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9 INTELLIQUICK DELIVERY, INC.; KEITH and
MIRIAM SPIZZIRRI; MAJIK LEASING, LLC;
10 FELICIA TAVISON; JASON MITTENDORF AND
JANE DOE MITTENDORF; JEFFREY LIEBER;
11 WILLIAM "BILL" COCCHIA AND JANE DOE
COCCHIA; STEVEN ANASTASE AND JANE
12 DOE ANASTASE

13
14 UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA
16

17 David Collinge, Melonie Priestly, and
Heather Arras, on behalf of themselves and
18 all others similarly situated,

19 Plaintiffs,

20 v.

21 IntelliQuick Delivery, Inc., an Arizona
corporation; Keith Spizzirri and Miriam
22 Spizzirri, husband and wife; Transportation
Authority, LLC, a Nevada corporation;
23 Robert F. Lorgeree, Jr; Majik Leasing, LLC,
an Arizona corporation; Felicia Tavison;
24 Jason Mittendorf and Jane Doe Mittendorf;
Jeffrey Lieber; William "Bill" Cocchia and
25 Jane Doe Cocchia; Steven Anastase and
Jane Doe Anastase,

26 Defendants.
27
28

Case No. 2:12-cv-00824-JWS

**ANSWER TO AMENDED
COMPLAINT**

1 Defendants IntelliQuick Delivery, Inc., (“IntelliQuick”), Keith Spizzirri, Miriam
 2 Spizzirri, Majik Leasing, LLC (“Majik”), Felicia Tavison, Jason Mittendorf, Jane Doe
 3 Mittendorf, Jeffrey Lieber, William “Bill” Cocchia and Jane Doe Cocchia, Steven Anastase
 4 and Jane Doe Anastase (collectively referred to herein as “Defendants”), by and through
 5 their undersigned counsel, for their Answer to Plaintiffs’ Amended Complaint, admit, deny,
 6 and allege as follows:

7 1. In response to Paragraph 1 of Plaintiffs’ Amended Complaint, Defendants
 8 admit that Plaintiffs purport to bring an action under the Fair Labor Standards Act (“FLSA”),
 9 29 U.S.C. § 201 *et. seq.*; Family Medical Leave Act (“FMLA”), 29 U.S.C. § 2601; the
 10 Arizona wage statute, A.R.S. § 23-350, *et. seq.*; and the Arizona minimum wage law, A.R.S.
 11 §§ 23-363 *et. seq.*, affirmatively deny that Plaintiffs are entitled to any relief whatsoever; and
 12 deny each and every remaining allegation in Paragraph 1.

13 2. In response to Paragraph 2 of Plaintiffs’ Amended Complaint, Defendants
 14 admit that Plaintiffs purport to allege claims for unpaid minimum wages, unpaid overtime
 15 wages, deductions from wages, benefits compensatory, treble damages, and penalties on
 16 behalf of themselves and all other alleged similarly situated current and former employees of
 17 Defendants, affirmatively deny that Plaintiffs are entitled to recover on the stated claims, or
 18 any other claims, deny that class certification and collective action certification should be
 19 granted, and deny each and every remaining allegation in Paragraph 2.

20 3. In response to Paragraph 3 of Plaintiffs’ Amended Complaint, Defendants
 21 deny the allegations therein.

22 4. In response to Paragraph 4 of Plaintiffs’ Amended Complaint, Defendants
 23 admit that Plaintiffs are required to pay expenses related to their own vehicles (i.e. gas,
 24 repairs and maintenance) and deny each and every remaining allegation in paragraph 4.

25 5. In response to Paragraph 5 of Plaintiffs’ Amended Complaint, Defendants
 26 assert that the allegations in Paragraph 5 are legal conclusions to which no answer is required
 27 of Defendants, and in any event, Defendants deny each and every allegation therein.
 28

JURISDICTION AND VENUE

6. In response to Paragraph 6 of Plaintiffs' Amended Complaint, Defendants admit that this Court has subject matter jurisdiction under 28 U.S.C. § 1331, admit that Plaintiffs purport to allege claims under 29 U.S.C. § 216(b) and 29 U.S.C. § 2617(a)(2), affirmatively deny that Plaintiffs are entitled to any relief whatsoever; and deny each and every remaining allegation in Paragraph 6.

7. In response to Paragraph 7 of Plaintiffs' Amended Complaint, Defendants admit that this Court has supplemental jurisdiction over state law claims which are sufficiently related to Plaintiffs' FLSA and FMLA claims pursuant to 28 U.S.C. § 1367 (a), affirmatively deny that Plaintiffs are entitled to any relief whatsoever; and deny each and every remaining allegation in Paragraph 7.

8. In response to Paragraph 8 of Plaintiffs' Amended Complaint, Defendants admit Paragraph 8.

9. In response to Paragraph 9 of Plaintiffs' Amended Complaint, Defendants admit venue is proper pursuant to 28 U.S.C. § 1391(b) only as to Defendants, admit Defendants reside in Maricopa County, Arizona, and admit that a substantial part of the acts and/or omissions giving rise to the alleged claims occurred in this district. To the extent Paragraph 9 is directed to Defendants Robert Lorgeree and Transportation Authority, LLC, no answer is required of Defendants. Defendants deny each and every remaining allegation in Paragraph 9.

PARTIES

10. In response to Paragraph 10 of Plaintiffs' Amended Complaint, Defendants admit that Plaintiff David Collinge is a citizen and resident of Maricopa County, Arizona, and that at all relevant times Plaintiff provided services to IntelliQuick as an independent contractor. The remaining allegations set forth in Paragraph 10 are legal conclusions to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny that they unlawfully classified Plaintiff Collinge as an independent

1 contractor, assert that Plaintiff Collinge was properly classified and deny each and every
2 remaining allegation in Paragraph 10.

3 11. In response to Paragraph 11 of Plaintiffs' Amended Complaint, Defendants
4 admit that Plaintiff Melonie Priestly is a citizen and resident of Maricopa County, Arizona,
5 and that currently and at all relevant times Plaintiff provided services to IntelliQuick as an
6 independent contractor. The remaining allegations set forth in Paragraph 11 are legal
7 conclusions to which no answer is required of Defendants. To the extent that an answer is
8 required, Defendants deny that they unlawfully classified Plaintiff Priestly as an independent
9 contractor, assert that Plaintiff Priestly was properly classified and deny each and every
10 remaining allegation in Paragraph 11.

11 12. In response to Paragraph 12 of Plaintiffs' Amended Complaint, Defendants
12 admit that Plaintiff Heather Arras is a citizen and resident of Maricopa County, Arizona, and
13 that currently and at all relevant times Plaintiff provided services to IntelliQuick as an
14 independent contractor. The remaining allegations set forth in Paragraph 12 are legal
15 conclusions to which no answer is required of Defendants. To the extent that an answer is
16 required, Defendants deny that they unlawfully classified Plaintiff Arras as an independent
17 contractor, assert that Plaintiff Arras was properly classified and deny each and every
18 remaining allegation in Paragraph 12.

