

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

**IN THE DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: OTHER CIVIL
Court File No:**

**OWNER-OPERATOR INDEPENDENT
DRIVERS ASSOCIATION, INC.
ROBERT D. SHORT, ROBERT S. STEMSON
WILLIAM L. MILLER, ROBERT K. STEVENS,
and DOGS LIFE TRUCKING, LLC
on behalf of themselves and
all others similarly situated**

**COMPLAINT (CLASS ACTION)
(JURY TRIAL DEMANDED)**

Plaintiffs,

v.

**THE STATE OF MINNESOTA;
MICHAEL CAMPION, COMMISSIONER OF
MINNESOTA DEPARTMENT OF PUBLIC SAFETY,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY;
MARK DUNASKI, CHIEF OF MINNESOTA STATE PATROL,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY;
TOM HANSON, MINNESOTA MANAGEMENT AND BUDGET,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY;
AND KEN URQUHART, MINNESOTA STATE PATROL
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,**

Defendants.

Plaintiffs, both individually and on behalf of all others similarly situated (“Class Members”), bring this class-action seeking declaratory judgment, equitable relief and damages against Defendants, and allege as follows:

INTRODUCTION

1. Plaintiffs include interstate motor carriers and/or drivers of motor vehicle equipment for interstate motor carriers who have been issued misdemeanor traffic and criminal citations (“citations”) by Defendants or their agents under an erroneous claim of authority to enforce federal regulations set forth in various sections of Title 49, Code of Federal Regulations.
2. The federal government has never authorized the State of Minnesota, or any of its officers or agencies including the individual Defendants, to enforce Federal Motor Carrier Safety Regulations set forth in Title 49, Code of Federal Regulations.
3. Prior to August 1, 2009, regulations set forth in Title 49, Code of Federal Regulations were not incorporated into Minnesota State law applicable to interstate motor carriers or private carriers operating in interstate commerce.
4. The actions and conduct of Defendants in issuing unauthorized citations for violations of Title 49, Code of Federal Regulations, and imposing fines and fees for such citations, and reporting such citations to various state and federal agencies and organizations that maintain records of driver and motor carrier safety violations, violated Plaintiffs’ and Class Members’ rights to due process of law under Article 1 §§ 2, 7,8 and 13 of the Minnesota Constitution, and the Fourteenth Amendment to the United States Constitution.
5. Plaintiffs for themselves and the Class they seek to represent seek relief as follows: (a) damages pursuant to 42 U.S.C. § 1983 in the amount of fines and fees unlawfully imposed in violation of the Fourteenth Amendment to the United States

Constitution, and the award of counsel fees and costs pursuant to 42 U.S.C. § 1988, against Defendants Tom Hanson, Michael Campion, Mark Dunaski, and Ken Urquhart in their personal and individual capacities; (b) restitution and disgorgement by the State of Minnesota of the fines and fees (together with interest as provided for by law) unlawfully imposed in violation of Plaintiffs' rights and the rights of those they seek to represent under the Fourteenth Amendment to the United States Constitution and Article 1 §§ 2, 7, 8 and 13 of the Constitution of the State of Minnesota; and (c) a declaratory judgment against all Defendants that the citations, out of service orders and the fines and fees imposed upon Plaintiffs and Class Members were issued and collected without authority under either federal or state law; and (d) equitable relief in the form of an injunction ordering Defendants to expunge such unauthorized citations and out of service orders from Plaintiffs' records and compelling them to communicate such action to all third parties to whom notice of such unauthorized citations and/or out of service orders have been given.

JURISDICTION AND VENUE

6. The actions and conduct of Defendants complained of herein constitute a violation of Plaintiffs' and Class Members' right to due process of law under Article 1 §§ 2, 7, 8 and 13 of the Minnesota Constitution, the Fourteenth Amendment to the United States Constitution, and the common law of the State of Minnesota.

