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7 *Attorneys for Defendants*

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 Jose A. Vega, on behalf of himself and all
11 those similarly situated,

12 Plaintiff,

13 v.

14 All My Sons Business Development, LLC, a
Delaware limited liability company; All My
15 Sons Moving & Storage of Tucson LLC, a
Delaware limited liability company; All My
16 Sons Moving & Storage of Phoenix LLC, a
Delaware limited liability company; All My
17 Sons of Mesa LLC, a Delaware limited
18 liability company,

19 Defendants.
20

Case No: 4:20-cv-00284-RCC

**FIRST AMENDED ANSWER OF
DEFENDANT
ALL MY SONS BUSINESS
DEVELOPMENT LLC**

21 For its First Amended Answer to Plaintiff’s Complaint (“the Complaint”), All My
22 Sons Business Development LLC (“AMSBD) admits, denies and alleges as follows:

23 1. The allegations in paragraph 1 are argumentative, call for a legal
24 conclusion and require no response. To the extent factual allegations were intended,
25 AMSBD denies the allegations contained in paragraph 1.

26 2. The allegations in paragraph 2 are argumentative, call for a legal
27 conclusion, and require no response. To the extent factual allegations were intended,
28 AMSBD denies the allegations contained in paragraph 2.

1 3. AMSBD admits the Court has subject matter jurisdiction. The remaining
2 allegations in paragraph 3 are argumentative, call for a legal conclusion, and require no
3 response. To the extent factual allegations were intended, AMSBD denies the remaining
4 allegations contained in paragraph 3.

5 4. AMSBD admits this Court has supplemental jurisdiction over Plaintiff
6 Vega's state law claims, if any. The remaining allegations contained in paragraph 4 are
7 argumentative, call for a legal conclusion, and require no response. To the extent factual
8 allegations were intended, AMSBD denies the remaining allegations contained in
9 paragraph 4.

10 5. AMSBD denies the allegations contained in paragraph 5.

11 6. AMSBD denies the allegations contained in paragraph 6.

12 7. The allegations contained in paragraph 7 are argumentative, call for a
13 legal conclusion, and require no response. To the extent factual allegations were
14 intended, AMSBD denies the allegations contained in paragraph 7.

15 8. The allegations contained in paragraph 8 are argumentative, call for a
16 legal conclusion, and require no response. To the extent factual allegations were
17 intended, AMSBD denies the allegations contained in paragraph 8.

18 9. The allegations contained in paragraph 9 are argumentative, call for a
19 legal conclusion, and require no response. To the extent factual allegations were
20 intended, AMSBD denies the allegations contained in paragraph 9.

21 10. AMSBD denies the allegations contained in paragraph 10.

22 11. AMSBD admits the allegations contained in paragraph 11.

23 12. AMSBD admits that it is a Delaware LLC, but denies that it does business
24 as a moving and storage company in Arizona.

25 13. The allegations in paragraph 13 pertain to another defendant. Therefore,
26 AMSBD lacks knowledge or information sufficient to form a belief about the truth of
27 the allegations contained in paragraph 13, and therefore denies them.

28

1 14. The allegations in paragraph 14 pertain to another defendant. Therefore,
2 AMSBD lacks knowledge or information sufficient to form a belief about the truth of
3 the allegations contained in paragraph 14, and therefore denies them.

4 15. The allegations in paragraph 15 pertain to another defendant. Therefore,
5 AMSBD lacks knowledge or information sufficient to form a belief about the truth of
6 the allegations contained in paragraph 15, and therefore denies them.

7 16. AMSBD admits that it has offices in Carrollton, Texas and has policies
8 relating to its employees and makes policies available to other AMS entities. AMSBD
9 denies the remaining allegations contained in paragraph 16.

10 17. AMSBD denies the allegations contained in paragraph 17.

11 18. AMSBD denies the allegations contained in paragraph 18 with respect to
12 AMSBD, and lacks knowledge or information to the extent the allegations refer to other
13 defendants and therefore denies them.

14 19. AMSBD denies the allegations contained in paragraph 19 except lacks
15 knowledge or information regarding plaintiff's residence and therefore denies the
16 allegation.

17 20. AMSBD denies the allegations contained in paragraph 20 as they relate to
18 AMSBD.

19 21. AMSBD admits that Plaintiff Vega is purporting to bring claims on behalf
20 of others. AMSBD denies the remaining allegations contained in paragraph 21.

21 22. AMSBD admits that Plaintiff Vega is purporting to bring claims on behalf
22 of others. AMSBD denies the remaining allegations contained in paragraph 22.

