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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ED CV 12 - 00886

VAP

(OPX)

GABRIEL CILLUFFO, KEVIN SHIRE,
and BRYAN RATTERREE individually
and behalf of all other similarly situated
persons,

Plaintiffs,

vs.

**COLLECTIVE & CLASS
ACTION COMPLAINT**

CENTRAL REFRIGERATED
SERVICES, INC., CENTRAL LEASING,
INC., JON ISAACSON, and JERRY
MOYES,

Defendants

COLLECTIVE & CLASS ACTION COMPLAINT

1. Defendants CENTRAL REFRIGERATED SERVICE, INC ("CRS") and CENTRAL LEASING, INC. ("CLI") are private companies, owned and operated by related individuals (including JON ISAACSON and JERRY MOYES) for a common business purpose, i.e. moving freight interstate for customers of CRS.

2. Plaintiffs are current and former drivers who are lured into a scheme by which:

- a) Defendants treat Plaintiffs as "independent contractors" (also known as "owner operators"), even though Defendants will exert control over every aspect of Plaintiffs' work,
- b) Defendants will lease trucks to Plaintiffs for exclusive re-lease back to CRS,
- c) Plaintiffs cannot drive their leased truck for any other company,
- d) Plaintiffs bear virtually all expenses required to deliver Defendants' freight, and
- e) Defendants coerce Plaintiffs to continue driving trucks for the Defendants for years at a time under threat of crushing financial debt and fear that they will lose the ability to work in the trucking industry again should they leave their employment with Defendants.

3. This case seeks redress under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* for Defendants' failure to pay Plaintiffs minimum wages through misclassification of Plaintiff drivers as "independent contractors" when by law they are employees. This case also seeks redress under the Federal Forced Labor statute, 29 U.S.C. §1589, for Defendants' scheme to tie the drivers treated as independent contractors to labor for Defendants for years under threat of serious harm.

4. Despite the characterization of drivers as independent contractors, CRS exercises virtually the same control over "owner operators" as it does over its

1 employee drivers.

2 5. The Defendants' characterization of CRS's employee workforce as
3 independent contractors is the centerpiece of a labor scheme crafted to allow CRS
4 to charge its employees for the opportunity to work, shift virtually all of its business
5 expenses and business risk to its drivers, coerce drivers into remaining with CRS
6 for years at a time under threat of serious financial harm; defeat all federal and state
7 protections for employees, such as Title VII, FMLA, NLRA and wage protection
8 statutes such as the FLSA and similar state laws. By misclassifying drivers,
9 Defendants also evade the tax burdens that it would bear for employees – Social
10 Security, FUTA, etc. – which are also shifted to the Plaintiff drivers.

11 6. To implement this scheme, CRS and CLI provide the Plaintiff truck
12 drivers an integrated series of forms, the Equipment Lease Agreement ("Lease")
13 and Contractor Agreement ("Contract"), referred to here collectively as
14 "Agreements." CRS and CLI provide the Agreement on a "take it or leave it" basis
15 that must be signed at the time they are provided to the Plaintiffs.

16 7. Although there is language in Defendants' Lease that appears to permit
17 Plaintiffs to work for other trucking companies, in fact, Defendants' Contract
18 specifically prohibits Plaintiffs from doing so. In addition, when signing the lease,
19 Defendant CLI repeatedly verbally emphasizes that Plaintiffs cannot take the truck
20 to another trucking company.

21 8. Defendants do not warranty the trucks that they lease to Plaintiffs and
22 do not guarantee Plaintiffs any amount of work.

23 9. Defendants jointly control Plaintiffs' work and, by law, employ the
24 Plaintiffs to transport goods by truck for CRS's customers. Defendants control
25 when, where, and how Plaintiffs deliver freight. They also control the equipment
26 that Plaintiffs use, including, its operation, maintenance, and condition. Defendants
27 control the amount of hours that Plaintiffs may drive in a week, thereby controlling
28 how much money they can make. Defendants attach a "speed governor" to the

1 trucks they lease to Plaintiffs, so that CRS even controls the speed at which
2 Plaintiffs may drive. Defendants control virtually every aspect of Plaintiffs'
3 performance of CRS's work and the equipment that Plaintiffs use for that work.

4 10. Even though Defendants act as Plaintiffs' employers by law,
5 Defendants benefit greatly by misclassifying Plaintiffs as independent contractors.
6 Plaintiffs fund Defendants' fleet inventory. Defendants charge Plaintiffs tens of
7 thousands of dollars per year for the lease of Defendants' trucks, and they also
8 require Plaintiffs to pay for other equipment, gas, tolls, insurance, bonding, repairs
9 and maintenance, among other items. Defendants charge Plaintiffs directly for a
10 wide variety of employer expenses.

11 11. By misclassifying Plaintiff drivers as independent contractors,
12 Defendants obtain a vast competitive advantage over competitor trucking
13 companies that treat their drivers as employees in compliance with the law.
14 Defendants' pay practices drive down trucker wages across the industry and
15 undercut fair labor practices across the country.

