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Attorneys for Plaintiffs
Cosmo Losco, MaryAnne Losco, and CD Losco, LLC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COSMO LOSCO, MARYANNE LOSCO, and CD)
LOSCO, LLC,)

Plaintiffs,)

v.)

ROBERT F. POWELSON, Chairman of the Pennsylvania)
Public Utilities Commission; JOHN F. COLEMAN, JR.,)
Vice-Chairman of the Pennsylvania Public Utilities)
Commission; JAMES H. CAWLEY, PAMELA A.)
WITMER, GLADYS M. BROWN, Commissioners of the)
Pennsylvania Public Utilities Commission; JAN H.)
FREEMAN, Executive Director of the Pennsylvania)
Public Utilities Commission, all in their official capacities;)

Defendants.)

Civil Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
[42 U.S.C. § 1983]**

INTRODUCTION

1. This lawsuit seeks to vindicate Cosmo and MaryAnne Losco’s constitutional right to earn a living at an occupation of their choice without unreasonable government interference. That right is guaranteed to them by the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment.

2. After years of working for others, the Loscos decided that they would like to start their own business. Cosmo Losco founded CD Losco, LLC, a limited liability company based in the Philadelphia suburb of Telford. CD Losco, LLC, then purchased two franchises—a moving franchise and a junk-hauling franchise—with the intent to operate both as a moving business. MaryAnne Losco serves as the business manager.

3. Unfortunately, Pennsylvania law effectively forbids a person from operating a moving company without getting permission from his or her own competition. That law requires the Loscos to get a Certificate of Public Convenience (CPC) from the Pennsylvania Public Utilities Commission (PUC) in order to operate a moving company. Operating without a CPC is a crime. 66 Pa. C.S.A. § 3310. But to obtain a CPC, the Loscos must undergo the following arbitrary and irrational licensing procedure.

4. First, the PUC notifies Pennsylvania’s existing moving companies of the application for a new CPC, and invites the existing businesses to file “protests” against the issuing of a new CPC. If a protest is filed, the Loscos’ application will be delayed for 20 days to encourage them to request a smaller radius of operation, wherein they will not compete economically against existing businesses. Finally, if this does not occur, the Loscos must participate in a hearing before the PUC—an expensive and time-consuming process requiring them to hire a lawyer—where they must prove to the PUC’s satisfaction that “the granting of such certificate is necessary or proper for the

service, accommodation, convenience, or safety of the public.” 66 Pa. C.S.A. § 1103(a); 52 Pa. Code § 3.381. The terms “necessary,” “proper,” “convenience,” are not defined in any statute, regulation, or other controlling legal authority in Pennsylvania.

5. The CPC laws challenged here therefore create an arbitrary and irrational “Competitor’s Veto” which allows existing moving companies to veto their own competition. The challenged laws—specifically, the application, protest, and hearing procedure and the CPC criteria described in 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, deprive the Loscos of their constitutionally protected liberty to earn a living, without any rational connection to the protection of the public health, safety, or welfare. Instead, this Competitor’s Veto blocks them from earning a living in the occupation of their choice, for the sole and explicit purpose of protecting a discrete economic group—established moving companies—against legitimate economic competition.

6. Plaintiffs seek to exercise their constitutionally protected right to earn a living without being first subject to this arbitrary and discriminatory Competitor’s Veto procedure established by state law. They request a declaratory judgment that the challenged laws and policies are invalid, unenforceable, and void; permanent injunctions against any further enforcement of the challenged laws, or implementation of any similar policy by the Defendants; and reasonable attorney fees, pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

7. Plaintiffs allege, pursuant to 42 U.S.C. § 1983, the deprivation of rights secured by the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment. Jurisdiction over their claims for declaratory and injunctive relief is vested in this Court by 28 U.S.C. §§ 1331, 2201, 2202.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that some or all of the conduct at issue took place in, and some or all of the Defendants reside in, the Eastern District of Pennsylvania.

