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Honorable Members of the Los Angeles City Council  
Trade, Travel and Tourism Committee  
200 N. Spring Street  
Los Angeles, CA 90012

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

Re: Recommendation that City Council Veto Board of Harbor Commissioners' Approval of  
NFI/CTS Revocable Permit

Dear Honorable Members of the Trade, Travel and Tourism Committee:

Our office represents the International Brotherhood of Teamsters, Port Division and Teamsters Local 848 (the "Teamsters"). We commend the Los Angeles City Council (the "Council") for its action last week to assert jurisdiction under section 245 of the Los Angeles City Charter over the Board of Harbor Commissioners' (the "Board") September 20, 2018 approval of a revocable permit between the Harbor Department and California Transload Services, LLC ("CTS"), a subsidiary of NFI Industries, Inc. The egregious pattern of law-breaking, including violations of labor, employment and health and safety laws, by NFI and its subsidiaries continues unabated, not only hurting workers and communities, but also leading to major labor disruptions that affect the Port of Los Angeles's (the "Port") revenue, damage the Port's reputation and jeopardize its customer base.

As frustrated NFI workers currently carry out their seventh strike in three years on this site, we urge you to recommend to the Council that it veto this permit, and any future permit for a CTS lease that does not include a provision to protect against disruptive labor actions affecting the proprietary interest of the Port, the landlord on this site. Such a "no labor disruption" provision is in the Port's economic interest and will redound to the benefit of the Port, its tenants and CTS and its related companies' workers. CTS's current need to seek a new permit puts the Port in a unique position in which it can insist that CTS accept a "no labor disruption" provision that will bind it and any other entity that does business on the site of the lease. Vetoing the current permit, and any future permit that does not include a "no labor disruption" provision, is urgent, necessary and lawful. The Council should ensure that the Port and the Board do not let this opportunity go to waste.

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### I. BACKGROUND

As mentioned above, CTS is a subsidiary of the conglomerate NFI Industries, Inc. Altogether, NFI owns at least five companies associated with warehousing and trucking at the Port: CTS; K&R Transportation California, LLC; California Cartage Transportation LLC; Container Freight Transportation LLC; and CMI Transportation LLC (collectively, the “NFI Companies”). CTS is applying for a permit to continue leasing the complex at 2401 E. Pacific Coast Highway, Wilmington, California, on Port property (the “Premises”). The NFI Companies use a warehouse on the Premises – often called the “Cal Cartage warehouse” – to store and organize goods that they are transporting, and two NFI-owned trucking companies, K&R and California Cartage Express, base their operations on the Premises.

Federal and state agencies have repeatedly found the NFI Companies to be in violation of labor, employment and health and safety laws. A summary of the extensive regulatory action and litigation involving the NFI Companies can be found in Exhibit A attached here. But the following represents a (not comprehensive) sampling of agencies’ findings:

- In February 2018 a **National Labor Relations Board** (“NLRB”) administrative law judge concluded that California Cartage violated workers’ legal rights by engaging in myriad unfair labor practices, including unlawfully interrogating employees, threatening termination and confronting workers in a physically aggressive fashion;
- In September 2018 the **U.S. Department of Labor** found that California Cartage and related companies had violated federal law by failing to pay a prevailing wage and refusing to provide required health and welfare benefits to workers;
- The **California Labor Commissioner** has issued at least twelve decisions finding that workers for NFI Companies were misclassified, resulting in over \$1.4 million in damages;
- The **California Employment Development Department** has found at least four K&R drivers to have been misclassified, and it has filed at least eight tax liens – totaling over \$150,000 – against K&R; and
- In 2015 **Cal/OSHA** issued four serious and six general penalties due to the unsafe working conditions on the Premises.

Employees of the NFI Companies have also repeatedly brought lawsuits to vindicate their rights. Many of these suits have settled; under the most recent settlement, the NFI Companies will pay \$3.5 million in damages to harmed employees. Other lawsuits and settlements remain pending, with millions of dollars more in damages being sought.

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In addition to the cases in which NFI Companies were definitively found to be in violation of the law, some of which are noted above, federal, state and local law enforcement authorities are currently prosecuting numerous actions and conducting many more investigations with respect to the NFI Companies that do business on the Premises. For example, mere days ago Region 21 of the NLRB issued a complaint against NFI and some subsidiaries for unlawfully interfering, restraining and coercing employees in the exercise of their rights, including unlawfully terminating an employee for his union activities and for standing up for his rights and the rights of his coworkers to take heat breaks.<sup>1</sup> The NLRB Region 21 complaint is also notable because it is asserted against three NFI Companies as a “single employer,” showing how closely integrated these entities’ operations are. In addition, earlier this year the Los Angeles City Attorney filed lawsuits against three NFI Companies (two of which, K&R and California Cartage Express, are located on the Premises) for misclassifying Port truck drivers.<sup>2</sup> Those are, again, just two examples among many of the ongoing prosecutions of and investigations into NFI’s employment practices (more can be found in the report attached as Exhibit A).

