

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

THEODUS DAVIS, on behalf of himself and  
those similarly situated,  
4100 White Hall Rd  
Pattison, MI 39144

Plaintiff,

v.

COLONIAL FREIGHT SYSTEMS, INC.,  
19 Probasco Rd,  
East Windsor, NJ 08520

and

PHOENIX LEASING OF TENNESSEE,  
INC.,  
C/O COLONIAL FREIGHT SYSTEMS,  
INC.  
19 Probasco Rd,  
East Windsor, NJ 08520

and

RUBY MCBRIDE  
c/o COLONIAL FREIGHT SYSTEMS, INC.  
19 Probasco Rd,  
East Windsor, NJ 08520

and

JOHN DOES 1-10

Defendants.

INDIVIDUAL AND COLLECTIVE  
ACTION FOR UNPAID MINIMUM  
WAGES UNDER FLSA

CLASS ACTION UNDER TRUTH IN  
LEASING ACT, BREACH OF CONTRACT

JURY TRIAL DEMANDED

No.

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**INDIVIDUAL, COLLECTIVE, AND CLASS ACTION CIVIL COMPLAINT**

Named Plaintiff Theodus Davis (hereinafter "Named Plaintiff"), individually and on behalf  
of himself and those similarly situated, by and through undersigned counsel, hereby complains as

follows against Defendants Colonial Freight Systems, Inc. (hereinafter “Defendant Colonial”), Phoenix Leasing of Tennessee (hereinafter “Defendant Phoenix”), Ruby McBride, and John Does 1-10 (hereinafter collectively “Defendants”).

### **INTRODUCTION**

1. Named Plaintiff has initiated the instant action to redress Defendants’ violations of the Fair Labor Standards Act (“FLSA”). Named Plaintiff asserts that Defendants erroneously designated Named Plaintiff and those similarly situated as independent contractors and unlawfully deducted from and withheld portions of the wages owed to Named Plaintiff and those similarly situated. Specifically, Defendants required Named Plaintiff and those similarly situated to attend Defendants’ driver trainee program without providing wages that were free and clear. Defendants further required Named Plaintiff and those similarly situated to cover the costs of Defendants’ business, intentionally reducing the wages of Named Plaintiff and those similarly situated below the minimum wage.

2. Named Plaintiff has initiated the instant action to redress Defendant Colonial’s violations of the Truth in Leasing Act, 49 U.S.C. §14704. Named Plaintiff asserts that Defendant Colonial entered into leases with Named Plaintiff and those similarly situated that violated the provisions of the Truth in Leasing Act.

3. Named Plaintiff has initiated this action to redress Defendants’ violations of the Tennessee common law for breach of contract on behalf of himself and all those similarly situated.

### **JURISDICTION AND VENUE**

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

5. 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.*, and the Truth in Leasing Act., 49 U.S.C. §14704, *et seq.* This Court has supplemental jurisdiction over Named Plaintiff's state law claims because those claims arise out of the same nucleus of operative fact as the federal claims.

6. 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.

7. 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.

### **PARTIES**

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

9. Named Plaintiff Theodus Davis is an adult individual with an address as set forth above.

10. Defendant Colonial is a truckload carrier operating throughout the United States. Defendant Colonial is a corporation with its principal place of business in Knoxville, Tennessee, and which operates out of East Windsor, New Jersey, location set forth in the caption.

11. Defendant Phoenix is a division of Defendant Colonial, which, *inter alia*, leases vehicles utilized by individuals whom Defendant Colonial classifies as independent contractors. Defendant Phoenix has a principal place of business in Knoxville, Tennessee, and leases its vehicles for service in every state in the United States.

12. Defendant Ruby McBride is the President, Chief Executive Officer ("CEO") and Director of Safety of Defendant Colonial. As President and CEO of Defendant Colonial, Defendant Ruby McBride was and is an officer of Defendant Colonial and had control and discretion over the manner in which Named Plaintiff and all similarly situated individuals were paid and classified at Defendant Colonial.

13. 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 Plaintiff, Collective Plaintiffs, and Class Plaintiffs proper compensation pursuant to the FLSA and the Illinois Wage Payment and Collection Act.

