IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

WILLIAM BLAKLEY, on behalf of himself and those similarly situated,
813 Sheffield Dr. Apt. 1
Siler City, NC 27344

and

HELEN BLAKLEY, on behalf of herself and those similarly situated,
813 Sheffield Dr. Apt. 1
Siler City, NC 27344

and

KIMBERLY SMITH, on behalf of herself and those similarly situated,
5775 Ortega Viewway US 16
Jacksonville, FL 32244

Plaintiffs,

v.

CELADON GROUP, INC.,
9503 East 33rd St.
Indianapolis, IN 46235

and

CELADON TRUCKING SERVICES, INC.,
9503 E. 33rd Street
Indianapolis, IN 46235

and

QUALITY COMPANIES, LLC.,
9702 East 30th St.
Indianapolis, IN 46229

and

INDIVIDUAL AND COLLECTIVE ACTION FOR UNPAID OVERTIME UNDER FLSA AND CLASS ACTION UNDER TRUTH IN LEASING ACT, INDIANA WAGE PAYMENT STATUTE, INDIANA SMALL LOANS ACT, INDIANA CONSUMER CREDIT CODE, AND INDIANA WAGE ASSIGNMENT ACT

No. 16-351

QUALITY EQUIPMENT LEASING, LLC,
9503 East 33rd St.
Indianapolis, IN 46235

and

JOHN DOES 1-10

Defendants.

FIRST AMENDED INDIVIDUAL, COLLECTIVE, AND CLASS ACTION CIVIL COMPLAINT

Named Plaintiffs William Blakley, Helen Blakley, and Kimberly Smith (hereinafter "Named Plaintiffs"), individually and on behalf of themselves and those similarly situated, by and through undersigned counsel, hereby complain as follows against Defendants Celadon Group, Inc., Celadon Trucking Services, Inc., Quality Companies, LLC, and Quality Equipment Leasing, LLC and John Does 1-10 (hereinafter collectively referred to as "Defendants").

INTRODUCTION

1. Named Plaintiffs have initiated the instant action to redress Defendants' violations of the Fair Labor Standards Act ("FLSA"). Named Plaintiffs assert that Defendants erroneously designated Named Plaintiffs and those similarly situated as independent contractors and unlawfully deducted from and withheld portions of the wages owed to Named Plaintiffs' and those similarly situated. Specifically, Defendants required Named Plaintiffs and those similarly situated to cover the costs of Defendants' business, intentionally reducing the wages of Named Plaintiffs and those similarly situated below the minimum wage.

2. Named Plaintiffs have initiated the instant action to redress Defendants' violations of the Truth in Leasing Act, 49 U.S.C. §14704. Named Plaintiff asserts that Defendants entered

into leases with Named Plaintiffs and those similarly situated that violated the provisions of the Truth in Leasing Act.

3. Named Plaintiffs have initiated the instant action to redress Defendants' violations of the Indiana Wage Payment Statute, Ind. Code Ann. § 22-2-5-1 *et seq.* ("IWPS"). Named Plaintiffs assert that Defendants erroneously designated Named Plaintiffs and those similarly situated as independent contractors and unlawfully deducted from and withheld portions of wages of Named Plaintiffs' and those similarly situated. Specifically, Defendants deducted from the pay of Named Plaintiffs and those similarly situated amounts that were not authorized by law. Ind. Code Ann. § 22-2-6-1 *et seq.*

4. Named Plaintiffs have initiated the instant action to redress Defendants' violations of the Indiana Uniform Consumer Credit Code – Small Loans Act, Ind. Code Ann. §24-4.5-7-101, *et seq.* ("ISLA" or "Small Loans Act") and the Indiana Uniform Consumer Credit Code – Loans Act, Ind. Code. Ann. §24-24.4.3-508, *et seq.* ("ICLA" or "Consumer Loan Act"). Named Plaintiffs assert that Defendants unlawfully collected and withheld compensation in connection with its scheme of issuing unlicensed loans and small loans to Named Plaintiffs and those similarly situated.

5. Named Plaintiffs have initiated the instant action to redress Defendants' violations of the Indiana Wage Assignment Act, §22-2-6-2, *et seq.* ("IWAA" or "Wage Assignment Act") Named Plaintiffs assert that Defendants unlawfully obtained wage assignment from Named Plaintiffs and those similarly situated and withheld compensation due in connection with the unlawful wage assignments.

JURISDICTION AND VENUE

6. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

7. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, the FLSA, 29 U.S.C. § 201 *et seq.* This Court has supplemental jurisdiction over Named Plaintiffs' state law claims because those claims arise out of the same nucleus of operative fact as the FLSA claims.

8. This Court may properly maintain personal jurisdiction over Defendants, because Defendants' contacts with this state and this jurisdictional district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

9. Venue is properly laid in this judicial district pursuant to 29 U.S.C. § § 1391(b)(1) and (b)(2), because Defendants reside in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

PARTIES

10. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

11. Named Plaintiff Helen Blakley is an adult individual with an address as set forth above.

12. Named Plaintiff William Blakley is an adult individual with an address as set forth above.

13. Named Plaintiff Kimberly Smith is an adult individual with an address as set forth above.

14. Defendant Celadon Group is a truckload carrier operating throughout the United States. Defendant Celadon Group is a Delaware Corporation with its principal place of business as set forth in the caption. It is the parent and umbrella company of numerous subsidiaries including, Celadon Trucking Services, Inc., Quality Companies, LLC, and Quality Equipment Leasing, LLC.

