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Sales and Leasing, LLC*

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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CHARLES ROBERTS, an individual, and  
KENNETH MCKAY, an individual, on behalf  
of themselves and others similarly situated,

Plaintiffs,

v.

C.R. ENGLAND, INC., a Utah corporation;  
OPPORTUNITY LEASING, INC., a Utah  
corporation; and HORIZON TRUCK SALES  
AND LEASING, LLC, a Utah limited liability  
company,

Defendants.

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C.R. ENGLAND, INC., a Utah corporation; and  
OPPORTUNITY LEASING, INC., a Utah  
corporation,

Countercomplainants,

vs.

CHARLES ROBERTS, an individual, and  
KENNETH MCKAY, an individual,

Counterdefendants.

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**DEFENDANTS' ANSWER TO  
PLAINTIFFS' THIRD AMENDED  
COMPLAINT AND COUNTERCLAIM  
AGAINST PLAINTIFFS**

**(DEMAND FOR JURY TRIAL)**

Civil No. 2:12-CV-00302 TS

Judge Ted Stewart

Defendants C.R. England, Inc. (“C.R. England”), Opportunity Leasing, Inc., and Horizon Truck Sales and Leasing, LLC (collectively sometimes herein “Defendants”) hereby answer Plaintiffs Charles Roberts and Kenneth McKay’s Third Amended Class Action Complaint (“Complaint”) as follows:

**DESCRIPTION OF CASE**

1. Answering paragraph 1 of the Complaint, Defendants admit that Plaintiffs Charles Roberts (“Roberts”) and Kenneth McKay (“McKay”) purport to act on behalf of a class of individuals in bringing this action against Defendants. Defendants deny each and every remaining allegation contained in paragraph 1 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

2. Answering paragraph 2 of the Complaint, Defendants admit that they are headquartered in Salt Lake City, Utah. Defendants also admit that C.R. England is in the transportation industry and has operations in Utah, California, Indiana and elsewhere across the country. Defendants further admit that C.R. England’s customers include Wal-Mart and other businesses that ship goods around the country via tractor-trailers. Defendants also admit that C.R. England transports some of its customers’ goods via company employees and company-owned trucks. Defendants deny each and every remaining allegation contained in paragraph 2 of the Complaint.

3. Answering paragraph 3 of the Complaint, Defendant aver that the document attached as Exhibit D to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 3 of the Complaint.

4. Defendants deny each and every allegation contained in paragraph 4 of the Complaint.

5. Answering paragraph 5 of the Complaint, Defendants admit that C.R. England advertises available truck driving positions in various mediums. Defendants also admit that C.R. England offers guaranteed employment to truck driving applicants who successfully complete their commercial driver's license ("CDL") training at one of C.R. England's truck driving schools located in, among other places, Mira Loma, California and Burns Harbor, Indiana. Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of whether the documents attached as Exhibit A to the Complaint are examples of C.R. England's advertising because, among other things, the documents appear to be incomplete and only comprise portions of alleged advertisements; Defendants therefore deny the allegation on that basis. Defendants further deny each and every remaining allegation contained in paragraph 5 of the Complaint.

6. Answering paragraph 6 of the Complaint, Defendants deny that they have a single consolidated website. Defendants nevertheless admit that, at the time this action was filed (i.e., on or about May 27, 2011), certain portions of C.R. England's website advertised guaranteed positions of employment to truck driving applicants who successfully completed their CDL training at one of C.R. England's truck driving schools located in, among other places, Mira Loma, California and Burns Harbor, Indiana. Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of whether the documents attached as Exhibit B to the Complaint are examples of C.R. England's website because, among other things, the documents appear to be incomplete and only comprise portions of alleged web pages; Defendants therefore deny the allegation on that basis. Defendants deny each and every remaining allegation contained in paragraph 6 of the Complaint.

7. Answering paragraph 7 of the Complaint, Defendants admit that, at the time this

action was filed (i.e., on or about May 27, 2011), C.R. England charged individuals who attended one of its truck driving schools \$1,995 if the individual paid the tuition in full without any financing. Defendants also admit that, at the time this action was filed (i.e., on or about May 27, 2011), C.R. England charged individuals who attended one of its truck driving schools \$2,995 if the individual financed the tuition through Eagle Atlantic Financial Services, Inc. Defendants deny each and every remaining allegation contained in paragraph 6 of the Complaint.

8. Defendants deny each and every allegation contained in paragraph 8 of the Complaint.

9. Defendants deny each and every allegation contained in paragraph 9 of the Complaint.

10. Defendants deny each and every allegation contained in paragraph 10 of the Complaint.

11. Defendants deny each and every allegation contained in paragraph 11 of the Complaint.

12. Answering paragraph 12 of the Complaint, Defendants admit that Roberts and McKay purport to act on behalf of a class of individuals in bringing this action against Defendants and seek to certify a class action under Rule 23 of the Federal Rules of Civil Procedure. Defendants also admit that, from approximately September 2009 to April 2010, Roberts worked as an independent contractor long haul driver for C.R. England. Defendants further admit that, from approximately July 2009 to October 2009, McKay worked as an independent contractor long haul driver for C.R. England. Defendants deny each and every remaining allegation contained in paragraph 12 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

**JURISDICTION AND VENUE**

13. Paragraph 13 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants admit that C.R. England and Opportunity Leasing, Inc. are incorporated in Utah. Defendants deny each and every remaining allegation contained in paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint states conclusions of law and therefore no response is required. Defendants admit that C.R. England conducts business in this district. Defendants further admit that they enforced a forum selection clause expressly contained in their agreements with Roberts and McKay.

**THE PARTIES**

17. Answering paragraph 17 of the Complaint, Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations contained therein and therefore deny each and every allegation contained in paragraph 17 of the Complaint on that basis.

18. Answering paragraph 18 of the Complaint, Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations contained therein and therefore deny each and every allegation contained in paragraph 18 of the Complaint

on that basis.

19. Defendants deny each and every allegation contained in paragraph 19 of the Complaint.

20. Defendants admit the allegations contained in paragraph 20 of the Complaint.

21. Defendants admit the allegations contained in paragraph 21 of the Complaint.

22. Answering paragraph 22 of the Complaint, Defendants admit that C.R. England transacts business throughout the United States and owns certain facilities in Utah, California, Indiana, and Texas. Defendants deny each and every remaining allegation contained in paragraph 22 of the Complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the Complaint.

24. Defendants deny each and every allegation contained in paragraph 24 of the Complaint.

#### **GENERAL ALLEGATIONS**

25. Answering paragraph 25 of the Complaint, Defendants admit that Roberts originally worked as a company driver for C.R. England and later became an independent contractor long haul driver for C.R. England. Defendants also admit that C.R. England is a large national trucking company specializing in the refrigerated transportation of customer goods (e.g., perishable food items). Defendants deny each and every remaining allegation contained in paragraph 25 of the Complaint.

26. Answering paragraph 26 of the Complaint, Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of certain allegations contained therein and therefore deny those allegations on that basis.

27. Answering paragraph 27 of the Complaint, Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of whether the documents attached as Exhibit B to the Complaint are examples of C.R. England's website because, among other things, the documents appear to be incomplete and only comprise portions of alleged web pages; Defendants therefore deny the allegation on that basis. Defendants also deny that they have a single consolidated website. Defendants nevertheless admit that, as of May 2011, C.R. England's website did contain the statements in the block quotes in paragraph 27 of the Complaint. Defendants deny each and every remaining allegation contained in paragraph 27 of the Complaint.

28. Answering paragraph 28 of the Complaint, Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of whether the documents attached as Exhibit B to the Complaint are examples of C.R. England's website because, among other things, the documents appear to be incomplete and only comprise portions of alleged web pages; Defendants therefore deny the allegation on that basis. Defendants nevertheless admit that, as of May 2011, C.R. England's website contained the statement that "You are GUARANTEED a job upon successful completion of our training program." Defendants deny each and every remaining allegation contained in paragraph 28 of the Complaint.

29. Answering paragraph 29 of the Complaint, Defendants admit that, as of May 2011, C.R. England's website contained the statements in the block quotes in paragraph 29 of the Complaint. Defendants deny each and every remaining allegation contained in paragraph 29 of the Complaint.

30. Answering paragraph 30 of the Complaint, Defendants aver that Exhibit K attached to the Complaint speaks for itself. Defendants admit that Exhibit K states that "England

said the truckers' lifestyle is so grueling that his company, which has about 4,500 drivers, faces an annual turnover of 100-140%." Defendants deny each and every remaining allegation contained in paragraph 30 of the Complaint.

