UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

OWNER-OPERATOR INDEPENDENT	**)**
DRIVERS ASSOCIATION, INC.,	**)**
and HOWARD JENKINS, MARSHALL	**)**
JOHNSON, SUSAN JOHNSON,	**)**
and JERRY VANBOETZELAER,	**)**
INDIVIDUALLY AND ON BEHALF OF	**)**
ALL OTHERS SIMILARLY SITUATED,	**)**
Plaintiffs,	**)**
v.	**)**
NEW PRIME, INC., d/b/a PRIME, INC., and	**)**
SUCCESS LEASING, INC.,	**)**
Defendants	**)**
	)
Civil Action No. _____	**)**

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

The Owner-Operator Independent Drivers Association, Inc., and Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly situated (collectively, "Plaintiffs" or "class members"), sue New Prime, Inc., d/b/a Prime, Inc. ("Prime"), and Success Leasing, Inc. ("Success Leasing"), and allege as follows:

NATURE OF THE ACTION

1. This is a class action against Defendants pursuant to which Plaintiffs named herein, as class representatives on behalf of themselves and all others similarly situated, all of whom are independent truck owner-operators, challenge the lawfulness of Defendants' Service Contracts and/or Lease-Purchase Agreements as applied to the class members. Plaintiffs maintain that Defendants' Service Contracts and Lease-Purchase Agreements contain terms that violate federal commercial transportation laws and regulations as set forth under the United States Code and the Code of Federal Regulations. More specifically, Plaintiffs assert that Defendants' Service Contracts and Lease-Purchase Agreements, *inter alia*, unlawfully require the class members to forfeit, and unlawfully permit Defendants to possess and retain, escrow and other funds to which only the class members are entitled, and are so prejudicial and unfair as to be unconscionable in their application to and effect upon the class members. Accordingly, Plaintiffs seek declaratory and injunctive relief; an immediate accounting of escrow and other funds deposited with Defendants by the various class members during

their respective periods of association with Defendants; the return of such escrow and other funds to the class members with interest as calculated under applicable law; rescission, at the option of each class member, of the respective lease-purchase agreements entered into between Prime or Success Leasing and each of the class members on the ground that such agreements are unconscionable in their application to and effect upon the class members; attorneys' fees and costs incurred by Plaintiffs in this action; and such other relief as may be deemed proper and just by the Court. Plaintiffs also request an order enjoining and restraining Defendants from transferring, diverting, or otherwise concealing the class members' funds at issue and from destroying records relating in any way to the escrow funds or other amounts owed by Defendants to the class members.

JURISDICTION AND VENUE

2. This action arises under 49 U.S.C. 14102 and 14704(a)(1) and (2), 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.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1331 (Federal Question), because the claims asserted herein arise under the laws of the United States.

4. This Court has supplemental jurisdiction over all other claims made in this action pursuant to 28 U.S.C. 1367(a) (Supplemental Jurisdiction), because any such claims are so related to claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) and 49 U.S.C. 14704(d)(1), because Defendants' principal place(s) of business and principal operating office(s) are located in this judicial district and in this division of that judicial district.

PARTIES

6. Plaintiff Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), is a business association of persons and entities, commonly known as "owner-operators," who own and operate motor carrier equipment. OOIDA is a not-for-profit corporation incorporated in Missouri, with its headquarters at 311 R.D. Mize Road, P.O. Box L, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has over 36,000 members in all fifty (50) States of the United States and in Canada. A number of OOIDA's members are owner-operators who operate motor vehicles in and through the State of Missouri and are, or are likely to be, employed by or otherwise associated with Prime and/or Success Leasing under the terms set forth in Defendants' Service Contracts and Lease-Purchase Agreements. OOIDA seeks to have Defendants' leasing and business practices declared unlawful and in violation of federal motor carrier leasing regulations (49 C.F.R. 376 *et seq.*), and to have the continuation of said practices permanently enjoined, and thus participates as a Plaintiff herein only in connection with Plaintiffs' prayers for declaratory and injunctive relief.

7. Plaintiff Howard Jenkins ("Plaintiff Jenkins") is a resident of the State of Missouri. Plaintiff Jenkins is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Prime under the terms of the Service Contract entered into between Plaintiff Jenkins and Defendant Prime. In addition, Plaintiff Jenkins is party to a Lease-Purchase Agreement with Success Leasing under which Plaintiff Jenkins leases from Success Leasing, with the option to purchase, the motor vehicle equipment that is the subject of the Service Contract between Plaintiff Jenkins and Defendant Prime. The terms of the Service Contract entered into between Plaintiff Jenkins and Defendant Prime are the same or substantially the same as the terms of the Service Contracts entered into between Defendant Prime and each of the class members herein. Plaintiff Jenkins maintains his contractual relationship with Defendant Prime, but has been and continues to be professionally, financially, and personally damaged because of the onerous conditions imposed upon him by the terms of the Service

Contract and the Lease-Purchase Agreement. Specifically, *inter alia*, Defendant Prime has persisted in unjustifiably depriving Plaintiff Jenkins of escrow and other funds deposited with Defendant Prime by Plaintiff Jenkins during the term of the Service Contract. In addition, the Success Leasing Lease-Purchase Agreement to which Plaintiff Jenkins is a party is so prejudicial and unfair as to be unconscionable in its application to and effect upon Plaintiff Jenkins. In light of these circumstances, Plaintiff Jenkins seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

