UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SHAWN POLINER, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

MANAGED LABOR SOLUTIONS, LLC

Defendant.
_____/

CLASS ACTION
Case No.:

CLASS ACTION COMPLAINT

Plaintiff, SHAWN POLINER, individually, and on behalf of all others similarly situated, by and through the undersigned counsel, sues Managed Labor Solutions, LLC (hereinafter "MLS" or "Defendant"), pursuant to RULE 23 of the Federal Rules of Civil Procedure for numerous claims and causes of action, including claims under ERISA, state law and common law, together which exceed the value of $75,000:

JURISDICTION AND VENUE

1. This is a class action by Plaintiff against Defendant, under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001-119(l)(c), and is brought under ERISA to obtain appropriate equitable relief for acts of discrimination under ERISA § 510, 29 U.S.C. § 1140, and for such further equitable relief as may be appropriate, in addition to numerous claims under Florida statutes, such as the Florida Deceptive and Unfair Trade Practices Act, and common law, including torts of unjust enrichment and breach of contract.

2. This Court has exclusive subject matter jurisdiction pursuant to 29 U.S.C. §

1132(e)(1) and 28 U.S.C. § 1331, because this is a claim for breach of fiduciary duty under ERISA.

3. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391, because the Defendant is subject to personal jurisdiction in this District, the relevant benefit plans are administered in this District, and a substantial part of the acts or omissions giving rise to the Plaintiff's claim occurred in this District.

4. This Court has jurisdiction over this action pursuant to ERISA § 502(e)(l), U.S.C. § 1132(e)(l).

5. Venue of this action lies in the district court for the Middle District of Florida, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). The violations and breaches alleged took place within this district and Defendants do business in this district.

6. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367. The state law claims are so related to the ERISA claims and also arise out of the same common nucleus of operative facts such that they form part of the same case or controversy.

7. This Court has personal jurisdiction over this action because MLS operated substantial business in Duval County, Florida, and the damages at issue occurred in Duval County, Florida and within this district.

PARTIES

8. Plaintiff, SHAWN POLINER (hereinafter "Poliner" or "Plaintiff") resided in St. Mary's, Georgia during all times material, and worked at MLS as a Transporter at the Jacksonville International Airport in Jacksonville, Florida from on or about September 8, 2019, to on or about March 26, 2020.

9. MLS is a foreign limited liability company with a principal address of 5235 Oakview Dr., Allentown, PA 18104.

10. MLS can be served via its current registered agent, NRAI Services, Inc., 1200 South Pine Island Road, Plantation, FL 33324.

11. MLS is an "Employer" within the meaning of the ERISA and is subject to the laws of ERISA.

CLASS ACTION ALLEGATIONS

12. This class action is brought pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of a class of persons currently or formerly employed by MLS (i) who were either eligible participants in an ERISA health insurance plan sponsored by MLS; or (ii) who were improperly classified as part time employees from June 1, 2013 to the present, after the enactment of the Patient Protection and Affordable Care Act ("ACA")

13. "The class", or putative class, is herein comprised of the following:

> **All persons who worked for Managed Labor Solutions Inc. as drivers, transporters, cleaners, shuttle bus drivers, and employees under any other similarly job titles at all locations across the United States within a period of 4 years preceding the filing of this complaint to the present, for a period of at least 90 days working 32 or more hours on average per week.**

14. NUMEROSITY: The class is so numerous that joinder of all the members is impracticable. The class consists of approximately 6,600 persons as estimated by the number of hourly employees employed in MLS's 26 locations in the United States, given turnover over the past several years.

15. MLS employs similar Transporters, drivers and cleaners in at least 14 or more different states including: Florida, Georgia, California, Colorado, Oklahoma, Hawaii, Illinois, Michigan, Wisconsin, Ohio, North Carolina, Pennsylvania, Texas and Virginia locations across the

country, including employees working from the following 26 cities: San Francisco, Denver, Durango, Ft. Lauderdale, Jacksonville, Miami, Orlando, Pompano Beach, Punta Gorda, Sanford, Sarasota, Tampa, Atlanta, Kahuai, Kona, Romulus, Charlotte, Raleigh, Dayton, Oklahoma City, Tulsa, Allentown, Irving, Midland, Richmond, and Milwaukee.

