

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

WILLIAM BLAKELY, *et al.*,

Plaintiffs,

v.

CELADON GROUP, INC., *et al.*

Defendants.

Civil Action No. 1:16-cv-00351-LJM-
TAB

PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Named Plaintiffs William Blakley, Helen Blakley and Kimberly Smith hereby submit their

Statement of Material Facts.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The instant action was filed by Named Plaintiffs William Blakley, Helen Blakley, and Kimberly Smith (collectively “Named Plaintiffs”) on February 12, 2016. (Civil Action Complaint, ECF Doc. No. 1).

2. The Second Amended Complaint, which is the operative Complaint, asserts violations of the minimum wage provision of the Fair Labor Standards Act (“FLSA”), the Truth in Leasing Act (“TILA”), the Indiana Wage Payment Statute (“Wage Payment Statute”), the Indiana Small Loan Act (“Small Loan Act”), the Indiana Consumer Loan Act (“Consumer Loan Act”), the Indiana Wage Deduction Act (“Wage Deduction Act”), and the Indiana Wage Assignment Act (“Wage Assignment Act”). Named Plaintiffs assert violations of these statutes on behalf of themselves and all similarly situated individuals against Celadon Group, Inc., Celadon Trucking Services, Inc., Quality Companies, LLC, and Quality Equipment Leasing, LLC. (Second Amended Complaint, ECF Doc. No. 52).

3. Named Plaintiffs’ employment based claims, specifically claims under the FLSA, the Wage Payment Statute, the Wage Deduction Act, and the Wage Assignment Act, are based upon Named Plaintiffs’ assertions that Defendants misclassified them as non-employee independent contractors. (*Id.*)

4. Named Plaintiffs took the deposition of Matthew Douglas, who is the Vice President of Operations for Celadon Trucking Services. (Deposition of Matthew Douglas “Douglas Dep.” at 7, attached to Swidler Cert. as Exhibit 1-B).

5. Named Plaintiffs took the deposition of David Chesterman, who has been employed by Celadon for 14 years, and who has held the job titles of night dispatcher, operations manager,

recruiting manager, and director of recruiting. At the time of his deposition, he was the director of recruiting. (Deposition of David Chesterman (“Chesterman Dep.”) at 7, attached to Swidler Cert as Exhibit 1-E).

6. Named Plaintiffs took the deposition of Bradley Hackett, who has been employed by Celadon Group, Inc. for three years, and has held the job titles of driver manager, assistant operations manager, and at the time of his deposition, was the director of operations. (Deposition of Bradley Hackett (“Hackett Dep.”) at 7-8, attached to Swidler Cert. as Exhibit 1-O).

7. Named Plaintiffs took the deposition of Michelle Sheets, who has been employed by Celadon since July of 2013. (Deposition of Michelle Sheets (“Sheets Dep.”) at 6, attached to Swidler Cert. as Exhibit 1-F). Sheets began Celadon as the student coordinator for the driving school, worked in driver relations, and is currently the driver orientation manager. (Sheets Dep., Ex. 1-F at 6-7).

8. At all times relevant herein, Defendants have operated a lease purchase program whereby drivers can apply to become drivers for Defendants who Defendants classify as “independent contractors.” (30(b)(6) Deposition of Bradley Hackett (“30(b)(6) Hackett Dep.”), Ex. 1-A at 74-80).

9. At all times relevant herein, Defendants also utilized truck drivers who performed work for Defendants as “Company Drivers” who Defendants classify as “employees.” (Deposition of Vice President of Operations, Matthew Douglas (“Douglas Dep”), Ex. 1-B at 104-105).

10. Since 2013, 6,786 individuals have completed orientation and have been hired by Defendants into the lease purchase program and classified as independent contractors. (*See* 30(b)(6) Deposition of David Chesterman 1-C, at 51-52, and Designee Exhibit 36, attached to his Deposition and attached hereto as Ex. 1-D).

11. Celadon operates approximately 30 fleets of drivers, with 15 fleets consisting of company drivers (who Celadon designates as employees) and the other 15 fleets consisting of “owner operators”. (Douglas Dep., Ex. 1-B at 63-64). Of the alleged owner operators, 98-99% are “lease purchase” drivers (referred to “lease purchase drivers” and/or “alleged contractors”). 100% of the lease purchase drivers lease their trucks from Quality. (*Id.* at 64).

12. Quality provides a form lease agreement to those entering into the lease purchase program. (*See, e.g.* Named Plaintiff Lease Agreements, Ex. 1-G). These lease agreement states that the lessee may only provide transportation services for the carrier identified in the agreement, *e.g.* Celadon. (Ex. 1-G at CLD220, 233, 248 ¶4). The lease agreement further states that a default of the agreement occurs if the “[l]essee shall cease using the Vehicle(s) for providing transportation services for the Carrier identified herein.” (*Id.* at CLD223, 236, 250 at ¶11).

13. Celadon provides a form operating agreement to those into the lease purchase program. (*See, e.g.* Form Operating Agreements, Ex. 1-H). These agreements refer to the lease purchase drivers as “independent contractors.” The agreements state that the contractor “agrees to furnish to Carrier for Carrier’s exclusive use, possession, and control to the extent required by the STB Leasing regulations, the highway tractor(s) described in the Schedule of Equipment...” (*See, e.g. Id.* at CLD1673 §2.01).

14. Named Plaintiffs signed the form operating agreements provided by Celadon. (Named Plaintiffs’ Operating Agreements, Ex. 1-I).

15. When a driver applies to work for Celadon, whether as a company driver (which Defendant correctly designates and treats as employees) or an alleged contractor, Celadon requires the driver to attend a multi-day orientation in Indianapolis (“new-hire orientation”). Upon arriving at the new-hire orientation, Celadon provides a written “conditional offer of employment” to the

driver which explains that the driver will be hired if he or she completes orientation. (*See, e.g.* Conditional Offer of Employment for Named Plaintiffs, CLD 800, 869, Ex 1-I. The conditional offers of employment provided to drivers are *identical* for Company Drivers and alleged contractors. (Chesterman Dep., Ex. 1-E at 60-61). The Director of Recruiting admitted that the form is “given to extend a conditional offer of employment to [sic] Celadon as an over-the-road truck driver” and admitted that drivers are informed of this when they are given the document to sign. (Chesterman Dep., Ex. 1-E at 61).

16. In order to work for Celadon as a lease purchase driver, Named Plaintiff Helen Blakley was required to sign a Program Lease Agreement with Quality. (Helen Blakley’s Program Lease Agreement, Ex. 1-G at CLD219-231).

17. In order to work for Celadon, Named Plaintiff William Blakley was required to sign a Program Lease Agreement. (William Blakley’s Program Lease Agreement, Ex. 1-G at CLD233-246).

18. In order to work for Celadon, Named Plaintiff Kimberly Smith was required to sign a Program Lease Agreement and a Settlement Deduction Agreement. (Kimberly Smith’s Program Lease Agreement, attached to Swidler Cert. as Ex. 1-G at CLD247-260).