16 12. Defendants force Plaintiffs to labor for them for years at a time, under
17 terms that employees would never be bound to follow. Specifically, Defendants
18 prohibit Plaintiffs from using the truck they lease to drive for other trucking
19 companies. Defendants let Drivers know that if they refuse to work for Defendants
20 during the term of the Agreements, Defendants will treat the Driver as in "default,"
21 Defendants will repossess the leased truck, accelerate all remaining lease payments,
22 thereby imposing crushing debt on the Driver, ruin the Driver's credit rating, and
23 file a negative entry on the Plaintiff Driver's "DAC Report" which is universally
24 used in the trucking industry as a pre-employment screening tool, thereby making it
25 virtually impossible to obtain work as a truck driver again. Defendants also threaten
26 to take these actions if Plaintiffs displease the Defendants or refuse to follow
27 Defendants' work instructions.

28 13. Even though Plaintiffs are tied to working for the Defendants for

1 years, CRS reserves the right to terminate its Contract with Plaintiffs at any time it
2 chooses, which is then contractually defined as a "default" of CLI's Lease by the
3 Driver. Upon characterizing the Defendant's acts as a Plaintiff Driver's default,
4 Defendants immediately repossess the truck and also accelerate the remaining
5 Lease payments and CLI's lost profits which become immediately due and owing.
6 Since a lease for a new truck can cost a Plaintiff over \$100,000, Defendants have
7 the unilateral power to subject Plaintiffs to crushing financial consequences, for any
8 reason or for no reason at all.

9 14. Thus, upon termination of the Contract, Defendants claim they may
10 reap windfall profits, further penalize Plaintiffs, and even prevent Plaintiffs from
11 earning a living using the leased truck -- the essential tool of Plaintiffs' trade --
12 while concurrently demanding excessive and unreasonable liquidated damages
13 upon "default."

14 15. Defendants' ability to put Plaintiffs in default of the Lease at any time
15 provides Defendants with further means to maintain exclusive control over the
16 Drivers' work, and forces Drivers to accept changes to the Contract or Lease
17 imposed unilaterally by Defendants.

18 16. Thus, even though the Contract provides that either party may
19 terminate the Contract, Plaintiffs cannot reasonably do so, because to do so also
20 would trigger a "default" of the Lease resulting in the same severe financial
21 penalties as if Defendant had terminated the Contract.

22 17. Plaintiffs are thereby forced to endure working under Defendants'
23 exclusive control for leases lasting as long as three years, even when they are being
24 paid sub-minimum wages, while Defendants on the other hand, may fire Plaintiffs
25 at any time, while calling that termination a "default" by the driver, and even exact
26 further profits from doing so.

27 JURISDICTION AND VENUE

28 18. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the

1 Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the
2 United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress
3 regulating commerce. Jurisdiction over Plaintiffs' claims for declaratory relief is
4 conferred by 28 U.S.C. §§2201 and 2202.

5 19. Plaintiffs' claims involve matters of national or interstate interest.

6 20. Defendants conduct business in this District. Defendants maintain
7 facilities for the conduct of business within the Central District of California. One
8 of Defendants' four terminals in the United States is located in Fontana, California,
9 within the Central District of California. Defendant employs terminal managers and
10 dispatchers in the Central District of California. Defendant maintains facilities in
11 the Central District of California at which drivers can have repairs and maintenance
12 performed on their trucks, park their trucks, park their trailers for swapping out
13 loads, and obtain fuel. Defendants have a company-sponsored CDL training facility
14 in the Central District of California. The named Plaintiff drivers drive for
15 Defendants into and out of the Fontana terminal and deliver freight for Defendants
16 through and to the Central District of California.

17 21. Venue is proper in the Central District of California, pursuant to 28
18 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to
19 the claim occurred in this District, one Plaintiff and at least one Defendant reside in
20 this District.

21 PARTIES

22 A. Plaintiffs

23 22. Plaintiff GABRIEL CILLUFFO is a natural person residing in
24 Highland California. CILLUFFO leased a truck from Defendants and signed
25 Defendants' form Agreements. As a matter of law, Plaintiff CILLUFFO was an
26 employee of Defendants as described herein. Plaintiff CILLUFFO worked for
27 Defendants in California and other states.

28 23. Plaintiff KEVIN SHIRE is a natural person residing at 890 Norse

1 Avenue, Sacramento CA 95864. Plaintiff SHIRE leased a truck from Defendants
2 and signed Defendants' form Agreements. As a matter of law, Plaintiff SHIRE was
3 an employee of Defendants as described herein. Plaintiff Shire worked for
4 Defendants out of the Fontana, California terminal and drove for Defendants in
5 California and other states.

6 24. Plaintiff BRYAN RATTERREE is a natural person residing in the
7 state of Washington. RATTERREE leased a truck from Defendants and signed
8 Defendants' form Agreements. As a matter of law, Plaintiff RATTERREE was an
9 employee of Defendants as described herein. Plaintiff RATTERREE worked for
10 Defendants out of the Fontana California terminal and drove for Defendants in
11 California and other states...

12 25. Plaintiffs were engaged in commerce in their work for Defendants.

13 26. The Named Plaintiffs bring claims under the Fair Labor Standards Act,
14 individually and on behalf of a collective action class as further described herein.

15 27. The Named Plaintiffs bring claims under the Federal Forced Labor
16 Statutes, 18 U.S.C. §§ 1589 and 1595, individually and on behalf of a FORCED
17 LABOR class, under Fed. R. Civ. P. Rule 23, as further described herein.

