UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

ANTHONY CERVANTES and MIKE CROSS, individually and behalf of all other similarly situated persons, Plaintiffs, vs. CRST INTERNATIONAL, INC. and CRST EXPEDITED, INC. Defendants.	Case No.: 1:20-cv-75-CJW-KEM

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CONDITIONALLY CERTIFY FLSA COLLECTIVE ACTION, FOR ISSUANCE OF NOTICE, AND FOR EQUITABLE ESTOPPEL REGARDING THE LIMITATIONS PERIOD

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Plaintiffs Cervantes and Cross have moved for conditional certification of this action as an FLSA collective action on behalf of similarly situated Drivers defined as:

> All drivers who entered into independent contractor operating agreements ("ICOAs") with CRST Expedited, Inc. at any time on after the date the terms set forth in ¶¶ 7(e) and 9(f) of Plaintiff Cervantes' ICOA were added to CRST Expedited's ICOAs, which was at least October 10, 2014, if not earlier [1]

(hereafter "Drivers"). Plaintiffs further move for issuance of Notice to these Drivers informing them of their right to participate in this action by filing a consent to sue.

STATEMENT OF THE CASE

This case arises out Defendants' attempts to evade the minimum wage requirements of the FLSA by misclassifying Drivers as independent contractors. At the beginning of their working relationship with Defendants, Defendants required Drivers to sign an Independent Contractor Operating Agreement ("ICOA") with Defendant CRST Expedited, Inc. by which they agreed to lease their truck to CRST Expedited and use it to haul CRST's loads. This document was the same in all material respects for all collective members and its terms, along with Defendants' policies and procedures implementing the ICOA, set the terms of their employment relationship with Defendants. The ICOA violates the FLSA rights of Plaintiff and the FLSA Collective members by wrongfully classifying them as "independent contractors," even though the reality of the working relationship was one of employer/employee. Defendants' utilized this improper misclassification scheme to shift all of the expenses of operating a truck—insurance,

[1] Excluded from the FLSA collective action are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the relevant class period has had, a controlling interest in any Defendant. Also excluded are Fleet Drivers, if any—i.e. drivers who leased two or more operational trucks to CRST Expedited, Inc. at the same time. Drivers who leased multiple trucks to CRST but only one at a time, or who leased a second truck while his or her original truck was inoperative are included in the collective action.

fuel, taxes, maintenance, as well as the risks of truck breakdowns, idle time, and downturns in business—onto the Drivers. Drivers did not have the capital of a true independent business to afford these expenses, so CRST made its misclassification scheme work by using its credit to advance virtually all of the costs of operation to Drivers and then deducting those expenses out of the Drivers' earnings. Indeed, because most Drivers did not have, and could not afford, a truck to lease to CRST Expedited as required by the ICOA, CRST arranged for its subsidiary, CRST Finance, Inc., to lease trucks to Drivers for no money down so that Drivers could then sign the ICOA and lease the truck back to CRST. The CRST Finance lease ("Lease") and the ICOA were form documents presented to Drivers as a package.[2] The net result of this scheme to shift all operating expenses and risk on to Drivers was that Drivers frequently earned less than the minimum wage for every hour worked and, in many weeks, Defendants paid Plaintiffs and other Drivers *nothing* at all. Misclassification and circular lease schemes like Defendants' are rampant in the trucking industry, relegating what was once a solidly middle-class profession to one that often pays poverty-level wages and treats truck drivers like "indentured servants."[3]

[2] Some Drivers own their trucks or lease them from another source. The distinction is irrelevant to the issue of whether those Drivers were misclassified as independent contractors, and thus irrelevant to this motion for conditional certification, because the ICOA and CRST's policies and procedures implementing that document determine the working arrangement with CRST. The Lease simply gives CRST additional means of controlling Drivers as CRST retains the ability to put Drivers in default of the Leases *at-will* and thereby impose draconian financial consequences on Drivers.

[3] *See* Ex. 1, Sweeney Decl. and attachments thereto: Ex. 1-A, Brett Murphy, USA Today, *Rigged. Forced into debt. Worked past exhaustion. Left with nothing.* (June 16, 2017), available at: https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/; Ex. 1-B, Steve Viscelli, The Atlantic, *Truck Stop: How One of America's Steadiest Jobs Turned Into One of Its Most Grueling* (May 10, 2016), available at: https://www.theatlantic.com/business/archive/2016/05/truck-stop/481926/; Ex. 1-C Lydia DePillis, Washington Post, *Trucking used to be a ticket to the middle class. Now it's just another low-wage job.* (April 28, 2014), available at https://www.washingtonpost.com/news/wonk/wp/2014/04/28/trucking-used-to-be-a-ticket-to-the-middle-class-now-its-just-another-low-wage-job/?utm_term=.8b22dd6fa8a4.

Predatory misclassification programs run by Defendants and other trucking companies leave drivers with no more control over their own operations than employee drivers. Drivers are expected to follow company policies and procedures, which regulate things like where to park the truck, driving rules, prohibited routes, how to pick up and deliver loads, and safety.[4] The company decides what loads Drivers are eligible to carry, the price they will be paid for those loads, and prohibits them from driving for other carriers.[5] Thus they are entirely dependent on the company for their livelihood. Meanwhile, Drivers incur expenses for the lease payment, several different insurance coverages, fuel, tolls, trailers, and truck maintenance and repairs, which are deducted from their pay weekly. If they do not earn enough to cover these expenses, they receive a negative settlement and do not receive any pay until [they] pay all outstanding expenses, past and present. It is a common occurrence for drivers to end up owing the company money despite having performed work during the week.[6] The massive debt burden from the these expenses force Drivers to work as much as they physically can. [7] They incur these weekly expenses even when they are not driving, so they must accept undesirable and unprofitable loads because not driving at all is not an option.

As a result, Drivers experience financial hardships and must spend weeks or months at a time on the road in their trucks and away from home.[8] Drivers work in grueling conditions

[4] Ex. 2, Cervantes Decl. ¶ 26.

[5] Ex. 2, Cervantes Decl. ¶ 41-43; Ex. 1-A, *Rigged* at 9 (In owner operator programs throughout the trucking industry, companies "retain[] the power to decide how much work to give their drivers," deciding "who gets the easiest and most lucrative routes -- and who gets to work at all."); *see also* Ex. 1-B, *Truck Stop* at 2; Ex. 1-C, *Trucking* at 5.

