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**IN THE UNITED STATES DISTRICT COURT**
**DISTRIC OF UTAH**
**(CENTRAL DIVISION)**

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

Plaintiffs,

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.

**CLASS ACTION**
**THIRD AMENDED COMPLAINT**

Chief Judge Ted Stewart

(Jury Trial Demanded)

Case No. 2:12-cv-00302-TS

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## OVERVIEW OF THE CASE

1. Plaintiffs Charles Roberts ("Roberts") and Kenneth McKay ("McKay") (collectively the "Plaintiffs") bring this class action on behalf of individuals (the "Drivers")

asserting that defendants C.R. England Inc. ("ENGLAND"), Opportunity Leasing, Inc. d/b/a Horizon Truck Sales and Leasing ("OPPORTUNITY"), and Horizon Truck Sales and Leasing, LLC (together with OPPORTUNITY identified as "HORIZON") (collectively, the "Defendants") fraudulently induced them 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 dedicated company employees and company-owned trucks but the majority of goods are transported by Drivers that have purchased the Driving Opportunity.

3. The Driving Opportunity is a specific program Defendants offered Roberts, McKay, and the Drivers called at various times the "Horizon Truck Sales and Leasing Program" and "C.R. England Independent Contractor Program" as noted in a March 30, 2009 sales and marketing brochure distributed by Defendants to the Drivers. A true and correct copy of Defendants' March 30, 2009 sales and marketing brochure explaining the program is attached to this Third Amended Complaint as **Exhibit D** and incorporated by reference. The program expressly requires (i) a "Horizon Truck Sales and Leasing Vehicle Lease Agreement" (the "Lease Agreement") with HORIZON (in name only, because Plaintiffs contend HORIZON and ENGLAND are alter egos, affiliates, and/or joint venturers and because it is not truly a lease but rather a rental agreement giving Plaintiffs and the class limited rights); and (ii) an "Independent Contractor Operating Agreement" (the "Contractor Agreement") with ENGLAND. As evidenced by **Exhibit D** to this Third Amended Complaint, Defendants also purport to provide to

the Drivers dispatching services, a successful business plan, bookkeeping, and maintenance support services.

4. Although the Driving Opportunity is a franchise and/or business opportunity under federal, Utah, and Indiana law, Defendants have never complied with the applicable registration, disclosure, and anti-fraud provisions of those laws.[1] Defendants made uniform misrepresentations, misleading statements, and concealed material information when offering and selling the Driving Opportunity to the Drivers, all in violation of applicable statutes and common law.

5. Because the turnover rate of Drivers is extremely high (due to the fact 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, satellite radio, and the Internet. True and correct copies of certain examples of such advertisements are attached as **Exhibit A** to this Third Amended Complaint and are 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.

6. Defendants' dedicated website at www.crengland.com uniformly and fraudulently represents that it offers guaranteed jobs to candidates. True and correct copies of excerpts from Defendants' website are attached to this Third Amended Complaint as **Exhibit B** and are

[1] Plaintiffs had included in their Second Amended Complaint a claim for violation of the California Franchise Investment Law ("CFIL"), but the district court dismissed that claim for failure to state a claim upon which relief can be granted and ordered this action transferred to the District of Utah. In accordance with the Court's decision, Plaintiffs have eliminated the CFIL claim from this Third Amended Complaint, but expressly do not concede the correctness of the Court's decision dismissing that claim and reserve their right to appeal the order of dismissal as of right if and when an opportunity to do so becomes ripe.

incorporated by reference. Defendants also employ recruiters that cruise for Drivers in such places as homeless shelters and soup kitchens.

7. Defendants charge the Drivers tuition for ENGLAND truck driving school in the approximate amount of $1,995 if the Drivers pay cash. More commonly, the Drivers have no money and Defendants charge them $2,995 at 18% interest, which ENGLAND requires the Drivers to repay out of future earnings so long as the Drivers maintain a relationship with Defendants. When the Drivers sever their relationship with ENGLAND, Defendants and their affiliates attempt to collect unpaid sums from the Drivers through litigation even though it is Defendants' conduct that caused the Drivers to the leave the program. On information and belief, Defendants also secure federal government funding or reimbursement related to the Drivers' training.

8. In a classic bait and switch fraud beginning with the Drivers' recruitment into ENGLAND truck driving school and afterwards, the Defendants subject 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. When prospective Drivers resisted purchasing the Driving Opportunity and insisted on remaining as an ENGLAND employee as promised in many documents and places, including without limitation the Student Training Agreement signed by each enrollee (including the Plaintiffs), 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, consistent with Defendants' never-disclosed but deliberately established and

internally-promoted goal of having at least 65% of the graduates of the driving schools purchase the Driving Opportunity.

9. 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 and into providing free labor for Defendants 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.

10. 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.

11. In sum, Defendants have perpetrated a fraudulent scheme directed from Utah but implemented in California, Utah, Indiana and all other states in the United States where Defendants operate trucks or where Drivers reside and make payments to Defendants that has defrauded the Drivers out of their labor and money.

12. Roberts and McKay file this action against ENGLAND, OPPORTUNITY, and HORIZON for themselves and others similarly situated, to redress the unlawful conduct alleged in this Third Amended 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**

13. 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). This Court further has jurisdiction over the civil RICO claim under 18 U.S.C. § 1964(c).

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

15. This Court has personal jurisdiction over the Defendants because Defendants are incorporated in, and citizens of, Utah and all transact substantial business in this district.

16. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all times material herein, ENGLAND, OPPORTUNITY, and HORIZON have actively been conducting business in this district. 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. It is further proper based on Defendants' consent as evidenced by their enforcement of a forum selection clause in the operative agreements with Roberts and McKay calling for this dispute to be heard in the state or federal courts of Utah.

**THE PARTIES**

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

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

19. Roberts, McKay, and the Drivers have been injured by Defendants' illegal practices and conduct alleged in this Third Amended Complaint. Roberts' and McKay's claims for relief alleged in this Third Amended Complaint are similar to and typical of the Drivers' claims.

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

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

22. ENGLAND, OPPORTUNITY, and HORIZON do business throughout the United States. At all material times, the Defendants owned and/or operated a facility related to the offered business opportunities in Salt Lake City, Utah, Mira Loma, California, Burns Harbor, Indiana, and Cedar Hill, Texas. 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.

23. ENGLAND, HORIZON, and OPPORTUNITY 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, share a common computer system and office space, and, under the facts presented herein, it would be unjust and inequitable to treat them as separate entities. They are also joint venturers with respect to the Driving Opportunity in that they share profits and losses.

24. 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

### Defendants' Common Marketing Pitch to Attract Candidates to the Driving School

25. 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.

26. In about May 2009, from his home in Santa Rosa, California, Roberts viewed ENGLAND's advertising on its website and found compelling 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 nationwide website in May 2011.

27. As of May 2011, ENGLAND represented on the first page of its website (**Exhibit B**) as follows:

> 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….
>
> 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.
>
> 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***.
>
> 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** (emphasis added)**.**

28. On the training page of Defendants' website, ENGLAND represents that "You are GUARANTEED a job upon successful completion of our training program." **Exhibit B**.

29. With respect to the Driving Opportunity, ENGLAND and HORIZON made factual representations on ENGLAND's May 2011 nationwide website as follows:

> Own Your Own Business As An Independent Contractor! You can own your own business by leasing a truck and becoming an 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 solo 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.**

30. Defendants' website advertising noted in **paragraphs 26-29** of this Third Amended Complaint constitute the offer of unregistered business opportunities and/or franchises.

Defendants therein make false and misleading representations including false, misleading, and unlawful financial performance representations. Specifically, Defendants failed to disclose 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 or generated by the inclusion of facts, known to be false at the time stated, that would result in false representations about the income levels actually achieved. Defendants further failed to disclose the extremely material fact 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, ENGLAND's 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%." A true and correct copy of the January 14, 2008 *USA Today* article is attached as **Exhibit K** to this Third Amended Complaint and is incorporated by reference. In fact, ENGLAND admits that the annualized turnover rate is between 190%-225% depending on what phase of driver training is reviewed.

31. 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 2010, only 42 (or 22%) had a May 2011 two year anniversary. Similarly, of the 165 Drivers that had a one year April 2010 anniversary, only 30 (or 18%) had a May 2011 two year anniversary. Plaintiffs draw this data from ENGLAND's "Roundtable" newsletter distributed internally at the company and used to inform ENGLAND personnel of various events. True and correct copies of excerpts of certain "Roundtable" newsletters from which this data is drawn is

attached to this Third Amended Complaint as **Exhibit J** and are incorporated by reference. Of course, these figures do not include the substantial number of Drivers that fail before their first anniversary.

**Roberts' Decision to Pursue ENGLAND's Training**

32. Induced by the descriptions he viewed on ENGLAND's website, which were similar to those noted above in **paragraphs 26-29**, Roberts submitted an online application from his home in Santa Rosa, California on or about June 15, 2009. Shortly thereafter, an ENGLAND representative from Utah made an interstate telephone call to 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 using the U.S. Mail system. During this call, the ENGLAND representative touted ENGLAND and the income opportunity it was offering.

