IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

(1) JOANN L. KENNEDY, on Behalf of Herself and All Others Similarly Situated, Plaintiff, vs. (1) LTI TRUCKING SERVICES, INC., Defendant.	Case No. 4:18-cv-00230-HEA **SECOND AMENDED COLLECTIVE & CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

1. Pursuant to F.R.C.P. (a)(1)(B) and the Court's Order of December 20, 2018, Dkt. No. 27, extended by the January 2, 2019 Order, Dkt. No. 29, Plaintiff JoAnn L. Kennedy files her Second Amended Collective and Class Action Complaint.

2. This case is brought to remedy the failure of Defendant to pay Plaintiff and members of the Class (as defined below) all wages required by federal and state wage and hour laws, including the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq*.

3. Defendant LTI Trucking Services, Inc. ("Defendant" or "LTI") is owned and operated for the purpose of moving freight interstate for its customers at the lowest cost possible.

4. Plaintiff and the members of the Class are truck drivers employed by Defendant to deliver freight for its customers.

5. Defendant controls the work of Plaintiff and the members of the Class. Defendant controls when, where, and how Plaintiff and members of the Class deliver freight. Defendant controls virtually every aspect of the way its truckers' work is performed,

including routes taken and the equipment used, along with the maintenance and condition of the trucks used.

6. Defendant also exercises control by requiring entry into a form contract, which shifts the business risks over to its truck drivers, like Plaintiff and the Class. As part of the contract, truck drivers are required to lease trucks owned by Defendant. The financial burden that would come with termination of the contract by the truck driver makes it unfeasible that s/he would ever be able to do so. This forces the truck drivers to work under the exclusive control of Defendant, all the while subjecting themselves to Defendant's unfair wage practices.

7. LTI reserves the right to terminate its contract with its truck drivers at any time. Such termination would be deemed an "Event of Default" regarding the lease of the truck mentioned above. In such event, Defendant may repossess the equipment and declare that the remaining balance of unpaid lease payments are "immediately due and payable," creating a crippling disincentive for truck drivers to terminate the contract at any point.

8. Thus, LTI retains the ability to reap huge benefits while further penalizing Plaintiff and the members of the Class and preventing them from continuing to earn a living using the leased truck, while also demanding exorbitant liquidated damages given an "Event of Default."

9. That Defendant retains the ability to place truck drivers in default at any time gives LTI a massive amount of power. It makes it unreasonable for truck drivers to believe they had any choice but to accept any terms LTI wished to impose, including unilateral changes to the contract or lease, and allowed Defendant to retain exclusive control over

their work.

10. The lease signed by Plaintiff locked her into four years of inability to challenge what turned out to be a deceptive wage practice. This meant Plaintiff either accepted forced under-compensation or risked being deemed in "Default" on her lease and forced to deal with the extreme financial consequences. Other members of the Class were subject to the same lease terms and deceptive wage practices.

11. The form contract that Defendant used with Plaintiff and members of the Class also shifts the risk of economic downturn to Plaintiff and truckers by forcing them to pay for all maintenance, fuel, tolls, oil, inspection fees, taxes, and other various fees. This allows Defendant to earn further profit off of truck drivers, like Plaintiff and members of the Class, who have no legitimate opportunity to withdraw from their contract without facing devastating financial consequences.

12. Plaintiff seeks, on behalf of herself and the Class, unpaid wages, liquidated damages, interest, costs and attorneys' fees as well as declaratory relief under the FLSA. Plaintiff brings this claim individually and on behalf of other similarly situated employees under the collective action provisions of the FLSA. 29 U.S.C. § 216(b).

JURISDICTION

13. Jurisdiction is conferred upon this Court by 29 U.S.C. § 216(b) of the Fair Labor Standards Act, by 28 U.S.C. § 1331, this action arising under laws of the United States, and by 28 U.S.C. § 1337, this action arising under Acts of Congress regulating commerce.

