

Port driver misclassification



Presentation to Long Beach City Council Tidelands Committee

Jessica Durrum, Director, LAANE Ports Project

May 31, 2018

LAANE coalition building: OUR PEOPLE OUR PORT



LAANE legal advocacy and research



The legal system has weighed in: Port drivers are employees



California wage & hour laws (DLSE): claims



California wage & hour laws (DLSE): claims



California wage & hour laws (DLSE): decisions

1
2
3 ROMEO GARCIA)
4 Plaintiff)
5 vs.)
6)
7 SEACON LOGIX, INC.)
8)
9 Defendant,)
10)

9 The formation of independent contractor agreements signed by its drivers can be
10 and is often a subterfuge to avoid paying payroll taxes and income taxes and to avoid
11 paying workers compensation liability. An independent contractor agreement is often a
12 consequence of independent contractor relationship not means of proving. The fact
13 that a person who provides services is paid as an independent contractor, that is,
14 without payroll deductions and with income reported by an IRS form 1099 rather than a
15 W-2, is of no significance whatsoever in determining employment status. The employer
16 cannot change the status from that of an employee to one of an independent contractor
17 by illegally requiring the employee to assume a burden that the law imposes directly on
18 the employer, that being, withholding payroll taxes and reporting such withholdings to
19 the taxing authorities.

20 The existence of a written agreement purporting to establish an independent
21 contractor relationship is not determinative. The Labor Commissioner and courts will
22 look behind any such agreement in order to examine the facts that characterize the
23 parties' actual relationship and make their determination as to employment status
24 based upon their analysis of such facts and application of the appropriate law.

25 Donovan v. Sureway Cleaners 656 F.2D 1368 (EE) (9th Cir. 1981). FLSA case
26 "Economic reality" test under FLSA requires independent contractor to be separate

11 **BACKGROUND**
12 The Plaintiff filed an initial claim with the Labor C
13 21, 2011. The complaint raises the following allegations:
14 1. Unauthorized deductions: reimbursemen
15 October 6, 2010 to April 12, 2011, truck lease payments, \$
16 \$5,200.00, fuel \$8,585.90, in the amount of \$25,485.90, and
17 2. Interest pursuant to California Labor Code § 98.1, and

California wage & hour laws (DLSE): decisions upheld by courts upon appeal

Filed 7/16/15; pub order 7/30/15 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALI
SECOND APPELLATE DISTRICT
DIVISION FOUR

ROMERO GARCIA et al.,

Plaintiffs and Respondents,

v.

SEACON LOGIX, INC.,

Defendant and Appellant.

B248227

(Los Angeles Count
Super. Ct. No. NS0

APPEAL from a judgment of the Superior Court of Los Ang
Michael P. Vicencia, Judge. Affirmed.

Prima Law Group, Inc., Naveen Madala, Kevin H. Sun and
Defendant and Appellant.

State of California, Department of Industrial Relations, Division of Labor

9. *Conclusion*

Taking into consideration all of the above factors, the trial court's reasoning is unassailable: substantial evidence proves that the balance of the secondary factors, like the primary factor of control, supports the finding that respondents were employees, not independent contractors.

II. *Seacon Forfeited the Issue of the Amount of Damages*

Seacon contends that the trial court erred in determining the amount of damages by including compensation for clean truck fees and fuel surcharges. However, Seacon has forfeited this issue on appeal by failing to raise it in the trial court. (*People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1232.) In its reply brief, Seacon contends that it did raise the issue in the trial court, citing numerous

California wage & hour laws (DLSE): Anti-SLAPP ruling defending driver's right to file claim

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/26/15				
HONORABLE WILLIAM BARRY	JUDGE	A. EASLEY	DEPT. SC B	
HONORABLE	JUDGE PRO TEM		DEPUTY CLERK	
NONE	Deputy Sheriff	NONE	ELECTRONIC RECORDING MONITOR	Reporter

4:00 pm	TC028059	Plaintiff Counsel		
	STERLING EXPRESS, INC,		NO APPEARANCES	
	VS	Defendant Counsel		
	JOHEL CLIMACO VALENCIA, ET-AL			
	*RELATED TO TC028058 AND TC0280			

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER;