PARTIES

Plaintiffs

9. Plaintiffs Cosmo and MaryAnne Losco are United States citizens and residents of Telford, Pennsylvania. Cosmo worked for seven years as Director of Operations for a medical device manufacturer, and MaryAnne, his wife, worked for 16 years as a human resources manager for various businesses until they decided in 2014 that they would like to start a business of their own.

10. In January, 2015, the Loscos founded Plaintiff CD Losco, LLC. Cosmo serves as managing director of CD Losco, LLC.

11. CD Losco, LLC, is a limited liability company organized under Pennsylvania law. In 2015, CD Losco, LLC, purchased a franchise of College Hunks Hauling Junk and a franchise of College Hunks Moving, both franchises of a national chain of hauling and moving operators. CD Losco, LLC, does not hold a CPC for moving household goods in use as specified in 66 Pa. C.S.A. § 1102., *et seq.*

Defendants

12. Defendant Robert F. Powelson is the Chairman of the PUC. Plaintiffs are informed and believe, and on that basis allege, that Mr. Powelson, in his official capacity, implements and enforces, and is authorized to adopt any rules and establish any policy to implement and enforce, the CPC requirement and the hearing procedure set forth in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.* In all of his actions and omissions alleged herein, Mr. Powelson was acting

under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

13. Defendant John F. Coleman, Jr., is the Vice-Chairman of the PUC. Plaintiffs are informed and believe, and on that basis allege, that Mr. Coleman, in his official capacity, implements and enforces, and is authorized to adopt any rules and establish any policy to implement and enforce, the CPC requirement and the hearing procedure set forth in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.* In all of his actions and omissions alleged herein, Mr. Coleman was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

14. Defendant James H. Cawley is a Commissioner of the PUC. Plaintiffs are informed and believe, and on that basis allege, that Mr. Cawley, in his official capacity, implements and enforces, and is authorized to adopt any rules and establish any policy to implement and enforce, the CPC requirement and the hearing procedure set forth in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.* In all of his actions and omissions alleged herein, Mr. Cawley was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

15. Defendant Pamela A. Witmer is a Commissioner of the PUC. Plaintiffs are informed and believe, and on that basis allege, that Ms. Witmer, in her official capacity, implements and enforces, and is authorized to adopt any rules and establish any policy to implement and enforce, the CPC requirement and the hearing procedure set forth in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.* In all of her actions and omissions alleged herein, Ms. Witmer was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

16. Defendant Gladys M. Brown is a Commissioner of the PUC. Plaintiffs are informed and believe, and on that basis allege, that Ms. Brown, in her official capacity, implements and enforces, and is authorized to adopt any rules and establish any policy to implement and enforce, the CPC requirement and the hearing procedure set forth in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.* In all of her actions and omissions alleged herein, Ms. Brown was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

17. Defendant Jan H. Freeman is the Executive Director of the PUC. Plaintiffs are informed and believe, and on that basis allege, that Mr. Freeman, in his official capacity, implements and enforces, and is authorized to adopt any rules and establish any policy to implement and enforce, the CPC requirement and the hearing procedure set forth in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.* In all of his actions and omissions alleged herein, Mr. Freeman was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

GENERAL ALLEGATIONS

I

PLAINTIFFS WANT TO START A MOVING COMPANY

18. In January, 2015, Cosmo and MaryAnne Losco, wishing to go into business for themselves, formed CD Losco, LLC, with the intention of starting a household goods moving business and a junk hauling business.

19. In January, 2015, CD Losco, LLC, purchased a franchise of College Hunks Moving, a nationwide moving franchise business, with the intention of operating a moving business in and around the area of Telford, Pennsylvania.

20. The Plaintiffs are competent and qualified to operate a household goods moving business. They have extensive business and management experience. CD Losco, LLC, owns one truck for junk hauling services, and has taken steps toward purchasing a second truck for moving services. Plaintiffs are ready, willing, and able to operate a household goods moving business, to obtain all required insurance policies, and comply with all applicable safety laws. On at least one occasion in April, 2015, Plaintiffs were forced to decline a specific request to provide moving services to a customer, because Plaintiffs do not hold a CPC. The only obstacle that prevents Plaintiffs from entering the household goods moving trade is the CPC requirement specified in 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.*

21. In order to obtain a CPC under 66 Pa. C.S.A. § 1102, *et seq.*, and 52 Pa. Code § 3.381, *et seq.*, the Loscos must—as explained below—demonstrate to PUC that they will not compete with existing moving companies.

