

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

HARRY SWALES, COREY LILLY, and  
KYLE SHETTLES on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

KLLM TRANSPORT SERVICES, LLC,  
and DOES 1-25

Defendants.

Civil Action No.: 3:17cv490 CWR-LRA

COMPLAINT  
AND DEMAND FOR JURY TRIAL

Harry Swales, Corey Lilly, and Kyle Shettles, ("Plaintiffs"), on behalf of themselves and those similarly situated, by and through their undersigned attorneys, hereby make the following allegations against Defendant KLLM Transport Services, LLC, and Does 1 through 25 ("Defendant") concerning its acts and status upon actual knowledge and concerning all other matters upon information, belief, and the investigation of their counsel:

NATURE OF ACTION

1. Plaintiffs bring the present action to seek redress for Defendant's violations of the Fair Labor Standards Act ("FLSA").
2. The factual circumstances here are as follows: Defendant KLLM Transport Services, LLC has engaged in a pattern and practice of taking advantage of its truck drivers by misclassifying them as independent contractors and improperly shifting the costs of doing business, while completely controlling the means and manner by which the truck drivers perform their job duties.

3. Defendant has, at all times relevant herein, misclassified Plaintiffs and similarly situated individuals nationwide as independent contractors, and refused and failed to pay them at least the minimum wage for all hours worked. Specifically, Defendant has intentionally required that Plaintiffs and similarly situated individuals cover the costs of operating Defendant's business, (including but not limited to the costs of fuel and truck maintenance), willfully reducing the wages of Plaintiffs and those similarly situated to a rate below the federally mandated minimum wage.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331 because this civil action arises under federal law of the United States, 29 U.S.C. § 201 *et seq.*

5. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional norms of fair play and substantial justice.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

#### **PARTIES**

7. Plaintiff Kyle Shettles is an adult individual residing at 4927 Cairo Loop, Ecru, Mississippi 38841.

8. Named Plaintiff Corey Lilly is an adult individual residing at 206 Atyla St., Longview, TX 75604.

9. Named Plaintiff Harry Swales is an adult individual residing at 6 Spectrum Drive, Newark, Delaware 19713.

10. Defendant KLLM Transport Services, LLC is a limited liability company formed in the State of Texas with its principal place of business at 135 Riverview Drive, Jackson, MS 39218. Defendant KLLM Transport Services, LLC provides over-the-road carrier services throughout the United States.

11. Defendants DOES 1 through 25 are presently unknown persons and/or entities who had control over the wages, hours, and payroll of Plaintiffs and similarly situated individuals.

12. At all times relevant herein, Defendants acted by and through their agents and employees, each of whom acted in the course and scope of their employment with Defendants.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

13. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

14. Plaintiffs bring this action for violations of the FLSA as both an individual and collective action on behalf of Plaintiffs and all persons who performed work as truck drivers under Defendant's owner-operator and/or lease-purchaser program and were designated as "independent contractors" by Defendant at any time during the period from three years prior to filing of the complaint to the present ("collective members"). Plaintiffs bring this action pursuant to section 216(b) of the FLSA, 29 U.S.C. § 216(b).

15. During all times relevant herein, Plaintiffs and collective members were subjected to an unlawful compensation system put in place by Defendant.

16. During the relevant time period, Defendant has employed Plaintiffs and collective members as "lease-purchasers" and/or "owner-operators" and misclassified them as independent contractors.

17. Plaintiffs and collective members are similarly situated. During the relevant time period, they have held similar job titles, performed similar job duties, been payed under similar pay provisions, and are all subject to Defendant's unlawful policies and practices as described herein.

18. Plaintiffs and collective members are numerous. There are numerous similarly situated current and former employees of Defendant who have worked as "owner-operators" and/or "lease-purchasers" and been misclassified by Defendant and improperly compensated under the FLSA. Each of these numerous individuals would benefit from notice of the present suit and the opportunity to join.

19. Defendant maintains records of its "owner-operators" and/or "lease purchasers" and as such they are readily identifiable by Defendant.

20. Therefore, Plaintiffs should be permitted to bring this action as a collective action on behalf of themselves and all other individuals similarly situated pursuant to the "opt-in" provisions of the FLSA.

