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 11 Secretary, U.S. Department of Labor

12
 13 UNITED STATES DISTRICT COURT FOR THE
 14 CENTRAL DISTRICT OF CALIFORNIA

15 THOMAS E. PEREZ, Secretary of
 Labor, United States Department
 16 of Labor,

17 Plaintiff,

18 v.

19 SHIPPERS TRANSPORT EXPRESS,
 20 INC., a corporation,

21 Defendant.

) HON. BEVERLY REID O'CONNELL

) Case No. 2:13-CV-04255-BRO-PLA

) **CONSENT JUDGMENT & ORDER**

22
 23 Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of
 24 Labor ("Plaintiff" or the "Secretary"), and Defendant Shippers Transport Express, Inc.
 25 ("Defendant" or "Shippers") have agreed to resolve the matters in controversy in this
 26 civil action and consent to the entry of this consent judgment ("Consent Judgment" or
 27 "Judgment") in accordance herewith.
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I. ADMISSIONS BY THE PARTIES:

- A. The Secretary has filed a Complaint alleging that Defendant violated provisions of Sections 6, 11(c), 15(a)(2) and (5) of the Fair Labor Standards Act of 1938, as amended (“FLSA” or the “Act”), 29 U.S.C. §§ 206, 211(c), 215(a)(2) and (5).
- B. Defendant acknowledges receipt of a copy of the Secretary’s Complaint.
- C. Defendant agrees herein to resolve all allegations of the Secretary’s Complaint.
- D. Defendant admits that the Court has jurisdiction over the parties and subject matter of this civil action and that venue lies in the district court for the Central District of California.
- E. Defendant and the Secretary agree to the entry of this Consent Judgment without contest.
- F. Defendant acknowledges that Defendant and any individual or entity acting on its behalf or at its direction (including but not limited to Edward DeNike, Defendant’s President, as well as Defendant’s management personnel at its Oakland facility, including General Manager Guy Sanderson, Operations Manager Maria Banales, Ja’Quita Carter, Lavita Jackson, and Dispatchers Kelvin Pham and Byron Trujillo) have notice of, and understand, the provisions of this Consent Judgment.
- G. Defendant admits that it has been a trucking and freight transportation company that arranges for and transports containerized goods arriving and departing on ocean vessels via ports, including the Port of Oakland.
- H. Defendant admits that it employed drivers who leased trucks from Defendant and who then were engaged in its transportation business through Defendant’s dispatchers transporting, shipping, and/or delivering goods to and from the

1 Port of Oakland (“Drivers”). Defendant admits that since at least August 20,
2 2009, the truck drivers with Defendant were and are engaged in commerce or
3 in the production of goods for commerce within the meaning of the FLSA.

4 I. Defendant admits that since at least August 20, 2009, it has been a California
5 corporation engaged in related activities performed through unified operation
6 or common control for a common business purpose in California, and has been
7 an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. §
8 203(r).

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10 J. Defendant admits that since at least August 20, 2009, it has been an enterprise
11 engaged in commerce or in the production of goods for commerce within the
12 meaning of Sections 3(s)(1)(A) of the FLSA, 29 U.S.C. § 203(s)(1)(A); in that
13 it has employees who have been engaged in commerce or the production of
14 goods for commerce, or in handling, selling, or otherwise working on goods or
15 materials that have been moved in or produced for commerce by any person,
16 and is an enterprise whose annual gross volume of sales made or business done
17 is not less than \$500,000.

18 K. Defendant admits that on at least some occasions, it has misclassified Drivers
19 as independent contractors rather than as employees (“Misclassified
20 Employees”).

21 L. Defendant understands and expressly acknowledges that the provisions and
22 safeguards guaranteed under the FLSA to employees, including but not limited
23 to those found in Sections 6, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5), apply to
24 the Misclassified Employees.

25 M. Defendant admits that on at least some occasions it has violated Sections 6 and
26 15(a)(2) of the FLSA by paying the Misclassified Employees wages at rates
27 less than the applicable federal minimum wage in workweeks when said
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1 employees were engaged in commerce or in the production of goods for
2 commerce or were employed in an enterprise engaged in commerce or in the
3 production of goods for commerce, within the meaning of the FLSA.

4 N. Defendant admits that on at least some occasions it has violated Sections 11(c)
5 and 15(a)(5) of the FLSA by failing to make, keep and preserve records of the
6 Misclassified Employees and of the wages, hours, and other conditions and
7 practices of employment maintained by them as prescribed by the regulations
8 found in 29 C.F.R. Part 516 that are issued, and from time to time amended,
9 pursuant to Section 11(c) of the FLSA.

10 O. Defendant admits and agrees that it will reclassify all Misclassified Employees
11 and any other present or future Drivers at its Oakland facility (or any future
12 facility should the current Oakland facility cease operations), as well as all
13 drivers at Defendant's other California facilities (including its facility located
14 in Carson, California, or any future facility should the current Carson facility
15 cease operations), as employees by no later than sixty (60) calendar days from
16 the date of entry of this Consent Judgment.

17 P. Defendant understands and expressly acknowledges that demanding or
18 accepting any of the monies due to any employees under the terms of this
19 Consent Judgment, threatening any employee for accepting monies due under
20 this Consent Judgment, or threatening any employee for exercising any of his
21 or her rights under the FLSA is specifically prohibited and may subject
22 Defendant to equitable and legal damages, including punitive damages and
23 civil contempt.

