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13 *Attorneys for Plaintiff and Proposed Collective*  
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15  
16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 JAMES KRAWCZYK, individually and on  
19 behalf of others similarly situated,

20 Plaintiffs,

21 v.

22 DIRECTORY DISTRIBUTING  
ASSOCIATES, INC., and AT&T CORP.

23 Defendants.  
24

Case No. \_\_\_\_\_

COLLECTIVE ACTION COMPLAINT  
FOR VIOLATIONS OF FLSA

DEMAND FOR JURY TRIAL

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1           6. Defendant Directory Distributing Associates was ordered to produce to Plaintiff's  
2 counsel a list with contact information of all individuals who were paid as independent  
3 contractors and who were hired to deliver AT&T telephone directories during the period between  
4 June 25, 2009 and the present.

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

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

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

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

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

18           12. The non-Texas plaintiffs appealed the District Court's decision to the appropriate  
19 state appellate court. On February 26, 2015, the Fourteenth Court of Appeals in Houston, Texas,  
20 affirmed the District Court. The non-Texas plaintiffs further appealed to the Texas Supreme  
21 Court.

22           13. The Texas Supreme Court sought briefing on the issue, but ultimately denied  
23 review of the decision on April 1, 2016. Under the Texas Rules of Appellate Procedure, the final  
24 mandate is scheduled to be issued on or after May 13, 2016, at which time the judgment of the  
25 appellate court will become final on appeal.

26           14. In light of the refusal of the Texas Supreme Court to review the decision, the non-  
27 Texas plaintiffs now file this Collective Action in the U.S. District Court for the Northern  
28 District of California.

1 **II. JURISDICTION**

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

9 16. This action is timely filed as the order dismissing the non-Texas plaintiffs was  
10 suspended for the duration of any appeals regarding the Order of dismissal and the final order  
11 denying the non-Texas plaintiff’s appeal has yet to issue. See Exhibit 1, attached hereto.  
12 Moreover, the U.S. Supreme Court has long recognized that when a federal complaint is filed in  
13 state court and dismissed for improper venue, “the limitation provision is tolled until the state  
14 court order dismissing the state action becomes final by the running of the time during which an  
15 appeal may be taken or the entry of a final judgment on appeal.” *Burnett v. New York Central R.*  
16 *Co.*, 380 U.S. 424, 434-35 (1965).

17 **III. VENUE**

18 17. Venue is proper in the Northern District of California because a substantial  
19 portion of the events forming the basis of this suit occurred in the Northern District of California.

20 **IV. INTRADISTRICT ASSIGNMENT**

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

25 **V. PARTIES**

26 19. Plaintiff, James Krawczyk, is an individual hired by defendants to deliver  
27 telephone directories. Krawczyk delivered AT&T telephone directories and was paid as  
28

1 an independent contractor during the relevant time period. He worked for Defendants  
2 until February 2013. Krawczyk currently resides in Westminster, California.

3 20. Defendant, Directory Distributing Associates, Inc., a foreign corporation  
4 organized and existing under the laws of the State of Missouri, whose principal office is located  
5 at 1324 Clarkson Center 0310, Suite 348, Ellisville, Missouri, 63011, has done business in  
6 California until at least 2013. Pursuant to the California Corporations Code, Directory  
7 Distributing Associates, Inc. may be served with process by and through the California Secretary  
8 of State as well as at its last known agent for service of process, which is National Registered  
9 Agents, Inc., located at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017. Directory  
10 Distributing Associates, Inc. also may be served with process by and through its president, John  
11 W. Runk, at its principal place of business and its Missouri Registered Office located at 825  
12 Maryville Centre Drive, Suite 300, Town & Country, Missouri.

13 21. Defendant, AT&T Corp., is a subsidiary of AT&T, Inc., a corporation that is  
14 publically traded on the New York stock exchange, and authorized to do business in California.  
15 AT&T Corp. may be served with process by serving its registered agent, CT Corporation  
16 System, which is located at 818 W. Seventh Street, Suite 930, Los Angeles, CA 90017.