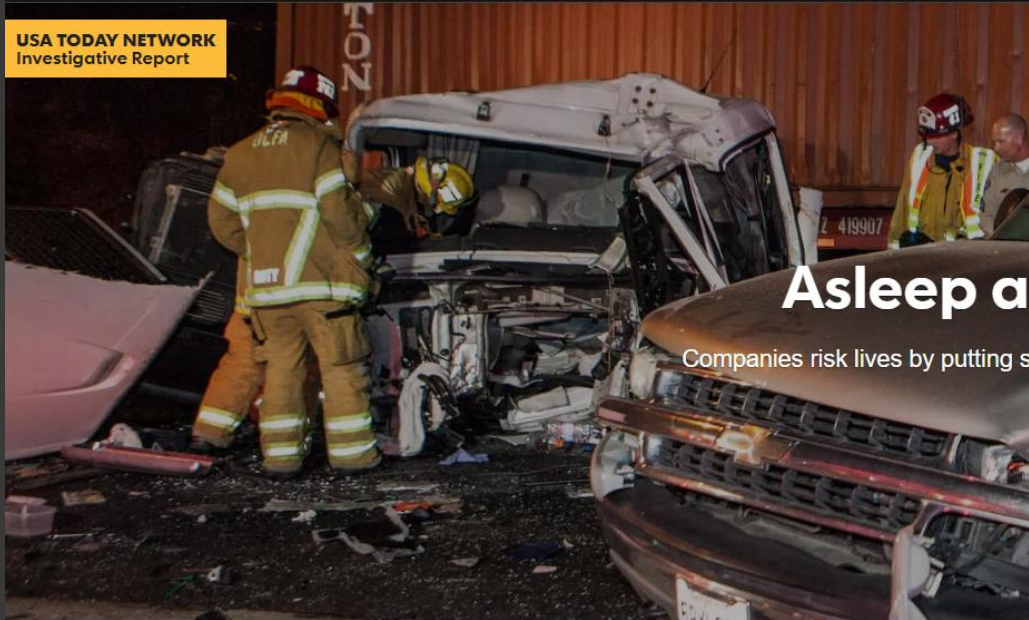
The Court rules on defendant's motion to strike the Complaint pursuant to Code of Civil Procedure 425.16. See attached conformed copy.

The motions to strike are granted.

State & Federal Health & Safety laws

RIGGED PART 1 PART 2 PART 3 PART 4

USA TODAY NETWORK
Investigative Report



Asleep at the wheel

Companies risk lives by putting s

By Brett Murphy
December 28, 2017

Reporters shared their results and methodology with researchers who have been studying commercial trucking safety for years at Michigan State University.

Professor Yemisi A. Bolumole said the analysis makes clear that safety laws have not been enforceable because “we are relying on carrier or driver honesty.”

At the request of the USA TODAY Network, Bolumole’s fellow researcher, Jason Miller, reviewed federal Department of Transportation data on safety and maintenance citations from a sample of large trucking companies across the country.

He found that port trucking is consistently one of the most dangerous sectors in the industry. Its drivers are almost 50 percent more likely to break hours-of-service rules than the industry average.

“It’s mind-boggling,” Miller said.

US Wage and Hour laws (DOL)

10 Attorneys for Plaintiff, Thomas E. Perez,
11 Secretary, U.S. Department of Labor

CONSENT JUDGMENT & ORDER

Page 8 of 33

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA

Case 2:13-cv-04255-BRO-PLA Document 146 Filed 11/17/14 Page 9 of 33 Page ID #:2542

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

17 Plaintiff,

18 v.

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

21 Defendant.

2. Defendant shall properly reclassify all Misclassified Employees and any other present or future Drivers at its Oakland facility (or any future facility should the current Oakland facility cease operations), as well as all Drivers at Defendant's other California facilities (including its facility located in Carson, California, or any future facility should the current Carson facility cease operations), as employees by no later than sixty (60) calendar days from the date of entry of this Consent Judgment ("Reclassification Date") (the period from August 20, 2009 to the Reclassification Date is hereafter referred to as the "Subject Period").

22
23 Plaintiff, THOMAS E. PEREZ, Secretary of
24 Labor ("Plaintiff" or the "Secretary"), and
25 ("Defendant" or "Shippers") have agreed,

26 civil action and consent to the entry of this consent judgment ("Consent Judgment" or
27