23 23. AMSBD denies the allegations contained in paragraph 23.

24 24. AMSBD denies the allegations contained in paragraph 24.

25 25. AMSBD denies the allegations contained in paragraph 25.

26 26. AMSBD denies the allegations contained in paragraph 26.

27 27. AMSBD denies the allegations contained in paragraph 27.

28 28. AMSBD denies the allegations contained in paragraph 28.

1 29. AMSBD admits that Plaintiff Vega is asserting claims, but denies that
2 there is any basis for the claims or the alleged class.

3 30. AMSBD denies the allegations contained in paragraph 30.

4 31. AMSBD denies the allegations contained in paragraph 31.

5 32. AMSBD denies the allegations contained in paragraph 32, including a-e.

6 33. AMSBD denies the allegations contained in paragraph 33.

7 34. AMSBD denies the allegations contained in paragraph 34.

8 35. AMSBD denies the allegations contained in paragraph 35.

9 36. AMSBD denies the allegations contained in paragraph 36.

10 37. AMSBD admits that the Complaint refers to putative class members as
11 Movers, but denies that any are entitled to assert class claims.

12 38. The allegations contained in paragraph 38 are argumentative, call for a
13 legal conclusion, and require no response. To the extent factual allegations were
14 intended, AMSBD denies the allegations contained in paragraph 38.

15 39. AMSBD denies the allegations contained in paragraph 39 as they relate to
16 AMSBD.

17 40. AMSBD denies the allegations contained in paragraph 40.

18 41. AMSBD denies the allegations contained in paragraph 41.

19 42. AMSBD denies the allegations in paragraph 42 as to AMSBD.

20 43. AMSBD denies the allegations contained in paragraph 43 as to AMSBD.

21 44. AMSBD denies the allegations contained in paragraph 44.

22 45. AMSBD denies the allegations contained in paragraph 45 except admits it
23 has policies and/or practices regarding compensation and trains its employees.

24 46. AMSBD denies the allegations contained in paragraph 46.

25 47. AMSBD denies the allegations contained in paragraph 47.

26 48. AMSBD lacks knowledge or information sufficient to form a belief about
27 the truth of the allegations contained in paragraph 48, and therefore denies them.
28

1 49. AMSBD lacks knowledge or information sufficient to form a belief about
2 the truth of the allegations contained in paragraph 49, and therefore denies them.

3 50. AMSBD denies the allegations contained in paragraph 50.

4 51. AMSBD denies the allegations contained in paragraph 51.

5 52. AMSBD denies the allegations contained in paragraph 52.

6 53. AMSBD denies the allegations contained in paragraph 53.

7 54. AMSBD denies the allegations contained in paragraph 54.

8 55. AMSBD denies the allegations contained in paragraph 55.

9 56. AMSBD denies the allegations contained in paragraph 56.

10 57. AMSBD denies the allegations contained in paragraph 57.

11 58. AMSBD lacks knowledge or information sufficient to form a belief about
12 the truth of the allegations contained in paragraph 58, and therefore denies them.

13 59. AMSBD lacks knowledge or information sufficient to form a belief about
14 the truth of the allegations contained in paragraph 59, and therefore denies them.

15 60. AMSBD denies the allegations contained in paragraph 60.

16 61. AMSBD denies the allegations contained in paragraph 61.

17 62. AMSBD admits the allegations contained in paragraph 62.

18 63. AMSBD admits that the minimum wage in Arizona is \$12 per hour for
19 2020 but denies the remaining allegations contained in paragraph 63.

20 64. AMSBD denies the allegations contained in paragraph 64.

21 65. AMSBD denies the allegations contained in paragraph 65.

22 66. AMSBD denies the allegations contained in paragraph 66.

23 67. AMSBD denies the allegations contained in paragraph 67.

24 68. The allegations contained in paragraph 68 are argumentative, call for a
25 legal conclusion, and require no response. To the extent factual allegations were
26 intended, AMSBD denies the allegations contained in paragraph 68.

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1 69. The allegations contained in paragraph 69 are argumentative, call for a
2 legal conclusion, and require no response. To the extent factual allegations were
3 intended, AMSBD denies the allegations contained in paragraph 69.

4 70. The allegations contained in paragraph 70 are argumentative, call for a
5 legal conclusion, and require no response. To the extent factual allegations were
6 intended, AMSBD denies the allegations contained in paragraph 70.

7 71. AMSBD denies the allegations contained in paragraph 71.

