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**Attorneys for Plaintiffs and  
the Proposed Class**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART: BERGEN COUNTY

\_\_\_\_\_x

MARIA AGUIRRE, ANDREA PALACIOS,  
And LORENA VARAS,

Case No.  
Civil Action

Plaintiffs,

-against-

**CLASS COMPLAINT  
AND JURY DEMAND**

CDL LAST MILE SOLUTIONS, LLC,  
SUBCONTRACTING CONCEPTS, LLC,  
d/b/a SCI, ANTHONY CURCIO, and  
KATTY PONCE,

Defendants.

\_\_\_\_\_x

Plaintiffs Maria Aguirre, Andrea Palacios, and Lorena Varas (collectively, “Plaintiffs”), by  
and through their attorneys, Menken Simpson & Rozger LLP and Newman Simpson & Cohen

LLP, for their Complaint against Defendants CDL Last Mile Solutions, LLC, Subcontracting Concepts, LLC, d/b/a “SCI,” Anthony Curcio, and Katty Ponce (collectively, “Defendants”), hereby state as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this action under R. 4:32 on behalf of themselves and a class of similarly situated individuals (“Class Members” or “the Class”) to redress violations of the New Jersey Wage and Hour Law (“NJWHL”) and the New Jersey Wage Payment Law (“NJWPL”) by Defendants CDL Last Mile Solutions, LLC (“CDL”), Subcontracting Concepts, LLC (“SCI”), Anthony Curcio, and Katty Ponce.

2. Defendants jointly employed Plaintiffs and Class Members and, despite exercising near total control over their work, misclassified them as independent contractors, thereby depriving them of overtime wages in violation of the NJWHL, N.J.S.A. 34:11-56(a)(4).

3. Defendants also made unlawful deductions from Plaintiffs’ and Class Members’ pay in violation of the NJWPL, N.J.S.A. 34:11-4.4, to cover, *inter alia*, payroll processing fees, uniform costs, bank fees, and occupational accident insurance.

4. In addition to compensatory damages, Plaintiffs seek attorneys’ fees, costs, prejudgment interest, liquidated damages, and injunctive and declaratory relief on behalf of themselves and the Class.

**JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this action pursuant to N.J. Const., Art. VI, Sec. 3, Par. 2.

6. Venue is proper in Bergen County pursuant to R. 4:3-1(a)(5) and 4:3-2(a)(3) because Plaintiffs' and Class Members' causes of action arose in Bergen County and because they seek monetary damages exceeding \$20,000.

### **PARTIES**

7. Plaintiffs Maria Aguirre and Andrea Palacios are adult individuals residing in Essex County, New Jersey.

8. Plaintiff Lorena Varas is an adult individual residing in Bergen County, New Jersey.

9. At all times relevant to this action, Plaintiffs Aguirre, Palacios, and Varas worked as delivery drivers for Defendant CDL.

10. Defendant CDL Last Mile Solutions, LLC ("CDL"), previously known as "Columbus Delivery Service" and "Columbus Delivery & Logistics," is a Delaware limited liability company with its headquarters in New York, New York. According to its website, CDL is a family-owned business founded in 1955 that specializes in logistics and last-mile delivery services. CDL operates a warehouse in Bergen County, New Jersey, where Plaintiffs report for work.

11. Defendant Subcontracting Concepts, LLC ("SCI"), is a Delaware limited liability company and staffing agency that provides third-party administrative support for courier and logistics companies. Since at least 2012, CDL has contracted with SCI to provide it with services including payroll processing and onboarding for CDL's delivery drivers. SCI is a "labor contractor" pursuant to N.J.S.A. 34:11-58.2 and is therefore jointly and severally liable for any violations of the state wage and hour laws that occurred after August 6, 2019 (the effective date of the New Jersey Wage Theft Act).

12. Defendant Anthony Curcio is an adult individual who, on information and belief, resides in New York, New York. At all times relevant to this action, Mr. Curcio owned and managed Defendant CDL and acted as its President. As such, Mr. Curcio is an “employer” of CDL’s employees within the meaning of the NJWHL, N.J.S.A. 34:11-4.1.

13. Defendant Katty Ponce is an adult individual residing in Bergen County, New Jersey, and working as a CDL dispatcher at the warehouse in Bergen County. Ms. Ponce is Plaintiffs’ employer within the meaning of the NJWHL and NJWPL.

