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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

C.R. ENGLAND, INC., a Utah corporation; OPPORTUNITY LEASING, INC., a Utah corporation; and HORIZON TRUCK SALES AND LEASING, LLC. a Utah Limited Liability Corporation

Defendants

CASE NO. 3:11-cv-02586 CW

CLASS ACTION
SECOND AMENDED COMPLAINT FOR:

1. California Franchise Investment Law Violation
2. California Seller Assisted Marketing Plan Act Violation
3. California Unfair Competition Law Violation
4. Utah Consumer Sales Practices Act Violation
5. Utah Business Opportunity Disclosure Act Violation
6. Indiana Business Opportunity Transactions Law Violation
7. Federal Telemarketing And Consumer Fraud And Abuse Prevention Act Violation
8. Common Law Fraud
9. Unjust Enrichment
10. Declaratory Relief
11. Utah Truth In Advertising Act Violation

JURY TRIAL DEMANDED

DESCRIPTION OF CASE

1. Plaintiffs Charles Roberts (Roberts) and Kenneth McKay (McKay) bring this class action on behalf of individuals (the "Drivers") that the defendants C.R. England Inc. (ENGLAND), Opportunity Leasing, Inc. d/b/a Horizon Truck Sales and Leasing, and Horizon Truck Sales and Leasing, LLC (collectively, HORIZON) (collectively, all referred to as "Defendants") fraudulently induced into purchasing a business opportunity to drive big rig trucks (the "Driving Opportunity").

2. Defendants are affiliated transportation industry companies that are headquartered at the same offices in Salt Lake City, Utah and that have offices and operations in California, Indiana and elsewhere. Defendants' customers include Wal-Mart and other businesses that ship goods around the country via tractor-trailers. Defendants transport some customers' goods via company employees and company-owned trucks but the majority of goods are transported by Drivers that have purchased the Driving Opportunity.

3. Although the Driving Opportunity is a franchise and/or business opportunity under federal, California, Utah, and Indiana law, Defendants have never complied with the applicable registration, disclosure, and anti-fraud provisions of those laws. Defendants made uniform misrepresentations, misleading statements, and concealed material information when offering and selling the Driving Opportunity to the Drivers in derogation of the applicable statutes and common law.

4. Because the turnover rate of Drivers is extremely high (as the Drivers cannot earn any money in the Driving Opportunity), the Defendants run thousands of nationwide weekly advertisements for new recruits via newspapers, employment agencies, and the internet. Examples of such advertisements are attached hereto in Exhibit A and are hereby incorporated by reference. Defendants post such ads and otherwise initially recruit candidates by fraudulently offering them "guaranteed jobs" if the candidates complete training at the ENGLAND truck driving schools located in, among other places, Mira Loma, California and Burns Harbor, Indiana.

5. Defendants' dedicated website at www.crengland.com uniformly and

fraudulently represents that it offers guaranteed jobs to candidates. Excerpts from Defendants' website are attached hereto in Exhibit B and are hereby incorporated by reference. Defendants also employ recruiters that cruise for Drivers in such places as homeless shelters and soup kitchens.

6. Defendants charged the Drivers tuition for ENGLAND truck driving school in the approximate amount of $2,000 if the Drivers paid cash. More commonly, the Drivers had no money and Defendants charged them $3,000 at 18% to be repaid out of future earnings. On information and belief, Defendants also secure federal government funding or reimbursement related to the Drivers' training.

7. In a classic bait and switch fraud beginning with the Driver's recruitment into ENGLAND truck driving school and afterwards, the Defendants subjected the Drivers to a variety of fraudulent acts and manipulative techniques to convince them to purchase the Driving Opportunity instead of seeking the "guaranteed job" that Defendants offered and advertised. If a prospective Driver resisted purchasing the Driving Opportunity and insisted on obtaining employment, Defendants ultimately told them either that they must purchase the Driving Opportunity for at least six months before they will be considered for employment or that they must wait an indefinite period for a truck to become available. Because of Defendants' conduct, the vast majority of all persons completing Defendants' truck driving school purchased the Driving Opportunity.

8. Defendants' conduct is a fraudulent scheme targeting and injuring the Drivers. Defendants defraud the Drivers into paying for all the expenses of transporting goods for Defendants' customers by making uniform false and misleading written and oral representations about the Driving Opportunity and by concealing material facts. The Drivers' expenses paid to Defendants include truck rental, gas, maintenance, computers, and other expenses associated with the Driving Opportunity. Defendants also retain all the money their customers pay for transporting goods.

9. Roberts, McKay, and the Drivers were damaged by paying Defendants money for the Driving Opportunity including for training tuition, truck rental, gas, maintenance,

computers, and other expenses associated with the Driving Opportunity. After paying such expenses, the Drivers had little or no compensation or even owed Defendants money despite the long hours they worked as Drivers. Thus, the Drivers were also damaged because Defendants defrauded them out of their labor.

10. In sum, Defendants have perpetrated a fraud scheme directed from Utah but implemented in California, Utah, and Indiana that has defrauded the Drivers out of their labor and money.

11. Roberts and McKay file this action against C.R. England, Inc., Opportunity Leasing, Inc., and Horizon Truck Sales and Leasing, LLC for themselves and others similarly situated, to redress the unlawful conduct noted in this complaint. Roberts was a Driver from approximately September 2009 to June 2010. McKay was a Driver from approximately July 2009 to September 2009. Roberts and McKay seek to certify an appropriate class action under Rule 23 of the Federal Rules of Civil Procedure that will assert claims under laws of the United States, Utah, California, and Indiana.

JURISDICTION AND VENUE

12. Jurisdiction over Roberts' and McKay's claims is based upon diversity jurisdiction and Class Action Fairness Act provisions under 28 U.S.C. §§ 1332 (a) and (d). Jurisdiction and venue are also based on the Telemarketing and Consumer Fraud and Abuse Prevention Act ("TCFAPA"), 15 U.S.C. § 6104 (a) and (f).

13. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

14. This Court has personal jurisdiction over the Defendants because Defendants purposefully availed themselves of the laws and resources of the State of California by marketing, offering, and selling the Driving Opportunity here and because they have offices and facilities in California including within the district.

15. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all times material herein, C.R. England, Inc, Opportunity Leasing, Inc., and Horizon Truck Sales and

Leasing, LLC have actively been conducting business in the State of California and within the geographic area encompassing the Northern District of the State of California. A substantial part of the events or omissions giving rise to the claims occurred in this judicial district and one or more of the Plaintiffs reside within this District in Sonoma County, California. Defendants regularly target candidates for the Driving Opportunity in this district and disseminate their false advertising in this district. For example, Defendants advertise within the district offers of a "guaranteed job as C.R. England Truck Driver," and the ability to "start your own business as a lease operator," and that "C.R. England…has never laid off a truck driver." Exemplars are contained in Exhibit A. As noted in Exhibit A, Defendants expressly advertise these jobs as being located within the district in Vallejo, San Francisco, San Jose, Oakland, Santa Rosa, Santa Cruz, Cloverdale, Emeryville, San Mateo, and Sunnyvale. On information and belief, Defendants have offices and employ personnel in this district including, but not limited to, American Canyon, California.

16. Venue in this district is also proper pursuant to 15 U.S.C. § 6104 (a) because Defendants are found in and transact business within the district. In addition, the California Franchise Investment Law favors franchise litigation in California by voiding any contractual non-California forum choice.

17. Intradistrict Assignment. The basis for assignment to the San Francisco Division of the Northern District of California is that Roberts resides in, performed, and headquartered his duties as a Driver in Santa Rosa, California.

THE PARTIES

18. Charles Roberts is a citizen of the State of California and resides in Sonoma County, California.

19. Kenneth McKay is a permanent resident of the State of California and resides in San Bernardino County, California.

20. Roberts, McKay, and the Drivers have been injured by Defendants' illegal practices and conduct alleged in this Complaint.

21. Roberts' and McKay's claims for relief alleged in this Complaint are similar to and typical of the Drivers' claims.

22. Defendants C.R. England, Inc and Opportunity Leasing, Inc., are Utah corporations with their principal places of business in Salt Lake City, Utah.

23. Horizon Truck Sales and Leasing, LLC is a Utah limited Liability Corporation with its principal place of business in Salt Lake City, Utah.

24. On information and belief, C.R. England, Opportunity Leasing, Inc., and Horizon Truck Sales and Leasing, LLC do business throughout the State of California. At all material times, the Defendants owned and/or operated a facility related to the offered business opportunities in Mira Loma, California.

25. On information and belief, C.R. England and/or Horizon Truck Sales and Leasing, LLC are the successors in interest to and/or alter ego of Opportunity Leasing, Inc., which entity is the party to certain truck lease contracts with the Drivers.

26. C.R. England, Inc., Horizon Truck Sales and Leasing, LLC, and Opportunity Leasing, Inc. have at all material times hereto been the alter egos of each other because, among other reasons, they have a unity of ownership, share officers and directors, comingle funds and, under the facts presented herein, it would be unjust and inequitable to treat them as separate entities. C.R. England, Inc., Horizon Truck Sales and Leasing, LLC, and Opportunity Leasing, Inc. are further joint venturers with respect to the Driving Opportunity in that they share profits and losses.

27. Plaintiffs are informed and believe and thereon allege that at all times mentioned herein each of the Defendants was acting as the agent, affiliate, partner, joint venture employee, and/or co-conspirator of each of the remaining Defendants, and that all the Defendants' acts alleged herein were within the course or scope of such agency, affiliation, partnership, joint venture, employment, and/or conspiracy. Plaintiffs are further informed and believe and thereon allege that at all times mentioned herein each of the Defendants ratified and or authorized the wrongful acts of the remaining Defendants and each of them, or is otherwise liable for the conduct of the remaining Defendants.

GENERAL ALLEGATIONS

28. Roberts is a former Driver for ENGLAND and HORIZON. ENGLAND is a large national trucking company specializing in the refrigerated transportation of customer goods (e.g. perishable food items). HORIZON is, on information and belief, affiliated with or the alter ego of ENGLAND and is the entity that ENGLAND designates to rent the Drivers trucks and other items necessarily utilized in the Driving Opportunity.

29. In about May 2009, from his home in Santa Rosa, California, Roberts viewed ENGLAND's advertising on its website and found interesting ENGLAND's representations of training, employment, the Driving Opportunity, and the potential income at ENGLAND. Roberts does not currently have the actual 2009 ENGLAND advertising from its website pages but the pages and information therein were very similar, if not identical, to advertising content found on ENGLAND's current nationwide website in May 2011 and downloaded in California and within the Northern District of California.

30. In that May 2011 nationwide website found at www.crengland.com, found at Exhibit B and hereby incorporated by reference, Defendants write on the first page:

> C.R. England offers all truck drivers an excellent opportunity to lease a truck and enjoy the freedoms of owning their own truck driving company. Lease operators enjoy the benefit of a partner that is dedicated to helping them be successful in their truck driving career….
>
> **Truck driving students, who complete the course at a C. R. England Truck Driving School, are guaranteed a job with C. R. England….**[bold emphasis added]
>
> A truck driver with C. R. England has many choices for a career with C. R. England. A driver can own his own business as an Independent Contractor by leasing his own truck. England will lease a truck to the driver for no money down and no credit check, and then contract with the Independent Contractor to deliver freight.

31. Defendants further write in their website:

> C.R. England has provided truck driving jobs to experienced and in experienced truck drivers alike for more than 90 years. Inexperienced truck drivers or those who want to start their truck driving career can attend one of four truck driving schools offered by C.R. England for a truck driver training program considered among the best in the industry. Admission to the C.R. England truck driving school does not require a cosigner, money down, or credit requirements. C.R. England truck driving school includes Commercial Driver's License (CDL) classroom training and behind the wheel training. **Successful graduates of the C.R. England truck driving training program are guaranteed CDL jobs through C.R. England.** [bold emphasis added]
>
> There are also excellent opportunities for experienced truck drivers as C.R. England offers a variety of career choices. You can choose these career paths:
> Company Driver
> Company Team Driver
> Driver Trainer
> Independent Contractor or Lease Operator

Exhibit B, pp. 93-94.

32. On the training page of that website, ENGLAND represents that "You are GUARANTEED a job upon successful completion of our training program." Exhibit B, p. 78.

33. With respect to the Driving Opportunity, ENGLAND and HORIZON made factual representations in pertinent part on ENGLAND's May 2011 nationwide website:

> Own Your Own Business As An Independent Contractor!
>
> You can own your own business by leasing a truck and becoming and independent contractor for C.R. England. You can lease a truck with no money down and then contract with C.R. England to deliver freight. By leasing your own truck you have the opportunity of making more money than a company driver.
>
> ***
> As of January of 2011, many independent contractors operating solo have earned big money! Examples include:
>
> - $4,600 per month for a solo operating his truck on a lease purchase plan!
> - $5,500 per month for a solo operating his truck that he's purchased and now runs under C.R. England's operating authority!
> - Nearly $3,000 per month for a team with less than 6-months

experience operating his truck on a short-term lease plan!

As of January of 2011, many independent contractors operating as a team have earned big money! Examples include:

- $9,800 per month for a team operating his truck on a lease purchase plan!
- $12,000 per month for a team operating his truck that he's purchased and now runs under C.R. England's operating authority!
- Nearly $8,500 per month for a team with less than 6-months experience operating his truck on a short-term lease plan!

Exhibit B, pp. 97-100.

