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GONZALO CHIRINO, FELIX D. JAY, ANDREW ANKLE, GARY JOSEPHS, RENE CAMPBELL, ASTON HEMLEY, and MARYAN VASYUTA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

PROUD 2 HAUL, INC., et al.,

Defendants, and

TRUCKING SUPPORT SERVICES, LLC, d/b/a CONTRACTOR RESOURCE SOLUTIONS, LLC,

Interested Party.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY

DOCKET NO. HUD-L-6191-11

Class Action

Civil Action

ORDER GRANTING PARTIAL SUMMARY JUDGEMENT

This matter, having been opened to the Court by application of David Tykulsker & Associates, Class Counsel and attorneys for Plaintiffs, for entry of partial summary judgment declaring that defendant PH is in violation of 49 C.F.R. § 376.12(a) and seeking additional declaratory relief, and the Court having considered the moving papers, the opposition that has been filed, and all other relevant matters of record, and good cause appearing,

IT IS this 20 Day of ~~November~~ December, 2013, **ORDERED and ADJUDGED** that

1. Plaintiffs' application for Partial Summary Judgment be and hereby is granted as against defendants Proud 2 Haul, Inc. and Ivana Koprowski (collectively "defendants"), jointly and severally.

2. Defendants are declared to have been in violation of 49 C.F.R. § 376.12(a) as of May 27, 2012, by failing to have in place a written lease agreement with each owner-operator.

3. Pursuant to N.J.S.A. 2A:16-60, defendants shall show cause why further declaratory relief to declare that

   a. The Current Lease which defendants were utilizing as of November 18, 2010 is declared to have continued in effect for all owner-operators providing services to PH to date;

   b. and further requiring defendants to cooperate with plaintiffs' supplemental discovery quantifying the resultant damages, including but not limited to any deductions for fuel tax so as to allow plaintiffs to file their motion for summary judgment quantifying the resultant damages within forty-five (45) days of the return date of this Order to Show Cause.

4. Defendants shall file any and serve papers within seven (7) days of service of this Order; plaintiffs shall file and serve any response within seven (7) days of the service of defendants papers. The parties shall appear before the undersigned on _____, 2013, at ____ _____ o'clock to present any oral argument they may have.

5. Plaintiffs are deemed entitled to their reasonable attorney's fees and costs for the relief obtained herein. Plaintiffs shall File their motion so that it is returnable withhold filing any motion for attorney's fees and costs until No later than January 31, 2014. The same motion shall quantify Damages determination of the instant Order to Show Cause and the resolution of plaintiffs' anticipated as calculated by the Brinker Court. motion for summary judgment quantifying the damages.

6. Interested Party Trucking Support Services, LLC d/b/a Contractor Resource Solutions, LLC ("TSS"), having advised the Court that it has no further interest in the proceedings herein so long as no relief is entered against it, and as no relief is being entered against it nor do

plaintiffs contemplate seeking any relief against it, TSS is hereby dismissed with prejudice from any further proceedings in this matter.

L. Maron

Hon. LAWRENCE M. MARON, J.S.C.

For the Reasons Set Forth in the Attached Findings of Fact and Conclusions of Law.

Request to Dismiss TSS is not properly before the Court as TSS is not a named party, but is only an "interested party".

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Chirino v. Proud 2 Haul, Inc.

Docket: L-6191-11

Motion Returnable:12/6/13

Relief Requested: Summary Judgment

FACTS

Relevant Background Facts

- This is a class action lawsuit. The Class includes owner-operators of trucks who were in a business relationship with Proud 2 Haul, Inc., (P2H), a federally licensed motor carrier.
- This case stems from various allegations concerning a contract/lease that existed between Plaintiffs and Defendant from November 19, 2010 through May 26, 2012. It also concerns contracts between Trucking Support Services (TSS) and members of the Class after May 26, 2012.
- Under the terms of the contract between TSS and P2H that commenced on May 26, 2012, certain equipment and services are leased from TSS to P2H.
    - Documents submitted by P2H in opposition to this motion state that the purpose of the contractual agreement between P2H and TSS is to preserve the status of owner-operators (the Class members/Plaintiffs) as independent contractors, rather than employees.
- TSS entered into contracts with members of the Class.
- When the TSS contracts began, in May of 2012, P2H stopped providing workers' compensation insurance to the Class members.
- TSS does not provide workers' compensation insurance to the Class members.