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

15. Because of their interrelation of operations, common management, common control over labor relations, and other factors as they relate to Named Plaintiff and those similarly situated, Defendants Colonial and Phoenix are sufficiently interrelated and integrated in their activities, labor relations, and management as same relate to Named Plaintiff and those similarly situated that they may be treated as a single employer for purposes of the instant action.

16. 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**

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

18. Named Plaintiff brings 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”).

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

20. There are numerous similarly situated current and former employees of Defendants who were compensated 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.

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

22. 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: (1) misclassified Named Plaintiff and Collective Plaintiffs as independent contractors; (2) failed to compensate its newly hired drivers at least the federal minimum wage for all compensable time worked during its over-the-road training program; (3) failed to compensate its drivers at least the federal minimum wage for all compensable time worked when on assignment for more than 24 hours; (4) failed to compensate its drivers at least the federal minimum wage for all compensable time, due to unlawful deductions made pursuant to Defendants’ Wage Deduction Policy (“Wage Deduction Policy”).

23. Collective Action Plaintiffs should be broken into 2 subclasses consisting of the following; many class members will be members of all subclasses:

a. Trainee Plaintiffs: Members of this subclass are similarly situated because all Trainee Plaintiffs were denied minimum wage while completing Defendants' driver trainee program, in violation of the FLSA. Named Plaintiff is the representative plaintiff for this subclass.

b. Misclassification Plaintiffs: Members of this subclass are similarly situated because all Misclassification Plaintiffs were misclassified as independent contractors by Defendants and denied minimum wage while driving over-the-road as lease drivers for Defendants, in violation of the FLSA. Named Plaintiff is the representative plaintiff for this subclass.

24. Therefore, Named Plaintiff 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**

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

26. Named Plaintiff brings this action for violations of the Truth in Leasing 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").

27. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does 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 hundreds.

28. Named Plaintiff's Truth in Leasing Act claims are typical of the claims of Class Plaintiffs because Named Plaintiff and all Class Plaintiffs signed substantively similar lease agreements which contained terms and conditions which are unlawful pursuant to the Truth in Leasing Act.

29. Named Plaintiff's common law claims for breach of contract are typical of the claims of Class Plaintiffs because Defendant Colonial uniformly breached its obligations under the Independent Contractor Operating Agreements to pay Named Plaintiff and Class Plaintiffs sixty-seven percent (67%) of gross freight revenue or seventy-six percent (76%) of gross freight revenue for tractor only or tractor and trailer trips, respectively.

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

31. 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.

32. 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.

33. 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 violated the Truth-In-Leasing act with respect to the agreements between Defendants and Class Plaintiffs and whether Defendants violated the contract terms of the agreements between Defendants and Class Plaintiffs.

### **FACTUAL BACKGROUND**

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

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

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

37. Named Plaintiff Theodus Davis worked for Defendants as a commercial truck driver from in or around September of 2014 to in or around January of 2016.

38. Upon Named Plaintiff's hiring, Defendants required Named Plaintiff to attend an orientation, which lasted approximately five days.

39. After orientation was completed, Defendants required Named Plaintiff to participate in Defendants' Driver Training Program as a prerequisite to continued employment.

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

41. Upon their hiring, Collective and Class Plaintiffs were required by Defendant to attend an orientation.



42. After Collective and Class Plaintiffs completed orientation, Defendants required them to participate in Defendants' Driver Training Program as a prerequisite to continued employment.

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

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

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

45. Upon Named Plaintiff's hiring, Defendants required Named Plaintiff to attend an orientation, which lasted approximately five days.

46. During orientation, Defendants required Named Plaintiff to learn the policies, practices, and procedure of Defendants, watch numerous training videos, take a drug test, undergo a medical physical, and take a road test.

47. Upon Collective and Class Plaintiffs' hiring, Defendants required Collective and Class Plaintiffs to attend orientation, which lasted approximately five days.

48. During orientation, Defendants required Collective and Class Plaintiffs to learn the policies, practices, and procedure of Defendants, watch numerous training videos, take a drug test, undergo a medical physical, and take a road test.