19 13. In response to Paragraph 13 of Plaintiffs' Amended Complaint, Defendants
20 deny the allegations in Paragraph 13.

21 14. In response to Paragraph 14 of Plaintiffs' Amended Complaint, Defendants
22 admit that Defendant IntelliQuick is an Arizona Corporation which is authorized and does
23 transact business in the state of Arizona, including Maricopa County, admit that IntelliQuick
24 has a place of business located at 4022 S. 20th Street, Phoenix, Arizona, 85040 and deny
25 each and every remaining allegation in Paragraph 14.

26 15. In response to Paragraph 15 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegation in Paragraph 15.
28

1 16. In response to Paragraph 16 of Plaintiffs' Amended Complaint, Defendants
2 admit the allegations therein.

3 17. In response to Paragraph 17 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations contained in Paragraph 17.

5 18. In response to Paragraph 18 of Plaintiffs' Amended Complaint, Defendants
6 admit Miriam Spizzirri is the wife of Keith Spizzirri, but deny she is properly named as a
7 defendant under any legal theory and deny each and every other allegation in Paragraph 18.

8 19. In response to Paragraph 19 of Plaintiffs' Amended Complaint, Defendants
9 admit that Defendant Felicia Tavison is an employee of IntelliQuick and admits that
10 Ms. Tavison resides and works in Maricopa County, Arizona. The remaining allegations in
11 Paragraph 19 are legal conclusions to which no answer is required of Defendants. To the
12 extent that an answer is required, Defendants deny each and every other and further
13 allegation in Paragraph 19.

14 20. In response to Paragraph 20 of Plaintiffs' Amended Complaint, Defendants
15 admit that Defendant Jeffrey Lieber was and is an employee of IntelliQuick and admits that
16 Mr. Lieber resides and works in Maricopa County, Arizona. The remaining allegations in
17 Paragraph 20 are legal conclusions to which no answer is required of Defendants. To the
18 extent that an answer is required, Defendants deny each and every remaining allegation in
19 Paragraph 20.

20 21. In response to Paragraph 21 of Plaintiffs' Amended Complaint, Defendants
21 admit that Defendant Jason Mittendorf was and is an employee of IntelliQuick and admits
22 that Mr. Mittendorf resides and works in Maricopa County, Arizona. The remaining
23 allegations in Paragraph 21 are legal conclusions to which no answer is required of
24 Defendants. To the extent an answer is required, Defendants deny each and every remaining
25 allegation in Paragraph 21.

26 22. In response to Paragraph 22 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations in Paragraph 22.
28

1 23. In response to Paragraph 23 of Plaintiffs' Amended Complaint, Defendants
2 admit that Defendant Bill Cocchia was an employee of IntelliQuick. The remaining
3 allegations in Paragraph 23 are legal conclusions to which no answer is required of
4 Defendants. To the extent an answer is required, Defendants deny each and every remaining
5 allegation in Paragraph 23.

6 24. In response to Paragraph 24 of Plaintiffs' Amended Complaint, Defendants
7 deny the allegations in Paragraph 24.

8 25. In response to Paragraph 25 of Plaintiffs' Amended Complaint, Defendants
9 admit that Defendant Steven Anastase was and is an employee of IntelliQuick and admits
10 that he currently works in Maricopa County, Arizona. The remaining allegations in
11 Paragraph 25 are legal conclusions to which no answer is required of Defendants. To the
12 extent an answer is required, Defendants deny each and every remaining allegation in
13 Paragraph 25.

14 26. In response to Paragraph 26 of Plaintiffs' Amended Complaint, Defendants
15 deny the allegations in Paragraph 26.

16 27. In response to Paragraph 27 of Plaintiffs' Amended Complaint, Defendants
17 admit that Majik is an Arizona corporation, with a place of business at 4022 S. 20th Street,
18 Phoenix, Arizona 85040, admit that Majik owns multiple vehicles, admit that IntelliQuick
19 drivers sometimes lease vehicles from Majik and that in such instances Majik requires
20 drivers of the vehicles to sign a Vehicle Rental Agreement before the driver may use the
21 vehicle, deny that Majik is owned and operated by Mr. Spizzirri, and deny each and every
22 remaining allegation in Paragraph 27.

23 28. In response to Paragraph 28 of Plaintiffs' Amended Complaint, Defendants
24 assert that this allegation is not directed to Defendants and therefore no answer is required of
25 these Defendants. To the extent that an answer is required, Defendants deny Paragraph 28
26 on this same basis.

27 29. In response to Paragraph 29 of Plaintiffs' Amended Complaint, Defendants
28 deny the allegations therein.

30. In response to Paragraph 30 of Plaintiffs' Amended Complaint, Defendants assert that this allegation is not directed to Defendants and to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny each and every allegation in Paragraph 30.

31. In response to Paragraph 31 of Plaintiffs' Amended Complaint, Defendants state that the allegations in Paragraph 31 are legal conclusion to which no answer is required of Defendants. To the extent an answer is required, Defendants assert that the language in 29 U.S.C. § 203(d), 29 U.S.C. § 2611(4)(A), and A.R.S. §23-350 speaks for itself and deny that IntelliQuick is a joint employer and/or alter ego with one or more of the other named party to this lawsuit. Defendants deny each and every remaining allegation in Paragraph 31.

CLASS ACTION ALLEGATIONS

32. In response to Paragraph 32 of Plaintiffs' Amended Complaint, Defendants state that Paragraph 32 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 32.

33. In response to Paragraph 33 of Plaintiffs' Amended Complaint, Defendants state that Paragraph 33 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 33.

34. In response to Paragraph 34 of Plaintiffs' Amended Complaint, Defendants admit that Plaintiffs seek class certification and collective action certification of the alleged class defined therein; however, Defendants deny the allegation and implication that class certification of the alleged defined class is proper. Defendants deny each and every remaining allegation in Paragraph 34.

35. In response to Paragraph 35 of Plaintiffs' Amended Complaint, Defendants admit that Plaintiffs seek to exclude "Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who at any time during the class period has a controlling interest in any of Defendants" for purposes of their collective and class action,

1 deny that class or collective action certification is proper and deny each and every remaining
2 allegation in Paragraph 35.

3 36. In response to Paragraph 36 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations contained therein.

5 37. In response to Paragraph 37 of Plaintiffs' Amended Complaint, Defendants
6 state that Paragraph 37 is a legal conclusion to which no answer is required of Defendants.
7 To the extent that an answer is required, Defendants deny each and every allegation in
8 Paragraph 37, including each and every allegation and contention listed in subparts a – k in
9 Paragraph 37, and deny, both generally and specifically, that Plaintiffs can establish that the
10 alleged putative class meets the commonality requirement for class certification. Defendants
11 deny each and every remaining allegation in Paragraph 37.

