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## VIA U.S. MAIL

Honorable Members of the Los Angeles City Council  
Trade, Travel, and Tourism Committee

Re: Exploitation of Workers at the Ports of Los Angeles and Long Beach

Dear Honorable Members of the Los Angeles City Council and the Trade, Travel and Tourism Committee:

Our office represents the International Brotherhood of Teamsters, Port Division (the "Teamsters"). This letter shall be our office's public comment regarding the Motion introduced by Councilmembers Buscaino and Blumenfield in front of the Trade, Travel and Tourism Committee this 28<sup>th</sup> day of November, 2017. Throughout the nearly five years that we have represented the Teamsters at the Port of Los Angeles (the "Port"), we have seen firsthand the frankly appalling working conditions that thousands of Port workers are subject to on a daily basis. Employers at the Port have taken 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.

The Port represents a significant economic driver for the City of Los Angeles and for Southern California more generally. Nearly one third of our nation's cargo flows through the Port of Los Angeles and the Port of Long Beach, and hundreds of thousands of individuals are employed either at the Port or in related industries in Southern California. As the City of Los Angeles commendably moves forward in setting a model for improving conditions for workers across the county—through minimum wage and paid sick time ordinances, for example—it is paradoxical that large sectors of Port workers are being left behind and that what has been described as the "indentured servitude" of port truck drivers has been tolerated for so long in this otherwise great and progressive City of Angels.

Organizations such as the National Employment Law Project (NELP), the Los Angeles Alliance for a New Economy ("LAANE"), the Teamsters, and even news organizations like USA Today have conducted and released numerous studies detailing the nature of the problems at the Port. These include unsafe working conditions, wage theft, misclassification, over-exhaustion of

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drivers leading to safety concerns, the violation of workers' right to collectively bargain to improve their working conditions, and the negative effect on the Port's ability to retain and increase the amount of cargo it processes.

Our office has worked with both the truck drivers who move cargo in and out of the Port and the warehouse workers who unload and repackage that cargo in attempting to tackle some of these issues. The truck drivers we have worked with have successfully challenged their misclassification, which violates multiple labor and employment laws, in various forums: from the National Labor Relations Board ("NLRB") to the U.S. Department of Labor ("DOL") to federal and state courts, to the California Division of Labor Standards and Enforcement ("DLSE") to the California Employment Development Department ("EDD"). We have seen striking commonalities in the working relationship between drivers and the companies they work for, commonalities which demonstrate that drivers are misclassified across the industry and which indicate a need for systemic repair.

It is important to place the current exploitation of these professional truck drivers—essential to the successful movement of goods for household names like Amazon, Home Depot, and Target—into context of how we got here. An already exploitative situation was made even worse when the Clean Trucks Program went into effect in 2008. Academic studies at the time showed port drivers earned very low wages,<sup>1</sup> because drivers were historically made financially liable for the equipment they used, were labeled as "independent contractors," were stripped of their rights, and did not have any bargaining power. This shifting of responsibility from financially viable companies to drivers who could not afford to purchase new clean trucks meant that on average the 16,000 trucks at the Port were 15 to 20 years old, making the Port known as the place where "old trucks go to die."

These old trucks were major contributors to Southern California's poor air quality, causing high rates of asthma, cancer and lung disease. Environmental litigation even shut down infrastructure projects at the ports until diesel emissions could be reduced.<sup>2</sup> The only path forward was to implement an aggressive clean trucks program requiring capital investments of over \$2.4 billion to replace the fleet of 16,000 trucks at an average estimated cost of \$150,000 per truck. Port drivers who had no means of purchasing new equipment were forced into debt peonage through predatory leases hoisted on them by their employers—the trucking companies who now needed

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<sup>1</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).

<sup>2</sup> See *Nat. Res. Def. Council, v. City of Los Angeles*, 103 Cal. App. 4th 268, 126 Cal. Rptr. 2d 615 (2002).



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to operate new, clean equipment in order to continue serving their customers. With new calls and commitments to meet zero-emission standards, there is a need for the City of Los Angeles to learn from its mistakes in order to avoid repeating history. In fact, by taking the correct steps, the Port can actually help bring port trucking out of the dark ages.

With the 2008 Clean Truck Program, the situation for these mostly Latino immigrant drivers went from bad to worse. If these driver wanted to survive and take care of their families, they had no option other than to accept the convoluted and confusing leasing arrangements pushed by their employers. Some employers called their arrangements leases and made vague promises that drivers would eventually own the trucks they were paying for. Other employers were brazen enough to make workers directly pay to use the truck the Employer had purchased, eschewing the pretense that drivers might eventually own the trucks and instead establishing “rental” agreements where driers paid to **rent** the company truck by the week or month, without building any ownership interest. Nearly every employer passed onto drivers every single operating expense it could, 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, owing the employer money because of these unlawful deductions. Some companies allegedly even pocketed subsidy money they received, and leased the trucks back to their drivers at full market value. All of this was done under 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. 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 and years of lease payments they had already given their employer.

