UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

THEODUS DAVIS, on behalf of himself and those similarly situated,	)	Case No. 3:16-cv-674
Plaintiff,	)	Judge Travis R. McDonough
v.	)	Magistrate Judge H. Bruce Guyton
COLONIAL FREIGHT SYSTEMS, INC., et al.,	)	
Defendants.	)	

MEMORANDUM AND ORDER

Before the Court is Defendants' motion to dismiss Count Two of Plaintiff's second amended complaint (Doc. 181). For the following reasons, the Court will **DENY** the motion.

I. BACKGROUND[1]

Defendant Colonial Freight, Inc. ("Colonial Freight") is a truckload carrier that provides transportation of cargo for hire. (Doc. 178, at 3.) Defendant Phoenix Leasing of Tennessee, Inc. ("Phoenix") leases vehicles to commercial truck drivers hired by Colonial. (*Id.*) Defendant Ruby McBride is Colonial's Chief Executive Officer and Director of Safety. (*Id.*) Named Plaintiff Theodus Davis worked as a commercial truck driver for Colonial Freight from approximately September 2014 to January 2016. (*Id.* at 4, 8.) This matter arises from Defendant Colonial Freight, Inc.'s ("Colonial Freight") classification of drivers as independent contractors. Plaintiff claims Colonial Freight should have classified them as employees. (*Id.* at 1.)

[1] The following relevant facts, alleged in Plaintiff's second amended complaint, are accepted as true for the purposes of resolving this motion. These facts are substantially similar to the facts alleged in Plaintiff's original complaint. (*Compare* Doc. 178, *with* Doc. 1.)

a. Training

Plaintiff alleges Colonial Freight required him to attend a five-day orientation when he was hired.[2] (*Id.* at 8.) During the orientation, Plaintiff was required "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." (*Id.* at 9.) After the orientation, Defendants required Plaintiff to complete a two-month "Driver Training Program" as a prerequisite to continued employment. (*Id.* at 13.) Plaintiff alleges that he was given an "Independent Contractor/Trainee Agreement" ("ICTA"), which classified him as an independent contractor while he participated in the Driver Training Program. (*Id.* at 10.) Pursuant to the ICTA, Plaintiff received "a $475 per week stipend or loan" during the training period. (*Id.* at 13.) However, under the terms of the ICTA, Plaintiff alleges that he would be required to reimburse this stipend if he did not sign an "Independent Contractor Operating Agreement" ("ICOA") upon completion of the Driver Training Program. (*Id.* at 13–14.) In addition, Plaintiff would also be required to reimburse the stipend in the event he did not work for Defendants for at least three months following the Driver Training Program. (*Id.*) Therefore, according to Plaintiff, he was not provided any compensation during the Driver Training Program, but "[was] instead merely provided with a potentially-forgivable loan." (*Id.* at 16.)

After completing the Driver Training Program, Plaintiff alleges that Defendants required him to execute two documents to continue working for Defendants: (1) "a lease agreement with Defendant Phoenix to lease a commercial vehicle to use in [his] work for Defendant Colonial" (the "Leasing Agreement"); and (2) the ICOA. (*Id.* at 10–11.)

[2] Plaintiff also makes factual allegations on behalf of those similarly situated. For the purposes of ruling on Defendants' motion to dismiss, the Court will refer to the allegations of Named Plaintiff Davis in the singular.

b. Leasing Agreement

Pursuant to the Leasing Agreement, Plaintiff paid a weekly truck lease fee for the use of a commercial vehicle that remained the property of Defendants during the leasing period. (*Id.* at 17.) The Leasing Agreement, which also designated Plaintiff as an independent contractor, prohibited Plaintiff from using the leased vehicle "for any carrier other than Defendant Colonial, unless Defendant Phoenix gave prior written consent." (*Id.* at 11, 17.) Accordingly, "[a]bsent written permission from Defendant Phoenix, [Plaintiff] could accept only jobs that were assigned to him by Defendant Colonial." (*Id.* at 11.) Plaintiff alleges that, "as a consequence of being permitted to accept only loads assigned to him from Defendants[,]" he "had no meaningful opportunity to increase his revenue by recruiting new customers . . . ." (*Id.* at 12.)