7. The Court has general jurisdiction over Plaintiffs' common law claims and constitutional claims arising under Article 1 §§ 2, 7, 8 and 13 of the Minnesota Constitution.

8. The Court has concurrent jurisdiction over Plaintiffs' claims arising under 42 U.S.C. §§ 1983 and 1988.
9. The Court is authorized to enter a declaratory judgment under Minn. Stat. Section § 555.01 (2006).
10. Venue lies in this court and county. Minn. St. 542.03; Minn. St. 542.09. The citations issued to Plaintiffs Miller, and Stemson and numerous members of the Class they seek to represent were issued in Hennepin County. Citations issued to Plaintiffs Stevens, Short and Dog Life Trucking, Inc., and other members of the class that Plaintiffs seek to represent, were issued in counties throughout the State of Minnesota. Data reported by the State of Minnesota to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration ("FMCSA") for violations of Title 49, Code of Federal Regulations incorporated into citations issued by Defendants between January 1, 2005 and June 6, 2009 show thousands of individual alleged violations incorporated in citations issued in Hennepin County. The number of such alleged violations in Hennepin County was more than 50 percent higher than the number of such alleged violations reported with respect to any other individual county. Thus, when compared to other counties within the State of Minnesota, Hennepin County has the most significant relationship to the acts and events at issue here.

PARTIES

A. Plaintiffs

11. Plaintiff William L. Miller is a commercial motor vehicle operator who resides at 807 2nd Avenue N, Humbolt Iowa, 50548. Plaintiff Miller is a member of the Owner

Operator Independent Drivers Association, Inc. Plaintiff Miller operates in interstate commerce as an owner-operator and independent contractor leased to motor carrier Virgil Kathol Trucking, Inc., of Hartington, Nebraska, (DOT number 158177).

12. Plaintiff Robert S. Stemson, d/b/a Fat Boys Trucking is a commercial motor vehicle operator who resides at 850 Niemi Road, Woodland, Washington 98674-8258. Plaintiff Stemson is a member of the Owner Operator Independent Drivers Association, Inc. Plaintiff Stemson operates in interstate commerce as an owner-operator and independent contractor leased to motor carrier Waymore Transportation Inc., 81 Hickory Street NE, Fridley, Minnesota 55432 (DOT number 621780).

13. Plaintiff Robert D. Short is a commercial motor vehicle operator who resides at 12919 Thomas Street, Osseo, Wisconsin, 54758-8750. Plaintiff Short operates under the authority granted to him by the Federal Motor Carrier Safety Administration to operate as motor carrier in interstate commerce under the name Dogs Life Trucking, LLC (DOT Number 1569761). Plaintiff Short, d/b/a Dogs Life Trucking, LLC is a member of the Owner Operator Independent Drivers Association, Inc.

14. Plaintiff Robert K. Stevens is a commercial motor vehicle operator who resides at 190 East Street, Boyceville, WI 54725. Plaintiff Stevens is a member of the Owner Operator Independent Drivers Association, Inc. Plaintiff Stevens operates in interstate commerce as an owner-operator and independent contractor leased to motor carrier Transport America of Eagan, Minnesota, (DOT number 183949).

15. Plaintiff, Dogs Life Trucking, LLC (Dogs Life), is a motor carrier operating in interstate commerce under DOT Number 1569761.

16. Plaintiff Owner Operator Independent Drivers Association, Inc., (“OOIDA”) is a not-for-profit corporation incorporated in the State of Missouri, with its headquarters located at 1 N.W. OOIDA Drive, P.O. Box 1000, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and has almost 160,000 members residing in all fifty (50) states and Canada. OOIDA’s membership is comprised of independent owner-operator drivers of commercial motor vehicles who lease their equipment and services to regulated interstate motor carriers as well as small business truckers who provide interstate trucking services under their own federal operating authority. OOIDA is acting herein in a representative capacity seeking only declaratory and injunctive relief on behalf of its members, including Plaintiffs, who operate from time-to-time within the State of Minnesota. The interests OOIDA seeks to protect are germane to the purposes for which it exists.