18 **B. The FLSA Collective Action Class**

19 28. The term "Plaintiff" or "Plaintiffs" as used in this Complaint refers to
20 the named Plaintiffs and any additional represented Class Members pursuant to the
21 collective action provision of 29 U.S.C. §216(b). The named Plaintiffs bring this
22 case under the collective action provision of the FLSA as set forth in 29 U.S.C.
23 §216(b) on behalf of themselves and a class of persons throughout the U.S.
24 consisting of "all truckers who lease a truck from Central Leasing, Inc. to drive for
25 CENTRAL REFRIGERATED SERVICE, Inc. during the three years preceding the
26 filing of the initial complaint and up through the date of final judgment herein and
27 subject to any equitable tolling for any applicable portion of the limitation period."

28 29. Excluded from any Collective Action Class are Defendants' legal

1 representatives, officers, directors, assigns, and successors, or any individual who
2 has, or who at any time during the class period has had, a controlling interest in any
3 Defendants.

4 **C. The Rule 23 Forced Labor Class**

5 30. The Second Cause of Action is properly maintainable as a class action
6 under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact
7 common to the Forced Labor Class that predominate over any questions solely
8 affecting individual members of the Class and that will be resolved by common
9 answers including but not limited to:

- 10 a. Whether Defendants are or were Plaintiffs' employers;
11 b. Whether Defendants' scheme, caused Plaintiffs to engage in forced
12 labor for Defendants in violation of the federal forced labor statutes;
13 c. The nature and extent of Class-wide injury and the appropriate
14 measure of damages for the Classes.

15 31. The claims of Plaintiffs are typical of the claims of the Class they seek
16 to represent. Plaintiffs and the Class members work or have worked for Defendants
17 and have been subjected to a common policy, practice and scheme that forces
18 Plaintiffs to work for Defendants for long periods of time under threat of serious
19 harm. Defendants acted and refused to act on grounds generally applicable to the
20 Class, thereby making declaratory relief with respect to the Class appropriate.

21 32. Plaintiffs will fairly and adequately represent and protect the interests
22 of the Class.

- 23 a. Plaintiffs understand that, as class representatives, they assume a
24 fiduciary responsibility to the Class to represent its interests fairly and
25 adequately.
26 b. Plaintiffs recognize that as class representatives, they must represent
27 and consider the interests of the Class just as they would represent and
28 consider their own interests.

- 1 c. Plaintiffs understand that in decisions regarding the conduct of the
2 litigation and its possible settlement, they must not favor their own
3 interests over those of the Class.
- 4 d. Plaintiffs recognize that any resolution of a class action lawsuit,
5 including any settlement or dismissal thereof, must be in the best
6 interests of the Class.
- 7 e. Plaintiffs understand that to provide adequate representation, they must
8 remain informed of developments in the litigation, cooperate with
9 class counsel by providing them with information and any relevant
10 documentary material in their possession, and testify, if required, in a
11 deposition and in trial.

12 33. Plaintiffs have retained counsel competent and experienced in complex
13 class action employment litigation.

14 34. A class action is superior to other available methods for the fair and
15 efficient adjudication of this litigation - particularly in the context of wage litigation
16 like the present action, where individual Plaintiffs may lack the financial resources
17 to vigorously prosecute a lawsuit in federal court against one of the larger truckload
18 carriers in the United States. The members of the Class have been damaged and are
19 entitled to recovery as a result of Defendants' common and uniform policies,
20 practices, and procedures. In addition, class treatment is superior because it will
21 obviate the need for unduly duplicative litigation that might result in inconsistent
22 judgments about Defendants' practices.

23 **D. Defendants**

24 35. Upon information and belief, Defendants are related business
25 corporations having an office and place of business in Utah.

26 36. Defendant CRS is a privately owned Nebraska corporation with its
27 principal office address at 5175 W 2100 S West Valley City, UT 84120.

28 37. Defendant CRS is a motor carrier, engaged in interstate shipment of

1 freight.

2 38. Defendant CLI is a privately owned Nevada corporation with its
3 principal address at 5175 W 2100 S West Valley City, UT 84120.

4 39. Defendant CLI has an office and place of business at the very same
5 location as CRS.

6 40. Defendant CLI is related to CRS. It leases trucks to truckers who will
7 drive for CRS. It requires truckers who sign Leases to sign Contracts with CRS.

8 41. Defendant CLI leases trucks to CRS employees for the purpose of
9 helping CRS further its shipping business.

10 42. Upon information and belief, trucks leased to Plaintiffs through CLI
11 are registered with the state department of motor vehicles to CRS.

12 43. Upon information and belief, CLI and CRS are owned and operated by
13 same principal shareholders or their relatives.

14 44. Upon information and belief, CLI and CRS have interlocking and
15 overlapping officers and directors.

16 45. JON ISAACSON is the Chief Executive Officer of both CLI and CRS
17 and, upon information and belief, has an ownership interest in both companies.

18 46. Upon information and belief, Defendant ISAACSON maintains offices
19 for his work with both CRS and CLI at the headquarters address for both
20 companies, 5175 W 2100 S West Valley City UT 84120.

21 47. JERRY MOYES is the Director of CRS and, upon information and
22 belief, has an ownership interest in both companies.

23 48. Upon information and belief, Defendant MOYES maintains offices for
24 his work at the headquarters address for both Defendant companies, 5175 W 2100 S
25 West Valley City UT 84120.

26 49. Defendants conduct business throughout the country.

27 50. CLI leases trucks to citizens of California as well as other states.

