IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

DAVID BROWNE, ANTONIO CALDWELL, and LUCRETIA HALL, *on behalf of themselves and those similarly situated,* PLAINTIFFS v. P.A.M. TRANSPORT, INC., *et al.* DEFENDANTS.	**Civil Action No.**: 5:16-cv-05366

MEMORANDUM OF LAW RELATED TO CHOICE-OF-LAW ANALYSIS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

In a class action potentially implicating multiple states' laws, the Court must conduct a choice-of-law analysis as part of its class certification analysis. If that analysis demonstrates that the Court will have to apply different substantive laws to different class members, based on highly individualized circumstances requiring a detailed merits analysis for each class member, this individualized inquiry will preclude a finding that common issues predominate over individualized issues. If, however, the choice-of-law analysis demonstrates that all class members will be subject to the same law, or that a reasonable plan for sub-classing will allow for uniform choice-of-law analyses for each sub-class, choice-of-law issues will not preclude Rule 23 class certification.

Here, the conflicts-of-law analysis for Plaintiffs and putative class members' state law claims support class certification because that analysis demonstrates that Arkansas law can and should apply to all class members' claims. Applying Arkansas law is both constitutionally permitted, and consistent with Arkansas choice-of-law principles. Accordingly, while the Court must conduct a choice-of-law analysis in order to certify this class, the result of that analysis demonstrates that Arkansas law applies to all putative class members, thereby **supporting** class certification, as the uniform application of Arkansas law is a common issue of law shared by all class members.

II. LEGAL ARGUMENT

A. If the Court determines that Arkansas law can never apply extraterritorially, the instant matter raises no conflicts-of-law issues which would preclude Rule 23 certification.

Plaintiffs argued in opposition to Defendants' Motion for Judgment on the Pleadings that while Arkansas statutory wage laws would not apply extraterritorially to employees with no significant contacts with Arkansas, applying Arkansas statutory wage laws to work class members

perform for PAM, an Arkansas employer, under direct monitoring, supervision, and control from Arkansas, was subject to Arkansas statutory wage law under choice-of-law principles. Under this theory, Arkansas law could be applied to Plaintiff Browne's employment even while he drove in Texas, and the Court would have to conduct a conflicts analysis to determine whether Arkansas or Texas would be applied in this particular action.

However, if this Court concludes that Arkansas law has no extraterritorial effect, but only applies to work performed in Arkansas, there would be no conflicts of law unless because it is permitted under both Arkansas choice-of-law principles and the Constitution to apply Arkansas law to a non-resident of Arkansas working for an Arkansas employer in Arkansas. Accordingly, if the Court does rule in such manner, certification of a Rule 23 class for all drivers for the time they were working while physically located in Arkansas would pose no conflicts-of-law issues and would instead support class certification as a common issue of law applicable to all putative class members.

B. Legal Standard for Choice-of-Law Analysis in Class Certification Motions pursuant to Rule 23(b)(3)

As part of a Rule 23 class certification analysis, the Court should conduct a choice-of-law analysis with respect to each putative class member to determine what effect, if any, such analysis would have on the certifiability of the class or classes. *In Re St. Jude Medical, Inc.*, 425 F.3d 1116, 1120 (8th Cir. 2005). This choice-of-law analysis has both a constitutional dimension and a state law conflicts analysis. The constitutional analysis asks whether a single state's law can be constitutionally applied to all class members claims, and, if not, whether a multi-state class action with state law sub-classes would remain manageable such that certification is appropriate. The state law conflicts analysis applies the conflicts-of-law rules of the state in which this Court sits, Arkansas, and then determines which laws would apply to class members' claims. *See Heating &*

Air Specialists, Inc. v. Jones, 180 F.3d 923, 928 (8th Cir. 1999); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941). Thus, the "conflicts and choice-of-law analysis is interwoven with the certifying court's Rule 23(b)(3) predominance determination." *See Ramthun v. Bryan Career Coll.-Inc.*, 93 F. Supp. 3d 1011, 1019 (W.D. Ark. 2015).

