

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

**Marcus Brent Jowers,
Plaintiff,**

**vs.
KLLM Transport Services, LLC
Defendant.**

Civil Action: 3:17-cv-517 DPJ-FKB

**PLAINTIFF’S OPPOSITION TO
DEFENDANT KLLM TRANSPORT
SERVICES, LLC’S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiff Marcus Brent Jowers (“Plaintiff”) respectfully submits the following opposition to Defendant KLLM Transport Services, LLC’s Motion for Partial Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This is a class action for violations of minimum-wage laws under the Federal Labor Standard Act (“FLSA”) on behalf of truck drivers employed by Defendant KLLM Transport Services, LLC (“Defendant” or “KLLM”). Defendant delivers refrigerated goods nationwide and, among other things, violated minimum wage laws by forcing drivers to travel days at time and be “continuously on duty . . . under 29 C.F.R section 785.22,” requiring 24-hour, or at a minimum, 16-hour per day compensation. Defendant paid based on the number of miles driven, and failed to pay minimum wages to its drivers.

Defendant’s motion to have the class allegations dismissed based on a class action waiver clause lacks merit for several reasons. First, the clause only applies to disputes “under this Agreement.” Plaintiff, however, has not sued under the contract. Rather, Plaintiff’s claim is a statutory claim under the FLSA. Thus, Plaintiff’s claims are outside the scope of the class action waiver, based on its explicit terms. Second, the class action waiver is unconscionable, both

procedurally and substantively, under Mississippi law. Defendant admits the independent contractor agreement which contains the class action waiver is a standard agreement, that all class members must sign as a condition of employment, presented on a take-it-or-leave-it basis, that is one-sided and strips employees of statutory rights. The unconscionability that permeates the class action waiver renders it unenforceable.

Moreover, the Federal Arbitration Act (“FAA”) does not apply to Plaintiff’s claims because he is a transportation worker, exempt from the FAA. Defendant is not seeking to compel arbitration, but solely to enforce a class action waiver outside the context of arbitration, and the federal policy as embodied by the FAA. However, it is precisely the federal policy in favor of arbitration which was the justification for upholding class action waivers. Without the FAA, the basis for enforcing a class action waiver does not exist. This is particularly true, where, as here, there is a statutory right under the National Labor Relations Act (“NLRA”) for Defendant’s employees to engage in “concerted activities” and pursue a collective action. 29 U.S.C. §157.

Finally, even where the FAA and arbitration is involved, the issue of whether a class action waiver is enforceable in the employment context is currently under review by the United States Supreme Court. Oral argument set for October 2, 2017. Thus, if the Motion is not denied on the other grounds stated herein, Plaintiff respectfully requests that a decision be deferred pending the Supreme Court’s resolution of the issue.

For the reasons set forth herein, Defendant’s Motion for Partial Summary Judgment as to Plaintiff’s class claims should be denied.

II. Factual Background.

This is a collective action for minimum wage violations on behalf of Defendant’s drivers who were misclassified as independent contractors. Complaint, ¶1.

A. KLLM Business Operations And Employment Of Its Drivers.

KLLM “is one of the largest refrigerated trucking companies in the United States, and

operates throughout the continental United States.” Complaint, ¶3.

Defendant’s Vice President of Safety, Wilson Risinger, was designated in another lawsuit as KLLM’s person most knowledgeable on, among other things, KLLM’s “business operations.” Declaration of Joshua H. Haffner (Haffner Decl.”), Exh.1, 7:8-12; 35:1-15, and Exh.2, 2:11-26. Mr. Risinger testified in June 2016 that KLLM has approximately 2800 drivers, of which 2500 lease their trucks from KLLM and are classified as independent contractors. *Id.* at 10:25 - 11:11, 38:12-14. KLLM owns the trucks it leases to its drivers. *Id.* at 36:5-22. KLLM has a federal motor carriers license that all its drivers operate under. *Id.* at 58:23 – 59:12. KLLM trucks drive “all over the country.” *Id.* at 15:3-16:1.

Mr. Risinger testified that *all* of KLLM’s drivers who lease trucks from KLLM have to sign the same, standard independent contractor and truck lease agreement with KLLM. *Id.* at 118:17-23. Mr. Risinger further testified it is “a condition of driving for KLLM” that drivers sign the independent contractor agreement. *Id.* at 117:17-20.

Defendant conducts multi-day training sessions for its new drivers in Mississippi. Haffner Decl., Exh. 3, 15:23- 16:10; and Declaration of Marcus Brent Jowers (“Jowers decl.”), ¶2. During this orientation/training, in a group setting, KLLM’s new prospective hires are presented with standard independent contractor agreements to sign, along with lease agreements for KLLM’s trucks. Haffner Decl., Exh. 3, 108:10-24.¹

B. KLLM Exercises Control Over Its Drivers.

KLLM leases trucks it owns to its drivers. Exh.1, 10:25 - 11:11. KLLM arranges for and deducts from its drivers’ paychecks the costs for the truck lease, maintenance, insurance and fuel. *Id.* at 16:17-17:11, 18:10-17, 18:23-19:6, 19:19-20:1, 20:14-16, 22:10-23, 33:10-13.

Drivers can only use the trucks they lease to perform for work for KLLM. *Id.* at 37:15-21, 37:24-38:2. Moreover, only the driver who leases the truck is allowed to drive it, unless

¹ Cuberly Sandifer, who provided the deposition testimony in the transcript attached as Exhibit 3 to the Declaration of Joshua Haffner, drove for KLLM from February 2012 through January 2015. Haffner Decl., Exh.3, 72:2-4, 77:7-8.

authorization from KLLM is obtained for another driver. *Id.* at 39:5-12. In addition, drivers “are only allowed to drive for KLLM,” and are not allowed to work as a driver for any other company. *Id.* at 37:19-21. KLLM requires its name and logo to be on the truck and trailer. *Id.* at 37:6-14.

Drivers are required to follow KLLM’s policies and rules. *Id.* at 24:17-24, 27:17-24, 111:7-13. Drivers must complete and submit daily driver logs as part of their job with KLLM. *Id.* at 73:10-16, 74:23 – 75:1. All drivers get the same training and orientation prior to driving for KLLM. *Id.* at 31:18 – 32:10.

KLLM has the power to terminate its drivers for any reason. Exh.1, 43:22 – 44:3, 102:16 – 103:6.

C. Defendant’s Hiring Of Plaintiff.

Plaintiff attended Defendant’s training program in Richland, Mississippi, travelling from Florida to attend. Jowers Decl., ¶2. While Plaintiff was “attending the ‘lease purchase class’” given by KLLM, Plaintiff “along with approximately twenty-five other individuals” were presented with the independent contractor agreement. *Id.* at ¶3. Plaintiff was not allowed to review until the next day. *Id.* at ¶¶2-3. No one went over the class action waiver with Plaintiff. *Id.* at ¶3.

Plaintiff was told he had to sign the independent contractor agreement “in order to work for KLLM.” *Id.* at ¶4. Plaintiff further attests as follows:

“There was no negotiation relating to the terms of the Agreement between KLLM and myself or any of the other individuals. KLLM did not give myself or the other individuals time to seek advice before signing the Agreement. . . . The Agreement was presented in a take it or leave it manner by KLLM.” *Id.* at ¶5.

D. Plaintiff’s Minimum Wage Claim Under The FLSA.

Plaintiff alleges he was a driver for KLLM and was “misclassified . . . as an independent contractor.” Complaint, ¶2. Plaintiff alleges he was “paid based on the number of miles driven.”

Complaint, ¶20. Plaintiff alleges that Defendant's policies require that its drivers work many hours for which they are not paid.

“Plaintiff and the Class consistently worked in excess of 40 hours per week. This includes not only their time spent driving but the many other hours spent on inspections, waiting for direction from KLLM, waiting for completion of pickup or delivery, refueling, and myriad other tasks required by KLLM.” *Id.* at ¶21.

Plaintiff alleges that while driving across country, to make a delivery, they were “continuously on duty and, therefore, worked at least 16 hours, if not 24 hours, under 29 CFR § 785.22.” *Id.* at ¶22. Plaintiff alleges that he and class members, after taking into account the deductions Defendant made from their paychecks, were “paid less than \$7.25 for each hour that they worked.” *Id.* at ¶20.

III. Legal Argument.

Defendant's motion for summary judgment seeking enforcement of the class action waiver lacks merit, and should be denied. As set forth herein, the scope of the class action waiver does not apply to the statutory claims asserted in this case. Moreover, the class action waiver is unconscionable. However, even if the class action waiver was enforceable, and encompassed Plaintiff's statutory claims, it cannot be enforced outside the context of an arbitration, and the federal policy embodied by the FAA.

A. Standard On Motion For Partial Summary Judgment.

District courts grant summary judgment only where the movant demonstrates that there is no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law. Fed R. Civ. P. 56(a). The evidence, as well as all inferences from the evidence, must be viewed in a light most favorable to the party opposing the motion for summary judgment. *Little v. Liquid Air Corp.*, 952 F.2d 841, 847 (5th Cir. 1992). If the evidence would permit a reasonable trier of fact to find for the nonmoving party, then summary judgment should not be granted. *Anaya v. Traylor Bros., Inc.*, 478 F.3d 251, 253 (5th Cir. 2007).

B. Plaintiff's Statutory FLSA Claim Is Not Within The Scope Of The Class Action Waiver.

The class action waiver agreement cited by Defendant does not, by its terms, encompass Plaintiff's statutory FLSA claim. The Class Action Waiver provides as follows:

"You agree that you may not bring a class action suit on behalf of others *under this Agreement* in any court or in arbitration." Christine Breaux Affidavit ("Breaux Decl."), Exh. A p.15, para.10.b (*italics added*).

By its terms, the class action waiver only applies to a class action "under this Agreement." Plaintiff has not sued under the agreement, and has not brought a breach of contract claim. Plaintiff's claim is *solely* for statutory violations of the FLSA, 29 U.S.C. section 216(b). Statutory claims are not mentioned as within the scope of the class action waiver at issue, and are not encompassed by it.

In analogous situations relating to the scope of arbitration and forum selection clauses, courts have held similar contractual language does not include statutory FLSA claims. Thus, in the arbitration context, the Ninth Circuit rejected inclusion of FLSA within the scope of an arbitration clause. *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 861–62 (9th Cir. 1979). The *Leyva* arbitration provision purported to apply to "any controversy, dispute, or disagreement aris(ing) during the period of this Agreement, out of the interpretation or application of the provisions of this Agreement" *Id.* *Leyva* held that "FLSA claims are statutory rights *existing independently* of the contracts," and the FLSA claim was not within the arbitration clause's scope. *Id.* at 862 (*emphasis added*). *Leyva* reasoned that arbitration clauses "should not be read to require arbitration of statutory claims absent express provision for such arbitration." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979).

Other courts have also held, in the context of forum selection clauses, when their scope relates to disputes under the contract, they do not encompass statutory FLSA claims. In *Pacheco v. St. Luke's Emergency Associates*, 879 F.Supp.2d 136,140-141 (M.D. Ten. 2012), the court analyzed a forum selection clause in an employment contract that applied to "any dispute derived out of this agreement." *Id.* at 140. The *Pacheco* court noted that "[a] number of cases

have held that suits to recover payments due under the FLSA . . . are ***not dependent*** upon the plaintiff's employment agreement." *Id.* at 141 (emphasis added). *Pacheco* concluded that the "FLSA claims are based on independent statutory rights" and outside the scope of disputes derived from the employment agreement. *Id.* at 142. In *Fuller v. Goldstar Estate Buyers Corp.*, 2011 WL 809429 (N.D. Ill. 2011), in analysis that applies equally here, the court rejected application of a forum selection clause to an FLSA claim, holding as follows:

"[T]he Agreement here expressly refers to actions 'relating to this contract.' Plaintiff is not attempting to enforce any terms of the Independent Contractor Agreement." *Id.* at *3.

