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10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**

13 In re:) **Case No.:** 2015-24947
14) **Chapter:** 11
15 **HENDRICKSON TRUCKING INC.**) **DCN:** CAH-008
16) **DISCLOSURE STATEMENT DESCRIBING**
17) **DEBTOR'S THIRD PLAN OF**
18 Debtor) **REORGANIZATION, DATED**
19) **SEPTEMBER 15, 2016**
20) **Date:** October 25, 2016
21) **Time:** 2:30 P.M.
22) **Location:** United States Courthouse
23) Dept. B, Courtroom 32
24) 501 I Street, Sacramento
25) 6th Floor
26) **Judge:** Honorable Christopher Jaime

27 Filed by:

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In re: Hendrickson Trucking, Inc.

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ARTICLE I. PURPOSE OF THIS DOCUMENT

The purpose of this document is to describe the plan to repay creditors in this case. The Court approving the Disclosure Statement is not an endorsement of the Plan. A Scheduling Order will be served with this document which will give the deadlines for voting and objecting to the Plan and Disclosure Statement. At any time a party in interest can request information from Attorney for the Debtor. **For questions and comments regarding the Plan or Disclosure Statement email to Gabe@4851111.com and Anthony@4851111.com** is preferred, but you can also mail correspondence to 1395 Garden Highway, Suite 150, Sacramento California, 95833, or fax to 916-437-4285 but the response time will be much longer.

The Plan contains detailed information concerning the rights of creditors and holders of equity security interests. The source of the information herein is the Debtor.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

ARTICLE II. VOTE REQUIRED FOR APPROVAL / CONFIRMATION REQUIREMENTS

A. Acceptance Necessary to Confirm the Plan.

Only impaired classes of claims are entitled to vote on the Plan. 11 U.S.C. § 1126(f). The Plan can be confirmed by the Court if the Plan is accepted by the holders of at least two-thirds in amount and more than one-half in number of claims in each impaired class of claims voting on the Plan. 11 U.S.C. § 1126(c). Unless there is unanimous acceptance of the Plan by an impaired class, the Bankruptcy Court must determine that the holders of claims in the class will receive or retain under the Plan property of a value not less than the amount each holder would receive if the Bankruptcy Estate of Debtor were liquidated under the provisions of Chapter 7 of the Bankruptcy Code.

B. Confirmation of the Plan Without Necessary Acceptance (“Cramdown”).

Even if the requisite number of acceptances are not obtained, the Court may nevertheless confirm the Plan over the rejection of the Plan by a class (or classes) of claims or interests. 11

1 U.S.C. § 1129(b). This process is known as cramdown. The application of cramdown is not
2 automatic, but must be requested by the proponent of the Plan. 11 U.S.C. § 1129(b)(1).

3 11 U.S.C. § 1129(b) provides that if an impaired class has not accepted the Plan, the Court
4 may nevertheless confirm it if it does not discriminate unfairly, and is fair and equitable, with
5 respect to each impaired class of claims or interests.

6 7 **C. Absolute Priority Rule**

8 The term “fair and equitable” includes a concept known as the “absolute priority rule.”
9 That holds that junior classes may take nothing under the Plan until dissenting senior classes have
10 been paid in full, and that senior classes may not be overpaid until dissenting junior classes have
11 been paid in full. 11 U.S.C. § 1129(b)(2). As a practical matter, this means that Interest Holders,
12 (*i.e.* Debtor’s members/stockholders) may not retain their Interests in the Debtor unless all
13 creditors are paid in full. A party in interest may object that this Plan violates the rule. The Plan is
14 intended to be a consensual Plan on the basis that Creditors will receive more under this Plan that
15 through any other method including liquidation and dissolution, however if a creditor doesn’t vote
16 and the Plan is confirmed, then that creditor is deemed to have accepted the terms of the Plan.
17 Debtor does not anticipate objection because as set forth in this Disclosure Statement, the
18 alternative to this Plan may be Chapter 7 conversion which would not result in any distribution to
19 general unsecured creditors.

20
21 **ARTICLE III. DESCRIPTION OF THE PLAN** (*Copied from the Plan*) (*In a different font, Arial, to be*
22 *able to distinguish from the rest of this disclosure statement*)

23 **Plan Summary Overview**

24 **Hendrickson Trucking, Inc., the Debtor, is no longer operating as a trucking company.**
25 **It has certain secured assets and goodwill that may have some value and through this**
26 **Plan, a separate Entity, Hendrickson Truck Lines (HTL) with common ownership shall**
27 **purchase the secured assets, goodwill, rights to pursue preferential payments, and**
28 **claim against Pilot Travel Centers, LLC (Pilot) of the Debtor and in exchange pay to the**

Debtor an amount to pay the General Unsecured Class a settlement amount, and for HTL to assume certain obligations and liabilities under this Plan. Debtor or HTL shall pay each claim in the General Unsecured Class #1 a 10% dividend in full satisfaction of the general unsecured claims within 90 days after the effective date of the confirmed plan.

Obligations and Agreements by Hendrickson Truck Lines, Inc. (HTL):

HTL shall be the purchaser and therefor assignee free and clear of all liens and claims except as stated explicitly in this Plan of: All Assets of the Debtor including but not limited to: Goodwill, Equipment, Causes of Action for Preference Payments, assumed leases, disputed claims, the claim against Pilot and all known obligations and liabilities provided for in this Plan. Debtor and HTL have entered into a formal agreement, Assignment of Assets and Assumption of Liabilities Agreement. (A true and accurate copy of the agreement is attached hereto as **Exhibit B**) In exchange, HTL shall pay upon confirmation to Debtor an amount necessary to pay the General Unsecured Class #1 under this Plan.

ARTICLE IV

DESIGNATION AND TREATMENT OF IMPAIRED AND UNIMPAIRED CLASSES

Unsecured Claims:

Administrative Claims

Professional Fees and Expenses (subject to final fee applications and court approval) Very rough estimate of amount owed beyond amount in retainer at time of confirmation Estimated Debtor Counsel Admin Fees: \$100,000 As of September 2016, Hughes Financial Law is holding \$4,818.71 in trust.	\$180,000.00	Due on the effective date of the Plan or any other date set forth in an order approving fees or agreement between the parties. Any deferred payments agreed to shall be assumed by HTL.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

1 2 3 4 5 6	Estimated Committee Counsel, Special Counsel, and Special Accountant Admin Fees: \$80,000 As of September 2016, the unsecured creditors committee is holding \$45,000.00 in trust.		
7 8	Cure Payments	\$0	There are no projected payments necessary to cure monetary defaults under assumed executory contracts or unexpired leases.
9 10 11	Current Operating Expenses	\$0	Current operating expenses as of the Effective Date of the Plan, shall be assumed by the Reorganized Debtor and paid in full in cash in the ordinary course of business.
12 13 14 15	Clerk's Office Fees U.S. Trustee Fees Debtor believes it is current on UST fees and anticipates being current through Confirmation.	\$0 \$0	Any unpaid UST fees at the time of confirmation shall be paid at the time of confirmation.
16		\$180,000.00	

Priority Unsecured Claims

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The following Claims shall be assumed by Hendrickson Truck Lines, Inc., (HTL). They are entitled to priority over the General Unsecured Claims. The monthly payment amount listed below is an estimate based on the Claim amount at the time of filing multiplied by the interest rate applicable to the particular creditor and paid monthly over 4 years.

Below is listed the Priority Unsecured portion of the listed Creditor's Claim. Separately classified is the General Unsecured portion in the General Unsecured Class #2, and the Priority Tax Penalties, Unsecured Tax Penalties, and interest on both of those.

Priority unsecured claims are paid according to the table below with the first payment for each claim commencing the 1st day of the first month after the effective date of the confirmed plan.

		Interest	5-year	Disputed
CREDITOR	DEBT	Rate	Pmt/Month	
Oregon Dept of Transportation	\$114,634.28 of this Claim shall be assumed by HTL and Paid as set forth in this Table. (this is the amount of tax excluding interest and penalties) Total Claim: \$898,141.10 (per POC #43)	12.00	\$3,018.76 from HTL. (total claim would have been \$19,979)	yes, appeal pending. DOT assessed based on sampling data. Debtor disputes the sampling data and method.
State Board of Equalization	\$65,766.56 of this Claim shall be assumed by HTL and Paid as set forth in this Table. (this is the amount of tax excluding interest and penalties) Total Claim: \$127,562.84 (per POC #12, entire amount priority)	9.00	\$1,636.60 from HTL. (total claim would have been \$2,649)	yes, appeal pending
Employment Development (EDD)	\$442,996.35 of this Claim shall be assumed by HTL and Paid as set forth in this Table. (this is the amount of tax excluding interest and penalties) Total Claim: \$737,189.07 (\$1,420,890.42 total claim amount per POC 10, \$737,189.07 priority amount)	3.50	\$9,903.63 from HTL. (total claim would have been \$13,411)	yes, appeal pending (Sacramento County Court OA Decision No. 4590599, EDD Case AO-334949)
Internal Revenue Service	\$345,198.97 of this Claim shall be assumed by HTL and Paid as set forth in this Table. (this is the amount of tax excluding interest and penalties) Total Claim: \$457,127.54 (\$479,492.54 total priority minus \$22,365.70 penalties moved to general unsecured class per POC filed 12-7-2015)	3.00	\$7,640.75 from HTL. (total claim would have been \$8,214)	yes, Debtor's accounting conflicts with IRS, and some are result of substitute returns which will be filed
TOTALS			\$22,199.74	

GENERAL UNSECURED CLASS #1 contains the following categories of claims:

Debtor shall pay class #1 a 10% dividend in full satisfaction of the general unsecured claims within 90 days after the effective date of the confirmed plan.

i. Claims listed in Schedule F of the Schedules. (Attached hereto as Exhibit D is a list of the unsecured claims in class 1). Debtor will be objecting to various claims,

1 as well as not paying the Pilot claim. **The total amount to be paid in this class**
2 **will be \$282,847.48.**

3 **ii.** Bifurcated unsecured portions of secured claims from the treatment of
4 Secured Claims in the table below.

5 **iii.** Claims which had a lien at the time of the filing of this case but for which
6 there is no equity for the lien to attach.

7 **iv.** Deficiency balances owed on rejected leases under the Plan.

8 **v.** General Unsecured portions of priority tax debt.

9 **vi.** Any Priority Tax Debt not assumed by HTL.

10
11 **GENERAL UNSECURED CLASS #2** contains the following claims:

12 This class contains the subordinated priority claims for both penalties, interest and interest on
13 penalties and will receive \$0.00. Pursuant to 11 U.S.C. Section 726(a)(4), debtor may
14 subordinate interest accrued on penalties. In addition, Debtor has included penalties and
15 interest in this class as well. The priority claims below will be receiving their full payment plus
16 interest of their underlying priority tax claims initially assessed, minus interest and penalties.
17 Debtor would not be able to reorganize his debts and provide payment to the general
18 unsecured class without subordinating these claims as such. Penalty provisions in the tax code
19 are expressly meant to deter and punish: two goals in contravention of any equity or equitable
20 consideration.

21 **i. IRS General Unsecured Penalties: \$718,727.22**

22 **ii. EDD \$79,545.67 (\$94,923.23 general unsecured interest, \$15,377.56 general**
23 **unsecured interest on penalties)**

24 **iii. State Board of Equalization \$0 (entire amount priority, none in General**
25 **Unsecured Class #2)**

26 **iv. Oregon Department of Transportation: Part of this claim may belong in this**
27 **class, but further discovery will be needed to calculate.**

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2 **GENERAL UNSECURED CLASS #1** contains unsecured portions of secured claims as
3 follows:

4 **Liens to be stripped, and whose claims are included in the General**
5 **Unsecured Class #1 (included in the total estimated general unsecured**
6 **claims amount)**

7 Included in the general unsecured class are the following creditors who had liens
8 at the time of the filing of this case, but whose liens are being valued at zero in this plan and
9 thus become general unsecured claims under this plan. Confirmation of the plan shall act to
10 satisfy the lien.

11	Employment Development			
12	Dept	Tax Lien	\$68,066.32	4/12/2011
13	Employment Development			
14	Dept	Tax Lien	\$56,444.46	8/29/2011
15	Employment Development			
16	Dept	Tax Lien	\$123,291.68	11/28/2011
17	Employment Development			
18	Dept	Tax Lien	\$38,097.95	12/12/2011
19	Juan C. Gonzalez	Judgment Lien	\$35,410.34	12/23/2011
20	Employment Development			
21	Dept	Tax Lien	\$182,418.12	2/16/2012
22	Employment Development			
23	Dept	Tax Lien	\$51,540.58	2/27/2012
24	Pilot Travel Centers, LLC	Judgment Lien	\$1,378,357.37	5/3/2012
25	County of Sacramento	Utility Lien	\$2,258.41	3/29/2013
26	County of Sacramento	Utility Lien	\$2,281.48	1/30/2014
27	Ricardo Allen	Judgment Lien	\$154,122.86	10/15/2014
28	Department of Industrial			
29	Relations	Judgment Lien	\$38,097.95	11/3/2014
30	Henry Christian	Judgment Lien	\$25,182.23	1/6/2015
31	Employment Development			
32	Dept	Tax Lien	\$530.87	4/27/2015
33	Employment Development			
34	Dept	Tax Lien	\$12,140.63	5/21/2015
35	Employment Development			
36	Dept	Tax Lien	\$793,218.40	5/21/2015
37	Michael Schuman	Judgment Lien	\$3,094.80	2015

In re: Hendrickson Trucking, Inc.

1 China Manufacturing Judgment Lien \$10,902.81 2015

2
3 **Secured Claims (Classes 3-9)**

4 The Following Table provides treatment for fully secured claims and bifurcated secured
5 portions of claims (for claim amounts which exceed the value of their collateral). The Claims
6 which are treated as Bifurcated will have a secured portion of the claim treated in the table
7 below, and a general unsecured portion of the claim which is treated in the General Unsecured
8 Class. Except insofar as the terms of this Plan conflict (and therefor trump) terms of the
9 original contract with the creditor, the original contract terms still remain valid and enforceable.
10 There are numerous liens in this case, and the Plan and Motions seek to provide treatment for
11 every secured claim and to strip off or cram down partially or wholly unsecured liens. Motions
12 to establish the secured claim amount of claims which have liens are being separately filed.
13 However, insofar as a secured creditor is not served with such Motion, the Secured Creditor
14 shall object to the Confirmation of the Plan or else the Confirmation Order shall act to strip or
15 bifurcate the secured claim (based on the collateral value and senior liens as stated in the
16 Plan) thus entitling the Reorganized Debtor to removal of the lien, with the exception of all
17 unimpaired secured claims. Unimpaired claims will not be modified, stripped or bifurcated
18 under this Plan. In the event a lien is not removed post confirmation, Debtor shall have the
19 option, and the Court shall retain jurisdiction, to either file a motion to value the collateral as of
20 the effective date of the Plan in order to obtain an order bifurcating the claim between a
21 secured and unsecured claim, or an order determining Debtor is entitled to removal of the lien
22 based on the claim being wholly undersecured. Secured Claims Claim amounts for claims that
23 are undersecured shall be determined by their Claim amount as of the date of the filing of the
24 Petition minus any amounts paid on account of those Claims during the case; interest on such
25 claims shall not begin to accrue on the petition date claim amount until the month after the
26 effective date of the Plan. Post Confirmation Debtor intends to assign title of its assets to HTL
27 pursuant to the terms of the Assignment agreement. Tab Bank is fully secured and will not be
28 the subject of a motion to value.

Secured Claims (Classes 3-9)

<u>CLASS</u>	<u>IMPAIRMENT</u>	<u>TREATMENT</u>
<p><u>Class 3</u></p> <p>Claim holder: Coleson Investment Companies LLC, SBA Loan 5428 Watt Avenue North Highlands, CA 95660</p> <p>First Deed of Trust on commercial property: <i>7080 Florin Perkins Road Sacramento CA 95828</i> <i>8.54 acres</i> <i>APN: 064-0040-023</i></p> <p>Claim: \$279,664.00* Value of collateral: \$1,650,000.00**</p> <p>* No proof of claim has been filed by claim holder</p> <p>** Valued based on Debtor's opinion</p>	Unimpaired	<p>Under this plan the Debtor shall continue to make mortgage payments to the Class 3 claimant in accordance with the pre-petition terms of the mortgage agreement.</p> <p>Monthly payment: \$5,281.78</p> <p>As such the Debtor shall make monthly installments payments to the claim holder.</p> <p>Payments shall continue as normally scheduled under the Note and Deed of Trust.</p> <p>In the event of a default, this claimant may exercise all of its remedies available under applicable state law. Likewise, Debtor maintains all rights and protections of California Law.</p> <p>Claimant may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan. See ARTICLE IX for Default Provisions.</p>
<p><u>Class 4</u></p> <p>Claim holder: Transportation Alliance Bank, Inc. Snell & Wilmer L.L.P. c/o Michael B. Reynolds 600 Anton Blvd., Suite 1400 Costa Mesa, California 92626-7689</p> <p>Second Deed of Trust on commercial property: <i>7080 Florin Perkins Road</i></p>	Impaired	<p>Under this plan, the Claim in Class 2 is to be treated as Fully Secured.</p> <p>The secured claim shall be paid as follows:</p> <p>Monthly payment: \$20,052.92 Interest rate: 6.5% Balloon payment due on month 36 for \$1,352,740.92</p> <p>First payment will commence the 1st day of the first month after the effective date of the confirmed plan.</p>

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<p>Sacramento CA 95828 8.54 acres APN: 064-0040-023</p> <p>Claim: \$1,757,022.67* Value of collateral: \$1,650,000.00**</p> <p>* Proof of claim filed, No. 28 **Value based on Debtor's opinion</p>		<p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of California Real Property and Foreclosure Law.</p> <p>Claimant may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan. See ARTICLE IX for Default Provisions.</p>
<p><u>Class 5</u></p> <p>Claim holder: EBC Asset Investment, Inc. 22980 Indian Creek Drive, Suite 130 Sterling, VA 20166</p> <p>Secured by 50 trailers</p> <p>Claim: \$339,037.00* Value of collateral: \$267,500.00**</p> <p>* Proof of claim filed, No. 45 **Value based on Debtor's opinion</p> <p><i>A motion to value will be filed to determine the fair market value.</i></p>	<p>Impaired</p>	<p>By Plan confirmation, Debtor will have established, pursuant to section 506(a), that the value of the collateral securing this claim is only \$267,500.00. This claim will be bifurcated into a secured and unsecured portion.</p> <p>As such, the unsecured portion of claimant is provided for as a member of the General Unsecured Class (Class 1) in the amount of \$71,537.00.</p> <p>The secured portion of this claim shall be paid as follows:</p> <p>Claim amount: \$267,500.00 Monthly payment: \$5,048.05 Interest rate per annum: 5.0% Amortized over: 5 years Prepayment penalty: None Balloon payment: None</p> <p>1st payment will commence the 1st day of the first month after the effective date of the confirmed plan.</p> <p>Lien is satisfied upon full payment of outstanding principal plus accrued interest under this Plan.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of</p>

		<p>California Real Property and Foreclosure Law.</p> <p>Claimant may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan. See ARTICLE IX for Default Provisions.</p>
<p><u>Class 6</u></p> <p>Claim holder: PACCAR Financial Corp. Attn: L. Markle, BK Specialist P.O. Box 1518 Bellevue, WA 98009-1518</p> <p>Secured by 6 Tractors: Nos. 308, 309, 310, 313, 316, 317</p> <p>Claim: \$753,614.40* Balance owed on tractors: \$223,688.00 Value of collateral: \$214,000**</p> <p>* Proof of claim filed, No. 20 **Value based on Debtor's opinion</p>	<p>Unimpaired</p>	<p>Under this plan the Debtor shall continue to make the contractual payments to the Class 6 claimant in accordance with the pre-petition terms of the security agreement.</p> <p>Monthly payment: \$8,701.15</p> <p>Payments shall continue as normally scheduled under the security agreement.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of California Real Property and Foreclosure Law.</p> <p>Claimant may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan. See ARTICLE IX for Default Provisions.</p>
<p><u>Class 7</u></p> <p>Claim holder: PACCAR Financial Corp. Attn: L. Markle, BK Specialist P.O. Box 1518 Bellevue, WA 98009-1518</p> <p>Secured by 7 Tractors: Nos. 300, 305, 311, 312, 314, 318, 319</p> <p>Claim: \$753,614.40* Balance owed on tractors: \$261,417.00</p>	<p>Unimpaired</p>	<p>Under this plan the Debtor shall continue to make the contractual payments to the Class 7 claimant in accordance with the pre-petition terms of the security agreement.</p> <p>Monthly payment: \$10,168.75</p> <p>Payments shall continue as normally scheduled under the security agreement.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of California Real Property and Foreclosure</p>

<p>Value of collateral: \$214,000**</p> <p>* Proof of claim filed, No. 20 **Value based on Debtor's opinion</p>		<p>Law.</p> <p>Claimant may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan. See ARTICLE IX for Default Provisions.</p>
<p><u>Class 8</u></p> <p>Claim holder: PACCAR Financial Corp. Attn: L. Markle, BK Specialist P.O. Box 1518 Bellevue, WA 98009-1518</p> <p>Secured by 7 Tractors: Nos. 299, 301, 302, 303, 304, 306, 315</p> <p>Claim: \$753,614.40* Balance owed on tractors: N/A Value of collateral: \$214,000**</p> <p>* Proof of claim filed, No. 20 **Value based on Debtor's opinion</p>	<p>Unimpaired</p>	<p>Under this plan the Debtor shall continue to make the contractual payments to the Class 8 claimant in accordance with the pre-petition terms of the security agreement.</p> <p>Monthly payment: \$10,608.76</p> <p>Payments shall continue as normally scheduled under the security agreement.</p> <p>In the event of a default, this Claimant may exercise all of its remedies available under applicable state law. Likewise, Debtors maintain all rights and protections of California Real Property and Foreclosure Law.</p> <p>Claimant may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan. See ARTICLE IX for Default Provisions.</p>

As to all of Classes 3-8, The terms of the underlying loan remain intact except for the interest rate, payment, and maturity date as set forth in the table above.

Class 9: Tab Bank Accounts Receivable Loan shall be unimpaired. All rights under the loan documents remain intact post confirmation.

* Note: The Challenge Period for TAB Bank's Pre Petition Liens or Adequate Protection Liens was January 31, 2015. That period has expired and thus the Liens of TAB Bank are not challengeable.

Class 10: Equity Holders: Ward Hendrickson and William Hendrickson each own 50% of the outstanding shares in Debtor. Their claims are unimpaired.

ARTICLE V

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Creditor	Lease Expiration Date	Date Entered Lease	Asset Description	Treatment
CIT Finance, LLC			1 copier	Assume 60 month lease for main office copier - Xerox WorkCentre 7775. Entered on 9/26/2014 thru on or around 9/25/2019 Monthly payment: 345.00
GE Capital	1/1/2017	9/1/2007	25 Trailers	Assume original contract and pre petition amendments, modifications, and extensions
GE Capital	1/1/2017	10/1/2007	24 Trailers	Assume original contract and pre petition amendments, modifications, and extensions
GE Capital	1/1/2017	11/1/2007	24 Trailers	Assume original contract and pre petition amendments, modifications, and extensions
Daimler Chrysler/Mercedes	9/15/2014	4/15/2007	10 Freight-liners	Leases are rejected. Debtor returned all vehicles in their possession (14) on or around July 11, 2015 after Debtor and creditor stipulated to the voluntary surrender.
Daimler Chrysler/Mercedes	12/15/2014	7/16/2007	5 Freight-liners	
Daimler Chrysler/Mercedes	5/15/2015	11/21/2007	7 Freight-liners	

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3	Daimler Chrysler/Mercedes	7/15/2015	12/15/2007	8 Freight- liners
4		06/30/19	07/01/14	
5	IBM Credit LLC			Assume 36 month lease for main office computers entered from 7/1/2014 thru 6/30/19. Monthly payment: \$1,398.20
6		12/01/17	12/01/14	
7	Symmetry Manages Services, LLC			Assume 36 month IT support service agreement to install, maintain 19 computers and server at main office from December 2014 thru December 2017. Monthly payment: \$1,445.00
8		03/01/18	03/25/15	
9	Symmetry Manages Services, LLC			Assume 36 month lease agreement for 24 main office phones. From 3/25/2015 thru March, 2018. Monthly payment: \$2,685.00
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17 Other Leases and Executory Contracts. Debtor is not aware of any other
18 unexpired leases or executory contracts. If any should be found to exist, it is rejected. A Proof
19 of Claim for damages resulting from a rejection shall be filed within thirty (30) days after the
20 entry or an order of the Court approving the rejection. Such claim shall be deemed allowed
21 unless, thirty (30) days of service a copy of the Proof of Claim upon the Reorganized Debtor
22 and its Counsel, an objection is filed. Each objection shall be determined by the Court as a
23 contested matter under ("FRBP"), 9014. Any such Claim shall be added to the general
24 unsecured class in the Plan.

1 **ARTICLE VI**

2 **ALLOWANCE AND DISALLOWANCE OF CLAIMS**

3
4 **5.01 Disputed Claim.** A disputed claim is a claim that has not been allowed or
5 disallowed, and as to which either: (i) a Proof of Claim has been filed or deemed filed, and the
6 Debtor or another Party in Interest has filed an objection; or (ii) no Proof of Claim has been
7 filed, and the Debtor has scheduled such claim as disputed, contingent or unliquidated.

8 Additionally, some of the claims are subject to appeals or other slow processes
9 to resolve the claim outside Bankruptcy Court, and those Claims are deemed disputed but may
10 be resolved in the proper forum and shall not cause delay in closing this case and obtaining a
11 final decree. For Claims in which there is some appeals or reconsideration process pending in
12 another forum, the Debtor shall not be required to object to the claim in this case. Those claims
13 will remain in dispute until resolved in their proper forum and confirmation of the Plan shall
14 grant relief from stay for the purposes of resolving those disputed claims in another forum.
15 The following are such claims: Oregon Department of Transportation, State Board of
16 Equalization, IRS, and California EDD.

17 For a complete list of disputed claims, review schedule D, E, F of the official
18 Bankruptcy Forms and the list of general unsecured claims provided for in this plan, attached
19 hereto as exhibit D.

20 **Pilot Travel Centers, LLC Claim:** Also disputed is the Pilot claim because
21 Debtor holds a claim against Pilot that shall be adjudicated before distributions to or from Pilot
22 can be made. Hendrickson Truck Lines shall assume liability of the 10% pro rata payment to
23 Pilot as provided under the general unsecured class. HTL shall not make payment to Pilot until
24 final resolution of the pending litigation Hendrickson v. Pilot Travel Centers, LLC, case no. 34-
25 2014-00168738 has been resolved.

26 Claims covered by Debtor's insurance shall not receive payments under this Plan
27 unless and until final judgment or settlement has entered and only to the extent that insurance
28 proceeds did not cover the judgment or settlement.

1 5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on
2 account of a disputed claim unless such claim is allowed by a Final Order, or resolution in the
3 proper forum as to Oregon Department of Transportation, State Board of Equalization, IRS,
4 and California EDD. Distributions shall begin on disputed claims the month after the resolution
5 of the dispute.

6 5.03 Settlement of Disputed Claims. The Debtor will have the power and
7 authority to settle and compromise a disputed claim with Court approval and compliance with
8 Rule 9019 of the Federal Rules of Bankruptcy Procedure.