"[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Id.* (quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312–13 (1981)). While a forum state typically has no obligation to apply another state's laws, the forum state's laws "may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them." *Phillips Petrol. Co. v. Shutts*, 472 U.S. 797, 822 (1985). However, because the burden to demonstrate a choice-of-law decision is constitutional is lower than the burden under most states' choice-of-law rules, it is frequently the case under the Full Faith and Credit Clause that a court can lawfully apply either the law of one State or the contrary law of another." *Franchise Tax Bd. of California v. Hyatt*, 538 U.S. 488, 494, 123 S. Ct. 1683, 1687, 155 L. Ed. 2d 702 (2003).

In Arkansas, a conflict of laws exists if the laws of two different states would produce different results based on the same set of facts. *Bettis v. Bettis*, 96 Ark. App. 101, 239 S.W.3d 5, 6 (2006). In resolving a choice-of-law issue, the court must first determine what type of claim is involved because courts employ different choice-of-law methods depending on the claim. *Lane v. Celadon Trucking, Inc.*, 543 F.3d 1005, 1007 (8th Cir. 2008). A separate analysis is done for each claim at issue, a process known as depecage. *Ewing v. St. Louis-Clayton Orthopedic Grp., Inc.*, 790 F.2d 682, 686 (8th Cir. 1986).

C. Class members had significant and continuing contact with Arkansas throughout their employment with Defendant.

Arkansas has significant contacts and aggregation of contacts with every class member such that the choice of Arkansas substantive law to govern class members' entire employment with Defendant is appropriate under Arkansas' choice-of-law rules, uniform for all class members, and would not raise any due process or jurisdictional concerns under the U.S. Constitution. These systematic and continuing contacts also support applying Arkansas law under Arkansas' choice-of-law rules.

From 2013 until 2016, the majority of the relevant class period, Defendants conducted orientations for new drivers in Tontitown, Arkansas, at PAM's headquarters. *See* Stewart 30(b)(6) Dep., Ex. 1-E at 23:23-24:15. Moreover, drivers **became** employees of PAM at the time they began orientation in Arkansas. *Id.* at 24:16-21. Defendant processes drivers job applications in Arkansas. Christensen 30(b)(6) Dep., at 12:21-13:05.

Defendant also **admits** that drivers' employment is principally located in and has a substantial contact with Arkansas. In the employment manual that Defendant distributes to all of its drivers, Defendants state the following:

> **Your employment is principally localized in the state of Arkansas and although you will travel through many states, your headquarters and hub of operations will be our facility in Tontitown, Arkansas. Your work will require you to travel regularly in many states over the road.**

See Driver Manual, Ex. 1-A at at PAM000276 (emphasis added).

This admission of a party opponent is corroborated by the actual experiences of drivers. The vast majority of supervision occurs either by real-time Qualcomm message or phone, with the supervisors, called Driver Managers, located in Arkansas. Rogers Dep., Ex. 1-P at 26:07-19. The involvement of these Driver Managers in drivers' daily activities and operations is substantial; Driver Managers review planned loads for drivers, review drivers' hours-of-service clocks, and

decide whether to dispatch the load to the driver from Arkansas. Clark Dep., Ex. 1-T at 23:22-24:2; 30:1-14; Johnson Dep., Ex. 1-Q at 36:15-24; 37:1-14. While the driver is delivering the load, the Driver Manager will often alert the driver to their likely next load in what is referred to a preplan, doing this from Arkansas, and using computer systems housed in Arkansas. Clark Dep. Ex. 1-T at 32:18-33:08; Johnson Dep., Ex. 1-Q at 39:23-40:06. And Driver Managers are able to see where drivers are in real time, what the driver is doing, and how much time the driver has left to drive under the DOT hours-of-service rules. Rogers Dep., Ex. 1-P at 29:20-31:03; Johnson Dep., Ex. 1-Q at 18:11-16; 21:15-24. Driver Managers at the Arkansas headquarters can send Qualcomm messages from their desks in real-time to their drivers' trucks. Rogers Dep., Ex. 1-P at 34:11-22.

Furthermore, the communication with Arkansas is bi-directional—drivers are required to report their activities such as confirming receipt of a new load, arriving at a shipper, getting loaded, leaving the shipper, and other activities by sending pre-formed Qualcomm macro messages. Johnson Dep., Ex. 1-Q at 40:20-22; 44:07-25. The proper sending of these macros automatically updates Defendant's Arkansas-based computer system. Johnson Dep., Ex. 1-Q at 49:09-51:07. Failure to properly send these macros results in the Driver Managers reviewing GPS records to determine the position of the driver, and then messaging or calling the driver to confirm the missing information. Johnson Dep., Ex. 1-Q at 45:04-46:10.