16. COMMONALITY: Further, common questions of law and fact exist as to all members of the Class that predominate over any questions affecting individual members, including but not limited to:

(a) Whether MLS acted to unlawfully deny Plaintiff and the class health insurance coverage under the MLS Plan;

(b) Whether Defendant acted to violate the ACA by failing to provide health insurance benefits to full time employees by fraudulently and falsely claiming Plaintiff and those similarly situated were part time employees;

(c) Whether MLS was unjustly enriched by willfully and intentionally underpaying all drivers/transporters by paying them less than the promised rates of pay and only paid a reduced rate of $9.00 per hour;

(d) Whether MLS intentionally interfered with the rights of Plaintiff and the class under the MLS health insurance Plan;

(e) Whether Defendant was unjustly enriched where Plaintiff and members of the class conferred services to Defendant with Defendant's knowledge thereof, Defendant voluntarily accepted and retained these services, and whether it would be inequitable for Defendant to retain the benefit of the services promised, including the enhanced rates of pay and health insurance without paying the benefit of such to Plaintiff and members of the class;

(f) Whether Defendant violated the Florida Deceptive and Unfair Trade Practices Act by misleading or deceiving Plaintiff and members of the Class that they would be paid an enhanced rate of pay for meeting a performance threshold, and refusing to pay what was promised.

(g) Whether Defendant breached their contractual promise to Plaintiff and the class of similarly situated by failing to compensate them as promised;

(h) Whether Plaintiff and the Class have sustained damages, and if so, what is the proper measure of such damages;

(g) Whether the Defendant's actions breached their fiduciary duties under ERISA and was an act of interference with the rights of Plaintiff and all others similarly situated as full-time employees under ERISA; and

(i) Whether Defendant violated the ACA by failing to offer and enroll Plaintiff and the class of similarly situated in the company health plan or any health plan at all.

17. TYPICALITY: Plaintiff's claims are typical of those of the Class. Plaintiff Poliner, like other class members, was subjected to Defendant's policy and practice of improperly paying all wages earned, and also was classified as a part time employee and never offered the opportunity to enroll in the company Health plan. Upon information and belief, Defendant has willfully underpaid Plaintiff and the putative class when they met a delivery threshold, and unlawfully failed to offer and enroll hundreds if not thousands of eligible full-time employees in the company plan or as required under the ACA.

18. ADEQUACY: Plaintiff Poliner will fairly and adequately represent and protect the interests of the putative members of the Class because he has no disabling conflict of interest that would be antagonistic to those of the other class members. Plaintiff Poliner has retained counsel

who is competent and experienced in class and collective action wage and hour litigation.

19. Class treatment is superior to alternative methods to adjudicate this dispute because Plaintiff Poliner and the putative class of similarly situated suffered similar treatment and harm as a result of Defendant's unlawful and systematic pay policies and practices, and because absent a class action, Defendants' unlawful conduct will likely continue un-remedied and unabated given that the damages suffered by individual class members are small compared to the expense and burden of individual litigation. Class certification is also superior because it will obviate the need for unduly duplicative litigation which might result in inconsistent judgments about Defendant's practices.

20. The claims of Plaintiff are typical of the claims of the class. Poliner was employed by MLS as a driver/transporter, working as a full time employee for more than six (6) months averaging more than 36 hours per week, and was never offered the opportunity to enroll in the company health plan nor offered any health insurance coverage. Moreover, Plaintiff Poliner also met the enhanced rate of pay threshold by transporting the stated number of vehicles, but did not receive the enhanced rate of pay, instead only being paid $9.00 per hour.

21. Plaintiff will assure the adequate representation of all members of the class and has no conflict with class members in the maintenance of this class action. He has had no relationship with MLS except as an employee. His interests in this action are antagonistic to the interests of MLS, and he will vigorously pursue the claims of the class. Conversely, Plaintiff has no interest antagonistic to or in conflict with the interests of the class.

22. Plaintiff has retained counsel experienced in the prosecution of class actions in general and ERISA litigation in particular.

23. MLS has acted on grounds generally applicable to the class so that final injunctive

and declaratory relief is appropriate with respect to the class.

24. The calculation of the equitable restitution to be awarded to Plaintiff and the class is formulaic and is capable of computation by means of objective standards.

25. No undue difficulties are anticipated to result from the prosecution of this suit as a class action.

26. Plaintiff will seek to identify all class members through such investigation and discovery as may be appropriate. Plaintiff will provide to the class such notice of this action as the Court may direct.

