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10 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF CALIFORNIA**  
11 **FRESNO DIVISION**

12 **Owner-Operator Independent Drivers**  
13 **Association, Inc. and THOMAS SHUTT,**  
14 **WILLIAM PIPER, DON SULLIVAN,**  
15 **SR., JAMES MURPHY, and WALTER**  
**WILLIAMS individually, and on behalf**  
**of all others similarly situated,**

16 **Plaintiffs,**

17 **vs.**

18 **C. R. ENGLAND, INC.**

19 **Defendant.**

**CASE NO. CIV F-02-5664 AWI SMS**

**HEARING ON MOTION FOR**  
**PRELIMINARY INJUNCTION**  
**SCHEDULED BEFORE JUDGE ISHII**  
**ON JULY 22, 2002 AT 1:30 PM IN**  
**COURTROOM #3**

**MEMORANDUM OF LAW IN SUPPORT**  
**OF MOTION FOR A PRELIMINARY**  
**INJUNCTION AGAINST DEFENDANT**  
**C.R. ENGLAND, INC.**

**TWENTY MINUTES REQUESTED**  
**FOR ORAL TESTIMONY**

20 Plaintiffs request the opportunity to present oral testimony in support of our Motion for  
21 Preliminary Injunction. We intend to present the testimony of James J. Johnston, president of OOIDA,  
22 and one named plaintiff. We anticipate the testimony will take twenty minutes.

23 Pursuant to Fed.R.Civ.P. 65, and 49 U.S.C. §§ 14102(a) and 14704(a)(1), and 49 C.F.R.  
24 §376.11(a), Plaintiffs seek a preliminary injunction restraining C.R. England, Inc. from performing  
25 Department of Transportation-authorized transportation in equipment it does not own until it enters  
26 written lease agreements meeting the requirements of Title 49, Part 376 of the Code of Federal  
27 Regulations for all such equipment. Plaintiffs respectfully submit this memorandum of law in support of  
28 their motion.

1 **I. STATEMENT OF THE CASE.**

2 Plaintiffs, owners of motor carrier equipment (truck tractors) under lease to Defendant, filed this  
3 action against Defendant for its failure to comply with the Truth-In-Leasing regulations found at 49  
4 C.F.R. Part 376. Defendant is directly regulated by the United States Department of Transportation  
5 (“DOT”). Under the authority of 49 U.S.C. § 14102, the DOT forbids “authorized carriers” from  
6 performing transportation services in equipment that they do not own, unless the carriers execute lease  
7 agreements that meet the requirements set forth in 49 C.F.R. § 376.12. *See* 49 C.F.R. § 376.11(a).  
8 Section 376.12 requires that authorized motor carriers enter into written lease agreements that include  
9 specifically prescribed terms and that the carriers adhere to those terms. Violations of these federal  
10 regulations are privately actionable under 49 U.S.C. § 14704(a)(1) and (2).

11 Defendant is currently performing transportation services using equipment and services leased from  
12 Plaintiff drivers and other similarly situated. The lease agreements governing the use of this equipment  
13 do not meet the requirements of 49 C.F.R. § 376.12. These lease agreements fail to contain numerous  
14 provisions required by 49 C.F.R. § 376.12 and contain other provisions that conflict with these  
15 regulations. Defendant’s noncompliant leases are attached to Plaintiffs’ Complaint at Tabs 1 and 2. The  
16 text of these leases provides reasonable cause to believe that the statutes and their implementing  
17 regulations have been violated and will be violated in the future. Plaintiff drivers have suffered economic  
18 injury as a direct result of Defendant’s non-compliant leases and Plaintiffs seek redress of their economic  
19 injury in this litigation. (See attached Declarations of Walter Williams, Don Sullivan, Sr., James Murphy,  
20 and James J. Johnston in support of the Motion for Preliminary Injunction). Title 49, Sections  
21 14704(a)(1) and (2) of the United States Code authorizes persons injured because of a motor carrier’s  
22 violations of these regulations to seek injunctive relief and damages. In this motion, Plaintiffs respectfully  
23 urge the Court to enter a preliminary injunction barring Defendant from providing authorized  
24 transportation services until such time as it executes lease agreements that comply with 49 C.F.R. Part  
25 376.