49. During Orientation, Defendants provided to Named Plaintiff an "Independent Contractor/Trainee Agreement" ("ICT Agreement"), which purported to classify Named Plaintiff as an independent contractor while he participated in Defendants' Driver Training Program.

50. Defendants provided to Collective and Class Plaintiffs ICT Agreements during orientation, which purport/purported to classify Collective and Class Plaintiffs as independent contractors while they participated in Defendants' Driver Training Program.

51. The ICT Agreements provided to Named Plaintiff and Collective and Class Plaintiffs are similar and/or identical in all material terms.

52. Upon completing Defendants' Driver Training Program, Defendants provided to Named Plaintiff an Independent Contractor Operating Agreement ("ICOA"), which purported to classify Named Plaintiff as an independent contractor for the remainder of his employment with Defendants, and required Named Plaintiff to sign same.

53. Upon completing Defendants' Driver Training Program, Defendants provided to Collective and Class Plaintiffs ICOAs, which purport/purported to classify Collective and Class Plaintiffs as independent contractors for the remainder of their employment with Defendants, and required Collective and Class Plaintiffs to sign same.

54. The ICOAs provided to Named Plaintiff and Collective and Class Plaintiffs are similar and/or identical in all material terms.

55. Defendants controlled and directed Named Plaintiff in the performance of his work.

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

57. Defendants assigned Named Plaintiff a "driver manager," who acted as Named Plaintiff's supervisor throughout his employment with Defendants.

58. Defendants assigned Collective and Class Plaintiffs "driver managers," who acted as their supervisors throughout their employment with Defendants.

59. Upon completing Defendants' Driver Training Program, Defendants required Named Plaintiff to sign a leasing agreement with Defendant Phoenix to lease a commercial vehicle to use in their work for Defendant Colonial.

60. Named Plaintiff was not permitted, by his contract with Defendant Phoenix, to use the commercial vehicle leased to him by Defendant Phoenix, for any carrier other than Defendant Colonial unless Defendant Phoenix gave prior written consent.

61. Upon completing Defendants' Driver Training Program, Defendants required Collective and Class Plaintiffs to sign a leasing agreement with Defendant Phoenix to lease a commercial vehicle to use in their work for Defendant Colonial.

62. Collective and Class Plaintiffs were/are not permitted, by their contracts with Defendant Phoenix, to use the commercial vehicles leased to them by Defendant Phoenix for any carrier other than Defendant Colonial unless Defendant Phoenix gave/gives prior written consent.

63. Absent written permission from Defendant Phoenix, Named Plaintiff could accept only jobs that were assigned to him by Defendant Colonial.

64. Absent written permission from Defendant Phoenix, Collective and Class Plaintiffs could/can accept only jobs that were/are assigned to them by Defendant Colonial.

65. Named Plaintiff had no meaningful opportunity to increase his revenue by recruiting new customers, as he was not permitted to recruit new customers as a consequence of being permitted to accept only loads assigned to him from Defendants.

66. 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.

67. Named Plaintiff was paid a percentage of gross freight revenue, which was not subject to negotiation based on the individual loads assigned to Named Plaintiff.

68. Collective and Class Plaintiffs were/are paid a percentage of gross freight revenue and/or a flat per-mile rate, which were/are not subject to negotiation based on the individual loads assigned to Collective and Class Plaintiffs.

69. Named Plaintiff could do little to increase his profitability other than attempt to improve his fuel efficiency.

70. Collective and Class Plaintiffs could/can do little to increase their profitability other than attempt to improve their fuel efficiency.

71. Named Plaintiff was economically dependent upon Defendants.

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

73. At all times, Defendant directed, provided, and supervised the work performed by Named Plaintiff on Defendants' behalf.

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

**Failure to Pay Minimum Wage During Defendant's Training Program  
(Named Plaintiff and Trainee Plaintiffs v. Defendants)**

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

76. At the outset of Named Plaintiff's employment, Defendants required Named Plaintiff to sign an ICT Agreement prior to driving for Defendants.

77. Named Plaintiff's ICT Agreement purported to classify Named Plaintiff as an independent contractor while he participated in Defendants' Driver Training Program, which he did for approximately two months.