GENERAL FACTUAL ALLEGATIONS

27. MLS classified Plaintiff as an employee. For example, MLS identified POLINER as an "employee" in its payroll system; MLS made employee tax deductions and withholdings from his pay, including income tax withholdings and deductions for the employee portion of Medicare and FICA taxes; and MLS issued him a form W-2, naming him as an "employee" and MLS as his "employer."

28. MLS is the plan sponsor and an ERISA fiduciary for various qualified retirement and welfare benefit plans offered to its employees. Pursuant to ERISA, those plans are governed by plan documents. MLS also issued summary plan descriptions ("SPDs") to some employees.

29. MLS did not provide SPDs to Plaintiff. Likewise, on information and belief, MLS did not provide SPDs to all the employees designated as "part time".

30. Plaintiff was in that group of eligible participants, as were all other drivers/ cleaners/ transporters who worked on a full-time basis.

31. Neither Plaintiff, nor, on information and belief, any other drivers, cleaners, transporters and others were informed about or permitted to enroll MLS's company health

insurance plan.

32. On the contrary, members of this group and class of workers were told by MLS that they would be enrolled at some point and that they were eligible to participate.

33. MLS was unjustly enriched in the amount of premium payments that it failed to pay on the behalf of Plaintiff and all others similarly situated.

34. By failing to afford Poliner and other eligible full-time employees the opportunity to participate in this plan, MLS deprived them of the economic benefit of coverage and the ability to submit claims for benefits under the plan.

35. Plaintiff was in the group of eligible participants, as were all other drivers, cleaners, transporters who worked more than 32 hours per week on a regular basis.

36. Neither Plaintiff nor, on information and belief, any other cleaners, drivers and transporters were informed about or permitted to enroll in this plan.

37. Coverage under this plan required payment by the employee and MLS of a premium or other cost. By failing to afford Plaintiff and other eligible similarly situated employees the opportunity to participate in this plan, MLS deprived them of the economic benefit of coverage and the ability to submit claims for benefits under the plan.

38. Upon information and belief, MLS' Medical Benefits Plan defined eligible employees to include "a regular full-time employee, as defined by [the] employer."

39. Plaintiff was in the group of eligible participants, as were all other drivers, cleaners, transporters working at least 32 or more hours per week.

40. Neither Plaintiff nor, on information and belief, any other drivers, cleaners, transporters, shuttle bus drivers were informed about or permitted to enroll in this plan. On the contrary, all such employees were told by managers that they were looking into it and would be

provided the opportunity to enroll.

41. Coverage under this plan required payments by MLS of premiums or a share of the cost of the plan.

42. By failing to afford Plaintiff and other eligible employees the opportunity to participate in this plan, MLS unlawfully and improperly deprived them of the economic benefit of coverage and the ability to submit claims for benefits under the plan.

43. By obtaining the benefit of services provided by Plaintiff and other eligible drivers, transporters, cleaners and shuttle drivers without allowing them to participate in this plan, MLS was unjustly enriched in the amount of premium payments that it failed to pay on their behalf.

44. In addition, Plaintiff suffered out-of-pocket losses and deferred medical care based on MLS' failure to afford him an opportunity to participate in this plan.

45. Plaintiff, and, on information and belief, other members of the Class would have enrolled in the Eligible Plans if MLS had properly informed them of their eligibility and had properly provided them an opportunity to enroll.

46. MLS employs Transporters, drivers and cleaners, shuttle drivers and other jobs in at least 14 or more different states including: Florida, Georgia, California, Colorado, Oklahoma, Hawaii, Illinois, Michigan, Wisconsin, Ohio, North Carolina, Pennsylvania, Texas and Virginia locations across the country, including employees working from the following 26 cities: San Francisco, Denver, Durango, Ft. Lauderdale, Jacksonville, Miami, Orlando, Pompano Beach, Punta Gorda, Sanford, Sarasota, Tampa, Atlanta, Kahuai, Kona, Romulus, Charlotte, Raleigh, Dayton, Oklahoma City, Tulsa, Allentown, Irving, Midland, Richmond, Milwaukee.

47. MLS also employs numerous other employees at these locations including persons working under the following job titles at numerous locations: Shuttle bus driver, rental car

supervisor, customer service greeter, rental car operations manager, and rental car site manager.