24 Q. Defendant understands and expressly acknowledges that it is "unlawful for any
25 person...to discharge or in any other manner discriminate against any
26 employee because such employee has filed any complaint or instituted or
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1 caused to be instituted any proceeding under [the FLSA], or has testified or is
2 about to testify in any such proceeding...” See 29 U.S.C. § 215(a)(3).

3 Defendant understands and expressly acknowledges that it is illegal to retaliate
4 in any manner against any employee, including the Drivers, because he or she
5 has participated in the instant proceedings by *inter alia* talking to the
6 Secretary’s representatives, providing deposition or trial testimony, or in any
7 way pursuing his or her rights under the FLSA. Defendant further understands
8 and expressly acknowledges that taking any retaliatory actions against any
9 employee in violation of the FLSA and the express terms of this Consent
10 Judgment may subject Defendant to equitable and legal damages, including
11 punitive damages and civil contempt.
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13 Having considered the submissions made in connection with the proposed
14 settlement, the representations, arguments, recommendation of counsel for the parties,
15 and the requirements of law, the Court hereby makes the following findings of fact and
16 conclusions of law in support of its Final Order and Judgment approving the Consent
17 Judgment.

18 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

- 19 A. The Secretary has filed a Complaint alleging that Defendant violated
20 provisions of Sections 6, 11(c), 15(a)(2) and (5) of the Fair Labor Standards
21 Act of 1938, as amended (“FLSA” or the “Act”), 29 U.S.C. §§ 206, 211(c),
22 215(a)(2) and (5).
- 23 B. Defendant has received a copy of the Secretary’s Complaint.
- 24 C. Defendant has withdrawn any defenses to the Secretary’s Complaint directly
25 inconsistent with this consent decree.
- 26 D. This Court has jurisdiction over the parties and subject matter of this civil
27 action, and venue lies in the district court for the Central District of California.
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- 1 E. Defendant and the Secretary have agreed to the entry of this Consent Judgment
2 without contest.
- 3 F. Defendant and any individual or entity acting on its behalf or at its direction
4 (including but not limited to Edward DeNike, Defendant's President, as well as
5 Kevin Baddeley, Defendant's Carson Manager, and Defendant's personnel at
6 its Oakland facility, including General Manager Guy Sanderson, Operations
7 Manager Maria Banales, Ja'Quita Carter, Lavita Jackson, Yard Manager Tony
8 Banales, and Dispatchers Kelvin Pham and Byron Trujillo) have notice of, and
9 understand, the provisions of this Consent Judgment.
- 10 G. Since at least August 20, 2009, Defendant has been a trucking and freight
11 transportation company that arranges for and transports containerized goods
12 arriving and departing on ocean vessels via ports, including the Port of
13 Oakland.
- 14 H. At times relevant, Defendant has employed drivers who leased trucks from
15 Defendant and who have been engaged in its transportation business,
16 transporting, shipping, and/or delivering goods to and from the Port of Oakland
17 ("Drivers"). Since at least August 20, 2009, the Drivers were and are engaged
18 in commerce or in the production of goods for commerce within the meaning
19 of the FLSA.
- 20 I. Since at least August 20, 2009, Defendant has been engaged in related
21 activities performed through unified operation or common control for a
22 common business purpose, and has been an enterprise within the meaning of
23 Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
- 24 J. Since at least August 20, 2009, Defendant has been an enterprise engaged in
25 commerce or in the production of goods for commerce within the meaning of
26 Sections 3(s)(1)(A) of the FLSA, 29 U.S.C. § 203(s)(1)(A); in that it has
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1 employees who have been engaged in commerce or the production of goods
2 for commerce, or in handling, selling, or otherwise working on goods or
3 materials that have been moved in or produced for commerce by any person,
4 and is an enterprise whose annual gross volume of sales made or business done
5 is not less than \$500,000.

6 K. At some times relevant, Defendant has misclassified the Drivers as
7 independent contractors rather than as employees (“Misclassified
8 Employees”).

9 L. Since at least August 20, 2009, the provisions and safeguards guaranteed under
10 the FLSA to employees, including but not limited to those found in Sections 6,
11 11(c), 15(a)(2) and 15(a)(5), apply to the Misclassified Employees.

12 M. Defendant has on at least some occasions violated Sections 6 and 15(a)(2) of
13 the FLSA by paying the Misclassified Employees wages at rates less than the
14 applicable federal minimum wage in workweeks when said employees were
15 engaged in commerce or in the production of goods for commerce or were
16 employed in an enterprise engaged in commerce or in the production of goods
17 for commerce, within the meaning of the FLSA.

18 N. Defendant has violated Sections 11(c) and 15(a)(5) of the FLSA by failing to
19 make, keep and preserve records of the Misclassified Employees and of the
20 wages, hours, and other conditions and practices of employment maintained by
21 them as prescribed by the regulations found in 29 C.F.R. Part 516 that are
22 issued, and from time to time amended, pursuant to Section 11(c) of the FLSA.

23 O. Demanding or accepting any of the monies due to any employees under the
24 terms of this Consent Judgment, threatening any employee for accepting
25 monies due under this Consent Judgment, or threatening any employee for
26 exercising any of his or her rights under the FLSA is specifically prohibited
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1 and may subject Defendant to equitable and legal damages, including punitive
2 damages and civil contempt. Said actions could also subject Defendant to
3 potential criminal prosecution.

4 P. Discharging, threatening to discharge, reducing a work schedule, or in any
5 other manner discriminating against any employee as a result of this litigation
6 or an employee's participation herein, is specifically prohibited and may
7 subject Defendant to equitable and legal damages, including punitive damages
8 and civil contempt.

