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10 *Attorneys for Plaintiff*

11 UNITED STATES DISTRICT COURT
 12 DISTRICT OF ARIZONA

14 **Samantha Sanders**, individually, and on
 15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 **Tristate Logistics of Arizona, LLC**, an
 Arizona Limited Liability Company;
 19 **Tristate Logistics of Nevada, LLC**, a
 Nevada Limited Liability Company;
 20 **Tristate Logistics, LLC**, a Nevada
 Limited Liability Company; **C&A**
 21 **Holdings, LLC**, a Nevada Limited
 Liability Company; **Elliot Auto Supply**
 22 **Co., Inc.**, a Minnesota Corporation;
 23 **Factory Motor Parts International,**
 LLC, a Minnesota Limited Liability
 24 Company; **The Bon Air Trust**, a Nevada
 Trust; **Carlos Jorge and Jane Doe Jorge**,
 a Married Couple; and **Elliot Badzin and**
 25 **Jane Doe Badzin**, a Married Couple,

26 Defendants.

No.

COMPLAINT

BENDAU & BENDAU PLLC
 P.O. Box 97066
 Phoenix, AZ 85060

27

1 Plaintiff, **Samantha Sanders** (“Plaintiff” or “Sanders”), individually, and on
2 behalf of all other persons similarly situated, allege as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this action on behalf of herself and all similarly-situated
5 current and former Couriers/Warehouse Workers¹ of Defendants Tristate Logistics of
6 Arizona, LLC (“Defendant Tristate Arizona”); Tristate Logistics of Nevada, LLC
7 (“Defendant Tristate Nevada”); Tristate Logistics, LLC (“Defendant Tristate”); C&A
8 Holdings, LLC (“Defendant C&A”) (each aforementioned entity may also be referred to
9 collectively as “Tristate Logistics”); Elliot Auto Supply, Inc. (“Defendants Elliot Auto
10 Supply”); Factory Motor Parts International, LLC (“Defendant Factory Motor Parts
11 International”) (both Elliot Auto Supply, Inc. and Factory Motor Parts International, LLC
12 are may be referred to collectively as “Factory Motor Parts”); The Bon Air Trust
13 (“Defendant Bon Air”); Carlos Jorge and Jane Doe Jorge; and Elliot Badzin and Jane Doe
14 Badzin (all Defendants may be referred to collectively as “Defendants”) who were
15 compensated at a straight-time rate for all hours worked, regardless of whether those
16 hours exceeded 40 in any given workweek.
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25 ¹ For the purposes of this Complaint, “Couriers/Warehouse Workers” is exclusively
26 a job title used for the purpose of classifying the putative class of similarly situated
27 individuals, is not necessarily the job title of Plaintiffs and putative class, and has no
bearing or relation to any specialization, skill, education, training, or other qualification
that might otherwise be associated with such a job title.

1 2. Plaintiff, individually, and on behalf of all others similarly-situated, brings
2 this action against Defendants for their unlawful failure to pay overtime in violation of
3 the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the “FLSA”).

4 3. Plaintiff brings a collective action under the FLSA to recover the unpaid
5 overtime owed to her individually and on behalf of all other similarly-situated employees,
6 current and former, of Defendants. Members of the Collective Action are referred to as
7 the “Collective Members.”

8 4. The Collective Members are all current and former Couriers/Warehouse
9 Workers who were employed by Defendants at any time.

10 5. This is an action for unpaid wages, liquidated damages, interest, attorneys’
11 fees, and costs under the FLSA.

12 6. The FLSA was enacted “to protect all covered workers from substandard
13 wages and oppressive working hours.” Under the FLSA, employers must pay all non-
14 exempt employees an overtime premium for all time spent working in excess of 40 hours
15 per week.

16 7. Defendants engaged in the regular policy and practice of misclassifying
17 their Couriers/Warehouse Workers as independent contractors rather than employees.
18 Specifically, Defendants subjected Plaintiff and the Collective Members to their policy
19 and practice of misclassifying their Couriers/Warehouse Workers, who were employees,
20 as independent contractors and then failing and/or refusing to pay them overtime for time
21 they worked in excess of 40 hours per week, in violation of 29 U.S.C. § 207(a).
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1 15. Throughout Plaintiff’s entire employment, she was paid approximately \$96
2 per day, regardless of the number of hours she worked for Defendants.

