

1 Michael C. McKay, SBN 023354  
2 SCHNEIDER WALLACE  
3 COTTRELL KONECKY  
4 WOTKYNS LLP  
5 8501 North Scottsdale Road, Suite 270  
6 Scottsdale, Arizona 85253  
7 Telephone: (480) 428-0142  
8 Facsimilie: (866) 505-8036  
9 mmckay@schneiderwallace.com

10 Joshua Konecky, CA SBN 182897 (*Pro Hac Vice application to follow*)  
11 Leslie H. Joyner, CA SBN 262705 (*Pro Hac Vice application to follow*)  
12 SCHNEIDER WALLACE  
13 COTTRELL KONECKY  
14 WOTKYNS LLP  
15 2000 Powell Street, Suite 1400  
16 Emeryville, CA 94608  
17 Telephone: (415) 421-7100  
18 Facsimile: (415) 421-7105  
19 jkonecky@schneiderwallace.com  
20 ljoyner@schneiderwallace.com

21 Attorneys for Plaintiff

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24 **UNITED STATES DISTRICT COURT**  
25 **DISTRICT OF ARIZONA**

26 ORSON JUDD, an individual, on behalf of )  
27 himself and on behalf of all others similarly )  
28 situated, )  
Plaintiff, )  
vs. )  
KEYPOINT GOVERNMENT SOLUTIONS, )  
29 INC., a Delaware corporation, )  
30 Defendant. )  
31 )  
32 )  
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**COLLECTIVE ACTION COMPLAINT  
UNDER THE FAIR LABOR STANDARDS  
ACT (FLSA), 29 U.S.C. § 201, et seq.**  
**JURY TRIAL DEMANDED**

34 Plaintiff Orson Judd (“Plaintiff”) by and through his undersigned attorneys, hereby brings this  
35 Collective Action Complaint on behalf of himself and all others similarly situated, against Defendant  
36 Keypoint Government Solutions, Inc. (“Defendant”), and alleges as follows:  
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**I. NATURE OF THE CASE**

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3 1. This is a collective action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*  
4 (“FLSA”), arising out of Defendant’s ongoing and willful misclassification of its “Investigators” as  
5 “independent contractors” instead of “employees.” Under the FLSA, employees are entitled to  
6 overtime premium wages for all hours worked beyond 40 in a workweek. Independent contractors  
7 do not have this legal right. Thus, Defendant’s willful policy of misclassification has allowed it to  
8 decrease its bottom line by wrongfully and illegally withholding the overtime wages that it owes to  
9 its numerous Investigators across the country.

10 2. On September 29, 2011, the Internal Revenue Service (IRS) provided a seven-page  
11 determination letter to Defendant’s CEO, Jeff Schlanger, explaining its conclusion that Defendant  
12 had misclassified one of its Investigators as an independent contractor rather than an employee. A  
13 copy of the letter is attached to this Complaint as Exhibit A. The IRS letter identified numerous  
14 reasons why the Investigator should have been classified as an employee. The IRS letter also  
15 references Defendant’s potential tax liability for not paying employment related taxes as a result of  
16 misclassifying the Investigator as an independent contractor rather than employee. As it turns out,  
17 Defendant employs thousands of Investigators across the United States who perform the same kind  
18 of work as this Investigator, under the same corporate-wide constraints, policies and procedures of  
19 Defendant that lead to the IRS determination. Defendant neither pays these Investigators overtime,  
20 nor does it pay employment taxes to the government pertaining to their employment.

21 3. In or around 2014, Defendant reclassified all its Investigator in California as  
22 employees. Defendant, however, continues to classify numerous Investigators in other states as  
23 independent contractors, even though they do the same kind of work under the same or substantially  
24 similar policies, procedures and constraints as the Investigators properly classified as employees.  
25 Defendant willfully continues to classify numerous Investigators as independent contractors—and  
26 deny them their legal right to overtime wages—despite knowing that the classification is unlawful.

27 4. The Investigators perform background checks, an integral part of Defendant’s business  
28 as a provider of background checks to the federal government. The Investigators also routinely

1 work more than 40 hours a week. They perform traditional investigative work (e.g. tracking down  
2 witnesses, interviewing witnesses, finding and reviewing public records, etc.). They also spend  
3 additional time writing reports on their investigations for Defendant to submit to the government.  
4 The investigative work must generally be performed during regular business hours and is itself a full  
5 time job. On top of the 40 or more hours per week spent on this work, the Investigators must spend  
6 substantial additional time after hours to write-up their reports, and must do so under deadlines  
7 imposed by Defendant. As a result, the Investigators, including Plaintiff, regularly work well over  
8 40 hours per week, but do not receive any overtime pay.

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10 5. Defendant owes its Investigators overtime pay for their overtime hours because  
11 Defendant is the legal employer of the Investigators. The Investigators perform an integral part of  
12 Defendant's business and Defendant retains the right to exercise extensive control over the way the  
13 Investigators perform their jobs. Among other things, Defendant retains the right to control the  
14 Investigators' pay rate, hours, deadlines, forms and scripts for interviews, quality control on reports  
15 ultimately submitted to the government, and other details of the job. Moreover, Defendant does not  
16 permit its Investigators to submit reports to the government until Defendant has completed an  
17 extensive "Case Review Process." Defendant treats the Investigators as employees in every material  
18 respect, except that it has misclassified an entire class of them as independent contractors.

19 6. Although Defendant has misclassified Plaintiff and numerous other similarly situated  
20 Investigators as independent contractors, it simultaneously has classified another subset of  
21 Investigators as employees. The Investigators classified as independent contractors are subject to  
22 the same or similar rules, procedures, responsibilities and level of control as those classified by  
23 Defendant as employees. Other than the number of hours worked or whether the worker is paid  
24 overtime and other benefits, there is no material difference between them. They all are "employees"  
25 under applicable law. Yet, Defendant has misclassified a whole category of them as "independent  
26 contractors." Using this classification scheme, Defendant has failed to pay these Investigators the  
27 full wages and employment benefits they are due.

28 7. Defendant's unlawful classification of Plaintiff and other similarly situated

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Investigators as independent contractors is part of an unlawful policy and practice to evade the overtime obligations and other responsibilities that employers owe to their workers and the government under the FLSA and applicable tax laws. Defendant has violated and continues to violate the overtime requirements of the FLSA, 29 U.S.C. § 207(a), and the applicable Regulations of the Department of Labor.

