

C. R. England transports property in equipment leased from independent truckers (known as “owner-operators”) including the Contracting Plaintiffs Thomas Shutt, William Piper, Don Sullivan, Sr., James Murphy, Walter Williams and others similarly situated. Under federal law and regulations, authorized motor carriers like C. R. England may perform authorized transportation in equipment they do not own *only* if the equipment is covered by a written lease meeting the requirements set forth in 49 C.F.R. § 376.12 (Part 376). *See* 49 C.F.R. § 376.11 (a); *see also* 49 U.S.C. § 14102. A person injured by an authorized carrier’s failure to comply with the federal leasing regulations may bring an action seeking injunctive relief and damages pursuant to 49 U.S.C. § 14704(a)(1) and (2), and may recover attorneys’ fees and costs under 49 U.S.C. § 14704(e).

2. Plaintiffs have been injured by Defendant’s execution of agreements with Contracting Plaintiff owner-operators, which contain material provisions that do not meet the requirements of Section 376.12. Numerous terms required by Section 376.12 are missing from the Standard Lease Agreement. Other terms in the Standard Lease Agreement conflict with provisions of Section 376.12. Further, Defendant has engaged in a pattern and practice of conduct violating its obligations under Part 376 to Contracting Plaintiffs and others similarly situated.

JURISDICTION AND VENUE

3. This action arises under 49 U.S.C. §§ 14102 and 14704 *et seq.*, and 49 C.F.R. Part 376, *et seq.*, governing the terms and conditions pursuant to which truck owner-operators lease equipment to authorized motor carriers for the transport of property.

4. Jurisdiction of this matter is granted to this court by 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1337 (proceedings arising under an act of Congress regulating commerce).

The causes of action alleged here arise under the laws of the United States regulating commerce and

the activities of motor carriers engaged in the transportation of property in interstate commerce, including 49 U.S.C. §§ 13501, 14102 and 14704(a)(1) and (2), and 49 C.F.R. § 376 *et seq.*

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). C.R. England has significant contacts with California including, but not limited to: its business dealings with Contracting Plaintiff Don Sullivan who lives in Bakersfield, in the state and Eastern District of California, and who received his weekly settlement sheets from Defendant within this state and district; its business dealings with numerous shippers and receivers of freight who ship and/or receive freight within this state and district that is transported by Defendant with the use of equipment owned by Contracting Plaintiffs and others who are absent class members; and its practice of recruiting drivers from within this state and district and training its drivers at its driver training school in Mira Loma, California, adjacent to this district.

PARTIES

6. Plaintiff Owner-Operator Independent Drivers Association (“OOIDA”) is a business association of persons and entities who own and operate motor vehicles, commonly known as “owner-operators.” Owner-operators are traditionally small business truckers who own and operate a truck tractor (of a tractor-trailer combination). They lease their tractor and driving services, and often their own trailer, to motor carriers (such as Defendant), agreeing to move items for the motor carrier in interstate commerce in exchange for specified compensation. OOIDA is a not-for-profit corporation incorporated in the State of Missouri, with its headquarters located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has approximately 78,000 members residing in all fifty (50) states and in Canada. OOIDA brings this action in a representative capacity and seeks declaratory and injunctive relief on behalf of all owner-operator

members.

7. Contracting Plaintiff Thomas Shutt, citizen of the state of Iowa, is an owner-operator who has leased motor vehicle equipment, with drivers, to C. R. England within the purview of 49 U.S.C. § 14102. Plaintiff Thomas Shutt is an OOIDA member.

8. Contracting Plaintiff William Piper, citizen of the state of Nevada, is an owner-operator who has leased motor vehicle equipment, with drivers, to C. R. England within the purview of 49 U.S.C. § 14102. Plaintiff William Piper is an OOIDA member.

9. Contracting Plaintiff Don Sullivan, Sr., citizen of the state and Eastern District of California, is an owner-operator who has leased motor vehicle equipment, with drivers, to C. R. England within the purview of 49 U.S.C. § 14102. Plaintiff Don Sullivan, Sr. is an OOIDA member.

10. Contracting Plaintiff James Murphy, citizen of the state of Florida, is an owner-operator who is currently leasing motor vehicle equipment, with drivers, to C. R. England within the purview of 49 U.S.C. § 14102. Plaintiff James Murphy is an OOIDA member.