33. An ENGLAND representative subsequently made another interstate telephone call to 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 again 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 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 ENGLAND's website had represented, or that the Defendants were baiting him with promises of guaranteed employment but planned to place him in the Driving Opportunity in accordance with ENGLAND's secret goal of having at least 65% of the graduates of its driving

schools purchase the Driving Opportunity. During this call, the ENGLAND representative never mentioned that it would be physically impossible for ENGLAND to directly employ in ENGLAND-owned trucks the thousands of students it trains annually through its driving schools.

34. In the summer of 2009, Roberts picked up the bus ticket that ENGLAND had purchased through interstate commerce and boarded a bus in Santa Rosa bound for training at ENGLAND's truck driving school in Mira Loma, California. ENGLAND lodged Roberts and about 130 or so other Driver candidates at 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.

35. 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 Roberts's case, ENGLAND presented him with a note in favor of Eagle Atlantic Financial (another ENGLAND affiliate) for $2,995 with 18% interest which he signed on or about June 15, 2009. He did not have sufficient cash resources to pay the lower tuition amount of $1,995. Before the completion of training, Roberts also executed a contract presented to him by ENGLAND and entitled "Student Training Agreement." A true and correct copy of Roberts' August 10, 2009 "Student Training Agreement" is attached to this Third Amended Complaint as **Exhibit O** and incorporated herein.

**Initial Efforts to Induce Drivers to Independent Contractor Status**

36. During training in Mira Loma, pursuant to a common course of conduct implemented at all of Defendants' training schools, ENGLAND and HORIZON presented to Roberts and all other Drivers what it called the England Business Guide ("the Guide"). A true and correct copy of excerpts from the Guide are attached to this Third Amended Complaint as **Exhibit C** and incorporated by reference. Upon information and belief, the Guide is still distributed to Drivers, but it is now known as the "Equinox Business Guide," which is substantially identical to the England Business Guide.

37. In the Guide, ENGLAND and HORIZON made specific factual representations about ENGLAND employment opportunities, the Driving Opportunity, and the income the Driving Opportunity 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 representation 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."

c. 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."

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

**Exhibit C.** Defendants made these representations at the time knowing that they were false.

38. In particular, Defendants made the following misrepresentations in the Guide to the Drivers, including Roberts:

> 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.**

39. These quotes about "independent contractors," if they are actually drawn from real individuals and are accurate, were not obtained through representative samples of all independent contractors who had ever been affiliated with ENGLAND, but instead were "cherry picked" from those very few Drivers purchasing the Driving Opportunity who evaded the tremendous odds in favor of economic failure and apparently managed to make some money.

40. Defendants' representations noted in the preceding **paragraphs 36-39** constitute the offer of business opportunities and/or franchises to the Drivers made without the disclosures required by law. In the Guide, Defendants also make false and misleading representations and omissions including false, misleading, and unlawful financial performance representations. For example, Defendants fraudulently omit to state the material facts "that [C.R. England] faces an annual [driver] turnover of 100%-140%" (**Exhibit K**), 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 and not in any way representative of the entire population of Drivers who had purchased the Driving Opportunity. Further, 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.

**McKay's Experience Common to Roberts' Experience and That of the Class**

41. McKay is also 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 also viewed ENGLAND's advertising on its website and found compelling 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 26-29**.

42. Induced by the information he viewed, McKay submitted an online application to ENGLAND. Sometime in late January 2009 or early February 2009, an ENGLAND representative from Utah made an interstate telephone call to 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.

43. An ENGLAND representative subsequently made another interstate telephone call to McKay (just like with Roberts) at his California home and told him that ENGLAND wanted him to attend ENGLAND's 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 disclosed 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 place him in the Driving Opportunity, consistent with their undisclosed goal of compelling at least 65% of the graduates of ENGLAND's driving schools into purchasing the Driving Opportunity.

44. McKay attended ENGLAND training school at Mira Loma, California in approximately February 2009. As with Roberts, McKay Defendants presented and McKay signed a note contract in favor Eagle Atlantic Financial for $2,995 with 18% interest on or about February 9, 2009. He, too, did not have sufficient cash on hand to pay the lower tuition rate. Before the completion of training, McKay (like Roberts) also executed the form "Student Training Agreement." A true and correct copy of McKay's March 30, 2009 "Student Training Agreement" is attached to this Third Amended Complaint as **Exhibit N** and incorporated herein.

45. At ENGLAND's 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 the same representations about ENGLAND employment opportunities and the Driving Opportunity and the income it offered as specifically alleged in **paragraphs 36-39**. Pursuant to a common pitch and script, Defendants training school instructors sought to dissuade all candidates from seeking direct employment driving ENGLAND-owned trucks and instead persuade them to purchase the Driving Opportunity by making statements such as the following: “no matter what, a driver who leases makes more than 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 you’re 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 not make significant net earnings if any at all.

**Phase I and Phase II Training and the Independent Contractor Offering**

46. After completing ENGLAND’s truck driving school and securing a commercial driver’s license, Roberts, McKay, and the 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. During Phase II training, Defendants provided Plaintiffs and the Drivers with “training materials” that contained the same misrepresentations and omissions as alleged in **paragraphs 36-39** above. At the end of Phase II, Defendants returned all Drivers to their headquarters in either Salt Lake City, Utah or their facility in Burns Harbor, Indiana.

47. Regardless of whether Defendants sent the Drivers to Salt Lake City or Burns Harbor, Defendants pursued the following course of common conduct at each location with respect to all Drivers after 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.

48. Defendants also, for the first time, gave the Drivers **Exhibit D**, a form document titled "The Horizon Truck Sales and Leasing Independent Contractor Program" on the first page and "Independent Contractor Program" on subsequent pages with direct references on those subsequent pages to ENGLAND's direct involvement in the program. 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 an 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.

50. Defendants' pro formas included in **Exhibit D** constitute financial performance representations and are unlawful when presented outside required franchise and/or business opportunity disclosures documents. Defendants knew these representations were false when made. 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 and expenses. The pro formas made unrealistic projections about the number of weekly miles that could be driven. They 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. Upon the return of Drivers to either Salt Lake City or Burns Harbor after the conclusion of Phase II training, Defendants commonly rebuffed any Drivers that stated they wanted to be employees and accept the Defendants' promises of guaranteed employment. Defendants told such Drivers 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 **paragraphs 47-50**. For those Drivers that remained un-persuaded and who 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 by ENGLAND.

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, even though McKay observed a yard full of trucks at the time Defendants made the representation. 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.

**The Contractor and Lease Agreements**

53. After the Drivers had agreed to purchase the Driving Opportunity, Defendants for the first time presented the Drivers with the Lease Agreement and Contractor Agreement.

54. As to all Drivers, Defendants' conduct, representations, and distribution of documents noted in the preceding **paragraphs 46-52** 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 46-52**, 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 Contractor Agreement that Defendants presented to each of them. As to all Drivers, the Contractor Agreement was executed in either Utah or Indiana. A true and correct copy of Roberts' Contractor Agreement is attached to this Third Amended Complaint as **Exhibit E** and incorporated by reference. Roberts and ENGLAND executed it in Utah 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. The Contractor Agreements executed by Roberts and McKay are substantially identical to those signed by thousands of other Drivers.

56. At the same time and place that the Contractor Agreement was presented to the Drivers, Defendants presented each Driver the nonnegotiable form Lease Agreement that they required each Driver sign. A true and correct copy of Roberts' Lease Agreement is attached to this Third Amended Complaint as **Exhibit F** and incorporated by reference. Roberts and HORIZON executed it 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. The Lease Agreements executed by Roberts and McKay are substantially identical to those signed by thousands of other Drivers.

57. The Lease Agreements that Roberts and McKay signed in Utah on September 29, 2009 and July 13, 2009, respectively, are on their faces between Plaintiffs and an entity identified 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 to serve as its leasing company. True and correct copies of these corporate records are attached to this Third Amended Complaint as **Exhibit G** and incorporated by reference.

58. Defendants' corporate records 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 both entities intended to perform under and be bound by the Lease Agreement.

The Driving Opportunity as a Franchise, Business Opportunity and Seller Assisted Marketing Plan

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

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

61. 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 3-6, 26-29, 36-39, and 47-52**, 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 protection statutes and the RICO statute.

