

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS)		
ASSOCIATION, INC; ANDREY BARSLAVETS;))	
NELSON HERNANDEZ; SIMON JAMEL;))	
JOSEPH LOPEZ; PETER C. MANGO;))	
DAVID P. PAUL; KELVIN L. ROBERTS; JOHN W.))	
ROBERTSON; HERBERT RUGGLES))	
JOHN A. SMITH; THOMAS R. TAYLOR;))	
KENNETH S. WARD; and on behalf of all others))	
similarly situated,))	
)	
Plaintiffs,))	Case No.
)	Complaint-Class Action
v.))	
)	Demand for Jury Trial
BULKMATIC TRANSPORT COMPANY))	
)	
Defendant.))	
)	

**FIRST AMENDED
 CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”); Andrey Braslavets; Nelson Hernandez; Simon Jamel; Joseph Lopez; Peter C. Mango; David P. Paul; Kevin L. Roberts; John W. Robertson; Herbert Ruggles; John A. Smith; Thomas R. Taylor; and Kenneth S. Ward (collectively “Plaintiffs,” or for all but the association, “Contracting Plaintiffs”), bring this action seeking declaratory, injunctive and monetary relief on behalf of themselves and all others similarly situated against Defendant Bulkmatic Transport Company (“Bulkmatic” or “Defendant”), and allege as follows:

NATURE OF THE ACTION

1. Bulkmatic is a regulated motor carrier that provides transportation of property in interstate commerce under authority issued by the U.S. Department of Transportation (“DOT”). Bulkmatic transports property in equipment leased from independent truckers (known as “owner-operators”) including the Contracting Plaintiffs Andrey Braslavets; Nelson Hernandez; Simon Jamel; Joseph Lopez; Peter C. Mango; David P. Paul; Kevin L. Roberts; John W. Robertson; Herbert Ruggles; John A. Smith; Thomas R. Taylor; and Kenneth S. Ward and others similarly situated. Under federal law and regulations, “authorized motor carriers” like Bulkmatic may perform authorized transportation in equipment they do not own *only* if the equipment is covered by a written lease meeting the requirements set forth in 49 C.F.R. § 376.12. *See* 49 C.F.R. § 376.11(a). Authorized motor carriers are required by regulation to follow the required lease provisions. 49 C.F.R. § 376.12.

2. Bulkmatic has engaged in a pattern and practice of conduct violating its obligations under 49 C.F.R. § 376.12 to Contracting Plaintiffs and others similarly situated.

JURISDICTION AND VENUE

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

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

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that Bulkmatic is incorporated in Illinois and maintains terminals in this District at Argo and Chicago Heights, Illinois, and because a part of the events giving rise to the claims raised herein occurred in this district or state.

PARTIES TO THE ACTION

6. Plaintiff Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) is a business association of persons and entities who own and operate motor vehicles, commonly known as “owner-operators.” Owner-operators are small business truckers who own and operate a truck tractor (of a tractor-trailer combination). They lease their tractor and driving services, and often their own trailer, to motor carriers (such as Bulkmatic), agreeing to move items in interstate commerce for the motor carrier in exchange for specified compensation. 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 now has over 100,000 members residing in all fifty (50) states and in Canada. OOIDA's members include owner-operators who are under contract to Bulkmatic, including all the named individuals to this action. OOIDA brings this action in a representative capacity and seeks declaratory and injunctive relief on behalf of all Bulkmatic owner-operators including those who are its members.

7. Contracting Plaintiff, Andrey Braslavets, a citizen of the State of New Jersey, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

8. Contracting Plaintiff, Nelson Hernandez, a citizen of the State of New York, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

9. Contracting Plaintiff, Simon Jamel, a citizen of the State of New York, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

10. Contracting Plaintiff, Joseph Lopez, a citizen of the State of New York, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

11. Contracting Plaintiff, Peter C. Mango, a citizen of the Commonwealth of Pennsylvania, is an owner-operator who has leased motor vehicle equipment, with a

driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

12. Contracting Plaintiff, David P. Paul, a citizen of the State of Florida, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

13. Contracting Plaintiff, Kevin L. Roberts, a citizen of the State of Ohio, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

14. Contracting Plaintiff, John W. Robertson, a citizen of the State of Georgia, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

15. Contracting Plaintiff, Herbert Ruggles, a citizen of the State of Ohio, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

16. Contracting Plaintiff, John A. Smith, a citizen of the State of New York, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

17. Contracting Plaintiff, Thomas R. Taylor, a citizen of the Commonwealth of Pennsylvania, is an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

18. Contracting Plaintiff, Kenneth S. Ward, a citizen of the State of Georgia, is

an owner-operator who has leased motor vehicle equipment, with a driver, to Bulkmatic within the purview of 49 U.S.C. § 14102.