14. By the conduct described in this Second Amended Collective and Class

Complaint, Defendant has also violated the wage and hour laws of Missouri by failing to pay its employees proper minimum hourly wages. These violations arose out of Defendant's company-wide policies, and a pattern and practice of violating wage and hour laws.

VENUE

15. Jurisdiction is conferred upon this Court by 29 U.S.C. § 216(b) of the Fair Labor Standards Act, by 28 U.S.C. § 1331, this action arising under laws of the United States, and by 28 U.S.C. § 1337, this action arising under Acts of Congress regulating commerce.

16. The amount in controversy is in excess of the sum or value of $5,000,000.00, exclusive of interest and costs.

17. At least one member of the proposed class is a citizen of a state different from that of Defendant.

18. Plaintiff's claims involve matters of national or interstate interest.

19. The members of the proposed class retain citizenship dispersed among at least two states: Missouri and Michigan.

20. Defendant resides in Missouri, and is subject to personal jurisdiction in Missouri.

21. Venue is proper in the Eastern District of Missouri pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this claim occurred in this District and Defendant resides in this District.

PARTIES

A. Plaintiff

22. Plaintiff JoAnn Kennedy is a citizen of the State of Michigan. Plaintiff was a truck driver for and an employee of Defendant.

23. Plaintiff brings claims under the Fair Labor Standards Act, individually and on behalf of a collective action class of all persons employed by Defendants between the period three years preceding the filing of their consent to sue in this case, and the date of final judgment in this matter.

24. Plaintiff brings claims under Missouri Labor Law, Mo. Rev. Stat. § 290.500-290.530, individually and on behalf of a class pursuant to Fed. R. Civ. P. 23 as further described herein.

25. Plaintiff brings claims regarding the unconscionability of the contract as a whole under Missouri Contract Law, Mo. Rev. Stat. § 400.2A-108 and Missouri common law, individually and on behalf of a class pursuant to Fed. R. Civ. P. 23 as further described herein.

26. Plaintiff was engaged in commerce in her work for Defendant.

B. Represented Parties under FLSA

27. The term "Plaintiff" as used in this complaint refers to the named Plaintiff as well as any additional represented Class Members pursuant to the collective action provision of 29 U.S.C. § 216(b).

28. The named Plaintiff represents all truckers who currently drive for LTI or have driven for LTI between May 2015 and the present.

29. The named Plaintiff brings this case under the collective action provision of

the FLSA as set forth in 29 U.S.C. § 216(b) on behalf of herself and a class of persons throughout the U.S. consisting of "all truckers who currently drive or have driven for LTI between May 2015 and the present."

C. Class Action Allegations

30. Plaintiff JoAnn Kennedy brings her First, Second, and Third Causes of Action under Fed. R. Civ. P. 23, on behalf of herself and a class of persons consisting of "all truckers who have driven for LTI within the last three years."

31. The term "Plaintiff" as used in this Complaint refers to the named Plaintiff and any additional represented Fed. R. Civ. P. 23 Class Members.

32. Excluded from any Fed. R. Civ. P. 23 or Collective Action Class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in any Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from any Fed. R. Civ. P. 23 Class.

33. The persons in the Fed. R. Civ. P. 23 Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendant.

34. Upon information and belief, the size of the Fed. R. Civ. P. 23 Class is more than 450 workers.

35. Defendant acted or refused to act on grounds generally applicable to the Fed.

R. Civ. P. 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

36. The Second and Third Causes of Action are properly maintainable as class actions under Fed. R. Civ. P. 23(b)(3). There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:

a. Whether Defendant employed Plaintiff but treated her as an independent contractor;

b. Whether Defendant failed to appropriately pay Plaintiff per mile driven; instead paying per zip code;

c. Whether Defendant failed to pay Plaintiff for the time or miles spent performing mandatory clean ups of her trailer and/or truck after hauling food items;