NFI purchased the companies associated with the Premises last fall, and it may argue that these extensive legal violations are an artifact of prior ownership. But that argument ignores the fact that law enforcement authorities continue to find good cause to investigate and prosecute the NFI Companies. Both the NLRB Region 21 complaint and the City Attorney lawsuits mentioned above implicate post-purchase actions. And last month individuals who work on the Premises filed three complaints alleging that they had suffered racial discrimination. These three examples are illustrative, not comprehensive, and they show that unfortunately NFI’s purchase did not materially change the culture of lawbreaking at the NFI Companies.

The NFI Companies’ numerous violations of law are not victimless crimes. Dangerous working conditions put workers at risk of death or serious injury. “Misclassifying” employees as independent contractors allows the NFI Companies to deduct the ordinary costs of business (like fuel and insurance) from employees’ paychecks; those onerous deduction often mean full-time workers make poverty-level wages.<sup>3</sup> And that is not even mentioning the pernicious side effects the NFI Companies’ actions have on the public at large and on law-abiding competitors.

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<sup>1</sup> NLRB Region 21’s complaint is attached here as Exhibit B.

<sup>2</sup> *People v. CMI Transp. LLC*, No. BC689321 (Super. Ct. L.A. Cty. Jan. 8, 2018); *People v. K&R Transp. Cal. LLC*, No. BC689322 (Super. Ct. L.A. Cty. Jan. 8, 2018); *People v. Cal. Cartage Transp. Express LLC*, No. BC689320 (Super. Ct. L.A. Cty. Jan. 8, 2018).

<sup>3</sup> See, e.g., CGR Mgmt. Consultants, *A Survey of Drayage Drivers Serving the San Pedro Bay Ports, prepared for Gateway Cities Council of Governments* (2007); Kristen Monaco, *Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach* (2008); Kristen Monaco, *Wage and Working Conditions of Truck Drivers at the Ports of Long Beach and Los Angeles* (2008); Kristen Monaco & Lisa Grobar, *A Study of Drayage at the Ports of Los Angeles and Long Beach* (2004).

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In light of the appalling working conditions facing employees on the Premises, it is unsurprising that they have conducted repeated labor disruptions in an attempt to effect change. Just this week, employees of the NFI Companies who work on the Premises began their *seventh* strike aimed at improving working conditions there.<sup>4</sup>

Strikes and other labor actions aimed at the NFI Companies on the Premises disrupt operations across the Port, hurting the Port's bottom line, drawing nationwide attention and causing substantial reputational harm. The strikes slow down or halt the activities of several major trucking companies, like K&R and California Cartage Express, making it more difficult to move shipments through the Port. They also result in "ambulatory pickets," in which workers follow NFI-related trucks as they move within and without the Port, disrupting the business of uninvolved companies and slowing down traffic. And they minimize the use of the Premises during the strikes, rendering prime Port real estate nearly valueless. Moreover, over time continuing labor disruptions will likely cause shipping companies to seek other, more placid ports. See Jeff Leeds, *Long Beach, L.A. Ports Face Crisis in Labor Dispute*, L.A. Times (May 8, 1996), [http://articles.latimes.com/1996-05-08/news/mn-7607\\_1\\_long-beach-port](http://articles.latimes.com/1996-05-08/news/mn-7607_1_long-beach-port) (noting, in the context of the 1990s labor disruptions, that "steamship lines [were] threatening to divert their freight containers to other West Coast ports to avoid the persistent labor troubles at Los Angeles' port").

The NFI Companies' lawbreaking also causes the Port to suffer a loss of goodwill and reputational harm. Major news organizations like USA Today have written at length about the "modern-day indentured servitude" represented by Port trucking companies' labor-law violations – and they have specifically named NFI Companies as culprits. See Brett Murphy, *Rigged*, USA Today (June 16, 2017), <https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/>. The additional media scrutiny that accompanies any strike will only brighten the spotlight on misclassification and similar ills. Considering that companies are increasingly responding to consumer concerns about ethical business practices, the Port's association with these pernicious practices and the consequent labor disruption they breed could translate directly into the loss of customers. See *Do Consumers Care About Ethical Retailing?*, Morgan Stanley (July 29, 2016) (noting that "[w]orker rights and safety, living wages, health and safety, and environmental and social stewardship" are "key considerations" for the kinds of corporations that ship through the Port).