8. Plaintiffs Marshall Johnson and Susan Johnson (collectively, "Plaintiffs Johnson") are residents of the State of Georgia. Plaintiffs Johnson are independent truck owner-operators who have provided motor vehicle equipment to Defendant Prime under the terms of the Service Contract entered into between Plaintiffs Johnson and Defendant Prime. In addition, Plaintiffs Johnson were party to a Lease-Purchase Agreement with Success Leasing under which Plaintiffs Johnson leased from Success Leasing, with the option to purchase, the motor vehicle equipment that was the subject of the Service Contract between Plaintiffs Johnson and Defendant Prime. The terms of the Service Contract entered into between Plaintiffs Johnson and Defendant Prime are the same or substantially the same as the terms of the Service Contracts entered into between Defendant Prime and each of the class members herein. Plaintiffs Johnson were forced to terminate their contractual relationship with Defendant Prime because of the onerous conditions imposed upon them by the terms of the Service Contract and the Lease-Purchase Agreement. Specifically, *inter alia*, Defendant Prime has persisted in unjustifiably depriving Plaintiffs Johnson of escrow and other funds deposited with Defendant Prime by Plaintiffs Johnson during the term of the Service Contract. In addition, the Success Leasing Lease-Purchase Agreement to which Plaintiffs Johnson were party was so prejudicial and unfair as to be unconscionable in its application to and effect upon Plaintiffs Johnson. In light of these circumstances, Plaintiffs Johnson seek monetary damages and declaratory, injunctive, and other equitable relief on behalf of themselves and all other similarly situated independent truck owner-operators.

9. Plaintiff Jerry Vanboetzelaer ("Plaintiff Vanboetzelaer") is a resident of the State of New York. Plaintiff Vanboetzelaer is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Prime under the terms of the Service Contract entered into between Plaintiff Vanboetzelaer and Defendant Prime. In addition, Plaintiff Vanboetzelaer was party to a Lease-Purchase Agreement with Prime under which Plaintiff Vanboetzelaer leased from Prime, with the option to purchase, the motor vehicle equipment that was the subject of the Service Contract between Plaintiff Vanboetzelaer and Defendant Prime. The terms of the Service Contract entered into between Plaintiff Vanboetzelaer and Defendant Prime are the same or substantially the same as the terms of the Service Contracts entered into between Defendant Prime and each of the class members herein. Plaintiff Vanboetzelaer has completed his term under the Service Contract with Defendant Prime. However, despite the fact that the Service Contract is no longer in effect, Defendant Prime has persisted in unjustifiably depriving Plaintiff Vanboetzelaer of escrow and other funds deposited with Defendant Prime by Plaintiff Vanboetzelaer during the term of the Service Contract. In addition, the Prime Lease-Purchase Agreement to which Plaintiff Vanboetzelaer was a party was so prejudicial and unfair as to be unconscionable in its application to and effect upon Plaintiff Vanboetzelaer. In light of these circumstances, Plaintiff Vanboetzelaer seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

10. Plaintiff owner-operators are "owners" within the meaning of 49 C.F.R. 376.2(d).

11. Plaintiff owner-operators are "lessors" within the meaning of 49 C.F.R. 376.2(f).

12. The equipment provided for use by Plaintiff owner-operators to Defendant Prime constitute "equipment" within the meaning of 49 C.F.R. 376.2(b).

13. Defendant Prime is a corporation incorporated under the laws of the State of Nebraska, authorized to do business in Missouri, and having its principal place of business at 1340 E. Woodhurst, Springfield, Missouri 65804. Defendant is a regulated motor carrier, primarily engaged in the enterprise of providing transportation services to the shipping public under authority granted by the United States Department of Transportation (the "DOT"). In addition, it is Plaintiffs' understanding, upon information and belief, that Defendant Prime, *inter alia*, engages in the business of leasing truck tractor units, with the option to purchase, to independent truck owner-operators.

14. Defendant Prime is an "authorized carrier" within the meaning of 49 C.F.R. 376.2(a).

15. Defendant Prime is a "lessee" within the meaning of 49 C.F.R. 376.2(g).

16. Defendant Success Leasing is a corporation incorporated under the laws of the State of Nebraska, authorized to do business in Missouri, and having its principal place of business at 2740 North Mayfair, Springfield, Missouri 65803. It is Plaintiffs' understanding, upon information and belief, that Defendant Success Leasing, *inter alia*, engages in the business of leasing truck tractor units, with the option to purchase, to independent truck owner-operators.

17. Upon information and belief, Plaintiffs maintain that Defendant Success Leasing is owned and controlled by Defendant Prime, or Defendants Prime and Success Leasing are under common ownership and control and said Defendants act as a single entity and do not engage in arm's-length transactions between one and the other. Thus, Plaintiffs maintain, upon information and belief, that the Lease-Purchase Agreements entered into between Success Leasing and the various class members herein effectively were entered into between those various class members and Defendant Prime or an alter ego or an agent of Prime, and that Defendant Prime consequently is liable under each of Plaintiffs' claims arising from the unlawfulness of the Lease-Purchase Agreements entered into between Defendant Success Leasing and the various class members herein.