34. Defendants' website advertising noted in preceding paragraphs 29, 30, and 32 constitute the offer of unregistered business opportunities and/or franchises. Defendants therein also make false and misleading representations including false, misleading, and unlawful financial performance representations. Specifically, Defendants concealed the true facts that persons leasing trucks do not have the opportunity to make more money than company drivers, that not many independent operating solo or as team earn big money (as defined in the examples), and that the specific examples of income levels are fabricated by Defendants. Defendants concealed that most Drivers fail within a year or two and do not make any significant net earnings as a Driver, if they earn anything at all. That most Drivers fail within 2 years is indisputable. In an interview for a January 14, 2008 USA today article, C.R. England chairman Dan England "said the truckers' lifestyle is so grueling that his company, which has about 4,500 drivers, faces an annual turnover of 100% -140%. Exhibit K, page 286, hereto and hereby incorporated by reference. Further, an analysis of England's "leased operator" anniversary dates confirms the high turnover and failure rate. For example, of the 186 Drivers that had a one year anniversary in May of 2010, only 42 (or 22%) had a May 2011 two year anniversary. Exhibit J, page 265 (column beginning with Driver Jeff Adger) compared to page 264 (column beginning with Driver Jeff Adger). Similarly, of the 165 Drivers that had a one year April 2010 anniversary, only 30 (or 18%) had a May 2011 two year anniversary. And these figures do not include the substantial number of Drivers that fail before their first

anniversary.

35. Induced by the descriptions Roberts viewed, which were similar to those noted above in paragraphs 29 -33, Roberts submitted an online application from his home in Santa Rosa, California. Within days thereafter, an ENGLAND representative from Utah called Roberts at his home in Santa Rosa. The ENGLAND representative interviewed Roberts at length about his background and asked for his tax returns, which Roberts then sent from California to ENGLAND. During this call, the ENGLAND representative touted ENGLAND and the income opportunity it was offering.

36. An ENGLAND representative subsequently called Roberts at his home in Santa Rosa and told him that ENGLAND wanted him to attend ENGLAND's training school at its facility in Mira Loma California. During this call, the ENGLAND representative touted ENGLAND and the income opportunity it was offering. The ENGLAND representative told Roberts that ENGLAND would purchase a Greyhound bus ticket for him and transport him from Santa Rosa to Mira Loma, California and that the bus ticket would be waiting for him at the Santa Rosa bus station. The representative never mentioned to Roberts the high turnover and failure rates of Defendants' drivers, that Drivers did not and could not earn what the website had represented, or that the Defendants were baiting him with promises of guaranteed employment but planned to switch him to the Driving Opportunity. During this call, the ENGLAND representative never mentioned that ENGLAND could not possibly employ the hundreds or thousands of students it trains annually through its driving schools.

37. In about June 2009, Roberts picked up the bus ticket that ENGLAND had purchased and boarded a bus in Santa Rosa bound for training at ENGLAND's truck driving school in Mira Loma. ENGLAND lodged Roberts and about 130 or so other Driver candidates at the nearby ENGLAND owned hotels. At training, Roberts met other candidates, two of whom told Roberts that they were homeless and had been personally recruited by ENGLAND representatives while at a homeless shelter and standing in line at a soup kitchen.

38. The first days at training consisted of background checks and physicals. Roberts and others passed and went on to training. On about the third day of training,

ENGLAND provided certain paperwork and collected the training tuition payments from the candidates. In Robert's case, ENGLAND presented him with a note in favor Eagle Atlantic Financial (another apparent ENGLAND affiliate) for $3,000 with 18% interest.

39. During training in Mira Loma, pursuant to a common course of conduct implemented at all Defendants' training schools, ENGLAND and HORIZON presented to Roberts and all other Drivers the "England Business Guide" (the Guide). Excerpts of the Guide are attached hereto as Exhibit C and hereby incorporated by reference. In the Guide, ENGLAND and HORIZON made representations about ENGLAND employment opportunities and the Driving Opportunity. Defendants made factual representations in the Guide about the Driving Opportunity and the income it offered, including, but not limited to:

a. Graphs showing comparative income levels (in specific dollar amounts) between those purchasing the Driver Opportunity and employee drivers over a ten-year period accompanied by the caption that "independent contractors make, more money faster than company drivers do."

b. A graph showing that those purchasing the Driving Opportunity averaged "33% more miles than company drivers do. More miles can equal more money." Another graph stating that in "this graph, you can see that 21% of independent contractors make more than $50,000 per year. Only 12% of company drivers make that same amount."

c. An exemplar spreadsheet projecting average weekly gross income of $4,247.71 and net income $1,013.83 along with other relevant financial projections.

Exhibit C, pp. 111-113.

40. Defendants made the following relevant misrepresentations stating in pertinent part in the Guide:

> C.R. England welcomes you in this new business relationship. The independent contractor (IC) program was created for drivers who wish to succeed while being their own boss. We are excited to help your business make money. The England Business Guide will give

> you several tools and examples that will help you accomplish your goals and prosper as an independent contractor.
>
> Let's see what other independent contractors have to say about their business experiences with C.R. England:
>
> - "The money is fantastic."
> - "I've come a long way working with this company. When I came here, I didn't have anything. Now I've got a house, new cars, and money in the bank."
> - "I decided to become an independent contractor when I looked at the amount of money I could make as an independent contractor. It basically doubled my income."
> - "The reason I decided to become an independent contractor was because of the money…"

Exhibit C, p. 104.

41. Defendants' representations noted in the preceding paragraphs 38 -40 constitute the offer of unregistered business opportunities and/or franchises. Defendants therein also make false and misleading representations including false, misleading, and unlawful financial performance representations. Defendants concealed the true facts that "the truckers' lifestyle is so grueling that [C.R. England] faces an annual turnover of 100% -140%" (see Exhibit K, page 286), that persons leasing trucks do not "make more money faster than company drivers do," that independent contractors do not average 33% more miles than company drivers, that 21% of independent contractors do not earn more than $50,000, that the pro formas were false, and that the testimonials were false and fabricated. Defendants concealed that most Drivers fail within a year or two and do not make any significant net earnings as a Driver, if they earn anything at all.

42. Kenneth McKay is a former Driver for ENGLAND and HORIZON and his experience was similar to Roberts' experience. In about late January 2009, from his home in San Jacinto, California, McKay viewed ENGLAND's advertising on its website and found interesting the website's representations of training, employment, the Driving Opportunity, and the potential income at ENGLAND. As with Roberts, McKay does not currently have the actual 2009 ENGLAND advertising from its website pages but the pages and information therein were very similar, if not identical, to advertising content noted above in paragraphs 29-31.

43. Induced by the information McKay viewed, McKay submitted an online application to ENGLAND. Shortly thereafter, an ENGLAND representative from Utah called McKay at his home in San Jacinto. The ENGLAND representative interviewed McKay at length about his background. During this call, McKay asked the representative if he would earn at least $30,000 per year. The representative told McKay that this would be "no problem" and that ENGLAND drivers' earned more than $30,000 per year.

44. An ENGLAND representative subsequently called McKay at his California home and told him that ENGLAND wanted him to attend ENGLAND training school at its facility in Mira Loma, California. McKay again asked the ENGLAND representative if he would earn at least $30,000 per year and was again assured by ENGLAND that he would. The representative never mentioned to McKay the true facts of high turnover and failure rates of Defendants' Drivers, that most Drivers never earned anything close to $30,000 per year, or that Defendants were baiting him with promises of guaranteed employment but planned to switch him to the Driving Opportunity.

45. McKay attended ENGLAND training school at Mira Loma in approximately February 2009. As with Roberts, McKay Defendants presented and McKay signed a note contract in favor Eagle Atlantic Financial for $3,000 with 18% interest.

46. At ENGLAND training school, ENGLAND and HORIZON gave McKay and others the "England Business Guide" and told them to carefully review it. In the Guide, ENGLAND and HORIZON made representations about ENGLAND employment opportunities and the Driving Opportunity and the income it offered as noted in paragraph 38 and 39. Pursuant to a common pitch and script, Defendants training school instructors sought to dissuade all candidates from seeking employment in favor of purchasing the Driving Opportunity by making statements such as the following: "no matter what, a driver who leases makes more then a company driver," "if you think you're going have a decent income you are wrong and need to lease," "if you want the income you expect while being a cross-country driver you need to lease," "who here doesn't want to make money," "if you go company you will be disappointed," and "who wants to end up saying welcome to McDonalds may I help you,

because if you don't listen that's where your going to end up." These representations were false and/or misleading. Defendants concealed the true facts that Drivers purchasing the Driving Opportunity did not earn more than company drivers, that the Driving Opportunity was a demonstrable failure, that most Drivers failed within a year or two, and that Drivers did make significant net earnings if any at all.

47. After completing ENGLAND's truck driving school and securing a commercial driver's license, Roberts, McKay and other Drivers spent approximately 90 days on the road as "back up" drivers to another ENGLAND driver in periods known as Phase I (30 days) and Phase II (60 days) training. At the end of Phase II, Defendants returned all Drivers to either Defendants' headquarters in Salt Lake City, Utah or their facility in Burns Harbor, Indiana.

48. Regardless of the whether Defendants sent the Drivers to Salt Lake City, Utah or Burns Harbor, Indiana, Defendants' pursued the following course of common conduct at each location with respect to all Drivers post Phase II. Under the guise of "additional training" and/or "evaluation" classes, Defendants pressured and conned Drivers into purchasing the Driving Opportunity. Defendants told the Drivers that purchasing the Driving Opportunity would provide them greater income and that they would be able to drive new or newer trucks that they could take pride in. Conversely, Defendants dissuaded Drivers from seeking employment by telling them, among other things, that employees made less money and would be assigned older and decrepit trucks. Defendants also, for the first time, gave the Drivers a form document titled "The Horizon Truck Sales and Leasing Independent Contractor Program" on the first page and "C.R. England….Independent Contractor Program" on subsequent pages. A copy of this document is attached as Exhibit D and hereby incorporated by reference. Defendants told the Drivers to review the document carefully. This document constituted Defendants' offer of a business opportunity and/or franchise to the Drivers and it contained false and misleading representations including false, misleading, and unlawful financial performance representations. Specifically, this document represented in pertinent part:

This program allows you to further your career by becoming and

> Independent Contractor. You can lease a truck and avoid the hassles and initial expenses of buying a truck….Program highlights are:
>
> - An operating agreement with C.R. England
> - BEST PAY in the industry, earn up to $1.53. per mile…
> - Friendly priority dispatch with an average length of haul of 1,500 miles
> - Successful business plan with mentoring and support staff…
>
> Please review the enclosed lease 'pro-forma.'

49. Defendants' representations in Exhibit D were false, misleading, and unlawful financial performance representations. Specifically, Defendants concealed the true facts that Defendants did not offer the "best pay in the industry," did not offer up to $1.53 per mile driven, did not offer an average length of haul of 1,500 miles, and did not offer a "successful business plan." The true facts were that Defendants offered the worst pay in the industry, payment schemes that did not pay drivers for all miles driven, an average length of haul that was far less than 1,500 miles, and its "successful business plan" was a demonstrable failure with far more than 100% annual Driver turnover as noted in Exhibit K, page 286, and J pages 281 and 265.

50. The pro formas found in Exhibit D constitute financial performance representations and are unlawful when presented outside required franchise and/or business opportunity disclosures documents. Moreover, the pro formas were false and/or misleading in that they:

a. unrealistically assume earnings based on a 52 week year
b. assume a false average mileage rate of .90 per mile;
c. made false and/or misleading and/ or incomplete representations and assumptions about the amount of income expenses. The pro formas did not include all of the expenses a Driving Opportunity purchaser would incur in connection with the Driving Opportunity thereby leading to a

false and/or misleading bottom line representation in the weekly and annual income sections of the pro forma.

d. failed to disclose the high turnover and failure rates of Defendants' drivers or that Defendants and that few, if any, Drivers achieved anything close to the represented income and expenses.

51. Defendants at this time rebuffed any Drivers that stated they wanted to be employees and take advantage of the Defendants' promises of guaranteed employment. Defendants told such persons they would have to purchase the Driving Opportunity and otherwise pressured, shamed, or manipulated them into purchasing the Driving Opportunity using similar techniques to those noted in paragraph 46. For those Drivers that remained unpersuaded and persisted in seeking employment, ENGLAND and HORIZON eventually told them either there were no available positions and/or that they had to purchase the Driving Opportunity, take it or leave it, for a minimum of six months before being considered for employment.

52. Indeed, at the end of Phase II training, ENGLAND told McKay that there were no positions available for company employee drivers and that he would have to purchase the Driving Opportunity on a three-year lease. McKay declined and instead insisted on employment or a maximum six-month lease. At this point, Defendants told McKay (and others) that they had no trucks available for six-month leases despite McKay observing a yard full of trucks. These representations were false and were made to coerce McKay and others to purchase the Driving Opportunity. Indeed, Defendants told McKay and other Drivers that while trucks for company drivers were not available, if they signed a two or three-year lease deal they could begin immediately and trucks were immediately available. Otherwise, Defendants told McKay and other Drivers that they would have to wait. McKay held out for a few weeks at Defendants' facility in Utah until Defendants finally offered him a Driving Opportunity under a six-month lease. But many other Drivers he observed that were hungry (literally, as Defendants provided Drivers a mere $7.00 per day for food at the company store/restaurant), tired, and lacking any income capitulated and purchased the Driving Opportunity under two or three-year

leases.