Due to events outside the scope of this letter, CTS is required to renew its permit with respect to the Premises. Despite the extensive history of lawbreaking and the labor unrest it engenders, on September 20 the Board approved CTS's permit. In response, Councilmember Buscaino wisely moved under section 245 of the Los Angeles City Charter to assert jurisdiction over the Board's

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<sup>4</sup> The previous strikes occurred in September 2015, October 2015, April 2016, June 2016, October 2016 and June 2017.

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action. That motion was approved by the Council, paving the way for the Council to veto the Board's approval.

**II. THE COUNCIL SHOULD VETO ANY CTS PERMIT THAT DOES NOT INCLUDE A "NO LABOR DISRUPTION" PROVISION**

As explained above, the NFI Companies' flagrant lawbreaking has resulted in labor unrest and reputational damage, causing economic harm to the Port and its tenants. Because CTS needs to renew its permit, at this moment the Port and the City have the opportunity to effect change in its behavior for the benefit of the Port, its tenants and the NFI Companies' workers. The Council should veto the CTS permit approved by the Board, and insist that a "no labor disruption" provision that binds any entity doing business on the Premises be included in any permit/lease ultimately granted to CTS for the Premises.

A "no labor disruption" provision essentially requires the lessee to proactively engage with labor organizations so that potential labor disputes can be nipped in the bud. Specifically, the provision obligates the lessee to enter into an agreement under which a labor organization seeking to represent the employees of companies that conduct business on the leased premises pledges not to conduct strikes, picketing, work stoppages, boycotts or other forms of economic interference with entities conducting business on the premises. The provision generally also contains language making it clear that the provision is not intended to favor any particular outcome in the determination of worker preference regarding union representation.

The City has instituted this kind of provision in other industries. For example, in 2005 it passed an ordinance requiring all hotel companies that lease property from the City to execute no-strike pledges. L.A., Cal., Ordinance No. 176580 (May 22, 2005), [http://clkrep.lacity.org/onlinedocs/2004/04-1646\\_ord\\_176580.pdf](http://clkrep.lacity.org/onlinedocs/2004/04-1646_ord_176580.pdf). And Los Angeles World Airports ("LAWA") has a similar requirement for Los Angeles International Airport ("LAX") concessionaires. See *Labor Peace Agreement*, LAWA, <https://www.lawa.org/en/lawa-businesses/lawa-administrative-requirements/labor-peace-agreement> (last visited Sept. 29, 2018).

The Port should include in the permit negotiated with CTS a similar provision that binds any entity doing business on the Premises. It is important that the "no labor disruption" provision goes beyond just CTS, because other NFI Companies are active on the Premises. Indeed, it is CTS's sister companies that are responsible for some of the most egregious misconduct on the Premises, like the Labor Commissioner's findings of K&R's widespread misclassification of employees. The NLRB has recognized that the NFI Companies are so closely linked that they operate as a "single employer," so the "no labor disruption" provision should likewise reach all the entities part of that integrated operation.

A "no labor disruption" provision in the permit that extends to all entities conducting business on the Premises will bring the NFI Companies and labor organizations to the table, so that they can

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work cooperatively to address issues that lead workers to engage in labor disruptions, and enter into an agreement that includes a no-strike pledge. And, once the parties sign the no-strike pledge, the Port will be safeguarded from the kind of labor actions that disrupt operations, reduce revenue and cause substantial reputational harm.

The Port is legally entitled to insist on a “no labor disruption” provision in its proprietary capacity as CTS’s landlord. The provision is a “contractual commitment[ ] voluntarily undertaken” by the parties, so it is not preempted by federal legislation. *See Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 569 U.S. 641, 649 (2013). It would be unremarkable, even expected, for a landlord to impose special conditions on a tenant that had a history of run-ins with the law and who repeatedly disrupted his neighbors; just the same, the Port would be well within its rights to attempt to rein in CTS and its related companies’ unlawful behavior, which triggers the labor unrest harmful to the Port’s proprietary interest. *See Airline Serv. Providers Ass’n v. LAWA*, 873 F.3d 1074, 1081 (9th Cir. 2017) (explaining that LAWA could permissibly “take[ ] action to protect its proprietary interest in running [LAX] smoothly”). For that reason, the U.S. Court of Appeals for the Ninth Circuit recently held that LAX could lawfully negotiate for “labor peace agreements.” *See id.* at 1082, 1086. Accordingly, there is significant precedent in Los Angeles and firm legal authority upholding the lawfulness of a “no labor disruption” provision in a lease/permit for the Premises.