19. While attending Celadon’s new-hire orientation, alleged contractors are required to sign a form document entitled “Workers Compensation Acknowledgment & Agreement.” (*See* Workers Compensation Acknowledgment & Agreement, attached to Swidler Cert. as Exhibit 1-J). The document states that it is a contract wherein the parties, Celadon Trucking Services, Inc. and the alleged contractor, agree “to be legally bound.” The Agreement refers to the alleged contractor as an “Employee” and refers to Celadon as the “Employer”. It states that the “Employer is in the business of hiring qualified employees to perform tasks in the trucking business;” the “Employee

desires to work in the trucking business for the Employer;” and the “Employee’s duties require travel regularly in Employer’s service in Indiana and in other states.” The Agreement provides that the Parties agree that the “Employee’s employment is principally localized in Indiana.” (*Id.*).

20. While the orientation procedure has changed during the class period, the changes are not material. For some time during the class period, alleged contractors and Company Drivers took the same 3-day new-hire orientation, and the orientation had both alleged contractors and company drivers in it. (Chesterman Dep., Ex. 1-E at 55-56; Sheets Dep., Ex. 1-F at 18). Now, the 3-day orientation is mostly through a computer, with the orientation-attendees watching numerous videos on the computer while at Defendants’ headquarters. (Chesterman Dep., Ex. 1-E at 55-56).

21. The subject matter provided to alleged contractors and company drivers is mostly identical, including presentations and videos. The main difference in the subject matter provided in orientation to alleged contractors versus company drivers is that company drivers are shown a video regarding benefits, and alleged contractors are not. (Sheets Dep. at 36, Ex. 1-F). The orientation covers the same subject matter because, regardless of whether the attendee is an alleged contractor or company driver, “they’re applying for a job as a driver, [and] all drivers have to go through . . . training every two years. So while we’re waiting for drug screen results, we take of it at that time.” (Sheets Dep., Ex. 1-F at 42-43, *See also* Deposition of Helen Blakley “Helen Blakley Dep.”, attached to Swidler Cert. as Ex. 1-K at 24-25).

22. During orientation, all drivers, including alleged contractors, are assigned an “employee number.” (Sheets Dep., Ex. 1-F at 44).

23. The new-hire orientation is designed to train the attendees on “specific policies and procedures of Celadon” to teach them “how to operate as a driver and be employed by us.” (Sheets Dep. at 40, Ex. 1-F) (emphasis added).

24. Named Plaintiffs William and Helen Blakley attended orientation to become lease purchase drivers in May of 2015. (Helen Blakley Dep., Ex. 1-K at 40; Deposition of William Blakley “William Blakley Dep.”, attached to Swidler Cert. as Ex. 1-L at 49-51).

25. Named Plaintiff Smith attended orientation to become a lease purchase driver in August of 2015. (Deposition of Kimberly Smith “Smith Dep.”, attached to Swidler Cert. as Ex. 1-M at 42, 45).

26. Douglas testified that prior to being promoted to Vice President of Operations, he was a pricing analyst. (Douglas Dep., Ex. 1-B at 7-8).

27. As a pricing analyst, Douglas bid on loads which Celadon would agree to complete on behalf of Celadon customer. (Douglas Dep., Ex. 1-B at 9). The bidding process was done without input from drivers of Celadon, including alleged independent contractors who would eventually be assigned by Celadon to haul such loads. (Douglas Dep., Ex. 1-B at 9-10).

28. Pricing analysts of Celadon bid on loads based upon “truck capacity on a daily basis [and] load capacity on a daily basis.” (Douglas Dep., Ex. 1-B at 10). “Trucking Capacity” refers to the number of trucks available to Celadon in a particular region at that point in time. “Load Capacity” refers to loads that are “available in a particular region.” (Douglas Dep., Ex. 1-B at 11).

29. When Celadon calculates its truck capacity, it does not distinguish between drivers who Celadon claims are running an independent business and drivers who are company drivers (drivers designated as “employees” by Celadon). Thus, the truck leased to a lease purchase driver is available to Celadon for purposes of Celadon’s internal metrics and bidding processes, without any input from the driver. (Douglas Dep., Ex. 1-B at 10-12).

30. Douglas admitted that use of contractors by Celadon is “integral” to Celadon’s bidding process because alleged contractors “add[] into our total truck count.” (*Id.* at 13).

31. Defendants require company drivers and alleged contractors to have governors installed on the trucks they drive limiting their maximum speed, to ensure compliance with Celadon's speed policies. Douglas testified that Celadon sets the governor at 63 mph for company drivers and 65 mph for alleged contractors. (Douglas Dep., Ex. 1-B at 18-19).

32. Alleged contractors are required to sign a "Tractor Tampering Policy" which refers to the trucks driven by alleged contractors as "company owned tractors." The Tractor Tampering Policy requires alleged contractors to acknowledge that changing the governor settings of the tractor, as well as failing to "immediately report to my Driver Manager any changes in these settings . . . is a violation of company policy." (*See, e.g.*, CLD891, attached to Swidler Cert. as Ex. 1-n). The agreement further provides that the alleged contractor "acknowledge[s] and agree[s] that any violation of this agreement constitutes gross misconduct on my part and will entitle the company to **immediately terminate my employment.**" (*Id.*) (emphasis added).

33. Defendants maintain that one of the central differences between company drivers and alleged contractors is that employees are not permitted to refuse loads. (Chesterman Dep., Ex. 1-E at 24). However, despite this policy, Celadon admits that company drivers refuse loads, and are not disciplined unless they refuse more than about 3 loads in a 30-day period. (Douglas Dep., Ex. 1-B at 32-33). When a company driver refuses a load, the reasons are generally related to compensation and home time, but also include "weight, destination region, [and] driving through the mountains." Contractors make the same types of decisions and refuse loads because of "home time, revenue, destination regions, tolls, mountains, [and] weight." (Douglas Dep., Ex. 1-B at 33). Thus, contractors and company drivers generally refuse loads for similar reasons. (*Id.* at 33-34).

34. Celadon utilizes load optimization software to assign loads to its company drivers and alleged contractors. The software "pulls in all drivers, all loads, put them through a weight

calculation, and it provides our recommendations to us.” The software recommends loads based on all available drivers of Celadon, including company drivers and alleged contractors. (Douglas Dep., Ex. 1-B at 36).

35. Celadon determines how freight should be prioritized and assigned by changing the weight of different factors of each load in the optimization software. The load planning weighting can be “changed at a moment’s notice” by Celadon and is managed and operated by Celadon; alleged contractors cannot change the system to have specific loads assigned to them. (Douglas Dep., Ex. 1-B at 36-37).

36. Once a recommendation is made by the optimization software, the recommendation is provided to a load planner, who reviews the recommendation and either assigns the load to a driver or chooses not to accept the recommendation. A load planner oversees both company drivers and alleged contractors, and the process for load assignments is the same for company drivers and alleged contractors, and occurs without direct input from the driver. (Douglas Dep., Ex. 1-B at 38-39).