78. At the outset of Trainee Plaintiffs' employment, Defendants require/required Trainee Plaintiffs to sign ICT Agreements prior to driving for Defendants.

79. Trainee Plaintiffs' ICT Agreements purported to classify Trainee Plaintiffs as independent contractors while they participated in Defendants' Driver Training Program.

80. The ICT Agreement provided that Named Plaintiff would receive a \$475 per week stipend or loan during the training period, in exchange for Named Plaintiff's work for Defendants.

81. Trainee Plaintiffs' ICT Agreements provide/provided that Trainee Plaintiffs would receive a stipend during the training period, in exchange for Trainee Plaintiffs' work for Defendants.

82. Named Plaintiff's payment under the ICT Agreement was not "free and clear" as contemplated by 29 U.S.C.S. § 201 *et seq.*, because the ICT Agreement required that Named Plaintiff agree to reimburse Defendants for the stipend or, in the alternative, sign an ICOA, at the end of the training period.

83. Trainee Plaintiffs' payment under the ICT Agreements was not "free and clear" as contemplated by 29 U.S.C.S. § 201 *et seq.*, because the ICT Agreements required that Trainee Plaintiffs agree to reimburse Defendants for the stipend or, in the alternative, sign an ICOA, at the end of the training period.

84. Further, in addition to signing an ICOA, Defendants required Named Plaintiff to continue working for Defendants for three (3) months after completing the training program before Defendants agreed to forgive the stipend provided to Named Plaintiff as compensation for the training program.

85. In addition to signing an ICOA, Defendants required Trainee Plaintiffs to continue working for Defendants for three (3) months after completing the training program before Defendants agreed to forgive the stipend provided to Trainee Plaintiffs as compensation for the training program.

86. In other words, if Named Plaintiff and Trainee Plaintiffs failed to sign an ICOA at the end of training, or failed to continue working for Defendants for three months after signing the ICOA, Named Plaintiff and Trainee Plaintiffs were required to pay back all of the stipend previously receiving during the training period.

87. As a result, Named Plaintiff and Trainee Plaintiffs were paid no compensation whatsoever during the training period, but were instead merely provided with a potentially-forgivable loan.

88. As a result of Defendants actions, Named Plaintiff and Trainee Plaintiffs were compensated less than the federal minimum wage of \$7.25 per hour for all hours worked during the training program.

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

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

90. Following the completion of Defendants' Training Program, as per the ICOA, Named Plaintiff agreed to "lease" a vehicle from Defendants to enable him to perform work for Defendants.

91. Following the completion of Defendants' Training Program, as per their ICOAs, Misclassification Plaintiffs agreed to "lease" a vehicle from Defendants to enable them to perform work for Defendants.

92. The agreement required Named Plaintiff to pay approximately \$545 per week to use Defendants' truck.

93. Misclassification Plaintiffs' ICOAs required them to pay a weekly truck lease fee in order to use Defendants' trucks.

94. During the leasing period, Named Plaintiff's truck remained the property of Defendants.

95. During the leasing period, Misclassification Plaintiffs' trucks remained the property of Defendants.

96. Named Plaintiff was not permitted to use the leased vehicle for any purpose other than to further the business interests of Defendants.

97. Misclassification Plaintiffs were not permitted to use the leased vehicles for any purpose other than to further the business interests of Defendants.

98. Named Plaintiff was not permitted to use the vehicle for loads other than loads provided by Defendants.

99. Misclassification Plaintiffs were not permitted to use the vehicle for loads other than loads provided by Defendants.

100. By virtue of the sham leasing agreement, Defendants designated Named Plaintiff and Misclassification Plaintiffs as "independent contractors" and required Named Plaintiff and Misclassification Plaintiffs to pay for all expenses incurred while over-the-road, including but not limited to insurance, fuel, and maintenance costs (in addition to the cost of the lease).

101. Following Defendants' Training Program, Named Plaintiff reported his status to Defendants via the Qualcomm computer in the truck.

102. Following Defendants' Training Program, Misclassification Plaintiffs reported their status to Defendants via the Qualcomm computer in the truck.

