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9

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Owner-Operator Independent Drivers
Association, Inc. and David Hayes, Bobby
13 Campbell, Gerald Webb, David Rush,
Valarie Helton, John Nunn, Sr., Wayne
14 Bibicoff, Roy Sparks, Olin Sparks, Paul
Hawkins, and Frank Carter, individually,
15 and on behalf of all others similarly
situated,
16

17 Plaintiffs,

18 vs.

19 Swift Transportation Co., Inc. (AZ), Swift
Transportation Co., Inc. (NV), M.S.
20 Carriers, Inc., and M.S. Carriers
Warehousing & Distribution, Inc.,
21

22 Defendants.

No.

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

23
24 David Hayes, Bobby Campbell, Gerald Webb, David Rush, Valarie Helton, John
25 Nunn, Sr., Wayne Bibicoff, Roy Sparks, Olin Sparks, Paul Hawkins, and Frank Carter and
26 all others similarly situated (collectively “Owner-Operator Plaintiffs”), having suffered
27 economic loss as the result of Defendants’ substantial and material failure to comply with
28 federal regulations, and the Owner-Operator Independent Drivers Association, Inc.

1 (“OOIDA”), bring this class action seeking declaratory, injunctive and monetary relief
2 against Defendants Swift Transportation Co., Inc. (Nevada) (“Swift Holding Company”), its
3 agents, affiliates, or successors in interest, Swift Transportation Co., Inc. (Arizona), its
4 agents, affiliates, or successors in interest (“Swift”), and M.S. Carriers, Inc., its agents,
5 affiliates, or successors in interest (“M.S. Carriers”) including M.S. Carriers Warehousing &
6 Distribution, Inc., (“M.S. Warehousing”) and allege as follows:

7 **NATURE OF THE ACTION**

8 1. Defendants Swift and M.S. Carriers are regulated motor carriers that provide
9 transport-ation of property in interstate commerce under authority issued by the U.S.
10 Department of Transportation (“DOT”). Defendants transport property in equipment leased
11 from independent truckers (known as “owner-operators”). Under federal law and regulation,
12 “authorized motor carriers” such as Defendants may perform authorized transportation in
13 equipment that they do not own only if the equipment is covered by a written lease that
14 meets the requirements set forth in 49 C.F.R. Part 376 (the “Truth-In-Leasing” regulations).
15 See 49 C.F.R. § 376.11(a). Authorized motor carriers are required by regulation to follow
16 the required lease provisions. 49 C.F.R. § 376.12. Violations of the federal regulations are
17 privately actionable under 49 U.S.C. § 14704(a)(1) and (2).

18 2. Defendants have substantially and materially failed to comply with the Truth-
19 In-Leasing regulations and have conducted themselves towards Plaintiffs in such a manner as
20 to cause Plaintiffs to suffer economic losses.

21 a. Defendants’ lease agreements substantially and materially violate the
22 Truth-In-Leasing regulations in that numerous material provisions required by Congress and
23 the DOT (and its predecessor the Interstate Commerce Commission) are missing from these
24 lease agreements. Moreover, certain material provisions of Defendants’ lease agreements are
25 in *conflict with* provisions of said regulations.

26 b. Defendants’ business practices, including some not specifically
27 addressed by its lease agreements, substantially and materially violate the practices
28 prescribed by Congress and the DOT under the Truth-In-Leasing regulations.

1 c. Defendants' business practices violate trust obligations imposed by
2 federal law.

3 d. Defendants Swift Holding Company and Swift acted in such a manner
4 as to cause a deliberate interference with and actual breach of Plaintiffs' contracts causing
5 Plaintiffs to suffer additional economic injury.

6 3. Defendants have been enriched by ignoring corporate forms and have profited
7 from the illegal conduct of purportedly separate corporate entities. Accordingly, Defendants
8 should be held jointly and severally liable for the damages suffered by Plaintiffs.

9 **JURISDICTION AND VENUE**

10 4. This action arises under 49 U.S.C. §§ 14102 and 14704, *et seq.*, and 49 C.F.R.
11 Part 376, *et seq.*, for violation of the federal statutes and regulations governing the terms and
12 conditions by which truck owner-operators lease equipment to authorized motor carriers for
13 the transport of property.

14 5. Jurisdiction of this matter is granted to this Court by 28 U.S.C. § 1331 (federal
15 question jurisdiction) and § 1337 (proceedings arising under an act of Congress regulating
16 commerce). The causes of action alleged here arise under the laws of the United States
17 regulating commerce and the activities of motor carriers engaged in the transportation of
18 property in interstate commerce, including 49 U.S.C. §§ 13501, 14102 and 14704(a)(1) and
19 (2), and 49 C.F.R. § 376 *et seq.*

20 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) in that
21 Defendant Swift maintains a place of business in the State of Arizona and Defendants M.S.
22 Carriers and M.S. Warehousing are authorized to do business in the State of Arizona.

