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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 29, 2020

SEAN F. McAVOY, CLERK

9 Counsel for Plaintiff

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 **JEREMIAH LINZ and AARON** : **Case No. 2:20-CV-00107-SMJ**
13 **KAMINSKY**, individually and on :
14 behalf of all others similarly situated : **Judge Mendoza**

15 **Plaintiffs,**

16 **v.**

17 **CORE VALUES ROADSIDE** : **PLAINTIFFS' FIRST AMENDED**
18 **SERVICE, LLC,** : **CLASS AND COLLECTIVE**
19 : **ACTION COMPLAINT AND**
20 : **JURY DEMAND**

21 **and**

22 **MARK HYNDMAN**

Defendants.

COMES NOW Plaintiffs Jeremiah Linz and Aaron Kaminsky by and through their undersigned legal counsel, and for their First Amended Collective and Class Action Complaint against Defendants Core Values Roadside Service, LLC and Mark Hyndman, allege as follows:

FIRST AMENDED CLASS AND COLLECTIVE ACTION
COMPLAINT: 1

INTRODUCTION

- 1
2 1. This case concerns Defendant Core Values Roadside Service, LLC
3 (hereinafter “Core Values” or “CVRS”), a roadside assistance company
4 providing services such as tire changes, jump starts, fuel delivery, and lockout
5 services, which intentionally misclassified Plaintiffs and all other members of
6 the putative Class as independent contractors.
- 7
8 2. Pursuant to this intentional misclassification scheme, Defendants willfully
9 refused to pay a minimum wage; willfully refused to pay overtime; and
10 reduced employee wages through unlawful deductions.
- 11
12 3. Plaintiffs, on behalf of themselves and other similarly situated roadside
13 assistance technicians currently or formerly employed by Defendant Core
14 Values, contend that Defendants violated the Fair Labor Standards Act of
15 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”) and numerous state wage and hour
16 statutes by: (1) misclassifying roadside assistance technicians as independent
17 contractors; (2) failing to pay roadside assistance technicians the minimum
18 wage in violation of the FLSA and state wage and hour laws; (3) knowingly
19 suffering and permitting Plaintiffs and the putative Class members to work in
20 excess of 40 hours during a workweek without paying overtime compensation
21 at a rate of one-and-one half times their regular rate; (4) improperly reducing
22

1 pay to Plaintiffs and the putative Class members through unlawful deductions;
2 and (5) adopting and implementing employment policies which violate the
3 FLSA and state wage and hour laws.

- 4 4. During the past three years, Defendant Core Values provided roadside
5 assistance services to customers in at least three markets in multiple states
6 across the United States including, but not limited to, Washington, Ohio, and
7 Pennsylvania. Defendant Core Values has a strict policy preventing Plaintiffs
8 and the putative Class members from knowing the identities of one another.
9 Upon information and belief, the unlawful employment policies and pay
10 practices that Defendants implemented in all of its markets are uniform.
11

12 **JURISDICTION AND VENUE**

- 13 5. This Court has subject-matter jurisdiction over Plaintiffs' claims pursuant to
14 28 U.S.C. § 1331 because the claims raise a federal question under the FLSA,
15 29 U.S.C. §201, *et al.*
16
17 6. This Court has supplemental jurisdiction over Plaintiffs' state law claims
18 asserted herein, as those claims share both a common nucleus of operative
19 facts and arise out of the same occurrences as their federal claims.
20
21 7. Venue is proper in this Court because a substantial part of the actions giving
22 rise to the claims occurred in this judicial district.

PARTIES

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2 8. Named Plaintiff, Jeremiah Linz, is a resident of Ohio. At all relevant times,
3 Linz was an employee of Defendant, as defined in 29 U.S.C. §201 *et seq.*, and
4 worked as a roadside assistance technician in Ohio and Pennsylvania from
5 2017 to 2019.