B. Defendants

17. Defendant Michael Campion is the Commissioner of the Minnesota Department of Public Safety, and has supervisory responsibility for and authority over the imposition of citations, and out of service orders, fines and fees on Plaintiffs and Class Members under an erroneous claim of authority to enforce federal motor carrier safety regulations set forth in various sections of Title 49, Code of Federal Regulations against interstate motor carriers and private carriers operating in interstate commerce and the drivers for such motor carriers. At all times relevant to the allegations set forth herein, such citations, out of service orders, fines and fees were issued without authority. At all times material to this Complaint, Defendant Campion has acted under color of state statute, ordinance,

regulation, custom or usage within the meaning of 42 U.S.C. § 1983. Defendant
Campion is sued in his official capacity for declaratory and injunctive relief and in his
personal and individual capacities for damages.

18. Defendant Mark Dunaski is Chief of the Minnesota State Patrol within the
Minnesota Department of Public Safety and holds the rank of Colonel in the Minnesota
State Patrol. Pursuant to Minnesota law, Colonel Dunaski has supervisory authority over
Minnesota State Patrol troopers and enforcement officers, including commercial vehicle
inspectors. At all times relevant herein, Defendant Dunaski, as Chief of the Minnesota
State Patrol, has supervisory responsibility for, and authority over, the imposition of
citations, and or out of service orders, fines and fees to Plaintiffs and Class Members
under an erroneous claim of authority to enforce federal motor carrier safety regulations
set forth in various sections of Title 49, Code of Federal Regulations against interstate
motor carriers and private carriers operating in interstate commerce and the drivers for
such motor carriers. At all times relevant to the allegations set forth herein, such
citations, out of service orders, fines and fees were issued without authority. At all times
material to this Complaint, Defendant Dunaski has acted under color of state statute,
ordinance, regulation, custom or usage within the meaning of 42 U.S.C. § 1983.
Defendant Dunaski is sued in his official capacity for declaratory and injunctive relief
and in his personal and individual capacities for damages.

19. Defendant Ken Urquhart is a Captain in the Minnesota State Patrol, Department of
Public Safety. Defendant Urquhart currently holds the title of Commander, Commercial
Vehicle Section, Minnesota State Patrol. At all times relevant herein, Defendant

Urquhart, acting in concert with various State Troopers and employees of the Minnesota State Patrol, has imposed or caused to be imposed citations, out of service orders, fines and fees on Plaintiffs and Class Members under an erroneous claim of authority to enforce various federal regulations embodied in Title 49, Code of Federal Regulations against interstate motor carriers and private carriers operating in interstate commerce and the drivers for such carriers. At all times material to this Complaint, Defendant Urquhart has acted under color of state statute, ordinance, regulation, custom or usage within the meaning of 42 U.S.C. § 1983. Defendant Urquhart is sued in his official capacity for declaratory and injunctive relief and in his personal and individual capacities for damages.

20. Defendant Tom Hanson is Commissioner, Minnesota Management & Budget, and has supervisory authority and responsibility for administration of fines. At all times material to this Complaint, Defendant Hanson has acted under color of state statute, ordinance, regulation, custom or usage within the meaning of 42 U.S.C. § 1983. Defendant Hanson is sued in his official capacity for declaratory and injunctive relief and in his personal and individual capacities for damages.

21. Defendant, State of Minnesota, is a body politic established under a constitution adopted October 13, 1857 and amended from time to time thereafter. The State of Minnesota operates through various executive officers each of whom take an oath of office requiring that he support the constitution of the United States and the State of Minnesota. Each of the individual defendants holds posts within the executive branch of the State of Minnesota.

