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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
17 Delaware limited liability company; All My
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
MOVING & STORAGE OF
PHOENIX LLC**

21 For its First Amended Answer to Plaintiff's Complaint ("the Complaint"), All My
22 Sons Moving & Storage of Phoenix LLC ("AMS-Phoenix) admits, denies and alleges as
23 follows:

24 1. The allegations in paragraph 1 are argumentative, call for a legal
25 conclusion and require no response. To the extent factual allegations were intended,
26 AMS-Phoenix denies the allegations contained in paragraph 1.
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1 2. The allegations in paragraph 2 are argumentative, call for a legal
2 conclusion, and require no response. To the extent factual allegations were intended,
3 AMS-Phoenix denies the allegations contained in paragraph 2.

4 3. AMS-Phoenix admits the Court has jurisdiction. The remaining
5 allegations in paragraph 3 are argumentative, call for a legal conclusion, and require no
6 response. To the extent factual allegations were intended, AMS-Phoenix denies the
7 remaining allegations contained in paragraph 3.

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

13 5. AMS-Phoenix denies the allegations contained in paragraph 5 except
14 admits that venue is proper as to Plaintiff Vega's claim.

15 6. AMS-Phoenix denies the allegations contained in paragraph 6 except
16 admits that the Court has personal jurisdiction over AMS-Phoenix.

17 7. The allegations contained in paragraph 7 are argumentative, call for a
18 legal conclusion, and require no response. To the extent factual allegations were
19 intended, AMS-Phoenix denies the allegations contained in paragraph 7.

20 8. The allegations contained in paragraph 8 are argumentative, call for a
21 legal conclusion, and require no response. To the extent factual allegations were
22 intended, AMS-Phoenix denies the allegations contained in paragraph 8.

23 9. The allegations contained in paragraph 9 are argumentative, call for a
24 legal conclusion, and require no response. To the extent factual allegations were
25 intended, AMS-Phoenix denies the allegations contained in paragraph 9.

26 10. AMS-Phoenix denies the allegations contained in paragraph 10.

27 11. AMS-Phoenix admits the allegations contained in paragraph 11.

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1 12. The allegations in paragraph 12 pertain to another defendant. Therefore,
2 AMS-Phoenix lacks knowledge or information sufficient to form a belief about the truth
3 of the allegations contained in paragraph 12, and therefore denies them.

4 13. The allegations in paragraph 13 pertain to another defendant. AMS-
5 Phoenix lacks knowledge or information sufficient to form a belief about the truth of the
6 allegations contained in paragraph 13, and therefore denies them.

7 14. AMS-Phoenix admits allegations contained in paragraph 14.

8 15. The allegations in paragraph 15 pertain to another defendant. AMS-
9 Phoenix lacks knowledge or information sufficient to form a belief about the truth of the
10 allegations contained in paragraph 15, and therefore denies them.

11 16. The allegations in paragraph 16 pertain to another defendant. Therefore,
12 AMS-Phoenix lacks knowledge or information sufficient to form a belief about the truth
13 of the allegations contained in paragraph 16, and therefore denies them.

14 17. The allegations contained in paragraph 17 pertain to multiple defendants.
15 The allegations are argumentative, call for a legal conclusion, and require no response.
16 To the extent factual allegations were intended, AMS-Phoenix denies the allegations
17 contained in paragraph 17.

18 18. AMS-Phoenix admits the allegations contained in paragraph 18 with
19 respect to AMS-Phoenix, and lacks knowledge or information to the extent the
20 allegations refer to other defendants and therefore denies them.

21 19. AMS-Phoenix denies the allegations contained in paragraph 19 except
22 lacks knowledge or information regarding plaintiff's residence and therefore denies the
23 allegation.

24 20. AMS-Phoenix denies the allegations contained in paragraph 20.

25 21. AMS-Phoenix admits that Plaintiff Vega is purporting to bring claims on
26 behalf of others. AMS-Phoenix denies the remaining allegations contained in paragraph
27 21.

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1 22. AMS-Phoenix admits that Plaintiff Vega is purporting to bring claims on
2 behalf of others. AMS-Phoenix denies the remaining allegations contained in paragraph
3 22.

4 23. AMS-Phoenix denies the allegations contained in paragraph 23.

5 24. AMS-Phoenix denies the allegations contained in paragraph 24.

6 25. AMS-Phoenix denies the allegations contained in paragraph 25.

7 26. AMS-Phoenix denies the allegations contained in paragraph 26.

8 27. AMS-Phoenix denies the allegations contained in paragraph 27.

9 28. AMS-Phoenix denies the allegations contained in paragraph 28.

10 29. AMS-Phoenix admits that Plaintiff Vega is asserting claims, but denies
11 that there is any basis for the claims or the alleged class.

12 30. AMS-Phoenix denies the allegations contained in paragraph 30.

13 31. AMS-Phoenix denies the allegations contained in paragraph 31.

14 32. AMS-Phoenix denies the allegations contained in paragraph 32,
15 including a-e.

16 33. AMS-Phoenix denies the allegations contained in paragraph 33.

17 34. AMS-Phoenix denies the allegations contained in paragraph 34.