II

HOW THE “COMPETITOR’S VETO” WORKS

22. To operate a household goods moving company in Pennsylvania, a person must first hold a CPC. 66 Pa. C.S.A. § 102 (defining movers of household goods as “common carriers”); 66 Pa. C.S.A. § 1102 (all “common carriers” must have a CPC).

23. Pennsylvania law distinguishes between carriers of “household goods in use” and carriers of other property. *See, e.g.*, 52 Pa. Code § 31.1. The household goods moving business that Plaintiffs wish to operate qualifies solely as the former.

24. Operating as a carrier of household goods in use without a CPC is a third-degree misdemeanor punishable by up to a year in jail, and fines of up to \$1,000 per infraction. 66 Pa. C.S.A. § 3310.

25. A person obtains a CPC by filing an application with the PUC. 52 Pa. Code § 3.381.
26. Upon receipt of an application and the payment of the filing fee, the PUC then publishes a notice of the application in the *Pennsylvania Bulletin*. *Id.* § 3.381(b).
27. Within 15 days of the publication of the notice in the *Pennsylvania Bulletin*, any person wishing to object to the issuance of a CPC to the applicant may then file a “protest.” *Id.* §§ 5.201(a); 3.381(c)(1)(i)(A); 3.381(c)(1)(ii). A person filing a protest is referred to as a “protestant.”
28. A protestant is required to specify in the protest, among other things, a statement of his, her, or its “interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant”; an identification of any CPC that the protestant might hold, and “[a] statement of any restrictions to the application which would protect the protestant’s interest, including a concise statement of any amendment which would result in a withdrawal of the protest.” *Id.* § 3.381(c)(1)(i)(A).
29. When a protest is filed, the PUC imposes a 20-day waiting period during which no action may be taken on the application. The reason for this 20-day period is to allow the applicant “to make restrictive amendments [to the application] leading to the withdrawal of protests.” *Id.* §§ 3.381(d)(1)(i); 5.235.
30. When a protest is filed and not withdrawn, the PUC must convene a hearing to determine whether to grant the CPC to the applicant. *Id.* § 3.381(d). The protestant is automatically allowed to participate in that hearing. *Id.* § 3.381(c)(1)(i)(B). If no protest is filed, or if all protests are withdrawn, the PUC may choose to act on the application without a hearing. *Id.* § 3.381(c)(1)(iii).

31. A party organized as a corporation may only appear at a hearing through a licensed attorney. *Id.* §§ 1.21, 1.22.

32. At a hearing, the applicant bears the burden of proof to establish that a CPC should be issued. *Id.* § 41.14(a). For the PUC to issue a CPC, the applicant must prove, *inter alia*,

(A) that the proposed new moving company “is necessary or proper for the service, accommodation, convenience, or safety of the public,” 66 Pa. C.S.A. § 1103(a);

(B) that the proposed new moving company “will serve a useful public purpose, responsive to a public demand or need,” 52 Pa. Code § 41.14(a); and

(C) that “entry of a new carrier into the field” will not “endanger or impair the operations of existing common carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.” *Id.* § 41.14(c).

33. Plaintiffs are informed and believe, and on that basis allege, that no statute, regulation, case law, or other legal authority in Pennsylvania defines the terms “adverse impact,” “necessary or proper,” “endanger or impair,” “contrary to the public interest,” “convenience . . . of the public,” “responsive,” or “useful public purpose.” As a result, persons of ordinary intelligence must guess as to the meanings of these terms.

34. The criteria specified in 52 Pa. Code § 41.14(a) and (c) do not apply to applicants who wish to transport persons instead of household goods in use. *See id.* § 41.14(d). Protests against applicants who wish to transport property other than “household goods in use”—for example, junk haulers—are not received or heard by the PUC. *Id.* §§ 5.51(b); 3.381(c)(2).