9 5.04 Deadline to File an Application to Approve an Administrative Claim. The
10 **Deadline to File an Application to Approve Administrative Claim is 45 days** from the
11 Effective Date of Plan Confirmation.

12 5.05 Deadline on a Denied Motion to an Administrative Claim. If a motion to an
13 Administrative Claim is filed within the deadline but the motion is denied then the deadline of
14 that Administrative Claim shall be extended 14 days after the Order denying the Application.

15 5.06 Deadline to File an Objection to a Claim. The Deadline to file an objection
16 to a claim is **45 days from the Effective Date of Plan Confirmation.** If the Effective Date of
17 the Plan lands before the deadline to file a claim, then the deadline to file an objection to the
18 claim shall be the later of 30 days after the deadline to file claims or 45 days after the Effective
19 Date of Plan Confirmation. In the event a rejected lease or executory contract Claim is filed
20 after Plan Confirmation, then the deadline to object to that claim is 30 days from service of the
21 Proof of Claim on Counsel for Debtor and Debtor.

22
23 **ARTICLE VII**

24 **MEANS FOR EXECUTION OF THE PLAN**

25
26 Section 6.01. Reorganized Debtor. On the Effective Date of the Plan, the
27 Debtor, shall become the Reorganized Debtor, and shall continue to operate its business. All
28 assets of the Estate shall vest in Debtor upon Confirmation.

1 7.02 Effective Date of Plan. The Effective Date of this Plan is the fifteenth day
2 following the date of the entry of the Final Order of Confirmation. But if a stay of the
3 Confirmation Order is in effect on that date, the Effective Date will be the first business day
4 after that date on which no stay of the Confirmation Order is in effect, provided that the
5 Confirmation Order has not been vacated.

6 7.03 Severability. If, prior to Confirmation of the Plan, any term or provision of the
7 Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy
8 Court, at the Debtor's request, shall have the power to alter or interpret such term or provision
9 to make it valid or enforceable to the maximum extent practicable, consistent with the original
10 purpose of the term or provision held to be invalid, void or unenforceable, and such term or
11 provision held to be invalid, void or unenforceable, and such term or provision shall then be
12 applicable as altered or interpreted. Notwithstanding any such holding, alteration or
13 interpretation, the remainder of the terms and provisions of the Plan will remain in full force and
14 effect.

15 7.04 Binding Effect. The rights and obligations of any entity named or referred to
16 in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of
17 such entity.

18 7.05 Election of § 1111(b)(2). An election of application of § 1111(b)(2) of the
19 Code by a class of secured creditors in a chapter 11 case may be made at any time prior to
20 the conclusion of the hearing on the Disclosure Statement or within such later time as the
21 Court may fix. If the Disclosure Statement is conditionally approved pursuant to Rule 3017.1,
22 and a final hearing on the Disclosure Statement is not held, the election of application of §
23 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another
24 date the Court may fix. The election shall be in writing and signed unless made at the hearing
25 on the Disclosure Statement. The election, if made by the majorities required by §
26 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the Plan.

27

28

1 by the default may serve upon Debtor and Debtor's attorney (if any) a written notice of Debtor's
2 default. If Debtor fails within 30 days after the date of service of the notice of default either: (i)
3 to cure the default; (ii) to obtain from the court an extension of time to cure the default; or (iii) to
4 obtain from the Court a determination that no default occurred, then Debtor is in Material
5 Default under the Plan to all the members of the affected class.

6 8.05 Remedies Upon Material Default. Upon Material Default (subject to the
7 Notices and Right to Cure below), any member of a class affected by the default: (i) may,
8 without further order of the Court, pursue its lawful remedies to enforce and collect Debtor's
9 pre-confirmation obligations.

10 8.06 Notices and Right to Cure. An event of default shall occur if the Debtor fails
11 to comply with a material provision of this Plan. In such an event, the Party alleging such
12 default shall provide written notice of the alleged default to the Debtor per address listed at that
13 time at the secretary of state agent for service of process address, and the attorneys for the
14 Debtor served either: (a) certified mail, return receipt requested, or (b) hand delivery, or c)
15 reputable overnight courier service.

16 With email copy to:

17 Anthony Hughes: Anthony@4851111.com

18 Gabe Liberman: Gabe@4851111.com

19
20 If, after thirty (30) days following the Debtor's and its Counsel's receipt of the
21 written notice of default, the Debtor and such Party have been unable to resolve, or the Debtor
22 has been unable to cure, the asserted default, such Party may proceed with any remedies
23 available to it under applicable law, and the Venue shall be either the Sacramento Division of
24 the Eastern District Bankruptcy Court, or the Superior Court of California in the County of
25 Sacramento.

1 **ARTICLE X**

2 **DISCHARGE**

3 9.01 Discharge and Injunction. Except as specifically provided in the Plan
4 and/or the Confirmation Order, as of the Effective Date, Confirmation shall discharge the
5 Debtor and the Reorganized Debtor pursuant to section 1141(d)(1)(A) of the Bankruptcy Code
6 from any and all Claims of any nature whatsoever, including any Claims and liabilities that
7 arose prior to Confirmation, and all debts of the kind specified in sections 502(g), 502(h) or
8 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such Claim was
9 filed or deemed filed under section 501 of the Bankruptcy Code, or such Claim was listed on
10 the Schedules of the Debtors, (b) such Claim is or was Allowed under section 502 of the
11 Bankruptcy Code, or (c) the holder of such Claim has voted on or accepted the Plan. Except
12 as provided for in the Plan and/or the Confirmation Order, the rights that are provided in the
13 Plan as of the Effective Date shall be in exchange for and in complete satisfaction, settlement
14 and discharge of all Claims against, liens on, and interests in the Debtor or the Reorganized
15 Debtor or any Estate Property.

16 From and after the Effective Date, and except as otherwise provided for in the Plan, all
17 Persons who have held, hold or may hold Claims, liens or interests against or in the Debtor are
18 (i) permanently enjoined from commencing, conducting or continuing in any manner, directly or
19 indirectly, any lawsuit, action or other proceeding of any kind against or affecting the Debtor, its
20 affiliates or any officer, director, member, shareholder, attorney or other professional or other
21 representative of the Debtor (collectively, the "Released Parties"), (ii) enforcing, attaching,
22 collecting or recovering in any manner any judgment, award, decree or order, (iii) creating,
23 perfecting or enforcing any lien or encumbrance against the Debtor or any property of the
24 Debtor, (iv) asserting, maintaining or failing to withdraw any right of setoff, subordination, or
25 recoupment of any kind, directly or indirectly, against any obligation due the Debtor, or any of
26 the Debtor's property, and (v) taking any action in any place and in any manner whatsoever
27 that does not conform to or comply with the provisions of the Plan.

1 By accepting distributions pursuant to this Plan, each Holder of an Allowed Claim will be
2 deemed to have specifically consented to the injunctions provide for herein.

3 9.02 Exculpation and Release. As of the Effective Date, the Debtor and its
4 respective present or former shareholders, officers, directors, affiliates, employees,
5 accountants, advisors, attorneys, consultants, experts or other agents, and each of its
6 members in their capacity as members and counsel shall not have or incur any liability to any
7 entity for any act or omission taken on or after the Petition Date in connection with or arising
8 out of the Chapter 11 Case, negotiation of the Plan or other related document, the attempt to
9 obtain a Confirmation Order, the consummation of the Plan, the administration of the Plan or
10 the property to be distributed under the Plan. The Debtor shall be entitled to rely upon the
11 advice of counsel with respect to its duties and responsibilities under the Plan and any related
12 document. In no event shall any Party exculpated from liability under this section be
13 exculpated from liability in the case of gross negligence, fraud or willful misconduct. In
14 addition, this shall not be construed to release from liability any guarantors from any debts of
15 the Debtor's that were personally guaranteed.

16 Pursuant to section 1125(e) of the Bankruptcy Code, the Confirmation Order will
17 confirm that all of the persons who have solicited acceptances or rejections of the Plan
18 (including the Debtor, its respective present or former officers, employees, accountants,
19 advisors, attorneys, consultants, experts or other agents) have acted in good faith and in
20 compliance with the applicable provisions of the Bankruptcy Code, and are not liable on
21 account of such solicitation or participation or for violations of any applicable law, rule or
22 regulation governing the solicitation of acceptances or rejections of the Plan.

23 9.03 Exclusion. Article IX of this plan shall not apply to Mercedes-Benz Financial
24 Services USA, LLC, or to its successors and assigns, with respect to any guaranty or
25 guarantees of any indebtedness of the Debtor to Mercedes-Benz Financial Services USA LLC
26 or any liability created by or related to such guaranty or guarantees.

27
28 **///// END OF PLAN /////**

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ARTICLE XI.

BACKGROUND OF DEBTOR, EVENTS DURING THE CASE, RISK FACTORS

1. Background

William Hendrickson founded Hendrickson Trucking in 1976 and incorporated as an S-corporation on January 5, 1994. The company is based out of Sacramento, CA. The company had grown to become one of the stronger carriers along the west coast. In 2013, the state of California ruled Debtor's owner operators as employees and assessed huge back withholding taxes, penalties and interest. This assessment is currently on appeal. Some of Debtors former owner operators also filed claims for unpaid wages as employees and Debtor lost through Labor Board hearings. Debtor did not have money to post bonds for appeal, and some of the owner operators had obtained judgments against the Debtor. This caused a swarm of lawsuits and tax debt and caused Debtor to become insolvent. The State of CA ruling had a domino effect causing further delinquencies.

The state of Oregon also conducted an audit on Debtors mileage taxes of prior years and assessed huge additional taxes, penalties and interest although Debtor disputes these assessments. During the appeal, the state of Oregon demanded full payments, and eventually suspended Debtors authority to run through Oregon earlier this year. Most of Debtors freight were running between L.A. area and Oregon and Washington. On or around January 1, 2015, Debtor hired Hendrickson Truck Lines, Inc. (the "Trucking Operations Company"). The Trucking Operations Company has the authority to run the trucks through Oregon and Debtor has licensed all their equipment through the Trucking Operations Company. Debtor does not and cannot operate in Oregon, and the loss of Oregon Operations would mean loss of any hope of Debtor to repay any of its debts. At the time the case was filed, Debtor could not operate as a trucking company. Debtor does not have any employees. Debtor owns trucks, trailers, and real property which are all over encumbered, but the ability to use them has value. Although Debtor could liquidate and priority claims would not be paid in full, and unsecured creditors would receive nothing, Debtor is seeking reorganization whereby Debtor receives money in exchange for leasing

1 its trucks, trailers, and real property to Hendrickson Truck Lines. Hendrickson Truck Lines now
2 operates the same or similar trucking operation that Debtor used to.

3 Prior to the filing of this case, Debtor's main source of funded were provided by
4 Transportation Alliance Bank (TAB Bank) through account receivable financing. Factoring is a
5 transaction in which a business sells its accounts receivable, or invoices, to a third party
6 commercial financial company, also known as a "factor." This is done so that the business can
7 receive cash more quickly than it would by waiting 30 to 60 days for a customer payment.
8 Factoring is sometimes called "accounts receivable financing."
9

10 **2. Events during the case, present condition of the Debtor**

11 a. The Chapter 11 case was filed on June 19, 2015. Orders to shorten time were granted to
12 hear first day motions. Continuing similar financing (account receivable financing) to that which
13 Debtor was receiving pre petition from TAB bank was approved (thus creating DIP financing and
14 approving the pre petition cash management system).

15 b. A Creditor Committee was appointed and negotiations between the Debtor, Committee and
16 Secured creditors were ongoing. Initially Debtor presented a Plan which was to pay a small
17 percentage to the General Unsecured Class. The Committee negotiated to an increased dividend to
18 the Class as well as faster payment terms and a structure where default to the General Unsecured
19 Class would not be a risk. Debtor negotiated adequate protection payments to secured creditors
20 and has been current on its adequate protection payments.

21 c. Mercedes-Benz Financial Services USA, LLC (MBFS) filed its motion for relief from the
22 automatic stay regarding leases equipment, specifically freightliners. Debtor agreed to surrender
23 all remaining MBFS's equipment upon court approval of the motion for relief, which was granted.

24 d. Employment of Howard Nevins of Hefner Stark and Marois for the Committee and C.
25 Anthony Hughes of Hughes Financial Law for the Debtor were approved.

26 e. Flemmer and Associates was employed by the Committee as a forensic accountant to
27 review the financials of Debtor.
28

1 f. Employment of Montgomery Cobb as Special Counsel to Debtor for defending an audit by
2 the Oregon Dept. of Transportation was approved. Debtor contends that the ODOT assessed the
3 taxes based on sample data that was not representative of the actual taxes incurred. Historical
4 reference to the amount of taxes Debtor was incurring supports that the sample data is either
5 inaccurate or not representative of the rest of the audit period. A motion was subsequently filed
6 by the State of Oregon, Department of Transportation for relief from the automatic stay in
7 connection with this appeal. The specific determination the State of Oregon is determining is if
8 Debtor has an opportunity to appeal a final ruling after the audit became final by showing good
9 cause exists.

10 g. An order to shorten time was granted to hear the motion to approve an interim stipulation
11 between the Debtor and PACCAR Financial Corp. for adequate protection payments. The court
12 thereafter granted the motion and the debtor has been timely making payments to PACCAR
13 Financial Corp. on a monthly basis of \$29,478.66 for use of truck equipment that is leased to
14 Hendrickson Truck Lines for operating the trucking business.

15 h. General Electrical Capital Corporation (GE) filed a motion for relief from the automatic stay
16 and motion to compel regarding commercial leases debtor had become delinquent by one month.
17 Prior to the hearing, Debtor became current on all defaults and attorney for GE confirmed there
18 were no delinquencies. The hearing was continued to September 27, 2016 at 2:30 p.m. for GE to
19 determine the treatment of their claim in debtor's plan. In addition, the Court ordered the debtor
20 to file a motion to approve the disclosure statement and set the hearing at the first available
21 hearing under
22

23 The New Entity -Hendrickson Truck Lines (HTL)

24 Operations of Debtor ceased prior to filing of this case but HTL maintains a condition
25 similar to Debtor's prior to ceasing operations. Debtor and Transportation Alliance Bank (TAB),
26 by court approved Debtor-in-possession financing, continue the same relationship they have had
27 since early 2015 which is as follows: Hendrickson Truck Lines performs trucking services and
28 generates an invoice owed by various large commercial clients. Collecting on the invoice takes

1 work and time. Neither Debtor nor Hendrickson Truck Lines have a collection department or
2 software and so Transportation Alliance Bank (TAB) is relied on to do all the collection work.
3 Debtor and Hendrickson Truck Lines also cannot wait for the payment on the invoice because
4 expenses need to be paid immediately. So TAB acts as a collection company and factoring
5 financing. Hendrickson Truck Lines assigns the invoice to TAB Bank and TAB immediately
6 disburses 90% of the invoice amount to Debtor (then about 7% in about 45 days once invoices are
7 collected while TAB retains about 3% as its admin/collection/financing fee). Debtor then uses the
8 money received from TAB to pay 1) Debts secured by its trucks, trailers, and real estate, and 2)
9 Hendrickson Truck Lines for its services in operating the trucking business. Said differently,
10 Hendrickson Truck Lines leases the trucks, trailers, real estate from Debtor.

11 The monthly operating reports filed only show Debtor simply receiving the money from
12 TAB coming in and a payment to secured debts and Hendrickson Truck Lines. The true
13 relationship between the two entities is more of a lessee lessor relationship, however because it is
14 the Debtor that obtains financing, it resembles the Debtor hiring Hendrickson Truck Lines to do
15 operations. The financing was left in place that way merely to maintain the status quo. On Plan
16 confirmation however, Hendrickson Truck Lines will obtain its own financing.

17 Since the filing of this case, operations by HTL have been running smoothly. HTL and
18 Debtor worked together during this case under an interim operating agreement. Debtor was not
19 able to continue its trucking operation, so HTL did the trucking operation but maintaining the
20 financing conduit through Debtor. Debtor had fired all its employees' pre petition who were hired
21 then by a co-employer relationship with PeopleLease and HTL.

22 HTL has been operating with an average monthly surplus of \$30,000 plus/minus. As of
23 August 2016, HTL is holding \$130,244.00 in cash reserves. (For additional discussions on HTL's
24 feasibility see "Article XIII. Financial Projections and Feasibility")

25 **3. Insiders of the Debtor**

26 William Hendrickson is the chairman, and is being consulted on major operation changes,
27 customer changes, business lane and rate changes, and making final decision on major equipment
28 purchases. He personally guarantees all company loans and leases.

1 Ward Hendrickson is son of the founder and has been with the company for over 30 years.
2 He is the president of the Debtor and 50% shareholder. He is responsible for day-to-day operation,
3 and he also personally guarantees all company loans and leases. He is also the president of HTL.

4 Alban Lang is the Vice President and CFO and is the signor of the Petition, and person most
5 knowledgeable.

6 All three are personally responsible for a portion of the trust fund taxes which are priority
7 taxes in this case. Ward and William are personal guarantors on much of the secured debt in this
8 case. Debtor's Accountant is Chuck Nicholson.

9 **4. Risk Factors**

10 a. General Risk of Operating a business. HTL (The Assignee/Purchaser of the Debtor's assets
11 is in the trucking industry. At any time large clients can leave and use competitor's services. If
12 HTL were to lose a certain portion of its business without replacing it with new business, then it
13 would become unfeasible to make the plan payments. This risk is mitigated by a track record of
14 performance for dozens of years, and that it was only the State of California's unfair determination
15 of employee status that caused the debt, not Debtor's mistakes.

16 b. Compensating Piece-Rate Workers for Rest and Recovery Periods and Other
17 Nonproductive Time

18 Effective January 1, 2016, AB 1513 adds a new section 226.2 to the Labor Code concerning
19 how to compensate piece-rate workers for mandated rest and recovery periods and other work
20 time that does not generate piece-rate earnings. Piece-rate compensation is based on paying a
21 specified sum for completing a particular task or making a particular item.

22 This administration-sponsored law does two things.

- 23 • Going forward, it establishes pay requirements for mandated rest breaks, recovery periods
24 and other nonproductive time, including related wage stub requirements.
- 25 • Looking backward, it provides a short window of time for employers to make back wage
26 payments to workers for previously uncompensated or undercompensated rest and
27 recovery periods and other nonproductive time in exchange for relief from statutory
28 penalties and other damages.

1 The risk to debtor is the look back period which is unknown if an employee would file a
2 claim under this bill. Currently, there is a temporary restraining order against AB1513.
3 In addition, AB 1513's "Safe Harbor" for Past Violation creates an affirmative defense to wage
4 claims for employers that follow the law's very specific "safe harbor" provisions. To come within
5 the safe harbor, employers must (1) provide written notice of their intent to utilize the safe harbor
6 procedures by no later than July 1, 2016, and (2) pay employees for all previously uncompensated
7 rest and recovery periods and other non-productive time, plus interest, for the period from July 1,
8 2012, through December 31, 2015, by December 15, 2016.

9
10 **ARTICLE XII.**

11 **ASSETS AND VALUATION, LIQUIDATION ANALYSIS, FRAUDULENT OR PREFERENTIAL**
12 **TRANSFERS**

13 Creditors may be entitled to receive as much under a Chapter 11 Plan of Reorganization as
14 they would under a Chapter 7 liquidation. 11 U.S.C. § 1129(a)(7). In a Chapter 7 liquidation, the
15 Debtor's assets would be liquidated.

16 All trucks, tractors, and trailers owned by Debtor are worth less than the amount of debt
17 owed against them, and thus would not bring any net funds in a liquidation.

18 Business goodwill: Debtor has no long term contracts. Debtor has a customer list but the
19 large customers are well known businesses, thus the list has no value. For example, anyone can
20 contact FedEx and become a contract trucking company for them. Further, the accounts are
21 managed by salesmen that have the relationship with the customers and there is no non-
22 competition agreement with the salesman, thus the salesman were free to leave and contact the
23 customer from a different company. Thus there is no value in the goodwill or customer list.
24 Debtor made its money from handling a very large volume of trucking, not from any premium
25 associated with the name or customer list.

26 The various licenses Debtor had to run the business with various agencies do not have any
27 liquidation value.

28 There was minimal money in the Debtor's bank account on the date of the filing of the case.

1 Hendrickson Truck Lines, inc. is a related entity not in Bankruptcy. Hendrickson Truck
2 Lines is using assets which belong to Debtor.

3 That leaves the following assets that may have value in a liquidation:

4 **1) Notes owed to Debtor by its shareholders:**

5 Debtor initially listed in its schedules Notes owed by Ward and Bill Hendrickson. Whether they
6 were notes or income was debatable at the time, but subsequently the IRS classified as income,
7 thereby eliminating the Note obligation theory. But for in depth analysis on why even if the IRS
8 did not change its classification, the Notes would still be difficult to assert liability: Ward
9 speculates that Persons responsible for running \$30 million per year trucking companies make in
10 excess of \$250,000 per year. Ward has been working for the last 10 years for Hendrickson
11 Trucking Inc. for the discounted averaged compensation of \$157,465. This Plan approaches the
12 issue of the Notes below that they were in fact part of the compensation package. Creditors can
13 take an alternate position to attempt to prove in a hypothetical lawsuit there would be value in the
14 claims and thus liquidation value in a hypothetical Chapter 7 case liquidation. Ward is willing to
15 continue working for the Debtor for the benefit of supporting the Plan performance at his reduced
16 compensation to the extent necessary to aid in feasibility. Ward contends this concession far
17 exceeds any remote benefit that could ever be obtained by taking any position against his
18 contention that the notes are part of his compensation package.

19
20 Notes payable (2) to Debtor from Ward Hendrickson:

21 $\$159,012.00 + \$170,962.00 = \$329,974.00$

22 This approach was a tax deferral technique. The amount was actually compensation paid as a loan
23 instead of payroll or dividend.

24 Nearly all of the earliest advances prior to the advances to pay taxes were actually loan
25 repayments (offsets), to pay back loans from the insider to the debtor.

26 A 10 year analysis of compensation and advances/loans results in an average compensation to
27 Ward of \$157,465 which corroborates his understanding that the loans were part of his
28

1 compensation and not enforceable against him as there was no consideration and no money was
2 actually borrowed.

3
4 Notes payable (3) to Debtor from William Hendrickson:

5 $\$320,924.00 + \$208,058.00 + \$106,762.00 = \$635,744.00$

6 This approach was a tax deferral technique. The amount was actually compensation paid as a loan
7 instead of payroll or dividend.

8 Nearly all of the earliest advances prior to the advances to pay taxes were actually loan
9 repayments (offsets), to pay back loans from the insider to the debtor.

10 A 10 year analysis of compensation and advances/loans results in an average compensation to William of \$159,142
11 which corroborates his understanding that the loans were part of his compensation and not enforceable against him
12 as there was no consideration and no money was actually borrowed.

13 **HENDRICKSONS WAGES ANALYSIS 6/16/15**

14

15 **William Hendrickson**

16 YEAR	WAGES	LOAN TO CO	ADVANCE FROM CO	TOTAL
17 2004	112,756	(248,535)	27,850	(107,929)
18 2005	109,928	-	100,888	210,816
19 2006	109,928	-	175,867	285,795
20 2007	112,000	-	114,710	226,710
21 2008	30,000	-	81,519	111,519
22 2009	-	-	175,817	175,817
23 2010	-	-	232,338	232,338
24 2011	39,000	-	117,972	156,972
25 2012	78,000	-	43,000	121,000
26 2013	78,000	-	91,899	169,899
27 2014	78,000	-	89,621	167,621

28

In re: Hendrickson Trucking, Inc.

	747,612	(248,535)	1,251,481	1,750,558
William Hendrickson average compensation per year				159,142

Ward Hendrickson				
YEAR	WAGES	LOAN TO CO.	ADV FROM CO	TOTAL
2004	97,676	-442,023	12,250	-332,097
2005	109,928		247,819	357,747
2006	156,000		130,867	286,867
2007	160,000		37,426	197,426
2008	104,000		34,719	138,719
2009	104,000		37,088	141,088
2010	104,000		271,828	375,828
2011	104,000		29,137	133,137
2012	104,000		8,314	112,314
2013	105,117		8,408	113,525
2014	184,628		22,928	207,556
	1,333,349	-442,023	840,784	1,732,110
Ward Hendrickson average compensation per year				157,465

2. Cause of Action: Hendrickson v. Pilot Travel Centers, LLC

Prior to the filing of this bankruptcy, on September 9, 2014, Debtor filed a complaint against Pilot in the Superior Court of California, Sacramento County claiming fraudulent "rebate" and "cost plus" discount billing of diesel direct fuel sales to small and mid-size trucking companies. The requested damages exceeded \$2.3 million. Case no.: 34-2014-00168738..

1 Currently, the lawsuit is stayed as a result of the bankruptcy filing. A copy of the lawsuit is
2 attached hereto as Exhibit A

3 Pilot had deprived Debtor of rebates due to Debtor on fuel purchases. Class action was
4 filed and class was paid but Hendrickson contends didn't get notice and doesn't cover all the
5 claims completely.

6 Market value of the claim is much less than the actual claimed amount in the lawsuit due to
7 cost of litigation, time value of money, collectability, etc.,

8 Pilot argues that subject matter was already the subject of a class action lawsuit that was already
9 settled. If the court were to find that true, then the claim is invalid.

10 Amount listed as market value of the claim in the schedules (\$1,021,896.04) shall in no way
11 limit the amount Debtor may seek from Defendant. The amount listed can be interpreted as the
12 liquidation value of the claim meaning what it may net in a settlement or what the claim may be
13 able to be sold for. Debtor reserves the right to sue Pilot for \$25 million to include punitive
14 damages, compound interest, etc. Pursuant to the terms of the Assignment of Assets and
15 Assumption of Liabilities Agreement between Debtor and Hendrickson Truck Lines, Inc., Debtor
16 assigns its rights of this claim to Hendrickson Truck Lines, Inc.

17 Recently, a Federal Indictment was filed against Pilot relating to this claim (Case 3:16-cr-
18 00020-ART-HBG Document 3 Filed 02/03/16 Page 13, 14, 15 of 58). There may be certain
19 advantages to Debtor from this act. Among them, Hendrickson as a "victim of Pilot" may well be
20 brought forth in the Federal Court criminal investigation and litigation as other companies are,
21 and are presently named. Secondly there is information that could be provided the Federal Bureau
22 of Investigation which would assist in the prosecution of the criminal case, and in exchange the
23 FBI may help in prosecution of the civil case. Thirdly the timing may be right to find the named
24 defendants, in the civil litigation, more interested in criminal charges than the civil litigation thus
25 desires to bring it to a quick resolution. Finally, the natural persons of the litigation may seek a
26 stay pending the criminal matter which we could use to our advantage in preserving statutory
27 limitations, i.e., the time in which to bring the case to trial.

1 Debtor does not believe an Attorney would represent them on a contingency fee basis, and
2 the cost of litigating a claim of this size against a company as large as Pilot would be very
3 expensive. Pilot's informal response to the claim is that the claim was already adjudicated and
4 compensation already paid pursuant to a class action settlement. Debtor contends they didn't get
5 notice of any class action settlement, and that although there was a class action settlement, it did
6 not settle the specific cause of action and damages Debtor alleges.