Prior Relevant Proceedings

- On August 23, 2013, after a lengthy requested adjournment and numerous submissions, this Court heard oral argument on a motion for summary judgment filed by the Class. That motion asked that the Court do the following: 1) Declare null and void Defendants' contracting scheme with TSS upon the basis that it is an attempt to circumvent the Truth-in-Leasing Regulations (TIL Regulations) because TSS is not a regulated motor carrier and therefore is not subject to the Federal Motor Carrier Act ("FMCA"); 2) Find that the Defendants failed to pay the fuel tax as required under the lease agreement and in violation of the TIL Regulations; and, 3) Find that Defendants breached their contract/lease with the class members for failing to pay the fuel tax.

- Defendants filed a cross-motion, seeking to de-certify the class with regard to the fuel-tax issue. Defendants' cross-motion was subsequently withdrawn at oral argument.
- Oral Argument was not completed on August 23, 2013. In the interest of justice, the Court scheduled additional oral argument on August 27, 2013.
- On August 30, 2013, the Court sent the parties its written opinion, with accompanying Orders.
    - The Court's Order stated that Defendants violated the Truth in Leasing Regulations. The Court found that Defendants breached their contract with the members of the class by not paying fuel taxes as provided in the contract. The Court, pursuant to 49 U.S.C. § 14704 (e), awarded attorney's fees, which were quantified in a later motion, due to the violation of the TIL Regulations, which mandate strict compliance with the required terms of a written lease.
    - The August 30, 2013 Order and Opinion denied Plaintiff's request for declaratory relief, without prejudice, pending the addition of TSS as an interested party.

Procedural Facts Relevant to the Current Motion

- The current motion is a renewed motion for summary judgment as to the declaratory relief that was denied, without prejudice, on August 30, 2013.
- Plaintiff continues to seek a declaration that P2H violated the TIL regulations by not having a written lease in effect between itself the Class members after June, 2012.
- TSS has, since, been added as an interested party.
- TSS submitted a brief on the issue presently before the Court.

THE CLASS' ARGUMENT

- The Class argues that the TSS-Class member leases, if P2H intended them to be the only leases governing their relationship with the drivers, are enough to establish a violation of the FMCA and TIL Regulations.
    - The TIL Regulations state that the lease "shall" be between the registered carrier and the owner operator. Use of the word "shall" indicates a mandatory provision. The TSS-Class member leases do not satisfy that requirement as TSS is not a registered motor carrier.
- P2H is trying to contract its way around federal regulations, which the Court should deem a violation of public policy.
- The Court could reinstate the last lease between P2H and the Class members.
    - However, this would bind individuals to a lease which some class member may not have seen or signed and that P2H believes to have been canceled.
- The Court could, in the alternative, order that Defendants violated the TIL Regulations by failing to have a written lease in place and that all deductions from the Class members' pay was inappropriate.

- The Class members are third-party beneficiaries to the TSS-P2H contract and could enforce that agreement against P2H.

DEFENDANTS' ARGUMENT

- TSS' representations about its services are false. P2H would not have entered into a contract with TSS if it did not believe that TSS was providing services in compliance with the FMCA and TIL Regulations and serving as an intermediary between P2H and the class members so as to ensure they were classified as independent contractors.
- The express language of the P2H-TSS contract indicates that TSS is subleasing all equipment and drivers to P2H and the argument that P2H could make a contract for the exact same services is against the language of that contract.
- Plaintiff's motion cannot be granted because it is based on TSS' misrepresentation of its business model.
- Because TSS will not defend its business model, it "will need to be drawn into this litigation before this particular issue will be decided."
- The P2H-Class member leases from November 2010 should not be reinstated as the leases were terminated with the signing of the TSS-Class member leases in 2012.
    - Reinstating that lease would serve to extend the dates from which Plaintiffs could claim fuel taxes.
    - If a lease must be applied, which P2H asserts should not be done, P2H argues that it should be allowed to adopt the TSS-Class member leases.