### **CLASS ALLEGATIONS**

14. Plaintiffs bring NJWHL and NJWPL claims on behalf of themselves and a Class of persons under R. 4:32 consisting of all delivery drivers who performed work for Defendants in the State of New Jersey from March 2, 2017, until Defendants cease their unlawful acts (the “Class Period”).

15. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is presently unknown to Plaintiffs, and calculation of such number would require facts in the sole control of Defendants, upon information and belief, Defendants have employed at least 100 such persons during the Class Period.

16. Plaintiffs’ claims are typical of the claims of the Class.

17. Plaintiffs will fairly and adequately protect the interests of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where an individual plaintiff may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. The members of the Class have been damaged and are entitled to recovery

as a result of Defendants' common and uniform policies, practices and procedures. Although the relative damages suffered by individual class members may not be *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

19. Defendants have acted on grounds generally applicable to the Class, thereby making declaratory relief appropriate for the Class, to wit, by deliberately misclassifying employees as independent contractors, failing to pay employees overtime wages as required by the NJWHL, and making unlawful deductions from employees' wages in violation of the NJWPL.

20. There are questions of law and fact common to the Class which predominate over any questions solely affecting individual members of the Class, including, *inter alia*:

- a. Whether Defendants jointly employ Plaintiffs and Class Members;
- b. Whether Defendant SCI is a "labor contractor" within the meaning of the New Jersey Wage Theft Act, N.J.S.A. 34:11-58.2;
- c. Whether Plaintiffs and Class Members are misclassified as independent contractors;
- d. Whether Defendants kept accurate time and pay records for Plaintiffs and the Class as required by state law;
- e. Whether Defendants failed to pay Plaintiffs and the Class overtime wages at a rate of one- and one-half times their regular rate of pay within the meaning of N.J.S.A. 34:11-56(a)(4);

- f. Whether Defendants made unlawful deductions from Plaintiffs' and Class Members' wages in violation of NJWPL, N.J.S.A. 34:11-4.4; and
- g. Whether Defendants' conduct was willful or whether Defendants had reasonable grounds for believing that the acts and omissions alleged herein were in compliance with the law.

### **FACTUAL ALLEGATIONS**

#### **SCI as "Labor Contractor" and CDL as "Client Employer" Within the Meaning of N.J.S.A 34:11-58.2**

- 21. On its website, Defendant SCI describes itself as a third-party administrator for the logistics industry.
- 22. SCI provides CDL with workers to perform labor services within the usual course of CDL's business—namely, last-mile delivery services.
- 23. When drivers are hired to work for CDL, they are required to sign an independent contractor agreement with SCI.
- 24. This contract, entitled "OWNER / OPERATOR AGREEMENT," purports to define the terms of drivers' engagement with CDL, which is indirectly referred to in the contract as the "logistics broker" or "customer."
- 25. The contract identifies various expenses that drivers will be responsible for, including uniforms, background checks, worker's compensation or occupational accident insurance, disability insurance, automobile and general liability insurance, and other expenses that are "normal costs of a delivery business," including "tolls, fuel, oil, tires, repairs, garaging, parking and maintenance of vehicle(s) and other equipment."

26. Though, in reality, CDL exercises near total control over drivers' work, the contract states that drivers are "free to negotiate rates and make deliveries as they see fit," and that drivers "have the right, in their discretion, to accept or reject assignments from Customers."

27. Once employed by CDL, drivers receive all of their paystubs from SCI and access key documents related to their employment via the SCI online portal.

28. SCI also administers the drivers' background checks, which are performed by an SCI vendor.

#### Plaintiffs and Class Members Are Employees, Not Independent Contractors

29. CDL relies on its delivery drivers to carry out the crux of its business, which is to provide last-mile delivery services.

30. At all times relevant to this action, Defendant CDL has exercised near total control over the work of its independent contractor delivery drivers through its dispatcher and/or general manager.

31. Since in or around 2017, CDL employee Katty Ponce has occupied the dispatcher role.

32. The CDL dispatcher has the authority to hire, fire, and discipline delivery drivers, as well as the authority to assign or reassign their delivery routes.

33. The CDL dispatcher is responsible for overseeing drivers' work and ensuring they deliver all of the packages assigned to them and in the manner CDL requires.