28 51. Upon information and belief, Defendants each grossed more than

1 \$500,000 in each of the last six calendar years, individually and collectively.

2 52. Defendants are enterprises engaged in interstate commerce for
3 purposes of the Fair Labor Standards Act.

4 53. Defendants have common control and a common business purpose and
5 are operated as a single enterprise, within the meaning of 29 U.S.C. 203(r)(1).

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

8 **FACTS**

9 **Misrepresentation That Plaintiffs Would Earn 15 to 43% More As** 10 **Owner Operators.**

11 55. Through emails, Qualcomm messages, and through CRS's website,
12 Defendants repeatedly represent to their "company driver" employees that they will
13 earn much more as "owner operators" than they do as company drivers. Defendants
14 regularly represent that owner operators will earn \$15,000 more than company
15 drivers. Defendants' website states that "Upon becoming a lease operator, the
16 driver's average income will increase by nearly \$15,000 per year." The website also
17 states that "Company drivers average between \$35,000 to \$40,000 in their first year
18 of employment with Central Refrigerated." Thus, the website promise of \$15,000
19 more in increased earnings for owner operators is equivalent to 37 to 43% more in
20 pay.

21 56. Upon information and belief, the vast majority of Owner Operators do
22 not earn 15 to 43 percent more than company drivers (employees). Upon
23 information and belief, nor do average earnings for owner operators amount to 15
24 to 43 percent more than earnings of company drivers. Upon information and belief,
25 Defendants possess all financial data necessary to know that its representations
26 concerning increased earnings are false.

27 **The Contract and Lease Generally**

28 57. CRS and CLI presented Plaintiffs with an integrated series of

1 preprinted forms, including the Equipment Lease Agreement ("Lease") and
2 Contractor Agreement ("Contract"), referred to collectively as "Agreements," to
3 lease Plaintiffs trucks owned by Defendants, and purporting to make Plaintiffs
4 independent "owner-operator" "business partners" of CRS.

5 58. Plaintiffs who sign a Lease with CLI are required to simultaneously
6 sign a Contract with CRS. The CLI Lease and CRS Contract are part of a package
7 that truckers are required to sign in toto.

8 59. CRS and CLI do not permit Plaintiffs to take a copy of the Lease and
9 Contract off the premises to review prior to signing. Plaintiffs are made to sign the
10 Lease and Contract "then and there" on Defendants' premises.

11 60. In many cases, Plaintiffs are made to review the Agreements at
12 locations far from their home, with no practical way home, other than by signing
13 the Agreements in order to lease the truck as a means of transportation.

14 61. The Lease portion of the form Agreement binds Plaintiffs for a term
15 generally ranging from one to three years. The Leases require Plaintiffs to make
16 weekly repayment of a portion of the total Lease term. For example, \$500 per week
17 or more was deducted from each named Plaintiff's wages for the lease of the
18 Defendants' truck.

19 62. The Contract portion of the form Agreement is for one year,
20 automatically renewable thereafter.

21 63. Under the Contract, CRS pays Plaintiffs by mileage rates.

22 64. Defendants forbid Plaintiffs to drive their leased trucks for any other
23 trucking companies, yet Defendants do not guarantee any amount of work to
24 Plaintiffs.

25 65. The Contracts permit unilateral modifications by Defendants, upon
26 notice to Plaintiffs.

27 66. Defendants sometimes demand that Plaintiffs accept Defendants'
28 unilateral Contract modifications during the term of their Contracts. Defendants are

1 able to obtain Plaintiffs' consent to these changes because otherwise Defendants
2 have the ability to terminate Plaintiffs, effectively causing Plaintiffs to be labeled as
3 in default on their Leases.

4 67. If a driver is "in default" Defendants seize the driver's truck and hold
5 him or her liable for all remaining Lease payments, and make negative entries on
6 Plaintiffs' DAC reports. Defendants are also able to obtain Plaintiffs' consent to
7 contract modifications because Defendants can refuse to dispatch Plaintiffs to new
8 jobs until they agree to the modifications or because Defendants can place Plaintiffs
9 on "safety holds" that prevent them from working until they agree to the
10 modifications.

11 68. These Contract changes are invariably in favor of Defendants at
12 Plaintiffs' expense.

13 69. The Lease and Contract are unlawful and unconscionable, insofar as
14 they purport to allow Defendants to (a) employ Plaintiffs but treat them as
15 independent contractors; (b) terminate the Plaintiffs' Lease and Contract and
16 repossess the truck but nevertheless require Plaintiffs to continue to make Lease
17 payments; (c) coerce Plaintiffs to remain as employees under threat of serious
18 harm; (d) shift Defendants' costs and risks of doing business to Plaintiffs; (e) make
19 Plaintiffs responsible for the costs of carrying and maintaining Defendants' fleet
20 and equipment; and (f) exact profits and reimbursements from their employees.

21 **Defendants' Control of Plaintiffs/Plaintiffs as Employees of Defendants**

22 70. Plaintiffs fulfill the primary business in which CRS engages – the
23 transportation of goods.

24 71. While the Contracts state that Plaintiffs are independent contractors,
25 these contracts allow Defendants to exert nearly complete control over Plaintiffs'
26 work and explicitly state that Plaintiffs cannot work for other companies during the
27 term of the Contract.