The NFI Companies may argue that a “no labor disruption” provision is not in the Port’s interest because it will cause CTS to reject the permit, leaving the Premises unoccupied. But even if CTS walked away, the harm to the Port would be negligible or none. Current estimates peg the vacancy rate for Port property at less than 2%, meaning that there would almost certainly be eager suitors for the Premises. Indeed, CTS’s leaving could turn out to be a boon for the Port, since CTS’s current lease does not meet the Board’s targets for financial rate of return, and whoever replaces CTS is unlikely to have the NFI Companies’ culture of lawbreaking. We are aware of many such high road companies that would jump at the opportunity to perform warehousing and drayage services on the Premises if the NFI Companies were to walk away. By that same token, the high demand for Port property and CTS’s current below-target lease make it more likely that CTS will accept the “no labor disruption” provision in order to keep its advantageous position.

In sum, vetoing the current permit, and any future lease/permit that does not include a “no labor disruption” provision, is urgent, necessary and lawful.

**III. CONCLUSION**

CTS and its sister NFI Companies’ history of pervasive lawbreaking has resulted in and continues to result in severe labor disruption that harms the Port, its tenants and the Companies’ employees. Because of CTS’s need to seek a new permit, the Port is in a unique position to start undoing that harm and to protect itself going forward. The Port and the Board must not let this

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opportunity go to waste. The Committee should recommend that the Council veto this permit and it should insist that any future CTS permit include a “no labor disruption” provision that binds any entity doing business on the Premises.

This office and the Teamsters stand ready to discuss this matter further, and to provide any additional information that may be of assistance to the Committee.

Very truly yours,

Bush Gottlieb  
A Law Corporation



Julie Gutman Dickinson

cc: Honorable Members of the Los Angeles City Council  
Honorable Mayor of Los Angeles Eric Garcetti  
Fredrick Potter, Teamsters International Vice President and Director of Port Division  
Randy Cammack, President, Teamsters Joint Council 42  
Eric Tate, Secretary Treasurer, Teamsters Local 848  
Ron Herrera, International Vice President, and Secretary Treasurer Teamsters Local 396

# **EXHIBIT A**

## Regulatory Action and Litigation at NFI/California Cartage

*Updated September 30, 2018*

NFI/California Cartage, based in Wilmington, CA, is one of the largest goods movement companies in America, with warehouses and port trucking operations across the U.S. **Referred to herein as “NFI/Cal Cartage,” this family of companies was recently acquired by the New Jersey-based National Freight Industries (NFI).**<sup>1</sup> Previous to this acquisition, Cal Cartage was owned and managed by Robert Curry, Sr. and his family. NFI/Cal Cartage represents the largest trucking operation at the Ports of Los Angeles and Long Beach by a wide margin.

### **Cal Cartage Port Trucking Operations**

The NFI/Cal Cartage family of companies includes five major trucking operations at the Ports of LA and Long Beach. The four largest - **K&R Transportation California LLC; Cal Cartage Transportation LLC, Container Freight Transportation LLC, and CMI Transportation LLC**<sup>2</sup> – have been facing multiple claims in the courts and government agencies for misclassifying their drivers. In several instances, agencies have already determined that drivers were, in fact, employees. K&R and California Cartage Express operate out of the same property as the Cal Cartage warehouse (described in the following section), CMI operates out of a nearby Wilmington yard, and ContainerFreight operates out of a yard in Long Beach. Combined, more than 600 alleged misclassified drivers work for these companies.

On September 28, 2018, Los Angeles City Council voted to assert jurisdiction over the 30-day revocable permit for Cal Cartage’s operations on LA Port property that the Port of Los Angeles Harbor Commission approved on September 20, 2018 citing concerns about labor disruptions. On October 2, 2018, the matter will be considered at the Trade, Travel and Tourism Committee. Previously, in an unprecedented move, on May 7, 2018, the Los Angeles City Council rejected the City’s Board of Harbor Commissioners approval of California Cartage’s Foreign-Trade Zone (FTZ) operating agreement at the Port of Los Angeles. Under this federal program, California Cartage’s customers received incentives such as deferred and reduced tariffs. After asserting jurisdiction over the matter, the City Council voted unanimously to veto the Harbor Board of Commissioners’ approval of the permit due to the multiple violations at the facility such as health and safety and labor violations, which place California Cartage in violation of the terms of the FTZ operating agreement. These and other violations and ongoing investigations are outlined below:

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<sup>1</sup> California Cartage Co. Acquired by NFI Industries. (2017, October 3). Retrieved from <http://labusinessjournal.com/news/2017/oct/03/california-cartage-co-acquired-nfi-industries/>

<sup>2</sup> On 7/26/2017, new entity names were filed in DE for these four companies. Previous entity names used are: K&R Transportation, California Cartage Express, ContainerFreight EIT and California Multimodal LLC (CMI). Additional related entities filed in CA on 10/10/2017 include: KRT2931 LLC, CCX2931 LLC, CFT2931 LLC, and CM2931 LLC.

