

IN THE  
SUPREME COURT OF CALIFORNIA

THE PEOPLE ex rel. KAMALA D.  
HARRIS, as Attorney General, etc.,  
  
Plaintiff and Respondent,  
  
v.  
  
PAC ANCHOR TRANSPORTATION,  
INC., et al.,  
  
Defendants and Petitioners.

Case Number S194388

SUPREME COURT  
FILED

OCT 25 2011

Frederick K. Chinich Clerk  
Deputy

After a Decision by the Court of Appeal  
Second Appellate District, Division Five  
[Case No. B220966]

Appeal from a Judgment of the Superior Court for Los Angeles County  
Hon. Elizabeth A. White, Judge  
[Case No. BC397600]

**PETITIONERS' REQUEST FOR JUDICIAL NOTICE**

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*Attorneys for Alfredo Barajas and  
Pac Anchor Transportation, Inc.*

**Service on the Office of the Attorney General and the District Attorney  
of the County of Los Angeles required by Bus. & Prof. Code § 17209**

Defendants-Petitioners Pac Anchor Transportation, Inc., and Alfredo Barajas (“Petitioners”) hereby request that, pursuant to Section 459 of the Evidence Code and Rule 8.252 of the Rules of Court, the Court take judicial notice of the following matters for the following reasons:

1. Petitioners request that the Court take judicial notice of the Complaint for Injunction, Civil Penalties and Other Equitable Relief (“Complaint”) filed by the Attorney General of the State of California on March 9, 1989, in the Superior Court of the State of California for the County of San Diego, in the matter *People of the State of California v. Trans World Airlines, Inc.*, No. 609941. Furthermore, Petitioners move the Court to find that in the Complaint, the State asserts a claim under the UCL for unfair competition, Compl. ¶¶ 5-7, and that the UCL was one of the “general consumer protection statutes” that the U.S. Supreme Court was considering in its opinion in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992); see *Trans World Airlines, Inc. v. Mattox* (“TWA”), 712 F. Supp. 99, 105 (W.D. Tex. 1989) and *id.*, 897 F.2d 773, 776, 788 (W.D. Tex. 1990), *aff’d in relevant part*, *Morales*, 504 U.S. 374. The Complaint is attached as Exhibit “A” to this Request.

- a. This request is being made because this case involves the interpretation of the interaction between the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 et seq., and the preemptive provision of the Federal Aviation Administration Act of 1994 (“FAAAA”), 49 U.S.C. § 14501(c)(1).
- b. The Complaint is relevant, because it demonstrates that the claim that the Attorney General filed, which is discussed in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992), *Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 776, 788 (W.D. Tex. 1990), and *Trans World Airlines, Inc.*

*v. Mattox*, 712 F. Supp. 99, 105 (W.D. Tex. 1989), the seminal case regarding FAAAA preemption, was a claim for unfair competition under the UCL.

- c. The Complaint was not presented to the trial court or the Court of Appeal.
- d. The Complaint does not relate to proceedings occurring after the order and judgment that are the subject of this appeal, but rather relate to the interpretation of the FAAAA.

2. Petitioners request that the Court take judicial notice of House Conference Report 103-677, H.R. Conf. Rep. 103-677 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715. The relevant sections of the Report are included in Appellant's Appendix ("A.A."), Vol. 1, at 214, 265-271.

- a. This request is made because the interpretation of Congress' purpose is an essential step in analyzing preemption under the FAAAA.
- b. The Report is relevant because it sets forth the legislative history of the FAAAA.
- c. The legislative history of the FAAAA is relevant because Congress' purpose in enacting a preemption statute is essential to determining the statute's preemptive effect in every case. *Smiley v. Citibank (South Dakota)*, 11 Cal. 4th 138, 147 (1995), *aff'd* 517 U.S. 735 (1996).
- d. The Report was presented to the trial court and the Court of Appeal. (1 A.A. 103 ¶ 4, Ex. D.) The trial court did not take judicial notice of it. (1 A.A. 428.) The Court of Appeal did.

e. The Complaint does not relate to proceedings occurring after the order and judgment that are the subject of this appeal

3. Respondents request that the Court take judicial notice of *Cal. Pub. Utils. Comm'n Regulation of Intermodal Small Package Carriers in Interstate & Intrastate Commerce: Hearing on AB 2015 Before the Assembly Comm. on Utils. & Commerce* at 3 (1993) (the "AB 2015 Bill Analysis"), which compromises part of the legislative history of AB 2015. The AB 2015 Bill Analysis is included in Appellant's Appendix, Vol. 1, at 119-122.