19. Contracting Plaintiffs Andrey Braslavets; Nelson Hernandez; Simon Jamel; Joseph Lopez; Peter C. Mango; David P. Paul; John W. Robertson; John A. Smith; Thomas R. Taylor; and Kenneth S. Ward are members of OOIDA.

20. Contracting Plaintiffs and other similarly situated owner-operators are “owners” within the meaning of 49 C.F.R. § 376.2(d), and “lessors” within the meaning of 49 C.F.R. § 376.2(f).

21. Each lease agreement entered between Contracting Plaintiffs and other similarly situated owner-operators, and Bulkmatic constitutes a "lease" within the meaning of 49 C.F.R. § 376.2(e).

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

23. On information and belief, the leasing agreements between Contracting Plaintiffs and Bulkmatic are substantively identical to the leasing agreements entered into between Bulkmatic and all other similarly situated owner-operators.

24. Bulkmatic is an Illinois corporation with principal place of business in Griffith, Indiana. Bulkmatic maintains 52 terminals located in 17 states, including terminals within this district, and operates throughout the continental United States.

Bulkmatic is a regulated motor carrier, primarily engaged in the enterprise of providing transportation services to the shipping public under authority granted by DOT and formerly the ICC. During all time material to this case, Bulkmatic is and has been an “authorized carrier” within the meaning of 49 C.F.R. § 376.2(a).

CLASS ACTION ALLEGATIONS

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

26. **Class Description.** Plaintiffs seek to represent a class (hereinafter “Class”) consisting of all owner-operators in the United States who, after November __, 1999, and through the pendency of this proceeding, had or have executed leases with Bulkmatic or its authorized agents or business affiliates (“Lessor”), that are subject to federal regulations contained in Part 376, Code of Federal Regulations.

27. **Impracticability of Joinder.** Upon information and belief, there are more than four hundred individual owner-operators who are members of this Class -- Lessors. These individual owner-operators are residents of various states and travel continuously, and are, therefore widely dispersed geographically. Thus, joinder of all potential Class Members would be impracticable.

28. **Commonality.** Bulkmatic has acted toward these Class Members in a way that affects all members of the Class -- Lessors -- similarly and, accordingly, questions of

fact and law are common to the Class, as are questions of the liability of Bulkmatic, or the appropriate nature of injunctive relief. The lease agreements entered by the named individual Plaintiffs are materially identical to agreements entered by all potential class members. To the extent that the agreements entered by the named individual Plaintiffs violate the truth-in-leasing regulations, all the agreements entered by potential class representatives similarly violate the regulations. By systematically reducing the gross revenue reported to owner-operators, Bulkmatic systematically underpays all potential class members by a similar practice. Questions of fact are common to the class, as are questions of Bulkmatic's liability to all potential class members.

29. **Typicality**. The claims of the Plaintiffs are typical of the claims of the potential Class as a whole. Each named Plaintiff, like each absent member of the potential class, was an owner-operator who entered an agreement with Bulkmatic which was materially identical and similarly non-compliant with the federal truth-in-leasing regulations. Each potential class member was subject to the same unlawful policies and practices of Bulkmatic as that experienced by the named individual Plaintiffs. Each potential class member was subject to the same scheme to reduce compensation by understating gross revenue as was experienced by the named individual Plaintiffs.

30. **Fair and Adequate Representation**. Plaintiffs are capable of fairly and adequately protecting the interests of the Class because the claims of the individually named Plaintiffs are common to the Class, and proof of those claims will prove the claims

of absent class members. Bulkmatic has engaged in a consistent course of wrongful conduct through the use of non-compliant lease agreements and through its scheme to reduce owner-operator compensation by understating gross revenue. Additionally, OOIDA has previously participated as class representative on behalf of owner-operators in several cases. In its 30 years in operation, OOIDA has consistently demonstrated its strong commitment to its long-standing mission of protecting the rights of independent drivers by providing services to independent truckers, and by its wide-ranging advocacy of their interests in legislative, regulatory and judicial forums. Counsel for Plaintiffs, The Cullen Law Firm, PLLC, has been appointed Class Counsel in similar class actions throughout the country.