CLASS

18. Class Description: Pursuant to Federal Rule of Civil Procedure 23, the individual owner-operators who are Plaintiffs and class members bring this action on behalf of themselves and all other similarly situated independent truck owner-operators. Each class member has, *inter alia*, entered into a Service Contract with Defendant Prime and a Lease-Purchase Agreement with either Defendant Prime or Defendant Success Leasing. Under the respective terms of these Service Contracts and Lease-Purchase Agreements, each class member has leased trucking equipment from either Prime or Success Leasing, and, in turn, leased their trucking equipment and services to Prime. In connection with these leasing transactions, each class member has been required to provide Prime and/or Success Leasing with various escrow and other funds, ostensibly to cover various trucking-related expenses arising in the course of the class members' work. Under federal law, the contractual terms under which such escrow funds are collected by a motor carrier must be specified in a regulated lease agreement, and must be returned to the truck owner-operator upon termination of the leasing relationship. However, Prime and/or Success Leasing have not specified in a regulated lease agreement the contractual terms under which Prime and/or Success Leasing have collected escrow funds, and have not returned the escrow funds rightfully belonging to the class members following the terminations of the leasing relationships at issue. Consequently, each of the class members is, *inter alia*, entitled to a return of the escrow and other funds held by Defendants Prime and/or Success Leasing.

19. Impracticability of Joinder: On information and belief, there are several thousands of independent truck owner-operators who have entered into Service Contracts and

Lease-Purchase Agreements with Defendants Prime and/or Success Leasing during the past several (exceeding one) years. Each of these owner-operators is entitled to a refund of escrow and other funds held by Defendants Prime and/or Success Leasing, each has been prejudiced as a result of entry into a Service Contract and a Lease-Purchase Agreement with Defendants Prime and/or Success Leasing, and each qualifies as a class member. Individual joinder of all potential class members is impracticable.

20. Commonality: Pursuant to identical, or substantially identical, Service Contracts and Lease-Purchase Agreements, Defendants Prime and Success Leasing have acted and failed to act with regard to Plaintiffs' escrow and other funds in a way that affects all class members similarly and, accordingly, any questions of fact are common to the class as a whole. Defendants' actions and failures to act with regard to Plaintiffs' escrow and other funds also have caused substantially the same harm to each of the class members and, accordingly, any questions regarding Defendants' liability to individual Plaintiff class members are common to the class as a whole. Further, Defendants have acted and failed to act with regard to Plaintiffs' escrow and other funds in a manner generally applicable to the class, therefore making injunctive relief appropriate with respect to the class as a whole.

21. Typicality: Plaintiffs' claims are typical of the claims of the class members as a whole, and Plaintiffs are capable of fairly and adequately protecting the interests of the class.

22. Class Action Superior: Defendants' actions in failing to provide either an accounting or a return of the class members' escrow and other funds, and questions relating to Defendants' actions, predominate over any questions affecting only individual members of the class. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

23. Other Factors:

In addition:

A. the prosecution of separate actions by individual members of the class would substantially impair or impede the individual members' abilities to protect their interests, in part because individual class members do not have the ability to promptly bring and prosecute these claims;

B. there is no litigation already commenced by class members concerning this controversy that will protect the interests of the class members as a whole;

C. the class action will be efficient because it will concentrate the litigation of numerous substantially identical claims in one forum; and

D. a class action is fair and efficient because no substantial difficulties are likely to be encountered in the management of the class action.

FACTUAL ASSERTIONS COMMON TO ALL COUNTS

24. Owner-operators are small business men and women who own or control truck tractors, and sometimes truck trailers, used to transport property over the nation' s highways. They comprise one of the primary sectors of the interstate motor carrier industry. It has been estimated that owner-operators account for approximately forty percent (40%) of all inter-city truck traffic in the United States. Nationwide, the number of owner-operators totals in the hundreds of thousands.

25. Owner-operators engage in the transportation of commodities exempt from DOT regulations, or, acting as independent contractors, they lease or otherwise provide their equipment and services to motor carriers who possess the requisite legal operating authority under DOT regulations to enter into contracts with shippers for the transport of property. The relationship between independent truck owner-operators and regulated carriers is set forth in an agreement between the parties which is regulated by the DOT under, *inter alia*, 49 U.S.C. 14102 *et seq.* and under 49 C.F.R. Part 376 *et seq.*

26. The class members herein are all independent truck owner-operators who, like each of the named individual Plaintiffs, have entered into two separate and distinct contracts–the first solely with Defendant Prime, and the second with Defendant Prime or with Defendant Success Leasing, a wholly-owned affiliate or alter ego or agent of Defendant Prime (*see infra*).

The Part 376 Service Contract (between Each Class Member and Prime)

27. The first contract, entitled the "Service Contract" and referred to herein as the "Part 376 Service Contract" (*see infra*), is a standard agreement pursuant to which each class member has leased a truck tractor unit and the services of a qualified driver to Defendant Prime for use by Defendant Prime as a carrier in the transport of property over the nation's highways. The Service Contract is directly regulated under 49 C.F.R. Part 376 *et seq.* A model of the Part 376 Service Contract entered into by and between Defendant Prime and each of the Plaintiff owner-operators, which is typical of each class member's Part 376 Service Contract with Defendant Prime, is attached hereto as Exhibit "A."

28. The Part 376 Service Contract constitutes a "lease" within the meaning of 49 C.F.R. 376.2(e) because it is a "contract or arrangement in which the owner [each class member] grants the use of equipment, with or without driver, for a specified period to an authorized carrier [Defendant Prime] for use in the regulated transportation of property, in exchange for compensation."

29. Pursuant to the Part 376 Service Contract, Plaintiff owner-operators, on behalf of and at the direction of Defendant Prime, transport and deliver property from pick-up points to points of delivery. Owner-operators generally are compensated for their services on a per-load basis, and are entitled to a percentage share of the revenues paid to Defendant Prime by shippers. The owner-operator receives his or her sole payment in the form of "settlement checks" issued to the owner-operator by Defendant Prime, usually on a weekly basis.