26 **II. ARGUMENT.**

27 **A. An Injunction Should Issue Where “Reasonable Cause” Exists To Believe That A**  
28 **Violation Of Law Has Occurred or Is About To Occur.**

The standard requirements for equitable relief need not be satisfied when an injunction is

1 sought to prevent the violation of a federal statute which specifically provides for injunctive relief.  
2 *See Trailer Train Co. v. State Bd. Of Equalization*, 697 F.2d 860, 869 (9th Cir.), *cert. denied*, 464  
3 U.S. 846 (1983); *see also Silver Sage Partners Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 826  
4 (9<sup>th</sup> Cir. 2001); *Burlington Northern v. Dept. of Revenue of Washington*, 934 F.2d 1064, 1074 (9<sup>th</sup>  
5 Cir. 1991). Where the trial court finds reasonable cause to believe that a violation has been, or is  
6 about to be, committed “an injunction should be granted to prevent that violation.” *Atchison, Topeka*  
7 *and Santa Fe Railway v. Lennen*, 640 F.2d 255, 259-61 (10<sup>th</sup> Cir. 1981) (cited as authority by *Trailer*  
8 *Train Co. v. State Bd. Of Equalization* , *supra*, at 869). The reasoning behind this principle is that  
9 “[i]n such situations, it is not the role of the courts to balance the equities between the parties. The  
10 controlling issue is whether Congress has already balanced the equities and has determined that, as a  
11 matter of public policy, an injunction should issue where the defendant is engaged in, or is about to  
12 engage in, any activity which the statute prohibits.” *Burlington Northern R.R. Co. v. Bair*, 957 F.2d  
13 599, 601-602 (8th Cir. 1992). Where there is “reasonable cause” for the court to believe that a  
14 violation of such a provision has occurred, or is about to occur, the court should grant a preliminary  
15 injunction. *Id.* at 603.

16 Under 49 U.S.C. §§ 14704(a)(1) and (2), a private right of action is authorized for injunctive  
17 relief and damages for violation of leasing regulations in 49 C.F.R. Part 376. *Owner-Operator Indep.*  
18 *Drivers Assn. v. New Prime, Inc.*, 192 F.3d 778 (8th Cir. 1999), *cert. denied*, 529 U.S. 1066 (2000).  
19 Injunctive relief under the “reasonable cause” standard applies to the Truth-In-Leasing regulations  
20 and their authorizing statute, 49 U.S.C. § 14102, which imposes a flat ban on the conduct challenged  
21 herein, *see* 49 C.F.R. § 376.11(a), and for which injunctive relief is provided, *see* 49 U.S.C.  
22 § 14704(a)(1).

23 **1. The Federal Government Has Solicited a Wide Range of Views In Weighing**  
24 **Equities Between Owner-Operators and Motor Carriers.**

25 Congress has already balanced the equities between the parties potentially affected by an injunction  
26 issued for violation of the Truth-In-Leasing provisions authorized by Section 14102. Most of the  
27  
28

1 provisions involved in this application have been considered by Congress over the course of two decades.<sup>1</sup>  
2 When these provisions were first being reviewed in the late-1970s, Congress was intimately involved in  
3 balancing the equities between owner-operators and regulated motor carriers. *See Global Van Lines* 627  
4 F.2d 546, 547-51 (D.C. Cir. 1980) *cert. denied*, 449 U.S. 1079 (1981) (citing *Regulatory Problems of the*  
5 *Independent Owner-Operator in the Nation’s Trucking Industry: Hearings Before the Subcomm. On*  
6 *Activities of Regulatory Agencies of the House Comm. On Small Business: Parts I, II, III*, 95<sup>th</sup> Cong., 2d  
7 Sess. (1976-78) (*summarized in* H.R. Rep. No. 1812, 95<sup>th</sup> Cong., 2d Sess. 9-23 (1978)). The Motor  
8 Carrier Act of 1980 was enacted by Congress after over 18 months of study of the motor carrier industry  
9 by the House of Representatives’ Committee on Public Works and Transportation, including lengthy  
10 consultations with various industry participants and hundreds of diverse witnesses. H.R. Rep. No. 1069,  
11 96<sup>th</sup> Cong., 2d Sess. 1 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2283; *see generally* Motor Carrier Act of  
12 1980, Pub. L. No. 96-296, 94 Stat. 793 (1980) (codified as amended in sections throughout Title 49  
13 U.S.C.). The congressional committee heard from “215 witnesses presenting the views of nearly every  
14 entity in our society touched by this [motor carrier] industry.” *Id.* The committee reported that “[m]any  
15 parties were consulted in the drafting of this bill, including drivers, independent owner-operators, shippers,  
16 truckers, and consumers[,]” and that the goals of the legislation “include meeting the needs of shippers,  
17 receivers, and consumers.” *Id.* at 3; *cf. Burlington*, 957 F.2d at 602 (“One of Congress’ express policies in  
18 the statute [at issue here] was to ‘balance the needs of shippers, receivers, and the public’”).