34. For example, drivers must deliver packages inside buildings where possible and are required to take photos of the packages once they have been delivered. Drivers are expressly forbidden from taking photographs of the delivered packages from their cars—in other words, they are required to exit their cars to take the photographs.

35. The CDL dispatcher communicates with drivers in person, over the telephone, and via WhatsApp in a group chat entitled “CDL LAST MILE SOLUTIONS.” Only the CDL dispatcher is authorized to send messages in the group chat.

36. All delivery drivers are paid a specific dollar amount per package that is determined by CDL. Though ostensibly guaranteed the right to negotiate this rate in their contracts, delivery drivers cannot, in reality, negotiate the rate at which they are paid.

37. Upon their hire, each delivery driver is assigned a particular route by CDL, which CDL then has the authority to alter or reassign at its discretion.

38. Without exception, drivers are required to wear a company t-shirt along with black, khaki, or navy pants/shorts to work every day. Drivers are also required to bring their CDL identification card to work each day.

39. Drivers with commercial license plates are required to place a CDL decal on the exterior of their vehicles.

40. Drivers are instructed to arrive at the CDL warehouse between 5:00 and 6:00 a.m. each morning. If drivers arrive even one minute late, they are threatened with being sent home or suspended by the CDL dispatcher.

41. Some drivers are only permitted by the dispatcher to work 5 days a week. Others are permitted to work 6 or 7 days a week.

42. Despite being independent contractors, drivers like Plaintiffs are not given the authority or the discretion to grow. Some drivers, for example, are expressly forbidden from hiring helpers to assist them on their routes and allow them to deliver more packages.

43. Before they begin delivering packages according to the route assigned by CDL, drivers are first required to do work in the warehouse.



44. Specifically, when drivers arrive at the warehouse, they are responsible for sorting the packages on their route(s) and then loading the packages onto their vehicles. On average, this takes between 1.5 and 2 hours to complete. Drivers are not paid for this work.

45. Sometimes, before they are able to sort and load the packages, CDL drivers are required to locate their packages in the warehouse themselves (a task otherwise performed by CDL warehouse workers). When this is the case, the drivers typically spend between 2 and 3 hours at the warehouse before leaving to make their deliveries. Drivers are not paid for this work.

46. Though ostensibly guaranteed this right in their contracts, drivers do not have the discretion or authority to decide which packages or how many packages they will deliver on a particular day.

47. If a driver cannot deliver every single package assigned to them on a particular day, they are threatened with discipline. The CDL dispatcher may, for example, threaten the driver with termination, cut the driver's route, or deduct from the driver's pay.

48. The CDL dispatcher also tracks drivers' performance and publicly announces (via WhatsApp) when a particular driver or group of drivers is underperforming, *i.e.*, unable to deliver all of their assigned packages. These drivers are threatened with discipline and told they cannot return to work if they do not improve.

49. Drivers do not have the discretion to leave the warehouse and start making their deliveries when they please. Instead, the CDL dispatcher requires drivers to wait at the warehouse until every single package assigned to them has been delivered to the CDL warehouse. Drivers are not paid for the time they spend waiting for all their packages to arrive.

50. Once permitted to leave the warehouse, drivers are required to use two applications on their smartphones to complete their routes: MobilTek, which is used to scan and

photograph packages, and Road Warrior, which tracks the drivers' location via GPS and determines the order of their deliveries.

51. While on their routes, drivers are frequently contacted by the CDL dispatcher, who may ask them for status updates and/or instruct them to change the order of their deliveries.

52. Though drivers pay for and maintain their own vehicles, CDL sometimes performs random searches of drivers' cars.

#### Unlawful Deductions from Drivers' Pay

53. CDL pays its drivers through SCI once per week, by check or direct deposit.

54. Drivers receive their paystub from SCI.

55. CDL and/or SCI take numerous deductions from drivers' paychecks, including but not limited to deductions for "CDL Admin Fee" (\$5 per week), "Processing Fee" (\$2.50 per week), "SCI Program Fee (P) Courier" (\$29.50 per week, which covers occupational accident insurance), and "Bank Fees."

56. CDL and/or SCI also deduct from drivers' wages to pay for the background checks conducted upon their hire.

57. Drivers pay for their own gas, tolls, and car insurance.

58. Drivers are held financially liable for lost and damaged packages.

59. Drivers are required to pay for the Road Warrior smartphone app out of their own pocket on a monthly basis (approx. \$10 per month).

