IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GABRIEL CILLUFFO, KEVIN SHIRE, and BRYAN RATTERREE individually and behalf of all other similarly situated persons, **Plaintiffs,** **v.** **CENTRAL REFRIGERATED SERVICE, INC. and CENTRAL LEASING, INC., JON ISAACSON and JERRY MOYES,** **Defendants.**	**COLLECTIVE & CLASS ACTION COMPLAINT**

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 employee drivers.

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

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

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

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

9. Defendants jointly control Plaintiffs' work and, by law, employ the Plaintiffs to transport goods by truck for CRS's customers. Defendants control when, where, and how Plaintiffs deliver freight. They also control the equipment that Plaintiffs use, including, its operation, maintenance, and condition. Defendants control the amount of hours that Plaintiffs may drive in a week, thereby controlling how much money they can make. Defendants attach a "speed governor" to the trucks they lease to Plaintiffs, so that CRS even controls the speed at which Plaintiffs may drive. Defendants control virtually every aspect of Plaintiffs' performance of CRS's work and the equipment that Plaintiffs use for that work.

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

11. By misclassifying Plaintiff drivers as independent contractors, Defendants obtain a vast competitive advantage over competitor trucking companies that treat

their drivers as employees in compliance with the law. Defendants' pay practices drive down trucker wages across the industry and undercut fair labor practices across the country.

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

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

14. Thus, upon termination of the Contract, Defendants claim they may reap

windfall profits, further penalize Plaintiffs, and even prevent Plaintiffs from earning a living using the leased truck – the essential tool of Plaintiffs' trade -- while concurrently demanding excessive and unreasonable liquidated damages upon "default."

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

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

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

JURISDICTION AND VENUE

18. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce. Jurisdiction over Plaintiffs' claims for declaratory relief is conferred by 28 U.S.C. §§2201 and 2202.

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

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

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

PARTIES

A. Plaintiffs

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

23. Plaintiff KEVIN SHIRE is a natural person residing at 890 Norse Avenue, Sacramento CA 95864. Plaintiff SHIRE leased a truck from Defendants and signed Defendants' form Agreements. As a matter of law, Plaintiff SHIRE was an employee

of Defendants as described herein. Plaintiff Shire worked for Defendants out of the Fontana, California terminal and drove for Defendants in California and other states.

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

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

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

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

B. The FLSA Collective Action Class

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

29. Excluded from any Collective Action Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in any Defendants.

C. The Rule 23 Forced Labor Class

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

a. Whether Defendants are or were Plaintiffs' employers;

b. Whether Defendants' scheme, caused Plaintiffs to engage in forced labor for Defendants in violation of the federal forced labor statutes;

c. The nature and extent of Class-wide injury and the appropriate measure of damages for the Classes.

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

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

a. Plaintiffs understand that, as class representatives, they assume a

fiduciary responsibility to the Class to represent its interests fairly and adequately.

b. Plaintiffs recognize that as class representatives, they must represent and consider the interests of the Class just as they would represent and consider their own interests.

c. Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the Class.

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

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

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

34. A class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of wage litigation like the present action, where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against one of the larger truckload carriers in the United States. The members of the Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices,

and procedures. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

D. Defendants

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

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

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

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

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

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

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

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

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

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

45. JON ISAACSON is the Chief Executive Officer of both CLI and CRS and,

upon information and belief, has an ownership interest in both companies.

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

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

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

49. Defendants conduct business throughout the country.

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

51. Upon information and belief, Defendants each grossed more than $500,000 in each of the last six calendar years, individually and collectively.

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

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

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

FACTS

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

55. Through emails, Qualcomm messages, and through CRS's website, Defendants repeatedly represent to their "company driver" employees that they will earn much

more as “owner operators” than they do as company drivers. Defendants regularly represent that owner operators will earn $15,000 more than company drivers. Defendants’ website states that “Upon becoming a lease operator, the driver’s average income will increase by nearly $15,000 per year.” The website also states that “Company drivers average between $35,000 to $40,000 in their first year of employment with Central Refrigerated.” Thus, the website promise of $15,000 more in increased earnings for owner operators is equivalent to 37 to 43% more in pay.

