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May 31, 2018

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**VIA E-MAIL AND U.S. MAIL**

Lena Gonzalez  
Chair of the Tidelands and Harbor Committee  
Long Beach City Council  
E-Mail: district1@longbeach.gov

Re: The Port Trucking Crisis, Misclassification of Drivers as Independent Contractors,  
Exploitation of Drivers and Warehouse Workers, and Finding Solutions That Protect the  
Port of Long Beach's Proprietary Interests

Honorable Chair Gonzalez and Members of the Long Beach City Council:

Our office represents the International Brotherhood of Teamsters, Port Division and Teamsters Local 848 (jointly referred to as "Teamsters"), along with hundreds of port truck drivers and warehouse workers that operate at the Port of Long Beach (the "Port"). This letter provides details regarding the untenable conditions facing the obviously misclassified workers at the Port and the growing labor unrest among drivers and warehouse workers that is damaging the Port's reputation and its proprietary interests. Throughout the five years that we have represented the Teamsters and drivers at the Port, we have seen these appalling conditions firsthand.

Notwithstanding our legal victories, and uniform findings that port truck drivers are employees who have been misclassified as independent contractors, Port trucking companies continue take advantage of every opportunity to deprive these workers of their rights under Federal, State, and even local laws and ordinances meant to protect the community members who work at these locations.

We recognize that some of these matters are outside the control of the City of Long Beach's (the "City") jurisdiction. As detailed below, however, there is no denying that the frustration amongst drivers and other workers, due to the impact of misclassification, directly impacts the City's proprietary interest in the operation of its Port and, to the extent the City contracts with companies involved, makes the City complicit in this unlawful behavior. We urge the Council to take all steps necessary both to protect its proprietary interest in the Port and to assure that City resources are not being used to support law-breaking.

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The Ports of Long Beach and Los Angeles represent significant economic drivers for all of Southern California. Nearly one third of our nation's cargo flows through these Ports, and hundreds of thousands of individuals are employed either at the Ports or in related industries. As the City moves forward in improving working conditions generally, it is paradoxical that large sectors are being left behind in what has been described as "indentured servitude" and "sweatshops on wheels" at the Port. Prominent and reputable organizations<sup>1</sup> have detailed these problems, describing unsafe working conditions, wage theft, misclassification, over-exhaustion leading to safety concerns, and the violation of workers' right to collectively bargain to improve their working conditions. There is no question that these grave issues lead to driver frustration and labor unrest, negatively affecting the Port's proprietary interest, including its ability to retain and increase the amount of cargo it processes.

Our office has worked with both truck drivers and warehouse workers at the Ports who are successfully challenging their misclassification in various forums, such as the National Labor Relations Board ("NLRB"), the U.S. Department of Labor ("DOL"), federal and state courts, the California Division of Labor Standards and Enforcement ("DLSE"), and the California Employment Development Department ("EDD"). The persistence of this issue, and the commonalities across the industry that have led to a perfect win record when challenging misclassification on behalf of port drivers, makes clear the need for systemic repair. The City of Long Beach can play its role in addressing this problem by focusing on and addressing the issues that directly impact its proprietary interests and the Port's reputation.

It is important to note that this is not a recent development. Even before the clean truck program, drivers made historically low wages, were made to finance the equipment used, and were incorrectly labeled as "independent contractors" who were stripped of all their rights.<sup>2</sup> While the clean truck program was necessary for environmental reasons, because old trucks contributed to poor air quality, asthma, cancer and lung disease, the clean truck program also made the situation for drivers even worse. Port drivers had no means of purchasing clean truck compliant equipment and were forced into debt peonage through predatory leases hoisted on them by their employers. If these mostly Latino immigrant drivers wanted to work and survive, they had to accept the convoluted and confusing leasing arrangements pushed by their employers.

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<sup>1</sup> Including, in part, the National Employment Law Project (NELP), the Los Angeles Alliance for a New Economy ("LAANE"), the Teamsters, and even large news organizations like USA Today.

<sup>2</sup> CGR Management Consultants, *"A Survey of Drayage Drivers Serving the San Pedro Bay Ports, prepared for Gateway Cities Council of Governments"* (Mar 2007); Kristen Monaco, *"Wage and Working Conditions of Truck Drivers at the Ports of Long Beach and Los Angeles"* (2008); Kristen Monaco, *"Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach"* (Feb 2008); Kristen Monaco & Lisa Grobar, *"A Study of Drayage at the Ports of Los Angeles and Long Beach"* (2004).

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Employers shifted every single operating expense possible onto these drivers, to the point that some drivers would put in full weeks at work and receive paychecks for a few cents or even end up in debt because of these unlawful deductions. Some companies even pocketed subsidy money they received, and leased the trucks back to their drivers at full market value. All of this was accomplished through the fiction that these drivers were independent contractors and therefore not subject to any labor or employment law protections.

In reality, these drivers spent years working for a single employer doing work at the very core of the employer's operations. These employers had complete control over how much the drivers earned, how much work each driver received, what loads each driver would deliver, and even how the containers would be loaded and unloaded. Employers disciplined drivers for failing to follow instructions, and often found ways to terminate drivers before those drivers could pay off their truck, meaning that the drivers would lose the years of lease payments they had made. In other words, these drivers in no way operated as independent businesses.