7 In a hypothetical Chapter 7 liquidation there would be significant administrative costs
8 which come out of the sale proceeds prior to paying creditors. This includes Trustee fees,
9 Accountant fees, and Attorney fees. Here is the trustee fee scale:

10 25% of the first \$5,000 disbursed

11 10% of the next \$45,000

12 5% of the next \$950,000, and

13 3% of anything over \$1,000,000.

14 Due to the fact that there is a legitimate dispute in the Hendrickson v. Pilot case, and the
15 lack of any other assets with net equity, it is estimated that the amount of money resulting from a
16 liquidation would be less than the \$1.47 million dollars in priority debt owed in taxes. **Because**
17 **the priority debt gets paid first, and the priority claims exceed the \$1.47 million, there**
18 **would be no funds left to pay general unsecured creditors.**

19 20 **3. Fraudulent Transfers**

21 Another source of recovery for the Bankruptcy Estate is Fraudulent Transfers. A
22 fraudulent transfer occurs when the Debtor transfers assets to another entity without adequate
23 consideration at a time when Debtor is insolvent. Debtor transferred its employees including its
24 booking agents to Hendrickson Truck Lines Inc. Debtor leased its over encumbered equipment
25 and property to Hendrickson Truck Lines Inc. This was done at a time when Debtor was insolvent.
26 The issue is whether adequate consideration was paid. As to the over encumbered assets such as
27 trucks, trailers, and the real property, those assets are being leased to Hendrickson Truck Lines.
28 Hendrickson Truck Lines assumed the payments on the upside down assets which is a benefit to

1 Debtor because if those assets were not leased to a viable entity, there would not be any funds to
 2 make the payments on them resulting in repossession and foreclosure and massive deficiencies.
 3 The estimated deficiencies would be in excess of the current amount that becomes an unsecured
 4 debt in this case as a result of bifurcation of the claim. Thus in a repossession or foreclosure
 5 situation, the general unsecured debt pool would be further diluted with a greater amount of Debt
 6 resulting in even less distribution to each creditor. As to the business goodwill, there is no value
 7 in the business goodwill. Instead what transferred was the employees who are booking agents
 8 and have the relationship with the clients. However those booking agents are not under any non-
 9 compete clause and they are free to go to any other company and bring the clients with them. In a
 10 liquidation situation, the booking agents would immediately disburse to other competing
 11 companies and in a matter of days if not hours, All of Debtor's business would distribute to
 12 competitors.

13 Hendrickson Truck Lines is assuming all Debtor's obligations under the plan which include,
 14 the lump sum payment to the general unsecured class, payments to priority claims and secured
 15 claims. In summary, Hendrickson Truck Lines is responsible for making the plan payments and
 16 will be liable for any defaults as well.

17 See Exhibit B, Assignment of Assets and Assumption of Liabilities Agreement attached
 18 hereto.

19
 20 4. Preference Payments

21 A final source of recovery for a Bankruptcy Estate is Preference payments. Preference
 22 payments are when a creditor is paid before the Bankruptcy Petition is filed in a situation which
 23 makes it unfair that creditor was paid and instead warranting the recovery of those funds to
 24 distribute evenly.

Party	Description	Face Value	Market Value
Ricardo Allen	Preferential payment to Ricardo Allen, who is an unsecured creditor. Ricardo Allen v. Hendrickson Trucking, Inc.	\$10,000	\$10,000.00

1		Case No. 34-2014-00166060-CU-OE-GDS, where creditor obtained judgment on August 19, 2014		
2				
3	Internal Revenue	Preferential payment to IRS on a priority claim.	\$90,000.00	\$0.00
4	Service			
5	Transport Alliance	Preferential payment to Transport Alliance Bank on a secured claim.	\$192,723.00	0
6	Bank			
7	Hendrickson Truck	Preferential payment to Hendrickson Truck Lines, Inc. for ordinary payments of services.	\$11,754,486.00	0
8	Lines, Inc.			
9	Daimler Chrysler	Preferential payments on deficiency claims for repossessed/returned Trucks in 2011	\$50,209.00	\$50,209.00
10	Financial Services			
11	Omotayo Fasuyi	Preferential payments to Omotayo Fasuyi, who is an unsecured creditor. Omotayo Fasuyi v. Hendrickson Trucking, Inc. case No. 34-2011-00103314 for settlement of an employee wage claim dispute.	\$2,500.00	\$2,500.00
12				
13				
14				
15	American Recovery Service	Preferential payments to American Recovery Service for settlement of deficiency claim on Kenworth Trucks 3-4 years ago	\$7,500.00	\$7,500.00
16				
17				
18	Michael Clark	Preferential payment to Michael Clark, who is an unsecured creditor. Michael Clark v. Hendrickson Trucking, Inc. Case No. 34-2012-00124697, where creditor obtained judgment on November 30, 2014	\$2,700.00	\$2,700.00
19				
20				
21				

ARTICLE XIII.

FINANCIAL PROJECTIONS AND FEASIBILITY

a. **Source of income of Debtor**

The Debtor will not have any income. Instead, Debtor is assigning its assets to HTL. Thus it is the income of HTL that Priority Claims may want to look to when analyzing feasibility.

b. **Payments summary under the Plan**

Here are the total payments outgoing between Debtor and HTL under this Plan::

In re: Hendrickson Trucking, Inc.

- 1 • Priority tax payments: estimated at \$\$22,199.74 per month for 5 years
- 2 • Secured debt payments: estimated at \$59,861.41 per month
- 3 • Administrative costs, accounting, misc. paid on confirmation
- 4 • General Unsecured Class #1 Dividend of 10% paid with 90 days of confirmation
- 5 (estimated 2.8 million general unsecured class #1 = estimated payment of \$282,847.48)

6
7
8 **C. Financial Projections**

9 **HISTORICAL PERFORMANCE FIRST:**

10 Although customers of the Debtor turned over many times as the contracts with them are
11 month to month, the principals of Debtor were able to maintain the solvency of the business
12 through their skill and experience for dozens of years. Those same principals will continue to be
13 involved in HTL.

14 Although the structure of Debtor and the relation to its affiliate Hendrickson Truck Lines
15 has changed, the actual gross income and expenses across both remains similar during this case,
16 and after confirmation, the financials of HTL will continue Debtor’s historical track record. Thus
17 referencing historical data also reflects projections.

18 Below is the six month historical financials of 2016 for Hendrickson Truck Lines, Inc.:

19

Hendrickson Truck Lines, Inc.	
	First 6 month 2016
Cash Receipts from Hendrickson Trucking	10,799,116
Total receipts	10,799,116
Cash payments:	
Peoplease employee wages & taxes	3,623,952
Ward Hendrickson wages	81,000

In re: Hendrickson Trucking, Inc.

1	Alban Lang wages	81,000
2	William Hendrickson wages	12,000
3	Kaiser health insurance	309,556
4	Fuel & oil	2,048,169
5	Maintenance	1,647,946
6	Taxes & licensing	450,261
7	Insurance	501,003
8	Equipment rent & purch transportation	1,019,249
9	Office equip & terminal rents	106,017
10	Safety & recruiting	174,063
11	Communication & utilities	99,819
12	Misc admin expenses	28,220
13	Property SBA loan	30,516
14	TAB loans	109,284
15	Paccar loans	176,874
16	GE leases	129,282
17	Trustee fee	9,750
18	Legal fee	30,000
19	Total Cash Disbursements	10,667,961
20		
21		
22	Net cash flow	131,155

23
24 A major change between pre bankruptcy financials and post confirmation projections is
25 that no longer will HTL be expending substantial funds on attorney fees defending dozens of legal
26 actions which will free up funds for the Plan in order to improve feasibility.

27
28 Prior to the petition date, Debtor were making payments to the following Secured creditors:

In re: Hendrickson Trucking, Inc.

BANK LOANS:	EQUIPMENT	MATURE DATE	LOAN BALANCE	MONTHLY PAYMENT
TAB Bank	Property	5/15/2014	1,816,191.97	18,241.00
TAB Bank	Equip Line of Cr	auto renewal	681,034.93	46,000.00
TAB Bank	A/R line of credit	auto renewal	2,592,156.59	9,180.55
Coleson Investment SBA loan	Property (SBA)	2/1/2021	292,661.69	5,281.78
EBC Asset Invest (Omni Bank by FDIC)	0753496-545 trailers	9/1/2018	367,037.00	7,000.00
PACCAR Financial Corp.#1	6 Kenworths	4/8/2017	245,579.41	8,701.15
PACCAR Financial Corp. #2	7 Kenworths	4/22/2017	287,000.51	10,168.75
PACCAR Financial Corp. #3	7 Kenworths	5/14/2017	308,188.05	10,608.76
BANK LEASES:				
Mercedes-Benz Financial Services LLC	10 Freightliners	9/15/2014	lease	12,434.08
Mercedes-Benz Financial Services LLC	5 Freightliners	12/15/2014	lease	6,951.98
Mercedes-Benz Financial Services LLC	7 Freightliners	5/15/2015	lease	10,388.53
Mercedes-Benz Financial Services LLC	8 Freightliners	7/15/2015	lease	13,212.88
GE Capital	25 trailers	1/1/2017	lease	7,602.24
GE Capital	24 trailers	1/1/2017	lease	6,835.27
GE Capital	24 trailers	1/1/2017	lease	7,109.34

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**PROJECTED INCOME AND EXPENSES AND PLAN PAYMENTS OF HENDRICKSON
TRUCK LINES (HTL) FINANCIALS**

HENDRICKSON TRUCK LINES, INC. POST-CONFIRMATION MONTHLY BUDGET PROFORMA

Income from TAB Bank A/R Financing	1,970,887
-------------------------------------------	-----------

Total receipts	1,970,887
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Cash payments:

Peoplease employee wages & taxes	659,288
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Ward Hendrickson wages	13,500
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Alban Lang wages	13,500
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William Hendrickson wages	2,000
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Kaiser health insurance	51,309
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Fuel & oil	369,701
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Maintenance	295,409
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Taxes & licensing	86,264
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Insurance	100,047
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Equipment rent & purch transportation	193,380
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Office equip & terminal rents	17,669
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Safety & recruiting	29,010
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Communication & utilities	16,231
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Misc admin expenses	4,704
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Property SBA loan	5,086
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1	Property TAB loan	19,813
2	Paccar loans*	29,479
3		
4	GE leases	21,547
5	Priority unsecured claim monthly payments	24,319
6	Legal & accounting fees	5,000
7		
8	Total Cash Disbursements	1,957,256
9		
10		
11	Budget surplus	13,631

12 *PACCAR's loans to be paid in full by July 2017, providing an additional surplus to operate.

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ARTICLE XIV.

TAX DISCLAIMER

ALL CLAIMANTS ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE FEDERAL, STATE AND LOCAL-TAX CONSEQUENCES OF THE PLAN ON THEIR CLAIM(S). NEITHER THE DEBTOR, NOT ITS COUNSEL MAKES ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO ANY CLAIMANT. THE DEBTOR AND ITS COUNSEL IS NOT RENDERING ANY FORM OF LEGAL OPINION AS TO ANY TAX CONSEQUENCES.

THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND AS SUCH, DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF ITS PARTICULAR CIRCUMSTANCES. THE FOREGOING SHOULD NOT BE CONSIDERED TAX ADVICE AND IT IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. ACCORDINGLY, EACH CLAIMANT IS URGED TO CONSULT WITH THEIR OWN TAX ADVISOR REGARDING THE POTENTIAL TAX CONSEQUENCES TO SUCH HOLDER.

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Respectfully submitted,

HUGHES FINANCIAL LAW

Dated: September 15, 2016

/s/ C. Anthony Hughes
Attorney for Debtor

ATTACHMENTS:

Exhibit A – Copy of Complaint filed in Hendrickson v. Pilot Travel Centers, LLC

Exhibit B - Assignment of Assets and Assumption of Liabilities Agreement between Debtor and Hendrickson Truck Lines, Inc.

Exhibit C – Hendrickson Truck Lines Tractor and Trailer list: to show what equipment of Debtor HTL continues to use versus its own assets.

Exhibit D – Class 1 General Unsecured class creditors – Schedule F claims

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Exhibit A

1 DOUGLAS A. MacDONALD, CSB # 088973
LAW OFFICE OF DOUGLAS A. MacDONALD
2 3620 American River Drive, Suite 130
Sacramento, California 95864
3 Tel.: (916) 488-3616 / Facsimile: (916) 488-6342

FILED
Superior Court Of California,
Sacramento
09/09/2014

4 TIMOTHY E. HODGSON, CSB # 108398
LAW OFFICE OF TIMOTHY E. HODGSON
5 3620 American River Drive, Suite 130
Sacramento, California 95864
6 Tel.: (916) 488-3616 / Email: email@timhodgson.us

amocanu
By _____, Deputy
Case Number:
34-2014-00168738

7 Attorneys for Plaintiff HENDRICKSON TRUCKING, INC.

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

9 IN AND FOR SACRAMENTO COUNTY

10	HENDRICKSON TRUCKING, INC.,)	No.
)	
11	Plaintiff,)	COMPLAINT
)	
12	vs.)	JURY TRIAL DEMANDED
)	
13	PILOT TRAVEL CENTERS, LLC,)	
	PILOT CORPORATION,)	
14	MICHAEL SCOTT FENWICK,)	
	MARK HAZELWOOD, and)	
15	ALL THOSE PERSONS WHO MAY BE)	
	ENTITLED TO BE RESTORED MONEY,)	
16	WHICH MAY HAVE BEEN ACQUIRED)	
	BY MEANS OF UNFAIR COMPETITION))	
17	BY PILOT FLYING J'S COST PLUS)	
	DISCOUNT FRAUD, WHO SHOULD)	
18	HAVE BEEN JOINED AS PLAINTIFFS))	
	BUT WHOSE CONSENT CANNOT BE)	
19	OBTAINED,)	
	and DOES 1-50,)	
20)	
	Defendants.)	
21)	

22
23 COMPLAINT

24 This case arises from massive fraudulent conduct by single
25 enterprise alter ego corporate defendants PILOT TRAVEL CENTERS, LLC
26 and PILOT CORPORATION (collectively "Pilot Flying J" or the "corporate
27 defendants" herein) which collectively constitute the nation's largest
28

HENDRICKSON TRUCKING, INC.'S
COMPLAINT

1 seller of diesel fuel to the small and mid-size over-the-road trucking
2 industry. As a result of an investigation by the Federal Bureau of
3 Investigation ("FBI") which remains ongoing, to date ten employees of
4 Pilot Flying J have signed plea agreements agreeing to plead guilty
5 to felony counts of mail fraud in Pilot Flying J's fraudulent "rebate"
6 and "cost plus" discount billing of diesel direct fuel sales to small
7 and mid-size trucking companies.

8 The concomitant civil cases filed to date have alleged claims for
9 relief primarily based on defendants' "rebate" fraud.

10 Recently, however, Hendrickson has learned that it was the victim
11 of Pilot Flying J's "cost plus" discount fraud and, as a result,
12 limits its causes of action to such fraud, below.

13
14 **THE PARTIES**

15 1. Plaintiff HENDRICKSON TRUCKING, INC. ("plaintiff" or
16 "Hendrickson") is a California corporation and a small, family-owned
17 over-the-road interstate trucking company which serves ten (10)
18 Western states (AZ, CA, CO, ID, NM, NV, OR, UT, WA, & WY) with
19 principal place of business at 7080 Florin Perkins Road, Sacramento,
20 California 95829.

21 2. Defendant PILOT TRAVEL CENTERS, LLC, is a privately held
22 Delaware limited liability company with its company headquarters
23 located at 5508 Lonas Drive, Knoxville, Tennessee 37909.

24 3. Now, and at all times herein alleged, defendant PILOT TRAVEL
25 CENTERS, LLC was engaged in doing business in the state of California
26 and is and has been registered to do business in the state of
27 California with the California Secretary of State (California business
28 entity number 200112210015).

1 4. Defendant PILOT CORPORATION is a Tennessee corporation with
2 its corporate headquarters located at 5508 Lonas Drive, Knoxville,
3 Tennessee 37909.

4 5. Now, and at all times herein alleged, defendant PILOT
5 CORPORATION was engaged in doing business in the state of California
6 and is and has been registered to do business in the state of
7 California with the California Secretary of State (California business
8 entity number C1617618).

9 6. Hendrickson is informed and believes and thereon alleges
10 that at all times herein mentioned that, although there are multiple
11 corporate defendants, there was but a single enterprise in which those
12 corporate defendants were engaged, and that there existed such a unity
13 of interest and ownership that the separate corporate personalities
14 are merged, so that one corporation was the mere adjunct of the other
15 thereby forming a single enterprise, such that any individuality and
16 separateness between each corporate defendant has never arisen or has
17 since ceased, and the corporate defendants are the alter egos of each
18 other, such that adherence to the fiction of the separate existence
19 of each of them would permit an abuse of the corporate privilege and
20 an inequity would result if the acts in question are treated as those
21 of one corporation alone, and would sanction fraud and promote
22 injustice on the facts hereinafter alleged. [Las Palmas Associates
23 v. Las Palmas Center Associates, 235 Cal. App. 3d 1220 (2d Dist.
24 1991).]

25 7. Defendants PILOT TRAVEL CENTERS, LLC and PILOT CORPORATION
26 are collectively referred to herein as "Pilot Flying J" or as the
27 "corporate defendants."

28 8. Defendant MICHAEL SCOTT FENWICK ("FENWICK") is an

1 individual, of unknown citizenship, domicile and residence, who was
2 employed by both corporate defendants as their "Regional Sales
3 Manager" for Pilot Flying J's Western Sales Region during the time of
4 some or all of the events alleged herein.

5 9. A true and correct copy of FENWICK's PILOT TRAVEL CENTERS,
6 LLC/Pilot Flying J's business card is attached hereto as Exhibit 2,
7 and is incorporated herein by reference.

8 10. In doing the acts herein alleged, FENWICK was a managing
9 agent of the corporate defendants in the Western Sales Region in that
10 FENWICK exercised substantial independent authority and judgment in
11 negotiating diesel direct fuel sales agreements with the various small
12 and mid-sized trucking companies in the Western Sales Region and
13 thereafter determined or participated in the determination of the size
14 of the rebate or cost plus discounts which those trucking companies
15 actually received from Pilot Flying J, such that FENWICK's decisions
16 ultimately determined or contributed to the determination of Pilot
17 Flying J's corporate policy in the Western Sales Region. [White v.
18 Ultramar, Inc., (1999) 21 Cal. 4th 563, 566-567.]

19 11. Defendant MARK HAZELWOOD ("HAZELWOOD"), is an individual,
20 of unknown citizenship, domicile and residence, who was the President
21 of both the corporate defendants during the time of some or all of the
22 events alleged herein.

23 12. A true and correct copy of HAZELWOOD's PILOT TRAVEL CENTERS,
24 LLC/Pilot Flying J's business card is attached hereto as Exhibit 3,
25 and is incorporated herein by reference.

26 13. In doing the acts herein alleged, HAZELWOOD was a managing
27 agent of both the corporate defendants in that, as President of both
28 corporate defendants, HAZELWOOD exercised substantial independent

1 authority and judgment such that HAZELWOOD's decisions ultimately
2 determined or contributed to the determination of Pilot Flying J's
3 corporate policy. [White v. Ultramar, Inc., (1999) 21 Cal. 4th 563,
4 566-567.]

5 14. Defendants FENWICK and HAZELWOOD are collectively referred
6 to herein as the "individual defendants."

7 15. Plaintiff does not know the true names of defendants DOE 1
8 through 50, inclusive, and therefore sues them by those fictitious
9 names. Plaintiff is informed and believes and thereon alleges that
10 each of the fictitiously named DOE defendants is responsible in some
11 manner for the occurrences herein alleged and proximately caused and
12 are in some manner responsible for the events and happenings alleged
13 in this complaint and for plaintiff's injuries and damages, and that
14 each of said fictitiously name DOE defendants was acting as agent for
15 the other defendants herein.

16 16. Hendrickson is informed and believes and thereon alleges
17 that at all times mentioned herein, the individual defendants and the
18 DOE defendants, and each of them, were the agents and employees of the
19 corporate defendants, and each of them, and in doing the things
20 hereinafter alleged, were acting within the course and scope of such
21 agency and employment.

22 17. PILOT TRAVEL CENTERS, LLC, PILOT CORPORATION, FENWICK
23 HAZELWOOD, and each of the DOE defendants are collectively referred
24 to herein as the "defendants."

25 18. Hendrickson also names and joins as defendants, pursuant to
26 Code of Civil Procedure, sections 17203 and 382, all those small and
27 mid-sized trucking companies who purchased diesel fuel under Pilot
28 Flying J's cost plus discount program (collectively referred to herein

1 as the "UCL Claimant-Defendants"), who may be entitled to claim relief
 2 from Pilot Flying J under California's Unfair Competition Law ("UCL")
 3 [Bus. and Prof. Code, § 17200, et seq., §§ 17203 and 17204], and who
 4 should have been joined as plaintiffs but whose consent cannot be
 5 obtained.

6 19. Hendrickson itself is a claimant who satisfies the UCL's
 7 standing requirement as "a person who has suffered injury in fact and
 8 has lost money or property as a result of" Pilot Flying J's "unfair
 9 competition" within the meaning of California Business and Professions
 10 Code, section 17204.

11 20. The questions presented by this complaint are common among
 12 Hendrickson and the UCL Claimant-Defendants which are all small and
 13 mid-sized trucking companies and which have all been subjected to
 14 Pilot Flying J's unlawful, unfair or fraudulent business acts or
 15 practices which are hereinafter described and are referred to herein
 16 as "cost plus discount fraud."

17 21. The UCL Claimant-Defendants are numerous ¹ in that there are

18 _____
 19 ¹ Hendrickson is informed and believes and thereon alleges
 20 that the UCL Claimant-Defendants are numerous in that the trucking
 21 industry is comprised of nearly 539,000 interstate trucking companies
 22 and that of all the interstate trucking companies in 2003, over 81%
 23 operated 6 or fewer trucks and over 93% operated 20 or fewer trucks.¹
 24 And that of all the interstate trucking companies in December 2011,
 25 90.2% operated 6 or fewer trucks and 97.2% operated 20 or fewer
 26 trucks.

23 "The trucking industry is composed of both large
 24 national enterprises as well as a host of small businesses.
 25 Over 81% of all interstate motor carriers operate six or
 26 fewer trucks and 93% of motor carriers (nearly 539,000 in
 27 number) have 20 or fewer trucks."

26 [Exhibit 1.a, Comments of the AMERICAN TRUCKING ASSOCIATIONS, INC. On
 27 the Notice and Request for Comments on the Office of Management and
 28 Budget's Proposed Bulletin on Peer Review and Information Quality
 Before the United States Office of Management and Budget, Executive
 Office of the President 68 Federal Register 54023 (September 15, 2003)]

1 nearly 539,000 small and mid-sized trucking companies spread across
 2 the nation, which are citizens of and domiciled in each and every
 3 state in the United States and which are, as yet, unidentified, such
 4 that it would be impracticable to bring them all before the court.

5 22. Accordingly, Hendrickson is expressly permitted by
 6 California Business and Professions Code, section 17203, to represent
 7 the UCL Claimant-Defendants' in their claims for relief against Pilot
 8 Flying J, including but not limited to injunctive relief, appointment
 9 of a receiver, and restoration of all monies paid as a result of Pilot
 10 Flying J's cost plus discount fraud during the year 2004 and prior
 11 thereto.

12 13 JURISDICTION AND VENUE

14 23. This Court has personal jurisdiction over defendants
 15 because: the corporate defendants are authorized to do business in
 16 California and, in fact, have conducted business in this California;
 17 the corporate defendants, doing business as "Pilot Flying J" marketed,
 18 contracted for, and sold diesel fuel to Hendrickson in California;
 19 the acts of the defendants herein alleged were either performed within
 20 or were directed so as to have an effect within California; and
 21 FENWICK and HAZELWOOD traveled to Hendrickson's headquarters in
 22 Sacramento, California, in doing the acts complained of herein.

23 _____
 24 D e c e m b e r 1 5 , 2 0 0 3 , p a g e 2 ;
 25 <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/comments/comment14.pdf>]

- 26 "• 90.2% operate 6 or fewer trucks
 27 • 97.2% operate fewer than 20 trucks"

28 [Exhibit 1.b, AMERICAN TRUCKING ASSOCIATION, "Reports, Trends &
 Statistics" page 3 of 6, December 2011.]

1 24. Venue is proper in this county because Hendrickson's
2 headquarters and principal place of business is located in Sacramento
3 County; because in doing the acts complained of herein, defendants'
4 directed their activities to occur in this county; because in doing
5 the acts complained of herein, the FENWICK and HAZELWOOD traveled to
6 this county to meet with Hendrickson at Hendrickson's headquarters;
7 and because a substantial part of the events giving rise to
8 Hendrickson's claims occurred in this county.

9
10 **CLASS ACTION**

11 25. Hendrickson is informed and believes and thereon alleges
12 that on or about July 15, 2013, Pilot Flying J entered into a global
13 settlement ("Global Settlement") resolving all rebate fraud claims
14 against Pilot Flying J and other defendants on behalf of a nationwide
15 class of plaintiffs (the "Class Action").

16 26. Hendrickson did not receive notice of the Class Action or
17 of the Global Settlement and, therefore, is informed and believes and
18 thereon alleges that Hendrickson is not included therein.

19 27. Additionally, Hendrickson is informed and believes and
20 thereon alleges that the Class Action is directed to Pilot Flying J's
21 "rebate fraud" customers, and Hendrickson is not a rebate customer of
22 Pilot Flying J and therefore that Hendrickson is not included therein.

23 28. Hendrickson is now and has been a Pilot Flying J cost plus
24 discount customer since 2004.

25 29. As alleged herein, Hendrickson's causes of action are
26 limited to Pilot Flying J's "cost plus discount fraud." For these
27 reasons, Hendrickson is informed and believes and thereon alleges that
28 Hendrickson is not a party to the Class Action or to the Global

1 Settlement.

2 30. The foregoing notwithstanding, to avoid all claims of
3 preemption by the federal class action, this lawsuit seeks damages for
4 Pilot's cost plus discount fraud for the year 2004 only which
5 Hendrickson is informed and believes and thereon alleges is not
6 preempted, covered or otherwise affected by the federal class action.

7 31. Hendrickson will amend this lawsuit to seek damages for
8 Pilot's cost plus discount fraud for the years 2005 through 2013 when
9 and if it is determined that Hendrickson's claims and the UCL-
10 Claimant-Defendants claims for Pilot's cost plus discount fraud for
11 such years are not preempted by the federal class action.

12

13

MULTIDISTRICT LITIGATION

14 32. Hendrickson is informed and believes and thereon alleges
15 that pursuant to an order dated April 7, 2013, the Judicial Panel on
16 Multidistrict Litigation (the "JPML") transferred seven rebate fraud
17 federal diversity actions pending against Pilot Flying J to the United
18 States District Court for the Eastern District of Kentucky, IN RE:
19 PILOT FLYING J REBATE LITIGATION Case No: 2:14-md-2515-ART, the
20 Honorable Amul R. Thapar presiding, for coordinated pretrial
21 proceedings.

22 33. Hendrickson is also informed and believes and thereon
23 alleges these seven cases were "rebate fraud" cases which had opted
24 out of the aforementioned Class Action.