48. For many of these positions, on the MLS website where jobs are posted, they absolutely indicate they offer: health, dental, and vision coverage. See https://managedlaborsolutions.prismhr-hire.com/

49. In or about September 2019, MLS took over the contract ABM Industries Inc. had with Hertz and numerous other rental car companies.

50. As a full-time employee, Mr. Poliner, like other full-time employees at the Jacksonville International Airport location were promised health insurance benefits and other company benefits after a 90 day waiting period.

51. Poliner and other MLS employees were promised health insurance and other benefits by MLS, and when they inquired, were told the company was working on it.

52. Upon information and belief, MLS has offered health insurance benefits, vision, and dental benefits to its employees prior to September 2019 and to the present.

53. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the "Patient Act"), declares that beginning in 2015, penalties will be assessed on employers who do not offer health insurance that meets certain affordability or benefit coverage requirements.

54. Pursuant to the Affordable Care Act (ACA), an Employer must provide health insurance to full-time employees if the company has 50 or more full-time equivalent employees (FTEs). This is known as the employer mandate.

55. Defendant has more than 50 employees at all times material hereto, including in 2019, 2020, and upon information and belief throughout 2016 to 2018.

56. The coverage mandates for private sector group health plans "established or

maintained" by employers are incorporated by reference into Section 715 of ERISA (Codified at 29 U.S.C. § 1185(d)).

57. In a scheme to evade the ACA, Defendant purposefully classified Plaintiff Poliner and all other drivers, cleaners, transporters, shuttle drivers as "part time" employees, even though they were in fact full time employees and met the definition of FTEs.

58. Defendant refused to provide or offer health insurance as required by the ACA in order to maximize profits.

59. At all times material, and throughout the years of 2016 to the present, Defendant did in fact have and provide a health insurance plan, including health, dental and vision, to some of its employees, as to which it paid some part of the premiums.

60. Neither plaintiff nor the other laborers, including drivers, cleaners and transporters at the Jacksonville airport location were provided these health insurance benefits nor the opportunity to enroll in the benefit plan.

61. In sum, MLS breached its fiduciary to Plaintiff Poliner and all other similarly situated duty by failing to provide Plaintiff and other members of the Class with plan information for the Eligible Health Insurance Plans, by not administering the Eligible Plans in accordance with the documents governing those plans, by failing to provide enrollment information to them for the Eligible Plans, and by failing to pay premiums for them for the Eligible Plans requiring such premiums.

62. Defendant's actions as herein described were willful, wanton and acted with gross and reckless disregard for Plaintiff's rights and his well-being, and for the rights and well-being all others similarly situated.

COUNT I
BREACH OF FIDUCIARY DUTY 29 U.S.C. § 1132(a)(3); 502(a)3

63. Poliner adopts and realleges paragraphs 1 through 62 as if fully set forth herein.

64. As set forth above, MLS violated its fiduciary duty under ERISA.

65. As an ERISA fiduciary, Defendant was required to discharge its duties in compliance with Section 2706 of the ACA and take reasonable efforts to remedy Defendant's breach.

66. Among other things, a fiduciary is required to discharge its duties with respect to a plan (1) solely in the interest of the plan's participants and beneficiaries, and (2) in accordance with the documents and instruments governing the plan. 29 U.S.C. § 1104.

67. MLS violated its fiduciary duty by acting in its own interest instead of the interest of all eligible participants of the company Eligible health Plans, by failing to provide Plaintiff and other members of the Class with plan information for the Eligible Plans, by inaccurately communicating to them that they were not eligible to participate in the Eligible Plans, by not administering the Eligible Plans in accordance with the documents governing those plans, by failing to provide enrollment information to them for the Eligible Plans, and by failing to pay premiums for them for any of the Eligible Plans requiring such premiums.

68. As a result of this breach of fiduciary duty, MLS caused Plaintiff and the Class harm by (1) depriving them of the economic value of coverage as to each Eligible Plan, regardless of whether Plaintiff or the Class had cause to file a claim for benefits, (2) depriving them of the ability to submit claims under an Eligible Plan where they had cause to file a claim for benefits, (3) causing them to incur out-of-pocket expenses as a result of their inability to participate in an Eligible Plan, or (4) causing them to suffer other harm as a result of their inability to participate in an Eligible

Plan.