d. Whether Defendant's failure to pay wages for time spent performing mandatory activities resulted in minimum wage violations;

e. Whether Defendant's failure to pay wages violates Missouri common law;

f. Whether Defendant imposed unconscionable contracts upon Plaintiff;

g. Whether Defendant was unjustly enriched by imposition of unconscionable contracts upon Plaintiff;

h. If Plaintiffs are found to be employees, or the contracts found to be unconscionable, whether those contracts are void and/or voidable; and

i. Whether the equipment lease portion of the independent contractor agreement between Defendant and Plaintiff was unconscionable under Mo. Rev. Stat. § 400.2A-108.

37. Plaintiff's claims are typical of the claims of the Class she seeks to represent. Plaintiff and the Class members work or have worked for Defendant and have been

subjected to a policy and pattern or practice of failing to pay wages, and a pattern and practice of deceptive payment techniques that undercompensated truckers for work performed, as well as an unconscionable contract that locked drivers into accepting said deceptive payment techniques.

38. Plaintiff will fairly and adequately represent and protect the interests of the Class.

a. Plaintiff understands that, as class representative, she assumes a fiduciary responsibility to the Class to represent its interests fairly and adequately.

b. Plaintiff recognizes that as class representative, she must represent and consider the interests of the Class just as she would represent and consider her own interests.

c. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over those of the Class.

d. Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Class.

e. Plaintiff understands that in order to provide adequate representation, she must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in her possession, and testify, if required, in a deposition and in trial.

39. Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

40. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation such as the present action, where individual plaintiffs may lack the financial resources to vigorously

prosecute a lawsuit in federal court against a corporate defendant. The members of the Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. In addition, class treatment is superior because it will eliminate the need for duplicative litigation that might result in inconsistent judgments regarding Defendant's practices.

D. Defendant

41. Upon information and belief, Defendant is a business incorporated under the laws of the state of Missouri that maintains its headquarters and principal place of business in St. Louis, Missouri.

42. Defendant is an enterprise engaged in interstate commerce for purposes of the Fair Labor Standards Act.

43. All actions and omissions described in this complaint were made by Defendants directly or through their supervisory employees and agents.

FACTS

44. Plaintiff, collective action, and Fed. R. Civ. P. 23 Class Members are truck drivers.

45. Defendant LTI employed Plaintiff and contracted with her to pay a certain amount per mile driven. From May 2015 to February 2016, Plaintiff was an employee of LTI. Plaintiff re-joined LTI as an employee in October 2016 and, in November 2016, became a Lease Owner Operator with LTI, having signed an Independent Contractor Operating Agreement. Plaintiff operated as a Lease Owner Operator for three to four months before transitioning back to being an employee of Defendant. Both as a Lease

Owner and as an official employee of LTI, Plaintiff was undercompensated in violation of the FLSA and state laws in the same manner.

46. LTI has failed to pay per mile driven, instead calculating wages via zip codes driven through, almost always accumulating to lower wages.

47. Further, the form contract foisted upon Plaintiff was designed to ensure an employment relationship tilted heavily in favor of Defendant.

48. LTI offered Plaintiff several integrated form contracts, including a lease and "Independent Contractor Operating Agreement," which purported to make Plaintiff an independent contractor engaging in a business relationship with Defendant, rather than an employee of Defendant.

49. The equipment lease portion of the form contract is for a term of four years.

50. The service contract portion of the form contract is for a term of one year.

51. Plaintiff was required to bear Defendant's business expenses by paying for Defendant-mandated maintenance to the equipment, as well as tolls, gas, taxes, and other charges.

52. The above described scheme passes the burdens of maintaining Defendant's fleet on to Plaintiff truckers, but manages to retain all of the benefits. The scheme also shifts any risk of downturn in the trucking business by not promising any work for Plaintiff, and paying nothing towards Plaintiff's expenses.

53. The extent of the control exerted by Defendant over Plaintiff's work makes Plaintiff, by law, an employee of Defendant.