28 72. Defendants CRS's contract states, "The parties acknowledge that

1 CONTRACTOR will be operating under the operating authority grant to
2 COMPANY by the Federal Motor COMPANY [sic] Safety Administration
3 ("FMCSA"). As required by the DOT Leasing Regulations, the Equipment shall be
4 for COMPANY's exclusive possession, control and use for the duration of the
5 Agreement, and COMPANY shall assume complete responsibility for the operation
6 of the Equipment during such time. ... While CONTRACTOR is operating under
7 COMPANY's operating authority, CONTRACTOR may not haul goods for any
8 third party and while operating the Equipment ... CONTRACTOR agrees not to
9 exceed a driving speed of sixty-five (65) miles per hour or any applicable lower
10 speed limit."

11 73. Defendants control Plaintiffs' work to the extent that they are, by law,
12 employees of Defendants.

13 74. Defendants dispatch Plaintiffs to jobs that it wishes them to perform.
14 Defendants control the amount of miles driven per week and the amount of money
15 Plaintiffs can earn as a driver.

16 75. Defendants monitor and control the time of Plaintiffs' departure and
17 the time of arrival. Defendants can monitor and dictate the route Plaintiffs will
18 travel. Defendants give job instructions through the Qualcomm on-board
19 computer/GPS system, and by telephone. Defendants monitor Plaintiffs' exact
20 location, speed, route compliance, ETA, rest time and driving time and other
21 aspects of job performance through the Qualcomm device. Defendants also affix a
22 "speed governor" to the truck which regulates engine RPM so that a driver may not
23 exceed the company's speed limits, even when state or federal law permits a higher
24 speed. Defendants can seize the truck if Plaintiff does not deliver a load correctly or
25 on time.

26 76. CLS does not allow truckers who lease its equipment to drive for any
27 motor carrier other than CRS, despite Lease provisions to the contrary, thereby
28 ensuring their exclusive control over Plaintiffs work.

1 77. Defendants prohibit Plaintiffs from freely using the trucks they lease
2 from Defendants by a variety of means, including but not limited to the Contract
3 explicitly stating that CRS shall have exclusive control over the equipment during
4 the term of the Contract.

5 78. Thus, while the Contract purports to permit Plaintiffs to be
6 independent contractors, Plaintiffs are compelled to work only for CRS during the
7 terms of their contracts, doing the primary work that CRS performs in the market –
8 trucking of goods for CRS's customers.

9 79. Plaintiffs are not "in business for themselves" to any extent greater
10 than a regular employee of CRS, except insofar as they take on CRS's business
11 expenses and pay CRS's employer share of social security taxes.

12 80. As set forth above, CRS determines how much work will be allocated
13 to each driver. When Plaintiffs cannot obtain enough work to earn enough to make
14 their truck payments and/or earn a living wage, CRS, at times, will provide loans to
15 drivers with interest, and with an increase in the performance bond maintained by
16 CRS. By giving loans, CRS keeps Plaintiffs owing even more money each month
17 and the money to repay the principal, repay the interest, and to increase the
18 performance bond, is deducted from wages. Exactly like a company store, this
19 constant debt to CRS enhances its control over Plaintiffs, as drivers must earn more
20 money to repay the various debts that they owe to CRS, make truck payments, and
21 avoid default of the CLI Lease. Thus, these loans further enhance Defendants'
22 control over Plaintiffs.

23 81. Defendants' misclassification of Plaintiffs as independent contractors
24 caused them loss of wages, additional tax burdens, insurance obligations and a
25 variety of other monetary and non-monetary compensable harm.

26 **The Shifting of Business Expenses/Minimum Wage Violations**

27 82. By the Agreements, Defendants force Plaintiffs to bear Defendants'
28 business expenses. Defendants require Plaintiffs to pay for the truck being used for

1 Defendants' business purpose, the Qualcomm device by which Defendants send
2 instructions to Plaintiffs, monthly Qualcomm administrative fees, liability
3 insurance, (indemnifying CRS and CLI), taxes, tolls, equipment, gas, truck
4 maintenance, and a variety of other charges, including those designed solely to
5 cover Defendants' administrative expenses and Defendants' profit. Defendants
6 claim the right to claim depreciation on the leased trucks on their tax returns.

7 83. Defendants (or agents arranged by Defendants) handle the
8 administration of taxes, licensure, registration, bonding, insurance, tolls, gas, and
9 accounting related to Plaintiffs' trucks, for Defendants' own protection, but pass
10 along all these costs (generally with a markup for profit) to the Plaintiffs.

11 84. Plaintiffs are required to pay money to Defendants for a performance
12 bond. Under the Contract, Defendants are authorized to deduct from the bond the
13 various expenses that they have shifted to Plaintiffs in the event that Plaintiffs do
14 not pay them, including for vehicle licenses, insurance, loss or damage to cargo,
15 personal injury or property damage, parts or service, administrative costs, taxes,
16 failure to properly or timely deliver freight, Qualcomm leasing, loss or damage to
17 CRS-owned trucks, and fines or penalties.

18 85. Defendants' scheme as described herein shifts virtually all of the costs
19 of maintaining CRS's fleet and general business operations to Plaintiffs, but keeps
20 all the benefits. This scheme also shifts the risk of a downturn in the trucking
21 business from Defendants to Plaintiffs, since Defendants are not obligated to give
22 Plaintiffs any specific amount of work.

23 86. CRS fails to pay the wages required by law free and clear to the
24 Plaintiff employees.