## Agency Investigations and Determinations:

### ***Los Angeles City Attorney***

- On January 8, 2018, Los Angeles City Attorney Mike Feuer announced that his office had filed lawsuits against Cal Cartage Express, CMI, and K&R Transportation for violation of California's Unfair Competition Law by misclassifying port truck drivers as independent contractors and evading paying taxes and providing benefits to drivers.<sup>3</sup>

### ***Los Angeles Bureau of Contract Administration***

- The City's Bureau of Contract Administration is engaged in an ongoing investigation of K&R Transportation for violation of the City's Minimum Wage Ordinance.

### ***California Labor Commissioner***

#### *Employee determinations:*

- Over the past two years, there have been at least 12 decisions issued by the California Labor Commissioner in individual claims filed by NFI/Cal Cartage drivers working for K&R Transportation, Cal Cartage Express, ContainerFreight, and CMI. All of these claims found that the drivers were, in fact, employees, and not independent contractors. Together, those decisions ordered NFI/Cal Cartage to pay those 12 drivers a total of **\$1,419,102.62** for Labor Code violations including unlawful deductions and unreimbursed expenses. NFI/Cal Cartage appealed these cases, settling eleven of them, with one remaining pending in Superior Court.<sup>4</sup>

#### *Pending claims:*

- There have been an additional 43 Labor Commissioner claims that have been filed against NFI/Cal Cartage, all of which appear to be pending. Of these, 16 were filed by K&R drivers, 14 by Cal Cartage Express drivers, and 13 by CMI drivers (10 of the K&R drivers had their hearings in December 2017 and a decision is pending; 12 of the 14 Cal Cartage Express drivers have hearings scheduled in October 2018; and 10 of the CMI drivers had hearings on July 2018 and a decision is pending). The **total liability for the 43 claims is \$10 million.**

### ***California Employment Development Department (EDD)***

- At least four K&R drivers have been determined to have been employees – not independent contractors – by the California EDD in individual benefits determinations.
- Since June 2017, the California EDD has filed at least eight tax liens against K&R Transportation for a total of **\$159,764**, indicating that K&R likely owes the state for unpaid payroll taxes.

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<sup>3</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

<sup>4</sup> *Angel Green v. California Cartage Express*, Case No. NS029740

### ***Private Litigation:***

- In recent years, NFI/Cal Cartage has faced at least five class action lawsuits in California Superior Court for multiple Labor Code violations, including willful misclassification, unlawful deductions, unreimbursed expenses, unpaid minimum wages, and failure to provide meal and rest breaks, along with violation of California’s Unfair Competition Law. In December 2017, the last pending case settled for \$3.5 million and a motion for final approval was held in May 2018.<sup>5</sup> The company recently settled four similar suits.<sup>6</sup>
- NFI/Cal Cartage also recently settled two “mass action” lawsuits for misclassification and wage theft in CA Superior Court involving 55 drivers.<sup>7</sup>

### **Cal Cartage Warehouse**

**Cal Cartage Container Freight Station** in Wilmington is a warehouse and freight center on Port of LA property and employs approximately 500 workers, with 40-50 percent of the workforce being employed through a temp agency. While Cal Cartage warehouse workers used to have good paying jobs that provided benefits, they have not had representation from a union in over 30 years and conditions have suffered. The company has been cited for serious health and safety violations twice in the past three years, and workers face serious retaliation resulting in unfair labor practices charges and five strikes.

### **Health & Safety**

The warehouse facility has ongoing health and safety issues. The building was built in the 1940s and is poorly maintained. Several workers have been hurt just trying to walk around the facility due to potholes and poor infrastructure. The machines, including forklifts, are not maintained and often have faulty brakes and horns—leading to accidents.

California’s workplace health and safety enforcement agency, Cal/OSHA, has repeatedly cited the warehouse since 1993, including multiple citations over the past three years. Workers filed a formal complaint with Cal/OSHA in June 2015, triggering an investigation at the facility. In November 2015, over \$21,000 in citations were issued—4 serious and 6 general penalties. It was noted in these citations that the chipped paint at this facility contains lead.

Cal/OSHA reinvestigated the facility a year later, resulting in additional serious citations in November 2016 amounting \$67,150 for the warehouse and \$51,275 for the staffing agency. Citations included not providing workers with steel-toed boots, not properly attaching shipping

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<sup>5</sup> *Campos v. California Cartage Company LLC et al*, Case No. BC570310

<sup>6</sup> *Constanza v. K&R Transportation, ContainerFreight, et al*, Case No. CIVDS1615424; *Martinez v. California Multimodal LLC*, Case No. BC583858; *Varela et al v. K&R Transportation LLC*, Case No. BC643325; *Almanza Melendez v. California Multimodal LLC*, Case No. BC633972

<sup>7</sup> *Alonso Jimenez Torres et al v. K & R Transportation LLC*, Case No. BC660910; *Jose Luis Aguilar Et Al v. California Cartage Company LLC*, Case No. BC577440

containers to the dock, and repeat violations for unsafe brakes on forklifts. The investigation regarding the company's abatement of these citations is still active.