62. 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 3-6, 26-29, 36-39, and 47-52**, 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 did not own and operate enough trucks and therefore could not (and did not) directly employ all of the students Defendants induced to enroll in their training schools.

c. ENGLAND and HORIZON knew but concealed that the vast majority of 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%" or an even higher 190%-225%.

d. ENGLAND and HORIZON knew but concealed that they had a clearly established goal of compelling at least 65% of the Drivers

who completed ENGLAND's driving schools into purchasing the Driving Opportunity.

e. ENGLAND and HORIZON knew but concealed that the vast majority of Drivers purchasing the Driving Opportunity did not make as much money as company drivers, making the representations noted in **paragraphs 3-6, 26-29, 36-39, and 47-52** and exhibits there referenced false and misleading.

f. 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 3-6, 26-29, 36-39, and 47-52**.

g. 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.

h. ENGLAND and HORIZON knew of its significant turnover rate ranging from 100-225% and concealed that no significant portion of those that had purchased the Driver Opportunity had made a "career" of driving for Defendants, instead making the representations noted in **paragraphs 3-6, 26-29, 36-39, and 47-52** and elsewhere, including those identified in the June 2, 2011 letter to ENGLAND and HORIZON from Plaintiffs' counsel summarizing the nature of Plaintiffs' concerns. A copy of the June

2, 2011 letter of Robert S. Boulter is attached to this Third Amended Complaint as **Exhibit H** and incorporated by reference. .

i. 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 and that Defendants would pursue collection efforts even though they were responsible for the Drivers leaving the system.

63. 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 fraudulent scheme designed to bilk the Drivers out of their labor and to have the Drivers pay the Defendants' expenses associated with transporting goods. Defendants' motives in perpetuating the scheme were to cut expenses and to increase their margin on the money ENGLAND makes selling transportation services. Indeed, from 2005 to the present, Defendants aggressively pursued their leasing program to the detriment of Roberts, McKay, and the other Drivers. Defendants routinely collected and distributed statistics on what they called their "Lease Conversion Goal" and actively promoted placing Drivers in the leasing program to achieve the highest goal percentage possible. Unsurprisingly, Defendants never disclosed the "Lease Conversion Goal" to Drivers. For a span of more than six years, Defendants have been offering a franchise, business opportunity, and seller assisted marketing plan, as each are defined under applicable, and in so doing have violated applicable state and federal law.

**Defendants' Control of Plaintiffs and the Class**

65. Section 1. A of the Contractor Agreement (**Exhibit E**) 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." "Equipment" is defined in the Contractor Agreement as a good, to wit, the tractor Defendants rent to the Drivers. "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"). Attachment 1 of the Contractor Agreement goes on to describe the truck lease from HORIZON as the equipment. 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 ENGLAND.

66. 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 ENGLAND. And in oral presentations in California and Salt Lake City, the Defendants told Roberts and McKay that the business Defendants offered required the Drivers to provide customer service to the customers and comply with customers' requests for service. Under the express written, oral, and implied terms, the Drivers had responsibilities to physically offer, provide, and distribute services directly to ENGLAND's customers, pursuant to instructions and orders of ENGLAND.

67. ENGLAND further controlled the Drivers by imposing limits on their ability to make arrangements with ENGLAND's customers. The Contractor Agreement provided under the section entitled "Customer Requirements" that "[r]easonable 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."

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

69. In the Guide, Defendants' described the services they would perform for the Drivers as further inducement for the Drivers to purchase the Driver Opportunity which, in turn, gave Defendants even greater control over the Drivers' livelihood:

> 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.**

70. 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 36-39 and 69**. The "Table of Contents" to HORIZON'S marketing brochure on the leasing program (**Exhibit D**) also 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." The Guide stated that ENGLAND would provide a system that included freight acquisition, a trailer, support staff, and many other pieces needed to operate the business.

71. In oral presentations in California and Salt Lake City, the Defendants also told Roberts and McKay that they 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, ENGLAND told Roberts and McKay that if they "leased" they would be required to follow the program Defendants offered as described in the Guide, the Contractor Agreement, and the Lease Agreement.

72. ENGLAND, not HORIZON, provided these services of acquiring freight, and support staffing. The England Business Guide also described the services that 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…" **Exhibit C**.

73. Defendants also required the Drivers to use the name "C.R. England." Each tractor leased to Roberts, McKay, and the Drivers had both the trade name "C.R. England" and ENGLAND's Coat of Arms prominently displayed on 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's Coat of Arms prominently displayed on 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**.

74. ENGLAND further 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. Plaintiffs and 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.

**What the Drivers Pay for the Driving Opportunity**

75. For the right to acquire the Driving Opportunity, Defendants obligated Plaintiffs and the Class 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, and insurance.

76. In order to become a Driver for ENGLAND under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the Drivers to attend, complete, and pay for ENGLAND's truck driving school regardless of whether the Driver had an active commercial driver license ("CDL") or not. Payment to 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 ENGLAND $500 dollars for that course. Unlicensed Drivers were required to pay ENGLAND either approximately $1,995 if paying cash or $2,995 if paying via a note executed with Defendants' affiliate Eagle Financial Services. These payments were for specific training services ENGLAND provided to the Drivers in order to both get a commercial driver license ***and*** to be trained on specifics of ENGLAND's method of

doing business, including those outlined in the Guide. As such, the training represented, in part, an ENGLAND-specific investment and was unrecoverable. Roberts, McKay, and the Drivers all in fact went through such training and paid for it.

77. In order to become Drivers for ENGLAND under the Driving Opportunity and for the right to enter that business, the Defendants required Roberts, McKay, and the Drivers to enter into the Lease Agreement (ostensibly with HORIZON) to rent a tractor for use in the business. Plaintiffs use the term "ostensibly" 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 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.

78. 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.

79. Notwithstanding disclaimers in Defendants' adhesion contracts, Roberts, McKay, and the Drivers ***were not*** "free" to lease trucks from other providers and ***were required*** to sign the Lease Agreement and to enter into a Contractor Agreement with ENGLAND. The Defendants, in concert, in fact offered the Plaintiffs the definitive and nonnegotiable business opportunity described in **Exhibit D** that required both a Lease Agreement with HORIZON and a Contractor Agreement with ENGLAND. Indeed, under a section called "Independent, But Not Alone" the Guide notes in pertinent part:

> Do you have a 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.

**Exhibit C.**

80. As alleged above, other than what Defendants sought to provide, the Drivers had no other options to obtain a truck after Defendants finished the Phase II training. At the end of their "training," Plaintiffs were deposited in either Salt Lake City, Utah or, alternatively, Burns Harbor, Indiana where (not coincidentally) only HORIZON had a facility, operations, personnel, and dozens of trucks at the ready. Most Drivers, including Roberts and McKay, expected to be offered employment driving ENGLAND-owned trucks consistent with ENGLAND's oral and written promises but Defendants told them no employment was available and that only the Driving Opportunity was available. Defendants further told Roberts, McKay, and the Drivers that if they wanted to get on the road they needed to lease immediately from HORIZON.

81. 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.

**Exhibit F, ¶ 13.**

82. In fact, most, if not all, Drivers would never qualify for what is commonly understood as a "lease" transaction. As a result of the circumstances deliberately created by Defendants, 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.

83. The Lease Agreement, in section 10, also locks the Drivers into driving for 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. HORIZON is an illegitimate business entity created by Defendants solely to further the schemes alleged in this Third Amended Complaint.

84. Each Driver paid Defendants between approximately $400 and $550 per week for the fixed rental payment on the truck. Over the approximate seven-month period of his Driving

Opportunity, Roberts paid approximately $13,000 in these fixed rental payments. A true and correct copy of an exemplar of Roberts' settlement statement showing such payments is attached to this Third Complaint as **Exhibit L**.

85. The tractor rental was a specific unrecoverable investment in 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 ENGLAND and also as way for Drivers to represent, and customers to note, the Drivers' specific association with 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.

86. Ordinarily, a driver entering a business like the Driving Opportunity (with a company other than 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.

87. In order to become Drivers for ENGLAND under the Driving Opportunity and for the right to enter that business, the Defendants also required Roberts, McKay, and all Drivers to

utilize and pay for a computerized "mobile communication terminal" known as the Qualcomm. The Qualcomm device 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 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 ENGLAND had discretion), install that unit, and sync it with 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 alleged above, Defendants had worn down the Drivers using a variety of physical and psychological manipulations.

88. 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 ENGLAND pays for the Qualcomm, this is not true. 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.

89. The Qualcomm system is preprogrammed in proprietary fashion by 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 ENGLAND. The Drivers build no equity in the Qualcomm device, cannot disconnect it, cannot refuse to use it, and 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.

90. In order to become Drivers for ENGLAND under the Driving Opportunity and for the right to enter that business, the Defendants further required Roberts, McKay, and the 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.

91. Moreover, on information and belief, ENGLAND did not in fact pass through the entirety of the variable mileage payments it received to HORIZON but instead commingled these funds with its own funds. As noted at paragraph 14 of **Exhibit D's** FAQ's, the variable mileage payment is "used to partially cover the cost of the truck, acquiring freight, staffing, and for other business expenses." In a "Roundtable" newsletter distributed to personnel of the Defendants, 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.

A true and correct copy of the "Roundtable" newsletter identified above is attached to this Third Amended Complaint as **Exhibit M** and incorporated herein.

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

93. The variable mileage payments served a number of purposes. First, they were used by Defendants in part as additional rental payments for the tractor. Second, the variable mileage payments were paid to ENGLAND for services that it provided to the Drivers, including dispatch services, freight acquisition services, load planning, booking, and other business expenses that ENGLAND incurred.