3 16. At all material times, Plaintiff was employed by Defendants but classified
4 and paid as an independent contractor. The Tristate Logistics Defendants employed
5 Plaintiff to perform automobile parts delivery-related duties, which generally consisted
6 of, but were not limited to transporting and delivering automobile parts to and from
7 various local Factory Motor Parts locations to and from entities or individuals who either
8 have or need certain automobile. In addition, the Factory Motor Parts Defendants
9 employed Plaintiff to perform additional duties, such as stocking shelves with items she
10 delivered, retrieving items from shelves for delivery, cleaning the premises (including
11 cleaning restrooms), and other repetitive, unskilled, menial labor assigned at the
12 discretion of Factory Motor Parts.
13

14 17. At all material times, Plaintiff was an employee of Defendants as defined
15 by the FLSA, 29 U.S.C. § 203(e)(1) and was a non-exempt employee under 29 U.S.C. §
16 213(a)(1).
17

18 18. Plaintiff has given her written consent to be a party Plaintiff in this action
19 pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to this
20 Complaint as “**Exhibit A.**”
21

22 19. Plaintiff brings this action on behalf of herself and on behalf of all other
23 persons similarly situated who are current or former Couriers/Warehouse Workers of
24 Defendants, including but not limited to Couriers/Warehouse Workers who agree in
25 writing to join this action seeking recovery under the FLSA.
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1 20. Plaintiff brings this action on behalf of themselves and on behalf of all
2 other similarly situated current and former employees of Defendants—specifically,
3 Couriers/Warehouse Workers who were not paid overtime for time worked in excess of
4 40 hours in any given workweek and whose wages, therefore, were non-compliant with
5 the FLSA.
6

7 21. Defendant Tristate Logistics of Arizona, LLC is an Arizona limited liability
8 company, authorized to do business in the State of Arizona and was at all relevant times
9 Plaintiff’s and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).
10

11 22. At all relevant times, Tristate Logistics of Arizona, LLC owned and
12 operated as Tristate Logistics, an auto parts courier company doing business in Maricopa
13 County, Arizona.
14

15 23. Under the FLSA, and at all relevant times, Defendant Tristate Logistics of
16 Arizona, LLC is an employer. The FLSA defines “employer” as any individual who acts
17 directly or indirectly in the interest of an employer in relation to an employee.
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19 24. At all relevant times, Tristate Logistics of Arizona, LLC had the authority
20 to hire and fire employees, supervised and controlled work schedules or the conditions of
21 employment, determined the rate and method of payment, and maintained employment
22 records in connection with Plaintiff’s and the Collective Members’ employment with
23 Defendants. As a person who acted in the interest of Defendants in relation to their
24 employees, Tristate Logistics of Arizona, LLC is subject to individual liability under the
25 FLSA.
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1 25. Defendant Tristate Logistics of Nevada, LLC is a Nevada limited liability
2 company, authorized to do business in the State of Arizona and was at all relevant times
3 Plaintiff's and the Collective Members' Employer as defined by 29 U.S.C. § 203(d).

4 26. At all relevant times, Tristate Logistics of Nevada, LLC owned and
5 operated as Tristate Logistics, an auto parts courier company in Clark County, Nevada.
6

7 27. Under the FLSA, and at all relevant times, Defendant Tristate Logistics of
8 Nevada, LLC is an employer. The FLSA defines "employer" as any individual who acts
9 directly or indirectly in the interest of an employer in relation to an employee.
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11 28. At all relevant times, Tristate Logistics of Nevada, LLC had the authority to
12 hire and fire employees, supervised and controlled work schedules or the conditions of
13 employment, determined the rate and method of payment, and maintained employment
14 records in connection with Plaintiff's and the Collective Members' employment with
15 Defendants. As a person who acted in the interest of Defendants in relation to their
16 employees, Tristate Logistics of Nevada, LLC is subject to individual liability under the
17 FLSA.
18

19 29. Defendant Tristate Logistics of Nevada, LLC is a Nevada limited liability
20 company, authorized to do business in the State of Nevada and was at all relevant times
21 Plaintiff's and the Collective Members' Employer as defined by 29 U.S.C. § 203(d).

22 30. At all relevant times, Tristate Logistics, LLC owned and operated as
23 Tristate Logistics, an auto parts courier company in both Clark County, Nevada and
24 Maricopa County, Arizona.
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1 31. Under the FLSA, and at all relevant times, Defendant Tristate Logistics,
2 LLC is an employer. The FLSA defines “employer” as any individual who acts directly
3 or indirectly in the interest of an employer in relation to an employee.

4 32. At all relevant times, Tristate Logistics, LLC had the authority to hire and
5 fire employees, supervised and controlled work schedules or the conditions of
6 employment, determined the rate and method of payment, and maintained employment
7 records in connection with Plaintiff’s and the Collective Members’ employment with
8 Defendants. As a person who acted in the interest of Defendants in relation to their
9 employees, Tristate Logistics, LLC is subject to individual liability under the FLSA.
10

11 33. Defendant C&A Holdings, LLC is a Nevada limited liability company,
12 authorized to do business in the State of Nevada and was at all relevant times Plaintiff’s
13 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).
14

15 34. At all relevant times, C&A Holdings, LLC owned and operated as Tristate
16 Logistics, an auto parts courier company in Clark County, Nevada.
17

18 35. Under the FLSA, and at all relevant times, Defendant C&A Holdings, LLC
19 is an employer. The FLSA defines “employer” as any individual who acts directly or
20 indirectly in the interest of an employer in relation to an employee.
21

22 36. At all relevant times, C&A Holdings, LLC had the authority to hire and fire
23 employees, supervised and controlled work schedules or the conditions of employment,
24 determined the rate and method of payment, and maintained employment records in
25 connection with Plaintiff’s and the Collective Members’ employment with Defendants.
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1 As a person who acted in the interest of Defendants in relation to their employees, C&A
2 Holdings, LLC is subject to individual liability under the FLSA.