37. Planning attempts to stay 12 hours in front of drivers, meaning that they attempt to have a load assigned to the alleged contractor prior to the driver completing his previous load, this way the truck will keep moving. Planning assumes, for all drivers, whether company driver or alleged contractor, and without input from the driver, that the driver will average 50 mph on the route, and will remain on the route as assigned by Celadon. (30(b)(6) Hackett Dep., Ex. 1-A at 114-116).

38. Drivers in the Celadon lease purchase program obtain loads exclusively from Celadon, whose goal is to “move Celadon freight on Celadon trailers for Celadon customers by Celadon lease operators.” (Douglas Dep., Ex. 1-B at 130).

39. Once a load planner decides which load to assign to a driver, the load is communicated to the driver through a computer communications system in the truck, which Celadon requires alleged contractors and company drivers to utilize. A driver has up to one hour to accept or reject the load. This process is identical for company drivers and alleged contractors. (Douglas Dep., Ex. 1-B at 41, Chesterman Dep., Ex. 1-E at 33).

40. When a driver is offered a load, he is not provided information on other loads that may be available if he refuses, nor is he informed how long it will be until Celadon provides him an alternative load. (Douglas Dep., Ex. 1-B at 44, Chesterman Dep., Ex. 1-E at 13). Drivers are thus not provided information necessary to evaluate the economic opportunity costs for taking or refusing a load. (Douglas Dep. Ex. 1-B at 52). Like company drivers, alleged contractors do not have the ability to choose a load from more than one option.¹ (Chesterman Dep., Ex. 1-E at 13).

41. Lease purchase drivers are not provided any information regarding (1) how and why planning selected the load to assign to the alleged contractor; (2) when or whether another load would be available if they reject the current assignment; (3) what the next load would be if they reject the current assignment; (4) other opportunities Celadon has for them if they turn down the current assignment; or (5) what loads will be available once they get to their destination if they accept the load assignment. (Chesterman Dep., Ex. 1-E at 13-14, Helen Blakley Dep., Ex. 1-K at 63-64).

42. Celadon utilizes driver managers to supervise the drivers. (Douglas Dep., Ex. 1-B at 60-61, Chesterman Dep., Ex. 1-E at 71-72). Celadon assigns the driver managers to the alleged contractors. (Douglas Dep., Ex. 1-B at 80, Helen Blakley Dep., Ex. 1-K at 40-42, Deposition of

¹ As discussed below, in August of 2016, Defendants began allowing lease purchase drivers to utilize an application named "Freight Rover" which allegedly allows contractors to chose from multiple available loads. As discussed below, the significant limitations imposed upon Celadon have greatly limited any distinction.

William Blakley “William Blakley Dep.”, Ex. 1-L at 97). The driver manager’s performance affects the alleged contractor’s ability to make money. (*Id.* at 80; Hackett Dep., Ex. 1-O at 22-23).

43. Part of the driver manager’s job is to get the alleged contractor to accept any load that is provided to him. When a driver manager is informed that an alleged contractor does not want to take a load, the driver managers “let [the contractor] know that if they’re sitting, they still have their fixed costs, to weigh that into their decision if they want to wait” for the next load rather than take their current assignment. (Hackett Dep., Ex. 1-O at 44).

44. Hackett further admitted that Celadon trains alleged contractors that “keeping the wheels turning is the ultimate goal” and that “sitting [*i.e.* waiting for another load assignment if you are unhappy with the first option provided by Celadon] is rarely a good business strategy.” (30(b)(6) Hackett Dep., Ex. 1-A at 138). Celadon trains contractors that they should not do a load-by-load analysis when offered a load but instead should focus on the “big picture” which is that “the most important thing” is to keep the truck moving and drive. (30(b)(6) Hackett Dep., Ex. 1-A at 138-139).

45. Lacking information about other potential loads and motivated by the fear that they could be informally punished for refusing loads, research shows that “drivers learn to accept nearly all assigned loads.” (Expert Report of Dr. Steve Viscielli, attached to Swidler Cert. as Ex. 1-P at 26). **Named Plaintiffs all testified that they learned they could not reject loads.** (Helen Blakley Dep, Ex. 1-K at 63-64; William Blakley Dep, Ex. 1-L at 109; Smith Dep, Ex. 1-M at 138-139).

46. During her employment for Celadon, **Helen Blakley learned that she could not reject loads after being informally disciplined by Celadon for doing so:**

Q. What happened next?

A. Well, **when I refused the load, they made – they penalized us by making us sit for 24 to 34 hours.**

Q. Why do you think that that was a penalty? How do you know that that was a penalty?

A. How do I know that was a penalty? Because at the time, we had a yard down in Laredo, Texas. There's other Celadon drivers sitting there waiting on loads. And about, I'd say about every two hours, there would be a Celadon driver go out bobtail and come back with a loaded trailer. So I took it upon myself at that time, after seeing Celadon bobtails leave out and come back with loaded trailers, I took it upon myself at that time to get on the celadonlogistics.com load board, and I seen loads.

Q. What did you do after you looked at the Celadon logistics load board?

A. I seen a couple of loads that was on there. I wrote the information down about them. **I called in to driver manager, asked him about it. And he, excuse my language, but he flat-out asked me, "Where the fuck did you get this information from?" And when I told him, he says, "You're not allowed to do that."**

Q. What did you say?

A. I'm like, **"Why not?" He said, "Because you're an employee of Celadon, and I control what loads you haul. I have a say-so about it, you have no say-so."**

(Helen Blakley Dep., Ex. 1-K at 63-64).

47. During his employment for Celadon, William Blakley could not reject loads after being informally disciplined by Celadon for doing so:

Q. What information would you consider when deciding to take a load or not? Did you consider where it was going, what part of the country?

A. No,

Q. How many miles it was?

A. Like I said, man, I turned down that one load, and I was disciplined about that. Twenty-four to 34 hours. I have keep telling myself, you turn down a load again, they're going to make you sit even more. So from here on out, I started accepting every load.

(William Blakley Dep., Ex. 1-L at 109).

48. Even where a load is rejected, many times Celadon will simply assign the same load back to the driver to obtain compliance within Celadon's system. For example, Named Plaintiff Smith rejected a load and was reassigned the same load *six* separate times (each time she

refused and Celadon only provided the exact same load back to her). Named Plaintiff Smith was ultimately disciplined for refusing the load so many times. (Kimberly Smith Dep., Ex. 1-M at 181-184; *see also* Kimberly Smith Discipline, Ex. 1-Q (stating nature of offense as “This driver has refused 6 loads since the 5th...”)).

49. Driver managers understand that they are largely responsible for the success of the alleged contractors they supervise. (Hackett Dep., Ex. 1-O at 11) (“I was responsible for keeping [the lease purchase drivers’] information up to date in the system, maintaining contact and keeping their truck as up to date as possible to ensure their success.”) (emphasis added). Mr. Hackett elaborated:

Q. What did you mean by "ensure success"?

A. Drivers get paid per load that they haul, whether they're on the mileage contract or percent revenue contract. So if they're not hauling loads, then they're not generating revenue. So the ultimate goal of my operations team is to ensure that within legal standards of DOT they keep their wheels turning and keep hauling more loads. More loads is more revenue, more paycheck for them.