53. After the Drivers had agreed to purchase the Driving Opportunity, Defendants for the first time presented the Drivers with the actual Driving Opportunity contracts described below.

54. As to all Drivers, Defendants' conduct, representations, and distribution of documents noted in the preceding paragraphs 47 to 52 occurred in either Utah or Indiana and constituted the offer of a business opportunity and/or franchise under the laws of those states. Defendants did not register the business opportunity and/or franchise or provide the Drivers with disclosure documents required by Utah and/or Indiana law. As noted in paragraphs 47 to 52, Defendants also made false and misleading representations including false, misleading, and unlawful financial performance representations.

55. In reliance on the information Defendants had provided to that point as well as the omitted material information, Roberts, McKay, and the Drivers signed the nonnegotiable form "Independent Contractor Operating Agreement" (the "Contractor Agreement") that Defendants presented to each of them. As to all Drivers, the Contractor Agreement was executed in either Utah or Indiana. Roberts' Contractor Agreement is attached as Exhibit E to this complaint and was executed in Utah by Roberts and ENGLAND on or about September 29, 2009. McKay's Contractor Agreement is substantially identical to Exhibit E and was executed by McKay and ENGLAND in Utah on or about July 13, 2009.

56. At the same time and place that the Contractor Agreement was presented to the Drivers, Defendants presented each Driver a nonnegotiable form "Truck Sales and Leasing Vehicle Lease Agreement" (the "Lease Agreement") that they required each Driver sign. Roberts' Lease Agreement is attached as Exhibit F to this complaint and was executed in Utah by Roberts and HORIZON on or about September 29, 2009. McKay's Lease Agreement is substantially identical to Exhibit F and was executed by McKay and HORIZON in Utah on or about July 13, 2009.

57. The Lease Agreements that Roberts and McKay signed in Utah on September 29, 2009 and July 13, 2009, respectively, are facially between them and an entity stated as

Opportunity Leasing, Inc. d/b/a Horizon Truck Sales and Leasing. However, according to records from the Utah Department of Commerce, Division of Corporations and Commerce, Opportunity Leasing, Inc.'s d/b/a as Horizon Truck Sales and Leasing expired on August 28, 2008 for the reason that Defendants created a "different entity." These records are attached as Exhibit G and hereby incorporated by reference. The records also show that Horizon Truck Sales and Leasing, LLC was created on August 28, 2008. On information and belief, Horizon Truck Sales and Leasing, LLC is the successor in interest or otherwise to Opportunity Leasing, Inc. and is a responsible party to the Lease Agreements with some, if not all, the Drivers. On information and belief, all of the Drivers performance under the Lease Agreement was tendered by Drivers to HORIZON and to ENGLAND. On information and belief, HORIZON and ENGLAND were all entities intended to perform and be bound by the Lease Agreement. The plaintiffs will amend this Complaint if and as necessary should discovery provide further relevant information about the contractual relationship between the Drivers and HORIZON.

58. Defendants' presentation, and the parties' respective executions, of the Lease Agreement and the Contractor Agreement were part of a single transaction and constituted the sale of business opportunities and/or franchises under applicable law.

59. The Contractor Agreement and Lease Agreement coupled with the terms and conditions under which ENGLAND and HORIZON required the Drivers to train, perform, work, and pay fees constitute a franchise under federal law, California law, and Utah law.

60. The Contractor Agreement and Lease Agreement coupled with the terms and conditions under which ENGLAND and HORIZON require the Drivers to train, perform, work, and pay fees constitute a "business opportunity" and/or "seller assisted marketing plan" under federal law, California law, Utah law, and Indiana law.

61. ENGLAND and HORIZON at all material times were and are required to comply with laws governing the sale and registration of franchises and/or business opportunities but they have never done so. ENGLAND's and HORIZON's failure to register and make the required disclosures in the required form in the offer and sale of the Driving Opportunity under these laws triggers a strict liability right to rescission and damages on behalf of all Drivers. This

Complaint serves as notice to the Defendants of the Drivers seeking rescission.

62. In addition to making unlawful financial performance representations under the applicable franchise and/or business opportunity statutes, ENGLAND and HORIZON's representations and advertising noted in paragraphs 4, 5, 29- 32, 38-39, 45, 47, 49, 50-52, and the exhibits referenced therein, were willfully false, misleading, and omitted material information in connection with the offer and sale of franchises and/or business opportunities. The noted conduct also runs afoul of applicable consumer protections statutes.

63. Defendants fraudulently induced and misled Roberts, McKay and the Drivers into signing the Contractor Agreement and Lease Agreement by misrepresenting and concealing material facts noted above in paragraphs 4, 5, 29- 32, 38-39, 45, 47, 49, 50-52 and because, at all material times:

a. ENGLAND and HORIZON knew but concealed that they did not guarantee students employment but rather engaged in a fraudulent bait and switch to get Drivers to purchase the Driving Opportunity.

b. ENGLAND and HORIZON knew but concealed that ENGLAND could not possibly guarantee students employment because ENGLAND could not (and did not) employ all of the students Defendants induced to enroll in their training school.

c. ENGLAND and HORIZON knew but concealed that the vast majority Drivers purchasing the Driving Opportunity failed within a year or two because the Drivers could not make enough money and that "the truckers' lifestyle is so grueling that [C.R. England] faces an annual turnover of 100% -140%" (see Exhibit K, page 286).

d. ENGLAND and HORIZON knew but concealed that the vast majority Drivers purchasing the Driving Opportunity did not make as much money as company drivers making the representations noted in paragraph 32, 38, 45, 47, 48, 49, 50, and exhibits there referenced false and misleading.

e. ENGLAND and HORIZON knew but concealed that no significant

portion of those that had purchased the Driver Opportunity earned anything approaching what they had represented as noted in paragraphs 32, 38, 45, 47, 48, 49, 50, and exhibits there referenced false and misleading.

f. ENGLAND and HORIZON knew but concealed the extremely high failure and turnover rate of those purchasing the Driver Opportunity in order to perpetuate their fraud scheme.

g. ENGLAND and HORIZON knew (e.g. Exhibit K, page 286) but concealed that no significant portion of those that had purchased the Driver Opportunity had made a "career" of driving for Defendants making that representations noted in paragraph 30 and elsewhere (e.g. Exhibit H, page 248) false and misleading.

h. ENGLAND and HORIZON knew but concealed that most of the Drivers ended up leaving the system in debt to ENGLAND and HORIZON and its affiliates under the contracts.

i. ENGLAND and HORIZON knew of these inaccuracies and the falsity of their advertising, website representations, the Guide projections and information, the pro formas, the in person representations, and intended them to induce Roberts, McKay, and the Drivers to purchase the Driving Opportunity.

64. In sum, ENGLAND and HORIZON concealed that the entire Driving Opportunity was a fraud scheme designed to defraud the Drivers out of their labor and to have the Drivers pay the Defendants' expenses associated with transporting goods.

65. Roberts and McKay challenge ENGLAND's and HORIZON's fraud in the sale of franchises and/or business opportunities as unlawful under federal, California, Indiana, and Utah law. Roberts and McKay also challenge ENGLAND's and HORIZON's false and fraudulent advertising in the sale of the truck driving school services as unlawful under California and Utah law.

66. Roberts and McKay assert all claims as a conventional "opt out" class action under Rule 23 of the Federal Rules of Civil Procedure. The Utah Consumer Sales Practices Act claim is asserted, in the alternative, as an opt-in class action under the terms of that statute should Rule 23 not control.

67. The Class Action is brought on behalf of all persons who have been, are and/or will be associated with ENGLAND and HORIZON as Drivers under the Contractor Agreement and Lease Agreement during the respective applicable statutory limitations periods preceding the filing of this complaint to the present.

68. Roberts and McKay, on behalf of themselves and those similarly situated, seek from the Defendants all available statutory and common law remedies including compensatory and exemplary damages, restitution, disgorgement, attorneys' fees, costs, interest, declaratory relief, and injunctive relief.

CLASS ACTION ALLEGATIONS

69. Roberts and McKay propose a Class consisting of all Drivers nationwide that purchased the Driving Opportunity, which will be afforded a remedy under applicable laws.

70. Roberts and McKay propose the following sub-classes:

a. A Utah Class, consisting of all Drivers who physically signed the Lease Agreement and Contractor Agreement in Utah, which will be afforded a remedy under applicable Utah laws;

b. A California Class, consisting of all Drivers that were offered the Driving Opportunity by Defendants while physically present in California, which will be afforded a remedy under applicable California laws;

c. An Indiana Class, consisting of all Drivers who physically signed the Lease Agreement and Contractor Agreement in Indiana, which will be afforded a remedy under applicable Indiana laws;

d. A Telemarketing Act Class, consisting of all Drivers whose actual damages exceed $50,000 and that were recruited by Defendants via more

than one interstate phone call, which will be afforded a remedy under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101- 6108 and the Federal Trade Commission's Telemarketing Sales Rules ("TSR"), 16 C.F.R. Part 310.

71. This case may be appropriately maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure because all of the prerequisites set forth under Rule 23 (a) are met.

72. To the extent required in this federal action, this case may be appropriately maintained as a class action under the Utah Consumer Sales Practices Act because all of the prerequisites set forth in Utah Code 13-11-20 are met.

73. Members of the Class are so numerous that joinder of all such members is impracticable if not impossible. Although the exact size of the Class is unknown, it is believed and alleged that the number of persons that have worked as Drivers for ENGLAND and HORIZON during the class period nationwide exceeds 5,000.

74. There are questions of law and fact common to the Class with respect to the liability issues, relief issues, and anticipated affirmative defenses. Common questions of law and fact predominate over questions effecting only individuals. Fed.R.Civ.P. 23 (b)(3); U.C.A. 1953 § 13-11-20 (e) (iii). Specifically, common issues include, but are not limited to,

a. Whether ENGLAND and HORIZON unlawfully sold (and sell) franchises in violation applicable federal, California, and Utah laws;

b. Whether ENGLAND and HORIZON unlawfully sold (and sell) business opportunities in violation applicable federal, California, Utah and Indiana laws;

c. Whether ENGLAND and HORIZON made misrepresentations and concealed material facts in the sale of franchises and/or business opportunities in violation of applicable federal, California, Utah and Indiana statutes and applicable common law misrepresentation principles;

d. Whether the ENGLAND and HORIZON's conduct noted above

constitute unfair competition and/or false advertising in violation of Business and Professions Code section 17200 et seq. and section 17500 et seq.;

e. Whether the ENGLAND and HORIZON's conduct were deceptive acts or practices or unconscionable acts or practices in violation of the Utah Consumer Sales Practices Act;

f. Whether the ENGLAND and HORIZON's conduct violated the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101- 6108 and the Federal Trade Commission's Telemarketing Sales Rules ("TSR"), 16 C.F.R. Part 310.

g. Whether the members of the Class sustained damages and, if so, the proper measure of such damages; and

h. Whether Defendants conduct warrants preliminary and/or permanent injunctive, declaratory, and ancillary relief.

75. The prosecution of separate actions by Class members would create a risk of inconsistent or varying adjudications with respect to individuals that would establish incompatible standards of conduct for parties opposing the class. Fed.R.Civ.P. 23 (b)(1)(A).

76. The prosecution of separate actions would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, and substantially impair, or impede their ability to protect their interests. Fed.R.Civ.P. 23 (b)(1)(B).

77. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Fed.R.Civ.P. 23 (b)(3). More specifically, members of the Class have little or no interest in individually controlling the prosecution of separate actions. Fed.R.Civ.P. 23(b) (3) (A).

78. Roberts and McKay will fairly and adequately protect the interests of the Class because they and their counsel possess the requisite resources and experience to prosecute this case as a class action.

79. Roberts and McKay are not aware of any other litigation concerning the instant controversy already commenced. Fed.R.Civ.P. 23(b)(3)(B).

80. It is desirable to concentrate the litigation of the claims in this Court because ENGLAND and HORIZON do substantial amount of business in California and this district. Defendants advertise and recruit heavily in this district for candidates to purchase the Driving Opportunity. This advertising is alleged to be false and misleading and the plaintiffs seek to enjoin such advertising in California under California Business and Professions code sections 17200 and 17500.

81. This action is manageable as a class action because, compared to any other method such as individual interventions or the consolidation of individual actions, a class action is more fair and efficient. Fed.R.Civ.P. 23(b) (3) (D).

82. Roberts and McKay know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. The names and addresses of the Class are available from ENGLAND and HORIZON. Roberts and McKay contemplate providing a notice or notices to the Class, as approved by the Court, to be delivered through the United States mail or as otherwise directed. The notice or notices shall, among other things, advise the Class that they shall be entitled to "opt out" of the Class if they so request by a date specified within the notice, and that any judgment, whether favorable or not, entered in this case will bind all class members except those who affirmatively exclude themselves by timely opting out.

FIRST CLAIM FOR RELIEF

(Violation of the California Franchise Investment Law)
(Roberts, McKay, California Class vs. Defendants)

83. Plaintiffs incorporate by reference Paragraphs 1- 82 of this Complaint.

84. Since at least 2007 to the present, ENGLAND and HORIZON have been offering franchises to the public in California and selling franchises to the California Class. ENGLAND and HORIZON were and are franchisors under California law and federal law.

85. In or about July and September 2009, ENGLAND and HORIZON offered

and sold McKay and Roberts, respectively, the Driving Opportunity, which constituted a franchise under the California Franchise Investment Law (CFIL), Cal. Corp. Code § 31000 et seq.