9 **III. JUDGMENT**

10 Therefore, upon motion of the attorneys for the Secretary, and for cause shown,
11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to
12 Section 17 of the FLSA, Defendant Shippers Transport Express, Inc., its officers, agents,
13 servants, employees, successor companies, and all persons in active concert or
14 participation, including but not limited to Guy Sanderson, Kevin Baddeley, and Edward
15 DeNike with them be, and they hereby are, permanently enjoined and restrained from
16 violating the provisions of the FLSA, in any of the following manners:

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- 18 1. Defendant shall not, contrary to the FLSA, misclassify the Misclassified
19 Employees and any other present or future Drivers at its Oakland facility (or
20 any future facility should the current Oakland facility cease operations), as well
21 as all Drivers at Defendant's other California facilities (including its facility
22 located in Carson, California, or any future facility should the current Carson
23 facility cease operations) as independent contractors or otherwise as non-
24 employees, but shall treat and classify said individuals as employees who shall
25 enjoy all protections and safeguards guaranteed under the FLSA, including but
26 not limited to those found in Sections 6, 11(c), 15(a)(2), 15(a)(3) and 15(a)(5)
27 of the Act.
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- 1 2. Defendant shall properly reclassify all Misclassified Employees and any other
2 present or future Drivers at its Oakland facility (or any future facility should
3 the current Oakland facility cease operations), as well as all Drivers at
4 Defendant's other California facilities (including its facility located in Carson,
5 California, or any future facility should the current Carson facility cease
6 operations), as employees by no later than sixty (60) calendar days from the
7 date of entry of this Consent Judgment ("Reclassification Date") (the period
8 from August 20, 2009 to the Reclassification Date is hereafter referred to as the
9 "Subject Period").
- 10 3. Defendant shall not, contrary to Sections 6 and 15(a)(2) of the FLSA, pay any
11 of its employees who in any workweek are engaged in commerce or in the
12 production of goods for commerce or who are employed in an enterprise
13 engaged in commerce or in the production of goods for commerce, within the
14 meaning of the FLSA, wages at a rate less than \$7.25 per hour (or at a rate less
15 than such other applicable minimum rate as may hereinafter be established by
16 amendment to the FLSA).
- 17 4. Defendant shall not, contrary to Sections 11(c) and 15(a)(5) of the FLSA fail to
18 make, keep and preserve records of their employees and of the wages, hours,
19 and other conditions and practices of employment maintained by them as
20 prescribed by the regulations issued, and from time to time amended, pursuant
21 to Section 11(c) of the FLSA and found in 29 C.F.R. Part 516.
- 22 5. Defendant shall make, keep, and preserve accurate records of the wages, hours,
23 and other work conditions and practices of each and every individual who
24 performs any work for Defendant at its Oakland facility (or any future facility
25 should the current Oakland facility cease operations).
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1 6. Defendant shall not, contrary to Section 15(a)(3) of the FLSA discharge,
2 threaten to discharge, lay off, refuse to provide work, reduce the work
3 schedule or wages, intimidate, provide negative employment references or
4 take any steps to interfere with an employee's application to work for another
5 employer, or in any other manner discriminate against any employee as a
6 result of this litigation or because such employee has filed any complaint
7 under or related to the FLSA, has spoken to the Secretary's representatives (or
8 provided a statement) in connection with this litigation, has provided
9 deposition testimony in this litigation, and/or has been named as a witness on
10 the Secretary's witness list. Defendant shall not terminate, refuse to provide
11 work for, reduce the work, or lay off any employee as a result of this litigation
12 or employee actions to enforce rights protected by the FLSA. In accordance
13 with and in furtherance of the requirements of this paragraph, Defendant:
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15 A) Shall post the daily dispatch log, each day, in a prominent location at its
16 Oakland facility, and shall identify the Driver to whom each dispatched load
17 or delivery was assigned;

18 B) Shall post the current Driver rate sheet, showing the rate for each
19 delivery or load, in a prominent location at its Oakland facility and shall
20 provide a copy to each of its current drivers;

21 C) Shall agree to provide neutral employment references for all Driver
22 employees upon request – and shall not take any steps to interfere with any
23 Drivers' application to work for another company; and

24 D) Shall not offer to pay Drivers hourly or piece rates that are intentionally
25 low enough to discourage Drivers from continuing to work for Defendant or
26 constructively terminate them.
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1 7. **IT IS FURTHER ORDERED** that Defendant shall make payments to the
2 Wage Hour Division of the United States Department of Labor of **\$94,293.64**,
3 which constitutes unpaid minimum wage compensation and pertinent
4 reimbursements for weeks during which minimum wage violations were found
5 due for the Subject Period to those current and former employees of Defendant
6 named in **Exhibit A**, attached hereto and made a part hereof (“Backwage
7 Calculation”), plus an additional equal amount of **\$94,293.64** as statutorily
8 authorized liquidated damages (“Liquidated Damages”), for a total of
9 **\$188,587.28**.