TSS' ARGUMENT

- No relief can be awarded against TSS because TSS is not a party to the litigation.
- TSS' contracts are not regulated by the FMCA or TIL Regulations because TSS is not a motor carrier.
- TSS' contracts with P2H and the Class members run parallel to the requirements of the FMCA and TIL regulations. TSS' contracts are not meant to replace the contracts between P2H and the class members.
- TSS simply provides administrative services and acts as a conduit for financial transactions.

CLASS' REPLY

- Defendants do not challenge the quantum of damages.
- Defendants cannot assert an "advice" defense.
- Defendant's testimony contradicts her arguments.
- An injunction should be issued to require P2H to conform to the TIL Regulations.

ANALYSIS

The standard for summary judgment is set forth in R. 4:46-2, and has been clarified by the New Jersey Supreme Court in Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520 (1995). An order for summary judgment "shall be rendered if the pleadings...show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill, the New Jersey Supreme Court held that:

> Whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the non-moving party.

Brill, 142 N.J. at 540. On a motion for summary judgment, the judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Id.

It is well settled that "a trial court should not grant summary judgment when the matter is not ripe for such consideration, such as when discovery has not yet been completed. See, Salomon v. Eli Lilly & Co., 98 N.J. 58 (1984). The court should afford "every litigant who has a bona fide cause of action or defense the opportunity for full exposure of his case." Oslacky v. Borough of River Edge, 319 N.J.Super. 79, 87(App.Div.1999) (quoting Velantzas v. Colgate-Palmolive Co. Inc., 109 N.J. 189, 193 (1988)).

However, if a motion for summary judgment is made during discovery, and the incompleteness of discovery is raised as a defense that party must establish that there is a likelihood that further discovery would supply the necessary information. J. Josephson, Inc. v. Crum & Forster Insurance Company, 293 N. J. Super. 170, 204 (App. Div. 1996) (citing Auster v. Kinoian, 153 N.J. Super. 52 (App.Div. 1977)).

Summary judgment should not be granted where adjudication of such motion would constitute what essentially results in a trial by affidavits on issue of fact. Shanley & Fischer, P.C. v. Sissleman, 251 N.J. Super. 200 (App. Div. 1987).

I. Declaratory Judgment and Applicable Federal Law

Plaintiffs request that the Court exercise its power pursuant to N.J.S.A. 2A:16-53, the Declaratory Judgment Act, and declare that P2H violated the FMCA and the TIL Regulations by not having a written lease in effect with the Class members after June, 2012. Plaintiffs assert that they do not ask that the Court invalidate any contract with TSS. No party asserts in their motion that it would be improper for the Court to issue such a judgment pursuant to the Declaratory Judgment Act.

"Under the statutory framework of Title 49, motor carriers engaging in interstate transportation must register with the Secretary of Transportation to receive operating authority and then must comply with regulations promulgated by the Secretary. 49 U.S.C. §§ 13901–2, 14102. These regulations include the federal Truth-in-Leasing Regulations, which govern the agreements between motor carriers and the independent owner-operators of trucks who are hired by the carriers to transport goods. 49 C.F.R. §§ 376.1, et. seq. A person aggrieved by a motor carrier's non-compliance with the statutory and regulatory regime created by Title 49 may seek damages and equitable relief under 49 U.S.C. § 14704." Port Drivers Fed'n 18, Inc. v. All Saints Exp., Inc., 757 F. Supp. 2d 443, 448 (D.N.J. 2010).

More specifically, if a carrier uses a motor vehicle it does not own to transport the property of a third party, then the motor carrier is required to (1) make the arrangement in a writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier; (2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect; (3) inspect the motor vehicle and obtain liability and cargo insurance on it; and (4) have control of and be responsible for operating those motor vehicles in compliance with applicable safety statutes and regulations as if the motor vehicle were owned by the motor carrier. 49 U.S.C.A. § 14102.

"Once the carriers are registered, [they] are statutorily obliged to comply with certain regulations promulgated by the DOT." Owner-Operator Indep. Drivers Ass'n v. Swift Transp. Co., 367 F.3d 1108, 1110 (9th Cir. 2004). "A primary goal of this regulatory scheme is to prevent large carriers from taking advantage of individual owner-operators due to their weak bargaining position." Ibid.