8. Defendant's violations have been willful under 29 U.S.C. § 255(a). Defendant has known that its classification of Investigators as independent contractors violates the FLSA since at least September 29, 2011, when the IRS concluded that Defendant had misclassified a California-based Investigator as an independent contractor when in fact he was an employee. See Ex. A. That Investigator, Michael Sgherzi, later filed a class action under California law in or around June of 2014, which included claims for violations of the FLSA. As a result of the California lawsuit, Defendant reclassified its Investigators in California as employees, but did not reclassify Investigators in other states. These facts and others demonstrate that Defendant has acted willfully in misclassifying the Investigators as independent contractors rather than employees. Thus, Plaintiff is entitled to recover damages under FLSA's three-year statute of limitations, which is applicable to willful violations.

9. This action follows an earlier filed action against Defendant, *Richard Smith, et al. v. KeyPoint Government Solutions*, Case No. 1:15-cv-00865 (D. Colo.) ("*Smith Action*"). During the pendency of the *Smith Action*, Defendant required all of its Investigators to execute new contracts, which included an arbitration agreement and collective action waiver. However, because the Ninth Circuit has held that collective action waivers such as the one contained in Defendant's arbitration agreement are unenforceable under the National Labor Relations Act (see *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016) petition for cert. granted 2017 WL 125665 (Jan. 13, 2016)), Plaintiff is entitled, under the law of this Circuit, to pursue his claims in this Court action.

10. Plaintiff Orson Judd brings this collective action under the FLSA, 29 U.S.C. § 216(b), on behalf of himself and other similarly situated individuals who worked for Defendant as Investigators in the United States, while being classified by Defendant as independent contractors at

1 any time beginning three years before the filing of this Complaint and/or the filing of consents to  
2 become party plaintiffs (including the time period Plaintiff's and others' claims were tolled by the  
3 filing of consents in an earlier filed action, *Richard Smith, et al. v. KeyPoint Government Solutions*,  
4 Case No. 1:15-cv-00865 (D. Colo.)), plus additional time for other periods of equitable tolling.

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6 11. Plaintiff challenges Defendant's policies of: (1) classifying Plaintiff and other  
7 similarly situated Investigators as independent contractors instead of employees; and (2) failing to  
8 pay Plaintiff and other similarly situated Investigators overtime wages for hours worked in excess of  
9 40 in a week. Plaintiff seeks compensation in the form of back wages, including overtime wages; an  
10 additional equal amount as liquidated damages; and interest to the full extent permitted by the  
11 FLSA. Plaintiff, on behalf of himself and all others similarly situated, also requests reasonable  
12 attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

## 13 **II. VENUE AND JURISDICTION**

14 12. The FLSA authorizes private rights of action to recover damages for violations of the  
15 FLSA's wage and hour provisions. 29 U.S.C. § 216(b).

16 13. This Court has jurisdiction over Plaintiff's FLSA claims under 28 U.S.C. § 1331  
17 because Plaintiff's claims arise under the FLSA. The Court also has jurisdiction under 28 U.S.C. §  
18 1332(a)(1), because the amount in controversy in this action exceeds \$75,000, exclusive of interests  
19 and costs, and because the parties are residents of different states.

20 14. Venue is proper under 28 U.S.C. §1391, because Defendant employs members of the  
21 proposed Collective and transacts business in this Judicial District, and a substantial part of the acts  
22 and/or omissions giving rise to the claims occurred in this District.

## 23 **III. PARTIES**

24 15. Plaintiff, Orson Judd, is a resident of Taylor, Arizona. Mr. Judd worked for Defendant  
25 as an Investigator in Arizona, between approximately June of 2008 and September of 2014.  
26 Throughout that time period, Defendant consistently classified Mr. Judd as an independent  
27 contractor and did not pay him any overtime or other benefits owed to employees. On August 20,  
28 2015, Mr. Judd filed a consent to join in an earlier filed case, *Richard Smith, et al. v. KeyPoint*

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*Government Solutions*, Case No. 1:15-cv-00865 (D. Colo.) (hereinafter, “*Smith*”). On December 16, 2016, the court determined that the claims of Richard Smith were time-barred under the applicable statute of limitations and ordered dismissal of the case. The dismissal was without prejudice as to the claims of all investigators other than Mr. Smith. Accordingly, the statute of limitation was tolled for Mr. Judd throughout the pendency of the *Smith* Action, which concluded on January 20, 2017.

16. Plaintiff’s signed consent to join form is attached to this Complaint as Exhibit B.

17. The Collective Action members are current or former Investigators who have worked for Defendant in the United States, while being classified by Defendant as independent contractors, at any time beginning three years before the filing of this Complaint and/or the filing of consents to become party plaintiffs (including the time period the claims of any Collective Action members were tolled by the filing of consents in the *Smith* case) plus additional time for periods of equitable tolling.

18. Defendant Keypoint Government Solutions, Inc. (“Keypoint”) is and at all relevant times has been engaged in the business of security-clearance background investigation and screening services across the United States.

19. Defendant Keypoint is incorporated in Delaware, headquartered in Loveland, Colorado, registered to do business in the State of Arizona, under registration number F15087750. Defendant employs thousands of Investigators to perform work across the United States, including in this Judicial District, and is a resident of this Judicial District.

20. Defendant Keypoint was formerly Kroll Government Services, Inc. (“Kroll”), also a Colorado corporation. Kroll was Plaintiff’s employer until 2009. In 2009, Kroll was acquired by Veritas Capital Fund Management, L.L.C., and became Defendant Keypoint.

21. Any reference to Defendant or Keypoint herein is intended to include both Keypoint and Kroll to the extent that any conduct by Kroll, or the consequences of any conduct by Kroll, extends into the period of time after Kroll changed to Keypoint.

#### IV. FACTUAL ALLEGATIONS

22. KeyPoint is in the business of performing background investigations for the federal

1 government. KeyPoint describes itself as “the leading provider of security-clearance background  
2 investigations and screening services to the U.S. Government.” Defendant classifies some  
3 Investigators as employees. Employee Investigators receive overtime pay and benefits, such as  
4 vacation, floating holidays, 401Ks, health insurance, mileage reimbursement, workers compensation  
5 insurance, short and long-term disability benefits and life insurance benefits. Plaintiff and the other  
6 similarly situated Investigators classified by Defendant as independent contractors, however, receive  
7 none of these benefits and do not receive overtime pay. The reason KeyPoint classifies them as  
8 independent contractors (rather than employees) is simply to allow KeyPoint to manage its workload  
9 by flexing up or down its workforce (and not because their work is categorically different from that  
10 of employees).