[6] Ex. 3, Cross Decl. ¶ 35-37; Ex. 1-A, *Rigged* at 2, 13, 16; Ex. 1-B, *Truck Stop* at 2.

[7] Ex. 2, Cervantes Decl. ¶ 49; Ex. 4, Gravelle Decl. ¶ 43; Ex. 1-B, *Truck Stop* at 5 (owner operators must work "the equivalent of two full-time jobs" to meet their expenses); Ex. 1-A, *Rigged* at 11-12 (owner operators regularly work "20 hours a day, six days a week").

[8] Ex. 2, Cervantes Decl. ¶ 49; Ex. 3, Cross Decl. ¶ 45-47; Ex. 4, Gravelle Decl. ¶ 43; *see also* Ex. 1-B, *Truck Stop* at 5; Ex. 1-A, *Rigged* at 8, 22; Ex. 1-C, *Trucking* at 3.

without benefits normally received by employees like health insurance, workers compensation, Social Security contributions or, unemployment insurance.[9] Though they are working toward ownership of their trucks, if their contracts with the company are terminated – which the company can do at will -- they often lose any monies in escrow or maintenance accounts or settlement proceeds they would otherwise be owed, and any equity they had in the truck. Indeed, when drivers are fired or quit, their trucks are routinely seized, along with all the money they paid towards owning it.[10] The Named Plaintiffs and FLSA Collective members are similarly situated with respect to this misclassification scheme and, accordingly, Plaintiffs' motion to conditionally certify this case as an FLSA collective action should be granted in its entirety.

STATEMENT OF FACTS

This motion is based on the allegations of the Second Amended Complaint and the following evidence supporting those allegations:

(a) Doc 37-4. A. St. Amour ICOA;

(b) Doc 39-1. Declaration of Chad Brueck;

(c) Ex. 2. Declaration of Anthony Cervantes and attachments thereto;

(d) Ex. 3. Declaration of Mike Cross;

(e) Ex. 4. Declaration of Linda Gravelle and attachment thereto;

The Third Amended Complaint, Doc. 108 (TAC) and the above evidence support the following facts for purposes of this motion:

1. CRST Expedited, Inc. (hereafter CRST) is a regulated, for-hire motor carrier authorized by the Federal Motor Carrier Safety Administration (FMCSA) to provide trucking

[9] TAC at ¶¶ 8-10; Ex. 1-A, *Rigged* at 8; Ex. 1-B, *Truck Stop* at 2; Ex. 1-C, *Trucking* at 2.
[10] Ex. 2, Cervantes Decl. ¶ 35; Ex. 3, Cross Decl. ¶ 32; Ex. 1-A, *Rigged* at 1, 3, 9-10; Ex. 1-B, *Truck Stop* at 6.

services to customers throughout the United States. Doc 39-1 ¶ 3.

2. CRST employs company drivers—i.e. employee drivers—to haul freight for CRST's customers. Doc 39-1 ¶ 6.

3. CRST also contracts with individuals that CRST refers to as "third party independent contractor owner-operators" (hereafter "Drivers") to deliver freight to CRST's customers. Doc 39-1, ¶ 8. Plaintiffs Cervantes and Cross were two such Drivers. They allege that they and other Drivers designated by CRST as independent contractors are similarly situated with respect to the FLSA claims made in the Third Amended Complaint. TAC ¶¶ 48-49.

4. CRST requires each of its Drivers, including Plaintiffs, to enter into a form contract drafted by CRST known as an "Independent Contractor Operating Agreement" (ICOA) pursuant to which a Driver leases a truck to CRST and agrees to haul freight for CRST. Doc 39-1 ¶ 8; *see also* Ex. 2-A and 2-B; Ex. 4-A. CRST has used at least two versions of the ICOA, one version shows a revision date of October 2014, Doc. 37-4 (St. Amour), and the other shows a revision date of October 2017. Doc. 37-2. (Cervantes). These two versions are the same in all respects material to Plaintiffs' FLSA claim. *See also* Ex. 2-A and 2-B (Cervantes ICOAs); Ex. 4-A (Gravelle ICOA).

5. Plaintiff Anthony Cervantes signed his first ICOA on January 3, 2018 and a subsequent one on March 14, 2018. Doc. 37-2 & 37-3; Ex. 2 ¶¶ 18, 20. He transported freight for CRST from approximately January 2018 to August 2019. Ex. 2 ¶ 2.

6. Plaintiff Mike Cross signed his first ICOA with CRST on or about October 2018 and has driven freight for CRST since that time. Ex. 3 ¶¶ 3.

7. CRST conveys its company policies regarding such things as driving rules, handling loads, safety, pet policy etc. to Drivers at an orientation conducted by CRST prior to signing the ICOA. Ex. 2 ¶ 7; Ex. 3 ¶ 8; Ex. 4 ¶ 6. These are the same policies that are conveyed to

employee drivers. *Id.*

8. The ICOAs, along with CRST's policies implementing those contracts, contain the terms and conditions of work under which Plaintiffs and other Drivers hauled freight for CRST. TAC ¶¶ 66-139; *see also* Ex. 2 ¶¶ 25-35 & Ex. 2-A & 2-B; Ex. 3 ¶¶ 22-32; Ex. 4 ¶¶ 20-30 & Ex. 4-A.

9. The ICOAs state that Drivers are independent contractors and, as a matter of policy, CRST treated Drivers as independent contractors exempt from the FLSA. Doc 39-1 ¶ 8.

10. Plaintiffs allege that policy of CRST was unlawful and that, as a matter of economic reality, they were employees of Defendants entitled to the protections of the FLSA. TAC ¶¶ 66-139; Ex. 2 (setting forth facts supporting employee status); Ex. 3 (same); *see also* Ex. 4 (same).

11. Plaintiffs allege that as a result of CRST's policy of classifying its Drivers as independent contractors, CRST violated the FLSA by paying Drivers less than the minimum wage in certain workweeks. TAC ¶ 158-63; Ex. 2 ¶ 39 (supporting minimum wage violations); Ex. 3 ¶ 36 (same); *see also* Ex. 4 ¶ 34 (same).

12. Since at least October 10, 2014, all of CRST's ICOAs have contained a paragraph stating that the Driver will "indemnify, and hold [CRST] harmless from all reasonable attorney's fees and litigation expense [CRST] incurs in defending against any claims, suits, actions or administrative actions brought by [Driver] . . . that allege that [Driver] . . . is an employee of [CRST], but fail to result in any final . . . decision holding the allegation to be true." Doc 39-4; Doc 39-2; Doc 39-3 at ¶ 7(E); *see also* Ex. 2-A & 2-B ¶ 7(E); Ex. 4-A ¶ 7(E).