Q. Okay. And as a driver manager was it your job to make sure they kept their wheels turning?

A. Correct.

(Hackett Dep., Ex. 1-O at 15:20 to 16:6).

50. Driver managers monitor company drivers and contractors remotely through the use of a Qualcomm computer which is required to be on every tractor, whether driven by a company driver or an alleged contractor. (Chesterman Dep., Ex. 1-E at 21-22). The Qualcomm unit provides “satellite tracking” of the alleged contractor’s vehicle in real time to the driver managers, and maintaining communication and “up to date” information regarding the drivers’ location and the drivers’ hours is “imperative” for Celadon’s load planning software and models. (Hackett Dep., Ex. 1-O at 14-15). The Qualcomm “lets [Celadon] do load tracking and keep track

of [the alleged contractor's] DOT hours of service and maintain service levels with [the] customer.” (Hackett Dep., Ex. 1-O at 90). The information is provided in real time to the driver manager. (30(b)(6) Hackett Dep., Ex. 1-A at 20).

51. One of things driver managers monitor of alleged contractors and company drivers is their driver logs, to ensure the driver is taking breaks when required, and to ensure the driver is not taking too many breaks. (30(b)(6) Hackett Dep., Ex. 1-A at 19-21). Celadon maintains that the action taken for non-compliance is different for company drivers and alleged contractors. (*Id.* at 19). Where a driver is a company driver, the driver manager calls the driver and can threaten disciplinary action, up to and including termination of employment if the driver does not comply with the instruction. (*Id.* at 20-21). This difference is in form only, as, where the driver is an alleged contractor, the driver manager calls the driver and can threaten to have his contract terminated, which would prevent the alleged contractor from continuing to perform work for Celadon. (*Id.* at 20-22).

52. Once a load is accepted by a driver, Celadon dispatches the driver by providing them all the “pertinent information” about the load to the driver. The information is communicated by the driver manager. This process is identical for alleged contractors and company drivers. (Chesterman Dep., Ex. 1-E at 10).

53. Celadon measures driver manager performance based on the same metrics for company drivers and alleged contractors. (Douglas Dep., Ex. 1-B at 45-46, Hackett Dep., Ex. 1-O at 47-48). Those metrics include utilization across the fleet, revenue per truck per day, out-of-service percentage, and dead-head percentage. (Douglas Dep., Ex. 1-B at 45-46).

- a. “Utilization” means miles per week; Celadon sets the goal of 2,100 miles per truck per week, and the goal is identical company-wide, regardless of whether

the driver is an alleged contractor or company driver. (Douglas Dep., Ex. 1-B at 47).

- b. “Revenue per truck per day” is \$475 per day, averaged over 7-days, including days where the driver is at home (and not producing any revenue). This expectation is the same for company drivers and alleged contractors. (Douglas Dep., Ex. 1-B at 49). This means that home time must be similar for company drivers and alleged contractors.
- c. “Out-of-service percentage” refers to trucks that “are not available to run for whatever reason that could be out there.” (*Id.* at 50). The expectation is 10% for weekdays and 15% for weekends. This expectation is identical for company drivers and alleged contractors. (*Id.*).
- d. “Dead-head percentage” refers to the percentage of miles which are driven without a load. The expectation is that driver manager will have around 10% dead-head miles. This expectation is identical for company drivers and alleged contractors. (*Id.* at 50-51).

54. Alleged contractors of Celadon are dependent upon Celadon to give them loads to succeed. (Douglas Dep., Ex. 1-B at 55; Chesterman Dep., Ex. 1-E at 14). Celadon admits that load assignments given by Celadon “have a large impact on the amount of money a contractor of Celadon [can] make.” (Chesterman Dep., Ex. 1-E at 30-31).

55. If Celadon does not have any loads to give the alleged contractor, the driver will lose money and the only thing that the alleged contractor can do in that situation is to let Celadon know that he is available to take a load for Celadon. (Chesterman Dep., Ex. 1-E at 32; Sheets Dep. Ex. 1-F at 15).

56. During the class period, Celadon utilized a performance metric which it called the “Driver Scorecard.” (Douglas Dep., Ex. 1-B at 69-70; *see also* Driver Scorecard Frequently Asked Questions, attached to Swidler Cert. at Exhibit 1-R).

57. The Driver Scorecard was utilized for both company drivers and alleged contractors, although contractors were ineligible for bonuses derived from the performance metric. (*Id.*). However, where an alleged contractor’s scorecard showed the driver was not performing to Defendants’ standards, Defendants utilize the scorecard “to provide action if [Defendants] feel a driver is scoring in a negative direction.” (Douglas Dep., Ex. 1-B at 69). Defendants admit that they coach alleged contractors who perform negatively. (*Id.* at 70-71). Even though Defendants maintain that lease purchase drivers may reject loads, Celadon “dings” lease purchase drivers for refusing a load.

Load Acceptance

Q: I am a Lease Purchase/Owner Operator; **will I be dinged for refusing a load?**

A: **Yes**, but please kind in mind this is not forced dispatch. This is simply to reward those contractors who accept loads as assigned.

(Driver Scorecard FAQ, CLD998-999, attached to Swidler Cert. as Exhibit 1-R) (emphasis added).

58. Alleged contractors of Celadon do not have the ability to negotiate prices on the loads assigned to them from Celadon. (Douglas Dep., Ex. 1-B at 87-88, Smith Dep., Ex. 1-M at 139-140). Instead, the price is dictated by Celadon and is provided in the form contract signed by alleged contractors. (*Id.* at 88).

59. Celadon informs alleged contractors during orientation that they are not permitted to broker their own freight, meaning that they must run exclusively Celadon freight. (30(b)(6) Dep. Hackett, Ex. 1-A at 94-95 (confirming the Powerpoint he created for the orientation class states specifically that “we do not allow drivers to broker freight”)). While the agreements alleged

contractors sign explain that a driver may “trip lease” the truck with written approval from Celadon, meaning the driver could haul freight for a carrier which is not Celadon, Celadon has never provided written approval and has no policy or practice in place for a driver to even request such approval. No driver has ever trip leased while under contract for Celadon. (30(b)(6) Hackett Dep., Ex. 1-A at 106-107, 131). Thus, all alleged contractors have hauled freight exclusively for Celadon during their relationship with Celadon.

60. Alleged contractors of Celadon enter the lease purchase program by signing a “form contract,” the terms of which are written by Celadon. (Douglas Dep., Ex. 1-B at 88). The contracts are all materially the same. (*See also* Operating Agreements, Ex. 1-H; Named Plaintiffs’ Operating Agreement, Ex. 1-S). Named Plaintiffs signed the form operating agreements. (*Id.*).