ALLEGATIONS COMMON TO ALL CLAIMS

22. The condition of the Plaintiffs' trucking equipment, and the condition of the Plaintiff drivers themselves, are subject to a variety of federal safety regulations promulgated by the Federal Motor Carrier Safety Administration (FMCSA), and enforced by various states which have properly adopted those provisions into state law statutes or regulations comparable to those promulgated by the FMCSA. Federal motor carrier safety regulations are codified in various sections of Title 49, Code of Federal Regulations.

23. Prior to August 1, 2009, MSA 221.605, Subd. 1 provided in pertinent part:

Federal regulations and state rules. (a) Interstate carrier and private carriers engaged in interstate commerce shall comply with the federal motor carrier regulations in Code of Federal Regulations, title 49, part 40, 382, 383, 387, and 390 through 398 and with the rules of the commissioner concerning inspections, vehicle and driver out-of-service restrictions and requirements, and vehicle, driver, and equipment checklists.

24. Prior to August 1, 2009, MSA 221.605, Subd. 1 did not incorporate the FMCSA's regulations into any state law applicable to interstate motor carriers, private carriers operating in interstate commerce or their drivers.

25. Prior to August 1, 2009, MSA 221.605, Subd. 1 did not authorize the State of Minnesota nor the individual Defendants herein to issue citations or out of service orders to interstate motor carriers or private carriers engaged in interstate commerce or the drivers for such carriers under state laws or regulations governing motor carrier safety.

26. The federal government had never authorized the State of Minnesota or any of its departments, agencies or officials, including Defendants herein, to enforce federal safety

regulations set forth in title 49, Code of Federal Regulations against interstate motor carriers, private carriers operating in interstate commerce or their drivers.

27. At all times prior to August 1, 2009, Defendants issued or knowingly and willfully directed the issuance of unauthorized citations, out of service orders and assessment collection of fines and fees, for violations of the federal motor carrier safety regulations incorporated in various sections of Title 49, Code of Federal Regulations to interstate motor carriers, private carriers operating in interstate commerce and their drivers. These citations were unauthorized, *ultra vires* and void.

(a) On or about the morning of June 12, 2009, the State of Minnesota issued to Plaintiff Miller Citation # 6090080315 in the City of Minneapolis, Hennepin County, State of Minnesota. The officer issuing the citation was an enforcement official wearing Badge Number 402/1638. That citation listed a single offense for violation of a federal regulation identified as “Statute Ordinance of 395.3(b)” and was described as “Violation of 70 HR Rule.”

(b) On or about February 17, 2006 the State of Minnesota issued to Plaintiff Stemson a citation in the City of Minneapolis, Hennepin County, State of Minnesota. The officer issuing the citation was an enforcement official of the State of Minnesota. That citation listed one offense for violation of a federal regulation codified as 49 C.F.R. § 392.3 (fatigue) and a second offense codified as 49 C.F.R. § 392.16 (failure to use seatbelt). Plaintiff Stemson was issued an out of service order under 49 C.F.R. § 392.3.

(c) On or about the afternoon of April 15, 2008, the State of Minnesota issued to Plaintiff Short citation # 06765 at the Red River Weigh Scale in Clay County,

Minnesota. The officer issuing the citation was C. Norton, an enforcement official wearing Badge Number 1766. That citation listed a single offense for violation of a federal regulation identified as “Statute Ordinance 49 C.F.R. 395.3(b)” and was described as “70 hour rule violation.”

(d) On or about the morning of July 25, 2009, the State of Minnesota issued to Plaintiff Stevens citation # 05012 at the St. Croix Scale, Washington County, Minnesota. The enforcement official issuing the citation was wearing Badge Number 1787. That citation listed a single offense for violation of a federal regulation identified as “Statute Ordinance of 49 C.F.R. § 395.8(a)” and was described as “False Log Book.”