54. Defendant issues jobs to Plaintiff, instructs her of the route to take, monitors

her travel, provides instruction and monitors actual performance via a Qualcomm on-board computer system. Defendant dictates how the job must be performed (including mandatory maximum speed limits) and then monitors Plaintiff's exact speed, location, route, control of the truck, ETA, rest and drive time, and other aspects of the job via the on-board Qualcomm system and other "satellite communication and tracking devices" that Plaintiff must consent to having installed.

55. The lease agreement is also entered into with LTI.

56. LTI includes in the lease agreement a provision that ensures it will be allowed to treat termination of the service contract by either party as an "Event of Default" on the lease.

57. If an "Event of Default" is claimed by LTI, Defendant may repossess the equipment and declare the entire amount of unpaid lease payments to be immediately due and payable as liquidated damages "for the loss of the bargain," even though it may have been LTI's unilateral determination that canceled the service contract and that any actual losses are reasonably determinable and would be far less than what Defendant then unreasonably would claim.

58. Plaintiffs are also not free to terminate the service contract or lease, as such termination could also be deemed an "Event of Default" and result in the same crippling financial consequences as detailed above.

59. Because an end to the business between Plaintiff and Defendant for any reason can be deemed an "Event of Default" on the four year lease, at the end of the one year service contract Plaintiff has no realistic choice but to re-enter a new contract with

Defendant. Otherwise Defendant could repossess the equipment, rendering Plaintiff unable to secure business driving for other companies. This means Plaintiff is forced to contract with Defendant and work under its exclusive control for the entire duration of the equipment lease, or else suffer severe financial consequences.

60. Effectually, the lease agreement allows Defendant the means to coerce Plaintiffs into allowing LTI complete and exclusive control over her work out of fear of termination and "Default."

61. The equipment lease requires the Plaintiff pay $50 per week of her compensation into a "Security Reserve" until that fund reaches $5,000. The "Security Reserve" is not reimbursed to Plaintiff until she fully completes the four year lease, and will be retained by Defendant and paid toward "damages" should the lease be terminated or deemed to be in "Default."

62. LTI forced Plaintiff to bear its business expenses. Defendant's scheme shifted the costs of maintaining its fleet to the drivers, but allowed LTI to retain the benefits, by requiring drivers to maintain trucks without compensation, as detailed below.

63. LTI specialized in refrigerated transportation, which naturally translates into a high level of food being transported by its trucker employees.

64. LTI requires its trucker employees to haul such food items, and to take their trailers to a facility in order to be cleaned out after hauling food items.

65. LTI did not compensate Plaintiff for the time spent performing mandatory cleanups, nor did it compensate Plaintiff for the miles driven to or from the cleanup facility.

66. LTI did not compensate Plaintiff or other class members for detention

periods. When workers were forced to wait for their loads to be offloaded once they reached their destination, LTI would force Plaintiff and Class members to sit for a minimum of two hours at the dock without pay while their trucks were being unloaded.

67. LTI employs or employed Plaintiff and Class members.

68. Defendant controlled Plaintiff's work to the extent that she was employee of Defendant.

69. Defendant sets the terms of Plaintiff's work.

70. Defendant's unlawful conduct, as set forth in this Class Action Complaint, has been intentional, willful, and in bad faith, and has caused significant damages to Plaintiff and the Class.

71. Upon information and belief, Defendant applied the same unlawful policies and practices to employees in every state in which it operated.

FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT)

72. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

73. While she was employed by Defendant, Plaintiff reported her status to Defendant via the Qualcomm computer in her truck.

74. Upon information and belief, the Qualcomm messages were received by Defendant LTI in a single centralized location in Missouri.

75. As a driver for Defendant, Plaintiff was regularly required to remain over-the-road in or in the general proximity of her assigned truck for more than 24 consecutive

hours.