a. This request is made because this case involves the interpretation of the FAAAA. The legislative history regarding the FAAAA indicates that Congress specifically sought to preempt AB 2015 when it enacted the FAAAA. H.R. Conf. Rep. No. 103-677 (1994), *reprinted in* 1994 U.S. Code Cong. & Admin. News 1715 (1 A.A. 270).

b. The legislative history of the FAAAA is relevant because Congress' purpose in enacting a preemption statute is essential to determining the statute's preemptive effect in every case. *Smiley v. Citibank (South Dakota)*, 11 Cal. 4th 138, 147 (1995), *aff'd* 517 U.S. 735 (1996).

c. The legislative history of AB 2015 is relevant to the legislative history of the FAAAA because it demonstrates the intended effect of a particular state statute Congress intended to preempt in enacting the FAAAA, and how that intent might apply to preemption in this matter.

d. The legislative history of AB 2015 is also relevant to rebut any assertion that Plaintiff-Respondent the People of the State of California *ex rel.* Kamala D. Harris, as Attorney

General of the State of California's (the "State") may make that the State has no interest in whether Petitioners use employee drivers rather than independent contractor drivers.

- e. The AB 2015 Bill Analysis was presented to the trial court and the Court of Appeal. (1 A.A. 103 ¶ 2, Ex. B.) The trial court did not take judicial notice of it. (1 A.A. 428.) The Court of Appeal did.
- f. The legislative history does not relate to proceedings occurring after the order and judgment that are the subject of this appeal.

4. Petitioners request that the Court take judicial notice of the Orders to Appear Before Labor Commissioner ("Orders") that the Deputy Labor Commissioner of the State of California Department of Industrial Relations, Division of Labor Standards Enforcement, issued on July 26, 2011, to various individuals. The Orders, with personal identifiers redacted, are attached as Exhibit "B" to this Request. Petitioners further request that the Court find the Deputy Labor Commissioner has been investigating the employment of drivers and that such investigation is another means the State has available, other than the UCL, to address alleged misclassifications.

- a. This request is made because this case involves resolution of a conflict between the State of California's policy favoring the use of employee drivers over independent contractor drivers and the policy that Congress announced in enacting the FAAAA prohibiting the State from regulating motor carriers.
- b. The Orders are relevant because they demonstrate one of the tactics the State has used to attempt to force motor carriers to use employee drivers rather than independent

contractor drivers, as well as one of the other means the State has available, other than the UCL, to address alleged misclassifications.

- c. The Orders were not presented to the trial court or the Court of Appeal.
- d. The Orders relate to proceedings occurring after the order and judgment that are the subject of this appeal, but those proceedings unrelated to the proceedings in this case.

5. Petitioners request that the Court take judicial notice of the Complaint for Injunctive Relief and Civil Penalties (“Complaint”) filed by the Attorney General of the State of California on October 28, 2008, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v. Edmundo Jose Lira*, No. Bc400654. Furthermore, Petitioners move the Court to find that in the Complaint the State asserts a claim under the UCL for unfair competition and seeks injunctive relief. Compl. at 3-4. The Complaint is attached to this Request as Exhibit C.

- a. The Complaint is relevant because it demonstrates that the State filed an action under the UCL against another motor carrier seeking an injunction under the UCL, and therefore is evidence of a State policy that disfavors the use of independent contractor drivers.
- b. The Complaint was not presented to the trial court or the Court of Appeal.
- c. The Complaint does not relate to proceedings occurring after the order and judgment that are the subject of this appeal, but rather relate to the interpretation of Section 14501(c)(1).

d. The Complaint was filed prior to the order and judgment that are the subject of this appeal. However, it relates to proceedings occurring after the order and judgment. Nevertheless, the proceedings to which it relates are unrelated to this case.

6. Petitioners request that the Court take judicial notice of the Final Judgment and Permanent Injunction (“Injunction”) filed on December 14 2009, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v. Edmundo Jose Lira*, No. Bc400654. Furthermore, Petitioners move the Court to find that Injunction enjoins the defendant in that case from “[m]isclassifying truck drivers as independent contractors including, but not limited to, classifying drivers who operate trucks that are provided, owned, or leased by [the defendants] as independent contractors.” Inj. at 2. The Injunction is attached to this Request as Exhibit D.

- a. The Injunction is relevant because it demonstrates the nature of the permanent injunctions the State has sought and obtained in similar cases.
- b. The nature of such injunctions is relevant to determining the logical effect of the State’s UCL claim for the purpose of determining whether the FAAAA preempts it.
- c. The Injunction was not presented to the trial court or the Court of Appeal.
- d. The Injunction relates to proceedings occurring after the order and judgment that are the subject of this appeal. Nevertheless, the proceedings to which it relates are unrelated to this case.