23 **PARTIES TO THE ACTION**

24 7. Plaintiff OOIDA is a business association of persons and entities who own and
25 operate motor vehicles, commonly known as "owner-operators." OOIDA is a not-for-profit
26 corporation incorporated in the State of Missouri, with its headquarters located at 1 NW
27 OOIDA Drive, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has
28 more than 78,000 members residing in all fifty (50) states and in Canada. OOIDA has

1 devoted significant resources to identifying and counteracting Defendants' improper conduct
2 and this diversion of resources has frustrated other of OOIDA's activities on behalf of its
3 owner-operator members. OOIDA brings this action in both its representative capacity,
4 seeking declaratory, injunctive, and other equitable relief on behalf of all owner-operators
5 including those who are its members, as well as in its own capacity on the grounds of
6 diversion of resources and frustration of mission.

7 8. The individual owner-operator plaintiffs are small business men and women
8 who own or control truck tractors, and sometimes truck trailers, used to transport property
9 over the nation's highways. Owner-operators engage in the transportation of commodities
10 exempt from DOT regulations, or, acting as independent contractors, they lease or otherwise
11 provide their equipment and services to motor carriers who are engaged in the enterprise of
12 providing transportation services to the shipping public under authority granted by the DOT.
13 Nationwide, the number of owner-operators totals in the hundreds of thousands. The
14 relationship between independent truck owner-operators and regulated carriers is set forth in
15 an agreement between the parties which is regulated by the DOT under, *inter alia*, 49 U.S.C.
16 § 14102, *et seq.* and under 49 C.F.R. Part 376, *et seq.*

17 9. Plaintiff David Hayes is a resident of the State of California and is an owner-
18 operator who entered into lease agreements with Defendants Swift and M.S. Carriers that are
19 subject to regulation under 49 U.S.C. § 13902.

20 10. Plaintiff Bobby Campbell is a resident of the State of Georgia and is an owner-
21 operator who entered into lease agreements with Defendants Swift and M.S. Carriers that are
22 subject to regulation under 49 U.S.C. § 13902.

23 11. Plaintiff Gerald Webb is a resident of the State of Tennessee and is an owner-
24 operator who entered into lease agreements with Defendants Swift and M.S. Carriers that are
25 subject to regulation under 49 U.S.C. § 13902.

26 12. Plaintiff David Rush is a resident of the State of South Carolina and is an
27 owner-operator who entered into lease agreements with Defendants Swift and M.S. Carriers
28 that are subject to regulation under 49 U.S.C. § 13902.

1 13. Plaintiff Valarie Helton is a resident of the State of Arkansas and is an owner-
2 operator who entered into lease agreements with Defendants Swift and M.S. Carriers that are
3 subject to regulation under 49 U.S.C. § 13902.

4 14. Plaintiff John Nunn is a resident of the State of Maryland and is an owner-
5 operator who entered into lease agreements with Defendant M.S. Carriers that are subject to
6 regulation under 49 U.S.C. § 13902.

7 15. Plaintiff Wayne Bibicoff is a resident of the State of Pennsylvania and is an
8 owner-operator who entered into lease agreements with Defendant M.S. Carriers that are
9 subject to regulation under 49 U.S.C. § 13902.

10 16. Plaintiff Roy Sparks is a resident of the State of Missouri and is an owner-
11 operator who entered into lease agreements with Defendant M.S. Carriers that are subject to
12 regulation under 49 U.S.C. § 13902.

13 17. Plaintiff Olin Sparks is a resident of the State of Missouri and is an owner-
14 operator who entered into lease agreements with Defendant M.S. Carriers that are subject to
15 regulation under 49 U.S.C. § 13902.

16 18. Plaintiff Paul Hawkins is a resident of the State of West Virginia and is an
17 owner-operator who entered into lease agreements with Defendant M.S. Carriers that are
18 subject to regulation under 49 U.S.C. § 13902.

19 19. Plaintiff Frank Carter is a resident of the State of Mississippi and is an owner-
20 operator who entered into lease agreements with Defendant M.S. Carriers that are subject to
21 regulation under 49 U.S.C. § 13902.

22 20. Plaintiffs Hayes, Campbell, Webb, Rush, Helton, Nunn, Bibicoff, and Carter
23 are members of OOIDA and on information and belief assert that other members of the class
24 are also members of OOIDA.