30. Pursuant to the Part 376 Service Contract, Defendant Prime has required each class member to, *inter alia*, furnish Defendant Prime with "Security Deposit" funds in the sum of $1,000.00 "as security for the full performance by [class member owner-operators] of all . . . obligations under the Service Contract." Under the Security Deposit provision, Defendant Prime may "set off against this deposit any reserve claims which [Prime] has reason to believe should be rightfully charged to the [Plaintiff owner-operators]." The Part 376 Service Contract requires class member owner-operators to deposit security deposit funds directly with Defendant Prime, and such funds are maintained in Defendant Prime's sole possession and control.

31. The Service Contract provides as to the terms of the "Security Deposit," in pertinent part, that:

> **The security deposit provided for herein shall be forfeited should contractor not comply with the provisions of [the] paragraph . . . of this service contract [requiring the return of licenses, placards, and other authorizations within seven days of termination].**

The Lease-Purchase Agreement (between Each Class Member and *either* Prime *or* Success Leasing)

32. The second contract, entitled the "Lease Agreement" and referred to herein as the "Lease-Purchase Agreement," is a commercial lease-purchase agreement pursuant to which each class member has leased from Prime or Success Leasing, with the option to purchase, one or more truck tractor units of the type employed by motor carriers in the transport of property over the nation's highways. The Lease-Purchase Agreement is not regulated under 49 C.F.R. Part 376*et seq.* A model of the Lease-Purchase Agreement entered into by and between Defendant Prime or Defendant Success Leasing and each of the Plaintiff owner-operators, which is typical of each class member's Lease-Purchase Agreement with Defendant Prime or Defendant Success Leasing, is attached hereto as Exhibit "B."

33. The Lease-Purchase Agreement does not constitute a "lease" within the meaning of 49 C.F.R. 376.2(e) because it is not a "contract or arrangement in which the owner [*i.e.*, the class member as lessor] grants the use of equipment . . . to an authorized carrier [*i.e.*, Defendant Prime as lessee]," but rather is an "equipment purchase or rental contract" (under 49 C.F.R. 376.12(i)), under which an individual entity (*i.e.*, Defendant Prime or Defendant Success Leasing) grants the use of equipment to Plaintiff owner-operators, who are not authorized carriers.

34. Pursuant to the Lease-Purchase Agreement, Defendant Prime or Defendant Success Leasing leases to an individual truck owner-operator a truck tractor for use by the owner-operator in providing services as an independent contractor to "a trucking company approved by [Prime or Success Leasing]" under a separate Part 376 agreement (*i.e.*, the Service Contract). In each instance, the trucking company approved by Prime or Success Leasing is Defendant Prime itself.

35. Each Lease-Purchase Agreement between Defendant Prime or Defendant Success Leasing and an individual class member specifies the weekly truck rental payments to be made to the Defendant by the class member. Defendant Prime or Defendant Success Leasing deducts these rental payments directly from each class member's compensation on a weekly basis, as reflected in weekly "Operator Settlement" statements provided to class members by Defendant Prime and/or Defendant Success Leasing.

36. Pursuant to the Lease-Purchase Agreement, Defendant Prime or Defendant Success Leasing has required each class member to, *inter alia*, furnish Defendant with "Excess Mileage Rental Account" funds, "Repair Reserve" funds, and "Tire Replacement Reserve" funds for the ostensible purpose of covering maintenance of and repairs to leased vehicles. These funds are deducted by Defendant Prime and/or Defendant Success Leasing directly from respective Plaintiffs' compensation and are maintained in Defendant Prime's and/or Defendant Success Leasing's possession and control.

37. The Lease-Purchase Agreement provides as to the terms of the "Excess Mileage Rental Account," "Repair Reserve," and "Tire Replacement Reserve," in pertinent part, that:

> **[I]n the event (i) this Lease shall be terminated prior to expiration of its initial term, (ii) the option to extend is not exercised by Lessee [*i.e.*, the owner-operator], or (iii) this Lease is terminated during the extension period and before its expiration, the excess mileage rental account, repair reserve and tire maintenance reserve shall become the sole property of Lessor [*i.e.*, Defendant Prime or Defendant Success Leasing] as provided in [other applicable paragraphs] hereof.**

The Lease-Purchase Agreement further provides that:

> **In the event Lessee shall purchase the equipment or sell it to a third party, or shall complete the full term of this Lease, the unused funds retained as a repair reserve shall be divided equally between the Lessor and Lessee.**

The Lease-Purchase Agreement further provides that:

> **In the event Lessee shall purchase the equipment or sell it to a third party, or shall complete the full term of this Lease, the unused funds retained as a tire replacement reserve shall be divided equally between the Lessor and Lessee.**

<u>Funds at Issue under the Part 376 Service Contract and the Lease-Purchase Agreement</u>

38. Pursuant to 49 C.F.R. 376.2(l), the "Excess Mileage Rental Account," "Repair Reserve," "Tire Replacement Reserve," and "Security Deposit" constitute regulated escrow funds because they are monies "deposited . . . to guarantee performance, to repay advances, to recover repair expenses, to handle claims, to handle license and state permit costs, and for any other purposes mutually agreed upon."

39. Pursuant to their respective Lease-Purchase Agreements and Part 376 Service Contracts, each class member has deposited with Defendant Prime and/or Defendant Success Leasing between approximately $1,000.00 and $20,000.00 per vehicle leased to Defendant Prime.