6
7 9. Named Plaintiff, Aaron Kaminsky, is a resident of western Pennsylvania. At
8 all relevant times, Kaminsky was an employee of Defendant, as defined in 29
9 U.S.C. §201 *et seq.*, and worked as a roadside assistance technician in
10 Pennsylvania from September 2018 to April 2019.

11 10. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated individuals (“FLSA Collective”) pursuant to the FLSA, 29 U.S.C.
13 §216(b). Plaintiffs and the FLSA Collective were, or are: (1) misclassified as
14 independent contractors; (2) not paid the wages, including overtime, to which
15 they were entitled as employees; and (3) unlawfully denied pay by way of
16 illegal deductions, as described more fully below.

17
18 11. Plaintiffs also bring this action under Ohio Rev. Code §4111 as a class action
19 pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs and the
20 putative Rule 23 Class were misclassified as independent contractors during
21 the applicable statutory period.
22

1 12.Plaintiffs also bring this action under Pennsylvania Code §231.1 as a class
2 action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs
3 and the putative Rule 23 Class were misclassified as independent contractors
4 during the applicable statutory period.

5 13.Defendant Core Values is a Washington limited liability company with its
6 principal place of business located in Spokane, Washington.

7 14.Defendant Mark Hyndman is a resident of Washington, and is the managing
8 member of Defendant Core Values. Upon information and belief, Defendant
9 Hyndman is responsible for Defendant Core Values’ payroll practices and
10 policies.
11

12 15.Defendants provide roadside assistance to customers, such as tire changes,
13 jump starts, fuel delivery, and lockout services.

14 16.Upon information and belief, Defendants’ gross annual sales made or business
15 done has been in excess of \$500,000 at all relevant times.
16

17 17.At all relevant times, Defendants are, and have been, “employers” engaged in
18 interstate commerce and/or the production of goods for commerce, within the
19 meaning of the FLSA §203(d). Defendants are also “employers” under O.R.C.
20 §4111 and Pennsylvania Code §231.

21 18.Defendants operate in interstate commerce by, among other things,
22

1 23.If Plaintiffs or the putative Class members refused a job or assignment, or
2 failed to respond to a dispatch by Defendants in a timely manner, Plaintiffs
3 and the putative Class would be penalized \$8.

4 24.In the event of damage to a customer’s vehicle, Defendants would deduct the
5 amount of damage from Plaintiffs and the putative Class members. Plaintiffs
6 and the putative Class members had no control over these improper
7 deductions.

8 25.Despite providing their own tools and automobiles, Plaintiffs and the putative
9 Class members were not paid a mileage reimbursement by Defendants.

10 26.Defendants required Plaintiffs and the putative Class members to keep an app
11 on their phones, called “Spark,” active at all times.

12 27.Defendants required Plaintiff and the putative Class members to be on call 24-
13 hours per day, seven days a week.

14 28.In additional to “on call” time, Plaintiffs and the putative Class members
15 routinely worked in excess of 70 hours per week.

16 29.The FLSA applied to Plaintiffs and the putative Class members at all times
17 during which they worked for Defendants. No exceptions to the FLSA apply
18 to Plaintiffs and the Class.

19 30.Upon information and belief, Defendants employed numerous roadside
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1 assistance technicians throughout the relevant time period without paying a
2 minimum wage or overtime pay, subjected them to improper and unlawful
3 pay deductions, and denied them the rights and benefits due to an employee.

4 31. At all relevant times, Defendants directly or indirectly exercised significant
5 control over the wages, hours, and working conditions of Plaintiffs and the
6 members of the putative Class.

7 32. At all relevant times, the employment terms, conditions, and policies that
8 applied to Plaintiffs were the same as those applied to other putative Class
9 members who also worked as roadside assistance technicians for Defendants.