The waiver at issue only governs "a class action suit . . . under this Agreement. . ." By its terms, this provision does not encompass Plaintiff's statutory FLSA claim.

Indeed, the limited scope of the class action waiver contrasts sharply with the broader language Defendant used in the next paragraph for the arbitration agreement, having it encompass any dispute relating to the Agreement "or any other aspect of our business relationship (whether in contract, tort, ***statutory*** or other)." Breaux Decl., Exh. A p.15, para.10.c (emphasis added). That Defendant chose to limit the class action waivers to disputes "under this Agreement," while having the arbitration agreement extend to and include "statutory" claims, reflects an intention to exclude statutory claims from the class action waiver.

To the extent the Court finds there is any ambiguity regarding whether the class action waiver encompasses statutory claims under the FLSA, that ambiguity must be resolved against Defendant and in favor of Plaintiff. Here, Defendant drafted the contract, and must accept the consequences of any ambiguities in it. *Rotenberry v. Hooker*, 864 So.2d 266, 270 (2003) ("vagueness and ambiguity [in a contract] are more strongly construed against the party drafting the contract").

Because FLSA claim is not within the scope of the class action waiver agreement, Defendant's motion should be denied.

C. The Class Action Waiver Is Unconscionable And Unenforceable Under Mississippi Law.

KLLM's class action waiver is unenforceable under Mississippi law because it is both procedurally and substantively unenforceable.

"Under Mississippi law, 'unconscionability has been defined as an absence of meaningful choice on the part of one of the parties, together with contract terms which are unreasonably favorable to the other party.' There are 'two types of unconscionability, procedural and substantive.'" *Bell v. Koch Foods of Mississippi, LLC*, 358 Fed.Appx. 498, 502-503 (5th Cir. 2009). The two types of unconscionability are alternatives -- either procedural *or* substantive unconscionability is adequate to void a contractual provision under Mississippi law. *Beverly Enterprises-Mississippi, Inc. v. Powell*, 244 Fed.Appx. 577, 580 (5th Cir. 2007) (finding material disputed fact existed as to procedural unconscionability, and holding "we need not address defendant's claims for substantive unconscionability"); and *West v. West*, 891 So.2d 203, 213 (Miss. 2004) ("[a] contract may be either procedurally or substantively unconscionable").

In this case, both procedural and substantive unconscionability exist in relation to the class action waiver, rendering it unenforceable.

1. The Class Action Waiver Is Procedurally Unconscionable.

KLLM's class action waiver meets the test for procedural unconscionability.

"Procedural unconscionability goes to the formation of the contract." *West, supra*, 891 So.2d at 213. Courts have explained procedural unconscionability under Mississippi law as follows:

"The indicators of procedural unconscionability generally fall into two areas: (1) lack of knowledge, and (2) lack of voluntariness. A lack of knowledge is demonstrated by a lack of understanding of the contract terms arising from inconspicuous print or the use of complex, legalistic language, disparity in sophistication of parties, and lack of opportunity to study the contract and inquire about contract terms. A lack of voluntariness is demonstrated in contracts of adhesion when there is a great imbalance in the parties' relative bargaining power, the stronger party's terms are unnegotiable, and the weaker party is prevented by market factors, timing or other pressures from being able to contract with

another party on more favorable terms or to refrain from contracting at all.” *East Ford, Inc. v. Taylor*, 826 So.2d 709, 715-716 (Miss. 2002).

Procedural “unconscionability is most strongly shown in contracts of adhesion presented to a party on a ‘take it or leave it basis.’” *York v. Georgia Pacific Corp.*, 585 F.Supp. 1265, 1278 (N.D. Miss. 1984). “A contract of adhesion has been described as one that is ‘drafted unilaterally by the dominant party and then presented on a ‘take-it-or-leave-it’ basis to the weaker party who has no real opportunity to bargain about its terms. Such contracts are usually prepared in printed form, and frequently at least some of their provisions are in extremely small print.’” *East Ford, supra*, 826 So.2d at 716.

KLLM’s Vice-President and person most knowledgeable on its business operation, Mr. Risinger, testified that the independent contractor agreement containing the class action waiver is a standard agreement KLLM always uses.

Q. All drivers which you are calling lease drivers as opposed to company drivers have signed this independent contractor agreement. Correct?

A. Yes.

Q. And it's a standard agreement that KLLM has its lease drivers sign. Correct?

A. Yes. Haffner Decl., Exh.1, 118:17-23.

Moreover, Plaintiff had no choice but to sign the agreements to work for KLLM in order to work for KLLM. Jowers, decl., ¶5; *see also* Haffner Decl., Exh. 3, 111:12-23. Indeed, Mr. Risinger of KLLM admitted as much.

Q. It's a condition of driving for KLLM that they sign this independent contractor agreement. Correct?

A. Yes. Haffner Decl., Exh.1, 117:17-20.

The agreement was presented to Plaintiff at a group training session, he had no time to independently review it, the class action waiver was not explained, there was no opportunity for negotiation, and it was provided on a take it or leave it basis. Jowers Decl., ¶3-5. This is also how Mr. Sandifer, another driver for KLLM, described how he was presented with and required to sign the independent contractor agreement. Exh.3, 111:12-23.

Thus, the independent contractor agreement relied on by KLLM is a classic contract of adhesion, drafted by KLLM, and forced upon Plaintiff and other drivers on a take-it-or-leave-it basis. Under Mississippi law, this constitutes procedural unconscionability.

2. The Class Action Waiver Is Substantively Unconscionable.

The class action waiver is also substantively unconscionable under Mississippi law.

The test of substantive unconscionability is whether “the clause or contract is so one-sided that it is unconscionable under the circumstances existing at the time the contract was made.” *York, supra*, 585 F.Supp. at 1278.

Here, the class action waiver explicitly only applies to Plaintiff, stating “[y]ou agree that you may not” bring a class action. Breaux Decl., Exh. A p.15, para.10.b. This provision is explicitly limited to Plaintiff, and is wholly one-sided. This constitutes substantive unconscionability.

Moreover, the NLRA provides a statutory right, whether characterized as procedural or substantive, to proceed in concert with other employees. 29 U.S.C. §157 (employees have the right to engage in “concerted activities for the purpose of . . . mutual aid or protection.”) The NLRA’s provision that employees have the right to engage in “‘concerted activities’ has long been held to include ‘resort to administrative and judicial forums.’” *Lewis v. Epic Systems Corporation* (7th Cir. 2016) 823 F.3d 1147, 1152. Here, the class action waiver purports to take away the statutory right for KLLM’s employees, including Plaintiff, to proceed together. This is also harsh and one-sided, and substantively unconscionable.

Finally, Plaintiff notes that, to the extent there are factual issues regarding unconscionability that need to be determined, that also warrants denial of Defendant’s summary judgment motion. *Beverly Enterprises-Mississippi, Inc. v. Powell*, 244 Fed.Appx. 577, 580 (5th Cir. 2007) (“[t]he resolution of these fact issues will undoubtedly affect the disposition of this action. . . [and] summary judgment was improper”).

Given the evidence of unconscionability, both procedurally and substantively, this Motion should be denied.

D. Without The FAA As Its Premise, Defendant's Class Action Waiver Is Not Enforceable In The Employment Context.

The FAA, and the federal policy behind it, is the justification to enforce a class action waiver. Here, Defendant agrees there is no arbitration being sought, and no FAA issue. Without that foundational basis, there is no basis to enforce a class action waiver in the face of the NLRA's statutory right to bring a collective action.

1. Plaintiff And His Claims Are Exempt From The FAA, And Defendant Is Not Requesting Arbitration.

The FAA does not apply to this case, and Defendant does not seek to enforce its arbitration provision.

Section 1 of the FAA expressly exempts the contracts of transportation workers working in foreign or interstate commerce from its coverage. 9 U.S.C. § 1 (excluding "contracts of employment of seamen, railroad employees, or any other class of works engaged in foreign or interstate commerce" from the reach of the FAA); *see Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 109, 112 (Section 1 applies to "transportation workers"). Plaintiff, as an interstate truck driver, is a transportation worker engaged in foreign or interstate commerce. Indeed, Defendant is one of the largest refrigerated trucking companies in the United States, and Plaintiff transported cargo across state lines and throughout the United States. (*see Harden v. Roadway Package Sys., Inc.*, 249 F.3d 1137, 1140 (9th Cir. 2001) (truck drivers are transportation workers within the meaning of § 1 and the FAA is inapplicable to them). The First Circuit recently reaffirmed that truck drivers are exempt from the FAA, regardless of whether they are employees or independent contractors. *Oliveira v. New Prime, Inc.*, 857 F.3d 7, 24 (1st Cir. 2017) ("we hold that a transportation-worker agreement that establishes or purports to establish an

independent-contractor relationship is a contract of employment under §1” making it exempt from the FAA).

Accordingly, in this case the FAA does not apply to Plaintiff and his claims.

2. Without The Federal Policy Behind The FAA, Class Action Waivers In An Employment Agreement Are Not Enforceable.

Class action waivers of FLSA claims outside the FAA and arbitration context are not enforceable. This is true whether the right to bring a class action is characterized as procedural or substantive.

In *Killion v. KeHe Distribs., LLC*, 761 F.3d 574 (6th Cir. 2014), the court noted that an earlier Sixth Circuit decision had “rejected the defendant’s argument that a plaintiff may waive procedural rights under the FLSA, just not substantive ones.” 761 F.3d at 590. The Court went on to hold that although “considerations change when an arbitration clause is involved,” such considerations are of “only minimal relevance” where a party seeks to enforce a class action waiver in an FLSA action not implicating the FAA. *Id.* As noted by the court in *Killion*, cases upholding class action waivers have typically involved the FAA. *Id.* at 592 (“None of the foregoing authorities speak to the validity of a collective-action waiver outside of the arbitration context.”). When confronted with an arbitration agreement falling outside the FAA, the *Killion* court held, class action waivers of FLSA claims are not enforceable because there is “no countervailing federal policy that outweighs the policy articulated in the FLSA.” *Id.*

Defendant admits this motion is brought for enforcement of its class action waiver, without seeking arbitration. Indeed, Defendant’s motion states as follows:

“Many of the cases addressing waiver of a collective action do so within the framework of the Federal Arbitration Act (FAA). KLLM is not seeking arbitration in this motion, although its Independent Contractor Agreement contains an arbitration provision. Rather, KLLM is seeking to preclude a collective action and simply litigate with Mr. Jowers his alleged claim.” Defendant’s Motion, p.5, ¶1.

While *Killion* is a Sixth Circuit Court of Appeals case, it is nevertheless highly persuasive. The Fifth Circuit has held that while “decisions from other circuit courts are not controlling precedent, they may be considered persuasive authority.” *United States v. Johnson*, 619 F.3d 469, 473, n.3 (5th Cir. 2010). Where there is no Supreme Court, Fifth Circuit, or district court precedent from the district the Court sits in, district courts “will normally follow decisions by other circuit courts.” *In Re First Republic Bank Corp.*, 113 B.R. 277, 279 (N.D.Tex. 1989). *Killion*’s holding that class action waivers in the employment context impinge the statutory right to proceed collectively, and in the absence of the federal policy embodied by the FAA should not be enforced, is logical and should be followed.

Defendant cites solely to federal district court cases, from other district courts, in support of its motion that a class action waiver in a FLSA action can be enforced ***absent arbitration***. Defendant’s Motion, pp.5-6. None of these federal district court decisions are controlling, and they explicitly conflict with *Killion*’s holding.² *Killion* is a Circuit Court of Appeal opinion, with persuasive reasoning, and should be followed.