35. Plaintiffs are informed and believe, and on that basis allege, that the standards listed in 66 Pa. C.S.A. § 1103 and 52 Pa. Code § 41.14, and the hearing and protest procedure established by Pa. C.S.A. § 1103 and 52 Pa. Code §§ 3.381, 41.14, allow existing household goods moving

companies to prevent and deter applicants from entering into the business of a mover of household goods for use, by imposing on applicants a burdensome, expensive, time-consuming, and irrational hearing requirement.

36. These statutes and regulations give established household goods moving companies a special privilege not accorded to others by allowing them to impose burdens on or prohibit their own potential competition, without regard for the applicant's fitness or capacity to practice the trade, or any other legitimate government interest. Specifically, 66 Pa. C.S.A. § 1103, and 52 Pa. Code §§ 3.381 and 41.14 allow existing household goods moving companies to file protests against CPC applications, but do not require such protests to specify any facts or allegations relating to the effects that the applicant's business will have on the public health, safety, or welfare. Instead, existing firms can protest solely for the purpose of preventing economic competition against themselves.

37. In addition, 66 Pa. C.S.A. § 1103, and 52 Pa. Code §§ 3.381 and 41.14 allow, if they do not require, the Defendants to deny a CPC to an applicant for reasons totally unrelated to the applicant's fitness or capacity to practice the trade of a household goods mover.

38. Plaintiffs are informed and believe, and on that basis allege, that the standards listed in 66 Pa. C.S.A. § 1103 and 52 Pa. Code §§ 3.381 and 41.14 and the hearing and protest procedure described therein have no rational connection to the public health, safety, or welfare, or any other legitimate government interest, and constitute a "Competitor's Veto" which allows existing moving companies to prohibit legitimate economic competition, create an artificial scarcity of moving services, and keep prices for their services artificially high, to the detriment of consumers and the general public.

III

INJUNCTIVE RELIEF ALLEGATIONS

39. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

40. Plaintiffs are informed and believe, and on that basis allege, that they are subject to civil and criminal penalties, including fines and jail time, if they operate a household goods moving business without a CPC. 66 Pa. C.S.A. § 3310.

41. Due to Defendants' enforcement of the challenged laws, Plaintiffs, and others similarly situated, are now and will continue to be denied the right to pursue their chosen occupation free from arbitrary, irrational, and discriminatory restrictions imposed by the statutory procedure challenged herein. On at least one occasion, Plaintiffs have been forced to decline requests from customers to provide moving services because they lack a CPC.

42. If not enjoined by this Court, Defendants and their agents, representatives, and employees will continue to implement the licensing and hearing procedure established in 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, which deprive Plaintiffs of liberty without due process of law, deny them the equal protection of the laws, and abridge their privileges or immunities of citizenship.

43. The licensing procedure described herein arbitrarily, irrationally, and discriminatorily deprives Plaintiffs of the opportunity to pursue their chosen occupation throughout the Commonwealth of Pennsylvania. Thus the licensing and hearing procedures established in 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, are now causing, and will continue to cause, Plaintiffs to suffer irreparable injury, including but not limited to, loss of business opportunities and

the deprivation of their livelihoods. Plaintiffs have no plain, speedy, and adequate remedy at law for such an injury.

44. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend that their actions comply with all applicable laws.

45. Accordingly, injunctive relief is appropriate.

IV

DECLARATORY RELIEF ALLEGATIONS

46. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

47. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend, pursuant to 42 U.S.C. § 1983, that both on their face and as applied to Plaintiffs, the challenged laws violate the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend otherwise on all counts.

48. Accordingly, declaratory relief is appropriate.

V

FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF—DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

49. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

50. Plaintiffs are not allowed to exercise their constitutionally protected liberty to engage in their chosen occupation unless they submit to the expensive and burdensome Competitor's Veto procedure created by 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14.

51. The factors an applicant must prove to obtain or modify a CPC to operate as a household goods moving company pursuant to these statutes and regulations do not bear any relationship to protecting the public health, safety, or welfare, or to the applicant's fitness or capacity to practice the trade. Instead, an applicant can and must be denied a CPC on the basis of statutory and regulatory criteria that protect established businesses against economic competition.