3 37. Defendant Elliot Auto Supply Co., Inc. is a Minnesota corporation,
4 authorized to do business in the State of Arizona and was at all relevant times Plaintiff's
5 and the Collective Members' Employer as defined by 29 U.S.C. § 203(d).
6

7 38. At all relevant times, Elliot Auto Supply Co., Inc. owned and operated as
8 Factory Auto Parts, a company that supplies automobile parts to dealerships, wholesale
9 distributors, and individuals and doing business in Maricopa County, Arizona.
10

11 39. Under the FLSA, and at all relevant times, Defendant Elliot Auto Supply
12 Co., Inc. is an employer. The FLSA defines "employer" as any individual who acts
13 directly or indirectly in the interest of an employer in relation to an employee.
14

15 40. At all relevant times, Elliot Auto Supply Co., Inc. had the authority to hire
16 and fire employees, supervised and controlled work schedules or the conditions of
17 employment, determined the rate and method of payment, and maintained employment
18 records in connection with Plaintiff's and the Collective Members' employment with
19 Defendants. As a person who acted in the interest of Defendants in relation to their
20 employees, Elliot Auto Supply Co., Inc. is subject to individual liability under the FLSA.
21

22 41. Defendant Factory Motor Parts International, LLC is a Minnesota
23 corporation, authorized to do business in the State of Arizona and was at all relevant
24 times Plaintiff's and the Collective Members' Employer as defined by 29 U.S.C. §
25 203(d).
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1 42. At all relevant times, Factory Motor Parts International, LLC owned and
2 operated as Factory Auto Parts, a company that supplies automobile parts to dealerships,
3 wholesale distributors, and individuals and doing business in Maricopa County, Arizona.

4 43. Under the FLSA, and at all relevant times, Defendant Factory Motor Parts
5 International, LLC is an employer. The FLSA defines “employer” as any individual who
6 acts directly or indirectly in the interest of an employer in relation to an employee.
7

8 44. At all relevant times, Factory Motor Parts International, LLC had the
9 authority to hire and fire employees, supervised and controlled work schedules or the
10 conditions of employment, determined the rate and method of payment, and maintained
11 employment records in connection with Plaintiff’s and the Collective Members’
12 employment with Defendants. As a person who acted in the interest of Defendants in
13 relation to their employees, Factory Motor Parts International, LLC is subject to
14 individual liability under the FLSA.
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17 45. Defendant The Bon Air Trust is a Nevada Trust, authorized to do business
18 in the State of Arizona and was at all relevant times Plaintiff’s and the Collective
19 Members’ Employer as defined by 29 U.S.C. § 203(d).
20

21 46. At all relevant times, The Bon Air Trust was an owner / manager of Tristate
22 Logistics of Arizona, LLC, which conducts business in Maricopa County, Arizona.

23 47. Under the FLSA, and at all relevant times, Defendant The Bon Air Trust is
24 an employer. The FLSA defines “employer” as any individual who acts directly or
25 indirectly in the interest of an employer in relation to an employee.
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1 48. Under the FLSA, as an owner or shareholder of Tristate Logistics of
2 Arizona, LLC, The Bon Air Trust is subject to individual liability under the FLSA.

3 49. Defendants Carlos Jorge and Jane Doe Jorge are, upon information and
4 belief, husband and wife. They have caused events to take place giving rise to the claims
5 in this Complaint as to which their marital community is fully liable. Carlos Jorge and
6 Jane Doe Jorge are owners of Tristate Logistics and were at all relevant times Plaintiff's
7 and the Collective Members' employer as defined by the FLSA, 29 U.S.C. § 203(d).

8 50. Under the FLSA, Defendants Carlos Jorge and Jane Doe Jorge are
9 employers. The FLSA defines "employer" as any individual who acts directly or
10 indirectly in the interest of an employer in relation to an employee. Carlos Jorge and
11 Jane Doe Jorge are the owners of Tristate Logistics. They had the authority to hire and
12 fire employees, supervised and controlled work schedules or the conditions of
13 employment, determined the rate and method of payment, and maintained employment
14 records in connection with Plaintiff's and the Collective Members' employment with
15 Defendants. As persons who acted in the interest of Defendants in relation to their
16 employees, Carlos Jorge and Jane Doe Jorge are subject to individual liability under the
17 FLSA.