In its Motion, Defendant also fails to distinguish between the right to proceed collectively under the FLSA, 29 U.S.C. § 216(b), and the right the right to take concerted action under the NLRA, 29 U.S.C. §157. Many of the cases cited by Defendant only address the right to proceed collectively under the FLSA, § 16(b). *See e.g., Carter v. Countrywide Credit Indus., Inc.*, 362 F.3d 294, 298 (5th Cir. 2004) (“Appellants . . . contend that the Agreements interfere with their right under the FLSA to proceed collectively”); *Walthour v. Chipio Windshield Repair, LLC*, 745

² Plaintiff notes that Defendant improperly cites *Garcia v. FTS Int’l, Inc.*, No.:4:15-CV-963-Y, 2016 U.S. Dist. LEXIS 188025 (N.D.Tex. 2016), as holding that “all of the circuits to address this issue have concluded that § 16(b) does not provide for nonwaivable, substantive right to bring a collective action. . .” Defendant’s Motion, p.6. In fact, *Garcia* was citing to another case which cited to *Walthour v. Chipio Windhsield Repair, LLC*, 745 F.3d 1326 (11th Cir. 2014) for the quoted language. *Garcia*, *supra*, at *12. *Walthour*, however, was decided in 2014, before *Lewis v. Epic Systems Corporation*, 823 F.3d 1147 (7th Cir. 2016) and *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016) reached contrary decisions. Thus, the statement that “all circuits” agree as to employee class action waivers in the arbitration context,” is not accurate as of today’s date, and the quote was not properly attributed.

F.3d 1326, 1331 (11th Cir. 2014) (discussing “the statutory right to bring a collective action under FLSA §16(b)”); *Sutherland v. Ernst & Young LLP*, 726 F.3d 290, 296 (2nd Cir. 2013) (discussing plaintiff’s assertion “that section 16(b) of the FLSA creates a ‘right’ to bring a collective action”). However, it is the right to act in “concert” under the NLRA that the Seventh and Ninth Circuit have described as “substantive.” *Morris v. Ernst & Young LLP* (9th Cir. 2016) 834 F.3d 975, 980 (“concerted activity – the right of employees to act *together* – is the essential, substantive right established by the NLRA”) and *Lewis v. Epic Systems Corporation* (7th Cir. 2016) 823 F.3d 1147, 1158 (discussing “the substantive right to act collectively that the NLRA gives to employees”). The issue is currently under review in Supreme Court. However, Defendant’s citation to cases addressing the FLSA, § 16(b)’s right to collective action, do not address Plaintiff’s right under the NLRA to engage in concerted activities.

Ultimately, because the FAA does not apply, there is no federal policy that justifies enforcing a class action waiver contrary to an employee’s statutory right to bring a class action.

3. Even Where The FAA Is Implicated, Whether Class Action Can Be Waived By Employees Is Currently Under Supreme Court Review.

Even where arbitration and the FAA are at issue, it is an open question as to whether the class action waiver is enforceable in the employment context.

The United State Supreme Court is currently reviewing the issue of whether an employee pursuing claims under the FLSA can waive proceeding as a class action in connection with an arbitration agreement. The NLRA provides that “[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and *to engage in other concerted activities* for the purpose of collective bargaining or other mutual aid or protection.” 29 U.S.C. §157 (emphasis added). *Lewis* held the NLRA’s provision that employees have the right to engage in “concerted activities” includes “‘resort to administrative and judicial forums.’” (*Lewis, supra*, 823 F.3d at 1152.) *Morris* held that “concerted action is the basic tenet of federal labor policy,” and includes

the substantive right to bring employment class actions. (*Morris*, *supra*, 834 F.3d at 983.) These decisions were contrary to prior other federal appellate court case law, including a 2015 decision in *Murphy Oil USA, Inc. v. N.L.R.B.*, 808 F.3d 1013 (5th Cir. 2015). The United States Supreme Court has granted review of these cases to decide the issue. The matter is currently set for oral argument before the Supreme Court on October 2, 2017.

Given that the issue is currently under Supreme Court review, if the Court is inclined to enforce the class action waiver, Plaintiff respectfully requests that a decision on Defendant's motion be deferred pending the Supreme Court review, as it will have a significant impact, and likely be controlling. Multiple courts have stayed cases pending the United States Supreme Court's decision in *Morris*. See e.g., *In Re Sprouts Farmers Mkt*, 2017 U.S. Dist. LEXIS 80323, at *5-11 (granting a stay and explaining that "whether this case proceeds as a class action likely turns on the outcome of *Morris*"); and *McElrath v. Uber Techs, Inc.*, 2017 WL 1175591, at *6 (N.D. Cal. 2017) ("Because . . . the issue before the Supreme Court is central to the issues in the instant case, a stay of proceedings until the Supreme Court resolves *Morris* is appropriate").

IV. Conclusion.

For the reasons set forth herein, Plaintiff respectfully requests that the Court deny Defendant's Motion for Partial Summary Judgment.

Respectfully submitted,

By: /s/ Joshua H. Haffner

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Plaintiff's opposition to Defendant's KLLM TRANSPORT SERVICES, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT* with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS the 18th day of August 2017.

/s/ Joshua H. Haffner
Joshua H. Haffner

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

**Marcus Brent Jowers,
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**DECLARATION OF JOSHUA
HAFFNER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I, Joshua H. Haffner, declare as follows:

1. I am an attorney at Haffner Law PC, counsel of record for Plaintiff. I have personal knowledge of the facts set forth in this declaration, and if called as a witness would and could competently testify about them.

2. I represented the plaintiff in a case entitled *Campbell v. KLLM Transport Services, LLC*, Los Angeles Superior Court Case No.MC025857. During the course of the *Campbell* case, I took the deposition of Defendant KLLM Transport Services, LLC's person most knowledgeable, Wilson Risinger. Attached as Exhibit "1" is a true and correct copy of portions of the deposition transcript of Mr. Risinger taken in the Campbell action.

3. In the Campbell action, Mr. Risinger was designated as Defendant's person most knowledgeable. Attached as Exhibit "2" is a true and correct copy of the person most knowledgeable deposition notice Mr. Risinger testified pursuant to. In his deposition, at page 35, lines 1 through 15, Mr. Risinger confirms he is the person most knowledgeable at KLLM on the topics listed in the deposition notice, attached hereto as Exhibit 2.

4. During the Campbell case, the deposition of Defendant's driver, Sandifer Cuberly, was also taken. A true and correct copy of portions of Mr. Sandifer's deposition from the Campbell action is attached hereto as Exhibit 3.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 18th day of August 2017 in Los Angeles, California.

/s/ Joshua H. Haffner
Joshua H. Haffner

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Declaration of Joshua H. Haffner in support of Plaintiff's opposition to Defendant's Partial Motion for Summary Judgment* with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS the 18th day of August 2017.

/s/ Joshua H. Haffner
Joshua H. Haffner

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANGEL CAMPBELL, a minor, by)
and through her Guardian Ad) Case No.
Litem CAROLYN THOMAS, et al.,) MC025857
Plaintiffs,)
vs.)
KLLM TRANSPORT SERVICES, LLC,)
a Texas limited liability,)
et al.,)
Defendants.)
-----)

DEPOSITION OF KLLM TRANSPORT SERVICES, LLC
PERSON MOST KNOWLEDGEABLE
WILSON RISINGER
TUESDAY, JUNE 21, 2016

REPORTED BY:
JARDENE L. PLATT,
RPR, CSR No. 3724
Job No. 2323423
Pages 1 - 143

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3
4 ANGEL CAMPBELL, a minor, by)
5 and through her Guardian Ad) Case No.
6 Litem CAROLYN THOMAS, et al.,) MC025857
7 Plaintiffs,)
8 vs.)
9 KLLM TRANSPORT SERVICES, LLC,)
10 a Texas limited liability,)
11 et al.,)
12 Defendants.)

13 _____)

14 Deposition of WILSON RISINGER, taken on
15 behalf of the plaintiff at 644 South Flower Street,
16 Los Angeles, California, on TUESDAY, JUNE 21, 2016,
17 at 10:17 a.m., before JARDENE L. PLATT, RPR, CSR No.
18 3724.

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I N D E X

EXAMINATION	PAGE
By Mr. Haffner	6
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UNANSWERED QUESTIONS

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E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Was marked and withdrawn.	25
Exhibit 1	Documents produced by KLLM.	25
Exhibit 2	Plaintiffs' Amended Notice of Deposition of Defendant KLLM Transport Services, LLC's Person(s) Most Knowledgeable and Demand for Production of Documents.	35
Exhibit 3	Defendant, KLLM Transport Services, LLC's Responses to Request for Production of Documents.	42
Exhibit 4	Traffic collision report.	136
Exhibit 5	Copy of photograph.	138

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LOS ANGELES, CALIFORNIA

TUESDAY, JUNE 21, 2016; 10:17 A.M.

WILSON RISINGER,

having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. HAFFNER:

Q. Good morning. Would you state and spell
your name for the record.

A. My name is Wilson Risinger. W-I-L-S-O-N,
R-I-S-I-N-G-E-R.

Q. Have you ever had your deposition taken
before?

A. Yes.

Q. About how many times?

A. I think this will be the fourth.

Q. Are you employed by KLLM Transport
Services?

A. Yes.

Q. What is your position with them?

A. Vice president, safety.

Q. Did you come from Texas?

1 A. Jackson, Mississippi.

2 Q. Okay. That's where -- that's where you
3 are based out of?

4 A. Yes.

5 Q. Those depositions you have taken before,
6 have they been as an agent or employee of KLLM?

7 A. Yes.

8 Q. Have you designated -- do you understand
9 today you are here testifying as a person most
10 knowledgeable as a corporate representative and kind
11 of speaking on behalf of KLLM?

12 A. Yes.

13 Q. Have you done that before?

14 A. I want to say yes, I have. Because I have
15 had -- both ways. Personal -- yes.

16 MR. HAFFNER: I'm sorry, let's just go off
17 the record for a second.

18 (Discussion off the record.)

19 (At this point LOUIS J. CUTRONE, ESQ.,
20 entered the deposition proceedings.)

21 BY MR. HAFFNER:

22 Q. You were explaining about that you think
23 you testified as a corporate representative before
24 for KLLM. Correct?

25 A. Yes.

1 Q. All right. Just a couple admonitions. I
2 know you are somewhat familiar with the process.

3 The oath you just took is the same oath
4 you take in a court of law. Same obligation to tell
5 the truth as you would in a court of law. You
6 understand that. Right?

7 A. Yes.

8 Q. Any reason you cannot give your best and
9 most accurate testimony today? Lack of sleep, not
10 feeling well, taking prescription medication? Any
11 reason at all?

12 A. No.

13 Q. You feel well and ready to proceed.

14 A. Yes.

15 Q. I'm going to be asking questions and you
16 are going to be answering them. The court reporter
17 is taking down everything that's said so it's
18 important we not step on each other's words. Let me
19 finish and I will try to do the same for you. Okay?

20 A. Yes.

21 Q. If you don't understand the question, will
22 you let me know?

23 A. Yes.

24 Q. And if you answer, I will assume you
25 understood. Is that fair?

1 A. Yes.

2 Q. Did you do anything to prepare for your
3 deposition today?

4 A. Yes.

5 Q. What did you do?

6 A. Met with my counsel and we looked over
7 some of the documents.

8 Q. Okay. Do you remember which documents you
9 reviewed?

10 A. Looked at the police reports. The
11 driver's qualification file. Some check call
12 history. Qual Com messages. I believe that was it.

13 Q. What does KLLM Transport do?

14 A. We are a refrigerated trucking company
15 carrier. We run all 48 states. It's irregular
16 route as opposed to regular-type runs. Truckload
17 carrier. That's it.