31. Answering paragraph 31 of the Complaint, Defendants admit that C.R. England utilizes its "Roundtable" newsletter to inform England personnel of various events. Defendants deny each and every remaining allegation contained in paragraph 31 of the Complaint.

32. Answering paragraph 32 of the Complaint, Defendants admit that Roberts submitted an online application for employment as a truck driver with C.R. England. Defendants also admit that a C.R. England representative called Roberts from Utah for the purpose of interviewing him after Roberts submitted his employment application to C.R. England. Defendants also admit that C.R. England received tax returns from Charles Roberts. Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of why Roberts submitted an online application and therefore deny the allegation on that basis. Defendants further deny each and every remaining allegation contained in paragraph 32 of the Complaint.

33. Answering paragraph 33 of the Complaint, Defendants admit that a C.R. England representative called Roberts from Utah for the purpose of interviewing him after Roberts submitted his employment application to C.R. England. Defendants also admit that C.R. England told Roberts it would purchase a bus ticket for him. Defendants deny each and every remaining allegation contained in paragraph 33 of the Complaint.

34. Answering paragraph 34 of the Complaint, Defendants admit that C.R. England purchased a bus ticket for Roberts. Defendants also admit that Roberts stayed in a hotel near C.R. England's truck driving school in Mira Loma. Defendants lack knowledge or information



sufficient to form a belief about the truth or falsity of some of the remaining allegations contained in paragraph 34 and therefore deny them on that basis. Defendants deny each and every remaining allegation contained in paragraph 34 of the Complaint.

35. Answering paragraph 35 of the Complaint, Defendants admit that C.R. England's truck driving school performs background checks and physicals on individuals interested in attending the school to obtain their CDL. Defendants also admit that Roberts passed the background checks and physical. Defendants further admit that Roberts voluntarily obtained a loan from Eagle Atlantic Financial Services, Inc. in the principal amount of \$2,995, which had an annual interest rate of 18%. Defendants also admit that Roberts signed a Student Training Agreement. Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of some of the remaining allegations contained in paragraph 35 and therefore deny them on that basis. Defendants further deny each and every remaining allegation contained in paragraph 35 of the Complaint.

36. Answering paragraph 36 of the Complaint, Defendants admit that, as of May 2011, C.R. England disseminated the England Business Guide to some, but not all, drivers. Defendants also admit that drivers no longer received the England Business Guide and that drivers now receive a business guide from Equinox. Defendants deny that the England Business Guide was disseminated by Opportunity Leasing, Inc., and/or Horizon Truck Sales and Leasing, LLC. Defendants further deny each and every remaining allegation contained in paragraph 36 of the Complaint.

37. Answering paragraph 37 of the Complaint, Defendants aver that Exhibit C to the Complaint speaks for itself. Defendants aver that the document attached as Exhibit C to the Complaint, which appears to be excerpts from a certain version of the England Business Guide,

states, speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 37 of the Complaint.

38. Answering paragraph 38 of the Complaint, Defendants aver that Exhibit C to the Complaint speaks for itself. Defendants aver that the document attached as Exhibit C to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 38 of the Complaint.

39. Answering paragraph 39 of the Complaint, Defendants admit that the quotes from independent contractors do not necessarily represent the view and opinions of all drivers and aver that the quotes are fairly representative of the experience of some drivers. Defendants deny each and every remaining allegation contained in paragraph 39 of the Complaint.

40. Defendants deny each and every allegation contained in paragraph 40 of the Complaint.

41. Answering paragraph 41 of the Complaint, Defendants admit that McKay originally worked as a company driver for C.R. England and later became an independent contractor long haul driver for C.R. England. Defendants lack knowledge or information sufficient to form a belief about the truth of some of the remaining allegations contained in paragraph 41 and therefore deny each of those allegations. Defendants further deny each and every remaining allegation contained in paragraph 41 of the Complaint.

42. Answering paragraph 42 of the Complaint, Defendants admit that McKay submitted an online application for employment as a truck driver with C.R. England. Defendants also admit that a C.R. England representative called McKay from Utah for the purpose of interviewing him after McKay submitted his employment application to C.R. England. Defendants deny each and every remaining allegation contained in paragraph 42 of the

Complaint.

43. Answering paragraph 43 of the Complaint, Defendants admit that a C.R. England representative called McKay from Utah for the purpose of interviewing him after McKay submitted his employment application to C.R. England. Defendants deny each and every remaining allegation contained in paragraph 43 of the Complaint.

44. Answering paragraph 44 of the Complaint, Defendants admit that McKay attended C.R. England's truck driving school located in Mira Loma, California in approximately February 2009. Defendants also admit that McKay obtained a loan from Eagle Atlantic Financial Services, Inc in the principal amount of \$2,995, which had an annual interest rate of 18%. Defendants further admit that McKay signed a Student Training Agreement. Defendants lack knowledge or information sufficient to form a belief about the truth of some of the remaining allegations contained in paragraph 44 and therefore deny each of those allegations. Defendants deny each and every remaining allegation contained in paragraph 44 of the Complaint.

45. Answering paragraph 45 of the Complaint, Defendants admit that, as of May 2011, C.R. England disseminated the England Business Guide to some, but not all, drivers. Defendants deny that the England Business Guide was disseminated by Opportunity Leasing, Inc., and/or Horizon Truck Sales and Leasing, LLC. Defendants deny each and every remaining allegation contained in paragraph 45 of the Complaint.

46. Answering paragraph 46 of the Complaint, Defendants admit that Roberts and McKay obtained their CDLs from C.R. England's truck driving school located in Mira Loma, California. Defendants also admit that Roberts and McKay spent a certain period of time driving as second-seat drivers for C.R. England and that this period is often referred to as Phase I and

Phase II by C.R. England. Defendants further admit that during both Phase I and Phase II training C.R. England provided drivers with certain training materials. Defendants deny each and every remaining allegation contained in paragraph 46 of the Complaint.

47. Answering paragraph 47 of the Complaint, Defendants deny each and every remaining allegation contained in paragraph 47 of the Complaint.

48. Answering paragraph 48 of the Complaint, Defendants aver that Exhibit D to the Complaint speaks for itself. Defendants admit that Exhibit D to the Complaint includes the language set forth in the block quote and bullet points at paragraph 48 of the Complaint. Defendants deny each and every remaining allegation contained in paragraph 48 of the Complaint.

49. Defendants deny each and every allegation contained in paragraph 49 of the Complaint.

50. Defendants deny each and every allegation contained in paragraph 50 of the Complaint.

51. Defendants deny each and every allegation contained in paragraph 51 of the Complaint.

52. Defendants deny each and every allegation contained in paragraph 52 of the Complaint.

53. Defendants deny each and every allegation contained in paragraph 53 of the Complaint.

54. Defendants deny each and every allegation contained in paragraph 54 of the Complaint.

55. Answering paragraph 55 of the Complaint, Defendants admit that Roberts entered

into an Independent Contractor Operating Agreement with C.R. England in Utah on or about September 29, 2009 and that the agreement is attached as Exhibit E to the Complaint.

Defendants also admit that McKay entered into an Independent Contractor Operating Agreement with C.R. England in Utah on or about July 13, 2009. Defendants further admit that other drivers signed independent contractor agreements that are substantially similar to those signed by other drivers in that time period. Defendants further admit that, as of May 2011, independent contractor long haul drivers for C.R. England generally executed their respective independent contractor operating agreements in either Utah or Indiana. Defendants deny each and every remaining allegation contained in paragraph 55 of the Complaint.

56. Answering paragraph 56 of the Complaint, Defendants admit that Roberts entered into a Vehicle Lease Agreement with Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing in Utah on or about September 29, 2009 and that the agreement is attached as Exhibit F to the Complaint. Defendants also admit that McKay entered into a Vehicle Lease Agreement with Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing in Utah on or about July 13, 2009. Defendants further admit that other drivers signed vehicle lease agreements that are substantially similar to those signed by other drivers in that time period. Defendants deny each and every remaining allegation contained in paragraph 56 of the Complaint.

57. Answering paragraph 57 of the Complaint, Defendants admit that Roberts entered into a Vehicle Lease Agreement with Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing in Utah on or about September 29, 2009 and that the agreement is attached as Exhibit F to the Complaint. Defendants also admit that McKay entered into a Vehicle Lease Agreement with Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing in

Utah on or about July 13, 2009. Defendants deny each and every remaining allegation contained in paragraph 57 of the Complaint.