15. Defendant Celadon Trucking Services, Inc. is a truckload carrier operating throughout the United States. Defendant Celadon Trucking Services, Inc.'s principal place of business is set forth in the caption (hereinafter Defendants Celadon Group and Celadon Trucking Services, Inc. are collectively referred to as "Defendant Celadon").

16. Defendant Quality Companies, LLC is a division of Defendant Celadon, which, *inter alia,* leases vehicles utilized by individuals whom Defendants Celadon Group and Celadon Trucking Services, Inc. classify as independent contractors. Defendant Quality Companies, LLC operates in Indiana at the address as set forth in the caption.

17. Defendant Quality Equipment Leasing, LLC is a division of Defendant Celadon, which, *inter alia,* leases vehicles utilized by individuals whom Defendants Celadon and Celadon Trucking Services, Inc. classify as independent contractors. Defendant Quality Equipment Leasing, LLC operates in Indiana at the address as set forth in the caption (hereinafter Defendants Quality Companies, LLC and Quality Equipment Leasing, LLC are collectively referred to as Defendant Quality).

18. Defendants John Doe 1 through John Doe 5 are presently unknown persons who directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices of Defendants, which resulted in Defendants failing to pay Named

Plaintiffs, Collective Plaintiffs, and Class Plaintiffs proper compensation pursuant to the FLSA and IWPS.

19. Defendants John Doe 6 through John Doe 10 are presently unknown persons who had control over processing payroll regarding Named Plaintiffs, Collective Plaintiffs, and Class Plaintiffs.

20. Because of their interrelation of operations, common management, common control over labor relations, and other factors as they relate to Named Plaintiffs and those similarly situated, Defendant Celadon, Celadon Trucking Services, Inc., Quality Companies, LLC, and Quality Equipment Leasing, LLC are sufficiently interrelated and integrated in their activities, labor relations, and management as same relate to Named Plaintiffs and those similarly situated that they may be treated as a single employer for purposes of the instant action.

21. At all times relevant herein, Defendants acted by and through their agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendants.

FLSA COLLECTIVE ACTION ALLEGATION

22. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

23. Named Plaintiffs bring this action for violations of the FLSA as an individual action and as collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who performed work as truck drivers and who were designated as "independent contractors" by Defendants at any point during the three years preceding the date the instant action was initiated (the members of this putative class are hereinafter collectively referred to as "Collective Plaintiffs").

24. Named Plaintiffs and Collective Plaintiffs are similarly situated, have substantially similar job duties, have substantially similar pay provisions, and are all subject to Defendants' unlawful policies and practices as described herein.

25. There are numerous similarly situated current and former employees of Defendants who were compensated improperly in violation of the FLSA and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join the present lawsuit.

26. Similarly situated employees are known to Defendants, are readily identifiable by Defendants, and can be located through Defendants' records.

27. Therefore, Named Plaintiffs should be permitted to bring this action as a collective action for and on behalf of himself and those employees similarly situated, pursuant to the "opt-in" provisions of the FLSA, 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

28. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

29. Named Plaintiffs bring this action for violations of the Truth in Leasing Act, Indiana Wage Payment Statute, Small Loans Act, Consumer Loan Act, and Wage Assignment Act, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who performed work as truck drivers or in similar positions who were designated as "independent contractors" by Defendants and who worked in this capacity at any point during the applicable statute of limitations (the members of this putative class are hereinafter collectively referred to as "Class Plaintiffs").

30. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiffs do not know the exact size of the class, as such information is in the exclusive

control of Defendants; however, on information and belief, the number of potential class members is in the thousands.

31. Named Plaintiffs' claims are typical of the claims of Class Plaintiffs, because Named Plaintiffs, like all Class Plaintiffs, performed work under the control and direction of Defendants, and were misclassified as independent contractors pursuant to an agreement, which explicitly states that Indiana law is to be applied.

32. Named Plaintiffs' claims are typical of the claims of Class Plaintiffs, because Named Plaintiffs, like all Class Plaintiffs, had moneys unlawfully withheld from their pay.

33. Named Plaintiffs' claims are typical of the claims of Class Plaintiffs, because Named Plaintiffs, like all Class Plaintiffs, were issued unlawful small loans and consumer loans by Defendants upon which Defendants unlawfully collected;

34. Named Plaintiffs' claims are typical of the claims of Class Plaintiffs, because Named Plaintiffs, like all Class Plaintiffs, had their wages unlawfully assigned to Defendants;

35. Named Plaintiffs will fairly and adequately protect the interests of the Class Plaintiffs, because Named Plaintiffs' interests are coincident with and not antagonistic to those of the class. Named Plaintiffs have retained counsel with substantial experience in the prosecution of claims involving employee wage disputes.

36. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendants' records.

37. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate

actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendants. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all of the individual putative class members to maintain separate actions against Defendants.

38. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class are whether Defendants misclassified Named Plaintiffs and Class Plaintiffs as independent contractors, whether Defendant unlawfully issued loans to Named Plaintiffs and Class Plaintiffs, whether Defendants entered into unlawful lease agreements, and whether Defendants unlawfully deducted from Named Plaintiffs' and Class Plaintiffs' wages.