18 Q. Are all KLLM Transport's trucks
19 refrigerated?

20 A. All the trailers. I understood your
21 question. Yes. There may be a handful of stuff
22 that we use internally to move a piece of equipment
23 from one place to another, flatbed type, but
24 generally we are a refrigerated trucking company.
25 We do not --

1 Q. Excuse me. I'm sorry. I interrupted you.
2 I thought you were done. I apologize.

3 A. Sure.

4 Q. Who are some of the types of customers
5 that KLLM Transport delivers for?

6 A. A lot of them are food shippers. That's
7 primarily who our customer base is.

8 Q. Where is KLLM based out of?

9 A. Jackson, Mississippi is the headquarters.

10 Q. How many drivers does KLLM have?

11 MR. SALLEY: Objection. Are you talking
12 employee --

13 MR. HAFFNER: I just said drivers. I said
14 drivers.

15 MR. SALLEY: Well, okay. I'm just
16 objecting vague and ambiguous and on the ground --

17 MR. HAFFNER: We are not going to get into
18 that. Don't worry. This is --

19 Q. Those are all legal issues. I'm not going
20 to try and trick you. That's an issue not for you.
21 I understand there is a dispute about that. So no
22 problem.

23 But can I have my question read back.

24 (The record was read as follows:

25 "Q. How many drivers does KLLM

1 have?")

2 THE WITNESS: Company drivers and leases,
3 approximately 2800.

4 BY MR. HAFFNER:

5 Q. And of those 2800, how many are company
6 drivers and how many are leases?

7 A. I want to say that approximately 300 of
8 those would be company drivers and the balance
9 lease.

10 Q. About 2500?

11 A. Yeah. I would say so. I -- those
12 numbers, it's hard for me just off of recollection
13 here but --

14 Q. Is it your best estimate, those numbers?

15 A. That's the best estimate. There may be
16 1900 independent contractors, owner/operators, but
17 somewhere around the 2,000 --

18 Q. 2500.

19 A. Yeah. Two -- so what I'm saying, there
20 may be more company drivers than I am giving credit
21 for because 2500 sounds high on the independent
22 contractors when I --

23 Q. Okay. Let me just --

24 A. -- said like that.

25 Q. All I'm trying to get is your best

1 Q. Where did you go after that?

2 A. Atlanta, Georgia, terminal manager there.

3 Q. How many terminals does KLLM have?

4 A. Currently?

5 Q. Yeah.

6 A. Four -- four.

7 Q. Where are they?

8 A. Jackson, Mississippi. Atlanta, Georgia.

9 Lancaster, Texas, which is the Dallas area.

10 Fontana, California. And Portage, Indiana.

11 Q. I count five.

12 A. Then it would be five. That's all of
13 them -- excuse me. There is -- there is a small
14 terminal at Laredo, Texas.

15 Q. St. Louis is gone?

16 A. It's no longer there, correct.

17 Q. Mr. -- is his name Cubery Sandifer or
18 Sandifer Cubery, as far as you know?

19 A. Cubery Sandifer.

20 Q. Mr. Sandifer, was he one of KLLM's lease
21 drivers?

22 A. Yes.

23 Q. Are their -- each of KLLM's drivers
24 attached to one of KLLM's terminals?

25 A. Not necessarily. Due to the nature of our

1 business we are run all over the country.

2 Q. So they shift around.

3 A. They could.

4 Q. Are they prime -- do they primarily
5 operate out of one terminal? Is that fair or not
6 even?

7 A. No.

8 Q. Okay. How do they work? Like, do the
9 drivers get assignments?

10 A. They would have a dispatcher and as an
11 over-the-road driver, his dispatcher would be in
12 Lancaster, Texas or Jackson, Mississippi.

13 Q. Okay. And then the dispatcher will tell
14 them what terminal to report to. Is that right?

15 A. Well, no. He doesn't have to report to
16 any terminal. That's not --

17 Q. What goes on at terminals?

18 A. Maintenance. In Atlanta, Jackson and
19 Dallas area there would be maintenance facilities
20 there. He could use them as drop lots. Yards that
21 a driver could drop a trailer, loaded or empty or
22 pick up a loaded or empty trailer. A place to put
23 your trailers. That would be primarily it.

24 Of course and our corporate office in
25 Jackson, there's dispatchers and same thing in

1 Dallas, there's dispatchers there. And conduct
2 orientation. Of course our safety department is
3 there in Jackson.

4 Q. What kind of maintenance goes on at the
5 terminals?

6 A. Primarily preventive. Oil change type,
7 but they can handle about any type of maintenance.

8 Q. On the KLLM trucks?

9 A. On either.

10 Q. On trucks or tractors?

11 A. Trucks, trailers, yes.

12 Q. Excuse me. Trucks, trailers, yeah.

13 And -- and KLLM maintains the trucks and the
14 trailers for all -- all of its drivers. Is that
15 right?

16 A. Well, the company trucks would maintain
17 all of those. The independent contractor, he can
18 have his truck serviced and maintained anywhere he
19 wants to. He could do it himself.

20 Q. Where did they get serviced, the 2300
21 leasehold drivers' trucks?

22 A. As independent contractor he can select
23 where he gets it serviced. He could get it serviced
24 at a dealer. He could get it serviced at a truck
25 stop. He could get it serviced at a shop. He could

1 get it serviced at a KLLM shop. He's charged like
2 he would be at a shop that he went to on the road
3 also.

4 Q. So the leaseholders get their trucks at
5 least sometimes, serviced at a KLLM shop. Is that
6 right?

7 A. He could.

8 Q. KLLM charges them for that?

9 A. Yes.

10 Q. Do they deduct that from the driver's pay?

11 A. I'm not sure. I'm sure they could, yes.
12 There's not a cash register out so let's say I
13 believe that they do.

14 Q. Okay. So KLLM deducts the cost of
15 maintenance from the truck driver's pay. Is that
16 right?

17 A. If he had it serviced there.

18 Q. Yeah. And what percentage of the
19 leaseholders have their trucks serviced at KLLM
20 versus other places?

21 A. I do not know. I don't even know if we
22 keep that.

23 Q. What other deductions does KLLM make from
24 the lease drivers' paychecks?

25 MR. SALLEY: I'll object to the term

1 "paychecks" as overbroad and vague.

2 THE WITNESS: Their payment for their
3 truck would be taken out of their settlement.

4 BY MR. HAFFNER:

5 Q. You mean the lease payment?

6 A. Lease payment.

7 Q. That's just deducted right out of the pay.

8 A. Out of the settlement, yeah. The -- if
9 the driver has set up a maintenance fund where he's
10 having some amount deducted so that could -- this is
11 up to him if he does this or not, use that money in
12 case he had a breakdown or needed a repair or
13 whatever.

14 Q. Is that what we just talked about,
15 maintenance at the terminal, or is this something
16 different?

17 A. Well, he could use that money for wherever
18 he had maintenance done. It's his account.

19 Q. I am trying to identify the deductions
20 from the driver's pay. I understand that one would
21 be maintenance done at the terminal if the drivers
22 do it there. Right?

23 A. Yes.

24 Q. Another one would be the cost of the
25 leasing the KLLM truck. Right?

1 A. Yes.

2 Q. And then you mentioned a maintenance fund
3 if they break down on the road. Is that something
4 different?

5 A. Yes. The driver --

6 Q. That's a third thing.

7 A. It could.

8 Q. Okay. Be deducted from the pay.

9 A. Yes.

10 Q. How do you determine whether or not that's
11 deducted?

12 A. The driver would set up an account
13 personally.

14 Q. And anything else that's deducted from the
15 driver's pay?

16 A. Any insurance payments that he would have.

17 Q. What kind of insurance?

18 A. They have non-trucking insurance where
19 they are using their vehicle for personal time use.
20 I believe that's it.

21 Q. So you deduct or KLLM -- excuse me. KLLM
22 deducts from the driver's pay the insurance for
23 their non-KLLM truck? Their personal use vehicle?

24 A. No.

25 Q. Okay. You are KLLM --

1 Correct? For work as a driver for KLLM.

2 MR. SALLEY: Objection. Is that a
3 question?

4 MR. HAFFNER: Yes.

5 MR. SALLEY: Are you talking about while
6 he's driving and KLLM business?

7 MR. HAFFNER: Can I have my question read
8 back.

9 MR. SALLEY: It's vague and ambiguous.

10 MR. HAFFNER: That's your objection.

11 Can I have my question read back.

12 (The record was read as follows:

13 "Q. But the driver has to have
14 insurance on the KLLM truck and pay for
15 it. Correct? For work as a driver for
16 KLLM.")

17 MR. HAFFNER: Let me ask it again.

18 Q. Does a lease driver have to have insurance
19 on the KLLM truck for any time he's not in the
20 course and scope, as you described it, of driving
21 for KLLM as a condition of driving as a driver for
22 KLLM?

23 A. I believe so, yes.

24 Q. I'm sorry, I cut you off. You were in
25 Atlanta as terminal manager in 1996. How long were

1 Q. When did you become VP of safety?

2 A. That's about six years ago.

3 Q. About 2010?

4 A. Yes.

5 Q. So you have been working out of the
6 Jackson headquarters for KLLM since 2002.

7 A. Yes.

8 Q. And who is your supervisor or superior?

9 A. Jim Richards.

10 Q. What his title?

11 A. CEO.

12 Q. You report directly to the CEO of KLLM?

13 A. Yes.

14 Q. So as VP of safety, do you manage all
15 safety operations for KLLM?

16 A. Yes.

17 Q. And KLLM does have safety standards for
18 its drivers to follow. Correct?

19 A. Yes.

20 Q. Including lease drivers.

21 A. Yes.

22 Q. And they are required to follow them.

23 Correct?

24 A. Yes.

25 MR. HAFFNER: Let's go ahead and attach as

1 Exhibit 1 your deposition notice for today.

2 (Deposition Exhibit 1 was marked for
3 identification and is attached hereto.)

4 BY MR. HAFFNER:

5 Q. Have you seen this before?

6 A. No.

7 Q. You know what? This is the wrong one.

8 A. I'm not sure I have seen this.

9 Q. I will withdraw Exhibit 1. Sorry about
10 that. One second here. Okay.

11 You brought in some documents with you to
12 produce today. Is that right?

13 A. Yes.

14 MR. HAFFNER: I'm going to go ahead and
15 attach those as -- as Exhibit 1.

16 (Deposition Exhibit 1 was marked for
17 identification and is attached hereto.)

18 BY MR. HAFFNER:

19 Q. Exhibit 1 -- do you have your own copy to
20 look at?

21 A. Yes.

22 Q. Can you just confirm that Exhibit 1 are
23 documents you are producing here today?

24 A. Yes.

25 Q. These are documents that KLLM maintained

1 giving them a copy of the handbook and having them
2 go to the handbook, no.

3 Q. And I asked about any laws they are
4 required to follow or whether they were given a copy
5 of the handbook. My question is, are the lease
6 drivers required to follow the rules that are in the
7 handbook that are given to KLLM's company drivers?

8 MR. SALLEY: Objection. Vague and
9 ambiguous. Overbroad.

10 BY MR. HAFFNER:

11 Q. Go ahead.

12 A. They are not -- if they don't -- if they
13 don't see the policy, I can't say that they are --

14 Q. Are some of those in the training and the
15 orientation package?

16 A. Yes. Some of these are.

17 Q. So my question is, are the rules that are
18 stated in the policy manuals that KLLM provides to
19 its company drivers, do those rules also apply for
20 its lease drivers?

21 MR. SALLEY: Same objection.

22 THE WITNESS: In regards to general
23 safety. Operating the vehicle in a safe manner in
24 our -- yes. I would say that they do.

25 ///

1 when you are all speaking over each other.

2 What do you want me to do, read the
3 question back?

4 MR. HAFFNER: Read the question.

5 (The record was read as follows:

6 "Q. And the full orientation packet
7 that all the lease drivers go through,
8 has that been produced here today?")

9 MR. SALLEY: Same objection.

10 THE WITNESS: I'm not sure whether it has
11 or not.

12 BY MR. HAFFNER:

13 Q. Do you know what has been produced here
14 today?

15 A. I know documents that we brought with us
16 here today. As far as the -- any documents in being
17 produced thus far I'm not.