(e) Enforcement officials of the State of Minnesota have issued several citations and out of service orders to drivers of Plaintiff Dogs Life’s trucks and have reported such citations and out of service orders to the Federal Motor Carrier Safety Administration where such reports operate as a demerit against the safety record of Dogs Life. On information and belief, the State of Minnesota reported citations and out of service orders issued to Plaintiff Dogs Life or individuals driving for Dogs Life to other state and federal departments and agencies and other third parties who maintain safety records of motor carriers and/or drivers.

28. On or about May 12, 2009, the State of Minnesota enacted legislation in an attempt to incorporate into Minnesota law parts of Title 49, Code of Federal Regulations so that they could be enforced against interstate motor carriers and private carriers operating in interstate commerce and drivers for such carriers as State law provisions. The effective date of this legislation was August 1, 2009.

29. Plaintiffs and Class Members have clearly established state and federal constitutional rights not to be deprived of their liberty and property without due process of law. The issuance by Defendants of unauthorized citations and out of service orders and the imposition of fines and fees on account of such unauthorized citations deprived Plaintiffs and Class Members of liberty and property without due process of law.

30. Defendants have officially reported thousands of unlawful citations and out of service orders issued to Plaintiffs and Class Members to several state and federal agencies and organizations that maintain databases recording activities of interstate motor carriers and private carriers operating in interstate commerce and their individual drivers. The databases to which these unlawful citations and out of service orders have been reported include the Federal Motor Carrier Safety Administration's A&I (Analysis and Information) system and its Motor Carrier Management Information System ("MCMIS"). Furthermore, on information and belief, Defendants have reported these unlawful and unauthorized citations and out of service orders to the Commercial Driver's License Information System ("CDLIS") which "ensures that all convictions are reported to the licensing state and made part of the driver's record." CDLIS records are, in turn, available to various departments and agencies within all 50 states and the District of Columbia.

31. Various private consumer reporting agencies likewise maintain databases on driver violations that they retrieve from those government databases described in the previous paragraph. These private consumer reporting agencies report such driver and motor carrier safety violations to various entities including insurance carriers, shippers,

receivers and others who are in a position to take prejudicial and detrimental action against drivers and motor carriers based upon the unauthorized and unlawful citations and out of service orders issued or caused to be issued by Defendants to Plaintiffs and the Class Members they seek to represent.

32. Records of violations of unauthorized and unlawfully issued citations and out of service orders constitute demerits on the records of Plaintiffs and Class Members and damage the Plaintiffs' ability to maintain a commercial drivers' license, to maintain federal motor carrier operating authority, to obtain insurance, to obtain or maintain a truck driving job, and to attract new customers.

33. As a direct and proximate result of the acts and omissions of the Defendants, Plaintiffs and Class Members have experienced deprivation of their liberty and property rights and have suffered harm as follows:

- a. Violation of Plaintiffs' and Class Members' rights to due process of law under the Fourteenth Amendment to the United States Constitution, as well as Article I §§ 2, 7,8 and 13 of the Minnesota Constitution in that Plaintiffs and Class Members were issued citations for purported violation of various federal safety regulations by state officials who had no authority to enforce such federal regulations;
- b. The taking of Plaintiffs' and Class Members' property and/or monies in the form of fines and fees paid to the State of Minnesota without due process or authority of law.
- c. The deprivation of the Plaintiffs' and Class Members' freedom of movement and right to earn a living on account of out of service orders for purported violation of federal regulations which Defendants had no lawful authority to issue.
- d. The creation and dissemination of false and misleading safety records at the state and federal levels for Plaintiff drivers and motor

carriers (including driving records within the meaning of Minn. R. 7409.2200) the dissemination of which has caused them irreparable harm.

- e. Attorney's fees and expenses associated with Plaintiffs' defense and challenge of the State Defendants' unconstitutional issuance of citations for violations of federal motor carrier safety regulations where they had no lawful authority to do so.

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action on behalf of a class of members described as follows:

All interstate motor carriers and private carriers operating in interstate commerce and all drivers of vehicles operated by interstate motor carriers and private carriers operating in interstate commerce who, prior to August 1, 2009, received citations or out of service orders from Minnesota enforcement officers for violations of provisions within Title 49, Code of Federal Regulations.