60. Drivers are also required to pay for their various CDL uniforms (e.g., CDL-labeled t-shirts, sweatshirts, and outerwear), which they purchase from CDL and must wear while they are performing work for CDL.

Plaintiff Maria Aguirre

61. Plaintiff Maria Aguirre has worked as a full-time delivery driver for CDL beginning in or around December 2018.

62. Ms. Aguirre is permitted by CDL to work no more than 5 days per week, Monday through Friday.

63. During the relevant statutory period, Ms. Aguirre has worked, on average, approximately 15-16 hours per day, or approximately 75-80 hours per week.

64. During the holiday busy season, which begins the second week of November and lasts until the first week of January, Ms. Aguirre has worked, on average, approximately 18-19 hours per day, or approximately 90-95 hours per week.

65. Like all drivers, Ms. Aguirre is misclassified as an independent contractor and is paid based on the number of packages she delivers (typically \$2-\$3 per package).

66. In 2022, Ms. Aguirre earned, on average, between \$1,200 and \$2,200 per week.

67. In 2022 alone, CDL and/or SCI deducted at least \$1,739 from Ms. Aguirre's pay to cover, *inter alia*, occupational accident insurance and administrative and processing fees.

68. In addition, Ms. Aguirre has paid out of pocket for her CDL uniforms, package scanner, and for use of the Road Warrior app.

69. Ms. Aguirre has never been paid overtime.

70. During her employment with CDL, Ms. Aguirre has never worked for or delivered packages for any other company.

Plaintiff Lorena Varas

71. Plaintiff Lorena Varas has worked as a full-time delivery driver for CDL since in or around March 2012.

72. Ms. Varas is permitted by CDL to work no more than 5 days per week, Monday through Friday.

73. During the relevant statutory period, Ms. Varas has worked, on average, approximately 11-12 hours per day, or approximately 55-60 hours per week.

74. During the holiday busy season, which begins the second week of November and lasts until the first week of January, Ms. Varas has worked, on average, approximately 15-16 hours per day, or approximately 75-80 hours per week.

75. Like all drivers, Ms. Varas is misclassified as an independent contractor and is paid based on the number of packages she delivers (typically \$2-\$3 per package).

76. In 2022, Ms. Varas earned, on average, between \$1,200 and \$2,200 per week.

77. In 2022 alone, CDL and/or SCI deducted at least \$1,898 from Ms. Vara's pay to cover, *inter alia*, occupational accident insurance and administrative and processing fees.

78. In addition, Ms. Vara has paid out of pocket for her CDL uniforms, package scanner, and for use of the Road Warrior app.

79. Ms. Varas has never been paid overtime.

80. During her employment with CDL, Ms. Varas has never worked for or delivered packages for any other company.

Plaintiff Andrea Palacios

81. Plaintiff Andrea Palacios has worked as a full-time delivery driver for CDL since in or around May 2018.

82. Ms. Palacios is permitted by CDL to work 6 days per week.

83. During the relevant statutory period, Ms. Palacios has worked, on average, approximately 12-15 hours per day, or approximately 72-90 hours per week.

84. Ms. Palacios was permitted by CDL to hire a helper in or around June 2022.

85. Since hiring a helper, Ms. Palacios has worked, on average, approximately 50 hours per week.

86. If Ms. Palacios is unable to report to work on a particular day, her helper is not permitted to cover her route. Instead, the CDL dispatcher assigns her route to another driver.

87. Like all drivers, Ms. Palacios is misclassified as an independent contractor and is paid based on the number of packages she delivers (typically \$2-\$4 per package).

88. In 2022, Ms. Palacios earned, on average, between \$1,500 and \$3,700 per week.

89. In 2022, CDL and/or SCI deducted at least \$1,887 from Ms. Palacios' pay to cover, *inter alia*, occupational accident insurance and administrative and processing fees.

90. In addition, Ms. Palacios has paid out of pocket for her CDL uniforms, package scanner, insurance, and for use of the Road Warrior app.

91. Ms. Palacios has never been paid overtime.

92. During her employment with CDL, Ms. Palacios has never worked for or delivered packages for any other company.

**FIRST CAUSE OF ACTION**

**Failure to Pay Overtime**

**New Jersey Wage and Hour Law, N.J.S.A. 34:11-56(a)(4)(b)**

**Asserted Against All Defendants**

93. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

94. At all times relevant to this action, Plaintiffs and Class Members were employees of Defendants CDL, SCI, Curcio, and Ponce, who controlled the terms and conditions of their employment (or can otherwise be held liable by statute for the wage and hour violations set forth herein).