18 Q. Are you familiar with the orientation
19 materials that the lease drivers either see or are
20 presented with?

21 A. Yes.

22 Q. What is that? What do those materials
23 consist of? Is it a PowerPoint? Is it handouts or
24 both?

25 A. PowerPoints.

1 Q. Okay. And how many pages in that
2 PowerPoint?

3 A. I do not know the number of pages.

4 Q. Can you estimate for me?

5 A. No. Because it would be a pure guess.

6 Q. Multiple pages.

7 A. Yes.

8 Q. And this is presented to all drivers,
9 lease drivers or company drivers during orientation.

10 A. Yes.

11 MR. HAFFNER: Off the record for one
12 second.

13 (Discussion off the record.)

14 BY MR. HAFFNER:

15 Q. Do you know if KLLM requires drivers to
16 have a specific amount of insurance for -- as
17 described in their non-KLLM course and scope of
18 work?

19 A. I do not. I think the policy is generally
20 the same for all of the independent contractors, but
21 I don't know that -- as far as requirement.

22 Q. Why do you say the policy is generally the
23 same for all the lease drivers that drive for KLLM?

24 A. Which policy are you speaking of? Make
25 sure I'm clear.

1 Q. Which policy were you just speaking of
2 that's the same?

3 A. The one I referred to as the non-trucking.

4 Q. For their -- what you described as their
5 personal use of the KLLM truck. Right?

6 A. Yes.

7 Q. What --

8 A. I assume -- I'm sorry, I thought that's
9 what you were asking.

10 Q. That's what I was asking about. That's
11 the same policy for all the lease drivers who work
12 for KLLM. Right?

13 A. To my knowledge, yes.

14 Q. Does it come under a group policy that the
15 drivers are insured?

16 A. I have a lease -- let me say this also. A
17 driver -- these drivers do have the ability to go
18 acquire their own insurance somewhere else if they
19 choose to do it.

20 Q. I get it, but KLLM arranges for a group
21 policy for the lease drivers that they are required
22 to purchase in order to drive for KLLM. Correct?

23 A. They are required to have insurance. They
24 are not necessarily required to purchase that
25 policy.

1 Q. All right. Just want to refer to
2 Exhibit -- let me -- I'm sorry -- go -- I will
3 attach as Exhibit 2 the deposition notice.

4 (Deposition Exhibit 2 was marked for
5 identification and is attached hereto.)

6 BY MR. HAFFNER:

7 Q. Have you ever seen this before?

8 A. Yes.

9 Q. You see on Page 2 of Exhibit 2 there is
10 seven topics for which we asked for a person most
11 knowledgeable?

12 A. Yes.

13 Q. Are you KLLM's person most knowledgeable
14 on all those topics?

15 A. Yes.

16 Q. With respect to the document requests,
17 they start on Page 4, number 1, and they go through
18 Page 8, number 34. Did you review those document
19 requests?

20 A. I do not recall reviewing these requests,
21 no.

22 Q. Do you know if documents responsive to
23 these requests have been produced by KLLM in this
24 litigation?

25 A. I do not know.

1 Q. You have been talking about leased trucks
2 that about 2,000 of 2500 of KLLM's drivers drive.
3 Right?

4 A. Yes.

5 Q. Okay. Who owns those trucks?

6 A. The -- KLLM holds the title until the
7 driver finishes the lease/purchase agreement term.
8 The -- I guess due to the nature of the
9 lease/purchase agreement the driver has some
10 ownership interest in the truck.

11 Q. But just to be clear, KLLM owns the trucks
12 that they lease to the drivers initially --

13 A. Yes.

14 Q. -- and -- and then during the lease there
15 is some kind of purchase arrangement. Is that
16 right?

17 A. Yes.

18 Q. And are you -- you are talking about
19 the -- the truck, meaning the tractor. Right?

20 A. Yes.

21 Q. Not the trailer.

22 A. Correct.

23 Q. The trailer is owned by who?

24 A. KLLM, or we are leasing it from a leasing
25 company, but it's KLLM's trailer.

1 Q. Always KLLM's trailer.

2 A. Yes.

3 Q. And the trailer is what's refrigerated.

4 Right?

5 A. Yes.

6 Q. Did the truck -- does that have KLLM signs
7 or insignias on it?

8 A. Yes.

9 Q. And does -- how do they get on there?
10 KLLM puts them on?

11 A. Yes.

12 Q. And the trailers also have KLLM signs in
13 it and logos. Right?

14 A. Yes.

15 Q. And when the driver is leasing a truck
16 from KLLM to drive for KLLM, can they drive that
17 truck for anybody else?

18 A. No.

19 Q. They are only allowed to drive for KLLM.
20 Correct?

21 A. Yes.

22 Q. With that truck.

23 A. While they are leased to KLLM, correct.

24 Q. That applies to all lease drivers. They
25 are only allowed to use the leased truck to drive

1 for KLLM. Correct?

2 A. Yes.

3 Q. Who are the lease drivers' customers?

4 A. They are KLLM's customers.

5 Q. Okay. The lease drivers, the lease
6 drivers who drive for KLLM, are servicing KLLM
7 customers. Correct?

8 A. Correct.

9 Q. And KLLM is in the business of trucking.
10 Correct?

11 A. Correct.

12 Q. And 90 percent of KLLM's drivers are
13 classified as independent contractors?

14 A. Correct.

15 Q. Has KLLM been sued in a class action for
16 misclassification?

17 A. Not to my knowledge.

18 Q. How long did Sandifer drive for KLLM?

19 A. I believe it's approximately three years.

20 Q. And he worked exclusively for KLLM during
21 that three-year period. Is that correct?

22 A. To my knowledge, yes.

23 Q. And he was still -- had a leased KLLM
24 truck?

25 A. Yes.

1 Q. And are these leased trucks exclusively --
2 like to Sandifer, is he the only one who drives it?

3 A. Unless he were to hire someone to drive
4 with him, team operation, yes.

5 Q. Okay. But if Mr. Sandifer wanted to hire
6 someone else and do a team operation, KLLM would
7 have to approve whoever Mr. Sandifer hired.
8 Correct?

9 A. Correct.

10 Q. So generally the lease drivers are the
11 only drivers who can drive the KLLM trucks.

12 A. Yes.

13 Q. And those trucks stay with the drivers
14 during their off duty time.

15 A. Yes.

16 Q. What about the tractor and the trailer?
17 Do the drivers ever detach those themselves?

18 A. Yes.

19 Q. Okay. Under what circumstances?

20 A. Certain customers may have a trailer pool.
21 Their driver will come in and drop an empty trailer
22 and picked up a loaded trailer, a different trailer
23 that's loaded and leaving, and he may drop a trailer
24 at a terminal.

25 Q. But I imagine that the trailers that KLLM

1 this document?

2 A. Yes.

3 Q. Is this part of the PowerPoint orientation
4 materials that all the drivers receive?

5 A. I believe so. I haven't reviewed each one
6 of those to make sure it's --

7 Q. So it --

8 A. It does look like it is, yes.

9 Q. And the second bullet point says:

10 "Parking along a highway or
11 interstate for any reasons other than
12 mechanical defects is STRICTLY
13 FORBIDDEN!!!"

14 Do you see that?

15 A. Yes.

16 Q. "Strictly forbidden" is capitalized and
17 exclamation marks. Do you see that?

18 A. Correct.

19 Q. Does that rule apply to drivers who lease
20 trucks from KLLM?

21 A. Yes.

22 Q. And if a driver violates a safety rule
23 like this one, are they subject to termination by
24 KLLM?

25 A. They could be, yes.

1 Q. Has that happened, that drivers have been
2 terminated by KLLM for violating KLLM safety rules?

3 A. Yes.

4 Q. Including lease drivers.

5 A. Yes.

6 Q. So the only rule -- the -- only re --
7 excuse me. Withdrawn.

8 The only justification a KLLM driver could
9 have under KLLM's safety rules for parking along a
10 highway or interstate is mechanical defect. Is that
11 right?

12 A. This line is a little bit constrictive,
13 obviously, but in the event of any other type
14 emergency, someone has a health emergency, an
15 accident, those would be things that -- we wouldn't
16 terminate a driver if there was an emergency
17 involved and a real need for them to be there, of
18 course.

19 Q. Is this policy accurate, the one I'm just
20 referring you?

21 A. It's -- like I said, I think there's other
22 caveats besides mechanical defect.

23 Q. An emergency.

24 A. Yeah, an emergency.

25 Q. Okay. You know that the KLLM truck

1 Q. What did you ask him?

2 A. Just asked him what happened, what he knew
3 about the accident.

4 Q. And how long can you estimate for me was
5 this after the accident?

6 A. Maybe the next day.

7 Q. Okay. And what did Mr. Sandifer tell you?

8 A. Just that he had parked the truck there
9 while he was on time off. And it -- there had been
10 an accident. Somebody had left the roadway and hit
11 the trailer and that was generally it.

12 Q. Is there anything else you remember from
13 your conversation with Mr. Sandifer about the
14 accident?

15 A. No.

16 Q. A motor carrier license is required to
17 operate KLLM trucks. Correct?

18 A. A CDL?

19 Q. A what?

20 A. You are talking about with the driver
21 or -- I'm sorry, I don't understand your question.

22 Q. A motor carrier license, you are not aware
23 of those? Does KLLM have a federal motor carrier
24 license?

25 A. Yes.

1 Q. Right.

2 A. Yeah. It's a number, I'm sorry.

3 Q. And do all KLLM drivers drive under KLLM's
4 federal motor carrier license?

5 MR. SALLEY: Objection. Overbroad. Vague
6 and ambiguous.

7 THE WITNESS: The drivers operate under
8 KLLM's authority when they are leased to KLLM or as
9 a company driver, yes.

10 BY MR. HAFFNER:

11 Q. That includes Mr. Sandifer?

12 A. Yes.

13 Q. If Palmdale Boulevard is also known as
14 Highway 138, does that affect your conclusion as to
15 whether it's a highway or an interstate for the
16 purpose of the written rule strictly forbidding
17 parking alongside it?

18 Do you need that back?

19 A. Yes, please.

20 (The record was read as follows:

21 "Q. If Palmdale Boulevard is also
22 known as Highway 138, does that affect
23 your conclusion as to whether it's a
24 highway or an interstate for the purpose
25 of the written rule strictly forbidding

1 fleet.

2 Q. Okay. Then you have several pages that
3 kind of seem to relate to -- they got page numbers
4 at the bottom, says 195, it starts with, and it goes
5 on to -- let me just start with that page in
6 Exhibit 1, Page 195 at the bottom.

7 Does this indicate Mr. Sandifer's schedule
8 on April 22nd?

9 A. This is his driver log, yes.

10 Q. So for every day that a driver works for
11 KLLM, KLLM has a driver log for that driver?

12 A. Yes.

13 Q. Is that something that the driver fills
14 out?

15 A. Yes. In this -- this is an electronic
16 log, but yes.

17 Q. Does the driver fill it out by hand and --

18 A. No.

19 Q. Do they fill it out electronically?

20 A. Correct.

21 Q. And how does he fill it out
22 electronically? Is there something on the truck for
23 him to use?

24 A. Yes.

25 Q. What is that?

1 A. It's a Qual Com device. It's a -- I don't
2 know how to describe it to you. It's a two-way --
3 you know, he can send messages to his dispatcher
4 through the device. He can receive messages from
5 dispatch. Or other people at KLLM on the device.
6 He can -- it keeps -- it's wired to the truck so it
7 knows when the truck moves and keeps up with his
8 hours of service.

9 Q. What's the device called?

10 A. Qual Com.

11 Q. Qual Com. Okay. And it essentially has a
12 GPS and can track KLLM drivers?

13 A. Yes.

14 Q. And also drivers use it to put -- input
15 their daily log.

16 A. Yes.

17 Q. And all KLLM drivers are required to have
18 this Qual Com device in their truck to drive to
19 KLLM.

20 A. They are now. In 2012, we were in
21 transition. Some could have still been using Piper
22 logs.

23 Q. To the extent -- all drivers were required
24 to keep their daily log, whether it be electronic or
25 written, at the time of this incident.