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12 23. KeyPoint hires Investigators to perform the integral role of KeyPoint’s business, i.e.,  
13 the Investigators’ job is to complete the actual case investigations in the field where the case is  
14 assigned. The Investigators, like Plaintiff and other similarly situated individuals, all perform the  
15 same basic job: interviewing subjects, conducting public records searches, interviewing sources, and  
16 writing investigation reports. They all sign a standardized “Independent Contractor Engagement  
17 Agreement” (ICEA) with KeyPoint.

18 24. The independent contractor agreement is terminable at-will by Defendant, and does  
19 not contain a notice requirement. Accordingly, the contractual agreement does not contemplate an  
20 end date to the business relationship. Plaintiff and other similarly situated Investigators often work  
21 for Defendant for several years. Ninety-five percent (95%) work for Defendant for more than one  
22 year, including Plaintiff.

23 25. All the Investigators that KeyPoint hires as independent contractors work on  
24 investigations KeyPoint performs for either the Office of Personnel Management (“OPM”) or  
25 Department of Homeland Security (“DHS”). Approximately 85% work on OPM, 15% work on  
26 DHS, and 5% work on both. Of the 15% that work on the DHS contract, at least 80% work on  
27 investigations pertaining to either Custom and Border Protection (“CBP”) and/or Immigration and  
28 Customs Enforcement (“ICE”).

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26. The Investigators receive all case assignments directly from KeyPoint. KeyPoint obtains a case investigation project from its client, and then divides the project into multiple sub-tasks that it then distributes to different Investigators. KeyPoint assigns work to the Investigators based on KeyPoint's own strategic and logistical needs, and the Investigators play no role in this process.

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27. The Investigators are completely dependent on the individual tasks KeyPoint makes available for them to complete. Investigators are prohibited from subcontracting out or assigning work to anyone else to perform. They do not have the independence to simply take on a project and decide who is going to perform it and how. Rather, the Investigators must personally perform all assigned tasks themselves.

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28. The clients belong to KeyPoint, not the Investigators, and the Investigators do not have access to or communicate with clients. In fact, Investigators have no role whatsoever in any of the negotiations that KeyPoint has with its clients that impact either the work made available to Investigators, the way in which the Investigators must perform their work, or the rates of pay ultimately offered to the Investigators.

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29. KeyPoint agrees with its clients to control the details of work performed by all the Investigators and KeyPoint maintains numerous uniform policies to manage the work of the Investigators.

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30. For example, KeyPoint enforces the multiple, detailed policies, procedures and techniques contained in the Investigator's Handbook. The Investigator's Handbook is nearly 550 single-spaced pages of detailed policies and procedures that Investigators must follow to complete work for KeyPoint. It even includes specific lines of questioning and questions that need to be adhered to in each interview conducted by an Investigator. The policies and procedures in the Investigator's Handbook are mandatory.

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31. Furthermore, KeyPoint has assumed responsibility for overseeing Investigators who are independent contractors to ensure that they are complying with the policies and procedures in the Investigator's Handbook. For example, KeyPoint enforces policies on the "proper process" for



1 contacting sources; how to use private information; how to keep handwritten notes, and the timing  
2 and method of shipping investigation notes to KeyPoint. KeyPoint also imposes deadlines on the  
3 Investigators based on deadlines KeyPoint has with its clients. KeyPoint is also responsible for  
4 ensuring compliance with the quality and timing standards set by KeyPoint's contracts with the  
5 government.

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7 32. KeyPoint's policies are mandatory and Investigators are expected to comply. If an  
8 Investigator fails to follow KeyPoint's numerous, detailed policies and procedures, KeyPoint  
9 reserves the right to take corrective action, up to and including termination.

10 33. KeyPoint requires that the Investigators attend extensive training provided by  
11 KeyPoint before starting work. For work on the OPM project (approximately 80% of the  
12 Investigators), KeyPoint requires a total of 10 weeks of training. The first seven weeks are unpaid  
13 and include between six and eight hours of classroom work per day. After completing the classroom  
14 training, Investigators must then complete 80 hours of On-The-Job ("OTJ") training.

15 34. KeyPoint also requires Investigators to complete annual training on security policies  
16 and procedures.

17 35. KeyPoint's training provides Investigators with the necessary skills to perform their  
18 job, including procedures for conducting interviews, handling notes, transmitting reports, and  
19 conducting record searches. Investigators' training even includes detailed written instructions for the  
20 lines of questioning that should be pursued for each interview. KeyPoint provides such extensive  
21 training as a measure of accountability to its customer. KeyPoint even monitors the Investigators'  
22 performance to determine if additional training is necessary.

23 36. Keypoint imposes report completion deadlines on Plaintiff and other similarly situated  
24 Investigators. The background checks usually must be completed within 2 weeks from the date they  
25 are assigned.

26 37. Once Investigators accept an assignment, they are expected to meet a due-date  
27 established by KeyPoint based on what KeyPoint negotiates with its clients. Investigators cannot  
28 renegotiate deadlines with KeyPoint's clients.

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38. The Investigators must complete the necessary interviews, perform the necessary document searches, and write the necessary reports in accordance with KeyPoint’s policies, deadlines and quality control standards. The end product is a “Report of Investigation” that KeyPoint submits to its client. For work provided to OPM, KeyPoint has a team of “Case Review Analysts” that review each report before it is deemed fit for the client. For the DHS project, KeyPoint has three levels of internal review before it goes to the client. If KeyPoint determines a report does not meet all the standards and requirements, the Investigator must rewrite it.

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39. Throughout the process, Keypoint provides the Investigators with guidance and mentoring by assigning them “Contract Liaisons” and “Case Managers.” The Case Managers and Contract Liaisons are employees of KeyPoint who “take ownership of the case” and “manage the case through to the end.” KeyPoint also has a “Policy and Guidance” Department that provides uniform guidance to Investigators in the field as to how to interpret and follow policy.