25 21. Plaintiffs Hayes, Campbell, Webb, Rush, Helton, Nunn, Bibicoff, Roy Sparks,
26 Olin Sparks, Hawkins, and Carter, are, or during all times relevant to this Complaint, were
27 “owners” within the meaning of 49 C.F.R. § 376.2(d), and are, or have been, “lessors” within
28 the meaning of 49 C.F.R. § 376.2(f).

1 22. Defendant Swift is an Arizona corporation located at 2200 South 75th Avenue,
2 Phoenix, Arizona 85043. Defendant Swift is a regulated motor carrier primarily engaged in
3 the enterprise of providing transportation services to the shipping public on a nationwide
4 basis under authority granted by DOT and formerly the ICC (DOT permit 54283). During
5 all times material to this case, Defendant Swift was and remains an “authorized carrier”
6 within the meaning of 49 C.F.R. § 376.2(a) and is subject to the requirements of the Truth-
7 In-Leasing regulations.

8 23. Defendant M.S. Carriers is a Tennessee corporation located at 3159 Starnes
9 Cove, Memphis, Tennessee 38116. Defendant M.S. Carriers is a regulated motor carrier
10 primarily engaged in the enterprise of providing transportation services to the shipping public
11 on a nationwide basis under authority granted by DOT and formerly the ICC (DOT permit
12 160095). During all times material to this case, Defendant M.S. Carriers was and remains an
13 “authorized carrier” within the meaning of 49 C.F.R. § 376.2(a) and is subject to the
14 requirements of the Truth-In-Leasing regulations.

15 24. Defendant Swift Holding Company is a Nevada corporation that serves as a
16 holding company for Defendant Swift and Defendant M.S. Carriers. The company's
17 headquarters are located at 2200 South 75th Avenue, Phoenix, Arizona 85043.

18 25. Defendant M.S. Warehousing is a Tennessee corporation located at 3171
19 Directors Row, Memphis, Tennessee 38131. Defendant M.S. Warehousing is a wholly-
20 owned subsidiary of M.S. Carriers and, following Defendant Swift Holding Company's
21 acquisition of M.S. Carriers, is also wholly-owned subsidiary of Defendant Swift Holding
22 Company. M.S. Warehousing leases equipment to owner-operators by way of “Equipment
23 Leases.” Owner-operators who lease equipment from M.S. Warehousing then lease their
24 services under “Contract Hauling” leases to M.S. Carriers and, since its acquisition by
25 Defendant Swift Holding Company, Defendant Swift under “Contractor Agreements”.
26 Defendant M.S. Carriers, and now Defendant Swift, automatically deduct money from
27 Plaintiffs' compensation to cover lease and escrow obligations purportedly owed to M.S.
28 Warehousing. Because Defendant M.S. Warehousing uses Defendants Swift and M.S.

1 Carriers as a facilitators for deducting escrow funds from drivers compensation, those escrow
2 obligations and the funds collected thereunder are subject to the Truth-In-Leasing
3 regulations.

4 CLASS ACTION ALLEGATIONS

5 26. This action is brought by Plaintiffs as a national class action, on their own
6 behalf and on behalf of all others similarly situated.

7 27. **Class Description.** Plaintiffs seek to represent a class (hereinafter “Class”) and two subclasses of owner-operator drivers. The Class would consist of all owner-
8 operators in the United States who have entered into lease agreements with Defendants that
9 are subject to federal regulations contained in Part 376, Code of Federal Regulations. The
10 first subclass would consist of all owner-operators in the United States who have entered into
11 lease agreements with Defendant Swift that are subject to federal regulations contained in
12 Part 376, Code of Federal Regulations. The second subclass would consist of all owner-
13 operators in the United States who have entered into lease agreements with Defendant M.S.
14 Carriers that are subject to federal regulations contained in Part 376, Code of Federal
15 Regulations.
16 Regulations.

17 28. **Impracticability of Joinder.** On information and belief, there are thousands
18 of individual owner-operators who are members of the Class and each subclass. These
19 individual owner- operators are residents of various states, travel continuously, and are
20 widely dispersed geographically. On average, an owner-operator drives more than 100,000
21 miles per year and spends more than 300 nights per year on the road. Owner-operators
22 follow irregular routes in their work, such that virtually all owner-operators must purchase
23 state permits from all states in order to operate in the 48 contiguous states. This
24 geographical dispersion presents a great difficulty to owner-operators in their pursuit of
25 claims against motor carriers for relatively small sums of money. Thus, joinder of all
26 potential Class members would be impracticable.

27 29. **Commonality.** By entering into adhesion lease agreements that conflict with
28 the Truth-In-Leasing regulations, engaging in conduct that violates the Truth-In-Leasing

1 regulations, and violating fiduciary and trust obligation, Defendants have failed to act and
2 have acted with regard to Plaintiffs in a way that affects members of the classes and the
3 subclasses similarly and, accordingly, any questions of fact are common to the Class and the
4 subclasses as a whole.