12 38. In response to Paragraph 38 of Plaintiffs' Amended Complaint, Defendants
13 deny that class certification is appropriate and further deny, generally and specifically, that
14 Plaintiffs can establish that the putative class meets the typicality requirement for class
15 certification and that Plaintiffs can establish that they are adequate representatives for the
16 alleged putative class. Defendants deny each and every remaining allegation in Paragraph
17 38.

18 39. In response to Paragraph 39 of Plaintiffs' Amended Complaint, Defendants
19 state that Paragraph 39 is a legal conclusion to which no answer is required of Defendants.
20 To the extent that an answer is required, Defendants deny each and every allegation in
21 Paragraph 39.

22 40. In response to Paragraph 40 of Plaintiffs' Amended Complaint, Defendants
23 deny that class certification is appropriate and further deny, generally and specifically, that
24 Plaintiffs can establish that they are adequate representatives for the alleged putative class
25 and/or that their claims are typical of the alleged claims of other putative class members.
26 Defendants deny each and every remaining allegation in Paragraph 40.

27 41. In response to Paragraph 41 of Plaintiffs' Amended Complaint, Defendants
28 state that this allegation is not directed at Defendants and therefore no answer is required of

1 Defendants. To the extent an answer is required, Defendants lack sufficient knowledge and
 2 information to admit or deny the allegations contained in Paragraph 41 and therefore deny
 3 them.

4 42. In response to Paragraph 42 of Plaintiffs' Amended Complaint, Defendants
 5 state that this allegation is a legal conclusion and therefore no answer is required of
 6 Defendants. To the extent that an answer is required, Defendants deny the allegations
 7 contained in Paragraph 42.

8 43. In response to Paragraph 43 of Plaintiffs' Amended Complaint, Defendants
 9 state that this allegation is not directed at Defendants and is a legal conclusion, therefore no
 10 answer is required of Defendants. To the extent that an answer is required, Defendants deny
 11 that class certification is appropriate and further deny, generally and specifically, that the
 12 predominance requirements for class certification are met or that a class action is superior to
 13 other forms of adjudication. Defendants deny each and every remaining allegation in
 14 Paragraph 43.

15 **GENERAL ALLEGATIONS**

16 **I. Defendants' Control over Drivers' Daily Activities**

17 44. In response to Paragraph 44 of Plaintiffs' Amended Complaint, Defendants
 18 deny the allegations therein.

19 45. In response to Paragraph 45 of Plaintiffs' Amended Complaint, Defendants
 20 state that this allegation is a legal conclusion to which no answer is required of Defendants.
 21 To the extent that an answer is required, Defendants deny the allegations contained in
 22 Paragraph 45.

23 46. In response to Paragraph 46 of Plaintiffs' Amended Complaint, Defendants
 24 deny the allegations therein.

25 47. In response to Paragraph 47 of Plaintiffs' Amended Complaint, Defendants
 26 deny the allegations therein.

27 48. In response to Paragraph 48 of Plaintiffs' Amended Complaint, Defendants
 28 deny the allegations therein.

1 49. In response to Paragraph 49 of Plaintiffs' Amended Complaint, Defendants
2 admit that independent contractors performed services within parameters set by clients.
3 Defendants deny each and every remaining allegation in Paragraph 49.

4 50. In response to Paragraph 50 of Plaintiffs' Amended Complaint, Defendants
5 lack sufficient knowledge or information to admit or deny the allegations contained in
6 Paragraph 50 and therefore deny Paragraph 50.

7 51. In response to Paragraph 51 of Plaintiffs' Amended Complaint, Defendants
8 admit that Drivers are required to adhere to certain operational requirements and that
9 chargebacks may occur. Defendants deny each and every remaining allegation in Paragraph
10 51.

11 52. In response to Paragraph 52 of Plaintiffs' Amended Complaint, Defendants
12 deny the allegations contained in Paragraph 52.

13 53. In response to Paragraph 53 of Plaintiffs' Amended Complaint, Defendants
14 deny the allegations contained in Paragraph 53.

15 54. In response to Paragraph 54 of Plaintiffs' Amended Complaint, Defendants
16 deny the allegations contained in Paragraph 54.

17 55. In response to Paragraph 55 of Plaintiffs' Amended Complaint, Defendants
18 deny the allegations contained in Paragraph 55.

19 56. In response to Paragraph 56 of Plaintiffs' Amended Complaint, Defendants
20 deny the allegations contained in Paragraph 56.

21 **A. Drivers' Daily Work Assignments**

22 57. In response to Paragraph 57 of Plaintiffs' Amended Complaint, Defendants
23 admit the allegations therein.

24 58. In response to Paragraph 58 of Plaintiffs' Amended Complaint, Defendants
25 admit the allegations therein.

26 59. In response to Paragraph 59 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations therein.

1 60. In response to Paragraph 60 of Plaintiffs' Amended Complaint, Defendants
2 admit independent contractors performed services using a scanner. Defendants deny each
3 and every remaining allegation in Paragraph 60.

4 61. In response to Paragraph 61 of Plaintiffs' Amended Complaint, Defendants
5 admit that Drivers are expected to follow instructions on their manifest and may incur
6 "chargebacks." Defendants deny each and every remaining allegation in Paragraph 61.

7 62. In response to Paragraph 62 of Plaintiffs' Amended Complaint, Defendants
8 lack sufficient knowledge or information to admit or deny Paragraph 57 and therefore
9 Defendants deny Paragraph 62.

10 63. In response to Paragraph 63 of Plaintiffs' Amended Complaint, Defendants
11 deny the allegations therein.

12 64. In response to Paragraph 64 of Plaintiffs' Amended Complaint, Defendants
13 deny the allegations therein.

14 65. In response to Paragraph 65 of Plaintiffs' Amended Complaint, Defendants
15 deny the allegations therein.

16 66. In response to Paragraph 66 of Plaintiffs' Amended Complaint, Defendants
17 deny that drivers are not paid for all work performed and that independent contractors
18 performing services for IntelliQuick are regularly required to perform administrative work or
19 other work incidental to their primary responsibilities of any duration. Defendants deny each
20 and every remaining allegation in Paragraph 66.

21 67. In response to Paragraph 67 of Plaintiffs' Amended Complaint, Defendants
22 deny the allegations therein.

23 68. In response to Paragraph 68 of Plaintiffs' Amended Complaint, Defendants
24 deny that anyone performing driving services for IntelliQuick is not paid for any and all
25 work performed. Defendants deny each and every remaining allegation therein.