58. Answering paragraph 58 of the Complaint, Defendants admit that Horizon Truck Sales and Leasing, LLC was formed on or about August 28, 2008. Defendants deny each and every allegation contained in paragraph 58 of the Complaint.

59. Defendants deny each and every allegation contained in paragraph 59 of the Complaint.

60. Defendants deny each and every allegation contained in paragraph 60 of the Complaint.

61. Defendants deny each and every allegation contained in paragraph 61 of the Complaint.

62. Defendants deny each and every allegation contained in paragraph 62 of the Complaint.

63. Defendants deny each and every allegation contained in paragraph 63 of the Complaint.

64. Answering paragraph 64 of the Complaint, Defendants admit that Opportunity and/or Horizon had lease conversion goals and promoted the opportunity to lease vehicles from Opportunity and/or Horizon but specifically aver that they always honored the right of every driver to choose whether to become an employee driver or an independent contractor driver. Defendants deny each and every allegation contained in paragraph 64 of the Complaint.

65. Answering paragraph 65 of the Complaint, Defendant aver that the document attached as Exhibit E to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 65 of the Complaint.

66. Answering paragraph 66 of the Complaint, Defendant aver that the document attached as Exhibit E to the Complaint speaks for itself. Paragraph 66 of the Complaint also states conclusions of law, which means no response is required for that reason as well. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 66 of the Complaint.

67. Answering paragraph 67 of the Complaint, Defendant aver that the document attached as Exhibit E to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 67 of the Complaint.

68. Answering paragraph 68 of the Complaint, Defendants are without knowledge to know what Roberts, McKay, or individual drivers were told regarding the assistance to independent contractor business and therefore deny the same.

69. Answering paragraph 69 of the Complaint, Defendants admit that, as of May 2011, C.R. England disseminated the England Business Guide to some, but not all, drivers. Defendants deny that the England Business Guide was disseminated by Opportunity Leasing, Inc., and/or Horizon Truck Sales and Leasing, LLC. Defendants also aver that Exhibit C to the Complaint, which appears to be excerpts from a certain version of the England Business Guide, speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 69 of the Complaint.

70. Answering paragraph 70 of the Complaint, Defendants admit that, as of May 2011, C.R. England disseminated the England Business Guide to some, but not all, drivers. Defendants deny that the England Business Guide was disseminated by Opportunity Leasing, Inc., and/or Horizon Truck Sales and Leasing, LLC. Defendants also aver that Exhibits C and D to the Complaint speak for themselves. Defendants deny that Exhibit D was disseminated by

Defendants jointly and also deny that it was provided to all drivers. Defendants deny each and every remaining allegation contained in paragraph 70 of the Complaint.

71. Answering paragraph 71 of the Complaint, Defendants deny each and every allegation contained in paragraph 71 of the Complaint.

72. Answering paragraph 72 of the Complaint, Defendants aver that Exhibit C to the Complaint speaks for itself. Defendants aver that as part of its business, C.R. England acquires freight and offers to independent contractors the opportunity to haul that freight pursuant to the terms of an independent contractor operating agreement. Defendants deny each and every allegation contained in paragraph 72 of the Complaint.

73. Answering paragraph 73 of the Complaint, Defendants admit that C.R. England is required by federal law to require its company drivers and independent contractor long haul drivers to display its Federal Motor Carrier Safety Administration identification number on any vehicles it owns or that it leases from independent contractors. Defendants also aver that Exhibit F to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 73 of the Complaint.

74. Answering paragraph 74 of the Complaint, Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of certain allegations in paragraph 74 and therefore deny them on that basis. Defendants further deny each and every remaining allegation contained in paragraph 74 of the Complaint.

75. Answering paragraph 75 of the Complaint, Defendants deny each and every allegation contained in paragraph 75 of the Complaint.

76. Answering paragraph 76 of the Complaint, Defendants deny each and every allegation contained in paragraph 76 of the Complaint.



77. Answering paragraph 77 of the Complaint, Defendants deny each and every allegation contained in paragraph 77 of the Complaint.

78. Answering paragraph 78 of the Complaint, Defendants deny each and every allegation contained in paragraph 78 of the Complaint.

79. Answering paragraph 79 of the Complaint, Defendants aver that Exhibits C and D to the Complaint speak for themselves. Defendants admit that, as of May 2011, C.R. England disseminated the England Business Guide to some, but not all, drivers. Defendants deny that the England Business Guide was disseminated by Opportunity Leasing, Inc., and/or Horizon Truck Sales and Leasing, LLC. Defendants deny that Exhibit D was disseminated by Defendants jointly and also deny that it was provided to all drivers. Defendants deny each and every remaining allegation contained in paragraph 79 of the Complaint.

80. Answering paragraph 80 of the Complaint, Defendants deny each and every allegation contained in paragraph 80 of the Complaint.

81. Answering paragraph 81 of the Complaint, Defendants aver that the document attached as Exhibit F to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 81 of the Complaint.

82. Answering paragraph 82 of the Complaint, Defendants deny each and every allegation contained in paragraph 82 of the Complaint.

83. Answering paragraph 83 of the Complaint, Defendants deny each and every allegation contained in paragraph 83 of the Complaint.

84. Answering paragraph 84 of the Complaint, Defendants admit that individuals who voluntarily elected to lease a truck from Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing, paid a fixed weekly lease amount. Defendants aver that the document

attached as Exhibit L to the Complaint speaks for itself. Nevertheless, Defendants admit that that Exhibit L constitutes one of Roberts' independent contract settlement statements from C.R. England. Defendants deny each and every remaining allegation contained in paragraph 84 of the Complaint.

85. Answering paragraph 85 of the Complaint, Defendants admit that, in certain situations, C.R. England's name, coat of arms and 800 telephone number appeared on certain portions of the big rigs driven by its employee drivers as well as its independent contractor long haul drivers. Defendants also admit that under the terms of the Vehicle Lease Agreement Roberts and McKay did not receive any equity in the truck they voluntarily elected to lease from Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing but note that Roberts and McKay could have obtained equity if they had entered into a lease purchase. Defendants deny each and every remaining allegation contained in paragraph 85 of the Complaint, including, but not limited to, denying that the tractor rental was an unrecoverable investment, denying that drivers were not permitted to alter the appearance of the big rig in any way, denying that drivers never earn equity in the big rig, and denying that all of the equity in the big rigs belonged to Defendants.

86. Answering paragraph 86 of the Complaint, Defendants deny each and every allegation contained in paragraph 86 of the Complaint.

87. Answering paragraph 87 of the Complaint, Defendants deny each and every allegation contained in paragraph 87 of the Complaint.

88. Answering paragraph 88 of the Complaint, Defendants deny each and every allegation contained in paragraph 88 of the Complaint.

89. Answering paragraph 89 of the Complaint, Defendants admit that the Qualcomm

system is designed to ensure secure communications regarding dispatching and other instructions from C.R. England to its drivers and remotely track their location and hours during which the driver is operating (for purposes of monitoring the driver's compliance with the Federal Motor Carrier Safety regulations). Defendants deny each and every remaining allegation contained in paragraph 89 of the Complaint.

90. Answering paragraph 90 of the Complaint, Defendants admit that, as of May 2011, any person who leased a truck from Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing had to pay Opportunity Leasing, Inc. a variable mileage fee of \$0.14 per mile. Defendants deny each and every remaining allegation contained in paragraph 90 of the Complaint.

91. Answering paragraph 91 of the Complaint, Defendants aver that the documents attached as Exhibits D and M to the Complaint speak for themselves. Defendants deny each and every remaining allegation contained in paragraph 91 of the Complaint.

92. Answering paragraph 92 of the Complaint, Defendants deny each and every remaining allegation contained in paragraph 92 of the Complaint.

93. Answering paragraph 93 of the Complaint, Defendants admit that the variable mileage fee is one of the fees included in Opportunity Leasing, Inc.'s Vehicle Lease Agreement to help pay for the wear and tear on the truck. Defendants deny each and every remaining allegation contained in paragraph 93 of the Complaint.

94. Answering paragraph 94 of the Complaint, Defendants deny each and every allegation contained in paragraph 94 of the Complaint.

95. Answering paragraph 95 of the Complaint, Defendants admit that, as of May 2011, the general reserve fee of \$0.07 per mile is one of the fees included in Opportunity

Leasing, Inc.'s Vehicle Lease Agreement to help ensure that necessary repairs and preventative maintenance are performed in a timely way. Defendants deny each and every remaining allegation contained in paragraph 95 of the Complaint.