25 87. Instead, CRS calculates the pay for Plaintiffs by a weekly accounting
26 that makes deductions from the mileage pay due to Plaintiffs for the various
27 business expenses it and CLI shifts to Plaintiffs. Additionally, Plaintiffs are made to
28 bear Defendants' business expenses out of their own pockets. Such expenses

1 constitute de facto deductions from Plaintiffs' pay.

2 88. In many weeks, the deductions from Plaintiffs' pay yield wages below
3 federal minimum wage guarantees. Thus, Defendants failed to pay Plaintiff the
4 minimum wage for each hour worked.

5 **Termination of the Contract as Default Under the Lease/Forced Labor**

6 89. The Contracts allow CRS to terminate Plaintiffs' Contracts, with or
7 without cause, on 10 days' notice.

8 90. Upon information and belief, CRS terminates Drivers' contracts
9 regularly without 10 days' notice.

10 91. The CLI Leases allows CLI to treat CRS's termination of Plaintiffs as
11 a "default" by Plaintiffs.

12 92. If a Plaintiff is put in default by CRS, Defendants take possession of
13 the truck, thereby depriving Plaintiffs of their means of livelihood, and claim
14 "liquidated damages" under a provision that guarantees all remaining Lease
15 payments (which can be a hundred thousand dollars or more), including anticipated
16 profits to CRS. This is so even though Defendants' own unilateral conduct
17 terminating the contract may have caused the "default." The Lease allows for
18 liquidated damages despite the fact that any actual losses to CLI are capable of
19 determination and mitigation through re-leasing the truck, and that any losses are
20 far less than what Defendants unreasonably claim from their truckers. Even more
21 onerous to the Plaintiffs is that the Lease provides for acceleration of these lease
22 payments.

23 93. Furthermore, if Defendants characterize a Plaintiff as in "default" for
24 any reason, Defendants report Plaintiffs' amounts due to credit reporting agencies
25 (thereby impeding Plaintiffs' ability to work for other carriers) and report Plaintiffs'
26 "default" to DAC (thus seriously impeding or denying their ability to obtain future
27 employment).

28 94. Although the Agreements allow for Plaintiffs to terminate these

1 contracts, Plaintiffs are not free to do so, because terminating a Contract is also
2 termed a "default" in the Lease, leading to the same severe financial and
3 reputational consequences for Plaintiffs as if Defendants has terminated the
4 Contracts.

5 95. The ability to terminate the Contractor Agreement is not mutual,
6 because there are severe adverse consequences to a Plaintiff regardless of which
7 party terminates it, including repossession of the truck and the trucker's liability to
8 Defendants for liquidated damages, negative DAC reporting, and Defendants'
9 ability to exact profit from characterizing the Driver as in "default."

10 96. Additionally, the Agreements provide Defendants remedies to collect
11 money owed for breach or termination but do not provide these same remedies to
12 Plaintiffs, who might be owed wages upon termination. For example, Defendants
13 are able to engage in self-help repossession of the leased trucks, take funds from
14 Plaintiffs' maintenance and escrow accounts, make negative entries in Plaintiffs'
15 DAC reports or credit reports, among other remedies.

16 97. In effect, the Lease (along with Defendants' ability to require Plaintiffs
17 to drive only for Defendants) provides Defendants with the means to pressure and
18 coerce Plaintiffs into allowing Defendants to maintain exclusive control over their
19 work for a period of years and to impose whatever conditions they wish, because
20 Plaintiffs fear being terminated and then becoming subject to the "default"
21 provision in the lease and its myriad negative consequences.

22 98. If Plaintiffs are terminated or choose to terminate their contract,
23 Plaintiffs are deemed to have defaulted on the lease, allowing Defendants to reap
24 windfall profits, take the truck, report them to credit agencies and HireRight, and
25 prevent them from obtaining future employment in their chosen profession.

26 99. Defendants' scheme is designed to force the continued labor of
27 Plaintiffs by using threats of serious financial harm through explicit threats to
28 impose, enforce, and collect significant debts of up to a hundred thousand dollars or

1 more on plaintiffs, prohibit Plaintiffs from pursuing their profession by submitting
2 negative entries on their DAC trucker employment report (so that other trucking
3 companies will not hire them), and to report the "default" to credit bureaus so the
4 Driver's credit is destroyed and he or she will not be able to become an owner
5 operator with another trucking company.

6 **Individual Plaintiff Facts**

7 100. Plaintiff CILLUFFO began working for CRS as an employee, or
8 company driver, in or about July 2010.

9 101. While he was a company driver, CRS repeatedly promised CILLUFFO
10 and other employees that he (and they) could make nearly \$15,000 more as a
11 company driver, or 15-30 percent more money as an owner operator. Plaintiff
12 CILLUFFO was told repeatedly that he would get more miles, that he would be
13 given priority in the assignment of miles, and would make more money as an owner
14 operator.

15 102. Plaintiff CILLUFFO relied on Defendant's postings on the website and
16 on bulletin boards about the additional income he could earn as an owner operator.

17 103. In reliance upon the CRS promises, CILLUFFO signed Defendants'
18 form agreements to become an owner operator in March 2011.

19 104. Plaintiff CILLUFFO began his Lease with CLI in March of 2011.

20 105. Plaintiff CILLUFFO did not make \$15,000 more during his work as an
21 owner operator.