86. The CFIL defines a franchise in California Corporations Code section 31005 as follows:

> (a) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
>
> (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
>
> (2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and
>
> (3) The franchisee is required to pay, directly or indirectly, a franchise fee.

87. Significantly, the definition in section 31005(a)(1) is stated in the disjunctive: "offering, selling or distributing goods or services." The double use of the disjunctive recognizes the distinctions between: offering goods; selling goods; distributing goods; offering services; selling services; and distributing services and evidences an intention to designate alternative or separate categories. The grant of the right to engage in a business that performs any one of these six categories is sufficient to satisfy that part of section 31005(a)(1).

88. The CFIL defines a "franchise fee" in Cal.Corp.Code § 31011, in pertinent part, as follows:

> "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any payment for goods and services.

89. The Driving Opportunity Defendants' offered Roberts, McKay, and the California Class satisfies each element of the CFIL's definition of a franchise. The Driving

Opportunity is reflected in a contract or agreement in part expressed, in part implied, in part oral, and in part written, between two or more persons as is described in more detail below.

90. The "between two or more persons" element of section 31005 is satisfied as the Defendants are the contracting franchisor parties and Roberts, McKay, and/or members of the California class are the contracting individual franchisee parties.

91. The Driving Opportunity is a specific program Defendants offered Roberts and McKay alternatively called the "Horizon Truck Sales And Leasing Program" and "C.R. England Independent Contractor Program" as noted in exhibit D hereto. The program expressly requires a truck lease with Horizon (in name only, Plaintiffs contend Horizon and England are alter egos and/or affiliates, and/or joint venturers) and an Independent Contractor Agreement with C.R. England. Exhibit D further states that via the Driving Opportunity, the Defendants provides to the Drivers dispatching services, a successful business plan, bookkeeping, and maintenance support services. *Id.*

92. The franchise "contract or agreement" at issue here is reflected in the Lease Agreement, the Contractor Agreement, Exhibit D hereto, the England Business Guide, various oral and written representations, and the conduct of the parties as otherwise noted herein.

BUSINESS OFFERING, SELLING, OR DISTRIBUTING GOODS OR SERVICES

93. Via the Driving Opportunity, Defendants granted Roberts, McKay, and the California Class the right to engage in a "business of offering, selling or distributing goods or services" with the meaning of CFIL section 31005(a)(1). Specifically, the Defendants' website advertising and other materials are replete with offers of a "right to engage in a business." Defendants advertise within the district the ability to "start your own business as a lease operator," (Ex. A, p. 73) and "[o]wn your own business as an Independent Contractor!" Ex. B., p 97. The Defendants' told Roberts and McKay and others that they would provide them a "[s]uccessful business plan with mentoring and support staff" [Ex. D, p. 114]. The Guide states "C.R. England welcomes you in this new business relationship. The independent contractor (IC)

program was created for drivers who wish to succeed while being their own boss. We are excited to help your business make money" and "You are now the boss and the owner of your own company." Ex. C, p. 104. Defendants also specifically orally told Robert and McKay while in training in California that the Defendants offered a lease program which granted them the right to engage in their own business. And in meetings prior to their signing the contracts in Salt Lake City, Defendants told Roberts and McKay that the program Defendants was offering them constituted the right to engage in an independent business.

94. The business Defendants granted Roberts, McKay, and the California class was for the purpose of offering, selling, or distributing the following goods and/or services: big rig truck driving equipment (i.e. the tractor the Drivers lease from Horizon), labor, driving, delivery, loading, unloading, and related services. The term "offer" is synonymous with extend, present, proffer, tender, afford, or provide. "Distribute" or "distributing" means to give out or deliver.

95. To whom would Roberts, McKay, and the California Class (and all the Drivers) offer, sell, or distribute goods or services? In short, to both C.R. England and to third party customers. Defendants granted the Plaintiffs concurrently 1) the right to engage in a business offering, selling, and/or distributing big rig truck driving equipment (a good), driving (a service), labor (a service), transport (a service), pick-up (a service), delivery (a service), loading (a service), unloading (a service), and other related services to C.R. England and further directly and personally offering (i.e. providing) and distributing (i.e. delivering) such services to third party customers whose goods were being picked-up, loaded, transported, unloaded, and delivered; 2) the right to engage in a business offering, selling, and/or distributing big rig truck driving, labor, transport, pick-up, delivery, loading, unloading, and other related services to third party customers with C.R. England acting as an intermediary; and 3) the right to engage in a business offering and/or distributing services to third party customers, to wit, labor, transportation of goods, pick-up of goods, delivery of goods, loading of goods, unloading of goods, unpacking of good, inventory control services and other related services. The facts demonstrate that the Driving Opportunity can be fairly viewed in each of these ways because

Defendants represented to Roberts, Mckay, and the California class, and the circumstances show, that the business had all of these characteristics. Indeed, in oral presentations in California and Salt Lake City, the Defendants told Roberts and McKay that the business Defendants offered had these characteristics.

96. The Contractor Agreement provides that Plaintiffs' businesses would offer, sell, and/or distribute goods and services to C.R. England. With respect to offering and selling goods and services, section 1. A of the Contractor Agreement provides that: "During the term of this Agreement, YOU shall lease to US and operate the Equipment, furnishing drivers and all other necessary labor to transport, load and unload, and perform all other services necessary to the movement from origin to destination of, all shipments offered by US and accepted by YOU." Ex. E, ¶ 1 A. p. 121. "Equipment" is defined in the Contractor Agreement as a good, to wit, the tractor Defendants rent to the Drivers. Ex. E, p. 121. "YOU are in lawful possession of equipment, which is suitable for use in OUR business as more fully described hereafter on Attachment 1 of this Agreement ("Equipment"). Ex. E, p. 21. Attachment 1 goes on to describe the truck lease from Horizon as the equipment. Ex. E, p.138. Thus, Defendants granted the Plaintiffs the right to engage in a business where the Drivers rented the Equipment (ostensibly from Horizon) and then offered, sold, or distributed back to C.R. England.

97. The Contractor Agreement also provided that the Drivers would offer, sell, or distribute specific services (i.e. "furnishing drivers and all other necessary labor to transport, load and unload, and perform all other services necessary…") to C.R. England. And in oral presentations in California and Salt Lake City, the Defendants told Roberts and McKay that the business Defendants offered required them to provide customer service to the customers and comply with customers' requests for service. Thus, even if the Drivers can be viewed as only providing services to C.R. England, the Drivers, in any event, engaged in a business of "offering" and "distributing" these services in turn to third party customers. Ender the express written, oral, and implied terms, the Drivers had responsibilities to physically offer, provide, and distribute services directly to the customers. Therefore, Defendants granted Roberts, McKay, and the California Class the right to engage in a business of offering or distributing services

with the meaning of CFIL section 31005(a)(1).

98. Roberts, McKay, and the California Class (as well as all of the Drivers) distributed and provided a variety services directly to third party customers and often acted at the customers' direction to meet the customers' needs. For example, when making deliveries, customers often required Roberts, McKay, and the California Class to "break down" pallets by separating by type and brand the various items that may have been packed on a single pallet by the shipper. The tasks of unloading and breaking down pallets would take as much as 3 hours and could be back breaking work in very difficult conditions – particularly for frozen loads where unloading occurred in freezer warehouses kept at minus 10 degrees Fahrenheit.

99. At every delivery and pick-up, Roberts, McKay, and the California Class were required to perform a careful examination and inventory of all items for the benefit of the customers. The examination and inventory included working with the customers (both the shippers and receivers) in checking the quantities of various goods, the identity of the goods, the condition and quality of the goods, and comparing the goods delivered with the respective manifests. This was a time consuming task. The Drivers were also often times held responsible to the customers for missing and/or damaged goods. For example, on one occasion, Charles Roberts was charged for cheesecakes accidentally damaged on a delivery for the Cheesecake Factory.

100. To Roberts, McKay, and the California Class, the customers for whom they provided pick-up, delivery, transport, and the related services were their customers. These were persons to whom they were responsible. C.R. England expressly recognized the importance of the Drivers' service responsibilities to the customer. The Contractor Agreement provided under the section entitled "Customer Requirements" that "Reasonable customer satisfaction is of utmost and critical importance and the responsibility of each party to this Agreement, and YOU agree to meet all customer requirements approved by US that are reasonably related to transporting, loading, and unloading freight that do not conflict with the terms of this Agreement." Exhibit E, ¶ 9, p. 125.

101. In oral presentations in California and Salt Lake City, the Defendants told

Roberts and McKay that the business Defendants offered required them to provide customer service to the customers and comply with customers' requests for service. In sum, at a minimum, the third party customers were customers of both C.R. England and the Plaintiffs and Drivers. As a consequence, under the express written, oral, and implied terms, the Drivers had direct responsibilities to offer, provide, and distribute services directly to the customer and therefore Defendants granted Roberts, McKay, and the California Class the right to engage in a business of offering or distributing services with the meaning of CFIL section 31005(a)(1).

102. Defendants' "business guide" and other materials also characterize the Driving Opportunity as one in which the Plaintiffs provide services to customers other than C.R. England and that C.R. England was acting as an intermediary for the Roberts, McKay, and the California Class with respect to those customers. Defendants expressly told Roberts, McKay, and the California Class in writing that

> [Defendants provided] a [s]uccessful business plan with mentoring and support staff (Ex. D, p. 114)
>
> I run my own business and C.R. England is my business partner
>
> You will have the independence of a business owner with the support of a helpful and established team at C.R. England.
>
> "Do you have experience pricing, selling, and/or booking your own freight? For many the answer to that question is 'no.' The staff at C.R. England consists of experienced load planners and bookers who can provide various options to get the maximum length of haul."

Ex C, 105-107.

Defendants also told Roberts, McKay, and the Drivers that C.R. England would provide them with assistance in running their own business including pricing, freight acquisition, and booking those jobs with customers.

103. Defendants' described the services they would perform for the Drivers.

> Having the desire to succeed and the business skills you need are only a few pieces of the puzzle. What do you really need to start your own trucking business? Do you have a truck? Where do you go to find freight? What are other things needed to begin a trucking business? We would suggest the following:

> Freight, Trailer, Truck, Support Staff, Accounting & Tax Service, Maintenance, Health Insurance, Fuel & Fuel Tax, Truck Insurance, and Licenses & Permits.
>
> If you were to go out on your own and start a trucking business, you would have to find all of these important parts to run your company….We take the hassle out of you having to do all this alone.

Exhibit C, p. 106.

104. As a consequence, the facts show that Defendants granted the Plaintiffs the right to engage in a business at least offering and distributing, if not selling, services to third party customers.

BUSINESS SYSTEM PRESCRIBED IN PART BY DEFENDANTS

105. The business Defendants granted the Plaintiffs the right to engage in was also under a marketing plan and/or system prescribed in substantial part by ENGLAND and HORIZON. Defendants told the Drivers in the Guide and other written materials that Defendants provided such a plan and/or system and stated, among other things, that Defendants provided a "[s]uccessful business plan with mentoring and support staff" and the items noted above in paragraphs 102-103. The Guide's table of contents shows the various aspects of the marketing plan and/or system Defendants provided the Drivers including lengthy instructions on "Tractor Leasing," "Five Things You Must Do Succeed," (e.g. "take no more than 3 to 4 days off every 4 to 6 weeks" and "run at least 5.75 mpg," and "don't go out of route.") "Running A Business," and "Maximizing Income". Exhibit C, pp. 103, 112. The Guide stated that C.R. England would provide a system that included freight acquisition, a trailer, support staff, and many other pieces needed to operate the business. Exhibit C, p. 106.

106. In oral presentations in California and Salt Lake City, the Defendants also told Roberts and McKay that it would assist them with acquiring freight, pricing, dispatching, customer relations and book them an average length of haul of 1,500 miles. In these same meetings, C.R. England told Roberts and McKay that if they "leased" they would be required to

follow the program Defendants offered as described in the C.R. England Business Guide, and the Contractor and Lease Agreements. As a consequence, the business Defendants granted the Plaintiffs was under a prescribed system that satisfies the definition of CFIL section 31005 (a).

SUBSTANTIAL ASSOCIATION WITH TRADE NAME

107. The operation of the Driving Opportunity was substantially associated with the trademarks, service marks, trade name, logotype, advertising or other commercial symbols designating C.R. England as required under section 31005. The term "C.R. England" is a trade name that identifies C.R. England's business and is a trade name as defined in California Business and Professions Code section 14208. The trade name C.R. England and the commercial symbol represented by C.R. England's coat of arms are well known in the trucking industry.

108. Defendants not only permitted the Drivers to use the name C.R. England, they required it. Each tractor rented to Roberts, McKay, and the California class had both the trade name C.R. England and the England Coat of Arms prominently displayed on both sides, the front, and rear of the tractor. Each and every trailer that the Defendants required the Drivers to tow also had both the trade name C.R. England and the England Coat of Arms prominently displayed on both sides, the front, and rear of the trailer. The contracts prohibited the Drivers from making any changes to the tractor – neither the name C.R. England nor the coat of arms could be altered or removed. Exhibit F, ¶ 3, p. 191.

109. Customers relied on the C.R. England name in dealing with Roberts, McKay, and the Drivers. England instructed Roberts, McKay, and all Drivers to always identify themselves with customers as Drivers for C.R. England and to use the trade name "C.R. England" when dealing with customers. The Drivers in fact did this at every interface with customers from the guards at the gates to the internal dispatchers to the warehousemen and managers inside the customer premises.

