative caused a delivery worker to be fired.[43] Another worker, instructed by AT&T instructors, "understood that if there were too many problems, I would be put on a do not rehire list."[44]

61. Another delivery worker has advised counsel that managers claiming to be representatives of AT&T would hire delivery workers and would fire those who did not deliver the phone books in accordance with the managers' expectations.

62. *Supervision and control of schedules and employment conditions*. The DOL explains that control or supervision of an employee's responsibilities, beyond routine oversight of contract performance, "suggests that the employee is economically dependent on the potential

[42] Ex. 21; *see also* Ex. 22 (substantially identical advertisements from around the United States).

[43] *See* Declaration of James Krawczyk at ¶¶ 6-10 (August 29, 2016) (Ex. 11).

[44] Declaration of Katherine Pullium at ¶ 5 (August 25, 2016) (Ex. 12) ("In our initial meeting with instructors, I was told specifically how to deliver the phone books. I was also told that I had to have proof of car insurance to deliver the phone books. I understood that these instructors worked for AT&T.").

joint employer."[45] Such control can be indirect (exercised through the intermediary employer) "and still be sufficient to indicate economic dependence by the employee."[46]

63. It is not necessary to show that an employee is under the exclusive control of the potential joint employer. Such economic dependence may exist even if the employee is also under the control of the intermediary employer.[47]

64. AT&T indirectly controlled the day-to-day responsibilities of delivery workers through a detailed Material and Services Agreement (MSA) that went beyond routine oversight of contract performance, dictating the details of the work to be performed by delivery workers.[48] It even required daily reports "tracking the day-to-day progress of hand delivered markets."[49]

65. In addition, AT&T specifically retained final authority over training materials. DDA was nominally responsible for training, but AT&T had the final word: "Training film and other delivery training materials are to be reviewed and approved by AT&T."[50]

66. Going beyond mere approval, delivery workers have confirmed that they received training and instructions from instructors working for AT&T.[51] Multiple delivery workers have

[45] DOL Interpretation No. 2016-1 at 11.

[46] *Id*. (citing *Torres-Lopez*, 111 F.3d at 643 ("indirect control as well as direct control can demonstrate a joint employer relationship").

[47] *Id*.; *see also Bonnette*, 704 F.2d at 1470 (finding sufficient control of employment conditions where the defendant exhibited "periodic and significant" involvement in supervising workers; notwithstanding that another party was responsible for day-to-day supervision, the defendant had the power to intervene and exercise control of employment tasks and working conditions).

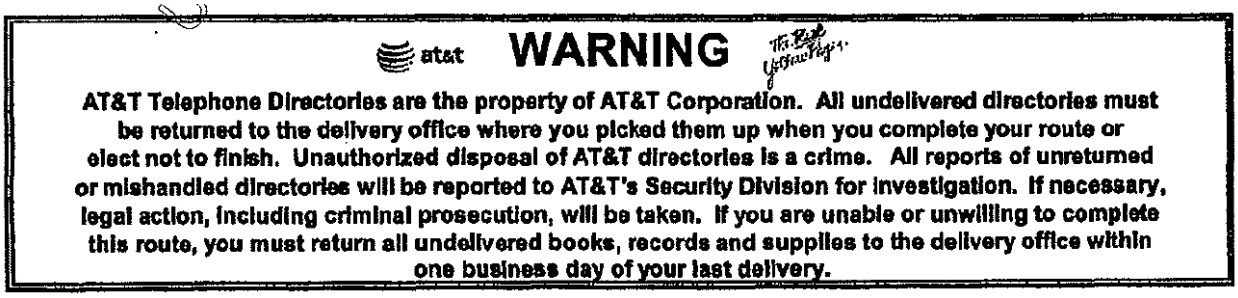
[48] *See*, *e.g*., Ex. 23 at App. A ¶ I.A.2 (MSA) (detailing particular requirements for hand delivery of telephone books); ¶ I.A.3 (requiring specific staffing levels for distributions); ¶ I.A.4 (setting forth detailed "quality assurance" requirements and requiring DDA to document full compliance with AT&T quality assurance requirements); ¶ I.A.9 (requiring detailed reporting on hand delivery distribution). These provisions addressed a wide range of details, such as requiring that deliveries to businesses "must be delivered inside the business" rather than delivered outside, ¶ I.C.2.d, and requiring confirmation that "a product was delivered in an AT&T bag." ¶ IV.B.3.c. More generally, AT&T required DDA "representatives, including employees and subcontractors" to "conform to the Specifications," which included "AT&T's requirements, specifications, and descriptions specified in, or attached to, this Agreement or an applicable Order." Ex. A at ¶¶ 4.1.c, 2.23.

[49] Ex. 23 at App. A ¶ I.A.9.b (MSA).

[50] Ex. 23 at App. A ¶ I.A.1.b (MSA).

indicated that there was no distinction between DDA and AT&T: "AT&T and Directory Distributing Associates were all one and the same. They both gave instruction and I understood that I worked directly for AT&T."[52]

67. A detailed checklist was prepared for the use of delivery workers, setting forth specific instructions about how to deliver books and safety guidelines for the delivery workers. That checklist included no reference to DDA but prominently displayed the AT&T logo:



at&t **WARNING**

AT&T Telephone Directories are the property of AT&T Corporation. All undelivered directories must be returned to the delivery office where you picked them up when you complete your route or elect not to finish. Unauthorized disposal of AT&T directories is a crime. All reports of unreturned or mishandled directories will be reported to AT&T's Security Division for investigation. If necessary, legal action, including criminal prosecution, will be taken. If you are unable or unwilling to complete this route, you must return all undelivered books, records and supplies to the delivery office within one business day of your last delivery.

Notably, this document made explicit reference to "AT&T Corporation."[53]

68. Furthermore, delivery workers were required to display placards in their vehicles while delivering books that branded the workers as agents of AT&T:[54]

[51] Declaration of Katherine Pullium at ¶ 4 (August 25, 2016) (Ex. 12) ("In our initial meeting with instructors, I was told specifically how to deliver the phone books. I was also told that I had to have proof of car insurance to deliver the phone books. I understood that these instructors worked for AT&T.").

[52] Declaration of Katherine Pullium at ¶ 6 (August 25, 2016) (Ex. 12); *compare Johnson*, 2016 WL 270952 at *12 (defendant actively trained workers and issued detailed work policies).

[53] Ex. 24 (Instructions on Route Sheets and Safety Procedures); *see also* Ex. 25 (Do's and Don'ts Checklist).

[54] Ex. 26; *see also* Declarations of Ervin Walker, Donald Walker, Eric Allen, Regina Coutee, Justin Cooper, Brian Mathis, and Trent Jedkins at ¶ 3(n) (July 29, 2012) (Ex. 14-20).

69. Delivery workers were also given the impression that they could be investigated, sued, or prosecuted by AT&T for misconduct.[55] One delivery worker "was told by various Directory Distributing managers that AT&T approved all the policies and that all decisions had to be cleared by AT&T because the telephone books belonged to AT&T."[56]

70. Delivery workers' day-to-day experiences on the job confirmed this impression. Plaintiff Krawczyk knew one AT&T representative who regularly came to delivery locations in the San Fernando Valley to confirm that DDA was handling its operations and paperwork according to AT&T requirements. This individual traveled to several locations to confirm that managers in those locations were in compliance with AT&T requirements.