#### **FACTUAL ALLEGATIONS**

21. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

22. Plaintiff Kyle Shettles worked for Defendant as an "owner-operator" and/or "lease-purchaser" from approximately October 2015 to January 2017, and was classified by Defendant as an independent contractor.

23. Plaintiff Harry Swales worked for Defendant as an "owner-operator" and/or "lease-purchaser" from approximately July 2013 to July 2015, and was classified by Defendant as an independent contractor.

24. Plaintiff Corey Lilly worked for Defendant as an “owner-operator” and/or “lease-purchaser” from approximately March 2016 to November 2016, and was classified by Defendant as an independent contractor.

25. Defendant’s primary business is the transport of goods/cargo by truck across the United States.

26. Defendant is a motor carrier as defined by the Motor Carrier Act.

27. Plaintiffs and collective members worked and/or work for Defendant as commercial truck drivers during the relevant time periods.

28. Defendant has continued to misclassify its “owner-operators” and/or “lease-purchasers” during all relevant times through the present.

29. Plaintiffs and collective members have been misclassified by Defendant as independent contractors during the covered period, and are/were in fact Defendant’s employees under federal law.

**Misclassification of Owner-Operators and Lease-Purchasers as Independent Contractors**

30. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

31. During the relevant time period, Defendant has engaged in a policy and practice of employing truck drivers and misclassifying them as independent contractors.

32. During all relevant times herein, Defendant has controlled and directed Plaintiffs and collective members in the performance of their job duties.

33. During all relevant times herein, Defendant has controlled the meaningful aspects of the business including customer flow and rates, effectively eliminating Plaintiffs and collective members’ ability to function as independent economic entities.

34. During all relevant times herein, Plaintiffs and collective members have entered into lease agreements with Defendant which require Plaintiffs and collective members to make large regular payments in return for the use of one of Defendant's trucks. Leases extend for periods such as four to six years. Defendant deducts lease payments from Plaintiffs and collective members' wages.

35. Plaintiffs and collective members do not gain equity in the trucks during the term of their lease with Defendant. Until an individual "owner-operator" and/or "lease-purchaser" reaches the end of the lease term and completes purchase of the truck, the "owner-operator" and/or "lease-purchaser" is essentially driving Defendant's equipment.

36. Upon termination of Plaintiffs and collective members' employment with Defendant by either Plaintiffs and collective members or Defendant, the lease agreement also automatically terminates. Defendant does not return the payments that were made toward the trucks. Plaintiffs and collective members are not permitted to take the truck with them and continue making lease payments.

37. Plaintiffs and collective members are compensated based on a number of factors unilaterally determined by Defendant, including but not limited to the distance a load must be hauled and the size and/or weight of the cargo.

38. Defendant does not permit Plaintiffs and collective members to carry loads for independent companies that are/were not assigned by and/or through Defendant, even on days Plaintiffs and collective members are not assigned work from Defendant.

39. Plaintiffs and collective members can only accept loads that have been assigned to them by Defendant.

40. Defendant requires Plaintiffs and collective members to have and maintain particular onboard communications and tracing technology.

41. The onboard communications and tracing technology enables Defendant to locate and track the trucks Plaintiffs and collective members drive at all times, and to better control the schedules and loads of Plaintiffs and collective members.

42. Defendant assigns loads to Plaintiffs and collective members through its communications and dispatch system.

43. Plaintiffs and collective members have/had little to no ability to refuse assigned loads.

44. When Plaintiffs and collective members refuse loads, Defendant can and has required Plaintiffs and collective members to sit and wait days for another load, substantially decreasing the amount of money they are able to earn and endangering their ability to meet their lease payment obligations.

45. As Plaintiffs and collective members were not permitted to accept loads or jobs from anyone other than Defendant, they had no meaningful opportunity to increase their business outside of what was offered by Defendant.

46. Although Plaintiffs and collective members are required by law to hold commercial driving licenses, they are not required to have special skills uncommon to the over-the-road trucking industry.