The Safety Department, which, in addition to ensuring safe equipment and safe and secure driving, monitors drivers' DOT hours-of-service through its Log Auditing department, is primarily based at PAM's headquarters in Arkansas, Gray Dep., Ex. 1-T, at 31:16-32:2; Allen Dep., Ex. 1-R at 11:03-13, and, through the Log Auditors or other safety staff, regularly audit, monitor, and communicate with drivers to ensure drivers are logging time consistent with Defendant's DOT HOS logging policies. Allen Dep., Ex. 1-R at 23:08-24:1. Moreover, these audits and meetings

provide granular and detailed information regarding drivers' work, allowing for to-the-minute supervision and review of drivers' activities when necessary. Allen Dep., Ex. 1-R at 52:21-53:13

Moreover, it is undisputed drivers work both in Arkansas and other states, such that performing interstate deliveries in other states do not undermine Arkansas' position as the hub, headquarters, and most important forum for drivers' work. Attached to this motion are summaries of the time certain opt-in plaintiffs logged time in various different states under HOS Duty Status Line 3 "Driving" and Line 4 "On-Duty, Not Driving." *See* Declaration of Daeun Kim, attached hereto as Ex. 2, Driver Summaries, Ex. 2-B. These summaries are demonstrative only, but show two things: (1) potential class members spent significant amounts of time working in Arkansas, and (2) class members typically worked significant amounts of time in various states. And Plaintiffs' expert has certified that he is able to analyze Defendant's data records and determine when a driver was present in any particular state. *See* Speakman Declaration, Ex. 3, at ¶ 20.

It is certainly true that drivers spent time working in many other states—but all drivers are similarly situated in that they worked in multiple states, they routinely and consistently worked outside their home states, and the hub and center of their employment was Arkansas. These connections are more than enough to ensure that application of Arkansas law to all class members claims—even for time spent outside Arkansas—is consistent with due process because of the factual connection Arkansas always maintains to drivers' work, no matter their physical location. Accordingly, the application of Arkansas law would not be arbitrary nor unfair. Moreover, as set forth below, under Arkansas' choice-of-law rules, Arkansas law is the most appropriate law to apply to all Rule 23 class members claims. Finally, an analysis of other states' wage laws demonstrates that any conflicts are minimal at best, and do not warrant applying any law but that of Arkansas to Plaintiffs and putative class members claims.

D. Under Arkansas choice-of-law rules, the Court should apply Arkansas law to the Rule 23 class members' claims.

Here, to resolve the choice-of-law issues for the Rule 23 class, the Court will have to have to conduct a choice-of-law analysis for the substantive sub-classes set forth in Paragraph 33 of Plaintiffs' First Amended Complaint. *See* ECF Doc. 7 at ¶ 33. Sub-class 1 and Sub-class 2 seek unpaid minimum wages under the Arkansas Minimum Wage law for time-spent driving over-the-road under Count II. Sub-class 3 allege failure to pay wages in legal tender in violation of the Arkansas Wage Payment Law (Count III). Sub-class 4 alleges that Defendant failed to pay all wages due at discharge under the Arkansas Wage Payment Law (Count IV), which also resulted in unjust enrichment under Arkansas common law (Count V). Sub-class 5 alleges that Defendants failed to pay agreed upon interest on class members' escrow accounts, resulting in either unjust enrichment or breach of contract under Arkansas common law (Count VI and VII).

Conducting a depecage analysis, the Arkansas Minimum Wage law claims set forth in Count II should be analyzed either under a contract choice-of-law analysis or a tort choice-of-law analysis. Under Arkansas' tort choice-of-law analysis, Arkansas courts apply *lex loci delicti*, the law of the place of injury, but also applies Professor Leflar's five choice-influencing factors, which are: (1) predictability of results; (2) maintenance of interstate order, (3) simplification of the judicial task, (4) advancement of the forum's governmental interests, and (5) application of the better rule of law. *Ganey v. Kawasaki Motors Corp., U.S.A.*, 366 Ark. 238, 251, 234 S.W.3d 838, 846 (2006). The first factor concerns the predictability of results, with the ideal being that the resolution of the litigation on a given set of facts should be the same regardless of where the litigation occurs in order to prevent forum shopping. *Schubert v. Target Stores, Inc.*, 360 Ark. 404, 410, 201 S.W.3d 917, 922 (2005). The second consideration, maintenance of interstate order, is of less importance in most claims that sound in tort, because out-of-state entities are unlikely to