10 33. Defendants' misclassification of Plaintiffs and the putative Class members as
11 independent contractors was specifically intended to enhance Defendants'
12 profit margins at the expense of the Class as follows: (1) failing to pay
13 roadside assistance technicians the minimum wage in violation of FLSA and
14 state wage and hour laws; (2) knowingly suffering and permitting Plaintiff
15 and the putative Class members to work in excess of 40 hours during a
16 workweek without paying overtime compensation at a rate of one and one-
17 half times their regular rate; (3) improperly reducing pay to class members
18 through unlawful deductions; and (4) adopting and implementing
19 employment policies which violate the FLSA and state wage and hour laws.
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1 34. Defendants' misclassification of Plaintiffs and the putative Class members
2 was willful.

3 35. Defendants knew or should have known that it was improper to classify
4 Plaintiffs and putative Class members as independent contractors.

5 36. Workers in the putative Class cannot "elect" to be treated as employees or
6 independent contractors. Workers in the Class likewise cannot agree to be
7 paid less than the minimum wage. Despite this, Defendants unfairly,
8 unlawfully, and unconscionably induced workers in the Class to waive their
9 statutory rights and elect to be treated as independent contractors.
10

11 37. Any contract which attempted to have workers in the putative Class waive,
12 limit, or abridge their statutory rights to be treated as employees under the
13 FLSA or other applicable wage and hour laws is void, unenforceable,
14 unconscionable, and contrary to public policy.
15

16 38. Plaintiffs and the putative Class do not exert control over any meaningful part
17 of Defendants' business operations and do not stand as a separate economic
18 entity from Defendants. Defendants exercise control over all aspects of the
19 working relationship with Plaintiffs and the other class members.

20 39. Plaintiffs and the putative Class members had no control over customers, nor
21 did they actively participate in any efforts to increase Defendants' customer
22

1 base or profit, or to improve business in any capacity.

2 40. Defendants did not permit Plaintiffs or the putative Class members to hire or
3 subcontract other qualified individuals to provide additional roadside
4 assistance to customers, thereby increasing their revenues, as an independent
5 contractor in business for himself would have the authority to do.

6 41. Defendants took active steps to prevent Plaintiffs and the putative Class
7 members from knowing the number and identities of other service providers
8 in their area or market, preventing Plaintiffs and the putative Class members
9 from coordinating availability or delegating responsibilities.
10

11 42. Plaintiffs and the putative Class members worked for Defendants as roadside
12 assistance technicians in Defendant's service areas during the applicable
13 statutory period. Because of Defendants' 24-hour on call policy, Plaintiffs and
14 the putative Class members were unable to have other means of employment.
15

16 43. All actions and agreements by Defendants as described herein were willful
17 and intentional, and they were not the result of mistake or inadvertence.

18 44. Defendants were aware that the FLSA applies to their business at all relevant
19 times and that, under the economic realities test applicable to determining
20 employment status under those laws, Plaintiffs and the putative Class
21 members were misclassified as independent contractors.
22

1 45.Despite this notice of their violations, and in an effort to enhance Defendants'
2 profits, Defendants continued to intentionally misclassify roadside assistance
3 technicians like Plaintiffs and the putative Class members, failed to pay them
4 the minimum wage in violation of the FLSA, knowingly suffered and
5 permitted them to work in excess of 40 hours during a workweek without
6 paying overtime compensation at a rate of one and one-half times their regular
7 rate, and improperly reduced their pay through unlawful deductions. Such
8 conduct was intentional, unlawful, fraudulent, deceptive, unfair, and contrary
9 to public policy.
10

11 **COLLECTIVE ACTION ALLEGATIONS**

12 46.Plaintiffs restate and incorporate by reference the above paragraphs as if fully
13 set forth herein.

14 47.Plaintiffs bring Counts I and II of this action pursuant to 29 U.S.C. § 216(b)
15 of the FLSA on their own behalf and on behalf of all similarly situated current
16 and former workers of Defendants who were subject to Defendants' illegal
17 misclassification scheme at any time during the last three years. The proposed
18

19 FLSA Collective is defined as follows:

20 All roadside assistance technicians who worked for Defendants and were
21 misclassified by Defendants as independent contractors at any time in the past
22 three years.