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

The Contract and Lease Generally

57. CRS and CLI presented Plaintiffs with an integrated series of preprinted forms, including the Equipment Lease Agreement (“Lease”) and Contractor Agreement (“Contract”), referred to collectively as “Agreements,” to lease Plaintiffs trucks owned by Defendants, and purporting to make Plaintiffs independent “owner-operator” “business partners” of CRS.

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

59. CRS and CLI do not permit Plaintiffs to take a copy of the Lease and Contract off the premises to review prior to signing. Plaintiffs are made to sign the Lease and

Contract "then and there" on Defendants' premises.

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

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

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

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

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

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

66. Defendants sometimes demand that Plaintiffs accept Defendants' unilateral Contract modifications during the term of their Contracts. Defendants are able to obtain Plaintiffs' consent to these changes because otherwise Defendants have the ability to terminate Plaintiffs, effectively causing Plaintiffs to be labeled as in default on their Leases.

67. If a driver is "in default" Defendants seize the driver's truck and hold him or her liable for all remaining Lease payments, and make negative entries on Plaintiffs' DAC reports. Defendants are also able to obtain Plaintiffs' consent to contract

modifications because Defendants can refuse to dispatch Plaintiffs to new jobs until they agree to the modifications or because Defendants can place Plaintiffs on "safety holds" that prevent them from working until they agree to the modifications.

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

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

Defendants' Control of Plaintiffs/Plaintiffs as Employees of Defendants

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

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

72. Defendants CRS's contract states, "The parties acknowledge that CONTRACTOR will be operating under the operating authority grant to COMPANY by the Federal Motor COMPANY [sic] Safety Administration ("FMCSA"). As required by the DOT Leasing Regulations, the Equipment shall be for COMPANY's

exclusive possession, control and use for the duration of the Agreement, and COMPANY shall assume complete responsibility for the operation of the Equipment during such time. … While CONTRACTOR is operating under COMPANY's operating authority, CONTRACTOR may not haul goods for any third party and while operating the Equipment … CONTRACTOR agrees not to exceed a driving speed of sixty-five (65) miles per hour or any applicable lower speed limit."

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

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

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

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

77. Defendants prohibit Plaintiffs from freely using the trucks they lease from

Defendants by a variety of means, including but not limited to the Contract explicitly stating that CRS shall have exclusive control over the equipment during the term of the Contract.

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

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

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

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

The Shifting of Business Expenses/Minimum Wage Violations

82. By the Agreements, Defendants force Plaintiffs to bear Defendants' business expenses. Defendants require Plaintiffs to pay for the truck being used for Defendants' business purpose, the Qualcomm device by which Defendants send instructions to Plaintiffs, monthly Qualcomm administrative fees, liability insurance, (indemnifying CRS and CLI), taxes, tolls, equipment, gas, truck maintenance, and a variety of other charges, including those designed solely to cover Defendants' administrative expenses and Defendants' profit. Defendants claim the right to claim depreciation on the leased trucks on their tax returns.

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

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

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

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

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

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

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

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

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

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

92. If a Plaintiff is put in default by CRS, Defendants take possession of the truck, thereby depriving Plaintiffs of their means of livelihood, and claim "liquidated damages" under a provision that guarantees all remaining Lease payments (which can be a hundred thousand dollars or more), including anticipated profits to CRS. This is so even though Defendants' own unilateral conduct terminating the contract may have caused the "default." The Lease allows for liquidated damages despite the fact that any actual losses to CLI are capable of determination and mitigation through re-leasing the

truck, and that any losses are far less than what Defendants unreasonably claim from their truckers. Even more onerous to the Plaintiffs is that the Lease provides for acceleration of these lease payments.

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

94. Although the Agreements allow for Plaintiffs to terminate these contracts, Plaintiffs are not free to do so, because terminating a Contract is also termed a "default" in the Lease, leading to the same severe financial and reputational consequences for Plaintiffs as if Defendants has terminated the Contracts.