engage in negligent conduct in one state in order to avail themselves of that state's laws as compared to their domicile state. *Id.* at 410. The third consideration, simplification of the judicial task, is given little importance, "because the law exists not for the convenience of the court, but for society and its members." *Id.* The fourth consideration, advancement of the forum's governmental interests, requires the Court to examine the Arkansas contacts to the claim to decide Arkansas' interests. *Id.* Finally, the fifth consideration is the application of the better rule of law. *Id.* The Arkansas Supreme Court has held that applying a law such that it would shield a party from tort liability is the worse law under the fifth consideration. *Id.* at 412.

For claims that sound in contract, Arkansas applies the center of gravity approach to determine the choice of law governing a multi-state contract. *Standard Leasing Corp. v. Schmidt Aviation, Inc.*, 264 Ark. 851, 855–56, 576 S.W.2d 181, 184 (1979); *Heating & Air Specialists, Inc. v. Jones*, 180 F.3d 923, 928 (8th Cir. 1999). Under this test, the court determines whether Arkansas or another state had the most significant contacts with the contracts at issue. *Heating & Air Specialists*, 180 F.3d at 930. It is unclear if the Arkansas Minimum Wage Act should be analyzed under tort or contract conflict principles. However, the Arkansas Wage Payment Law and unjust enrichment and contract claims sound in contract, and, accordingly, should be analyzed under Arkansas' contracts choice-of-law rules.

1. Under a traditional application of *Lex Loci Delicti,* the place of injury is in Arkansas as the place of payment and the place where decisions regarding payment were made.

Under *lex loci delicti*, the traditional choice-of-law rule for torts, damages for injuries rely on the substantive law of the state where the injury occurred. *Wallis v. Mrs. Smith's Pie Co.*, 261 Ark. 622, 626, 550 S.W.2d 453, 455 (1977). Here, the injury was Defendant's alleged failure to pay the proper wages, a decision made and executed in Arkansas. Accordingly, *lex loci delicti* supports the application of Arkansas law.

2. The first Leflar factor, predictability of results, supports applying Arkansas law to the minimum wage claims of class members.

Dr. Robert A. Leflar described his first factor, predictability of results, as follows:

> Predictability of results includes the ideal that parties to a consensual transaction should be able to know at the time they enter upon it that it will produce, by way of legal consequences, the same socioeconomic consequences (usually based upon the assumed validity of the transaction) regardless of where litigation occurs so that forum-shopping will benefit neither party. They should be able to plan their transaction as one with predictable results. At least this is an ideal for some kinds of transactions.
>
> Protection of the justified expectations of parties to a transaction is achieved to the extent that the results are reasonably predictable in advance. A rule that permits parties to select at the time of their transaction the state whose law is to govern it serves this purpose.

ROBERT A. LEFLAR, LUTHER L. MCDOUGAL III, AND ROBERT L. FELIX, AMERICAN CONFLICTS LAW § 103 at 290 (4th ed.1986).

This factor, the predictability of results, "is most relevant when parties have expectations about the applicable law, such as in 'consensual transactions where people should know in advance what law will govern their act.' *Tyler v. Alltel Corp.,* 265 F.R.D. 415, 426 (E.D. Ark. 2010).

Here, Defendant informed Plaintiffs and putative class members that Arkansas was the hub and center of their employment. The putative class members further understand that they are being hired to work all over the United States, not just in their home domicile. Accordingly, the reasoned expectations of all parties to the employment relationship support finding that (a) a single state's labor protections should apply to the class members' multi-state employment; (b) the center of employment—i.e., Arkansas—is a more appropriate and more predictable state for purposes of choice-of-law, allowing Defendant to ensure it complies with Arkansas minimum wage laws and to pay the same employees the same wages while they're traveling across America, instead of either paying each driver based on that driver's domicile (encouraging carriers to **forum-shop** with

their drivers' domicile) or paying each driver based on what state the driver happens to be traveling in on any particular day or week.

Accordingly, while this factor typically has little relevance to tort claims involving accidents, where the "tort" is a statutory tort related to the enforcement of labor standards, and is being applied to multi-state employment, this factor strongly supports applying a single state's law which has the most significant contacts to the work as a whole, in this case, Arkansas.