69. As a further result of this breach of fiduciary duty, MLS was unjustly enriched: that is, Plaintiff and other members of the Class conferred a benefit on MLS through their services as employees, MLS voluntarily accepted and retained this benefit, and it would be inequitable for MLS to retain the benefit of those services without paying for the full cost thereof, including the cost of benefit coverage to which Plaintiff and other members of the Class were entitled under the Eligible Plans.

70. The actions of Defendant violate Title I of ERISA, which now incorporates the ACA coverage mandate.

71. ACA's coverage mandates were incorporated into Title I, Part 7 of ERISA, participants of employer-provided health plans have a private cause of action to enforce their rights to these ACA benefits through ERISA's remedial provisions. See, e.g., § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3) providing that participants, beneficiaries and fiduciaries can sue for "appropriate equitable relief" for any act or practice that violates Title I of ERISA. Subject to limitations on suits against insurers, the DOL can sue under the parallel provision of § 502(a)(5) of ERISA, 29 U.S.C. § 1132(a)(5).

72. ERISA authorizes various private causes of action by plan participants, including lawsuits to clarify their rights to benefits, to recover benefits owed, and for "appropriate equitable relief" to redress any other "act or practice" violating the plan or ERISA. See ERISA § 502(a), 29 U.S.C. § 1132(a)

73. This claim is brought pursuant to 29 U.S.C. § 1132(a)(3). This claim is not brought pursuant to 29 U.S.C. § 1132(a)(1)(B).

74. Plaintiff and members of the Class were prevented from bringing any claims under

section 1132(a)(1)(B) by virtue of MLS's breach of fiduciary duty including not offering them the opportunity to enroll in the company health plan, nor alternatively having or providing a company health plan as required by the ACA.

75. Plaintiff and the members of the class were improperly precluded from enrolling and participating in the company health insurance plan, suffered without health insurance, suffered increased costs of privately obtained health coverage, out of pocket medical costs, and other co-payments and deductibles higher than had they been provided coverage in the company plan.

COUNT II
VIOLATION OF ERISA SECTION 502(a)(1)B; 20 USC § 1132

76. Plaintiff adopts and realleges paragraphs 1 through 62 as if fully set forth herein.

77. This count is a claim to recover benefits due to Plaintiff and the class of similarly situated under the terms of the Plan, to enforce his rights under the terms of the Plan, and/or to clarify his rights to future benefits under the terms of the Plan, brought pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B).

78. As set forth above, MLS violated its fiduciary duty under ERISA.

79. The actions of Defendant violate Title I of ERISA, which now incorporates the ACA coverage mandate.

80. ACA's coverage mandates were incorporated into Title I, Part 7 of ERISA; participants of employer-provided health plans have a private cause of action to enforce their rights to these ACA benefits through ERISA's remedial provisions. See, e.g., § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3) providing that participants, beneficiaries and fiduciaries can sue for "appropriate equitable relief" for any act or practice that violates Title I of ERISA. Subject to limitations on suits against insurers, the DOL can sue under the parallel provision of § 502(a)(5) of ERISA, 29 U.S.C. § 1132(a)(5).

81. As an ERISA fiduciary, Defendant was required to discharge its duties in compliance with Section 2706 of the ACA and take reasonable efforts to remedy Defendant's breach.

82. ERISA authorizes various private causes of action by plan participants, including lawsuits to clarify their rights to benefits, to recover benefits owed, and for "appropriate equitable relief" to redress any other "act or practice" violating the plan or ERISA. See ERISA § 502(a), 29 U.S.C. § 1132(a)

83. Among other things, a fiduciary is required to discharge its duties with respect to a plan (1) solely in the interest of the plan's participants and beneficiaries, and (2) in accordance with the documents and instruments governing the plan. 29 U.S.C. § 1104.

84. MLS violated its fiduciary duty by acting in its own interest instead of the interest of all eligible participants of the Eligible Plans, by failing to provide Plaintiff and other members of the Class with plan information for the Eligible Plans, by inaccurately communicating to them that they were not eligible to participate in the Eligible Plans, by not administering the Eligible Plans in accordance with the documents governing those plans, by failing to provide enrollment information to them for the Eligible Plans, and by failing to pay premiums for them for any of the Eligible Plans requiring such premiums.

85. As a result of this breach of fiduciary duty, MLS caused Plaintiff and the Class harm by (1) depriving them of the economic value of coverage as to each Eligible Plan, regardless of whether Plaintiff or the Class had cause to file a claim for benefits, (2) depriving them of the ability to submit claims under an Eligible Plan where they had cause to file a claim for benefits, (3) causing them to incur out-of-pocket expenses as a result of their inability to participate in an Eligible Plan, or (4) causing them to suffer other harm as a result of their inability to participate in an Eligible

Plan.

