IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

Case No. 2002 CA __________

PAUL GAGNON, individually and through class representation on behalf of a class consisting of all other similarly situated owner-operators,

Plaintiff,

Vs.

SERVICE TRUCKING, INC., a Florida corporation,

Defendant.

____/

CLASS ACTION COMPLAINT FOR DAMAGES, DECLARATORY RELIEF, AND INJUNCTIVE RELIEF; DEMAND FOR JURY TRIAL

Plaintiff, Paul Gagnon, individually and through class representation on behalf of all other similarly situated owner-operators (hereinafter referred to as "Plaintiff") sues Defendant, Service Trucking, Inc., a Florida corporation, (hereinafter referred to as "Defendant") and alleges as follows:

General Allegations

1. Defendant is a Florida corporation whose principal place of business is located at 2815 Highway 44 West, Eustis, Florida, 32726.

2. Defendant is a federally regulated motor carrier engaged in providing transportation services to the shipping public and is an "authorized carrier" within the meaning of 49 C.F.R. §376.2(a).

3. Defendant is a "lessee" within the meaning of 49 C.F.R. §376.2(g).

4. Plaintiff is a resident of the State of Florida and an independent owner-operator who leases motor vehicle equipment and provides services to Defendant.

5. Plaintiff brings this action on behalf of himself and on behalf of all other similarly situated owner-operators (hereinafter referred to as the "Potential Class Members") and seeks monetary damages and declaratory, injunctive, and other equitable relief.

6. Plaintiff and the Potential Class Members are "lessors" within the meaning of 49 C.F.R. §376.2(f) and are "owners" within the meaning of 49 C.F.R. §376.2(d).

7. The vehicles provided for use to Defendant by Plaintiff and the Potential Class Members are "equipment" within the meaning of 49 C.F.R. §376.2(b).

8. Plaintiff and the Potential Class Members are independent truck owner-operators who provide the use of their vehicles and driving services to regulated motor carriers by means of lease agreements entered into between the regulated carrier (the lessee) and the owner-operator (the lessor).

9. Owner-operators are typically small business men and women who own and operate Class 7 and 8 trucks (large tractor-trailers) in interstate commerce. Owner-operators typically lease their equipment, with drivers, to authorized carriers operating under the authority granted by the U.S. Department of Transportation ("DOT") and formerly by the Interstate Commerce Commission ("ICC"). Each such lease is regulated under Title 49, Subpart B, Chapter III, Part 376 of the Code of Federal Regulations (49 C.F.R. §376 et seq.). Owner-operators comprise one of the primary sectors of the interstate motor carrier industry, accounting for an estimated forty percent (40%) of all intercity truck traffic in the United States. The number of owner-operators nationwide totals in the hundreds of thousands.

10. Pursuant to Federal law, owner-operators generally are compensated for their services on a per-load basis and are entitled to a percentage share of the revenues paid to the regulated carrier by shippers. The owner-operator receives his or her sole payment in the form of "settlement checks" issued to the owner-operator by the regulated carriers pursuant to a lease agreement.

11. The regulations governing the lease agreements between owner-operators and authorized carriers are known as the truth-in-leasing laws and arose to protect truckers from the deceptive, unfair, and unscrupulous practices of authorized carriers.

12. The purpose of the truth-in-leasing laws is to provide full disclosure between the authorized carrier and the owner-operator of the elements, obligations, benefits and burdens of the relationship between owner-operators and authorized carrier. The truth-in-leasing laws were enacted by Congress to eliminate or reduce opportunities for skimming and other illegal or inequitable practices by authorized carriers and to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry. Despite deregulation of the motor carrier industry, the truth-in-leasing laws have not been repealed, and in fact, were strengthened in 1996 to permit owner-operators a private right of action against authorized carriers for truth-in-leasing violations.

13. On or about August 1, 2000, Plaintiff entered into a lease agreement, titled "Independent Contractor Operating Agreement", with Defendant for the provision of trucking equipment and driving services for the transport and delivery of loads from various pick-up points to various points of delivery. A true and correct copy of said lease agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

14. The above referenced lease agreement is substantially similar in the form and substance at issue in this action to each of the Potential Class Member's lease agreements with Defendant. The above referenced lease agreement is substantially similar in the form and substance at issue in this action to subsequent lease agreements entered into between Plaintiff

and Defendant. Upon information and belief, the above referenced lease agreement is a form used by Defendant and entered into by with Plaintiff and the Potential Class Members (all of said lease agreements hereinafter collectively referred to as the "Lease Agreement").

15. Under the Lease Agreement, Defendant, as the authorized carrier, holds the federal motor carrier operating authority needed to provide services for the transport of non-exempt goods in interstate commerce. Defendant secures the required licenses and permits needed by the owner-operator to perform services related to the physical movement of the goods. The lease relationship between Defendant and Plaintiff and the Potential Class Members is strictly governed by, *inter alia,* 49 C.F.R. §376 *et seq.*

16. The Lease Agreement constitutes a "lease" within the meaning of 49 C.F.R. §376.2(e) because it is "[a] contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation."

17. Under 49 C.F.R. §376.11(a), a "lease" is required to be in writing and must meet the requirements of 49 C.F.R. §376.12.

18. The written Lease Agreement between Defendant and Plaintiff and the Potential Class Members provides that it is a fully integrated contract and is the entire agreement and understanding between the parties.