8 72. AMSBD incorporates its previous admissions and denials in response to
9 the allegations above.

10 73. The allegations contained in paragraph 73 are argumentative, call for a
11 legal conclusion, and require no response. To the extent factual allegations were
12 intended, AMSBD denies the allegations contained in paragraph 73.

13 74. The allegations contained in paragraph 74 are argumentative, call for a
14 legal conclusion, and require no response. To the extent factual allegations were
15 intended, AMSBD denies the allegations contained in paragraph 74.

16 75. AMSBD denies the allegations contained in paragraph 75.

17 76. The allegations contained in paragraph 76 are argumentative, call for a
18 legal conclusion, and require no response. To the extent factual allegations were
19 intended, AMSBD denies the allegations contained in paragraph 76.

20 77. AMSBD denies the allegations contained in paragraph 77.

21 78. AMSBD denies the allegations contained in paragraph 78 as they relate to
22 AMSBD.

23 79. AMSBD denies the allegations contained in paragraph 79.

24 80. AMSBD denies the allegations contained in paragraph 80.

25 81. AMSBD denies the allegations contained in paragraph 81, including a-f,
26 and denies that Plaintiff is entitled to any of the relief requested in the prayer for relief.

27 82. AMSBD incorporates its previous admissions and denials.
28

1 83. The allegations contained in paragraph 83 are argumentative, call for a
2 legal conclusion, and therefore require no response. To the extent factual allegations
3 were intended, AMSBD denies the allegations contained in paragraph 83.

4 84. AMSBD admits that it is covered by the FLSA and that its employees are
5 engaged in interstate commerce. AMSBD denies the remaining allegations contained in
6 paragraph 84.

7 85. AMSBD denies the allegations contained in paragraph 85.

8 86. AMSBD denies the allegations contained in paragraph 86.

9 87. AMSBD denies the allegations contained in paragraph 87.

10 88. AMSBD denies the allegations contained in paragraph 88 as they relate to
11 AMSBD.

12 89. AMSBD denies the allegations contained in paragraph 89.

13 90. AMSBD denies the allegations contained in paragraph 90.

14 91. AMSBD denies the allegations contained in paragraph 91, including a-e,
15 and denies that Plaintiff is entitled to any of the relief requested in the prayer for relief.

16 92. AMSBD denies that Plaintiff or any other individual is entitled to any of
17 the relief requested in paragraph 92.

18 93. AMSBD incorporates its admissions and denials in the previous
19 paragraphs.

20 94. AMSBD denies the allegations contained in paragraph 94.

21 95. The allegations contained in paragraph 95 are argumentative, call for a
22 legal conclusion, and therefore require no response. To the extent factual allegations
23 were intended, AMSBD denies the allegations contained in paragraph 95.

24 96. The allegations contained in paragraph 96 are argumentative, call for a
25 legal conclusion, and therefore require no response. To the extent factual allegations
26 were intended, AMSBD denies the allegations contained in paragraph 96.

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1 97. The allegations contained in paragraph 97 are argumentative, call for a
2 legal conclusion, and therefore require no response. To the extent factual allegations
3 were intended, AMSBD denies the allegations contained in paragraph 97.

4 98. AMSBD denies the allegations contained in paragraph 98.

5 99. AMSBD denies the allegations contained in paragraph 99.

6 100. AMSBD denies the allegations contained in paragraph 100, including a-e,
7 and denies that Plaintiff is entitled any of the relief requested in the prayer for relief.

8 101. AMSBD incorporates its previous admissions and denials to the prior
9 paragraphs.

10 102. AMSBD denies the allegations contained in paragraph 102 as they relate
11 to AMSBD.

12 103. AMSBD denies that it employed Plaintiff or any other employees in
13 Arizona and therefore denies the allegations contained in paragraph 103.

14 104. AMSBD denies the allegations contained in paragraph 104.

15 105. AMSBD denies the allegations contained in paragraph 105.

16 106. AMSBD denies the allegations contained in paragraph 106.

17 107. AMSBD denies the allegations contained in paragraph 107, including a-e,
18 and denies that Plaintiff is entitled to recover any of the relief requested in the prayer for
19 relief.

20 108. AMSBD incorporates its previous admissions and denials to the prior
21 paragraphs.

22 109. The allegations contained in paragraph 109 are argumentative, call for a
23 legal conclusion, and require no response. To the extent factual allegations were
24 intended, AMSBD denies the allegations contained in paragraph 109.