71. Importantly, AT&T required that the workers' job performance be monitored. The MSA required DDA to "implement and use an AT&T-approved Global Positioning System ('GPS') in specified markets . . . to record presence of Supplier's Distribution Carrier during Initial Hand Distribution."[57] AT&T had the "sole discretion" to choose the markets in which

[55] Declarations of Ervin Walker, Donald Walker, Eric Allen, Regina Coutee, Justin Cooper, Brian Mathis, and Trent Jedkins at ¶ 3(m) (July 29, 2012) (Ex. 14-20).

[56] Declaration of Ervin Walker at ¶ 4 (July 29, 2012) (Ex. 14).

[57] Ex. 27 at 34-35 (MSA).

GPS monitoring would be used, and to terminate such monitoring.[58] The GPS tracking data was "available to AT&T upon request" and was "stored in a format that permits AT&T . . . to access it to verify Distribution time and dates for a specific route or specific addresses on a route."[59]

72. Delivery workers have confirmed that AT&T required them to use GPS devices. "I was told by various managers at Directory Distributing that AT&T required the use of this GPS device. I was also told by various managers that AT&T required the use of this GPS device to track the workers and, as mentioned, that AT&T had to approve all the policies relating to the delivery of the telephone books."[60] Another delivery worker has advised counsel that she was instructed by managers to deliver the phone books in a particular way and to use the GPS clicker to account for the books she delivered.

73. Delivery workers' training materials (subject to the approval of AT&T) documented this GPS monitoring, instructing delivery workers to activate their "delivery logger" before beginning work: "CLICK the log button EVERY TIME you deliver to the front door or inside a business."[61] They even included a graphic to emphasize the command:

[62]

[58] *Id*.

[59] *Id*.

[60] Declaration of Ervin Walker at ¶¶ 4-5 (July 29, 2012) (Ex. 14). Plaintiff Krawczyk confirms this account, reporting that he was told "that AT&T insisted that the delivery workers use the [GPA] trackers so AT&T could know if the deliveries were being made properly." Declaration of James Krawczyk at ¶ 12 (July 29, 2012) (Ex. 11). AT&T had access to the GPS tracking data. *Id*.

[61] Ex. 25 (Do's and Don'ts Checklist).

[62] *Id*.

Another document reiterated this command: "GPS Logger – You will click at each resident door and Inside Business for an additional verification of your delivery."[63]

74. *Determination of the rate and method of payment*. If the defendant had the power to dictate the rate or method of pay, even through an intermediary, "such control indicates that the employee is economically dependent on the potential joint employer."[64]

75. AT&T dictated the rate and method of pay for the delivery workers indirectly through its MSA, which included a pricing chart that covered "labor, hand deliver carrier fees."[65] In addition, AT&T provided funding for "carrier bonuses" and a "gas surcharge" that was used to provide "supplemental payments to independent delivery contractors (carriers)."[66]

76. In addition, DDA's training materials (subject to AT&T's approval), set forth specific requirements for payment and conditions under which payment would be withheld—making delivery workers economically dependent on the requirements imposed by AT&T.[67]

77. As set forth above, AT&T also required delivery workers to use GPS trackers. Workers were told to activate the tracking device each time they made a delivery, and workers who failed to do so were not paid (or were audited and paid later).[68] Delivery workers who did not use the GPS device were not paid and were not given new delivery routes.

[63] Ex. 28 (DDA Carrier Procedures).

[64] *See* Ex. 10 at 12 (DOL Interpretation No. 2016-1). "Again, the potential joint employer may exercise such control indirectly and need not exclusively exercise such control for there to be an indication of joint employment." *Id.*; *Bonnette*, 704 F.2d at 1470 (it is not necessary for a defendant to pay the worker directly; indirect payment through another party will suffice).

[65] Ex. 23 at App. B, Table B-2 and p. 56.

[66] Ex. 23 at App. B ¶¶ VI, VII (MSA).

[67] Ex. 29 (Instructions Regarding Payment); Ex. 30 (Instructions Regarding Delivery); *see also* Ex. 28 (DDA Carrier Procedures).

[68] *See* ¶¶ 71-73, *supra*.

78. *Maintenance of employment records*. The DOL takes a broad view of this factor, focusing on the extent to which a potential joint employer undertakes administrative functions that are characteristically performed by an employer—such as handling payroll matters, providing workers' compensation insurance, and providing safety equipment or other tools and materials required for the work.[69] These facts "indicate economic dependence by the employee on the potential joint employer."[70]

79. DDA instructed delivery managers to connect to an AT&T network, using the "AT&T Connect Screen," when synchronizing data to DDA's server.[71] Among other features, this system provided access to "employee payroll."[72] Thus, it is reasonable to infer that AT&T had access to data on the AT&T network and was involved, to some extent, in payroll matters.

80. AT&T dictated insurance arrangements for both workers' compensation and employer's liability insurance,[73] and the MSA required that each such policy "include a waiver of subrogation in favor of AT&T, its affiliates, and their directors, officers and employees."[74]

81. Additionally, the MSA required commercial general liability insurance and demanded that "AT&T, its Affiliates, and their directors, officers, and employees" be included as "additional insureds."[75] That policy also included a waiver of subrogation in favor of AT&T.[76]

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[69] *See* Ex. 10 at 12 (DOL Interpretation No. 2016-1).

[70] *Id*.

[71] Ex. 31, Bates No. 759 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.).

[72] *Id*.

[73] Ex. 23 at ¶ 3.19.c.1 (MSA).

[74] *Id*.

[75] Ex. 23 at ¶ 3.19.c.2 (MSA).

[76] *Id*.

82. In this manner, AT&T indirectly provided workers' compensation insurance for delivery workers through its intermediary, DDA, pricing the cost of that coverage into the MSA. Likewise, AT&T secured insurance protection for itself from liability incurred as a result of the conduct of the delivery workers, pricing the cost of that coverage into the MSA as well.

ADDITIONAL FACTORS AND ECONOMIC REALITY

83. *Economic reality and the business of the potential joint employer*. As explained, the overriding factor in a determination of employer status is "economic reality."[77] One key indicator of economic reality is the nature of the relationship between the employee's work and the business of the potential joint employer:

> If the employee's work is an integral part of the potential joint employer's business, that fact indicates that the employee is economically dependent on the potential joint employer. Whether the work is integral to the employer's business has long been a hallmark of determining whether an employment relationship exists as a matter of economic reality.[78]

84. AT&T telephone books were delivered for the direct economic benefit of AT&T. Even as the usefulness of printed telephone books declined in the Internet era, telephone books remain profitable for AT&T as a source of advertising revenue. Because the "Yellow Pages" were regarded as a profitable source of revenue and advertising rates were based (at least in part) on the number of books distributed, AT&T retained an economic incentive to distribute the Yellow Pages.

85. On the other hand, the "White Pages" (containing residential listings) were historically required by state law; many states obligated telephone companies to distribute them

[77] *See* ¶¶ 34-53, *supra*.

[78] *See* Ex. 10 at 12 (DOL Interpretation No. 2016-1) (citing *Rutherford Food Corp.*); *Torres-Lopez*, 111 F.3d at 640 (considering "whether the service rendered was an integral part of the alleged joint employer's business").

as a public service. Until 2011, California required the delivery of White Pages to customers; currently, California gives customers the option to receive the White Pages.[79]

86. Thus, the delivery of telephone books generated economic benefits for AT&T by (a) providing a source of advertising revenue and (b) satisfying AT&T's legal obligations under state law. Although DDA received payment from AT&T for managing these delivery services, the ultimate benefit flowed to AT&T. Delivery workers were integral to the success of AT&T's business model.