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40. In addition to the multi-layer report review process, KeyPoint also subjects the Investigators to random audits and internal inspections to ensure they comply with the “proper process.” KeyPoint will re-contact 10% of sources in order to determine if an Investigator followed proper procedure. KeyPoint also monitors Investigators’ emails to ensure compliance with KeyPoint’s security protocols and keeps track of complaints filed against the Investigators.

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41. KeyPoint evaluates Investigators based on a set of 78 standards. When they fail to comply with KeyPoint policies, KeyPoint sends Investigators a letter of violation. The Investigator must reply, confirming agreement to next time follow the “proper process.” If KeyPoint determines that an Investigator did not follow “proper process,” KeyPoint may require additional corrective action, such as retraining. In some cases, KeyPoint’s corrective action may include termination.

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42. The Investigators do not “invest” in their own businesses. Conversely, KeyPoint invests over \$12,000 into each Investigator to provide mandatory training and credentials. Investigators also receive a laptop, software, and security equipment. They do not invest time or resources into developing relationships with KeyPoint’s clients. They do not invest in additional employees to perform work. In fact, KeyPoint requires the Investigators to personally perform all the

1 tasks themselves.

2 43. The only investment Investigators make into their “business,” is for transportation,  
3 paper, pens, a printer, and sometimes a fax machine. KeyPoint provides everything else  
4 Investigators need to receive and complete their tasks.

5 44. At the same time, every Investigator’s opportunity for profit is constrained by the  
6 work that KeyPoint decides to make available. KeyPoint also limits Investigators’ opportunities for  
7 profit and loss by paying them all on a similar piece-rate structure. Under certain circumstances,  
8 Investigators may ask for premium pay for specific work, but only 12-15% of assignments include  
9 premium pay. KeyPoint affords its Contract Liaisons limited authority to grant premium pay. The  
10 only ways that Investigators can control profits and losses is to accept more work from what  
11 KeyPoint makes available, work more efficiently on their tasks, and/or drive a less expensive car.

12 45. Still, Investigators work for KeyPoint on a continuous basis. Ninety-five percent  
13 (95%) of Investigators remain with KeyPoint for more than one year. Indeed, the standardized  
14 agreement KeyPoint requires all Investigators to sign obligates them to repay KeyPoint for up to  
15 \$5,000 in training expenses if they leave KeyPoint within a year. KeyPoint also keeps Investigators  
16 working regularly and continuously by enforcing a policy that Investigators must work at least once  
17 every 30 days to stay credentialed.

18 46. KeyPoint has no degree requirements for its Investigators. KeyPoint’s only specific  
19 requirement is that the Investigator complete the training KeyPoint provides. KeyPoint’s training is  
20 designed to provide Investigators with the specialized skills required for the job. All Investigators  
21 attend the same training to develop the skills necessary to work for KeyPoint.

22 47. As indicated above, the work Defendant requires and/or suffers and permits Plaintiff  
23 and other similarly situated Investigators to perform can be divided into two broad categories: (1)  
24 investigative tasks; and (2) report writing. Plaintiff and other similarly situated Investigators  
25 generally must perform the investigative tasks during traditional business hours because public  
26 records and interview subjects tend to be unavailable outside of these hours. Consequently, report  
27 writing and related tasks often must be performed outside of traditional business hours. The  
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investigative work alone is substantial, and regularly demands at least 40 hours of work per week, per Investigator. Combined with the report writing, Plaintiff and the other similarly situated Investigators must regularly work well over 40 hours per week. Indeed, given the nature of investigative work and timing restrictions on investigative tasks, Plaintiff and other similarly situated Investigators regularly work substantial overtime hours to meet the deadlines set by Defendant. Yet, Defendant does not pay Plaintiff or other similarly situated Investigators for all these hours, and does not pay them at one and one-half times their regular rate for hours over 40 in a week.

48. Defendant compensates Plaintiff and other similarly situated Investigators for work performed on the Office of Personnel Management contract with a flat fee. For all other work, Defendant compensates Plaintiff and other similarly situated Investigators pursuant to a standard “Project Structure Fee,” under which all payments are broken into “source units.” For example, subject interviews are considered 4 source units, and reference interviews are considered 1 source unit, even if they take the same amount of time to complete. Defendant presents the compensation terms to Plaintiff and other similarly situated Investigators on a “take-it-or-leave-it” basis.

49. Plaintiff and other similarly situated Investigators also incur substantial out-of-pocket expenses in the form of mileage and office supplies, among other resources. Despite these significant expenditures, Plaintiff and other similarly situated Investigators invest little in their “businesses” besides gas money, office supplies, and a phone, which in reality are the Defendant’s costs of doing business. As a general matter, Plaintiff and other similarly situated Investigators do not have or work through a genuine “business” in any meaningful sense, but simply work as employees of Defendant.

50. Plaintiff and other similarly situated Investigators perform their work according to instructions set by Defendant and communicated to Plaintiff and other similarly situated Investigators during the lengthy trainings and mentoring programs to ensure that work is performed according to Defendant’s precise specifications.

51. As noted above, this action follows an earlier filed action against Defendant, *Richard*

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2 *Smith, et al. v. KeyPoint Government Solutions*, Case No. 1:15-cv-00865 (D. Colo.) (“*Smith*  
3 Action”). During the pendency of the *Smith* Action, Defendant required all of its Investigators to  
4 execute new contracts, which included an arbitration agreement and collective action waiver.  
5 However, because the Ninth Circuit has held that collective action waivers such as the one contained  
6 in Defendant’s arbitration agreement are unenforceable under the National Labor Relations Act (see  
7 *Morris*, 834 F.3d 975, Plaintiff is entitled, under the law of this Circuit, to pursue his claims in this  
8 Court action.

## 9 V. COLLECTIVE ALLEGATIONS

10 52. Plaintiff brings this action as an “opt-in” collective action pursuant to 29 U.S.C. §  
11 216(b), on behalf of himself and a proposed Collective of similarly situated employees defined as:

12 “All individuals who have worked for Defendant as Investigators in the United States, while  
13 being classified as independent contractors, at any time beginning three years before the  
14 filing of this Complaint and/or the filing of consents to become party plaintiffs (including the  
15 time period the claims of any Collective Action members were tolled by the filing of  
16 consents in *Richard Smith, et al. v. KeyPoint Government Solutions*, Case No. 1:15-cv-00865  
17 (D. Colo.)), plus additional time for periods of equitable tolling.”