FACTUAL BACKGROUND

39. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

40. Named Plaintiff Helen Blakley worked for Defendants as a commercial truck driver from on or about May 21, 2015 until on or about September 22, 2015 when she voluntarily left Defendants.

41. Named Plaintiff William Blakley worked for Defendants as a commercial truck driver from on or about May 20, 2015 until on or about September 22, 2015 when he voluntarily left Defendants.

42. Named Plaintiff Kimberly Smith worked for Defendants as a commercial truck driver from in or around August 2015 until in or around October 2015 when she voluntarily left Defendants.

43. Collective and Class Plaintiffs worked/work for Defendants as commercial truck drivers during the relevant time periods.

44. Upon information and belief, Defendants have maintained an unlawful wage payment system for at least the last six (6) years.

45. At all times relevant, Defendants unlawfully designated Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs as independent contractors.

Named Plaintiff and Class Plaintiffs
Were "Employees" under Federal and State Law

46. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

47. Defendants provided to Named Plaintiffs an "independent contractor" agreement, which purports to classify Named Plaintiffs as independent contractors.

48. Defendants provided to Collective and Class Plaintiffs an "independent contractor" agreement, which purports to classify Collective and Class Plaintiffs as independent contractors.

49. Defendants are a motor carrier as defined by the Motor Carrier Act.

50. Defendants' primary business is to provide transportation of cargo for hire.

51. Defendants controlled and directed Named Plaintiffs in the performance of their work.

52. Defendants controlled/control and directed/direct Collective and Class Plaintiffs in the performance of their work.

53. Upon Named Plaintiffs' hiring, Defendants required Named Plaintiffs to attend orientation, which lasted three days.

54. During orientation, Defendants required Named Plaintiffs to take a drug test, take a physical, take a road test, and watch numerous training videos.

55. Upon completing orientation, Defendant Celadon directed Named Plaintiffs to Defendant Quality in order to go through the process of leasing their trucks.

56. Upon Collective and Class Plaintiffs' hiring, Defendants required Collective and Class Plaintiffs to attend orientation, which lasted between two and three days.

57. During orientation, Defendants required Named Plaintiffs to take a drug test, take a physical, take a road test, and watch numerous training videos.

58. Upon completing orientation, Defendant Celadon directed/direct Named Plaintiffs to Defendant Quality in order to go through the process of leasing their trucks.

59. Named Plaintiffs were not permitted, by their contract with Defendant Celadon, to use the commercial vehicle leased to them by Defendant Quality, for any carrier other than Defendant Celadon unless Defendant Celadon gave prior written consent.

60. Collective and Class Plaintiffs were/are not permitted, by their contract with Defendant Celadon, to use the commercial vehicle leased to them by Defendant Quality for any carrier other than Defendant Celadon unless Defendant Celadon gave/gives prior written consent.

61. Absent written permission from Defendant Celadon, Named Plaintiffs could accept only jobs that were assigned to them by Defendant Celadon from the Celadon freight system.

62. Absent written permission from Defendant Celadon, Collective and Class Plaintiffs could/can accept only jobs that were/are assigned to them by Defendant Celadon from the Celadon freight system.

63. Named Plaintiffs had no meaningful opportunity to increase their revenue by recruiting new customers, as they were not permitted to recruit new customers as a consequence of being permitted to accept only loads assigned to them from Defendants.

64. Collective and Class Plaintiffs had/have no meaningful opportunity to increase their revenue by recruiting new customers, as they were/are not permitted to recruit new customers as a consequence of being permitted to accept only loads assigned to them from Defendants.

65. Named Plaintiffs' could do little to increase their profitability other than attempt to improve their efficiency (i.e. improve fuel efficiency).

66. Class Plaintiffs could/can do little to increase their profitability other than attempt to improve their efficiency.

67. Named Plaintiffs were economically dependent upon Defendants.

68. Collective and Class Plaintiffs were/are economically dependent upon Defendants.

69. At all times, Defendants directed, provided, and supervised the work performed by Named Plaintiffs on Defendants' behalf.

70. At all times, Defendants directed, provided, and supervised the work performed by Collective and Class Plaintiffs on Defendants' behalf.

Defendants' Unlawful Wage Deduction Policy
(Named Plaintiffs and Class Plaintiffs v. Defendants)

71. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

72. Upon information and belief, Defendants paid Named Plaintiffs and Class Plaintiffs.

73. Upon information and belief, paychecks, which were provided to Named Plaintiffs and Class Plaintiffs, were processed in Indiana.

74. Defendants are an "employer" in Indiana under the statutory definition of the IWPS.

75. Named Plaintiffs and Class Plaintiffs were "employees" under the statutory definition of the IWPS because they were permitted to work by Defendants, an employer, as commercial truck drivers.

76. During Named Plaintiffs' employment, Defendants made unlawful deductions from Named Plaintiffs' paychecks, including deductions for lease payments, fuel, trailer lock, glad hand lock, tolls, Qualcomm use fees, air cuff lock, truck repairs, and other miscellaneous fees ("Wage Deduction Policy").

77. During Collective and Class Plaintiffs' employment, Defendants made unlawful deductions from Named Plaintiffs' and Class Plaintiffs' paychecks, including but not limited to deductions for lease payments, fuel, trailer lock, glad hand lock, tolls, Qualcomm maintenance fees, air cuff lock, truck repairs, and other miscellaneous fees.