19 In its role as regulator of motor carrier - owner operator relations, the ICC was similarly involved in  
20 balancing the equities of the motor carrier leasing situation, having conducted a series of hearings on the  
21 plight of owner-operators in leasing relationships, and having received testimony and statements from  
22 hundreds of individuals. *See Global Van Lines, supra*, at 547 n.2 (noting that by 1977, the ICC conducted  
23 a series of hearings on the plight of owner-operators in leasing relationships, receiving testimony from 438

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25 <sup>1</sup> Congress enacted the precursor to Section 14102(a) in 1978. It appeared with no relevant differences at 49 U.S.C. § 11107. *See*  
26 Act of Oct. 17, 1978, Pub.L. 95-473, § 11107, 92 Stat., 1337,1420; Motor Carrier Act of 1980, Pub.L. 96-296, § 15(d), 94 Stat.  
27 793, 809 (1980) (designating existing § 11107 as subsection (a) and adding subsection (b)). Likewise, the precursors to 49 C.F.R.  
28 §§ 376.11 & 376.12 were promulgated in 1979. *Lease and Interchange of Vehicles*, 131 M.C.C. 141 (1979). In 1996, the  
regulations at 49 C.F.R. Part 376 were redesignated from 49 C.F.R. Part 1057 without substantive change. *See* 61 Fed. Reg.  
54706, 54707 (1996). *Lease and Interchange of Vehicles*, 129 M.C.C. 700, 702-08 (1978) provides an extensive analysis of the  
Commission’s statutory authority to issue the precursors to the current Truth-In-Leasing regulations. An excellent synopsis of the  
events that gave rise to the regulatory and congressional scrutiny of transportation leasing and the Congressional authority vested  
in the ICC to undertake leasing regulation can be found in *Global Van Lines v. ICC*, 627 F.2d 546, 547-51 (D.C. Cir. 1980), *cert.*  
*denied*, 449 U.S. 1079 (1981).

1 witnesses and hundreds of written statements from around the country). By 1979, the ICC had revised and  
2 rewritten the Truth-In-Leasing provisions after conducting two rule making proceedings, considering  
3 comments from over 220 members of the trucking industry, staff reports, a nationwide survey of owner-  
4 operators, analysis of permanent leases, and giving careful consideration to the effect the rules would have  
5 on all parts of the motor carrier industry. *See Lease and Interchange of Vehicles*, 129 M.C.C. 700, 701  
6 (1978); *Lease and Interchange of Vehicles*, 131 M.C.C.141, 141-42 (1979).

7 **2. The Truth-In-Leasing Regulations Address the Disparity in Bargaining Power**  
8 **Between Owner-Operators and Motor Carriers.**

9 The Truth-In-Leasing regulations were promulgated because owner-operators lack the economic  
10 leverage and bargaining power to protect themselves in transactions with carriers. *See* U.S. Dept. of  
11 Transportation, *Problems of Truck Owner Operators – A Report by Secretary of Transportation Neil*  
12 *Goldschmidt* 4 (1979) (“Because the owner operator has relatively little economic leverage or bargaining  
13 power in dealing with larger, more organized entities such as brokers, shippers or trucking companies, he is  
14 at a sharp disadvantage in trying to adjust to changing economic conditions.”); U.S. Dept. of  
15 Transportation, *Report on the Functions of the Interstate Commerce Commission* 85 (1995) (the “DOT  
16 Report”) (“leasing rules were adopted and implemented in response to numerous complaints by carriers  
17 and owner-operators about abuses and inequitable treatment of owner-operators by some carriers”).