95. At all times relevant to this action, Defendants misclassified Plaintiffs and Class Members as independent contractors in order to avoid paying them overtime at a rate of time and one-half their regular rate of pay for all hours worked in excess of 40 in a week.

96. Defendants' conduct was not an inadvertent error made in good faith, nor did Defendants have reasonable grounds for believing that the acts and omissions alleged herein were in compliance with the law.

97. Pursuant to N.J.S.A. 34:11-4.10, Plaintiffs seek to recover compensatory damages, liquidated damages, and attorneys' fees and costs.

**WHEREFORE**, Plaintiffs, individually and on behalf of all others similarly situated, pray for the following relief:

- a. Compensatory damages, liquidated damages, and attorneys' fees and costs pursuant to N.J.S.A. 34:11-4.10;
- b. Certification of this case as a class action pursuant to R. 4:32;
- c. Designation of Plaintiffs as representatives of the Class, and counsel of record as Class Counsel;
- d. Issuance of a declaratory judgment that the practices complained of herein are unlawful under the New Jersey Wage and Hour Law;
- e. An injunction enjoining Defendants' unlawful conduct; and
- f. Such additional and further relief as the Court finds just and proper.

**SECOND CAUSE OF ACTION**  
**Unlawful Deductions**  
**New Jersey Wage Payment Law, N.J.S.A. 34:11-4.4**  
**Asserted Against All Defendants**

98. Plaintiffs repeat and incorporate by reference all preceding paragraphs as though fully set forth herein.

99. At all times relevant to this action, Plaintiffs and Class Members were employees of Defendants CDL, SCI, Curcio, and Ponce, who controlled the terms and conditions of their employment (or can otherwise be held liable by statute for the wage and hour violations set forth herein).

100. Defendants unlawfully deducted from Plaintiffs' and Class Members' wages in violation of N.J.S.A. 34:11-4.4 to cover costs for, *inter alia*, mandatory uniforms, mandatory background checks, mandatory smartphone application use, mandatory processing and administrative fees, and mandatory occupational accident insurance.

101. Defendants' conduct was not an inadvertent error made in good faith, nor did Defendants have reasonable grounds for believing that the acts and omissions alleged herein were in compliance with the law.

102. Pursuant to N.J.S.A. 34:11-4.10, Plaintiffs seek to recover compensatory damages, liquidated damages, and attorneys' fees and costs.

**WHEREFORE**, Plaintiffs, individually and on behalf of all others similarly situated, pray for the following relief:

- g. Compensatory damages, liquidated damages, and attorneys' fees and costs pursuant to N.J.S.A. 34:11-4.10;
- h. Certification of this case as a class action pursuant to R. 4:32;
- i. Designation of Plaintiffs as representatives of the Class, and counsel of record as Class Counsel;
- j. Issuance of a declaratory judgment that the practices complained of herein are unlawful under the New Jersey Wage Payment Law;
- k. An injunction enjoining Defendants' unlawful conduct; and

1. Such additional and further relief as the Court finds just and proper.

**JURY DEMAND PURSUANT TO R. 1:8-1(b) AND R. 4:35-1**

Plaintiffs hereby request a trial by jury as to all issues herein.

**NOTICE OF DESIGNATION OF TRIAL COUNSEL**

Plaintiffs hereby designates Scott Simpson, Esq. (to be admitted *pro hac vice*), as trial counsel in the within matter.

**RULE 4:5-1 CERTIFICATION**

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge, information, and belief, the matter in controversy is not the subject of any other action pending in any Court or arbitration proceedings, and no other action is contemplated. I know of no other parties that should be joined herein.

**CERTIFICATE OF FILING**

The undersigned hereby certify that the foregoing Class Action Complaint has been filed using the Court's electronic case filing system on this 2nd day of March 2023.

Dated: March 2, 2023  
New York, New York

MENKEN SIMPSON & ROZGER LLP

*s/ Scott Simpson* (to be admitted *pro hac vice*)

*s/ Raya F. Saksouk* (to be admitted *pro hac vice*)

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