Applicable Federal Motor Carrier Law

40. DOT regulations expressly provide for the disclosure in lease contracts of certain terms set forth in equipment purchase or rental contracts such as the ones entered into between the class member owner-operators and Defendant Prime or Defendant Success Leasing. Specifically, 49 C.F.R. 376.12 provides:

> **(i) *Products, equipment, or services from authorized carrier* -- The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.**

49 C.F.R. 376.12(i) (emphasis added).

41. DOT regulations specifically provide for the manner in which regulated motor carriers, such as Defendant Prime, are required to maintain escrow funds, including providing for an immediate accounting and the return of escrow funds to the lessor owner-operator following lease agreement termination. Specifically, 49 C.F.R. 376.12 provides as follows:

> **(k) *Escrow funds* -- If escrow funds are required, the lease shall specify:**

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate account to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor of all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

42. Violations of DOT regulations are privately actionable. Specifically, 49 U.S.C. 14704(a)(2) provides as follows:

> ***Rights and remedies of persons injured by carriers or brokers***
>
> ***

A carrier or broker providing transportation or service subject to jurisdiction under [applicable federal motor carrier transportation law] is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

Further, 49 U.S.C. 14704(c) provides as follows:

> **A person may . . . bring a civil action under [this section] to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under [applicable federal motor carrier transportation law].**

43. Parties asserting a private right of action under 49 U.S.C. 14704 may seek and are entitled to reasonable attorneys' fees and costs incurred in the prosecution of such an action. Federal law expressly provides that:

> **The district court shall award a reasonable attorney's fee under [Section 14704]. The district court shall tax and collect that fee as part of the costs of the action.**

49 U.S.C. 14704(e).

44. Defendants are liable for violations of federal commercial transportation laws and regulations as described herein, and Defendants' acts and omissions have caused Plaintiffs to bring this action.

45. All conditions precedent to the maintenance of this action have been performed, discharged, or otherwise satisfied.

COUNT I

(Violation of 49 C.F.R. 376.12(i) *et seq.*,
Unauthorized Deduction of Purchase or Rental Payments)

46. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 45 hereof.

47. Defendant Prime's Part 376 Service Contracts do not make reference to, let alone specify, the terms of the rental payment or escrow withholding provisions of the Lease-Purchase Agreements under which Defendant Prime and/or Defendant Success Leasing, as the case may be, makes deductions directly from each owner-operator's compensation. Consequently, Defendant Prime's and/or Defendant Success Leasing's actions in deducting regular purchase or rental payments due under the respective Lease-Purchase Agreements from compensation due the class members under their respective Part 376 Service Contracts with Prime are unlawful and constitute material and continuing violations of 49 C.F.R. 376.12(i) *et seq.*

48. As a direct and proximate result of Defendants' actions and omissions, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

COUNT II

(Violation of 49 C.F.R. 376.12(k) *et seq.*,
Unauthorized Deduction of Escrow Funds)

49. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 48 hereof.

50. Defendants' actions in making direct escrow fund deductions (in the form of "Excess Mileage Rental Account," "Repair Reserve," "Tire Replacement Reserve," and "Security Deposit" funds) from compensation due to owner-operators under Prime's Part 376 Service Contracts, and Defendant Prime's and/or Defendant Success Leasing's subsequent retention and failures to return such escrow funds pursuant to Prime's and/or Success Leasing's respective Lease-Purchase Agreement with owner-operators, are unlawful and constitute material and continuing violations of 49 C.F.R. 376.12(k) *et seq.* because, *inter alia*:

A. There are no provisions in Prime's Part 376 Service Contracts authorizing such deductions or permitting the retention of all or any portion of such escrow funds following termination or cancellation of said Part 376 Service Contracts, and said Part 376 Service Contracts do not

specify or even make reference to the terms of the Lease-Purchase Agreements which give Defendants Prime and/or Defendant Success Leasing the right to make deductions from an owner-operator's compensation for escrow fund deductions. *See* 49 C.F.R. 376.12(k), *supra*.

B. There are no provisions in Prime's Part 376 Service Contracts which specify the amount of any escrow fund or performance bond required to be paid by the owner-operator to Prime or to a third party.

C. There are no provisions in Prime's Part 376 Service Contracts which identify the specific items to which the escrow fund can be applied.

D. There are no provisions in Prime's Part 376 Service Contracts which specify (i) that while the escrow fund is under Prime's control, Prime shall provide an accounting to the lessor of any transactions involving such fund, and (ii) the means by which Prime shall perform such an accounting.

E. There are no provisions in Prime's Part 376 Service Contracts which specify the right of the lessor owner-operator to demand to have an accounting for transactions involving the escrow fund at any time.

F. There are no provisions in Prime's Part 376 Service Contracts which specify that while the escrow fund is under Prime's control, Prime shall pay interest on the escrow fund on at least a quarterly basis under the calculation methods and at the rate prescribed under 49 C.F.R. 376.12(k)(5).

G. There are no provisions in Prime's Part 376 Service Contracts which specify (i) the conditions the owner-operator must fulfill in order to have the escrow fund returned, (ii) that Prime, at the time of the return of the escrow fund, may deduct monies for those obligations incurred by the owner-operator which have been previously specified in the lease, and shall provide a final accounting to the owner-operator of all such final deductions made to the escrow fund, and (iii) that in no event shall the escrow fund be returned to the owner-operator later than 45 days from the date of lease termination.