11. Contracting Plaintiff Walter Williams, citizen of the state of Minnesota, is an owner-operator who has leased motor vehicle equipment, with drivers, to C. R. England within the purview of 49 U.S.C. § 14102. Plaintiff Walter Williams is an OOIDA member.

12. C. R. England is a Utah corporation doing business in all or substantially all of the lower 48 states, including the Eastern District of California. C. R. England is a regulated motor carrier, primarily engaged in the enterprise of providing transportation services to the shipping public under authority granted by DOT and formerly the ICC. During all times material to this case, Defendant is and has been an “authorized carrier” within the meaning of 49 C.F.R. § 376.2(a).

CLASS ACTION ALLEGATIONS

13. **Class Description.** Plaintiffs represent a class (hereinafter “Class”) consisting of all owner-operators in the United States who have entered federally regulated leases with C. R. England, or its authorized agents or business affiliates (“Lessors”).

14. **Impracticability of Joinder.** On information and belief, there are over one thousand (1,000) individual owner-operators who are members of this Class - - Lessors. These individual owner-operators are residents of various states and travel continuously, and are, therefore widely dispersed geographically. Thus, joinder of all potential Class Members would be impracticable.

15. **Commonality.** Each potential class member is party to a standard lease agreement which is substantively identical to the agreements alleged in this Complaint to be in violation of the federal leasing regulations. C. R. England has acted toward these Class Members in a way that affects all members of the Class - - Lessors - - similarly and, accordingly, questions of fact and law are common to the Class, as are questions of the liability of C. R. England, or the appropriate nature of injunctive relief.

16. **Typicality.** The claims of the Plaintiffs are typical of the claims of the potential Class as a whole in that all claims arise from materially identical standard lease agreements alleged to be in violation of the federal leasing regulations.

17. **Fair and Adequate Representation.** Plaintiffs are capable of fairly and adequately protecting the interests of the Class. Additionally, OOIDA has previously participated as class representative on behalf of owner-operators in several cases, and counsel for Plaintiffs (The Cullen Law Firm, PLLC) has been involved in numerous class actions around the country on behalf of owner-operators. There is no evidence that any of the interests of the class members are adverse.

18. **Class Certification Appropriate Under Rule 23(b)(2).** Defendant has acted or

failed to act on grounds generally applicable to the potential class as a whole, as alleged in this Complaint. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under Fed. R. Civ. P. 23(b)(2).

19. **Class Certification Appropriate Under Rule 23(b)(3)**. The questions of law enumerated in the counts below are common to all potential class members, as described in paragraph 18, *supra*, and predominate over any questions affecting only individual members which are essentially limited to the amounts due each member. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of the claims alleged in this Complaint.

20. **Additional Factors Favoring Class Certification**. Other factors favoring the certification of this suit as a class action include:

(a) the amounts in controversy for individual owner-operators are relatively small, so that individual members of the Class would not find it cost-effective to bring individual claims;

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

(c) on information and belief, there is no litigation already commenced by Class Members concerning the causes of action raised in the Complaint;

(d) no substantial difficulties are likely to be encountered in managing this class action;

(e) on information and belief, Defendant has utilized essentially the same standard lease agreement for many years and the conduct at issue arises from this agreement; and

(f) Plaintiffs are represented by The Cullen Law Firm, PLLC, which has the

experience of representing their clients in numerous class actions involving owner-operators and other small business truckers nationwide.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

21. The Contracting Plaintiffs entered into federally-regulated lease agreements (the “Lease Agreements”) with Defendant. A copy of the Lease Agreements entered into between Defendant and Plaintiffs Walter Williams and James Murphy are attached as Exhibits “A” and “B,” respectively. These Lease Agreements are the same form of Agreement entered into with all other Contracting Plaintiffs. On information and belief, this Lease Agreement is substantively identical in all material respects to Lease Agreements entered into with the entire potential class.

22. These Lease Agreements and the leases between C. R. England and Class members constitute leases as defined in 49 C.F.R. § 376.2(e).

23. The vehicles Contracting Plaintiffs, and other similarly situated owner-operators, provided to C. R. England for use are “equipment” within the meaning of 49 C.F.R. § 376.2(b).