25 34. Since Hendrickson's causes of action herein are limited to
26 Pilot Flying J's "cost plus discount fraud," thus, even if filed in
27 or removed to U.S. District Court, Eastern District of California,
28 Hendrickson's complaint would not be not subject to the JPML order

1 requiring transfer to the United States District Court for the Eastern
2 District of Kentucky, IN RE: PILOT FLYING J REBATE LITIGATION Case No:
3 2:14-md-2515-ART.

4 35. The foregoing notwithstanding, to avoid all claims of
5 preemption by the JPML, this lawsuit seeks damages for Pilot's cost
6 plus discount fraud for the year 2004 only which is Hendrickson is
7 informed and believes and thereon alleges is not preempted, covered
8 or otherwise affected by the JPML.

9 36. Hendrickson will amend this lawsuit to seek damages for
10 Pilot's cost plus discount fraud for the years 2005 through 2013 when
11 and if it is determined that Hendrickson's claims and the UCL
12 Claimant-Defendants claims for Pilot's cost plus discount fraud for
13 such years are not preempted by the JPML.

14
15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 37. Pilot Flying J operates truck stops under the "Pilot Travel
17 Centers" and the "Flying J Travel Plaza" brands which collectively
18 constitute the largest truck stop chain in the United States and the
19 largest seller of diesel fuel to the U.S. trucking industry.

20 38. Hendrickson is a small, family-owned over-the-road
21 interstate trucking company which serves ten (10) Western states (AZ,
22 CA, CO, ID, NM, NV, OR, UT, WA, & WY) which is within Pilot Flying J's
23 Western Sales Region.

24 39. Hendrickson has been buying diesel fuel for its
25 tractor/semi-trailer fleet (hereinafter "trucks") at Pilot Flying J's
26 truck stops since well before 2000.

1 40. In 2004, Hendrickson became a "Direct Billed Customer"² of
2 Pilot Flying J and commenced buying fuel under Pilot Flying J's cost
3 plus "0" discount program by which Pilot Flying J promised and
4 represented to Hendrickson that it would bill Hendrickson for diesel
5 fuel at a price equal to the sum of Pilot Flying J's actual cost per
6 gallon (including Pilot Flying J's actual cost for fuel, taxes, and
7 transport expenses) plus a markup of approximately "0" cents per
8 gallon (i.e., cost plus "0").

9 41. Hendrickson is informed and believes and thereon alleges
10 that Pilot Flying J's customers are assigned a "Regional Account
11 Representative" who works under the supervision of a "Regional Sales
12 Manager" who, working together, conduct Pilot Flying J's pricing and
13 contract negotiations with, and then thereafter bill, Pilot Flying J's
14 small and mid-size trucking company customers.

15 42. Defendant FENWICK was the Regional Sales Manager assigned
16 to Pilot Flying J's Western Region, which included negotiating Pilot
17 Flying J's pricing with Hendrickson and thereafter billing Hendrickson
18 for its diesel fuel purchases from Pilot Flying J.

19 43. Pilot Flying J's direct sales personnel conducted Pilot
20

21 ² In the FBI's AFFIDAVIT, Pilot Flying J's "Direct Billed
22 Customers," are:

23 "Direct Billed Customers. Based on information provided by
24 CHS-2, the term "Direct Billed Customers" refers to
25 Customers to whom Pilot has extended credit for the
26 purchase of diesel fuel. Direct Billed Customers purchase
27 their diesel from Pilot on credit extended by Pilot, and
28 Pilot sends these Customers an invoice for the cost of the
diesel purchased on credit, including any agreed upon
discount, on a periodic basis, sometimes on a daily basis,
but typically no longer than a weekly basis."

[Exhibit 5, FBI AFFIDAVIT, II. Terms, para. c., page 5 of 120.]

1 Flying J's pricing and contract negotiations with, and then thereafter
2 billed Hendrickson for Hendrickson's diesel fuel purchases from Pilot
3 Flying J.

4 44. As part of its payment process, Hendrickson would view Pilot
5 Flying J's daily "Pilot Pricing Overview," along with Pilot Flying J's
6 invoice summaries posted on an "EFS" website. Then, twice a week,
7 Hendrickson would wire funds to Pilot Flying J paying for its fuel
8 purchases from Pilot Flying J.

9 45. In 2011, as a result of the economic recession and high fuel
10 prices, Hendrickson fell behind in payment for some of its fuel
11 purchases from Pilot Flying J.

12 46. In 2011, Pilot Flying J sued Hendrickson in Sacramento
13 Superior Court for breach of contract for failing to pay Pilot Flying
14 J approximately \$1,077,643.12, or for approximately two months worth
15 of Hendrickson's fuel purchases from Pilot Flying J.

16 47. Thereafter, on April 2, 2012, Pilot Flying J obtained a
17 judgment against Hendrickson for the amount sued upon plus interest
18 and attorneys' fees.

19 48. Approximately one year later, on April 15, 2013, the FBI
20 raided Pilot Flying J's corporate headquarters, an additional office
21 building, and a separate commercial building, along with the personal
22 residences of three of Pilot Flying J's employees.

23 49. The FBI raids were authorized by a search warrant issued
24 upon an affidavit containing clear and convincing evidence of fraud
25 by Pilot Flying J in its rebate and cost plus billing of small and
26 mid-sized trucking companies which, as revealed by recordings made by
27 FBI Confidential Human Source number 2 ("CHS-2") during national and
28 regional sales meetings and during conversations with Pilot Flying J

1 Regional Sales Managers and Regional Account Representative, were
2 deemed to be too "unsophisticated" to "deserve" the low pricing which
3 Pilot Flying J's direct sales personnel had represented to such
4 customers that they were getting.

5 50. A true and correct copy of the FBI's AFFIDAVIT IN SUPPORT
6 OF SEARCH WARRANT APPLICATION, in the Matter of the Searches Of: the
7 office building located at 5500 Lonas Drive, Knoxville, Tennessee,
8 etc., filed Under Seal April 15, 2013, in the United States District
9 Court, Eastern District of Tennessee (at Knoxville), Case No.
10 3:13-MJ-2018, (hereinafter "FBI AFFIDAVIT") is attached hereto as
11 Exhibit 5, and is incorporated herein by reference.

12 51. In Sacramento, California, during late Spring and Summer of
13 2013, Hendrickson and Pilot Flying J were negotiating the settlement
14 of Pilot Flying J's lawsuit against Hendrickson and the judgment
15 entered therein.

16 52. At that time, Hendrickson was aware from the news media that
17 the FBI had raided Pilot Flying J's offices for rebate fraud.

18 53. As a result, Hendrickson was concerned that Pilot Flying J
19 may have also defrauded Hendrickson.

20 54. On May 9, 2013, Pilot Flying J's President MARK HAZELWOOD
21 personally traveled to Sacramento to meet with the Hendrickson family
22 at Hendrickson's headquarters in Sacramento, California.

23 55. At that meeting, Hendrickson's President, Ward Hendrickson,
24 specifically asked Pilot Flying J's President MARK HAZELWOOD if Pilot
25 Flying J had defrauded Hendrickson.

26 56. In response, Pilot Flying J's President MARK HAZELWOOD
27 falsely stated that "Pilot Flying J had not defrauded Hendrickson in
28 any way" and further falsely stated that "the FBI's inquiry was

1 limited to Pilot Flying J's rebate program and did not include the
2 cost plus program," or similar words to that effect.

3 57. In reliance thereon, on August 30, 2013, Hendrickson entered
4 into a Settlement Agreement with Pilot Flying J wherein Hendrickson
5 agreed: (1) to pay Pilot Flying J the sum of \$780,000, in
6 installments starting at \$5,000 per month and increasing to \$20,000
7 per month, with 10% interest accruing on the unpaid balance; and (2)
8 also to purchase from Pilot Flying J a minimum average of 110,000
9 gallons of diesel fuel per month.

10 58. Hendrickson has faithfully made and continues faithfully to
11 make its payments to Pilot Flying J under the terms of the Settlement
12 Agreement, such that there remains due and owing at the time of the
13 filing of this complaint approximately \$705,000 from Hendrickson to
14 Pilot Flying J under the terms of such Settlement Agreement.

15 59. A true and correct copy of the Settlement Agreement is
16 attached hereto as Exhibit 6.

17 60. By its terms, the Settlement Agreement is governed by
18 California law. [Exhibit 6, para. 15.]

19 61. The Settlement Agreement does not contain any waiver or
20 release of any claims whatsoever which Hendrickson had or may have
21 against Pilot Flying J.

22 62. The Settlement Agreement also does not contain any waiver
23 of the provisions of California Civil Code, section 1542.³

24 _____
25 ³ Even if the Settlement Agreement did contain a waiver or
26 release of Hendrickson's claims against Pilot Flying J, the Settlement
27 Agreement does not contain a waiver of California Civil Code, section
28 1542 which provides as follows:

"A general release does not extend to claims which the
creditor does not know or suspect to exist in his or her

1 63. Consequently, Hendrickson has not waived or released any
2 fraud or other claims it has against Pilot Flying J.

3 64. Additionally, the statute of limitations has not run and,
4 additionally, defendants are estopped to plead the statute of
5 limitations against Hendrickson's fraud or other claims against
6 defendants for the reason that: (1) for the duration of the fraud,
7 as quoted in the FBI AFFIDAVIT, Pilot Flying J's personnel
8 intentionally misstated and actively concealed the true facts
9 constituting the fraud; and (2) Pilot Flying J's President MARK
10 HAZELWOOD actively concealed Pilot Flying J's fraud by his affirmative
11 denials that Pilot Flying J had defrauded Hendrickson and his
12 affirmative statement the FBI's inquiry was limited to Pilot Flying
13 J's rebate program, or words to that effect. ⁴

14 65. Additionally, subdivision (d) of Section 338 of the
15 California Code of Civil Procedure specifically provides that a fraud
16 cause of action does not accrue until the victim's actual "discovery
17 ... of the facts constituting the fraud." ⁵

18
19 favor at the time of executing the release, which if known
20 by him or her must have materially affected his or her
settlement with the debtor."

21 [Cal. Civil Code § 1542, quoted in full.]

22 ⁴ "CHS-2, had confided to him/her that certain Pilot
23 employees had been intentionally defrauding some of Pilot's
24 Customers by deliberately charging these Customers a higher
25 price than the contractually agreed upon price, and then
concealing the fact and nature of this increased price from
these victimized customers."

26 [Exhibit 5, hereto, FBI AFFIDAVIT, III. Summary, page 8 of 120.]

27 ⁵ Pursuant to California Code of Civil Procedure § 338(d), the
28 statute of limitations for a cause of action for fraud or mistake is
three (3) years but accrues only "upon discovery, by the aggrieved
party of the facts constituting the fraud or mistake." Because the

1 66. As hereinafter more specifically alleged, Hendrickson did
2 not discover the true facts of Pilot Flying J's fraudulent billing of
3 Hendrickson until April of 2014.

4 67. Plaintiff is informed and believes and thereon alleges that
5 on or about May 9, 2013, Pilot Flying J employee, Ashley Judd, entered
6 into an agreement with the United States of America, filed under seal,
7 agreeing to plead guilty to one felony count of conspiracy to commit
8 mail fraud for her participation in Pilot Flying J's fraudulent rebate
9 and discount pricing programs. Ashley Judd, whose immediate
10 supervisor was defendant FENWICK, is currently awaiting sentencing of
11 up to five (5) years imprisonment, a fine of not more than \$250,000,
12 not more than three (3) years supervised release, in addition to any
13 applicable forfeiture and restitution. [Judd Plea Agreement, USA v.
14 Judd, U.S. District Court, Eastern District of Tennessee (Knoxville),
15 Case No. 3:13-cr-00058-ART-HBG-1, a true and correct copy of which is
16 attached hereto as Exhibit 7, and is incorporated herein by
17 reference.]

18 68. Plaintiff is informed and believes and thereon alleges that
19 on or about July 9, 2013, defendant FENWICK entered into an agreement
20 with the United States of America, filed under seal, agreeing to plead
21 guilty to one felony count of conspiracy to commit mail fraud for his
22 participation in Pilot Flying J's fraudulent rebate and discount
23 pricing programs. FENWICK is currently awaiting sentencing of up to
24 five (5) years imprisonment, a fine of not more than \$250,000, not
25 more than three (3) years supervised release, in addition to any

26 _____
27 statute expressly requires "discovery by the aggrieved party," a
28 plaintiff, such as Hendrickson, cannot be charged with knowledge of
information in public records or other publicly available sources.
[FDIC v. Dintino, (2008) 167 Cal. App. 4th 333, 349.]

1 applicable forfeiture and restitution. [Fenwick Plea Agreement, USA
2 v. Fenwick, U.S. District Court, Eastern District of Tennessee
3 (Knoxville), Case No. 3:13-cr-00077-ART-HBG-1, a true and correct copy
4 of which is attached hereto as Exhibit 8, and is incorporated herein
5 by reference.

6 69. Hendrickson is also informed and believes and thereon
7 alleges that eight (8) other persons working in Pilot Flying J's
8 direct sales department have also entered into agreements with the
9 United States of America, agreeing to plead guilty to felony counts
10 of conspiracy to commit mail fraud for their participation in Pilot
11 Flying J's fraudulent rebate and discount pricing programs.

12 70. Hendrickson is informed and believes and thereon alleges
13 that sometime in mid to late 2013, Ashley Judd ceased being employed
14 by Pilot Flying J.

15 71. Hendrickson is informed and believes and thereon alleges
16 that sometime in mid to late 2013, FENWICK also ceased being employed
17 by Pilot Flying J.

18 72. Hendrickson is also informed and believes and thereon
19 alleges that sometime in mid to late 2013, the other eight (8) direct
20 sales employees who plead to felony counts of conspiracy to commit
21 mail fraud also ceased being employed by Pilot Flying J.

22 73. Hendrickson is also informed and believes and thereon
23 alleges that sometime after the cessation of Ashley Judd's employment,
24 Barbara Yaber became the Customer Sales Support Team Member for Pilot
25 Flying J's Western Region.

26 74. Hendrickson is informed and believes and thereon alleges,
27 that sometime after the cessation of FENWICK's employment, James
28 Studor became the Regional Sales Manager for Pilot Flying J's Western

1 Region.

2 75. Hendrickson is informed and believes and thereon alleges
3 that sometime in early to mid 2014, HAZELWOOD ceased being employed
4 by Pilot Flying J.

5 76. From 2004 to December 31, 2013, Pilot Flying J never
6 provided Hendrickson any documentation breaking out or describing the
7 various "cost components" of the fuel cost element in Pilot Flying J's
8 cost plus "0" billing to Hendrickson.

9 77. However, in January of 2014, Pilot Flying J's new Western
10 Regional Sales Manager, James Studor, began providing Hendrickson with
11 Pilot Flying J's daily "US Direct Bill" "Better Of Pricing Report"
12 which, for the first time ever, broke out the various "cost
13 components" of the fuel cost element in Pilot Flying J's cost plus "0"
14 billing to Hendrickson which revealed for the first time ever that
15 Pilot Flying J was not charging Pilot Flying J's actual cost for fuel
16 but was charging Hendrickson the daily OPIS average price for the day
17 of Hendrickson's fuel purchase.

18 78. Additionally, in January of 2014, Pilot Flying J's Vice
19 President of Sales & Transportation transmitted to Hendrickson a cover
20 letter with a fuel transport pricing sheet which reduced the fuel
21 transport expense of the fuel cost component in Pilot Flying J's cost
22 plus "0" billing to Hendrickson which revealed for the first time ever
23 that Pilot Flying J had been overcharging Hendrickson for the fuel
24 transport expense of the fuel cost component in Pilot Flying J's cost
25 plus "0" billing to Hendrickson.

26 79. Pilot Flying J's January 2014 fuel transport expense
27 reduction letter reduced the fuel transport expense by approximately
28 1 cent per gallon (\$0.0092 per gallon) for the nine (9) Pilot Flying

1 J truck stops in the Western states which Hendrickson usually
2 purchases fuel from Pilot Flying J, stating that:

3 "These changes [*fuel transport expense reductions*] are the
4 result of a recent review of rates in various markets."

5 [A true and correct copy of Pilot Flying J's January 17, 2014, cover
6 letter and transport expense reduction spreadsheet is attached hereto
7 as Exhibit 9, and is incorporated herein by reference. Italicized
8 material in brackets added.]

9 80. Hendrickson did not actually discover the facts constituting
10 Pilot Flying J's cost plus "0" discount fraud until Hendrickson: (1)
11 received Pilot Flying J's new daily "US Direct Bill" "Better Of
12 Pricing Report" in January 2014 which for the first time revealed that
13 Pilot Flying J's fuel cost was not based on Pilot Flying J's "actual
14 cost" for fuel but was based on the daily OPIS average price effective
15 on the day of Hendrickson purchase and which also for the first time
16 broke out the "cost components" of Pilot Flying J's cost plus pricing
17 (and, coincidentally, reduced the actual fuel cost per gallon to
18 Hendrickson); (2) received Pilot Flying J's Vice President of Sales
19 & Transportation's January 2014, letter reducing the fuel transport
20 expense component of Pilot Flying J's cost plus discount pricing by
21 approximately 1 cent per gallon; and (3) obtained a copy of Love's
22 current and historical cost plus "0" pricing to compare with Pilot
23 Flying J's cost plus "0" pricing, for the same day and same cities,
24 which enabled Hendrickson for the first time to determine that Pilot
25 Flying J was effectively charging Hendrickson cost plus "7" cents
26 instead of cost plus "0" as Pilot Flying J had repeatedly promised and
27 represented to Hendrickson.

28

1
2 **FIRST CAUSE OF ACTION**3 **COST PLUS DISCOUNT FRAUD**

4 81. Plaintiff incorporates herein each and every other paragraph
5 of this complaint.

6 82. As further alleged below, for the year 2004, Hendrickson
7 purchase diesel fuel from Pilot Flying J under Pilot Flying J's cost
8 plus "0" discount program.

9 83. As further alleged below, Hendrickson was a victim of Pilot
10 Flying J's cost plus "discount fraud" which is defined in the FBI
11 AFFIDAVIT as:

12 "Discount Fraud. The term 'Discount Fraud,' which is a
13 term that was not used by Pilot employees, is a short-hand
14 reference used in this affidavit to mean the intentional
and deceptive reduction of a diesel discount agreement with
a Customer, without the Customer's knowledge or approval,
15 for the purpose of increasing Pilot's profitability and the
16 sales commissions of Pilot employees. Based on information
17 provided through the cooperation of CHS-2, internally at
Pilot, this deceptive practice has been referred to at
various times as 'managing the discount,' and 'jacking the
discount.'"

18 [Exhibit 5, FBI AFFIDAVIT, II. Terms, para. d., page 5 of 120,
19 incorporated herein by reference.]

20 84. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157
21 gallons of diesel fuel from Pilot Flying J under Pilot Flying J's Cost
22 plus "0" discount program for which Hendrickson is informed and
23 believes and thereon alleges that it was overcharged by Pilot Flying
24 J an average of not less than 10 cents per gallon for a total "Actual
25 'Cost' Overcharge" to be determined at trial but not less than
26 \$221,215.70 [2,212,157 gal. x \$0.10 = \$221,215.70] which constitutes
27 one component of Hendrickson's total cost plus damages in an amount
28 to be determined at trial but no less than \$2,360,688.12, as further

1 described in plaintiff's First Cause of Action in Counts I through
 2 III, below.

3 *First Cause of Action - Cost Plus Discount Fraud*
 4 *Count*

4	<u>No.</u>	<u>Damage Description</u>	
5	I.	Actual Cost Overcharge	\$221,215.70
6	II.	Fuel Transport Overcharge	\$20,351.84
7	III.	Markup Overcharge	<u>\$152,417.62</u>
8		Overcharge subtotal:	\$393,985.16
9		With 10%/Year Prejudgment Interest:	\$1,021,896.04
10		With Punitive damages (min. 3x)	\$3,065,688.12
11	<i>off-</i>	Less Pilot offset remaining	<u>-\$705,000.00</u>
12	<i>set</i>	owed by Hendrickson pursuant to Superior Court Settlement Agmt.	
13		TOTAL COST PLUS FRAUD DAMAGES: ⁶	<u>\$2,360,688.12</u>

14 **Fraud Count I. Actual Cost Overcharge**

15 **(Charging Hendrickson the OPIS Daily Average Index Price instead of**
 16 **Pilot's Actual "Cost" for Fuel as Promised and Represented)**

17 85. Plaintiff incorporates herein each and every other paragraph
 18 of this complaint.

19 86. In 2004, with the intent to defraud and deceive Hendrickson,
 20 and to induce Hendrickson to purchase its requirements for diesel fuel
 21 from Pilot Flying J, defendants promised Hendrickson that they would
 22 bill and then defendants represented to Hendrickson that they did, in
 23 fact, charge Hendrickson's diesel fuel purchases from Pilot Flying J
 24 at Pilot Flying J's "cost" per gallon (consisting of its actual cost
 25 per gallon, plus taxes and transport expenses) plus a markup of "0"
 26

27 _____
 28 ⁶ Approx. amounts to date. Actual amounts to be determined
 at trial but no less than the amounts alleged above.

1 cents per gallon (i.e., cost plus "0").

2 87. Defendants made said promises without any intention of
3 performing them.

4 88. Defendants made said representations knowing them to be
5 false at the time said representations were made and at all times
6 thereafter.

7 89. In fact and in truth, Pilot Flying J did not charge
8 Hendrickson the "cost" which Pilot Flying J had actually previously
9 paid for the fuel but charged Hendrickson the OPIS daily average index
10 price effective on the day that Hendrickson later purchased the fuel
11 (hereinafter referred to as the "Actual Cost Overcharge").

12 90. As stated under penalty of perjury in their respective plea
13 agreements, FENWICK and Ashley Judd admitted that they knew that Pilot
14 Flying J did not charge its cost plus discount customers Pilot Flying
15 J's actual "cost" for fuel:

16 "For its cost-plus discount deals, Pilot has typically
17 agreed to provide the customer with a discount price equal
18 to Pilot's "cost" for a gallon of diesel plus a negotiated
19 "x" cents. However, under its cost-plus discount deals,
20 Pilot's actual cost has not been the benchmark used for
21 Pilot's "cost" in cost-plus discount deals. Rather,
22 Pilot's "cost" in its cost-plus discount deals typically
23 has been determined by the Oil Price Information Services'
24 ("OPIS") wholesale rack price for a specific OPIS rack or
25 racks tied to the particular Pilot travel plaza where the
26 diesel fuel was purchased."

27 [Exhibit 7, Judd Plea Agreement, para. 3(c), page 3, incorporated
28 herein by reference; Exhibit 8, FENWICK Plea Agreement, para. 3(c),
page 3, incorporated herein by reference.]

91. From 2004 to December 31, 2013, Pilot Flying J never
provided Hendrickson any documentation stating that the "cost"
component in Pilot Flying J's cost plus "0" charged to Hendrickson was

1 anything other than Pilot Flying J's actual historical "cost" for
2 fuel.

3 92. From 2004 to December 31, 2013, Pilot Flying J never
4 provided Hendrickson any documentation stating that the "cost" of
5 diesel fuel which Pilot Flying J charged to Hendrickson was, in fact,
6 not Pilot Flying J's historical "cost" for fuel but was, in truth and
7 in fact, the OPIS daily average index price on the day Hendrickson
8 purchased the fuel.

9 93. The reference to "OPIS" in the "US Direct Bill" "Better Of
10 Pricing Report" which Pilot Flying J first started providing to
11 Hendrickson in January 2014, was the first time Hendrickson realized
12 that the "cost" component in Pilot Flying J's cost plus "0" billing
13 of Hendrickson was anything other than Pilot Flying J's actual "cost"
14 for fuel. [A true and correct copy of Pilot Flying J's "US Direct
15 Bill" "Better Of Pricing Report," Effective date: 4/24/14, is attached
16 hereto as Exhibit 10, and is incorporated herein by reference.]

17 94. Defendants promised, without any intention of performing
18 their promises, and then falsely represented, and then actively
19 concealed that the fact that Pilot Flying J did not charge Hendrickson
20 Pilot Flying J's actual "cost" for fuel, and they did so with the
21 intent to defraud and deceive Hendrickson, and to induce Hendrickson
22 to purchase its requirements for diesel fuel from Pilot Flying J.

23 95. Hendrickson is informed and believes and thereon alleges
24 that because of Pilot Flying J's market dominance as the largest truck
25 stop chain in the United States and as the largest seller of diesel
26 fuel to the U.S. trucking industry, Pilot Flying J did, in fact,
27 strategically time its diesel fuel bulk purchases to purchase diesel
28 at an actual "cost" which was substantially lower than the price of

1 the OPIS daily average index price on the days and at the locations
2 where Hendrickson later purchased diesel fuel.

3 96. In fact, Hendrickson is informed and believes and thereon
4 alleges that there can be quite a large "spread" between Pilot Flying
5 J's historical actual "cost" for fuel and the OPIS daily average index
6 price on the days and at the locations where its customer's later
7 purchase it, such that Pilot Flying J has fraudulently and unfairly
8 profited to the detriment of its customers:

9 "FREEMAN: -- Hey, this is a game. We're playin' fuckin'
10 poker with funny money, and its liar's poker with funny
money because of all this cost-plus stuff.

11 ...
12 FREEMAN: Yeah. Yeah, Western Express (...) they were on
13 a cost-plus/retail-minus deal, and I manually calculated
14 the discount. And for life, you know, my pencil probably
15 wasn't as sharp maybe as it could've been, but in July of
16 '8, July of '08 when crude was \$147, on July the 6th or
17 whatever it was, was it '08 when the market dumped?

18 CHS-2: Uh-hum.

19 FREEMAN: And it went from \$147 to -

20 CHS-2: 32.

21 FREEMAN: -- by the end of the month, down to about \$90, and
22 the next month down to \$60. And it wasn't, you know, it
23 dropped just dramatically. That average versus the day to
24 day, I mean, mother fuck, it was (UI.) I mean it, whatever.
25 So, everything was golden, really for the next year.

26 ...
27 Anyway, that three months I basically cost them almost \$1
28 million. I mean, I was playin' with 4-1/2 million gallons
and there was, you know, a 13-cent spread between the
average and the actual during that huge downturn.

29 ...
30 FREEMAN: See. Fuck 'em early and fuck 'em often .."

31 [Exhibit 5, FBI AFFIDAVIT, IV., "There is probable cause to believe
32 that certain Pilot employees have devised and conspired to devise a
33 scheme to defraud Pilot's Customers...", para. 63, pages 49-50 of 120;
34 recorded by CHS-2 at Pilot Flying J's October 25, 2012, regional sales
35 directors meeting, John Freeman, Pilot Flying J's Vice President of
36 Sales speaking. "UI" is believed to mean "unintelligible." Material
37
38

1 in (...) deleted.]

2 97. As a direct and proximate result of defendants' promises
3 made without any intention of performing them, and their intentional
4 false representations and concealment of the true facts, Hendrickson
5 has been damaged in a sum to be determined at trial, which among other
6 things consists of the difference between Pilot Flying J's actual
7 "cost" per gallon of fuel sold to Hendrickson and the OPIS daily
8 average index price (plus a fraudulently inflated transport expense
9 and a fraudulently understated markup, as further alleged below) which
10 defendants' actually charged Hendrickson.