26 69. In response to Paragraph 69 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations therein.
28

1 70. In response to Paragraph 70 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 **B. Defendants Treat Drivers Like Employees**

4 71. In response to Paragraph 71 of Plaintiffs' Amended Complaint, Defendants
5 respond that Paragraph 71 is a legal conclusion to which no answer is required of
6 Defendants. To the extent that an answer is required, Defendants deny the allegations
7 contained in Paragraph 71.

8 72. In response to Paragraph 72 of Plaintiffs' Amended Complaint, Defendants
9 deny the allegations therein.

10 73. In response to Paragraph 73 of Plaintiffs' Amended Complaint, Defendants
11 deny the allegations therein.

12 74. In response to Paragraph 74 of Plaintiffs' Amended Complaint, Defendants
13 admit that Drivers are required to report to IntelliQuick's central facility and deny all
14 remaining allegations in Paragraph 74.

15 75. In response to Paragraph 75 of Plaintiffs' Amended Complaint, Defendants
16 deny the allegations therein.

17 76. In response to Paragraph 76 of Plaintiffs' Amended Complaint, Defendants
18 deny the allegations therein.

19 77. In response to Paragraph 77 of Plaintiffs' Amended Complaint, Defendants
20 assert that the quoted language speaks for itself and deny each and every remaining
21 allegation therein.

22 78. In response to Paragraph 78 of Plaintiffs' Amended Complaint, Defendants
23 assert that the quoted language speaks for itself and deny each and every remaining
24 allegation therein.

25 79. In response to Paragraph 79 of Plaintiffs' Amended Complaint, Defendants
26 assert that the quoted language speaks for itself and deny each and every remaining
27 allegation therein.

1 80. In response to Paragraph 80 of Plaintiffs' Amended Complaint, Defendants
2 assert that the quoted language speaks for itself and deny each and every remaining
3 allegation therein.

4 81. In response to Paragraph 81 of Plaintiffs' Amended Complaint, Defendants
5 admit that there are various photographs on IntelliQuick's website and that some include
6 individuals wearing attire of the same color used by IntelliQuick in its marketing.
7 Defendants deny each and every remaining allegation in Paragraph 81.

8 82. In response to Paragraph 82 of Plaintiffs' Amended Complaint, Defendants
9 admit that Drivers are required to maintain a professional appearance and to wear a red shirt,
10 but deny that Drivers are required to wear uniforms. Defendants deny each and every
11 remaining allegation in Paragraph 82.

12 83. In response to Paragraph 83 of Plaintiffs' Amended Complaint, Defendants
13 deny the allegations therein.

14 84. In response to Paragraph 84 of Plaintiffs' Amended Complaint, Defendants
15 admit the Plaintiffs herein were provided and displayed identifying badges for purposes,
16 among others, to gain access to IntelliQuick's facilities. Defendants deny each and every
17 other allegation remaining in Paragraph 84.

18 85. In response to Paragraph 85 of Plaintiffs' Amended Complaint, Defendants
19 admit that IntelliQuick posts all openings on its website, including for employee positions,
20 and that anyone interested and qualified, whether an employee, independent contractor or
21 member of the public at large, must apply at IntelliQuick's headquarters or other offices.
22 Defendants deny each and every other allegation remaining in Paragraph 85.

23 86. In response to Paragraph 86 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

25 87. In response to Paragraph 87 of Plaintiffs' Amended Complaint, Defendants
26 deny the allegations therein.

27 88. In response to Paragraph 88 of Plaintiffs' Amended Complaint, Defendants
28 deny the allegations therein.

1 89. In response to Paragraph 89 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 90. In response to Paragraph 90 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations therein.

5 91. In response to Paragraph 91 of Plaintiffs' Amended Complaint, Defendants
6 deny the allegations therein.

7 **C. Payment of Wages**

8 92. In response to Paragraph 92 of Plaintiffs' Amended Complaint, Defendants
9 admit that independent contractors receive weekly settlements. Defendants deny each and
10 every other allegation remaining in Paragraph 92.

11 93. In response to Paragraph 93 of Plaintiffs' Amended Complaint, Defendants
12 admit that independent contractors have electronic access to their weekly settlements.
13 Defendants deny each and every other allegation remaining in Paragraph 93.

14 94. In response to Paragraph 94 of Plaintiffs' Amended Complaint, Defendants
15 admit that independent contractors receive weekly settlements generally based on routes or
16 deliveries. Defendants deny each and every other allegation remaining in Paragraph 94.

17 95. In response to Paragraph 95 of Plaintiffs' Amended Complaint, Defendants
18 deny the allegations therein.

19 96. In response to Paragraph 96 of Plaintiffs' Amended Complaint, Defendants
20 deny the allegations therein.

21 97. In response to Paragraph 97 of Plaintiffs' Amended Complaint, Defendants
22 deny the allegations therein.

23 98. In response to Paragraph 98 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

25 99. In response to Paragraph 99 of Plaintiffs' Amended Complaint, Defendants
26 admit that settlement checks are generally issued by a third-party service, including
27 Transportation Authority, and that there have been occasions when certain checks are issued
28

1 directly from IntelliQuick and signed by Defendant Spizzirri. Defendants deny each and
2 every remaining allegation in Paragraph 99.

3 100. In response to Paragraph 100 of Plaintiffs' Amended Complaint, Defendants
4 admit that from time to time customers are charged a "fuel surcharge," and deny each and
5 every remaining allegation in Paragraph 100.

6 101. In response to Paragraph 101 of Plaintiffs' Amended Complaint, Defendants
7 deny the allegations therein.

8 102. In response to Paragraph 102, Defendants admit that Route Drivers and On-
9 Demand Drivers are expected and required to pay for gas and maintenance of their own
10 vehicles, and deny each and every remaining allegation contained in Paragraph 102.

11 **D. Trainings and Meetings**

12 103. In response to Paragraph 103, Defendants deny the allegations therein.

13 104. In response to Paragraph 104, Defendants admit that Drivers are required to
14 attend and participate in an initial meeting to become familiar with IntelliQuick's operations,
15 deny that Defendants Spizzirri, Mittendorf, Lieber, and Tavison regularly conduct or
16 participate in the initial orientation, and deny each and every remaining allegation in
17 Paragraph 104.

18 105. In response to Paragraph 105, Defendants admit that independent contractors
19 providing services to IntelliQuick are required to complete HIPAA training and that they
20 receive a certificate of completion for doing so, and lack sufficient knowledge or information
21 to admit or deny each and every remaining allegation contained in Paragraph 105.

22 106. In response to Paragraph 106, Defendants admit that independent contractors
23 receive instruction pertaining to specific requirements set by specific customers in
24 conjunction with servicing their accounts, and deny each and every remaining allegation in
25 Paragraph 106.

26 107. In response to Paragraph 107 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations therein.