103. Named Plaintiff was required to remain on assignment continually for more than 24 hours. (*see* 29 C.F.R. § 785.22).

104. Misclassification Plaintiffs were required to remain on assignment continually for more than 24 hours. *Id.*

105. Per 29 C.F.R. § 785.22, the maximum amount of time an employer may dock an employee who is on assignment for more than 24 hours for sleeping and meal periods is 8 hours per day. The remaining amount of time (16 hours per day) is work time and must be paid.

106. While over-the-road, Named Plaintiff was confined to the general vicinity of his assigned truck for more than 24 consecutive hours.

107. While over-the-road, Misclassification Plaintiffs were confined to the general vicinity of their assigned trucks for more than 24 consecutive hours.

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

109. By way of example only:

- a. On or around December 24, 2014 Named Plaintiff received a settlement sheet (paycheck) that included compensation for trip number T055474, a load that was delivered from Seebree, Kentucky to New Orleans, Louisiana.
- b. For trip number T055474, Named Plaintiff was to receive \$956.08 in compensation.
- c. On Named Plaintiff's December 24, 2014 settlement sheet, Defendants represented to Named Plaintiff that he had accrued \$1,091.49 in expenses, including, but not limited to, fuel, insurance, federal highway use taxes and Named Plaintiff's lease payment.



- d. As a result, Named Plaintiff's December 24, 2014 settlement sheet states that Named Plaintiff's net pay for that pay period was -\$135.41, meaning that Named Plaintiff was in debt to Defendants in the amount of \$135.41 for that pay period.
- e. This was so despite the fact that Named Plaintiff completed compensable work for Defendants during that pay period.
- f. Named Plaintiff did not receive any compensation for the pay period represented by his December 24, 2014 settlement sheet.
- g. The \$135.41 that Named Plaintiff purportedly owed to Defendants was deducted from his compensation on Named Plaintiff's December 31, 2014 settlement statement.

110. By way of further example:

- a. On or around December 31, 2014, Named Plaintiff received a settlement statement that included compensation for trip number T055541, a load that was delivered from New Orleans, Louisiana to Shelbyville, Indiana.
- b. For trip number T055541, Named Plaintiff was to receive \$1,033.60 in compensation.
- c. On Named Plaintiff's December 31, 2014 settlement sheet, Defendants represented to Named Plaintiff that he had accrued \$1,004.59 in expenses, including, but not limited to, fuel, insurance, federal highway use taxes, Named Plaintiff's lease payments and the \$135.41 that was purportedly owed to Defendants due to Named Plaintiff's negative balance from his December 24, 2014 settlement.

- d. As a result, Named Plaintiff received \$29.01 in compensation for the pay period represented by the December 31, 2014 settlement sheet, despite working significantly more than 4 hours ( $\$7.25/\text{hr} * 4 \text{ hrs} = \$29$  in compensation at the federal minimum wage).

111. Because of Defendants' misclassification of Named Plaintiff and Misclassification Plaintiffs as independent contractors and because of the significant expenses that Named Plaintiff and Misclassification Plaintiffs were required to incur for Defendants' benefit, Named Plaintiff and Misclassification Plaintiffs were regularly paid less than the federal minimum wage of \$7.25 for each hour worked.

**Defendants' Violations of the Truth in Leasing Act  
(Named Plaintiff and Class Plaintiffs v. Defendants Colonial Freight and Phoenix)**

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

113. To help facilitate the interstate and intrastate delivery of freight, Defendant Colonial entered into substantively similar and/or identical Independent Contractor Operating Agreements ("ICOAs") with Named Plaintiff and Class Plaintiffs.

114. The ICOAs purport to lease, on behalf of Defendant Colonial, commercial trucks and driving services from Named Plaintiff and Class Plaintiffs.

115. Under federal law and regulations, "authorized motor carriers" such as Defendant Colonial, 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).