1 A. Yes.

2 Q. And --

3 A. Excuse me. Let me clarify, Josh. They
4 all do have a Qual Com unit. Some of those devices
5 were older and didn't support electronic logs but
6 they had the communication. They didn't have
7 electronic log form.

8 Q. I'm looking at the documents you produced
9 here today which we have attached as Exhibit 1 and
10 it's pages -- I believe the daily logs that you
11 provided are at Pages 195 through 204. Can you just
12 confirm that for me.

13 A. Yes.

14 Q. That shows he last drove on May 22nd --
15 excuse me, April 22nd. Is that correct?

16 A. Yes.

17 Q. And then at Page 204 of Exhibit 1 it has
18 the log for May 1. Is that right?

19 A. Yes.

20 Q. And was Mr. Sandifer scheduled to start
21 work that day at 10:15 a.m.?

22 A. No.

23 Q. What does that indicate there, that 10:15
24 time?

25 A. That is when the logs were captured.

1 Q. I didn't ask about the safest place
2 possible. Is alongside the road an unsafe place to
3 park a KLLM truck and trailer?

4 MR. SALLEY: Let me interpose an
5 objection. The question is vague and ambiguous and
6 overbroad with respect to the term "roads" or
7 "road."

8 BY MR. HAFFNER:

9 Q. Go ahead.

10 A. It -- generally speaking, in accordance
11 with our policy, we prefer that we didn't park. If
12 you are speaking of on the shoulder on the side of
13 the road, that's -- I am assuming that's what you
14 mean by "adjacent," we actually would rather them
15 park in a different location.

16 Q. KLLM had the power to terminate
17 Mr. Sandifer in connection with this accident.
18 Right?

19 A. Yes.

20 Q. KLLM could terminate one of its drivers
21 for any reason it wants. Right?

22 A. I believe the independent contractors.
23 The lease can be termed, yes, for any reason by
24 either party really.

25 Q. KLLM has a right to terminate its drivers

1 at will. Right?

2 A. No. We don't terminate drivers for no
3 reason.

4 Q. I know, but you always retain the right to
5 do so if you feel there's a reason. Right?

6 A. Yes.

7 Q. Okay. Looking at Exhibit 1, which are the
8 documents you produced here today, I just want to
9 zip through them.

10 There's one document that's titled,
11 "QTRACS Message Directory Listing." I just want you
12 to tell me what that is.

13 A. This is the Qual Com -- printout of the
14 messages sent and received with -- trying to find
15 the -- yeah, with Mr. Sandifer's truck.

16 Q. How can you tell it's from Mr. Sandifer's
17 truck?

18 A. It says mailbox 24120 on the upper right
19 of the -- left, excuse me.

20 Q. That's associated with Mr. Sandifer's
21 truck?

22 A. It's his truck number, yes.

23 Q. And so this is the messages for
24 Mr. Sandifer and then the communications from the
25 dispatcher back and forth?

1 federal motor carrier regulations, yes. You can't
2 be outside the regulation and work for a trucking
3 company, or shouldn't be.

4 Q. Look at the next page, KLLM Qual Com
5 policy. Do you see that?

6 A. Yes.

7 Q. Are drivers required to follow this policy
8 to work for KLLM as a driver?

9 A. Trying to just get the content of it
10 really quick. Yes.

11 Q. And this is not a federal regulation or
12 requirement. Right?

13 A. No.

14 Q. Look at the second paragraph there. It
15 says:

16 "Any driver intending to use the
17 Qual Com unit to Read or Send a message
18 must park the truck in a safe location.
19 The side of a road, highway or
20 interstate is not a safe location."

21 Do you see that?

22 A. I do.

23 Q. Is that a true statement?

24 A. Yes.

25 Q. Does that represent KLLM's policy with

1 Q. And do drivers have to sign an independent
2 contractor agreement with KLLM to be hired to drive
3 for KLLM?

4 A. If they are going to be an independent
5 contractor.

6 Q. If --

7 A. Yes.

8 Q. Yeah. If they are only a driver for KLLM
9 and KLLM wants them to have this loose arrangement,
10 they have to sign this independent contractor
11 agreement. Correct?

12 A. Yes.

13 Q. It's a condition of employment. Correct?

14 MR. SALLEY: Objection.

15 THE WITNESS: It's not employment.

16 BY MR. HAFFNER:

17 Q. It's a condition of driving for KLLM that
18 they sign this independent contractor agreement.
19 Correct?

20 A. Yes.

21 Q. It's also a condition of driving for KLLM
22 that the driver sign this lease agreement so that
23 they have a KLLM truck.

24 A. Yes.

25 Q. They can't bring their own truck to drive

1 for KLLM. Right?

2 A. Yes, they can.

3 Q. They can?

4 A. Yes.

5 Q. Does that ever happen?

6 A. Yes.

7 Q. So all drivers which you are calling lease
8 drivers as opposed to company drivers have signed
9 this independent contractor agreement. Correct?

10 A. Yes.

11 Q. And it's a standard agreement that KLLM
12 has its lease drivers sign. Correct?

13 A. Yes.

14 Q. And all KLLM's lease drivers have also
15 signed this standard lease contract. Correct?

16 A. Yes.

17 Q. So the contracts that Mr. Sandifer signed
18 with respect to leases and independent contractor
19 status are the standard contracts that all KLLM
20 lease drivers sign. Correct?

21 A. Yes.

22 Q. Over 2,000 of them.

23 A. Yes.

24 Q. Is there any location -- you mentioned
25 these terminals people could leave trucks at. Is

1 time, please.

2 BY MR. HAFFNER:

3 Q. You keep saying -- I don't want to argue
4 about it. But I see a whole lot of control that
5 makes them an employee. But we will let the judge
6 decide that.

7 I'm asking about your policies with
8 respect to what they can do with the truck when they
9 are off duty. KLLM lets them do whatever they want,
10 including running errands or whatever personal use.
11 Correct?

12 A. Yes.

13 Q. Is there anything that the drivers cannot
14 do with their trucks when they are not driving for
15 KLLM?

16 A. They cannot haul freight for another
17 trucking company.

18 Q. Do the truckers get manifests when they
19 have -- when they get dispatched?

20 A. From the customer when they pick up the
21 load, they get shipping papers, yes.

22 Q. Do they have to follow the manifest with
23 respect to the scheduled delivery and whatnot?

24 A. The appointment times, pick-up, delivery,
25 yes.

1 Q. Is that something that KLLM drivers are
2 required to do for KLLM when they are hauling, is
3 control the temperature at the proper degree?

4 A. Yes.

5 Q. And did KLLM -- and did drivers -- they
6 communicate with the dispatcher. Right?

7 A. Yes.

8 Q. Do they have to follow the dispatcher's
9 instructions?

10 A. In regards to --

11 Q. I don't know. Anything.

12 A. When they are dispatched with load
13 information about as far as what time to pick up and
14 deliver the load, and if there's any reason they
15 can't make that pick-up time or delivery, just to
16 communicate, to notify us.

17 Q. On the Qual Com program, if you see a
18 driver is kind of out of the area for their
19 schedule, do you have -- do you ever call them up
20 and say what's going on?

21 A. Yeah. The dispatcher would.

22 Q. They will see kind of where he's driving,
23 whether or not he's kind of meeting the manifest and
24 the schedule and if not, call him up.

25 A. They could, yes.

EXHIBIT 2

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANGEL CAMPBELL, a minor, by and through
her Guardian Ad Litem CAROLYN THOMAS;
FREDERICK CAMPBELL, a minor, by and
through his Guardian Ad Litem CAROLYN
THOMAS; MILUV CAMPBELL, a minor, by
and through her Guardian Ad Litem CAROLYN
THOMAS; CAROLYN THOMAS, an
individual and as successor-in-interest of
LAJUANNA CAMPBELL, deceased,

Plaintiffs,

v.

KLLM TRANSPORT SERVICES, LLC, a
Texas limited liability company; SANDIFER
CUBERLY, an individual; MICHAEL
WILLIAMS-LEE, an individual; and, DOES 1-
50, inclusive,

Defendants.

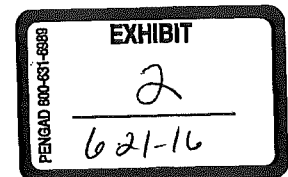
CASE NO.: MC025857

**PLAINTIFFS' AMENDED NOTICE OF
DEPOSITION OF DEFENDANT KLLM
TRANSPORT SERVICES, LLC'S
PERSON(S) MOST KNOWLEDGEABLE
AND DEMAND FOR PRODUCTION OF
DOCUMENTS**

Date: June 21, 2016

Time: 10:00 a.m.

Place: Kabateck Brown Kellner LLP
644 S. Figueroa St.
Los Angeles, California 90017



1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:**

2 **PLEASE TAKE NOTICE** that Plaintiffs Angel Campbell, Frederick Campbell, and
 3 Miluv Campbell ("Plaintiffs") will take the deposition of the Person Most Knowledgeable of
 4 Defendant KLLM Transport Services, LLC ("KLLM") on **June 21, 2016 at 10:00 a.m.** at
 5 Kabateck Brown Kellner LLP, 644 S. Figueroa Street, Los Angeles, CA 90017. The deposition
 6 will be taken before a duly qualified notary of public, and will continue from day to day
 7 thereafter, until completed.

8 Pursuant to Code of Civil Procedure section 2025.230, the deponent shall designate
 9 and produce at the deposition those of its officers, directors, managing agents,
 10 employees or agents who are most qualified to testify as to the following topics:

- 11 1. KLLM's relationship with Defendant Sandifer Cuberly, including but not limited
 12 to, any employment, agency, independent contractor or other relationship.
- 13 2. KLLM's business operations.
- 14 3. KLLM's interest in or connection to either the tractor or trailer involved in the
 15 accident at issue in this case, including any ownership, lease, rental, or other
 16 interest or connection to the tractor or trailer.
- 17 4. The identity of any entity that has an interest in either the tractor or trailer
 18 involved in the accident at issue in this case.
- 19 5. What job, duties, or function Defendant Sandifer Cuberly was performing on the
 20 day of the accident, including KLLM's involvement or connection to the job,
 21 duties, or function Defendant Sandifer Cuberly was performing.
- 22 6. What Defendant Sandifer Cuberly was transporting or intending to transport at the
 23 time of the accident at issue in this case, and for or from whom, including but not
 24 limited to, the identity of the person or entity that owned or had an interest in
 25 what was being transported.
- 26 7. The facts and circumstances related to the accident at issue in this case.

1 Pursuant to the provisions of the Code of Civil Procedure section 2025.220(a)(4), the
2 deponent is HEREBY FURTHER NOTIFIED AND REQUIRED to produce at the
3 deposition at the time and place set forth above, the documents set forth in Exhibit "A"
4 attached hereto.

5 PLEASE TAKE NOTICE that pursuant to Code of Civil Procedure sections 2025.330(b)
6 and 2025.560(a), Plaintiff may record the deposition stenographically and on videotape before a
7 video operator authorized to administer an oath, and Plaintiff reserves the right to introduce the
8 videotape in lieu of the deponent's testimony at trial.

9
10 DATED: May 27, 2016

KABATECK BROWN KELLNER LLP

11
12 By: 

13 Joshua H. Haffner

14 Justin F. Spearman

15 Attorneys for Plaintiff
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EXHIBIT "A"
REQUEST FOR PRODUCTION OF DOCUMENTS

DEFINITION OF TERMS

The following definitions are to be used in connection with the following Request for Production of Documents:

1. As used herein, the terms "YOU" and "YOUR" means defendant KLLM Transport Services, LLC, including its attorneys, employees, agents, accountants, representatives, or anyone purporting or actually authorized to act on its behalf.