24. Shutt was leased to and operated for C. R. England from May 2001 to October 2001.

25. Piper was leased to and operated for C. R. England from April 1999 to July 2001.

26. Sullivan was leased to and operated for C. R. England from May 1998 to May 1999.

27. Murphy entered into his lease with C. R. England in July 2001 and is currently leased to Defendant.

28. Williams was leased to and operated for C. R. England from January 2001 to May 2001.

COUNT I
Unlawful Provision of Transportation Services by C. R. England

29. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 28.

30. Under federal law, an “authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions: . . . [t]here shall be a written lease granting the use of the equipment and meeting the requirements contained in § 376.12.” Defendant C. R. England is engaged in the unlawful provision of transportation services in equipment it does not own because the leases governing its use of such equipment fail to conform to 49 C.F.R. Part 376.

a. Defendant’s Lease Agreements with Plaintiffs do not contain certain provisions required by 49 C.F.R. § 376.12. By way of illustration and not limitation:

- (1) Defendant C. R. England’s Lease Agreements do not recite an unqualified obligation to provide drivers with documentation to substantiate chargebacks as required by 49 C.F.R. § 376.12(h).
- (2) Defendant C. R. England’s Lease Agreements do not specify that it will provide the driver with certificates of insurance for each policy the driver purchases through it as required by C.F.R. § 376.12 (j)(2).
- (3) Defendant C. R. England’s Lease Agreements do not specify that, upon a driver’s request, it will provide the driver with a copy of each insurance policy as required by C.F.R. § 376.12 (j)(2).
- (4) Defendant C. R. England’s Lease Agreements do not specify that when deductions for cargo or property damage are made

from a driver's compensation, a written explanation and itemization of those deductions will be given to the driver before the deductions are made as required by 49 C.F.R. § 376.12 (j)(3).

b. Defendant C. R. England's Lease Agreements contain provisions that conflict with 49 C.F.R. § 376.12. By way of illustration and not limitation,

- (1) Defendant C. R. England's Lease Agreements provide that it can deduct from the driver's compensation *any* amount the driver owes it, notwithstanding its obligation to specify all chargebacks in advance as required by 49 C.F.R. § 376.12 (h);
- (2) Defendant C. R. England's Lease Agreements provide that *all* indebtedness may be deducted from a driver's escrow notwithstanding its obligation to specify with particularity the items for which the escrow can be used as required by 49 C.F.R. § 376.12 (k);
- (3) At least one version of Defendant C. R. England's Lease Agreements requires the driver to purchase insurance from the carrier which constitutes the forced purchase of a product in conflict with 49 C.F.R. §376.12(i);
- (4) Defendant C. R. England's Lease Agreements require drivers to allow the motor carrier to install a satellite communications device in their trucks and require the drivers to pay a \$15.00

per week usage charge for the device and for the cost of insuring the device which constitutes the forced purchase of a product/service in violation of 49 C.F.R. §376.12(i);

(5) Defendant C. R. England's Lease Agreements require drivers to authorize the deduction of a settlement administrative fee from their compensation which constitutes the forced purchase of a service in conflict with 49 C.F.R. §376.12(i);

(6) Defendant C. R. England's Lease Agreements require drivers to authorize the deduction of an insurance administrative fee from their compensation which constitutes the forced purchase of a service in conflict with 49 C.F.R. §376.12(i);

(7) Defendant C. R. England's Lease Agreements give the motor carrier sole discretion to determine when withdrawals can be made from the maintenance escrow and to what use the funds can be applied in violation of the specificity requirement of 49 C.F.R. §376.12(k).

31. As a direct and proximate result of this violation of federal law, the rights of Plaintiffs have been violated and Plaintiffs have suffered financial injury.

32. Plaintiffs will continue to be violated and Plaintiffs will suffer additional future injury unless Defendant C. R. England is enjoined from providing transportation in equipment they do not own until they execute conforming lease agreements with owner-operators.

COUNT II
Violations of the Truth-In-Leasing Regulations by C. R. England

33. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 32.

34. The Truth-In-Leasing regulations mandate that lease agreements by motor carriers contain certain provisions and that those lease provisions “be *adhered to and performed* by the authorized carrier.” 49 C.F.R. § 376.12 (emphasis added).