1 108. In response to Paragraph 108 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 **II. Defendants' Failure to Pay Overtime**

4 109. Defendants admit that they classified and continue to classify Plaintiffs as
5 independent contractors and lack sufficient knowledge or information to admit or deny the
6 remaining allegations in Paragraph 109 and therefore deny them.

7 110. In response to Paragraph 110 of Plaintiffs' Amended Complaint, Defendants
8 deny the allegations therein.

9 111. In response to Paragraph 111 of Plaintiffs' Amended Complaint, Defendants
10 deny the allegations therein.

11 112. In response to Paragraph 112 of Plaintiffs' Amended Complaint, Defendants
12 deny the allegations therein.

13 113. In response to Paragraph 113 of Plaintiffs' Amended Complaint, Defendants
14 admit independent contractors are expected to complete the routes or deliveries which they
15 chose to perform and deny every other and further allegation in Paragraph 113.

16 114. In response to Paragraph 114 of Plaintiffs' Amended Complaint, Defendants
17 lack sufficient knowledge or information necessary to admit or deny Paragraph 114 and
18 therefore deny this Paragraph.

19 115. In response to Paragraph 115 of Plaintiffs' Amended Complaint, Defendants
20 deny the allegations therein.

21 116. In response to Paragraph 116 of Plaintiffs' Amended Complaint, Defendants
22 deny the allegations therein.

23 117. In response to Paragraph 117 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

25 **III. Defendants' Failure To Pay Minimum Wage**

26 118. In response to Paragraph 118 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations therein.

1 119. In response to Paragraph 119 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 120. In response to Paragraph 120 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations therein.

5 121. In response to Paragraph 121 of Plaintiffs' Amended Complaint, Defendants
6 deny the allegations therein.

7 122. In response to Paragraph 122 of Plaintiffs' Amended Complaint, Defendants
8 deny the allegations therein.

9 123. In response to Paragraph 123 of Plaintiffs' Amended Complaint, Defendants
10 deny the allegations therein.

11 124. In response to Paragraph 124 of Plaintiffs' Amended Complaint, Defendants
12 deny the allegations therein.

13 125. In response to Paragraph 125 of Plaintiffs' Amended Complaint, Defendants
14 deny the allegations therein.

15 126. In response to Paragraph 126 of Plaintiffs' Amended Complaint, Defendants
16 deny the allegations therein.

17 127. In response to Paragraph 127 of Plaintiffs' Amended Complaint, Defendants
18 deny the allegations therein.

19 128. In response to Paragraph 128 of Plaintiffs' Amended Complaint, Defendants
20 deny the allegations therein.

21 129. In response to Paragraph 129 of Plaintiffs' Amended Complaint, Defendants
22 deny the allegations therein.

23 130. In response to Paragraph 130 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

25 131. In response to Paragraph 131 of Plaintiffs' Amended Complaint, Defendants
26 deny the allegations therein.

27 132. In response to Paragraph 132 of Plaintiffs' Amended Complaint, Defendants
28 deny the allegations therein.

133. In response to Paragraph 133 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

134. In response to Paragraph 134 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

135. In response to Paragraph 135 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

IV. Defendants' Unlawful Deductions from Drivers' Paychecks

A. Defendants Illegally Deduct "Chargebacks"

136. In response to Paragraph 136 of Plaintiffs' Amended Complaint, Defendants admit that independent contractors may incur chargebacks, and deny each and every remaining allegation in Paragraph 136.

137. In response to Paragraph 137 of Plaintiffs' Amended Complaint, Defendants state that Paragraph 137 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 137.

138. In response to Paragraph 138 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

139. In response to Paragraph 139 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

140. In response to Paragraph 140 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

141. In response to Paragraph 141 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

142. In response to Paragraph 142 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

143. In response to Paragraph 143 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

144. In response to Paragraph 144 of Plaintiffs' Amended Complaint, Defendants deny the allegations therein.

1 145. In response to Paragraph 145 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 146. In response to Paragraph 146 of Plaintiffs' Amended Complaint, Defendants
4 admit that certain pick-ups or deliveries that are part of a designated route may be assigned
5 to an On-Demand Driver, which may affect settlements, and deny all remaining allegations
6 in Paragraph 146.

7 **B. Defendants Illegally Deduct Chargebacks for Family or Medical Leave**

8 147. In response to Paragraph 147 of Plaintiffs' Amended Complaint, Defendants
9 deny the allegations therein.

10 148. In response to Paragraph 148 of Plaintiffs' Amended Complaint, Defendants
11 deny the allegations therein.

12 149. In response to Paragraph 149 of Plaintiffs' Amended Complaint, Defendants
13 deny the allegations therein.

14 **C. Defendants Illegally Deduct Other Fees**

15 150. In response to Paragraph 150 of Plaintiffs' Amended Complaint, Defendants
16 admit a scanner is required to perform delivery services within IntelliQuick's operations and
17 deny all remaining allegations in Paragraph 150.

18 151. In response to Paragraph 151 of Plaintiffs' Amended Complaint, Defendants
19 admit that IntelliQuick may make deductions from total settlement amounts, and deny all
20 remaining allegations in Paragraph 151.

21 152. In response to Paragraph 152 of Plaintiffs' Amended Complaint, Defendants
22 deny the allegations therein.

23 153. In response to Paragraph 153 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

25 154. In response to Paragraph 154 of Plaintiffs' Amended Complaint, Defendants
26 deny the allegations therein.

27 155. In response to Paragraph 155 of Plaintiffs' Amended Complaint, Defendants
28 deny the allegations therein.

1 156. In response to Paragraph 156 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 157. In response to Paragraph 157 of Plaintiffs' Amended Complaint, Defendants
4 state that this allegation is a legal conclusion to which no answer is required of Defendants.
5 To the extent that an answer is required, Defendants deny Paragraph 157.

6 158. In response to Paragraph 158 of Plaintiffs' Amended Complaint, Defendants
7 admit that independent contractors bear responsibility for the cost and maintenance of the
8 equipment they use, and deny all remaining allegations in Paragraph 158.

9 159. In response to Paragraph 159 of Plaintiffs' Amended Complaint, Defendants
10 lack sufficient knowledge or information necessary to admit or deny Paragraph 159 and
11 therefore deny this Paragraph.

12 **V. Transportation Authority and Other Related Entities**

13 160. In response to Paragraph 160 of Plaintiffs' Amended Complaint, Defendants
14 state that this allegation is a legal conclusion to which no answer is required of Defendants.
15 To the extent that an answer is required, Defendants deny Paragraph 160.

16 161. In response to Paragraph 161 of Plaintiffs' Amended Complaint, Defendants
17 state that this allegation is not directed to Defendants and therefore no answer is required of
18 Defendants. To the extent that an answer is required, Defendants lack sufficient knowledge
19 or information to admit or deny Paragraph 161 and therefore deny the same.