31. **Class Certification Appropriate Under Rule 23(b)(2)**. Defendants have acted and/or failed to act on grounds generally applicable to the potential class as a whole, as described further herein. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under Fed. R. Civ. P. 23(b)(2).

32. **Class Certification Appropriate Under Rule 23(b)(3)**. The questions of law enumerated in the counts below are common to all potential class members, as described in paragraph 24, and predominate over any questions affecting only individual members which are essentially limited to the amounts due each member. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of

the claims herein.

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

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

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

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

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

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

(f) Plaintiffs are represented by The Cullen Law Firm, PLLC, which has the experience of representing their clients in numerous class actions involving owner-operators and other small business truckers nationwide.

FEDERAL REGULATORY SETTING

34. Under federal law, an authorized motor carrier may perform authorized transportation in equipment it does not own only under a written lease granting use of the equipment and meeting the requirements contained in 49 C.F.R. § 376.12. 49 C.F.R. § 376.11(a); *see also* 49 U.S.C. § 14102. A person injured on account of an authorized carrier's violation of or failure to comply with the federal leasing regulations may bring an action seeking injunctive relief and damages against such authorized carriers pursuant to 49 U.S.C. § 14704(a)(1) and (2), as well as attorneys' fees and costs as authorized by 49 U.S.C. § 14704(e).

35. The federal leasing regulations provide that the lease contain specific provisions and that the regulated motor carrier adhere to those terms. 49 C.F.R. §§ 376.11 and 376.12. The Contracting Plaintiffs entered into federally-regulated lease agreements (the "Lease Agreements") with Bulkmatic. A genuine copy of the Lease Agreement entered between Bulkmatic and Plaintiff Smith is attached as Exhibit "A." This Lease Agreement is identical in all material respects to the Lease Agreements for all of the Contracting Plaintiffs. On information and belief, this Lease Agreement is identical in all material respects to Lease Agreements entered by Bulkmatic with all of the individuals in the potential class.

COUNT I

Unlawful Provision of Transportation Services by Bulkmatic

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

35.

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

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

1. Bulkmatic’s leases do not disclose the amount deducted from the owner-operator’s compensation that exceeds the actual cost of the items initially paid for by Bulkmatic, and the leases do not contain recitations as to how these deductions from compensation are calculated, all in violation of 49 C.F.R. § 376.12 (h);
2. Defendant Bulkmatic’s Lease Agreements do not specify with particularity the items for which the escrow can be used as required by 49 C.F.R. § 376.12 (k);

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

1. Defendant Bulkmatic's Lease Agreements state that owner-operator may be required to purchase or rent products, equipment, or services from Bulkmatic in violation of 49 C.F.R. § 376.12(i), which prohibits such a requirement.
2. Defendant Bulkmatic's Lease Agreements require the submission of more documentation before Bulkmatic will pay owner-operator than is permitted by 49 C.F.R. § 376.12(f).

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

COUNT II

Failure to Provide Rated Freight Bill on Request (in violation of 49 C.F.R. § 376.12 (g))

39. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 35 above.

40. Owner-operators receive compensation from Bulkmatic based on fixed percentage of the gross revenue paid by the shipper. *See* Exhibit A, ¶ D.

41. Plaintiffs Kenneth S. Ward and John A. Smith requested their respective supervisors, Tim Butterfield and Alex Taggart, to provide them with the rated freight bills for shipments that they carried for Bulkmatic. In violation 49 C.F.R. § 376.12 (g)

Bulkmatic's supervisors failed to provide copies of the rated freight bill.

42. On August 19, 2002, Plaintiff Kenneth S. Ward sent a letter to Albert Y. (Butch) Bingham, Jr., President of Bulkmatic, requesting the rates and rated freight bills for all shippers at Bulkmatic's Atlanta terminal. Mr. Bingham never responded to this request.

43. On July 24, 2003, The Cullen Law Firm sent a letter to Albert Y. Bingham, Jr., on behalf of owner-operators Andrey Braslavets, Simon Jamel; Joseph Lopez; Peter C. Mango; John A. Smith; Thomas R. Taylor; and Kenneth S. Ward requesting copies of rated freight bills or other forms of freight documentation related to specific shipments carried by these owner-operators. These owner-operators are current and former drivers for Bulkmatic driving out of Bulkmatic terminals located in Georgia, New Jersey and New York. The letter requested that Mr. Bingham and Bulkmatic respond to this request within 20 days of its receipt. The letter was sent by certified mail and received on July 28, 2003. As of the date of the filing of this complaint neither Bulkmatic nor Mr. Bingham has responded to the letter.