5 30. **Typicality**. The claims of the Plaintiffs are typical of one or both of the
6 classes identified. Specifically, Defendants have used the device of adhesion contracts to
7 enter into lease agreements with owner-operators. These adhesion contracts provide owner-
8 operators no realistic opportunity to bargain and present owner-operators with an “all or
9 nothing” choice. The terms and conditions of Defendants’ lease agreements that conflict
10 with the Truth-In-Leasing regulations are typical of Defendants’ lease agreements with
11 members of one or both of the Defendants’ business practices that violate the Truth-In-
12 Leasing regulations are typical of Defendants’ business practices with respect to one or both
13 members of the proposed classes. Defendants’ violation of its trust obligations to Plaintiffs
14 are typical of Defendants’ violation of their trust obligations with respect to the proposed
15 Class and subclasses.

16 31. **Fair and Adequate Representation**. Plaintiffs are capable of fairly and
17 adequately protecting the interests of the classes specified and do not have interests that are
18 adverse to members of the class. Additionally, OOIDA has previously participated as a
19 Class representative on behalf of owner-operators in several cases, and attorneys of The
20 Cullen Law Firm, PLLC have been appointed Class Counsel in similar class actions
21 throughout the country.

22 32. **Class Certification Appropriate Under Rule 23(b)(2)**. Because Defendants
23 have contracted with members of one or both classes using lease agreements that do not
24 comply with the Truth-In-Leasing regulations, engaged in business practices that violate
25 obligations under the Truth-In-Leasing regulations, and violated fiduciary obligations as
26 trustees of Plaintiffs’ escrow funds, Defendants have acted and/or failed to act on grounds
27 generally applicable to one or both members of the identified classes as a whole. Thus,
28

1 injunctive and declaratory relief are appropriate with respect to each of the proposed classes
2 as a whole, making class certification appropriate under Fed. R. Civ. P. 23(b)(2).

3 33. **Class Certification Appropriate Under Rule 23(b)(3)**. The questions of law
4 enumerated in the counts below are common to all potential class members and predominate
5 over any questions affecting only individual members which are essentially limited to the
6 amounts due each member. Therefore, a class action is superior to other available methods
7 for the fair and efficient adjudication of the claims herein.

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

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

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

15 c. on information and belief, there is no litigation already commenced by
16 Class members concerning the causes of action raised in this Complaint;

17 d. it is desirable to concentrate the individual members' claims in one
18 forum because, given the amount in controversy, to require these claims to be brought in
19 separate forums would effectively prevent individuals from bringing claims to recover their
20 funds;

21 e. no substantial difficulties are likely to be encountered in managing this
22 class action;

23 f. on information and belief, Defendants M.S. Carriers and Swift have
24 utilized essentially the same respective lease agreements for years and the conduct at issue
25 arises from this agreement; and

26 g. Plaintiffs are represented by attorneys of The Cullen Law Firm, PLLC,
27 who have the experience of representing their clients in numerous class actions involving
28

1 owner-operators and other small business truckers nationwide.

2 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

3 35. Each lease agreement entered between Defendants and Plaintiffs constitute a
4 “lease” within the meaning of 49 C.F.R. § 376.2(e). A genuine copy of a Swift “Contractor
5 Agreement” executed on December 17, 2001 between David B. Hayes and Swift (the “Swift
6 Contractor Agreement”) is attached at Tab 1; a genuine copy of an M.S. Carriers “Contract
7 Hauling Agreement” executed on March 7, 2001 between David B. Hayes and M.S. Carriers
8 (the “M.S. Contract Hauling Agreement”) is attached at Tab 2; and a genuine copy of an
9 M.S. Warehousing “Equipment Lease” executed on March 7, 2001 between David B. Hayes
10 and M.S. Warehousing (the “M.S. Warehousing Equipment Lease”) is attached at Tab 3. A
11 genuine copy of a Contract Hauling Agreement executed on December 7, 1998 between
12 Frank S. Carter and M.S. Carriers (the “Carter Contract Hauling Agreement”) is attached at
13 Tab 4. A Declaration of David B. Hayes authenticating documents at Tabs 1, 2, and 3 is
14 attached at Tab 5. A Declaration of Frank S. Carter authenticating the document found at
15 Tab 4 is attached at Tab 6. The lease agreements at Tabs 1-4 are substantially the same as
16 those entered with all other Plaintiffs and similarly situated owner-operators. On
17 information and belief, these lease agreements are identical in all material respects to lease
18 agreements entered with the entire potential class.

19 36. The vehicles Plaintiffs provided to Defendants for their use are “equipment”
20 within the meaning of 49 C.F.R. § 376.2(b).