20 162. In response to Paragraph 162 of Plaintiffs' Amended Complaint, Defendants
21 state that this allegation is not directed to Defendants and therefore no answer is required of
22 Defendants. To the extent that an answer is required, upon information and belief,
23 Defendants admit Paragraph 162.

24 163. Paragraph 163 is not directed to Defendants and therefore no response is
25 required of Defendants. Further, Defendants lack sufficient knowledge or information to
26 admit or deny Paragraph 163 and therefore deny the same.

27 164. In response to Paragraph 164 of Plaintiffs' Amended Complaint, Defendants
28 deny the allegations therein.

1 165. In response to Paragraph 165 of Plaintiffs' Amended Complaint, Defendants
2 state that this allegation is not directed to Defendants and therefore no answer is required of
3 Defendants. To the extent that an answer is required, Defendants lack sufficient knowledge
4 or information to admit or deny Paragraph 165 and therefore deny the same.

5 166. In response to Paragraph 166 of Plaintiffs' Amended Complaint, Defendants
6 state that this allegation is not directed to Defendants and therefore no answer is required of
7 Defendants. To the extent that an answer is required, Defendants lack sufficient knowledge
8 or information to admit or deny Paragraph 166 and therefore deny the same.

9 167. In response to Paragraph 167 of Plaintiffs' Amended Complaint, Defendants
10 state that this allegation is not directed to Defendants and therefore no answer is required of
11 Defendants. To the extent that an answer is required, Defendants lack sufficient knowledge
12 or information to admit or deny Paragraph 167 and therefore deny the same.

13 **A. The Agreement**

14 168. In response to Paragraph 168 of Plaintiffs' Amended Complaint, Defendants
15 lack sufficient knowledge or information to admit or deny this allegation and therefore deny
16 Paragraph 168.

17 169. In response to Paragraph 169 of Plaintiffs' Amended Complaint, Defendants
18 state that this allegation is a legal conclusion to which no answer is required of Defendants.
19 To the extent that an answer is required, Defendants deny Paragraph 169.

20 170. In response to Paragraph 170 of Plaintiffs' Amended Complaint, Defendants
21 deny the allegations therein.

22 171. In response to Paragraph 171 of Plaintiffs' Amended Complaint, Defendants
23 deny the allegations therein.

24 172. In response to Paragraph 172 of Plaintiffs' Amended Complaint, Defendants
25 deny the allegations therein.

26 173. In response to Paragraph 173 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations therein.

1 174. In response to Paragraph 174 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 175. In response to Paragraph 175 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations therein.

5 176. In response to Paragraph 176 of Plaintiffs' Amended Complaint, Defendants
6 assert that the Agreement speaks for itself and deny each and every remaining allegation
7 therein.

8 177. In response to Paragraph 177 of Plaintiffs' Amended Complaint, Defendants
9 deny the allegations therein.

10 178. In response to Paragraph 178 of Plaintiffs' Amended Complaint, Defendants
11 state that this allegation is a legal conclusion to which no answer is required of Defendants.
12 To the extent that an answer is required, Defendants deny Paragraph 178.

13 179. In response to Paragraph 179 of Plaintiffs' Amended Complaint, Defendants
14 state that this allegation is a legal conclusion to which no answer is required of Defendants.
15 To the extent that an answer is required, Defendants deny Paragraph 179.

16 180. In response to Paragraph 180 of Plaintiffs' Amended Complaint, Defendants
17 state that this allegation is a legal conclusion to which no answer is required of Defendants.
18 To the extent that an answer is required, Defendants deny Paragraph 180.

19 **B. Majik Leasing, LLC**

20 181. In response to Paragraph 181 of Plaintiffs' Amended Complaint, Defendants
21 admit that Majik owns a fleet of vans or vehicles and that these vehicles are available to be
22 leased by drivers for various delivery purposes. Defendants deny each and every remaining
23 allegation in Paragraph 181.

24 182. In response to Paragraph 182 of Plaintiffs' Amended Complaint, Defendants
25 admit that any individual leasing a vehicle from Majik is required to sign a Vehicle Rental
26 Agreement prior to using such vehicle. Defendants deny each and every remaining
27 allegation in Paragraph 182.

28

1 183. In response to Paragraph 183 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 **VI. RETALIATION**

4 184. In response to Paragraph 184 of Plaintiffs' Amended Complaint, Defendants
5 assert that this allegation is not directed to Defendants and therefore no answer is required of
6 these Defendants. To the extent that an answer is required, Defendants admit Paragraph 184.

7 185. In response to Paragraph 185 of Plaintiffs' Amended Complaint, Defendants
8 deny the allegations therein.

9 186. In response to Paragraph 186 of Plaintiffs' Amended Complaint, Defendants
10 assert that the allegations concerning TA and Robert Lorgeree are not directed to them and
11 therefore no answer is required of these Defendants. As to the remaining allegations,
12 Defendants admit Paragraph 186.

13 187. In response to Paragraph 187 of Plaintiffs' Amended Complaint, Defendants
14 assert that this allegation is not directed to Defendants and therefore no answer is required of
15 these Defendants. To the extent that an answer is required, Defendants deny Paragraph 187
16 on this basis.

17 188. In response to Paragraph 188 of Plaintiffs' Amended Complaint, Defendants
18 deny the allegations therein.

19 189. In response to Paragraph 189 of Plaintiffs' Amended Complaint, Defendants
20 admit that it announced a Driver Recognition Night to be held on May 5, 2012, admits that
21 the announcement was posted in IntelliQuick's Route Room, admits Drivers were asked to
22 RSVP to Becky at IntelliQuick and deny all remaining allegations therein.

23 190. In response to Paragraph 190 of Plaintiffs' Amended Complaint, Defendants
24 admit the event was moved to May 12, 2012, and that drivers were asked to RSVP to Ariana
25 in the TA office by May 8, 2012, and deny all remaining allegations therein.

26 191. In response to Paragraph 191 of Plaintiffs' Amended Complaint, Defendants
27 deny the allegations therein.
28

1 192. In response to Paragraph 192 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 193. In response to Paragraph 193 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations therein.

5 194. In response to Paragraph 194 of Plaintiffs' Amended Complaint, Defendants
6 deny the allegations therein.

7 195. In response to Paragraph 195 of Plaintiffs' Amended Complaint, Defendants
8 deny the allegations therein.

9 196. In response to Paragraph 196 of Plaintiffs' Amended Complaint, Defendants
10 deny the allegations therein.

11 197. In response to Paragraph 197 of Plaintiffs' Amended Complaint, Defendants
12 deny the allegations therein.

13 198. In response to Paragraph 198 of Plaintiffs' Amended Complaint, Defendants
14 deny the allegations therein.

15 199. In response to Paragraph 199 of Plaintiffs' Amended Complaint, Defendants
16 assert that this allegation is not directed to Defendants and therefore no answer is required of
17 these Defendants. To the extent that an answer is required, Defendants deny Paragraph 199
18 on this basis.