11 98. Hendrickson is informed and believes and thereon alleges
12 that Pilot Flying J's actual "cost" for fuel in 2004 was at least 10
13 cents (\$0.10) per gallon less than the daily OPIS average which
14 defendants charged Hendrickson.

15 99. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157
16 gallons of diesel fuel from Pilot Flying J for which Hendrickson is
17 informed and believes and thereon alleges that it was overcharged by
18 Pilot Flying J an average of not less than 10 cents per gallon for a
19 total "Actual 'Cost' Overcharge" to be determined at trial but not
20 less than \$221,215.70 [2,212,157 gal. x \$0.10 = \$221,215.70] which
21 constitutes one component of Hendrickson's total cost plus damages in
22 an amount to be determined at trial but no less than \$2,360,688.12,
23 as further described in plaintiff's First Cause of Action in Counts
24 II through III, below.

25 100. Hendrickson is entitled to prejudgment interest as damages
26 on the sum that it has been damaged in accordance with California
27 Civil Code sections 3287, 3288 and/or 3289.

28 101. Hendrickson is also entitled to all other compensatory

1 damages, punitive damages, costs and attorneys' fees from all
2 defendants as a proximate result of the above-described fraud and
3 deceit.

4
5 **Fraud Count II. Fuel Transport Overcharge**

6 **(Charging Hendrickson an average of \$0.0092 per Gallon More than**
7 **Pilot's Actual Fuel Transport Expense)**

8 102. Plaintiff incorporates herein each and every other paragraph
9 of this complaint.

10 103. In 2004, with the intent to defraud and deceive Hendrickson,
11 and to induce Hendrickson to purchase its requirements for diesel fuel
12 from Pilot Flying J, defendants promised Hendrickson that they would
13 bill and then defendants represented to Hendrickson that they did, in
14 fact, charge Hendrickson's diesel fuel purchases from Pilot Flying J
15 at Pilot Flying J's "cost" per gallon (consisting of its actual cost
16 per gallon, plus taxes and transport expenses) plus a markup of "0"
17 cents per gallon (i.e., cost plus "0").

18 104. Defendants made said promises without any intention of
19 performing them.

20 105. Defendants made said representations knowing them to be
21 false at the time said representations were made and at all times
22 thereafter.

23 106. In fact and truth, Pilot Flying J overcharged Hendrickson
24 from \$.0015 to \$.0269 per gallon more than Pilot Flying J's actual
25 cost to transport the fuel to the Pilot Flying J truck stops where
26 Hendrickson purchased fuel (hereinafter referred to as the "Fuel
27 Transport Overcharge").

28 107. Hendrickson is informed and believes and thereon alleges

1 that defendants would fraudulently raise the amount of the fuel
2 transport cost without the customer's knowledge if the customer was
3 deemed to be too unsophisticated to discern the increase:

4 "FREEMAN: I tell you what would be great in our world
5 internally, if we could have two-tier pricing. Have a set
6 of racks for those companies that don't close-watch, don't
7 optimize, and then another set of racks where you have to
8 get in that optimizing closewatch game. There's a whole
9 bunch of fuckin' guys that buy they're getting cost-plus
10 today that have no fuckin' idea.

11 STINNETT: Why don't we do that?

12 FREEMAN: Okay. Can't we have two tiers? Like this'd be
13 Tier-A, this is a Tier-A pricing

14 * * *

15 HAZELWOOD: What we're really talkin' 'bout is two-tiered
16 customers.

17 RALENKOTTER: Yeah, and really, what John said there,
18 again, we have the one-price file, we have that, but, we
19 oughta have the ability to call out Customer Bs if we're
20 just gonna increase transport freight by a penny

21 HAZELWOOD: Sure. Customer A, Customer B. Customer A
22 looks at every orifice you have, Customer B doesn't even
23 know you have an orifice.

24 RALENKOTTER: Lori hits one button and blows a penny on
25 everybody in Customer B.

26 MALE VOICE: Yeah, but you shouldn't raise the rate on that
27 guy (UI.)

28 FREEMAN: But you gotta know how your customer buys, right?
(Unknown) buy, give him a cost-minus-32 and raise his
freight rate to 40.

MALE VOICE: Right.

FREEMAN: That's part of the game, I mean, but if you don't
know how they buy and what they understand, then you can't
take advantage of these things. And it's our job to teach,
manage, direct our regionals to understand all this stuff.
And then Jay can get us set up to where we can have A and
B buckets. Yeah, fuck 'em, just give 'em what they want."

STINNETT: And what'd

FREEMAN: You're exactly right.

STINNETT: And you take advantage of our advantage.

RALENKOTTER: Put it to 'em a way that

MALE VOICE: Our advantage is their ignorance

STINNETT: Yeah, AKA, we're fuckin' 'em. (Laughter.)"

[Exhibit 5, FBI AFFIDAVIT, IV., "There is probable cause...", para.
83, pages 83-84 of 120; recorded by CHS-2 at Pilot Flying J's February
18, 2013, Pilot Flying J's Regional and National Sales Meeting which
was attended by HAZELWOOD, John Freeman, etc. "* * *" in original.]

1 108. Defendants promised, without any intention of performing
2 their promises, and then falsely represented, and then actively
3 concealed the fact that Pilot Flying J charged Hendrickson more than
4 Pilot Flying J's actual fuel transport cost, and they did so with the
5 intent to defraud and deceive Hendrickson, and to induce Hendrickson
6 to purchase its requirements for diesel fuel from Pilot Flying J.

7 109. As a direct and proximate result of defendants' promises
8 made without any intention of performing them, and their intentional
9 false representations and concealment of the true facts, Hendrickson
10 has been damaged in a sum to be determined at trial, which among other
11 things consists of the difference between Pilot Flying J's actual cost
12 to transport the fuel to the Pilot Flying J truck stops where
13 Hendrickson purchased fuel and the inflated fuel transport charge
14 which Pilot Flying J charged Hendrickson.

15 110. On January 17, 2014, Pilot Flying J's current Vice President
16 of Sales & Transportation transmitted to Hendrickson a letter reducing
17 the cost which Pilot Flying J billed Hendrickson for fuel transport,
18 stating:

19 "These changes [*fuel transport expense reductions*] are the
20 result of a recent review of rates in various markets."

21 [A true and correct copy of Pilot Flying J's January 17, 2014, letter
22 and the transport expense reduction spreadsheet transmitted therewith
23 is attached hereto as Exhibit 9, and is incorporated herein by
24 reference. Italicized material in brackets added.]

25 111. The transport expense reduction spreadsheet which
26 accompanied Pilot Flying J's January 17, 2014 letter, reduced the per
27 gallon transport expense from \$.0015 to \$.0269 per gallon (depending
28 on the truck stop) at the Pilot Flying J truck stops which Hendrickson

1 purchases fuel.

2 112. Pilot Flying J's January 17, 2014 transport expense
3 reduction letter and its transport expense reduction spreadsheet
4 constitute a written party admission that Pilot Flying J had
5 previously charged Hendrickson more than Pilot Flying J's actual cost
6 to transport fuel to the truck stops where Hendrickson purchased fuel.

7 113. Furthermore, Hendrickson is informed and believes and
8 thereon alleges that because of Pilot Flying J's market dominance as
9 the largest truck stop chain in the United States and the largest
10 seller of diesel fuel to the U.S. trucking industry, Pilot Flying J
11 did in fact transport fuel to its truck stops at a cost which was
12 substantially less than even the fuel transport expenses listed in
13 Pilot Flying J's January 17, 2014 letter.

14 114. Prior to Pilot Flying J's January 17, 2014 letter, Pilot
15 Flying J never provided Hendrickson any documentation indicating that
16 the "fuel transport cost" component in Pilot Flying J's cost plus "0"
17 charges to Hendrickson was any more than Pilot Flying J's actual cost
18 to transport fuel to the truck stops where Hendrickson purchased fuel.

19 115. Based on the fuel transport cost reduction set forth in
20 Pilot Flying J's January 17, 2014 letter, Hendrickson is informed and
21 believes and thereon alleges that Pilot Flying J overcharged
22 Hendrickson from \$.0015 to \$.0269 per gallon more than Pilot Flying
23 J's actual cost to transport the fuel to the Pilot Flying J truck
24 stops where Hendrickson purchased fuel.

25 116. Hendrickson is informed and believes and thereon alleges
26 that Pilot Flying J overcharged Hendrickson an amount to be determined
27 at trial but not less than an average of \$0.0092 per gallon more than
28 Pilot Flying J's actual cost to transport the fuel to the Pilot Flying

1 J truck stops where Hendrickson purchased fuel (hereinafter referred
2 to as the "Fuel Transport Overcharge").

3 117. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157
4 gallons of diesel fuel from Pilot Flying J for which Hendrickson is
5 informed and believes and thereon alleges that it was overcharged by
6 Pilot Flying J an average of not less than 0.0092 cents per gallon for
7 a total "Fuel Transport Overcharge" to be determined at trial but not
8 less than \$20,351.84 [2,212,157 gal. x \$0.0092 = \$20,351.84] which
9 constitutes the second component of Hendrickson's total cost plus
10 damages in an amount to be determined at trial but no less than
11 \$2,360,688.12, as further described in plaintiff's First Cause of
12 Action in Counts I and II above, and III below.

13 118. Hendrickson is entitled to prejudgment interest as damages
14 on the sum that it has been damaged in accordance with California
15 Civil Code sections 3287, 3288 and/or 3289.

16 119. Hendrickson is also entitled to all other compensatory
17 damages, punitive damages, costs and attorneys' fees from all
18 defendants as a proximate result of the above-described fraud and
19 deceit.

20
21 **Fraud Count III. Markup Overcharge**

22 **(Charging Hendrickson a Cost Plus Markup of approx. 7 Cents per**
23 **Gallon Instead of the Promised and Represented Cost Plus "0" Cents**
24 **Markup)**

25 120. Plaintiff incorporates herein each and every other paragraph
26 of this complaint.

27 121. In 2004, with the intent to defraud and deceive Hendrickson,
28 and to induce Hendrickson to purchase its requirements for diesel fuel

1 from Pilot Flying J, defendants promised Hendrickson that they would
2 bill and then defendants represented to Hendrickson that they did, in
3 fact, charge Hendrickson's diesel fuel purchases from Pilot Flying J
4 at Pilot Flying J's "cost" per gallon (consisting of its actual cost
5 per gallon, plus taxes and transport expenses) plus a markup of "0"
6 cents per gallon (i.e., cost plus "0").

7 122. Defendants made said promises without any intention of
8 performing them.

9 123. Defendants made said representations knowing them to be
10 false at the time said representations were made and at all times
11 thereafter.

12 124. In fact and in truth, Pilot Flying J charged Hendrickson a
13 markup of approximately "7" cents per gallon, not a "0" cents per
14 gallon markup as defendants promised and represented.

15 125. Post-January 2014, in addition to reducing their transport
16 cost to Hendrickson, defendants cost plus markup to Hendrickson also
17 mysteriously decreased by approximately 7 cents per gallon.

18 126. For example, Pilot Flying J's post-January 2014 cost plus
19 "0" prices have been nearly the same or slightly less than Pilot
20 Flying J's competitor, Love's Travel Stops & Country Stores ("Love's")
21 cost plus "0" prices for the same day, for the same cities.

22 127. Pre-January 2014, however, Pilot Flying J's cost plus "0"
23 pricing was approximately 7 cents per gallon higher than Love's cost
24 plus "0" pricing for the same day, for the same cities.

25 128. As hereinbefore alleged, it is now known that the "cost"
26 component of Pilot Flying J's cost plus "0" discount pricing has not
27 been based on Pilot Flying J's actual cost for fuel but has also been
28 based on the OPIS daily average index price on day of purchase.

1 129. So, if Pilot Flying J's post-January 2014 cost plus "0"
2 prices are nearly the same as or slightly less than Love's cost plus
3 "0" prices for the same day and same cities, why were Pilot's
4 pre-January 2014 cost plus "0" prices nearly 7 cents higher than
5 Love's cost plus "0" prices for the same day and the same cities?

6 130. Hendrickson is informed and believes and thereon alleges
7 that unlike Love's sales representatives, Pilot Flying J's Regional
8 Account Representatives and their Regional Sales Managers, including
9 FENWICK, were required to prepare a separate profit and loss
10 spreadsheet for each trucking company customer (i.e., "carrier") in
11 their region. ⁸

12 131. Hendrickson is further informed and believes and thereon
13 alleges that Pilot Flying J made profits,

14 132. and paid defendant FENWICK and Ashley Judd commissions
15 and/or bonuses, based upon the size of the margins between Pilot
16 Flying J's actual cost for fuel and the amount that the customers in
17 the Western Region, including Hendrickson, paid Pilot Flying J for
18 fuel. ⁷

19 133. As hereinbefore alleged, FENWICK and Ashley Judd have agreed
20 to plead guilty for their participation in Pilot Flying J's fraudulent
21 billing practices.

22 134. As described in the FBI AFFIDAVIT, Pilot Flying J's
23 profitability from such fraud was substantial:

24 _____
25 ⁷ "MOSHER: My guess is he might've tried to open that
26 can of worms, but you have to understand, at Love's, they
27 are not held on a P&L specific to a carrier, you know,
every month and their pay based on that, that doesn't
happen over there. So there's really no incentive. Why
would they do it, okay? What's the point?"

28 [Exhibit 5, FBI AFFIDAVIT, pages 54-55.]

1 "On December 17, 2012, CHS-2 advised that during a business
 2 trip to Washington to meet with Pilot Regional Sales
 3 Manager Scott Fenwick, Fenwick told CHS-2 that he was
 engaging in Rebate Fraud that was costing Customers a total
 of \$70,000 to \$90,000 in lost rebates each month."

4 [Exhibit 5, hereto, quoted from FBI AFFIDAVIT, Part IV., para. 74,
 5 page 69 of 120; "CHS-2" means "Confidential Human Source number 2."]

6 135. As hereinbefore alleged, Hendrickson is informed and
 7 believes and thereon alleges that, in addition to "rebate fraud,"
 8 Pilot Flying J, FENWICK and HAZELWOOD also engaged in "cost plus
 9 discount fraud."

10 136. For instance, the FBI AFFIDAVIT reveals that Pilot Flying
 11 J representatives would represent to cost plus discount customers that
 12 they were being billed at a particular markup amount, when in fact
 13 they were being charged at a higher markup amount:

14 "ANDREWS: I don't care if he thinks he's getting cost plus
 15 0 and he's getting cost plus 10, I mean I'm not a moral
 compass, I mean all we can make we make (...)"

16 ANDREWS: "I got some guys that are that way today in
 17 Florida. They think they're at cost plus 0, but they're
really at cost plus 4."

18 [Exhibit 5, FBI AFFIDAVIT, IV "There is probable cause....," para. 80,
 19 page 74 of 120. Material in (...) omitted.]

20 "FREEMAN: And you gotta understand what he was do in' to
 21 understand how to keep playin' the same game. And that has
 22 not happened. Me and J.W., I know Jay had an account over
 23 in North Carolina, the guy was a fuckin' blowhard. I mean
 24 a fucking blowhard. 50,000 gallons, he was gettin' a
 25 cost-plus somethin', and Jay, "Oh yeah, I'm gonna give you
 a cost-plus." He says, "It needs to be 3," and Jay's like,
 "Sure I'll give you a cost-plus," and he was in at a
cost-plus 8 on direct-bill but there's no way for the guy
to know. Wasn't reflecting it, Wasn't sending a price
 fetch.

26 CHS-2: So he thought he was gettin' a 3?

27 FREEMAN: Yeah. So J.W. walks in one day, after Jay had
 28 specifically set down with him and said this guy thinks
he's gettin' a cost-plus-3, he's gettin' a cost-plus 8.

Pay attention here --

1 CHS-2: Right.
FREEMAN: J.W. wasn't paying attention,
2 CHS-2: swwwwuuuuu!
FREEMAN: Sits in front of the customer, he says, "Now
3 listen, I'm at a cost-plus-3 now, I'm fixin' to grow by 20
trucks, I want to go to a cost-plus-2." JW flips open his
4 P&L, says, "No, you're at a cost-plus-8."
CHS-2: How'd that go over?
5 FREEMAN: Oh, Jay called him and said, "Oh no no, J.W.
doesn't know how to read a P&L, that was an 8-cent tax.
6 You're gettin' a cost-plus-3."
ANDREWS: (Unknown)
7 CHS-2: Gee. (Laughter.)
FREEMAN: Guy has no business gettin' a cost-plus-3, or a
8 cost-plus-2.
ANDREWS: Are you serious, man?
9 FREEMAN: And, he has no way to know what his deal is."

10 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...", para. 81,
11 page 80-81 of 120.]

12 "RALENKOTTER- ... I said maybe this is a real obvious
13 statement, but you know the low hanging fruit is PCTH,
Tcheck and EFS you know where we are pushing the one price
14 file, I mean the first thing to do is arrive at a number
15 where you're going to increase the cost plus number in
those markets, whether it's 1, 2, 3 or 4, whatever the
16 number is. We are going to do that right out of the get
go.

17 CHS-2 - Right
RALENKOTTER- And then we're going to look at the, you know,
18 ComData accounts were we may not be reflecting. Again,
must list gets jacked. Um, if we are reflecting we are
19 going to look at trying if we can, if ComData does get it
fixed, do the one price file with ComData and jack it.

20 CHS-2- **Right, just move these and not tell the customers**
and they probably won't even notice it, Right?

21 RALENKOTTER - Yeah, yeah, there is no reason to. I mean
the price is the price.

22 CHS-2 -Um, hum

23 RALENKOTTER- I mean, how are they going to tell me, **how do**
they know if it's cost plus 2 or cost plus 5?"

24 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause..." para. 81,
25 page 80-81 of 120.]

26 137. As hereinbefore alleged, defendants promised and represented
27 to Hendrickson that Pilot Flying J would sell and did sell diesel fuel
28 to Hendrickson at Pilot Flying J's actual cost for fuel plus a markup

1 of "0" cents per gallon (i.e., cost plus "0").

2 138. Also as hereinbefore alleged, Pilot Flying J's October 26,
3 2010 cost plus discount commitment letter and spreadsheet to
4 Hendrickson (signed by FENWICK) stated in writing that Pilot Flying
5 J would charge Hendrickson cost plus a markup of "0" cents per gallon
6 (i.e., cost plus "0").

7 139. Also as hereinbefore alleged, Pilot Flying J's written
8 billing invoices sent to Hendrickson stated that Pilot Flying J did
9 charge Hendrickson Pilot Flying J's cost plus a markup of "0" cents
10 per gallon (i.e., cost plus "0").

11 140. However, as hereinbefore alleged, a comparison of the
12 pre-January 2014 Pilot Flying J cost plus "0" price sheets with the
13 Love's cost plus "0" price sheets for the same day and the same cities
14 reveals that Pilot Flying J charged Hendrickson a markup an average
15 of \$0.0689 per gallon higher than Love's cost plus "0" price for the
16 same day, in the same cities (i.e., a markup nearly 7 cents higher
17 than Love's).

18 141. The post-January 2014 reduction of Pilot Flying J's cost
19 plus "0" billing to nearly the same or slightly less than Love's cost
20 plus "0" prices for the same day, for the same cities constitutes a
21 written party admission that Pilot Flying J had previously charged
22 Hendrickson more than a cost plus "0" markup per gallon.

23 142. Defendants promised without any intention of performing the
24 same and intentionally falsely stated and intentionally concealed the
25 fact that Pilot Flying J, in fact, charged Hendrickson a markup of
26 nearly "7" cents per gallon markup with the intent to defraud and
27 deceive Hendrickson, and to induce Hendrickson to purchase its
28 requirements for diesel fuel from Pilot Flying J.

1 143. As a direct and proximate result of defendants' promises
2 made without any intention of performing them, and their intentional
3 false statements and concealment of the true facts, Hendrickson has
4 been damaged in a sum to be determined at trial, which among other
5 things is the difference between Pilot Flying J's represented markup
6 of "0" cents per gallon and the true markup of "7" cents per gallon
7 which Pilot Flying J really charged Hendrickson.

8 144. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157
9 gallons of diesel fuel from Pilot Flying J for which Hendrickson is
10 informed and believes and thereon alleges that it was overcharged by
11 Pilot Flying J a hidden markup in the Pilot Flying J's cost plus "0"
12 discount billing of Hendrickson of approximately 7 cents per gallon,
13 equal to a total "Markup Overcharge" to be determined at trial but not
14 less than \$152,417.62 (i.e., 2,212,157 gal. x 0.0689 = \$152,417.62)
15 which constitutes the second component of Hendrickson's total cost
16 plus damages in an amount to be determined at trial but no less than
17 \$2,360,688.12, as further described in plaintiff's First Cause of
18 Action in Counts I, II, and III.

19 145. Hendrickson is entitled to prejudgment interest as damages
20 on the sum that it has been damaged in accordance with California
21 Civil Code sections 3287, 3288 and/or 3289.

22 146. Hendrickson is also entitled to all other compensatory
23 damages, punitive damages, costs and attorneys' fees from all
24 defendants as a proximate result of the above-described fraud and
25 deceit.

26

27

28

1 **ADDITIONAL ALLEGATIONS COMMON TO ALL FRAUD CAUSES OF ACTION**

2 147. Plaintiff incorporates the following "Additional Allegations
3 Common to All Fraud Claims for Damages" into all fraud claims for
4 damages plead by plaintiff in this complaint.

5 148. It is anticipated that further investigation and discovery
6 including the depositions of Ashley Judd, FENWICK and HAZELWOOD and
7 other current and former employees of Pilot Flying J will provide
8 additional admissible evidence tending to prove defendants' fraud.

9 149. Defendants' promises were made without any intention of
10 performing them, and defendants' J's intentional false representations
11 of fact and their intentional concealment of the true facts were
12 material to the parties' direct fuel sales agreement and purchase
13 transactions.

14 150. Except for the same, Hendrickson would not have agreed to
15 purchase its requirements for diesel fuel from Pilot Flying J.

16 151. Hendrickson would have purchased more or all of its diesel
17 fuel from Pilot Flying J's competitors and less or none of its fuel
18 from Pilot Flying J had Hendrickson known that defendants' promises
19 and representations to Hendrickson were false and/or known that
20 defendants were intentionally concealing the true facts from
21 Hendrickson.

22 152. In doing the acts heretofore alleged defendants willfully
23 deceived Hendrickson with intent to induce Hendrickson to alter its
24 position to Hendrickson's injury, damage or risk.

25 153. Defendants made the hereinbefore alleged representations and
26 suggestions as a fact, of that which is not true, by one who does not
27 believe it to be true.

28 154. Defendants made the hereinbefore alleged assertions, as

1 fact, of that which are not true, with no reasonable ground for
2 believing them to be true.

3 155. Defendants suppressed and concealed the hereinbefore alleged
4 true facts, although defendants were bound to disclose them, and/or
5 gave information of other facts which were likely to mislead for want
6 of communication of those facts.

7 156. Defendants made the hereinbefore alleged promises without
8 any intention of performing the same.

9 157. With respect to defendants' hereinbefore alleged false
10 representations of fact, defendants represented to Hendrickson that
11 said statements of fact were true; however, said representations
12 were, in truth and in fact, false; defendants knew that said
13 representations were false when they made them, or defendants made
14 said representations recklessly and without regard for their truth;
15 defendants intended that Hendrickson rely on said representations;
16 Hendrickson did, in fact, reasonably rely on said representations;
17 Hendrickson was damaged thereby; and Hendrickson's reliance on said
18 representations was a substantial factor in causing Hendrickson's
19 damage.

20 158. With respect to defendants' hereinbefore alleged concealment
21 of the true facts, defendants and Hendrickson were in a relationship
22 of trust and confidence in that Pilot Flying J was Hendrickson's
23 creditor for millions of dollars a year over multiple years since
24 before year 2000 and said creditor-debtor relationship was devised by
25 defendants in such a manner that defendants were completely or
26 substantially in charge of setting, calculating and accurately
27 reporting the diesel fuel prices and thereafter billing Hendrickson
28 therefor; Hendrickson was wholly dependent upon defendants for

1 accurately and honestly providing said information and although
2 defendants did disclose some facts to Hendrickson defendants
3 intentionally failed to disclose other important facts to Hendrickson,
4 making defendants' disclosures deceptive. Additionally, defendants
5 intentionally failed to disclose important facts which were known only
6 to defendants and which defendants knew that Hendrickson could not
7 have discovered. In addition, defendants actively concealed important
8 facts from Hendrickson and defendants' method for determining fuel
9 prices, and defendants' accounting statements, methods and practices
10 prevented Hendrickson from discovering the concealed facts;
11 Hendrickson did not know of the concealed facts; and defendants
12 intended to deceive Hendrickson by concealing said facts. Hendrickson
13 reasonably relied on defendants' deception; Hendrickson was damaged
14 thereby; and defendants' concealment was a substantial factor in
15 causing Hendrickson's damage.

16 159. With respect to defendants' hereinbefore alleged promises
17 to Hendrickson; defendants did not intend to perform said promises
18 when they made said promises; however, defendants intended
19 Hendrickson to rely on said promises; Hendrickson did, in fact,
20 reasonably rely on said promises; defendants did not perform their
21 promises; Hendrickson was damaged thereby; and Hendrickson's
22 reliance on defendants' promises was a substantial factor in causing
23 Hendrickson's damage.

24 160. Defendants represented to Hendrickson that the hereinbefore
25 alleged facts were true; defendants representations were not, in
26 fact, true; while defendants may have honestly believed that said
27 representations were true, defendants had no reasonable grounds for
28 believing said representations were true when defendants made said

1 representations; defendants intended that Hendrickson rely on said
2 representations; Hendrickson did reasonably rely said representations;
3 Hendrickson was damaged thereby; and Hendrickson's reliance on
4 defendants' representations was a substantial factor in causing
5 Hendrickson's damage.

6
7 **SECOND CAUSE OF ACTION**

8 **QUASI-CONTRACTUAL RECOVERY OF PILOT FLYING J's "SECRET PROFITS"**

9 **[Ward v. Taggart, (1959) 51 C.2d 736]**

10 161. Plaintiff incorporates herein each and every other paragraph
11 of this complaint.

12 162. As hereinbefore alleged, defendants falsely promised and
13 represented that it would charge Hendrickson only defendants' actual
14 cost for fuel, including taxes and transport, and a markup thereon of
15 only "0" cents per gallon.

16 163. In truth and in fact, defendants charged Hendrickson more
17 than defendants' actual cost for fuel and for transport as well as a
18 hidden markup of nearly "7" cents per gallon and defendants thereafter
19 concealed said facts.

20 164. As a result of their fraud, defendants' profited secretly
21 such that defendants have been unjustly enriched as a result of the
22 fraud for which the usual tort measure of damages may be inadequate.

23 165. Pursuant to Civil Code, section 2224, because defendants
24 have gained money by their fraud or other wrongful act, defendants are
25 an involuntary trustees of the money so gained.

26 166. Hendrickson's overpayment for fuel has conferred a benefit
27 upon defendants, defendants retained those benefits, and defendants
28 received and retained these benefits under such circumstances that it

1 would be inequitable and unconscionable to permit defendants to retain
2 those benefits without paying the reasonable value of the same to
3 Hendrickson.

4 167. As a direct and proximate result of defendant's unjust
5 enrichment, Hendrickson suffered injury and seeks a judgment ordering
6 defendants to disgorge their secret profits and allow Hendrickson to
7 recover said secret profits from defendants under the
8 quasi-contractual theory of recovery to prevent unjust enrichment.
9 [Ward v. Taggart, (1959) 51 C.2d 736, 741.]