17 22. Upon information and belief, Defendant AT&T Corp. owns and manages AT&T  
18 Advertising & Publishing, which is a wholly or majority owned division or subsidiary of AT&T  
19 Corp. AT&T Corp., at least for employment purposes, manages and controls AT&T Advertising  
20 and Publishing and promulgates all business and personnel policies.

## 21 VI. FACTUAL ALLEGATIONS

22 23. Defendant Directory Distributing Associates, Inc. (hereinafter “DDA”) is a  
23 telephone directory distributor, whose primary business includes the hiring of delivery workers  
24 to deliver AT&T telephone directories to AT&T’s residential and business customers. At all  
25 relevant times, DDA contracted with and delivered telephone directories for and on behalf of  
26 AT&T Corp. through its wholly owned subsidiary or division, AT&T Services, Inc., which acted  
27 on behalf of AT&T Advertising and Publishing, also a wholly owned division or subsidiary of  
28 AT&T Corp. As such AT&T Corp., and its wholly owned divisions and subsidiaries AT&T

1 Services, Inc. and AT&T Advertising and Publishing, relied on, approved and benefited from the  
2 policies and practices engaged in by DDA.

3 24. Defendant DDA acted with the knowledge and consent and on behalf of  
4 defendant AT&T Corp., its divisions, subsidiaries and affiliates.

5 25. At all relevant times, Defendants hired individual workers, such as Plaintiff, to  
6 deliver the AT&T telephone directories throughout the United States and Canada.

7 26. Individual workers, such as Plaintiff, were required to execute agreements  
8 classifying themselves as independent contractors. These agreements were not subject to  
9 negotiation by the individual workers.

10 27. Defendants used identical or virtually identical “independent contractor  
11 agreements” with each person hired. The terms of the agreement are essentially the same for  
12 each individual hired.

13 28. Pursuant to these “independent contractor agreements,” the individual workers,  
14 such as Plaintiff, are/were paid a flat fee for the deliveries. This flat fee was non-negotiable and  
15 presented to the individual workers as a “take it or leave it” deal.

16 29. Defendant AT&T Corp. knew or should have known that defendant DDA was  
17 paying individual workers hired to deliver the telephone directories as independent contractors.  
18 Defendant AT&T further knew that such individuals were paid a flat fee for the deliveries.

19 30. Defendants required the individual workers, such as Plaintiff, to attend training  
20 sessions prior to the start of their delivery duties.

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

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

25 33. Following the training video, Defendants required the individual workers, such as  
26 Plaintiff, to have the telephone books loaded into the workers’ personal vehicles. Workers, such  
27 as Plaintiff, waited for indefinite, extended periods of time to pick up telephone directories to  
28 deliver to customers.

1           34.     The individual workers, such as Plaintiff, were required to load and unload the  
2 telephone directories from their personal vehicles and place the directories in bags prior to  
3 making the deliveries.

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

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

11           37.     Despite classifying the individual workers an independent contractors, Defendants  
12 required the individual workers to turn in forms that included information regarding the  
13 telephone deliveries, including listing the hours worked and miles driven so that the workers’  
14 time could be recorded. Defendants would not pay the individual workers if the forms were not  
15 approved.

16           38.     Defendants required individual workers to use GPS trackers and to click the  
17 tracker each time a telephone directory was delivered.

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

21           40.     Individual workers were expected to complete the delivery route within a certain  
22 range of hours. Defendants refused to allow the individual workers, such as Plaintiff, to  
23 accurately record their hours of work. Individual workers who recorded their accurate hours of  
24 work were retaliated against by being deprived of other jobs if the managers and supervisors  
25 deemed the hours “excessive.” Such workers were placed on “do not rehire” lists or simply not  
26 offered new delivery assignments. Such retaliation is a violation of the FLSA. *See* 29 U.S.C.  
27 218c(a)(5).

28



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

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

6 43. By paying the individual workers as independent contractors, Defendants receive  
7 a financial benefit.

8 44. By paying the individual workers as independent contractors, Defendants have a  
9 reduced tax liability because Defendants do not withhold any taxes such as federal and state  
10 income tax, social security and Medicare taxes from the workers' wages, which taxes would be  
11 withheld if the workers were paid as employees.