We are increasingly seeing more and more port drivers challenging this system and winning in all forums, despite intense retaliation by the employers who see their unlawful advantage starting to disappear. In front of the DLSE, we have worked with port truck drivers who have been found to be misclassified in over 400 cases, and the DLSE has awarded over \$45 million in stolen wages and penalties to these drives. No higher court has overturned any of these cases on appeal. Similarly, the EDD has found in each of at least 45 cases that have come before it, that port drivers were actually employees and not independent contractors. In the courts, more than 3500 misclassified port truck drivers in the Long Beach-Los Angeles area have been a part of over 30 class action cases filed against Port trucking companies and/or dozens of individual or "mass-action" suits, some of which have settled and some of which remain pending.<sup>3</sup> Even the DOL,<sup>4</sup> the California Attorney General,<sup>5</sup> and the City of Los Angeles<sup>6</sup> have brought cases against Port trucking companies guilty of pervasive misclassification.

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<sup>3</sup> Nearly all private litigation settles for monetary compensation significantly below what is owed drivers, and without injunctive relief to end misclassification. Our law firm recently filed a class action/Private Attorney General Action in California Superior Court in the matter of *Alvarez v. XPO Logistics Case No. BC695123* (filed February 26, 2018), where the drivers we represent have made clear that they will not settle for less than injunctive relief to enjoin and put a permanent stop to systemic and deliberate misclassification of port and rail truck drivers at XPO's facilities .

<sup>4</sup> See e.g., *Thomas E. Perez, v. Shippers Transport Express, Inc.*, Case No. 2:13-cv-04255-BRO-PLA (2014) (consent judgement available at <https://www.dol.gov/sol/regions/SF/Shippers.pdf>);

<sup>5</sup> *The People of the State of California v. Pac Anchor*, Case No. BC397600 (trial scheduled for September 11, 2017)

<sup>6</sup> *The People of the State of California v. CMI Transportation*, Case No. BC689321; *The People of the State of California v. K&R Transportation*, Case No. BC689322; *The People of the State of California v. California Cartage Express*, Case No. BC689320

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In front of the NLRB, drivers are having similar success. In one of the cases our firm handled, drivers obtained a monumental injunction in federal district court ordering the employer to reinstate terminated drivers who had been misclassified as independent contractors<sup>7</sup>. An NLRB judge later issued a decision confirming that these drivers were in fact misclassified and that they had been terminated for joining together with their coworkers to improve their working conditions.<sup>8</sup> More recently, another NLRB judge found that an employer had misclassified its drivers and committed various unfair labor practices.<sup>9</sup> What made that case groundbreaking is that the judge found, based in part on arguments made by our firm, that the mere act of misclassification interferes with an individual's right to act collectively with his coworkers.<sup>10</sup> California has also experienced a similar shift towards protecting workers rights, with the Supreme Court clarifying the proper test for determining whether a worker is an independent contractor.<sup>11</sup> These legal victories, however, have not solved the problem as employers continue to violate the law with impunity.

The persistence of misclassification and the system of indentured servitude it creates has led to growing frustration amongst port truck drivers. We recognize that the City is not in a position to take sides in particular litigation, but it is important to acknowledge that the frustration felt by drivers directly impacts the operation, reputation, and image of the Port. There have been 15 strikes at the Ports of Long Beach and Los Angeles with more looming on the horizon as worker exploitation continues to run rampant. History here and at other ports demonstrates that delayed and diverted cargo resulting from labor unrest negatively affects the Port of Long Beach's operations and its ability to protect its proprietary interest. Moreover, USA Today articles and other news articles throughout the nation highlight this system of indentured servitude and the resulting strikes and work stoppages, which threatens the Port's reputation and customer relationships.

Although the Long Beach City Council cannot fix all these issues unilaterally, it undeniably has authority to take steps to comprehensively address the threat to its proprietary interest and to assure that City programs do not facilitate a system which relies on the exploitation of workers. The Teamsters, and the port drivers they represent, urge the City Council to take every single step possible to address this endemic problem leading to labor unrest that threatens to severely damage the Port's reputation. Policy solutions should level the playing field for legally compliant

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<sup>7</sup> *Garcia v. Green Fleet Sys., LLC*, No. CV 14-6220 PSG JEMX, 2014 WL 5343814, at \*1 (C.D. Cal. Oct. 10, 2014).

<sup>8</sup> *Green Fleet Sys.*, 21-CA-100003, 2015 L.R.R.M. (BNA) ¶ 180798 (NLRB Div. of Judges Apr. 9, 2015).

<sup>9</sup> *Intermodal Bridge Transp.*, JD(SF)-48-17, 2017 WL 5852765 (Nov. 28, 2017).

<sup>10</sup> *Id.* The Board itself has now accepted amicus and supplemental briefs on this issue.

<sup>11</sup> *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018).

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companies; protect the City and Port of Long Beach's proprietary interest, reputation and ability to successfully compete in the market for port services; and implement responsible contractor policies for city procurement. Our office, the Teamsters, and hard-working and courageous port truck drivers and warehouse workers stand ready to provide any additional information or to further discuss the steps Long Beach can take to tackle these problems.

Thank you for your attention to this critical matter.

Very truly yours,

Bush Gottlieb  
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Julie Gutman Dickinson

cc: Fredrick Potter, Int'l Vice President & Port Director, Int'l Brotherhood of Teamsters  
Eric Tate, Secretary-Treasurer, Teamsters Local 848  
Mike Manley, Counsel, Int'l Brotherhood of Teamsters, Washington, D.C.