61. The form agreements contain a lengthy non-compete agreement which restricts the alleged contractors from hauling freight, directly or indirectly, for any customer of Celadon (whether the driver hauled freight for that customer or not) for one-year following the driver terminating from Celadon. The non-compete explains that this is necessary because the driver, who is allegedly running his own business, would profit off of the good-will that Celadon owns as a result of the work performed by the driver, who is allegedly running a small and independent business. (Operating Agreements, 1-H, at, *e.g.*, CLD1687, 1709, 2609)

62. Celadon asserts that lease purchase drivers run their own businesses and can hire additional drivers so that they can lease multiple trucks. Discovery has revealed that only 0.2% (1 in 500 drivers) have actually operated multiple trucks for Defendants. (*See* March 13, 2017 discovery letter at 2, attached to Swidler Cert. as Ex. 1-T).

63. More than 90-95% of the drivers who enter the lease purchase program fail to complete it. Defendants allege the failure of 90%+ of the drivers to complete the lease program is

because of “personal finance management.” Defendants admit that at least half of the alleged contractors end the program with outstanding debt owed to Defendants. (Douglas Dep., Ex. 1-B at 75-77).

64. For nearly one third of all workweeks where an alleged contractor completes a load for Defendants, Defendants pay the alleged contractor nothing at all. (See 30(b)(6) Hackett Dep. 1-A at 99-101) (testifying that 31.6% of all workweeks, alleged contractors are provided net pay of less than or equal to zero).

65. When an alleged contractor is not making enough money, Celadon counsels the driver to manage expectations and money better, to reduce home time (*i.e.* to work more hours for Celadon), and to idle less and manage fuel better. (Douglas Dep., Ex. 1-B at 90). Chesterman admitted that when he counseled the drivers he managed regarding inadequate compensation, whether they were alleged contractors or employees, the discussion “would be similar” and would focus on productivity and fuel. (Chesterman Dep., Ex. 1-E at 27; *see also* Sheets Dep., Ex. 1-F at 13-14 (testifying that when she counseled alleged contractors who were upset they were not making money, her advice related only to time and fuel management)). In evaluating the drivers’ productivity, Chesterman would review the information Celadon collects through its monitoring of the alleged contractor, and specifically would review “if they’re using the hours they have available, if they’re taking too long of breaks in transit, etc.” (Chesterman Dep., Ex. 1-E at 28).

66. In or around September of 2015, Mike Griffin, who was at that time an operations manager for Celadon, gave an interview where he explained that when he counsels drivers in the lease purchase program, his advice for “success” is mostly “based towards the fuel efficiency side of things.” (Douglas Dep., Ex. 1-B at 118, quoting YouTube interview).

67. Celadon provides in alleged contractors the *same manual* it provides its company drivers, which is labeled “Employee Handbook” and which explains all the company policies and procedures the drivers must follow. (30(b)(6) Hackett Dep., Ex. 1-A at 154). Just like company drivers, alleged contractors are required to sign an acknowledgment stating that they received the manual and that they “understand that [they] [are] responsible to follow the practices and procedures outline in this manual.” (Douglas Dep., Ex. 1-B at 149-150; *See also* Celadon Trucking Services, Inc. Pre-Employment Acknowledgement & Drivers Manual Statement, attached to Swidler Cert. as Exhibit 1-U).

68. Just like company drivers, alleged contractors are required to follow all the practices and procedures provided in the employee handbook. (Hackett Dep., Ex. 1-O at 34-35; 30(b)(6) Hackett Dep., Ex. 1-A at 165).

69. The acknowledgement further explains that “I agree to abide by the policies set forth in this manual and understand that violations of these policies could lead to disciplinary action up to and including termination of my employment.” (Douglas Dep., Ex. 1-B at 149-150; *See also* Ex. 1-U).

70. In addition to the Employee Handbook, contracted drivers are also provided a “Contractor Guide” which provides other rules and procedures contracted drivers must follow, and provides information regarding the consequences for failing to abide by such policies and procedures. (30(b)(6) Hackett Dep., Ex. 1-A at 157) (*See* Contractor Guide, CLD345-360, attached to Swidler Cert. as Ex. 1-V). The Guide explains that, like company drivers, lease purchase drivers “earn” one day off for every 7 days on the road and must request time off “7 days in advance.” (*Id.* at CLD354).

71. Celadon operates a progressive discipline policy for company drivers which is as follows: “verbal is the first form, written is the second, in-person meeting would be three, and then if there’s another escalation point at that point in time, it will be termination.” (Douglas Dep., Ex. 1-B at 92; Hackett Dep., Ex. 1-O at 27-28; *see also* Contractor Guide, Ex. 1-V at CLD360).

72. Celadon subjects its alleged contractors to the same progressive discipline policy, providing (in order) a verbal warning, written warning, in-person meeting, and then termination. (Douglas Dep., Ex. 1-B at 92).

73. Despite such testimony from the Director of Operations, in a designee deposition regarding employee discipline, the designee testified that Celadon cannot force an alleged contractor to attend an in-person meeting where it can force a company driver. But further discussion revealed that this “difference” does not exist. The designee explained that if a company driver refuses to come to Indianapolis for a face-to-face meeting, Celadon informs the driver that he will be terminated if he does not comply, thus coercing the company driver through threat of termination to attend the meeting. (30(b)(6) Hackett Dep., Ex. 1-A at 29). Likewise, where an alleged contractor refuses to come to Indianapolis, “if they do not want to complete the training face-to-face, we would terminate the contract.” (*Id.* at 27). The lack of a difference is further evidenced below:

Q. So if a company driver is at a threshold where they need to do a face-to-face meeting – where Celadon wants them to do a face-to-face meeting for a corrective action, how does Celadon force that driver to get to the terminal?

MR. ECKHART: *Objection. Asked and answered. Go ahead.*

A. **We would get them a load to get within a distance of one of those terminals and then route them in.**

Q. And what if they refuse?

A. **They would be terminated.**

Q. So Celadon can't physically force the company drivers to comply; correct?

A. **Correct.**

Q. They use the coercion of threat of termination to get their company drivers to comply; correct?

A. **Correct.**

Q. And with respect to a contracted driver, you said that while Celadon can't force the driver to comply, Celadon can threaten to terminate the contract; correct?

MR. ECKHART: *Objection. Misstates his testimony.*

A. **Yes.**

Q. And when you say contract, we're talking about terminating the operating agreement?

A. **Yes, terminating the operating agreement between the driver and Celadon.**

(30(b)(6) Hackett Dep., Ex. 1-A at 29-30).

74. Chesterman explained that when he was night manager, he regularly required alleged contractors to come in for a face-to-face final warning due to violations of Celadon's policies, and that during those meetings he would explain that further violations would result in termination. Chesterman testified that for a company driver, he would explain that the employee could be terminated, but for an alleged contractor the threat would be that "we would terminate their lease and would no longer allow them to leave to Celadon." (Chesterman Dep, Ex. 1-E at 23-24).

75. Celadon's assistant managers have authority to issue all levels of discipline, with the exception of termination. An operations manager is required to terminate a driver. Again, this is the same for company drivers and alleged contractors. (*Id.* at 93, Chesterman Dep, Ex. 1-E at 17-18).

76. When a driver is disciplined by Celadon, whether the driver is an alleged contractor or employee, Celadon issues corrective action, which is reduced to writing on a document which Celadon labels as an "employee notice." (Douglas Dep., Ex. 1-B at 96-97). This process is the same for alleged contractors and company drivers. (*Id.*).