10 8. Defendant shall not request, solicit, suggest, or coerce, directly, or indirectly,
11 any employee to return or to offer to return to Defendant or to someone else for
12 Defendant, any monies in the form of cash, check, or any other form, for
13 wages previously due or to become due in the future to said employee under
14 the provisions of this Consent Judgment or the FLSA; nor shall Defendant
15 accept, or receive from any employee, either directly or indirectly, any monies
16 in the form of cash, check, or any other form, for wages heretofore or hereafter
17 paid to said employee under the provisions of this Consent Judgment or the
18 FLSA; nor shall Defendant withhold work or wages, discharge, threaten to
19 discharge, or in any other manner discriminate, solicit or encourage anyone
20 else to discriminate, against any such employee because such employee has
21 received or retained monies due to him or her from Defendant under the
22 provisions of this Consent Judgment or the FLSA.

23 **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to Section 6
24 above in accordance with Section 16(c) of the FLSA, in favor of the Secretary and
25 against Defendant in the total amount of \$188,587.28.
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- 1 9. Defendant shall pay to the Secretary the net amount of back wages due from
2 the total amount of the Backwage Calculation, which represents the unpaid
3 gross minimum wage compensation, and pertinent reimbursements for weeks
4 during which minimum wage violations were determined for the Subject
5 Period to the current and former employees of Defendant as set forth in
6 Exhibit A, attached hereto and made a part hereof. (See Section 7.)
7
8 10. Pursuant to authority expressly provided in Section 16 of the FLSA, 29 U.S.C.
9 § 216, Defendant shall further pay to the Secretary the additional equal sum of
10 the Backwage Calculation as Liquidated Damages, hereby found to be due for
11 the Subject Period to the current and former employees named in Exhibit A,
12 attached hereto and made a part hereof. (See Section 7.)
13 11. The monetary provisions of this Consent Judgment shall be deemed satisfied
14 where Defendant complies with the following payment provisions:
15 a. Within sixty (60) calendar days of the entry of this Consent Judgment,
16 Defendant shall deliver to the Wage and Hour Division, United States
17 Department of Labor, Attn: Susana Blanco, 90 Seventh Street, Suite 12-100,
18 San Francisco, California, 94103, a schedule containing: (1) the employer's
19 name, employer identification number, employer addresses and telephone
20 number, and (2) the names, last known home addresses, Social Security
21 numbers, home telephone numbers, mobile telephone numbers, gross
22 amount of back wages, amounts of legal deductions for Social Security and
23 withholding taxes thereon, and the resulting gross and net amount of back
24 wages for each Driver listed in the attached Exhibit A. Defendant shall be
25 responsible for determining the employer and employee portions of each
26 employee's legal deductions for Social Security and withholding taxes
27 thereon from the amounts to be paid to the employees named in the attached
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1 Exhibit A, and for timely remitting said deductions to the appropriate
2 governmental agencies entitled thereto.

3 b. Within sixty (60) calendar days of entry of this Consent Judgment,
4 Defendant shall initiate repayment of the Backwage Calculation and
5 Liquidated Damages described supra by delivering three checks per
6 employee listed in Exhibit A to the DOL.

- 7 i. The first check will be in the amount of total net back wages due to
8 said employee and shall have “Net BW Due” written thereon.
9 ii. The second check will be in the amount of the total reimbursements
10 due to said employee and shall have “Reimbursements” written
11 thereon.
12 iii. The third check will be for the full amount of liquidated damages due
13 to said employee as set forth in the attached Exhibit A and shall have
14 “Liquidated Damages” written thereon.
15 iv. All checks shall include the firm name of “Shippers Transport
16 Express” and shall be made payable to the order of the employee and
17 “Wage & Hour Div., Labor.” For example, payment to John
18 Employee would be payable to “John Employee or Wage & Hour
19 Div., Labor.” Defendant shall deliver these payments to Wage and
20 Hour Division, United States Department of Labor, 90 Seventh
21 Street, Attn: Susana Blanco, Suite 12-100, San Francisco, California,
22 94103.
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24 12. In the event of a default in the timely making of the payments specified in this
25 Consent Judgment, the full gross amount outstanding due under this Consent
26 Judgment, plus post-judgment interest at the rate of 10% per year from the date
27 of this Consent Judgment until the amount of this Consent Judgment is paid in
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1 full, shall become immediately due and payable directly to the U.S.

2 Department of Labor by certified check to the Wage and Hour Division (“Wage
3 and Hour”). For the purposes of this paragraph, a “default” is deemed to occur
4 if payment is not delivered within five (5) calendar days of the due date.

5 13. Upon receipt of the payments detailed supra, the Secretary shall distribute said
6 payments to the persons named in the attached Exhibit A, or to their estates if
7 that be necessary, in his sole discretion, and any monies not so paid within a
8 period of three (3) years from the date of its receipt, because of an inability to
9 locate the proper persons or because of their refusal to accept it, shall be then
10 deposited in the Treasury of the United States, as miscellaneous receipts,
11 pursuant to 29 U.S.C. § 216(c).

12 14. Within thirty (30) calendar days of the date of entry of this Consent Judgment,
13 Defendant shall provide each of their employees with a copy of the notice of
14 rights, attached as **Exhibit B**, which summarizes the terms of this Consent
15 Judgment and provides direct guidance from the U.S. Department of Labor
16 regarding employees’ rights, including protection from retaliation, under the
17 FLSA (“Notice of Rights”). Exhibit B includes English and Spanish versions
18 of the Notices of Rights. In the event Shippers is informed in writing by an
19 employee or the DOL that the native language of any employee of Defendant is
20 a language other than English and Spanish, Defendant shall ensure that the
21 Notice of Rights is properly translated into that language within a week.
22 Within the time period prescribed above, Defendant shall take the following
23 steps to help ensure that all of Defendant’s employees are aware of their rights
24 under the FLSA:
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- 26 a. Defendant shall post a copy of Exhibit B in a prominent location at its
27 current Oakland facility (for example, near the facility’s front door, near the
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1 dispatch window), and Defendant shall do the same at any future facility
2 should the current Oakland facility cease operations, within ten (10)
3 calendar days of it beginning operations;

4 b. Defendant shall provide a copy of Exhibit B to all of Defendant's
5 employees;

6 c. Defendant shall provide a copy of Exhibit B to all newly hired employees
7 before or by the date said employee begins performing work for Defendant
8 at its Oakland facility (or any future facility should the current Oakland
9 facility cease operations).