18 53. Plaintiff, on behalf of himself, and on behalf of other similarly situated employees  
19 defined above, seeks relief on a collective basis challenging Defendant’s policy of misclassifying  
20 Investigators as independent contractors, and failing to pay them for all hours worked, including  
21 overtime compensation. The number and identity of other similarly situated persons yet to opt-in as  
22 party-plaintiffs may be determined from the records of Defendant, and potential opt-ins may be  
23 easily and quickly notified of the pendency of this action.

24 54. This case is well suited for certification as a collective action because the independent  
25 contractor misclassification issue will be answered with common proof for Plaintiff and the other  
26 similarly situated individuals.

27 55. The test for determining whether KeyPoint has misclassified its Investigators as  
28 independent contractors contains the following factors: 1) The degree of the alleged employer's right  
to control the manner in which the work is to be performed; 2) the alleged employee's opportunity  
for profit or loss depending upon his managerial skill; 3) the alleged employee's investment in

1 equipment or materials required for his task, or his employment of helpers; 4) whether the service  
2 rendered requires a special skill; 5) the degree of permanence of the working relationship; 6)  
3 whether the service rendered is an integral part of the alleged employer's business. *Donovan v.*  
4 *Sureway Cleaners*, 656 F.2d 1368, 1370 (9th Cir. 1981). Plaintiff and the other investigators are  
5 similarly situated with respect to these factors:  
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7 (a) **Investigators Are Similarly Situated With Regard To KeyPoint's Right to**  
8 **Control The Details of The Work.** Here, as shown above, KeyPoint has agreed with  
9 its government clients to maintain and enforce multiple, detailed procedures and  
10 standards pertaining to quality, performance and timing of all work performed by the  
11 Investigators. These standards are highly similar, if not uniform, across the proposed  
12 collective. KeyPoint also provides standardized training and common guidance to the  
13 Investigators. It further maintains a common procedure for reviewing the reports the  
14 Investigators prepare, randomly auditing the conduct of Investigators in the field to  
15 ensure compliance with the "proper process," and issuing corrective action up to and  
16 including termination if the Investigators repeatedly do not follow the rules.

17 (b) **Investigators Are Similarly Situated With Regard To Their Opportunity For**  
18 **Profit And Loss Based on Managerial Skill.** KeyPoint's Investigators are similarly  
19 situated with respect to the opportunity for profit and loss for several reasons. First,  
20 KeyPoint pays them pursuant to a common piece rate structure. Second, while  
21 KeyPoint may provide an opportunity to seek premiums for individual tasks, this  
22 opportunity is applicable to all Investigators and, in each case, the ultimate authority to  
23 grant or deny the premium rests with KeyPoint. Indeed, KeyPoint approves premium  
24 pay to only 12-15% of the assignments. Third, the Investigators receive their work  
25 assignments directly from KeyPoint, not from the client, and have no authority to offer  
26 services to, or negotiate directly with, the client to obtain a better pay rate or more  
27 flexible procedures for performing the work. Fourth, while Investigators may be able  
28 to decline their assignments, they have no control over what KeyPoint makes

1 available, which ultimately is what dictates their earning potential. Fifth, once  
2 Investigators accept an assignment, they must perform the work according to the  
3 deadlines and parameters that flow from the contracts KeyPoint has negotiated with its  
4 clients. Finally, KeyPoint prohibits Investigators from delegating or subcontracting  
5 work, even if that would allow them to earn more money. All these facts and  
6 considerations are similar if not uniform across the collective.

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8 (c) **Investigators Are Similarly Situated With Regard To How Integral They Are To  
9 The Business.** This factor will be resolved in common for all Investigators because  
10 they all perform the same essential job. KeyPoint admits that Investigators are integral  
11 to KeyPoint's business because they are responsible for carrying out the actual work  
12 necessary for KeyPoint to fulfill its contracts with DHS and OPM. Furthermore,  
13 KeyPoint admits that it only classifies Investigators as Independent Contractors to  
14 maintain a more flexible workforce, and not because Investigators perform some  
15 collateral function to KeyPoint's business.

16 (d) **Investigators Are Similarly Situated With Regard To Their Investment In Their  
17 Business.** KeyPoint spends over \$12,000 per Investigator to provide the required  
18 training and credentials. KeyPoint also provides the computers and software. In  
19 contrast, Investigators only invest resources in basic equipment such as office  
20 supplies, potentially a printer, and basic travel. Investigators do not invest time or  
21 resources in soliciting new business for KeyPoint or developing relationships with  
22 KeyPoint's clients. They are explicitly prohibited from investing any resources into  
23 hiring other employees or subcontracting out work.

24 (e) **Investigators Are Similarly Situated With Regard To The Contractual Terms  
25 Controlling The Permanence If Their Working Relationship With KeyPoint.**  
26 KeyPoint engages with Investigators as Independent Contractors for an extended  
27 period of time involving multiple assignments rather than periodically for discrete  
28 assignments. At least 95% of Investigators work for KeyPoint for more than a year.

1  
2 Furthermore, KeyPoint requires that Investigators reimburse KeyPoint for up to  
3 \$5,000 if the Investigator leaves KeyPoint before one year.

4 (f) **Investigators Are Similarly Situated With Regard To The Degree Of Skill**

5 **Required For Their Work.** KeyPoint maintains uniform, standardized job  
6 qualifications for all its Investigators. Investigators do not need a specialized degree or  
7 previous job. Moreover, to the extent that the required knowledge or skills vary for the  
8 work provided by KeyPoint, KeyPoint also provides the required training to ensure  
9 that its Investigators have the necessary skills.

10 56. Additionally, Plaintiff's underlying overtime claims will be resolved in common for  
11 all similarly situated individuals, as KeyPoint admits it does not pay the Investigators overtime and  
12 thus liability will turn entirely on whether the Investigators are misclassified as Independent  
13 Contractors.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF THE FAIR LABOR STANDARDS ACT,  
29 U.S.C. § 201, et seq. FAILURE TO PAY OVERTIME WAGES**

16 57. Plaintiff and other similarly situated Investigators re-allege and incorporate all  
17 previous paragraphs herein.

18 58. The FLSA requires that employers whose employees are engaged in commerce,  
19 engaged in the production of goods for commerce, or employed in an enterprise engaged in  
20 commerce or in the production of goods for commerce pay their employees overtime wages at one  
21 and one-half their regular rate for hours worked in excess of 40 hours during a workweek. 29 U.S.C.  
22 §§ 207.