19. Violations of the truth-in-leasing laws are privately actionable by owner-operators. Specifically, 49 U.S.C. §14704(a)(2) provides as follows:

> *Rights and remedies* of *persons injured by carriers or brokers.* A carrier or broker providing transportation or service subject to jurisdiction under [applicable Federal motor carrier transportation law] is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

20. Further, 49 U.S.C. §14704(c) provides as follows:

> A person may . . . bring a civil action under [this section] to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under [applicable Federal motor carrier transportation law].

21. The causes of action alleged in this Complaint arise under the laws of United States regulating commerce and the activities of motor carriers engaged in the transport of property in interstate and intrastate commerce, including 49 U.S.C. §§13501, 14102, and 14704(a)(1) and (2), and 49 C.F.R. §312 et. seq., and state law claims arising out of state common law and Chapter 501 FLORIDA STATUTES, (2001).

22. All conditions precedent to the maintenance of this action have been performed, discharged, or otherwise satisfied.

23. Venue is appropriate in Lake County because it is where (i) Defendant has its principal place of business, (ii) Plaintiff, the class representative, resides, (iii) class counsel's principal office is located, and (iv) the witnesses and documentation needed for trial are located.

24. Jurisdiction is appropriate in this Court because (i) state law issues predominate in Plaintiffs' state law claims against Defendant, (ii) the Courts of this state have a duty to police the behavior of its corporate citizens, and (iii) the laws of the United States are enforceable in State Courts.

Class Representation Allegations

25. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-four (24) above as if fully set forth herein.

26. An adjudication as to an individual class member's challenge of the legality of the Lease Agreement and the business practices of Defendant would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications. Therefore, this claim is appropriate on behalf of the class of all owner-operators who have leased equipment to Defendant pursuant to Defendant's Lease Agreement.

27. This case involves common questions of law and fact to the class representative and all members of the class, namely, whether the Lease Agreement and Defendant's actions with respect thereto violates federal truth-in-leasing law and Florida law. These common questions of law and fact predominate over any question of law or fact affecting only individual members of the class. Class representation is superior to other available methods for the fair and efficient adjudication of the controversy at issue.

28. Plaintiff is a member of the class because, like all other members of the class, he has entered a Lease Agreement with Defendant.

29. Plaintiff and the Potential Class Members comprise a community of legal interests and rights because they have been consistently and uniformly subjected to the same unlawful lease and the same business practices of Defendant. The representative party and each member of the potential certified class have the same claims against the Defendant; the lease is unlawful and the business practices of Defendant are illegal under federal truth-in-leasing law and Florida law. The representative party's claim is the typical claim of each member of the potential certified class grounded in Federal truth-in-leasing laws and Florida law.

30. The approximate number of the class is 200. On information and belief, there are hundreds of independent owner-operators who have leased their equipment and services to Defendant under the terms set forth in the Lease Agreement like Plaintiff. All such persons are potential class members. Individual joinder of all potential class members is thus impracticable.

31. The class is defined as each owner-operator who has leased equipment to Defendant pursuant to the Lease Agreement.

32. The class representative will fairly and adequately protect and represent the interests of each member of the class because (i) the class representative has the time, experience, and resources to litigate this case, (ii) the class representative has substantially similar, if not the same, damages suffered by each member of the class, (iii) the class representative is familiar with the complex issues involved in this matter and has already investigated this matter to ascertain the legality of the Lease Agreement, (iv) the class representative is a member of the Owner-Operator Independent Drivers Association, Inc, a national organization involved in many class action lawsuits across the country similar to this one, (v) the remedies requested by the class representative are the remedies available under Federal and Florida law and are the

remedies available to each member of the class, and (vi) the class representative permits and requests this Court to allow members to opt-out if a member so desires.

33. This action may be maintained as a class action because the facts and circumstances concerning the parties' interests in this action are substantially the same. By example and not limitation, the class representative and each member of the class were damaged and continue to suffer damages because Defendant has failed to comply with Federal truth-in-leasing laws and Florida law. The terms of the Lease Agreement used by Defendant are the primary factual issues in this case. The applicable terms of the Lease Agreement are common to all class members and the class representative in that each Lease Agreement between Defendant and Plaintiff and the Potential Class Members omits legally required terms intended to protect Plaintiff and the Potential Class Members.

34. Other factors favoring the maintenance of this suit as a class action include, but are not limited to, the following:

(i) The amounts in controversy for Plaintiff and the Potential Class Members are relatively small so that individual members of the potential class would not find it cost-effective to bring individual claims;

(ii) Requiring individuals to prosecute separate actions would substantially impair or impede the individual members' ability to protect their interests;

(iii) On information and belief, there is no litigation already commenced by class members concerning the causes of action raised in this Complaint against Defendant;

(iv) It is desirable to concentrate the individual members' claims in one forum, because given the amount in controversy to require these claims to be brought in separate forums would effectively prevent individuals from bringing claims to recover their damages;

(v) No substantial difficulties are likely to be encountered in managing this class action as the Lease Agreement clearly violates well-established law; and

(vi) Counsel in this matter are familiar with the trucking industry, have approximately fifty (50) years of combined legal experience, and have filed and successfully settled a class action lawsuit in Lake County, Florida within the last year.