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

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

97. In effect, the Lease (along with Defendants' ability to require Plaintiffs to drive

only for Defendants) provides Defendants with the means to pressure and coerce Plaintiffs into allowing Defendants to maintain exclusive control over their work for a period of years and to impose whatever conditions they wish, because Plaintiffs fear being terminated and then becoming subject to the "default" provision in the lease and its myriad negative consequences.

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

99. Defendants' scheme is designed to force the continued labor of Plaintiffs by using threats of serious financial harm through explicit threats to impose, enforce, and collect significant debts of up to a hundred thousand dollars or more on plaintiffs, prohibit Plaintiffs from pursuing their profession by submitting negative entries on their DAC trucker employment report (so that other trucking companies will not hire them), and to report the "default" to credit bureaus so the Driver's credit is destroyed and he or she will not be able to become an owner operator with another trucking company.

Individual Plaintiff Facts

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

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

assignment of miles, and would make more money as an owner operator.

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

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

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

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

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

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

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

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

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

"Your decisions to terminate the contractor agreement and default on your

lease will affect you in the following ways:

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

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

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

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

112. Plaintiff SHIRE began working for CRS as an employee in or about January 2009. He worked as an employee for approximately three months. CRS repeatedly promised SHIRE and other employees that he (and they) could make 15-30 percent more money as an owner operator. In reliance upon the CRS promises, SHIRE signed Defendants' form agreements to become an owner operator in April 2009.

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

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

115. Plaintiff SHIRE worked for Defendants on a "dedicated route." As an owner

operator driving a dedicated route, Plaintiff SHIRE was unable to refuse a load offered by the company. If he did so, he would lose his dedicated route.

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

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

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

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

120. Plaintiff RATTERREE began working for CRS as an employee in September of 2010. CRS repeatedly promised RATTERREE and other employees that he (and they) could make 15-30 percent more money as an owner operator. Defendant CRS sent Plaintiff RATTERREE many messages through his Qualcomm device when he completed loads stating how much he would have made on that load if he was an

owner operator. He also was given a document by Defendant called "Pay Package Comparison" that showed an annualized income of $34,172.32 for company drivers driving 2800 miles a week compared with owner operators earning $49,817 for the same number of miles driven in a week, a 30% increase in income. As he was engaged to be married and wanted to help his fiancé thru college, RATTERREE believed CRS's representations and thought becoming an owner operator under the terms promised by Defendants was a good financial plan. In reliance upon the CRS promises, RATTERREE signed Defendants' form agreements to become an owner operator in November 18, 2010.

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

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

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

124. On or about December 27, 2010, while RATTERREE was in the terminal in Salt Lake City, Defendant unilaterally repossessed RATTERREE's truck. Defendant had security guards surround RATTERREE and tell him that his driver manager

"would be accepting his resignation." Defendant then demanded his truck and disabled it so it could not be driven.

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

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

Defendants' Actions Were Willful and Defendants' Unlawful Practices Were Widespread

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

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

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

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

FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT)

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.

WHEREFORE, Plaintiffs request that this Court enter an Order:

1. With respect to the FLSA violations

    a. Declaring that Defendants violated the FLSA;

b. Approving this action as a collective action and directing that Notice be issued to all Class Members;

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

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

e. Awarding Plaintiffs and represented parties their reasonable attorneys' fees and costs of suit including expert fees and interest.

2. With respect to the Forced Labor Claim:

a. Certifying this action as a class action;

b. Designating Plaintiffs as Class Representatives;

c. Designating the undersigned counsel as Class Counsel;

d. Entering a declaratory judgment that the practices complained of herein are unlawful;

e. Fashioning appropriate equitable and injunctive relief to remedy Defendants' violations of law, including but not necessarily limited to an order determining that the contract is void, or voidable, or alternatively severing any unconscionable clauses and enjoining Defendants from continuing their unlawful practices as described herein;

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

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

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

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

Dated: June 4, 2012

Respectfully Submitted,

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