94. By way of example, over the approximate seven month period Roberts operated the Driving Opportunity, he paid approximately $10,500 in variable mileage payments.

95. In order to become Drivers for ENGLAND under the Driving Opportunity and for the right to enter that business, the Defendants also required Roberts, McKay, and the Drivers to pay 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 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…"

96. By way of example, over the period of the Driving Opportunity Roberts paid approximately $5,300 for general reserve payments.

97. In order to become Drivers for ENGLAND under the Driving Opportunity and for the right to enter that business, the Defendants further required Roberts, McKay, and all Drivers to pay Defendants for a variety of insurance coverage and pay ENGLAND for the service of securing such coverage. See **Exhibit E, Attachment 4, ¶ V**. (Driver to pay an "Insurance Administrative Fee to US…")

98. 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 ENGLAND's practice nor was it reasonable or possible under the circumstances. Given the exigencies and pressure exerted by 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 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.

99. In addition, although the Contractor Agreement states that ENGLAND does not charge a markup on the insurance, it is highly doubtful that ENGLAND's statement is true. 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 are far too high for the limited coverage offered. On

information and belief, ENGLAND keeps for its own benefit, a portion of the insurance payments the Drivers submit to it.

100. By way of example, over the period of the Driving Opportunity Roberts paid approximately $6500 for insurance and Insurance Administrative Fees.

**CLASS ACTION ALLEGATIONS**

101. Roberts and McKay propose a Class consisting of all Drivers in the United States that purchased the Driving Opportunity.

102. Roberts and McKay specifically allege the following sub-classes:

a. 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.

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

c. A Telemarketing 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.

d. A National Class, consisting of all Drivers which will be afforded a remedy under RICO statute and all Utah laws asserted herein.

e. To the extent not covered by the National Class, a Utah Class consisting of all Drivers that were offered the Driving Opportunity by Defendants, while physically present in Utah, which will be afforded a remedy under applicable Utah laws.

103. 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) and 23(b) are met. 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.

**Rule 23(a) Factors**

104. **Numerosity**. 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 to Plaintiffs at this juncture, 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.

105. **Existence of Common Questions of Fact and Law**. 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 affecting 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 of applicable federal and Utah laws;

b. Whether ENGLAND and HORIZON unlawfully sold (and sell) business opportunities in violation of 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 ENGLAND and HORIZON breached one or more terms of the Student Training Agreement;

e. Whether ENGLAND and HORIZON served as fiduciaries to the Plaintiffs and the Drivers and, through the conduct alleged in this Third Amended Complaint, breached their fiduciary obligations to the Class;

f. Whether 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.;

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

h. Whether 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.

i. Whether the defendants' fraudulent scheme to induce Drivers to purchase the Driving Opportunity violates the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq*.

j. Whether the members of the Class sustained damages by reason of the uniform and patterned wrongful acts and omissions of the defendants and, if so, the proper measure of such damages; and

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

106. **Typicality**. Plaintiffs are members of the Classes alleged above. They have a common origin and share common bases. Plaintiffs' claims originate from the same illegal, fraudulent and confiscatory practices of the Defendants, and the Defendants act in the same way toward the Plaintiffs and the Class members. If brought and prosecuted individually, the claims of each Class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

107. **Adequacy**. 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. Plaintiffs' interests do not conflict with the interests of the members of the Classes they seek to represent.

**Rule 23(b) Factors**

108. 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). 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).

109. 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). In addition, questions of law or fact common to class members predominate over any questions affecting individual members. Fed. R. Civ. P. 23(b)(3).

110. 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). Roberts and McKay are not aware of any other litigation concerning the instant controversy already commenced. Fed. R. Civ. P. 23(b)(3)(B). It is also desirable to concentrate the litigation of the claims in this Court because ENGLAND and HORIZON are headquartered here. Fed. R. Civ. P. 23(b)(3)(C). Finally, 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).

111. The stakes and difficulty of individual Drivers bringing individual claims in Utah, far from most of their home states and cities, means that the only realistic alternative to a class

action is no suits at all and therefore Defendants will never be called to account for their flagrant misconduct.

112. 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**
**VIOLATIONS OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ("RICO") ACT**
**18 U.S.C. § 1962(C)**
**(Fraudulent Scheme to Sell Driving Opportunity and Have Drivers Bear the Expenses and Risks of England's Transportation Business)**
***Alleged Against All Defendants By Plaintiffs and the National Class***

113. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

114. Defendants ENGLAND, OPPORTUNITY, and HORIZON have violated 18 U.S.C. § 1962(c) because they have conducted or participated in the conduct of the affairs of an enterprise through a pattern of racketeering activity.

115. The Defendants, together with the Drivers who service the customers of ENGLAND, and enter into the Lease Agreements with OPPORTUNITY and HORIZON, comprise an "association-in-fact" enterprise (the "ENGLAND Truck Leasing Enterprise") within

the meaning of 18 U.S.C. § 1961(4). The ENGLAND Truck Leasing Enterprise is separate and distinct from the individual Defendants that participate in it and direct its affairs

116. The structure of the ENGLAND Truck Leasing Enterprise is imposed by, among other things: (i) the terms of the Student Training Agreements which Drivers sign in order to enter the training program; (ii) the terms of the Contractor Agreements that Drivers must sign in order to service ENGLAND customers; (iii) the terms of the Lease Agreements signed by Drivers with OPPORTUNITY and with HORIZON; (iv) the terms of the Guide and the Equinox Business Guide which Drivers who purchase the Driving Opportunity are required to follow; (v) the computerized program designed and implemented by ENGLAND that assigns loads to Drivers; (vi) the directives issued via Qualcomm governing the manner in which loads are assumed, picked up, navigated, and delivered; and (vii) through the manner alleged above at **paragraphs 65-100**.

117. The contractual rights and other rights exercised by the Defendants as alleged in **paragraph 116** allow the Defendants to control the Drivers' actions in the manner of a classic top-down hierarchy, in which decisions are made by the Defendants and then dictated to the Drivers, who have no choice but to follow the orders or risk termination and thereby lose their entire investment in the Driving Opportunity.

118. Each Plaintiff and each Driver in the National Class is a person or legal entity separate from any and all Defendants. Because each Plaintiff is subject to the control exercised by the Defendants in the service of a common purpose, as alleged elsewhere in this Third Amended Complaint, all are part of the same association-in-fact enterprise.

119. There are numerous aspects of the operation of the ENGLAND Truck Leasing Enterprise that do not involve conduct that is intrinsically criminal or illegal, including but not

limited to: (i) the provision of transportation services to members of the public; (ii) the advertising of ENGLAND's transportation services by ENGLAND to members of the public; (iii) the hiring of employees by the Defendants to perform ordinary business functions that have no relationship to the fraudulent scheme alleged in this Third Amended Complaint; and (iv) many other day-to-day business activities that do not partake of criminality.

120. All of the members of the ENGLAND Truck Leasing Enterprise share the common purpose of providing services necessary to the safe, timely and effective transportation of goods for companies and persons who need to purchase such services. The Drivers share this goal with Defendants despite the fact that they have been defrauded into purchasing the Driving Opportunity; indeed, working extremely hard and providing outstanding service to ENGLAND's customers is the only way that the Drivers have any chance at all of falling into the tiny percentage of those who do not fail quickly in the Driving Opportunity. It would be possible for Defendants to work within the law and either provide the Drivers with the true facts about the Driving Opportunity before Drivers sign on or change the economic terms of their relationships with the Drivers and give the Drivers a realistic chance to succeed. Defendants' fraudulent lies and omissions at the inception of the relationship transform the ENGLAND Truck Leasing Enterprise from a legitimate business into an ongoing criminal organization.

121. The Defendants conduct the affairs of the ENGLAND Truck Leasing Enterprise, as opposed to merely their own affairs, by, among other things, invoking provisions of the Student Training Agreements, the Contractor Agreements, the Lease Agreements, the England Business Guide, the Equinox Business Guide, and other documents, rules and regulations to require the Plaintiffs to take certain actions and to refrain from taking certain actions, and in

general by asserting control over the activities of independent contractors in the manner of a classic top-down hierarchy as alleged in **paragraphs 65-100** of this Third Amended Complaint.

122. If it were not for the separate legal existence of the Drivers, the Defendants would not have been able to effectuate their scheme of conducting the affairs of the ENGLAND Truck Leasing Enterprise so as to defraud the Plaintiffs of money and/or property. For example, only by virtue of the separate existence of individuals who agree to purchase the Driving Opportunity can the Defendants fraudulently induce such purchases and achieve their goal of having others bear the costs of providing transportation services to ENGLAND's customers. This effective "outsourcing" of costs would be impossible if ENGLAND operated exclusively through company-owned trucks driven by employees of ENGLAND.