110. C.R. England touted to Roberts, McKay, and to Driver candidates in

meetings in California and Salt Lake City that its name had value, goodwill, and that it was a successful long term company. C.R. England advertising notes that it is the "world's largest refrigerated carrier and has been in business for 90 years."

111. C.R. England also touted its goodwill, longevity, and reputation when marketing itself to customers. For example. C.R. England's website at http://www.crengland.com/truckload/index.jsp touts to customers:

> For over 80 years the name C.R. England has stood for high quality transportation services to a growing list of prestigious customers. Experience, integrity and a solid track record has earned C.R. England the reputation as one of the nation's leading transport companies in both temperature and dry products.

112. A key association with the name and goodwill of C.R. England occurs when a customer selects and permits C.R. England to deliver services in partnership with the Drivers. The Drivers are therefore intimately associated and identified with C.R. England in the minds of all customers and it is this association that benefits the Drivers who then operate their businesses pursuant to the franchise agreement described herein.

REQUIRED PAYMENTS OF FRANCHISE FEES

113. Defendants required Roberts, McKay, and the California Class to pay (and they in fact paid) the Defendants direct and/or indirect franchise fees for the right to enter into the business of the Driving Opportunity under the franchise agreement alleged herein. Specifically, for the right to enter the business, the Drivers were required to and/or agreed to pay for goods, services, and other items including training tuition, tractor rental, dispatch services, freight acquisition services, customer relation services, maintenance services, computer rental, insurance, and other items for the right to enter the Driving Opportunity as will be noted in detail below.

114. In order to become a Driver for C.R. England under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the California class (and all Drivers) to attend, complete, and pay for C.R. England's truck

driving school regardless of whether the Driver had an active commercial driver license or not. Payment to C.R. England for training was not optional and was a required part and parcel of the nonnegotiable business opportunity Defendants offered to Plaintiffs. Even already licensed drivers were required to go through a shorter training course and were required to pay C.R. England $500 dollars for that course. Unlicensed Drivers were required to pay C.R. England either approximately $2,000 if paying cash or $3,000 if paying via a note executed with Defendants' affiliate Eagle Financial Services. These payments were for specific training services C.R. England provided to the Drivers in order to both get a commercial driver license and to be trained on specifics of C.R. England's method of doing business including as outlined in C.R. England's Business Guide. As such, the training represented, in part, a C.R. England specific investment and was unrecoverable. Roberts, McKay, and the California class all in fact went through such training and paid for it. This payment constituted a "payment for … services" within the definition of CFIL section 31011 and therefore satisfies the requirement of a required direct or indirect franchise fee under CFIL section 31005 (c).

115. In order to become Drivers for C.R. England under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the California class (and all Drivers) to enter into a Lease Agreement (ostensibly with Horizon) to rent a tractor for use in the business. Plaintiffs use the term "ostensibly" in the preceding paragraph because they have alleged that England and Horizon are alter egos and one and the same for purposes of this lawsuit. Although the Lease Agreement facially provides England would collect such payments from the Drivers and would pass them through to Horizon, because they were alter egos, the payments and funds were at all times in fact subject to the control and dominion of C.R. England. Moreover, on information and belief, England did not in fact pass through the tractor rental payments to Horizon and/or otherwise commingled these funds with its own funds.

116. Rental of the tractor from Horizon and payment of the tractor rental fees to Defendants was not optional and was a required part and parcel of the nonnegotiable business opportunity Defendants offered to Plaintiffs.

117. Notwithstanding disclaimers in Defendants' adhesion contracts, Roberts, McKay, and the California class were not "free" to lease trucks from other providers and were required to sign the Lease Agreement to enter a Contractor Agreement with C.R. England. The Defendants, in concert, in fact offered the Plaintiffs the definitive and nonnegotiable business opportunity noted in Exhibit. D that required both a Lease Agreement with Horizon and a Contractor Agreement with C.R. England. Under a section called "Independent, But Not Alone" the England Business Guide notes in pertinent part,

> Do You Have Truck?
>
> We take the hassle out of you having to do this alone.
>
> Horizon Truck Sales and Leasing provides a selection of top-quality trucks.
>
> C.R. England has arranged with Horizon Truck Sales and Leasing, to provide you competitive truck leases with no credit requirements and no down payments. This means as an independent contractor, you can lease a variety of top-of-the-line, upscale trucks without making the usual $9,000 to $12,000 down payment.
>
> They will assist you in picking out the truck to begin your business.

Ex. C, p. 106-107.

118. The surrounding circumstances, as note in paragraphs 51 to 58 above, also show that no other options of a truck source were available. At the end of their "training," Plaintiffs were deposited in either Salt Lake City or Burns Harbor, Indiana at C.R. England's facility where only Horizon had its facilities, operations, personnel, and dozens of trucks at the ready. Most Drivers including Roberts and McKay expected to be offered employment but Defendants told them no employment was available and that only the Driving Opportunity was available. Defendants further told Roberts and McKay and the Drivers that if they wanted to get on the road they needed to lease immediately from Horizon. The fact that there were no credit or other requirements demanded of the Drivers also shows that the Drivers had no other choice. Indeed, the "Lease Agreement" should be called a rental agreement because it is not what is ordinarily understood as a vehicle lease. There is no buyout option, no interest rate, no initial

cost, no capitalized cost, no residual value, no accumulation of equity and other such common financial terms. Indeed, the Lease Agreement states in pertinent part

> WE [Horizon] are merely allowing YOU to use the vehicle, and YOU shall not have title thereto at any time during the term of this Agreement. YOU Agree that WE are entitled to and shall have the right to claim the following tax benefits [depreciation etc.]
>
> This Agreement is not a security agreement.

Ex. F, ¶ 13, p. 194.

Most, if not all, Drivers would never qualify for what is commonly understood as a "lease" transaction. In sum, the Drivers had no option other than "leasing" from Horizon. Finally, the contracts containing such disclaimers were universally presented to Roberts, McKay, and the California class only after all such persons had already agreed to lease a specific truck from Horizon and had picked that truck. At this point, as noted above, the Drivers had no choice but enter the Lease Agreements.

119. The Lease Agreement, in section 10, also locks the Drivers into driving for C.R. England alone by creating empirically insurmountable barriers to change including granting Horizon discretion regarding debts, charging Drivers for "investigation fees," requiring the proposed new carrier to agree to ETF fund transfers, and other such requirements. Further, given the unity of ownership and identity of interest between England' and Horizon, the Drivers would never be permitted to drive a truck rented from Horizon for a carrier other than England.

120. Each Driver paid Defendants between approximately $400 and $550 per week for the fixed rental payment. Over the approximate seventh month period of his Driving Opportunity, Roberts paid approximately $13,000 in these fixed rental payments. An exemplar of Roberts' settlement statement showing such payments is attached as Exhibit L, p.290.

121. The tractor rental was a firm specific unrecoverable investment in C.R. England and Horizon. The tractor was emblazoned with permanent paint or decals on all sides with England's name and its commercial symbol in the form of England's coat of arms. England's "1 800" telephone number was permanently and prominently displayed on the sides of the tractor. Indeed, the tractor served as a continuous firm specific advertisement for C.R.

England and also as way for Drivers to represent, and customers to note, the Drivers' specific association with C.R. England. Under the terms of the Lease Agreement, Drivers were not permitted to alter the appearance of the tractor. In addition, under the Lease Agreement, despite making substantial payments amounting to many thousands of dollars, the Drivers received no equity in the tractor making their payments unrecoverable. At all times, all of the equity in the tractors belonged to the Defendants.

122. The tractor rental was not an "ordinary" business expense. Ordinarily, a driver entering a business like the Driving Opportunity (with a company other than C.R. England) would either purchase a tractor or perhaps lease a tractor under a conventional lease whereby equity would be built up. In the latter case, the driver would know capitalized cost, the interest rate, the residual, the buyout, and the lease payment would be calculated using those factors. In both cases, the driver would have equity for his investment. But here, the Drivers are in the dark as to how the rental payment is calculated and they build no equity in the tractor.

123. The tractor rental payment constituted a "payment for goods" within the definition of CFIL section 31011 and therefore satisfies the requirement of a direct or indirect franchisee under CFIL section 31005 (c). The payment of sums to a franchisor (or its affiliates) for the purchase or rental of fixtures, equipment, or other tangible property to be utilized in, and necessary for, the operation of the franchised business constitutes a "payment for goods" under section CFIL 31011. Indeed, the later enacted (but related) California Franchise Relations Act (CFRA), defines "franchise fee" in precisely manner. Cal.Bus. & Prof.Code § 20007 (e) (qualifying that "payment for goods" includes rental payments for necessary fixtures, equipment, and tangible property as long such payments exceed a $1,000 annual threshold) The CFIL and CFRA definition of franchise fee are essentially the same except that the CFIL does not contain an express $1,000 annual threshold. Here, the tractor that Defendants rented to Roberts, McKay, and the California Class was clearly equipment to be utilized in, and was necessary for the operation of the Driving Opportunity and its cost far exceeded $1,000 annually for all Drivers satisfying even the more restrictive CFRA definition of "franchise fee."

124. In order to become Drivers for C.R. England under the Driving

Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the California class (and all Drivers) to utilize and pay for a computerized "mobile communication terminal" known as the QualComm. The QualComm was preinstalled by Defendants in every tractor utilized in the Driving Opportunity. Although the Contractor Agreement states that the Drivers were "free" to obtain devices similar to QualComm from other sources, this was neither true nor C.R. England's practice nor was it reasonable or possible under the circumstances. A Driver could not in reality refuse the QualComm, search for another similar unit (over which C.R. England had discretion), install that unit, and sync it with C.R. England's system. The Contract Agreement and Lease Agreement were presented for the first time only after the Drivers had selected the tractor and Defendants were pressuring the Drivers to get out on the road within hours of signing. Defendants gave the Drivers very little time, about an hour and half to review the contracts, and most of that time was taken up by a directed presentation Defendants made highlighting only the parts of these agreements that Defendants selected. And as noted above in paragraphs 52-56, Defendants had worn down the Drivers using a variety of physical and psychological manipulations.

125. Payment for and utilization of Qualcomm was not optional and was required as part and parcel of the nonnegotiable business opportunity Defendants offered to Plaintiffs. Although the Contractor Agreement states C.R. England pays for the QualComm, Plaintiffs alleges this is not true in fact. Rather, payment for the Qualcomm system from the Drivers to Defendants was secured by Defendants out of either the tractor rental payment noted above or the variable mileage payment noted below but was not broken out as a separate expense item by Defendants. On information and belief, the Defendants utilized an internal charge of about $100 per month for the QualComm to recover the approximate $3,000 cost of the unit.

126. The Qualcomm system is preprogrammed in proprietary fashion by C.R. England (not Horizon) to make secure communications regarding dispatching and other instructions to the Drivers and to remotely track their speed, location, and operating hours for the tractor. For the same reasons noted above in reference to the tractor lease, the QualComm

represents a firm specific investment by the Drivers in C.R. England. The Drivers build no equity in the QualComm device, cannot disconnect it, cannot refuse to use it, could not use it for a business other than the Driving Opportunity and it is therefore not an ordinary business expense. If Defendants did not require it, the Drivers would not pay for or utilize the QualComm.

127. In order to become Drivers for C.R. England under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the California class (and all Drivers) to pay Defendants a variable mileage fee of $.14 per mile driven. Payment of the variable fee to Defendants was not optional and was required as part and parcel of the nonnegotiable business opportunity Defendants offered to Plaintiffs. Although the Lease Agreement facially provides England would collect such payments from the Drivers and would be pass them through to Horizon, because they were alter egos, the payments and funds were at all times in fact controlled by England.

128. Moreover, on information and belief, England did not in fact pass through the entirety variable mileage payments it received to Horizon and/or commingled these funds with its own funds. As noted in Exhibit D's FAQ's (p. 118 ¶ 14), the variable mileage payment is "used to partially cover the cost of the truck, acquiring freight, staffing, and for other business expenses." In its newsletter, found at Exhibit M (p. 291) hereto, C.R. England (not Horizon) issued the following statement regard the variable mileage payment:

> The Variable Mileage Payment has been a source of confusion and contention so the [C.R. England] Independent Contractor Division has issued a clarification of what it is and what it is used for. Definition: The Variable Mileage is used to partially cover the cost of the truck, acquisition of freight, support staffing, and other business expenses.

129. C.R. England, not Horizon, provided these services of acquiring freight, and support staffing. The England Business Guide also described the services that C.R. England, not Horizon, would provide to the Drivers "C. R. England can provide you the freight, trailer, support staff and many other pieces of for your business" and the "staff at C.R. England

consists of experience load planners and bookers who can provide various options…" Ex C, p. 106-107.

130. In addition to the above, in meetings with Roberts, McKay, and other Drivers, C.R. England orally explained that the variable mileage payment was to compensate C.R. England for providing dispatch services, freight acquisition services, load planning, booking, and other business expenses that C.R. England incurred.

131. The variable mileage payment served a number of purposes. First, they were used by Defendants in part as additional rental payments for the tractor. As a consequence, the variable mileage was a "payment for goods" under CFIL section 31011 as noted in more detail in paragraph 123 above. Second, the variable mileage payment was paid to C.R. England for services that it provided to the Drivers including dispatch services, freight acquisition services, load planning, booking, and other business expenses that C.R. England incurred. As a consequence, the variable mileage was a "payment for services" under CFIL section 31011. In both cases, the variable mileage fee satisfies the CFIL's definition of a "franchise fee."

