

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRODERICK GOLDEN, AURTHUR HOUSTON, and RICKY LEE DIXON, individually and on behalf of all others similarly situated,	:	
Plaintiff,	:	DOCKET NO. 4:17-cv-844
	:	
	:	JURY TRIAL DEMANDED
	:	
v.	:	COLLECTIVE ACTION
	:	PURSUANT TO 29 U.S.C. § 216(b)
INMAN’S AUTO RESCUE LP, MICHAEL K. INMAN, INMAN’S AUTO RESCUE OF HOUSTON, LLC, and AUTO RESCUE OF SAN ANTONIO, LLC,	:	
	:	
Defendants.	:	

NOW COME Plaintiffs BRODERICK GOLDEN, AURTHUR HOUSTON, and RICKY LEE DIXON, by and through their attorneys, Blanchard & Walker PLLC and Berger & Montague, P.C., on behalf of themselves and on behalf of all others similarly situated, bring this Complaint against Defendants as follows:

COLLECTIVE ACTION COMPLAINT

1. This is a collective action brought pursuant to 29 U.S.C. §216(b) by Plaintiffs Broderick Golden, Aurthur Houston, and Ricky Lee Dixon (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, which arises from Defendants’ willful violation of the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.*, for failure to pay proper minimum wage and overtime wages for all hours of work performed by its employees.

2. Defendants Inman’s Auto Rescue of Houston, LLC, Auto Rescue of San Antonio, LLC, Inman’s Auto Rescue LP, and Michael K. Inman (collectively, “Defendants” or “Auto Rescue”), employ Plaintiffs and others similarly situated as roadside assistance technicians to

provide services to motorists whose vehicles have suffered a mechanical failure that leaves the operator stranded, such as getting a flat tire, being locked out of their car, running out of fuel, or a dead battery.

3. Plaintiffs bring this collective action on behalf of themselves and others similarly situated to challenge Defendants' unlawful policy and practice of misclassifying their roadside assistance technicians as "independent contractors" when they are properly classified as employees.

4. By misclassifying their roadside assistance technicians as "independent contractors," Defendants violated the FLSA by failing to pay their workers minimum wage and overtime for all time worked in excess of forty hours per week.

5. Plaintiffs bring this claim under the FLSA on behalf of all similarly situated employees who may choose to opt in to this action pursuant to 29 U.S.C. §216(b).

PARTIES

6. Plaintiff Broderick Golden ("Golden") is a citizen and resident of Houston, Texas. Golden worked for Defendants as a roadside assistance technician from August 2011 to on or about December 2015. Pursuant to 29 U.S.C. § 216(b), Golden has consented in writing to being a Plaintiff in this action. *See Exhibit A.*

7. Plaintiff Aurthur Houston ("Houston") is a citizen and resident of Houston, Texas. Houston worked for Defendants as a roadside assistance technician from 2013 until on or about November 2015. Pursuant to 29 U.S.C. § 216(b), Houston has consented in writing to being a Plaintiff in this action. *See Exhibit B.*

8. Plaintiff Ricky Lee Dixon ("Dixon") is a citizen and resident of San Antonio, Texas. Dixon worked for Defendants as a roadside assistance technician from 2012 until on or

about August 2015. Pursuant to 29 U.S.C. § 216(b), Dixon has consented in writing to being a Plaintiff in this action. *See* Exhibit C.

9. Defendant Inman's Auto Rescue LP, is a Texas limited partnership with its corporate headquarters located in the City of Lewisville, Texas.

10. Defendant Inman's Auto Rescue of Houston, LLC is a Texas limited liability company doing business in Texas with its principal office listed at 359 Lake Park Road, Suite 124, Lewisville, Texas 75057.

11. Defendant Auto Rescue of San Antonio, LLC is a Texas limited liability company doing business in Texas with its principal office listed at 359 Lake Park Road, Suite 124, Lewisville, Texas 75057.

12. Defendant Michael K. Inman ("Inman") is a resident of the State of Texas and is the majority limited partner and president of Defendant Inman's Auto Rescue, LP, and is the manager of Auto Rescue of Houston, LLC. On information and belief, Inman directs and controls the activities of all Defendants.

13. The business entities (Defendants Inman's Auto Rescue LP, Inman's Auto Rescue of Houston, LLC, and Auto Rescue of San Antonio, LLC) constitute a single integrated enterprise and/or acted as a joint employer of Plaintiffs and others similarly situated, in that the entities were commonly owned and/or operated by Defendant Michael K. Inman, shared common policies regarding the employment and compensation of roadside assistance technicians, and shared common management.

14. The business entities (Defendants Inman's Auto Rescue of Houston, LLC, Auto Rescue of San Antonio, LLC, and Inman's Auto Rescue LP) are jointly and severally liable for

Plaintiffs' FLSA claim because they constitute a single integrated enterprise and/or acted as joint employer of Plaintiffs and others similarly situated.

15. The individual Defendant (Michael K. Inman) is jointly liable for the FLSA violations as owner, officer, and/or manager of the business entities who possessed substantial control over the entities' actual operations and employment decisions.