2. As used herein, the term "CUBERLY" means and refers to defendant Sandifer Cuberly.

4. As used herein, the term "DOCUMENTS" means any "writing" as defined by California Evidence Code §§250, 225 and 260, and shall include the plural and shall mean any tangible thing or media for the recording or transcription of information, data, sounds, images, or any written, readable, graphic, audible, or visual material, of any kind or character, whether handwritten, typed, photocopied, printed, duplicated, reproduced, recorded, videotaped, photographed, copied, microfilmed, microcarded, digitized, encoded, or transcribed by any means, including but not limited to any writing, memorandum, letter, correspondence, e-mail, instrument, telegram, note, minutes, contract, agreement, proposal, book, interoffice and intraoffice communications, bulletin, circular, procedure, pamphlet, brochure, article, report, file, analysis, summary, statement, projection, diary, record or note of telephone conversation, chart, schedule, entry, print, representation, record, report, survey, comment, photograph, printout or other stored information on or from any computer, retrieval systems, or the web, and including, without limitation, each interim as well as final draft and each revision.

5. As used herein, the term "ACCIDENT" means the accident alleged in the complaint in this action.

DEMANDS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS which relate or refer to CUBERLY, including any personnel file, application(s), any and all driver daily manifests, payment stubs, invoices, dispatch, or work records.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS which relate or refer to the ACCIDENT including, but not limited, any witness statements.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS that comprise, evidence, or relate to YOUR complete policies and procedures in place at the time of the accident for drivers who are transporting goods or driving a truck on YOUR behalf.

REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS that comprise, evidence, or relate to YOUR complete policies and procedures in place at the time of the accident for drivers regarding parking trucks or vehicles.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS which comprise or evidence any and all driver daily manifests which relate or refer to CUBERLY.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS evidencing the Department of Transportation records or licenses relating the tractor or trailer being driven by CUBERLY on the day of the accident.

REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS which relate or refer to the PLAINTIFF.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS which refer or relate to any and/or all loads YOU hauled or transported on the day of the accident, in the tractor or trailer being driven at the time of the accident.

///

1 **REQUEST FOR PRODUCTION NO. 9:**

2 All DOCUMENTS that refer or relate to the company or companies for whom YOU were
3 hauling or transporting loads on the day of the ACCIDENT.

4 **REQUEST FOR PRODUCTION NO. 10:**

5 All DOCUMENTS which relate or refer to the maintenance records for the past year for
6 the tractor or trailer being driven at the time of the accident.

7 **REQUEST FOR PRODUCTION NO. 11:**

8 All DOCUMENTS which relate or refer to any person or entity's interest in the tractor or
9 trailer being driven at the time of the accident including, but not limited to, ownership, lease,
10 rental, or other interest.

11 **REQUEST FOR PRODUCTION NO. 12:**

12 All diagrams, photographs and/or video relating to the ACCIDENT.

13 **REQUEST FOR PRODUCTION NO. 13:**

14 All DOCUMENTS which constitute or evidence any witness statement relating to the
15 accident, whether written or recorded, including but not limited to, any statement by Sandifer
16 Cuberly.

17 **REQUEST FOR PRODUCTION NO. 14:**

18 All reports relating to the ACCIDENT, including but not limited to, police reports,
19 emergency reports, medical reports, criminal investigation reports, and/or incident reports.

20 **REQUEST FOR PRODUCTION NO. 15:**

21 All DOCUMENTS relating to any investigation undertaken or caused to be undertaken
22 by YOU into the ACCIDENT, including but not limited to, notes, reports, photographs, and
23 transcripts of notes regarding interviews.

24 **REQUEST FOR PRODUCTION NO. 16:**

25 All DOCUMENTS relating to CUBERLY's scheduled route on the date of ACCIDENT.

26 **REQUEST FOR PRODUCTION NO. 17:**

27 All DOCUMENTS constituting or evidencing any contract or agreement between YOU
28 and CUBERLY.

1 **REQUEST FOR PRODUCTION NO. 18:**

2 All DOCUMENTS evidencing or comprising any and all communications between YOU
3 and CUBERLY relating to the accident, including but not limited to, any emails, letters, memos,
4 or other communications.

5 **REQUEST FOR PRODUCTION NO. 19:**

6 All DOCUMENTS evidencing or comprising any and all communications between YOU
7 and any third party relating to the accident, including but not limited to, any emails, letters,
8 memos, or other communications.

9 **REQUEST FOR PRODUCTION NO. 20:**

10 All DOCUMENTS evidencing or relating to YOUR insurance coverage for the
11 ACCIDENT including but not limited to, complete copies of any policies covering or potentially
12 covering YOU in relation to the ACCIDENT.

13 **REQUEST FOR PRODUCTION NO. 21:**

14 All DOCUMENTS relating to installation of the underride bumper on the truck and/or
15 trailer involved in the ACCIDENT.

16 **REQUEST FOR PRODUCTION NO. 22:**

17 All DOCUMENTS evidencing or relating to orders, permits or licenses for the shipment
18 being transported on the day of the ACCIDENT within the truck and/or trailer involved in the
19 ACCIDENT.

20 **REQUEST FOR PRODUCTION NO. 23:**

21 All DOCUMENTS relating to Department of Transportation reports, memos, or
22 correspondence regarding the truck and/or trailer involved in the ACCIDENT.

23 **REQUEST FOR PRODUCTION NO. 24:**

24 All DOCUMENTS relating to downloadable computer data from the truck and/or trailer
25 involved in the ACCIDENT.

26 ///

27 ///

28 ///

1 **REQUEST FOR PRODUCTION NO. 25:**

2 All DOCUMENTS evidencing or constituting any employment or independent contractor
3 application completed by CUBERLY related to his employment or engagement with YOU on
4 the day of the ACCIDENT.

5 **REQUEST FOR PRODUCTION NO. 26:**

6 All DOCUMENTS relating or referring to YOUR hiring of CUBERLY.

7 **REQUEST FOR PRODUCTION NO. 27:**

8 All DOCUMENTS relating to any discipline administered by YOU to CUBERLY during
9 his employment or engagement with YOU including, but not limited to, any discipline relating to
10 the ACCIDENT.

11 **REQUEST FOR PRODUCTION NO. 28:**

12 Any DOCUMENTS evidencing or relating to any and all services CUBERLY provided
13 on YOUR behalf at anytime from January 1, 2014 to the present.

14 **REQUEST FOR PRODUCTION NO. 29:**

15 All DOCUMENTS referring or relating to CUBERLY'S performance during his
16 employment or engagement with YOU.

17 **REQUEST FOR PRODUCTION NO. 30:**

18 Any DOCUMENTS relating to the training YOU provided to CUBERLY, including but
19 not limited to any manuals.

20 **REQUEST FOR PRODUCTION NO. 31:**

21 All DOCUMENTS evidencing or relating to any training YOU provided to CUBERLY.

22 **REQUEST FOR PRODUCTION NO. 32:**

23 All DOCUMENTS which reflect, evidence or comprise YOUR complete policies and
24 procedures for safe operation of YOUR trucks and/or vehicles, including but not limited to,
25 parking such trucks and/or vehicles.

26 **REQUEST FOR PRODUCTION NO. 33:**

27 Any manuals, policies or procedures CUBERLY received from YOU that was in effect at
28 the time of the ACCIDENT.

1 REQUEST FOR PRODUCTION NO. 34:

2 All DOCUMENTS which evidence or reflect YOUR status as a federally licensed motor
3 carrier at the time of the ACCIDENT.
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PROOF OF SERVICE

Case No. MC025857

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 644 S. Figueroa Street, Los Angeles, California 90017.

On May 31, 2016, I served the foregoing document described as:

PLAINTIFFS AMENDED NOTICE OF DEPOSITION OF PMK OF KLLM TRANSPORT SERVICES, LLC

on the interested parties in the action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Attorney	DEFENDANT
Kevin Smith Danielle L. Pittsenbarger Wood, Smith, Henning & Berman, LLP 505 N. Brand Blvd., Suite 1100 Glendale, CA 91203	Attorney for: SANDIFER CUBERLY Tel.: (818) 551-6067 Fax: (818)
Robert B. Sally, Esq. Tharpe & Howell, LLP 15250 Ventura Blvd., 9 th Floor Sherman Oaks, CA 91403	Attorney for KLLM Transport Services, Tel: 818-205-9955 Fax: 818-205-9944
Michael Williams-Lee P.O. Box 68061 Prattville, AL 36068	Michael Williams-Lee 137 Cosby Ct. Prattville, AL 36067-2509

X **MAIL** I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepared at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X **[STATE]** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 31, 2016, at Los Angeles, California.

Maisha McCray
Maisha McCray

SERVICE LIST

EXHIBIT 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANGEL CAMPBELL, a minor, by and)
through her Guardian Ad Litem)
CAROLYN THOMAS; FREDERICK CAMPBELL,)
a minor, by and through his Guardian)
Ad Litem CAROLYN THOMAS; MIILUV)
CAMPBELL, a minor, by and through)
her Guardian Ad Litem CAROLYN)
THOMAS; CAROLYN THOMAS, an)
individual and as successor-in-)
interest of LAJUANNA CAMPBELL,)
deceased,)

Plaintiff,)

vs.) Case No.
MC025857

KLLM TRANSPORT SERVICES, LLC, a)
Texas limited liability company;)
SANDIFER CUBERLY, an individual;)
MICHAEL WILLIAMS-LEE, an individual;)
and, DOES 1 - 50, inclusive,)

Defendants.)

DEPOSITION OF CUBERY SANDIFER

Los Angeles, California

Monday, July 5, 2016

Volume I

Reported by:
WENDY S. SCHREIBER
CSR No. 3558

Job No. 2337575
PAGES 1 - 118

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANGEL CAMPBELL, a minor, by and)
through her Guardian Ad Litem)
CAROLYN THOMAS; FREDERICK CAMPBELL,)
a minor, by and through his Guardian)
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SANDIFER CUBERLY, an individual;)
MICHAEL WILLIAMS-LEE, an individual;)
and, DOES 1 - 50, inclusive,)

Defendants.)

Deposition of CUBERY SANDIFER, Volume 1,
taken at 15260 Ventura Boulevard, Suite 670,
Sherman Oaks, California, commencing at 10:00 A.M.,
Tuesday, July 5, 2016, and ending at 12:19 P.M.,
before WENDY S. SCHREIBER, Certified Shorthand
Reporter No. 3558.

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VOLUME I

TUESDAY, JULY 5, 2016

WITNESS

EXAMINATION

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DEPOSITION EXHIBITS

CUBERY SANDIFER

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Exhibit 2	Triangle Placement Power Point	19
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DEPOSITION EXHIBITS (Continued)

CUBERY SANDIFER

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1 SHERMAN OAKS, CALIFORNIA; TUESDAY, JULY 5, 2016

2 10:00 A.M.

3
4 CUBERY SANDIFER,
5 having been first placed under oath, testified as
6 follows:

7
8 EXAMINATION

9 BY MR. HAFFNER:

10 Q. Good morning, sir. Could you please state
11 and spell your name for the record.

12 A. Cubery Sandifer. C-U-B-E-R-Y, first name.
13 Sandifer, S-A-N-D-I-F-E-R.

14 Q. My name is Joshua Haffner and I represent
15 the plaintiffs in this case MIILuv, Angel and
16 Frederick Campbell. I'm going to be asking you a
17 few questions about the accident.

18 Have you ever had your deposition taken
19 before?

20 A. No.

21 Q. The oath you just took is the same oath you
22 would take in a court of law. You have the same
23 obligation to tell the truth as you would if you
24 were in front of a judge or a jury.

25 Do you understand that?

Page 7

1 A. Uh-huh.

2 Q. Can you --

3 A. Yes, I do.

4 Q. One of the other issues we have is we have a
5 court reporter taking down every word being said
6 here so I understood when you just nodded and said
7 "uh-huh," but I've got to get you to say "yes" or
8 "no" so that the court reporter can transcribe it.
9 Okay?