3. The second Leflar factor, maintenance of interstate order, supports applying Arkansas state wage laws to class members' multi-state employment.

The second factor, maintenance of interstate order, favors application of the law of the state with the "more significant relationship to the parties." *Ganey*, 366 Ark. at 252. Here, as outlined above, Arkansas has the most significant relationship to the parties and the claims at issue. The employment contracts began and were centered in Arkansas; daily supervision over drivers' tours of duty were centered in Arkansas with Driver Managers who micro-managed and monitored each drivers' work in real-time. While a driver may travel from state to state, even in the same day, the connection to Arkansas was constant. A driver's time spent in his home state would often be incidental to his employment, a coincidence of the delivery that might not even allow the driver to return to his home.

Consider a driver who resides in New Mexico, has not returned home for three weeks, starts his day in Oklahoma, drives an hour to the Texas border, spends an hour driving and picking up a load in Texas, and then, drives an hour to the Arkansas border, and then drives three hours driving through Arkansas, and two hours driving in Tennessee where he stops for the night, all while receiving assignments from and staying in regular contact with his Driver Manager in Arkansas. Should New Mexico law apply to this day's work, when the driver has not been in New Mexico for three weeks? Should Oklahoma law apply, when the driver started his day in

Oklahoma, but only spent an hour there? Should Texas law apply, since the load was picked up there, even though he only spent two hours driving in Texas? Should Tennessee law apply, since this is where the driver stopped for the night?

While it would not be unfeasible to pay interstate drivers different minimum wage rates based on the state they were driving in, the second Leflar factor does not require courts to apply such a framework to claims such as these. Where Arkansas has the most significant contacts with putative class members' employment, the second factor supports applying Arkansas law to these claims.

4. The third Leflar factor, simplification of the judicial task, is the least important Leflar factor.

As noted above, the simplification factor "is not a paramount consideration, because the law at issue does not exist for the convenience of the court that administers it, but for society and its members." *Schubert v. Target Stores, Inc.*, 360 Ark. 404, 411, 201 S.W.3d 917, 922 (2005). This factor supports applying a single law to all class members' claims, and therefore supports the application of Arkansas law as the law of the state with the most significant contacts to all class members.

5. The fourth Leflar factor, the forum's governmental interest, is a government interest analysis which supports finding that Arkansas law should apply.

The fourth Leflar factor examines the advancement of Arkansas' governmental interests in comparison to the interests of other states. *Tyler v. Alltel Corp.*, 265 F.R.D. 415, 427 (E.D. Ark. 2010). Accordingly, in order to determine whether the government interest factor supports applying Arkansas law, the Court must determine the extent to which applying Arkansas law creates a meaningful conflict with other states' laws and other states' interests in regulating this conduct. As set forth below, because 98% of class members are domiciled in 20 states, 13 of which

do not extend their states' minimum wage coverage to the class members, and because these domiciles have little interest in regulating the employment of their own citizens when they are working for an out-of-state employer and working out-of-state, Arkansas has a greater government interest in policing an Arkansas' employer treatment of employees who regularly work within Arkansas and whose employment supervision and activities are managed, controlled, and directed from Arkansas than any other state.

6. The fifth Leflar factor, the better rule of law, supports finding that Arkansas law would apply.

The fifth Leflar factor has been applied by Arkansas courts to apply the rule of law which would allow a claimant to bring his claims in court. Here, as set forth below, 98% of class members are domiciled in one of twenty states. *See supra.* Of these, 6501 (60%) are domiciled in one of thirteen states which exclude employees of interstate motor carriers from coverage under their states' minimum wage laws or do not have minimum wage laws, and in the seven remaining states in which the vast majority of class members are domiciled, only Michigan and New York have a higher minimum wage rate than Arkansas. *Id.* Thus, applying Arkansas law to class members claims allows each class member to vindicate their rights and at least receive partial relief, while avoiding arguments that Michigan or New York law would not apply to employment centered around Arkansas.

7. Application of Arkansas' contract choice-of-law analysis, the center of gravity test, support that Arkansas law would apply.