10 168. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157
11 gallons of diesel fuel from Pilot Flying J for which Hendrickson is
12 informed and believes and thereon alleges that Pilot Flying J
13 overcharged Hendrickson and Pilot Flying J received "secret profits"
14 consisting of: an Actual Cost Overcharge of \$221,215.70; a Fuel
15 Transport Overcharge of \$20,351.84; and a Markup Overcharge of
16 \$152,417.62, for which Hendrickson is entitled to a judgment ordering
17 defendants to disgorge their secret profits to Hendrickson to prevent
18 unjust enrichment in an amount to be determined at trial but not less
19 than \$393,985.16.

20 169. Hendrickson is entitled to prejudgment interest as damages
21 on the sum that it has been damaged in accordance with California
22 Civil Code sections 3287, 3288 and/or 3289.

23 170. Hendrickson is also entitled to all other compensatory
24 damages, punitive damages, costs and attorneys' fees from all
25 defendants as a proximate result of the above-described secret
26 profits.

27
28

1 THIRD CAUSE OF ACTION

2 FRAUD IN SALE OF GOODS

3 [Calif. Comm. Code, § 2721; Continental Airlines, Inc. v. McDonnell
4 Douglas Corp. (1990) 216 Cal. App. 3d 388, 429-433]

5 171. Plaintiff incorporates herein each and every other paragraph
6 of this complaint.

7 172. As hereinbefore alleged, defendants falsely promised and
8 represented that it would charge Hendrickson only defendants' actual
9 cost for fuel, including taxes and transport, and a markup thereon of
10 only "0" cents per gallon.

11 173. In truth and in fact, defendants billed Hendrickson more
12 than defendants' actual cost for fuel and for transport as well as a
13 hidden markup of nearly "7" cents per gallon and defendants thereafter
14 concealed said facts.

15 174. As a result of defendants' conduct as heretofore alleged,
16 plaintiff is also entitled to avail itself of the remedies provided
17 by California Commercial Code, section 2721 the purpose of which is
18 to make the remedies for fraud, as broad as possible including the
19 "loss-of-bargain" rule under which the defrauded party is permitted
20 to obtain the benefits he would have received if the representation
21 had been true. [Continental Airlines, Inc. v. McDonnell Douglas
22 Corp., (1990) 216 Cal. App. 3d 388, 429-433.]

23 175. As a result, Hendrickson suffered injury and seeks a
24 judgment awarding Hendrickson damages under the "loss-of-bargain" rule
25 under which the Hendrickson is awarded the benefits Hendrickson would
26 have received if defendants' promises and representations had been
27 true.

28 176. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157

1 gallons of diesel fuel for which Pilot Flying J deprived Hendrickson
2 of the benefit of its bargain by overcharging Hendrickson the
3 following amounts: an Actual Cost Overcharge of \$221,215.70; a Fuel
4 Transport Overcharge of \$20,351.84; and a Markup Overcharge of
5 \$152,417.62, for which Hendrickson is entitled to a judgment awarding
6 Hendrickson its "loss-of-bargain" by ordering defendants to pay to
7 Hendrickson an amount to be determined at trial but not less than
8 \$393,985.16.

9 177. Hendrickson is entitled to prejudgment interest as damages
10 on the sum that it has been damaged in accordance with California
11 Civil Code sections 3287, 3288 and/or 3289.

12 178. Hendrickson is also entitled to all other compensatory
13 damages, punitive damages, costs and attorneys' fees from all
14 defendants as a proximate result of the above-described fraud in the
15 sale of goods.

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20 **FOURTH CAUSE OF ACTION**

21 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

22 179. Plaintiff incorporates herein each and every other paragraph
23 of this complaint.

24 180. In 2004 defendants breached the implied covenant of good
25 faith and fair dealing in Pilot Flying J's direct fuel sales agreement
26 with Hendrickson by charging Hendrickson more than Pilot Flying J's
27 actual cost for fuel, taxes and transport and by charging Hendrickson
28 a markup of "0" cents per gallon as promised.

1 181. As hereinbefore alleged, defendants' breach of the implied
2 covenant of good faith and fair dealing was accompanied by the
3 traditional common law tort of fraud and deceit.

4 182. As also hereinbefore alleged, the means defendants used to
5 breach the parties' direct fuel sales agreement were themselves
6 tortious, involving deceit and false statements and intentional
7 concealment.

8 183. As also hereinbefore alleged, defendants intentionally
9 breached the parties' direct fuel sales agreement intending or knowing
10 that such a breach would cause Hendrickson severe unmitigable harm in
11 the form of substantial consequential damages of which defendants had
12 reason to know since Hendrickson was struggling to survive as a result
13 of the economic recession and high fuel prices.

14 184. As a result, Hendrickson suffered injury and is entitled to
15 a judgment awarding Hendrickson damages in an amount to be determined
16 at trial.

17 185. In year 2004, Hendrickson paid \$4,734,016.00 for 2,212,157
18 gallons of diesel fuel pursuant to a cost plus "0" direct fuel sales
19 agreement with Pilot Flying J which contained an implied covenant of
20 good faith and fair dealing which defendants breached by means of the
21 traditional common law tort of fraud and deceit which damaged
22 Hendrickson in the following amounts: an Actual Cost Overcharge of
23 \$221,215.70; a Fuel Transport Overcharge of \$20,351.84; and a Markup
24 Overcharge of \$152,417.62, for which Hendrickson is entitled to a
25 judgment awarding Hendrickson ordering defendants to pay to
26 Hendrickson an amount to be determined at trial but not less than
27 \$393,985.16.

28 186. Hendrickson is entitled to prejudgment interest as damages

1 on the sum that it has been damaged in accordance with California
2 Civil Code sections 3287, 3288 and/or 3289.

3 187. Hendrickson is also entitled to all other compensatory
4 damages, punitive damages, costs and attorneys' fees from all
5 defendants.

6
7 **FIFTH CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

9 188. Plaintiff incorporates herein each and every other paragraph
10 of this complaint.

11 189. As hereinbefore alleged, Pilot Flying J and Hendrickson
12 mutually intended to form and, in fact, entered into, valid and
13 enforceable direct bill fuel sales agreement whereby Pilot Flying J
14 promised to sell Hendrickson diesel fuel at Pilot Flying J's actual
15 cost for fuel, taxes and transport and a markup of "0" cents per
16 gallon.

17 190. The parties' direct bill fuel sales agreement was verbal.

18 191. The parties' direct bill fuel sales agreement was executed
19 by performance by both parties for the year 2004 during which time
20 Pilot Flying J did, in fact, sell to Hendrickson and Hendrickson did,
21 in fact, purchase from Pilot Flying J, 2,212,157 gallons of diesel
22 fuel for a total price of \$4,734,016.00.

23 192. Hendrickson performed all conditions precedent to Pilot
24 Flying J's liability under said direct bill fuel sales agreement.

25 193. Pilot Flying J performed some of its obligations under said
26 direct bill fuel sales agreement by providing fuel to Hendrickson.

27 194. However, as hereinbefore alleged, Pilot Flying J breached
28 the parties' direct bill fuel sales agreement with Hendrickson by,

1 among other things, overcharging Hendrickson: an Actual Cost
2 Overcharge of \$221,215.70; a Fuel Transport Overcharge of \$20,351.84;
3 and a Markup Overcharge of \$152,417.62.

4 195. As a result, Hendrickson suffered injury and is entitled to
5 a judgment awarding Hendrickson damages in an amount to be determined
6 at trial but not less than \$393,985.16.

7 196. Hendrickson is entitled to prejudgment interest as damages
8 on the sum that it has been damaged in accordance with California
9 Civil Code sections 3287, 3288 and/or 3289.

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SIXTH CAUSE OF ACTION

RESTORATION OF HENDRICKSON'S MONIES ACQUIRED BY PILOT FLYING J'S
COST PLUS DISCOUNT FRAUD; RESTORATION OF THE UCL CLAIMANT-
DEFENDANTS' MONIES ACQUIRED BY PILOT FLYING J'S COST PLUS DISCOUNT
FRAUD; APPOINTMENT OF A RECEIVER TO MANAGE THE RESTORATION OF
MONEY WHICH WAS ACQUIRED BY MEANS OF PILOT FLYING J'S
COST PLUS DISCOUNT FRAUD; A PERMANENT INJUNCTION
PROHIBITING PILOT FLYING J, ITS PRESIDENT, ITS CEO, ITS MANAGERS,
EMPLOYEES AND ALL OTHERS ACTING IN CONCERT WITH PILOT FLYING J,
FROM ENGAGING IN COST PLUS DISCOUNT FRAUD
IN VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW
[Bus. and Prof. Code, §§ 17200, 17203, 17204]

197. Plaintiff incorporates herein each and every other paragraph
of this complaint.

198. California Business and Professions Code, section 17200
defines "unfair competition" as "any unlawful, unfair or fraudulent
business act or practice":

["U"]nfair competition shall mean and include any 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."

[Bus. and Prof. Code, § 17200.]

199. California Business and Professions Code, section 17203
provides remedies for unfair competition including injunction,
appointment of a receiver, and/or restoration of money which the
defendant has acquired by means of unfair competition:

"Any person who engages, has engaged, or proposes to engage
in unfair competition may be enjoined in any court of
competent jurisdiction. The court may make such orders or
judgments, including the appointment of a receiver, as may
be necessary to prevent the use or employment by any person

1 of any practice which constitutes unfair competition, as
2 defined in this chapter, or as may be necessary to restore
3 to any person in interest any money or property, real or
4 personal, which may have been acquired by means of such
5 unfair competition."

6 [Code Civ. Proc., § 17203.]

7 200. Private causes of action for violations of Business and
8 Professions Code section 17200 and 17200 by "a person who has suffered
9 injury in fact and has lost money or property as a result of the
10 unfair competition" are authorized by Business and Professions Code
11 section 17204. [Stop Youth Addiction, Inc. v. Lucky Stores, Inc.,
12 (1998) 17 Cal.4th 553.]

13 201. As hereinbefore alleged, in or about 2004, with the intent
14 to defraud and deceive Hendrickson, and to induce Hendrickson to
15 purchase its requirements for diesel fuel from Pilot Flying J,
16 defendants promised to Hendrickson that defendants would bill, and
17 thereafter represented to Hendrickson that defendants did, in fact,
18 bill Hendrickson's diesel fuel purchases at: (1) Pilot Flying J's
19 actual cost per gallon; (2) Pilot Flying J's actual cost to transport
20 the fuel to the truck stops used by Hendrickson; and (3) a markup of
21 "0" cents per gallon.

22 202. Said promises were made without any intention of performing
23 them.

24 203. And said representations were false and defendants knew them
25 to be false at the time the representations were made and at all times
26 thereafter.

27 204. As hereinbefore alleged, in fact and truth: (1) Pilot
28 Flying J charged Hendrickson the OPIS daily average index price
effective on the day that Hendrickson purchased the fuel, not the
price which Pilot Flying J had actually paid for the fuel as promised

1 and represented; (2) Pilot Flying J charged Hendrickson approximately
2 1 cent per gallon more than Pilot Flying J's actual cost to transport
3 the fuel to the truck stops used by Hendrickson; and (3) Pilot Flying
4 J charged Hendrickson a markup of approximately "7" cents per gallon,
5 not "0" cents as promised and represented.

6 205. As a direct and proximate result of defendants' conduct,
7 defendants have acquired and continue to retain ill-gotten monies
8 which rightfully belong to Hendrickson by virtue of Pilot Flying J's
9 unlawful, unfair or fraudulent overcharge of Hendrickson.

10 206. Said promises and said representations and defendants
11 intentional concealment of the true facts as hereinbefore alleged
12 constituted "unlawful, unfair, or fraudulent business acts or
13 practices" and, thus, constituted "unfair competition" within the
14 meaning of California Business and Professions Code, section 17200.

15 207. As a result Hendrickson has suffered injury and is entitled
16 to a judgment ordering defendants: a) to restore to Hendrickson all
17 monies acquired from Hendrickson by defendants' unlawful, unfair or
18 fraudulent business acts or practices; b) to restore all monies
19 acquired by defendants' unlawful, unfair or fraudulent business acts
20 or practices to the UCL Claimant-Defendants whom Hendrickson has
21 joined as defendants under Code of Civil Procedure, sections 17203 and
22 382; c) for appointment of a receiver as may be necessary to manage
23 the restoration to Hendrickson and to the UCL Claimant-Defendants any
24 money which may have been acquired by means of Pilot Flying J's cost
25 plus discount fraud; and d) for a permanent Injunction prohibiting
26 Pilot Flying J, its President, CEO, its Managers, Employees and all
27 others acting in concert with Pilot Flying J, from engaging in cost
28 plus discount fraud.

1 208. As hereinbefore alleged, Pilot Flying J's cost plus discount
2 fraud and plaintiffs' related claims therefor, are based upon a civil
3 conspiracy.

4
5 **Unfair Competition Count I. Restoration of Hendrickson's Monies**
6 **Acquired by Pilot Flying J's Cost Plus Discount Fraud,**
7 **to be Determined Without Individualized Proof**
8 **of Deception, Reliance, and Injury at Trial,**
9 **but not less than \$1,021,896.04**

10 209. Plaintiff incorporates herein each and every other paragraph
11 of this complaint.

12 210. Pursuant to California Business and Professions Code,
13 section 17203:

14 "The court may make such orders or judgments ... as may be
15 necessary to restore to any person in interest any money
16 ... which may have been acquired by means of such unfair
competition."

17 [Bus. and Prof. Code, § 17203.]

18 211. The purpose of restitution orders is to deter future
19 violations of the unfair competition statute and to foreclose
20 retention by the violator of its ill-gotten gains.

21 212. Injunctive relief is not a prerequisite to restitution under
22 Business and Professions Code, section 17203. [ABC International
23 Traders, Inc. v. Matsushita Electric Corp., 14 Cal. 4th 1247, 1997-1
24 Trade Cas. (CCH) P 71736 (1997).]

25 213. The California Supreme Court has ruled that the Legislature
26 considered this purpose so important that it **authorized courts to**
27 **order restitution without individualized proof of deception, reliance,**
28 **and injury.** [Bank of the West v. Superior Court, (1992) 2 Cal. 4th

1 1254.]

2 214. As hereinbefore alleged, as a result of Pilot Flying J's
3 cost plus discount fraud, Pilot Flying J overcharged Hendrickson and
4 Hendrickson overpaid Pilot Flying J: a) an Actual Cost Overcharge of
5 \$221,215.70; b) a Fuel Transport Overcharge of \$20,351.84; and c) a
6 Markup Overcharge of \$152,417.62.

7 215. As a result, Hendrickson suffered injury and is entitled to
8 a judgment awarding Hendrickson damages in an amount to be determined
9 at trial but not less than \$393,985.16.

10 216. Hendrickson is entitled to prejudgment interest as damages
11 on the sum that it has been damaged in accordance with California
12 Civil Code sections 3287, 3288 and/or 3289.

13 217. As a result, Hendrickson is entitled to a judgment restoring
14 to Hendrickson all monies acquired from Hendrickson by Pilot Flying
15 J's unlawful, unfair or fraudulent business acts or practices in an
16 amount to be determined at trial but not less than \$1,021,896.04

17 218. Hendrickson is also entitled to all other equitable relief,
18 costs, and attorneys' fees pursuant to Code of Civil Procedure,
19 section 1021.5 (the "Private Attorney General Act") from all
20 defendants.

21

22 **Unfair Competition Count II. Restoration of the**

23 **UCL Claimant-Defendants' Monies**

24 **Acquired by Pilot Flying J's Cost Plus Discount Fraud,**

25 **to be Determined Without Individualized Proof**

26 **of Deception, Reliance, and Injury at Trial**

27 219. Plaintiff incorporates herein each and every other paragraph
28 of this complaint.

1 220. As hereinbefore alleged, Hendrickson has named and has
2 joined as defendants, pursuant to Code of Civil Procedure, sections
3 17203 and 382, all those small and mid-sized trucking companies who
4 purchased diesel fuel under Pilot Flying J's cost plus discount
5 program (collectively the "UCL Claimant-Defendants"), who may be
6 entitled to claim relief from Pilot Flying J under California's Unfair
7 Competition Law ("UCL") [Bus. and Prof. Code, §§ 17200, et seq.; §§
8 17203 and 17204], and who should have been joined as plaintiffs but
9 whose consent cannot be obtained.

10 221. Hendrickson itself is a claimant who satisfies the UCL's
11 standing requirement as "a person who has suffered injury in fact and
12 has lost money or property as a result of" Pilot Flying J's "unfair
13 competition" within the meaning of California Business and Professions
14 Code, section 17204.

15 222. The questions presented by this complaint are common among
16 Hendrickson and the UCL Claimant-Defendants which are all small and
17 mid-sized trucking companies and which have all been subjected to
18 Pilot Flying J's unlawful, unfair or fraudulent business acts or
19 practices which are hereinafter described and are referred to herein
20 as "cost plus discount fraud."

21 223. The UCL Claimant-Defendants are numerous in that there are
22 nearly 539,000 small and mid-sized trucking companies spread across
23 the nation, which are citizens of and domiciled in each and every
24 state in the United States and which are, as yet, unidentified, such
25 that it would be impracticable to bring them all before the court.

26 224. Accordingly, Hendrickson is expressly permitted by
27 California Business and Professions Code, section 17203, to represent
28 the UCL Claimant-Defendants' in their claims for relief against Pilot

1 Flying J, including but not limited to injunctive relief, appointment
2 of a receiver, and restoration of all monies paid as a result of Pilot
3 Flying J's cost plus discount fraud.

4 225. As hereinbefore alleged, and as shown by recorded statements
5 of Pilot Flying J's National and Regional Sales Managers, Regional
6 Account Representatives, and other personnel, Pilot Flying J's had a
7 corporate policy of engaging in unlawful, unfair or fraudulent
8 business acts or practices by perpetrating: a) an Actual Cost
9 Overcharge, b) a Fuel Transport Overcharge, and c) a Markup
10 Overcharge, referred to herein as "cost plus discount fraud," on
11 unsophisticated small and medium trucking companies across the nation
12 and, thereby, acquiring and thereafter retaining ill-gotten monies
13 from such customers.

14 226. As hereinbefore alleged, FENWICK and Ashley Judd admitted
15 under penalty of perjury in their respective plea agreements that
16 Pilot Flying J fraudulently engaged in cost plus discount Actual Cost
17 Overcharge when Pilot Flying J did not charge its cost plus discount
18 customers Pilot Flying J's actual cost for fuel (i.e., "Actual Cost
19 Overcharge"):

20 "For its cost-plus discount deals, Pilot has typically
21 agreed to provide the customer with a discount price equal
22 to Pilot's "cost" for a gallon of diesel plus a negotiated
23 "x" cents. However, under its cost-plus discount deals,
24 Pilot's actual cost has not been the benchmark used for
25 Pilot's "cost" in cost-plus discount deals. Rather,
26 Pilot's "cost" in its cost-plus discount deals typically
27 has been determined by the Oil Price Information Services'
28 ("OPIS") wholesale rack price for a specific OPIS rack or
racks tied to the particular Pilot travel plaza where the
diesel fuel was purchased."

26 [Exhibit 7, Judd Plea Agreement, para. 3(c), page 3, incorporated
27 herein by reference; Exhibit 8, FENWICK Plea Agreement, para. 3(c),
28 page 3, incorporated herein by reference.]

1 227. In fact, as hereinbefore alleged, Hendrickson is informed
 2 and believes and thereon alleges that there can be quite a large
 3 "spread" between Pilot Flying J's actual cost for fuel and the OPIS
 4 average price on the days and at the locations where its customer's
 5 purchase it, by which Pilot Flying J has profited to the detriment of
 6 its customers:

7 "Anyway, that three months I basically cost them almost \$1
 8 million. I mean, I was playin' with 4-1/2 million gallons
 9 and there was, you know, a 13-cent spread between the
 10 average and the actual during that huge downturn.

11 ...
 12 FREEMAN: See. Fuck 'em early and fuck 'em often .."

13 [Exhibit 5, FBI AFFIDAVIT, IV., "There is probable cause to believe
 14 that certain Pilot employees have devised and conspired to devise a
 15 scheme to defraud Pilot's Customers...," para. 63, pages 49-50 of 120;
 16 recorded by CHS-2 at Pilot Flying J's October 25, 2012, regional sales
 17 directors meeting, John Freeman, Pilot Flying J's Vice President of
 18 Sales speaking. "UI" is believed to mean "unintelligible." Material
 19 in (...) deleted.]

20 228. As also hereinbefore alleged, Pilot Flying J fraudulently
 21 engaged in cost plus discount Fuel Transport Overcharge when
 22 defendants raised the amount of the fuel transport expense without the
 23 customer's knowledge if the customer was deemed to be unsophisticated
 24 or to increase profits on an unsophisticated customer who believed it
 25 was buying from Pilot Flying J at a cost plus discount with a low per
 26 gallon markup:

27 "FREEMAN: But you gotta know how your customer buys,
 28 right? (Unknown) buy, give him a cost-minus-32 and raise
 29 his freight rate to 40.

MALE VOICE: Right.

FREEMAN: That's part of the game, I mean, but if you don't
 know how they buy and what they understand, then you can't
 take advantage of these things. And it's our job to teach,

1 manage, direct our regionals to understand all this stuff.
2 And then Jay can get us set up to where we can have A and
3 B buckets. Yeah, fuck 'em, just give 'em what they want."
4 STINNETT: And what'd
5 FREEMAN: You're exactly right.
6 STINNETT: And you take advantage of our advantage.
7 RALENKOTTER: Put it to 'em a way that
8 MALE VOICE: Our advantage is their ignorance
9 STINNETT: Yeah, AKA, we're fuckin' 'em. (Laughter.)"

10 [Exhibit 5, FBI AFFIDAVIT, IV., "There is probable cause...", para.
11 83, pages 83-84 of 120; recorded by CHS-2 at Pilot Flying J's February
12 18, 2013, Pilot Flying J's Regional and National Sales Meeting which
13 was attended by HAZELWOOD, John Freeman, etc. "* * *" in original.]

14 229. As also hereinbefore alleged, Pilot Flying J fraudulently
15 engaged in cost plus discount Markup Overcharge when defendants
16 represented to cost plus discount customers that they were being
17 billed at a particular markup amount, when in fact they were being
18 billed at a higher markup amount:

19 "ANDREWS: I don't care if he thinks he's getting cost plus
20 0 and he's getting cost plus 10, I mean I'm not a moral
21 compass, I mean all we can make we make (...)"

22 ANDREWS: "I got some guys that are that way today in
23 Florida. They think they're at cost plus 0, but they're
24 really at cost plus 4."

25 [Exhibit 5, FBI AFFIDAVIT, IV "There is probable cause...", para. 80,
26 page 74 of 120. Material in (...) omitted.]

27 "FREEMAN: Oh, Jay called him and said, "Oh no no, J.W.
28 doesn't know how to read a P&L, that was an 8-cent tax.
29 You're gettin' a cost-plus-3."

30 ANDREWS: (Unknown)

31 CHS-2: Gee. (Laughter.)

32 FREEMAN: Guy has no business gettin' a cost-plus-3, or a
33 cost-plus-2.

34 ANDREWS: Are you serious, man?

35 FREEMAN: And, he has no way to know what his deal is."

36 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...", para. 81,
37 page 80-81 of 120.]

38 "CHS-2- Right, just move these and not tell the customers

1 and they probably won't even notice it, Right?

2 RALENKOTTER - Yeah, yeah, there is no reason to. I mean
3 the price is the price.

4 CHS-2 -Um, hum

5 RALENKOTTER- I mean, how are they going to tell me, how do
6 they know if it's cost plus 2 or cost plus 5?"

7 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause..." para. 81,
8 page 80-81 of 120.]

9 230. Accordingly, in its representative capacity pursuant to
10 California Business and Professions Code, section 17204, Hendrickson
11 is entitled to a judgment restoring all monies acquired by Pilot
12 Flying J's cost plus discount fraud to all the UCL Claimant-Defendants
13 in an amount to be determined at trial without individualized proof
14 of deception, reliance, and injury. [Bank of the West v. Superior
15 Court, (1992) 2 Cal. 4th 1254.]

16 231. Hendrickson as representative for the UCL Claimant-
17 Defendants is entitled to prejudgment interest on that sum in
18 accordance with California Civil Code sections 3287, 3288 or 3289.

19 232. Hendrickson as representative for the UCL Claimant-
20 Defendants is also entitled to all other equitable relief, and as
21 their representative Hendrickson is entitled to costs, and attorneys'
22 fees pursuant to Code of Civil Procedure, section 1021.5 (the "Private
23 Attorney General Act") from all defendants.

24 **Unfair Competition Count III. Appointment of a Receiver**
25 **to Manage the Restoration of Money**
26 **Which Was Acquired by Means of Pilot Flying J's**
27 **Cost Plus Discount Fraud**

28 233. Plaintiff incorporates herein each and every other paragraph
of this complaint.

1 234. Pursuant to California Business and Professions Code,
2 section 17203:

3 "Any person who engages, has engaged, or proposes to engage
4 in unfair competition may be enjoined in any court of
5 competent jurisdiction. The court may make such orders or
6 judgments, including the appointment of a receiver, as may
7 be necessary to prevent the use or employment by any person
8 of any practice which constitutes unfair competition, as
9 defined in this chapter, or as may be necessary to restore
10 to any person in interest any money or property, real or
11 personal, which may have been acquired by means of such
12 unfair competition."

13 [Code Civ. Proc., § 17203.]

14 235. For the reasons hereinbefore alleged, Hendrickson will by
15 motion move the court for orders and a judgment appointing a receiver
16 to take control of the assets and financial and other affairs of Pilot
17 Flying J and the corporate defendants comprising it, as may be
18 necessary to prevent the use or employment by Pilot Flying J of any
19 practice that constitutes fraudulent, unfair or unlawful competition,
20 or as may be necessary to restore to Hendrickson and the UCL Claimant-
21 Defendants all monies or property, real or personal, that may have
22 been acquired by means of the corporate defendants' alleged
23 fraudulent, unfair and unlawful competition hereinbefore referred to
24 as cost plus discount fraud. [Bus. & Prof. Code, § 17203; People v.
25 Murrison, 101 Cal. App. 4th 349 (3d Dist. 2002).]

26 236. In addition to an order appointing a receiver, Hendrickson
27 for itself and as representative for the UCL Claimant-Defendants is
28 also entitled to all other equitable relief, costs, as well as
attorneys' fees from all defendants pursuant to Code of Civil
Procedure, section 1021.5 (the "Private Attorney General Act").

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1 **Unfair Competition Count IV.** **A Permanent Injunction**
2 **Prohibiting Pilot Flying J, its President, its CEO, its Managers,**
3 **Employees and all others acting in concert with Pilot Flying J,**
4 **from engaging in**
5 **Cost Plus Discount Fraud**

6 237. Plaintiff incorporates herein each and every other paragraph
7 of this complaint.

8 238. Pursuant to California Business and Professions Code,
9 section 17203:

10 "Any person who engages, has engaged, or proposes to engage
11 in unfair competition may be enjoined in any court of
12 competent jurisdiction. The court may make such orders or
13 judgments, including the appointment of a receiver, as may
14 be necessary to prevent the use or employment by any person
15 of any practice which constitutes unfair competition, as
 defined in this chapter, or as may be necessary to restore
 to any person in interest any money or property, real or
 personal, which may have been acquired by means of such
 unfair competition."