23 59. Defendant is covered by the FLSA and has violated the FLSA by failing to pay  
24 Plaintiff for all time worked, including overtime pay, because it has misclassified Plaintiff and other  
25 similarly situated Investigators as independent contractors.

26 60. Plaintiff and other similarly situated Investigators are victims of a uniform and  
27 company-wide compensation policy that systematically denies them their statutorily mandated  
28 overtime premium pay. This uniform policy, in violation of the FLSA, has been applied to all



1 Investigators classified as independent contractors by Defendant throughout the United States.

2  
3 61. Defendant's conduct in misclassifying Plaintiff and other similarly situated  
4 Investigators as independent contractors has been willful. Defendant has done it to avoid paying  
5 premium overtime pay and the other benefits to which Plaintiff and other similarly situated  
6 Investigators are entitled. Furthermore, and as set forth above, Defendant has been aware that its  
7 conduct violates the FLSA since at least September of 2011.

8  
9 62. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within  
10 the meaning of 29 U.S.C. § 255(a), as Defendant has known that its classification of Investigators as  
11 independent contractors violates the FLSA since at least September 29, 2011, when the Department  
12 of Treasury concluded that Defendant had misclassified a California-based Investigator as an  
13 independent contractor when in fact he was an employee. See Ex. A. That Investigator, Michael  
14 Sgherzi, later filed a class action under California law in or around June of 2014, which included  
15 claims for violations of the FLSA. As a result of the California lawsuit, Defendant reclassified its  
16 Investigators in California as employees, but did not reclassify Investigators in other states. Plaintiff  
17 and all similarly situated employees therefore are entitled to all damages owed for the limitations  
18 period beginning three years preceding the filing of this Complaint and/or the filing of consents to  
19 become party plaintiffs (including the time period the claims of any Collective Action members  
20 were tolled by the filing of consents in *Richard Smith, et al. v. KeyPoint Government Solutions*, Case  
21 No. 1:15-cv-00865 (D. Colo.)), plus additional time for periods of equitable tolling.

22 63. Plaintiff and other similarly situated employees are entitled to recover an award in the  
23 amount of their unpaid overtime compensation.

24 64. Plaintiff and other similarly situated employees are entitled to recover an additional  
25 award of liquidated damages in an amount equal to the amount of unpaid overtime pay, and/or  
26 prejudgment interest at the applicable rate. 29 U.S.C. § 216(b).

27 65. Employers subject to the FLSA must "make, keep, and preserve" accurate records of  
28 all hours worked and the wages, hours, and other conditions and practices of employment. 29  
U.S.C. § 211(c). It is unlawful for any person to violate § 211(c). 29 U.S.C. § 215(a)(5).

1  
2 66. 29 C.F.R. § 516.2 and 29 C.F.R. § 825.500 further require that every employer shall  
3 maintain and preserve payroll or other records containing, without limitation, the total hours worked  
4 by each employee each workday and total hours worked by each employee each workweek.

5 67. Defendant has failed to maintain all records required by the aforementioned statutes  
6 and regulations, and failed to furnish Plaintiff and other similarly situated Investigators  
7 comprehensive statements showing the hours they worked during the relevant time period.

8 68. Where an employer's records are inaccurate or inadequate, employees need only  
9 produce sufficient evidence to show the amount and extent of the work as a matter of just and  
10 reasonable inference to prove they were improperly compensated. *Anderson v. Mt. Clemens Pottery*  
11 *Co.*, 328 U.S. 680, 687-88 (1946). If an employer is unable to rebut the reasonableness of this  
12 inference, the court may award damages to the employee, even if the result "be only approximate."  
13 *Id.*

14 69. Plaintiff and other similarly situated Investigators are entitled to their unpaid overtime  
15 wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.  
16 29 U.S.C. § 216(b).

## 17 VI. PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff, on behalf of himself and the proposed Collective they seek  
19 to represent in this action, requests the following relief:

- 20 a) For an order certifying that this Complaint may be maintained as a collective action  
21 pursuant to 29 U.S.C. § 216(b) and that prompt notice of this action be issued to  
22 potential members of the Collective, apprising them of the pendency of this action,  
23 and permitting them to assert their FLSA claims;
- 24 b) For an order equitably tolling the statute of limitations for the potential members of  
25 the Collective;
- 26 c) For an order awarding Plaintiff and the Collective compensatory and statutory  
27 damages (including liquidated damages), including lost wages, earnings, and all other  
28 sums of money owed to Plaintiff and members of the Collective, together with interest

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on these amounts;

- d) For an order directing Defendant to identify, locate and restore to all current and former Investigators classified as independent contractors the restitution and compensation they are due for lost wages, earnings, and other sums of money, together with interest on these amounts.
- e) For a declaratory judgment that Defendant has willfully violated the FLSA and public policy as alleged herein.
- f) For pre- and post-judgment interest;
- g) For an award of reasonable attorneys' fees as provided by the FLSA;
- h) For all costs of suit; and
- i) For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: March 9, 2017

SCHNEIDER WALLACE  
COTTRELL KONECKY WOTKYNS LLP

By: /s/ Michael C. McKay  
MICHAEL C. MCKAY  
Attorney for Plaintiff and the Proposed Collective

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**DEMAND FOR JURY TRIAL**

Plaintiff Orson Judd by and through his attorney, hereby demand a jury trial on all claims and issues for which Plaintiff and the Collective are entitled to a jury.

Respectfully submitted,

Dated: March 9, 2017

SCHNEIDER WALLACE  
COTTRELL KONECKY WOTKYNS LLP

By: /s/ Michael C. McKay  
MICHAEL C. MCKAY  
Attorney for Plaintiff and the Proposed Collective

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2017, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Michael C. McKay  
Michael C. McKay (SBN 023354)  
SCHNEIDER WALLACE  
COTTRELL KONECKY WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608  
Telephone: (415) 421-7100  
Facsimile: (415) 421-7105  
mmckay@schneiderwallace.com

# Exhibit A

S

Internal Revenue Service  
40 Lakemont Road  
Newport, VT 05855-1555

Department of the Treasury  
SB/SE, Compliance  
BIRSC, SS-8 Program

September 29, 2011

Jeff Schlanger, CEO  
Keypoint Government Solutions Inc.  
1750 Foxtrail Dr., Unit 120  
Loveland, CO 80538-8807 454

Form SS-8, *Determination of Worker  
Status for Purposes of Federal  
Employment Taxes and Income Tax  
Withholding*

Person to Contact:  
Beverly Miller 1023114

Telephone Number: 802-751-4446  
Fax Number: 802-751-4454/4455

Refer Reply to: Case # 86360

Dear Mr. Schlanger:

The purpose of this letter is to respond to a request for a determination of employment status, for federal employment tax purposes, concerning the work relationship between Keypoint Government Solutions Inc., referred to as "the firm" in the rest of this letter, and Michael J. Sgherzi referred to as "the worker" in the rest of this letter. It has come to our attention that the services were performed in 2005 through 2010.

