

Brett Horton
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September 26, 2018

Dear Brett Horton:

We write to express our deep concern about a significant forced labor problem in the port trucking industry, which is affecting almost every company that imports goods through U.S. ports. The problem has been extensively documented as “modern-day indentured servitude” in a 2017 *USA Today* investigative series that was recently announced as a 2018 Pulitzer finalist. Several members of the U.S. House and Senate have already called for stronger regulations in the industry and for retailers to take preventive action. **We are asking that the business community respond constructively, in a way that ensures victims of these abuses are remediated and their rights protected.**

Tens of thousands of port truckers across the U.S. find themselves trapped in unethical employment agreements that can leave them earning as little as \$3 an hour – well below the minimum wage – despite working 50+ hours per week.¹ Many drivers even end their work week in debt because their employers deduct fuel, insurance, new tires, and lease payments that can exceed what they were paid to haul freight containers filled with your merchandise. Not only does this situation run afoul of U.S. labor laws, but these employment agreements, disguised as independent contractor or leasing agreements, often leave workers unable to quit their jobs because they risk losing all the equity they have in their truck.

While reducing air pollution and the carbon footprint from port activity has been a priority for many stakeholders, and mandates for new emission reducing equipment are on the horizon, the most vulnerable workers in our supply chains are at risk of being subjected to a repeat of the past: footing the bill for our environmental cleanup.² The landmark Clean Truck Program passed by the Ports of Los Angeles and Long Beach in 2008 required replacing over 16,000 old polluting trucks. Unfortunately, because the trucking companies unlawfully misclassified the drivers as independent contractors, the costs of implementation was pushed onto the backs of thousands of drivers through unconscionable leasing schemes.³ It is critical that beneficial cargo owners ensure the port trucking firms they hire comply with labor laws and not make their drivers pay for clean air.

Cleaning up our ports, however, needs to go beyond the drivers. Port drivers deliver containers to warehouse workers who handle the goods, working jobs that are frequently precarious, low wage, and dangerous. A high profile warehouse managed by California Cartage/NFI Industries and located on Port of Los Angeles property recently lost its Foreign Trade Zone (FTZ) designation in a unanimous rebuke by the Los Angeles City Council because of its repeated labor and safety violations.⁴ Underscoring the dangerous nature of warehouse jobs, this California Cartage/NFI warehouse has been cited and fined repeatedly by the California Division of Occupational Safety and Health (Cal/OSHA) which still has an open investigation. Some of these unsafe conditions include unsanitary restrooms and break rooms, including rat infestations, toxic lead paint, and faulty emergency brakes on forklifts.

¹ “Rigged: Forced into debt, worked past exhaustion, left with nothing.” USA Today Network Investigative Report. Brett Murphy. June 16, 2017.

² “L.A. needs to clean up its ports, but truck drivers shouldn’t have to pay for all of it,” Los Angeles Times Editorial Board. June 23, 2017.

³ From Clean to Clunker: The Economics of Emissions Control. Los Angeles Alliance for a New Economy. April 15, 2010.

⁴ “L.A. lawmakers reject warehouse agreement over worker concerns,” LA Times, Emily Alpert Reyes, May 8, 2018.

Additionally, studies have found that third-party logistics warehouse firms such as California Cartage/National Freight Industries fulfill 60 percent of their staffing needs⁵ through temporary staffing agencies that pay an average of \$3 less per hour than direct hires. This abuse occurs despite government rulings that warehouse firms are “joint employers” and suggests temp employees should be afforded similar legal protections as direct hires.⁶ Temp warehouse workers are often required to wait in line for hours, and then sent home if they are not needed. They typically are not paid for this waiting time. This two-tiered employment structure also fosters racial discrimination by managers, who in turn also attempt to pit ethnic groups against each other.

Finally, the vast majority of port drivers at the San Pedro Port complex in California are Latino immigrants with a significant portion residing in the U.S. through Temporary Protected Status (TPS). With the TPS program currently being dismantled, many port drivers are faced with an even more precarious future, which could exacerbate an already acute truck driver shortage in the U.S.

The UN Guiding Principles on Business and Human Rights calls for companies to know the human rights violations in their supply chains and to help ensure victims have access to remedy. Given that the human rights violations in the port trucking and warehouse industries are happening inside the U.S. and legal recourse has not secured remedy for workers, we believe U.S. companies benefiting from port trucking and warehouse services need to learn more about the nature of the problem and take appropriate action. It is critical that those action steps not include precipitously cutting off port trucking or warehouse companies or undermining their ability to pay workers what they are owed.

These problems are systemic. Over 1,000 port drivers have filed wage complaints with California’s Division of Labor Standards Enforcement (DLSE), which has awarded drivers over \$46 million in back pay and penalties. Every decision to date has been upheld in court. **In light of this situation, we ask that your company develop and implement a Responsible Contractor Policy in partnership with the International Brotherhood of Teamsters for all contracted logistics services throughout your global value chains, including in U.S. port trucking and warehouses.** We call for you to ensure that your policy and implementation include the following:

- Strict compliance with all applicable labor laws, including minimum wage, worker classification, safety and health, and freedom of association;
- Improve supply chain transparency by providing the names and addresses of all logistics suppliers used in the hauling and handling of goods;
- Develop and participate in a consensus-based working group to include participating logistics contractors, brands/buyers of goods, and worker representatives;
- Establish processes for worker complaints and resolutions (with strict protections against retaliation) and supplier appeals processes;
- Commit to a comprehensive program for auditing and corrective action measures conducted by an independent monitoring organization that has the trust of workers;
- Define a process and timeline for consistent review and modifications to policies and standards to be applied across all logistics contractors; and
- Agree to include market-based consequences for contractors that refuse to comply with policy.

⁵ [Bad Jobs in Goods Movement](#). Warehouse Workers for Justice with technical assistance from Center for Urban Economic Development at the University of Illinois at Chicago. 2010.

⁶ Decision and Direction of Election. [Case 21 RC -188813](#); California Cartage Company LLC and Orient Tally Company Inc., a single employer and CORE Employee Management, Inc., a joint employer. National Labor Relations Board Region 21. December 9, 2016.

We, the undersigned, jointly urge you to take swift action. We request that you follow up directly with the Teamsters on this matter as well as keeping our co-signing organizations informed on the actions your company is taking by writing to Judy Gearhart, Executive Director of the International Labor Rights Forum, at laborrights@ilrf.org.

Sincerely,

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