Analysis

VI. IBT's Misclassification of the Lease Driver's Standing Alone is a Violation of Section 8(a)(1)

After reaching the conclusion that the lease drivers were misclassified, the first question that arises is whether this misclassification is merely a mechanism which triggers the applicability and protections of the Act or if the misclassification itself can constitute a violation. General Counsel argues that an independent violation exists but cites no direct authority for the proposition. Instead, citing *Parexel International, LLC*, 356 NLRB 516, 519 (2011), General Counsel argues that the Board has held in other cases that conduct similar to misclassification that serves to chill future activity or can be used as a "preemptive strike" to prevent employees from engaging in protected and concerted activity violates Section 8(a)(1) of the Act because of its "chilling effect" on employees' future exercise of their rights. Without question, by misclassifying, the employer intends, "the very consequences which foreseeably and inescapably flow from his actions." *Erie Resistor*, 373 U.S. 221, 228 (1963). From a practical standpoint misclassification not only serves to chill future concerted activity as asserted by the General Counsel but essentially deprives and conceals available protections these employees have under the Act. Interference and restraint of Section 7 rights flows directly from misclassification. As such, I find that misclassification rises to the level of a *per se* violation of Section 8(a)(1).¹⁵

VII. Other Unlawful Practices

(A) Interrogation, Surveillance, Promise of Better Work for Abandoning Union Activity, Threatening Lease Drivers with Unspecified Reprisals

(1) Interrogation

In determining whether an interrogation is coercive in violation of Section 8(a)(1), the Board applies a totality of the circumstances test which considers whether under all circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. *Bloomfield Health Care Center*, 352 NLRB 252 (2008). Relevant factors for consideration were

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES – SAN FRANCISCO

INTERMODAL BRIDGE TRANSPORT

AND

CASES

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Ami Silverman, Esq., and Sanam Yasseri, Esq.,
for the General Counsel.

A. Jack Finklea Esq., and Donald J. Vogel Esq.
(Scopelitis, Garvin, Light, Hanson & Feary, P.C.),
for the Respondent.

Julie Gutman Dickinson, Esq. and Hector De Haro, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

DICKIE MONTEMAYOR, Administrative Law Judge. This case was tried before me beginning on August 22, 2016, with trial testimony concluding on December 7, 2016. Charging Party filed a charge (the allegations which comprise Case Number 21-CA-157647) on August

Unfair Competition Law enforcement: CA Attorney General

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE ex rel. KAMALA D. HARRIS, as Attorney General, etc.,

Plaintiff and Appellant,

v.

PAC ANCHOR TRANSPORTATION, INC., et al.,

Defendants and Respondents.

S194388

Ct.App. 2/5 B220966

Los Angeles County
Super. Ct. No. BC397600

The narrow question presented is whether an action under the unfair competition law (Bus. & Prof. Code, § 17200 et seq. (UCL)) that is based on a

Unfair Competition Law enforcement: LA City Attorney

THE WALL STREET JOURNAL.

Home World U.S. Politics Economy **Business** Tech Markets Opinion Life & Arts Real Estate WSJ. Ma

BUSINESS | LOGISTICS REPORT

Los Angeles City Attorney Sues Port-Trucking Firms Over Worker Classification

Lawsuits asks that companies compensate drivers for back pay and pay civil penalties of up to \$2,500 per violation



In sum...

- State enforcement
 - Division of Labor Standards Enforcement (DLSE)
 - Employment Development Department (EDD)
 - California Occupational Safety and Health Administration (Cal/OSHA)
 - CA Attorney General
- Federal enforcement
 - Department of Labor (DOL)
 - National Labor Relations Board (NLRB)
- City enforcement
 - Los Angeles City Attorney

Yet the misclassification continues...



Settlement Statement

Owner ID: 22189

Owner: GAITAN, NAPOLEON

Settlement Dates: 5/2/2018 3:07:48 PM -
5/9/2018 3:27:07 PM

Open Balances

Settlement

\$0.00

Settlements

Unit	ProNo	Equipment#	Account	Net Price
173037	173-067530-001-01	XPOU410006	SCFUEL	\$8.40
			TRUCK	\$35.00
173037	173-067424-001-02	XPOU412474	SCFUEL	\$20.04
			TRUCK	\$83.50
173037	173-065404-001-03	XPOU414180	SCFUEL	\$14.16
			TRUCK	\$59.00
173037	173-065404-001-01	XPOU414180	DRDETN	\$66.00
			SCFUEL	\$5.28
			TRUCK	\$22.00
173037	173-066985-001-02	XPOU411789	TRUCK	\$101.50
			SCFUEL	\$24.36
173037	173-067530-001-03	XPOU410006	SCFUEL	\$5.28
			TRUCK	\$22.00
173037	173-066322-001-01	XPOU412562	DRDETN	\$110.00
			TRUCK	\$22.00
			SCFUEL	\$5.28
173037	173-065404-001-02	XPOU414180	SCFUEL	\$18.84
			TRUCK	\$78.50
173037	173-067530-001-02	XPOU410006	SCFUEL	\$18.84
			TRUCK	\$78.50
173037	173-067424-001-01	XPOU412474	TRUCK	\$43.00
			SCFUEL	\$10.32
			DRDETN	\$55.00
173037	173-067424-001-03	XPOU412474	SCFUEL	\$5.28