78. The deductions made pursuant to Defendants' Wage Deduction Policy were not authorized by law. Ind. Code Ann. § 22-2-6-1 *et seq.*

79. The deductions made pursuant to Defendants' Wage Deduction Policy were not for the benefit of the employee.

80. The deductions made pursuant to Defendants' Wage Deduction Policy were not made in response to a valid wage assignment.

81. The deductions made pursuant to Defendants' Wage Deduction Policy were not revocable at any time by Named Plaintiffs and Class Plaintiffs upon written notice to Defendants.

82. Pursuant to Defendants' Wage Deduction Policy, Named Plaintiffs and Class Plaintiffs frequently were denied wages.

Failure to Pay Minimum Wage for all Hours Worked
(Named Plaintiffs and Collective Plaintiffs v. Defendants)

83. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

84. Defendants' Wage Deduction Policy and its pay structure regularly caused Named Plaintiffs' wages to drop below the federal minimum wage of $7.25 per hour for all hours worked during a workweek.

85. Upon information and belief, Collective Plaintiffs regularly received less than the federal minimum wage of $7.25 per hour for all hours worked during a workweek as a result of Defendants' Wage Deduction Policy and its pay practices.

Violations of the Truth in Leasing Act
(Named Plaintiffs and Class Plaintiffs v. Defendants)

86. The foregoing paragraphs are incorporated herein as if set forth in full.

87. To help facilitate the interstate and intrastate delivery of freight, Defendants entered into substantively similar and/or identical "independent contractor" agreements with Named Plaintiffs and Class Plaintiffs (hereinafter the "Agreements").

88. These "independent contractor" agreements purport to lease, on behalf of Defendants, commercial trucks and driving services from Named Plaintiffs and Class Plaintiffs.

89. Under federal law and regulations, "authorized motor carriers" such as Defendant Celadon, may perform authorized transportation in equipment that they do not own *only* if the equipment is covered by a written lease meeting the requirements set forth in the federal Truth-in-Leasing regulations at 49 C.F.R. § 376.12. *See* 49 C.F.R. § 376.12(a).

90. Defendants' "independent contractor" agreements do not conform to the requirements set forth in 49 C.F.R. § 376.12.

91. By way of example only, Defendants' "independent contractor" agreements contain several provisions that violate the Truth-in-Leasing Regulations:

a. Subparagraph 2.02 of the Agreements states that Named Plaintiffs and Class Plaintiffs will indemnify Defendants for any damage, fine, penalty, allegation or loss arising from the operation of the vehicle during subcontracted operations or trip leases. This provision impermissibly seeks to limit Defendants' exclusive possession, control and responsibility concerning the operation of the vehicle, in violation of 49 C.F.R. § 376.12(c)(1).

b. Subparagraph 3.02 of the Agreements states that Named Plaintiffs and Class Plaintiffs will indemnify Defendants for any liability, claim, loss, cost or expense incurred by or asserted against Defendants in connection with late pickup and/or delivery of shipments where the late pickup and/or delivery is the result of Named Plaintiffs' and Class Plaintiffs' negligence. This provision impermissibly seeks to limit Defendants' exclusive possession, control and responsibility concerning the operation of the vehicle, in violation of 49 C.F.R. § 376.12(c)(1).

c. Subparagraph 8.02 of the Agreements purports to indemnify Defendants from liability for bodily injury or property loss to third parties where the vehicle is not specifically performing a trip for Defendants. This provision impermissibly seeks to limit Defendants' exclusive possession, control and responsibility concerning the operation of the vehicle, in violation of 49 C.F.R. § 376.12(c)(1) and impermissibly seeks to limit Defendants' legal

obligations concerning public liability insurance under 49 C.F.R. § 376.12(j)(1) and 49 U.S.C. § 13906.

d. Subparagraph 8.05 of the Agreements directs Named Plaintiffs and Class Plaintiffs to maintain a "Non-Trucking Liability Insurance" policy, to be applied to the use and operation of the vehicle by Named Plaintiffs and Class Plaintiffs when the vehicle is not performing a trip that was specifically assigned by Defendants. This provision impermissibly seeks to limit Defendants' exclusive possession, control and responsibility concerning the operation of the vehicle, in violation of 49 C.F.R. § 376.12(c)(1) and impermissibly seeks to limit Defendants' legal obligations concerning public liability insurance under 49 C.F.R. § 376.12(j)(1) and 49 U.S.C. § 13906.

e. Subparagraph 12.01 of the Agreements purports to indemnify Defendants of liability where such liability in certain circumstances. This provision impermissibly seeks to limit Defendants' exclusive possession, control and responsibility concerning the operation of the vehicle, in violation of 49 C.F.R. § 376.12(c)(1).

f. Subparagraph 12.02 of the Agreements purports to indemnify Defendants of liability where such liability is incurred as a result of the Carrier's agents' acts or omissions. This provision impermissibly seeks to limit Defendants' exclusive possession, control and responsibility concerning the operation of the vehicle, in violation of 49 C.F.R. § 376.12(c)(1).

g. Paragraph 3 of Addendum I to the Agreements conditions the payment to Named Plaintiffs and Class Plaintiffs for loading or unloading the vehicle

upon the submission of proof that the vehicle was loaded and unloaded. This provision exceeds the limitations on the paperwork that may be required before Named Plaintiffs and Class Plaintiffs receive payment, in violation of 49 C.F.R. § 376.12(f).