47. During all relevant times herein, Plaintiffs and collective members have performed the same or substantially similar job duties as are performed by company drivers employed directly by Defendant.

48. Because Defendant controls the rates paid and the available loads, Plaintiffs and collective members can do little to increase their profits other than attempt to improve their efficiency within the bounds of the Motor Carrier Act.

49. During all relevant times herein, Plaintiffs and collective members are/were economically dependent on Defendant.

50. During all relevant times herein, Defendant directed, provided, and supervised the work performed by Plaintiffs and collective members on Defendant's behalf.

**Failure to Pay Plaintiffs and Collective Members Minimum Wages for All Hours Worked**

51. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

52. Defendant's pay structure regularly caused Plaintiffs and collective members to make less than the minimum wage as set forth by section 206 of the Fair Labor Standards Act, 29 U.S.C. § 206.

53. Defendant has a policy and practice of making regular deductions from Plaintiff and collective members' pay checks for items including but not limited to: lease payments, communications system rentals, and for an escrow account set aside to cover maintenance of the truck.

54. Additionally, Defendant has failed to reimburse Plaintiffs and collective members for necessary and reasonable business expenses including but not limited to costs of fuel, lubricants, antifreeze, licenses, and insurance.

55. Defendant's pay structure, including both deductions made and its failure to reimburse for all necessary and reasonable business expenses, regularly causes/caused Plaintiffs



and collective members to make wages amounting to less than the federal minimum wage of \$7.25 per hour for all hours worked during a workweek.

**COUNT I**

**Violation of the Fair Labor Standards Act ("FLSA")**

**Failure to Pay Minimum Wages**

56. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

57. At all times relevant herein, Defendant was and continues to be an "employer" of Plaintiffs and collective members within the meaning of the FLSA.

58. At all times relevant herein, Plaintiffs and collective members were/are "employees" within the meaning of the FLSA.

59. At all times relevant herein, Defendant, as well as Plaintiffs and collective members, have been engaged in "commerce" within the meaning of the FLSA, 29 U.S.C. §203.

60. Section 201 of the FLSA, 29 U.S.C. §206, requires employers to minimally compensate employees such as Plaintiffs and collective members at the federal minimum wage rate for all hours worked.

61. Defendant has violated and continues to violate the FLSA by willfully failing to compensate Plaintiffs and collective members at least the federal minimum wage.

62. As a result of Defendant's company-wide policy and practice of not paying Plaintiffs and collective members at least the federally mandated minimum wage for all hours worked, Plaintiffs and collective members have been harmed.

**JURY DEMAND**

63. Plaintiff hereby demands a trial by jury in the above captioned matter.

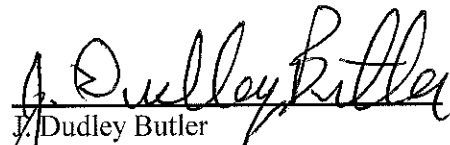
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and collective members, respectfully seeks the following relief:

- a. Judgment against Defendant;
- b. All unpaid minimum wages;
- c. Liquidated damages;
- d. Litigation costs, expenses, and attorneys' fees; and
- e. Such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Dated: June \_\_, 2017

  
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*\*pro hac vice* admission anticipated

# CIVIL COVER SHEET

## I. (a) PLAINTIFFS

## DEFENDANTS

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

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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

Attorneys (If Known)

J. Dudley Butler, Butler Farm and Ranch Law Group PLLC  
499A Breakwater Drive, Benton, MS 39039; 662-673-0091

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

- |   |   |
|---|---|
| <input type="checkbox"/> 1 U.S. Government<br>Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government<br>Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III)   |

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

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other   <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Set TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):  
28 U.S.C. Section 1331

**Brief description of cause:**  
**Violations of the FLSA**

**VII. REQUESTED IN COMPLAINT:**

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

## DEMANDS

**CHECK YES only if demanded in complaint:**

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S)  
IF ANY**

(See instructions):

**JUDGE**

DOCKET NUMBER

DATE  
06/20/2017

SIGNATURE OF ATTORNEY OF RECORD  
/s/ J. Dudley Butler

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

## APPLYING IFP

JUDGE

MAG. JUDGE

34643045493