DETERMINATION RESULT

We hold the worker to have been an employee of the firm. In the rest of this letter, we will explain the facts, law, and rationale that form the basis for this finding.

DESCRIPTION OF WORK RELATIONSHIP

The firm is the investigative service business. The firm engaged the worker as an investigator to perform services under the firm's business contracts. Prior to the firm being awarded business contracts by the firm's customers, the firm was required to submit bids with proposals to the firm's customers. Within the bids were the firm's practices and procedures pertaining to enforcement, supervision, and monitoring of the contracted services.

The firm engaged the worker through signed contracts based on the worker's experience, holding of required credentials, and availability. The firm assigned the worker jobs that were available to be performed according to the worker's qualifications

Internal Revenue Service  
40 Lakemont Road  
Newport, VT 05855-1555

EXHIBIT  
5-21-2013  
6  
Wit: Fuson





"employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, if it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co adventurer, agent, or independent contractor must be disregarded.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

#### ANALYSIS

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Revenue Service  
Department Road  
Montpelier, VT 05655-1555

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. You engaged the worker to perform services for your business customers. You entered into contracts with your customers to provide qualified labor, facilities, materials, management, processing, investigation, quality assurance, and any subcontractor and consultant oversight needed to produce quality investigative leads provided in the reports of investigations provided by your customers. You required the worker to sign a contract indicating he would comply with your customer's criteria for investigators, and keep in full force all licenses required to perform the services. You required the worker to contact your designated management regarding problems or complaints and resolve them.

You required the worker to provide you with required reports on accepted assignments timely based on due dates established by you and your customers. You required the worker to perform any re-work without payment for reports not accepted by you or your customers. You required the worker to have any substitutes or helpers pre-approved as required by your customers. These facts evidence behavioral control by you over the services performed by the worker. Even though you allowed the worker some flexibility in performing the services, once accepted by the worker, you were responsible for the oversight necessary in order to meet your customers desired end results per your contract with your customers.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest significant capital in a business. The worker did not have control over profit and loss with regard to the services you contracted to perform for your customers.

You provided the contracted jobs, access to forms required by your customers, and management. The worker provided a computer, supplies, transportation, and telephone. Your customers provided credentials and forms. The worker incurred some expenses for personal items needed in order to perform the services. You reimbursed the worker for some expenses. You paid the worker an hourly wage or a fee. Your customers paid you. The worker could incur a profit or loss when required to perform re-work at no additional cost as required by you. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. In your contracts with your customers, you established the prices in your bid for the contracts. Your business also could suffer a loss with regard to untimely submissions and re-work requirements. In order to protect your financial investment it would be both necessary and integral to your business operations to control the performance of the services. These facts show that you retained control over the financial aspects of the worker's services.

Revenue Service  
Road  
Newport, VT 05855-1555

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There were written contracts between you and the worker indicating the worker to be an independent contractor. For federal employment tax purposes, the autonomy of a work relationship determines a worker status. If the autonomy is employer/employee than any agreements written or verbal indicating otherwise are irrelevant.

The worker did perform similar services for others while performing services for your business and you did not prohibit the worker from doing so unless there was a conflict of interest. Once the worker accepted jobs you determined the worker was qualified to perform, the worker was required to perform the services as contracted and meet your established due dates based on your business needs and your contracts with your customers. The services the worker performed were both a necessary and integral part of your business operations and fulfillment of your contracts with your customers.

All parties retained the right to terminate the work relationship at any time without incurring any liability. The ability to terminate a work relationship at any time without incurring a legal contractual liability for early termination is indicative of an employer/employee relationship. An independent contractor, on the other hand, cannot be fired or quit without incurring a liability so long as the independent contractor produces a result that meets the contract specifications.

#### CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.

#### TAX RAMIFICATIONS

Compensation to an individual classified as an employee is subject to federal income tax withholding, Federal Insurance Contributions Act tax (FICA), and Federal Unemployment Tax Act (FUTA) tax as provided by sections 3101, 3301, and 3401 of the Internal Revenue Code, and it is possible you are liable for the same. The employment tax liabilities for income tax withholding and FICA also apply to resident and non-resident aliens, except that non-resident aliens may have an exception depending on their immigrant status. FUTA may also apply to the income earned by aliens, even when the income is not subject to FICA tax. If your worker is a resident or non-resident alien, and you need additional information, you may wish to obtain Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

For the years prior to 2008 in question, it is possible that the statute of limitations has expired for the assessment of taxes in this matter. If so, it will not be necessary for you to amend your return(s). Internal Revenue Code (IRC) section 6501(a) provides that

the statute of limitations for assessment generally expires three years from the due date of the return, or three years after the date the return was actually filed, whichever is later. IRC section 6501(b)(2) provides that for certain employment tax returns, the three years would begin April 15 of the following year for which the return was due. IRC section 6511(a) provides that a claim for credit or refund of an overpayment shall be filed within three years from the date the return was filed, or two years from the date the tax was paid, whichever expires later.

This determination is based on the application of law to the information presented to us and/or discovered by us during the course of our investigation; however, we are not in a position to personally judge the validity of the information submitted. This ruling pertains to all workers performing services under the same or similar circumstances. It is binding on the taxpayer to whom it is addressed; however, section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

Internal Revenue Code section 7436 concerns reclassifications of worker status that occur during IRS examinations. As this determination is not related to an IRS audit, it does not constitute a notice of determination under the provisions of section 7436, nor is this an audit for purposes of entitling you to section 530 relief (further explained below) if you are not otherwise eligible for such relief.