96. Answering paragraph 96 of the Complaint, Defendants deny each and every allegation contained in paragraph 96 of the Complaint.

97. Answering paragraph 97 of the Complaint, Defendants aver that the document attached as Exhibit E to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 97 of the Complaint.

98. Answering paragraph 98 of the Complaint, Defendants deny each and every allegation contained in paragraph 98 of the Complaint.

99. Answering paragraph 99 of the Complaint, Defendants deny each and every allegation contained in paragraph 99 of the Complaint.

100. Answering paragraph 100 of the Complaint, Defendants deny each and every allegation contained in paragraph 100 of the Complaint.

**CLASS ACTION ALLEGATIONS**

101. Defendants deny each and every allegation contained in paragraph 101 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

102. Defendants deny each and every allegation contained in paragraph 102 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

103. Defendants deny each and every allegation contained in paragraph 103 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in

this case.

104. Defendants deny each and every allegation contained in paragraph 104 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

105. Defendants deny each and every allegation contained in paragraph 105 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

106. Defendants deny each and every allegation contained in paragraph 106 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

107. Defendants deny each and every allegation contained in paragraph 107 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

108. Defendants deny each and every allegation contained in paragraph 108 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

109. Defendants deny each and every allegation contained in paragraph 109 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

110. Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the statements in paragraph 110 of the Complaint, including Roberts and McKay's awareness of other litigation, and therefore deny each and every allegation on that basis. Defendants deny each and every remaining allegation contained in paragraph 110 of the

Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

111. Defendants deny each and every allegation contained in paragraph 111 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

112. Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of certain statements in paragraph 112 (i.e., what Plaintiffs may contemplate doing with respect to notice and what difficulties they are aware of that will arise as a result of this litigation) and therefore deny each of those allegations on that basis. Defendants further deny each and every remaining allegation contained in paragraph 112 of the Complaint, including, but not limited to, denying any assertion that a class should be certified in this case.

**FIRST CLAIM FOR RELIEF**

113. Answering paragraph 113 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 112 above as if set forth in full herein.

114. Certain portions of paragraph 114 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 114 of the Complaint.

115. Certain portions of paragraph 115 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 115 of the Complaint.

116. Defendants deny each and every allegation contained in paragraph 116 of the Complaint.

117. Defendants deny each and every allegation contained in paragraph 117 of the

Complaint.

118. Certain portions of paragraph 118 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 118 of the Complaint.

119. Defendants admit that the conduct described in paragraph 119 does not constitute illegal or criminal conduct. Certain portions of paragraph 119 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 119 of the Complaint.

120. Defendants admit that C.R. England has a goal of providing the safe, timely, and effective transportation of goods. Certain portions of paragraph 120 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 120 of the Complaint.

121. Defendants deny each and every allegation contained in paragraph 121 of the Complaint.

122. Defendants deny each and every allegation contained in paragraph 122 of the Complaint.

123. Defendants deny each and every allegation contained in paragraph 123 of the Complaint.

124. Defendants deny each and every allegation contained in paragraph 124 of the Complaint.

125. Paragraph 125 of the Complaint states conclusions of law and therefore no

response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 125 of the Complaint.

126. Certain portions of paragraph 126 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 126 of the Complaint.

127. Certain portions of paragraph 127 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 127 of the Complaint.

128. Certain portions of paragraph 128 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 128 of the Complaint.

129. Certain portions of paragraph 129 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 129 of the Complaint.

130. Paragraph 130 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 130 of the Complaint.

131. Certain portions of paragraph 131 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 131 of the Complaint.

132. Defendants deny each and every allegation contained in paragraph 132 of the Complaint.

133. Certain portions of paragraph 133 of the Complaint state conclusions of law and



therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 133 of the Complaint.

**SECOND CLAIM FOR RELIEF**

134. Answering paragraph 134 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 133 above as if set forth in full herein.

135. Paragraph 135 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 135 of the Complaint.

136. Certain portions of paragraph 136 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 136 of the Complaint.

137. Defendants deny each and every allegation contained in paragraph 137 of the Complaint.

138. Defendants deny each and every allegation contained in paragraph 138 of the Complaint.

139. Certain portions of paragraph 139 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 139 of the Complaint.

140. Defendants admit that the conduct described in paragraph 140 does not constitute illegal or criminal conduct. Certain portions of paragraph 140 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 140 of the Complaint.

141. Defendants admit that C.R. England has a goal of providing the safe, timely, and effective transportation of goods. Certain portions of paragraph 141 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 141 of the Complaint.

142. Defendants deny each and every allegation contained in paragraph 142 of the Complaint.

143. Defendants deny each and every allegation contained in paragraph 143 of the Complaint.

144. Defendants deny each and every allegation contained in paragraph 144 of the Complaint.

145. Defendants deny each and every allegation contained in paragraph 145 of the Complaint.

146. Paragraph 146 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 146 of the Complaint.

147. Paragraph 147 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 147 of the Complaint.

148. Certain portions of paragraph 148 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 148 of the Complaint.

149. Certain portions of paragraph 149 of the Complaint state conclusions of law and

therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 149 of the Complaint.

150. Certain portions of paragraph 150 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 150 of the Complaint.

151. Paragraph 151 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 151 of the Complaint.

152. Certain portions of paragraph 152 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 152 of the Complaint.

153. Certain portions of paragraph 153 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 153 of the Complaint.

154. Certain portions of paragraph 154 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 154 of the Complaint.

### **THIRD CLAIM FOR RELIEF**

155. Answering paragraph 155 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 154 above as if set forth in full herein.

156. Certain portions of paragraph 156 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 156 of the Complaint.

157. Defendants deny each and every allegation contained in paragraph 157 of the Complaint.

158. Defendants deny each and every allegation contained in paragraph 158 of the Complaint.

159. Certain portions of paragraph 159 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 159 of the Complaint.

160. Certain portions of paragraph 160 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 160 of the Complaint.

161. Certain portions of paragraph 161 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 161 of the Complaint.

162. Certain portions of paragraph 162 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 162 of the Complaint.

**FOURTH CLAIM FOR RELIEF**

163. Answering paragraph 163 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 162 as if set forth in full herein.

164. Paragraph 164 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 164 of the Complaint.

165. Paragraph 165 of the Complaint states conclusions of law and therefore no

response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 165 of the Complaint.

166. Paragraph 166 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 166 of the Complaint.

167. Certain portions of paragraph 167 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 167 of the Complaint.

168. Paragraph 168 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 168 of the Complaint.

169. Paragraph 169 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 169 of the Complaint.

170. Paragraph 170 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 170 of the Complaint.

171. Paragraph 171 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 171 of the Complaint.

172. Defendants deny each and every allegation contained in paragraph 172 of the Complaint.

173. Defendants deny each and every allegation contained in paragraph 173 of the

Complaint.

174. Defendants deny each and every allegation contained in paragraph 174 of the Complaint.

175. Certain portions of paragraph 175 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 175 of the Complaint.

176. Paragraph 176 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 176 of the Complaint.

177. Paragraph 177 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants admit that, as of May 2011, C.R. England disseminated the England Business Guide to some, but not all, drivers. Defendants deny that the England Business Guide was disseminated by Opportunity Leasing, Inc. and/or Horizon Truck Sales and Leasing, LLC. Defendants deny each and every remaining allegation contained in paragraph 177 of the Complaint.

178. Certain portions of paragraph 178 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 178 of the Complaint.

179. Answering paragraph 179 of the Complaint, Defendants deny that they received reimbursements from the United States government for student tuition. Because the remaining allegations state conclusions of law, no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 179.

180. Certain portions of paragraph 180 of the Complaint state conclusions of law and

therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 180 of the Complaint.

181. Paragraph 181 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 181 of the Complaint.

182. Certain portions of paragraph 182 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 182 of the Complaint.

**FIFTH CLAIM FOR RELIEF**

183. Answering paragraph 183 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 182 above as if set forth in full herein.

184. Answering paragraph 184 of the Complaint, Defendants admit that Roberts and McKay executed their respective Independent Contractor Operating Agreements with C.R. England and Vehicle Lease Agreements with Opportunity Leasing, Inc. doing business as Horizon Truck Sales and Leasing in Utah. Other portions of paragraph 184 state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every remaining allegation contained in paragraph 184.