12 45. By paying the individual workers as independent contractors, Defendants avoid  
13 their obligations under the Affordable Care Act to ensure that employees are provided health  
14 insurance.

15 46. By paying the individual workers as independent contractors, Defendants avoid  
16 the inclusion of thousands of individuals in the companies' retirement programs, such as the  
17 401k retirement accounts.

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

21 48. Despite classifying the individual workers, such as Plaintiff, as independent  
22 contractors, the State of California has found such workers to be employees, entitled to  
23 unemployment benefits.

24 49. Defendants intentionally and willfully engaged in, and continue to engage in a  
25 pattern and practice of classifying the individual delivery workers as independent contractors to  
26 avoid paying the workers the required minimum wage and overtime wages to which they are  
27 entitled pursuant to the Fair Labor Standards Act ("FLSA").  
28

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

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

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

9 **VII. COLLECTIVE ACTION ALLEGATIONS**

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

13 54. The collective action is comprised of (a) all individuals who were hired to deliver  
14 AT&T telephone directories between June 25, 2009 and December 21, 2012 and (b) all  
15 individuals who were hired to deliver AT&T telephone directories at any time within three years  
16 prior to this action's filing date through the time of trial of this action (the "collective period").

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

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

1 **VIII. CLAIM FOR RELIEF**

2 **FAIR LABOR STANDARDS ACT**

3 57. The facts set forth in ¶¶ 1-56, *supra*, are re-alleged and incorporated by reference  
4 herein.

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

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

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

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

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

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



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

69. Plaintiff hereby demands a trial by jury of all issues which are subject to adjudication by a trier of fact.

Dated: May 10, 2016

**COTCHETT, PITRE & McCARTHY, LLP**

*/s/ Mark C. Molumphy*

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*Attorneys for Plaintiff and Proposed Collective Members*

# **EXHIBIT 1**

Filed 13 September 18 P7:33  
Chris Daniel - District Clerk  
Harris County  
ED101J017722682  
By: Jerri Coble

*STPRX*

NO. 2011-50578

ERVIN WALKER, et al.,

Plaintiffs

VS.

DIRECTORY DISTRIBUTING  
ASSOCIATES, INC., et al.,

Defendants

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

269<sup>th</sup> JUDICIAL DISTRICT

**STAY OF INTERLOCUTORY ORDER**

On September \_\_, 2013, the Court signed its Interlocutory Order Granting Defendants' Motion to Dismiss as to Non-Texas Collective Action Plaintiffs Pursuant to Texas Civil Practice & Remedies Code Section 15.003 ("the Order"). Plaintiffs have filed a notice of appeal.

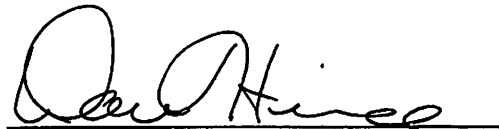
Pursuant to Texas Rule of Appellate Procedure 29.2, the Court suspends enforcement of the Order for the duration of any appeals regarding the Order.

The Court determines that no bond is necessary to suspend the Order pending appeal pursuant to Texas Rule of Appellate Procedure 24.2(a)(3).

The Court stays discovery by any party with respect to those Plaintiffs affected by the Order and all other proceedings with respect to the same.

IT IS SO ORDERED.

Signed this 19<sup>th</sup> day of September, 2013.



The Honorable Dan Hinde  
Presiding Judge, 269th District Court

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging



# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO/OAKLAND DIVISION**

JAMES KRAWCZYK, individually and on  
behalf of others similarly situated,

Plaintiffs,

Case No. \_\_\_\_\_

v.

DIRECTORY DISTRIBUTING ASSOCIATES,  
INC., and AT&T CORP.

COLLECTIVE ACTION  
COMPLAINT FOR VIOLATIONS  
OF FLSA

Defendants.