Drivers taking action

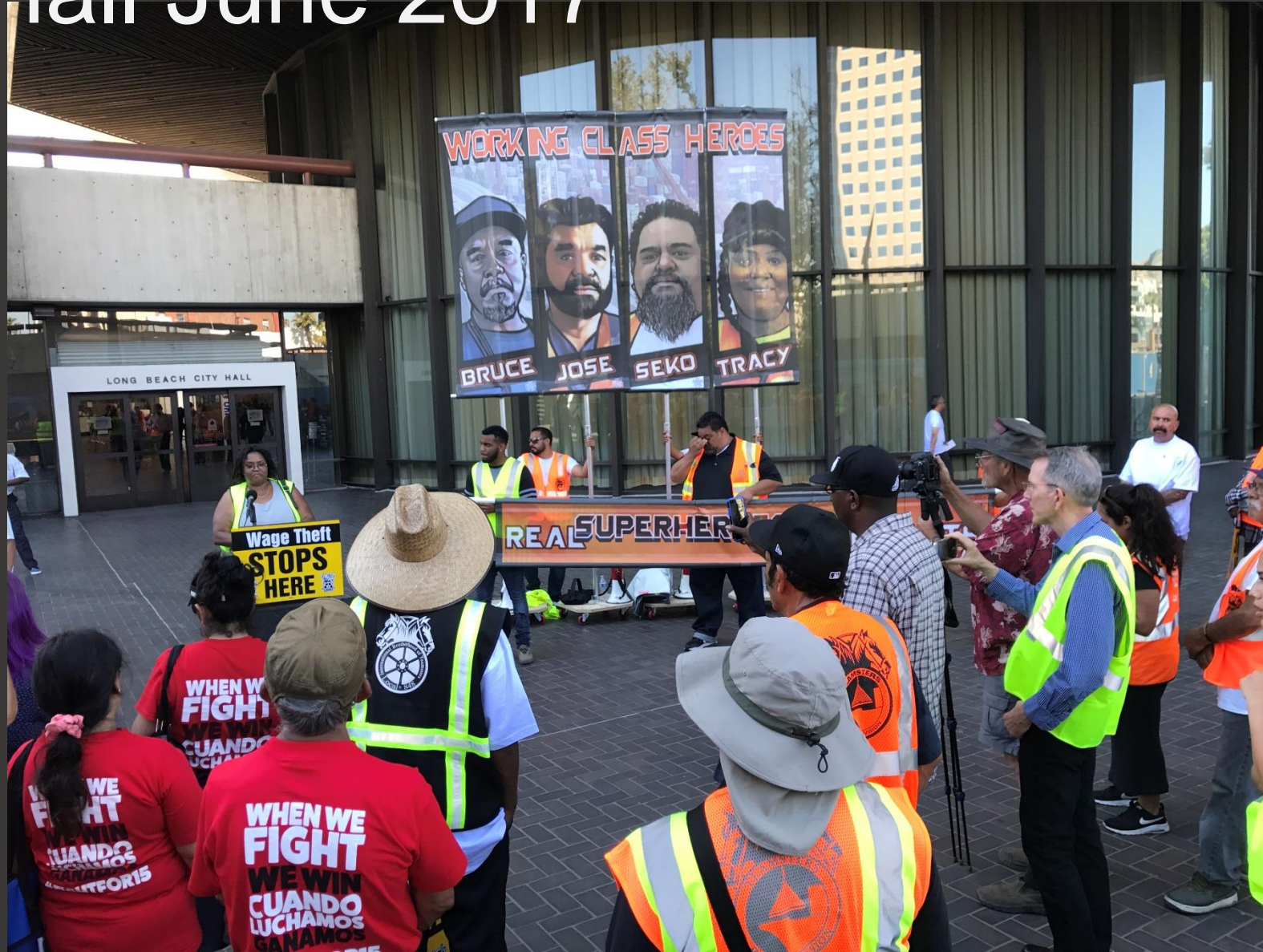




Drivers sharing their stories with community, Nov 2017



Drivers and community partners at LB City Hall June 2017



Drivers and community partners sharing testimony at LB City Hall hearing on wage theft July 2015