86. As a further result of this breach of fiduciary duty, MLS was unjustly enriched: that is, Plaintiff and other members of the Class conferred a benefit on MLS through their services as employees, MLS voluntarily accepted and retained this benefit, and it would be inequitable for MLS to retain the benefit of those services without paying for the full cost thereof, including the cost of benefit coverage to which Plaintiff and other members of the Class were entitled under the Eligible Plans.

87. Plaintiff and members of the Class were prevented from bringing any claims under section 1132(a)(1)(B) by virtue of MLS's breach of fiduciary duty, in which, none, including Plaintiff were enrolled in the company health plan or offered the opportunity to enroll in the company health plan.

88. Plaintiff and the members of the class were improperly precluded from enrolling and participating in the company health insurance plan even though Defendant knew that under the ACA they had a duty to offer the health coverage.

89. Alternatively, if Defendant did not have any health plan, they had a fiduciary duty to obtain one and offer it to Plaintiff and all others similarly situated but failed to do so.

90. Plaintiff and the members of the class were improperly precluded from enrolling and participating in the company health insurance plan, and suffered without health insurance, increased costs of privately obtained health coverage, out of pocket medical costs, and other co-payments and deductibles higher than had they been provided coverage in the company plan

COUNT III
INTERFERENCE AND VIOLATION OF ERISA § 510; 29 U.S.C. § 1140

91. Plaintiff adopts and realleges paragraphs 1 through 62 as if fully set forth herein.

92. At all times relevant, the MLS Plan was an "employee welfare benefit plan" as

defined by ERISA, 29 U.S.C. § 1002.

93. At all relevant times, Plaintiff and the class were qualified for their positions at MLS as full-time employees.

94. Defendant has maintained a policy and practice of willfully classifying Plaintiff and all others similarly situated as "part time employees", when in fact they were full time employees.

95. Plaintiff and those similarly situated were intentionally and willfully excluded from being provided the opportunity to enroll in the MLS health insurance, dental insurance and vision insurance plans.

96. By classifying Plaintiff and the class as part-time employees, Defendants interfered with the attainment of their rights to participate in the MLS Plan in violation of § 510 of ERISA, 29 U.S.C. § 1140.

97. Plaintiff and the class have suffered a loss of health insurance benefits (including dental and vision) and seek equitable restitution as a result of Defendants' violation of § 510 of ERISA, 29 U.S.C. § 1140.

98. Plaintiff and the members of the class were improperly precluded from enrolling and participating in the company health insurance plan, and suffered without health insurance, increased costs of privately obtained health coverage, out of pocket medical costs, and other co-payments and deductibles higher than had they been provided coverage in the company plan.

COUNT IV
(claim for relief under ERISA, 29 U.S.C. § 1132(a)(3)(B))

99. Plaintiff incorporates by reference paragraphs 1 through 62 as though such paragraphs were fully stated herein.

100. This count is brought pursuant to 29 U.S.C. § 1132(a)(3)(B), to obtain appropriate equitable relief (i) to redress MLS'S violations of Section 2706 of the ACA, as incorporated into

the Plan and ERISA, and/or (ii) to enforce such provisions of ERISA or the Plan. Plaintiff brings this claim only to the extent that the Court finds that the equitable relief sought is unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B) or 29 U.S.C. § 1132(a)(3)(A).

COUNT V
TORT OF UNJUST ENRICHMENT

101. Plaintiff adopts and realleges paragraphs 1 through 62 as if fully alleged herein.

102. Plaintiff and the class of similarly situated accepted employment with Defendant under the promise of being entitled to and eligible for company health insurance benefits.

103. Plaintiff and members of the putative class performed services for and on Defendant's behalf.

104. Defendant voluntarily accepted and retained the additional compensation it had promised to pay to Plaintiff and the class of similarly situated from the labor of Plaintiff and members of the putative class, and likewise accepted and retained the value of health insurance and health insurance premiums it had and was required to provide to Plaintiff and the class of similarly situated.

105. It would be inequitable for the Defendant to retain the benefits of the work Plaintiff and members of the putative class performed without providing Plaintiff and members of the putative class the benefits promised due to them, namely health insurance, dental insurance and vision insurance and the payment of Defendant's share of the associated premiums.