13. Since at least October 2014, all of CRST's ICOAs also have contained a provision stating that if the Driver "is determined to be an employee by any federal, state, local or foreign

court . . . ," the ICOA "shall be rescinded back to the time of its formation," and the Driver will "immediately owe" CRST all gross remuneration paid under the ICOA less certain deductions the Driver already paid and that CRST will owe the Driver "only the then applicable federal minimum hourly wage or, if higher, a State's then-applicable minimum hourly wage but only to the extent [the Driver's] wage earning activities occurred in the State." Doc 39-4; Doc 39-2; Doc 39-3 ¶ 9(F); *see also* Ex. 2-A & 2-B ¶ 9(F); Ex. 4-A ¶ 9(F)

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO CONDITIONAL FLSA CERTIFICATION

A. Standard for FLSA Conditional Certification

The FLSA allows aggrieved workers to maintain a collective action against their employers on behalf of "themselves and other employees similarly situated." 29 U.S.C. § 216(b). No employee shall be a party plaintiff ... unless he gives his consent in writing...." 29 U.S.C. § 216(b). Thus, class members must file a "consent to sue" to be considered parties to a collective action under the FLSA. *Schmidt v. Fuller Brush Co.*, 527 F.2d 532, 536 (8th Cir. 1975).

Iowa federal courts follow a two-step approach to determine whether an FLSA claim should be permitted to proceed as a collective action. *Betroche v. Mercy Physician Assocs., Inc.*, 2018 WL 4107909 (N.D. Iowa Aug. 29, 2018); *Bouaphakeo v. Tyson Foods,* 546 F. Supp. 2d 870, 890-891 (N.D. Iowa 2008). The first step involves conditional certification and generally occurs as early as possible after the case is filed because the statute of limitations continues to run against similarly situated workers until they receive notice of the case and file their consent to sue forms. "The sole consequence of conditional certification is the sending of court-approved written notice to employees, who in turn become parties to a collective action only by filing written consent with the court." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013).

At the conditional certification stage, "the plaintiffs 'need merely provide some factual basis from which the court can determine if similarly situated potential plaintiffs exist.'" *Salazar v. Agriprocessors, Inc.*, No. 07-cv-1006-LRR, 2008 WL 782803, at*5 (N.D. Iowa Mar. 17, 2008) (quoting *Dietrich v. Liberty Square, LLC*, 230 F.R.D. 574, 577 (N.D. Iowa 2005)). The Plaintiffs' burden at this stage is lenient and "does not require existing plaintiffs to 'show that members of the conditionally certified class are actually similarly situated.'" *Bouaphakeo*, 564 F. Supp. 2d at 892 (quoting *Fast v. Applebee's Int'l, Inc.*, 243 F.R.D. 360, 363 (W.D. Mo. 2007)). However, "plaintiffs must present more than mere allegations; some evidence to support the allegations is required." *Id.* (quoting *Young v. Cerner Corp.*, 503 F. Supp. 1226, 1229 (W.D. Mo. 2007)).

The second step occurs after discovery is complete. At that point, the Court considers whether final certification—or decertification—is appropriate. *See Frazier v. PJ Iowa, L.C.*, 337 F. Supp. 3d 848, 861 (S.D. Iowa 2018); *West v. Border Foods, Inc.*, Civil No. 05-2525 (DWF/RLE), 2006 WL 1892527, at *3 (D. Minn. June 10, 2006) ("At the second stage, the court conducts a fact intensive inquiry of several factors, including: (1) the extent and consequence of disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to defendant which appear to be individual to each plaintiff; and (3) fairness and procedural considerations."); *see also Myers v. Iowa Bd. of Regents*, No. 19CV00081 SMRSBJ, 2020 WL 2172274, at *6 (S.D. Iowa May 5, 2020).

Both stages focus on whether the plaintiffs and the collective action members are "similarly situated," the sole statutory criterion for proceeding as a collective. 29 U.S.C. § 216(b). The Eighth Circuit, like most other circuits, considers individuals to be similarly situated when the plaintiff alleges that he or she and the class members were together "victims of

a single decision, policy or plan" of the defendant that resulted in an FLSA violation. *Bouaphakeo*, 564 F. Supp. 2d at 892 (quoting *Young*, 503 F. Supp. 2d at 1229). Recently, the Ninth and Second Circuits have examined the meaning of "similarly situated" and have adopted a more general definition holding that "'similarly situated' simply means that named plaintiffs and opt-in plaintiffs share a similar issue of law or fact material to the disposition of their FLSA claims." *Scott v. Chipotle Mexican Grill, Inc.*, 954 F.3d 502, 515–16 (2d Cir. 2020) (citing *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1114 (9th Cir. 2019) ("[A] collective action can only be maintained—to the extent party plaintiffs are alike in ways that matter to the disposition of their FLSA claims. If the party plaintiffs' factual or legal similarities *are* material to the resolution of their case, dissimilarities in other respects should not defeat collective treatment." (citations omitted))). These standards are not materially different from the one used by the Eighth Circuit: When the class members are all victims of the same allegedly illegal policy, the legality of that policy presents factual and legal issues common to the class justifying conditional certification. As set forth below, Plaintiffs easily satisfy the lenient standard for conditional certification.

B. Plaintiffs are Entitled to Conditional Certification

Plaintiffs' complaint alleges that they and other Drivers were together victims of CRST's policy of designating Drivers as independent contractors exempt from the FLSA when they were, in fact, employees. TAC ¶¶ 61, 158-59. As a result, Plaintiffs and the collective action members did not receive minimum wage each work week. TAC ¶¶ 160. Thus, Plaintiffs and the other Drivers are similarly situated because they were all victims of CRST's policy of classifying them as independent contractors and not paying them minimum wage. *Bouaphakeo*, 564 F. Supp. 2d at 892 (quoting *Young*, 503 F. Supp. 2d at 1229). In support of these allegations, Plaintiffs have filed their declarations as well as that of another Driver attesting that CRST treated them as

independent contractors and did not pay them the minimum wage each week. *See* Ex. 2 ¶¶ 10, 39; Ex. 3 ¶¶ 11, 36; Ex. 4 ¶¶ 8, 34. These declarations also demonstrate that Plaintiffs and other Drivers worked pursuant to materially similar ICOAs and work rules. Ex. 2 ¶¶ 7, 13-16; Ex. 3 ¶¶ 8, 12-14; Ex. 4 ¶¶ 6, 12-14. Thus the terms and conditions of work that the Court must analyze to determine whether the Plaintiffs and the collective action members were properly classified as independent contractors or were, instead, FLSA employees—which is the central liability question in this litigation—are the same for the Plaintiffs and all collective action members.[11] If the terms and conditions of work set by CRST's ICOAs and work rules demonstrate that Plaintiffs were employees of CRST for purposes of the FLSA, then the other Drivers, all of whom operated pursuant to the same terms and conditions of work, were also FLSA employees of CRST. In short, all of the factual and legal questions relevant to the determination of whether CRST controlled the Drivers, whether they had an opportunity for profit or loss, the degree of skill they possessed, the intended permanence, *vel non*, of their relationship with CRST, and the extent to which their work was integral part of CRST's business are common to the Plaintiffs and