JURISDICTION AND VENUE

16. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, because Plaintiffs have brought a claim pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

17. Venue is proper in this Court because Plaintiffs reside within this judicial district, and because a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred within this District.

STATEMENT OF FACTS

18. Auto Rescue provides roadside services to stranded motorists whose vehicles have suffered a mechanical failure that leaves the operator stranded, such as a flat tire, being locked out of their car, running out of fuel, or a dead battery.

19. As a condition of employment, Auto Rescue requires its roadside assistance technicians to sign an "Independent Contractor Agreement" (the "Agreement") that mischaracterizes each roadside assistance technician as an "independent contractor."

20. The Agreement is designed to facilitate Defendants' intentional misclassification of employees and to conceal the employer-employee relationship between the roadside assistance technicians and Auto Rescue.

21. In fact, Auto Rescue maintains the absolute right to control and direct the work of its roadside assistance technicians by, among other things:

- a. Assigning roadside assistance technicians to calls and punishing technicians who fail to accept a call by not giving the technician work for a period of time;
- b. Requiring roadside assistance technicians to wear particular clothing and to display specific branding on their vehicles;
- c. Issuing rules for roadside assistance technicians regarding who can be in the technicians' vehicles during calls;
- d. Prescribing rules on how roadside assistance technicians are to conduct themselves while on calls;
- e. Controlling the dispatch of roadside assistance service calls by Defendant Inman Auto-Rescue; and
- f. Equipping new roadside assistance technician hires with specific tools and providing a GPS tracking device to install on the new technician's vehicle, and, on occasion, Agents of Inman Auto Rescue visiting the new technician to assist with proper GPS set-up.

22. While Defendants (mis)classified Plaintiffs and others similarly situated as “independent contractors,” Defendants retained the absolute right to control and direct the work of Plaintiffs and others similarly situated. Further, the nature of the services that they performed, and the manner in which they performed these services, made it clear that Plaintiffs were actually “employees” within the meaning of the FLSA.

23. Plaintiffs and others similarly situated are not paid hourly wages. Rather, they are paid on a “per call” basis for each call they receive, respond to, and assist.

24. Defendants did not provide Plaintiffs and others similarly situated with payroll statements or other documentation that reflected the actual number of hours that Plaintiffs worked.

25. Plaintiffs and others similarly situated are on call 24 hours a day, 7 days a week. They regularly work in excess of 40 hours a week, but they are not paid any overtime. For example, Plaintiff Broderick Golden recalls routinely working more than 100 hours a week. Likewise, Plaintiff Aurthur Houston remembers routinely working more than 80 hours a week. Likewise, Plaintiff Ricky Lee Dixon remembers routinely working more than 50 hours a week.

COLLECTIVE ACTION

26. This Cause of Action is brought as a collective action under the FLSA, 29 U.S.C §216(b).

27. Plaintiffs bring this Cause of Action on behalf of themselves all other similarly situated roadside assistance technicians who have worked for Defendants between February 2014 and the date of final judgment in this matter.

28. Plaintiffs and other roadside assistance technicians are “similarly situated,” as that term is used in 29 U.S.C. § 216(b), in that they are all subject to Defendants’ common plan or practice of misclassifying technicians as independent contractors, not paying them overtime for all hours worked beyond forty (40) in a given week, and not ensuring that they receive at least the federal minimum wage for all weeks worked. Thus, resolution of this action requires inquiry into common facts, including, *inter alia*, Defendants’ common compensation, timekeeping and payroll practices.

29. The similarly situated roadside assistance technicians are known to Defendants, are readily identifiable, and may be located through Defendants’ records, as well as the records of any payroll companies that Defendants have utilized. Defendants have employed, and continue to employ, many roadside assistance technicians throughout the State of Texas. These similarly situated employees may be readily notified of this action through direct U.S. mail and/or other

appropriate means, and allowed to opt into it pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

30. Copies of Golden's, Houston's, and Dixon's consents to bring their claims for unpaid minimum and overtime wages under FLSA as a representative action are attached hereto as Exhibits A, B, and C, respectively.

CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
COLLECTIVE ACTION
Failure to Pay Overtime
(Named Plaintiffs and opt-ins against all Defendants)

31. Plaintiffs incorporate herein all previously stated allegations.

32. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §207(a)(1), an employer must pay an employee overtime at a rate not less than one and a half (1.5) times the employee's regular rate of pay for all hours worked in excess of forty hours per week.

33. The FLSA allows an employer to pay on a piece-rate basis, provided that the employer pays for all hours worked, including non-productive hours, and pays a premium for hours worked over forty hours in a week, based on the employee's regular rate of pay. 29 U.S.C. §207(a) and (g); 29 C.F.R. § 778.111.

34. A piece-rate employee's regular rate of pay is determined by "adding together his total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid[.]" 29 C.F.R. § 778.111. Once the regular rate has been established, the piece-rate overtime is compensated at one and one-half times that regular rate for hours in excess of 40 that workweek.