87. AT&T was free to choose a distribution method for telephone books, and it chose the method that maximized its own economic benefit. Rather than pay to mail the books, it selected door-to-door delivery as a more efficient option.

88. Door-to-door delivery is only the more efficient alternative, however, if AT&T can classify delivery workers as independent contractors and compensate them for delivering each book for a fixed price (rather than paying minimum wage, overtime, and benefits to workers by the hour).

89. To accomplish this objective, AT&T formally entered into the MSA with DDA to provide delivery services with the knowledge and intent that DDA would act as a labor service on behalf of AT&T—formally hiring delivery workers on economic terms that were dictated by AT&T to achieve its economic objectives. As a matter of economic reality, AT&T used DDA as an indirect labor provider to hire delivery workers in order to fulfill this aspect of its business model at the minimum possible expense. Thus, the delivery workers were dependent on AT&T, not DDA, for continued employment. In substance, AT&T was their employer.

90. *Nature of the work*. According to the DOL, to the extent an employee's work is "repetitive and rote, is relatively unskilled, and/or requires little or no training, those facts

[79] *See* California PUC, Order Approving Verizon California Inc. Advice Letter No. 12535, T-17302, 2011 WL 2481576, at *6 (June 9, 2011).

indicate that the employee is economically dependent on the potential joint employer."[80] The door-to-door delivery work at issue in this case was profoundly repetitive, rote, and unskilled—as evidenced by the fact that training could be completed in a matter of hours and was largely composed of standardized training films and several printed checklists (one bearing the AT&T logo and explicit references to "AT&T Corporation").[81]

91. *Ownership of equipment used for the work*. The Ninth Circuit instructs courts to consider whether a potential joint employer owned or had an interest in the equipment used for the work.[82] Here, the "equipment used for the work" was the AT&T telephone book—and every delivery worker was given a checklist with a prominent warning that "AT&T Telephone Directories are the property of AT&T Corporation."[83]

92. Other equipment used for the worker included the delivery bags in which every telephone book had to be delivered. Those bags were likewise the property of AT&T.

93. Underscoring AT&T's ownership of this equipment, delivery workers were even threatened with investigation and prosecution if they failed to deliver the books as required or failed to return AT&T's property.[84]

[80] *Id*. at 12; *see also Torres-Lopez*, 111 F.3d at 640 (considering whether "the work done by the employee was analogous to a specialty job on the production line" and whether "the services rendered were piecework and did not require special skill, initiative or foresight").

[81] Ex. 24 (Instructions on Route Sheets and Safety Procedures); *see also* Ex. 25 (Do's and Don'ts Checklist); *compare Johnson*, 2016 WL 270952 at *14 (drivers required no special skill or license).

[82] *Torres-Lopez*, 111 F.3d at 640.

[83] Ex. 24 (Instructions on Route Sheets and Safety Procedures); *see also* Ex. 30 (delivery routes, books, and bags "are the property of AT&T").

[84] Ex. 24 (Instructions on Route Sheets and Safety Procedures); *see also* Ex. 25 (Do's and Don'ts Checklist); Declarations of Ervin Walker, Donald Walker, Eric Allen, Regina Coutee, Justin Cooper, Brian Mathis, and Trent Jedkins at ¶ 3(m) (July 29, 2012) (Ex. 14-20).

94. *Duration*. According to the DOL, the existence of an "indefinite" or "long-term" relationship "suggests economic dependence."[85] The duration of the employment relationship is to be considered in the context of the particular industry at issue.[86]

95. Here, Plaintiff Krawczyk had a long-lasting relationship as a delivery worker, delivering AT&T telephone books for 12 years (continuing to the present time). His experience is representative of many delivery workers; over the years, he has executed numerous identical "independent contractor" agreements, but the economic substance of his relationship with AT&T has not changed. Similarly, many delivery workers maintain ongoing relationships with AT&T, following telephone book delivery programs from town to town like migrant workers following the harvest.

96. *Business units*. The Ninth Circuit instructs courts to consider whether the employees had a business organization that could shift as a unit from one worksite to another.[87] Here, delivery workers had no such organization.

97. *Opportunity for profits or losses depending upon managerial skill*. The Ninth Circuit instructs courts to consider whether an employee has a chance to earn profits or a risk of incurring losses depending on his or her managerial skill.[88] Here, each delivery worker's compensation was fixed at a flat fee for each book; delivery workers could not do anything to increase their profits (or incur losses) except to alter the speed with which they completed their

[85] *See* Ex. 10 at 12 (DOL Interpretation No. 2016-1); *see also Torres-Lopez*, 111 F.3d at 640 (considering whether "there was permanence in the working relationship").

[86] *Id*. at 12 ("For example, if the work in the industry is by its nature seasonal, intermittent, or part-time, such industry condition should be considered when analyzing the permanency and duration of the employee's relationship with the potential joint employer.")

[87] *Torres-Lopez*, 111 F.3d at 640.

[88] *Torres-Lopez*, 111 F.3d at 640.

delivery routes and the precision with which they complied with AT&T delivery requirements.[89] These factors are not indicia of managerial skill; they suggest that the delivery workers were economically dependent on AT&T, not themselves, for their income.

98. *Transferability of intermediary employer's contractual responsibility*. Finally, the Ninth Circuit instructs courts to consider whether the intermediary employer's responsibility under the contract was standard for the industry and could be passed from one contractor to another without material change and little negotiation.[90] In this case, not only could the responsibility be passed from one contractor to another without material change—it was, in fact, passed to another contractor without any change.

99. In 2013, DDA's role was assigned to a different labor provider in some areas: Product Development Corporation (PDC). On information and belief, PDC does business with AT&T in California and elsewhere on similar terms. Plaintiff Krawczyk continues to deliver AT&T telephone books under agreements with PDC, and the business operations are similar to the AT&T-DDA business operations. Indeed, some former DDA representatives simply moved to PDC. In substance, therefore, DDA was a captive entity, which AT&T used as a middleman to accomplish its own purposes while skirting the FLSA.

100. The history of AT&T's relationship with DDA reveals this economic reality. DDA was incorporated shortly after World War II, and ever since its business has focused on "telephone directory distribution and related services."[91] DDA identified AT&T Advertising and

[89] *See Johnson*, 2016 WL 270952 at *14 (flat fee compensation structure).

[90] *Torres-Lopez*, 111 F.3d at 640.

[91] Ex. 32, Bates No. 214 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.).

Publishing as one of its "major clients,"[92] and its website touted "at&t Awards" (sic) as one of its principal selling points.[93]

101. DDA worked seamlessly with AT&T to handle requests and concerns from telephone book customers. Customer requests were regularly forwarded from AT&T to DDA,[94] and customer complaints were regularly referred to AT&T.[95] During all of these conversations, DDA representatives were admonished to remember "you represent the Telephone Company and the Directory Publisher."[96]

102. DDA held itself out to the public as an arm of AT&T, instructing employees to introduce themselves on the phone as representatives of "the telephone book delivery office."[97] Plaintiff Krawczyk personally overheard conversations in which customers were told that representatives were calling on behalf of AT&T regarding the telephone books.

103. In economic reality, therefore, AT&T has a long history hiring delivery workers indirectly through nominally independent but captive labor providers in an effort to avoid its obligations to employees who are economically dependent on AT&T—contrary to the FLSA. This is a classic case for joint employer status under the FLSA.