123. Defendant ENGLAND participated in the conduct of the ENGLAND Truck Leasing Enterprise through inducing the purchase of the Driving Opportunity by Plaintiffs and thousands of other Drivers by knowingly misrepresenting and omitting material facts about: (i) ENGLAND's policies and procedures; (ii) the actual availability of employment directly with ENGLAND driving a company-owned truck; (iii) the weekly mileage that ENGLAND made available to independent contractors who purchased the Driving Opportunity; (iv) the costs of operating as an independent contractor; (v) the express goal to compel at least 65% of those who satisfactorily completed driving school into purchasing the Driving Opportunity; and (vi) the net revenues and profit margins that purchasers of the Driving Opportunity could expect to receive, as alleged more specifically in **paragraphs 3-6, 26-29, 36-39, and 47-52** of this Third Amended Complaint.

124. Defendants HORIZON and OPPORTUNITY participated in the conduct of the ENGLAND Truck Leasing Enterprise by inducing or otherwise assisting the purchase of the

Driving Opportunity by Plaintiffs, and thousands of other Drivers; by providing financing or otherwise assisting in providing financing for Plaintiffs and thousands of other Drivers to lease trucks; and by knowingly misrepresenting and omitting material facts about: (i) the costs of operating as an independent contractor; (ii) the net revenues and profit margins that purchasers of the Driving Opportunity could expect to receive; (iii) by entering into the Lease Agreements, the terms of which made it virtually impossible for Plaintiffs and those similarly situated to earn any net revenues at all, let alone enough to make the amounts represented by HORIZON and OPPORTUNITY in order to induce the purchase of the Driving Opportunity, as alleged more specifically in **paragraphs 3-6, 26-29, 36-39, and 47-52** of this Third Amended Complaint; and (iv) by collecting payments from the Drivers for the exorbitantly priced Lease Agreements.

125. The predicate crimes committed by Defendants are mail fraud as defined by 18 U.S.C. § 1341 and wire fraud as defined by 18 U.S.C. § 1343.

126. In violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343, Defendants devised and effected a scheme to defraud the Plaintiffs and the Drivers by knowingly and deliberately making false representations of fact, and/or omitting material true facts to them in order to induce them to purchase the Driving Opportunity.

127. The execution of the scheme to defraud by Defendants involved numerous individual instances of the use of the United States mails and interstate wire facilities in furtherance of the scheme, which uses of the United States mails and interstate wire communications were reasonably foreseeable by Defendants and were essential parts of Defendants' fraudulent scheme.

128. Specific instances of the uses of the United States mails and interstate wire communications area as follows and interstate wire and interstate wire facilities in furtherance of

Defendants' fraudulent scheme are as follows: (i) accepting driving school applications submitted through Defendants' website; (ii) accepting driving school applications submitted through interstate facsimile transmissions; (iii) placing and maintaining false and misleading advertising on websites about the Driving Opportunity, about guaranteed jobs with ENGLAND driving a company-owned truck, and other false and misleading statements and omissions; (iv) placing and maintaining false and misleading advertising about the Driving Opportunity, about guaranteed jobs with ENGLAND driving a company-owned truck, and other false and misleading statements and omissions in local newspapers and flyers that, upon information and belief, are distributed through United States bulk mail; (v) through interstate telephone calls made by or to prospective Drivers and/or driving school candidates who reside in states outside of Utah; (vi) through interstate telephone calls from agents or employees of ENGLAND to prospective driving school candidates in order to advise them that they have been accepted and to provide them with confirmation information for their bus tickets to driving school; (vii) through interstate electronic mail communication from agents or employees of ENGLAND in Utah to prospective driving school candidates to provide them with bus tickets to driving school; (viii) sending settlement statements through the U.S. Mail and via the Internet through sponsorship of a Driver-enabled website; and (ix) automatically debiting expenses owed by the Drivers pursuant to their agreements with Defendants via wire transfer into and out of Driver-controlled accounts.

129. The fraudulent representations and omissions giving rise to this claim are stated with particularity in **paragraphs 3-6, 26-29, 36-39, and 47-52** of this Third Amended Complaint. It is Defendants, not Plaintiffs, who have (or should have) detailed records of the thousands upon thousands of mailings, interstate electronic mail and Internet communications,

and telephone calls made by them and their numerous employees and agents to Plaintiffs and others similarly situated, that contained fraudulent representations or that were essential parts of Defendants' ability to effectuate the fraudulent scheme alleged in this Third Amended Complaint. In fact, without discovery, it is impossible for Plaintiffs to present all such factual detail about the Defendants' activities.

130. The predicate acts committed by Defendants as alleged in this Third Amended Complaint constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

131. The acts of mail fraud and wire fraud as alleged herein are related because they involve repeated instances of using the United States mails and interstate wire facilities to defraud the Plaintiffs and the Drivers by inducing them through misrepresentations and omissions of material facts to purchase the Driving Opportunity, when Defendants well knew that the overwhelming majority of individuals who did so would be unwittingly bearing the costs of ENGLAND's business and thus would have no real chance to survive economically. In addition, all of the persons who have ever purchased the Driving Opportunity across the United States have also been victimized by this fraudulent scheme, meaning that the scheme has literally thousands of victims.

132. The acts of mail fraud and wire fraud as alleged herein threaten to continue indefinitely into the future because the very business model of ENGLAND, OPPORTUNITY and HORIZON is built upon continual and astronomically high turnover among the Drivers, which by ENGLAND's own admission ranges from 100%-225% on an annualized basis. Only by continually and repeatedly inducing the misplaced trust of Plaintiffs and the Drivers and by exploiting the economic desperation being experienced by many people in the wake of the Great

Recession can Defendants continue to achieve their undisclosed goal of shifting the cost of providing trucking services to others, who have no reasonable expectation of making a profit from their purchases of the Driving Opportunity, while preserving outrageously high profits for themselves.

133. Plaintiffs and the Drivers have been damaged by reason of the Defendants' having conducted and continuing to conduct the affairs of the ENGLAND Truck Leasing Enterprise through the pattern of racketeering activity as alleged herein. In particular, there exists a direct and proximate chain of causation from the fraudulent statements and omissions made by the Defendants to induce the plaintiffs and the Drivers to purchase the Driving Opportunity, and the economic losses suffered by the Plaintiffs and the Drivers. Those economic losses are the natural and expected consequence of action taken reasonably by the Plaintiffs and the Drivers in reliance on the Defendants' false statements and misleading omissions, and there are no other third parties who have more directly suffered the economic losses that have been incurred by the Plaintiffs and the Drivers.

## SECOND CLAIM FOR RELIEF
## VIOLATIONS OF UTAH RACKETEER INFLUENCED AND CRIMINAL ENTERPRISE ("RICE") ACT
## UTAH CODE § 76-10-1601 *et seq.*
**(Fraudulent Scheme to Sell Driving Opportunity and Have Drivers Bear the Expenses and Risks of England's Transportation Business)**

***Alleged Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

134. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

135. Defendants ENGLAND, OPPORTUNITY, and HORIZON have violated Utah Code § 76-10-1603(3) because they have conducted or participated in the conduct of the affairs of an enterprise through a pattern of unlawful activity.

136. The Defendants, together with the Drivers who service the customers of ENGLAND, and enter into the Lease Agreements with OPPORTUNITY and HORIZON, comprise an "association-in-fact" enterprise (the "ENGLAND Truck Leasing Enterprise") within the meaning of Utah Code § 76-10-1602(1). The ENGLAND Truck Leasing Enterprise is separate and distinct from the individual Defendants that participate in it and direct its affairs.

137. The structure of the ENGLAND Truck Leasing Enterprise is imposed by, among other things: (i) the terms of the Student Training Agreements which Drivers sign in order to enter the training program; (ii) the terms of the Contractor Agreements that Drivers must sign in order to service ENGLAND customers; (iii) the terms of the Lease Agreements signed by Drivers with OPPORTUNITY and with HORIZON; (iv) the terms of the England Business Guide and the Equinox Business Guide which Drivers who purchase the Driving Opportunity are required to follow; (v) the computerized program designed and implemented by ENGLAND that assigns loads to Drivers; (vi) the directives issued via Qualcomm governing the manner in which loads are assumed, picked up, navigated, and delivered; and (vii) through the manner alleged above at **paragraphs 65-100**.

138. The contractual rights and other rights exercised by the Defendants as alleged in **paragraph 137** allow the Defendants to control the Drivers' actions in the manner of a classic top-down hierarchy, in which decisions are made by the Defendants and then dictated to the Drivers, who have no choice but to follow the orders or risk termination and thereby lose their entire investment in the Driving Opportunity.

139. Each Plaintiff and each Driver in the National Class is a person or legal entity separate from any and all Defendants. Because each Plaintiff is subject to the control exercised

by the Defendants in the service of a common purpose, as alleged elsewhere in this Third Amended Complaint, all are part of the same association-in-fact enterprise.

140. There are numerous aspects of the operation of the ENGLAND Truck Leasing Enterprise that do not involve conduct that is intrinsically criminal or illegal, including but not limited to: (i) the provision of transportation services to members of the public; (ii) the advertising of ENGLAND's transportation services by ENGLAND to members of the public; (iii) the hiring of employees by the Defendants to perform ordinary business functions that have no relationship to the fraudulent scheme alleged in this Third Amended Complaint; and (iv) many other day-to-day business activities that do not partake of criminality.