10 A. Okay.

11 Q. And along those lines, and you're doing fine
12 so far, is we have to let each other finish our
13 sentences. Let me finish my question and I've got
14 to let you finish your answer. Even if you
15 anticipate where I'm going, let the words get out so
16 we have a nice transcript. Okay?

17 A. Okay.

18 Q. If you don't understand a question I ask,
19 will you let me know?

20 A. Yeah.

21 Q. And if you answer, I'm going to assume you
22 understood. Is that fair?

23 A. That's fair.

24 Q. Is there any reason -- lack of sleep, not
25 feeling well, taking prescription medication --

1 really any reason at all that you feel you couldn't
2 give your best and most accurate testimony here
3 today?

4 A. No.

5 Q. You're feeling well and ready to go?

6 A. Fine.

7 Q. When the deposition is finished in a couple
8 of weeks you're going to get a chance to read the
9 transcript -- the questions and the answers you
10 gave -- and if you feel you want to change any of
11 the answers you gave you can have an opportunity to
12 do that. I just want to let you know and kind of
13 caution you that if you change your answer later, it
14 can be commented on by me or any other attorney to
15 argue that it reflects on your credibility. So in
16 some ways it's best to testify as accurately as
17 possible here today verbally.

18 Do you understand?

19 A. Okay.

20 Q. If you need a break at any time, just let me
21 know and we can take a break. If I have a question
22 pending, I'll want an answer but then we can take a
23 break. Okay?

24 A. Okay.

25 Q. Did you do anything to prepare for your depo

1 today?

2 A. I got here.

3 Q. Good job on that. Did you review any
4 documents?

5 A. No, I haven't.

6 Q. Did you meet with your lawyer before today
7 to prepare?

8 MS. PITTSBARGER: Objection to the extent
9 it calls for attorney-client privilege.

10 BY MR. HAFFNER:

11 Q. You can answer whether you met with her
12 today before to prepare.

13 A. Today.

14 Q. You met with her today. Okay. Did you ever
15 see the police report in this case?

16 A. No.

17 Q. Did you only talk to the police once in this
18 case?

19 A. Didn't talk to the police.

20 Q. Where did you graduate from high school? In
21 what year?

22 A. I didn't graduate.

23 Q. Where did you grow up?

24 A. South Central, Los Angeles.

25 Q. And where did you go to school?

1 A. It could be -- it could be within the work
2 forces swiping one empty trailer for a loaded
3 trailer. Never did I detach a trailer on my own
4 with my own recognizance.

5 Q. And did you ever drive the KLLM truck
6 without a trailer on it?

7 A. Yes, I have.

8 Q. To like go pick up a trailer somewhere?

9 A. Correct.

10 Q. So how did you hear about KLLM and the job
11 opportunity?

12 A. Advertising. It's like all over the years
13 I've been knowing KLLM as long as I've been driving.
14 I've been seeing the company over a great period of
15 time.

16 Q. Because they're a big trucking company?

17 A. Pretty large.

18 Q. And at the time of the accident where were
19 you living?

20 A. In Palmdale.

21 Q. Do you still live in Palmdale?

22 A. Yes, I do.

23 Q. And so you just went and applied to KLLM?

24 A. Yes, I did.

25 Q. Did you have to go meet anybody to be

1 interviewed?

2 A. There's an orientation that you have to go.
3 Yes, yes, I did.

4 Q. Where was that at?

5 A. Jackson, Mississippi.

6 Q. How long does that take place for?

7 A. Three days.

8 Q. And they kind of give you training on how
9 KLLM does things?

10 A. Pretty much.

11 Q. And are you attached to a terminal when you
12 drive for KLLM?

13 A. Revise.

14 Q. For instance, I know they have a terminal
15 out here in California.

16 A. Okay.

17 Q. Is that a terminal that you work out of or
18 are you assigned to a specific terminal?

19 A. Jackson, Mississippi.

20 Q. And where did you generally drive or did it
21 vary?

22 A. 48 states.

23 Q. All around the country?

24 A. 48 states.

25 Q. During this orientation did KLLM kind of

1 A. Yeah, that was part of the conditions.

2 Q. And so you didn't -- you only drove your
3 KLLM truck for KLLM, right?

4 A. Right.

5 Q. Did you even drive for anybody else even
6 another truck during the time you were working for
7 KLLM?

8 A. Another KLLM truck, yeah.

9 Q. No, but I met for like another company.

10 A. No.

11 Q. Were you allowed to drive for another
12 company while you worked for KLLM?

13 A. No.

14 Q. And were you supervised at all by KLLM?
15 Like did you have a supervisor?

16 A. We have a thing called DM, driver
17 management.

18 Q. And what do they do?

19 A. They're the ones that provides you with the
20 load information, getting the load and where you
21 have to go and where you have to pick it up and when
22 you have to deliver it.

23 Q. And do you get like a manifest or a schedule
24 you have to follow when you have a load?

[25 A. As far as load information, yes.

1 Q. And does it have like a scheduled delivery
2 time, drop-off time?

3 A. Yes, it does.

4 Q. Are you supposed to follow that as closely
5 as you can?

6 A. Yes.

7 Q. And if you get off schedule at all, does
8 KLLM have a way of tracking you?

9 A. Yes, they do.

10 Q. What would they do if you were off schedule?

11 A. They would want to know the reasons why.

12 Q. They'd call you up?

13 A. Right, or they send me a message over the
14 Qual Com system there in the truck.

15 Q. What is that Qual Com system?

16 A. Computer system inside the tractor.

17 Q. And it allows you to communicate with
18 Dispatch?

19 A. Allows Dispatch to communicate with you.
20 Both ways.

21 Q. And is that -- do you use that to like keep
22 track of your hours?

23 A. Yes, I do.

24 Q. Because you're only allowed to drive a
25 certain amount of hours?

1 A. Correct.

2 Q. When did you stop working for KLLM?

3 A. I don't have the specific date but January
4 2015.

5 Q. And why?

6 A. Wanted to be more close to home.

7 Q. You mean you were driving too far?

8 A. I was -- I had been out there too long. I
9 wanted to come back in. I wanted to get close to my
10 family.

11 Q. So did you get a job that allowed you to
12 stay closer to your family?

13 A. Yeah, I did.

14 Q. Is it another trucking job?

15 A. Yes, it was.

16 Q. Is it just more local?

17 A. It was.

18 Q. You no longer work there?

19 A. No.

20 Q. When you left KLLM, what happened to your
21 truck that you had been leasing?

22 A. I turned it back in to the Fontana terminal.

23 Q. So KLLM took it back?

24 A. Correct.

25 Q. Did they refund you the lease money or

1 documents?

2 A. One more time?

3 Q. Do you remember getting and reading these
4 documents?

5 A. Getting and reading them? During my
6 orientation.

7 Q. That's when you were hired, February 2012?

8 A. Right.

9 Q. Did you have a copy of these documents or
10 just KLLM had them?

11 A. The ones here I think we both had them.
12 It's part of the package.

13 Q. Take a look at the second paragraph on the
14 one about the KLLM policy. Do you see what it says?

15 A. Electronic or --

16 MR. SALLEY: Which exhibit are we talking
17 about? 5 or 6?

18 MR. HAFFNER: We're talking about 5, the
19 second paragraph.

20 Q. "Any driver intending to use the Qual Com
21 unit to Read or Send a message must park the truck
22 in a safe location." Do you see that?

23 A. Second paragraph, right? Which policy?

24 Q. This one right here.

25 A. Qual Com. "Must park the truck in a safe

1 miles?

2 A. Correct.

3 Q. If you took another route and it involved
4 more mileage, you wouldn't get paid for that?

5 A. Correct.

6 Q. So you kind of had to follow the routes KLLM
7 provided to you if you wanted to get paid for all
8 your miles?

9 A. Correct.

10 Q. This Independent Contractor Agreement we
11 attached as Exhibit 8 and the lease agreement
12 attached as Exhibit 9 --

13 A. Okay.

14 Q. -- were they presented to you at the same
15 time?

16 A. Yes.

17 Q. And this was when you were in Jacksonville?

18 A. Yes.

19 Q. And was this presented to the whole group at
20 the same time?

21 A. Yes, it was.

22 Q. And how many people were in this group?

23 A. I can't remember. There were 20 or better
24 probably.

25 Q. And Doug kind of did this explanation of

1 the paper for the tractor that you're leasing it
2 showed you how much you was going to pay that every
3 month and the total amount that you are going to pay
4 at the end and the total amount of weeks that you
5 are going to pay.

6 Q. Do you know why that term wasn't included in
7 the contract you actually signed?

8 A. No, I don't.

9 Q. So based on the contract you actually signed
10 you didn't know how much the lease was?

11 A. Not at that particular time, no.

12 Q. During this group meeting when everybody was
13 presented with these two contracts at the same time,
14 were they told they had to sign these contracts to
15 drive for KLLM?

16 A. That was part of it, yeah.

17 Q. And by that time you had already filled out
18 your application, been pre-approved and traveled all
19 the way to Jacksonville, Mississippi for this job,
20 correct?

21 A. Correct.

22 Q. So you were already invested?

23 A. Correct.

24 Q. Looking at the contract which was Exhibit 8,
25 counsel for KLLM referred you to page 9.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MARCUS BRENT JOWERS, AND
OTHER SIMILARLY SITUATED

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:17cv517DPJ-FKB

KLLM TRANSPORTATION SERVICES, LLC

DEFENDANT

**DECLARATION OF MARCUS BRENT JOWERS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I, Marcus Brent Jowers, declare as follows:

1. I was employed by KLLM Transportation Services, LLC ("KLLM") as a truck driver until December 2016. I am sufficiently familiar with the facts and circumstances reflected below surrounding this litigation that if called to testify I could and would competently do so under oath.

2. As a condition of my employment, I was required to: apply and become accepted into the KLLM training program; travel from Florida to Richland, Mississippi to receive training for five days; receive six weeks of road training, where I traveled all around the country, with a KLLM driver; and participate and pass a road, backing, and written test.

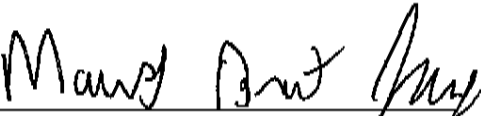
3. On June 1, 2016, I began attending the “lease purchase class” conducted and instructed by KLLM at their home terminal located in Richland, Mississippi. During this three-day “lease purchase class”, I, along with approximately twenty-five other individuals, were presented with a document packets that contained the pre-printed Independent Contactor Agreement (“Agreement”). When I received the packet, KLLM instructed everyone not to review the packet unless told when and where to do so. KLLM also instructed that the packet, which contained the Agreement, could not be removed from KLLM’s home terminal.

4. On June 2, 2016, KLLM instructed me and my class to review the portion of the packet containing the Agreement. During this meeting, KLLM reviewed some of the clauses of the Agreement primarily focusing on the clauses pertaining to the truck lease agreement and glossing over the others. I do not recall KLLM addressing, mentioning, or explaining the class action waiver included in the Agreement.

5. During this meeting, KLLM stated that everyone was required to sign the documents in order to work for KLLM. There was no negotiation relating to the terms of the Agreement between KLLM and myself or any of the other individuals. KLLM did not give myself or the other individuals time to seek advice before signing the Agreement. The only aspect of the Agreement I could choose

not to accept was the benefits packet associated with the Agreement. The Agreement was presented in a take it or leave it manner by KLLM.

I declare under penalty of perjury under the laws of the State of Mississippi that the foregoing is true and correct. Executed this 9th day of August 2017 in Indian Rocks Beach, Florida.



Marcus Brent Jowers

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing ***DECLARATION OF MARCUS BRENT JOWERS IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT*** with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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THIS the 18th day of August 2017.

/s/ Joshua H. Haffner
Joshua H. Haffner