22 106. Plaintiff CILLUFFO did not make 37.5 to 43 percent more as an
23 owner operator.

24 107. Plaintiff CILLUFFO did not make 15-30 percent more as an owner
25 operator.

26 108. In some weeks of work, Plaintiff CILLUFFO did not make any
27 earnings at all, and in fact, was treated by the Defendants as owing them money for
28 the work he performed for their benefit.

1 109. On or about June 14, 2011 Defendants terminated CILLUFFO's
2 contract for allegedly being late with a load, which they claimed was a "service
3 failure" despite the fact that CILLUFFO had notified the company via the QualCom
4 device 17 hours in advance that he needed to be rescheduled or for them to arrange
5 for the load to be taken by another driver.

6 110. On June 22, 2011 Plaintiff CILLUFFO received a letter from CLI
7 stating that he had "chosen to terminate his Contractor Agreement with Central
8 Refrigerated Service, Inc., as of 2011-06-14 00:00:00, which in turn has left you in
9 default of your lease." This letter also stated:

10 "Your decisions to terminate the contractor agreement and default on your
11 lease will affect you in the following ways:

12 -The remaining balance on your lease will be reported to a credit agency
13 showing as a default on your personal credit report.

14 -You will remain responsible for any applicable lease payments, damage to
15 the tractor (other than normal wear and tear), insurance premiums, or other
16 deductions until the truck is re-seated and/or released to another contractor...

17 -Central Refrigerated Service, Inc. has a policy to report all drivers' records
18 to DAC reporting agency. You will have a "lease default" on your record along
19 with any other applicable information regarding your performance as a contractor
20 with Central..."

21 111. Plaintiff CILLUFFO also received a Lease Default memo from CFI
22 dated 6/14, 2011 that is "authorization to report the following Lessee(s) to the
23 Credit Bureau for default of Lease #18807." This memo showed the Lease default
24 balance to be \$87,169.00.

25 112. Plaintiff SHIRE began working for CRS as an employee in or about
26 January 2009. He worked as an employee for approximately three months. CRS
27 repeatedly promised SHIRE and other employees that he (and they) could make 15-
28 30 percent more money as an owner operator. In reliance upon the CRS promises,

1 SHIRE signed Defendants' form agreements to become an owner operator in April
2 2009.

3 113. Plaintiff SHIRE began his Lease with CLI in April of 2009 and
4 worked as an owner operator until approximately January of 2010.

5 114. During many weeks of work, Plaintiff SHIRE had no earnings at all,
6 and owed the company more money for expenses than he had earned.

7 115. Plaintiff SHIRE worked for Defendants on a "dedicated route." As an
8 owner operator driving a dedicated route, Plaintiff SHIRE was unable to refuse a
9 load offered by the company. If he did so, he would lose his dedicated route.

10 116. In or about January of 2010 Defendant CRS terminated SHIRE from
11 employment.

12 117. At the time of his termination, Defendants claimed that SHIRE was
13 due no money in earnings and that he owed them money.

14 118. Upon terminating SHIRE's services, Defendants demanded and took
15 possession of the leased truck, refused to release it to another driver, took
16 approximately \$2,000 in SHIRE's maintenance account, for debts they alleged to be
17 due, kept approximately \$1,500 due him in unpaid mileage payments, again
18 claiming Shire owed this amount, and began billing him for approximately \$1,500
19 they claimed was due. Defendants referred this amount to a collections agency
20 which began dunning Mr. Shire. Defendants reported this amount to credit
21 reporting agencies as an unpaid debt due to them. In addition, Defendants made
22 negative entries in Plaintiffs' DAC reports in order to prevent him from finding
23 work with another trucking company. The negative DAC report kept Plaintiff from
24 finding other work as a driver.

25 119. Because Defendants had treated SHIRE as an independent contractor,
26 he was unable to claim workers' compensation benefits to cover the period of time
27 he was unable to work.

28 120. Plaintiff RATTERREE began working for CRS as an employee in

1 September of 2010. CRS repeatedly promised RATTERREE and other employees
2 that he (and they) could make 15-30 percent more money as an owner operator.
3 Defendant CRS sent Plaintiff RATTERREE many messages through his
4 Qualcomm device when he completed loads stating how much he would have made
5 on that load if he was an owner operator. He also was given a document by
6 Defendant called "Pay Package Comparison" that showed an annualized income of
7 \$34,172.32 for company drivers driving 2800 miles a week compared with owner
8 operators earning \$49,817 for the same number of miles driven in a week, a 30%
9 increase in income. As he was engaged to be married and wanted to help his fiancé
10 thru college, RATTERREE believed CRS's representations and thought becoming
11 an owner operator under the terms promised by Defendants was a good financial
12 plan. In reliance upon the CRS promises, RATTERREE signed Defendants' form
13 agreements to become an owner operator in November 18, 2010.

14 121. Plaintiff RATTERREE did not make \$15,000 more, nor 15 to 30%
15 more as an owner operator. Plaintiff RATTERREE made less money as an owner
16 operator.

17 122. During many weeks of work for Defendants, Plaintiff RATTERREE
18 earned no money at all and was treated as owing Defendants for the work he
19 performed on their behalf. Over the entire period that he was an owner operator,
20 RATTERREE had negative income – i.e. he owed more money than he received.