[11] To determine whether an individual is an FLSA employee, courts look to the "economic reality" of the work relationship to determine whether the worker was economically dependent upon the alleged employer. *See Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947); *Karlson v. Action Process Service & Private Investigations, LLC*, 860 F.3d 1089, 1092 (8th Cir. 2017); *Aimable v. Long & Scott Farms*, 20 F.3d 434, 439 (11th Cir. 1994). Economic dependence turns on the following factors: (1) the degree of control exercised by the employer over the workers; (2) the workers' opportunity for profit or loss and their investment in the business; (3) the degree of skill and independent initiative required to perform the work; (4) the permanence or duration of the working relationship; and (5) the extent to which the work is an integral part of the employer's business. *Karlson*, 860 F.3d at 1092; *Morrison v. Int'l Programs Consortium, Inc.*, 253 F.3d 5, 11 (D.C. Cir. 2001); *see also United States v. Silk*, 331 U.S. 704 (1947); *Brock v. Superior Care, Inc.*, 840 F.2d 1054 (2d Cir. 1988). All of these questions are common to all of the Drivers since they are required to sign materially similar ICOAs and operate pursuant to the same work policies set by CRST. The ICOAs and declarations of the named Plaintiffs provide factual support for the allegations in the TAC that Plaintiffs and other Drivers were employees for purposes of the FLSA.

members of the collective. Because the Plaintiffs and members of the collective allege they were all victims of CRST's illegal policy of classifying them as independent contractors and because Plaintiffs have presented substantial evidence supporting those allegations and demonstrating that the Plaintiffs and collective action members share common factual and legal questions material to the resolution of their FLSA claims, conditional certification of this action is appropriate.

Courts across the country have found FLSA certification to be appropriate in cases, like this one, in which truck drivers working under materially similar operating agreements alleged they were illegally classified as independent contractors. *See, e.g., Canava v. Rail Deliv. Serv., Inc.*, 2020 WL 2510648, at *6-8 (C.D. Cal. Feb. 27, 2020) (certifying collective of truck drivers and holding that the "assertion that the Drivers all signed the Contract or a materially similar agreement . . . is sufficient to establish the Drivers are 'similarly situated'"); *Carter v. XPO Last Mile, Inc.*, No. 16cv1231-WH0, 2016 WL 5680464, at *3-6 (N.D. Cal. Oct. 3, 2016) (certifying collective of delivery drivers working under 5 different versions of delivery service agreements who allege that all agreements misclassified them as independent contractors); *Villalpando v. Exel Direct, Inc.*, No. 12cv4137-JCS, 2016 WL 1598663 (N.D. Cal. Apr. 21, 2016) (refusing to decertify collective action alleging the contract signed by collective members improperly misclassified them as independent contractors); *Collinge v. Intelliquick Deliv. Inc.*, No. 2:12cv824 JWS, 2015 WL 1292444, at *1-10 (D. Ariz. 2015) (same); *Flores v. Velocity Exp., Inc.*, 12-CV-05790-JST, 2013 WL 2468362 (N.D. Cal. June 7, 2013) ("Plaintiffs have alleged, and Defendants do not dispute, that each individual delivery driver signed an independent contractor agreement, subjecting them to a uniform company policy of treating them as exempt workers under FLSA."); *Scott v. Bimbo Bakeries, USA, Inc.*, CIV.A. 10-3154, 2012 WL 645905

(E.D. Pa. Feb. 29, 2012) (granting conditional certification to bakery delivery drivers who alleged they were misclassified as independent contractors and, as a result, failed to receive minimum wage and overtime); *Spellman v. Am. Eagle Exp., Inc.*, CIV.A. 10-1764, 2011 WL 4102301 (E.D. Pa. May 18, 2011) (same); *see also Ortega v. Spearmint Rhino Cos Worldwide, Inc.*, 2019 WL 2871156, at *7-9 (C.D. Cal. May 15, 2019) (granting conditional certification where all collective members worked pursuant to the same form contract which classified them as independent contractors); *Doe v. Swift Transp. Co.*, No. 2:10-CV-00899 JWS, 2017 WL 67521, at *15 (D. Ariz. Jan. 6, 2017) (finding as a matter of law that ICOAs signed by Swift drivers that purported to establish independent-contractor relationships were in fact "contracts of employment," making them employees).

This case is indistinguishable from the cases cited above. Plaintiffs have alleged that they and the members of the collective were all victims of the same unlawful policy, and Plaintiffs have produced substantial evidence supporting those allegations. Thus, Plaintiffs have more than satisfied their modest burden of showing that the members of the collective are similarly situated with respect to Plaintiffs' FLSA claim. Accordingly, this Court should grant the motion for conditional certification and issue notice to the members of the collective.

II. THE COURT SHOULD GRANT NOTICE TO THE COLLECTIVE ACTION MEMBERS

Once conditional certification is deemed to be appropriate, "the Court has discretion to facilitate the opt-in process and authorize court-supervised notice to potential opt-in plaintiffs." *Frazier v. PJ Iowa, L.C.*, 337 F. Supp. 3d 848, 861–62 (S.D. Iowa 2018); *Saleen v. Waste Mgmt., Inc.*, 649 F. Supp. 2d 937, 939 (D. Minn. 2009) (citing *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989)). The goal of the notice process is to ensure potential plaintiffs receive

"accurate and timely notice concerning the pendency of the collective action, so they can make informed decisions about whether to participate." *Hoffmann-La Roche*, 493 U.S. at 170.