35. **Class Members** - Plaintiffs seek certification of the claims asserted herein pursuant to Rule 23.02(a), Rule 23.02(b) or Rule 23.02(c) of the Minnesota Rules of Civil Procedure for legal and equitable relief for injuries suffered as a result of the unauthorized issuance of citations for violations of Title 49, Code of Federal Regulations.

36. **Class Members** – Plaintiffs are members of the Class they seek to represent. They received citations for violations of Title 49, Code of Federal Regulations, paid fines or fees pursuant thereto, were subjected to out of service orders and/or notation of such citations and/or out of service orders were made in official records maintained by the State of Minnesota.

37. **Numerosity** - The Class of individuals who were issued unauthorized citations and/or out of service orders for violations of Title 49, Code of Federal Regulations,

number in the thousands and are so numerous that joinder of all Class Members is impracticable.

38. **Commonality**- There are questions of law and fact common to the Class, including, but not limited to, whether the issuance of unauthorized citations and/or out of service orders for violations of Title 49, Code of Federal Regulations, and the imposition of fines and fees, and the negative effect on their driving records under the circumstances described herein deprived the Plaintiffs and members of the Plaintiff Class of their property without due process of law. These and other questions of law and/or fact are common to the Class and predominate over any questions affecting only individual members of the Class.

39. **Typicality**- The claims of Plaintiffs are typical of the claims of the Class they seek to represent.

40. **Adequacy of Representation**- Plaintiffs are capable of fairly and adequately protecting the interests of the Class. OOIDA has previously participated as class representative on behalf of owner-operators and motor carriers in numerous cases filed in both state and federal courts. Counsel for Plaintiffs (The Cullen Law Firm, PLLC) has been appointed Class Counsel in class actions involving interstate motor carriers and/or their drivers in numerous state and federal courts throughout the country. Attorney Albert Goins is competent and experienced in the legal pursuit of legal actions alleging violations of 42 U.S.C. § 1983 and has served as local counsel to The Cullen Law Firm, PLLC, and has been involved in multiple Plaintiff litigation previously. Plaintiffs have no claim antagonistic to those of the other members of the Class.

41. **Superiority**- Class certification pursuant to Rule 23.02(a) of the Minnesota Rules of Civil Procedure is appropriate because the prosecution of separate actions creates the risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the Defendant.

42. Class certification pursuant to Rule 23.02(a) of the Minnesota Rules of Civil Procedure is also appropriate because prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impede or impair their ability to protect their interests.

43. Class certification pursuant to Rule 23.02(b) of the Minnesota Rules of Civil Procedure is appropriate because Defendants have acted on grounds generally applicable to the Class, making appropriate equitable injunctive relief with respect to the Class as a whole.

44. Class certification pursuant to Rule 23.02(c) of the Minnesota Rules of Civil Procedure is appropriate because common issues of law and fact predominate over any individual issues, thereby rendering the class action superior to other available methods for the fair and efficient adjudication of these claims. Damages and/or restitution in an amount equal to fines and fees imposed upon Plaintiffs and individual Class Members are a matter of record and require no special calculations other than computation of interest as provided for by law. In addition, there would be enormous economic benefits to the Court and parties in litigating these common issues on a class-wide basis rather than in

individual trials. Plaintiffs foresee no difficulties in the management of the action as a class action.

COUNT I

Declaratory Judgment Under M.S.A. § 555.01. **As To All Defendants**

45. Paragraphs 1 – 44 are incorporated herein by reference.

46. The Minnesota Declaratory Judgment Act, Minn. Stat. Section § 555.01 (2006), provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

47. The allegations set forth herein present a ripe and justiciable controversy, including: (1) a genuine and present controversy; (2) presented by persons with truly concrete and adverse interests; and (3) capable of specific rather than advisory relief by a decree or judgment, with respect to whether the issuance of unauthorized citations and/or out of service orders for violations of Title 49, Code of Federal Regulations, and the imposition of fines and fees, and the negative effect on their safety records under the circumstances described herein deprives the Plaintiffs and members of the Plaintiff Class of their property and liberty interests without due process of law.