16 [Code Civ. Proc., § 17203.]

17 239. As hereinbefore alleged, defendants "have engaged" in
18 "unfair competition" within the meaning of California Business and
19 Professions Code, section 17203.

20 240. As hereinbefore alleged, Hendrickson and the UCL Claimant-
21 Defendants have sustained great and irreparable injury by Pilot Flying
22 J's cost plus discount fraud.

23 241. Defendants' fraudulent, unlawful and unfair acts and
24 practices as hereinbefore alleged present a continuing threat to
25 Hendrickson, to the UCL Claimant-Defendants and to the numerous other
26 small and mid-size trucking companies in the United States.

27 242. With respect to all counts alleging cost plus discount fraud
28 plaintiff is informed and believes and thereon alleges that unless

1 prevented and permanently restrained by by order of this court, Pilot
2 Flying J, its President, its Managers, its CEO, Employees and all
3 others acting in concert with Pilot Flying J, are continuing to engage
4 in or will in the future resume to engage in the alleged cost plus
5 discount fraud.

6 243. Accordingly, Hendrickson and the UCL Claimant-Defendants are
7 entitled to a final and permanent injunction restraining and enjoining
8 defendants and each of them, in their dealings with Hendrickson, the
9 UCL Claimant-Defendants and all other small and mid-size trucking
10 companies, from: failing to clearly and expressly state the method
11 by which Pilot Flying J's fuel cost is determined; charging more than
12 the represented cost for fuel transport, taxes or any other component
13 of the base fuel cost; understating or otherwise misrepresenting the
14 true amount of the per gallon markup charge; and any other mandatory
15 or prohibitory relief which, after due deliberation, the court
16 determines is fair, just and appropriate and within the equitable
17 jurisdiction of this court.

18
19 **SEVENTH CAUSE OF ACTION**

20 **PUNITIVE DAMAGES**

21 **[Calif. Civ. Code, § 3294]**

22 244. Plaintiff incorporates herein each and every other paragraph
23 of this complaint.

24 245. In committing the acts described in this complaint,
25 defendants were guilty of fraud, oppression and/or malice within the
26 meaning of California Civil Code, section 3294.

27 246. As a result, Hendrickson is entitled to an award of punitive
28 damages from all defendants.

1 247. "Fraud," for purposes of California Civil Code, section
2 3294, means an intentional misrepresentation, deceit, or concealment
3 of a material fact known to the defendant with the intention on the
4 part of the defendant of thereby depriving a person of property or
5 legal rights or otherwise causing injury. [Civ. Code, § 3294, subd.
6 (c)(3).]

7 248. As hereinbefore alleged, in or about 2004, with the intent
8 to defraud and deceive Hendrickson, and to induce Hendrickson to
9 purchase its requirements for diesel fuel from Pilot Flying J,
10 defendants promised to Hendrickson that defendants would bill, and
11 thereafter represented to Hendrickson that defendants did in fact bill
12 diesel fuel to Hendrickson at: a) Pilot Flying J's actual cost per
13 gallon; b) Pilot Flying J's actual cost to transport the fuel to the
14 truck stops used by Hendrickson; and c) a markup of "0" cents per
15 gallon.

16 249. Said promises were made without any intention of performing
17 them.

18 250. And said representations were false and defendants knew them
19 to be false at the time the representations were made and at all times
20 thereafter.

21 251. As hereinbefore alleged, defendants defrauded Hendrickson
22 because in fact and truth: a) Pilot Flying J charged Hendrickson the
23 OPIS daily average index price effective on the day that Hendrickson
24 purchased the fuel (plus taxes and inflated transport expenses), not
25 the price which Pilot Flying J had actually paid for the fuel; b)
26 Pilot Flying J charged Hendrickson approximately 1 cent per gallon
27 more than Pilot Flying J's actual cost to transport the fuel to the
28 truck stops used by Hendrickson; and c) Pilot Flying J charged

1 Hendrickson a markup of approximately "7" cents per gallon, not "0"
2 cents.

3 252. "Malice," for purposes of California Civil Code, section
4 3294, means conduct that is intended by the defendant to cause injury
5 to the plaintiff or despicable conduct that is carried on by the
6 defendant with a willful and conscious disregard of the rights or
7 safety of others. [Civ. Code, § 3294, subd. (c)(1)]

8 253. In doing the acts hereinbefore alleged, defendants intended
9 to injure Hendrickson and also acted despicably towards and with a
10 willful and conscious disregard of the rights of Hendrickson and of
11 the rights of the UCL Claimant-Defendants, which defendants had reason
12 to know were struggling to survive as a result of the economic
13 recession and high fuel prices.

14 254. According to the FBI special agent investigating the
15 underlying criminal case, Pilot Flying J actively targeted small and
16 medium trucking companies like Hendrickson and the UCL Claimant-
17 Defendants because, as small or mid-sized trucking companies, they
18 were deemed too unsophisticated to know that Pilot Flying J was
19 defrauding them:

20 "To be sure, your affiant is not suggesting that Pilot
21 employees have conspired and schemed to defraud all of
22 Pilot's Customers. Instead, your affiant has determined
23 that there is probable cause to believe that certain Pilot
24 employees have conspired and schemed to defraud, in
25 violation of 18 U.S.C. §§ 371, 1341, 1343 and 1349, Pilot
26 Customers that certain Pilot employees deemed to be too
27 unsophisticated to catch that their agreed-upon discount
28 deal with Pilot was being changed to benefit Pilot without
the knowledge of those Customers."

26 [Exhibit 5, FBI AFFIDAVIT, III. "Summary," para. 13, page 12 of 120.]

27 255. At a November 19, 2012 Pilot Flying J sales meeting, Pilot
28 Flying J's Director of National Sales, Brian Mosher, demonstrated

1 Pilot Flying J's intent to injure Hendrickson the UCL Claimant-
 2 Defendants and also acted despicably towards them with a willful and
 3 conscious disregard of the rights of Hendrickson and of the rights of
 4 the UCL Claimant-Defendants by *blaming* the small and mid-size trucking
 5 companies (like Hendrickson and the UCL Claimant-Defendants) for
 6 trusting Pilot Flying J to honestly bill them:

7 "MOSHER: (...) [W]hat does the customer know about his
 8 pricing? Does he know ANYthing about his pricing? 'Cause
 9 I then bring in the argument of, he doesn't know what his
 10 pricing is. All he's leveraging through is a number;
 11 cost-plus-2, cost-minus-2. He wants cost. Is cost OPIS
 12 average? I don't know. I don't know what the Love guy's
 13 presented the customer, all I know is what the customer's
 14 telling me

15 (...)

16 So again, all I'm saying is, a lot of these guys that talk
 17 cost-plus don't know what cost-plus is, okay?"

18 (...)

19 SCHIMMEL: Let me ask a question. Even though, do we have
 20 an idea of what percentage of people out there truly know,
 21 have an understanding of discounts?

22 I mean...

23 MOSHER: I would tell you it's, I'm gonna say way less than
 24 50%. I'm thinking it's 25% or less, that really, really
 25 know on a day-in-day-out basis.

26 (...)

27 WELCH: Some of 'em. (Laughter.)

28 MOSHER: Some of 'em, some of 'em don't know what a
 29 spreadsheet is. I'm not kiddin'.

30 So, again, my point is this: Know your customer."

31 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...," para.
 32 68, page 54 of 120; Pilot Flying J's Director of National Sales, Brian
 33 Mosher, recorded by CHS-2 at Pilot Flying J's November 19, 2012 sales
 34 meeting.]

35 "MOSHER: (...) [H]e's not gonna take the time to know what
 36 it means, 'cause, frankly, he's lazy, and he doesn't care.
 37 But he's heard the buzz word long enough to know, "This is
 38 valuable and I should have cost-plus pricing." That guy
 39 does not deserve premium pricing from us, in my opinion,
 40 because he's not willing to go back and do all the work on
 41 it. We buy very good at Pilot, and I'm sure a lot of our
 42 buying is indexed to Platt's and OPIS low, I'll guarantee
 43 our guys go back and check what we're buying versus those

1 indexes."

2 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...", para.
3 68, page 56 of 120; Pilot Flying J's Director of National Sales,
4 Brian Mosher, recorded by CHS-2 at Pilot Flying J's November 19, 2012
5 sales meeting.]

6 256. At that same November 19, 2012 Pilot Flying J sales meeting,
7 Pilot Flying J's Director of National Sales, Brian Mosher, continued
8 to demonstrate Pilot Flying J's intent to injure the small and mid-
9 sized trucking companies like Hendrickson the UCL Claimant-Defendants,
10 by acting despicably towards them with a willful and conscious
11 disregard of their rights when he explained to the Pilot Flying J
12 Regional Sales Managers and Regional Account Representative in
13 attendance that small and mid-sized trucking companies do not deserve
14 cost plus pricing if they are unsophisticated, but "we're tellin' the
15 customer what he wants to hear":

16 "MOSHER - So, the other part of this equation that I kinda
17 of look at is, if I've got a guy that calls me and says I
18 need a cost-plus deal, he's not on any index, right? he's
not EStop, he's not on anything, we're not sending him any
pricing why does he deserve cost-plus pricing?
19 (...)

20 He's never ever gonna go back and match up to an index,
it's just not gonna happen. The guy's not gonna spend the
time to do it. And then you go into one of your other guys
21 that you're givin' cost-plus-3 on an off-invoice basis, and
you know that guy's managin' his drivers and tellin', you
22 know, exactly where to go, and he's, you know, lookin' at
our pricing that we send him on a daily basis, and he's
23 occasionally, you know, doin' some benchmarking, the guy
deserves cost-plus. He's doin' the work to deserve cost
plus. I may not wanna give it to him but he deserves it.
24 The first guy that doesn't do any of that stuff? He does
not deserve a true cost-plus price, okay? This is no
25 different than any other buying situation out there, it's
just, you know, maximizing our profitability while we're
26 tellin' the customer what he wants to hear."

27 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...", para.
28 70, page 64 of 120; Pilot Flying J's Director of National Sales,

1 Brian Mosher, recorded by CHS-2 at Pilot Flying J's November 19, 2012
2 sales meeting.]

3 257. At that same November 19, 2012 Pilot Flying J sales meeting,
4 Pilot Flying J's Director of National Sales, Brian Mosher, further
5 showed Pilot Flying J's intent to injure the small and mid-sized
6 trucking companies (such as Hendrickson the UCL Claimant-Defendants)
7 and also acted despicably towards them with a willful and conscious
8 disregard of their rights when he explained that it would be extremely
9 difficult if not impossible for the small and mid-size trucking
10 companies on Pilot Flying J's cost plus discount billing program to
11 determine what they should have been billed, and that such customers
12 shouldn't be on cost plus, but Pilot Flying J has to tell them they
13 are on cost plus to get their business:

14 "JONES: And to the point of them not knowing, I mean, on
15 a percentage-wise, very few of 'em actually ask for backup.
I would say less than 10%.

16 MOSHER: Yeah, you're only gonna have a handful. And
17 usually, guys, the guys that are asking for backup are the
guys that are asking for pricing up front.

18 RADFORD: Um-hum.

19 MOSHER: They want a daily price "So I can see what my
20 price is." Now, to Scott's point, I think you said this,
21 is there any way possible for them to take that monthly,
22 you know, 30 days' worth of price fetch, put together an
23 average, and have an average price that they should've paid
24 for that month? No. Absolutely not. They can't weight
25 that fuel purchase by what day they bought it on. They
have an index, so they can get close, but they can't weight
that. There's (noise.) 15 cents beginning of the
month 'til the end of the month, there's no way they have
any idea what they're close to payin'. Or what they paid.
Again, this is simply a tool. And this works for some
folks, mainly the smaller ones that, I'll be honest with
you, couldn't put 'em on cost-plus, we shouldn't have 'em
on cost-plus. But, at the point of we're not gonna have
their business if we don't put 'em on cost-plus"

26 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...," para.
27 68, pages 58-59 of 120; Pilot Flying J's Director of National Sales,
28 Brian Mosher, recorded by CHS-2 at Pilot Flying J's November 19, 2012

1 sales meeting.]

2 258. At that same November 19, 2012, Pilot Flying J sales
3 meeting, Regional Account Representative, Holly Radford, described
4 Pilot Flying J's cost plus discount billing of unsophisticated small
5 and mid-size trucking companies (like Hendrickson and the UCL
6 Claimant-Defendants) as the "gray side":

7 "RADFORD: And what did I tell you? Welcome to the gray side.
8 (Laughing.)"

9 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause...", para.
10 68, page 59 of 120; Regional Account Representative, Holly Radford,
11 recorded by CHS-2 at Pilot Flying J's November 19, 2012 sales
12 meeting.]

13 259. As an employer, Pilot Flying J is liable for punitive
14 damages based on the acts of its employees if Pilot Flying J (1) had
15 advance knowledge of the unfitness of the employee and employed him
16 or her with a conscious disregard of the rights or safety of others;
17 (2) authorized or ratified the employee's wrongful conduct for which
18 the damages were awarded; or (3) was personally guilty of oppression,
19 fraud, or malice. [Civ. Code, § 3294, subd. (b); StreetScenes v. ITC
20 Entertainment Group, Inc., 103 Cal. App. 4th 233 (2d Dist. 2002),
21 review denied, (Jan. 15, 2003).]

22 260. Pilot Flying J itself and the corporate defendants which
23 comprise it were themselves "personally" guilty of oppression, fraud,
24 or malice in that the cost plus discount fraud and rebate fraud were
25 corporate policies of Pilot Flying J, known by and approved and
26 ratified by the highest levels of corporate managers including but not
27 limited to Pilot Flying J's President MARK HAZELWOOD and Pilot Flying
28 J's CEO, Jimmy Haslam as illustrated by a discussion regarding Pilot

1 Flying J's Vice President of Sales, John Freeman's, purchase of an
2 dilapidated airplane for \$1,000,000 from Western Express which was a
3 trucking company that had caught John Freeman in the act of
4 fraudulently raising Western Express' markup:

5 "CHS-2: Well what if you can't talk your way out of it?
They figure out a way and they've got you nailed?

6 FREEMAN: You pay up.

7 CHS-2: Pay it?

8 FREEMAN: Yeah. Or you buy an airplane.

9 CHS-2: What does Mark and Jimmy say about shit like that?

10 Do they even catch it or do they know?

11 FREEMAN: Fuckin' A. I mean, I called Jimmy and told him
12 I got busted at Western Express.

13 CHS-2: What'd he say?

14 FREEMAN: Oh he knew it.

15 CHS-2: Oh did he?

16 FREEMAN: Absolutely. I mean, he knew all along that I was
17 cost-plussin' this guy.

18 He knew it all along. Loved it. We were makin' \$450,000 a
19 month on him--

20 CHS-2: Holy shit!

21 FREEMAN: -- why wouldn't he love it?

22 CHS-2: Yeah.

23 FREEMAN: Did it for five years, cost us a million bucks.
24 I mean, we made \$6 million on the guy, cost us a million
25 bucks.

26 CHS-2: Great investment."

27 [Exhibit 5, FBI AFFIDAVIT, IV. "There is probable cause....," para. 81,
28 page 81 of 120.]

29 261. Additionally, the fraud, false statements and intentional
30 concealment and malicious and oppressive acts of the individual
31 defendants were within the individual defendants' scope of employment
32 by Pilot Flying J. [Garton v. Title Ins. & Trust Co., (1980, 3rd
33 Dist) 106 Cal. App. 3d 365; John R. v. Oakland Unified School Dist.,
34 (1989) 48 Cal. 3d 438.]

35 262. Additionally, in doing the acts herein alleged, FENWICK was
36 a managing agent of the corporate defendants in the Western Sales
37 Region in that FENWICK exercised substantial independent authority and
38 judgment in negotiating diesel direct fuel sales agreements with the

1 various small and mid-sized trucking companies in the Western Region
2 and thereafter determined or participated in the determination of the
3 size of the rebate or cost plus discounts which those trucking
4 companies actually received from Pilot Flying J, such that FENWICK's
5 decisions ultimately determined or contributed to the determination
6 of Pilot Flying J's corporate policy in the Western Sales Region.
7 [White v. Ultramar, Inc., (1999) 21 Cal. 4th 563, 566-567.]

8 263. Likewise, in doing the acts herein alleged, HAZELWOOD was
9 a managing agent of the corporate defendants in that, as President of
10 both corporate defendants, HAZELWOOD exercised substantial independent
11 authority and judgment such that HAZELWOOD's decisions ultimately
12 determined Pilot Flying J's corporate policy. [White v. Ultramar,
13 Inc., (1999) 21 Cal. 4th 563, 566-567.]

14 264. As hereinbefore alleged, for purposes of California Civil
15 Code, section 3294, the defendants, and each of them, intended by
16 "fraud" and "deceit" to deprive Hendrickson and the UCL Claimant-
17 Defendants of their monies and legal rights and acted despicably
18 towards Hendrickson and the UCL Claimant-Defendants with "malice" and
19 willful and conscious disregard of their rights and, as a result,
20 Hendrickson is entitled to an award of punitive damages from all
21 defendants.

22 265. Accordingly, Pilot Flying J itself and the corporate
23 defendants which comprise it and the defendants, and each of them, are
24 liable to Hendrickson in punitive damages for the actions of the
25 individual defendants as hereinbefore alleged.

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for various orders and a judgment against defendants, and each of them, for:

1. On Hendrickson's First Cause of Action for defendants' Cost Plus "0" Discount Fraud in Counts I, II, and III, damages in an amount to be determined at trial, but no less than:

First Cause of Action - Cost Plus Discount Fraud

Count

No. *Damage Description*

I.	Actual Cost Overcharge	\$221,215.70
II.	Fuel Transport Overcharge	\$20,351.84
III.	Markup Overcharge	<u>\$152,417.62</u>
	Overcharge subtotal:	\$393,985.16
	With 10%/Year Prejudgment Interest:	\$1,021,896.04
	With Punitive damages (min. 3x)	\$3,065,688.12
<i>off-</i>	Less Pilot offset remaining	- <u>\$705,000.00</u>
<i>set</i>	owed by Hendrickson pursuant to Superior Court Settlement Agmt.	
	TOTAL COST PLUS FRAUD DAMAGES:	<u>\$2,360,688.12</u>

2. On Hendrickson's Second Cause of Action for Quasi-Contractual Recovery of Pilot Flying J's "Secret Profits," a judgment ordering defendants to disgorge their secret profits to Hendrickson to prevent unjust enrichment consisting of an Actual Cost Overcharge of \$221,215.70; a Fuel Transport Overcharge of \$20,351.84; and a Markup Overcharge of \$152,417.62, for which Hendrickson is entitled to a judgment ordering defendants to disgorge their secret profits of \$393,985.16 to Hendrickson plus interest thereon for an amount to prevent unjust enrichment to be determined at trial but not less than \$1,021,896.04;

1 3. On Hendrickson's Third Cause of Action for Fraud in Sale of
2 Goods, a judgment awarding Hendrickson damages under the
3 "loss-of-bargain" rule under which the Hendrickson is awarded the
4 benefits Hendrickson would have received if defendants' promises and
5 representations had been true plus prejudgment interest as damages on
6 the sum that it has been damaged, and all other compensatory damages,
7 punitive damages, costs and attorneys' fees from all defendants as a
8 proximate result of the above-described fraud in the sale of goods;

9 4. On Hendrickson's Fourth Cause of Action for Breach of the
10 Covenant of Good Faith and Fair Dealing, a judgment awarding
11 Hendrickson damages in an amount to be determined at trial, plus
12 prejudgment interest as damages on the sum that it has been damaged,
13 and all other compensatory damages, punitive damages, costs and
14 attorneys' fees from all defendants;

15 5. On Hendrickson's Fifth Cause of Action for Breach of
16 Contract, a judgment awarding Hendrickson damages for the amount of
17 the reduced cost plus fuel discounts in an amount to be determined at
18 trial, plus prejudgment interest as damages on the sum that it has
19 been damaged, and all other compensatory damages, costs and attorneys'
20 fees from all defendants;

21 6. On Hendrickson's Sixth Cause of Action Violation of
22 California's Unfair Competition Law, a judgment:

23 a) awarding Hendrickson and the UCL Claimant-Defendants
24 restitution of defendants' ill-gotten gains that rightfully belong to
25 Hendrickson and the UCL Claimant-Defendants by virtue of their
26 overpayment of Pilot Flying J;

27 b) orders or judgments pursuant to California Business and
28 Professions Code, section 17203 [People v. Murrison, 101 Cal. App. 4th

1 349 (3d Dist. 2002)] including the appointment of a receiver, as may
2 be necessary to prevent the use or employment by any person of any
3 practice that constitutes unfair competition, or as may be necessary
4 to restore to any person in interest any money or property, real or
5 personal, that may have been acquired by means of such unfair
6 competition;

7 c) an injunction pursuant to Business and Professions
8 Code, section 17203 [People v. First Federal Credit Corp., 104 Cal.
9 App. 4th 721 (2d Dist. 2002)] permanently enjoining defendants from
10 continuing the acts of fraudulent, unfair and unlawful competition as
11 hereinbefore alleged;

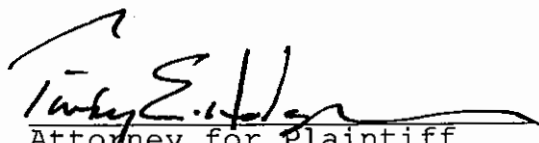
12 7. On Hendrickson's Seventh Cause of Action for Punitive
13 Damages, for punitive or exemplary damages in an amount to be proven
14 at trial but not less than three times Hendrickson's and the UCL
15 Claimant-Defendants' actual damages;

16 8. For all costs of suit herein incurred;

17 9. For reasonable attorney's fees pursuant to California Code
18 of Civil Procedure, section 1021.4, or otherwise, according to law;
19 and

20 10. For such further relief as the court may deem proper.

21
22 Dated: September 9, 2014



Attorney for Plaintiff
HENDRICKSON TRUCKING, INC.
Timothy E. Hodgson
Attorney at Law, CSB 108398
3620 American River Drive, Suite 130
Sacramento, California 95864
Telephone: (916) 488-3616
Facsimile: (916) 488-6342
Email: email@timhodgson.us

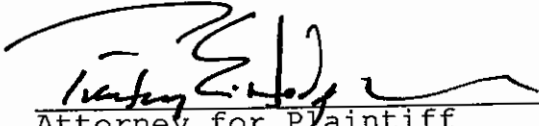
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DEMAND FOR JURY TRIAL

Plaintiff HENDRICKSON TRUCKING, INC. hereby demands a jury trial.

Dated: September 9, 2014



Attorney for Plaintiff
HENDRICKSON TRUCKING, INC.
Timothy E. Hodgson
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Exhibit B

THIS AGREEMENT (the "ASSIGNMENT OF ASSETS AND ASSUMPTION OF LIABILITIES AGREEMENT") is made as of this date of *May 20, 2016* by and between *Hendrickson Trucking, Inc.*, a corporation organized and existing under the laws of the State of California ("Seller") and *Hendrickson Truck Lines, Inc.*, a corporation organized and existing under the law of the State of California ("Purchaser").

WHEREAS, pursuant to this AGREEMENT, Seller and Purchaser have agreed to enter into this Assignment of Assets and Assumption of Liabilities, pursuant to which Seller shall assign all of the assets of the Business to Purchaser as of the Closing Date of the Hendrickson Trucking, Inc. bankruptcy proceedings, and Purchaser shall assume all of the liabilities and obligations of the Business as of the Closing Date of the Hendrickson Trucking, Inc. bankruptcy proceedings, for liabilities outlined under the bankruptcy proceedings;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

Assignment of Assets.

1. Assignment of Assets. Subject to the terms and conditions of this AGREEMENT, Seller hereby agrees to assign, transfer, convey and deliver any and all right, title and interest in the assets and property of the Business, as of the Closing Date, and Purchaser hereby agrees to the assignment, transfer, conveyance and delivery of the Assigned Assets;

Assumption of Liabilities.

2. Assumption of Liabilities. Subject to the terms and conditions of this AGREEMENT, Purchaser hereby agrees to assume, pay, perform and discharge all debts, obligations and liabilities, as outlined under the bankruptcy proceedings as of the Closing Date.

Indemnification.

3. Indemnification. Purchaser hereby agrees to indemnify and hold Seller harmless from and against any and all obligations, costs, expenses, interests or overdue charges, fees, claims, damages, judgments, penalties, deficiencies, taxes or liabilities of whatever kind or nature imposed on, sustained or incurred by Seller, to the extent they arise out of or relate to the Assumed Liabilities, including, without limitation, attorneys', accountants' and other investigatory fees and out-of-pocket expenses, actually expended or incurred by Seller (*which costs shall not include any expenses associated with salaries or overhead related to employees of Seller*).

Further Assurances.

4. Further Assurances. Upon request from Seller from time to time, Purchaser shall execute and deliver all documents and do all other reasonable acts that may be reasonably necessary to carry out and effectuate the intent and purpose of this Agreement. Upon request from Purchaser from time to time, Seller shall execute and deliver all documents and do all other reasonable acts that may be reasonably necessary to carry out and effectuate the intent and purposes of this AGREEMENT.

Power of Attorney.

5. Power of Attorney. Seller on behalf of itself and its successors, hereby irrevocably appoints Purchaser and its designated

officers and directors as the true and lawful attorney of Seller to handle, satisfy and/or dispute the Assumed Liabilities as well as to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such assurances or documents, and to promptly perform, or cause to be performed, such further acts or deeds, which, in the reasonable discretion of said attorney may be necessary, desirable or expedient for the purpose of transferring to Purchaser the Assumed Liabilities. Such power of attorney, being coupled with an interest, shall not be revoked by the dissolution of Seller and may be exercised in the name and on behalf of Purchaser.

Governing Law.

6. Governing Law. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

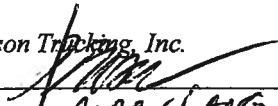
Specific Performance.

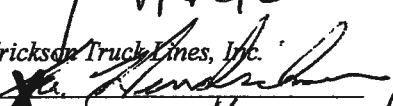
7. Specific Performance. The parties recognize and agree that if for any reason any of the provisions of this Assignment and Assumption of Liabilities Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to any other available remedies, each other party shall be entitled to an injunction restraining any violation or threatened violation of any of the provisions of this AGREEMENT without the necessity of posting a bond or other form of security pending the outcome of any arbitration. In the event that any action should be brought in equity to enforce any of the provisions of this AGREEMENT, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

Descriptive Headings.

8. Descriptive Headings. The descriptive article and section headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this AGREEMENT.

IN WITNESS WHEREOF, each of the parties hereto has caused this instrument to be duly executed in its name by an authorized representative as of the date set forth above.