18 51. Defendants Elliot Badzin and Jane Doe Badzin are, upon information and
19 belief, husband and wife. They have caused events to take place giving rise to the claims
20 in this Complaint as to which their marital community is fully liable. Elliot Badzin and
21 Jane Doe Badzin are owners of Factory Motor Parts and were at all relevant times
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1 Plaintiff's and the Collective Members' employer as defined by the FLSA, 29 U.S.C. §
2 203(d).

3 52. Under the FLSA, Defendants Elliot Badzin and Jane Doe Badzin are
4 employers. The FLSA defines "employer" as any individual who acts directly or
5 indirectly in the interest of an employer in relation to an employee. Elliot Badzin and
6 Jane Doe Badzin are the owners of Factory Motor Parts. They had the authority to hire
7 and fire employees, supervised and controlled work schedules or the conditions of
8 employment, determined the rate and method of payment, and maintained employment
9 records in connection with Plaintiff's and the Collective Members' employment with
10 Defendants. As persons who acted in the interest of Defendants in relation to their
11 employees, Elliot Badzin and Jane Doe Badzin are subject to individual liability under
12 the FLSA.

13 53. Plaintiff is further informed, believes, and therefore alleges that each of the
14 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as
15 alleged in this Complaint.

16 54. Defendants, and each of them, are sued in both their individual and
17 corporate capacities.

18 55. Defendants are jointly and severally liable for the injuries and damages
19 sustained by Plaintiff and the Collective Members.

20 56. At all relevant times, Plaintiff and the Collective Members were
21 "employees" of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

1 57. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
2 Defendants.

3 58. At all relevant times, Defendants were and continue to be “employers” as
4 defined by FLSA, 29 U.S.C. § 201, *et seq.*

5 59. Defendants individually and/or through an enterprise or agent, directed and
6 exercised control over Plaintiff’s and the Collective Members’ work and wages at all
7 relevant times.
8

9 60. At all relevant times, Plaintiff and the Collective Members, in their work
10 for Defendants, were engaged in commerce or the production of goods for commerce.
11

12 61. At all relevant times, Plaintiff and the Collective Members, in their work
13 for Defendants, were employed by an enterprise engaged in commerce that had annual
14 gross sales or receipts of at least \$500,000 in 2015.
15

16 62. At all relevant times, Plaintiff and the Collective Members, in their work
17 for Defendants, were employed by an enterprise engaged in commerce that had annual
18 gross sales or receipts of at least \$500,000 in 2016.
19

20 63. At all relevant times, Plaintiff and the Collective Members, in their work
21 for Defendants, were employed by an enterprise engaged in commerce that had annual
22 gross sales or receipts of at least \$500,000 in 2017.
23

24 64. At all relevant times, Plaintiff and the Collective Members, in their work
25 for Defendants, were employed by an enterprise engaged in commerce that had annual
26 gross sales or receipts of at least \$500,000 in 2018.
27

1 71. Factory Motor Parts is an enterprise that functions as a supplier of
2 automobile parts to dealerships, wholesale distributors, and individuals and whose
3 primary marketplace offering is automobile parts.

4 72. At all relevant times, Tristate Logistics contracts with Factory Motor Parts
5 to provide Factory Motor Parts with Couriers/Warehouse Workers to transport and
6 deliver automobile parts to and from various local Factory Motor Parts locations to and
7 from entities or individuals who either have or need certain automobile parts. In
8 exchange, Factory Motor Parts compensates Tristate Logistics for use of their
9 Couriers/Warehouse Workers.
10

11 73. On approximately April 1, 2016, Plaintiff began her employment with
12 Defendants as a Courier/Warehouse Worker, performing various repetitive tasks for
13 Tristate Logistics, such as transporting and delivering automobile parts to and from
14 various local Factory Motor Parts locations to and from entities or individuals who either
15 have or need certain automobile. In addition, Plaintiff performed various repetitive tasks
16 within each of the local Factory Motor Parts locations to and from which she transported
17 automobile parts, all at the direction of Factory Motor Parts. Such duties included, but
18 were not limited to, stocking shelves with items she delivered, retrieving items from
19 shelves for delivery, cleaning the premises (including cleaning restrooms), and other
20 repetitive, unskilled, menial labor assigned at the discretion of Factory Motor Parts.
21