On March 2017, the warehouse was issued a citation of \$36,000 and the staffing agency another citation of \$36,000 for an accident that occurred at the work place.

Workers filed a third Cal/OSHA complaint in November 2017 and on June 6, 2018 the warehouse was issued serious and general citations totaling \$5,430 for the warehouse and \$5,430 for the staffing agency.

### **National Labor Relations Board**

- On February 28, 2018, Administrative Law Judge (ALJ) Ariel Sotolongo issued a decision finding that California Cartage and its subsidiary Orient Tally violated workers' rights at the 2401 E. Pacific Coast Highway, warehouse, including engaging in unlawful interrogation, implied threats of termination, and confronting workers in a physically aggressive fashion. This decision ordered the company to cease and desist the unlawful behavior, and was issued following a hearing held in June 2017. The case arose after Region 21 of the National Labor Relations Board (NLRB) issued a March 2016 Consolidated Complaint (Cases: 21-CA-160242 and 21-CA-162991) against California Cartage for unfair labor practice (ULP) charges.
- From late 2016 through February 2018, workers at the same warehouse have filed numerous ULP charges (Cases: 21-CA-190500 and 21-CA-207939) with the International Brotherhood of Teamsters against California Cartage for several unfair labor practices including then company owner Bob Curry threatening to close the warehouse if workers unionized. A trial for the consolidated case was held the week of July 23, 2018 and a decision is pending.
- On September 28 2018, NLRB Region 21 issued a consolidated complaint (Cases: 21-CA-213042 and 21-CA-220171) alleging numerous violations of Section 8(a)(1) and (3) of the National Labor Relations Act against NFI, California Cartage Distribution, and California Transload Services as a single employer; and against these same NFI Group entities and Core as joint employers. These violations include discriminatorily transferring a union supporter to another warehouse, and then disciplining, suspending and terminating him in retaliation for his union activities and in retaliation for his protected concerted activities, including informing co-workers of their right to take a heat break, and actually encouraging and taking a heat break with them.

### **United States Department of Labor (DOL)**

- On September 13, 2018, the US DOL announced that it found that California Cartage Company and five of its subcontractors had violated federal contract provisions of the McNamara-O'Hara Service Contract Act (SCA). Its investigation determined that Cal Cartage owed over \$3.5 million to 1,416 workers for failing to pay the federal prevailing wages and required health and welfare benefits to workers at the Centralized

Examination Station it operates for the US Customs and Border Patrol.<sup>8</sup> There is also a separate DOL investigation for SCA violations regarding a federal contract to move military cargo that was stored at the Cal Cartage Wilmington warehouse site.<sup>9</sup> The status of that investigation is unknown.

### **CA Department of Fair Employment Housing**

On September 16, 2018, workers at the Wilmington warehouse filed two complaints with the CA Department of Fair Housing and Employment (DFEH) for racial discrimination. A third complaint was filed September 26, 2018.<sup>10</sup>

### **Private Litigation**

On December 17, 2014, workers from the California Cartage warehouse on Pacific Coast Highway at the Port of Los Angeles filed a class action lawsuit alleging millions of dollars in wage theft, primarily for failure to comply with the Los Angeles Living Wage Ordinance, which applies to businesses such as California Cartage that contract with the City of Los Angeles.<sup>11</sup> In June 2018, the workers reached a \$1.9 million settlement with the company. A final approval hearing is set for October 25, 2018 in California State Court.

**NFI/Cal Cartage's key customers include:** Lowe's, Amazon, TJ Maxx, Kmart, Sears, Puma, Vans, and New Balance.

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<sup>8</sup> <https://www.dol.gov/newsroom/releases/whd/whd20180913>

<sup>9</sup> <https://www.usatoday.com/story/news/2017/11/10/federal-agencies-used-port-trucking-companies-labor-violations/848554001/>

<sup>10</sup> Case Nos. 201809-03597118 and 201809-03598018

<sup>11</sup> *Carlos Ayala, et al. v. California Cartage Company, Inc., et al*, Case No. BC566992

## **Exhibit B**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 21**

**NFI CALIFORNIA CARTAGE HOLDING  
COMPANY, LLC; CALIFORNIA CARTAGE  
DISTRIBUTION, LLC; AND CALIFORNIA  
TRANSLOAD SERVICES LLC**