1 48.Excluded from the Class are all of Defendants’ executives, administrators,
2 professional employees, and outside salespersons.

3 49.Plaintiffs Linz and Kaminsky has consented in writing to be part of this action
4 pursuant to 29 U.S.C. §216(b) and have filed those notices with the Court.
5 ECF 1-1, 12.

6 50.At this time, Defendants’ records demonstrate that the size of the putative
7 Collective exceeds 200 persons.

8 51.As this case proceeds, it is likely that other individuals will file consent forms
9 and join as “opt-in” Plaintiffs.

10 52.Defendants willfully engaged in a pattern of conduct that violated the FLSA
11 as previously described in this Complaint.

12 53.Defendants are liable under the FLSA for failing to properly compensate
13 Plaintiffs and the FSLA Collective. Accordingly, notice should be sent to the
14 FLSA Collective. There are numerous similarly situated current and former
15 employees of Defendants who have suffered from Defendants’ practice of
16 misclassifying its employees as independent contractors and who would
17 benefit from the issuance of court-supervised notice of this lawsuit and the
18 opportunity to join. Those similarly situated employees are known to
19 Defendants and are readily identifiable through Defendants’ records.
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CLASS ACTION ALLEGATIONS

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2 54.Plaintiff brings Counts III-V of this action as a class action pursuant to Federal
3 Rule of Civil Procedure Rule 23.

4 55.Named Plaintiffs bring this action individually and as class actions pursuant
5 to Rule 23 of the Federal Rules of Civil Procedure (hereinafter the “Classes”):

6 56.The Ohio Class is defined as follows:

7 All roadside assistance technicians who worked for Defendants in the State of
8 Ohio and were misclassified by Defendants as independent contractors at any
9 time in the past three years.

10 57.The Pennsylvania Class is defined as follows:

11 All roadside assistance technicians who worked for Defendants in the State of
12 Pennsylvania and were misclassified by Defendants as independent
13 contractors at any time in the past three years.

14 58.Upon information and belief, all requirements of Rule 23 of the Federal Rules
15 of Civil Procedure are satisfied to maintain a class action.

16 59.The individuals in the Classes are so numerous that joinder of all members is
17 impracticable. While the exact number of Class members has not been
18 determined at this time, upon information and belief, Defendants have
19 employed hundreds of Class members during the relevant time period.
20 Plaintiffs and members of the Rule 23 Classes have been equally affected by
21 Defendants’ violations of law.
22

1 60. There are questions of law and fact common to the Classes that predominated
2 over any questions affecting individual members, including, but not limited
3 to:

- 4 a. Whether Defendants violated the rights of Plaintiffs and the Classes by
5 routinely subjecting them to improper pay deductions to account for
6 alleged damage to customer vehicles and failure to pay a mileage
7 reimbursement.
8
9 b. The amount of damages, restitution, and/or other relief (including all
10 applicable civil penalties, liquidated damages, and equitable relief
11 available to which Plaintiffs and the Classes are entitled); and
12
13 c. Whether Defendants should be enjoined from such violations in the
14 future.

15 61. Plaintiffs' claims are typical of those of the Classes. Plaintiffs, like other
16 members of the Classes, were subjected to Defendants' policies and willful
17 practices of improper pay deductions to account for alleged damage to
18 customer vehicles and failure to pay a mileage reimbursement. Plaintiffs and
19 members of the Rule 23 Class have sustained similar injuries as a result of the
20 Defendants' actions.
21
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1 62. Plaintiffs are adequate representatives of the Classes. Plaintiffs retained
2 counsel experienced in complex wage and hour cases and collective/class
3 action litigation.