Where there is no agreement between the employer and the employee made prior to performance of the work, the FLSA does not permit the employer to calculate a pieceworker's regular rate of pay by any other method. *See* 29 U.S.C. §207(g).

35. Plaintiffs have regularly worked in excess of forty hours per week but have not been paid overtime premium pay for hours worked in excess of forty hours per week.

36. Defendants knowingly, intentionally, and willfully failed to pay Plaintiffs overtime premium pay for hours worked in excess of forty hours per week.

37. As a direct and proximate result of Defendants' willful unlawful conduct, Plaintiffs have suffered, and will continue to suffer, lost wages and other damages.

38. This claim is brought on behalf of a class of similarly situated individuals who may choose to "opt in" to this case, pursuant to 29 U.S.C. § 216(b).

JURY TRIAL DEMAND

39. Plaintiffs demand a trial by jury for all issues of fact.

RELIEF REQUESTED

WHEREFORE, Plaintiffs Broderick Golden, Aurther Houston, and Ricky Lee Dixon, and on behalf of all other persons similarly situated, known and unknown, request that this Court enter the following relief:

- a. Permission for individuals throughout the State of Texas who performed work for Defendants, are classified as independent contractors, and have not been paid minimum wage or overtime for hours greater than forty (40) worked in a week, to opt-in to this action pursuant to § 216(b) of the FLSA;
- b. All damages to which the named Plaintiffs and class members may be entitled;

- c. Liquidated and multiple damages as allowed by law, including double damages under the FLSA;
- d. An injunction prohibiting Defendants from further violations of the law as described here;
- e. Post-judgment assignment of attorney's fees and costs; and
- f. Any other relief to which Plaintiffs and class members may be entitled.

Dated: March 16, 2017

Respectfully submitted,

/s Shanon J. Carson

Shanon J. Carson

Fed. Id. 2330781

PA State Bar No.: 85957

**ATTORNEY IN CHARGE FOR
PLAINTIFFS**

Sarah R. Schalman-Bergen

Fed. Id. 2330780

PA State Bar No.: 206211

Eric Lechtzin

Fed. Id. (application pending)

PA State Bar No.: 62096

CA State Bar No. 248958

NJ State Bar No.: 011841992

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**ATTORNEYS FOR PLAINTIFFS
BRODERICK GOLDEN, AURTHUR
HOUSTON, AND RICKY LEE DIXON**

Exhibit A

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216(b)

1. I was misclassified as an independent contractor performing work on behalf of Inman's Auto Rescue LP and related companies ("Auto Rescue") as a roadside technician to assist stranded drivers, when in fact I was an employee of Auto Rescue. I consent and agree to pursue my claims in a lawsuit arising out of my employment.
2. During the time I worked for Auto Rescue, I worked more than forty hours in certain weeks. I have not been paid overtime (time-and-a-half) for these hours.
3. I understand that the lawsuit will be brought under the Fair Labor Standards Act, 29 U.S.C. §201, et seq. I hereby consent, agree, and "opt in" to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action. I hereby designate David Blanchard, Esq., Blanchard & Walker PLLC and additional counsel as he may associate with, to represent me for all purposes in this action.

Signature: _____  _____ Date: _____ 12/5/2016 _____

Exhibit B

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216(b)

1. I was misclassified as an independent contractor performing work on behalf of Inman's Auto Rescue LP and related companies ("Auto Rescue") as a roadside technician to assist stranded drivers, when in fact I was an employee of Auto Rescue. I consent and agree to pursue my claims in a lawsuit arising out of my employment.
2. During the time I worked for Auto Rescue, I worked more than forty hours in certain weeks. I have not been paid overtime (time-and-a-half) for these hours.
3. I understand that the lawsuit will be brought under the Fair Labor Standards Act, 29 U.S.C. §201, et seq. I hereby consent, agree, and "opt in" to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action. I hereby designate David Blanchard, Esq., Blanchard & Walker PLLC and additional counsel as he may associate with, to represent me for all purposes in this action.

Signature: *Matthew Page* Date: 12-9-16

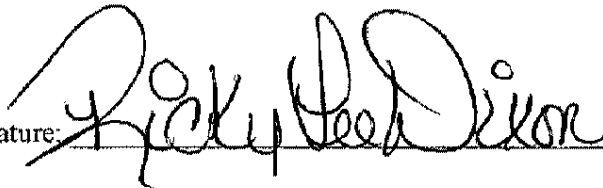
Exhibit C

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216(b)

1. I was misclassified as an independent contractor performing work on behalf of Inman's Auto Rescue LP and related companies ("Auto Rescue") as a roadside technician to assist stranded drivers, when in fact I was an employee of Auto Rescue. I consent and agree to pursue my claims in a lawsuit arising out of my employment.
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3. I understand that the lawsuit will be brought under the Fair Labor Standards Act, 29 U.S.C. §201, et seq. I hereby consent, agree, and "opt in" to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action. I hereby designate David Blanchard, Esq., Blanchard & Walker PLLC and additional counsel as he may associate with, to represent me for all purposes in this action.

Signature:



Date:



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each cell contains a list of legal categories with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.