H. The escrow provisions contained in the respective Lease-Purchase Agreements between owner-operators and Defendant Prime or Defendant Success Leasing authorize the unlawful retention of escrow amounts in excess of those needed to offset obligations incurred by Defendant Prime or Defendant Success Leasing on behalf of the respective owner-operators.

I. The escrow provisions contained in the respective Lease/Purchase Agreements between owner-operators and Defendant Prime or Defendant Success Leasing unlawfully provide for the return of only half of the owner-operator's escrow funds under certain narrow conditions (*i.e.*, if the owner-operator completes the full term of the lease, or if the owner-operator purchases the equipment or sells the equipment to a third party).

J. The escrow provisions contained in the respective Lease/Purchase Agreements between owner-operators and Defendant Prime or Defendant Success Leasing unlawfully mandate the owner-operator's complete forfeiture of his or her escrow funds if the lease is terminated (presumably by either the owner-operator or Prime) prior to expiration of its initial term, if the owner-operator does not exercise his or her option to extend the lease, or if the lease is terminated (presumably by either the owner-operator or Prime) during an extension period and before the lease's expiration.

K. Defendants Prime and Success Leasing have failed, and continue to fail, to return to the owner-operators the escrow funds (with quarterly interest as calculated under applicable law) to which the owner-operators rightfully are entitled following their respective terminations of their agreements with Prime and/or Success Leasing.

51. In sum, the scheme under which Prime and/or Success Leasing has obtained and maintained possession of escrow and other funds rightfully belonging to class member owner-operators is unlawful because (A) the provisions under which Prime and/or Success

Leasing collect and retain such funds are not set forth in Prime's Part 376 Service Contracts and (B) the provisions themselves are facially violative of applicable federal regulations.

52. As a direct and proximate result of Defendants' actions and omissions, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

COUNT III

(Rescission of Lease-Purchase Agreement on Grounds of Unconscionability)

53. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 52 hereof.

54. At all times material to this Complaint, Defendant Prime and/or Defendant Success Leasing, as Defendant Prime's wholly-owned affiliate or alter ego or agent, had and maintained a superior bargaining position over the individual Plaintiffs and class members herein. Specifically:

A. Defendant Prime is a large corporation having assets in 1996 in excess of $194,000,000.00 dollars, lines of credit of $6,000,000.00, annual revenues of $276,672,000.00, and an operating ratio of 13.3 percent, and reported a growth rate in annual revenues of 20 percent in each year since 1986. Defendant Prime is recognized as a leader in international refrigerated and flatbed transportation, and boasts a fleet of over 1,725 tractors, 1,650 refrigerated trailers, and 550 flatbed trailers. Defendant Prime has a large and sophisticated staff with ready access to outside professional assistance in the fields of finance and law.

B. The individual owner-operators who are Plaintiffs and class members are small business men and women who lack sophistication in matters of finance and law and lack the financial resources to retain the services of outside professionals in these disciplines.

C. The Lease-Purchase Agreements executed between individual Plaintiffs and class members and Defendant Prime and/or Defendant Success Leasing were prepared by Defendants' professional staff and outside consultants. Plaintiffs and the vast majority of class members were not represented by counsel at the time the respective Lease-Purchase Agreements were negotiated and executed. The substantive terms and provisions of the Lease-Purchase Agreements were not the subject of negotiation between the Plaintiffs and Defendant Prime or Defendant Success Leasing, and the terms contained in the Defendants' form contracts were accepted by Plaintiffs without change.

D. Prior to the execution of the respective Lease-Purchase Agreements, Defendant Prime and/or Defendant Success Leasing presented the individual Plaintiffs and class members with documents that understated the actual costs an owner-operator would incur in operating the equipment proposed for lease and that presented an unrealistically optimistic projection of an owner-operator's potential for making a profit under Defendants' Lease-Purchase Agreements and Part 376 Service Contracts. Defendants took advantage of the respective Plaintiffs' and class members' lack of sophistication and inability to analyze Defendants' over-optimistic projections, and used said documents and other inducements to pressure Plaintiffs into entering into Lease-Purchase Agreements and Part 376 Service Contracts.

55. At all times material to this Complaint, Defendant Prime knew and knows that approximately seventy percent (70%) of owner-operators who sign Defendant Prime's Part 376 Service Contracts terminate those contracts within one year. Given this information, Defendant Prime knew and knows that it was statistically improbable that an owner-operator entering into a Lease-Purchase Agreement with Defendant Prime and/or Defendant Success Leasing for a three-year term could avoid defaulting on said contract. Defendants took unfair and unconscionable advantage of this situation by imposing severe forfeiture provisions regarding funds held in escrow pursuant to Defendants' Lease-Purchase Agreements, including, *inter alia*, one hundred percent (100%) forfeiture of funds held in the "Excess

Mileage Rental Account," "Repair Reserve Account," and "Tire Replacement Reserve Account" in the event of default or premature termination of the Lease-Purchase Agreements.

56. In their transactions with individual Plaintiffs and class members, Prime and/or Success Leasing engaged in self-dealing and manipulated class members into executing Service Contracts and Lease-Purchase Agreements with Prime and/or Success Leasing. Specifically:

A. In initiating the leasing relationship with each class member, Prime and/or Success Leasing presented the transactions embodied in the Service Contract and the Lease-Purchase Agreement as a "package" deal of economic and practical benefit to the owner-operator, even though Prime and/or Success Leasing knew that the terms of said agreements would, *inter alia*, deprive the owner-operator of escrow and other funds to which the owner-operator rightfully was entitled.