76. While employed by Defendant, Plaintiff was "on duty" (per United States Department of Labor ("DOL") Regulations) continually for days and weeks on end.

77. Per 29 C.F.R. § 785.22, the maximum amount of time an employer may dock an employee who is on duty for more than 24 hours for time spent in a sleeper berth is 8 hours per day. The remaining amount of time (16 hours per day) is work time and must be paid, less bona fide meal periods.

78. While driving over-the-road for Defendant Plaintiff regularly worked more than 16 hours per day because she was required to, among other things: (1) drive the truck; (2) wait for cargo to be loaded or unloaded while in the truck or its immediate vicinity; (3) fuel up the truck and perform routine maintenance to same; (4) remain in the vicinity of the truck to help protect Defendant and its customers' property; and (5) remain inside the truck when stopped to log time in the sleeper berth and to help protect Defendant and its customer's property.

79. Additionally, the wages Defendant paid to Plaintiff each workweek failed, on at least one occasion, to equal at least the federal minimum wage, because the time Plaintiff spent "on duty", when multiplied by $7.25 (the federal minimum wage), exceeded the wages paid to Plaintiff based on the per-mileage rate. For example, in the week ending December 4, 2015, Plaintiff was on the road for Defendant seven days that week and spent, according to DOL regulations, a total of 112 hours "on duty." Accordingly, per 29 C.F.R. § 785.22, Plaintiff should have received a total of $ 812.00 for her work in that week ($7.25 x 112) under the Federal Fair Labor Standards Act 29 U.S.C. § 206 et seq. In reality,

Plaintiff received only $800.00 in gross pay for this period, or $7.14 per hour.

80. Upon information and belief, Defendant paid Plaintiff less than the federal minimum wage on other occasions as well.

81. Upon information and belief, Defendant's method of calculating pay resulted in other members of the Class being paid less than the federal minimum wage some weeks.

82. Defendant failed to pay minimum wages to Plaintiff in violation of the Fair Labor Standards Act, 29 U.S.C. § 206 *et seq*. and its implementing regulations.

83. Defendant's failure to pay proper minimum wages for each hour worked per week was willful within the meaning of the FLSA.

84. Defendant's failure to comply with the FLSA minimum wages protections cause Plaintiff to suffer loss of wages and interest thereon.

SECOND CAUSE OF ACTION
(MISSOURI LABOR LAW)

85. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs. Additionally, the wages Defendant paid to Plaintiff each workweek failed, on at least one occasion, to equal at least the Missouri minimum wage, because the time Plaintiff spent "on duty", when multiplied by $7.65 (the 2015 minimum wage set by Missouri's Department of Labor), exceeded the wages paid to them based on the per-mileage rate. For example, in the week ending December 4, 2015, Plaintiff was on the road for Defendant seven days that week and spent, according to DOL regulations, a total of 112 hours "on duty." Accordingly, per 29 C.F.R. § 785.22, Plaintiff should have received a total of $ 856.80 for her work in this week ($7.65 x 112) under Missouri's Labor and

Industrial Relations laws. In reality, Plaintiff received only 800.00 in gross pay for this period, or $7.14 per hour.

86. Upon information and belief, Defendant paid Plaintiff less than the Missouri wage on other occasions as well.

87. Upon information and belief, Defendant's method of calculating pay resulted in other members of the Class being paid less than Missouri minimum wage some weeks.

88. Defendant failed to pay minimum wages and all wages due to Plaintiff JoAnn Kennedy and the Class in violation of Missouri's Labor and Industrial Relations laws. Mo. Rev. Stat. § 290.500-290.530.

89. Defendant's failure to comply with Missouri's Labor and Industrial Relations laws caused Plaintiff to suffer loss of wages and interest thereon. MO. REV. STAT. § 290.500-290.530.