141. All of the members of the ENGLAND Truck Leasing Enterprise share the common purpose of providing services necessary to the safe, timely and effective transportation of goods for companies and persons who need to purchase such services. The Drivers share this goal with Defendants despite the fact that they have been defrauded into purchasing the Driving Opportunity; indeed, working extremely hard and providing outstanding service to ENGLAND's customers is the only way that the Drivers have any chance at all of falling into the tiny percentage of those who do not fail quickly in the Driving Opportunity. It would be possible for Defendants to work within the law and either provide the Drivers with the true facts about the Driving Opportunity before Drivers sign on or change the economic terms of their relationships with the Drivers and give the Drivers a realistic chance to succeed. Defendants' fraudulent lies and omissions at the inception of the relationship transform the ENGLAND Truck Leasing Enterprise from a legitimate business into an ongoing criminal organization.

142. The Defendants conduct the affairs of the ENGLAND Truck Leasing Enterprise, as opposed to merely their own affairs, by, among other things, invoking provisions of the

Student Training Agreements, the Contractor Agreements, the Lease Agreements, the England Business Guide, the Equinox Business Guide, and other documents, rules and regulations to require the Plaintiffs to take certain actions and to refrain from taking certain actions, and in general by asserting control over the activities of independent contractors in the manner of a classic top-down hierarchy as alleged in **paragraphs 65-100** of this Third Amended Complaint.

143. If it were not for the separate legal existence of the Drivers, the Defendants would not have been able to effectuate their scheme of conducting the affairs of the ENGLAND Truck Leasing Enterprise so as to defraud the Plaintiffs of money and/or property. For example, only by virtue of the separate existence of individuals who agree to purchase the Driving Opportunity can the Defendants fraudulently induce such purchases and achieve their goal of having others bear the costs of providing transportation services to ENGLAND's customers. This effective "outsourcing" of costs would be impossible if ENGLAND operated exclusively through company-owned trucks driven by employees of ENGLAND.

144. Defendant ENGLAND participated in the conduct of the ENGLAND Truck Leasing Enterprise through inducing the purchase of the Driving Opportunity by Plaintiffs and thousands of other Drivers by knowingly misrepresenting and omitting material facts about: (i) ENGLAND's policies and procedures; (ii) the actual availability of employment directly with ENGLAND driving a company-owned truck; (iii) the weekly mileage that ENGLAND made available to independent contractors who purchased the Driving Opportunity; (iv) the costs of operating as an independent contractor; (v) the express goal to steer at least 65% of those who satisfactorily completed driving school into purchasing the Driving Opportunity; and (vi) the net revenues and profit margins that purchasers of the Driving Opportunity could expect to receive,

as alleged more specifically in **paragraphs 3-6, 26-29, 36-39, and 47-52** of this Third Amended Complaint.

145. Defendants HORIZON and OPPORTUNITY participated in the conduct of the ENGLAND Truck Leasing Enterprise by inducing or otherwise assisting the purchase of the Driving Opportunity by Plaintiffs, and thousands of other Drivers; by providing financing or otherwise assisting in providing financing for Plaintiffs and thousands of other Drivers to lease trucks; and by knowingly misrepresenting and omitting material facts about: (i) the costs of operating as an independent contractor; (ii) the net revenues and profit margins that purchasers of the Driving Opportunity could expect to receive; (iii) by entering into the Lease Agreements, the terms of which made it virtually impossible for Plaintiffs and those similarly situated to earn any net revenues at all, let alone enough to make the amounts represented by HORIZON and OPPORTUNITY in order to induce the purchase of the Driving Opportunity, as alleged more specifically in **paragraphs 3-6, 26-29, 36-39, and 47-52** of this Third Amended Complaint; and (iv) by collecting payments from the Drivers for the exorbitantly priced Lease Agreements.

146. The episodes of unlawful activity engaged in by Defendants are repeated instances of mail fraud as defined by 18 U.S.C. § 1341 and wire fraud as defined by 18 U.S.C. § 1343, made applicable to the Utah RICE Act pursuant to Utah Code § 76-10-1602(jjjj).

147. In violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343, Defendants devised and effected a scheme to defraud the Plaintiffs and the Drivers by knowingly and deliberately making false representations of fact, and/or omitting material true facts to them in order to induce them to purchase the Driving Opportunity.

148. The execution of the scheme to defraud by Defendants involved numerous individual instances of the use of the United States mails and interstate wire facilities in

furtherance of the scheme, which uses of the United States mails and interstate wire communications were reasonably foreseeable by Defendants and were essential parts of Defendants' fraudulent scheme.

149. Specific instances of the uses of the United States mails and interstate wire communications area as follows and interstate wire and interstate wire facilities in furtherance of Defendants' fraudulent scheme are as follows: (i) accepting driving school applications submitted through Defendants' website; (ii) accepting driving school applications submitted through interstate facsimile transmissions; (iii) placing and maintaining false and misleading advertising on websites about the Driving Opportunity, about guaranteed jobs with ENGLAND driving a company-owned truck, and other false and misleading statements and omissions; (iv) placing and maintaining false and misleading advertising about the Driving Opportunity, about guaranteed jobs with ENGLAND driving a company-owned truck, and other false and misleading statements and omissions in local newspapers and flyers that, upon information and belief, are distributed through United States bulk mail; (v) through interstate telephone calls made by or to prospective Drivers and/or driving school candidates who reside in states outside of Utah; (vi) through interstate telephone calls from agents or employees of ENGLAND to prospective driving school candidates in order to advise them that they have been accepted and to provide them with confirmation information for their bus tickets to driving school; (vii) through interstate electronic mail communication from agents or employees of ENGLAND in Utah to prospective driving school candidates to provide them with bus tickets to driving school; (viii) sending settlement statements through the U.S. Mail and via the Internet through sponsorship of a Driver-enabled website; and (ix) automatically debiting expenses owed by the

Drivers pursuant to their agreements with Defendants via wire transfer into and out of Driver-controlled accounts.

150. The fraudulent representations and omissions giving rise to this claim are stated with particularity in **paragraphs 3-6, 26-29, 36-39, and 47-52** of this Third Amended Complaint. It is Defendants, not Plaintiffs, who have (or should have) detailed records of the thousands upon thousands of mailings, interstate electronic mail and Internet communications, and telephone calls made by them and their numerous employees and agents to Plaintiffs and others similarly situated, that contained fraudulent representations or that were essential parts of Defendants' ability to effectuate the fraudulent scheme alleged in this Third Amended Complaint. In fact, without discovery, it is impossible for Plaintiffs to present all such factual detail about the Defendants' activities.

151. The predicate acts committed by Defendants as alleged in this Third Amended Complaint constitute a "pattern of unlawful activity" within the meaning of Utah Code § 76-10-1602(2).

152. The acts of mail fraud and wire fraud as alleged herein are not isolated, but have the same or similar purposes, results, participants, victims or methods of commission, and are otherwise related by distinguishing characteristics, because they involve repeated instances of using the United States mails and interstate wire facilities to defraud the Plaintiffs and the Drivers by inducing them through misrepresentations and omissions of material facts to purchase the Driving Opportunity, when Defendants well knew that the overwhelming majority of individuals who did so would be unwittingly bearing the costs of ENGLAND's business and thus would have no real chance to survive economically. In addition, all of the persons who have

ever purchased the Driving Opportunity across the United States have also been victimized by this fraudulent scheme, meaning that the scheme has literally thousands of victims.

153. The acts of mail fraud and wire fraud as alleged herein threaten to continue indefinitely into the future because the very business model of ENGLAND, OPPORTUNITY and HORIZON is built upon continual and astronomically high turnover among the Drivers, which by ENGLAND's own admission ranges from 100%-225% on an annualized basis. Only by continually and repeatedly inducing the misplaced trust of Plaintiffs and the Drivers and by exploiting the economic desperation being experienced by many people in the wake of the Great Recession can Defendants continue to achieve their undisclosed goal of shifting the cost of providing trucking services to others, who have no reasonable expectation of making a profit from their purchases of the Driving Opportunity, while preserving outrageously high profits for themselves.

154. Plaintiffs and the Drivers have been damaged by reason of the Defendants having conducted and continuing to conduct the affairs of the ENGLAND Truck Leasing Enterprise through the pattern of unlawful activity as alleged herein. In particular, there exists a direct and proximate chain of causation from the fraudulent statements and omissions made by the Defendants to induce the plaintiffs and the Drivers to purchase the Driving Opportunity, and the economic losses suffered by the Plaintiffs and the Drivers. Those economic losses are the natural and expected consequence of action taken reasonably by the Plaintiffs and the Drivers in reliance on the Defendants' false statements and misleading omissions, and there are no other third parties who have more directly suffered such damages.