18 35. AMS-Phoenix denies the allegations contained in paragraph 35.

19 36. AMS-Phoenix denies the allegations contained in paragraph 36.

20 37. AMS-Phoenix admits that the Complaint refers to putative class members
21 as Movers, but denies that any are entitled to assert class claims.

22 38. The allegations contained in paragraph 38 are argumentative, call for a
23 legal conclusion, and require no response. To the extent factual allegations were
24 intended, AMS-Phoenix denies the allegations contained in paragraph 38.

25 39. AMS-Phoenix denies the allegations contained in paragraph 39.

26 40. AMS-Phoenix denies the allegations contained in paragraph 40.

27 41. AMS-Phoenix denies the allegations contained in paragraph 41.

28 42. AMS-Phoenix denies the allegations in paragraph 42.

1 43. AMS-Phoenix denies the allegations contained in paragraph 43.

2 44. AMS-Phoenix denies the allegations contained in paragraph 44.

3 45. AMS-Phoenix denies the allegations contained in paragraph 45 except
4 admits it has policies and/or practices regarding compensation and trains its employees.

5 46. AMS-Phoenix denies the allegations contained in paragraph 46.

6 47. AMS-Phoenix denies the allegations contained in paragraph 47.

7 48. AMS-Phoenix lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations contained in paragraph 48, and therefore denies them.

9 49. AMS-Phoenix lacks knowledge or information sufficient to form a belief
10 about the truth of the allegations contained in paragraph 49, and therefore denies them.

11 50. AMS-Phoenix denies the allegations contained in paragraph 50.

12 51. AMS-Phoenix denies the allegations contained in paragraph 51.

13 52. AMS-Phoenix denies the allegations contained in paragraph 52.

14 53. AMS-Phoenix denies the allegations contained in paragraph 53.

15 54. AMS-Phoenix denies the allegations contained in paragraph 54.

16 55. AMS-Phoenix denies the allegations contained in paragraph 55.

17 56. AMS-Phoenix denies the allegations contained in paragraph 56.

18 57. AMS-Phoenix denies the allegations contained in paragraph 57.

19 58. AMS-Phoenix denies the allegations contained in paragraph 58 as they
20 relate to AMS-Phoenix.

21 59. AMS-Phoenix denies the allegations contained in paragraph 59 as they
22 relate to AMS-Phoenix.

23 60. AMS-Phoenix denies the allegations contained in paragraph 60.

24 61. AMS-Phoenix denies the allegations contained in paragraph 61.

25 62. AMS-Phoenix admits the allegations contained in paragraph 62.

26 63. AMS-Phoenix admits that the minimum wage in Arizona is \$12 per hour
27 for 2020 but denies the remaining allegations contained in paragraph 63.

28 64. AMS-Phoenix denies the allegations contained in paragraph 64.

1 65. AMS-Phoenix denies the allegations contained in paragraph 65.

2 66. AMS-Phoenix denies the allegations contained in paragraph 66.

3 67. AMS-Phoenix denies the allegations contained in paragraph 67.

4 68. The allegations contained in paragraph 68 are argumentative, call for a
5 legal conclusion, and require no response. To the extent factual allegations were
6 intended, AMS-Phoenix denies the allegations contained in paragraph 68.

7 69. The allegations contained in paragraph 69 are argumentative, call for a
8 legal conclusion, and require no response. To the extent factual allegations were
9 intended, AMS-Phoenix denies the allegations contained in paragraph 69.

10 70. The allegations contained in paragraph 70 are argumentative, call for a
11 legal conclusion, and require no response. To the extent factual allegations were
12 intended, AMS-Phoenix denies the allegations contained in paragraph 70.

13 71. AMS-Phoenix denies the allegations contained in paragraph 71.

14 72. AMS-Phoenix incorporates its previous admissions and denials in response
15 to the allegations above.

16 73. The allegations contained in paragraph 73 are argumentative, call for a
17 legal conclusion, and require no response. To the extent factual allegations were
18 intended, AMS-Phoenix denies the allegations contained in paragraph 73.

19 74. The allegations contained in paragraph 74 are argumentative, call for a
20 legal conclusion, and require no response. To the extent factual allegations were
21 intended, AMS-Phoenix denies the allegations contained in paragraph 74.

22 75. AMS-Phoenix denies the allegations contained in paragraph 75.

23 76. The allegations contained in paragraph 76 are argumentative, call for a
24 legal conclusion, and require no response. To the extent factual allegations were
25 intended, AMS-Phoenix denies the allegations contained in paragraph 76.

26 77. AMS-Phoenix denies the allegations contained in paragraph 77.

27 78. AMS-Phoenix lacks knowledge or information sufficient to admit or deny
28 and therefore denies the allegations contained in paragraph 78.

1 79. AMS-Phoenix denies the allegations contained in paragraph 79.

2 80. AMS-Phoenix denies the allegations contained in paragraph 80.

3 81. AMS-Phoenix denies the allegations contained in paragraph 81, including
4 a-f, and denies that Plaintiff is entitled to any of the relief requested in the prayer for
5 relief.

6 82. AMS-Phoenix incorporates its previous admissions and denials.