116. The ICOAs do not conform to the requirements set forth in 49 C.F.R. § 376.12.

117. By way of example only, Defendant Colonial's ICOAs contain several provisions that violate the Truth-in-Leasing Regulations:

- a. Paragraph 1 of the ICOAs sets forth that the ICOAs shall remain in effect for 24 hours and shall be renewed for each 24 hour period until terminated for any reason or no reason with 24 hours' notice. This provision violates 49 C.F.R. § 376.12(b) as it does not sufficiently specify the term of the lease.
- b. Paragraph 3(B) of the ICOAs impermissibly conditions Defendants' payment to Misclassification Plaintiffs on the submission of documents other than log books required by the Department of Transportation and those documents necessary for Defendants to secure payment from the shipper, in violation of 49 C.F.R. § 376.12(f)(2).
- c. Paragraph 3(C) of the ICOAs gives Defendants the right to deduct from Misclassification Plaintiffs' pay "any other monies owed to [Defendants]," in violation of Defendants' obligation to clearly specify Misclassification Plaintiffs' compensation and any items that may be charged back against Misclassification Plaintiffs' compensation, in violation of 49 C.F.R. § 376.12(d) and (h), respectively.
- d. Paragraph 3(C) of the ICOAs impermissibly sets a time limit for the submission of required delivery documents and other paperwork, in violation of 49 C.F.R. § 376.12(f)(4).
- e. Paragraph 9 of the ICOAs gives Defendants the right to deduct from Misclassification Plaintiffs' pay "all other costs incurred in the performance of this Agreement" in violation of Defendants' obligation to clearly specify Misclassification Plaintiffs' compensation and any items that may be charged

back against Misclassification Plaintiffs' compensation, in violation of 49 C.F.R. § 376.12(d) and (h), respectively.

- f. Paragraph 9(f) of the ICOAs gives Defendants the right to deduct from Misclassification Plaintiffs' pay "interest on items owing Carrier" without clearly specifying the source, amount or method of calculation of said interest payments in violation of Defendants' obligation to clearly specify Misclassification Plaintiffs' compensation and any items that may be charged back against Misclassification Plaintiffs' compensation, in violation of 49 C.F.R. § 376.12(d) and (h), respectively.
- g. Paragraph 11 of the ICOAs requires Misclassification Plaintiffs to indemnify Defendant Colonial and hold Misclassification Plaintiffs responsible for various claims, fees, costs and penalties. These provisions impermissibly seek to limit Defendant Colonial's exclusive possession, control and responsibility concerning the operation of the vehicles, in violation of 49 C.F.R. § 376.12(c)(1) and, in several instances, impermissibly seek to limit Defendant Colonial's legal obligations concerning public liability insurance under 49 C.F.R. § 376.12(j)(1) and 49 U.S.C. § 13906.
- h. Paragraph 11(e) of the ICOAs authorizes Defendants to establish an escrow account on behalf of Misclassification Plaintiffs, but does not specifically state the items that this escrow account may be applied to, in violation of 49 C.F.R. § 376.12(k)(2).

- i. Paragraph 11(e) of the ICOAs purports to give Defendants the right to withhold Misclassification Plaintiffs' escrow funds for longer than 45 days from the date of termination, in violation of 49 C.F.R. § 376.12(k)(6).
- j. Paragraph 14 of the ICOAs authorizes Defendants to withhold or deduct from Misclassification Plaintiffs' pay "sums sufficient to reimburse [Defendants] when such reimbursement is owed to [Defendants]", in violation of Defendants obligation to clearly specify Misclassification Plaintiffs' compensation and any items that may be charged back against Misclassification Plaintiffs' compensation, in violation of 49 C.F.R. § 376.12(d) and (h), respectively.
- k. Paragraph 26 of the ICOAs authorizes Defendants to establish an escrow account on behalf of Misclassification Plaintiffs without specifically stating the items to which the escrow account may be applied, in violation of Defendants' obligation to do so under 49 C.F.R. § 376.12(k)(6).
- l. Paragraph 4 of Schedule A to the ICOAs requires Misclassification Plaintiffs to pay for various fixed charges on a weekly basis, including a Global Positioning Satellite system, in violation of Defendants' obligation not to require Misclassification Plaintiffs to purchase any products, equipment or services from Defendants as a condition of entering into the lease, in violation of 49 C.F.R. § 376.12(i).