185. Paragraph 185 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 185 of the Complaint.

186. Certain portions of paragraph 186 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 186 of the Complaint.

187. Defendants deny each and every allegation contained in paragraph 187 of the Complaint.

188. Defendants deny each and every allegation contained in paragraph 188 of the Complaint.

189. Defendants deny each and every allegation contained in paragraph 189 of the Complaint.

190. Certain portions of paragraph 190 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 190 of the Complaint.

191. Certain portions of paragraph 191 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 191 of the Complaint.

#### **SIXTH CLAIM FOR RELIEF**

192. Answering paragraph 192 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 191 above as if set forth in full herein.

193. Certain portions of paragraph 193 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 193 of the Complaint.

194. Paragraph 194 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 194 of the Complaint.

195. Certain portions of paragraph 195 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny



each and every allegation contained in paragraph 195 of the Complaint.

196. Paragraph 196 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 196 of the Complaint.

#### **SEVENTH CLAIM FOR RELIEF**

197. Answering paragraph 197 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 196 above as if set forth in full herein.

198. Certain portions of paragraph 198 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 198 of the Complaint.

199. Paragraph 199 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 199 of the Complaint.

200. Certain portions of paragraph 200 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 200 of the Complaint.

201. Paragraph 201 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 201 of the Complaint.

#### **EIGHTH CLAIM FOR RELIEF**

202. Answering paragraph 202 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 201 above as if set forth in full herein.

203. Paragraph 203 of the Complaint states conclusions of law and therefore no

response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 203 of the Complaint.

204. Paragraph 204 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 204 of the Complaint.

205. Certain portions of paragraph 205 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 205 of the Complaint.

206. Defendants deny each and every allegation contained in paragraph 206 of the Complaint.

207. Paragraph 207 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 207 of the Complaint.

208. Paragraph 208 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 208 of the Complaint.

209. Certain portions of paragraph 209 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 209 of the Complaint.

210. Defendants deny each and every allegation contained in paragraph 210 of the Complaint.

211. Defendants deny each and every allegation contained in paragraph 211 of the Complaint.

212. Paragraph 212 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 212 of the Complaint.

213. Paragraph 213 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 213 of the Complaint.

214. Paragraph 214 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 214 of the Complaint.

**NINTH CLAIM FOR RELIEF**

215. Answering paragraph 215 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 214 above as if set forth in full herein.

216. Defendants deny each and every allegation contained in paragraph 216 of the Complaint.

217. Defendants deny each and every allegation contained in paragraph 217 of the Complaint.

218. Defendants deny each and every allegation contained in paragraph 218 of the Complaint.

219. Paragraph 219 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 219 of the Complaint.

220. Paragraph 220 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every

allegation contained in paragraph 220 of the Complaint.

**TENTH CLAIM FOR RELIEF**

221. Answering paragraph 221 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 220 above as if set forth in full herein.

222. Answering paragraph 222, Defendants aver that the document attached as Exhibit N to the Complaint speaks for itself. Defendants admit that McKay signed a Student Training Agreement with C.R. England.

223. Answering paragraph 223, Defendants aver that the document attached as Exhibit O to the Complaint speaks for itself. Defendants admit that Roberts signed a Student Training Agreement with C.R. England.

224. Defendants deny each and every allegation contained in paragraph 224 of the Complaint.

225. Paragraph 225 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 225 of the Complaint.

226. Paragraph 226 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 226 of the Complaint.

**ELEVENTH CLAIM FOR RELIEF**

227. Answering paragraph 227 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 226 above as if set forth in full herein.

228. Defendants deny each and every allegation contained in paragraph 228 of the Complaint.

229. Defendants deny each and every allegation contained in paragraph 229 of the Complaint.

230. Defendants deny each and every allegation contained in paragraph 230 of the Complaint.

231. Defendants deny each and every allegation contained in paragraph 231 of the Complaint.

232. Paragraph 232 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 232 of the Complaint.

233. Paragraph 233 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 233 of the Complaint.

234. Paragraph 234 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 234 of the Complaint.

**TWELFTH CLAIM FOR RELIEF**

235. Answering paragraph 235 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 234 above as if set forth in full herein.

236. Defendants deny each and every allegation contained in paragraph 236 of the Complaint.

237. Defendants deny each and every allegation contained in paragraph 237 of the Complaint.

238. Defendants deny each and every allegation contained in paragraph 238 of the

Complaint.

239. Defendants deny each and every allegation contained in paragraph 239 of the Complaint.

**THIRTEENTH CLAIM FOR RELIEF**

240. Answering paragraph 240 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 239 above as if set forth in full herein.

241. Paragraph 241 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 241 of the Complaint.

242. Paragraph 242 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 242 of the Complaint.

243. Defendants deny each and every allegation contained in paragraph 243 of the Complaint.

244. Answering paragraph 244 of the Complaint, Defendants aver that the document attached as Exhibit H to the Complaint speaks for itself. Defendants admit that they received a letter from Plaintiffs' counsel on or about June 3, 2011 notifying them of alleged violations of law but deny engaging in any such wrongdoing. Defendants further deny each and every remaining allegation in paragraph 244 of the Complaint, including, but not limited to, denying any assertion that Defendants violated the law in any way.

245. Answering paragraph 245 of the Complaint, Defendants admit that C.R. England offers guaranteed employment to truck driving applicants who successfully complete their CDL training at one of C.R. England's truck driving schools located in, among other places, Mira

Loma, California and Burns Harbor, Indiana. Defendants deny each and every remaining allegation contained in paragraph 245 of the Complaint.

246. Answering paragraph 246 of the Complaint, Defendants aver that the document attached as Exhibit H to the Complaint speaks for itself. Defendants admit that C.R. England offers guaranteed employment to truck driving applicants who successfully complete their CDL training at one of C.R. England's truck driving schools located in, among other places, Mira Loma, California and Burns Harbor, Indiana. Defendants deny each and every remaining allegation contained in paragraph 246 of the Complaint.

247. Answering paragraph 247 of the Complaint, Defendants admit that the document attached as Exhibit I to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 247 of the Complaint.

248. Answering paragraph 248 of the Complaint, Defendants aver that document attached as Exhibit J to the Complaint speaks for itself. Defendants deny each and every remaining allegation contained in paragraph 248 of the Complaint.

249. Defendants deny each and every allegation contained in paragraph 249 of the Complaint.

250. Certain portions of paragraph 250 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 250 of the Complaint.

251. Certain portions of paragraph 251 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 251 of the Complaint.

252. Defendants deny each and every allegation contained in paragraph 252 of the

Complaint.

253. Defendants deny each and every allegation contained in paragraph 253 of the

Complaint.

254. Defendants deny each and every allegation contained in paragraph 254 of the

Complaint.

255. Certain portions of paragraph 255 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 255 of the Complaint.

256. Certain portions of paragraph 256 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 256 of the Complaint.

#### **FOURTEENTH CLAIM FOR RELIEF**

257. Answering paragraph 257 of the Complaint, Defendants hereby incorporate each of the answers to paragraphs 1 through 256 of the Complaint as if set forth in full herein.

258. Answering paragraph 258 of the Complaint, Defendants admit that an actual controversy exists between the parties but deny each and every remaining allegation contained in paragraph 258 of the Complaint.

259. Certain portions of paragraph 259 of the Complaint state conclusions of law and therefore no response is required to them. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 259 of the Complaint.

260. Paragraph 260 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 260 of the Complaint.



261. Paragraph 261 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 261 of the Complaint.

262. Paragraph 262 of the Complaint states conclusions of law and therefore no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 262 of the Complaint.

Defendants further deny that Plaintiffs are entitled to any monies, relief or damages whatsoever as a result of their lawsuit.

#### **AFFIRMATIVE DEFENSES**

By way of separate and affirmative defenses to the Complaint, and each and every cause of action alleged by Plaintiffs therein, Defendants allege as follows:

##### **FIRST SEPARATE OR AFFIRMATIVE DEFENSE**

The Complaint and each and every purported cause of action contained therein fails to state facts sufficient to constitute any cause of action against Defendants.

##### **SECOND SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs' purported claims and causes of action, including any claims involving putative class members, are barred in whole or in part by the applicable statutes of limitations, periods of repose, and contractual limitations provisions contained in the Independent Contractor Operating Agreement and Vehicle Lease Agreement.