35. Defendant C. R. England does not adhere to or perform the obligations established by 49 C.F.R. Part 376.12. By way of illustration and not limitation:

a. Defendant C. R. England unilaterally increased the amount Plaintiffs agreed to pay for insurance pursuant to their Lease Agreements in violation of 49 C.F.R. § 376.12 (h) and (j);

b. Defendant C. R. England failed to provide Plaintiffs copies of those documents which are necessary to determine the validity of certain chargebacks in violation of 49 C.F.R. § 376.12 (h), thereby facilitating the imposition of unreasonable excessive chargebacks against compensation;

c. Defendant C. R. England made deductions from Plaintiffs’ compensation for truck lease payments for which they were not responsible in violation of 49 C.F.R. § 376.12 (k);

d. Defendant C. R. England required Plaintiffs to purchase insurance and other products from it as a condition of entering into lease agreements with it in violation of C.F.R. § 376.12 (i);

e. Defendant C. R. England failed to provide Plaintiffs with certificates of insurance that contain all the information required by C.F.R. § 376.12 (j), thereby facilitating the sale

of insurance at unreasonable and excessive premiums;

f. Defendant C. R. England failed to provide Plaintiffs with copies of insurance policies upon request in violation of C.F.R. § 376.12 (j), thereby preventing Plaintiffs from evaluating the scope and value of the insurance coverage provided;

g. As a direct and proximate result of this violation of federal law, the rights of Plaintiffs have been violated and Plaintiffs have suffered financial injury;

h. Plaintiffs will continue to be violated and Plaintiffs will suffer future financial injury unless Defendant C. R. England is enjoined from engaging in business practices that violate the Truth-In-Leasing Regulations.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., THOMAS SHUTT, WILLIAM PIPER, DON SULLIVAN, SR., JAMES MURPHY, WALTER WILLIAMS individually and for all others similarly situated, respectfully request that this Court:

1. Enter declaratory judgment that the leases Defendant entered with the Class violate 49 C.F.R. § 376.12 in that they fail to contain provisions required by law;

2. Enter declaratory judgment that the leases Defendant entered with the Class contain provisions that are inconsistent with the requirements and responsibilities imposed upon authorized carriers under 49 C.F.R. § 376.12;

3. Enter an injunction pursuant to 49 C.F.R. § 376.11(a) and 49 U.S.C. § 14704(a)(1) enjoining and restraining Defendant from performing authorized transportation in equipment it does

not own until it enters into written lease agreements meeting the requirements contained in 49 C.F.R. § 376.12;

4. Certify a class comprised of lessors of motor vehicle equipment who have leased, are leasing, or will lease during the pendency of this proceeding, such equipment to Defendant for the transport of property in interstate commerce;

5. Enter an Order requiring Defendant to deliver to Contracting Plaintiffs and all members of the Class all insurance information and documentation for the Class as required by 49 C.F.R. § 376.12(h) and (j);

6. Enter an Order that Defendant provide Class Members an accounting of all transactions involving their compensation in any respect, including deductions from income, debits and credits to escrow funds, fuel tax credits and debits, and requiring Defendant to recite how each charge to income or escrow was calculated while providing all documentation necessary to confirm the validity of the same transactions pursuant to 49 C.F.R. § 376.12(h), (j) and (k);

7. Enjoin Defendant from future violations of 49 C.F.R. § 376.

8. Enjoin Defendant from any acts of retaliation, harassment, or intimidation against class members and others who may assist and/or participate in this actions;

9. Enter judgment against Defendant in favor of individual class members for all actual damages for violation of 49 C.F.R. § 376.12 (h), (i), (j), and (k) pursuant to 49 U.S.C. § 14704(a)(2), including pre and post-judgment interest, as allowed by law;

10. Enter judgment against Defendant in favor of individual class members for costs of this action, reasonable attorneys' fees, and other costs reasonably related to collections for unlawfully deducting, withholding or otherwise reducing Lessors compensation, such as for forced purchase of

insurance and communication devices, escrow fund charges, as well as pre- and post-judgment interest, as allowed by law;

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

12. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid out of the common fund;

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

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

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues triable as of right by jury.

Respectfully submitted,

Paul D. Cullen, Sr.
Joyce E. Mayers
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