106. It would be inequitable for Defendant to retain the benefits of the work Plaintiff and members of the putative class performed without compensating Plaintiff and members of the putative class the value of the services performed as promised, namely the enhanced rates of pay up to $10.00 per hour for meeting a delivery transportation threshold and other bonuses promised to be paid.

107. Defendant's actions as set forth above in failing to pay Plaintiff and members of the putative Class the base hourly wages promised and due to them for time spent performing work for the benefit of Defendants, and improperly refusing to offer them and enroll them in the company sponsored health insurance plan resulted in unlawful Unjust Enrichment to Defendant pursuant to Florida common law.

108. Plaintiff and all other similarly situated present and former employees have suffered financial harm as a direct and proximate result of Defendant's unlawful pay practices complained of herein.

COUNT VI
VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT F.S. 501.201 ET SEQ - AS TO ALL DRIVERS/TRANSPORTERS IN THE STATE OF FLORIDA

109. Plaintiff adopts and realleges paragraphs 1 through 62 as if fully set forth herein.

110. Plaintiff brings this count for a subclass defined as follows:

> **All persons working for Managed Labor Solutions LLC as drivers or transporters in the State of Florida within a period of 4 years preceding the filing of this complaint to the present.**

111. Plaintiff and the putative Class provided services to Defendant after accepting employment from Defendant in reliance upon oral and written promises to be paid a base hourly wage for all hours worked up to forty (40) in each workweek, in addition, payment of an enhanced rate of pay up to $10.00 per hour for meeting certain threshold or metric, and payment of a performance bonus as well.

112. Plaintiff and the class of similarly situated relied to their detriment on Defendant's false oral and written promises to be compensated as promised.

113. Defendant is engaged in providing services to entities and to other third parties in the State of Florida.

114. Defendant deceived, and willfully mislead Plaintiff and the class of similarly situated Florida based transporters/drivers by promising and leading all drivers and transporters to believe they were to be paid an enhanced base rate of pay up to $10.00 per hour for meeting a delivery or driving threshold and a bonus payment.

115. Defendant instead, throughout the term of Plaintiff's employment to the present, has failed to ever pay drivers/transporters more than $9.00 per hour at the Jacksonville Airport Location.

116. Upon information and belief, Defendant has maintained the same unlawful pay practice and not paid drivers/transporters at all other locations an enhanced rate of pay for delivery or transportation of a threshold number of vehicles, and no more than the base rate respectively for the location, whether it is $9.00 per hour or another amount.

117. Defendants maintained a common unlawful and deceptive pay practice applicable to all drivers/transporters including Plaintiff in the State of Florida, of luring them into employment under a promise of performance rate increase and then willfully refusing to increase the rate of pay as promised.

118. The compensation plan as presented to Plaintiff and all other similarly situated transporters/drivers is unconscionable, in that it purports to provide an enhanced base hourly rate of pay based upon performance but instead Defendant never had any intention in paying the enhanced wages and willfully mislead plaintiffs to induce them to work for Defendant.

119. Alternatively, Defendant knew they were acting deceptively and unconscionably by purposefully underpaying Plaintiff and the class of similarly situated the enhanced wage rates promised.

120. Defendant's employment conduct as complained of herein are unconscionable acts

or practices and are unfair and deceptive as to all drivers and transporters.

121. Plaintiff and all drivers/transporters have suffered damages in the form of all reduced base pay due them at the hourly rates they were promised, throughout their employment to the present and continuing.

122. The actions of Defendant of withholding and refusing to pay the enhanced wages earned by the Plaintiff and the class of similarly situated as were promised by Defendant upon hiring them is a deceptive business practice.

123. The actions of Defendant of withholding and refusing to pay the enhanced wages earned by the Plaintiff and the class of similarly situated as were promised by Defendant upon hiring them is an unconscionable act or practice.

124. Defendants actions as set forth above in failing to pay Plaintiff and members of the putative class the hourly wages due to them pursuant to the promises made to them for performing work for the benefit of Defendant is a violation of FDUTPA.

COUNT VII
BREACH OF CONTRACT

125. Plaintiff adopts and realleges paragraphs 1 through 62 as if fully set forth herein.

126. Plaintiff brings this action for a subclass defined as follows:

All persons working for Managed Labor Solutions LLC as drivers or transporters in the State of Florida within a period of 4 years preceding the filing of this complaint to the present.