##### **THIRD SEPARATE OR AFFIRMATIVE DEFENSE**

By virtue of the choice of law clauses in the Plaintiffs' respective Conditional Offer(s) of Employment, the Loan Agreement(s), Installment Promissory Note(s), the Independent Contractor Operating Agreement(s), and the Vehicle Lease Agreement(s), and/or the transfer of

this action for improper venue under 29 U.S.C. § 1406(a), Utah law, including Utah choice of law standards, apply to all state-law causes of action in this case.

#### **FOURTH SEPARATE OR AFFIRMATIVE DEFENSE**

Pursuant to Sections 18 of the Independent Contractor Operating Agreements, any claim or dispute arising from or in connection with the Independent Contractor Operating Agreements which covers all of the claims asserted by the Plaintiffs, is barred to the extent it was not brought in state or federal courts in Salt Lake County, Utah, within two years of the accrual of such claim or dispute. This contractual limitation period replaces statutes of limitations with limitation periods equal to or longer than two years. The Defendants allege that the contractual two-year limitation period applies to all claims asserted by the Plaintiffs, except for the claims for liability created by the statutes of California and Indiana, which, as described below, are subject to a one-year statute of limitation under Utah law.

#### **FIFTH SEPARATE OR AFFIRMATIVE DEFENSE**

To the extent, if any, that the two-year contractual limitations period does not apply (or the applicable statute of limitations period is less than two years), any claim or dispute is barred to the extent it was not brought within the time prescribed in the following statutes of limitation:

- (a) First Claim for Relief (RICO): four years from the accrual of the cause of action;
- (b) Second Claim for Relief (PUAA): three years after the conduct prohibited by Section 76-10-1603 terminates or the cause of action accrues, whichever is later, pursuant to Utah code Ann. § 76-10-1605(9);
- (c) Third Claim for Relief (California Seller Assisted Marketing Plan Act, Cal. Civ. Code § 1812.200 *et seq.*): one year pursuant to Utah Code Ann. § 78B-2-302(1) governing liability created by the statute of a foreign state;

- (d) Fourth Claim for Relief (California Unfair competition Law, California Business and Professions Code § 13200 *et seq.*): one year pursuant to Utah Code Ann. § 78B-2-302(1) governing liability created by the statute of a foreign state;
- (e) Fifth Claim for Relief (Utah Consumer Sales Practices Act, Utah Code Ann. § 13-11-1): three years pursuant to Utah Code Ann. § 78B-2-305(3) for liability created by the statutes of this state (without a specific limitation period);
- (f) Sixth Claim for Relief (Utah Business Opportunity Disclosure Act, Utah Code Ann. § 13-15-1, *et seq.*): three years pursuant to Utah Code Ann. § 78B-2-305(3) for liability created by the statutes of this state (without a specific limitation period);
- (g) Seventh Claim for Relief (Indiana Business Opportunity Transaction Act, IC 24-5-8-1, *et seq.*): one year pursuant to Utah Code Ann. § 78B-2-302(1) governing liability created by the statute of a foreign state;
- (h) Eighth Claim for Relief (Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101, *et seq.*): three years pursuant to 15 U.S.C. § 6104(a);
- (i) Ninth Claim for Relief (common law fraud and misrepresentation)” three years from the discovery of the facts constituting the fraud pursuant to Utah Code Ann. § 78B-2-305(3);
- (j) Tenth Claim for Relief (breach of the Student Agreement): six years pursuant to Utah Code Ann. § 78B-2-309(2) for liability founded upon an instrument in writing;

- (k) Eleventh Claim for Relief (breach of fiduciary duty): four years pursuant to Utah Code Ann. § 78B-2-307 for relief not otherwise provided for by law;
- (l) Twelfth Claim for Relief (unjust enrichment): four years pursuant to Utah Code Ann. § 78B-2-307 for relief not otherwise provided for by law;
- (m) Thirteenth Claim for Relief (Utah Truth in Advertising Act, Utah Code Ann. § 13-11a-1): three years pursuant to Utah Code Ann. § 78B-2-305(3) for liability created by the statutes of this state (without a specific limitation period);
- (n) Fourteenth Claim for Relief (declaratory judgment on certain contract clauses): six years pursuant to Utah Code Ann. § 78B-2-309(2) for liability founded upon an instrument in writing; and
- (o) To the extent, if any, that any of the above causes of action arise in another jurisdiction, and such causes of action are not actionable in the other jurisdiction by reason of the lapse of time, such causes of action may not be pursued except to the extent permitted under Utah's borrowing statute, Utah Code Ann. § 78B-2-103, if Utah law governs the selection of limitation periods, or at all under the statutes of limitations of the other jurisdiction(s) to the extent that the law of a state other than Utah governs the selection of limitation periods.

**SIXTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that all of Plaintiffs' purported claims and causes of action, including any claims involving putative class members, are barred in whole or in part by the doctrine of estoppel.

**SEVENTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that all of Plaintiffs' purported claims and causes of action, including any claims involving putative class members, are barred in

whole or in part by the doctrine of in pari delicto.

**EIGHTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that all of Plaintiffs' purported claims and causes of action, including any claims involving putative class members, are barred in whole or in part by the doctrine of waiver.

**NINTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that all of Plaintiffs' purported claims and causes of action, including any claims involving putative class members, are barred in whole or in part by the doctrine of laches.

**TENTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that all of Plaintiffs' purported claims and causes of action, including any claims involving putative class members, are barred in whole or in part by the doctrine of unclean hands.

**ELEVENTH SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred in whole or in part because the injuries and damages Plaintiffs (as well as the putative class members) claim to have suffered were not directly or proximately caused by any acts or omissions of Defendants.

**TWELFTH SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, because Plaintiffs (as well as the putative class members) did not suffer any harm or injury as a result of Defendants' actions.

**THIRTEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

As to all of Plaintiffs' claims and causes of action, a collective or class action would not be the superior method for resolving the claims of Plaintiffs and other purported class members described in the Complaint because, among other things, they do not share a community of interest, common questions do not predominate over individualized questions, and Plaintiffs cannot satisfy the requirements of numerosity, commonality, typicality, and/or adequacy necessary to obtain class certification. Nor can Plaintiffs satisfy other elements required for class certification under various federal and/or state laws.

**FOURTEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

As to each of Plaintiffs' causes of action, including any claims involving putative class members, the alleged conduct of which Plaintiffs complain, if committed, was not willful or malicious, but rather, was made in good faith, honestly, and in the exercise of Defendants' good faith business judgment.

**FIFTEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

As to Plaintiffs' request for equitable relief, those claims and prayer for relief are barred in whole or in part because Plaintiffs (as well as the putative class members) have adequate remedies at law.

**SIXTEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs' (and any putative class member's) damages, if any, are limited in whole or in part by the doctrine of avoidable consequences and/or duty to mitigate any damage.

**SEVENTEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

As to all of Plaintiffs' claims and causes of action, a collective or class action would violate Defendants' rights to due process under the Due Process Clause of the Fifth Amendment

of the United States Constitution, Section 1 of the Fourteenth Amendment of the United States Constitution, the Due Process Clause contained in Article I, Section I of the California Constitution, and the due process clauses contained in other state constitutions, by depriving Defendants of their rights to trial by jury as to the individual claims of the purported class members.

**EIGHTEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

The business practices alleged in the Complaint are not “unlawful,” “unfair,” or “fraudulent” as those terms are defined and utilized in California Business and Professions Code Sections 17200 and 17500.

**NINETEENTH SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, because the alleged practices are not unfair, the public is not likely to be deceived by any alleged practices, Defendants gained no competitive advantage by such practices, and the benefits of the alleged practices outweigh any harm or other impact they may cause.

**TWENTIETH SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, because Defendants’ business practices are not and were not “unlawful” in that they complied with all applicable statutes and regulations.

**TWENTY-FIRST SEPARATE OR AFFIRMATIVE DEFENSE**

All actions taken by Defendants were lawful and not in violation of public policy.

**TWENTY-SECOND SEPARATE OR AFFIRMATIVE DEFENSE**

Any claim for punitive damages is unconstitutional under the United States Constitution, California Constitution, Utah Constitution, Indiana Constitution, and the constitutions and laws of other states.

**TWENTY-THIRD SEPARATE OR AFFIRMATIVE DEFENSE**

California Business and Profession Code Section 17200 et seq. is unconstitutional, vague and over broad in the manner in which Plaintiff claims that the statutes apply to Defendants' business practices and thus constitutes a violation of Defendants' rights to due process and equal protection.