118. Furthermore, the Agreements do not contain certain provisions required by the Truth-in-Leasing Regulations; by way of example only:

- a. The ICOAs do not conform to 49 C.F.R. § 376.12(c)(1) because they do not contain an *unqualified* statement of Defendant Colonial's *exclusive* possession,

use and control of the equipment, in violation of Defendant Colonial's obligation to include such a statement in the lease.

- b. The ICOAs do not conform to 49 C.F.R. § 376.12(g) because they do not confer upon Misclassification Plaintiffs the right to view, during normal business hours, a copy of any actual documents underlying any computer-generated document that is presented to Misclassification Plaintiffs so as to communicate the information that would appear on a rated freight bill.
- c. The ICOAs do not conform to 49 C.F.R. § 376.12(e) because they do not clearly state that Defendants shall assume the risks and costs of fines for overweight or oversized trailers when the trailers are preloaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the Driver's control, and for improperly permitted over-dimension and overweight loads.
- d. Paragraph 9 of the ICOAs lists a number of items that Misclassification Plaintiffs are required to pay for without stating the method of computation of such items or any attendant service charges, in violation of Defendants' obligation to clearly specify Misclassification Plaintiffs' compensation and any items that may be charged back against Misclassification Plaintiffs' compensation, in violation of 49 C.F.R. § 376.12(d) and (h), respectively.

119. 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.

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

- a. Paragraph 4 of Defendant Phoenix's Commercial Vehicle Lease Agreements requires Misclassification Plaintiffs to enter into an Independent Operator Contract with a DOT certified motor carrier that is approved by Defendant Phoenix, and to have all repairs and maintenance of the vehicle be performed at a facility approved by Defendant Phoenix and coordinated by the Vice President of Maintenance of the approved carrier.
- b. Upon information and belief, Defendant Phoenix is a wholly owned subsidiary of Defendant Colonial, and Defendant Colonial is the only motor carrier for which approval is granted by Defendant Phoenix.
- c. Despite the fact that Defendant Colonial's ICOAs state that Misclassification Plaintiffs are not required to purchase any products or services as a condition of entering into the ICOAs, by virtue of Paragraph 4 of Defendant Phoenix's Commercial Vehicle Lease Agreements, which Defendants require Misclassification Plaintiffs to sign in order to work for Defendants, Defendants do in fact force Misclassification Plaintiffs to purchase equipment, parts, and maintenance services from Defendants, in violation of 49 C.F.R. § 376.12(i).

121. The above violations are mere examples of the written lease violating substantial provisions of the Truth in Leasing Act. Moreover, many of the violations stated herein violate multiple sections of the Truth in Leasing Act even where only one specific section is cited.

**Defendant Colonial's Breach of Contract  
(Named Plaintiff and Misclassification Plaintiffs v. Defendant Colonial)**

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

123. As detailed above, Defendant Colonial regularly failed to pay the compensation owed to Named Plaintiff and Misclassification Plaintiffs as required by their Agreements.

124. As a consequence of such breach, Named Plaintiff and Misclassification Plaintiffs have suffered harm.

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

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

126. At all times relevant herein, Defendants were and continue to be “employers” within the meaning of the FLSA.

127. At all times relevant herein, Named Plaintiff and Collective Plaintiffs were “employees” within the meaning of the FLSA.

128. 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.

129. 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 Plaintiff and Collective Plaintiffs have been harmed.

130. Defendant Ruby McBride is 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 she, directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices which violated the FLSA.

131. John Does 1-5 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 directly or indirectly, directed, aided, abetted, and/or assisted with creating and/or executing the policies and practices which violated the FLSA.



132. 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 Plaintiff and Collective Plaintiffs.

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

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

**COUNT II**  
**Violations of the Truth in Leasing Act**  
**Named Plaintiff and Misclassification Plaintiffs v. Defendants**

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

136. The written leases provided to Named Plaintiff and Misclassification Plaintiffs violate numerous provisions of the Truth in Leasing Act.