**and**

**Case 21-CA-213042**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

**NFI CALIFORNIA CARTAGE HOLDING  
COMPANY, LLC; CALIFORNIA CARTAGE  
DISTRIBUTION, LLC; CALIFORNIA  
TRANSLOAD SERVICES LLC; AND NEXEM-  
ALLIED LLC DBA CORE EMPLOYEE  
MANAGEMENT**

**and**

**Case 21-CA-220171**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, It Is Ordered That Case 21-CA-213042 and Case 21-CA-220171, which are based on charges filed by the International Brotherhood of Teamsters (Union) against NFI California Cartage Holding Company, LLC (Respondent NFI), California Cartage Distribution, LLC, (Respondent Cartage Distribution), California Transload Services, LLC (Respondent Transload), and Nexem-Allied LLC dba Core Employee Management (Respondent Core), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent NFI, Respondent Cartage Distribution, Respondent Transload, and Respondent Core have violated the Act as described below.

1. (a) The original charge in Case 21-CA-213042 was filed by the Union on January 11, 2018, and a copy was served on Respondent NFI, Respondent Cartage Distribution, and Respondent Transload by U.S. mail on January 16, 2018.

(b) The first amended charge in Case 21-CA-213042 was filed by the Union on March 29, 2018, and a copy was served on Respondent NFI, Respondent Cartage Distribution, and Respondent Transload by U.S. mail on March 29, 2018.

2. (a) The original charge in Case 21-CA-220171 was filed by the Union on May 11, 2018, and a copy was served on Respondent NFI, Respondent Cartage Distribution, Respondent Transload, and Respondent Core by U.S. mail on May 11, 2018.

(b) The first amended charge in Case 21-CA-220171 was filed by the Union on June 5, 2018, and a copy was served on Respondent NFI, Respondent Cartage Distribution, Respondent Transload, and Respondent Core by U.S. mail on June 6, 2018.

(c) The second amended charge in Case 21-CA-220171 was filed by the Union on September 27, 2018, and a copy was served on Respondent NFI, Respondent Cartage Distribution, Respondent Transload, and Respondent Core by U.S. mail on September 27, 2018.

3. (a) Since about October 1, 2017, Respondent NFI, a Delaware limited liability corporation licensed to do business in California, with a principal place of business located at

2931 Redondo Avenue, Long Beach, California, and a facility located at 2401 East Pacific Coast Highway, Wilmington, California, herein the Wilmington Facility, has been engaged in the business of warehousing, transloading, and distribution.

(b) Since about October 1, 2017, Respondent Cartage Distribution, a Delaware limited liability corporation licensed to do business in California, with a principal place of business located at 2931 Redondo Avenue, Long Beach, California, and the Wilmington Facility, has been engaged in the business of warehousing, transloading, and distribution.

(c) Since about October 1, 2017, Respondent Transload, a Delaware limited liability corporation licensed to do business in California, with a principal place of business located at 2931 Redondo Avenue, Long Beach, California, and the Wilmington Facility, has been engaged in the business of warehousing, transloading and distribution.

4. (a) Since about October 1, 2017, Respondent NFI, Respondent Cartage Distribution, and Respondent Transload have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; have had interrelated operations with common insurance; and have held themselves out to the public as a single integrated business enterprise.

(b) Based on their operations described above in paragraph 4(a), since about October 1, 2017, Respondent NFI, Respondent Cartage Distribution, and Respondent Transload, have constituted a single integrated business enterprise and a single employer within the meaning of the Act.

5. (a) Since October 1, 2017, Respondent NFI, Respondent Cartage Distribution, and Respondent Transload, while conducting their business operations described above in paragraphs 3(a),(b), and (c), have performed services valued in excess of \$50,000 directly to customers located outside the State of California.

(b) Since about October 1, 2017, Respondent NFI, Respondent Cartage Distribution, and Respondent Transload, hereinafter collectively called Respondent NFI Group, have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act:

6. (a) At all material times Respondent Core, a California corporation, with a branch location located at 4100 South Street, Lakewood, California, has been engaged in the business of providing temporary staffing services to companies.

(b) Since October 1, 2017, Respondent Core, in conducting its business operations described above in paragraph 6(a), has provided services valued in excess of \$50,000 to Respondent NFI Group.

7. At all material times, Respondent Core has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

8. (a) Since about October 1, 2017, Respondent NFI Group and Respondent Core have been parties to a contract pursuant to which Respondent Core has provided temporary staffing services at the Wilmington Facility.

(b) Since about October 1, 2017, Respondent NFI Group and Respondent Core have jointly controlled and administered the labor relations policies applicable to the employees of Respondent Core assigned to work at the Wilmington Facility.