AT&T DEFENDANTS AND YP DEFENDANTS

104. "AT&T Corporation" was identified in training materials as the owner of the AT&T telephone books,[98] and Plaintiffs continue to believe that AT&T Corp. is the entity

[92] *Id*.

[93] Ex. 33 (DDA website home page, 7/27/2012).

[94] Ex. 34, Bates No. 291 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.).

[95] Ex. 35, Bates No. 293 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.).

[96] *Id*.; *see also* Ex. 36, Bates No. 290 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.) ("Remember, we represent the directory publisher").

[97] Ex. 37, Bates Nos. 280, 288 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.).

[98] Ex. 24 (Instructions on Route Sheets and Safety Procedures).

responsible for the FLSA violations at issue in this litigation (by virtue of acting as their joint employer for purposes of the FLSA). Plaintiffs hereby set forth in this amended complaint the full extent of their understanding of the role of various AT&T entities, based on the admittedly limited information available to them to date.

105. Telephone book delivery workers did not have access to information regarding the corporate structure of the AT&T family, and the materials furnished to delivery workers did not identify any other particular AT&T entities. As noted, delivery workers widely believed they were working for "AT&T" but had no way to distinguish among the various AT&T entities.[99] Thus, it is possible that Plaintiffs were mistaken in their identification of AT&T Corp. as the defendant responsible for the conduct at issue in this litigation.

106. In an abundance of caution, based on the information made available to Plaintiffs as a consequence of the limited discovery that has been answered in the companion state litigation and AT&T's representations in the two proceedings, Plaintiffs hereby identify other entities that may be responsible for the conduct in question as well as the known details concerning their involvement.

107. AT&T Services, Inc. entered into the Material and Services Agreement (MSA) with Directory Distributing Associates, Inc. (DDA).[100] Through the MSA, DDA was engaged to provide workers to deliver AT&T telephone books.

108. AT&T Services, Inc. executed the MSA on behalf of another AT&T entity known as AT&T Advertising, LP, d/b/a AT&T Advertising and Publishing,[101] also d/b/a AT&T Advertising Solutions (collectively, AT&T Advertising).

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[99] *See* ¶¶ 57-73, *supra*.

[100] Ex. 23 (MSA).

[101] *Id*. at 25.

109. In its publicity, DDA has named AT&T Advertising and Publishing as one of its "major clients."[102] AT&T Advertising included AT&T's telephone directory operations.[103]

110. The MSA was executed by Tim Harden as "President" of AT&T Services, Inc.[104] Harden has been named in official filings by AT&T Corp. as the "AT&T President of Supply Chain and Fleet Operations."[105] Thus, the MSA was executed by an officer of AT&T Corp. acting within the scope of his authority for both AT&T Services, Inc. and AT&T Corp.

111. AT&T Services, Inc. holds itself out as a provider of management and specialized services to its parent company (AT&T, Inc.) and to the parent company's direct and indirect subsidiaries and affiliates.

112. When acting as a provider of management and specialized services to another AT&T company, AT&T Services, Inc. acts as an agent. In that capacity, legal responsibility for its conduct is attributed to the principal that authorized the conduct of AT&T Services, Inc.

113. AT&T Corp. and AT&T Advertising are among the subsidiaries and affiliates to which AT&T Services, Inc. provides such services.

114. Throughout the period in question, AT&T Services, Inc. has shared a number of officers and directors in common with AT&T, Inc. and AT&T Corp.

115. The MSA authorized delivery services to be ordered from DDA by or on behalf of "affiliates" of AT&T Services, Inc.[106] The MSA defined "affiliate" as "a business association

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[102] Ex. 31, Bates No. 214 (DDA Initial Delivery Manager Procedures Manual (2011 V2 Ed.).

[103] Ex. 38 at 9, 18 (AT&T, Inc. 2012 10-Q).

[104] Ex. 23 at 25.

[105] Ex. 39 (AT&T Global Supplier Diversity 2013 Annual Report / 2014 Annual Plan).

[106] Ex. 23 at ¶ 3.1 (MSA) ("An Affiliate may transact business under this Agreement and place orders with Supplier that incorporate the terms and conditions of this Agreement. References to 'AT&T herein are deemed to refer to an Affiliate when an Affiliate places an Order with Supplier under this Agreement, or when AT&T places an Order on behalf of an Affiliate, or when an Affiliate otherwise transacts business with Supplier under this Agreement.")

that has legal capacity to contract on its own behalf, to sue in its own name, and to be sued, if and only if either (a) such business association owns, directly or indirectly, a majority interest in AT&T (its "parent company"), or (b) a third percent (30%) or greater interest in such business association is owned, either directly or indirectly, by AT&T or its parent company."[107]

116. AT&T, Inc. is a holding company and is the parent company of both AT&T Corp. and AT&T Services, Inc.[108] Accordingly, AT&T, Inc. is an "affiliate" of AT&T Services, Inc. under ¶ 2.3(a) of the MSA, while AT&T Corp. is an "affiliate" of AT&T Services, Inc. under ¶ 2.3(b) of the MSA.

117. In the companion state court litigation, AT&T Corp. has admitted that AT&T Services is an "affiliate" of AT&T Corp.[109]

118. Before May 2012, AT&T Advertising was a segment of AT&T, Inc. and thus also an "affiliate" of AT&T Services, Inc. under ¶ 2.3(a)-(b) of the MSA.

119. On information and belief, AT&T Corp., as the owner of the telephone books, was the AT&T entity that ordered delivery services from DDA (or those services were ordered on behalf of AT&T Corp.), and that entity was the joint employer of the delivery workers.

120. Pleading in the alternative, on information and belief, AT&T Inc. or its segment, AT&T Advertising, was the AT&T entity that ordered delivery services from DDA (or those services were ordered on behalf such entity), and was the joint employer of the delivery workers.

[107] Ex. 23 at ¶ 2.3 (MSA).

[108] AT&T Inc. traces its history to Southwestern Bell Corporation, which was established in 1985 as a result of the antitrust breakup of the original AT&T Corp. Southwestern Bell changed its name to SBC Communications Inc. in 1995, and acquired AT&T Corp. in 2005. At that time, the new entity was renamed AT&T, Inc. Thus, the holding company now known as AT&T, Inc. was previously known as AT&T Corp. The current incarnation of AT&T Corp. is a subsidiary of the parent company, AT&T Inc.

[109] Ex. 40 (Verification of Conor C. Murphy in State Court Action, July 13, 2012).

121. Pleading further in the alternative, on information and belief, AT&T Services, Inc. was the AT&T entity that ordered delivery services from DDA (or those services were ordered on behalf such entity), and was the joint employer of the delivery workers.

122. In May 2012, after the filing of an amended petition in January 2012 in the state court litigation naming AT&T Corp. as a defendant, AT&T Advertising was sold to a company known as YP Holdings, LLC. AT&T, Inc. retained a 47% equity interest in the new company.[110] YP Holdings, LLC is legally responsible for all liabilities and obligations of AT&T Advertising based on events occurring prior to that transaction, and for its own operations thereafter.

123. On May 8, 2012, the MSA was assigned by AT&T Services, Inc. to YP Shared Services, LLC. YP Shared Services, LLC is legally responsible for all liabilities and obligations of AT&T Services, Inc. based on events arising from the MSA prior to that transaction, and for its own operations under the MSA thereafter.