18 Interstate Commerce Commission (“ICC”) has explained that three of the four main purposes  
19 underlying the Truth-In-Leasing provisions are “to promote truth-in-leasing – a full disclosure between the  
20 carrier and the owner-operator of the elements, obligations, and benefits of leasing contracts signed by  
21 both parties; . . . to eliminate or reduce opportunities for skimming<sup>2</sup> and other illegal or inequitable  
22 practices [by motor carriers]; and . . . to promote the stability and economic welfare of the independent  
23 trucker segment of the motor carrier industry.” *Lease and Interchange of Vehicles*, 131 M.C.C. 141, 142  
24 (1979). Motor carriers, including Defendant, have no authority to eliminate this protective regulation  
25 through contract negotiation.

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27 <sup>2</sup> *See generally* U.S. Dept. of Justice, *The Effects of ICC Regulation on Independent Owner-Operators in*  
28 *the Trucking Industry*, at 8 (1978) (examining the motor carrier practice of “skimming” – i.e., the carrier’s  
unlawful siphoning of a portion of the owner-operator’s compensation – which “can take literally dozens of  
forms”).

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3           **3.       Congress Affirms the Truth-In-Leasing Regulations and Adds Injunctive**  
4           **Remedies to Cure Violations.**

5           In 1994, Congress required ICC and DOT to conduct studies to develop policy changes in the  
6 regulation of surface transportation. *See* Trucking Industry Regulatory Reform Act of 1994, Pub.L. 103-  
7 311, Title II, §§210(a) & (b), 108 Stat. 1683, 1688-89 (1994) (“TIRRA”); *see also* DOT Report at 3.

8           Balancing the equities of parties to motor carrier lease, the ICC reported:

9                     If the federal government were to discontinue regulation of owner-  
10                     operator leasing arrangements, owner-operators would be left on their own  
11                     to protect themselves against possible abuses by carriers. . . . As  
12                     independent contractors, owner-operators are unable to organize and  
13                     obtain the benefits of collective bargaining. Some federal regulatory  
14                     oversight of owner-operator leasing would ensure that an important  
15                     segment of the transportation community can conduct its operations safely  
16                     and without being subjected to abusive practices that cannot be prevented  
17                     by market forces.

18           Interstate Commerce Commission, *Study of Interstate Commerce Commission Regulatory*  
19           *Responsibilities Pursuant to Section 210(a) of the Trucking Industry Regulatory Reform Act of 1994,*  
20           1994, 170-71, 1994 WL 639996, \*53 (1994). The ICC recommended that federal regulation of owner-  
21           operator leases continue, and *injunctive* enforcement powers be established. *Id.* at 171.

22           The Department of Transportation explained to Congress that, “These [Truth-In-Leasing] rules  
23           were adopted primarily to protect owner-operators from the unscrupulous practices of some carriers.  
24           Because of their small size and weak bargaining position, owner-operators sometimes lack the ability to  
25           negotiate and the resources to enforce equitable terms of their contractual agreements with carriers.”  
26           DOT Report at 83. Because of this inequity, DOT also recommended that the Truth-In-Leasing  
27           provisions be retained to protect owner-operators, and that “[i]n lieu of federal enforcement, owner-  
28           operators will be given the right of private action to enforce them ....” *Id.* at 86. In keeping with the  
mandate of Congress, DOT’s study “ensured full participation by all affected parties including carriers,  
shippers, intermediaries, labor . . .” *Id.* at 4. Armed with these studies, Congress set out to remake the  
industry.

          The ICC Termination Act of 1995 (“ICCTA”) transformed the laws governing motor carrier  
leasing, which had remained largely unchanged since 1980, by eliminating the agency previously regulating

1 carrier-owner operator relations. Importantly, the Truth-In-Leasing provisions were not altered by ICCTA  
2 while Congress created in section 14704 (a)(1) a judicial mechanism with which individuals could enforce  
3 the leasing provisions by obtaining injunctive relief against violations. *See* 49 U.S.C. § 14704(a)(1) and  
4 (2); *see generally* H.R. Rep. No. 311, 104th Cong., 1st Sess.120-21 (1995) ("ICCTA House Report");  
5 H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 221 (1995); S. Rep. No. 176, 104th Cong., 1st Sess. 48  
6 (1995). By providing injunctive relief in the statute that terminated the ICC, but left relevant leasing  
7 regulations unchanged, Congress indicated that, as a matter of public policy, the equities supported such  
8 relief where a violation of the leasing provisions has or is about to occur. *Cf. Bair*, 957 F.2d at 602;  
9 *Lennen*, 640 F.2d at 259.