**JURY TRIAL DEMANDED**

**CONSENT TO PARTICIPATE IN LAWSUIT/COLLECTIVE ACTION**

I, James Krawczyk, hereby consent to be the named plaintiff and to participate in this action against Directory Distributing Associates, Inc. AT&T Corp, and any other entities and individuals who may be legally responsible to me, to recover what I allege to be unpaid wages, overtime wages and other sums owed to me pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, et. seq. and any other applicable state and federal statutes and regulations.

I have requested the firm of Holmes, Diggs, Eames & Sadler, PLLC and any associated counsel, to bring the claims I may have including this lawsuit. I understand that by signing this Consent and becoming a plaintiff I will be bound by settlements and decisions in this case. This written Consent is intended to serve as my consent in writing to join this lawsuit and become a party as required by 29 U.S. C. §216(b) and any other state or federal statutes and/or regulations.

Date 05-05-2016

James D Krawczyk  
James Krawczyk

Print | Close Window

Subject: DDA Workers Consent Form  
 From: "form\_engine@fs21.formsite.com" <form\_engine@fs21.formsite.com>  
 Date: Tue, Mar 05, 2013 5:28 pm  
 To: lawsuit@ddadeliveryworkersgroup.com

CAUSE NO. 2011-50578																											
ERVIN WALKER, DONALD WALKER, ERIC ALLEN, JUSTIN COOPER, REGINA COUTEE, TRENT JEDKINS, AND BRIAN MATHIS  <p style="text-align: center;">Plaintiffs,</p> v. DIRECTORY DISTRIBUTING ASSOCIATES, INC., RICHARD PRICE, STEVE WASHINGTON, LAURA WASHINGTON, ROLAND E. SCHMIDT, and SANDY SANDERS,  and AT&T CORPORATION  <p style="text-align: center;">Defendants.</p>	§IN THE DISTRICT COURT §  §  §  § OF HARRIS COUNTY, § TEXAS  §  §  § 269TH JUDICIAL § DISTRICT §																										
<p><b>CONSENT TO OPT IN AND JOIN COLLECTIVE ACTION</b></p> <p>I consent to be a party plaintiff in this case, called <i>Ervin Walker, et al. v. Directory Distributing Associates, Inc. et. al.</i> to recover what I allege to be unpaid wages, overtime wages and other sums owed to me. I allege that I was mis-classified as an independent contractor under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219.</p> <p>I want the firms of Holmes, Diggs &amp; Eames, PLLC, and the Law Offices of Judith Sadler, PC, and any associated counsel, to bring the claims I may have, including this lawsuit. I understand that by signing this Consent and becoming a plaintiff I will be bound by settlements and decisions in this case. This written Consent is intended to serve as my consent in writing to join in this lawsuit and become a party plaintiff as required by 29 U.S.C. § 216(b).</p>																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Questions</th> <th style="text-align: left;">Values</th> </tr> </thead> <tbody> <tr> <td>First Name</td> <td>James</td> </tr> <tr> <td>Last Name</td> <td>Krawczyk</td> </tr> <tr> <td>Telephone</td> <td>(714) 310 -2028</td> </tr> <tr> <td>Address</td> <td>14272 Hoover Street Space # 125</td> </tr> <tr> <td>City</td> <td>Westminster</td> </tr> <tr> <td>Item # 7</td> <td>California</td> </tr> <tr> <td>Zip Code</td> <td>92683</td> </tr> <tr> <td>Email (optional)</td> <td>krawczyk.james@gmail.com</td> </tr> <tr> <td>Last 3 Digits of Drivers License</td> <td>314</td> </tr> <tr> <td>State issuing Drivers License</td> <td>California</td> </tr> <tr> <td>Last 3 Digits of Social Security #</td> <td>504</td> </tr> <tr> <td>Todays Date</td> <td>03-05-2013</td> </tr> </tbody> </table>	Questions	Values	First Name	James	Last Name	Krawczyk	Telephone	(714) 310 -2028	Address	14272 Hoover Street Space # 125	City	Westminster	Item # 7	California	Zip Code	92683	Email (optional)	krawczyk.james@gmail.com	Last 3 Digits of Drivers License	314	State issuing Drivers License	California	Last 3 Digits of Social Security #	504	Todays Date	03-05-2013	
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