10 15. Within ten (10) calendar days of the date that Defendant signs this Consent
11 Judgment, Defendant shall post U.S. Department of Labor-approved posters
12 regarding the minimum wage provision of the FLSA, in a prominent location
13 at its Oakland facility (for example, near the facility's front door, near the
14 dispatch window), and Defendant shall do the same at any future facility
15 should the current Oakland facility cease operations within ten (10) calendar
16 days of it beginning operations. Copies of said posters are available for
17 download and printing at:

18 <http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>.

19 16. Within six (6) months of the date that Defendant signs this Consent Judgment,
20 or as soon as thereafter practicable given Wage and Hour representatives'
21 availability, Defendant shall permit representatives from Wage and Hour to
22 conduct a training session for all employees at Defendant's Oakland facility (or
23 any future facility should the current Oakland facility cease operations).
24 Defendant's employees, including Guy Sanderson, Maria Banales, Ja'Quita
25 Carter, Kelvin Pham, Tony Banales, Lavita Jackson, Sonia Pena, and Byron
26 Trujillo shall also be present at said training, which shall be compensable time
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1 for which employees shall receive pay. Topics to be covered by Wage and
2 Hour during said training shall include, but are not limited to: minimum wage
3 and recordkeeping provisions of the FLSA; specific considerations relating to
4 misclassification in the port truck driving industry; and anti-retaliation
5 provisions of the FLSA. Upon a determination by Wage and Hour
6 representatives, said training may be followed by a confidential question and
7 answer session between Wage and Hour representatives and Defendant's
8 employees, during which time Defendant's non-driver employees are not
9 present ("Q&A Session"). The Q&A Session shall also be compensable time
10 for which employees shall receive pay.

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12 17. Within ten (10) calendar days of the date that Defendant signs this Consent
13 Judgment, Defendant shall implement a recordkeeping, retention, and
14 inspection program as detailed below:

- 15 a. All employees of Defendant at its Oakland facility (or any future facility
16 should the current Oakland facility cease operations) shall record their work
17 time in an accurate and timely manner, whether such recording be made
18 through the use of a time clock, handwritten time records, or by other
19 means ("Time Records"). Work time shall include, but is not necessarily
20 limited to, time spent by individuals: hauling loads on behalf of Defendant,
21 waiting in line at the Port of Oakland, waiting for dispatches, and
22 conducting pre-trip and post-trip truck inspections.
- 23 b. For each work week, Defendant shall sum each employee's Time Records
24 to identify the time worked each day and each workweek per individual.
25 Each pay period, Defendant shall prepare a statement of hours worked by
26 each individual for each day, week and pay period ("Work Hours
27 Summary"). Defendant shall have each individual review his or her Work
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1 Hours Summary, write in corrections if necessary, and sign the Work Hours
2 Summary. Each Work Hours Summary shall contain a statement in English
3 and Spanish indicating that:

4 **“Your Employer must pay you for all hours worked, which**
5 **includes all time that you are required to be on the**
6 **Employer’s premises and are not free from duties. If you**
7 **think your Employer has not paid you for all hours you**
8 **worked, you can call the U.S. Department of Labor to**
9 **make a confidential complaint at 1-866-4US-WAGE.”**

10 Immediately upon issuance and for two (2) years thereafter, Defendant shall
11 maintain copies of all Work Hours Summary for inspection by the U.S.
12 Department of Labor at any time and by any of Defendant’s employees at
13 any time.
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15 18. Within six (6) months of the date that Defendant signs this Consent Judgment,
16 Defendant shall obtain an audit of its compliance with the FLSA, and
17 regulations issued under the FLSA, to be conducted by a third-party monitor
18 who shall be a former Federal Judge with JAMS hired at Defendant’s expense,
19 the total cost of which shall not exceed \$7,500. The third-party monitor Judge
20 will prepare a written report which summarizes the steps taken to complete the
21 audit, and the findings of the audit as to Defendant’s compliance with the
22 FLSA. In the event that the third-party monitor finds non-compliance with the
23 FLSA, Defendant shall provide a copy of the written report to the Wage and
24 Hour Division, United States Department of Labor, Attn: Susana Blanco, 90
25 Seventh Street, Suite 12-100, San Francisco, California, 94103.

26 a. The third-party monitor shall have the ability to communicate with
27 Defendant’s employees in their native language(s), or, shall be provided
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1 with an interpreter as necessary at Defendant's expense.