10 Congress expended great effort to balance the equities when it authorized promulgation of leasing  
11 regulations over 20 years ago, and then later in 1995 when it created a private right of action to obtain  
12 injunctive relief for violations of those regulations. It is not the responsibility or prerogative of the courts  
13 to re-weigh Congress' balancing of the policy considerations underlying the authorization for private  
14 injunctive relief. *Burlington*, at 602.

15 **B. Reasonable Cause Exists To Believe That Defendant Has Violated And Will**  
16 **Violate Federal Regulations.**

17 Reasonable cause exists to believe that Defendant has violated and will continue to violate the  
18 Truth-In-Leasing regulations. Consideration of Plaintiffs' Motion for a Preliminary Injunction does not  
19 require the consideration of complex factual issues by the Court. In fact, the Court's consideration of this  
20 motion does not require the consideration of *any* factual issues outside the four-corners of Defendant's  
21 regulated lease agreements since, by law, these written lease agreements must include provisions  
22 prescribed by Congress, the ICC and the DOT. As discussed above, 49 C.F.R. § 376.12 establishes that  
23 "the written lease required under § 376.11(a) *shall* contain the following provisions."

24 Defendant's lease agreements with Plaintiffs fail to include numerous provisions required by 49  
25 C.F.R. § 376.12. Indeed, when one catalogues the provisions missing from Defendant's leases, it becomes  
26 clear that the flaws in these leases are material and have caused economic harm to Plaintiffs and others  
27 similarly situated. Missing provisions include the following:

28 1. C.R. England's lease agreements do not recite an unqualified obligation to provide  
drivers with documentation to substantiate chargebacks against compensation as required by 49 C.F.R. §

1 376.12(h).

2           2.       C.R. England’s lease agreements do not specify that it will provide the driver with  
3 certificates of insurance for each policy the driver purchases through it as required by C.F.R. § 376.12  
4 (j)(2).

5           3.       C.R. England’s lease agreements do not specify that, upon a driver’s request, it  
6 will provide the driver with a copy of each insurance policy as required by C.F.R. § 376.12 (j)(2).

7           4.       C.R. England’s lease agreements do not specify that when deductions for cargo or  
8 property damage are made from a driver’s compensation, a written explanation and itemization of those  
9 deductions will be given to the driver *before* the deductions are made as required by 49 C.F.R. § 376.12  
10 (j)(3).

11           In addition to the substantial and material terms Defendant has omitted from the regulated lease,  
12 Defendant’s lease agreements with Plaintiffs contain provisions that actually *conflict with* 49 C.F.R.  
13 § 376.12. Conflicting provisions include the following:

14           1.       49 C.F.R. § 376.12 (h) requires that “[t]he lease . . . *clearly specify* all items that  
15 may be initially paid for by the authorized carrier, but ultimately deducted from the lessor’s compensation  
16 at the time of payment or settlement.” Paragraph 4 of C.R. England’s lease agreements completely  
17 nullifies this important provision by providing that it can deduct from the driver’s compensation *any*  
18 amount the driver owes it;

19           2.       49 C.F.R. § 376.12 (k) requires that “the lease . . . specify . . . the specific items to  
20 which the escrow funds can be applied.” Once again, C.R. England’s lease agreements completely  
21 emasculate this specificity requirement by providing, in section III of Addendum 2 to its lease, that *all*  
22 indebtedness may be deducted from a driver’s escrow;

23           3.       Another violation of 49 C.F.R. § 376.12 (k) is the provision in section III of  
24 Addendum 2 to C.R. England’s lease that gives the motor carrier sole discretion to determine when  
25 withdrawals can be made from the maintenance escrow and to what use the funds can be applied.