25 110. The allegations contained in paragraph 110 are argumentative, call for a
26 legal conclusion, and require no response. To the extent factual allegations were
27 intended, AMSBD denies the allegations contained in paragraph 110.

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1 111. The allegations contained in paragraph 111 are argumentative, call for a
2 legal conclusion, and require no response. To the extent factual allegations were
3 intended, AMSBD denies the allegations contained in paragraph 111.

4 112. The allegations contained in paragraph 112 are argumentative, call for a
5 legal conclusion, and require no response. To the extent factual allegations were
6 intended, AMSBD denies the allegations contained in paragraph 112.

7 113. The allegations contained in paragraph 113 are argumentative, call for a
8 legal conclusion, and require no response. To the extent factual allegations were
9 intended, AMSBD denies the allegations contained in paragraph 113.

10 114. AMSBD denies the allegations contained in paragraph 114.

11 115. AMSBD denies the allegations contained in paragraph 115, including a-e,
12 and denies that Plaintiff is entitled to recover any of the relief requested in the prayer for
13 relief.

14 116. The allegations contained in paragraph 116 do not require a response. To
15 the extent a response is required, AMSBD denies the allegations contained in paragraph
16 116.

17 **GENERAL DENIAL**

18 Defendant AMSBD denies each and every allegation of the Complaint not
19 expressly admitted herein and denies that Plaintiff has been damaged as alleged in the
20 Complaint, or at all.

21 **AFFIRMATIVE AND OTHER DEFENSES¹**

22 Defendant AMSBD asserts the following defenses:

23 1. The Complaint in whole or in part, and each cause of action contained
24 therein, fails to state a claim upon which relief can be granted.

25 2. There is no private right of action recognized for some or all of the claims
26 alleged.

27 _____
28 ¹ In asserting these defenses, Defendant does not assume the burden of proof with respect to any issue as to which applicable law places the burden of proof upon Plaintiff.

1 3. Plaintiff's request for collective treatment should be denied in that Plaintiff
2 and the members of the putative collective are not similarly situated and therefore,
3 Plaintiff cannot meet the requirements for collective treatment pursuant to § 216(b) of
4 the FLSA.

5 4. This action may not be properly maintained as a class action because
6 Plaintiff has failed to plead and cannot establish the necessary procedural elements for
7 class treatment, a class action is not an appropriate method for fair and efficient
8 adjudication of the claims described in the Complaint, common issues of fact or law do
9 not predominate, individual issues of fact or law predominate, Plaintiff's claims are not
10 representative or typical of the claims of the putative class, Plaintiff is not an adequate
11 representative for the alleged putative class, and there is not a well-defined community
12 of interest in the questions of law or fact affecting Plaintiff and the members of the
13 alleged putative class.

14 5. Plaintiff's attempt to pursue his claims as a collective action fail because
15 an independent and individual analysis of the claims of each plaintiff, opt-in plaintiff,
16 and putative class member, and each of Defendant's defenses, is required.

17 6. Plaintiff's attempt to pursue his claims on a collective action violates
18 Defendant's constitutional rights to due process because Defendant has a due process
19 right to raise every defense applicable to Plaintiff, opt-in plaintiffs, and putative class
20 members at every stage of this action.

21 7. Plaintiff's proposed class definitions are vague and overbroad.

22 8. Plaintiff and other members of the putative collective lack standing and/or
23 capacity to bring these causes of action.

24 9. Plaintiff and other members of the putative collective or classes have not
25 suffered any legally cognizable damages.

26 10. Plaintiff's claims are barred, in whole or in part, as they are without merit
27 as to both law and fact.

28

1 11. Plaintiff's claims are barred, in whole or in part, by the doctrine of full
2 payment and satisfaction.

3 12. Plaintiff's claims are barred to the extent that Defendants' actions have
4 been taken in good faith, in conformity with, and in reliance upon, rulings,
5 administrative regulations, interpretations, orders, opinions, practices, or enforcement
6 policies of the Department of Labor.

7 13. Plaintiff and others similarly situated were exempt from the overtime
8 requirements of the Fair Labor Standards Act, pursuant to the exemptions provided in
9 Section 13(b)(1) of the FLSA, including but not limited to the Motor Carrier Exemption.

10 14. Even if Plaintiff was a non-exempt employee (which he was not), some or
11 all of Plaintiff's claims would be barred to the extent Plaintiff seeks compensation for
12 time that is non-compensable and/or non-working time.