h. Subparagraph 2.04 of the Agreements purports to reserve for Defendants the right to charge to Named Plaintiffs and Class Plaintiffs a service fee for keeping a passenger on the truck without stating the amount of said fee or the method of calculation of same. This provision is in violation of 49. C.F.R. § 376.12(h) which requires that the amount and method of computation of any charge-back item must be clearly stated on the face of the lease.

i. Subparagraph 5.02 of the Agreements purports to provide Defendants the right to deduct or offset certain costs and charges as including, but not being limited to, the rights enumerated in the lease and the addendum. As this provision states that Defendants' rights to charge-back items are not limited to those enumerated in the Agreements and supporting documents, it is in violation of 49 C.F.R. § 376.12(h) as it creates uncertainty as to the items that may be charged back against compensation.

j. Subparagraph 5.05(c) of the Agreements states that Defendants may charge back against compensation any charges or expenses incurred or paid by Defendants on behalf of Named Plaintiffs and Class Plaintiffs. This provision violates 49 C.F.R. § 376.12(h) as it allows Defendants to charge-back against compensation amounts for items that were not clearly specified in the lease.

k. Paragraph 13 of Addendum I to the Agreements states that Defendants may make deductions from Named Plaintiffs' and Class Plaintiffs' Settlement Statements or from their escrow accounts as provided by Sections 5.05 and 10.04 of the Agreements. As Section 5.05 contains a catch-all provision allowing Defendants to charge-back from compensation for any reason, Paragraph 13 of Addendum I violates 49 C.F.R. § 376.12(h) and 49 C.F.R. § 376.12(k)(2) as it purports to allow Defendants to charge back against compensation or escrow accounts, respectively, items that are not specified in the lease.

l. Subparagraph 8.08 of the Agreements purports to give Defendants the ability to unilaterally change the amount that may be charged back against compensation for insurance coverages paid for by Named Plaintiffs and Class Plaintiffs through Defendants, in violation of Defendants' obligation to clearly specify the amount that may be charged back against compensation as per 49 C.F.R. § 376.12(h).

m. Paragraph 20 of Addendum I to the Agreements purports to require the Named Plaintiffs and Class Plaintiffs to have Qualcomm equipment serviced by a vendor approved by Defendants, in violation of the proscription against forced purchases under 49 C.F.R. § 376.12(i).

n. Subparagraph 10.04 of the Agreements purports to give Defendants the right to deduct from the escrow accounts of Named Plaintiffs and Class Plaintiffs any charges or indebtedness provided in Section 5.05 of the Agreements. As Section 5.05 allows Defendants to charge back against compensation due for

any charges or expenses incurred, Subparagraph 10.04 violates 49 C.F.R. § 376.12(k)(2) and (k)(6) as the Agreements do not clearly specify all items that may be deducted from escrow accounts and unlawfully purports to give Defendants an unqualified and unrestricted right to retain escrow monies.

o. Subparagraph 10.05 of the Agreements purports to give the Defendants the right to deduct from escrow accounts any charges or indebtedness provided in Section 5.05 of the Agreements at the time of final settlement. As Section 5.05 states that Defendants may deduct from the compensation of Named Plaintiffs and Class Plaintiffs any charges or expenses incurred, Subparagraph 10.04 violates 49 C.F.R. 376.12(k)(2) and k(6) because the Agreements do not clearly specify all items that may be applied to the escrow accounts and purports to give Defendants an unqualified and unrestricted right to retain escrow monies.

p. Subparagraph 7.02 of purports to provide Defendants the right to retain escrow funds beyond 45 days after termination, in violation of 49 C.F.R. § 376.12(k)(6).

92. Additionally, the Agreements do not contain certain required provisions; by way of example only:

a. Paragraph 7.02 of the Agreements describing obligations to return identifying markings, placards, decals or other devices to Defendants upon termination, but does not make an exception for identifying markers that are painted directly onto the equipment, in violation of 49 C.F.R. 376.12(f).

b. The Agreements do not specify Defendant's obligation to give the Named Plaintiffs and Class Plaintiffs, before or at the time of settlement, a copy of the rated freight bill or a computer-generated document containing the same information, in violation of Defendants' obligation to clearly state same in the Agreements as per 49 C.F.R. § 376.12(g)(1).

c. Where a computer-generated document is provided to Named Plaintiffs and Class Plaintiffs by Defendants in lieu of a rated freight bill, the Agreements do not afford the Named Plaintiffs and Class Plaintiffs the right to view *any* actual documents underlying the computer-generated document, in violation of Defendants' obligation to include such an obligation in the Agreements under 49 C.F.R. 376.12(g).

d. Paragraph 10 to Addendum I of the Agreements establishes an escrow account for the payment of mileage based taxes, without providing that Defendants will provide an accounting of same to the Named Plaintiffs and Class Plaintiffs, that Named Plaintiffs and Class Plaintiffs have the right to demand an accounting of transactions related to same, that Defendants will pay interest on same quarterly, or that the balance of the escrow account will be returned to the Named Plaintiffs and Class Plaintiffs within forty-five (45) days of termination of the Agreements, in violation of Defendants' obligation to do so under 49 C.F.R. § 376.12(k)(3), (4), (5) and (6), respectively.