MISCLASSIFICATION AND FLSA VIOLATIONS

124. Just as the Department of Labor has found it useful to issue official guidance on the subject of joint employers, it has done the same on the subject of employee misclassification. "Misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States," a phenomenon that DOL finds especially troubling because "some employees may be intentionally misclassified as a means to cut costs and avoid compliance with labor laws."[111] That concern precisely captures the issue in this case.

125. According to the DOL, the test for determining whether a worker is an employee for purposes of the FLSA resembles the joint employer test (with its focus on economic reality). "When determining whether a worker is an employee or independent contractor, the application

[110] Ex. 38 at 7, 30 (AT&T, Inc. 2012 10-Q).

[111] U.S. Dep't of Labor, Wage and Hour Division, Administrator's Interpretation No. 2015-1 at 1 (July 15, 2015) (interpretive guidance concerning misclassification under the FLSA) (hereinafter "DOL Interpretation No. 2015-1") (Ex. 41).

of the economic realities factors should be guided by the FLSA's statutory directive that the scope of the employment relationship is very broad," and "applying the economic realities test in view of the expansive definition of 'employ' under the Act, most workers are employees under the FLSA."[112]

126. The factors to be considered in this analysis are the same as the factors identified by the Ninth Circuit and the DOL to guide the "economic reality" test for joint employment:

(1) the extent to which the work performed was an integral part of the business;

(2) the worker's opportunity for profit or loss depending on managerial skill;

(3) the extent of the relative investments of the employer and the worker;

(4) whether the work required special skills and initiative;

(5) the permanency of the relationship; and

(6) the degree of control exercised or retained by the employer.[113]

127. Just as with the joint employment inquiry, moreover, the misclassification inquiry is a holistic test of economic dependence; it does not turn on common-law concepts of control:

> All of the factors must be considered in each case, and no one factor (particularly the control factor) is determinative of whether a worker is an employee. Moreover, the factors themselves should not be applied in a mechanical fashion, but with an understanding that the factors are indicators of the broader concept of economic dependence. Ultimately, the goal is not simply to tally which factors are met, but to determine whether the worker is economically dependent on the employer (and thus its employee) or is really in business for him or herself (and thus its independent contractor). The factors are a guide to make this ultimate determination of economic dependence or independence.[114]

128. The ultimate inquiry is whether the worker is operating his or her own business or is economically dependent on the employer: "The ultimate inquiry under the FLSA is whether

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[112] *Id.* at 2 (emphasis added); *see also id.* at 3 (grounding this inquiry in the broad "suffer or permit" definition of employment under the FLSA).

[113] *Id.* at 4; *see also Real v. Driscoll Strawberry Assoc., Inc.*, 603 F.2d 748, 754 (9th Cir. 1979) (listing the factors); *Perez v. Abbas*, No. 5:13-CV-04208-EJD, 2015 WL 2250436, at *10 (N.D. Cal. May 13, 2015) (same). This test has been applied to sustain joint employer allegations against AT&T in an FLSA action. *See Guitierrez v. Carter Bros. Sec. Services, LLC*, No. 2:14-CV-00351-MCE, 2014 WL 5487793, at *5 (E.D. Cal. Oct. 29, 2014).

[114] *Id.*; *see also id.* at 3-4 (explaining that the "suffer or permit" definition of employment rejects the control test).

the worker is economically dependent on the employer or truly in business for him or herself. If the worker is economically dependent on the employer, then the worker is an employee. If the worker is in business for him or herself (i.e., economically independent from the employer), then the worker is an independent contractor."[115]

129. Of course, it makes no difference that a worker and an employer signed a contract designating the worker as an independent contractor. "Economic realities, not contractual labels, determine employment status for the remedial purposes of the FLSA."[116] Emphasizing that the "economic realities of the relationship, and not the label an employer gives it, are determinative," the DOL explains that "an agreement between an employer and a worker designating or labeling the worker as an independent contractor is not indicative of the economic realities of the working relationship and is not relevant to the analysis of the worker's status."[117]

130. *Is the work an integral part of the employer's business?* As set forth above, delivery workers' efforts—and the compensation structure that made those efforts profitable—were integral to the business of both DDA and AT&T.[118] This prong of the test can be satisfied "even if the work is just one component of the business and/or is performed by hundreds or thousands of other workers" and "even if that worker's work is the same as and interchangeable with many others' work."[119] Here, delivery workers' efforts were integral to the business model of delivering telephone books for the economic benefit of DDA and AT&T.

131. *Does the worker's managerial skill affect his or her opportunity for profit or loss?* As set forth above, delivery workers had no ability to generate greater profits—and no risk of

[115] Ex. 41 at 5 (DOL Interpretation No. 2015-1); *see also id*. at 4 ("In applying the economic realities factors, courts have described independent contractors as those workers with economic independence who are operating a business of their own. On the other hand, workers who are economically dependent on the employer, regardless of skill level, are employees covered by the FLSA."). This analysis "must focus on whether the worker is economically dependent on the employer or truly in business for him or herself." *Id*. at 5.

[116] *Real v. Driscoll Strawberry Assoc., Inc*., 603 F.2d 748, 755 (9th Cir. 1979).

[117] Ex. 41 at 5 (DOL Interpretation No. 2015-1).

[118] *See* ¶¶ 83-89, *supra*.

[119] Ex. 41 at 6 (DOL Interpretation No. 2015-1).

incurring losses—as a consequence of managerial skill.[120] "In considering whether a worker has an opportunity for profit or loss, the focus is whether the worker's managerial skill can affect his profit or loss. A worker in business or him or herself faces the possibility to not only make a profit, but also to experience a loss."[121] The delivery workers had no such opportunities.

132. Delivery workers were paid by the book and could not increase their incomes unless they worked longer or made deliveries faster; these are not indicia of managerial skill. According to the DOL, "the worker's ability to work more hours and the amount of work available from the employer have nothing to do with the worker's managerial skill and do little to separate employees from independent contractors—both of whom are likely to earn more if they work more and if there is more work available."[122] Thus, "this factor should not focus on the worker's ability to work more hours, but rather on whether the exercises managerial skills and whether those skills affect the worker's opportunity for both profit and loss."[123]

133. *How does the worker's investment compare to the employer's investment?* Genuine independent contractors ordinarily make investments in their businesses that go beyond any single job. "The investment of a true independent contractor might, for example, further the business's capacity to expand, reduce its cost structure, or extend the reach of the independent contractor's market."[124] Moreover, evaluating investments is a relative inquiry that requires a comparison to the investment of the employer. "If the worker's investment is relatively minor, that suggests that the worker and the employer are not on similar footings and that the worker may be economically dependent on the employer."[125]

134. Here, the delivery workers made virtually no investments for business purposes. They were required only to provide their own automobiles and insurance—commonplace assets

[120] *See* ¶ 97, *supra*.

[121] Ex. 41 at 6 (DOL Interpretation No. 2015-1).

[122] *Id*. at 7.

[123] *Id*. at 8.

[124] *Id*. at 9.

[125] *Id*.

that virtually all workers have for their personal benefit and protection. Indeed, the minimal investment required to deliver AT&T telephone books was a selling point in job advertisements; the only physical equipment workers needed to be hired was an "insured vehicle."[126]

135. By contrast, as noted above, AT&T made substantial investments in the delivery of its telephone books—as evidenced by its extensive efforts to remind delivery workers that the telephone books and bags were the property of AT&T.[127] And its overall capital investment in delivery of telephone books nationwide was very substantial—as evidenced by the provisions of the MSA setting forth the pricing terms of AT&T's obligations to its distributors.[128]

136. *Does the work performed require special skill or initiative?* As set forth above, delivery of telephone books does not require any special skill or initiative.[129] It is settled that "[a] worker's business skills, judgment, and initiative, not his or her technical skills, will aid in determining whether the worker is economically independent."[130] Delivery of telephone books requires no such skills.