22 74. At all relevant times, both Tristate Logistics and Factory Motor Parts
23 functioned jointly as Plaintiff's and the Collective Members' employers under the FLSA.
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1 75. At all relevant times, Plaintiff and the Collective Members were subject to
2 both Tristate Logistics' and Factory Motor Parts' control. Specifically, all
3 Couriers/Warehouse Workers, including Plaintiff and the Collective Members, were
4 subject to both Tristate Logistics' and Factory Motor Parts' supervisory and disciplinary
5 authority; were expected and required to follow rules and guidelines set by both Tristate
6 Logistics and Factory Motor Parts; and were trained by Defendants with regard to policy
7 and procedure related to working for each entity, respectively.
8

9 76. Rather than classify their Couriers/Warehouse Workers as employees,
10 Defendants classified them as independent contractors.
11

12 77. Defendants misclassified all of their Couriers/Warehouse Workers,
13 including Plaintiff and the Collective Members, as independent contractors.
14

15 78. Despite Defendants having misclassified all of their Couriers/Warehouse
16 Workers, including Plaintiff and the Collective Members, as independent contractors,
17 Plaintiff and the Collective Members were actually employees, as defined by the FLSA,
18 29 U.S.C. § 201 et seq.
19

20 79. All of Defendants' Couriers/Warehouse Workers, including Plaintiff and
21 the Collective Members, in their work for Defendants, used Defendants' equipment and
22 wore company uniforms.
23

24 80. Defendants controlled their Couriers/Warehouse Workers' schedules,
25 including those of Plaintiff and the Collective Members.
26
27

1 81. At all relevant times, Plaintiff and the Collective Members were
2 economically dependent on all Defendants, including Tristate Logistics and Factory
3 Motor Parts.

4 82. The following further demonstrate that the Couriers/Warehouse Workers,
5 including Plaintiff and the Collective Members, were employees of Defendants:
6

- 7 a. The work performed by the Couriers/Warehouse Workers, including
8 Plaintiff and the Collective Members, was akin to a specialty job on
9 the production line;
10
- 11 b. Defendants had the right to hire and fire their Couriers/Warehouse
12 Workers, including Plaintiff and the Collective Members;
13
- 14 c. Responsibility under the contracts between Couriers/Warehouse
15 Workers, including Plaintiff and the Collective Members, and
16 Defendants passed from one Courier/Warehouse Worker to another
17 without material changes;
18
- 19 d. Defendants made the decision not to pay overtime to their
20 Couriers/Warehouse Workers, including Plaintiff and the Collective
21 Members;
22
- 23 e. Defendants supervised their Couriers/Warehouse Workers, including
24 Plaintiff and the Collective Members, and subjected them to
25 Defendants' rules;
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- f. Defendants' Couriers/Warehouse Workers, including Plaintiff and the Collective Members, had relatively insignificant financial investment with Defendants' business;
- g. Defendants' Couriers/Warehouse Workers, including Plaintiff and the Collective Members, had no opportunity for profit or loss in the business;
- h. The work that Defendants' Couriers/Warehouse Workers, including Plaintiff and the Collective Members, performed for Defendants was piecework and not work that required initiative, judgment, or foresight;
- i. The services rendered by Defendants' Couriers/Warehouse Workers, including Plaintiff and the Collective Members, in their work for Defendants was integral to Defendants' business;
- j. Defendants' Couriers/Warehouse Workers, including Plaintiff and the Collective Members, were hired as permanent employees, working for Defendants for continuous unspecified amounts of time.

83. At all relevant times, Defendants did not pay Plaintiff or the Collective Members one- and one-half times their regular rates of pay for time spent working in excess of 40 hours in a given workweek.

84. Defendants classified their Couriers/Warehouse Workers, including Plaintiff and the Collective Members, as independent contractors to avoid Defendants' obligation to pay their Couriers/Warehouse Workers, including Plaintiff and the

1 Collective Members, one- and one-half time their regular rates of pay for all hours
2 worked in excess of 40 hours per week.

3 85. Plaintiff and the Collective Members were non-exempt employees.

4 86. From the beginning of Plaintiff's and the Collective Members' employment
5 through the present day, Defendants failed to properly compensate Plaintiff and the
6 Collective Members for any of their overtime hours. During this time, Plaintiff and the
7 Collective Members worked approximately between forty-eight (48) and sixty (60) hours
8 per week.
9

10 87. Plaintiff worked more than 40 hours without being paid an overtime
11 premium in at least one workweek during which they worked for Defendants.
12

13 88. Plaintiff worked more than 40 hours without being paid an overtime
14 premium in multiple workweeks during which they worked for Defendants.
15

16 89. Plaintiff and the Collective Members worked more than 40 hours without
17 being paid an overtime premium in at least one workweek during which they worked for
18 Defendants.
19

20 90. Plaintiff and the Collective Members worked more than 40 hours without
21 being paid an overtime premium in multiple workweeks during which they worked for
22 Defendants.
23

24 91. Plaintiff, in her work for Defendants, was never paid any overtime
25 premium whatsoever for time spent working in excess of 40 hours per week.