44. Mr. Bingham's failure to provide copies of the rated freight bills or other forms of freight documentation on request represents a Bulkmatic company-wide practice to refuse or ignore requests for information that would enable owner-operators to verify the amount of gross revenue received by Bulkmatic.

45. As a direct and proximate result of Bulkmatic's violations of 49 C.F.R.

§ 376.12(g), owner-operators are deprived of the ability to accurately calculate the amount of revenue rightfully due to them by the motor carrier.

COUNT III

Unlawful Reductions of Compensation (in violation of 49 C.F.R. § 376.12 (d) and (g))

44. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 35 and 40 through 45 above.

47. Owner-operators receive compensation from Bulkmatic based on fixed percentage of the gross revenue paid by the shipper. Bulkmatic, in violation of its lease, and the truth-in-leasing regulations, reduces and understates the gross revenue actually received from the shipper on owner-operators' settlements before it calculates the compensation due the owner-operators. By reporting to drivers a reduced amount in gross revenue received from the shipper, Bulkmatic underpays its owner-operators by an amount that equals the amount of the reduction of gross revenue times the percentage of gross revenue specified in the lease.

48. As a direct and proximate result of Bulkmatic's violations of 49 C.F.R. §376.12(d) and (g), owner-operators are deprived of sums rightfully belonging to them and have incurred substantial monetary damages.

COUNT IV

Failure to pay interest on escrows and/or return escrows at lease termination (in violation of 49 C.F.R. § 376.12 (k))

49. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 35 above.

50. The federal leasing regulations provide that if a motor carrier requires the escrowing of funds by owner-operators, then the motor carrier must provide an accounting to the owner-operator of the escrowed funds on a monthly basis and that interest be paid at lease on a quarterly basis. 49 C.F.R. § 376.12(k).

51. Pursuant to the lease agreement entered into with the Defendant, owner-operators were required to deposit \$1000.00 in escrow with the Defendant.

52. Defendant violated the escrow provision of the leasing regulations by failing to provide owner-operators a monthly accounting, by failing to pay interest quarterly on escrow deposits and by failure to return escrow deposits at the termination of the lease.

53. As a direct and proximate result of Bulkmatic's violations of 49 C.F.R. §376.12(k), owner-operators are deprived of sums rightfully belonging to them and have incurred substantial monetary damages.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs, Owner-Operator Independent Drivers Association, Inc., Andrey Braslavets; Nelson Hernandez; Simon Jamel; Joseph Lopez; Peter C. Mango; David P. Paul; Kevin L. Roberts; John W. Robertson; Herbert Ruggles; John A. Smith;

Thomas R. Taylor; and Kenneth S. Ward, individually and on behalf of all others similarly situated, respectfully request that this Court:

1. Enter declaratory judgment that the lease agreements Bulkmatic entered into with Contracting Plaintiffs violate 49 C.F.R. § 376.11(a) by failing to include certain provisions required by 49 C.F.R. § 376.12 and by including others that conflict with that regulatory provision;
2. Enter a declaratory judgment that Defendant has violated 49 C.F.R. § 376.12(d) and (g) by failing to provide copies of the rated freight bills or other forms of freight documentation on request and reducing the stated revenue received from shippers before calculating owner-operators compensation;
3. Enter an Order that Defendant provide to Contracting Plaintiffs and Class Members an accounting of all transactions involving reductions of gross income received from all shippers;
4. Enjoin Defendant from violations of Part 376 regulations;
5. Certify a class comprised of lessors of motor vehicle equipment who, after November ____, 1999, and through the pendency of this proceeding are or have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Bulkmatic;
6. Enjoin Defendant from any acts of retaliation, harassment, or intimidation against Contracting Plaintiffs and Class Members and others who may assist and/or

participate in this action;

7. Enter judgment against Defendant in favor of Contracting Plaintiffs and individual class members for restitution and disgorgement of sums unlawfully deducted from compensation in violation of 49 C.F.R. § 376.12 and for damages, all pursuant to 49 U.S.C. § 14704(a)(2), and including pre- and post-judgment interest, as allowed by law;

8. Create a common fund made up of all amounts disgorged and damages awarded to individual Class Members;

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

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

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

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