c. ICOA and Employment Relationship

The ICOA, which again designated Plaintiff as an independent contractor, contained a lease-back provision, whereby Colonial Freight would lease the commercial truck from Plaintiff that Plaintiff in turn had leased from Phoenix, along with his services as a driver. (*Id.* at 10, 22.) According to Plaintiff, the ICOA would "remain in effect for 24 hours and [would renew] each 24 hour period until terminated for any reason or no reason with 24 hours' notice." (*Id.* at 23.) The ICOA provided that Plaintiff would be paid a certain percentage of gross freight revenue based on his individual loads, which was not subject to negotiation. (*Id.* at 12, 28.) According to Plaintiff, he "could do little to increase [his] profitability other than attempt to improve [his] fuel efficiency." (*Id.* at 12.) Plaintiff alleges that "Defendants controlled and directed [him] in the performance of [his] work." (*Id.* at 11.) Additionally, Plaintiff alleges that Defendants assigned him a "'driver manager[ ],' who acted as [his] supervisor[ ] throughout [his] employment with Defendants." (*Id.*)

According to Plaintiff, he was required "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)." (*Id.* at 17–18.) Plaintiff alleges that he was also required to "pay for various fixed charges on a weekly basis, including a Global Positioning Satellite system," and was "force[d] . . . to purchase equipment, parts, and maintenance services from Defendants." (*Id.* at 25, 27.) Plaintiff alleges, however, that the ICOA did not clearly specify the items Defendants were authorized to deduct from his compensation. (*Id.* at 23–24.) For example, the ICOA authorized Defendants to deduct "any other monies owed to [Defendants]" and "all other costs incurred in the performance of this Agreement." (*Id.*) Plaintiff alleges that Defendants' pay structure and deduction policy regularly caused his wages to drop below the federal minimum wage of $7.25 per hour. (*Id.* at 22.) As an example, Plaintiff alleges that, after various expenses were deducted from Plaintiff's compensation for a December 2014 load he transported from Kentucky to Louisiana, Plaintiff *owed* Defendants $135.41 and, therefore, did not receive any compensation for that pay period. (*Id.* at 20.)

II. PROCEDURAL HISTORY

Plaintiff filed his original complaint in the United States District Court for the District of New Jersey on September 20, 2016, asserting violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203 *et seq.*, and the Truth-in-Leasing ("TIL") regulations, 49 C.F.R. § 376.12, pursuant to 49 U.S.C. § 14704, and claims of common-law breach of contract, on behalf of himself and those similarly situated. (Doc. 1.) On November 30, 2016, the case was transferred to this Court. (Docs. 12, 13.) On July 24, 2017, Defendants filed a motion to dismiss, *inter alia*, Plaintiff's TIL claim. (Doc. 36.)

On November 22, 2017, the Court offered this analysis when it denied Defendants' motion as to the TIL claim:

> Defendants also seek dismissal of Plaintiff's claim for violation of TIL regulations. TIL regulations "govern motor carrier equipment leases between motor carriers and owner-operators of motor carrier equipment." *Britts v. Stevens Van Lines, Inc.*, Case No. 1:15CV1267, 2017 WL 385738, at *4 (N.D. Ohio Jan. 27, 2017). Plaintiff alleges that the ICOA purported to lease back from Plaintiff the vehicle that Plaintiff leased from Phoenix. (Doc. 1, at 18.) Pursuant to federal law, authorized motor carriers like Colonial may transport property in leased equipment only if the equipment is covered by a written lease that meets the requirements of TIL regulation. 49 C.F.R. §§ 376.11–12. Those regulations require that the lease outline certain terms, such as the duration of the lease, compensation, the return of escrowed funds, a listing of items for charge-back or deduction, and duties relating to insurance coverage. *Id.* If an authorized carrier fails to comply with those requirements, the statute provides for a private right of action for the enforcement of the regulations, either by injunctive relief or by an award of damages and attorney's fees. 49 U.S.C. § 14704.
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> Defendants first argue that Plaintiff's TIL claim should be dismissed because Plaintiff "does not provide any examples of any injury that he or any other similarly situated individual suffered related to these purported violations." (Doc. 37, at 21–22.) Defendants do not cite any Sixth Circuit case law that stands for the proposition that a plaintiff must allege damages to state a claim under 49 U.S.C. § 14704. (*See id.*) However, courts in other circuits have required plaintiffs to allege damages to state a TIL claim. *See, e.g.*, *Fulfillment Servs. Inc. v. United Parcel Serv., Inc.*, 528 F.3d 614, 621 (9th Cir. 2008) ("[T]o state a claim, a plaintiff must still allege damages as a consequence of the [TIL regulations] violation.").
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> Even if the Court follows precedent from other circuits, Plaintiff alleges damages necessary to state a claim under 49 U.S.C. § 14704. Plaintiff alleges that Defendants underpaid him and failed to provide him with documentation that would have confirmed the underpayments. (Doc. 1, at 16–19.) Such an allegation is sufficient to plead TIL damages. *See, e.g.*, *Mervyn v. Nelson Westerberg, Inc.*, No. 11C6594, 2012 WL 6568338, at *3 (N.D. Ill. Dec. 17, 2012). Moreover, Plaintiff alleges that he was required to "pay for various fixed charges on a weekly basis, including a Global Positioning Satellite system" and was "force[d] . . . to purchase equipment, parts, and maintenance services from Defendants" in violation of TIL regulation.[3] (Doc. 1, at 21, 23.) Accordingly, Plaintiff alleges damages sufficient to state a claim for violation of TIL regulations.

[3] TIL regulations require leases to specify "that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement." 49 C.F.R. § 376.12(i).

> Next, Defendants argue that Plaintiff's TIL claim should be dismissed because many of the leasing provisions that Plaintiff alleges are not in the ICOA are in fact in the ICOA. (Doc. 37, at 21–22.) For example, Defendants argue that, although Plaintiff alleges that the ICOA does not sufficiently specify the term of the lease in violation of 49 C.F.R. § 376.12(b), the ICOA states that it becomes effective on November 21, 2014, and will "remain in effect for subsequent 24 hour periods until terminated by either party as hereinafter provided . . . ." (*Id.* at 22.) Plaintiff makes over a dozen allegations of TIL-regulation violations, but Defendant addressed only one in its motion to dismiss. (*See id.*) "Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones." *McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) (internal quotation marks omitted). Accordingly, because Defendants addressed one out of over a dozen TIL allegations, Defendants have not developed this argument enough for the Court to consider it.
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> Finally, Defendants appear to argue that Plaintiff's TIL claim should be dismissed because Plaintiff was an independent contractor, not an employee. (*See* Doc. 37, at 22–28.) Under 49 U.S.C. § 14704, a carrier is "liable for damages sustained *by a person* . . . ." 49 U.S.C. § 14704 (emphasis added); *see also* 49 C.F.R. § 376.12(c)(4) ("Nothing in the provisions required [for lease agreements] is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier.") Accordingly, whether a plaintiff is an employee or independent contractor is irrelevant to state a TIL claim. For these reasons, the Court will **DENY** Defendants' motion to dismiss Plaintiff's TIL claim.

(Doc. 56, at 13–16.)

Plaintiff filed an amended complaint on November 29, 2017, and a second amended complaint on September 3, 2019. (Docs. 61, 178.) Both asserted violations of the TIL regulations. (*Id.*) Defendants now claim that Plaintiff has not established standing to assert the TIL claim and have accordingly filed a motion to dismiss Plaintiff's claims under the TIL regulations, as set forth in Count Two of the second amended complaint (Doc. 179). Defendants' motion is now ripe for the Court's review.