19 200. In response to Paragraph 200 of Plaintiffs' Amended Complaint, Defendants
20 deny the allegations therein.

21 201. In response to Paragraph 201 of Plaintiffs' Amended Complaint, Defendants
22 deny the allegations therein.

23 202. In response to Paragraph 202 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

25 203. In response to Paragraph 203 of Plaintiffs' Amended Complaint, Defendants
26 deny the allegations therein.

27 204. In response to Paragraph 204 of Plaintiffs' Amended Complaint, Defendants
28 deny the allegations therein.

1 205. In response to Paragraph 205 of Plaintiffs' Amended Complaint, Defendants
2 deny the allegations therein.

3 206. In response to Paragraph 206 of Plaintiffs' Amended Complaint, Defendants
4 deny the allegations therein.

5 207. In response to Paragraph 207 of Plaintiffs' Amended Complaint, Defendants
6 deny the allegations therein.

7 208. In response to Paragraph 208 of Plaintiffs' Amended Complaint, Defendants
8 deny the allegations therein.

9 209. In response to Paragraph 209 of Plaintiffs' Amended Complaint, Defendants
10 deny the allegations therein.

11 210. In response to Paragraph 210 of Plaintiffs' Amended Complaint, Defendants
12 deny the allegations therein.

13 211. In response to Paragraph 211 of Plaintiffs' Amended Complaint, Defendants
14 deny the allegations therein.

15 212. In response to Paragraph 212 of Plaintiffs' Amended Complaint, Defendants
16 deny the allegations therein.

17 213. In response to Paragraph 213 of Plaintiffs' Amended Complaint, Defendants
18 deny the allegations therein.

19 214. In response to Paragraph 214 of Plaintiffs' Amended Complaint, Defendants
20 admit that on or about August 27, 2012, Mr. Collinge returned all items belonging to
21 IntelliQuick and resigned from his role as a Driver and deny all remaining allegations
22 therein.

23 215. In response to Paragraph 215 of Plaintiffs' Amended Complaint, Defendants
24 deny the allegations therein.

COUNT I**FAILURE TO PAY OVERTIME AND MINIMUM WAGES IN VIOLATION OF
FLSA****(29 U.S.C. § 201 *et seq.*)**

216. In response to Paragraph 216 of Plaintiffs' Amended Complaint, Defendants incorporate by reference the answers set forth in Paragraphs 1-215 above, as though fully set forth herein.

217. In response to Paragraph 217 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 217 is a legal contention to which no answer is required of Defendants and the language in 29 U.S.C. § 206 speaks for itself.

218. In response to Paragraph 218 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 218 is a legal contention to which no answer is required of Defendants and the language in 29 U.S.C. § 207(a)(2) speaks for itself.

219. In response to Paragraph 219 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 219.

220. In response to Paragraph 220 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 220.

221. In response to Paragraph 221 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 221.

222. In response to Paragraph 222 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 222.

223. In response to Paragraph 223 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 223.

224. In response to Paragraph 224 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 224.

225. In response to Paragraph 225 of Plaintiffs' Amended Complaint, Defendants state that this allegation is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 225.

COUNT II

VIOLATION OF ARIZONA'S WAGE ACT

(A.R.S. § 23-350 et seq.)

226. In response to Paragraph 226, Defendants incorporate by reference the answers set forth in Paragraphs 1-225 above, as though fully set forth herein.

227. In response to Paragraph 227 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 227 is a legal conclusion to which no answer is required of Defendants and the language in A.R.S. § 23-351 speaks for itself.

228. In response to Paragraph 228 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 228 is a legal conclusion to which no answer is required of Defendants and the language in A.R.S. § 23-355(A) speaks for itself.

229. In response to Paragraph 229 of Plaintiffs' Amended Complaint, Defendants contend that the allegation in Paragraph 229 is a legal conclusion for which no answer is required. Defendant also asserts that the language in A.R.S. § 23-352 speaks for itself.

230. In response to Paragraph 230 of Plaintiffs' Amended Complaint, Defendants contend that the allegation in Paragraph 230 is a legal conclusion for which no answer is required. Defendant also asserts that the language in A.R.S. § 23-363 speaks for itself.

231. In response to Paragraph 231 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 231 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 231.

RESTITUTION/UNJUST ENRICHMENT

233. In response to Paragraph 233 of Plaintiffs' Amended Complaint, Defendants incorporate by reference the answers set forth in Paragraphs 1-232 above, as though fully set forth herein.

234. In response to Paragraph 234 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 234 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 234.

235. In response to Paragraph 235 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 235 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 235.

236. In response to Paragraph 236 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 236 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 236.

237. In response to Paragraph 237 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 237 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 237.

238. In response to Paragraph 238 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 238 is a legal conclusion to which no answer is

1 required of Defendants. To the extent that an answer is required, Defendants deny Paragraph
2 238.

3 239. In response to Paragraph 239 of Plaintiffs' Amended Complaint, Defendants
4 respond that the allegation in Paragraph 239 is a legal conclusion to which no answer is
5 required of Defendants. To the extent that an answer is required, Defendants deny Paragraph
6 239.

7 **COUNT IV**

8 **DECLARATORY JUDGMENT**

9 240. In response to Paragraph 240 of Plaintiffs' Amended Complaint, Defendants
10 incorporate by reference the answers set forth in Paragraphs 1-239 above, as though fully set
11 forth herein.

12 241. In response to Paragraph 241 of Plaintiffs' Amended Complaint, Defendants
13 respond that the allegation in Paragraph 241 is a legal conclusion to which no answer is
14 required of Defendants. To the extent that an answer is required, Defendants deny Paragraph
15 241.

16 242. In response to Paragraph 242 of Plaintiffs' Amended Complaint, Defendants
17 respond that the allegation in Paragraph 242 is a legal conclusion to which no answer is
18 required of Defendants. To the extent that an answer is required, Defendants deny Paragraph
19 242.

20 **COUNT V**

21 **VIOLATIONS OF FMLA** 22 **(29 U.S.C. § 2601 *et seq.*)**

23 243. In response to Paragraph 243 of Plaintiffs' Amended Complaint, Defendants
24 incorporate by reference the answers set forth in Paragraphs 1-242 above, as though fully set
25 forth herein.

26 244. In response to Paragraph 244 of Plaintiffs' Amended Complaint, Defendants
27 respond that the allegation in Paragraph 244 is a legal conclusion to which no answer is
28 required of Defendants and the language in 29 U.S.C. § 2612 speaks for itself.

246. In response to Paragraph 246 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 246 is a legal conclusion to which no answer is required of Defendants and the language in 29 U.S.C. § 2615 speaks for itself.

247. In response to Paragraph 247 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 247 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 247.