13 15. Even if Plaintiff was a non-exempt employee (which he was not), some or
14 all of Plaintiff's claims would be barred to the extent that any insubstantial or
15 insignificant periods of working time beyond the scheduled working hours of Plaintiff
16 and other members of the putative collective, which as a practical administrative matter
17 cannot be recorded precisely for payroll purposes, are *de minimus* and may be properly
18 disregarded for payroll purposes, in accordance with 29 C.F.R. § 785.47.

19 16. Even if Plaintiff was a non-exempt employee (which he was not), some or
20 all of Plaintiff's claims would be barred to the extent that Defendant is not subject to
21 liability under the FLSA for any alleged failure to pay compensation for preliminary
22 activities (performed prior to the employee's first principal activity of the work day) or
23 post-preliminary activities (performed after the employee's last principal activity of the
24 work day), in accordance with the Portal-To-Portal Act, 29 U.S.C. § 254.

25 17. Even if Plaintiff was a non-exempt employee (which he was not), some or
26 all of Plaintiff's claims would be barred to the extent Plaintiff and other members of the
27 putative collective are able to establish that they worked an inappropriate amount of
28 non-exempt work, such activity was without the knowledge and contrary to the

1 instructions of Defendants. Plaintiff and other members of the putative collective,
2 therefore, are equitably estopped from asserting a claim that was created, if at all, by
3 their own misconduct.

4 18. Plaintiff's claims are barred in whole or in part by virtue of the fact that
5 Defendant took reasonable steps to ensure that its employees were and are paid properly,
6 and despite Defendant's open door practices, at no time prior to the filing of this lawsuit
7 did Plaintiff ever bring any concerns or complaints to Defendant similar to those alleged
8 in this lawsuit. Had such claim or concern been raised, Defendant would have
9 investigated the matter and taken whatever remedial steps necessary, if any, to remedy
10 the situation.

11 19. Plaintiff and other members of the putative collective or classes have failed
12 to mitigate or take reasonable steps to avoid their alleged damages.

13 20. To the extent that Plaintiff and other members of the putative collective or
14 classes were involved in any improper activities occurring during their employment,
15 they are estopped from recovering for their claims.

16 21. Plaintiff's claims are barred by principals of equity, including unclean
17 hands, estoppel, and laches.

18 22. Some or all of Plaintiffs' claims may be barred by the applicable statute of
19 limitations.

20 23. Any actions by Defendant AMSBD were not so outrageous or extreme as
21 to warrant an award of exemplary, compensatory or other damages or relief.

22 24. AMBD did not employ plaintiff or any other putative class member.

23 25. The Court lacks personal jurisdiction over AMSBD.

24 26. Defendant is entitled to a credit or set off against amounts overpaid to
25 Plaintiff and others in the course of their employment.

26 27. This action may not be properly maintained as a class action because
27 Plaintiff cannot establish the necessary procedural elements for class treatment, a class
28 action is not an appropriate method for fair and efficient adjudication of the claims

1 described in the Complaint, common issues of fact or law do not predominate, individual
2 issues of fact or law predominate, Plaintiff's claims are not representative or typical of
3 the claims of the putative class, Plaintiff is not an adequate representative for the alleged
4 putative class, and there is not a well-defined community of interest in the questions of
5 law or fact affecting Plaintiff and the members of the alleged putative class.

6 28. Plaintiff's claims are barred, in whole or part, by the doctrines of accord,
7 satisfaction, and/or accord and satisfaction.

8 29. The claims for paid sick leave are not applicable to this Defendant, but to
9 the extent this Court may deem otherwise, Defendant acted in good faith and complied
10 or substantially complied with all legal requirements.

11 Discovery may reveal a factual basis for additional affirmative defense and,
12 therefore, Defendant AMSBD reserves the right to add any additional affirmative
13 defenses that discovery may reveal.

14 **RELIEF REQUESTED**

15 Having fully answered Plaintiff's Complaint, Defendant AMSBD respectfully
16 requests the Court take all of the following actions:

- 17 1. Dismiss Plaintiff's Complaint in its entirety with prejudice;
- 18 2. Award Defendant AMSBD its costs and attorneys' fees incurred in having
19 to defend against Plaintiff's claims;
- 20 3. Award Defendant AMSBD such other and further relief as the Court
21 deems just and proper.

22 DATED April 8, 2021.

23 JACKSON LEWIS P.C.

24 By: /s/ Amy J. Gittler

25 Amy J. Gittler

26 William L. Davis

27 Attorneys for Defendant

28

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021, 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:

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By: /s/ Amalia Tafoya

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