52. Plaintiffs are informed and believe, and on that basis allege, that previous applicants for CPCs have been rejected, or have been compelled to restrict their area of operations, for reasons that are not rationally related to the applicant's fitness, skills, capacity, qualifications, honesty, or experience, but solely to prevent economic competition against existing household goods moving businesses.

53. The challenged statutes create an arbitrary, irrational, discriminatory, and fundamentally unfair Competitor's Veto procedure which infringes on the constitutional right of Plaintiffs to pursue their chosen occupation in Pennsylvania. By enforcing the challenged statutes, Defendants, acting under color of state law, are depriving and will continue to deprive Plaintiffs of their constitutional right to earn a living in a common occupation without due process of law.

54. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

55. An actual controversy exists between the parties, in that Plaintiffs will continue to suffer an ongoing and irreparable harm unless the further enforcement of the procedures established

by 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, are declared unlawful and enjoined by this Court.

VI

SECOND CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF—EQUAL PROTECTION: ARBITRARY AND IRRATIONAL DISCRIMINATION

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

56. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

57. The Competitor's Veto procedure described herein provides a special privilege to existing companies engaged in moving household goods in use, that is not enjoyed by applicants for CPCs who wish to enter the trade of moving household goods in use. That distinction is not rationally related to the protection of the public health, safety, or welfare.

58. First, under 52 Pa. Code § 3.381, a protestant may trigger a 20-day waiting period on an application, and force the applicant to undergo a burdensome and time-consuming hearing procedure—where a business applicant such as Plaintiff CD Losco, LLC, must hire an attorney—for reasons unrelated to the applicant's fitness or capacity to practice the trade, but solely because the protestant does not wish to face economic competition from the applicant. This delay, and the cost of legal representation, are significant burdens on an applicant for a CPC.

59. Second, no similar protest and hearing requirement exists for movers of property other than household goods in use, 52 Pa. Code §§ 5.51(b), 3.381(c)(2), or for companies engaged in transportation of persons. 52 Pa. Code § 41.14(d). Plaintiffs are informed and believe and on that basis allege that there is no rational connection between this exemption for movers of other types of property or for limousine companies and the public health, safety, or welfare.

60. Third, the challenged statutes and regulations are explicitly biased in favor of protecting established businesses against economic competition. As described above, whenever an established moving company protests that the applicant's proposed business would have an "adverse impact" on the protestant's operations, the protestant may specify how the applicant may "restrict" the CPC application to the protestant's satisfaction. 52 Pa. Code § 3.381(c)(1)(i)(A).

61. Finally, the criteria for granting or withholding CPCs, specified in 66 Pa. C.S.A. § 1103(a) and 52 Pa. Code § 3.381, are inherently biased in favor of existing moving companies and against applicants who seek to enter that trade, for reasons not related to the applicant's fitness or capacity to practice the trade, or to any other considerations of public health, safety, or welfare. The Defendants are required under 52 Pa. Code § 41.14(c) to deny a CPC to an applicant if they determine that "entry of [the] new carrier into the field" will "endanger or impair the operations of existing common carriers" to an extent that they believe "would be contrary to the public interest."

62. These differences in treatment between Plaintiffs and existing, operating movers of household goods in use do not rationally relate to the Plaintiffs' skills, qualifications, fitness, or capacity to practice the trade, but exist solely to favor existing businesses at the expense of Plaintiffs and others similarly situated.

63. By enforcing these rules, Defendants, acting under color of state law, are irrationally and arbitrarily discriminating against Plaintiffs in favor of existing businesses in violation of Plaintiffs' right to equal protection of the laws.

64. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

65. An actual controversy exists between the parties, in that Plaintiffs are suffering an ongoing and irreparable harm by Defendants' discriminatory treatment, and the harm will continue

unless the hearing procedure provided for in 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14 is declared unlawful and enjoined by this Court.