Count I
Unlawful Withholding of Compensation
[Violation of 49 C.F.R. §376.12(d)]

35. This is an action by Plaintiff against Defendant pursuant to federal motor carrier laws for equitable relief, declaratory relief, damages, interest, costs and attorneys' fees. The damages sought exceed $15,000.00 in amount, exclusive of interest, costs, and attorney's fees. This action arises under Federal law.

36. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through thirty-four (34) above as if fully set forth herein.

37. Federal Law requires specific standards for the terms of a Lease Agreement between regulated motor carriers and owner-operators. Specifically, 49 C.F.R. §376.12(d) provides:

> (d) *Compensation to be specified.* The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease.

38. Further, the introductory paragraph of 49 C.F.R. §376.12 states that "(t)he required lease provisions shall be adhered to and performed by the authorized carrier."

39. Defendant's Lease Agreement with Plaintiff and the Potential Class Members states that Defendant will pay Plaintiff and the Potential Class Members a percentage of "revenue" on shipments.

40. The Lease Agreement does not further define "revenue" or further specify how "revenue" is to be calculated in the Lease Agreement. Defendant failed to pay Plaintiff and the Potential Class Members the agreed upon percentage of the total revenue received by Defendant for shipments.

41. Defendant has a business practice wherein Defendant under-compensates drivers based on "Short Miles." Defendant uses this "Short Miles" practice to avoid paying Plaintiff and the Potential Class Members the agreed upon percentage of the total revenue received by Defendant for shipments.

42. Under this practice, Defendant charges to shippers a certain fee for each mile the shipment will be in transport. The total fee charged by Defendant and paid by the shipper for the shipment is based upon the actual mileage from the pick-up point to the delivery point. However, when rendering payment to Plaintiff and the Potential Class Members pursuant to the Lease Agreement, Defendant does not pay the agreed upon percentage of the amount charged to and paid by the shipper. Instead, Defendant pays Plaintiff and the Potential Class Members the agreed upon percentage of the "Short Mile" calculation for the shipment, not the actual mileage incurred and charged to a supplier.

43. The "Short Mile" calculation is based on the shortest distance between the municipality or county of origin and the destination, instead of the actual distance between pick-up and delivery points. For example, Defendant charges a shipper 2,549 miles at $1.04 a mile from Lake Wales, Florida to Fullerton, California, totaling $2,650.96. However, when rendering compensation to Plaintiff and the Potential Class Members pursuant to the Lease Agreement, Defendant pays the agreed upon percentage of 2,465 miles (the "Short Miles") at $1.04 a mile which is $2,563.60 instead of the $2,650.96 charged to the shipper. Defendant then retains the overage paid by the shipper.

44. Defendant has used the "Short Mile" scheme on Plaintiff and each of the Potential Class Members.

45. In addition to the "Short Mile" scheme, Defendant, upon information and belief, calculates compensation due to Plaintiff and the Potential Class Members pursuant to the Lease Agreement on a lower amount than what it actually charges a shipper.

46. Defendant's failure to specify the form of compensation in the lease and failure to provide the specified compensation called for in the Lease Agreement with Plaintiff Paul Gagnon and each of the other class members is a violation of 49 C.F.R. § 376.12.

47. As a direct and proximate result of Defendant's actions and/or omissions, Plaintiff and the Potential Class Members have suffered substantial damages and have been, and will continue to be, irreparably harmed by Defendant's oppressive and illegal corporate behavior.

48. Defendant is liable for violations of the Federal truth-in-leasing laws as described herein, and Defendant's acts and omissions have caused Plaintiff to bring this action.

49. Plaintiff has retained the undersigned attorneys to represent him in this action.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter a declaratory judgment declaring (i) that the Lease Agreement Defendant entered into with Plaintiff and the Potential Class Members is unlawful and violates 49 C.F.R. §376.12(d), (ii) that the "Short Mile" scheme used by Defendant is unjust, inequitable, in error, unlawful, unreasonable, and violates 49 C.F.R. §376.12, and (iii) that Defendant has failed to comply with the requirements and responsibilities imposed upon authorized carriers;

C. Enter an injunction pursuant to 49 C.F.R. §376.12(d) and 49 U.S.C. §14704(a)(1) enjoining and restraining Defendant (i) from performing authorized transportation in equipment it does not own in violation of 49 C.F.R. § 376.12, (ii) from future violations of Part 376 regulations, and (iii) from any acts of retaliation, harassment, or intimidation against Plaintiff and the Potential Class Members and others who may assist and/or participate in this action;

D. Enter an order requiring that Defendant provide to Plaintiff and the Potential Class Members an accounting of all transactions regarding the amounts paid to Plaintiff and the Potential Class Members on each shipment and the amounts charged to and paid by each supplier for a shipment while providing all documentation necessary to confirm the validity of the same transactions pursuant to 49 C.F.R. §376.12(d);

E. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for restitution and disgorgement of all sums unlawfully withheld from compensation in violation of 49 C.F.R. §376.12 and for damages, all pursuant to 49 U.S.C. §14704(a)(2) and including pre-judgment and post-judgment interest, as allowed by law;

F. Create a common fund made up of all damages and other amounts owed by Defendant to Plaintiff and the Potential Class Members;

G. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

H. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. §14704(c); and

I. Award such other relief as this Court may deem to be just and proper.

Count II
Unauthorized Receipt and Use of Escrow Funds and Interest on Escrow Funds
[Violation of 49 C.F.R. §376.12(k)]

50. This is an action by Plaintiff against Defendant pursuant to federal motor carrier laws for equitable relief, declaratory relief, damages, interest, costs and attorneys' fees. The damages sought exceed $15,000.00 in amount, exclusive of interest, costs, and attorney's fees. This action arises under Federal law.

51. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through thirty-four (34) above as if fully set forth herein.

52. Federal Law provides for the manner in which authorized motor carriers, such as Defendant, are required to establish and maintain escrow funds. Under 46 C.F.R. 3716.12(k), an "escrow fund" is defined as follows:

> Money deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purpose mutually agreed upon by the lessor and lessee.

53. Federal law specifically provides for the manner in which regulated motor carriers, such as Defendant, are required to maintain escrow funds, including providing for an immediate accounting and the return of escrow funds to the owner-operator following lease agreement termination. Specifically, 49 C.F.R. § 376.12 provides as follows:

> (k) *Escrow funds* -- If escrow funds are required, the lease shall specify:
>
> (1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.
>
> (2) The specific items to which the escrow fund can be applied.
>
> (3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:
>
> > (i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or
> >
> > (ii) By providing a separate account to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.
>
> (4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. A the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor of all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination..

54. Federal law also requires an authorized carrier to strictly adhere to the specific terms required in all lease agreements between regulated authorized carriers and owner-operators

55. As part of the Lease Agreement, Defendant requires Plaintiff and the Potential Class Members to pay an escrow fund to Defendant. Plaintiff and the Potential Class Members have paid an escrow fund to Defendant as required by Defendant.

56. Defendant's Lease Agreement with Plaintiff and the Potential Class Members does not specify the following, all of which are required by 49 C.F.R. §376.12(k):

(i) That an escrow is required or the amount of the escrow fund;

(ii) The specific items to which the escrow fund can be applied;

(iii) That Defendant shall provided an accounting of the escrow fund;

(iv) The right of the owner-operator (lessor) to demand an accounting of the escrow fund at anytime;

(v) That interest is to be paid to the owner-operator on a quarterly basis; and

(vi) The conditions the owner-operator must fulfill in order to have the escrow fund returned.

57. In addition, Defendant has never paid interest on the escrow funds to Plaintiff and the Potential Class Members as required under 49 C.F.R. §376.12(k), to their financial detriment.

58. The scheme under which Defendant has obtained and maintained possession of the escrow funds is unlawful because the manner in which Defendant collects and retains such funds are not set forth Defendant's Lease Agreement as required.

59. As a result of the foregoing, Defendant has violated 49 C.F.R. §376.12 and has unlawfully received and used the escrow fund paid by Plaintiff and the Potential Class Members.

60. As a direct and proximate result of Defendant's actions and/or omissions, Plaintiff and the Potential Class Members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

61. Defendant is liable for violations of the Federal truth-in-leasing laws as described herein, and Defendant's acts and omissions have caused Plaintiff to bring this action.

62. Plaintiff has retained the undersigned attorneys to represent him in this action.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter a declaratory judgment declaring (i) that the Lease Agreement Defendant entered into with Plaintiff and the Potential Class Members is unlawful and violates 49 C.F.R. §376.12(k), (ii) that Defendant's receipt and use of the escrow funds is unjust, inequitable, in error, unlawful, unreasonable, and in violation of 49 C.F.R. §376.12, and (iii) that Defendant has failed to comply with the requirements and responsibilities imposed upon authorized carriers;

C. Enter an injunction pursuant to 49 C.F.R. §376.12(d) and 49 U.S.C. §14704(a)(1) enjoining and restraining Defendant (i) from performing authorized transportation in equipment it does not own in violation of 49 C.F.R. §376.12, (ii) from future violations of Part 376 regulations, and (iii) from any acts of retaliation, harassment, or intimidation against Plaintiff and the Potential Class Members and others who may assist and/or participate in this action;

D. Enter an order requiring that Defendant provide to Plaintiff and the Potential Class Members an accounting of all transactions regarding the escrow funds paid by Plaintiff and the Potential Class Members and all transactions involving the escrow funds pursuant to 49 C.F.R. §376.12(k);

E. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for restitution and disgorgement of all escrow funds unlawfully received and used by Defendant in violation of 49 C.F.R. §376.12 and for damages (including interest), all pursuant to 49 U.S.C. §14704(a)(2) and including pre-judgment and post-judgment interest, as allowed by law;

F. Create a common fund made up of all damages and other amounts owed by Defendant to Plaintiff and the Potential Class Members;

G. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

H. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. §14704(c); and

I. Award such other relief as this Court may deem to be just and proper.

Count III
Failure to Return and Account for Tax Refunds
[Violation of 49 C.F.R. §376.12]

63. This is an action by Plaintiff against Defendant pursuant to federal motor carrier laws for equitable relief, declaratory relief, damages, interest, costs and attorneys' fees. The damages sought exceed $15,000.00 in amount, exclusive of interest, costs, and attorney's fees. This action arises under Federal law.

64. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through thirty-four (34) above as if fully set forth herein.

65. The introductory paragraph of 49 C.F.R. §376.12 states that "(t)he required lease provisions shall be adhered to and performed by the authorized carrier."