48. Plaintiffs and Class Members are entitled to a judgment declaring that the issuance of citations and/or out of service orders to Plaintiffs and Class Members for purported violations of Title 49, Code of Federal Regulations, and the imposition of fines and fees, and the communication of such citations to organizations that maintain records of citations and out of service orders issued to drivers and motor carriers by Defendants was unauthorized by law and abridged guarantees of due process of law under the constitutions of the State of Minnesota and the United States, as well as other common law rights and interests.

COUNT II

Violation of Federal Civil Rights Act, 42 U.S.C. § 1983 **By Defendant State Officers**

49. Paragraphs 1 – 48 are incorporated herein by reference.

50. The issuance of unauthorized citations and/or out of service orders to Plaintiffs and Class Members by or under the supervision and/or direction of Defendants Campion, Dunaski, Urquhart, and Hanson (“Defendant Individuals” for violations of Title 49, Code of Federal Regulations, and the imposition of fines and fees, and the negative effect on the safety records of Plaintiffs and Class Members) has denied and deprived them of their rights to due process under the U.S. Constitution.

51. It was the policy and/or custom, and/or practice, and/or pattern, and/or usage of the Defendant Individuals to hold out themselves and those enforcement officers whom they supervise as having legal authority to issue citations and/or out of service orders for violations of Title 49, Code of Federal Regulations, and to impose and collect fines and

fees for purported violations of said federal regulations. Because Defendant individuals had no authority to issue citations and/or out of service orders for violations of Title 49, Code of Federal Regulations, or to impose fines and fees for such violations, Plaintiffs and Class Members were denied their rights to due process of law under the Fourteenth Amendment to the U.S. Constitution.

52. The aforesaid actions were taken under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of Minnesota within the meaning of the Federal Civil Rights Act, 42 U.S.C. § 1983.

53. Upon information and belief, it is the policy and/or custom, and/or practice, and/or pattern, and/or usage of the Defendant individuals to make certifications to the Department of Public Safety for certain violations of Title 49, Code of Federal Regulations. Such certifications have an adverse impact on the safety records of Plaintiffs and Class Members.

54. As a result of the above-described conduct, Plaintiffs and Class Members have been deprived of their property and liberty rights without due process of law.

55. Pursuant to 42 U.S.C. § 1983, Plaintiffs claim damages in an amount equal to fines and fees unlawfully imposed plus interest as provided for by law from Defendants Campion, Dunaski, Hanson and Urquhart personally and individually. Said Defendants, acting under color of state law, abridged Plaintiffs' federal constitutional rights. Plaintiffs also seek an award of reasonable counsel fees and costs pursuant to 42 U.S.C. §1988.

COUNT III

Violation of Minnesota State Constitution **By All Defendants**

56. Paragraphs 1 – 48 are incorporated herein by reference.

57. The actions of Defendants in sanctioning the issuance of unauthorized citations and/or out of service orders for violations of Title 49, Code of Federal Regulations, and the imposition of fines and fees were unlawful and *ultra vires* and abridged Plaintiff's right to due process of law under Article 1 §§ 2, 7, 8 and 13 of the Minnesota Constitution.

58. As a result of the above-described conduct, Plaintiffs and members of the Plaintiffs Class have been deprived of their liberty and property rights without due process of law.

59. Plaintiffs claim a right to restitution against the State of Minnesota in an amount equal to fines and fees imposed upon them and the members of the Class they seek to represent plus interest as provided for by law.