**TWENTY-FOURTH SEPARATE OR AFFIRMATIVE DEFENSE**

Pre-judgment interest may not be granted because the damages claimed by Plaintiff (as well as any putative class member) are not sufficiently certain to allow an award of pre-judgment interest.

**TWENTY-FIFTH SEPARATE OR AFFIRMATIVE DEFENSE**

Except for certain causes of action (which do not apply unless Plaintiffs are deemed the prevailing party), Plaintiffs' claims for attorneys' fees are not authorized by contract or statute or any other law, and are therefore improper.

**TWENTY-SIXTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, because Plaintiffs (and putative class members) released any and all claims they may have had against Defendants.



**TWENTY-SEVENTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, because the damages, if any, suffered by Plaintiffs and the putative classes must be offset by any monies Plaintiffs and/or the putative class members owe Defendants.

**TWENTY-EIGHTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, because enforcement of the agreements at issue as interpreted by Plaintiffs would run counter to the actual agreements between the parties.

**TWENTY-NINTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred in whole or in part, by reason of the fact that the obligations of Defendants, if any, have been fully satisfied by Defendants.

**THIRTIETH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred, in whole or in part, by the doctrines of accord and satisfaction.

**THIRTY-FIRST SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred in whole or in part because Plaintiffs and/or the putative class members ratified and/or acquiesced to, the acts upon

which the Complaint is based.

**THIRTY-SECOND SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred and/or recovery is limited or excluded by the doctrine of consent.

**THIRTY-THIRD SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants are informed and believe and thereon allege that Plaintiffs' claims and causes of action, including any claims involving putative class members, are barred because Plaintiffs failed to give proper notice as required by Utah Code Section 13-11a-4(5).

**THIRTY-FOURTH SEPARATE OR AFFIRMATIVE DEFENSE**

The Student Training Agreements signed by the Plaintiffs are superseded by their respective Independent Contractor Operating Agreement, and/or Vehicle Lease Agreement.

**THIRTY-FIFTH SEPARATE OR AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part by their own "fault" under the Utah Code Sections 78B-5-817 to -820.

**THIRTY-SIXTH SEPARATE OR AFFIRMATIVE DEFENSE**

Defendants currently have insufficient information upon which to form a belief as to whether they have additional affirmative defenses available. Defendants therefore reserve the right to assert additional affirmative defenses in the event that investigation and discovery indicate that they would be appropriate.

**PRAYER**

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs' Complaint and all claims and causes of action therein be

dismissed with prejudice;

2. That Plaintiffs take nothing by this action;
3. That judgment be entered against Plaintiffs and in favor of Defendants;
4. That Defendants be awarded their costs incurred in this action as permitted by law;
5. That Defendants be awarded their reasonable attorney's fees on any ground permitted by law, including, but not limited to, as the prevailing party with respect to (i) Plaintiffs' Federal Telemarketing and Consumer Fraud And Abuse Prevention Act cause of action (see 15 U.S.C. § 6104(d)), (ii) Plaintiffs' Utah Consumer Sales Practices Act claim (see Utah Code § 13-11-19(5)), (iii) Plaintiffs' Utah Truth in Advertising Act cause of action (see Utah Code § 13-11a-4(2)(c)), (iv) Plaintiffs' Pattern of Unlawful Activity Act cause of action (see Utah Code § 76-10-1605(8)), and litigation arising from the Plaintiffs' employment as provided by the Conditional Offer of Employment; and
6. That this Court grant Defendants such other and further legal or equitable relief as the Court deems just and proper.

## **COUNTERCLAIM**

Defendants and Counterclaimants C.R. ENGLAND, INC. and OPPORTUNITY LEASING, INC. (C.R. England and Opportunity Leasing are referred to collectively herein as “Counterclaimants”) hereby complain against Plaintiffs and Counterdefendants CHARLES ROBERTS (“Roberts”) and KENNETH MCKAY (“McKay”) (Roberts and McKay are referred to collectively herein as “Counterdefendants”) as follows:

### **I. INTRODUCTION**

Although Counterdefendants voluntarily agreed to a mandatory forum selection clause as part of their respective contracts with Counterclaimants, which required them to litigate any disputes with Counterclaimants in a state or federal court serving Salt Lake City, Utah, Counterdefendants breached their contractual obligations by suing Counterclaimants in the Northern District of California. That Counterdefendants breached their contractual obligations to Counterclaimants is undeniable given that the Northern District of California has transferred this matter to the District of Utah as a result of, among other things, the parties’ contractually agreed upon choice of venue. Counterdefendants’ breach has further caused foreseeable and direct damage to Counterclaimants by forcing them to incur substantial costs and fees to enforce the forum selection clauses and have this matter transferred to this judicial district. Accordingly, Counterclaimants respectfully request that this Court enter judgment in their favor against Counterdefendants in the manner specified below.

### **II. THE PARTIES**

1. Counterclaimant and Defendant C.R. England, Inc. (“C.R. England”) is, and at all times mentioned herein was, a Utah corporation with its principal place of business in Salt Lake City, Utah.

2. Counterclaimant and Defendant Opportunity Leasing, Inc. (“Opportunity Leasing”) is, and at all times mentioned herein was, a Utah corporation with its principal place of business in Salt Lake City, Utah.

3. Counterclaimants are informed and believe and based thereon allege that Counterdefendant and Plaintiff Charles Roberts (“Roberts”) is an individual who resides in and is a citizen of the State of California.

4. Counterclaimants are informed and believe and based thereon allege that Counterdefendant and Plaintiff Kenneth McKay (“McKay”) is an individual who resides in and is a citizen of the State of California.

### **III. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 and 1367.

6. This Court has personal jurisdiction over each of the Counterdefendants because, among other things, they contractually agreed that jurisdiction is proper in this judicial district. Counterdefendants also executed the agreements that are the subject of this counterclaim in this judicial district.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because, among other things, Counterdefendants executed the agreements at issue in this judicial district. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because the parties agreed upon a mandatory forum selection clause that requires any disputes related to the agreements that are the subject of this counterclaim to be brought exclusively in the state or federal courts serving Salt Lake City, Utah.

#### IV. FACTUAL BACKGROUND

8. C.R. England is one of the nation's largest trucking companies and specializes in the refrigerated transportation of its customers' goods (e.g., perishable food items). C.R. England uses both company employees and independent contractor long haul drivers to deliver transportation services to its customers.

9. Opportunity Leasing is a separate company that leases big rigs to anyone interested in leasing such a vehicle.

10. In February 2009, Counterdefendant McKay signed a Conditional Offer of Employment with C.R. England. A copy of the Conditional Offer of Employment that McKay entered into with C.R. England in February 2009 is attached hereto as Exhibit A.

11. In July 2009, Counterdefendant McKay voluntarily chose to become an independent contractor long haul driver for C.R. England. A copy of the independent contractor operating agreement (also referred to as an "ICOA") that McKay entered into with C.R. England in July 2009 is attached hereto as Exhibit B.

12. Around the same time that Counterdefendant McKay opted to become an independent contractor for C.R. England, he voluntarily decided to lease a truck from Opportunity Leasing. A copy of the vehicle lease agreement (also referred to as a "VLA") that McKay entered into with Opportunity Leasing in July 2009 is attached hereto as Exhibit C.

13. In June 2009, Counterdefendant Roberts likewise chose to sign a Conditional Offer of Employment with C.R. England. A copy of the Conditional Offer of Employment that Roberts entered into with C.R. England in June 2009 is attached hereto as Exhibit D.

14. In September 2009, Counterdefendant Roberts chose to become an independent contractor long haul driver for C.R. England. A copy of the ICOA Roberts voluntarily entered into with C.R. England in September 2009 is attached hereto as Exhibit E.

15. Around the same time that Roberts decided to become an independent contractor long haul driver for C.R. England, he opted to lease a truck from Opportunity Leasing. A copy of the VLA that Roberts voluntarily entered into with Opportunity Leasing in September 2009 is attached hereto as Exhibit F.

16. As a material part of the conditional offer of employment that Counterdefendants signed with C.R. England, Counterdefendants agreed that “the venue of litigations that may arise from this employment shall be in the State of Utah,” and “Utah law shall apply exclusively to any such claims or litigation.” (See Ex. A (McKay’s Conditional Offer of Employment with C.R. England); Ex. D (Roberts’ Conditional Offer of Employment with C.R. England).

17. As a material part of the ICOAs and VLAs that they signed with Counterclaimants, Counterdefendants agreed to forum selection clauses stating, in ALL CAPS as follows:

ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW . . . SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING SALT LAKE CITY, UTAH . . . . YOU AND WE HEREBY CONSENT TO THE JURISDICTION AND VENUE OF SUCH COURTS.