66. Under 49 C.F.R. §376.12(e), a lease is required to clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items.

67. As required under 49 C.F.R. §376.12(e), the Lease Agreement specifies that Plaintiff and the Potential Class Members are entitled to tax refunds of which Defendant will act as custodian for the lessor's disposition. Specifically, the Lease Agreement provides in paragraph 7 thereof as follows:

> [W]e, as an (sic) custodian, shall secure permits and distribute them to you under our current license and permit program, and will also file all necessary road use, mileage and fuel reports as the "motor carrier" and be entitled to receive from states credit or refunds on fuel purchased for your disposition as otherwise agreed to, (sic)

68. Accordingly, Defendant maintains fuel-tax credit accounts for Plaintiff and the Potential Class Members.

69. In general, states impose fuel taxes based upon fuel consumption within the state's border. Drivers are required to keep logs of the mileage driven in each state as well as their fuel purchases in each state. For example, if a driver purchases fuel in State A, just before driving across the border into State B, that fuel may carry the truck all the way through State B and into State C. Thus, the driver purchases no fuel in State B, but is still responsible for paying taxes based upon the fuel consumed within State B's borders. By virtue of having purchased the fuel in State A, the driver is deemed to have underpaid fuel taxes in State B. Conversely, the driver has paid taxes on fuel purchased in State A (taxes are included in the purchase price of the fuel), but the fuel was not consumed in State A. Thus, the driver is deemed to have overpaid fuel taxes in State A. These overpayments and underpayments of fuel taxes are adjusted between the individual states and the carriers on a fleet-wide basis. Defendant, as custodian under the Lease Agreement, is then responsible for paying fuel taxes to states where taxes are owed or obtaining refunds of credits due on account of the overpayment of taxes to a given state on a fleet-wide basis.

70. Defendant deducts from the compensation due to Plaintiff and the Potential Class Members the amounts underpaid in fuel taxes, but does not provide them with a refund of

credits due on the account of the overpayment to a given state. Instead, Defendant retains the credits intended for Plaintiff and the Potential Class Members.

71. The Lease Agreement between Defendant and Plaintiff and the Potential Class Members fails to recite that tax amounts underpaid will be deducted from their compensation, fails to specify how the amount of the deductions is computed, and fails to recite that credits will not be given to Plaintiff and the Potential Class Members for the tax amounts overpaid.

72. Defendant has received substantial money from state tax credits and refunds, but has failed to pay these state tax credits and refunds to Plaintiff and the Potential Class Members.

73. Defendant has failed to adhere to and perform its required lease provision regarding compensation of state tax refunds and credits.

74. As a direct and proximate result of Defendant's actions and/or omissions, Plaintiff and the Potential Class Members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

75. Defendant is liable for violations of the Federal truth-in-leasing laws as described herein, and Defendant's acts and omissions have caused Plaintiff to bring this action.

76. Plaintiff has retained the undersigned attorneys to represent him in this action.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter a declaratory judgment declaring (i) that the Lease Agreement Defendant entered into with Plaintiff and the Potential Class Members is unlawful and violates 49 C.F.R. §376.12(d), (ii) that Defendant's withholding of state tax credits and refunds is unjust, inequitable, in error, unlawful, unreasonable, violates 49 C.F.R. § 376.12, and (iii) that Defendant has failed to comply with the requirements and responsibilities imposed upon authorized carriers;

C. Enter an injunction pursuant to 49 C.F.R. §376.12(e) and 49 U.S.C. §14704(a)(1) enjoining and restraining Defendant (i) from performing authorized transportation in equipment it does not own in violation of 49 C.F.R. §376.12, (ii) from future violations of Part 376 regulations, and (iii) from any acts of retaliation, harassment, or intimidation against Plaintiff and the Potential Class Members and others who may assist and/or participate in this action;

D. Enter an order requiring that Defendant provide to Plaintiff and the Potential Class Members an accounting of all transactions regarding the fuel taxes paid by Plaintiff and the Potential Class Members and all tax credits or refunds received by Defendant;

E. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for restitution and disgorgement of all sums unlawfully withheld from compensation by Defendant in violation of 49 C.F.R. §376.12 and for damages, all pursuant to 49 U.S.C. §14704(a)(2) and including pre-judgment and post-judgment interest, as allowed by law;

F. Create a common fund made up of all damages and other amounts owed by Defendant to Plaintiff and the Potential Class Members;

G. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

H. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. §14704(c); and

I. Award such other relief as this Court may deem to be just and proper.

Count IV
Unlawful Charge-Backs
[Violation of 49 C.F.R. §376.12(h)]

77. This is an action by Plaintiff against Defendant pursuant to federal motor carrier laws for equitable relief, declaratory relief, damages, interest, costs and attorneys' fees. The damages sought exceed $15,000.00 in amount, exclusive of interest, costs, and attorney's fees. This action arises under Federal law.

78. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through thirty-four (34) above as if fully set forth herein.

79. 49 C.F.R. §376.12(h) requires authorized carriers, such as Defendant, to specify in the Lease Agreement with an owner-operator, such as Plaintiff and the Potential Class Members, all items that will be initially paid by the authorized carrier and then deducted from the owner-operator's compensation. Specifically, 49 C.F.R. §376.12(h) provides:

> *(h) Charge-Back Items.* The lease shall clearly specify the all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

80. While Defendant pays for numerous items which it then deducts from the compensation due Plaintiff and the Potential Class Members, the Lease Agreement makes no reference to which items will be initially paid by Defendant and later deducted from Lessor's compensation and does not recite the how the amount of each item is to be computed.