137. *Is the relationship between the worker and the employer permanent or indefinite?* Permanency or indefiniteness suggests that a worker is an employee, because a business owner ordinarily eschews the dependence associated with such a relationship. Independent contractors ordinarily work only a single project for an employer, not "continuously or repeatedly."[131] Here, Plaintiff Krawczyk has worked delivering AT&T telephone books "continuously or repeatedly" for 12 years. His experience is representative of many delivery workers, who frequently follow AT&T telephone book delivery programs from job to job.

138. Moreover, even for those delivery workers who do not have such a track record, "a lack of permanence or indefiniteness does not automatically suggest an independent

[126] Ex. 21; *see also* Ex. 22 (substantially identical advertisements from around the United States).

[127] *See* ¶¶ 91-93, *supra*.

[128] *See* ¶ 75, *supra*.

[129] *See* ¶ 90, *supra*.

[130] Ex. 41 at 10 (DOL Interpretation No. 2015-1).

[131] *Id*. at 11-12.

contractor relationship, and the reason for the lack of permanence or indefiniteness should be carefully reviewed to determine if the reason is indicative of the worker's running an independent business."[132] The question is whether the nature of the relationship is a function of the worker's independent choice or simply a structural reality of the industry. "The key is whether the lack of permanence or indefiniteness is due to 'operational characteristics intrinsic to the industry' (for example, employers who hire part-time workers or use staffing agencies) or the worker's 'own business initiative.'"[133] Here, the formal independent contractor agreements executed by the delivery workers (on a job-by-job basis) were not primarily a consequence of "the worker's own independent business initiative,"[134] but of the deliberate efforts by AT&T and DDA to mask the economic substance of the relationship with their workers.

139. Individual workers, such as Plaintiffs, were required to execute agreements classifying themselves as independent contractors. These agreements were not subject to negotiation by the individual workers.

140. Defendants used identical or virtually identical "independent contractor agreements" with each person hired. The terms of the agreement were essentially the same for each individual hired.

141. Pursuant to these "independent contractor agreements," the individual workers, such as Plaintiffs, are/were paid a flat fee for the deliveries. This flat fee was non-negotiable and presented to the individual workers as a "take it or leave it" deal.

142. Defendant AT&T knew or should have known that defendant DDA was paying individual workers hired to deliver the telephone directories as independent contractors and were paid a flat fee for the deliveries. AT&T selected this model for its own economic benefit.

143. *What is the nature and degree of the employer's control?* As set forth above, AT&T and DDA exercised substantial control over the details of the delivery workers' jobs.[135]

[132] *Id.*

[133] *Id.* at 12 (citations omitted).

[134] *Id.*

[135] *See* ¶¶ 55-82, *supra*.

"As with the other economic realities factors, the employer's control should be analyzed in light of the ultimate determination whether the worker is economically dependent on the employer or truly an independent businessperson."[136] To be an independent contractor, "[t]he worker must control meaningful aspects of the work performed such that it is possible to view the worker as a person conducting his or her own business."[137]

144. As noted above, under the broad definition of "employment" under the FLSA, "the 'control' factor should not play an oversized role in the analysis of whether a worker is an employee or an independent contractor. All possible relevant factors should be considered, and cases must not be evaluated on the control factor alone."[138]

145. Nevertheless, the facts reveal a very high degree of control by AT&T and DDA. Certainly, the delivery workers were economically dependent on AT&T and DDA and could not fairly be viewed "as a person conduct his or her own business."[139] For purposes of this inquiry, it is useful to reiterate a few of the most prominent acts of control by Defendants.

146. Defendants required the individual workers, such as Plaintiffs, to attend training sessions prior to the start of their delivery duties.

147. Defendants provided the individual workers with detailed instructions as to the manner and method by which the deliveries must be made.

148. Defendants instructed the individual workers that if a worker failed to follow the instructions directly the worker would not be paid.

149. Following a training video, Defendants required the individual workers, such as Plaintiffs, to have the telephone books loaded into the workers' personal vehicles. Workers,

[136] Ex. 41 at 11-12 (DOL Interpretation No. 2015-1); *see also id*. at 14 (explaining that "the nature and degree of the employer's control must be examined as part of determining the ultimate question whether the worker is economically dependent on the employer").

[137] *Id*.

[138] *Id*. at 14.

[139] *Id*.

such as Plaintiffs, waited for indefinite, extended periods of time to pick up telephone directories to deliver to customers.

150. The individual workers, such as Plaintiffs, were required to load and unload the telephone directories from their personal vehicles and place the directories in bags prior to making the deliveries.

151. Defendants refused to pay the individual workers, such as Plaintiffs, for any of the time expended on any activities other than the actual delivery of the telephone books, although these activities were integral and necessary to the delivery of the telephone directories.

152. Defendant DDA internally pre-determined the amount of time the telephone deliveries on a particular route should take in order to make a profit from its contracts with Defendant AT&T. Using this calculation, DDA formulated a flat amount it would pay for each delivery route.

153. Despite classifying the individual workers as independent contractors, Defendants required the individual workers to turn in forms that included information regarding the telephone deliveries, including listing the hours worked and miles driven so that the workers' time could be recorded. Defendants would not pay the individual workers if the forms were not approved.

154. Defendants required individual workers to use GPS trackers and to click the tracker each time a telephone directory was delivered—an especially significant fact because the DOL has recognized that "[t]echnological advances and enhanced monitoring mechanisms may encourage companies to engage workers not as employees yet maintain stringent control over aspects of the workers' jobs . . . ." [140]

155. Defendants failed or intentionally chose not to retain the records of the time that is normally tracked using a GPS tracking device. Such records would have reflected at least part of the actual time spent by an individual worker making a telephone directory delivery.

[140] Ex. 41 at 13 (DOL Interpretation No. 2015-1).

156. Individual workers were expected to complete the delivery route within a certain range of hours. Defendants refused to allow the individual workers, such as Plaintiffs, to accurately record their hours of work. Individual workers who recorded their accurate hours of work were retaliated against by being deprived of other jobs if the managers and supervisors deemed the hours "excessive." Such workers were placed on "do not rehire" lists or not offered new delivery assignments. Such retaliation is a violation of the FLSA. *See* 29 U.S.C. 218c(a)(5).

157. Defendants restricted the hours in which workers, such as Plaintiffs, were allowed to work by instructing the workers that they could only work during daylight hours and instructing them that the deliveries must be completed with a certain number of days.

158. Individual workers who did not complete their entire delivery assignment within the specified timeframe were not compensated for the hours they worked.

159. These facts demonstrate sufficient control to establish that delivery workers were not independent business owners, but were economically dependent on Defendants:

> [T]he FLSA covers workers of an employer even if the employer does not exercise the requisite control over the workers, assuming the workers are economically dependent on the employer. The control factor should not overtake the other factors of the economic realities test, and like the other factors, it should be analyzed in the context of ultimately determining whether the worker is economically dependent on the employer or an independent business.[141]

160. *Economic reality*. By paying the individual workers as independent contractors, Defendants received a financial benefit by lowering their payroll obligations.