A. Form of notice

The FLSA's collective suit provisions require that the proposed notice provide "accurate and timely notice concerning the pendency of the collective action, so that [potential plaintiffs] can make informed decisions about whether to participate." *Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317, 323 (S.D.N.Y. 2007) (quoting *Hoffmann–La Roche*, 493 U.S. at 170). Plaintiffs believe that the proposed notice and opt-in form attached to Plaintiffs' Motion as Ex. A (Doc. 109-1) meets this standard and urge the Court to approve the notice.[12] The proposed notice calls for an opt-in period of 120 days. This period of time is appropriate given that the collective action members are truck drivers who are frequently away from home for extended periods of time and may not receive notice in a timely fashion. Courts certifying collective actions involving truck drivers routinely grant opt-in periods ranging from 90 to 150 days. *See, e.g.*, *Elmy v. Western Express, Inc.*, 2019 WL 6715115, at *1 (M.D. Tenn. Dec. 10, 2019) (120 days); *Huddleston v. John Christner Trucking, LLC.*, No. 17cv549-GFK-FHM, 2018 WL 7373644, at *3 (N.D. Okla. May 1 2018) (90 days); *Brown v. Phenix Transp. W. Inc.*, No. 3:13cv781-WHB-RHW, 2016 WL 3648274, at *5 (S.D. Miss. Mar. 31, 2016) (150 days); *Gatdula v. CRST Int'l, Inc.*, 2012 WL 12884919, at *7 (C.D. Cal. Aug 21, 2012) (90-days); *Mowdy v. Beneto Bulk Transp.*, No. C06-5682 MHP, 2008 WL 901546, at *11 (N.D. Cal. Mar. 31, 2008) (90 days); *see*

[12] The notice is modeled on the notice that this Court approved in *Bertroche v. Mercy Physicians Assocs., Inc.*, No. 18-CV-59-CJW (Doc 41-1), 2018 WL 4558199 (N.D. Iowa Sept. 21, 2018). Plaintiffs have reformulated the *Betroche* notice somewhat (a) to make it easier for truck drivers to understand, (b) added and revised provisions to account for the size of the class in this action and to address the coercive and misleading portions of the ICOA requiring Drivers to pay CRST's attorney's fees if Plaintiffs lose this case and a substantial part of their earnings should they win this case, and (c) included additional information such as the fee structure to ensure drivers are able to make informed decisions. *See* Section III, *infra*.

also Meyers v. Iowa Bd. Of Regents, No. 319CV00081SMRSBJ, 2020 WL 2172274, at *8–10 (S.D. Iowa May 5, 2020) (authorizing 90-day opt-in period for local hospital workers).

B. Method of notice

Plaintiffs propose to disseminate the notice by first-class mail and email, along with a reminder post-card to be sent to those class members who do not opt-in within 21 days of mailing. A copy of the proposed reminder card is attached to Plaintiffs' Motion as Ex. B (Doc. 109-2). Mail and email notice are appropriate because of the increasing problems and delay in postal delivery and because, as over-the-road drivers, the collective action members are dispersed around the country and may be absent from their mailing addresses for long periods of time during the opt-in period. Reminder post-cards afford the Plaintiffs an opportunity to ensure that the best notice practicable is provided to collective action members.

Courts routinely approve all three forms of notice in cases involving over-the-road truck drivers. *See Haworth v. New Prime, Inc.*, 2020 WL 1899276, at *2 (W.D. Mo. Apr. 16, 2020) (mail, email, and reminder notice); *Elmy*, 2019 WL 6715115, at *3 (mail, email, and reminder notice); *Ortega*, 2019 WL 2871156, at *8 (mail, email, and text reminder); *DeLaRosa v. J&GK Props., LLC*, 2019 WL 7067130, at *4 (E.D. Tex. Dec. 23, 2019) (mail, email, and reminder notices); *Davis v. Colonial Freight Sys., Inc.*, 2018 WL 2014548, at *4 (E.D. Tenn. Apr. 30, 2018) (mail and email notice); *Reyes v. Pier Enters. Grp, Inc.*, 2017 WL 10619856, at *5 (C.D. Cal. June 9, 2017) (mail, email, and reminder notice); *Warren v. MBI Energy Servs., Inc.*, 2020 WL 937429, at *9 (D. Colo. Feb.25, 2020) (mail and email notice); *Brown v. Phenix Transp. West, Inc.*, 2016 WL 3648274, at *4 (S.D. Miss. Mar. 31, 2016) (mail, email, and reminder post card); *Collado v. J & G Transp., Inc.*, 2014 WL 5390569, at *5 (S.D. Fla. Oct. 23, 2014) (mail and email).[13]

[13] Even apart from truck driver cases, courts routinely recognize that mail, email, and follow up reminder notices are an appropriate way to ensure that the best notice practicable is provided to

To be able to disseminate the notice in this manner, Plaintiffs request that the Court order CRST to provide Plaintiffs' counsel the following information for each collective action member: first name, last name, street address, city, state, zip, email address, and a unique employee identification number. Because of the extremely large number of collective action members, Defendants should provide this information in electronic spreadsheet format, such as Excel, with each type of information appearing in a separate column, which will facilitate use of the data. Plaintiffs also request that CRST provide Plaintiffs the telephone numbers and the last four digits of the social security numbers for any class member whose notice is returned as undeliverable. This information will be used by Plaintiffs' counsel to attempt to find more up-to-date addresses for such class members and for no other purpose.

Courts in the Eighth Circuit regularly require defendants to provide such information in these circumstances to ensure the best notice practicable. *See Murray v. Silver Dollar Cabaret, Inc.*, 2017 WL 514323, at *6 (W.D. Ark. Feb. 8, 2017) (ordering production of telephone numbers and authorizing Plaintiff to contact by telephone class members whose mail notice is returned to obtain a good address); *Wilson v. Agrileum LLC*, 2016 WL 11541229, at *4 (W.D. Tenn. Aug. 26, 2016) (telephone numbers); *Nobles v. State Farm Mut. Auto. Ins. Co.*, 2011 WL 5563444, at *2 (W.D. Mo. Nov. 15, 2011) (telephone numbers and last four digits of social security); *Resendiz-Ramirez v. P & H Forestry, LLC*, 544 F. Supp. 2d 785 (W.D. Ark. April 2,

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the collective action members. *See Craven v. Neeley's Serv. Ctr, Inc.*, No. 4:19cv 4115, 2020 WL 2046383, at *5 (W.D. Ark. Apr. 28, 2020) (mail, email, and follow-up reminder); *Murray v. Silver Dollar Cabaret, Inc.*, 2017 WL 514323, at *6 (W.D. Ark. Feb. 8, 2017) (mail and email notice); *Helton v. Factor 5, Inc.*, C-10–04927 SBA, 2012 WL 2428219, *7 (N.D. Cal. June 26, 2012) (ordering notice by mail and reminder post card, and production of email addresses); *Sanchez v. Sephora USA, Inc.*, No. 11–CV–3396, 2012 WL 2945753, at *6 (N.D. Cal. July 18, 2012) ("[C]ourts have recognized that a second notice or reminder is appropriate in an FLSA action since the individual is not part of the class unless he or she opts-in.").