81. Defendant's Lease Agreement violates 49 C.F.R. 376.12(h) because Defendant deducts numerous charge-back items from the compensation due Plaintiff and the Potential Class Members for amounts initially paid by Defendant but which are not even addressed in the Lease Agreement, as set forth below.

82. Defendant is liable for violations of the Federal truth-in-leasing laws as described herein, and Defendant's acts and omissions have caused Plaintiff to bring this action.

83. Plaintiff has retained the undersigned attorneys to represent him in this action.

A. Unlawful Fuel Card Discounts

84. Defendant has an arrangement with EFS, a fuel card company, which, among other things, is intended to facilitate the acquisition of fuel by Plaintiff and the Potential Class Members from various truck stops throughout the nation. Pursuant to Defendant's arrangement with EFS, Plaintiff and the Potential Class Members procure fuel using credit made available to them on a EFS Fuel Card issued to each owner-operator. EFS notifies Defendant of fuel acquired by the owner-operators using its EFS Fuel Card. Thereafter, an amount equal to the pump price of the fuel is deducted from the owner-operator's' compensation by Defendant.

85. Under its arrangement with EFS, however, Defendant receives a significant discount in price on each gallon of gas purchased by Plaintiff and the Potential Class Members. Despite such discounts, Defendant has never issued a credit to Plaintiff and the Potential Class Members for the discount from the transaction price paid for certain fuel acquired using the EFS Fuel Card. Instead, Defendant keeps the entire discount Plaintiff and the Potential Class Members should receive from using the EFS Fuel Card to pay for fuel.

86. The Lease Agreement between Defendant and Plaintiff and the Potential Class Members does not disclose the amount deducted from the compensation due Plaintiff and the Potential Class Members that exceeds the actual price for fuel paid by Defendant with the discount. Further The Lease Agreement does not contain a recitation as to how the fuel deduction from compensation is calculated or of the existence of Defendant's arrangement with EFS. Defendant has not afforded Plaintiff and the Potential Class Members copies of those documents which are necessary to determine the validity of the charge.

87. Defendant's actions and the Lease Agreement with Plaintiff and the Potential Class Members violates 49 C.F.R. §376.12(h) because Defendant has deducted from Plaintiffs' compensation fuel charges which are more than the actual fuel costs, has not disclosed its arrangement with EFS, and has not afforded copies of those documents which are necessary to determine the validity of the charge.

88. Defendant's unauthorized deductions and excessive charge-backs for fuel have substantially damaged Plaintiff and the Potential Class Members by causing them to pay more for fuel than the actual cost of the fuel without their consent or knowledge.

B. Unlawful Transaction Fees

89. Defendant also charges Plaintiff and the Potential Class Members a transaction fee each time they use the EFS Fuel Card.

90. For each fuel purchase, Defendant adds a transaction fee to the amount of the fuel purchase. For all advances and other purchases, Defendant deducts from the compensation due Plaintiff and the Potential Class Members a transaction fee. In both cases, the transaction fee is greater than the fee Defendant pays to EFS for use of the Fuel Card.

91. The Lease Agreement does not disclose the amount deducted from compensation that exceeds the actual transaction fee paid by Defendant.

92. Defendant's actions and the Lease Agreement violates 49 C.F.R. §376.12(h) because the Lease Agreement does not contain a recitation as to how the fuel card deduction from compensation is calculated, the existence of a fee for using the EFS card, or the profit

Defendant makes from these fees. Defendant has also not afforded Plaintiff and the Potential Class Members copies of those documents which are necessary to determine the validity of the charge.

93. Defendant's unauthorized deductions from the compensation due Plaintiff and the Potential Class Members has substantially damaged them by causing the to pay additional charges when they purchase fuel without their consent to and without the Lease Agreement specifically providing for such.

C. Unlawful Worker's Compensation Charges

94. Defendant also charges Plaintiff and the Potential Class Members for the worker's compensation insurance premiums paid by Defendant on a fleet wide basis.

95. The Lease Agreement between Defendant and Plaintiff and the Potential Class Members does not disclose the worker's compensation insurance premiums deducted from the compensation due Plaintiff and the Potential Class Members and, further, does not contain a recitation as to how the deduction from compensation is calculated. Defendant has not afforded Plaintiff and the Potential Class Members copies of those documents which are necessary to determine the validity of the charge.

96. Defendant's actions and the Lease Agreement with Plaintiff and the Potential Class Members violates 49 C.F.R. §376.12(h).

97. Defendant's unauthorized deductions and excessive charge-backs for worker's compensation insurance premiums have substantially damaged Plaintiff and the Potential Class Members by causing them to pay more for fuel than the actual cost of the fuel without their consent or knowledge.

D. Unlawful Over Advance Charges, Accounting Fees, and Other Charges

98. Plaintiff and the Potential Class Members are permitted to and periodically take advances from Defendant against the compensation due to them from Defendant while on the road to pay for food, travel, and other expenses.

99. When the advance limit set by Defendant is exceeded, Defendant deducts from the compensation due Plaintiff and the Potential Class Members not only the amount of the advance initially paid by Defendant and the nominal costs involved, but also adds to the deduction from the compensation an "over advance charge" on the advance.

100. In addition to the over advance charge, Defendant charges Plaintiff and the Potential Class Members accounting fees and other charges which are not specified in the Lease Agreement.