161. By paying the individual workers as independent contractors, Defendants had a reduced tax liability because Defendants did not withhold any taxes such as federal and state income tax, social security and Medicare taxes from the workers' wages, which taxes would be withheld if the workers were paid as employees.

162. By paying the individual workers as independent contractors, Defendants avoided their obligations under the Affordable Care Act to ensure that employees are provided health insurance.

[141] Ex. 41 at 14 (DOL Interpretation No. 2015-1).

163. By paying the individual workers as independent contractors, Defendants avoided the inclusion of thousands of individuals in the companies' retirement programs, such as the 401k retirement accounts.

164. Despite classifying the individual workers as independent contractors, Defendants provided certain insurance coverage to the individual workers, including workers' compensation insurance and coverage for automobile accidents that occurred during the course of a delivery.

165. Despite Defendants' classifying the individual workers, such as Plaintiffs, as independent contractors, the State of California has found such workers to be employees entitled to unemployment benefits.

166. Defendants intentionally and willfully engaged in, and continue to engage in a pattern and practice of classifying the individual delivery workers as independent contractors to avoid paying the workers the required minimum wage and overtime wages to which they are entitled pursuant to the Fair Labor Standards Act.

167. Defendants failed and/or refused to pay the individual workers, including Plaintiffs, for all hours worked at the appropriate straight time rate and for any hours worked in excess of forty hours in a work week.

168. Defendants' violations of the FLSA, and calculations of the appropriate damages, will be established in part through scientifically reliable representative evidence as authorized by the U.S. Supreme Court in *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016).

169. Defendants were aware of the wage and hour laws and intentionally and willfully chose to violate those laws by misclassifying individual workers as independent contractors.

170. Defendants failed and/or refused to maintain accurate records reflecting the actual wages, hours worked by the individual workers and other conditions of employment, such as the operating costs incurred by the individual workers on behalf of Defendants.

171. Plaintiff Krawczyk, and others who are similarly situated to him, worked for Defendants from in or around 2004 through the present. Plaintiff David Estrada, and others who are similarly situated to him, worked for Defendants from in or around 2013 through the present.

Plaintiffs, and others similarly situated, routinely were required to work and did work in excess of eight (8) hours a day and forty (40) hours per week. Defendants failed and refused to pay Plaintiffs, and those similarly situated to him, for all hours actually worked. Further, Defendants failed and refused to pay Plaintiffs, and those similarly situated to them, the overtime pay to which they are entitled.

172. Examples of the times Defendants failed and refused to pay Plaintiff Krawczyk for all hours actually worked and/or the overtime pay to which he was entitled include but are not limited to the following:

a) During a period starting on Sunday, May 16, 2010 and ending on Saturday, May 22, 2010, Plaintiff worked 102.50 hours, but he was only paid for 40 hours worked during that period. He was not paid overtime for the hours he worked in excess of 40 hours during the week, nor was the compensation he received sufficient to pay minimum wage for all hours worked;

b) During a period starting on Saturday, April 16, 2011 and ending on Thursday, April 22, 2010, Plaintiff worked 73.50 hours, but he was only paid for 40 hours worked during that period. He was not paid overtime for the hours he worked in excess of 40 hours during the period, nor was the compensation he received sufficient to pay minimum wage for all hours worked;

c) During a period starting on Sunday, August 26, 2012 and ending on Saturday, September 1, 2012, Plaintiff worked 95.00 hours, but he was only paid for 40 hours worked during that period. He was not paid overtime for the hours he worked in excess of 40 hours during the week, nor was the compensation he received sufficient to pay minimum wage for all hours worked.

Based on these examples, Plaintiff Krawczyk estimates that he routinely worked between five and nine hours of uncompensated overtime each regular work day for the period during which he was employed by Defendants.

173. Examples of the times Defendants failed and refused to pay Plaintiff David Estrada for all hours actually worked and/or the overtime pay to which he was entitled include but are not limited to the following:

a) During the period starting on Sunday, October 25, 2015 and ending on Saturday, October 31, 2015, Plaintiff delivered telephone books, but was not paid for all hours worked and was not paid overtime for the hours worked in excess of forty hours;

b) During the period starting on Sunday, November 1, 2015 and ending on Saturday, November 7, 2015, Plaintiff delivered telephone books, but was not paid for all hours worked and was not paid overtime for the hours worked in excess of forty hours;

c) Plaintiff delivered these telephone books in and around the San Antonio, Texas area. Defendant DDA did not provide Plaintiff David Estrada with copies of the paperwork that he completed. On various occasions, Mr. Estrada's supervisor instructed him to complete routes for other delivery workers when the other delivery workers failed or refused to complete their assigned route or when customers complained that the other delivery workers had not properly left the telephone books. In those instances, the supervisor did not provide Mr. Estrada with copies of the paperwork for the other delivery workers. Mr. Estrada was instructed as to the route and locations to which he was to deliver the telephone books.

Based on these examples, Plaintiff Estrada estimates that he worked approximately five to ten hours of uncompensated overtime each regular work week for the period during which he was employed by Defendants to deliver telephone books.

CONTINUATION OF BUSINESS ACTIVITIES IN 2013-16

173. The activities summarized in the foregoing paragraphs have continued without any material change from the original filing of this litigation in state court, in August 2011, to the present time (except for the involvement of a different labor provider in at least some areas).

174. In particular, AT&T and DDA have continued the delivery activities and business practices described above during the period since August 30, 2013 (the three years immediately preceding the filing of this Amended Complaint). Plaintiff Estrada was hired by DDA to deliver

AT&T telephone books between August 30, 2013 and the present. Throughout this period, AT&T and DDA continued doing business in a manner consistent with the allegations set forth in paragraphs 54-103 and 130-172.

175. Defendants should be required to provide a list with contact information of all individuals who were paid as independent contractors and who were hired to deliver AT&T telephone directories during the period between August 30, 2013 and August 30, 2016.

VII. COLLECTIVE ACTION ALLEGATIONS

2009-2012 PERIOD

176. Plaintiff, James Krawczyk, brings this action on behalf of himself and other similarly situated non-Texas employees as authorized under the FLSA, 29 U.S.C. § 216(b). Krawczyk's consent to participate in this action is attached hereto as Exhibit 2.

177. The collective action is comprised of all individuals who were hired to deliver AT&T telephone directories between June 25, 2009 and December 21, 2012, aside from those Texas plaintiffs whose claims remain pending in Texas state court.

178. As set forth above, this collective action was certified by a Texas district court in the companion state litigation on November 26, 2012, and notice was sent on January 25, 2013. The consents submitted by non-Texas opt-in plaintiffs were filed with the Original Complaint.

179. Defendants' pattern and practice of misclassifying individuals as independent contractors and requiring them to sign the alleged "independent contractor agreement" is a generally applicable policy or practice and does not depend on the personal circumstances of the members of the class. Plaintiff's experiences are typical of the experiences of the members of the class.

180. All individuals hired as independent contractors to deliver AT&T telephone directories are similarly situated. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts.

2013-2016 PERIOD

181. Plaintiff, James Krawczyk, brings this action on behalf of himself and other similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b), against Defendants AT&T and YP. Plaintiff, David Estrada, brings this action on behalf of himself and other similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b), against Defendants AT&T, YP, and DDA. His consent to participate in this action is attached hereto as Exhibit 7.