26           4.       49 C.F.R. §376.12(i) requires that “the lease . . . specify that the lessor is not  
27 required to purchase or rent any products, equipment, or services from the authorized carrier as a  
28 condition of entering into the lease agreement.” In flagrant disregard for this provision, C. R. England’s

1 lease agreements require the following forced purchases: the driver is required to purchase all of his  
2 insurance from C.R. England; the driver is required to pay a \$15.00 per week usage charge and for the  
3 cost of insuring a satellite communication device that C.R. England installs in his truck; the driver is  
4 required to authorize the deduction of a settlement administrative fee from his compensation; and the  
5 driver is required to authorize the deduction of an insurance administrative fee from his compensation.

6 **C. Failure of Defendant to Provide Leases That Conform to Part 376 has Caused**  
7 **Serious Prejudice and Economic Harm to Plaintiff Drivers and Others Similarly**  
8 **Situated.**

9 As a result of Defendant's substantial and material failure to insert the mandatory language in its  
10 regulated lease agreements, Plaintiffs have experienced and are experiencing economic losses. The failure  
11 to observe the mandates of the Truth-In-Leasing regulations makes it difficult for owner-operators to  
12 verify the veracity of deductions made from their compensation and escrow funds. Without an ability to  
13 verify such deductions, owner-operators are exposed to, and are in fact being victimized by the very  
14 "skimming" practices that the Truth-In-Leasing regulations were designed to counter. Defendant's  
15 regulatory violations are not mere technical violations. Defendant's violation of the Truth-In-Leasing  
16 regulations has caused real prejudice and real economic harm to real people who are the intended  
17 beneficiaries of the protections that Congress established through the Truth-In-Leasing regulations and the  
18 private right of action created to enforce them.

19 **1. The Owner-Operator Independent Drivers Association.**

20 OOIDA is a not-for-profit corporation incorporated and founded in 1973 and now has over  
21 78,000 members residing in all fifty (50) states and in Canada. OOIDA shares common interests with the  
22 potential class members and there is substantial overlap between the interests of OOIDA's membership and  
23 the unnamed potential class members. OOIDA is a plaintiff in this suit in its own capacity, due to the  
24 damages suffered from the diversion of its resources in cataloguing and prosecuting Defendant's Truth-in-  
25 Leasing violations, and in its representational capacity as the association representing the interests of  
26 owner-operators. James J. Johnston, the President of OOIDA, has submitted a Declaration in support of  
27 Plaintiffs' Motion for a Preliminary Injunction.

28 In his Declaration, Mr. Johnston states that "when the lease agreement of a regulated motor carrier  
does not contain the provisions required by the Truth-In-Leasing regulations or contains provisions that

1 conflict with these regulations, owner-operators are prejudiced and suffer direct and substantial economic  
2 harm.” (Johnston Declaration at ¶8.) Mr. Johnston then provides specific details on the economic harm  
3 that results.

4 He declares, for example, that “[w]hen the lease agreements of regulated motor carrier, such as the  
5 lease agreements for C.R. England, provide for the deduction of *any* amount from an owner-operator’s  
6 compensation and calls for *all* indebtedness to be deducted from an owner-operator’s escrow funds, the  
7 ability of owner-operators to resist deductions from compensation for items not specified in the lease is  
8 substantially impaired. First, the driver’s right to restrict chargebacks to compensation for specific items  
9 identified in advance is not disclosed. Second, the contract purports to confer on the motor carrier a right  
10 to make unrestricted deductions from compensation -- a right specifically forbidden by regulation.”

11 (Johnston Declaration at ¶8a.)

12 In addition, he declares, “[w]hen lease agreements of regulated motor carriers, such as the lease  
13 agreements for C.R. England, force an owner-operator to purchase services or equipment, owner-  
14 operators are economically harmed by their inability to obtain these same goods and services on the open  
15 market, by being unable to compare the price and quality of such goods and services and choose the best  
16 value for themselves.” (Johnston Declaration at ¶8a.)

17 Where lease agreements fail to inform owner-operators of their rights to obtain and inspect certain  
18 important insurance documents, Mr. Johnston declares that “owner-operators suffer substantial economic  
19 harm because they are not able to determine important terms and conditions of such insurance coverage  
20 including the name of the insurer, the cost of the policy, the scope of the coverage, the basis for any  
21 markup in price to the insured, specific exclusions from policy coverage, procedures for handling claims,  
22 and procedures for determining when claims are charged to the owner-operators’s policy rather than to  
23 policies that the law requires motor carriers to carry. In the absence of such information, owner-operators  
24 are unable to compare the cost and scope of coverage provided by C.R. England with that available  
25 through other insurance providers in the open market.” (Johnston Declaration at ¶8c.)