**THIRD CLAIM FOR RELIEF**
**VIOLATIONS OF CALIFORNIA SELLER ASSISTED MARKETING PLAN ACT**
***Alleged Against All Defendants by Plaintiffs and the California Class***

155. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

156. The Driving Opportunity meets the definitions of a "seller assisted marketing plan" under the California Seller Assisted Marketing Plan ("SAMP") 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.

157. 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 3-6, 26-29, 36-39, and 47-52**.

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

159. Defendants are sellers of "Seller Assisted Marketing Plans", as defined in California Civil Code section 1812.201 (d), and represented and/or implied to 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.

160. 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, Lease Agreement, and Student Training 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.

161. As more fully alleged above, 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.

162. 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 agreements at issue, and punitive damages pursuant to Cal. Civ. Code §§ 1812.215 and 1812.218. The Defendants' disclosure violations entitle Roberts, McKay, and the California Class to their actual damages, attorneys' fees, rescission of the agreements at issue, and punitive damages pursuant to Cal. Civ. Code §§ 1812.215 and 1812.218. The Defendants' anti-fraud violations entitle Roberts, McKay, and the California Class to recover their damages pursuant to Cal. Civ. Code §§ 1812.215 and 1812.218.

## FOURTH CLAIM FOR RELIEF
## VIOLATIONS OF CALIFORNIA UNFAIR COMPETITION LAW
***Alleged Against All Defendants by Plaintiffs and the California Class***

163. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

164. 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."

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

**Count I – SAMP Act Violations**

166. Defendants unlawfully offered and sold unregistered seller assisted marketing plans to Roberts, McKay, and the California Class as alleged in **paragraphs 59-74 and 155-162**. Consequently, the Defendants' practice of offering and selling unregistered seller assisted marketing plans constitutes an unlawful business act or practice.

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

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

169. 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.

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

171. Defendants' violation of the SAMP Act's anti-fraud provisions constituted unlawful, fraudulent, and unfair business acts or practices.

**Count II—The Fraud Scheme**

172. 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 more particularly above in **paragraphs 3-6, 26-29, 36-39, and 47-52**.

173. Defendants unlawfully baited Plaintiffs and 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 Roberts, McKay, and the California Class into purchasing the Driving Opportunity as alleged above.

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

175. 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.

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

177. 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. In addition, the bait of "guaranteed employment" and switch to the Driving Opportunity was a deceptive act and practice. Consequently, Defendants' conduct was fraudulent, and unfair.

178. 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.

179. On information and belief, Defendants received reimbursement from the United States government for student tuition or for other actions used to perpetrate the schemes alleged in this Third Amended Complaint. Given the fraud scheme described herein, such moneys should be disgorged and returned to the United States government.

180. Advertising is virtually any statement made in connection with the sale of goods or services. Defendants' fraud scheme, their websites, the Guide, and the other conduct therein in marketing the franchises was advertising and was unfair, deceptive, false and/or misleading as alleged in detail in this Third Amended Complaint, particularly in **paragraphs 3-6, 26-29, 36-39, and 47-52**.

181. Certain provisions 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.

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

**FIFTH CLAIM FOR RELIEF**
**VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT**
***Alleged Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

183. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

184. Defendants' conduct alleged above 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 Plaintiffs, the National Class, and the Utah Class was at all material times developed, orchestrated, and implemented in part out of their headquarters in Utah by their senior management in conjunction with those under their

direct control. In addition, the actual execution of the Contractor Agreements and Lease Agreements by Roberts, McKay, and the Utah Class took place in Utah.

185. 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.

186. The Driving Opportunity satisfies the definition of a consumer transaction in that it required the Plaintiffs, the National Class, and the Utah 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.

187. As alleged above with particularity, the Defendants knowingly or intentionally represented to the Plaintiffs, the National Class, and the Utah Class 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 3-6, 26-29, 36-39, and 47-52** to Roberts, McKay, the National Class, and the Utah Class and such were untrue statements of material fact and/or were misleading in light of the concealed material facts alleged above. This conduct is ongoing as Defendants' false and misleading representations continue unabated to this day.

188. The Defendants also engaged in the following conduct that constitute unconscionable acts or practices in connection with a consumer transaction in violation of the statute:

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

189. 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 Utah) in connection with a consumer transaction:

a. Misrepresenting the prospects or chances for success of a proposed or existing franchise or distributorship as noted in detail in **paragraphs 3-6, 26-29, 36-39, and 47-52** and concealing material facts noted therein in relation to the representations made as well as concealing the almost certain failure of those purchasing the Driving Opportunity; and

b. Misrepresenting the amount of profits, net or gross, the franchisee can expect from the operation of the franchise or distributorship as alleged above.

190. If not for ENGLAND's and HORIZON's deceptive acts or practices or unconscionable acts or practices in violation of the Act, Plaintiffs, the National Class, and the Utah Class would not have paid for the Driving Opportunity.

191. Roberts, McKay, the National Class, and the Utah Class 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). They are further 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). Plaintiffs, the National Class, and the Utah Class are also 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*. Finally, Roberts, McKay, the National Class and the Utah Class are entitled to an award of attorneys' fees under Utah Code § 13-11-19 (5).

**SIXTH CLAIM FOR RELIEF**
**VIOLATION OF THE UTAH BUSINESS OPPORTUNITY DISCLOSURE ACT**
***Alleged Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

192. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

193. 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 National Class to enable them to start a business. Further, ENGLAND and HORIZON represented to Roberts, McKay, and the National Class that they would provide a sales program and marketing plan that would enable Roberts, McKay, the National Class, and the Utah Class to derive income exceeding the purchase price paid.

194. Defendants are sellers of "Assisted Marketing Plans", as defined in the Utah Business Opportunity Disclosure Act, Utah Code Ann. § 13-15- 1, *et seq*. Defendants have not

and never have complied with the registration and disclosure requirements for offering such plans.

195. The consent of the Plaintiffs and the members of the National and Utah Classes to the Driving Opportunity, if any, was obtained through Defendants' failure to comply with the Utah statutory requirements.

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

**SEVENTH CLAIM FOR RELIEF**
**VIOLATION OF THE INDIANA BUSINESS OPPORTUNITY TRANSACTIONS LAW**
***Alleged Against All Defendants By Plaintiffs and the Indiana Class***

197. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

198. 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 as alleged in this Third Amended Complaint that would enable the Indiana Class to derive income from the exceeding the purchase price paid and the Indiana Class relied on such representations.

199. Defendants are "sellers" of "business opportunities" as defined in the Indiana Business Opportunity Transactions Act, IC 24-5-8-1. They have not complied with the registration and disclosure requirements for offering such plans under Indiana law.

200. The consent of the Indiana Class 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*.

201. 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. The Indiana Class is further entitled to reasonable attorneys' fees and court costs from Defendants under Indiana Business Opportunity Transactions Act, IC 24-5-8-17. Finally, the Indiana Class is entitled to an injunctive relief under Indiana Business Opportunity Transactions Act, IC 24-5-8-18.

**EIGHTH CLAIM FOR RELIEF**
**VIOLATIONS OF THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT**
***Alleged Against All Defendants By Roberts and the Telemarketing Class***

202. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

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

204. 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.

205. Defendants initiated outbound telephone calls to consumers throughout 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 goods and services. Defendants are "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2.

206. 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 32 and 33**, Roberts received two or more such calls.

207. 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).

208. 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).

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

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

a. Would receive guaranteed jobs on completion of the school;
b. Would earn income in the amount of money Defendants' other drivers had made and as otherwise represented on the ENGLAND website and elsewhere;
c. 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; and
d. 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.

211. Defendants misrepresented, directly or by implication, the risk involved, the earnings potential, or profitability associated with the training and Driving Opportunity.

212. 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."

213. Roberts and each member of 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.

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

**NINTH CLAIM FOR RELIEF**
**COMMON LAW FRAUD AND MISREPRESENTATION**
***Alleged Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

215. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

216. Prior to purchasing the Driving Opportunity by entering the Lease Agreement, Contractor Agreement, and Student Training Agreement with Drivers, Defendants intentionally made misrepresentations of material facts and concealed true material and qualifying facts as alleged in **paragraphs 1-100** of this Third Amended Complaint.

217. The Defendants' false representations concerned then-existing material facts. Defendants knew at the time that these representations were false. 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. 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. Defendants did not disclose the material facts to the Drivers but instead concealed them.

218. 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. In justified reliance on

Defendants' representations and omissions, the Drivers purchased the Driving Opportunity and entered into the Contractor Agreement, Lease Agreement, and Student Training 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.

219. 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.

220. Defendants further 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.

**TENTH CLAIM FOR RELIEF**
**BREACH OF STUDENT TRAINING AGREEMENT**
***As Against England By Plaintiffs, the National Class, and the Utah Class***

221. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

222. On or about March 30, 2009, McKay signed a "Student Training Agreement" with ENGLAND, in which, among other things, ENGLAND promised McKay that "[a]t the completion of Phase II training I can choose one of the following career paths: . . . 4. Remain a C.R. England employee with a company truck." A true and correct copy of McKay's March 30, 2009 Student Training Agreement is attached to this Third Amended Complaint as **Exhibit N** and incorporated by reference.