Hendrickson Trucking, Inc.
By: 
Name: ALBIN LANG
Title: VP & CFO

Hendrickson Truck Lines, Inc.
By: 
Name: WILLIAM HENDRICKSON
Title: CHAIRMAN & OWNER

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Exhibit C

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
942841	ALLOY	1994	
942842	ALLOY	1994	
942843	ALLOY	1994	
942844	ALLOY	1994	
955325	UTIL	1995	
955326	WABASH	1995	
955329	WABASH	1995	
955331	WABASH	1995	
955336	WABASH	1995	
965332	WABASH	1996	
965333	WABASH	1996	
D985362	UTIL	1998	
D985363	UTIL	1998	
D985365	UTIL	1998	
D985367	UTIL	1998	
D985369	UTIL	1998	
D985393	UTIL	1998	
D985394	UTIL	1998	
975345	UTIL	1998	
975346	UTIL	1998	
975347	UTIL	1998	
975348	UTIL	1998	
975349	UTIL	1998	
975351	UTIL	1998	
975352	UTIL	1998	
975353	UTIL	1998	
975354	UTIL	1998	
975355	UTIL	1998	
975357	UTIL	1998	
975358	UTIL	1998	
975359	UTIL	1998	
984895	UTIL	1998	Leased from Hen Trucking, Inc.
984896	UTIL	1998	Leased from Hen Trucking, Inc.
984897	UTIL	1998	Leased from Hen Trucking, Inc.
984898	UTIL	1998	Leased from Hen Trucking, Inc.
984899	UTIL	1998	Leased from Hen Trucking, Inc.
985360	UTIL	1998	
985366	UTIL	1998	
985370	UTIL	1998	
985371	UTIL	1998	
985372	UTIL	1998	
985375	UTIL	1998	

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
985376	UTIL	1998	
985379	UTIL	1998	
985380	UTIL	1998	Leased from Hen Trucking, Inc.
985385	UTIL	1998	Leased from Hen Trucking, Inc.
985387	UTIL	1998	Leased from Hen Trucking, Inc.
985389	UTIL	1998	Leased from Hen Trucking, Inc.
9953104	UTIL	1999	
9953106	UTIL	1999	
9953108	UTIL	1999	
9953110	UTIL	1999	
9953111	UTIL	1999	
9953113	UTIL	1999	
9953114	UTIL	1999	
9953115	UTIL	1999	
9953117	UTIL	1999	
9953118	UTIL	1999	
9953120	UTIL	1999	
9953122	UTIL	1999	
9953123	UTIL	1999	
9953125	UTIL	1999	
9953126	UTIL	1999	
9953128	UTIL	1999	
9953129	UTIL	1999	
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9953131	UTIL	1999	
9953132	UTIL	1999	
9953133	UTIL	1999	
9953134	UTIL	1999	
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9953136	UTIL	1999	
9953137	UTIL	1999	
9953139	UTIL	2000	
9953142	UTIL	2000	
9953143	UTIL	2000	
9953144	UTIL	2000	
9953146	UTIL	2000	
9953147	UTIL	2000	
9953148	UTIL	2000	
0053149	UTIL	2001	
0053150	UTIL	2001	
0053151	UTIL	2001	
0053153	UTIL	2001	

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0053156	UTIL	2001	
0053157	UTIL	2001	
0053158	UTIL	2001	
0053159	UTIL	2001	
0053160	UTIL	2001	
0053161	UTIL	2001	
0053162	UTIL	2001	
0053163	UTIL	2001	
0053165	UTIL	2001	
0053166	UTIL	2001	
0053167	UTIL	2001	
0053168	UTIL	2001	
0053169	UTIL	2001	
0053170	UTIL	2001	
0053171	UTIL	2001	
0053172	UTIL	2001	
0053173	UTIL	2001	
0053175	UTIL	2001	
0053176	UTIL	2001	
0053177	UTIL	2001	
0053178	UTIL	2001	
0053179	UTIL	2001	
0053180	UTIL	2001	
0053181	UTIL	2001	
0053182	UTIL	2001	
0053183	UTIL	2001	
0053185	UTIL	2001	
0053186	UTIL	2001	
0053187	UTIL	2001	
0053188	UTIL	2001	
0053190	UTIL	2001	
0353191	HYUN	2003	Leased from Hen Trucking, Inc.
0353192	HYUN	2003	Leased from Hen Trucking, Inc.
0353193	HYUN	2003	Leased from Hen Trucking, Inc.
0353194	HYUN	2003	Leased from Hen Trucking, Inc.
0353195	HYUN	2003	Leased from Hen Trucking, Inc.
0353196	HYUN	2003	Leased from Hen Trucking, Inc.
0353198	HYUN	2003	Leased from Hen Trucking, Inc.
0353199	HYUN	2003	Leased from Hen Trucking, Inc.
0353200	HYUN	2003	Leased from Hen Trucking, Inc.
0353201	HYUN	2003	Leased from Hen Trucking, Inc.
0353202	HYUN	2003	Leased from Hen Trucking, Inc.

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0353203	HYUN	2003	Leased from Hen Trucking, Inc.
0353205	HYUN	2003	Leased from Hen Trucking, Inc.
0353206	HYUN	2003	Leased from Hen Trucking, Inc.
0353207	HYUN	2003	Leased from Hen Trucking, Inc.
0353208	HYUN	2003	Leased from Hen Trucking, Inc.
0353209	HYUN	2003	Leased from Hen Trucking, Inc.
0353210	HYUN	2003	Leased from Hen Trucking, Inc.
0653271	HYUN	2006	
0653273	HYUN	2006	
0653274	HYUN	2006	
0653275	HYUN	2006	
0653276	HYUN	2006	
0653277	HYUN	2006	
0653278	HYUN	2006	
0653279	HYUN	2006	
0653280	HYUN	2006	
0653281	HYUN	2006	
0653282	HYUN	2006	
0653284	HYUN	2006	
0653285	HYUN	2006	
0653286	HYUN	2006	
0653287	HYUN	2006	
0653288	HYUN	2006	
0653289	HYUN	2006	
0653290	HYUN	2006	
0653291	HYUN	2006	
0653292	HYUN	2006	
0653293	HYUN	2006	
0653294	HYUN	2006	
0653295	HYUN	2006	
0653296	HYUN	2006	
0653297	HYUN	2006	
0653298	HYUN	2006	
0653299	HYUN	2006	
0653300	HYUN	2006	
0653301	HYUN	2006	
0653302	HYUN	2006	
0653303	HYUN	2006	
0653304	HYUN	2006	
0653305	HYUN	2006	
0653306	HYUN	2006	
0653307	HYUN	2006	

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0653308	HYUN	2006	
0653310	HYUN	2006	
0653311	HYUN	2006	
0653312	HYUN	2006	
0653313	HYUN	2006	
0653314	HYUN	2006	
0653315	HYUN	2006	
0653316	HYUN	2006	
0653317	HYUN	2006	
0653318	HYUN	2006	
0653319	HYUN	2006	
0653320	HYUN	2006	
0653321	HYUN	2006	
0653322	HYUN	2006	
0653323	HYUN	2006	
0653324	HYUN	2006	
0653325	HYUN	2006	
0653326	HYUN	2006	
0653327	HYUN	2006	
0653328	HYUN	2006	
0653329	HYUN	2006	
0653330	HYUN	2006	
0653331	HYUN	2006	
0653332	HYUN	2006	
0653333	HYUN	2006	
0653334	HYUN	2006	
0653335	HYUN	2006	
0653336	HYUN	2006	
0653337	HYUN	2006	
0653339	HYUN	2006	
0653340	HYUN	2006	
0653341	HYUN	2006	
0653342	HYUN	2006	
0653343	HYUN	2006	
0653345	HYUN	2006	
0753346	HYUN	2007	
0753349	HYUN	2007	
0753352	HYUN	2007	
0753355	HYUN	2007	
0753358	HYUN	2007	
0753359	HYUN	2007	
0753360	HYUN	2007	

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0753364	HYUN	2007	
0753367	HYUN	2007	
0753370	HYUN	2007	
0753371	HYUN	2007	
0753373	HYUN	2007	
0753375	HYUN	2007	
0753377	HYUN	2007	
0753378	HYUN	2007	
0753379	HYUN	2007	
0753382	HYUN	2007	
0753384	HYUN	2007	
0753385	HYUN	2007	
0753386	HYUN	2007	
0753387	HYUN	2007	
0753388	HYUN	2007	
0753389	HYUN	2007	
0753395	HYUN	2007	
0753401	HYUN	2007	
0753402	HYUN	2007	
0753403	HYUN	2007	
0753405	HYUN	2007	
0753406	HYUN	2007	
0753407	HYUN	2007	
0753408	HYUN	2007	
0753411	HYUN	2007	
0753412	HYUN	2007	
0753414	HYUN	2007	
0753415	HYUN	2007	
0753419	HYUN	2007	
0753420	HYUN	2007	
0753422	HYUN	2007	
0753425	HYUN	2007	
0753428	HYUN	2007	
0753430	HYUN	2007	
0753433	HYUN	2007	
0753434	HYUN	2007	
0753435	HYUN	2007	
0753436	HYUN	2007	
0753447	HYUN	2007	
0753451	HYUN	2007	
0753454	HYUN	2007	
0753455	HYUN	2007	

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0753456	HYUN	2007	
0753460	HYUN	2007	
0753463	HYUN	2007	
0753464	HYUN	2007	
0753465	HYUN	2007	
0753468	HYUN	2007	
0753470	HYUN	2007	
0753472	HYUN	2007	
0753476	HYUN	2007	
0753478	HYUN	2007	
0753479	HYUN	2007	
0753480	HYUN	2007	
0753482	HYUN	2007	
0753483	HYUN	2007	
0753484	HYUN	2007	
0753485	HYUN	2007	
0753487	HYUN	2007	
0753488	HYUN	2007	
0753492	HYUN	2007	
0753496	HYUN	2007	Leased from Hen Trucking, Inc.
0753497	HYUN	2007	Leased from Hen Trucking, Inc.
0753498	HYUN	2007	Leased from Hen Trucking, Inc.
0753499	HYUN	2007	Leased from Hen Trucking, Inc.
0753500	HYUN	2007	Leased from Hen Trucking, Inc.
0753501	HYUN	2007	Leased from Hen Trucking, Inc.
0753502	HYUN	2007	Leased from Hen Trucking, Inc.
0753503	HYUN	2007	Leased from Hen Trucking, Inc.
0753504	HYUN	2007	Leased from Hen Trucking, Inc.
0753505	HYUN	2007	Leased from Hen Trucking, Inc.
0753506	HYUN	2007	Leased from Hen Trucking, Inc.
0753507	HYUN	2007	Leased from Hen Trucking, Inc.
0753508	HYUN	2007	Leased from Hen Trucking, Inc.
0753509	HYUN	2007	Leased from Hen Trucking, Inc.
0753510	HYUN	2007	Leased from Hen Trucking, Inc.
0753511	HYUN	2007	Leased from Hen Trucking, Inc.
0753512	HYUN	2007	Leased from Hen Trucking, Inc.
0753513	HYUN	2007	Leased from Hen Trucking, Inc.
0753514	HYUN	2007	Leased from Hen Trucking, Inc.
0753515	HYUN	2007	Leased from Hen Trucking, Inc.
0753516	HYUN	2007	Leased from Hen Trucking, Inc.
0753517	HYUN	2007	Leased from Hen Trucking, Inc.
0753518	HYUN	2007	Leased from Hen Trucking, Inc.

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0753519	HYUN	2007	Leased from Hen Trucking, Inc.
0753520	HYUN	2007	Leased from Hen Trucking, Inc.
0753521	HYUN	2007	Leased from Hen Trucking, Inc.
0753522	HYUN	2007	Leased from Hen Trucking, Inc.
0753523	HYUN	2007	Leased from Hen Trucking, Inc.
0753524	HYUN	2007	Leased from Hen Trucking, Inc.
0753525	HYUN	2007	Leased from Hen Trucking, Inc.
0753526	HYUN	2007	Leased from Hen Trucking, Inc.
0753527	HYUN	2007	Leased from Hen Trucking, Inc.
0753528	HYUN	2007	Leased from Hen Trucking, Inc.
0753529	HYUN	2007	Leased from Hen Trucking, Inc.
0753530	HYUN	2007	Leased from Hen Trucking, Inc.
0753531	HYUN	2007	Leased from Hen Trucking, Inc.
0753532	HYUN	2007	Leased from Hen Trucking, Inc.
0753533	HYUN	2007	Leased from Hen Trucking, Inc.
0753534	HYUN	2007	Leased from Hen Trucking, Inc.
0753535	HYUN	2007	Leased from Hen Trucking, Inc.
0753536	HYUN	2007	Leased from Hen Trucking, Inc.
0753537	HYUN	2007	Leased from Hen Trucking, Inc.
0753538	HYUN	2007	Leased from Hen Trucking, Inc.
0753539	HYUN	2007	Leased from Hen Trucking, Inc.
0753540	HYUN	2007	Leased from Hen Trucking, Inc.
0753541	HYUN	2007	Leased from Hen Trucking, Inc.
0753542	HYUN	2007	Leased from Hen Trucking, Inc.
0753543	HYUN	2007	Leased from Hen Trucking, Inc.
0753544	HYUN	2007	Leased from Hen Trucking, Inc.
0753545	HYUN	2007	Leased from Hen Trucking, Inc.
0853546	HYUN	2008	Leased from Hen Trucking, Inc.
0853547	HYUN	2008	Leased from Hen Trucking, Inc.
0853548	HYUN	2008	Leased from Hen Trucking, Inc.
0853549	HYUN	2008	Leased from Hen Trucking, Inc.
0853550	HYUN	2008	Leased from Hen Trucking, Inc.
0853551	HYUN	2008	Leased from Hen Trucking, Inc.
0853552	HYUN	2008	Leased from Hen Trucking, Inc.
0853553	HYUN	2008	Leased from Hen Trucking, Inc.
0853554	HYUN	2008	Leased from Hen Trucking, Inc.
0853555	HYUN	2008	Leased from Hen Trucking, Inc.
0853556	HYUN	2008	Leased from Hen Trucking, Inc.
0853557	HYUN	2008	Leased from Hen Trucking, Inc.
0853558	HYUN	2008	Leased from Hen Trucking, Inc.
0853559	HYUN	2008	Leased from Hen Trucking, Inc.
0853560	HYUN	2008	Leased from Hen Trucking, Inc.

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0853561	HYUN	2008	Leased from Hen Trucking, Inc.
0853562	HYUN	2008	Leased from Hen Trucking, Inc.
0853563	HYUN	2008	Leased from Hen Trucking, Inc.
0853564	HYUN	2008	Leased from Hen Trucking, Inc.
0853565	HYUN	2008	Leased from Hen Trucking, Inc.
0853567	HYUN	2008	Leased from Hen Trucking, Inc.
0853568	HYUN	2008	Leased from Hen Trucking, Inc.
0853569	HYUN	2008	Leased from Hen Trucking, Inc.
0853570	HYUN	2008	Leased from Hen Trucking, Inc.
0853571	HYUN	2008	Leased from Hen Trucking, Inc.
0853572	HYUN	2008	Leased from Hen Trucking, Inc.
0853573	HYUN	2008	Leased from Hen Trucking, Inc.
0853574	HYUN	2008	Leased from Hen Trucking, Inc.
0853575	HYUN	2008	Leased from Hen Trucking, Inc.
0853576	HYUN	2008	Leased from Hen Trucking, Inc.
0853577	HYUN	2008	Leased from Hen Trucking, Inc.
0853578	HYUN	2008	Leased from Hen Trucking, Inc.
0853579	HYUN	2008	Leased from Hen Trucking, Inc.
0853580	HYUN	2008	Leased from Hen Trucking, Inc.
0853581	HYUN	2008	Leased from Hen Trucking, Inc.
0853582	HYUN	2008	Leased from Hen Trucking, Inc.
0853583	HYUN	2008	Leased from Hen Trucking, Inc.
0853584	HYUN	2008	Leased from Hen Trucking, Inc.
0853585	HYUN	2008	Leased from Hen Trucking, Inc.
0853586	HYUN	2008	Leased from Hen Trucking, Inc.
0853587	HYUN	2008	Leased from Hen Trucking, Inc.
0853588	HYUN	2008	Leased from Hen Trucking, Inc.
0853589	HYUN	2008	Leased from Hen Trucking, Inc.
0853590	HYUN	2008	Leased from Hen Trucking, Inc.
0853591	HYUN	2008	Leased from Hen Trucking, Inc.
0853592	HYUN	2008	Leased from Hen Trucking, Inc.
0853593	HYUN	2008	Leased from Hen Trucking, Inc.
0853594	HYUN	2008	Leased from Hen Trucking, Inc.
0853595	HYUN	2008	Leased from Hen Trucking, Inc.
0853596	HYUN	2008	Leased from Hen Trucking, Inc.
0853597	HYUN	2008	Leased from Hen Trucking, Inc.
0853598	HYUN	2008	Leased from Hen Trucking, Inc.
0853599	HYUN	2008	Leased from Hen Trucking, Inc.
0853600	HYUN	2008	Leased from Hen Trucking, Inc.
0853601	HYUN	2008	Leased from Hen Trucking, Inc.
0853602	HYUN	2008	Leased from Hen Trucking, Inc.
0853603	HYUN	2008	Leased from Hen Trucking, Inc.

HENDRICKSON TRUCK LINES, INC.			
TRAILER LIST 1/31/16			
Trailer #	Make	Year	Comment
0853604	HYUN	2008	Leased from Hen Trucking, Inc.
0853606	HYUN	2008	Leased from Hen Trucking, Inc.
0853607	HYUN	2008	Leased from Hen Trucking, Inc.
0853608	HYUN	2008	Leased from Hen Trucking, Inc.
0853609	HYUN	2008	Leased from Hen Trucking, Inc.
0853610	HYUN	2008	Leased from Hen Trucking, Inc.
0853611	HYUN	2008	Leased from Hen Trucking, Inc.
0853612	HYUN	2008	Leased from Hen Trucking, Inc.
0853613	HYUN	2008	Leased from Hen Trucking, Inc.
0853614	HYUN	2008	Leased from Hen Trucking, Inc.
0853615	HYUN	2008	Leased from Hen Trucking, Inc.
0853616	HYUN	2008	Leased from Hen Trucking, Inc.
0853617	HYUN	2008	Leased from Hen Trucking, Inc.
0853618	HYUN	2008	Leased from Hen Trucking, Inc.
0853619	HYUN	2008	Leased from Hen Trucking, Inc.
0853620	HYUN	2008	Leased from Hen Trucking, Inc.
			Total # of trailers 394
Note: 123 of 394 trailers are leased from Hendrickson Trucking, Inc.			

HENDRICKSON TRUCK LINES, INC. TRACTOR LIST AS OF 1/31/16

Tractor #	Make	Year	License #	Comment
69	FRT	1999	SP67163	Leased from Hen Trucking
151	VOL	2006	UP60404	
152	VOL	2006	UP60405	
153	VOL	2006	UP40596	
154	VOL	2006	UP60406	
156	VOL	2006	UP40597	
159	VOL	2006	UP60408	
162	VOL	2006	UP40599	
164	VOL	2006	UP45380	
165	VOL	2006	UP40610	
166	VOL	2006	UP40611	
170	VOL	2006	UP45405	
171	VOL	2006	UP45406	
180	VOL	2006	UP40705	
184	VOL	2006	UP40706	
185	VOL	2006	UP40707	
186	VOL	2006	UP40708	
187	VOL	2006	UP40709	
189	VOL	2006	UP40715	
190	VOL	2006	UP40680	
191	VOL	2006	UP40716	
193	VOL	2006	UP40718	
195	VOL	2006	UP40733	
197	VOL	2006	UP40735	
198	VOL	2006	UP40736	
199	VOL	2006	UP40739	
200	VOL	2006	UP40740	
201	VOL	2006	UP40741	
204	VOL	2006	UP45424	
209	VOL	2006	UP45556	
211	VOL	2006	UP45425	
212	VOL	2006	UP45426	
213	VOL	2006	UP45561	
214	VOL	2006	UP45562	
215	VOL	2006	UP45563	
216	VOL	2006	UP45564	
220	VOL	2006	UP45576	
221	VOL	2006	UP45577	
222	VOL	2006	UP45578	
224	VOL	2006	WP15985	
228	PET	2007	WP45471	Leased from Hen Trucking
299	KW	2012	22365060	Leased from Hen Trucking

300	KW	2012	22365052	Leased from Hen Trucking
301	KW	2012	22365061	Leased from Hen Trucking
302	KW	2012	22365062	Leased from Hen Trucking
303	KW	2012	22365063	Leased from Hen Trucking
304	KW	2012	22365064	Leased from Hen Trucking
305	KW	2012	22365053	Leased from Hen Trucking
306	KW	2012	22365065	Leased from Hen Trucking
308	KW	2012	22365041	Leased from Hen Trucking
309	KW	2012	22365042	Leased from Hen Trucking
310	KW	2012	22365043	Leased from Hen Trucking
311	KW	2012	22365054	Leased from Hen Trucking
312	KW	2012	22365055	Leased from Hen Trucking
313	KW	2012	22365044	Leased from Hen Trucking
314	KW	2012	22365056	Leased from Hen Trucking
315	KW	2012	22365066	Leased from Hen Trucking
316	KW	2012	22365046	Leased from Hen Trucking
317	KW	2012	22365047	Leased from Hen Trucking
318	KW	2012	22365050	Leased from Hen Trucking
319	KW	2012	22365051	Leased from Hen Trucking
320	INT	2015	UP12456	
321	INT	2015	WP50196	
322	INT	2015	WP50201	
323	INT	2015	WP50197	
324	INT	2015	WP50198	
325	INT	2015	WP50199	
326	INT	2015	WP50202	
327	INT	2015	WP50203	
328	INT	2015	WP50204	
329	INT	2015	WP50205	
330	INT	2015	WP53418	
331	INT	2015	WP53419	
332	INT	2015	WP53420	
333	INT	2015	WP53421	
334	INT	2015	WP53422	
335	INT	2015	WP56923	
336	INT	2015	WP56924	
337	INT	2015	WP56925	
338	INT	2015	WP56926	
339	INT	2015	WP56927	
340	INT	2016	WP58117	
341	INT	2016	WP58118	
342	INT	2016	WP58119	
343	INT	2016	WP58120	
344	INT	2016	WP58121	
345	INT	2016	WP60375	
347	INT	2016	WP60378	
348	INT	2016	WP60379	

349	INT	2016	WP60380	
350	INT	2016	WP61725	
351	INT	2016	WP62456	
353	INT	2016	WP62458	
354	INT	2016	WP62459	
355	INT	2016	WP63293	
356	INT	2016	WP63288	
357	INT	2016	WP63290	
358	INT	2016	WP63289	
359	INT	2016	WP63287	
360	INT	2016	WP66382	
361	INT	2016	WP67692	
362	INT	2016	WP66383	
363	INT	2016	WP66384	
364	INT	2016	WP65183	
365	INT	2016	WP65184	
366	INT	2016	WP65185	
367	INT	2016	WP65186	
368	INT	2016	WP65291	
369	INT	2016	WP63292	
370	INT	2016	WP68334	
371	INT	2016	WP37694	
372	INT	2016	WP67696	
373	INT	2016	WP67693	
374	INT	2016	WP67695	
375	INT	2016	WP67697	
376	INT	2016	WP68336	
377	INT	2016	WP68335	
378	INT	2016	WP68337	
379	INT	2016	WP68338	
116	PET	2001	WP31668	
L240	PET	2010	WP52234	
L241	FRT	2010	WP60273	

Total tractors	122
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Note: 22 of 122 tractors are leased from Hendrickson Trucking, Inc.

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Exhibit D

Unsecured creditor claims:								
AIG Property Casualty	Alleged breach of contract - workers comp	POC No. 26 (disputed)	864,365.00	None	None			
American Recovery Service	Deficiency balance of returned trucks		37,500.00	10% settlement	3,750.00			
Anthony Herrera	Truck accident claim		9,500.00	10% settlement	950.00			
Bobby Murphy	Owner operator wages claim	POC No. 37	274,800.13	10% settlement	27,480.01			
CA State Fund	Outdated workers comp premium		32,400.00	10% settlement	3,240.00			
China Manufacturers Alliance	Truck tires		40,739.00	10% settlement	4,073.90			
China Manufacturers Alliance	Judgment lien		10,902.81	10% settlement	1,090.28			
Commerce & Industry Insurance	Alleged breach of contract, AIG	POC No. 16 (withdrawn)	-	None	None			
Curtis Allen	Owner operator wages claim	POC No. 29	126,737.00	10% settlement	12,673.70			
Daimler Chrysler Financial	Deficiency balance of returned trucks		470,977.00	10% settlement	47,097.70			
Daniel Moren	Owner operator wages claim	POC No. 2	10,345.72	10% settlement	1,034.57			
Doug Christen Hauling	Judgment for damages		12,686.00	10% settlement	1,268.60			
EBC Asset Investment, Inc.	Class 5 unsecured portion of claim	POC. No. 45	71,537.00	10% settlement	7,153.70			
Gabriel Goodheart	Truck accident claim		3,700.00	10% settlement	370.00			
Henry Christian	Claims	POC No. 1	25,207.23	10% settlement	2,520.72			
Joe Moya	Owner operator wages claim	POC No. 35	99,509.79	10% settlement	9,950.98			
Juan Gonzalez	Owner operator wages claim		38,067.84	10% settlement	3,806.78			
Lemuel Kinney Jr	Owner operator wages claim	POC No. 33	202,351.22	10% settlement	20,235.12			
Liberty Mutual Insurance	Workers comp premium	(disputed)	61,389.00	None	None			
Martin Trujillo	Owner operator wages claim	POC No. 40	87,532.56	10% settlement	8,753.26			
Michael Clark	IT manager overtime claim	POC No. 18	54,715.00	10% settlement	5,471.50			
Michael Schuman	Owner operator wages claim		3,094.80	10% settlement	309.48			
Michael Thomas	Owner operator wages claim	POC No. 39	164,985.29	10% settlement	16,498.53			
Mitel Net Solutions	Disputed phone charges & services	POC No. 27	13,701.53	10% settlement	1,370.15			
Murad Mubarak	Owner operator wages claim	POC No. 36	139,116.82	10% settlement	13,911.68			

Norman Koval	Owner operator wages claim	POC No. 34	75,310.07	10% settlement	7,531.01
Pilot Travel Centers	Truck fuel	POC No. 9	1,378,357.36	None	None
PJC Logistics	Patent infringement claim	Contingent, no claim	-	None	None
Regina Lewis	Owner operator wages claim	Contingent, no claim	-	None	None
Ricardo Allen	Owner operator wages claim	POC No. 8	104,122.00	10% settlement	10,412.20
Ruben Trujillo	Owner operator wages claim	POC No. 41	227,119.09	10% settlement	22,711.91
Sacramento County	Property taxes		3,529.57	10% settlement	352.96
Shawn Ayers	Owner operator wages claim	POC No. 30	72,401.23	10% settlement	7,240.12
Todd Bazurto	Owner operator wages claim	POC No. 31	180,756.05	10% settlement	18,075.61
Timothy Cano	Owner operator wages claim	POC No. 32	109,570.74	10% settlement	10,957.07
Transvantage Solutions	Chapter 7 trustee freight payment claim	POC No. 3 (withdrawn)	-	None	None
Vincent Myles	Owner operator wages claim	POC No. 38	125,559.31	10% settlement	12,555.93
American Express Travel	Account settled and paid off	POC. No 19 (disputed)	73,428.17	None	None
Great American Financial	Unknown claim, covered by ins	POC No. 22	24,576.32	None	None
Patricia Beary	Unkown claim	POC No. 24 (withdrawn)	-	None	None
	Total unsecured claims		5,230,590.65		282,847.48