127. In September 2019, Plaintiff Poliner accepted employment with Defendant under which Plaintiff agreed to perform work as a non-exempt, hourly paid employee for Defendant in exchange for payment of a base hourly pay of compensation.

128. Defendant promised Plaintiff and all others that when they transported certain levels of cars, their hourly base pay would increase up to $10.00 per hour and also offered an

additional performance bonus.

129. Plaintiff met the threshold for the enhanced and increased rate of pay throughout his employment, however, Defendant refused to pay him anything more than $9.00 per hour.

130. Defendant promised all other employees at the same location who were transporting and driving cars the opportunity to earn an increased rate of pay based upon performance metrics of transporting a certain number of cars.

131. Each time Plaintiff and other drivers/transporters complained to management about the deficiency pay and the company's failure to compensate them according to the terms promised, Defendant gave false statements of looking into the deficient pay and working to correct the errors.

132. Eventually Plaintiff and others working at the Jacksonville Airport location gave up as, just like the inability to obtain health insurance benefits, all inquiries with management were purposefully ignored and not responded to.

133. Upon information and belief, drivers/transporters at all locations across the U.S. working for Defendant had the same, if not identical compensation plan as Plaintiff with an enhancement to the base rate of pay upon meeting a threshold number of vehicles transported or moved.

134. In breach of the contractual terms of the employment, Defendant willfully and intentionally has not paid Plaintiff and members of the putative class all enhanced base wages plus other bonuses promised.

135. Defendants breached the terms of the agreement with Plaintiff and all other drivers/transporters by failing to pay them the enhanced base rate of pay promised for hitting or moving a certain number of vehicles, and by not paying additional bonuses promised.

136. Plaintiff and all drivers/transporters have suffered damages in the form of reduced

pay and compensation from what was promised throughout their employment to the present and continuing.

137. The putative class relied upon the representations made by Defendant when they were provide employment as drivers and transporters, and Defendant's breach of the promise to pay them enhanced base rates of pay up to $10.00 per hour, have harmed members of the class by denying them the pay that was bargained for between the parties.

138. The reduced pay similarly has resulted in an underpayment of overtime wages for all overtime hours worked.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SHAWN POLINER, individually, and on behalf of all others similarly situated, demands judgment against MLS including the following relief:

a. Certification of this case as a class action pursuant to Fed. R. Civ. P. 23, including all subclasses as identified and described herein;

b. appointing Plaintiff as a class representative and Mitchell Feldman, Esq. and Feldman Legal Group as class counsel;

c. A declaration that the Plaintiff and similarly situated members of the Class were eligible to participate in Defendant's Health Insurance/Eligible Plan notwithstanding their classification as "part time" employees as per the Court's authority under 28 U.S.C. § 2201;

d. A declaration pursuant to 28 U.S.C. § 2201 that Defendant breached its fiduciary duty owed to Plaintiff and the class of similarly situated;

e. Ordering Defendant to compensate Plaintiff and the class the value of all premium payments in the MLS Plan that complies with the requirements of the ACA, and to

immediately enroll all current full-time employees in the PLAN;

f. Awarding Plaintiff and the class equitable restitution to make Plaintiff and the class whole for the unpaid wages, plus prejudgment interests;

g. Awarding Plaintiff and the class equitable restitution and other damages to make them whole for the costs of health insurance they secured to replace the health insurance MLS denied them and to reimburse them for any out of pocket costs for medical claims that would have been paid in whole or in part as if they had participated in the MLS plan as of 90 days after commencement of employment or date of eligibility, whichever is earlier;

h. Awarding Plaintiff and the class of similarly situated all past due wages including the values of any underpaid overtime wages for their action in failing to compensate them as promised and represented and including an equal sum in liquidated damages;

i. An order awarding punitive damage;

j. Awarding Plaintiff reasonable attorney's fee and costs pursuant to 29 U.S.C. l132(g)/ERISA § 502(g), 29 U.S.C. § 1132(g); Florida's Deceptive and Unfair Trade Practices Act, F.S. 448.08.

k. Award Plaintiff a class service award fee;

l. Awarding Plaintiff such other, further and additional relief in Equity as may be just and proper in the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint and on all other issues so triable.

Respectfully submitted this 28th day of July 2020.

/s/ Mitchell L. Feldman, Esq.
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