Under Arkansas' contract choice-of-law principles, the state in which the contract's "center of gravity" is located applies its substantive laws. *Standard Leasing Corp. v. Schmidt Aviation, Inc.*, 264 Ark. 851, 855–56, 576 S.W.2d 181, 184 (1979). Because the center of the employment relationship was Arkansas, a contract choice-of-laws analysis also supports applying Arkansas' wage laws.

Defendant's manual confirms that the employment relationship was centered in Arkansas, and the facts set forth above demonstrate that Defendant's language in its manual accurately described the central importance of Arkansas to each driver's employment.

The other potential "centers of gravity" would be (a) the domicile of each class member; or (b) the state in which each class member performed the most work. But in both cases, even if a driver performed a significant amount of work in either their domicile or their highest-mileage state, the nature of this job would mean that the percentage of work performed in either location would never even be a majority of all work. *See* Driver Summaries, Ex. 2-B. Thus, neither the domicile of the employee nor the location in which the employee performed a plurality of work constitutes a stronger "center of gravity" than Arkansas for any of the drivers.

Likeise, the putative class members' claims under the Arkansas Wage Payment Act and for unjust enrichment and breach of contract should also be analyzed under Arkansas' contract choice-of-law principles, and, for the same reasons set forth above, the Court should apply Arkansas law.

E. <u>A choice-of-law analysis based on each class members' domicile also demonstrates that Arkansas law can and should be applied to each class members' employment.</u>

1. Ninety-Eight Percent of Class Members are Domiciled in only 20 States.

Defendant produced a partial list of putative class members and their addresses for purposes of FLSA notice consisting of 10,741 current and former truck drivers who worked for PAM. *See* Kim Declaration, Ex. 2, at ¶ 2-3; Ex. 2-A.[1] Of these, 621 reside in Arkansas, including Named Plaintiff Caldwell. *Id*. Of the remaining 10,120 on the list, 9,921 potential members (98%) live in the following twenty states: Texas, North Carolina, Ohio, Florida, Missouri, Michigan,

[1] While the total class list will be larger than this FLSA notice list, it is likely that the geographic distribution of class members will track this initial list.

Indiana, Mississippi, Georgia, Pennsylvania, Tennessee, Kentucky, Alabama, Louisiana, Oklahoma, Virginia, Illinois, West Virginia, South Carolina, and New York. *Id.* The remaining 199 putative class members (1.9%) live in 22 different states. *Id.*

2. Relevant variations, similarities, and differences between the statutory wages laws of the lower 48 States suggest that applying Arkansas wage law to class members' employment would be neither arbitrary nor unfair.

The primary variations between the state minimum wage laws and wage payment statutes in the lower 48 states relevant to this lawsuit are: (1) whether class members are excluded from coverage by the state minimum wage law, either as employees working for interstate motor carriers, as employees covered by FLSA's minimum wage protections, or because the state lacks a minimum wage or wage payment law; (2) the hourly rate of pay provided for by each state's minimum wage law.

With respect to these variations, for the twenty primary states where 98% of class members are domiciled, as set forth below, 13 states exclude the class members from coverage under their state wage laws or do not have state wage laws. For the seven primary states whose laws extend to the putative class members (Ohio, Florida, Missouri, Michigan, Pennsylvania, Kentucky, and New York), the definitions of terms such as "hours worked," "employee," and "employer" are essentially identical to Arkansas' definitions of these terms. *Compare* Ark. Code Ann. § 11-4-203(2) (West) *with* OH ST § 4111.14; FL ST § 448.101; Mo. Ann. Stat. § 290.500 (West); MI ST 408.412; 43 Pa. Stat. Ann. § 333.103 (West); Ky. Rev. Stat. Ann. § 337.010 (West); N.Y. Lab. Law § 651 (McKinney).

Likewise, these seven states, like Arkansas, follow and rely on FLSA regulations and interpretations for determining when certain periods time are compensable under their respective minimum wage laws. *Compare* Code Ark. R. 010.14.1-101 *with* Ohio Rev. Code Ann. § 4111.14(4)(B) (due consideration and great weight given to interpretations of FLSA in interpreting