77. When discipline is issued to either a company driver or an alleged contractor, the protocol is to discuss the discipline with the driver and discuss ramifications for continued misconduct. (Chesterman Dep., Ex. 1-E at 68-69). This process is the same for alleged contractors and company drivers. (*Id.*).

78. The discipline issued is then put in the “employee’s personnel file,” which Celadon maintains for all alleged contractors and company drivers. (Chesterman Dep., Ex. 1-E at 68).

79. Alleged Contractors, like company drivers, are subject to being disciplined for not following Celadon’s procedures. (Chesterman Dep., Ex. 1-E at 76). For example, Hackett issued discipline to alleged contractors for service and conduct related issues, including disciplining alleged contractors for “taking extended breaks.” (Hackett Dep., Ex. 1-O at 54). Alleged Contractors and company drivers are subject to both subject to discipline for service and conduct related times. (30(b)(6) Hackett Dep., Ex. 1-A at 44).

80. Named Plaintiff William Blakley was issued an “employee notice” resulting in a first written warning, for “not following Celadon procedures.” (Douglas Dep., Ex. 1-B at 99; *see also* Corrective Action Notice, Employee Notice for William Blakley, Ex. 1-X).

81. Named Plaintiff Blakley was issued a second written warning for failing to follow Celadon procedures, and the warning indicates that a face-to-face meeting was ordered to address the alleged concerns. (Ex. 1-X). Douglas confirmed that Celadon considers itself to have authority to order contractors to come to Indianapolis for face-to-face counseling for corrective actions. (Douglas Dep., Ex. 1-B at 101-102).

82. Similarly, Named Plaintiff Smith was issued an “employee notice” for violations of Celadon’s rules and procedures which subjected her to discipline. (Smith Discipline, Employee Notice Ex. 1-Q).

83. When an alleged contractor separates from Celadon, they are issued a form letter which explains that the alleged contractor was an employee of Celadon and that he or she held the title of Owner Operator while detailing the driver's dates of employment. (*See*, e.g., letters of separation for Named Plaintiffs, Ex. 1-Y)

84. Douglas explained that Celadon utilizes its resources, specifically its "driver managers, assistant managers, and then also individuals over at Quality" to make contractors "successful." (Douglas Dep., Ex. 1-B at 133). Alleged contractors do not pay for any of those resources. (Douglas Dep., Ex. 1-B at 133).

85. Alleged contractors have been required to utilize and submit electronic time logs showing all working hours during the entire class period and Celadon has retained such logs. (Chesterman Dep., Ex. 1-E at 40-41; 30(b)(6) Hackett Dep., Ex. 1-A at 18).

86. Celadon has an auditing department which audits logs of drivers, both company drivers and alleged contractors, for alleged violations of the hours of service rules. The auditors treat company drivers and alleged contractors identically and do not differentiate between a company driver and an alleged contractor when auditing. (30(b)(6) Hackett Dep., Ex. 1-A at 174).

87. Alleged contractors invest "zero dollars" to become a contractor with Celadon. Celadon estimates that Celadon invests, per contractor, approximately \$3,000-\$3,500. (Hackett at 83-84, Ex. 1-A).

88. When a contracted driver or company driver is assigned and accepts a load, Celadon retains the ability to take the driver off the load, even in mid-transit, and assign it to another driver. Such a process is called a "re-power" and it involves the first driver dropping the load at a location determined by Celadon for a second driver (also chosen by Celadon) to pick up the load. The

process is identical for company drivers and alleged contractors, and alleged contractors are not permitted to opt-out of the repower request. (30(b)(6) Hackett Dep., Ex. 1-A at 131-134).

89. Celadon operates a single payroll department which covers both its company drivers and its alleged contractors. (30(b)(6) Isaacs Dep., Ex. 1-Z at 11). The individuals working in the payroll department field questions from both company drivers and alleged contractors. (30(b)(6) Isaacs Dep., Ex. 1-Z at 25).

90. Celadon pays its company drivers a flat piece-rate pay of 33-34 cents per mile. (30(b)(6) Isaacs Dep., Ex. 1-Z at 13).

91. Celadon pays its alleged contractors either a per mile rate or a percentage rate. (30(b)(6) Isaacs Dep., Ex. 1-Z at 11). Alleged contractors who select mileage pay are paid a different rate than company drivers, but the calculation of how the total miles paid is identical to that of company drivers. (30(b)(6) Isaacs Dep., Ex. 1-Z at 16).

92. Alleged contractors who select the percentage rate are paid based on the percent of the total revenue Celadon negotiated with its customer to pay for a load. (30(b)(6) Isaacs Dep., Ex. 1-Z at 15).

93. While alleged contractors have been given the option of choosing a percentage or per mile rate since 2014, the amount of the percentage and the amount paid per mile is dictated by Celadon and not subject to negotiation.

94. When an alleged contractor earns less than minimum wage during the workweek for each hour worked, Celadon does not pay the driver additional compensation so that the driver will earn at least minimum wage. (30(b)(6) Isaacs Dep., Ex. 1-Z at 17).

95. Throughout her employment for Celadon, Named Plaintiff Helen Blakley was never paid for her work for Celadon, as the settlements that were issued for work she completed

were issued to her husband, Named Plaintiff William Blakley. (Helen Blakley Dep., Ex. 1-K at 38).

96. Throughout her employment for Celadon, Helen Blakley completed work for the company without being compensated at all. By way of example only, for the workweek of June 24, 2015 – June 30, 2015, for which William Blakley was provided a settlement statement on July 3, 2015, Named Plaintiff Helen Blakley's driver logs show that she logged 3.27 hours driving for Celadon, comprising only a portion of her compensable time worked that workweek. (Helen Blakley's Driver Logs, attached to Swidler Cert. as Ex. 1-AA at pp. 28-34). For these 3.27 hours of work, she should have received at least \$23.70 in compensation (3.27 x \$7.25). For this workweek, Celadon paid Mrs. Blakley nothing.

97. During his employment for Celadon, Named Plaintiff William Blakley was denied minimum wage in many workweeks. By way of example only, for the workweek of June 24, 2015 – June 30, 2015, for which he was provided a settlement statement on July 3, 2015, Named Plaintiff William Blakley's driver logs show that he logged 43.4 hours driving for Celadon, comprising only a portion of his compensable time worked that workweek. (William Blakley's Driver Logs, attached to Swidler Cert. as Ex. 1-AA at pp. 36-42). For these 43.4 hours of work, he should have received at least \$314.65 in compensation (43.4 x \$7.25). After working the entire workweek for Celadon, Mr. Blakley was paid nothing and ended the workweek *owing* significant money to Celadon (*i.e.*, \$636.86 for fuel purchased for Defendant). (William Blakley's Settlement Sheets, attached to Swidler Cert. as Ex. 1-BB at p. 12-14).