4 63. Plaintiffs are members of the Classes. Given Plaintiff's injury and loss,
5 Plaintiffs are committed to the prosecution of this action for the benefit of the
6 Class.

7 64. Plaintiffs have no interest that would cause them to act adversely to the best
8 interests of their respective class actions. These actions are maintainable as
9 class actions because the prosecution of separate actions by individual
10 members of the Classes would create a risk of inconsistent or varying
11 adjudications with respect to individual members of the Classes, which would
12 establish incompatible standards of conduct for Defendants.

13 65. These actions are maintainable as class actions because questions of law and
14 fact common to the Classes predominate over any questions affecting only
15 individual members of the Classes and because class actions are superior to
16 other methods for the fair and efficient adjudication of these actions.

17 66. The Class Representatives intend to send notice to all members of the Rule 23
18 Class to the extent required by the Federal Rules of Civil Procedure.

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21 **CAUSES OF ACTION**
22

COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY STATUTORY MINIMUM WAGE
(On behalf of Plaintiffs and the FLSA Collective)

1
2
3 67.Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
4 herein.

5 68.The minimum wage requirements of the FLSA apply to Defendants and
6 protect Plaintiffs and the members of the putative FLSA Collective.

7 69.Pursuant to the FLSA, Plaintiffs and the putative FLSA Collective were
8 entitled to be compensated at the rate of \$7.25 per hour.

9 70.Defendants failed to pay Plaintiffs and the putative FLSA Collective the
10 minimum wage set forth in the FLSA throughout the relevant time period
11 because Defendants intentionally misclassified them as independent
12 contractors.
13

14 71.Plaintiffs and the putative Class were required by Defendants to use their own
15 personal vehicles for their employment purposes, and to pay for alleged
16 damage to customer vehicles. Plaintiffs and the putative FLSA Collective
17 were not reimbursed for these expenses. To the extent that these deductions
18 lowered Plaintiffs' and the putative FLSA Collective's pay below the FLSA
19 minimum wage, Defendants have likewise violated the FLSA.
20
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1 72. In light of the foregoing, Plaintiffs and the putative FLSA Collective have
2 been damaged in the form of unpaid minimum wages for the applicable
3 statutory period.

4 **COUNT II – VIOLATION OF THE FAIR LABOR STANDARDS ACT**
5 **FAILURE TO PAY STATUTORY OVERTIME PREMIUM**
6 **(On behalf of Plaintiffs and the FLSA Collective)**

7 73. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
8 herein.

9 74. The overtime premium requirements of the FLSA apply to Defendants and
10 protect Plaintiffs and the members of the putative FLSA Collective.

11 75. Pursuant to the FLSA, Plaintiffs and the putative FLSA Collective were
12 entitled to be compensated at the rate of one and one half times their regular
13 rate of pay for every hour worked over forty per week.

14 76. Defendants failed to pay Plaintiffs and the putative FLSA Collective the
15 overtime premium set forth in the FLSA throughout the relevant time period
16 because Defendants intentionally misclassified them as independent
17 contractors. This policy was willful and uniform among the members of the
18 FLSA Collective.
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1 77. In light of the foregoing, Plaintiffs and the putative FLSA Collective have
2 been damaged in the form of unpaid overtime premiums for the applicable
3 statutory period.

4 **COUNT III – QUANTUM MERUIT/UNJUST ENRICHMENT**
5 **IMPROPER AND UNLAWFUL PAY DEDUCTIONS**
6 **(On behalf of Plaintiffs and the putative Class members)**

7 78. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
8 herein.

9 79. Plaintiffs and the putative Class members provided valuable labor to
10 Defendants that inured to Defendants' benefit and for which they were not
11 compensated.

12 80. Through their work for Defendants, Plaintiffs and the putative Class members
13 provided a material benefit to Defendants.

14 81. Defendants received and accepted the above-referenced services and enjoyed
15 the benefits therefrom.