Ohio minimum wage law); Fla. Stat. Ann. § 448.110(3) (West) (explicitly incorporating FLSA regulations and interpretations for purposes of applying Florida's minimum wage law); Mich. Comp. Laws Ann. § 408.12 (West) (employ defined as to suffer or permit); Mo. Code Regs. Ann. tit. 8, § 30-4.010(1) (Missouri incorporates federal regulations interpreting and implementing FLSA for purposes of interpreting its own minimum wage law); *Chevalier v. Gen. Nutrition Centers, Inc.*, 2017 PA Super 407, 177 A.3d 280, 299 (2017), *appeal granted*, 189 A.3d 386 (Pa. 2018) (courts can look to federal authority extant at the time of enactment for interpreting Pennsylvania's 1968 Minimum Wage Act); 803 Ky. Admin. Regs. 1:065 (explicitly tracking federal regulations from 49 C.F.R. § 785); *Zutrau v. Ice Sys., Inc.*, 38 Misc. 3d 1235(A), 969 N.Y.S.2d 807 (Sup. Ct. 2013) (noting similarity between FLSA provisions and New York Labor Law definitions).

Accordingly, none of the variations between the potentially applicable state wage laws result in conflicts that would preclude this Court from applying Arkansas law to all periods of class members' employment with Defendant.

3. The Court can and should apply Arkansas law to the putative class members residing outside Arkansas.

Of the twenty states in which 98% of putative class members reside, 13 either lack state minimum wage laws or exclude the putative class members from their coverage. Texas, North Carolina, Indiana, Georgia and Virginia, exclude employees covered by FLSA from coverage under the state laws. *See* Tex. Labor Code Ann. § 62.151 (West); N.C. Gen. Stat. Ann. § 95-25.14(a)(1); Ind. Code Ann. § 22-2-2-3 (West); Ga. Code Ann. § 34-4-3 (West); Va. Code Ann. § 40.1-28.9(12) (West). Oklahoma, Illinois, and West Virginia exclude from coverage employees of interstate motor carriers. *See* Okla. Stat. Ann. tit. 40, § 197.4(6) (West); 820 Ill. Comp. Stat. Ann. 105/3(7); W. Va. Code Ann. § 21-5C-1(f)(17) (West). Mississippi, Tennessee, Alabama,

Louisiana, and South Carolina lack state minimum wage acts. *See* WHD Consolidated Minimum Wage Table, https://www.dol.gov/whd/minwage/mw-consolidated.htm; State Minimum Wage Wages Chart, National Conference of State Legislatures, http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx#Table.

Thus, of the twenty primary states, only seven states, Ohio, Florida, Missouri, Michigan, Pennsylvania, Kentucky, and New York even extend their minimum wage protections to over-the-road interstate truck drives. *See* Ohio Rev. Code Ann. § 4111.14(b)(1); Fla. Stat. Ann. § 448.101(2); Mo. Ann. Stat. § 290.500(3); Mich. Comp. Laws Ann. § 408.420 (West); PA ST 43 PS 333.104(a.1); Ky. Rev. Stat. Ann. § 337.275(1) (West); and NY STAT § 650.

With respect to the minimum wage rates of these seven states, only Michigan and New York have higher minimum wage rates than Arkansas. Mich. Comp. Laws Ann. § 408.414(1) (West); N.Y. Lab. Law § 652 (McKinney). Ohio has an hourly minimum wage rate of $8.30, Florida has a minimum wage rate of $8.25, Missouri has a minimum wage rate of $7.85, Pennsylvania has a minimum wage rate of $7.25, and Kentucky's rate is $7.25. *See* https://www.com.ohio.gov/documents/dico_2018Minimumwageposter.pdf; Fla. Stat. Ann. § 448.110(4)(a);http://www.floridajobs.org/docs/default-source/2018-minimum-wage/florida-minimum-wage-2018-announcement.pdf?sfvrsn=2; Mo. Ann. Stat. § 290.502 (West); https://labor.mo.gov/DLS/WageAndHour/wage_hour_notices.

Thus, of the 9921 known putative class members residing in the twenty primary states, 6501 reside in thirteen different states in which they would not be covered by a minimum wage statute, and 2750 reside in five states that provide for a lower minimum wage than Arkansas. And while the remaining class members might receive a higher minimum wage under their own states'

wages laws, this does not demonstrate that it would either be unconstitutional or contrary to Arkansas choice-of-law rules to apply Arkansas law to employment based in Arkansas.

III. CONCLUSION

Accordingly, for the foregoing reasons, a conflicts analysis supports certifying the instant matter as a class action pursuant to Fed. R. Civ. P. 23.

Respectfully submitted,

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Date: November 3, 2018