2008) (social security numbers, telephone numbers, and dates of birth); *Dietrich v. Liberty Square, LLC*, 230 F.R.D. 574 (N.D. Iowa 2005) (telephone numbers and dates of birth); *see also Reyes*, 2017 WL 10619856, at *5 (ordering defendant to produce dates of birth and partial social security numbers for class members whose initial notice is returned by mail); *Gieseke v. First Horizon Home Loan Corp.*, No. 04-2511-CM-GLR, 2007 WL 445202, at *4 (D. Kan. Feb. 7, 2007), *aff'd as modified*, No. CIV.A. 04-2511-CM, 2007 WL 1201493 (D. Kan. Apr. 23, 2007) ("[D]istrict courts appear to routinely order defendants in FLSA collective actions to produce information, including social security numbers, necessary for locating putative class members."); *Rees v. Souza's Milk Transp., Co.*, No. 1:05–cv–00297 AWI TAG, 2006 WL 3251829, at *1 (E.D. Cal. Nov. 08, 2006) (ordering defendant to disclose social security numbers for eleven FLSA class members for whom mailing to a last known address was insufficient). Plaintiffs ask that the requested information be provided within 10 days of the Court's granting this motion.

Finally, Plaintiffs seek an Order requiring the Defendants to issue a short text through its communications network to all currently employed class members advising them of the existence of this case, their right to participate, and where they can receive a copy the notice. (Proposed text attached to Plaintiffs Motion as Ex. C, Doc. 109-3). CRST requires all currently employed class members to have a computer communication device in their truck which is used to transmit and receive written communications from CRST. *See* Ex. 2-A & 2-B ¶ 4(C)(3) (describing communication device). The Court should order CRST to post a message through this communication system, without pulling the message, once a week between 9am and 5pm during the notice period.[14] This is an important and non-burdensome way to ensure that current Drivers

[14] Upon information and belief, CRST can deliver the notice to current lease operators, but can also pull it off the screens of recipients. Thus, CRST should be directed not to pull the advisory once sent. Further, if such delivery is made at night, it might be missed by the driver the next day,

receive notice of the action and their right to opt-in; it is especially important as a means of providing notice to truck drivers who may be away from home (and by extension, away from their mail delivery) for extended periods. *See Doe v. Swift Transp. Co.*, No. 2:10cv899 JWS, 2017 WL 735376, at *7 (D. Ariz. Feb. 24, 2017) (ordering curative notice to be sent to putative class members via on-board communication device); *Petrone v. Werner Enters. Inc.*, No. 8:11 cv401, 2013 WL 12176452, at *2 (D. Neb. Apr. 1, 2013) (ordering FLSA notice to be sent to putative class members via Qualcomm because defendant "use[d] its Qualcomm messaging system as a means of regular communication" with drivers).

III. THE NOTICE SHOULD REMEDY DEFENDANTS' DELIBERATE EFFORTS TO CHILL PARTICIPATION IN THIS SUIT

In October 2014 (if not before[15]), CRST began inserting two paragraphs in its ICOAs for the sole purpose of intimidating and coercing Drivers into not filing or joining an FLSA action. Because these paragraphs are patently illegal and highly likely to chill participation in this collective action, Plaintiffs ask the Court to state in the Notice that the offending paragraphs are of no force and effect, and that Drivers can join this case without fear that they could be required to pay CRST's attorney's fees if they lose, and without fear that they will have to repay CRST the gross wages they received while working for CRST in the event they win. In addition, because CRST added these illegal paragraphs to the ICOA for the purpose of deterring Drivers from pursuing FLSA claims—a purpose that the paragraphs clearly accomplished, *see* Ex. 2 ¶ 51; Ex. 4 ¶ 44, Defendants should be estopped from asserting the FLSA statute of limitations

especially when followed by the numerous other instructions and information that CRST transmits to drivers around the clock.

[15] The two paragraphs appear in the ICOA form revised as of 10/10/2014. This is the earliest exemplar of a CRST Expedited ICOA that Plaintiffs currently have. However, it may be that the offending paragraphs were first inserted prior to October 2014.

against any claim that was valid as of the date CRST first started putting the offending paragraphs in its ICOAs.

The two paragraphs at issue are ¶7(E) and ¶9(F) of the ICOA. Paragraph 7, titled "Indemnification and Hold Harmless," states in subsection (E) that the Driver is required to pay CRST's attorney's fees and expenses if the Driver unsuccessfully claims that CRST is its employer. The paragraph provides as follows:

> 7(E) . . . . Contractor agrees to indemnify and hold Carrier harmless from all reasonable attorney's fees and litigation expenses Carrier incurs in defending against any claims, suits, actions, or administrative proceedings brought by Contractor . . . . or, at Contractor's instance or with Contractor's consent, by any union or other private organization or member of the public—that allege Contractor or any of Contractor's workers is an employee of Carrier, but fail to result in any final (upon completion of all appeals or the running of all applicable appeal periods) judicial or administrative decision holding the allegation to be true.

Doc 37-4 ¶ 7(E). Paragraph 9(F) of the ICOA provides that, in the event the Driver is determined to be an employee of CRST "by any federal, state, local, or foreign court, administrative agency, or governmental body," the ICOA is automatically rescinded "back to the date of its formation." Doc 37-4 ¶9(F). Upon rescission, the Driver shall "immediately owe" CRST all gross compensations received by the Driver during the term of the contract less deductions previously taken by CRST and expenses incurred by the Driver in performance of his or her work for CRST, Doc 37-4 ¶9(F)(1), and CRST will, in turn, owe the Driver "only the then applicable minimum hourly wage or, if higher, a State's then-applicable minimum hourly wage, but only to the extent the [Driver's] wage-earning activities occurred in that State."[16] Doc 37-4 ¶9(F)(2). Paragraph 9(F)(3) provides that all of the rescission provisions, including the duty to repay all gross receipts to CRST, survive the termination of the ICOA.