A private cause of action exists to enforce the TIL Regulations via the Motor Carrier Act. 49 U.S.C. § 14704(a); Swift, 367 F.3d at 1114 ("A person injured because a carrier [violates the Truth-in-Leasing regulations] may bring a civil action to enforce [the regulations].").

Here, Plaintiffs argue that strict compliance is required with respect to the TIL Regulations. The Court agrees. Thus, because the statute requires that a written lease shall be made between the authorized carrier and the owner of the equipment, 49 C.F.R. § 376.12, P2H, is the only entity that can have a lease agreement with the Class members. The Court finds and declares that P2H violated the FMCA and TIL Regulations by not having a written lease in effect with the class members after June, 2012.

II. TSS' Role in this Litigation

TSS argues that the Court should not, and cannot, invalidate its contracts at this time. TSS contends that the Court could not invalidate the contracts because it is not a party to the case and doing so, at this point, would be an inappropriate adjudication of the rights of a non-party. The Court agrees. TSS is named as an "interested party" solely to put it on notice of the potential action concerning its contracts and to permit it to make an argument concerning the relief requested. It is neither a plaintiff nor a defendant. No third-party claims as to TSS are currently asserted. Adjudicating the rights of an entity that is not currently a party to the litigation and which has not had the benefit of discovery would be inappropriate. See R. 4:28-1 (a). Accordingly, at any point, if the Court's decision on this motion would necessitate an adjudication of the rights of TSS, no decision must be made and that portion of this motion must be denied.

III. Was there a violation of the TIL Regulations by P2H?

In the instant matter, there is a violation of the TIL Regulations. 49 C.F.R. § 367.12 mandates that a written lease agreements shall exist between the owner-operator and the licensed motor carrier. Here, no such lease agreement exists.

P2H contracted with TSS, which, in turn, contracted with the Class members. P2H is a licensed motor carrier. TSS is not a licensed motor carrier. The question of whether TSS is, or should be considered to be a motor carrier is, for purposes of this motion, irrelevant since they

are certainly not licensed as such. Accordingly, the only "written lease" that currently exists is between an unregulated entity (TSS) and the Class members. In turn, there is a "Master Equipment Lease and Service Agreement" between P2H and TSS. However, no direct relationship exists between the Class members and P2H. P2H reaped the benefits of a relationship with the Class members through its contract with TSS, in contravention of the TIL Regulations.

No other contract remains viable under which P2H could claim that it has complied with the TIL Regulations. P2H asserts that the contract between itself and the Class members was terminated as of the signing of the TSS-Class member agreements. In fact, that is a key element in Defendants argument against the "revival" of the P2H-Class member leases. P2H unquestionably intended to have no contractual relationship between itself and the members of the class. See, generally, Koprowski Cert. The goal of the entire TSS relationship, according to P2H, was to make TSS the only party with a contractual relationship to the Class members. Therefore, as of the effective dates of those contracts, P2H essentially admits that it began violating the TIL Regulations by not having a lease in place between itself, the regulated carrier, and the owner-operators with whom it did business.

Accordingly, the Court finds that P2H violated the TIL Regulations by not having in place a written contract that satisfied the TIL Regulations.

IV. The TSS Contracts

It is inescapable that the Court cannot determine the validity of the TSS contracts without adjudicating TSS' rights. Therefore, the Court would be required to deny summary judgment if it found that a determination as to the validity of the TSS contracts is required to dispose of an issue on this motion.

In their initial motion for summary judgment, Plaintiffs asserted that the TSS contract should be invalidated and a former contract revived and applied against Defendants. P2H opposed, at that time, because TSS was not a party to the case. With regard to the present motion, Defendants continue to oppose based on TSS' status. Additionally, Defendants take issue with reviving the lease, as they believe this would only be done to permit additional fuel tax claims.

Plaintiffs now assert that they no longer ask the Court to evaluate the validity of the TSS contracts. Plaintiffs maintain, consistent with the position of TSS, that the TSS contract with the Class members exists parallel to the contract that is required to be operational, but is non-existent, between the Class members and P2H. Specifically, TSS and Plaintiffs point to paragraph 9 of the TSS-P2H agreement, which expressly states:

> MOTOR CARRIER understands and agrees that it will be solely responsible for dispatching the OWNER OPERATORS and Equipment. MOTOR CARRIER represents and warrants that it shall comply with the Federal Leasing Regulations with respect to Owner Operators provided to Motor Carrier that have elected CRS settlement processing and related services.