7 83. The allegations contained in paragraph 83 are argumentative, call for a
8 legal conclusion, and therefore require no response. To the extent factual allegations
9 were intended, AMS-Phoenix denies the allegations contained in paragraph 83.

10 84. AMS-Phoenix admits that it is covered by the FLSA and that its
11 employees are engaged in interstate commerce. AMS-Phoenix denies the remaining
12 allegations contained in paragraph 84.

13 85. AMS-Phoenix denies the allegations contained in paragraph 85.

14 86. AMS-Phoenix denies the allegations contained in paragraph 86.

15 87. AMS-Phoenix denies the allegations contained in paragraph 87.

16 88. AMS-Phoenix lacks knowledge or information sufficient to admit or deny
17 and therefore denies the allegations contained in paragraph 88.

18 89. AMS-Phoenix denies the allegations contained in paragraph 89.

19 90. AMS-Phoenix denies the allegations contained in paragraph 90.

20 91. AMS-Phoenix denies the allegations contained in paragraph 91, including
21 a-e, and denies that Plaintiff is entitled to any of the relief requested in the prayer for
22 relief.

23 92. AMS-Phoenix denies that Plaintiff or any other individual is entitled to
24 any of the relief requested in paragraph 92.

25 93. AMS-Phoenix incorporates its admissions and denials in the previous
26 paragraphs.

27 94. AMS-Phoenix denies the allegations contained in paragraph 94.

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1 95. The allegations contained in paragraph 95 are argumentative, call for a
2 legal conclusion, and therefore require no response. To the extent factual allegations
3 were intended, AMS-Phoenix denies the allegations contained in paragraph 95.

4 96. The allegations contained in paragraph 96 are argumentative, call for a
5 legal conclusion, and therefore require no response. To the extent factual allegations
6 were intended, AMS-Phoenix denies the allegations contained in paragraph 96.

7 97. The allegations contained in paragraph 97 are argumentative, call for a
8 legal conclusion, and therefore require no response. To the extent factual allegations
9 were intended, AMS-Phoenix denies the allegations contained in paragraph 97.

10 98. AMS-Phoenix denies the allegations contained in paragraph 98.

11 99. AMS-Phoenix denies the allegations contained in paragraph 99.

12 100. AMS-Phoenix denies the allegations contained in paragraph 100, including
13 a-e, and denies that Plaintiff is entitled any of the relief requested in the prayer for relief.

14 101. AMS-Phoenix incorporates its previous admissions and denials to the
15 prior paragraphs.

16 102. AMS-Phoenix denies the allegations contained in paragraph 102.

17 103. The allegations contained in paragraph 103 are argumentative, call for a
18 legal conclusion, and require no response. To the extent factual allegations were
19 intended, AMS-Phoenix denies the allegations contained in paragraph 103.

20 104. The allegations contained in paragraph 104 are argumentative, call for a
21 legal conclusion, and require no response. To the extent factual allegations were
22 intended, AMS-Phoenix denies the allegations contained in paragraph 104.

23 105. AMS-Phoenix denies the allegations contained in paragraph 105.

24 106. AMS-Phoenix denies the allegations contained in paragraph 106.

25 107. AMS-Phoenix denies the allegations contained in paragraph 107, including
26 a-e, and denies that Plaintiff is entitled to recover any of the relief requested in the
27 prayer for relief.

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AFFIRMATIVE AND OTHER DEFENSES¹

Defendant AMS-Phoenix asserts the following defenses:

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

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

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

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

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

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

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 7. Plaintiff’s proposed class definitions are vague and overbroad.

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

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

6 10. Plaintiff’s claims are barred, in whole or in part, as they are without merit
7 as to both law and fact.

8 11. Plaintiff’s claims are barred, in whole or in part, by the doctrine of full
9 payment and satisfaction.

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

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

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

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

26 16. Even if Plaintiff was a non-exempt employee (which he was not), some or
27 all of Plaintiff’s claims would be barred to the extent that Defendant is not subject to
28 liability under the FLSA for any alleged failure to pay compensation for preliminary

1 activities (performed prior to the employee's first principal activity of the work day) or
2 post-preliminary activities (performed after the employee's last principal activity of the
3 work day), in accordance with the Portal-To-Portal Act, 29 U.S.C. § 254.

4 17. Even if Plaintiff was a non-exempt employee (which he was not), some or
5 all of Plaintiff's claims would be barred to the extent Plaintiff and other members of the
6 putative collective are able to establish that they worked an inappropriate amount of
7 non-exempt work, such activity was without the knowledge and contrary to the
8 instructions of Defendants. Plaintiff and other members of the putative collective,
9 therefore, are equitably estopped from asserting a claim that was created, if at all, by
10 their own misconduct.

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

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

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

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

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

27 23. Any actions by Defendant AMS-Phoenix were not so outrageous or
28 extreme as to warrant an award of exemplary, compensatory or other damages or relief.

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DATED this April 8, 2021.

JACKSON LEWIS P.C.

By: /s/ Amy J. Gittler
Amy J. Gittler
William L. Davis
Attorneys for Defendant

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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4828-6790-8574, v. 3