VII

THIRD CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF—EQUAL PROTECTION AND DUE PROCESS OF LAW: VAGUENESS AND UNBRIDLED DISCRETION OF PUBLIC OFFICIALS

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

66. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

67. The criteria specified in the challenged statutes for the granting of a CPC are vague and undefined and give no guidance to the meaning of crucial terms including, but not limited to, “adverse impact” (52 Pa. Code § 3.381(c)(1)(i)(A)); “necessary or proper” (66 Pa. C.S.A. § 1103(a)); “endanger or impair” (52 Pa. Code § 41.14(c)); “contrary to the public interest” (*id.* § 41.14(c)); “convenience . . . of the public” (66 Pa. C.S.A. § 1103(a)); “responsive” (52 Pa. Code § 41.14(a)); or “useful public purpose” (52 Pa. Code § 41.14(a)).

68. Plaintiffs are informed and believe that no other statute, regulation, legal precedent, handbook, or other document exists that defines these terms or explains what a Certificate applicant must prove in order to satisfy these standards. As a result, persons of ordinary intelligence are left to guess as to the meanings of these terms.

69. Thus, 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, and the rules, regulations, policies, and procedures by which these provisions are implemented provide Plaintiffs no reasonable opportunity to understand what conduct they authorize or prohibit, and allow or encourage arbitrary and discriminatory enforcement. These rules, regulations, policies, and

procedures submit Plaintiffs' exercise of their constitutional rights to the unlimited and unguided discretion of PUC officials.

70. By exercising unlimited, unguided discretion over applications for Certificates, Defendants, acting under color of state law, violate Plaintiffs' rights to equal protection and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

71. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

72. An actual controversy exists between the parties, in that Plaintiffs are suffering an ongoing and irreparable harm by Defendants' exercise of unbridled and unguided discretion, and the harm will continue unless 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, and their implementing rules, regulations, policies, and procedures, are declared unlawful and enjoined by this Court.

VIII

FOURTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF: ABRIDGMENT OF PRIVILEGES OR IMMUNITIES

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

73. Plaintiff Cosmo and MaryAnne Losco incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

74. By mandating a discriminatory hearing procedure for an application for a CPC, Defendants, acting under color of state law, arbitrarily and unreasonably interfere with Plaintiffs Cosmo and MaryAnne Losco's constitutional right to earn a living in a lawful occupation without reasonable government interference. This right is secured by the Privileges or Immunities Clause of the Fourteenth Amendment of the United States Constitution. Because, as described herein, the

challenged statutes, regulations, and procedures deprive Plaintiffs Cosmo and MaryAnne Losco of this right without any rational connection to the protection of the public health, safety, or welfare, these statutes and regulations violate the Fourteenth Amendment.

75. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

76. An actual controversy exists between the parties, in that Plaintiffs are suffering an ongoing and irreparable harm by Defendants' favoritism toward existing carriers and their discriminatory treatment against Plaintiffs, and the harm will continue unless the procedures established by 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, and their implementing rules, regulations, and policies are declared unlawful and enjoined by this Court.

PRAYER

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. To enter a declaratory judgment that 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, facially and as interpreted and applied by Defendants, deprive Plaintiffs of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

2. To enter a declaratory judgment that 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, facially and as interpreted and applied by Defendants, deprive Plaintiffs of the equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

3. To enter a declaratory judgment that 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, facially and as interpreted and applied by Defendants, abridges Plaintiffs Cosmo and

MaryAnne Loscos' privileges or immunities of citizenship, in violation of the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution;

4. To permanently enjoin Defendants, their agents, representatives, and employees from enforcing 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, as well as any and all implementing rules and regulations and the policies and practices by which Defendants enforce these provisions, including, but not limited to: (a) the policies of prohibiting Plaintiffs from operating intrastate as a moving company without being subject to the arbitrary and discriminatory CPC scheme under 66 Pa. C.S.A. § 1103, 52 Pa. Code §§ 3.381 and 41.14, and (b) seeking or imposing fines or penalties against Plaintiffs, or otherwise subjecting Plaintiffs to harassment;

5. For costs of suit;

6. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988(b); and

7. Any such further legal and equitable relief as the Court may deem just and proper.

DATED: May 18, 2015.

Respectfully submitted,

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