21 **COUNT I**
22 **Unlawful Provision of Transportation Services**
23 **by Swift and M.S. Carriers.**

24 37. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 35
25 above.

26 38. Under federal law, an “authorized carrier may perform authorized
27 transportation in equipment it does not own *only* under the following conditions: . . . [t]here

1 shall be a written lease granting the use of the equipment and meeting the requirements
2 contained in § 376.12.” (emphasis added). Defendants M.S. Carriers and Swift are engaged
3 in the unlawful provision of transportation services in equipment that they do not own
4 because the leases governing their use of such equipment fail to conform to 49 C.F.R. Part
5 376.

6 a. Defendants’ lease agreements with Plaintiffs do not contain the
7 provisions required by 49 C.F.R. § 376.12. By way of illustration and not limitation:

8 i. The lease agreements of Defendants Swift and M.S. Carriers do
9 not clearly state the amount to be paid by the authorized carrier for equipment and driver’s
10 services as required by 49 C.F.R. § 376.12(d).

11 ii. The lease agreements of Defendant M.S. Carriers do not clearly
12 specify the responsibility of each party with respect to the costs of fuel, empty mileage,
13 permits, tolls, ferries, detention and accessorial services as required by 49 C.F.R.
14 § 376.12(e).

15 iii. The lease agreements of Defendants Swift and M.S. Carriers do
16 not clearly state that the authorized carrier lessee shall assume the risks and costs of fines for
17 overweight and oversize trailers when the trailers are preloaded, sealed, or the load is
18 containerized, or when the trailer or lading is otherwise outside of the lessor's control, and
19 for improperly permitted overdimension and overweight loads and shall reimburse the lessor
20 for any fines paid by the lessor as required by 49 C.F.R. § 376.12(e).

21 iv. The lease agreements of Defendant M.S. Carriers do not clearly
22 describe Defendant’s obligation to refund the cost of base plates upon sale of such plates to
23 another motor carrier as required by 49 C.F.R. § 376.12(e).

24 v. The lease agreements of Defendants Swift do not recite the
25 owner-operators right to examine copies of the carrier's tariff or, in the case of contract
26 carriers, other documents from which rates and charges are computed as required by 49
27 C.F.R. § 376.12(g).

1 vi. The lease agreements of Defendants Swift and M.S. Carriers do
2 not adequately specify the charge-backs made by Defendant from Plaintiffs' compensation as
3 required by 49 C.F.R. § 376.12(h).

4 vii. The lease agreements of Defendants Swift and M.S. Carriers do
5 not recite how items deducted from owner-operator's compensation are to be computed as
6 required by 49 C.F.R. § 376.12(h).

7 viii. The lease agreements of Defendants Swift and M.S. Carriers do
8 not accurately disclose the cost they incurred for fuel and other items charged back against
9 the compensation of owner-operators as required by of 49 C.F.R. § 376.12(h).

10 ix. The lease agreements of Defendants Swift and M.S. Carriers do
11 not specify that the authorized carrier will provide the lessor with a copy of each insurance
12 policy purchased from the carrier upon the request of the lessor as required by 49 C.F.R.
13 § 376.12(j)(2).

14 x. The lease agreements of Defendant Swift do not specify that the
15 authorized carrier will provide the lessor with a certificate of insurance for each insurance
16 policy purchased from the carrier as required by 49 C.F.R. § 376.12(j)(2).

17 xi. The lease agreements of Swift and M.S. Carriers do not clearly
18 specify the conditions under which deductions for cargo or property damage may be made
19 from the lessor's settlements in that they do not state that a written explanation and
20 itemization must be delivered to the lessor before any deductions are made from the owner-
21 operator's settlement as required by 49 C.F.R. § 376.12(j)(3).

22 xii. The lease agreements of Defendants Swift and M.S. Carriers do
23 not provide Plaintiffs with adequate notice of the specific items to which the escrow fund can
24 be applied as required by 49 C.F.R. § 376.12(k)(2).

25 xiii. The lease agreements of Defendants Swift and M.S. Carriers do
26 not specify that while the escrow fund is under the control of the motor carrier, the motor
27 carrier will provide an accounting to the owner-operator of the transactions involving the

1 fund under the conditions described in 49 C.F.R. § 376.12(k)(3).

2 xiv. The lease agreements of Defendants Swift and M.S. Carriers do
3 not specify that the owner-operator can demand to have an accounting for transactions
4 involving the escrow at any time as required by 49 C.F.R. § 376.12(k)(4).

5 xv. The lease agreements of Defendant M.S. Carriers do not recite
6 any interest rate as being applicable to escrow funds, let alone at the rate established by
7 regulation as required by 49 C.F.R. § 376.12(k)(5).