[16] The net effect of the rescission is that the Driver will end up owing CRST money for every work week in which he or she made more than minimum wage.

In essence, these paragraphs make clear to Drivers that if they dare to pursue claims under federal or State wage laws, they will end up owing CRST money whether they win or lose and may lose their jobs as well. The obvious purpose of these paragraphs is to deter Drivers from asserting their rights as employees under federal and State wage laws, including the FLSA. And they are uniquely effective in accomplishing that purpose for two reasons. First, no rational Driver would file or join a minimum wage lawsuit knowing that, win or lose, the only result will be that he or she will end up owing CRST money. Second, CRST ensures that the Drivers will take that threat seriously by requiring the Drivers to contractually *agree* to the indemnification and recission provision as part of his or her ICOA. The provisions are not mere threats from an employer that a worker might take exception to, but something that the Driver himself will view as binding because he has agreed to the provisions. *See* Ex. 2 ¶ 51; Ex. 4 ¶ 44. Moreover, by explicitly stating that the indemnity and rescission provisions survive the termination of the contract, CRST ensures that the deterrent function of these paragraphs will continue even after a Driver has left CRST. No matter how long ago a Driver may have quit working for CRST, these paragraphs make clear that he will end up owing CRST money if he attempts to file or join an FLSA lawsuit against CRST in the future—whether or not the lawsuit is successful.

In addition to their deterrent effect, the indemnity and rescission paragraphs are clearly unlawful. The FLSA requires minimum wages to be paid in a timely fashion each workweek, not years after the fact in response to a rescission of the contract. 29 U.S.C. § 206; *see Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993) (discussing FLSA requirement of timely payment). In addition, the FLSA categorically prohibits an employer from exacting waivers of FLSA rights, including rights to liquidated damages. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 (1945) ("No one can doubt but that to allow waiver of statutory wages by agreement would nullify the

purposes of the Act. We are of the opinion that the same policy considerations which forbid waiver of basic minimum and overtime wages under the Act also prohibit waiver of the employee's right to liquidated damages."). Nor is it lawful for CRST to contract to make its employees liable for its fees or costs if they lose. *Phelps v. MC Commc'ns, Inc., No. 2:11-CV-00423, 2011 WL 3298414, at *7 (D. Nev. Aug. 1, 2011)* (citing *Mach v. Will Cnty Sheriff*, 580 F.3d 495, 501 (7th Cir.2009) ("The FLSA's fee-shifting provision refers only to a prevailing plaintiff, . . . and says nothing of a prevailing defendant" and thus a prevailing defendant "may obtain attorneys' fees only if the plaintiff litigated in bad faith") (citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258–59 (1975); *Richardson v. Alaska Airlines, Inc.*, 750 F.2d 763, 767 (9th Cir.1984) ("A prevailing employer may not recover attorney's fees in an action under the FLSA")).

Finally, and perhaps most importantly, the offending paragraphs constitute an unlawful retaliation. The FLSA explicitly states that it is illegal for an employer "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted . . . any proceeding under or related to this chapter . . ." 29 U.S.C. § 215(a)(3). Demanding indemnification from workers who bring FLSA claims constitutes illegal retaliation. *Martin v. Gingerbread House, Inc.*, 977 F.2d 1405, 1407-08 (10th Cir. 1992); *Hose v. Henry Ind., Inc.*, 2017 WL 386545, at *5 (E.D. Mo. Jan. 27, 2017) (same). Demanding all compensation previously paid under a contract and substituting less advantageous compensation in response to an FLSA suit is also per se retaliatory. *See Wagner v. Campbell*, 779 F.3d 761, 766 (8th Cir. 2015) (an adverse employment action that will support a finding of retaliation consists of a tangible change in working conditions that produces a material disadvantage.)

Demanding that workers contractually agree to such retaliation is simply another way of asking workers to waive their FLSA rights. *Brooklyn Sav. Bank*, 324 U.S. at 707.

Plaintiffs are aware of only one court that has addressed a provision like the one at issue here. Probably not coincidentally, that case also arose in the context of an interstate transportation company trying to prevent its contract drivers from pursuing FLSA rights. In *Doe v. Swift Transp. Co.*, 2017 WL 735376 (D. Ariz. Feb. 2, 2017), after the court entered summary judgment finding drivers operating under Swift's ICOAs were employees, Swift demanded that its drivers sign new ICOAs containing indemnification and rescission provisions virtually identical to those in Paragraphs 7(E) and 9(F) of the CRST ICOA. The *Swift* court found the rescission provision to be "misleading in that it suggests Swift may impose its own measure of damages in the event of a reclassification decision," *id.* at 4, and because it "suggests that Swift's approach of recapture and substitution will satisfy its FLSA obligations." *Id.* The court also found the indemnification provision misleading because "[a] successful defendant is generally not entitled to attorneys' fees under the FLSA." *Id.* Most importantly, the court concluded that the indemnification and rescission paragraphs, taken together, "**have a coercive effect on potential class members** who, after reading the agreement, have a well-founded fear that they may end up owing Swift money whether or not the case is ultimately resolved in their favor. . . . **The threat of owing money undoubtedly has a chilling effect** on participation in the class action, particularly in the context of an employer-worker relationship such as here." *Id.* at *5 (emphasis added).

The *Swift* plaintiffs had filed their FLSA action years before Swift demanded that drivers sign the new indemnification and recission provisions, so the *Swift* court was not concerned with tolling of the limitations period, but it was concerned that the new provisions would discourage

drivers from opting into the case when FLSA notice was issued. *Id.* Accordingly, the court ordered Swift to issue a notice to its Drivers clearly stating that (1) the two paragraphs "will not apply with respect to any relief granted to the parties in the [*Swift*] lawsuit" and (2) the two offending paragraphs "do not waive or limit any rights or remedies you may have under any state or federal wage payment laws and statutes including the Fair Labor Standards Act. The indemnification provision . . . will not require you to pay the Company's attorneys' fees or expenses for any claims you bring or which are brought on your behalf in the [*Swift*] lawsuit." *Id.* at *7.

The same language should be inserted in the notice in this case for the same reason the *Swift* court ordered such notice to the class members in that case—to ensure that CRST's unlawful contract provisions do not operate to deter class members from joining this case.