98. During her employment for Celadon, Named Plaintiff Kimberly Smith was denied minimum wage in many workweeks. By way of example only, for the workweek of September 9 – 15, 2015, for which Ms. Smith was provided a settlement statement on September 18, 2015,

Named Plaintiff Kimberly Smith's driver logs show that she logged 34.53 hours driving for Celadon. Kimberly Smith's Driver Logs, attached to Swidler Cert. as Ex. 1-CC at pp. 24-30. For these 34.53 hours of work, she should have received at least \$250.34 in compensation (34.53 x \$7.25). After working the entire workweek for Celadon, Ms. Smith was paid nothing and ended the workweek *owing* significant money to Celadon. (Kimberly Smith's Settlement Sheets, attached to Swidler Cert. as Ex. 1-DD at pp. 11-12.

99. Celadon makes many deductions from alleged contractors' pay for items necessary for the driver to perform work for Celadon, including bobtail insurance, physical damage insurance, occupational accident insurance, truck payment, maintenance escrow, deposits for equipment such as air cuff locks and trailer locks, general escrow, Qualcomm use fees, fuel, and cash advances. (30(b)(6) Isaacs Dep., Ex. 1-Z at 26-28).

100. With the sole exception of deductions relating to a weekly tax service, alleged contractors are not permitted to request Celadon to stop making deductions from their pay. (30(b)(6) Isaacs Dep., Ex. 1-Z at 62-63).

101. Celadon charges between \$3.00 - \$7.50 for each advance and fuel purchase. (30(b)(6) Isaacs Dep., Ex. 1-Z at 28-29).

102. All alleged contractors are charged a weekly fee for the Qualcomm device. (30(b)(6) Isaacs Dep., Ex. 1-Z at 30-31).

103. Celadon provides short term loans to its alleged contractors and charges between \$3 - \$7.50 for each loan. The loans are labelled "personal money" or "payroll advance," depending on whether the loan is made by a Comdata check or by providing the money on the Comdata card. (30(b)(6) Isaacs Dep., Ex. 1-Z at 40-43). "All of this money is basically personal money for an independent contractor." (*Id.* at 42).

104. A loan is requested by an alleged contractor by sending a preprogrammed message over the Qualcomm computer in the driver's truck. The system asks the driver whether the loan is for a lump sum (to pay a person who helps load or unload the truck), expenses, or an advance. (*Id.* at 47-78. The deduction will only show as a "payroll advance" or "personal money" if the driver informs Celadon the loan is for a personal advance, and not a business expense or lump sum. (*Id.* at 47-48).

105. The loans are repaid on the next settlement date if the driver has enough net pay to cover the loan. Where the driver does not have enough net pay, the loan continues to roll over until the driver can pay back the loan. **If that does not occur during the working relationship with Celadon, Celadon deducts the money directly from the driver's escrow account.** (30(b)(6) Isaacs Dep., Ex. 1-Z at 65-66). Celadon further retains the legal ability to take legal action to collect on the outstanding debt, and Celadon has a division whose sole focus is to collect on outstanding debt. (Form Operating Agreements, Ex. 1-H at 5.05; Named Plaintiffs Signed Agreements, Ex. 1-S at 5.05).

106. Named Plaintiffs each took out a loan during the class period and repaid such amount, along with the service charge fee. (Helen Blakley Dep., Ex. 1-K at p. 38, William Blakley's Settlement Statements, Ex. 1-BB, Kimberly Smith's Settlement Statements, Ex. 1-DD).

107. **Celadon admits that the escrow accounts that it utilizes in case there is outstanding debt owed belong to the driver.** (30(b)(6) Isaacs Dep., Ex. 1-Z at 70).

108. While Celadon's designee objected to the term "loan" to describe the advance transactions, Celadon admits that Celadon provides money to the driver in exchange for the driver repaying Celadon the amount of the advance in addition to the service charge of \$3-\$7.50.

(30(b)(6) Isaacs Dep., Ex. 1-Z at 56-57). Celadon is not licensed to provide consumer loans in Indiana. *Id.* At 73.

109. Alleged contracted drivers must submit the same paperwork as company drivers to receive pay; alleged contractors are paid on the same paydays as company drivers, and the deadlines for alleged contractors to turn in documentation for pay is identical for both groups of drivers. (30(b)(6) Isaacs Dep., Ex. 1-Z at 60-61).

110. Plaintiffs have retained economic sociologist, Dr. Steve Viscelli, Ph. D. to submit an expert report in this matter. Dr. Viscelli has been studying the trucking industry for 12 years. Dr. Viscelli has opined that Celadon utilizes the “lease-operator labor management model for over the road truckload carrier [which] is fundamentally incompatible with the exercise of meaningful control” by the alleged contractors. (Expert Report of Dr. Steve Viscelli “Viscelli Report”, attached to Swidler Cert. as Ex. 1-P at 7).

111. Dr. Viscelli has opined that drivers at Celadon are subjected to control of Celadon generally through a consensual management system, as are nearly all truck drivers on the road today. Dr. Viscelli explains that consensual management systems “are consciously designed to align the interests of workers with that of their employer. Consensual systems can employ all kinds of particular incentives to achieve this, but the most important features generally involve compensation.” (Viscelli Report, Ex. 1-P at 22-24). Dr. Viscelli opines that drivers, whether employed as Company Drivers or as lease purchase drivers, make the same types of decision and behave in similar ways.

112. Defendants have provided a rebuttal expert report of Dr. Thomas N. Hubbard, Ph.D. (Expert Report of Dr. Thomas N. Hubbard “Hubbard Report”, attached to Swidler Cert. as Ex. 1-EE). Dr. Hubbard does not dispute that the interactions between Celadon and its drivers are similar

“irrespective of whether drivers are company drivers or owner-operators.” (Hubbard Report, Ex. 1-EE at 5-6). Hubbard agrees that “Owner-operators and company drivers make similar decisions in their day-to-day operations at Celadon.” (Hubbard Report, Ex. 1-EE at ¶38). Hubbard argues that a key distinction between owner operators and company drivers is that owner operators will drive more efficiently, decreasing fuel and maintenance expenses. (*Id.* at ¶39). While Hubbard asserts that having residual rights to the will incentivize drivers to be more efficient, Hubbard does not assert that alleged lease purchase drivers make any types of managerial or business-related decisions such as making business investments, advertising, hiring staff, or the like. (*Id.*). Moreover, Hubbard agrees that the Named Plaintiffs’ experience is typical and expected. (*Id.* at ¶52).

113. In August of 2016, Celadon began utilizing a program named “Freight Rover” which Celadon asserts provided alleged contractors the ability to pick from multiple loads. Celadon contends that today, only about 8% of loads assigned to alleged contractors were assigned via Freight Rover, although that number has fluctuated from 8-12% since August of 2016. (30(b)(6) Hackett Dep., Ex. 1-A at 53; *see also* Percentage of Freight Rover Loads Hauled, attached to Swidler Cert. as Ex. 1-II). The loads available on Freight Rover are exclusively Celadon loads which Celadon has already agreed to pick up and deliver and which Celadon has already negotiated with the customer. (*Id.* at 58-59).