21 123. When Plaintiff RATTERREE told Defendants that he no longer
22 wanted to be in his truck because of the number of weeks with negative pay
23 settlements, he was threatened by Defendants that CRS would place negative marks
24 on his DAC and credit report, and that he would suffer legal penalties from
25 Defendants needing to repossess the truck, fix any damages, or do any basic upkeep
26 needs that the truck required at the time it was returned to the terminal.

27 124. On or about December 27, 2010, while RATTERREE was in the
28 terminal in Salt Lake City, Defendant unilaterally repossessed RATTERREE's

1 truck. Defendant had security guards surround RATTERREE and tell him that his
2 driver manager "would be accepting his resignation." Defendant then demanded his
3 truck and disabled it so it could not be driven.

4 125. Thereafter, Plaintiff RATTERREE was dunned by Partner's Financial
5 Services Inc. on behalf of Defendant for \$844.02, \$2661.76, and \$1339.45, totaling
6 \$4,845.22 for amounts that Defendants claimed he owed.

7 126. As an employee company driver, Plaintiff RATTERREE received
8 gross wages of \$5934.25 for about two and a half months work (an approximate
9 weekly average of \$540). When his work was characterized as an independent
10 contractor Owner Operator, his weekly settlements were: (\$3.43), [amount
11 unknown], \$220, (\$849), (\$1142), (\$1044), (\$3545) [amounts in parentheses are
12 negative numbers].

13 **Defendants' Actions Were Willful and Defendants' Unlawful Practices**
14 **Were Widespread**

15 127. Defendants' failure to pay Plaintiffs the proper wages required by law
16 was willful.

17 128. Defendants' unlawful conduct, as set forth in this Class Action
18 Complaint, has been intentional, willful, and in bad faith, and has caused significant
19 damages to Plaintiffs and the Class.

20 129. Defendants were aware or should have been aware that the law
21 required them to pay Plaintiffs and the Plaintiff Class members minimum wages for
22 each workweek.

23 130. Upon information and belief, Defendants apply the same unlawful
24 policies and practices to the Plaintiffs in every state in which they operate.

25 **FIRST CAUSE OF ACTION**
26 **(FAIR LABOR STANDARDS ACT)**
27

28 131. Plaintiffs re-allege and incorporate by reference all allegations in all

preceding paragraphs

132. Defendants failed to pay minimum wages to Plaintiffs in violation of the Fair Labor Standards Act, 29 U.S.C. §206 et seq. and its implementing regulations.

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

134. Defendants' failure to comply with the FLSA minimum wage protections caused Plaintiffs to suffer loss of wages and interest thereon.

SECOND CAUSE OF ACTION

(FORCED LABOR)

135. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

136. Defendants obtained the continuous labor of Plaintiffs by using threats of serious harm.

137. Defendants operated a scheme, plan or pattern intended to cause Plaintiffs to believe that non-performance of labor would result in serious harm.

138. Defendants threatened Plaintiffs that they would use the legal system, debt collection system, and DAC Reports to enforce the crushing debt that defendants' Lease and Contract operation imposed on Plaintiffs.

139. Defendants' scheme, plan or pattern caused Plaintiffs to engage in forced labor for Defendants in violation of the federal forced labor statutes, 18 U.S.C. §§ 1589 and 1595.

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1 WHEREFORE, Plaintiffs request that this Court enter an Order:

2 1. With respect to the FLSA violations

- 3 a. Declaring that Defendants violated the FLSA;
- 4 b. Approving this action as a collective action and directing that
- 5 Notice be issued to all Class Members;
- 6 c. Declaring that Defendants' violations of the FLSA were willful;
- 7 d. Granting judgment to Plaintiffs and represented parties for their
- 8 claims of unpaid wages as secured by the Fair Labor Standards
- 9 Act, as well as an equal amount in liquidated damages and
- 10 interest; and
- 11 e. Awarding Plaintiffs and represented parties their reasonable
- 12 attorneys' fees and costs of suit including expert fees and
- 13 interest.

14 2. With respect to the Forced Labor Claim:

- 15 a. Certifying this action as a class action;
- 16 b. Designating Plaintiffs as Class Representatives;
- 17 c. Designating the undersigned counsel as Class Counsel;
- 18 d. Entering a declaratory judgment that the practices complained of
- 19 herein are unlawful;
- 20 e. Fashioning appropriate equitable and injunctive relief to remedy
- 21 Defendants' violations of law, including but not necessarily
- 22 limited to an order determining that the contract is void, or
- 23 voidable, or alternatively severing any unconscionable clauses
- 24 and enjoining Defendants from continuing their unlawful
- 25 practices as described herein;
- 26 f. Awarding statutory, compensatory and punitive damages,
- 27 liquidated damages, appropriate statutory penalties, and
- 28 restitution to be paid by Defendants according to proof;

- 1 g. Awarding Pre-judgment and Post-Judgment interest, as provided
2 by law;
3 h. Granting such other legal and equitable relief as the Court may
4 deem just and proper; and
5 i. Awarding attorneys' fees and costs of suit, including expert fees,
6 interest, and costs.

7
8 Dated: June 1, 2012


9 Respectfully Submitted,

10 Schonbrun DeSimone Seplow
11 Harris Hoffman & Harrison LLP

12 Getman & Sweeney, PLLC

13 Martin & Bonnett, PLLC

14 Edward Tuddenham

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19 BY: 
20 Benjamin Schonbrun
21 ATTORNEY FOR PLAINTIFFS
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