(See Ex. B (McKay’s ICOA with C.R. England), p. 6, ¶ 18; Ex. C (McKay’s VLA with Opportunity Leasing), p. 5, ¶ 21; Ex. E (Roberts’ ICOA with C.R. England), p. 6, ¶ 18; Ex. F (Roberts’ VLA with Opportunity Leasing), p. 5, ¶ 21.)

18. At the time they entered into their Conditional Offer of Employment, ICOAs and

VLAAs with C.R. England and Opportunity Leasing, Counterdefendants knew or should have known that suing Counterclaimants in any jurisdiction outside of the agreed upon forum would result in substantial damages to Counterclaimants resulting directly from Counterdefendants' breach of the forum selection clauses.

19. On or about May 27, 2011, Plaintiffs/Counterdefendants filed a putative class action lawsuit against Defendants/Counterclaimants in the Northern District of California (Case No. 3:11-cv-02586 CW) alleging at least eleven separate causes of action ("California Action").

20. All of Counterdefendants' claims in the California Action arose from and/or were connected with the Conditional Offer or Employment, ICOA, and the VLA. Accordingly, under the forum selection provisions of the Conditional Offer of Employment, ICOA, and VLA, Counterdefendants were required to pursue their claims in a state or federal court serving Salt Lake City, Utah. By choosing to file their claims in the Northern District of California, Counterdefendants assumed the risk that they would be held in breach of contract for all of Countercomplainants' reasonably foreseeable damages, including any costs and fees related to enforcing the forum selection clauses and transferring the action to the agreed-upon forum.

21. Counterclaimants responded to the complaint in the California Action by, among other things, moving to dismiss the action as an improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) or, in the alternative, have it transferred to the District of Utah pursuant to 28 U.S.C. § 1406.

22. Counterdefendants vigorously opposed Counterclaimants' efforts to enforce the parties' agreed upon forum selection clauses and thereby significantly exacerbated the damage caused to Counterclaimants.



23. After extensive briefing and oral argument regarding whether the California Action could proceed in the Northern District of California, the district court granted Counterclaimants' motion to dismiss on November 22, 2011 and tentatively agreed the case should be transferred to Utah. Rather than transferring the case immediately, however, the district court in Northern California gave Counterdefendants' leave to amend their complaint to see if they could properly plead a California franchise claim which might invalidate the forum selection clauses.

24. On December 2, 2011, Counterdefendants filed a second amended complaint and again alleged that the forum selection clauses were invalid due to the existence of a California franchise claim. By filing this amended complaint in the Northern District of California, Counterdefendants again breached the forum selection clauses and damaged Counterclaimants.

25. Counterclaimants responded by once again moving to dismiss the franchise claim and asking the Court to enforce its finding that the matter must be transferred to the District of Utah as a result of the parties' agreed upon forum selection clauses.

26. After reviewing the briefs submitted by the parties, the district court in the California Action dismissed Counterdefendants' franchise cause of action on January 25, 2012 and ordered the matter transferred to Utah pursuant to 28 U.S.C. § 1406 (as well as pursuant to 28 U.S.C. § 1404(a)).

27. Counterdefendants nevertheless continued to pursue litigation in California in breach of their contractual obligations. For example, Counterdefendants filed a series of motions and requests with the district court in Northern California seeking to stay the transfer and allow an immediate appeal. Counterdefendants also filed writ of mandamus with the Ninth Circuit requesting that it overturn the district court's January 25, 2012 order as well as an emergency

motion seeking a stay. Although all of Counterdefendants' motions and requests were denied, Counterclaimants still had to incur substantial attorneys fees and costs in order to enforce the forum selection clauses and have the action transferred to the contractually agreed upon forum.

28. After a nearly a year of legal battles arising directly from Counterdefendants' breach of the forum selection clauses and their numerous attempts to prevent their enforcement, the California Action was at long last transferred to the District of Utah near the end of March 2012.

29. Counterclaimants have since demanded that Counterdefendants pay for the damages that Counterclaimants have suffered as a result of Counterdefendants' breach of the forum selection clauses. But Counterdefendants have refused to pay any portion of these damages.

## **FIRST CAUSE OF ACTION**

### **Breach of Contract**

#### **(Counterclaimants Against Counterdefendants)**

30. Counterclaimants reallege and incorporate herein by reference paragraphs 1 through 29 above.

31. As explained previously, McKay entered into a Conditional Offer of Employment with C.R. England in or around February 2009 in which the parties agreed, among other things, that "the venue of litigations that may arise from this employment shall be in the State of Utah," and "Utah law shall apply exclusively to any such claims or litigation." (See Ex. A.)

32. McKay also entered into an independent contractor operating agreement with C.R. England in or around July 2009 in which the parties agreed, among other things, that "ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT,

WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW . . . SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING SALT LAKE CITY, UTAH . . . .” (See Ex. B, p. 6, ¶ 18.)

33. Around the same time, McKay entered into a vehicle lease agreement with Opportunity Leasing in which the parties similarly agreed, among other things, that “ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW . . . SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING SALT LAKE CITY, UTAH . . . .” (See Ex. C, p. 5, ¶ 21.)

34. In or around June 2009, Roberts likewise entered into a Conditional Offer of Employment with C.R. England in which the parties agreed, among other things, that “the venue of litigations that may arise from this employment shall be in the State of Utah,” and “Utah law shall apply exclusively to any such claims or litigation.” (See Ex. D.)

35. In or around September 2009, Roberts also entered into an independent contractor operating agreement with C.R. England in which the parties agreed, among other things, that “ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW . . . SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING SALT LAKE CITY, UTAH . . . .” (See Ex. E, p. 6, ¶ 18.)

36. Around the same time, Roberts entered into a vehicle lease agreement with Opportunity Leasing in which the parties agreed, among other things, that “ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW . . . SHALL BE BROUGHT

EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING SALT LAKE CITY, UTAH . . . .” (See Ex. F, p. 5, ¶ 21.)

37. Counterclaimants have performed all of the obligations required by them under the Conditional Offer of Employment, ICOAs and VLAs that they respectively entered into with Counterdefendants.

38. Despite the existence of the mandatory forum selection clauses requiring disputes between them to be litigated in Salt Lake City, Utah, Counterdefendants improperly filed a lawsuit against Counterclaimants in the Northern District of California.

39. By filing a lawsuit against Counterclaimants outside of the parties’ agreed upon forum for resolving disputes, Counterdefendants breached their obligations to Counterclaimants under the agreements attached as Exhibits A through F.

40. As a direct and proximate result of the aforementioned breaches by Counterdefendants, Counterclaimants have incurred substantial fees and costs in seeking to enforce the parties’ agreed upon forum selection clauses and have this matter transferred to Utah. The exact amount of general and consequential damages suffered by Counterclaimants will be proven at trial, but is in excess of one hundred thousand dollars (\$100,000).

**PRAYER FOR RELIEF**

WHEREFORE, Counterclaimants respectfully pray for judgment against Counterdefendants as follows:

1. For general, consequential and/or incidental damages in an amount according to proof (including, but not limited to, any fees and costs incurred in enforcing the parties’ agreed upon forum selection clauses), plus interest which continues to accrue thereon;
2. For all other damages permitted by law;

3. Any attorneys' fees, expenses, and/or costs incurred in litigating this counterclaim to the extent permitted by law; and
4. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Defendants and Counterclaimants hereby demand a jury trial on all issues triable by a jury as a matter of right. Defendants contend that Plaintiffs' claims for breach of fiduciary duty and declaratory judgment are not triable as a matter of right, and Defendants object to the Plaintiffs' jury demand on those claims and any other claims that are not triable as a matter of right.

DATED this 27<sup>th</sup> day of September, 2012.

RAY QUINNEY & NEBEKER P.C.

/s/ David B. Dibble

\_\_\_\_\_  
James S. Jardine  
Scott A. Hagen  
David B. Dibble

THEODORA ORINGHER PC  
Drew R. Hansen (admitted *pro hac vice*)

*Attorneys for Defendants C.R. England, Inc.,  
Opportunity Leasing, Inc., and Horizon Truck  
Sales and Leasing, LLC*

1198659

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of September, 2012, I electronically filed the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT AND COUNTERCLAIM AGAINST PLAINTIFFS** using the CM/ECF system which sent notification of such filing to:

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/s/ Shannon Crist