93. The conduct and business practice of authorized motor carriers must also comply with the Truth-in-Leasing regulations irrespective of whether or not their written lease agreements satisfy the requirements of the regulations. *See* 49 C.F.R. § 376.12.

94. Defendants' conduct does not conform to the requirements set forth in 49 C.F.R. § 376.12, as, by way of example only:

a. Defendants failed to provide Named Plaintiffs and Class Plaintiffs with rated freight bills or other forms of freight documentation in violation of their obligation to do so as per 49 C.F.R. § 376.12(g).

b. Defendants failed to provide Named Plaintiffs and Class Plaintiffs with copies of the documents necessary to determine the validity of certain chargebacks in violation of Defendants' duty to provide such documentation. *See* 49 C.F.R. § 376.12(h).

c. Defendants required Named Plaintiffs and Class Plaintiffs to purchase insurance through Defendants, in contradiction to Subparagraphs 8.06(d) and 12.03 of the agreement and Defendants obligation not to do so as per 49 C.F.R. § 376.12(i).

d. Defendants required Named Plaintiffs and Class Plaintiffs to purchase a Qualcomm device through Defendants, in contradiction to Paragraph 20 of Addendum I to the Agreements and Defendants' obligation not to do so as per 49 C.F.R. § 376.12(i).

e. Defendants failed to pay interest on Named Plaintiffs' and Class Plaintiffs' fuel tax escrow fund, in violation of their obligation to do so under 49 C.F.R. § 376.12(k)(2).

f. Defendants failed to provide Named Plaintiffs and Class Plaintiffs an accounting of their escrow funds within forty-five (45) days of termination of

the Agreements, in violation of their strict obligation to do so as per 49 C.F.R. § 376.12(k)(6).

g. Defendants failed to provide Named Plaintiffs and Class Plaintiffs all escrow funds due them within forty-five (45) days of termination of the Agreements, in violation of their strict obligation to do so as per 49 C.F.R. § 376.12(k)(6).

95. Defendants' unlawful activity has made it impossible for Named Plaintiffs and Class Plaintiffs to calculate the proper compensation owed to them or to determine the validity of the amounts paid to them in settlement, resulting in Defendants frequently underpaying Named Plaintiffs and Class Plaintiffs, even per the terms of the Agreement.

96. As a result of Defendants' unlawful activity, Plaintiffs have been harmed.

Violations of the Indiana Small Loans Act

97. The foregoing paragraphs are incorporated herein as if set forth in full.

98. Defendants provided payroll and other advances, which were more than $50 but less than $550, to Named Plaintiffs and Class Plaintiffs in exchange for a service fee, which was typically between $3.00 and $7.50 per transaction.

99. Upon information and belief, Defendants are not licensed to provide small loans in the state of Indiana.

100. In exchange of the advances, Defendants required Named Plaintiffs and Class Plaintiffs to allow a deduction of the amount of the loan, including the service fee, from their settlement.

101. Under the terms of the Agreements signed by Named Plaintiffs and Class Plaintiffs, Defendants secured the repayment of all loan(s) made to Named Plaintiff and Class

Plaintiffs by allowing itself to take the amount(s) owed from Named Plaintiffs' and Class Plaintiffs' from their escrow accounts.

102. The loans made to Named Plaintiffs and Class Plaintiffs were due upon the next payday of Named Plaintiff and Class Plaintiffs, which was typically within one week and resulted in a loan term of less than fourteen days. *See* Ind. Code Ann. §24.-4.5-7-401.

103. Defendants regularly provided small loans to Named Plaintiffs and Class Plaintiffs which resulted in the total of all small loan balances the borrower had outstanding with Defendants exceeding twenty percent of the borrower's monthly gross income. *See* Ind. Code Ann. §24-4.5-7.402(1).

104. Defendants secured the loans by requiring Named Plaintiffs and Class Plaintiffs to permit multiple debits from their weekly settlements and their escrow accounts. *See* Ind. Code Ann. §24-4.5-7.402(2).

105. Defendants failed to provide a signed and dated receipt to Named Plaintiffs and Class Plaintiffs after making partial or full payments of the loan. *See* Ind. Code Ann. §24-4.5-7-402(4).

106. Defendants failed to provide the required loan documents and disclosures to Named Plaintiffs and Class Plaintiffs prior to distributing the loan proceeds. *See* Ind. Code Ann. §24-4.5-7.402(5).

107. Defendants failed to grant Named Plaintiffs and Class Plaintiffs the option of rescinding the loans by repaying the cash amount of the principal of the loan by the end of the next business day. *See* Ind. Code Ann. §24-4.5-7.402(6).

108. Defendants secured the loans provided to Named Plaintiffs and Class Plaintiffs through wage assignments and by securing their personal property. *See* Ind. Code Ann. §24-4.5-7-403.

109. Defendants permitted Named Plaintiffs and Class Plaintiffs to become obligated to Defendants for multiple loans at the same time. *See* Ind. Code Ann. §24-4.5-7.404(2).

110. Defendants made small loans to Named Plaintiffs and Class Plaintiffs so that the total owed under such small loan agreements exceeded $550, exclusive of finance charges. *See* Ind. Code Ann. §24-4.5-7.404(3).