COUNT VI
RETALIATION IN VIOLATION OF FLSA
(29 U.S.C. § 201 *et seq.*)

248. In response to Paragraph 248 of Plaintiffs' Amended Complaint, Defendants deny that Plaintiff David Collinge was retaliated against for exercising his rights under the FLSA and incorporate by reference the answers set forth in Paragraphs 1-247 above, as though fully set forth herein.

249. In response to Paragraph 249 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 249 is a legal conclusion to which no answer is required of Defendants and the language in 29 U.S.C. § 215(a)(3) speaks for itself.

250. In response to Paragraph 250 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 250 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 250.

251. In response to Paragraph 251 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 251 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 251.

252. In response to Paragraph 252 of Plaintiffs' Amended Complaint, Defendants respond that the allegation in Paragraph 252 is a legal conclusion to which no answer is required of Defendants. To the extent that an answer is required, Defendants deny Paragraph 252.

AFFIRMATIVE DEFENSES

A. As a separate and distinct defense, Defendants allege that Plaintiffs' Amended Complaint and each purported claim for relief stated therein fails to state a claim upon which relief can be granted because, *inter alia*, Plaintiffs were properly classified as independent contractors.

B. As a separate and distinct defense, Defendants allege that Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations, e.g., 29 U.S.C. § 255(a) (FLSA claims limited to two years from date complaint filed, unless violations are "willful"); A.R.S. § 12-541 (claims based on Arizona state statute limited to one year).

C. As a separate and distinct defense, Defendants allege that if Plaintiffs establish that Defendants violated the FLSA, Defendants' conduct was not willful, i.e., Defendants did not know that their conduct violated the FLSA and did not show reckless disregard for whether their actions violated the FLSA and therefore, the applicable statute of limitations is two years. *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988).

D. As a separate and distinct defense, Plaintiffs' claims are barred in whole or in part by the provisions of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, because Defendants' actions taken in connection with Plaintiffs' compensation were done in good faith in conformity with and reliance upon written administrative regulations, orders, rulings, approvals, interpretations, and written and unwritten administrative practices or enforcement policies of the Administrator of the Wage and Hour Division of the United States Department of Labor. Because Defendants' acts or failure to act were in good faith and they had reasonable grounds for believing that their acts or omissions did not violate the FLSA, the Plaintiffs are not entitled to liquidated damages.

1 E. As a separate and distinct defense, Plaintiffs' claims are barred in whole or in
2 part to the extent that the work they performed falls within exemptions, exclusions,
3 exceptions, or credits provided for in Section 7 of the FLSA, 29 U.S.C. § 207.

4 F. As a separate and distinct defense, Plaintiffs' claims are barred in whole or in
5 part by the provisions of Section 11 of the Portal-to-Portal Act, 29 U.S.C. § 260, because any
6 acts or omissions giving rise to this action were done in good faith and with reasonable
7 grounds for believing that the actions or omissions were not a violation of the FLSA, and
8 Defendants assert a lack of willfulness or intent to violate the FLSA as a defense to any
9 claim by Plaintiffs for liquidated damages.

10 G. As a separate and distinct defense, Plaintiffs' claims are barred in whole or in
11 part to the extent that the work they performed falls within exemptions provided for in
12 Section 13(a) and/or (b) of the FLSA, 29 U.S.C. § 213(a) and/or (b).

13 H. As a separate and distinct defense, Plaintiffs' claims are barred in whole or in
14 part by the provisions of Section 4 of the Portal-to-Portal Act, 29 U.S.C. § 254, as to all
15 hours during which Plaintiffs were engaged in activities which were preliminary or
16 postliminary to their principal activities.

17 I. As a separate and distinct defense, Plaintiffs' claims are barred in whole or in
18 part because the work performed was *de minimis* in nature.

19 J. As a separate and distinct defense, to the extent that discovery reveals that
20 Plaintiffs have previously received compensation for their alleged unpaid regular or overtime
21 wages in connection with, or as a result of, a payment to Defendants' employees supervised
22 by the Department of Labor; or in connection with, or as a result of, a prior judicial action
23 that was resolved through a court-approved settlement or judgment, Defendants hereby
24 invoke the doctrine of waiver to bar the claims asserted by Plaintiffs.

25 K. As a separate and distinct defense, Defendants allege that Plaintiffs' claims are
26 subject to the doctrine of laches, i.e., that Plaintiffs' lack of diligence in filing the complaint
27 unduly prejudiced the Defendants and that Plaintiffs' claims must be reduced or eliminated
28 accordingly.

1 L. As a separate and distinct defense, Defendants assert that Plaintiffs' claims are
2 barred in whole or in part under the doctrine of estoppel.

3 M. As a separate and distinct defense, Defendants assert that Plaintiffs' claims
4 may be barred in whole or in part under the doctrine of failure to exhaust remedies.

5 N. As a separate and distinct defense, Defendants allege that any relief to which
6 Plaintiffs may be entitled is barred by and/or limited by the after-acquired evidence doctrine.

7 O. As a separate and distinct defense, Defendants allege that a reasonable good-
8 faith dispute existed regarding the amounts of wages, if any, which were owed by
9 Defendants to Plaintiffs. A.R.S. § 23-352(3).

10 P. As a separate and distinct defense, Plaintiffs' claims are barred or limited, in
11 whole or in part, because Defendants at all times acted in good faith and in full compliance
12 with the Family Medical Leave Act, and other relevant laws and regulations.

13 Q. As a separate and distinct defense, Plaintiffs' claims are barred or limited,
14 either in whole or in part, by Plaintiffs' failure to mitigate damages.

15 R. As a separate and distinct defense, Plaintiffs' claims are improperly joined in
16 this action.

17 S. As a separate and distinct defense, Defendants allege that the Complaint and
18 each cause of action stated therein is barred by the affirmative defenses set forth at FRCP
19 8(c) and any other applicable affirmative defense not specifically set forth herein.

20 T. As a separate and distinct defense, because the Complaint is couched in
21 conclusory and vague terms, Defendants cannot fully anticipate all affirmative defenses that
22 may be applicable to this case. Accordingly, Defendants hereby reserve the right to assert
23 additional affirmative defenses.

24 **RELIEF REQUESTED BY DEFENDANTS**

25 WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendants
26 respectfully request that this Court:

27 a. Dismiss the Plaintiffs' Amended Complaint in its entirety;

b. Deny each and every demand, claim and prayer for relief contained in Plaintiffs' Amended Complaint both as to the individual Plaintiffs and the purported class members;

c. Grant such other and further relief as the Court may deem just and proper;

d. Award Defendants their reasonable attorney fees and costs incurred in the defense of this matter.

DATED this 31st day of December, 2012

s/ Laurent R.G. Badoux

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I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, and mailed a copy of same to the following if non-registrants, this 31st day of December, 2012:

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