COUNT IV

Unjust Enrichment **By State of Minnesota**

60. Paragraphs 1 – 48 and 57 - 59 are incorporated herein by reference.

61. The actions and conduct of Defendants in issuing or causing to be issued unauthorized citations for violations of Title 49, Code of Federal Regulations, and the

imposition of unlawfully exacted fines and fees were unconstitutional, *ultra vires*, and void.

62. The State of Minnesota has received and retained monies paid by the Plaintiffs and members of the Class they seek to represent in the form of fines and fees remitted by them pursuant to the unauthorized and *ultra vires* actions of the other Defendants in issuing of citations for violations of Title 49, Code of Federal Regulations.

63. It is unconscionable and inequitable for the State of Minnesota to retain the money paid by the Plaintiffs and the Plaintiff Class in the form of fines and fees pursuant to citations that are unauthorized and invalid.

64. As a result of the above-described conduct, the State of Minnesota has been unjustly enriched by holding money that rightfully belongs to Plaintiffs and the members of the class they seek to represent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court grant judgment against Defendants in favor of Plaintiffs and the Class as follows:

(a) That the Court determine and order that this action may proceed as a Class Action and certify a Class either as described above or as otherwise found by the Court to be appropriate; and that counsel for the Plaintiffs be appointed Class Counsel for such Class;

(b) That the State of Minnesota be ordered to identify all members of the Plaintiff Class;

(c) That Declaratory Judgment be entered against all Defendants declaring that the actions and conduct of Defendants in issuing or causing to be issued unauthorized citations and/or out of service orders for violations of Title 49, Code of Federal Regulations against interstate motor carriers and/or private motor carriers operating in interstate commerce and/or drivers for interstate motor carriers and/or private carriers operating in interstate commerce, and imposing or causing to be imposed fines and fees because of such unauthorized citations and/or out of service orders prior to August 1, 2009 were unconstitutional, *ultra vires*, and void;

(d) That the Court issue an order directing the State of Minnesota to disgorge all moneys paid to it by Plaintiffs and Class Members in the form of fines and fees plus interest as provided for by law;

(e) That the Court award damages in the amount of fines and fees unlawfully imposed plus interest as provided for by law to Plaintiffs Short, Stemson, Miller, Stevens

and Dog Life Trucking and the members of the Class they seek to represent against Defendants Campion, Dunaski, Urquhart, and Hanson individually and in their personal capacities;

(f) That the Defendant State of Minnesota be ordered to deposit all funds collected as fines and fees for unauthorized citations against interstate motor carriers and private motor carriers operating in interstate commerce and/or their drivers for violations of Title 49, Code of Federal Regulations prior to August 1, 2009 in a segregated account to be held as a common fund for the benefit of and for ultimate return to those to whom such funds rightfully belong, to wit Plaintiffs and members of the Class they seek to represent;

(g) That the State of Minnesota be further ordered to expunge records of any violations stemming from the issuance of unauthorized citations and/or out of service orders for purported violations of Title 49, Code of Federal Regulations prior to August 1, 2009, from the records of each member of the Plaintiff Class; and to notify all third parties to whom notification of such citations and/or out of service orders was given that records of such citations and/or out of service orders have been expunged by the State of Minnesota and request that such third parties purge their records of such citations and/or out of service orders;

(h) That the Court award Plaintiffs and the Plaintiff Class attorney's fees and costs and any other available statutory damages pursuant to law in such amount as the Court may deem just and appropriate pursuant to 42 U.S.C. § 1988;

(i) That the Court award attorneys fees as it may deem just and appropriate from the common fund described in Paragraph (f) above and/or from such other funds as may be available;

(j) That the Court award such other relief as it may deem just, equitable or appropriate.

JURY DEMAND

Plaintiffs request trial by jury for all issues that may be tried to a jury.

Respectfully submitted,

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ACKNOWLEDGMENT

Plaintiff asserts these claims in good faith, and acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party as provided by Minnesota Statutes Sec. 549.211.

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