Defendants, in response, argue that the TSS contract does not exist parallel to the P2H-Class member contracts and that the TSS contracts must be terminated for Plaintiffs to prevail. P2H asserts that TSS, according to its brochure, is intended to serve as an intermediary between P2H and the Class members, not a financial conduit. Ms. Koprowski certifies that the brochure states TSS operates in compliance with the FMCA and TIL Regulations so as to insulate the carrier from potential litigation involving owner-operators claiming employee status. Ms. Koprowski further certifies that P2H would not have entered into a contract with TSS solely for check processing services. Ms. Koprowski maintains that P2H entered into a relationship with TSS because of the service TSS alleged that it provided; namely, TSS asserted that it insulated carriers from being classified as "employers" of the owner-operators.

Defendants' arguments regarding the inducement to enter a relationship with TSS and what that relationship would provide has no bearing on this motion. Moreover, the intent of TSS and P2H regarding TSS' responsibility for ensuring compliance with the TIL Regulations and FMCA is, presently, of no moment. Those issues are solely between TSS and Defendants and do not weigh on the question that now concerns the Court.

The question that next concerns the Court is raised by Defendants in opposition to this motion. That question is whether the TSS contracts must be invalidated to afford the relief Plaintiffs request. The Court finds that it need not determine the validity of the TSS contracts; the Court is merely asked to determine whether their invalidation would be required to afford Plaintiffs relief under the TIL Regulations.

The Court finds that there is no reason the TSS contracts would need to be invalidated to afford Plaintiffs relief. The only question that bears on establishing a violation of the TIL Regulations is whether Plaintiffs and P2H have a written lease from June 2012 through the present date. The Court, as stated in section II, supra, has already determined that no such lease exists. P2H cannot assert that its contract with TSS substantially complies with the regulations because strict compliance is mandated. All Saints, supra, 757 F. Supp. 2d at 451.

Therefore, no determination needs to be made at this time regarding the validity of the TSS agreements or what the content of the TSS agreements were. The uncontested facts in the motion record support only one finding: there was no written lease between P2H and the Class members once P2H began relying on the TSS-Class member contracts in 2012.

V. Damages

The parties agree that the P2H-Class member leases that were in operation through May, 2012 are now no longer in force. Moreover, as Plaintiffs argue, there are Class members who have never seen or signed those leases.

No legal authority is provided to support the assertion that the Court could "revive" the P2H-Class member leases or that it could impose them on any individual, whether formerly a party or not, after their termination. Plaintiffs suggest the idea, seemingly, only to argue against it as a viable option. Plaintiffs argue that such a result would violate the intent of the TIL Regulations by depriving the Class members of notice of what charges would be deducted from their pay. See Pla's Br. at 14 (citing Owner-Operator Indep. Drivers Ass'n v. Swift Transp. Co., 632 F.3d 1111, 1118). Defendants assert only that the P2H-Class member lease cannot be substituted for the TSS-Class member leases unless those leases are declared invalid.

Additionally, no legal authority is provided to support the issue of whether the Court could permit P2H to "adopt" the TSS-Class member leases. Defendants suggest the idea, but provide no legal support for their recommendation. Such an adoption may run afoul of All Saints, supra, where the court determined that substantial compliance with the TIL Regulations is not sufficient, because it would permit the motor carrier to adopt the contract it alleged "substantially complied" to avoid paying greater damages.

In the alternative to "reviving" a lease, or permitting Defendants to "adopt" a lease, Plaintiffs urge the Court to declare that they are entitled to damages in the amount of all charges withheld after May, 2012 since there was no lease in violation of the TIL Regulations. Plaintiffs, for support, cited Brinker v. Namcheck, 577 F. Supp. 2d 1052 (W.D. Wisc. 2008) (finding that the motor carrier is liable for any expense they fail to specify is to be paid by the owner-operator). Plaintiffs also assert that quantifying the damages in this way will provide a greater deterrent carriers considering circumventing the TIL regulations and spur Defendants to correct the defects in their practices.

Defendants did not address Brinker in their Brief. In fact, Defendants arguments did not address the quantum of damages or how damages should be calculated.