B. Under the terms of the Lease-Purchase Agreement, an owner-operator's opportunity to enter into a regulated leasing transaction with a motor carrier other than Prime is illusory at best. In practical reality, by stating that the owner-operator shall only lease equipment under the Lease-Purchase Agreement to companies approved by Prime or Success Leasing, as the case may be (*see also infra*), the Lease-Purchase Agreement precludes the owner-operator from entering into Part 376 lease agreements with trucking companies other than Prime.

57. The substantive terms and provisions of Defendants' Lease-Purchase Agreements, which were not the subject of negotiation between the respective individual Plaintiffs and class members and Defendant Prime and/or Defendant Success Leasing, and which were accepted by class members without change, were and are unfair and unconscionable in their application to and effect upon individual Plaintiffs and class members. Examples of the Lease-Purchase Agreement's unconscionability include, but are not limited to, the following:

A. The body of the Lease-Purchase Agreement makes no reference to the appraised value of the vehicle leased by an owner-operator, the basis on which the weekly lease payments paid by the owner-operator are calculated, or the rate of interest applied to such payments, thereby effectively concealing from the owner-operator his true financial obligation to Prime for use of the vehicle. *See* Model Lease-Purchase Agreement (the "Lease-Purchase Agreement"), attached hereto as Exhibit "B," at Paragraph 3. Further, the body of the Lease-Purchase Agreement sets forth an initial lease term that conflicts with the number of weeks cited in the "Purchase Option Schedule," attached as "Schedule 'A'" to the Lease-Purchase Agreement, as the term under which a residual value for the subject vehicle will be determined. Lease-Purchase Agreement at Paragraph 3, and "Purchase Option Schedule," attached as "Schedule 'A'" to the Lease-Purchase Agreement.

B. The Lease-Purchase Agreement provides for the direct deduction of escrow funds by Defendant Prime and/or Defendant Success Leasing from an owner-operators' compensation, at a rate dictated by Prime and/or Success Leasing, ostensibly for repairs to and maintenance of leased vehicles, yet also requires the owner-operator to pay all costs to repair or alter the vehicle and to furnish at his own expense all fuel, parts, tires, and other materials while providing for no offset of such expenses against escrow funds held by Prime and/or Success Leasing. Lease Agreement at Paragraphs 10, 20.

C. The Lease-Purchase Agreement unfairly precludes an owner-operator from holding Defendant Prime and/or Defendant Success Leasing accountable for legitimate vehicle-related claims against Prime and/or Success Leasing in connection with damages suffered by the owner-operator or third parties that may truly be attributable to Prime and/or Success Leasing or their respective agents. Lease Agreement at Paragraph 14.

D. By stating that an owner-operator shall only lease equipment covered under the Lease-Purchase Agreement to trucking companies approved by Prime or Success Leasing, as the case may be, the Lease-Purchase Agreement unfairly precludes the owner-operator from entering into Part 376 lease agreements with trucking companies other than Prime.

While the owner-operator may appear under a facial reading of the Lease-Agreement to have discretion as to the trucking companies with which he or she may enter into Part 376 lease agreements, in fact each of the Plaintiffs and class members has entered into a Part 376 lease agreement solely with Prime.

E. Since the Lease-Purchase Agreement grants to Defendant Prime and/or Defendant Success Leasing the right to collect all proceeds from the operation of a vehicle leased by an owner-operator directly from any company to which the vehicle is leased under a Part 376 lease agreement, and since the company to which each of the Plaintiffs and class members has leased the vehicle under Prime's Part 376 Service Contract is Prime itself, the Lease-Purchase Agreement effectively affords Prime an unchecked opportunity to self-deal through its complete and unsupervised control over all funds generated in connection with an owner-operator's use of a leased vehicle. Lease-Purchase Agreement at Paragraph 18. This arrangement has permitted Defendant Prime to enforce in its Part 376 Service Contracts terms and provisions of the respective Lease-Purchase Agreements that are not permitted in Part 376 lease agreements under DOT regulations. Lease-Purchase Agreement at Paragraph 14.

F. The Lease-Purchase Agreement grants Defendant Prime and/or Defendant Success Leasing the right, upon termination or cancellation of the agreement by either party, to retain one hundred percent (100%) of the "Excess Mileage Rental Account" escrow fund deposited with Prime and/or Success Leasing by an owner-operator even if such funds have not been determined to be necessary for application to their assigned purpose of ensuring the maintenance of the leased vehicle's value. Lease-Purchase Agreement at Paragraph 19.

G. The Lease-Purchase Agreement grants Defendant Prime and/or Defendant Success Leasing the right, upon termination or cancellation of the agreement by either party, to retain one hundred percent (100%) of the "Repair Reserve" escrow fund deposited with Prime and/or Success Leasing by an owner-operator even if such funds have not been determined to be necessary for application to their assigned purpose of covering repairs to the leased vehicle, and yet grants the owner-operator the right to retain only fifty percent (50%) of the unassigned "Repair Reserve" escrow fund if the owner-operator exercises his option to purchase the vehicle or sell it to a third party or if the vehicle is determined to be a total loss. Lease-Purchase Agreement at Paragraph 20.

H. The Lease-Purchase Agreement grants Defendant Prime and/or Defendant Success Leasing the right, upon termination or cancellation of the agreement by either party, to retain one hundred percent (100%) of the "Tire Replacement Reserve" escrow fund deposited with Prime and/or Success Leasing by an owner-operator even if such funds have not been determined to be necessary for application to their assigned purpose of covering replacement tires for the leased vehicle, and yet grants the owner-operator the right to retain only fifty percent (50%) of the unassigned "Tire Replacement Reserve" escrow fund if the owner-operator exercises his option to purchase the vehicle or sell it to a third party or if the vehicle is determined to be a total loss. Lease-Purchase Agreement at Paragraph 21.