#### OPTIONS AND ASSISTANCE

The SS-8 Program does not calculate your balance due and send you a bill. You are responsible for satisfying the employment tax reporting, filing, and payment obligations that result from this determination, such as filing employment tax returns or adjusting previously filed employment tax returns. Your immediate handling of this correction and your prompt payment of the tax may reduce any related interest and penalties.

Section 530 of the 1978 Revenue Act established a safe haven from an employer's liability for employment taxes arising from an employment relationship. This relief may be available to employers who have misclassified workers if they meet certain criteria. This is explained more fully in the enclosed fact sheet. It is important to note that this office does not have the authority to grant section 530 relief in relation to this determination. Section 530 relief is officially considered and possibly granted by an auditor at the commencement of the examination process should IRS select your return(s) for audit. The SS-8 determination process is not related to an examination of your returns. There is also no procedure available to you by which you can request an audit for the purpose of addressing your eligibility for section 530 relief. You should contact a tax professional if you need assistance with this matter.

If you deem that the firm meets the criteria for section 530 relief as outlined in the enclosure, you do not have to file/adjust your employment tax returns to reflect this determination. Also, you may choose to reclassify this class of worker to employee status in accordance with this determination for future periods without jeopardizing your ability to claim section 530 relief for past periods.

If you are not eligible for section 530 relief, and the failure to pay the correct amount of employment tax was due to the misclassification of a worker's status, you must adjust

Revenue Service  
 Vermont Road  
 Newport, VT 05855-1555

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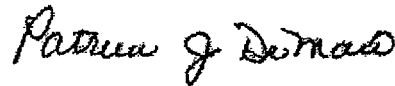
your return(s) using specific tax rates. The rates and other instructions on the amendment process are outlined in Publication 4341, *Information Guide for Employers Filing Form 941 or Form 944*. You may wish to obtain a copy of Publication 4341. The publication is available on the IRS internet site, or you may call to have a copy mailed to you (see the contact information at the bottom of this letter).

If you need further assistance in filing/adjusting your employment tax returns due to the reclassification of your worker, please call the IRS help line at 1-800-829-4933. Call 1-866-455-7438 for assistance in preparing or correcting Forms W-2, W-3, 1099, 1096, or other information returns.

For personal assistance, go to <http://www.irs.gov/app/officeLocator/index.jsp> to locate and visit the closest Taxpayer Assistance Center.

If you have any questions concerning this determination, please feel free to contact the person whose name and number are listed at the top of this letter. Please refer to your case number (86360) when contacting us about this case.

Sincerely,



Patricia J. DeMaio  
Operations Manager

Enclosures: Section 530 Fact Sheet  
Notice of IRS Compliance Expectations  
Notice 441  
Sanitized Determination Letter for Public Disclosure

cc: Michael J. Sgherzi

To order forms and publications, please call 1-800-TAX-FORM or visit us online at [www.irs.gov/formspubs](http://www.irs.gov/formspubs).

Letter 3711-A (CG) (Rev. 5-2011)  
Catalog Number 356300

Revenue Service  
Newport Road  
Newport, VT 05855-1555

# Exhibit B

1 Joshua Konecky, SBN 182897  
jkonecky@schneiderwallace.com  
2 Leslie H. Joyner, SBN 262705  
ljoyner@schneiderwallace.com  
3 SCHNEIDER WALLACE  
COTTRELL KONECKY WOTKYNS LLP  
4 2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
5 Telephone: (415) 421-7100  
Facsimile: (415) 421-7105

6 Attorneys for Plaintiffs and the Proposed Collective

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF ARIZONA**

10 ORSON JUDD, individually and on  
behalf of all others similarly situated,

11 Plaintiffs,

12 vs.

13 KEYPOINT GOVERNMENT  
14 SOLUTIONS, INC., a Delaware  
corporation,

15 Defendant.  
16

) Case No.:  
) Hon.

) **CONSENT TO JOIN COLLECTIVE**  
) **ACTION UNDER THE FAIR LABOR**  
) **STANDARDS ACT OF 1938 (FLSA), 29**  
) **U.S.C. § 216(b)**

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I worked for KeyPoint Government Solutions, Inc. ("KeyPoint"), within the past three years. Specifically, I worked for KeyPoint from June of 2008 through September of 2014 and I filed an opt-in consent form in *Richard Smith, et al. v. KeyPoint Government Solutions*, Case No. 1:15-cv-00865 (D. Colo.) on August 20, 2015, which is pending until final judgment is entered. I want to join this lawsuit alleging that KeyPoint has violated the Fair Labor Standards Act by misclassifying me and other Investigators as independent contractors rather than employees. I understand that this lawsuit seeks unpaid wages and/or overtime that may be owed to me, and that by joining this lawsuit I will become a party plaintiff.

By joining this lawsuit, I designate the Plaintiff named in the Complaint as my representative to the fullest extent possible under applicable laws, to make decisions on my behalf concerning the litigation, the manner and method of conducting and resolving the litigation, and all other matters pertaining to this lawsuit.

I understand that I have the right to choose other counsel and I choose to be represented in this matter by the law firm of Schneider Wallace Cottrell Konecky Wotkyns LLP and other attorneys with whom they associate.

Orson Judd

Name

P.O. Box 817

Address

Taylor  
St. David, AZ 85939

City,

State

Zip

Date: 1/28/2017

Signature: Orson Judd



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Orson Judd, an individual, on behalf of himself and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Navajo County, Arizona
(c) Attorneys (Firm Name, Address, and Telephone Number)
(see attachment)

DEFENDANTS
Keypoint Government Solutions, Inc., a Delaware corporation
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. Section 201, et seq.
Brief description of cause:
Denial of overtime wages resulting from misclassification of employees as independent contractors.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 03/09/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Michael C. McKay

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Attorneys for Plaintiffs:

Michael C. McKay, SBN 023354  
SCHNEIDER WALLACE  
COTTRELL KONECKY  
WOTKYNS LLP  
8501 North Scottsdale Road, Suite 270  
Scottsdale, Arizona 85253  
Telephone: (480) 428-0142

Joshua Konecky, CA SBN 182897 (*Pro Hac Vice application to follow*)  
Leslie H. Joyner, CA SBN 262705 (*Pro Hac Vice application to follow*)  
SCHNEIDER WALLACE  
COTTRELL KONECKY  
WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
Telephone: (415) 421-7100

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Keypoint Government Solutions 'Willfully' Misclassified Workers](#)

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