- 2 b. Defendant shall cooperate in full with the third-party monitor, including
3 providing the monitor access to the Shippers' facilities and yard, employees,
4 and to payroll and time records. Defendant shall also provide to the
5 monitor the daily dispatch logs that show which Driver was assigned to
6 each load or delivery – so that the monitor may ascertain whether or not
7 Defendant has refused to provide work or diminishes work for any Drivers,
8 and why.
- 9 c. If the third-party monitor finds violations of the FLSA, or regulations
10 issued under the FLSA, that result in back wages due, Defendant shall pay
11 the wages due within thirty (30) calendar days.
- 12 d. If the third-party monitor directs changes in Defendant's policies and/or
13 procedures, or directs that Defendant take action to comply with the FLSA
14 or regulations issued under the FLSA, Defendant shall do so. The monitor
15 may investigate and report incidents or allegations or complaints of
16 retaliation to the employer. If not resolved in a satisfactory manner, the
17 monitor will report it to the U.S. Department of Labor.
- 18 e. The third-party monitor shall have the duty to conduct off-site interviews
19 with Defendant's employees; such interviews, and other communications
20 between employees and the third-party monitor may be kept confidential --
21 except as to authorized representatives of the U.S. Department of Labor --
22 at the option of each employee; and copies of all notes and interviews
23 conducted by the monitor may be turned over to Wage and Hour, along with
24 the audit report, if requested by Wage and Hour.
- 25 f. Discrimination or retaliation by Defendant against any employee for
26 cooperating or communicating with the third-party monitor is prohibited to
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1 the fullest extent of the law, as provided in 29 U.S.C. § 215(a)(3).

2 19. The filing, pursuit, and/or resolution of this proceeding with the filing of this
3 Consent Judgment shall not act as, or be asserted as, a bar to any action under
4 Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as to any employee not named
5 on the attached Exhibit A, nor as to any employee named on the attached
6 Exhibit A for any period not specified herein for the back wage recovery
7 provisions.

8 20. Each party shall bear all fees and other expenses (including court costs and
9 attorney's fees) incurred by such party in connection with any stage of this
10 proceeding.

11 21. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
12 action for purposes of enforcing compliance with the terms of this Consent
13 Judgment for five years.
14

15 **IT IS SO ORDERED.**



16 Dated: November 17, 2014

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18 HONORABLE BEVERLY REID O'CONNELL
19 UNITED STATES DISTRICT COURT JUDGE
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Presented by:

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

SUSAN SELETSKY
FLSA Counsel

JEREMIAH E. MILLER
Senior Trial Attorney

Dated: 11-13-14


NATALIE NARDECCHIA
Trial Attorney

Dated: 11/13/14

On behalf of
Defendant Shippers Transport Express


Kyle Lukins
Vice President-General Counsel

Dated: 11/13/14

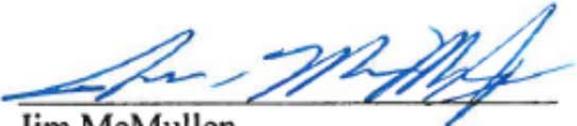

Jim McMullen
Counsel for Defendant

Exhibit A

Updated Driver List From August 20, 2009 to Present

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4
5 1. Mark Abney

6 Section 6 Minimum Wage Violations: \$76.30
7 Section 6 Liquidated Damages: \$76.30
8 Reimbursements: \$247.92
9 Reimbursement Liquidated Damages: \$247.92
10 Total Owed: \$648.44

11
12 2. Gerardo Azurdia

13 Section 6 Minimum Wage Violation: \$258.66
14 Section 6 Liquidated Damages: \$258.66
15 Reimbursements: \$1,526.93
16 Reimbursement Liquidated Damages: \$1,526.93
17 Total Owed: \$3,571.18

18
19
20 3. Ralph Bates

21 Section 6 Minimum Wage Violation: \$392.92
22 Section 6 Liquidated Damages: \$392.92
23 Reimbursements: \$5,291.52
24 Reimbursement Liquidated Damages: \$5,291.52
25 Total Owed: \$11,368.88

26
27 4. Sam Bowie
28

1 Section 6 Minimum Wage Violation: \$260.48
2 Section 6 Liquidated Damages: \$260.48
3 Reimbursements: \$1,837.23
4 Reimbursement Liquidated Damages: \$1,837.23
5 Total Owed: \$4,195.42
6

7 5. Tammany Brooks

8 Section 6 Minimum Wage Violation: \$6.54
9 Section 6 Liquidated Damages: \$6.54
10 Reimbursements: \$614.56
11 Reimbursement Liquidated Damages: \$614.56
12 Total Owed: \$1,242.20
13

14 6. William Cantrell

15 Section 6 Minimum Wage Violation: \$469.72
16 Section 6 Liquidated Damages: \$469.72
17 Reimbursements: \$3,933.79
18 Reimbursement Liquidated Damages: \$3,933.79
19 Total Owed: \$8,807.02
20

21 7. Omar Carrillo

22 Section 6 Minimum Wage Violation: \$205.26
23 Section 6 Liquidated Damages: \$205.26
24 Reimbursements: \$2,643.97
25 Reimbursement Liquidated Damages: \$2,643.97
26 Total Owed: \$5,698.46
27
28

1 8. Israel Chavez

2 Section 6 Minimum Wage Violation: \$297.57
3 Section 6 Liquidated Damages: \$297.57
4 Reimbursements: \$1,342.63
5 Reimbursement Liquidated Damages: \$1,342.63
6 Total Owed: \$3,280.40
7

8 9. Franklin Coello

9 Section 6 Minimum Wage Violation: \$25.20
10 Section 6 Liquidated Damages: \$25.20
11 Reimbursements: \$1,342.63
12 Reimbursement Liquidated Damages: \$1,342.63
13 Total Owed: \$2,735.66
14