16 82. Pursuant to Defendants' policies, Plaintiffs and the others similarly situated
17 routinely suffered improper pay deductions to account for alleged damage to
18 customer vehicles and failure to properly reimburse for mileage.

19 83. Defendants instituted these policies so that they could retain the material
20 benefit of the work performed by Plaintiffs and the Class members without
21 providing them appropriate compensation.
22

1 84. Defendants were unjustly enriched by the retention of monies that should have
2 been paid to Plaintiffs and class members in exchange for their services but
3 were, instead, improperly and unlawfully deducted from the pay of Plaintiffs
4 and the class members as a result of Defendants' illegal policies.

5 85. In light of the foregoing, Plaintiffs and the putative Class members did not
6 receive fair compensation for the work they performed and Defendants were
7 unjustly enriched in an amount to be determined at trial.

8
9 **COUNT IV – VIOLATION OF THE PENNSYLVANIA MINIMUM WAGE**
10 **ACT, PENNSYLVANIA CODE §231.1 et seq.**
11 **(On behalf of Plaintiffs Linz, Kaminsky, and the putative Pennsylvania class**
12 **members)**

13 86. Plaintiff Kaminsky and the putative Class members incorporate by reference
14 the preceding paragraphs as if fully restated herein.

15 87. The above-described actions of Defendants violated the rights of Plaintiff
16 Davis and the putative Pennsylvania Class members under Pennsylvania law
17 for which they are entitled relief.

18 88. In light of the foregoing, Plaintiff Davis and the Pennsylvania Class have
19 been damaged in the form of unpaid minimum wage and overtime premiums.

20 **COUNT V – VIOLATION OF THE OHIO MINIMUM WAGE ACT, OHIO**
21 **REVISED CODE §4111.01 et seq.**
22 **(On behalf of Plaintiff Linz and the putative Ohio class members)**

1 89. Plaintiff Linz and the putative Class members incorporate by reference the
2 preceding paragraphs as if fully restated herein.

3 90. The above-described actions of Defendants violated the rights of Plaintiff
4 Linz and the putative Ohio class members under Ohio law for which they are
5 entitled to relief.

6 91. In light of the foregoing, Plaintiff Linz and the Ohio class have been damaged
7 in the form of unpaid minimum wage and overtime premiums.
8

9 WHEREFORE, Plaintiffs request the following relief:

- 10 a) Certification of this case as a collective action in accordance with 29 U.S.C.
11 § 216(b) with respect to the FLSA claims set forth above;
- 12 b) Certifying classes in Pennsylvania, Ohio, and other appropriate states in
13 accordance with Fed. R. Civ. P. 26(b)(3) with respect to the claims set forth
14 above;
- 15 c) Designating Named Plaintiffs as Class Representatives;
- 16 d) Declaring that Defendants willfully violated their obligations under the FLSA
17 and its attendant regulations as set forth above;
- 18 e) Declaring that Defendants willfully violated the Pennsylvania and Ohio wage
19 and hour statutes;
- 20
21 f) Certifying this matter to proceed as a class action;
22

- 1 g) Designating the Finney Law Firm as Lead Counsel for Plaintiffs and the Class
2 members on their Collective and Class action claims;
- 3 h) Awarding Plaintiffs and the class members all available compensatory and
4 liquidated damages, including, *inter alia*, all unpaid wages owed under
5 applicable law;
- 6 i) Interest according to law;
- 7 j) An award of reasonable attorneys' fees and costs;
- 8 k) Leave to add additional plaintiffs and/or state law claims by motion, the filing
9 of written consent forms, or any other method approved by the Court; and
10
- 11 l) For any and all further relief that this Court deems just and equitable.

12 /s/ *Matthew S. Okiishi*

13 _____
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Attorneys for Plaintiff

JURY DEMAND

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

/s/ Matthew S. Okiishi

Matthew S. Okiishi, Esq. (Ohio
0096706/PHV)