8 xvi. The lease agreements of Defendants Swift and M.S. Carriers do
9 not clearly specify the conditions that the owner-operators must fulfill in order to have the
10 escrow funds returned as required by 49 C.F.R. § 376.12(k)(6).

11 xvii. The lease agreements of Defendants Swift and M.S. Carriers do
12 not provide that the escrow funds will be returned later than 45 days from the date of
13 termination as required by 49 C.F.R. § 376.12(k)(6).

14 b. Defendants' lease agreements with Plaintiffs contain provisions that
15 conflict with 49 C.F.R. § 376.12. By way of illustration and not limitation:

16 i. 49 C.F.R. § 376.12(a) requires that "[t]he lease shall be made
17 between the authorized carrier and the owner of the equipment" and does not permit the
18 lease to be entered into with a subsidiary of the DOT license holder. Yet, in violation of this
19 provision, the Swift Contractor Agreement identifies its subsidiaries as being parties to the
20 lease agreements with owner-operators.

21 ii. 49 C.F.R. § 376.12(f) requires that the lease specify that "[t]he
22 paperwork required before the lessor can receive payment is limited to log books required by
23 the Department of Transportation and those documents necessary for the authorized carrier
24 to secure payment from the shipper." Yet, Paragraph 3 of the Swift Contractor Agreement
25 and Paragraph 4 of the Carter Contract Hauling Agreement impose conditions that
26 significantly exceed the limitations imposed by Section 376.12(f).

27 iii. 49 C.F.R. § 376.12(h) requires that "[t]he lease . . . *clearly*

1 *specify* all items that may be initially paid for by the authorized carrier, but ultimately
2 deducted from the lessor's compensation at the time of payment or settlement.” (emphasis
3 added). Paragraph 3 of the Swift Contractor Agreement and Paragraph 4 of the M.S.
4 Carriers Contract Hauling Agreement directly violates this provision by asserting the right of
5 these regulated motor carriers to deduct “any” amount allegedly owed to them by the owner-
6 operator.

7 iv. 49 C.F.R. § 376.12(i) requires that “[t]he lease shall specify that
8 payment to the lessor shall be made within *15 days* after submission of the necessary
9 delivery documents and other paperwork concerning a trip in the service of the authorized
10 carrier” and that “[t]he lease shall specify that the lessor is not required to purchase or rent
11 any products, equipment, or services from the authorized carrier as a condition of entering
12 into the lease arrangement.” (emphasis added). Paragraph 4 of the M.S. Carriers Contract
13 Hauling Agreement directly violates this requirement by purportedly allowing M.S. Carriers
14 forty-five days to provide the final settlement. In direct violation of 49 C.F.R. § 376.12(i),
15 the M.S. Carrier Contract Hauling Agreement, Schedule II N requires payment for certain
16 goods and services as including \$25.00 per week for settlement processing, \$15 per month
17 per truck for TripPack services, and “mail box charges” for use of the required Qualcomm.
18 In direct violation of 49 C.F.R. § 376.12(i), Schedule II, N(g) of the Carter Contract Hauling
19 Agreement, the owner operator is required by contract to pay \$500 charge for the service of
20 having a Qualcomm unit installed in the truck.

21 v. 49 C.F.R. § 376.12(k)(2) requires that “[i]f escrow funds are
22 required, the lease shall specify . . . [t]he *specific* items to which the escrow fund can be
23 applied.” (emphasis added). Paragraph 6 of the Swift Contractor Agreement creates a
24 security escrow from which Swift claims the right to make “any” deduction for “any”
25 indebtedness in direct violation of Section 376.12(k)(2). M.S. Carriers also ignores this
26 mandate by including provisions requiring the creation of a Security Reserve Account and an
27 Excess Mileage Reserve Account and then asserting the right to satisfy *any* liability under

1 the lease agreement. Carter Contract Hauling Agreement, Schedule II, 2A and B.

2 vi. 49 C.F.R. § 376.12(k)(4) requires that “[i]f escrow funds are
3 required, the lease shall specify . . . [t]he right of the lessor to demand to have an accounting
4 for transactions involving the escrow fund *at any time.*” (emphasis added). Yet, in violation
5 of this provision, Paragraph 6 of the Swift Contractor Agreement fails to recite the
6 Contractor’s right to demand an accounting at any time but only states that “[t]he
7 COMPANY, *from time to time*, shall provide CONTRACTOR with an accounting of the
8 balance of the bond.” (emphasis added).

9 39. As a direct and proximate result of these substantial and material violations of
10 federal law, the rights of Plaintiffs have been violated and Plaintiffs have suffered economic
11 damages.