111. Upon information and belief, Defendants failed to review its own records and records available by a private consumer reporting service to determine the number and amount of small loans currently due by Named Plaintiffs and Class Plaintiffs prior to issuing the loans. *See* Ind. Code Ann. §24-4.5-7-404(4).

112. Upon information and belief, without authorization from the State of Indiana Department of Financial Institutions, Defendants operated its motor carrier business within the same business location that it provided small loans. *See* Ind. Code Ann. §24-4.5-7-405(2).

113. Defendants failed to provide any contractual agreement for any small loan provided to Named Plaintiffs and Class Plaintiffs that included a notice of the remedies available to Defendants and the remedies Defendants were prohibited from seeking. *See* Ind. Code Ann. §24-4.5-7-406(4).

114. The cited practices are mere examples of Defendants' conduct in violation the Indian Small Loans Act. Defendants has violated numerous other provisions of the Act.

115. As a consequence of the aforementioned practices of Defendants, Defendants regularly engaged in "prohibited practices" as defined by Ind. Code Ann. §24-4.5-7-410.

116. Defendants' violations of the Indiana Small Loans Act were not the result of an accident of bona fide error of computation. *See* Ind. Code Ann. §24-4.5-7-409(2)(d).

117. Defendants unlawfully collected, received, and retained the principal and charges for each small loan made to Named Plaintiffs and Class Plaintiffs.

118. Defendants' violations of the Indiana Small Loans Act injured Named Plaintiffs and Class Plaintiffs.

Violations of the Indiana Consumer Loan Act

119. The foregoing paragraphs are incorporated herein as if set forth in full.

120. Defendants regularly engaged in making payroll and other advances in exchange for a service fee to Named Plaintiffs and Class Plaintiffs.

121. The service fee charged to Named Plaintiffs and Class Plaintiffs per loan ranged from $3.00 to $7.50, typically for a loan length of less than two weeks, for an amount that was not more than $500.

122. The service fee thus exceeded a 36% interest rate on an annual basis. *See* Ind. Code Ann. §24-4.5-3.508.

123. The service fee thus exceeded a 72% interest rate on an annual basis and constitutes felony loansharking. *See* Ind. Code An. §35-45-7-2

124. By way of example only, on September 2, 2015 Defendants issued a $100 payroll advance to Named Plaintiff Smith. Defendants charged Named Plaintiff Smith a $3.00 service fee for the loan. Nine days later, Defendants withheld from Named Plaintiffs pay $103 (the $100 principal plus the $3 fee) to secure repayment of the loan. The annual percentage rate of interest on the $100 loan thus amounted to 121.7%.

125. All payday and other advances made to Named Plaintiffs and Class Plaintiffs, are void as a matter of law. *See* Ind. Code Ann. §35-45-7-4.

126. Upon information and belief, Defendants did not acquire or retain a license to issue loans to Named Plaintiffs and Class Plaintiffs.

127. Defendants permitted Named Plaintiffs and Class Plaintiffs to be obligated under multiple payroll and other advances to obtain a higher loan finance charge than is permitted under the statute. *See* Ind. Code Ann. §24-4.5-3-509.

128. Defendants unlawfully collected and retained the principal and finance charges on loans made to Named Plaintiffs and Class Plaintiffs.

129. The cited practices are mere examples of Defendants' conduct in violation the Indiana Consumer Credit Code - Loans. Defendants have violated numerous other provisions of the Act.

130. Defendants' unlawful conduct has harmed Named Plaintiffs and Class Plaintiffs.

Violations of the Indiana Wage Assignment Act

131. The foregoing paragraphs are incorporated herein as if set forth in full.

132. Defendants secured wage assignments from Named Plaintiffs and Class Plaintiffs for, *inter alia*, lease payments, fuel purchases, insurance purchases, and payroll advances.

133. The wage assignment(s) secured by Defendants were not, by their terms, revocable at any time upon written notice to Defendants.

134. Defendants charged transactional fees for the wage assignments, which resulted in interest rates that well exceeded the bank prime loan interest rate as reported by the Board of Governors plus four percent.

135. Defendants charged transactions fees for the wage assignments, which resulted in interest rates exceeding 8% per year.

136. Defendants deducted from Named Plaintiffs' and Class Plaintiffs' wages for equipment that was necessary to fulfill the duties of employment of Named Plaintiffs and Class Plaintiffs in amounts that exceeded $2,500 per year and 5% of Named Plaintiffs' and Class Plaintiffs' disposable income.

137. Defendants secured agreements that exceeded thirty days in length.

138. Defendants unlawfully withheld compensation due to Named Plaintiffs and Class Plaintiffs in violation of the Indiana Wage Assignment Act.

139. Defendants' unlawful conduct has harmed Named Plaintiffs and Class Plaintiffs.

COUNT I
Violations of the Fair Labor Standards Act ("FLSA")
(Failure to Pay Minimum Wage)
Named Plaintiffs and Collective Plaintiffs v. Defendants

140. The foregoing paragraphs are incorporated herein as if set forth in full.

141. At all times relevant herein, Defendants were and continue to be "employers" within the meaning of the FLSA.

142. At all times relevant herein, Named Plaintiffs and Collective Plaintiffs were/are "employees" within the meaning of the FLSA.

143. The FLSA requires employers, such as Defendants, to minimally compensate employees, such as Named Plaintiff and Collective Plaintiffs, at the federal minimum wage rate for each hour worked.