15 10. Anthony Contares

16 Section 6 Minimum Wage Violation: \$427.73
17 Section 6 Liquidated Damages: \$427.73
18 Reimbursements: \$4,403.91
19 Reimbursement Liquidated Damages: \$4,403.91
20 Total Owed: \$9,663.28
21

22 11. Leon Davis

23 Section 6 Minimum Wage Violation: \$156.98
24 Section 6 Liquidated Damages: \$156.98
25 Reimbursements: \$2,364.55
26 Reimbursement Liquidated Damages: \$2,364.55
27
28

1	Total Owed:	\$5,043.06
2	12. Siu Eng	
3	Section 6 Minimum Wage Violation:	\$64.77
4	Section 6 Liquidated Damages:	\$64.77
5	Reimbursements:	\$444.42
6	Reimbursement Liquidated Damages:	\$444.42
7	Total Owed:	\$1,018.38
8		
9	13. Jose Garcia	
10	Section 6 Minimum Wage Violation:	\$788.38
11	Section 6 Liquidated Damages:	\$788.38
12	Reimbursements:	\$2,063.13
13	Reimbursement Liquidated Damages:	\$2,063.13
14	Total Owed:	\$5,703.02
15		
16	14. Xavier Gillete	
17	Section 6 Minimum Wage Violation:	\$1,718.83
18	Section 6 Liquidated Damages:	\$1,718.83
19	Reimbursements:	\$8,778.75
20	Reimbursement Liquidated Damages:	\$8,778.75
21	Total Owed:	\$20,995.16
22		
23	15. Lemuel Hardaway	
24	Section 6 Minimum Wage Violation:	\$14.82
25	Section 6 Liquidated Damages:	\$14.82
26	Reimbursements:	\$661.58
27		
28		

1	Reimbursement Liquidated Damages:	\$661.58
2	Total Owed:	\$1,352.80
3	16. Thon Kloak	
4	Section 6 Minimum Wage Violation:	\$155.72
5	Section 6 Liquidated Damages:	\$155.72
6	Reimbursements:	\$1,784.04
7	Reimbursement Liquidated Damages:	\$1,784.04
8	Total Owed:	\$3,879.52
9	17. Nhan Trung Le	
10	Section 6 Minimum Wage Violation:	\$153.42
11	Section 6 Liquidated Damages:	\$153.42
12	Reimbursements:	\$1,082.30
13	Reimbursement Liquidated Damages:	\$1,082.30
14	Total Owed:	\$2,471.44
15	18. Peter Lee	
16	Section 6 Minimum Wage Violation:	\$421.73
17	Section 6 Liquidated Damages:	\$421.73
18	Reimbursements:	\$338.35
19	Reimbursement Liquidated Damages:	\$338.35
20	Total Owed:	\$1,520.16
21	19. Oscar Marmol	
22	Section 6 Minimum Wage Violation:	\$1,088.27
23	Section 6 Liquidated Damages:	\$1,088.27
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1	Reimbursements:	\$5,124.63
2	Reimbursement Liquidated Damages:	\$5,124.63
3	Total Owed:	\$12,425.80
4	20. Hernando Martinez	
5		
6	Section 6 Minimum Wage Violation:	\$198.56
7	Section 6 Liquidated Damages:	\$198.56
8	Reimbursements:	\$1,929.91
9	Reimbursement Liquidated Damages:	\$1,929.91
10	Total Owed:	\$4,256.94
11		
12	21. Marcelino Matias	
13		
14	Section 6 Minimum Wage Violation:	\$52.20
15	Section 6 Liquidated Damages:	\$52.20
16	Reimbursements:	\$1,321.32
17	Reimbursement Liquidated Damages:	\$1,321.32
18	Total Owed:	\$2,747.04
19		
20	22. Urbain Mekoyo	
21		
22	Section 6 Minimum Wage Violation:	\$174.26
23	Section 6 Liquidated Damages:	\$174.26
24	Reimbursements:	\$2,449.10
25	Reimbursement Liquidated Damages:	\$2,449.10
26	Total Owed:	\$5,246.72
27		
28	23. Jamie B. Nunez	
	Section 6 Minimum Wage Violation:	\$188.12

1	Section 6 Liquidated Damages:	\$188.12
2	Reimbursements:	\$1,447.80
3	Reimbursement Liquidated Damages:	\$1,447.80
4	Total Owed:	\$3,271.84
5		
6	24. Herbert Olivares	
7	Section 6 Minimum Wage Violation:	\$77.94
8	Section 6 Liquidated Damages:	\$77.94
9	Reimbursements:	\$1,321.85
10	Reimbursement Liquidated Damages:	\$1,321.85
11	Total Owed:	\$2,799.58
12		
13	25. Sebastian Padilla	
14	Section 6 Minimum Wage Violation:	\$58.52
15	Section 6 Liquidated Damages:	\$58.52
16	Reimbursements:	\$1,119.58
17	Reimbursement Liquidated Damages:	\$1,119.58
18	Total Owed:	\$2,356.20
19		
20	26. Alan Pelley	
21	Section 6 Minimum Wage Violation:	\$121.95
22	Section 6 Liquidated Damages:	\$121.95
23	Reimbursements:	\$1,762.62
24	Reimbursement Liquidated Damages:	\$1,762.62
25	Total Owed:	\$3,769.14
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1 27. Armando Perez

2	Section 6 Minimum Wage Violation:	\$294.25
3	Section 6 Liquidated Damages:	\$294.25
4	Reimbursements:	\$5,113.87
5	Reimbursement Liquidated Damages:	\$5,113.87
6		
7	Total Owed:	\$10,816.24