- e. The Injunction relates to proceedings occurring after the order and judgment that are the subject of this appeal, but those proceedings unrelated to the proceedings in this case.

7. Petitioners request that the Court take judicial notice of the Complaint for Injunctive Relief and Civil Penalties (“Complaint”) filed by the Attorney General of the State of California on December 29, 2009, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v. Pacifica Trucks, LLC*, No. BC428934. Furthermore, Petitioners move the Court to find that in the Complaint the State asserts a claim under the UCL for unfair competition and seeks injunctive relief. Compl. at 3-4. The Complaint is attached to this Request as Exhibit E.

- a. The Complaint is relevant because it demonstrates that the State filed an action under the UCL against another motor carrier seeking an injunction under the UCL, and therefore is evidence of a State policy that disfavors the use of independent contractor drivers.
  - b. The Complaint was not presented to the trial court or the Court of Appeal.
  - c. The Complaint does not relate to proceedings occurring after the order and judgment that are the subject of this appeal, but rather relate to the interpretation of Section 14501(c)(1).
  - d. The Injunction relates to proceedings occurring after the order and judgment that are the subject of this appeal, but those proceedings unrelated to the proceedings in this case.
8. Petitioners request that the Court take judicial notice of the Final Judgment and Permanent Injunction (“Injunction”) filed on January 5, 2010, in the Superior Court of the State



of California for the County of Los Angeles in the matter *People of the State of California v. Pacifica Trucks, L.L.C.*, No. BC428934. Furthermore, Petitioners move the Court to find that Injunction enjoins the defendant in that case from “[m]isclassifying as independent contractors truck drivers who operate trucks that are provided, owned, or leased by Pacifica Trucking.” Inj. at 2. The Injunction is attached to this Request as Exhibit F.

- a. The Injunction is relevant because it demonstrates the nature of the permanent injunctions the State has sought and obtained in similar cases.
- b. The nature of such injunctions is relevant to determining the logical effect of the State’s UCL claim for the purpose of determining whether the FAAAA preempts it.
- c. The Injunction was not presented to the trial court or the Court of Appeal.
- d. The Injunction relates to proceedings occurring after the order and judgment that are the subject of this appeal. Nevertheless, the proceedings to which it relates are unrelated to this case.

9. Petitioners request that the Court take judicial notice of the Complaint for Injunctive Relief and Civil Penalties (“Complaint”) filed by the Attorney General of the State of California on October 27, 2008, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v. Moreno*, No. BC400655. Furthermore, Petitioners move the Court to find that in the Complaint the State asserts a claim under the UCL for unfair competition and seeks injunctive relief. Compl. at 3-4. The Complaint is attached to this Request as Exhibit G.

- a. The Complaint is relevant because it demonstrates that the State filed an action under the UCL against another motor carrier seeking an injunction under the UCL, and therefore is evidence of a State policy that disfavors the use of independent contractor drivers.
- b. The Complaint was not presented to the trial court or the Court of Appeal.
- c. The Complaint was filed prior to the order and judgment that are the subject of this appeal. However, it relates to proceedings occurring after the order and judgment. Nevertheless, the proceedings to which it relates are unrelated to this case.

10. Petitioners request that the Court take judicial notice of the Final Judgment and Permanent Injunction (“Injunction”) filed on January 8, 2010, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v Moreno*, No. BC400655. Furthermore, Petitioners move the Court to find that Injunction enjoins the defendant in that case from “[m]isclassifying truck drivers as independent contractors including, but not limited to, classifying drivers who operate trucks that are provided, owned, or leased by [the defendants] as independent contractors.” Inj. at 2. The Injunction is attached to this Request as Exhibit H.

- a. The Injunction is relevant because it demonstrates the nature of the permanent injunctions the State has sought and obtained in similar cases.
- b. The nature of such injunctions is relevant to determining the logical effect of the State’s UCL claim for the purpose of determining whether the FAAAA preempts it.

- c. The Injunction was not presented to the trial court or the Court of Appeal.
- d. The Injunction relates to proceedings occurring after the order and judgment that are the subject of this appeal. Nevertheless, the proceedings to which it relates are unrelated to this case.

11. Petitioners request that the Court take judicial notice of the Complaint for Injunctive Relief and Civil Penalties (“Complaint”) filed by the Attorney General of the State of California on September 5, 2008, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v. Jose Maria Lira*, No. BC397601. Furthermore, Petitioners move the Court to find that in the Complaint the State asserts a claim under the UCL for unfair competition and seeks injunctive relief. Compl. at 3-4. The Complaint is attached to this Request as Exhibit I.