(c) Since about October 1, 2017, Respondent NFI Group and Respondent Core have shared or co-determined the essential terms and conditions of employment of Respondent Core's employees assigned to work at the Wilmington Facility, specifically the day-to-day supervision and direction of the workforce.

9. Since about October 1, 2017, Respondent NFI Group and Respondent Core have been joint employers of the employees of Respondent Core assigned to work at the Wilmington Facility.

10. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

11. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent NFI Group and Respondent Core within the meaning of Section 2(11) of the Act and agents of Respondent NFI Group and Respondent Core within the meaning of Section 2(13) of the Act:

David Garcia	General Manager of Respondent NFI Group
Freddy Rivera	Operations Manager of Respondent NFI Group
Reyes Ramos	Supervisor for Respondent NFI Group
Jose Rodriguez	Supervisor for Respondent NFI Group
Victor Parra	Supervisor for Respondent NFI Group
John Rodriguez	Supervisor for Respondent NFI Group
Enrique Gonzalez	Manager for Respondent NFI Group
Lisa Lyons	Regional Vice President of Respondent Core
Louis (last name unknown)	Lead Clerk for Respondent NFI Group
Bryan (last name unknown)	Lead Clerk Respondent NFI Group

12. On about October 20 or 23, 2017, in or around the Sears/K-mart Department in Warehouse 13 at the Wilmington facility, Respondent NFI Group, by its Supervisor Reyes Ramos, instructed an employee not to engage in protected concerted activities, when he told the

employee that the employee was not allowed to inform other employees of their right to take heat breaks.

13 (a) About October 20 or 23, 2017, employee Bruce Jefferson (Jefferson) engaged in concerted activities with other employees for the purposes of mutual aid and protection, when he informed his co-workers of their right to take a heat break, encouraged his co-workers to take a heat break and then proceeded to take a heat break along with several other of his co-workers.

(b) About October 30, 2017, Respondent NFI Group transferred employee Jefferson to the east side of the warehouse at the Wilmington facility.

14 (a) About April 20, 2018, employee Jefferson engaged in concerted activities with other employees for the purposes of mutual aid and protection, when he spoke up in a department meeting in order to protest an unreasonable work rule regarding employees' use of cell phones at the Wilmington Facility.

(b) About April 26, 2018, Respondent NFI Group and Respondent Core disciplined their employee Jefferson by issuing him a final written warning.

(c) About April 26, 2018, Jefferson protested the Employer's conduct described above in paragraph 14(b).

(d) About April 26, 2018, Respondent NFI Group and Respondent Core suspended their employee Jefferson.

(e) About April 27, 2018, Respondent NFI Group and Respondent Core terminated their employee Jefferson.

15. (a) Respondent NFI Group engaged in the conduct described above in paragraph 13(b), because employee Jefferson engaged in the conduct described above in paragraph 13(a), and to discourage employee(s) from engaging in these or other concerted activities.

(b) Respondent NFI Group engaged in the conduct described above in paragraph 13(b) because employee Jefferson supported and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

16. (a) Respondent NFI Group and Respondent Core engaged in the conduct described above in paragraph 14(b) because employee Jefferson engaged in the conduct described above in paragraphs 14(a), and to discourage employees from engaging in these or other concerted activities.

(b) Respondent NFI Group and Respondent Core engaged in the conduct described above in paragraphs 14(d) and (e) because employee Jefferson engaged in the conduct described above in paragraphs 14(a) and (c), and to discourage employees from engaging in these or other concerted activities.

(c) Respondent NFI Group and Respondent Core engaged in the conduct described above in paragraphs 14(b), (d), and (e) because employee Jefferson supported and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

17. By the conduct described above in paragraphs 12, 13(b), and 15(a), Respondent NFI Group has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

18. By the conduct described above in paragraphs 14(b), (d), and (e), and 16(a) and (b), Respondent NFI Group and Respondent Core have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

19. By the conduct described above in paragraphs 13(b) and 15(b), Respondent NFI Group has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

20. By the conduct described above in paragraphs 14(b), (d), and (e), and 16(c), Respondent NFI Group and Respondent Core have been discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

21. The unfair labor practices of Respondent NFI Group and Respondent Core described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **ANSWER REQUIREMENT**

Respondent NFI Group and Respondent Core are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, each of them must file an answer to the consolidated complaint. The answer must be **received by this office on or before October 12, 2018, or postmarked on or before October 11, 2018.** Respondent NFI Group and Respondent Core should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint as to the nonresponding Respondent are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **December 3, 2018**, at 1 pm at National Labor Relations Board, Region 21, 312 N. Spring Street, 10<sup>th</sup> Floor, Los Angeles, CA, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent NFI Group and Respondent Core and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: September 28, 2018



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William B. Cowen, Regional Director  
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