8 28. Justin Phan

9	Section 6 Minimum Wage Violation:	\$617.47
10	Section 6 Liquidated Damages:	\$617.47
11	Reimbursements:	\$2,590.39
12	Reimbursement Liquidated Damages:	\$2,590.39
13		
14	Total Owed:	\$6,415.72

15 29. Zharman Prior

16	Section 6 Minimum Wage Violation:	\$190.02
17	Section 6 Liquidated Damages:	\$190.02
18	Reimbursements:	\$902.67
19	Reimbursement Liquidated Damages:	\$902.67
20		
21	Total Owed:	\$2,185.38

22 30. John M. Puerta

23	Section 6 Minimum Wage Violation:	\$246.87
24	Section 6 Liquidated Damages:	\$246.87
25	Reimbursements:	\$1,197.80
26	Reimbursement Liquidated Damages:	\$1,197.80
27		
28		

1 Total Owed: \$2,889.34

2 31. Jose Rodriguez

3 Section 6 Minimum Wage Violation: \$43.05

4 Section 6 Liquidated Damages: \$43.05

5 Reimbursements: \$1,325.78

6 Reimbursement Liquidated Damages: \$1,325.78

7 Total Owed: \$2,737.66

8 9 32. Orlando Sanchez

10 Section 6 Minimum Wage Violation: \$419.59

11 Section 6 Liquidated Damages: \$419.59

12 Reimbursements: \$5,729.42

13 Reimbursement Liquidated Damages: \$5,729.42

14 Total Owed: \$12,298.02

15 16 33. Dwayne Smith

17 Section 6 Minimum Wage Violation: \$140.71

18 Section 6 Liquidated Damages: \$140.71

19 Reimbursements: \$3,755.86

20 Reimbursement Liquidated Damages: \$3,755.86

21 Total Owed: \$7,793.14

22 23 34. Carlos Suarez

24 Section 6 Minimum Wage Violation: \$141.24

25 Section 6 Liquidated Damages: \$141.24

26 Reimbursements: \$650.94

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	Reimbursement Liquidated Damages:	\$650.94
	Total Owed:	\$1,584.36
35.	Thomas J. Templin	
	Section 6 Minimum Wage Violation:	\$183.88
	Section 6 Liquidated Damages:	\$183.88
	Reimbursements:	\$1,568.44
	Reimbursement Liquidated Damages:	\$1,568.44
	Total Owed:	\$3,504.64
36.	Carletta Todd-Reed	
	Section 6 Minimum Wage Violation:	\$162.17
	Section 6 Liquidated Damages:	\$162.17
	Reimbursements:	\$1,698.85
	Reimbursement Liquidated Damages:	\$1,698.85
	Total Owed:	\$3,722.04
37.	Johnny Tran	
	Section 6 Minimum Wage Violation:	\$269.36
	Section 6 Liquidated Damages:	\$269.36
	Reimbursements:	\$690.81
	Reimbursement Liquidated Damages:	\$690.81
	Total Owed:	\$1,920.34
38.	Amanaki Veamatahau	
	Section 6 Minimum Wage Violation:	\$24.03
	Section 6 Liquidated Damages:	\$24.03

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Reimbursements:	\$1,302.30
Reimbursement Liquidated Damages:	\$1,302.30
Total Owed:	\$2,652.66

1 **Exhibit B**

2 **LEGAL NOTICE TO ALL EMPLOYEES**

3 The United States Department of Labor conducted an investigation of Shippers
4 Transport Express (“Shippers”) and has determined that drivers who haul loads on behalf
5 of Shippers (“you”), were misclassified as “independent contractors,” and should instead
6 have been treated as “employees” because your work is controlled by Shippers and you
7 are not independent business people. Some employers improperly classify employees as
8 independent contractors so that the employers can avoid giving benefits to employees
9 and can avoid paying payroll taxes.

10 In a settlement with the United States Department of Labor, Defendant has
11 voluntarily agreed to properly classify all drivers who haul or have hauled loads from
12 Shippers from August 20, 2009 through the present as employees, rather than as
13 independent contractors, to pay the back wages and liquidated damages owed to you,
14 and to take other steps to ensure that all employees are paid properly under the Fair
15 Labor Standards Act (“FLSA”).

16 Among other things, the FLSA provides that all employees must be paid
17 **minimum wage** for all hours worked. The FLSA also provides that **all employees are**
18 **protected from retaliation or discrimination**. This means that **no one** from Shippers,
19 including Guy Sanderson, Tony Banales, Kelvin Pham, Maria Banales, or Ja’Quita
20 Carter can terminate you, threaten to terminate you, reduce your work or your pay, or in
21 any way retaliate or discriminate against you because you have spoken to anyone at the
22 Department of Labor, testified in this case, or in any way tried to enforce your rights
23 under the FLSA.

24
25 **The United States Department of Labor wants to remind you that you may**
26 **contact the Department if you have any question about your employment situation,**
27 **such as your classification as an employee (versus independent contractor) and**
28

1 **your rights to lawful wages and to be free from retaliation.**

2 **If you think you are not being paid in accordance with the law, you can call**
3 **the United States Department of Labor, Wage and Hour Division, at (415) 625-7720**
4 **or 1-866-4-USWAGE (1-866-487-9243), and your name will be kept confidential.**

5
6 The Department wants to remind you that you also have employment rights under
7 California state law and you may contact the California Division of Labor Standards
8 Enforcement, at (415) 703-5300, for any questions you may have about those rights.
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