Due to the lack of briefing, the Court permitted counsel for all parties, at oral argument, to place their arguments regarding damages on the record.

Based on the arguments presented at oral argument, the Court finds that the methodology followed by the court in Brinker is the appropriate means to quantify damages. Plaintiffs shall submit a motion, returnable no later than January 31, 2014 quantifying the damages herein awarded.

VI. Permanent Injunction

In their reply brief, for the first time, Plaintiffs requested a permanent injunction. Plaintiffs allege that "it is pellucidly clear that defendant [P2H] will persist in disregarding the TIL Regulations, even with the entry of additional monetary judgments."

Defendants, because this issue was raised in reply, did not have the opportunity to address this issue in their moving papers.

At oral argument Plaintiff's counsel indicated that there was "no indication" that violation of the TIL Regulations would cease. Defendant's counsel indicated that Defendant did not, and would not, willfully violate the TIL Regulations and that Ms. Koprowski would execute a certification stating that she would come into compliance with the TIL Regulations.

Plaintiff's counsel then argued "It is not like they have submitted an affidavit that says 'if your honor makes this declaration we will be in compliance within thirty days.'" He also argued that if the certification stated Proud 2 Haul was in compliance and had would remain in compliance it would be the "virtual equivalent" of the relief requested.

Defendant's counsel indicated that the certification would state "we will not" engage in interstate commerce without coming into compliance with the TIL Regulations.

The Court withheld decision on this motion to give counsel an opportunity to confer and submit a certification. The parties indicated they would communicate. After several phone calls from the Court, which made it apparent the parties had not communicated, the Court again requested that the parties reach out to one another and make an effort to resolve the issue by way of certification. The Court received the certification, via facsimilie, on December 18, 2013.

Paragraph one of the certification of Ivana Koprowski states "I have never willfully or intentionally violated the federal Truth-In-Leasing ("TIL") Regulations." Ms. Koprowski further certifies in paragraphs 3 and 4 that Defendant is drawing up new leases for all drivers assigned to interstate routes and that "As of January 1, 2014, Proud 2 Haul, Inc. will not engage, utilize, or assign any drivers to perform any interstate deliveries unless such driver has signed a Lease agreement. . .that conforms to and does not violate any provision of the TIL Regulations . . . ."

Plaintiff argues that a prospective injunction is still required, even in light of this certification. Plaintiff alleges bad faith and dishonesty with the Court, in addition to other factors, demonstrates grounds for an injunction. The Court disagrees and will not opine on the issue of whether there has been any dishonesty to date, as such an issue is not properly before the Court. Plaintiff's certification is sufficient to grant the "virtual equivalent" of the relief requested by Plaintiffs, which was an injunction requiring Defendants to come into compliance and remain in compliance with the TIL Regulations.

Because the Court finds that the certification is sufficient to grant relief virtually equivalent to that which Plaintiff requested, Plaintiff's request for a permanent injunction is now moot.

VII. Attorney's Fees

Plaintiffs seek attorney's fees pursuant to 49 U.S.C. § 14704 (e), which provides a district court shall award attorney's fees for a party that is injured due to a violation of the Truth-in-Leasing Regulations.

In accordance with the statute, the Court GRANTS the award of attorney's fees. Plaintiffs shall request attorney's fees in their motion to quantify damages. That motion is to be filed within twenty (20) days of the Order. The motion will be returnable January 17, 2014.

CONCLUSION

Plaintiffs' motion for summary judgment is GRANTED. Defendants violated the TIL Regulations by not having a written lease in effect between themselves and the Class members from June 2012 to the present day. Nothing in this opinion is to be construed as an adjudication or finding as to the rights of TSS or the validity of any contract entered into by TSS.

As to the issue of damages, the quantum of damages will be determined in a motion filed within 20 days of the date of this Order. Damages are to be assessed, as in Brinker, by totaling all deductions taken from Plaintiffs during the time when there was no lease in effect between Plaintiffs and P2H. That motion shall be returnable no later than January 31, 2014.

Plaintiffs' request for a permanent injunction is DENIED as moot.

Plaintiffs' request for attorney's fees is GRANTED. Fees shall be quantified in the motion assessing damages. The proofs, including an affidavit of services, shall comply with the requirements of the Rules of Court and shall clearly redact any fees already awarded.