12 40. Plaintiffs rights will continue to be violated and Plaintiffs will suffer additional
13 future damaged unless Defendants Swift and M.S. Carriers are enjoined from providing
14 transportation in equipment they do not own until they execute conforming lease agreements
15 with owner-operators.

16 **COUNT II**
17 **Violation of the Truth-In-Leasing Regulations**
18 **by Swift and M.S. Carriers.**

19 41. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 39
20 above.

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

24 43. Defendants Swift and M.S. Carriers do not adhere to or perform the obligations
25 established by 49 C.F.R. Part 376. By way of illustration and not limitation:

26 a. Defendants Swift and M.S. Carriers have failed to provide Plaintiffs
27

1 copies of those documents which are necessary to determine the validity of the charge-backs
2 in violation of 49 C.F.R. § 376.12(h);

3 b. Defendant M.S. Carriers has required owner-operators to purchase
4 insurance and other products as a condition to entering into lease agreements with them in
5 violation of 49 C.F.R. § 376.12(i);

6 c. Defendants Swift and M.S. Carriers have made deductions from escrow
7 accounts that were not related to the purpose for which the escrow accounts were created in
8 violation of 49 C.F.R. § 376.12(k)(2);

9 d. Defendants Swift and M.S. Carriers have failed to return escrow funds
10 within 45 days of lease termination as required by 49 C.F.R. § 376.12(k)(6).

11 44. As a direct and proximate result of this violation of federal law, the rights of
12 Plaintiffs have been violated and Plaintiffs have suffered damages.

13 45. Plaintiffs rights will continue to be violated and Plaintiffs will suffer additional
14 future damaged unless Defendants Swift and M.S. Carriers are enjoined from engaging in
15 business practices that violate the Truth-In-Leasing regulations.

16 **COUNT III**
17 **Breach of Fiduciary Duty by All Defendants.**

18 46. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 44
19 above.

20 47. By collecting escrow monies from owner-operators under the terms and
21 conditions of the Truth-In-Leasing regulations, Defendants assumed obligations as
22 fiduciaries and trustees. The failure to observe the escrow requirements of the Truth-In-
23 Leasing regulations, the dissipation of the escrow accounts, the failure to pay interest on
24 such accounts, and the failure to return escrow accounts to Plaintiffs, among other things,
25 constitute a violation of Defendants' fiduciary and trust duties.

26 48. As a direct and proximate result of Defendants' violation of their fiduciary
27 duties to Plaintiffs, Plaintiffs suffered losses and their rights have been violated.

1 **COUNT IV**
2 **Tortious Interference with Contract**
3 **by Swift Holding Company and Swift.**

4 49. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 48
5 above.

6 50. At the time M.S. Carriers was purchased by Swift Holding Company and
7 Swift, there existed contracts between owner-operators and M.S. Carriers and contracts
8 between owner-operators and M.S. Warehousing.

9 51. Swift Holding Company and Swift had knowledge of the existence of these
10 contracts.

11 52. Swift Holding Company and Swift acted intentionally and improperly to cause
12 a breach of the contracts between M.S. Carriers and owner-operators and contracts between
13 owner-operators and M.S. Warehousing.

14 53. Swift Holding Company and Swift acted maliciously and improperly in
15 causing the breach of contract between owner-operators and M.S. Carriers and breach of
16 contract between owner-operators and M.S. Warehousing.

17 54. Contracts between owner-operators and M.S. Carriers and contracts between
18 owner-operators and M.S. Warehousing were in fact breached as a result of the improper
19 acts committed by Swift and Swift Holding Company.

20 55. As a result of Swift Holding Company and Swift's conduct Plaintiffs suffered
21 damages.

22 **COUNT V**
23 **Defendants are Jointly and Severally Liable.**

24 56. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 54
25 above.

26 57. When Defendant Swift Holding Company acquired Defendant M.S. Carriers,
27 Defendants wholly ignored the corporate separateness and formalities between M.S.
28 Carriers, M.S. Warehousing, Swift, and Swift Holding Company.

1 a. Without invoking the termination procedures contained in the M.S.
2 Carriers Contract Hauling Contract Hauling agreement with owner-operators or the
3 termination procedures contained in the M.S. Warehousing Equipment Lease agreement with
4 owner operators and returning to those owner-operators the balance of funds held in escrow
5 and the settlements due under that lease, Defendant Swift required those owner-operators to
6 enter into Contract Hauling leases with Defendant Swift.

7 b. Defendant Swift Holding Company did not return the escrow funds held
8 by M.S. Carriers and it failed to reconcile the regulatory and contractual requirements of
9 M.S. Carriers and the owner-operators.

10 c. Defendant Swift ignored the corporate form of M.S. Carriers and its
11 owner-operator drivers by entering into lease agreements with these owner-operators
12 notwithstanding their contractual obligations to M.S. Carriers. Moreover, Defendants Swift
13 profited substantially by ignoring the M.S. Carrier corporate form through its ability to gain
14 immediate access to a new pool of owner-operator drivers and equipment.