223. On or about August 10, 2009, Roberts signed a "Student Training Agreement" with ENGLAND identical in form to the one signed earlier by McKay, in which, among other things, ENGLAND promised Roberts that "[a]t the completion of Phase II training I can choose one of the following career paths: . . . 4. Remain a C.R. England employee with a company truck." A true and correct copy of Robert's August 10, 2009 Student Training Agreement is attached to this Third Amended Complaint as **Exhibit O** and incorporated by reference.

224. As alleged specifically in **paragraphs 1-100** of this Third Amended Complaint, McKay and Roberts were never provided a genuine opportunity to accept the promised career path of remaining an ENGLAND employee driving a company-owned truck. Instead, ENGLAND created circumstances that compelled them to purchase the Driving Opportunity.

225. ENGLAND's failure to provide Plaintiffs with a genuine opportunity to accept the promised career path of remaining an ENGLAND employee driving a company-owned truck is a breach of the Student Training Agreement. ENGLAND's failure further violates the implied covenant of good faith and fair dealing implicit in each of the Student Training Agreements.

226. ENGLAND's breach of the Student Training Agreement has proximately and foreseeably damaged Plaintiffs and all those similarly situated and will continue to cause such damage in the future.

**ELEVENTH CLAIM FOR RELIEF**
**BREACH OF FIDUCIARY DUTY**
***As Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

227. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

228. Before purchasing the Driving Opportunity, Plaintiffs and the Drivers possessed only the misleading and deceptive information about the economics of the Driving Opportunity

that Defendants had made available to them. In contrast, Defendants knew all the true facts about the economics of the Driving Opportunity, including but not limited to the fact that few, if any, Drivers placed into the Driving Opportunity would be able to earn a net profit.

229. Under the facts and circumstances alleged in this Third Amended Complaint, particularly that Defendants had exclusive access to the true facts of the economics of the Driving Opportunity and repeatedly assured the Plaintiffs and the Drivers that they could make a living after purchasing the Driving Opportunity, Defendants induced Plaintiffs and the Drivers to relax the care and vigilance they would ordinarily have exercised.

230. Under the facts and circumstances alleged in this Third Amended Complaint, the terms of the relationships between the Plaintiffs and the other Drivers and the Defendants made Plaintiffs and the Drivers utterly dependent upon Defendants for their economic survival. Among other things, Plaintiffs and the Drivers were not allowed to haul loads for any individual or company other than ENGLAND. They were exclusively dependent on assignments given them by ENGLAND for their economic well-being.

231. Under the facts and circumstances alleged in this Third Amended Complaint, the conduct of the Defendants created conditions that made Plaintiffs and the Drivers unduly vulnerable to Defendants, thus empowering Defendants to take undue advantage of Plaintiffs and the Drivers and preventing Plaintiffs and the Drivers both before and after they had purchased the Driving Opportunity from taking effective action to protect themselves.

232. The facts and circumstances alleged in this Third Amended Complaint created a fiduciary relationship between Plaintiffs and Defendants, imposing a fiduciary duty on Defendants to treat Plaintiffs and the Drivers with undivided loyalty and to act toward Plaintiffs and the Drivers at all times with the utmost good faith.

233. The conduct of Defendants as alleged in this Third Amended Complaint breached the fiduciary duty owed by defendants to Plaintiffs and the Drivers.

234. By reason of the Defendants' breach of fiduciary duty, Plaintiffs and the Drivers have been damaged and will continue to be damaged in the future.

**TWELTH CLAIM FOR RELIEF**
**UNJUST ENRICHMENT**
**(ALTERNATIVE CLAIM)**
***Alleged Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

235. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

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

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

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

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

**THIRTEENTH CLAIM FOR RELIEF**
**VIOLATION OF UTAH'S TRUTH IN ADVERTISING ACT**
***Alleged Against All Defendants By Plaintiffs, the National Class, and the Utah Class***

240. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

241. Utah's Truth in Advertising Act (the "TIAA") is intended to 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.

242. 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.

243. 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.

244. 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 true and correct copy of the notice delivered on June 3, 2011 is attached to this Third Amended Complaint as **Exhibit H** and incorporated by reference. As of the date of this Third Amended Complaint, Defendants have not notified Roberts or McKay that they have performed any corrective measures.

245. 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 alleged throughout this Third Amended Complaint. The truck driving school is a good or service as defined in the statute.

246. 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.

247. 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, ENGLAND's former corporate vice president of its Independent Contractor Division admits that about "75 percent of England's fleet consists of independent contractors" and that the "grand majority" of ENGLAND drivers are in some type of lease program (i.e. have purchased the Driving Opportunity). A true and correct copy of the article in which Mr. Fife is quoted is attached to this Third Amended Complaint as **Exhibit I**. According to Mr. Fife in an April-May 2011 ENGLAND newsletter, 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.

**Exhibit J.**

248. According to the February-March 2011 ENGLAND newsletter (**Exhibit J**), 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. As the newsletter proudly proclaims: "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."

249. Defendants do not offer guaranteed employment at all. As noted in detail in this Third Amended Complaint, 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.

250. 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.

251. 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 **paragraphs 3-6 and 26-29**. 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.

252. Defendants' representations in the England Business Guide, the graphs (and commentary thereto), and the pro formas noted in **paragraphs 36-39** 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.

253. Defendants' representations in "The Horizon Truck Sales and Leasing Independent Contractor Program" and pro formas noted in **paragraphs 47-52** 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.

254. Defendants' conduct caused Plaintiffs and the National Class 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.

255. Plaintiffs seek to (i) enjoin Defendants violations of the TIAA; (ii) recover from the Defendants the amount of actual damages sustained or $2,000, whichever is greater; (iii) recover costs and attorneys' fees; and (iv) 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.

256. 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.

**FOURTEENTH CLAIM FOR RELIEF**
**DECLARATORY JUDGMENT**
***Alleged Against All Defendants by Plaintiffs and All Classes***

257. Plaintiffs reallege each of the foregoing paragraphs of this Third Amended Complaint as if set forth in full.

258. An actual and justiciable controversy exists between Plaintiffs and the members of each and every Class alleged herein, on the one hand, and Defendants, on the other hand, within the meaning of 28 U.S.C. § 2201 and Fed. R. Civ. P. 57. The controversy concerns the parties' respective rights and obligations under the Contractor Agreement, the Lease Agreement, and the Student Training Agreement. Questions also exist on whether Defendants should be held liable for the misconduct alleged in this Third Amended Complaint, be it contractually, in tort, or for violating one or more of the state and federal statutes invoked in this Third Amended Complaint.

259. The Contractor Agreement and the Lease Agreement are contracts of adhesion. Defendants will not as a matter of course negotiate their terms and the agreements are presented in a "take it or leave it" fashion. In addition, as alleged above, the circumstances surrounding the presentation of these agreements to the Drivers leave little time for them to truly acquire an understanding of their terms or seek counsel to obtain that understanding. The Contractor Agreement and the Lease Agreement contain extremely one-sided terms that favor Defendants over the Drivers. Aware of its superior bargaining position, Defendants created

these agreements to include unconscionable procedural obstacles, which intend to discourage claims against Defendants or otherwise attempt to shield Defendants from liability.

260. The unconscionable, unreasonable, and unenforceable provisions from the agreements, among others, include:

a. A provision designed to truncate any applicable statutes of limitation to two years despite the existence of claims (alleged here) that clearly provide for limitation periods in excess of two years; and

b. A term requiring Plaintiffs and the Drivers to litigate any dispute with Defendants in Salt Lake City, Utah (as compared to doing so in their home states) despite the economic hardship it would place on all Drivers except those living in Utah.

261. The inclusion of these procedural limitations in the adhesive form Contractor Agreement and Lease Agreement violates public policy, is unconscionable, and violates one or more provisions of the California Unfair Competition Law and the Utah Consumer Sales Practices Act.

262. Plaintiffs are entitled to a declaration from the Court that these provisions of the Contractor Agreement and Lease Agreement are void and unenforceable.

WHEREFORE, Charles Roberts and Kenneth McKay, individually and on behalf of all others similarly situated, pray for judgment against Defendants as follows:

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

b. For damages, rescission, and restitution to Roberts, McKay, and the Drivers and disgorgement of any moneys found owing to federal or state governments;

c. For a declaration invalidating those terms of the Contractor Agreement and Lease Agreement found to be unconscionable and void as a matter of public policy;

d. 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/or anti-racketeering laws and for an appropriate damage and/or restitution award;

e. For compensatory damages in a sum not less than the jurisdictional minimum of this Court in an amount to be proven;

f. For exemplary damages against each Defendant;

g. For an injunction prohibiting Defendants' sale of unregistered franchises and business opportunities and misleading advertising;

h. For interest according to law;

i. For attorney's fees and costs of suit under applicable law; and

j. For such other relief as the Court deems just and equitable.

Dated this 31st day of August, 2012

KRAVIT, HOVEL & KRAWCZYK, S.C.

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