26 92. Plaintiff and the Collective Members were generally paid on a daily, flat
27 rate basis.

1 93. In her work for Defendants, Plaintiff was not a manager.

2 94. In her work for Defendants, Plaintiff did not have supervisory authority
3 over any employees.

4 95. In her work for Defendants, Plaintiff did not possess the authority to hire or
5 fire employees.
6

7 96. In her work for Defendants, Plaintiff did not possess authority to make
8 critical job decisions with respect to any of Defendants' employees.

9 97. In her work for Defendants, Plaintiff did not direct the work of two or more
10 employees.
11

12 98. In her work for Defendants, Plaintiff did not exercise discretion and
13 independent judgment with respect to matters of significance.

14 99. In her work for Defendants, Plaintiff's primary duty was not the
15 management of the enterprise in which she was employed or any recognized department
16 of the enterprise.
17

18 100. In their work for Defendants, Plaintiff and the Collective Members were
19 not managers.

20 101. In their work for Defendants, Plaintiff and the Collective Members did not
21 have supervisory authority over any employees.
22

23 102. In their work for Defendants, Plaintiff and the Collective Members did not
24 possess the authority to hire or fire employees.
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1 103. In their work for Defendants, Plaintiff and the Collective Members did not
2 possess authority to make critical job decisions with respect to any of Defendants'
3 employees.

4 104. In their work for Defendants, Plaintiff and the Collective Members did not
5 direct the work of two or more employees.

6 105. In their work for Defendants, Plaintiff and the Collective Members did not
7 exercise discretion and independent judgment with respect to matters of significance.

8 106. In their work for Defendants, Plaintiff's and the Collective Members'
9 primary duty was not the management of the enterprise in which they were employed or
10 any recognized department of the enterprise.

11 107. From the beginning of Plaintiff's and the Collective Members' employment
12 through the present day, Defendants failed to properly compensate them for any of their
13 overtime hours.

14 108. Defendants knew that—or acted with reckless disregard as to whether—their
15 refusal or failure to properly compensate Plaintiff and the Collective Members over the
16 course of their employment would violate federal and state law, and Defendants were
17 aware of the FLSA overtime wage requirements during Plaintiff's and the Collective
18 Members' employment. As such, Defendants' conduct constitutes a willful violation of
19 the FLSA.

20 109. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
21 and the Collective Members of their rights under the FLSA.

1 110. Defendants failed to post and keep posted in a conspicuous place the
2 required poster / notice explaining their employee’s rights under the FLSA pursuant to 29
3 C.F.R. § 516.4.

4 111. Therefore, in a given workweek, and during each and every workweek of
5 Plaintiff’s and the Collective Members’ employment with Defendants, Plaintiff and the
6 Collective Members were subject to Defendants’ policy and practice of not paying one-
7 and one-half times Plaintiff’s and the Collective Members’ regular rates of pay.
8

9 112. In a given workweek, and during each and every workweek of Plaintiff’s
10 and the Collective Members’ employment with Defendants, Plaintiff and the Collective
11 Members worked more than 40 hours but were not paid the applicable one- and one-half
12 times Plaintiff’s and the Collective Members’ regular rates of pay for time they spent
13 working in excess of 40 hours.
14

15 113. Plaintiff believes and therefore claims that Defendants subjected each and
16 every Courier/Warehouse Worker that they employed, including Plaintiff and the
17 Collective Members, to their policy and specific course of not paying one- and one-half
18 times Plaintiff’s and the Collective Members’ regular rates of pay for time spent working
19 in excess of 40 hours in a given workweek.
20

21 114. Plaintiff and the Collective Members are covered employees within the
22 meaning of the Fair Labor Standards Act (“FLSA”).
23

24 115. Defendants individually and/or through an enterprise or agent, directed and
25 exercised control over Plaintiff’s and Collective Members’ work and wages at all relevant
26 times.
27

1 116. Due to Defendants' illegal wage practices, Plaintiff and the Collective
2 Members are entitled to recover from Defendants compensation for unpaid overtime
3 wages, an additional amount equal amount as liquidated damages, interest, and
4 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).
5

6 **COLLECTIVE ACTION ALLEGATIONS**

7 117. Plaintiff realleges and incorporates by reference all allegations in all
8 preceding paragraphs.