132. Over the approximate seven month period Roberts operated the Driving Opportunity, he paid approximately $10,500 in variable mileage payments.

133. In order to become Drivers for C.R. England under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the California class (and all Drivers) to pay C.R. England a "general reserve fee" of .07 per mile driven. Payment of the general reserve fee to Defendants was not optional and was required as part and parcel of the nonnegotiable business opportunity Defendants offered to Plaintiffs. The reserve fee was held by Defendants allegedly as an "escrow fund" to allegedly pay for future repairs and future maintenance to be determined in C.R. England's discretion, and, at the time of termination, for an entire host of future charges Defendants might make against the Drivers. Specifically, these future charges included all "advances, expenses, taxes, fees, fines, penalties, damages, losses, or other amounts paid…charge-back and deduction items set forth in Attachment 3 and any other attachments or addendums…"

134. Paying into an escrow to be used at C.R. England's' sole discretion is not an ordinary business expense. Indeed, there were no specific incurred business expenses incurred but rather just anticipated expenses – most of which could not satisfy the term "ordinary." Items like amorphous taxes, fees, fines, penalties, losses, damages etc. are not "ordinary business" expenses. The Drivers' payment to C.R. England of an escrow fee for the right to enter the business was a franchise fee under CFIL section 31011. Section 31101 does not limit franchise fees to payments for "goods or services" but rather includes any "fee or charge that a franchisee…is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any payment for goods and services."

135. Over the period of the Driving Opportunity Roberts paid approximately $5,300 for general reserve payments.

136. In order to become Drivers for C.R. England under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the California class (and all Drivers) to pay Defendants for a variety of insurance coverage and pay C.R. England for the service of securing such coverage. See Exhibit E, Att. 4, ¶ V, p. 159. (Driver to pay an "Insurance Administrative Fee to US…" This payment constituted a "payment for … services" within the definition of CFIL section 31011 and therefore satisfies the requirement of a required direct or indirect franchise fee under CFIL section 31005 (c).

137. The payment of the insurance and the Insurance Administrative Fee to Defendants was not optional and was required as part and parcel of the nonnegotiable business opportunity Defendants offered to Plaintiffs. Although the Contractor Agreement states that the Drivers were "free" to obtain insurance from other sources, this was neither true nor C.R. England's practice nor was it reasonable or possible under the circumstances. Given the exigencies and pressure exerted by C.R. England to get the Drivers out on the road within hours of signing (and last minute presentation of the contracts) Drivers could not in reality refuse the insurance program C.R. England was providing as there was simply no time, opportunity, experience level, or even documentation from which the Driver might even get a quote for insurance.

138. In addition, although the Contractor Agreement states that C.R. England does not charge a markup on the insurance and Plaintiffs challenge that assertion. For example, for commercial liability insurance, each and every driver was charged by England exactly $130.77 per week without an individual determination of risk or any underwriting whatsoever. These insurance payments seem for too high for the limited coverage offered. On information and belief, C.R. England keeps for its own benefit, a portion of the insurance payments the Drivers submit to it.

139. Over the period of the Driving Opportunity Roberts paid approximately $6500 for insurance and Insurance Administrative Fees.

CFIL VIOLATIONS

140. ENGLAND and HORIZON willfully failed to register the franchise offer with the California Commissioner of Corporations before, at the time of, and after the offer and sale of the Driving Opportunity to Roberts, McKay, and the California Class. California Corporations Code section 31300 provides that a franchisee may seek damages and rescission in such circumstances. Had Defendants registered the Driving Opportunity and otherwise complied with the California Franchise Investment Law, the Drivers would have had information about the Driving Opportunity and would not have purchased it.

141. In addition to failing to register the franchise, ENGLAND and HORIZON have not made the required disclosures to Roberts, McKay, and the California Class at any time prior to the filing of the Complaint herein. Defendants' conduct was willful. California Corporations Code section 31300 provides that a franchisee may seek damages and rescission in such circumstances. Had Defendants provided the required disclosures, the Drivers would have had information about the Driving Opportunity and would not have purchased it.

142. Under California Corporations Code section 31201 it is unlawful to offer or to sell a franchise in California by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order

to make the statements made, in the light of the circumstances under which they were made, not misleading. Defendants made the written and oral representations noted in paragraphs 29-32, 38, 39, 45, 47, and 49-51 to Roberts, McKay and the California Class and such were untrue statements of material fact and/or were misleading in light of the concealed material facts noted therein and in paragraphs 33, 40, 48, 49, 51, 62, and 63. These representations and omissions were intended by Defendants to induce Roberts, McKay, and the California Class to purchase the Driving Opportunity.

143. Roberts, McKay and the California Class relied on the Defendants' false and/or misleading representations and material omissions and purchased the Driving Opportunity and paid substantial sums to Defendants.

144. ENGLAND and HORIZON willfully or otherwise made (and continue to make) false and unlawful financial performance representations (as defined in 16 C.F.R. § 436.1 (e)) in the sale of franchises to the California Class and the public. Financial performance representations are unlawful if they are not included in a registered disclosure document, are not prepared in accordance with generally accepted accounting principles, and do not satisfy other requirements of the FTC Franchise Rule and California law.

145. ENGLAND and HORIZON currently makes the false and unlawful financial performance representations noted above in paragraphs 32, 38, 39, 47, and 49 to the public and those attending their driving schools. Defendants made substantially similar false and unlawful financial performance representations to Roberts, McKay, and the California Class during the period 2007 to the present.

146. ENGLAND's and HORIZON's violations of the California Franchise Investment Law and as described above proximately caused Roberts, McKay, and the California Class damages in that they and members of the class could not properly evaluate the nature of the Driving Opportunity and purchased it based on false and/or misleading representations, omissions of material fact, and unlawful financial performance representations.

147. Had the Defendant provided Roberts, McKay, and the California Class the true facts and not concealed material facts the Drivers would not have purchased the Driving

Opportunity.

148. Defendants' fraudulent conduct and statutory violations harmed Roberts, McKay, and the California Class entitling them to compensatory damages, rescission, restitution, costs, available attorney's fees, and ancillary relief according to proof. Roberts, McKay, and the California Class were damaged in an amount to be determined at trial but that is believed to exceed the jurisdictional minimum of $5,000,000 and consisting, without limitation, all payments made by them to ENGLAND and HORIZON in the course of the Driving Opportunity and the value of the Drivers' labor in providing services to Defendants.

149. Defendants acted with oppression, fraud, and malice, and in conscious disregard of the rights of Roberts, McKay, and the California Class entitling them to exemplary damages in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

SECOND CLAIM FOR RELIEF

(Violation of The California Seller Assisted Marketing Plan Act)
(Roberts, McKay, California Class vs. Defendants)

150. Plaintiffs incorporate by reference Paragraphs 1- 82 of this Complaint.

151. The Driving Opportunity meets the definitions of a "seller assisted marketing plan" under the California Seller Assisted Marketing Plan Act, Cal. Civ. Code §§ 1812.200 et seq. and did not qualify for any exemptions thereunder. Specifically, the Driving Opportunity involved Defendants' sale or lease of product, equipment, supplies, and services for initial payment exceeding $500 to Roberts, McKay, and the California Class in connection with or incidental to beginning, maintaining, or operating the Driving Opportunity.

152. Defendants advertised and otherwise solicited the purchase or lease of product, equipment, supplies, and services to Roberts, McKay, and the California Class as noted above in paragraphs 27-67.

153. Defendants represented to Roberts, McKay, and the California Class that they would earn, were likely to earn, or could earn an amount in excess of the initial payment paid by them for participation in the Driving Opportunity.

154. Defendants represented to Roberts, McKay, and the California Class that there was a market for the services provided by the Driving Opportunity.

155. Defendants are sellers of "Seller Assisted Marketing Plans", as defined in California Civil Code section 1812.201 (d) and represented and/or implied to the Roberts, McKay, and the California Class that Defendants had sold at least five Driving Opportunities in the 24 months prior to the solicitations. Defendants had in fact sold such Driving Opportunities and intended to, represented, and/or implied to Roberts, McKay, and the California Class that Defendants would sell at least five Driving Opportunities in the 12 months following the solicitations.

156. The Defendants did not provide Roberts, McKay, and the California Class a Disclosure Document or an Information Sheet as required by Cal. Civ. Code §§ 1812.205 and 1812.206. Furthermore, the Driving Opportunity contracts (i.e. the Contractor Agreement and Lease Agreement) did not meet the substantive requirements of Cal. Civ. Code § 1812.209. Nor was the Driving Opportunity registered in California as required by Cal. Civ. Code § 1812.203.

157. As more fully alleged in paragraphs 27-65, Defendants made earnings and market representations to Roberts, McKay, and the California Class without the substantiating data or disclosures required by Cal. Civ. Code § 1812.204. The representations were fraudulent in violation of Cal. Civ. Code §§ 1812.201 and 1812.204.

158. The Defendants' sale of an unregistered "Seller Assisted Marketing Plan" in the state of California entitles Roberts, McKay, and the California Class to their actual damages, attorneys' fees, rescission of the Agreement, and punitive damages pursuant to Cal. Civ. Code §§ 1812.215 and 1812.218.

159. The Defendants' disclosure violations entitles Roberts, McKay, and the California Class to their actual damages, attorneys' fees, rescission of the Agreement, and punitive damages pursuant to Cal. Civ. Code §§ 1812.215 and 1812.218.

160. The Defendants' anti-fraud violations entitles Roberts, McKay, and the California Class to recover their damages pursuant to Cal. Civ. Code §§ 1812.215 and 1812.218.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

THIRD CLAIM FOR RELIEF
(Violation of the California Unfair Competition Law)
(Roberts, McKay, California Class vs. Defendants)

161. Plaintiffs incorporate by reference Paragraphs 1- 160 of this Complaint.

162. California Business and Professions Code Section 17200 et seq. prohibits "unfair competition" defined as five categories of conduct: "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

163. Defendants' acts and practices alleged herein violate Section 17200, et seq. in the following respects:

Count I - Unregistered Franchise

164. Defendants unlawfully offered and sold unregistered franchises to the California Class. The foregoing offers and sales violated the California Franchise Investment Law, California Corporations Code Sections 31110 and 31125 and the FTC Franchise Rule, 16 C.F. R. §§ 436.1 et seq. Consequently, the Defendants' practice of offering and selling unregistered franchises constitutes an unlawful business act or practice.

165. Defendants' failure to register the Driving Opportunity as a franchise deprived Roberts, McKay and the California Class of the benefits of registration and they were misled by the omissions. Consequently, the Defendants' practice of offering and selling unregistered franchises constitutes a fraudulent business act or practice.

166. The harm to the Roberts, McKay and the California Class outweighs the utility of Defendants' policies, practices, and acts alleged herein. Consequently, the Defendants' practice of offering and selling unregistered franchises constitutes an unfair business act or practice.

Count II – Failure to Provide Franchise Disclosure Document

167. Defendants offered and sold franchises to the California Class but did not provide an Franchise Disclosure Document (FDD) offering circular to them as it was required to do under California Corporations Code section 31119, the California Administrative Code sections 310.11 (b) and 310.114.1, and the FTC Franchise Rule 16 C.F. R. §§ 436.1 (a) - (g) as further defined in 16 C.F. R. § 436.2 (g) (k) and (n). Further, pursuant to Section 18 (d) (3) of the FTC Act, 15 U.S.C. § 57 a (d) (3), and 16 C.F.R. § 436.1, violations of the Franchise Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 (a) of the FTC Act, 15 U.S.C. § 45 (a).

168. Defendants failed to comply with FTC Franchise Rule 16 C.F.R. § 436.1 (and therefore, also, California Administrative Code sections 310.11 (b) and 310.114.1) that requires that certain accurate information be in the franchise disclosure documents, including background information on the principals of the company, litigation information, truthful financial performance information, and lists of previous purchasers. Defendants violated 16 C.F.R. § 436.1 (a) (16) (iii) by failing to disclose previous purchasers of their business opportunity. Defendants violated sections 436.1 (b) and (c) by never providing substantiation for the earnings claims they made to the Drivers in the website, the Guide, and pro formas. Defendants violated § 436.1 (e) (3) by never providing Drivers with the number and percentage of purchasers known to have achieved the same or better sales results from the Driving Opportunity as those claimed in website advertisements and elsewhere.

169. Consequently, the Defendants' practice of offering and selling franchises but failing to provide the required disclosure documents and information constitutes an unlawful business act or practice.

170. Without receiving the requisite disclosure documents and information, Roberts, McKay, and the California Class were likely to be and were misled. Consequently, the Defendants' practice of offering and selling franchises but failing to provide the required disclosure documents and information constitutes a fraudulent business act or practice.

171. The harm to Roberts, McKay, and the California Class outweighs the

utility of Defendants' policies, practices, and acts alleged herein. Consequently, the Defendants' practice of offering and selling franchises without providing the requisite disclosure documents and information constitutes an unfair business act or practice.

Count III – Seller Assisted Marketing Plan Act Violations

172. Defendants unlawfully offered and sold unregistered seller assisted marketing plans to Roberts, McKay, and the California Class as noted in paragraphs 150 to 160. Consequently, the Defendants' practice of offering and selling unregistered seller assisted marketing plans constitutes an unlawful business act or practice.