But that alone is not sufficient. Unlike the *Swift* case, where the company tried to add the offending provisions years after the underlying lawsuit had been filed and many drivers had already joined the case, CRST began including the indemnification and rescission provisions in its ICOAs in October 2014, if not before. Those provisions have been deterring Drivers from asserting their rights since that time, and many of Drivers' claims would now be barred by limitations if Defendants are permitted to benefit from their unlawful coercion of Drivers. In these circumstances, the appropriate remedy is to equitably estop Defendants from asserting limitations as a bar to the FLSA claims of any Driver who signed an ICOA containing the offending paragraphs.

Equitable estoppel as applied to the statute of limitations "focuses on the employer/defendant's conduct." *Garfield v. J.D. Nichols Real Estate*, 57 F.3d 662, 666 (8th Cir. 1995). It arises when "the employee's failure to file in timely fashion is the consequence of

either a deliberate design by the employer or of actions that the employer should unmistakably have understood would cause the employee to delay filing his [claim]." *Id.* (quoting *Kriegesman v. Barry-Wehmiller Co.*, 739 F.2d 357, 358-59 (8th Cir. 1984)). The doctrine is only to be invoked in exceptional circumstances. *Dring v. McDonnell Douglas Corp.*, 58 F.3d 1323, 1330 (8th Cir. 1995). If the threats explicitly set forth in Paragraphs 7(E) and 9(F) of the ICOA are not exceptional circumstances, nothing is. There can be no question that Paragraphs 7(E) and 9(F) constitute a "deliberate design" by CRST to deter Drivers from filing federal or state wage claims—and CRST certainly understood they would have that effect when it inserted the provisions in the ICOA. *Garfield*, 57 F.3d at 666; *see also Bassett v. TVA*, No. 5:09cv39, 2013 WL 2902821, at *6 (W.D. Ky. June 13, 2013) (stating if plaintiffs' allegations are true, "it appears to the Court that the threat of termination and retaliation could constitute an extraordinary circumstance that prevented the Plaintiffs from exercising their rights under FLSA").

Accordingly, this Court should equitably estop Defendants from asserting the statute of limitations for any FLSA claims that were timely as of the date CRST first starting inserting the offending paragraphs in its ICOAs, whether that was October 2014 or some earlier date. To ensure that all of these individuals receive notice of their right to opt-into this action, Plaintiffs have defined the FLSA class as all individuals who entered in to ICOAs to drive for CRST at any time on or after October 2014.

In addition, Plaintiffs are entitled to equitable tolling of the FLSA statute of limitations from the date this motion is filed until the date notice is issued.[17] Courts in the Eighth Circuit

[17] This tolling will be superfluous if the Court equitably estops Defendants from asserting the statute of limitations.

"commonly grant equitable tolling for the time it takes the court to rule on a conditional certification motion." *Clendenen v. Steak N Shake Operations, Inc.*, 2018 WL 467928, at *4 (E.D. Mo. Sept. 28, 2018) (citing cases from W.D. Ark., W.D. Mo., D. Minn., and *Putnam v. Galaxy 1 Mktg. Inc.*, 276 F.R.D. 264, 276 (S.D. Iowa 2011). In addition to the cases cited in *Clendenen*, see also *Vinsant v. MyExperian, Inc.*, No. 2:18cv2056, 2018 WL 3313023, at *4-5 (W.D. Ark. July 5, 2018); *Murray v. Silver Dollar Cabaret, Inc.*, No.5:15cv5177, 2017 WL 514323, at *4 (W.D. Ark. Feb. 8, 2017). Tolling during this period is particularly appropriate where, as here, Defendants misinformed Drivers, in writing, that Drivers were independent contractors, a representation that might well cause Drivers to sleep on their rights in the absence of notice. *See Whitworth v. French Quarters Partners, LLC*, No. 6:13-CV-6003, 2013 WL 132364197, at *3–4 (W.D. Ark. July 31, 2013).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court:

(1) Grant conditional certification of an FLSA collective action on behalf of a collective defined as:

> All drivers who entered into independent contractor operating agreements ("ICOAs") with CRST Expedited, Inc. at any time on after the date the terms set forth in ¶¶ 7(e) and 9(f) of Plaintiff Cervantes' ICOA were added to CRST Expedited's ICOAs, which was at least October 10, 2014, if not earlier.[18]

(2) Order Defendants to provide Plaintiffs' counsel within 10 days, the following information with respect to each individual within the above-defined collective: first name, last name,

[18] Excluded from the FLSA collective action are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the relevant class period has had, a controlling interest in any Defendant. Also excluded are Fleet Drivers, if any—i.e. drivers who leased two or more operational trucks to CRST Expedited, Inc. at the same time. Drivers who leased multiple trucks to CRST but only one at a time, or who leased a second truck while his or her original truck was inoperative are included in the collective action.

street address, city, state, zip, email address, and unique identification number. Defendants should also be ordered to produce the telephone numbers and last four digits of the social security number for all members of the collective whose notices are returned as undeliverable and for all collective members who have the same names. All of this information should be provided in an electronic spreadsheet format such as Excel, and each item of information should be set forth in a separate column;

(3) Authorize Plaintiffs to send the notice attached to their Motion as Exhibit A (Doc. 109-1) to the FLSA collective through first-class mail and email, authorize Plaintiffs to send reminder post-cards attached to their Motion as Exhibit B (Doc. 109-2) to collective members who do not opt-in within 21 days of the start of the opt-in period, and authorize Plaintiffs to resend notice to collective members whose notices are returned as undeliverable if a more accurate address can be found;

(4) Order Defendants to issue the short statement attached to Plaintiffs' Motion as Exhibit C (Doc. 109-3) on CRST's communication device to collective members currently working for Defendants indicating that a lawsuit that may affect them has been filed and indicating where they can obtain a copy of the notice;

(5) Approve the Notice, Opt-in Form, Reminder Postcard, and statement to be issued on Defendant's communication system (each of which is attached to Plaintiffs' Motion);

(6) Approve an opt-in period of 120 days; and

(7) Equitably estop Defendants from claiming statute of limitations as a defense to claims from October 10, 2014 to the present as a result of the illegal, deceptive and coercive provisions set forth in ¶7(E) and ¶9(F) of the ICOA.

(8) Order that the statute of limitations is equitably tolled as October 23, 2020, the date of the of the filing of this motion, until the date notice is issued should the Court not grant the equitable estoppel requested above.

Respectfully submitted this 23rd day of October, 2020.

By: */s/ Michael J.D. Sweeney*

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