114. If a driver attempt to select a load on Freight Rover, Operations is notified of the driver’s request. The Operations department retains the ability to reject the request made by the driver for the load. (30(b)(6) Hackett Dep., Ex. 1-A at 66-67).

115. Drivers may not pick loads on Freight Rover that have a dead head percentage of more than 20% of total miles. (30(b)(6) Hackett Dep., Ex. 1-A at 128).

116. Drivers cannot negotiate prices on any of the load Celadon has listed on Freight Rover. (*Id.*).

117. Celadon maintains a website which publicly makes available the “available loads” on Celadon’s system. (See <http://www.celadonlogistics.com/available-loads>). For example, on March 17, 2017 at 2:30 pm, Celadon had only 16 loads “available” throughout the entire United States and 1 load in Canada. Celadon Logistics Load Board (Mar. 17, 2017), attached to Swidler Cert. as Ex. 1-FF. Based upon the deadhead limitations imposed by Celadon, unless the alleged contractor was in Laredo, TX or Dallas, TX (where the driver would have the option of picking between one of two Celadon-provided loads), the alleged contractor would only have, at most, 1 load he or she could choose from in Freight Rover. And drivers located in most places in the United States would have *no* loads available at all. *Id.*

118. While Celadon has modified the “Independent Contractor Operating Agreement” during the class period, Celadon admits that they are similar in nature. (30(b)(6) Hackett Dep., Ex. 1-A at 176).

119. Celadon is aware of no facts that any Named Plaintiff has a conflict of interest with members of the proposed class. (30(b)(6) Hackett Dep., Ex. 1-A at 202).

120. Named Plaintiffs have no conflicts of interest with any class members and are pursuing such claims for the benefit of class members.

121. Named Plaintiffs each signed a “Settlement Deduction Agreement” which instructed Defendants to place an assignment on their wages. (Named Plaintiffs’ Signed Settlement Deduction Agreements, attached to Swidler Cert. as Ex. 1-GG).

122. Additionally, twenty-one individuals have opted into the FLSA action as of the date of this filing. (ECF Doc. Nos 23, 34, 37, 38, 49, 51, 64).

123. The Agreements state that the driver may operate the equipment for another motor carrier, only with the prior written consent of Celadon and only upon removing or covering up all of Celadon's identifying marks. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 1, 19; Form Operating Agreements, Ex. 1-H at pp. 1, 22, 41, 59, 77, 96, 114, 132).

124. Subparagraph 5.02 of the Agreements provides Celadon the unbounded right to deduct or offset from the driver's pay "certain costs and charges." (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 3, 21; Form Operating Agreements, Ex. 1-H at pp. 3, 24, 43, 61, 79, 98, 116, 134).

125. Subparagraph 5.05 of the Agreements state that Celadon may withhold payment for or set off against payment "[a]ny other charges or expenses incurred or paid by [Celadon] on behalf of Contractor." (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 3, 21; Form Operating Agreements, Ex. 1-H at pp. 3, 24, 43, 61, 79, 98, 116, 134).

126. Subparagraph 9.01 of the Agreements state that the driver is required to go through Celadon's safety lanes for inspection upon arrival at any Celadon facility, at the driver's cost. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 6, 24; Form Operating Agreements, Ex. 1-H at pp. 5, 27, 46, 64, 82, 101, 119, 137).

127. Subparagraph 10.01 of the Agreements require the driver to maintain with Celadon and make regular deposits to an Escrow Account. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 7, 25; Form Operating Agreements, Ex. 1-H at pp. 6, 28, 47, 65, 83, 102, 120, 138).

128. Subparagraph 10.04 of the Agreements give Celadon the right to deduct from the Escrow Accounts any charges or indebtedness provided for in subparagraph 5.05 of the Agreements. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 7, 25; Form Operating Agreements, Ex. 1-H at pp. 6, 28, 47, 65, 83, 104, 120, 138).

129. Subparagraph 10.05 of the Agreements give Celadon the right to deduct from the Escrow Accounts any charges or indebtedness provided for in subparagraph 5.05 of the Agreements upon the driver's termination, as well as the right to, withhold any portion of the remaining funds in the driver's escrow accounts after termination until satisfaction of the terms of subparagraph 7.02. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 7, 25; Form Operating Agreements, Ex. 1-H at pp. 6, 28, 47, 65, 83, 102, 120,).

130. Subparagraph 10.06 of the agreements state that, after application of the aforesaid provisions of Article 10, Celadon will remit to the driver the balance of the Escrow Account within 45 days of termination of the agreement. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 8, 25; Form Operating Agreements, Ex. 1-H at pp. 6, 28, 47, 65, 83, 103, 121, 138).

131. Paragraph 4 of Addendum I of the Agreements state that the driver may receive compensation for loading or unloading of a trailer, "provided that as a condition of such payment [Celadon] reserves the right to require [the driver] to meet [Celadon's] documentation procedures for evidencing loading and/or unloading." (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 11, 29; Form Operating Agreements, Ex. 1-H at pp. 10, 32, 51, 69, 87, 106,).

132. Addendum I of the Agreements state under "Other Deductions" that Celadon may deduct from the driver's Settlement Statements or Escrow Account as provided by Subparagraphs 5.05 and 10.01 of the Agreements. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 12, 30; Form Operating Agreements, Ex. 1-H at pp. 11, 33, 52, 70, 88, 107, 124, 142).

133. Addendum I to the Agreements state under "Advances" that Celadon may advance money to the driver and that the driver shall be responsible for the full amount of any such advance, but does not state that a service fee may be charged to the driver under such circumstances.

(Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 12, 30; Form Operating Agreements, Ex. 1-H at pp. 34, 52, 70, 89, 107, 125, 143).

134. Throughout their employment for Celadon, Named Plaintiffs William Blakley, Helen Blakley and Kimberly Smith were charged service fees for advances that they received from Celadon. (Helen Blakley Dep., Ex. 1-K at p. 38; William Blakley's Settlement Statements, Attached to Swidler Cert. as Ex. 1-BB at CLD000691-CLD000734; Kimberly Smith's Settlement Statements, Attached to Swidler Cert. as Ex. 1-DD at CLD000283-CLD000322).

135. Addendum I to the Agreements state under "Qualcomm" that the driver must either purchase a Qualcomm unit through Celadon or provide a compatible unit, but must have said unit serviced by a vendor approved by Celadon. (Named Plaintiffs' Operating Agreements, Ex. 1-S at pp. 12, 30; Form Operating Agreements, Ex. 1-H at pp. 12, 34, 52, 70, 89, 107, 125, 143).

136. The agreements do not state that Celadon will provide the driver with an accounting the Escrow Account established for the payment of mileage based taxes paid by Celadon on the driver's behalf, that the driver has the right to demand an accounting of transactions related to same, that Celadon will pay interest on Escrow Account quarterly or that the remaining proceeds of the Escrow Account will be returned to the driver within forty-five days of termination of the Agreements. (*See* Named Plaintiffs' Operating Agreements, Ex. 1-S; *see also* Form Operating Agreements, Ex. 1-H).

Respectfully submitted,

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