15 d. In its 10K statement to the Securities and Exchange Commission dated
16 April 1, 2002, Swift Holding Company has represented that “[b]eginning January 1, 2002,
17 M.S. Carriers, Inc. was operationally combined with the Swift entities and will not be an
18 operating company in the future.” However, as of May 22, 2002, M.S. Carriers, Inc. was
19 still an incorporated business in the state of Tennessee with its own legal personality and
20 obligations.

21 e. Defendant Swift Holding Company and Defendant Swift totally
22 disregarded the contractual obligations between M.S. Carriers and M.S. Warehousing.

23 f. Swift Holding Company and Defendant Swift totally disregarded the
24 contractual obligations between M.S. Warehousing and owner-operators.

25 g. Disregarding M.S. Warehousing’s corporate form enriched Defendants
26 Swift by giving it immediate access to a pool of drivers and equipment without regard to the
27 contractual obligations that existed between M.S. Carriers, M.S. Warehousing, and owner-

1 operators and without regard to the regulatory obligations governing those contractual
2 relations.

3 h. Swift Holding Company and Defendant Swift failed entirely to
4 reconcile the regulatory requirements of M.S. Warehousing with regard to the owner-
5 operators who were to use the M.S. Warehousing equipment in Contract Hauling leases with
6 Defendants Swift.

7 58. Due to Defendants failures to observe the corporate formalities and structures
8 and because Defendants were enriched by ignoring corporate formalities, Defendants should
9 be held jointly and severally liable for the damages and other remedies sought in this
10 Complaint.

11 **PRAYERS FOR RELIEF**

12 Wherefore, Plaintiffs OOIDA, Hayes, Campbell, Webb, Rush, Helton, Nunn,
13 Bibicoff, R. Sparks, O. Sparks, Hawkins, and Carter, individually and on behalf of all others
14 similarly situated, respectfully request that this Court:

15 1. Declare that the terms and conditions of Defendants Swift and M.S. Carriers's
16 lease agreements substantially and materially violate the terms and conditions mandated by
17 federal law and found at 49 C.F.R. § 376.

18 2. Declare that Defendants business practices substantially and materially violate
19 the practices required by the Truth-In-Leasing regulations.

20 3. Declare that all Defendants have violated their fiduciary and trust duties to
21 Plaintiffs and similarly situated owner-operators by failing to safeguard the trusts established
22 when Defendants became custodians of escrow deposits under the terms and conditions of
23 the Truth-In-Leasing regulations;

24 4. Declare that Defendants Swift and Swift Holding Company tortiously
25 interfered with the contracts between M.S. Carriers and Plaintiffs and the contracts between
26 M.S. Warehousing and Plaintiffs.

27 5. Declare that Defendants ignored corporate formalities and enriched themselves

1 by each other's illegal activities and that the corporate veil between these entities should be
2 pierced and that Defendants be joint and severally liable for the damages suffered by
3 Plaintiffs;

4 6. Certify a class consisting of all owner-operators in the United States who have
5 entered into lease agreements with Defendants Swift or M.S. Carriers that are subject to
6 federal regulations contained in Part 376, Code of Federal Regulations.

7 7. Certify a subclass consisting of all owner-operators in the United States who
8 have entered into lease agreements with Defendant Swift that are subject to federal
9 regulations contained in Part 376, Code of Federal Regulations.

10 8. Certify a subclass consisting of all owner-operators in the United States who
11 have entered into lease agreements only with Defendant M.S. Carriers, and not also with
12 Swift, that are subject to federal regulations contained in Part 376, Code of Federal
13 Regulations.

14 9. Enter an injunction pursuant to 49 C.F.R. § 376.11(a) and 49 U.S.C.
15 § 14704 (a)(1) enjoining and restraining Defendants Swift or M.S. Carriers from performing
16 authorized transportation in equipment it does not own until it enters into written lease
17 agreements that meet the requirements of the Truth-In-Leasing regulations found at 49
18 C.F.R. § 376.12.

19 10. Order Defendants Swift and M.S. Carriers to return all the monies deducted
20 from Plaintiffs' compensation in violation of the Truth-In-Leasing regulations.

21 11. Order all Defendants to return any escrow funds collected from Plaintiffs and
22 individual Class members and wrongfully withheld by Defendants at lease termination.

23 12. Order Defendants to pay all interest that should have been paid on escrow
24 accounts held by Defendants.

25 13. Order Defendants to pay interest owed on monies that this Court determines
26 were unjustifiably deducted from Plaintiffs' compensation and escrow accounts.