173. Defendants' failure to register the Driving Opportunity as a franchise deprived Roberts, McKay and the California Class of the benefits of registration and they were misled by the omission. Consequently, the Defendants' practice of offering and selling unregistered seller assisted marketing plans constitutes a fraudulent business act or practice.

174. The harm to the California Class outweighs the utility of Defendants' policies, practices, and acts alleged herein. Consequently, the Defendants' practice of offering and selling unregistered seller assisted marketing plans constitutes an unfair business act or practice.

175. Defendants' failure to provide Roberts, McKay and the California Class the required seller assisted marketing plans disclosure documents constituted unlawful, fraudulent, and unfair business acts or practices.

176. Defendants' failure to provide Roberts, McKay and the California Class the required seller assisted marketing plan contract terms constitute unlawful, fraudulent, and unfair business acts or practices.

177. Defendants' violation of the Seller Assisted Marketing Plan Act's anti-fraud provisions constitutes unlawful, fraudulent, and unfair business acts or practices.

Count IV – The Fraud Scheme

178. Defendants sold the Driving Opportunity to Roberts, McKay, and the California Class via uniform scripted presentations in the Guide and other uniform communications that misrepresented facts, misled, and concealed material information as described above in paragraphs 1-4, 27-63 and 258-265.

179. Defendants unlawfully baited the California Class into paying for and attending its truck driving school with false promises of guaranteed employment only to later switch them to and demand that they purchase the Driving Opportunity. Defendants utilized a variety of fraudulent and manipulated techniques to induce the Roberts, McKay and the California Class into purchasing the Driving Opportunity as noted in paragraphs 45-51.

180. Defendants concealed the fact that almost all Drivers fail within a year or two and none make anything close to the income Defendants' represented.

181. Defendants' conduct violated Section 5 (a) of the FTC Act, 15 U.S.C. § 45(a), that provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful." Defendants' representations and omissions were false or misleading and constitute deceptive acts or practices in violation of Section 5 (a) of the FTC Act, 15 U.S.C. § 45 (a). Consequently, Defendants conduct was unlawful, fraudulent, and unfair.

182. The Defendants' noted conduct violated the CFIL and provisions prohibiting fraud, misleading statements, and omissions of material fact in the sale of a franchise. Consequently, Defendants conduct was unlawful, fraudulent, and unfair.

183. The Defendants' noted conduct violated the SAMP Act and provisions prohibiting fraud, misleading statements, and omissions of material fact in the sale of a SAMP. Consequently, Defendants conduct was unlawful, fraudulent, and unfair.

184. The Defendants' conduct in communicating deceptive endorsements in the Guide violated 16 C.FR. § 255.0 et seq. prohibiting misleading, deceptive, and/or distorted endorsements. Consequently, Defendants conduct was unlawful, fraudulent, and unfair.

185. The bait of "guaranteed employment" and switch to the Driving

Opportunity was a deceptive act and practice. Consequently, Defendants conduct was fraudulent, and unfair.

186. Defendants' conduct otherwise constituted fraudulent business practices in that Plaintiffs were likely to be deceived (and were deceived) into purchasing training, franchises and/or seller assisted marketing plans.

187. On information and belief, Defendants received reimbursement from the United States government for student tuition. Given the fraud scheme described in this complaint, such moneys should be disgorged and returned to the United States government.

188. Advertising is virtually any statement made in connection with the sale of goods or services. Defendants' fraud scheme, its websites, the Guide, and the other conduct therein in marketing the franchises was advertising and was unfair, deceptive, false and/or misleading as noted in detail paragraphs 4-8 and 27-63.

189. The fifth prong of § 17200 liability makes certain other acts automatic violations ("any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code"). Defendants' false and misleading advertising violates section 17500. To the extent that such advertising included misleading claims or other facts, it also violates section 17508. Further, Defendants' use of the misleading endorsements is also prohibited by section 17500.

190. Defendants' conduct caused Plaintiffs to suffer injury in fact including losses suffered by the California Class in paying money to Defendants for tuition for training, truck lease payments, gas, insurance, maintenance, equipment leases and other fees.

191. Defendants' unfair competition presents a continuing threat to Plaintiffs and to members of the public in that Defendants will persist in these practices until preliminary and permanent injunctions are issued by this Court.

192. Defendants have been unjustly enriched and have otherwise received revenues and labor that should be restored and disgorged to the extent allowed by law.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

FOURTH CLAIM FOR RELIEF
(Violation of the Utah Consumer Sales Practices Act)
(Roberts, McKay, and Nationwide and Utah Classes vs. Defendants)

193. Plaintiffs incorporate by reference Paragraphs 1- 82 of this complaint.

194. Defendants' conduct noted above in paragraphs 3-10 and 27-63 constitutes deceptive acts or practices in connection with a consumer transaction under Utah Code § 13-11-1 *et seq*. Defendants conduct in perpetrating the described fraudulent scheme against the Nationwide Class was at all material times developed, orchestrated, and implemented in part out of its headquarters in Utah by their senior management. In addition, the actual execution of the Contractor Agreement and Lease Agreement contracts by Roberts, McKay, and the Utah Class took place in Utah.

195. The Utah Consumer Sales Practice Act is intended not only to protect consumers but also protect law-abiding competitors and, as much as possible, conform Utah state law to policies of the Federal Trade Commission Act.

196. The Driving Opportunity satisfies the definition of a consumer transaction in that it required the Roberts, McKay, and Nationwide Class to expend money and personal services on a continuing basis for ENGLAND and HORIZON and was one in which they had not previously been engaged.

197. As noted above paragraphs 3-10 and 27-63, the Defendants knowingly or intentionally represented to the Roberts, McKay, and the Nationwide and Utah Classes that the Driving Opportunity Defendants offered for sale had performance characteristics, uses, benefits, and qualities that the Driving Opportunity did not. Defendants made the written and oral representations noted in paragraphs 29-32, 38, 39, 45, 47, and 49-51 to Roberts, McKay and the California Class and such were untrue statements of material fact and/or were misleading in light of the concealed material facts noted therein and in paragraphs 33, 40, 48, 49, 51, 62, and 63. This conduct is ongoing as Defendants false and misleading representations continue unabated to this day.

198. The Defendants also in the following conduct that constitutes

unconscionable acts or practices in connection with a consumer transaction:

a. misrepresenting and concealing material information in the sale of the Driving Opportunity;

b. baiting consumers with promises of guaranteed employment and the switching them into purchasing a business opportunity;

c. failing to provide disclosures required by the FTC franchise rule and the applicable business opportunity statute;

d. entering into and enforcing the terms and conditions of the illegal contracts and accepting the benefits conferred by Drivers

199. The Defendants also engaged in the following conduct that constitutes deceptive acts or practices or unconscionable acts or practices in violation of the Act pursuant to rules adopted by the Utah Department of Commerce, Division of Consumer Protection in Rule 152-11 in the establishment of a franchise or distributorship (which the Driving Opportunity is) in connection with a consumer transaction:

e. Misrepresenting the prospects or chances for success of a proposed or existing franchise or distributorship as noted in detail in paragraphs 29-32, 38, 39, 45, 47, and 49-51 to and concealing material facts noted therein and in paragraphs 33, 40, 48, 49, 51, 62, and 63 and concealing the almost certain failure of those purchasing the Driving Opportunity; and

f. Misrepresenting the amount of profits, net or gross, the franchisee can expect from the operation of the franchise or distributorship as noted in paragraphs 27-63;

200. If not for ENGLAND's and HORIZON's deceptive acts or practices or unconscionable acts or practices in violation of the Act, Roberts, McKay, the Nationwide and Utah Classes would not have paid for the Driving Opportunity.

201. Roberts, McKay, the Nationwide and Utah Classes are entitled to recover their damages caused by Defendants violations of Utah Code § 13-11-1 *et seq* pursuant to Utah

Code § 13-11-19 (2) and (4).

202. Roberts, McKay, the Nationwide and Utah Classes are entitled to a declaratory judgment that Defendants' acts and practices described herein violate Utah Code § 13-11-1 *et seq* pursuant to Utah Code § 13-11-19 (1) (a) and (3).

203. Roberts, McKay, and the Nationwide and Utah Classes are entitled to an injunction and appropriate ancillary relief under Utah Code § 13-11-19 (1) (b) and (3). Defendants' acts and practices described herein violate Utah Code § 13-11-1 *et seq*.

204. Roberts, McKay, and the Nationwide and Utah Classes are entitled to an award of attorney's fees under Utah Code § 13-11-19 (5).

WHEREFORE, Plaintiffs pray for judgment as set forth below.

FIFTH CLAIM FOR RELIEF
(Violation of the Utah Business Opportunity Disclosure Act)
(Roberts, McKay, Nationwide and Utah Classes vs. Defendants)

205. Plaintiffs incorporate by reference Paragraphs 1- 82 of this complaint.

206. The Driving Opportunity meets the definitions of "business opportunity" and an "assisted marketing plan" under the Utah Business Opportunity Disclosure Act, Utah Code Ann. § 13-15- 1, et seq and did not qualify for any exemptions thereunder. Specifically, the Driving Opportunity involved ENGLAND's and HORIZON's sale or lease of product, equipment, supplies, and services for consideration of $300 or more to Roberts, McKay, and the Nationwide and Utah Classes to enable them to start a business. Further, ENGLAND and HORIZON represented to the Roberts, the Nationwide and Utah Classes that they would provide a sales program and marketing plan (for example, as noted above in paragraphs 29, 38-39, 45, 47-51) that would enable Roberts, McKay, the Nationwide and Utah Classes to derive income exceeding the purchase price paid.

207. Defendants are sellers of "Assisted Marketing Plans", as defined in the Utah Business Opportunity Disclosure Act, Utah Code Ann. § 13-15- 1, et seq.

208. Defendants have not and never have complied with the registration and disclosure requirements for offering such plans.

209. Roberts', McKay's, and the Nationwide and Utah Classes' consent to the Driving Opportunity, if any, was obtained through Defendants' failure to comply with the Utah statutory requirements.

210. Roberts, McKay, and the Nationwide and Utah Classes are entitled rescission and damages from Defendants, including, but not limited to, all monies paid to Defendants as provided for in Utah Code § 13-15-6 (2).

211. Roberts, McKay, and the Nationwide and Utah Class are entitled reasonable attorney's fees and court costs from Defendants under Utah Code § 13-15-6(2).

WHEREFORE, Plaintiffs pray for judgment as set forth below.

SIXTH CLAIM FOR RELIEF
(Violation of the Indiana Business Opportunity Transactions Law)
(Roberts and McKay On Behalf of the Indiana Class vs. Defendants)

212. Plaintiffs incorporate by reference Paragraphs 1- 82 of this complaint.

213. The Driving Opportunity meets the definitions of "business opportunity" under the Indiana Business Opportunity Transactions Act, IC 24-5-8-1, and did not qualify for any exemptions thereunder. Specifically, the Driving Opportunity involved ENGLAND's and HORIZON's sale or lease of product, equipment, supplies, and services for initial payment of more than $500 paid to them by the Indiana Class to enable them to start a business. Further, ENGLAND and HORIZON represented to the Indiana Class that they would provide a sales program and/or marketing plan (for example, as noted above in paragraphs 29, 38-39, 45, 47-51) that would enable the Indiana Class to derive income from the exceeding the purchase price paid and the Indiana Class relied on such representations.

214. Defendants are "sellers" of "business opportunities" as defined in the Indiana Business Opportunity Transactions Act, IC 24-5-8-1.

215. Defendants have not complied with the registration and disclosure requirements for offering such plans under Indiana law.

216. The Indiana Classes' consent to the Driving Opportunity, if any, was

obtained through Defendants' failure to comply with the Indiana Business Opportunity Transactions Act, IC 24-5-8-1 et seq.

217. The Indiana Class is entitled to rescission and damages from Defendants, including, but not limited to, all monies paid to Defendants as provided for Indiana Business Opportunity Transactions Act, IC 24-5-8-16 and 17.

218. The Indiana Class is entitled to reasonable attorney's fees and court costs from Defendants under Indiana Business Opportunity Transactions Act, IC 24-5-8-17.

219. The Indiana Class is entitled to an injunctive relief under Indiana Business Opportunity Transactions Act, IC 24-5-8-18.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

SEVENTH CLAIM FOR RELIEF
(Violation of the Telemarketing and Consumer Fraud and Abuse Prevention Act)
(Roberts and The Telemarketing Class vs. Defendants)

220. Plaintiffs incorporate by reference Paragraphs 1-82 of this complaint.

221. The Telemarketing and Consumer Fraud and Abuse Prevention Act ("TCFAPA"), 15 U.S.C. §6101 et seq., authorized the Federal Trade Commission to prescribe rules (Telemarketing Sales Rules or TSR) to prevent deceptive and abusive telemarketing practices.

222. 15 U.S.C. § 6102(a)(2) provides that "[t]he Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices . . . which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing . . . ." The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

223. Defendants initiate outbound telephone calls to consumers in the United States to induce the purchase of goods or services including those affiliated with their truck driving schools and the Driving Opportunity and related good and services. Defendants are

"telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2.

224. Since at least 2008, Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of truck driving training, the Driving Opportunity, and related goods and services to by use of one or more telephones and which involves more than one interstate telephone call. As noted above in paragraphs 34 and 35, Roberts received two or more such calls.

225. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, material aspects of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3 (a) (2) (iii).

226. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of any "investment opportunity" including, but not limited to, risk, liquidity, earnings potential, or profitability. 16 CFR § 310.3 (a)(2)(vi). Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation. 16 CFR § 310.2 (q).

227. Defendants' truck driving school, the Driving Opportunity, and the related goods and services, constitute goods, services, and an investment opportunity under the TSR.

228. Defendants misrepresented, directly and/or by implication the efficacy of the school, Driving Opportunity, and the related goods and services by, among other things, making false, fraudulent, and misleading claims that Roberts and others similarly situated:

g. would receive guaranteed jobs on completion of the school

h. would earn income in the amount of money Defendants' other drivers had made and as otherwise represented on the ENGLAND website and elsewhere;

i. Defendants concealed that ENGLAND had no guaranteed jobs for

candidates it enrolled in its school and concealed that it would engage and had for years engaged in a bait and switch scheme.

j. Defendants concealing that the almost all Drivers failed, ended up returning their trucks to Defendants, ended up in debt to Defendants, and could not earn any net profit or income and instead worked for free;

229. For the same reasons described in paragraphs 176, Defendants misrepresented, directly or by implication, the risk involved, the earnings potential, or profitability associated with the training and Driving Opportunity.

230. The TCFAPA, 15 U.S.C. §6104(a), permits any person "adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission" to bring an action for damages and/or to enjoin such conduct if the amount in controversy "exceeds the sum or value of $50,000 in actual damages."

231. Roberts and each member the Telemarketing Class have suffered in excess of $50,000 in actual damages as a result of Defendants unlawful pattern and practice of telemarketing that violated the Commissions' rules. Roberts has notified the FTC of this action as required by law.

232. Roberts are the Telemarketing Class are entitled to damages, attorney's fees, expert witness fees, costs of suit, and injunctive relief.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

EIGHTH CLAIM FOR RELIEF

(Common Law Fraud And/Or Negligent Misrepresentation)
(Roberts, McKay, Indiana and Utah Classes vs. Defendants)

233. Roberts incorporates by reference Paragraphs 1- 82 of this complaint.

234. Prior to purchasing the Driving Opportunity by entering the Lease Agreement and Contractor Agreement with Drivers in either Utah or Indiana, Defendants intentionally made misrepresentations of material facts and concealed true material and qualifying facts as noted in paragraphs 4, and 27-63.

235. The Defendants false representations concerned then existing material

facts.

236. Defendants' made these misrepresentations and omissions with the intent to induce the Drivers to rely on them and to purchase training, the Driving Opportunity, and enter into the Lease Agreement and Contractor Agreement.

237. As to the Utah Class, if the above misrepresentations were not made intentionally, then they were made negligently by Defendants without regard to their truth and falsity and constitute negligent misrepresentation.

238. When Defendants chose to speak and make the various representations on the subject matter of the Driving Opportunity, they were duty bound to disclose all qualifying materials facts, including but not limited to, those described in paragraph 62 above. Defendants did not disclose the material facts to the Drivers but instead concealed them.

239. The Drivers were ignorant of the falsity of Defendants' misrepresentations and could not in the exercise of reasonable diligence have discovered Defendants' misrepresentations and omissions because only Defendants possessed that information.

240. In justified reliance on Defendants' representations and omissions, the Drivers purchased the Driving Opportunity and entered into the Contractor Agreement and Lease Agreement and paid substantial sums to Defendants. Had the Drivers known of the falsity of Defendants' representations or known of the omitted material facts, they would not have entered into the subject contracts.

241. As a direct and proximate result of Defendants' fraud, the Drivers were damaged by paying money to and expending labor for Defendants. The Drivers are entitled to damages in a sum not yet fully ascertained but in excess of the jurisdictional minimum of this court. Alternatively, the Drivers are entitled to rescission of the subject contracts, restitution, and ancillary damages according to proof.

242. Defendants acted with oppression, fraud, and malice, and in conscious disregard of the Drivers' rights entitling the Drivers to exemplary damages in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

NINTH CLAIM FOR RELIEF
(Unjust Enrichment)
(Roberts, McKay, Indiana and Utah Classes vs. Defendants)

243. Plaintiffs incorporate by reference Paragraphs 1- 82 of this Complaint.

244. As a result of Defendants' wrongful and fraudulent conduct, Roberts, McKay, and all of the Drivers have conferred benefits upon Defendants.

245. Defendants were at all relevant times aware that the benefits conferred upon them by the Drivers were the result of fraud and misrepresentation.

246. Allowing Defendants to retain these unjust profits and other benefits would offend traditional notions of justice and fair play.

247. Under these circumstances, it would be inequitable for Defendants to retain the benefits and allowing them to do so would induce companies to make misrepresentations to increase sales.

248. Defendants are in possession of funds that were wrongfully obtained from Drivers and such funds should be disgorged as ill-gotten gains.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

TENTH CLAIM FOR RELIEF
(Declaratory Relief)
(Roberts, McKay, and All Classes vs. Defendants)

249. Plaintiffs incorporate all other allegations in this Complaint.

250. An actual controversy now exists between Roberts, McKay, and those similarly situated (Plaintiffs) on one hand and Defendants on the other hand concerning their respective rights and obligations under the Lease Agreement and Contractor Agreement:

k. Plaintiffs contend that they are Defendants' franchisees whereas the Defendants contend to the contrary.

l. Plaintiffs contend that the contractual limitations, choice of law, and choice of forum, are unenforceable, in derogation of statutory provisions (unwaivable or otherwise) and public policy, and are unconscionable

whereas the Defendants contend to the contrary.

251. Such declarations are necessary and appropriate at this time so that the parties may ascertain their respective rights in obligations.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

ELEVENTH CLAIM FOR CLAIM FOR RELIEF
(Utah's Truth in Advertising Act Violation)
(Roberts, McKay, and Utah Classes vs. Defendants)

252. Plaintiffs incorporate by reference Paragraphs 1- 82 and 178-188 of this Complaint.

253. Utah's Truth in Advertising Act (the "TIAA") is intended prevent deceptive, misleading, and false advertising practices. Utah Code Ann. § 13–11a–1. "Advertisement" means any written, oral, or graphic statement or representation made by a supplier in connection with the solicitation of business. U.C.A. 1953 § 13-11a-2

254. Actionable deceptive trade practices occur under TIAA section 13-11a-3 when, in the course of a person's business that person:

> (e) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
>
> (i) advertises goods or services or the price of goods and services with intent not to sell them as advertised;
>
> (t) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

255. Defendants' engage in two main practices that violate the TIAA. First, Defendants bait consumers to purchase their driving training services with false advertising and representations containing express promises of "guaranteed employment" and, after the consumer signs up for Defendants' truck driving schools, switching them to purchase the Driving Opportunity. Second, Defendants make misleading representations to induce consumers to purchase the Driving Opportunity.

256. On June 3, 2011, Roberts and McKay gave notice to defendants of the alleged TIAA violations and the opportunity to make corrective changes as required by Utah Code Ann. § 13–11a–4 (5). A copy of the notice delivered on June 3 (proof of service, Exhibit H, page 257) is attached hereto as Exhibit H and incorporated by reference. As of the date of the first amended complaint, Defendants have not notified Roberts or McKay that they have performed any corrective measures.

257. Roberts and McKay allege the following conduct violates the TIAA. Defendants expressly advertise "guaranteed employment" to those that enroll in and pay for the truck driving school as found in Exhibits A and B hereto as noted in paragraphs 30 and 31. The truck driving school is a good or service as defined in the statute.

258. Defendants otherwise advertise "full time" and "guaranteed" employment and "exciting careers" as C.R. England truck drivers with a base pay of "$40,000-$75,000/year" and various benefits such as health and life insurance, vacation pay, and company funded retirement plans in order to induce consumers to purchase the driving school services. Exhibit H, pages 247 to 249, attached hereto and incorporated by reference.

259. Defendants' enroll far more driving school students than they could ever employ (and conceal this material fact from the Drivers) and they switch almost all students to purchasing the Driving Opportunity. Indeed, Michael Fife, C.R. England's corporate vice president of the independent contractor division has been quoted by a reporter as saying that about "75 percent of the England's fleet consists of independent contractors" and that the "grand majority" of C.R. England drivers are in some type of lease program (i.e. have purchased the Driving Opportunity). Exhibit I, page 259, attached hereto and incorporated by reference. According to Fife in an April-May 2011 C.R. England newsletter (Exhibit J, page 262, attached hereto and incorporated by reference), the Defendants have sold "literally hundreds" of Driving Opportunities in the "past several months" with the result of increasing driver "earnings:"

> Over the past several months, C.R. England has worked with Horizon Truck Sales and Leasing to bring in literally hundreds of trucks, and as a result, hundreds of new and experienced drivers have jumped in to lease or purchase their own truck, taking the first

> steps to becoming a truck and fleet owner. In doing so, their earnings have increased and their ability to take advantage of new opportunities has expanded. Their success stories resonate through the hallways of C.R. England and across the highways of the U.S.

260. According to the February March 2011 C.R. England newsletter (Exhibit J, page 272), the Defendants added 708 new drivers (almost certainly the majority of which purchased the Driving Opportunity) in the fourth quarter of 2010 and defendants have a goal selling 40 Driving Opportunities per week. "We ended at 708 new drivers, which by all means is considered a success when taking into account the holidays. We face the challenge to continue in Q1 with a growth goal of 40 drivers per week. C.R. England is poised for significant growth this year."

261. Defendants do not offer guaranteed employment at all. As noted in detail in paragraphs 39-41, 46, 48, 49-52, 63-64, beginning with the Driver's recruitment into truck driving school and afterwards, the Defendants subjected the Drivers to a variety of fraudulent advertising, acts, and manipulative techniques to convince them to purchase the Driving Opportunity instead of seeking the "guaranteed job" that Defendants offered and advertised.

262. Defendants' advertising and representations of "guaranteed employment" in connection with the sale of the sale of truck driving training are deceptive practices under the TIAA in that they represent that school has characteristics, uses, benefits, and qualities (i.e. would lead to guaranteed employment) that it does not have. The above conduct also shows that Defendants advertise the school with intent not to sell them as advertised (i.e. would lead to guaranteed employment). Finally, the conduct at minimum creates in the consumer likelihood of confusion or of misunderstanding.

263. Defendants' advertising and representations regarding the Driving Opportunity are also deceptive trade practices under the TIAA. Defendants' website contains deceptive factual representations as noted in paragraph 33-34. The advertising is deceptive because it advertises the sale of the Driving Opportunity and represents that it has characteristics, uses, benefits, and qualities (i.e. leads to big money and specific income levels) that it does not have. Given the vast and concealed turnover, the conduct and representations at

minimum creates in the consumer likelihood of confusion or of misunderstanding.

264. Defendants' representations in the England Business Guide, the graphs (and commentary thereto) and the pro formas noted in paragraphs 39-40 are deceptive practices in connection with the sale of the Driving Opportunity. Defendants therein represent that the Driving Opportunity has characteristics, uses, benefits, and qualities that it does not have and create likelihood of confusion or of misunderstanding in the consumer.

265. Defendants' representations in "The Horizon Truck Sales and Leasing Independent Contractor Program" and pro formas noted in paragraph 48-50 are deceptive practices in connection with the sale of the Driving Opportunity. Defendants therein represent that the Driving Opportunity has characteristics, uses, benefits, and qualities that it does not have and create likelihood of confusion or of misunderstanding in the consumer.

266. Defendants' conduct caused Plaintiffs to suffer injury in fact including losses suffered by paying money to Defendants for tuition for training, truck lease payments, gas, insurance, maintenance, equipment leases and other fees.

267. Plaintiffs seek to 1) enjoin Defendants violations of the TIAA, 2) recover from the Defendants the amount of actual damages sustained or $2,000, whichever is greater, 3) recover costs and attorneys fees, and 4) have the court order the defendants to promulgate corrective advertising by the same media and with the same distribution and frequency as the advertising found to violate the TIAA.

268. Defendants also acted with oppression, fraud, and malice, and in conscious disregard of the Drivers' rights entitling the Drivers to exemplary damages in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

PRAYER

WHEREFORE, Roberts and McKay pray for JUDGMENT against Defendants as follows:

1. For a determination that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

2. For damages, rescission, and restitution to Roberts, McKay, and the Drivers and disgorgement of any moneys found owing to federal or state governments.
3. For a finding that Defendants violated, and continue to violate federal, California, Utah, and Indiana franchise laws and/or business opportunity laws and/or consumer protection and false advertising laws and for an appropriate damage and/or restitution award.
4. For compensatory damages in a sum not less than the jurisdictional minimum of this Court in an amount to be proven.
5. For exemplary damages against each Defendant.
6. For a declaration of the respective rights and obligations between Roberts and those similarly situated on the one hand and Defendants on the other under and related to the franchise agreements.
7. For an injunction prohibiting Defendants' the sale of unregistered franchises and business opportunities and misleading advertising.
8. For interest according to law.
9. For attorney's fees and costs of suit under applicable law; and
10. For such other relief as the Court deems just and equitable.

Dated: December 2, 2011

Lagarias & Boulter L.L.P.

s / Robert S. Boulter
Robert S. Boulter
Attorneys for Charles Roberts and Kenneth McKay

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and others similarly situated, demand a jury trial in this action.

Dated: December 2, 2011

Lagarias & Boulter L.L.P.

s / Robert S. Boulter

Robert S. Boulter
Attorneys for Charles Roberts and Kenneth McKay