III. STANDARD OF REVIEW

Article III standing is a threshold requirement for federal jurisdiction. *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 344 (6th Cir. 2016) ("If a party does not have standing to bring an action,

then the court has no authority to hear the matter and must dismiss the case."). "[A]ny person invoking the power of a federal court must demonstrate standing to do so." *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013). The party seeking to invoke federal jurisdiction bears the burden to demonstrate standing for each of his claims, *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008), and "he must plead its components with specificity[,]" *Daubenmire v. City of Columbus*, 507 F.3d 383, 388 (6th Cir. 2007) (internal citations and quotations omitted). In a class action, each plaintiff must establish standing. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 n.6 (2016). To do so, a litigant must allege that he has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* at 1547. "These elements are commonly referred to as the 'injury-in-fact,' 'causation,' and 'redressability' requirements." *Phillips v. DeWine*, 841 F.3d 405, 414 (6th Cir. 2016). An "injury in fact" is "an invasion of a legally protected interest which is (a) concrete and particularized injury and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal citations and quotation marks omitted).

IV. ANALYSIS

Defendants argue that Plaintiff's TIL claim must be dismissed under Rule 12(b)(1) because Plaintiff has failed to allege an injury in fact from Defendants' alleged violations of the TIL regulations and, therefore, has failed to establish standing to bring that claim. Plaintiff responds that both of Defendants' arguments—(1) that Plaintiff has not alleged actual TIL violations, and (2) that Plaintiff has not alleged injuries arising from the alleged violations—were rejected by the Court in its November 22, 2017 memorandum and order denying Defendants' motion to dismiss Plaintiff's original complaint. (Doc. 189, at 1 (citing Doc. 56, at 13–16).)

Although the Court has not explicitly ruled that Plaintiff has alleged an injury in fact sufficient to confer Article III standing, the Plaintiff's reliance on the Court's previous ruling is well-taken. The Court previously found, with respect to the original complaint, that "Plaintiff alleges damages necessary to state a claim under 49 U.S.C. § 14704." (*See* Doc. 56, at 14.) The Court found that Plaintiff alleged he incurred damages arising from Defendants' TIL violations when "Defendants underpaid him and failed to provide him with documentation that would have confirmed the underpayments." (*Id.*) The Court also noted Plaintiff's allegation that, though the TIL regulations prohibit lease agreements from requiring the purchase or rental of equipment as a condition of the agreement, he was nonetheless required to pay for certain equipment. (*Id.*) Because Plaintiff's allegations of TIL violations are nearly identical in the original and second amended complaint and because Defendants have not moved the Court to reconsider those findings, the Court sees no reason to revisit them.[4] These alleged damages constitute an actual injury to a protected legal interest—underpayment for the work Plaintiff provided, and that alleged injury is concrete, even quantifiable; particular to Plaintiff, as he was the only person owed for his work, and actual as opposed to speculative. The Court therefore rejects Defendants' argument that Plaintiff has not adequately alleged an injury in fact.

Although Defendants do not address the other two elements of standing, the Court will do so now to ensure it has jurisdiction over the TIL claims. As to the causation requirement, the alleged underpayments are fairly traceable to the allegedly impermissible provisions of the Defendants' ICOAs because the ICOAs provide the parties' agreement for how money would

[4] Defendants assert that Plaintiff's only allegations related to TIL damages is a generalization that "[a]s a result of Defendants' conduct," he has "suffered damages." (Doc. 195, at 5 (citing Doc. 178, at 33).) Although this is an accurate quotation from Plaintiff's second amended complaint, the foregoing paragraphs incorporated into the statement of that claim contain allegations of TIL violations and underpayment resulting from them, such as those noted above. (*See generally* Doc. 178.)

flow between them. And as to the redressability requirement, Plaintiff seeks compensatory and punitive money damages and is likely to be redressed by a judicial decision that he is entitled to such relief. Therefore, Plaintiff has established Article III standing to bring this action.[5]

V. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss (Doc. 181) is **DENIED**.

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

[5] Statutory standing exists as well, as 49 U.S.C. § 14704 provides a private right of action to individuals injured by violations of the TIL regulations.