9 118. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) on her own
10 behalf and as a representative of individuals similarly situated who are current or former
11 Couriers/Warehouse Workers of Defendants.
12

13 119. At all times material, Defendants paid Plaintiff and the Collective Members
14 a fixed daily compensation.
15

16 120. Defendants subjected all of their Couriers/Warehouse Workers, including
17 Plaintiff and the Collective Members, to their policy and practice of misclassifying their
18 Couriers/Warehouse Workers, who were actually employees, as independent contractors.
19

20 121. Defendants subjected all of their Couriers/Warehouse Workers, including
21 Plaintiff and the Collective Members, to their policy and practice of not paying their
22 Couriers/Warehouse Workers one- and one-half times their regular rates of pay for time
23 they spent working in excess of 40 hours in a given workweek, in violation of 29 U.S.C.
24 § 207(a).
25

26 122. At all times material, Plaintiff and the Collective Members are and have
27 been similarly situated, have had substantially similar job requirements and pay

1 provisions, and are and have been subject to Defendants' decision, policy, plan, and
2 common programs, practices, procedures, protocols, routines, and rules of willfully
3 subjecting Plaintiff and the Collective Members to their policy and practice of not paying
4 their Couriers/Warehouse Workers one- and one-half times their regular rates of pay for
5 time they spent working in excess of 40 hours in a given workweek, in violation of 29
6 U.S.C. § 207(a).

8 123. Plaintiff's claims stated in this complaint are essentially the same as those
9 of the Collective Members. This action is properly maintained as a collective action
10 because in all pertinent aspects the employment relationship of individuals similarly
11 situated to Plaintiff is identical or substantially similar.

13 124. Plaintiff and the Collective Members were each compensated on a fixed
14 daily rate of compensation for the duration of their employment with Defendants.

16 125. The Collective Members perform or have performed the same or similar
17 work as Plaintiff.

18 126. Defendants' failure to pay overtime compensation required by the FLSA
19 results from generally applicable policies or practices and does not depend on the
20 personal circumstances of Plaintiff or the Collective Members.

22 127. While Plaintiff has described Plaintiff's and the Collective Members' job
23 titles as Couriers/Warehouse Workers, the specific job titles or precise job responsibilities
24 of each Collective Member does not prevent collective treatment.

1 128. All Collective Members, irrespective of their particular job requirements
2 and job titles, are entitled to proper overtime wage compensation for all hours worked in
3 excess of 40 in a given workweek.

4 129. Although the exact amount of damages may vary among the Collective
5 Members, the damages for the Collective Members can be easily calculated by a simple
6 formula. The claims of all Collective Members arise from a common nucleus of facts.
7 Liability is based on a systematic course of wrongful conduct by the Defendants that
8 caused harm to all of the Collective Members.

9
10 130. As such, Plaintiff brings her FLSA overtime wage claim as a collective
11 action on behalf of the following class:

12 **The FLSA Collective Members are all of Defendants' current
13 and former Couriers/Warehouse Workers who were not paid
14 one- and one-half times their regular rates of pay for time spent
15 working in excess of 40 hours in a given workweek.**

16 131. Defendants' unlawful conduct, as described in this Collective Action
17 Complaint, is pursuant to Defendants' corporate policy or practice of minimizing labor
18 costs by refusing and/or failing to properly compensate its employees according to the
19 FLSA.
20

21 132. Defendants are aware or should have been aware that federal law prohibited
22 them from not paying their Couriers/Warehouse Workers—namely, Plaintiff and the
23 Collective Members—an overtime premium wage for time spent working in excess of 40
24 hours per given workweek.
25
26
27

1 139. Plaintiff and the Collective Members are also entitled to an amount equal to
2 all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

3 140. Plaintiff and the Collective Members are also entitled to recover their
4 attorneys' fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

5
6 **COUNT ONE: FAIR LABOR STANDARDS ACT**
7 **FAILURE TO PAY OVERTIME**

8 141. Plaintiff realleges and incorporates by reference all allegations in all
9 preceding paragraphs.

10 142. At all relevant times, Defendants engaged in the regular policy and practice
11 of classifying their Couriers/Warehouse Workers, including Plaintiff and the Collective
12 Members, as independent contractors when they were in reality employees as defined by
13 the FLSA.

14 143. At all relevant times, Defendants did not pay Plaintiff or the Collective
15 Members one- and one-half times their regular rates of pay for time spent working in
16 excess of 40 hours in a given workweek.

17 144. Defendants misclassified their Couriers/Warehouse Workers, including
18 Plaintiff and the Collective Members, as independent contractors to avoid Defendants'
19 obligation to pay their Couriers/Warehouse Workers, including Plaintiff and the
20 Collective Members, one- and one-half times their regular rates of pay for all hours
21 worked in excess of 40 hours per week.

22 145. Defendants engaged in such conduct in direct violation of 29 U.S.C. §
23 207(a).

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1 146. As such, unpaid overtime wages for such time Plaintiff and the Collective
2 Members worked in excess of 40 hours per given workweek is owed to Plaintiff and the
3 Collective Members for the entire time they were employed by Defendants.