When drivers began challenging their misclassification and this exploitative system, employers retaliated—often going as far as firing the drivers who led the pack in asserting their rights. By and large, drivers are winning in every forum where they challenge their misclassification as court after court and governmental agency after governmental agency are uniformly finding misclassified port truck drivers to be employees. In one case our office handled, drivers obtained a monumental victory in federal district court when the court issued an injunction ordering the employer to reinstate terminated drivers as employees because they were likely to succeed in their claim that they were employees who had been unlawfully terminated. A judge for the National Labor Relations Board (“NLRB”) later issued a decision, following a four week trial, in which he confirmed that these drivers were in fact misclassified and that they had been

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terminated for joining together with their coworkers to improve their working conditions.<sup>3</sup> Our office has also worked with drivers at other trucking companies who prevailed in their quest to be reclassified as employees when their employers settled NLRB charges against them. Other cases remain pending at the NLRB, including cases challenging the very scheme of misclassification as a violation of federal labor law.

In front of the California Division of Labor Standards Enforcement (“DLSE”), drivers have been found to be misclassified in at least 379 cases, and the DLSE has awarded over \$40 million in stolen wages and penalties to these drivers. Similarly, the California Employment Development Department has found that at least 45 port driver were actually employees and not independent contractors. Over 30 class action cases have been filed against Port trucking companies along with dozens of individual or “mass-action” suits, some of which have settled and some of which remain pending. Even the U.S. Department of Labor and the California Attorney General have investigated and brought cases against Port trucking companies guilty of pervasive misclassification.<sup>4</sup>

These types of problems are not confined to Port truck drivers. Our office has also been working with warehouse workers at the warehouse owned by the Port of Los Angeles and leased by NFI Industries (California Cartage companies leased these warehouses from the Port for many years until the company was recently purchased by NFI Industries). Although this warehouse is located on Port property, those workers toil in a completely substandard and unsafe work environment. Working in warehouses open to the elements, these workers alternately slosh through slippery rain inside the warehouse and work inside containers where temperatures regularly rise above 100 degrees Fahrenheit. These workers have also sued their employer for wage theft both at the state level—for atrocities such as not being paid for showing up at the warehouse and being sent home for lack of work, or for not being provided proper safety equipment—and at the city level—because California Cartage blatantly ignored the City’s Living Wage Ordinance. At a recent community hearing titled “Truth Commission to End Abuse at LA’s Port,” one of the Living Wage Ordinance’s original drafters, former City Councilmember Jackie Goldberg, expressed dismay at seeing these conditions at a warehouse **located on Port property.**

Although workers are having immense success at every forum where they are challenging their exploitation, these governmental enforcement actions have proven insufficient. Overburdened and underfunded departments mean that these cases take years and years to reach any resolution. This is especially true when employers spend vast amounts of money fighting and appealing

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<sup>3</sup> *Green Fleet Sys.*, 21-CA-100003, 2015 L.R.R.M. (BNA) ¶ 180798 (NLRB Div. of Judges Apr. 9, 2015).

<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>); *The People of the State of California v. Pac Anchor*, Case No. BC397600.

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these cases, forcing workers to give up or settle for pennies while the employers continue their unlawful business practices as usual. Even when workers get close to winning a case, employers either file for bankruptcy or outright refuse to pay drivers, leading to difficult and costly enforcement hearings. There are currently cases in front of both the NLRB and the courts which have been in process, while workers wait without any relief, for years. At the DLSE, over 150 cases are pending and awaiting hearings as more new claims are filed every few weeks. Throughout this whole time, the employers in question continue profiting from their exploitative practices—in some cases aided by the Port.

That is why this committee, the City Council, and the Port must take whatever steps are within their authority to improve the conditions at the Port and to stop facilitating this system built on the backs of workers. The concrete steps proposed by Councilmembers Buscaino and Blumenfield in their Motion are a good beginning. By reviewing the leases of trucking and warehousing companies at the Port to identify law breaking companies, the City and the Port can ensure that they are not complicit in the continued exploitation of these workers. Once identified, the Port should also move forward with denying access to these law breaking companies. Further, by directing the Bureau of Contract Administration to investigate minimum wage and sick time violations at the Port, the City can ensure that every company it contracts with to operate at the Port is following the City's own requirements.

While these steps must be just the beginning, they will go a long way towards starting to improve conditions for workers at the Port and towards making the Port the most attractive destination for cargo owners choosing between multiple ports across the coast and country. Our office and the Teamsters stand ready to provide any additional information requested by this committee or the Council, and to discuss additional steps the Port and the City can take to tackle these problems.

Thank you for your attention to this critical matter.

Very truly yours,

Bush Gottlieb  
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cc: Mike Manley, International Brotherhood of Teamsters