101. Defendant's actions and Lease Agreement between Defendant and Plaintiff and the Potential Class Members violates 49 C.F.R. §376.12(h) because Defendant deducts from the compensation due Plaintiff and the Potential Class Members various fees and charges where the Lease Agreement fails to recite these charges as deductions and fails to specify how the amount of the deductions is computed. Defendant has also failed to afford copies of those documents which are necessary to determine the validity of the charge and interest.

102. Defendant's unauthorized deductions from compensation of various fees and charges has substantially damaged Plaintiff and the Potential Class Members by forcing them to pay various fees and charges without their consent and without the Lease Agreement specifically providing for such.

103. As a direct and proximate result of Defendants' actions and omissions, Plaintiff and the Potential Class Members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter a declaratory judgment declaring (i) that the Lease Agreement Defendant entered into with Plaintiff and the Potential Class Members is unlawful and violates 49 C.F.R. §376.12(h), (ii) that Defendant's imposition of charge backs is unjust, inequitable, in error, unlawful, unreasonable, violates 49 C.F.R. §376.12, and (iii) that Defendant has failed to comply with the requirements and responsibilities imposed upon authorized carriers;

C. Enter an injunction pursuant to 49 C.F.R. §376.12(h) and 49 U.S.C. §14704(a)(1) enjoining and restraining Defendant (i) from performing authorized transportation in equipment it does not own in violation of 49 C.F.R. §376.12, (ii) from future violations of Part 376 regulations, and (iii) from any acts of retaliation, harassment, or intimidation against Plaintiff and the Potential Class Members and others who may assist and/or participate in this action;

D. Enter an order requiring that Defendant provide to Plaintiff and the Potential Class Members an accounting of charge backs made by Defendant against compensation due to Plaintiff and the Potential Class Members while providing all documentation necessary to confirm the validity of the same transactions pursuant to 49 C.F.R. §376.12(h);

E. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for restitution and disgorgement of all charge backs unlawfully withheld from compensation by Defendant in violation of 49 C.F.R. §376.12 and for damages, all pursuant to 49 U.S.C. §14704(a)(2) and including pre-judgment and post-judgment interest, as allowed by law;

F. Create a common fund made up of all damages and other amounts owed by Defendant to Plaintiff and the Potential Class Members;

G. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

H. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. §14704(c); and

I. Award such other relief as this Court may deem to be just and proper.

Count V
Failure to Disclose Insurance Policy Terms
[Violation of 49 C.F.R. §376.12(j)]

104. This is an action by Plaintiff against Defendant pursuant to federal motor carrier laws for equitable relief, declaratory relief, damages, interest, costs and attorneys' fees. The damages sought exceed $15,000.00 in amount, exclusive of interest, costs, and attorney's fees. This action arises under Federal law.

105. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through thirty-four (34) above as if fully set forth herein.

106. 49 C.F.R. §376.12(j) requires the authorized carrier to specify in every lease with an owner-operator (lessor) the amount which will be deducted from the owner-operator's compensation for insurance paid by the authorized carrier (insurance charge-backs).

107. 49 C.F.R. §376.12(j) also requires the authorized carrier to specify in every lease with an owner-operator (lessor), in which the owner-operator purchases insurance through the authorized carrier, that the authorized carrier will provide the owner-operator (lessor) with a copy of the insurance policy upon request and a certificate of insurance including the name of the insurer, the policy number, effective policy dates, amounts and types of coverage, the cost to the lessor of the coverage, and the deductible.

108. Under the Lease Agreement, Plaintiff and the Potential Class Members are required to purchase and maintain, among other things, bobtail insurance. Plaintiff and the Potential Class Members purchase bobtail insurance through Defendant, with the insurance premiums being deducted and charged from the compensation due Plaintiff and the Potential Class Members.

109. The Lease Agreement between Defendant and Plaintiff and the Potential Class Members fails to recite the amount to be deducted for bobtail insurance premiums and fails to state that Defendant will provide them, upon request, with copy of the insurance policy and a certificate of insurance including the name of the insurer, the policy number, effective policy dates, amounts and types of coverage and the cost to the lessor of the coverage, and the deductible.

110. As a direct and proximate result of these violations of federal law, the rights of Plaintiff and the Potential Class Members have been violated and Plaintiff and the Potential Class Members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

111. Defendant is liable for violations of the Federal truth-in-leasing laws as described herein, and Defendant's acts and omissions have caused Plaintiff to bring this action.

112. Plaintiff has retained the undersigned attorneys to represent him in this action.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter a declaratory judgment declaring (i) that the Lease Agreement Defendant entered into with Plaintiff and the Potential Class Members is unlawful and violates 49 C.F.R. §376.12(j) and (iii) that Defendant has failed to comply with the requirements and responsibilities imposed upon authorized carriers;

C. Enter an injunction pursuant to 49 C.F.R. §376.12(j) and 49 U.S.C. §14704(a)(1) enjoining and restraining Defendant (i) from performing authorized transportation in equipment it does not own in violation of 49 C.F.R. §376.12, (ii) from future violations of Part 376 regulations, and (iii) from any acts of retaliation, harassment, or intimidation against Plaintiff and the Potential Class Members and others who may assist and/or participate in this action;

D. Enter an Order that Defendant provide to Paul Gagnon, Individually, and as Class Representaive for all Potential Class Members a copy of each insurance policy and a certificated of insurance for each class member including the name of the insurer, the policy number, effective policy dates, amounts and types of coverage and the cost to the lessor of the coverage, and the deductible.

E. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for damages pursuant to 49 U.S.C. §14704(a)(2) and including pre-judgment and post-judgment interest, as allowed by law;

F. Create a common fund made up of all damages and other amounts owed by Defendant to Plaintiff and the Potential Class Members;

G. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

H. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. §14704(c); and

I. Award such other relief as this Court may deem to be just and proper.

Count VI
Deceptive and Unfair Trade Practices

113. This is an action against Defendant for (i) declaratory relief under FLORIDA STATUTES Chapter 86 (2001), (ii) injunctive relief pursuant to Florida law, and (iii) damages which exceed $15,000 in amount, exclusive of interest, costs, and attorney's fees, all under the Florida Deceptive and Unfair Trade Practices Act, FLORIDA STATUTES Chapter 501 (2001).

114. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through one hundred twelve (112) above as if fully set forth herein.

115. Defendant engages in commerce throughout the State of Florida by providing goods to owner-operators for transportation throughout the State of Florida.

116. Plaintiff and the Potential Class Members are individuals who agree to transport goods for Defendant and are Consumers as defined by Florida Statutes §501.202(7).

117. Defendant's Lease Agreement with Plaintiff and the Potential Class Members and Defendant's afore-noted business practices as described in this Complaint are deceptive and

unfair, offend public policy, are unethical, illegal, and have caused substantial injury to Plaintiff and the Potential Class Members.

118. As a result of Defendant's deceptive and unfair trade practices, Plaintiff and the Potential Class Members have suffered considerable damage. Such damages include not only the money taken from them, but also their costs, attorney's fees, and expenses incident to making this demand and Complaint for justice.

119. Plaintiff and the Potential Class Members contend that the Lease Agreement is facially unlawful under Federal law and is unjust, deceptive, and unfair under applicable Florida law.

120. Upon information and belief, Defendant contends that its lease complies with governing laws.

121. A real, present, substantial, and bona fide controversy exists between Plaintiff and the Potential Class Members and Defendant and a justiciable question arises as to the legal relationship between the parties in light of Florida and Federal law.

122. Plaintiff and the Potential Class Members have no adequate remedy at law and will suffer irreparable harm should this injunctive relief not be granted because Defendant's wrong is continuous is nature, will be committed in the future, and consumers are entitled to injunctive relief to avoid a multiplicity of actions in law.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter a declaratory judgment declaring that the Lease Agreement Defendant entered into with Plaintiff and the Potential Class Members is unlawful, unjust, deceptive, and unfair under governing law;

C. Enter an injunction enjoining and restraining Defendant engaging in unlawful, unjust, deceptive, and unfair acts;

D. Restore Plaintiff and the Potential Class Members through a restitution award of damages to the position they were in prior to Defendant's deceptive and unfair action;

E. Award Plaintiff and the Potential Class Members prejudgment interest, reasonable attorney's fees, and costs as provided under Florida law;

F Create a common fund made up of all damages owed by Defendant to individual Class Members;

G. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law and as prevailing party pursuant FLORIDA STATUTES Chapter 501 (2001); and

H. Award such other relief as this Court may deem to be just and proper.

Count VII
Conversion

123. This is an action for damages that exceed $15,000.00, exclusive of interest, costs, and attorney's fees. This is an action under Florida common law.

124. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through one hundred twelve (112) above as if fully set forth herein.

125. Plaintiff and the Potential Class Members are the rightful owners of monies unlawfully deducted and received by Defendant as set forth in this Complaint.

126. Defendant possesses or has benefited from converting funds intended for and owned by Plaintiff and the Potential Class Members.

127. Plaintiff and the Potential Class Members have lost the use, interest, and benefit of their monies because of Defendant's improper and unlawful deductions and takings from the compensation owed to them.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for damages, together with prejudgment interest;

C. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

D. Award such other relief as this Court may deem to be just and proper.

Count VIII
Unjust Enrichment

128. This is an action for damages that exceed $15,000.00, exclusive of interest, costs, and attorney's fees. This is an action under Florida common law.

129. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs one (1) through one hundred twelve (112) above as if fully set forth herein.

130. Defendant improperly retained and used money owned by and intended for Plaintiff and the Potential Class Members.

131. As set forth in this Complaint, Defendant knowingly and voluntarily used monies intended for and owned by Plaintiff and the Potential Class Members for Defendant's own benefit.

132. Plaintiff and the Potential Class Members has been harmed and damaged by Defendant's actions and it would be inequitable for Defendant to retain any benefit of such

money without paying the value of the benefit of the money to Plaintiff and the Potential Class Members.

133. Defendant has been unjustly enriched through its violations of governing law and as matter of equity should be forced to return all funds it unlawfully obtained from Plaintiff and the Potential Class Members.

WHEREFORE, Plaintiff respectfully demands that this Court:

A. Certify a class comprised of lessors of motor vehicle equipment who have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;

B. Enter judgment against Defendant in favor of Plaintiff and the Potential Class Members for damages, together with prejudgment interest;

C. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid on a multiplier basis under Florida law;

D. Award such other relief as this Court may deem to be just and proper.

Demand For Jury Trial

Plaintiff demands that the issues presented herein be tried by a jury.

Dated this 21st day of October, 2002.

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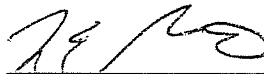

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