4 147. Defendants knew that – or acted with reckless disregard as to whether –
5 their refusal or failure to properly compensate Plaintiff and the Collective Members over
6 the course of their employment would violate federal and state law, and Defendants were
7 aware of the FLSA overtime wage requirements during Plaintiff’s and the Collective
8 Members’ employment. As such, Defendants’ conduct constitutes a willful violation of
9 the FLSA.
10

11 148. Plaintiff and the Collective Members are therefore entitled to compensation
12 for their unpaid overtime wages at an hourly rate, to be proven at trial, plus an additional
13 equal amount as liquidated damages, together with interest, reasonable attorney’s fees,
14 and costs.
15

16 WHEREFORE, Plaintiff, Samantha Sanders, individually, and on behalf of all
17 other similarly situated persons, requests that this Court grant the following relief in
18 Plaintiff’s and the Collective Members’ favor, and against Defendants:
19

20 A. For the Court to declare and find that the Defendants committed one or
21 more of the following acts:
22

- 23 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by
24 failing to pay proper overtime wages;
25 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;
26
27

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Phoenix, AZ 85060

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- B. For the Court to award damages in the amounts of all unpaid overtime compensation due and owing to Plaintiff and the Collective Members for time they spent working in excess of 40 hours per given workweek;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest on any damages awarded;
- E. For the Court to award Plaintiff's and the Collective Members' reasonable attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth in this Complaint;
- F. For the Court to provide reasonable incentive awards to Plaintiff to compensate her for the time she spent attempting to recover wages for the Collective Members and for the risks she took in doing so; and
- G. Such other relief as this Court deems just and proper.

REQUEST FOR COLLECTIVE ACTION CERTIFICATION

As to Count I of this Complaint, Plaintiff requests that the Court designate this action as a collective action on behalf of the FLSA Collective Members and promptly issue a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to timely assert FLSA claims in this action by filing individual Consent to Sue Forms pursuant to 29 U.S.C. § 216(b).

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 9th Day of January 2019.

BENDAU & BENDAU PLLC

By: /s/ Clifford P. Bendau, II
Clifford P. Bendau, II
Christopher J. Bendau
Attorneys for Plaintiff

ZOLDAN LAW GROUP PLLC

By: /s/ Jason Barrat
Michael Zoldan
Jason Barrat
Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Samantha Sanders

**Tristate Logistics of Arizona, LLC ;
Tristate Logistics of Nevada, LLC ;
Tristate Logistics, LLC ; C&A
Holdings, LLC ; Elliot Auto Supply
Defendant(s): Co., Inc. ; Factory Motor Parts
International, LLC ; The Bon Air
Trust ; Carlos Jorge ; Jane Doe
Jorge ; Elliot Badzin ; Jane Doe
Badzin**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Clifford Phillip Bendau II, Founding Partner
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Scottsdale, Arizona 85260
(480) 442-3410

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI. Cause of Action: **29 U.S.C. § 201, et seq., failure to pay overtime wages**

VII. Requested in Complaint

Class Action: **No**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/ Clifford P. Bendau, II

Date: 1/9/2019

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

BENDAU & BENDAU PLLC

Exhibit A

1 **BENDAU & BENDAU PLLC**
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 9 chris@bendaulaw.com
 10 *Attorneys for Plaintiff*

6 UNITED STATES DISTRICT COURT
 7
 8 DISTRICT OF ARIZONA

9 **Samantha Sanders**, individually, and on
 10 behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 **Tristate Logistics of Arizona, LLC**, an
 14 Arizona Limited Liability Company;
 15 **Tristate Logistics of Nevada, LLC**, a
 16 Nevada Limited Liability Company;
 17 **Tristate Logistics, LLC**, a Nevada
 18 Limited Liability Company; **C&A**
Holdings, LLC, a Nevada Limited
 Liability Company; and **Carlos Jorge and**
Jane Doe Jorge, a Married Couple,

19 Defendants.

No. _____

**PLAINTIFF SAMANTHA SANDERS’
 CONSENT TO JOIN FLSA
 COLLECTIVE ACTION**

19 I, Samantha Sanders, do hereby consent to be a party plaintiff to the above-entitled
 20 action. I have read the complaint to be filed in the United States District Court for the
 21 District of Arizona, and authorize my attorneys, Bendau & Bendau PLLC, and its
 22 associated attorneys (the “Attorneys”), to file the Complaint on my behalf and for other
 23 employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
 24 and make decisions on my behalf, including how to conduct the lawsuit, settlement, and
 25 all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
 26
 27

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 P.O. Box 97066
 Phoenix, AZ 85060

(40%) of any recovery they obtain on my behalf in the lawsuit or the reasonable hourly value of their legal services for time expended in the lawsuit, as paid by Defendants, whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata share of any reasonable costs incurred by the Attorneys on my behalf.

DocuSigned by:

Samantha Sanders

1/9/2019

Samantha Sanders

Date

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P.O. Box 97066
Phoenix, AZ 85060

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Tristate Logistics, Factory Motor Parts International 'Misclassified' Worker as OT-Exempt](#)