144. As a result of Defendants' company-wide practices and policies of not paying its employees at least the federally mandated minimum wage for all hours worked, Named Plaintiffs and Collective Plaintiffs have been harmed.

145. John Does 1-5 are jointly and individually liable for Defendant's failure to compensate Named Plaintiffs and Collective Plaintiffs at least the statutorily mandated federal minimum wage for all hours worked because they directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices which violated the FLSA.

146. John Does 6-10 are jointly and individually liable for Defendant's failure to compensate Named Plaintiff and Collective Plaintiffs at least the statutorily mandated federal minimum wage for all hours worked because they had control over processing payroll for Named Plaintiffs and Collective Plaintiffs.

147. Defendants willfully failed/fail to compensate Named Plaintiffs and Collective Plaintiffs the federal minimum wage.

148. As a result of Defendants' failure to compensate Named Plaintiffs and Collective Plaintiffs at the federal minimum wage rate, Defendants have violated and continue to violate the FLSA.

COUNT II
Violations of the Indiana Wage Payment Statute ("IWPS")
(Unlawful Deductions)
Named Plaintiffs and Class Plaintiffs v. Defendants

149. The foregoing paragraphs are incorporated herein as if set forth in full.

150. At all times relevant herein, Defendants stood in an Employer/Employee relationship with Named Plaintiffs and Class Plaintiffs.

151. At all times relevant herein, Defendants were responsible for paying wages to Named Plaintiffs and Class Plaintiffs.

152. Defendants violated the IWPS, Ind. Code Ann. § 22-2-5-1 *et seq.*, by withholding wages for illegal deductions from Named Plaintiffs' and Class Plaintiffs' pay.

153. John Does 1-5 are jointly and individually liable for Defendants' unlawful deductions from Named Plaintiffs' and Class Plaintiffs' pay because they directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices which violated the IWPS.

154. John Does 6-10 are jointly and individually liable for Defendants' unlawful deductions from Named Plaintiffs and Class Plaintiffs pay, because they directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices which violated the IWPS.

155. Defendants did/do not act in good faith in unlawfully deducting from Named Plaintiffs' and Class Plaintiffs' wages.

156. As a result of Defendants' conduct, Named Plaintiffs and Class Plaintiffs have suffered damages.

COUNT III
Violations of the Truth in Leasing Act
Named Plaintiffs and Class Plaintiffs v. Defendants

157. The foregoing paragraphs are incorporated herein as if set forth in full.

158. Defendants' conduct violated multiple provisions of the Truth in Leasing Act.

159. As a result of Defendants' conduct, Named Plaintiffs and Class Plaintiffs have suffered damages.

COUNT IV
Violations of the Indiana Small Loans Act
Named Plaintiffs and Class Plaintiffs v. Defendants

160. The foregoing paragraphs are incorporated herein as if set forth in full.

161. Defendants' conduct violated the Indiana Small Loans Act.

162. As a result of Defendant's conduct, Named Plaintiffs and Class Plaintiffs have suffered damages.

COUNT V
Violations of the Indiana Consumer Loans Act
Named Plaintiffs and Class Plaintiffs v. Defendants

163. The foregoing paragraphs are incorporated herein as if set forth in full.

164. Defendants' conduct violated the Indiana Consumer Loans Act.

165. As a result of Defendant's conduct, Named Plaintiffs and Class Plaintiffs have suffered damages.

COUNT VI
Violations of the Indiana Wage Assignment Act
Named Plaintiffs and Class Plaintiffs v. Defendants

166. The foregoing paragraphs are incorporated herein as if set forth in full.

167. Defendants' conduct violated the Indiana Consumer Loans Act.

168. As a result of Defendant's conduct, Named Plaintiffs and Class Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs pray that this Court enter an Order providing that:

(1) Defendants are to be prohibited from continuing to maintain their policies, practices or customs in violation of state laws and principles of equity;

(2) Defendants are to compensate, reimburse, and make Named Plaintiffs, Collective and Class Plaintiffs whole for any and all pay and benefits they would have received had it not been for Defendants' illegal actions, including but not limited to past lost earnings. Named Plaintiffs, Collective and Class Plaintiffs should be accorded those benefits illegally withheld;

(3) Defendants are to compensate, reimburse, and make Named Plaintiffs and Class Plaintiffs whole for any and all harm incurred as a result of Defendants' illegal actions. Named Plaintiffs and Class Plaintiffs should be accorded those benefits illegally withheld;

(4) Named Plaintiffs, Collective and Class Plaintiffs are to be awarded liquidated damages;

(5) Named Plaintiffs and Class Plaintiffs are to be awarded statutory penalties, punitive damages, and other damages permitted by law;

(6) Named Plaintiffs, Collective, and Class Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable law;

(7) Any and all other equitable relief which this Court deems fit.

Respectfully Submitted,

/s/ Justin L. Swidler

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Date: April 13, 2016

DEMAND TO PRESERVE EVIDENCE

All Defendants are hereby directed to preserve all physical and electronic information pertaining in any way to Named Plaintiffs', Collective Plaintiffs, and Class Plaintiffs' employment, to Named Plaintiffs', Collective Plaintiffs, and Class Plaintiffs' cause of action

and/or prayers for relief, and to any defenses to same, including, but not limited to, electronic data storage, driver logs, loan documents, lease documents, titles, closed circuit TV footage, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages, any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.