26 The failure to disclose rights governing the handling and accounting of escrow is, according to Mr.  
27 Johnston, another source of economic injury to owner-operators. He explains that “[m]ost regulated  
28 motor carriers require every owner-operator to establish an escrow fund for the purpose of paying for

1 maintenance and repairs to his tractor-trailer. The deposits into this escrow fund come directly from the  
2 owner-operator's compensation. While an owner-operator has a 100 per cent ownership interest in these  
3 funds, C.R. England's lease agreements claim for the carrier the sole discretion over approval of  
4 withdrawals from the fund. In such a situation, a motor carrier can arbitrarily deny owner-operators  
5 access to their own money, even when the funds are needed to pay repair and maintenance  
6 expenses.”(Johnston Declaration at ¶8d.)

## 7                   **2.       Plaintiff Murphy**

8           Plaintiff James Murphy, who is a current driver for C.R. England, is being economically harmed by  
9 his inability to keep more of the compensation he earns with C.R. England. Despite being available and  
10 willing to work more than enough hours to economically sustain himself and his family, the total amount of  
11 deductions taken from his weekly compensation leaves him with very little on which to exist. (Murphy  
12 Declaration at ¶ 7.) These deductions include amounts taken from him for items he was unlawfully  
13 compelled to purchase from Defendant including insurance, satellite equipment usage, and insurance  
14 administration services. (Murphy Declaration at ¶¶ 3, 4.) Instead of being given the opportunity to  
15 procure his own insurance, Plaintiff Murphy is forced to pay what C.R. England alleges to be the cost of its  
16 insurance. (Murphy Declaration at ¶ 3.) He can not verify this cost because C.R. England has not  
17 provided him with a fully compliant certificate of insurance that recites the cost of the insurance. (Murphy  
18 Declaration at ¶ 5.) Additionally, five cents per mile is taken from his compensation and put into a  
19 maintenance escrow account over which he has no control and from which he is guaranteed no right to  
20 withdraw funds for repairs or maintenance. Plaintiff Murphy's economic injury is real and substantial and  
21 is a direct result of providing transportation services under a lease agreement that does not comply with  
22 Part 376 of Title 49 of the federal regulations.

## 23                   **3.       Plaintiff Shutt**

24           C.R. England's non-complaint leases, and the inequitable practices that spring forth from them, do  
25 not harm only current drivers, but past drivers as well. Plaintiff Thomas Shutt, who was leased to C.R.  
26 England from May 2001 to October 2001, received a final settlement of his escrow account from C. R.  
27 England in December 2001, well in excess of the 45 day time limit provided for in 49 C.F.R. § 376.12.  
28 (Shutt Declaration at ¶ 6.) C.R. England did not return to Plaintiff Shutt any of the escrow funds that he

1 had accumulated during his relationship with C.R. England. (Shutt Declaration at ¶ 5.) Instead, C.R.  
2 England presented Plaintiff Shutt with a statement showing that he owed it \$8,313.20. C.R. England  
3 applied Plaintiff Shutt's final compensation, along with the balance of his escrow maintenance fund, to this  
4 putative debt and gave him ten days to pay the balance of \$3,088.74. (Shutt Declaration at ¶ 6.)

5 Plaintiff Shutt made several attempts to contact C.R. England regarding this alleged debt, but was  
6 only able to leave telephone messages which were never returned. (Shutt Declaration at ¶ 8.) On  
7 December 27, 2001, Accelerated Collection Management, Inc.(hereinafter "Accelerated") sent Plaintiff  
8 Shutt a collection letter for the amount of \$4,119.74. Plaintiff Shutt responded to both Accelerated  
9 Collection Management and to C.R. England in writing, disputing the charges and asking for  
10 documentation to substantiate the charges. (Shutt Declaration at ¶ 8.) C.R. England never responded to  
11 Plaintiff Shutt, and although Accelerated continued to send Plaintiff Shutt collection letters, the  
12 documentation it provided to substantiate the charges did not correspond with any of the charges on  
13 Plaintiff Shutt's final settlement. (Shutt Declaration at ¶ 8.) Plaintiff Shutt's economic injury is real and  
14 substantial and is a direct result of providing transportation services under a lease agreement that does not  
15 comply with Part 376 of Title 49 of the federal regulations. Moreover, C.R. England reported his  
16 purported failure to pay this alleged debt to the credit reporting agencies.