I. The Lease-Purchase Agreement sets forth unconscionable termination provisions. Specifically,*inter alia*:

i. The Lease-Purchase Agreement provides for numerous circumstances under which Defendant Prime and/or Defendant Success Leasing may at its sole option terminate the Lease-Purchase Agreement, yet provides for no circumstances under which an owner-operator may terminate the agreement.

ii. The terms and provisions under which Defendant Prime and/or Defendant Success Leasing may terminate the Lease-Purchase Agreement for failure by the owner-operator to perform certain lease provisions do not permit the owner-operator an adequate opportunity to avoid termination by attempting to remedy such alleged failures of performances.

iii. The Lease-Purchase Agreement requires the owner-operator, upon Defendant Prime's and/or Defendant Success Leasing's termination of the agreement, to arrange for the return of the vehicle to Prime and/or Success Leasing and to absorb all expenses incurred in association with such return.

iv. The Lease-Purchase Agreement provides that, upon termination by Defendant Prime and/or Defendant Success Leasing, escrow funds held by the trucking company (*i.e.*, Prime) to which the equipment is leased under a Part 376 leasing agreement (*i.e.*, Prime's Part 376 Service Contract) shall be paid directly to Prime and/or Success Leasing notwithstanding the failure by Prime and/or Success Leasing to disclose such provisions in the Part 376 agreement in violation of 49 C.F.R. 376.12(i) and (k) *et seq.*

Lease-Purchase Agreement at Paragraph 25; *see also* Counts I and II, *supra*.

J. The Lease-Purchase Agreement provides that Defendant Prime and/or Defendant Success Leasing may recover any attorneys' fees it incurs in any effort to vindicate its rights under the Lease-Purchase Agreement, but sets forth no reciprocal provision under which an owner-operator may recover attorneys' fees incurred in any effort to vindicate his or her own rights under the agreement. Lease-Purchase Agreement at Paragraph 27.

K. The Lease-Purchase Agreement permits Defendant Prime and/or Defendant Success Leasing to assign its rights under the agreement at its own discretion and to shield its assignee from any liabilities arising under the agreement, but does not permit an owner-operator to assign his or her rights under the Lease-Purchase Agreement absent Prime's or Success Leasing's written consent. Lease-Purchase Agreement at Paragraph 28.

L. The Lease-Purchase Agreement entitles Defendant Prime and/or Defendant Success Leasing to reap all tax benefits arising from possession and use of vehicles subject to the Lease-Purchase Agreement, including claims of depreciation, but requires the owner-operator to pay for all repairs to and maintenance of the vehicle and to forfeit all or parts of escrow funds designated for repair and maintenance upon termination, cancellation, or cessation of the Lease-Purchase Agreement by either party. Lease-Purchase Agreement at Paragraphs 10, 19-21, and 29.

M. The Lease-Purchase Agreement permits the owner-operator to cancel the agreement only after a period of weeks from the date of the agreement's execution that exceeds the initial term of the agreement itself. Lease-Purchase Agreement at Paragraphs 3 and 30.

58. As a direct and proximate result of the unfair and unconscionable terms and provisions of Defendant Prime's and/or Defendant Success Leasing's Lease-Purchase Agreements, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs Owner-Operator Independent Drivers Association, Inc., and Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly situated, respectfully request this Court:

A. to certify the class as described herein;

B. to enter judgment (i) declaring the practices of Defendants as described herein to be unlawful and in violation of federal motor carrier leasing regulations (49 C.F.R. Part 376 *et seq.*) and (ii) permanently enjoining the continuation of said practices; and

C. to award reasonable attorneys' fees to Plaintiffs pursuant to 49 U.S.C. 14704(e).

AND WHEREFORE, Plaintiffs Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly-situated, respectfully requests this Court to enter judgment:

A. requiring Defendants immediately to provide an accounting of all transactions and other activity relating to the class members' escrow and other funds;

B. requiring Defendants immediately to return to the class members the escrow and other funds (with quarterly interest as calculated under applicable law) rightfully belonging to the class members;
C. enjoining Defendants from transferring, diverting, or otherwise concealing the class members' escrow and other funds and from destroying records which demonstrate Defendants' liability or relate in any way to the class members' escrow and other funds;
D. rescinding, at the option of each class member, each of the Lease-Purchase Agreements entered into by Defendant Prime and/or Success Leasing and each class member, either in its entirety or at those portions determined by the Court to have unjustly deprived the respective owner-operator of his or her funds or otherwise to have injured the Plaintiff owner-operator;
E. awarding reasonable attorneys' fees to the class members pursuant to 49 U.S.C. 14704(e); and
F. awarding such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

Pursuant to Rules 38 and 39 of the Federal Rules of Civil Procedure, and to Rule 14.A. of the Rules of the United States District Court for the Western District of Missouri, Plaintiffs Owner-Operator Independent Drivers Association, Inc., and Howard Jenkins, Marshall Johnson, Susan Johnson, and Jerry Vanboetzelaer, individually and on behalf of all others similarly situated, demand a trial by jury of all issues triable of right by a jury.
Respectfully submitted,
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., and HOWARD JENKINS, MARSHALL JOHNSON, SUSAN JOHNSON, and JERRY VANBOETZELAER,
Individually and on Behalf of All Others Similarly Situated

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