THIRD CAUSE OF ACTION
(MISSOURI STATUTORY CONTRACT LAW)

90. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

91. Defendant's independent contractor operating agreement is unconscionable under MO. REV. STAT. § 400.2A-108 and under Missouri common law as described above and including that it is a contract of adhesion, terminable by Defendant but binding on Plaintiff for a period of years. The agreement carried steep financial consequences if terminated by Plaintiff, which forced Plaintiff into continued employment with Defendant and into accepting LTI's unlawful wage deductions, as well as LTI's false and misleading

characterization of Plaintiff as an independent contractor and practice of unlawfully shifting business costs onto Plaintiff.

92. Defendant's lease sets forth unreasonable liquidated damages in violation of § 2A-504. LIQUIDATION OF DAMAGES, UNIF. COMMERCIAL CODE § 2A-504.

93. Defendant failed to pay per mile driven, instead calculating wages via zip codes driven through, almost always accumulating to lower wages.

94. Defendant's failure to comply with Missouri Contract Law led directly to loss of income, wages, and interest thereon by Plaintiff, as well as caused Plaintiff to bear Defendant's business expenses. It forced Plaintiff to incur various other costs not properly charged to an employee as well, not limited to taxes, unemployment, workers' compensation, various insurance, and social security.

FOURTH CAUSE OF ACTION
(RESTITUTION/UNJUST ENRICHMENT)

95. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

96. Defendant's lease and Independent Contractor Operating Agreement are unconscionable.

97. Defendant's unconscionable agreements are void, or alternatively, voidable by Plaintiff under the common law.

98. Defendant has failed to pay per mile driven, instead calculating wages via zip codes driven through, almost always accumulating to lower wages.

99. Defendant has been unjustly enriched by the unconscionable terms of the

contracts they imposed on Plaintiff.

100. Plaintiff is entitled to restitution or damages in quantum merit for the value of Defendant's unconscionable contracts conferred upon defendants.

FIFTH CAUSE OF ACTION
(DECLARATORY JUDGMENT)

101. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

102. Defendant's lease and Independent Contractor Operating Agreement are unconscionable.

103. Plaintiff is entitled to declaratory judgment that Defendant's lease and Independent Contractor Operating Agreement are unconscionable.

WHEREFORE, Plaintiff requests that this Court enter an Order:

1. With respect to the FLSA violations:

    a. Declaring that Defendant violated the FLSA;

    b. Approving this action as a collective action;

    c. Declaring that Defendant's violations of the FLSA were willful;

    d. Granting judgment to Plaintiffs and represented parties for their claims of unpaid wages as secured by the Fair Labor Standards Act, as well as an equal amount in liquidated damages and interest; and

    e. Awarding Plaintiff and represented parties their costs and reasonable attorneys' fees.

2. With Respect to the Class:

    a. Certifying this action as a class action;

    b. Designating Plaintiff as a Class Representative;

c. Designating the undersigned counsel as Class Counsel;

d. Entering a declaratory judgment that the practices complained of herein are unlawful under appropriate respective state law;

e. Fashioning appropriate equitable and injunctive relief to remedy Defendants' violations of state law, including but not necessarily limited to an order enjoining Defendant from continuing its unlawful practices;

f. Awarding damages, liquidated damages, appropriate statutory penalties, and restitution to be paid by Defendant according to proof;

g. Awarding Pre-judgment and Post-judgment interest, as provided by law;

h. Granting such other injunctive and equitable relief as the Court may deem just and proper; and

i. Awarding attorneys' fees and costs of suit, including expert fees, interest, and costs.

JURY TRIAL DEMANDED

Dated: January 17, 2019

Respectfully submitted,

/s/ William B. Federman
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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2019, I electronically filed the foregoing document with the Clerk of the Court and that the foregoing document is being served this day on all counsel of record or pro se parties identified either via transmission of Notices of Electronic Filing generated by the Court or in some other authorized manner for those counsel or parties who are not authorized to receive electronically filed Notices of Electronic Filing.

/s/ William B. Federman
William B. Federman