#### 17 **4. Plaintiff Sullivan**

18 Plaintiff Sullivan was leased to C. R. England from February 1999 to May 1999. Plaintiff Sullivan  
19 received a final settlement of his escrow account in December of 1999, well beyond the 45 day time limit  
20 provided for in 49 C.F.R. § 376.12. (Sullivan Declaration at ¶ 6.) C.R. England did not return any of the  
21 escrow funds that Plaintiff Sullivan had accumulated during his relationship with C.R. England. (Sullivan  
22 Declaration at ¶ 5.) Like Plaintiff Shutt, Plaintiff Sullivan received a bill from C.R. England, in Sullivan's  
23 case, for \$8,700.28. (Sullivan Declaration at ¶ 6.) Plaintiff Sullivan repeatedly made attempts to resolve  
24 this issue, but received no response from C.R. England until he physically went to its headquarters and  
25 demanded to speak to someone regarding this alleged debt. (Sullivan Declaration at ¶ 7.)

26 After speaking with a clerk at C.R. England, C.R. England admitted it made a mistake and Mr.  
27 Sullivan did not, in fact, owe it \$8,700.28. (Sullivan Declaration at ¶ 7.) Nevertheless, C.R. England still  
28 claimed that Plaintiff Sullivan owed it another amount and Plaintiff Sullivan, in frustration, agreed to pay

1 that amount. (Sullivan Declaration at ¶ 7.) C.R. England, however, never provided documentation to  
2 Plaintiff Sullivan to prove the validity of this debt. (Sullivan Declaration at ¶ 6.) Moreover, much of the  
3 damage had already been done, as C.R. England reported Mr. Sullivan’s failure to pay this alleged, and by  
4 its own admission invalid, debt to the credit reporting agencies. (Sullivan Declaration at ¶ 8.) In fact, this  
5 is how Mr. Sullivan first learned of his alleged debt to C.R. England, as C.R. England reported it to the  
6 credit reporting agencies before sending a final settlement and demand for payment to Plaintiff Sullivan.  
7 (Sullivan Declaration at ¶ 8.) This negative credit information showed up on his credit report when  
8 Plaintiff Sullivan and his wife attempted to secure a mortgage for a house. (Sullivan Declaration at ¶ 8.)  
9 Despite its error, C.R. England has made no efforts to rectify its inaccurate reports to the credit reporting  
10 agencies. Plaintiff Sullivan’s economic injury is real and substantial and is a direct result of providing  
11 transportation services under a lease agreement that does not comply with Part 376 of Title 49 of the  
12 federal regulations.

13 Defendant’s lease agreements are inadequate for the purpose of promoting full disclosure of the  
14 obligations and benefits of the lease as required by federal mandate. Defendant’s decision to obscure its  
15 legal obligations in its regulated lease eliminates a significant check upon inequitable “skimming” and other  
16 unlawful practices by these motor carriers. The failure of Defendant’s lease agreements to include or  
17 accurately specify lease terms as required by law destabilizes the economic welfare of owner-operators.  
18 Plaintiffs have suffered and will suffer economic harm from the continued violations of the Truth-In-  
Leasing regulations.

### 19 **III. CONCLUSION**

20 The text of Defendant’s lease agreements provide the best evidence of Defendant’s regulatory  
21 violations. The text of the lease agreements shows that many provisions required by regulation are missing  
22 while other provision conflict with the regulations. This Court should find that, on the face of Defendant’s  
23 lease agreements, there is reasonable cause to believe that a violation of 49 U.S.C. § 14102 as implemented  
24 by 49 C.F.R. § 376.11(a) has occurred and will continue to occur, and that a preliminary injunction should  
25 issue restraining the Defendant from providing regulated transportation services in equipment it does not  
26 own until it executes leases that comply with 49 C.F.R. § 376.12 for all such equipment.

27  
28 WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs’ Motion for  
Preliminary Injunction.

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Respectfully submitted this            day of            , 2002,

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