137. As a result of Defendants' conduct, Named Plaintiff and Misclassification Plaintiffs have suffered damages.

**COUNT III**  
**Violations of the Common Law**  
**Breach of Contract**  
**Named Plaintiff and Class Plaintiffs v. Defendants**

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

139. Defendant Colonial breached its contractual obligations to Named Plaintiff and Class Plaintiffs by failing to pay Named Plaintiff and Class Plaintiffs consistent with their Agreements.

140. In Tennessee, “there is implied *in every contract* a duty of good faith and fair dealing in its performance and enforcement, and a person is presumed to know the law.” *Wallace v. Nat’l Bank of Commerce*, 938 S.W.2d 684, 686 (Tenn. 1996) (quoting *TSC Indus. Inc. v. Tomlin*, 743 S.W.2d 169, 173 (Tenn. Ct. App. 1987) (citing Restatement (Second) of Contracts § 205 (1979))).

141. Defendants breached their implied duty of good faith and fair dealing by acting dishonestly and by failing to abide by state and federal law in carrying out their obligations to Named Plaintiff and Class Plaintiffs under the various contracts.

142. Defendants acted in order to injure the rights of Named Plaintiff and Class Plaintiffs so as to deprive them of the benefits of the agreements.

143. Defendants had a legal duty to act honestly, in good faith and in accordance with federal and state law during all contractual negotiations with Named Plaintiff and Class Plaintiffs and in the performance of their obligations under the contracts.

144. At all times relevant herein, Defendants were presumed to know the laws governing the contracts and their employment relationships with Named Plaintiff and Class Plaintiffs.

145. Defendants breached their legal duty and did not deal in good faith, fairly or in accordance with federal or state law for the reasons stated *supra*.

146. As a result of Defendants’ conduct, Named Plaintiff 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 federal and state law and principles of equity;

(2) Defendants are to compensate, reimburse, and make Named Plaintiff, Collective Plaintiffs 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 Plaintiff, Collective Plaintiffs and Class Plaintiffs should be accorded those benefits illegally withheld;

(3) Named Plaintiff, Collective Plaintiffs and Class Plaintiffs are to be awarded liquidated damages as applicable under the laws they are suing under in an amount equal to the actual damages in this case;

(4) Named Plaintiff and Class Plaintiffs are to be awarded punitive damages for Defendants' willful and egregious conduct;

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

(6) Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs are to be awarded equitable relief, including disgorgement of profits and other relief deemed appropriate by the Court;

(7) Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs are to have a trial by jury;

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

Respectfully Submitted,

/s/ Joshua Boyette

Joshua S. Boyette, Esq.

Justin L. Swidler, Esq.

Travis Martindale-Jarvis, Esq.

**SWARTZ SWIDLER, LLC**

1101 Kings Highway North, Suite 402  
Cherry Hill, NJ 08034  
Phone: (856) 685-7420  
Fax: (856) 685-7417

Date: September 20, 2016

**DEMAND TO PRESERVE EVIDENCE**

All Defendants are hereby directed to preserve all physical and electronic information pertaining in any way to Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs' employment and/or contractual relationship with Defendant, to Named Plaintiff, 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, Defendant's marketing materials (including its website), orientation materials, complaints made by any driver regarding pay, closed circuit TV footage, digital images, computer images, cache memory, searchable data, emails, Qualcomm messages, spreadsheets, 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.



## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**

THEODUS DAVIS, on behalf of himself and those similarly situated

(b) County of Residence of First Listed Plaintiff Claiborne County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

Swartz Swidler LLC Joshua S. Boyette, Esq.  
1101 Kings Hwy N. Ste 402, Cherry Hill NJ 08034  
Ph: 856-685-7420 Fax: 856-685-7417 jboyette@swartz-legal.com**DEFENDANTS**COLONIAL FREIGHT SYSTEMS, INC., PHOENIX LEASING OF  
TENNESSEE, INC., RUBY MCBRIDE, and JOHN DOES 1 - 10County of Residence of First Listed Defendant Mercer County  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Violations of the Fair Labor Standards Act ("FLSA")Brief description of cause:  
Failure to Pay Minimum Wage**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/20/2016

SIGNATURE OF ATTORNEY OF

RECORD /s/ Joshua S. Boyette

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IF

JUDGE

MAG. JUDGE

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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