182. The collective action is comprised of (a) all individuals who were hired to deliver AT&T or YP directories between August 30, 2013 to August 30, 2016 and (b) all individuals who were hired to deliver AT&T or YP directories at any time within three years prior to this action's filing date through the time of trial of this action (the "collective period").

183. Defendants' pattern and practice of misclassifying individuals as independent contractors and requiring them to sign the alleged "independent contractor agreement" is a generally applicable policy or practice and does not depend on the personal circumstances of the members of the class. Plaintiff's experiences are typical of the experiences of the members of the class.

184. All individuals hired as independent contractors to deliver AT&T or YP telephone directories are similarly situated. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts.

VIII. CLAIMS FOR RELIEF

A. FAIR LABOR STANDARDS ACT: 2009-2012

185. The allegations set forth in ¶¶ 31-175, *supra*, are re-alleged and incorporated by reference herein.

186. This is an action to recover unpaid wages and unpaid overtime compensation for time worked under the Fair Labor Standards Act, as amended 29 U.S.C. § 201, *et seq*. and to address the Defendants' violations of the FLSA record keeping provisions 29 U.S.C. § 211(c).

187. At all times relevant and material, Plaintiff Krawczyk and those similarly situated were jointly employed by Defendants within the meaning of the Act, 29 U.S.C. § 203(e)(1). Plaintiff and others similarly situated have consented to participation in this suit. *See* Exhibits 2 and 3 (consent forms for Krawczyk).

188. At all times relevant and material, Defendants were joint employers engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

189. Defendants have acted intentionally, knowingly and willfully and/or in reckless disregard of the rights of Plaintiff and the rights of similarly situated employees by failing to pay Plaintiff and other similarly situated employees the minimum wage, straight time pay and overtime pay for time actually worked to which they were entitled during each workweek in violation of 29 U.S.C. §§ 207 & 216.

190. Defendants did not make, keep and/or preserve Plaintiff's records as required pursuant to 29 U.S.C. § 211(c) or file necessary administrative reports related to these records.

191. During the individual worker's employment with Defendants, Plaintiff and the similarly situated individual workers worked in excess of forty (40) hours in a work week on a regular and recurring basis. Plaintiff and those similarly situated were not paid minimum wages and straight time for all the hours they worked during the work week. Furthermore, they were not paid time and one-half for the hours they worked in excess of forty (40) hours.

192. Defendants' actions with regard to Plaintiff and those similarly situated employees were willful and/or in reckless disregard of their obligations under the FLSA, thereby allowing for a three (3) year statute of limitation period.

193. Defendants' pattern and practice of classifying individuals hired to deliver AT&T telephone directories as independent contractors was, and is, a violation of the FLSA. Therefore, Plaintiff and all those similarly situated are entitled to be paid for all hours worked, to be paid the minimum wage for each hour worked, and to be paid for time and one-half for each hour worked in excess of forty (40) hours in a work week.

194. Further, Defendants retaliated against any individuals who complained or objected to the manner in which they were classified and paid. Such retaliation is a violation of the FLSA. *See* 29 U.S.C. § 218c(a)(5).

195. Plaintiff and all those similarly situated are entitled to an amount equal to all their unpaid wages as liquidated damages, as well as reasonable attorneys' fees and costs of this action. 29 U.S.C. § 216(b).

B. FAIR LABOR STANDARDS ACT: 2013-2016

196. The allegations set forth in ¶¶ 31-175, *supra*, are re-alleged and incorporated by reference herein.

197. This is an action to recover unpaid wages and unpaid overtime compensation for time worked under the Fair Labor Standards Act, as amended 29 U.S.C. § 201, *et seq*. and to address the Defendants' violations of the FLSA record keeping provisions 29 U.S.C. § 211(c).

198. At all times relevant and material, Plaintiff Estrada and those similarly situated was jointly employed by Defendants within the meaning of the Act, 29 U.S.C. § 203(e)(1). Plaintiff Estrada has consented to participation in this suit. *See* Exhibit 7. Plaintiff Krawczyk was employed by Defendants AT&T and YP during the 2013-2016 class period.

199. At all times relevant and material, Defendants were joint employers engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

200. Defendants have acted intentionally, knowingly and willfully and/or in reckless disregard of the rights of Plaintiff and the rights of similarly situated employees by failing to pay Plaintiff and other similarly situated employees the minimum wage, straight time pay and overtime pay for time actually worked to which they were entitled during each workweek in violation of 29 U.S.C. §§ 207 & 216.

201. Defendants did not make, keep and/or preserve Plaintiff's records as required pursuant to 29 U.S.C. § 211(c) or file necessary administrative reports related to these records.

202. During the individual workers' employment with Defendants, Plaintiff and the similarly situated individual workers worked in excess of forty (40) hours in a work week on a regular and recurring basis. Plaintiff and those similarly situated were not paid minimum wages and straight time for all the hours they worked during the work week. Furthermore, they were not paid time and one-half for the hours they worked in excess of forty (40) hours.

203. Defendants' actions with regard to Plaintiff and those similarly situated employees were willful and/or in reckless disregard of their obligations under the FLSA, thereby allowing for a three (3) year statute of limitation period.

204. Defendants' pattern and practice of classifying individuals hired to deliver AT&T telephone directories as independent contractors was, and is, a violation of the FLSA. Therefore, Plaintiff and all those similarly situated are entitled to be paid for all hours worked, to be paid the minimum wage for each hour worked, and to be paid for time and one-half for each hour worked in excess of forty (40) hours in a work week.

205. Further, Defendants retaliated against any individuals who complained or objected to the manner in which they were classified and paid. Such retaliation is a violation of the FLSA. *See* 29 U.S.C. § 218c(a)(5).

206. Plaintiff and all those similarly situated are entitled to an amount equal to all their unpaid wages as liquidated damages, as well as reasonable attorneys' fees and costs of this action. 29 U.S.C. § 216(b).

IX. PRAYER

207. WHEREFORE, Plaintiffs, both individually and as representatives of all current and former employees similarly situated, ask the Court that they, and all current and former employees similarly situated, be awarded a judgment against Defendants for the following:

a. Designation of this action as a collective action on behalf of Plaintiffs and those similarly situated and prompt issuance of any required notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated apprising them of the pendency of this action and permitting them to assert timely FLSA claims;

b. Judgment that Plaintiffs and those similarly situated are non-exempt employees are entitled to protection under the FLSA;

c. Judgment against Defendants for violation of the minimum wage provisions of the FLSA;

d. Judgment against Defendants for failure to pay Plaintiffs and those similarly situated for all hours worked;

e. Judgment against Defendants for violation of the overtime provisions of the FLSA;

f. Judgment that Defendants' actions were willful;

g. An award in an amount equal to each Plaintiff's and the collective action opt-in Plaintiffs' unpaid back wages;

h. An award in an amount equal to each Plaintiff's and the collective action opt-in Plaintiffs' unpaid back wages at the applicable overtime rate;

i. An award to each Plaintiff and those similarly situated for an amount of unpaid wages owed, liquidated damages and penalties where provided by law, and interest thereon;

j. As award of reasonable attorneys' fees, costs and expenses of this action pursuant to 29 U.S.C. § 216 (b) and/or other applicable laws;

k. An award of prejudgment interest to the extent liquidated damages are not awarded;

l. Leave to add additional Plaintiffs by motion, by the filing of written consent forms, or any other method approved by the Court; and

m. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

X. JURY DEMAND

208. Plaintiffs hereby demand a trial by jury of all issues which are subject to adjudication by a trier of fact.

Dated: December 23, 2016

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