- a. The Complaint is relevant because it demonstrates that the State filed an action under the UCL against another motor carrier seeking an injunction under the UCL, and therefore is evidence of a State policy that disfavors the use of independent contractor drivers.
- b. The Complaint was not presented to the trial court or the Court of Appeal.
- c. The Complaint was filed prior to the order and judgment that are the subject of this appeal. However, it relates to proceedings occurring after the order and judgment. Nevertheless, the proceedings to which it relates are unrelated to this case.

12. Petitioners request that the Court take judicial notice of the Final Judgment and Permanent Injunction (“Injunction”) filed on January

8, 2010, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v Jose Maria Lira*, No. BC397601. Furthermore, Petitioners move the Court to find that Injunction enjoins the defendant in that case from “[m]isclassifying truck drivers as independent contractors including, but not limited to, classifying drivers who operate trucks that are provided, owned, or leased by [the defendant] as independent contractors.” Inj. at 2. The Injunction is attached to this Request as Exhibit J.

- a. The Injunction is relevant because it demonstrates the nature of the permanent injunctions the State has sought and obtained in similar cases.
- b. The nature of such injunctions is relevant to determining the logical effect of the State’s UCL claim for the purpose of determining whether the FAAAA preempts it.
- c. The Injunction was not presented to the trial court or the Court of Appeal.
- d. The Injunction relates to proceedings occurring after the order and judgment that are the subject of this appeal. Nevertheless, the proceedings to which it relates are unrelated to this case.

13. Petitioners request that the Court take judicial notice of the Complaint for Injunctive Relief and Civil Penalties (“Complaint”) filed by the Attorney General of the State of California on October 27, 2008, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v. Guasimal Trucking, LLC*, No. BC400653. Furthermore, Petitioners move the Court to find that in the Complaint the State asserts a claim under the UCL for unfair competition and seeks injunctive relief. Compl. at 3-4. The Complaint is attached to this Request as Exhibit K.

- a. The Complaint is relevant because it demonstrates that the State filed an action under the UCL against another motor carrier seeking an injunction under the UCL, and therefore is evidence of a State policy that disfavors the use of independent contractor drivers.
- b. The Complaint was not presented to the trial court or the Court of Appeal.
- c. The Complaint was filed prior to the order and judgment that are the subject of this appeal. However, it relates to proceedings occurring after the order and judgment. Nevertheless, the proceedings to which it relates are unrelated to this case.

14. Petitioners request that the Court take judicial notice of the Final Judgment and Permanent Injunction (“Injunction”) filed on September 4, 2009, in the Superior Court of the State of California for the County of Los Angeles in the matter *People of the State of California v Guasimal Trucking, LLC*, No. BC400653. Furthermore, Petitioners move the Court to find that Injunction requires the defendant to “classify and pay” “any drivers who operate trucks owned or leased by [the defendant]” as employees. Inj. at 2. The Injunction is attached to this Request as Exhibit L.

- a. The Injunction is relevant because it demonstrates the nature of the permanent injunctions the State has sought and obtained in similar cases.
- b. The nature of such injunctions is relevant to determining the logical effect of the State’s UCL claim for the purpose of determining whether the FAAAA preempts it.
- c. The Injunction was not presented to the trial court or the Court of Appeal.

- d. The Injunction does not relate to proceedings occurring after the order and judgment that are the subject of this appeal.

Dated: October 24, 2011

Respectfully submitted,

SANDS LERNER



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Neil S. Lerner

Arthur A. Severance

*Attorneys for Defendant-Petitioners*

*Alfredo Barajas and Pac Anchor*

*Transportation, Inc.*



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7 Attorneys for Plaintiff

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PATRICIA GENSIS  
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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN DIEGO

11 PEOPLE OF THE STATE OF CALIFORNIA,  
12 Plaintiff,  
13 v.  
14 TRANS WORLD AIRLINES, INC., a  
Delaware Corporation, and  
15 DOES 1 - 10, inclusive,  
16 Defendants.

609941

NO.  
COMPLAINT FOR  
INJUNCTION,  
CIVIL PENALTIES  
AND OTHER EQUITABLE  
RELIEF

17  
18 The People of the State of California, by and through  
19 John K. Van de Kamp, Attorney General of the State of California,  
20 allege:

21 1. Defendants transact business within the County of  
22 San Diego and other counties of the State of California. The  
23 violations of law hereinafter described are being and have been  
24 carried out within the County of San Diego, and other counties in  
25 the State of California. The actions of the defendants, as set  
26 out below, are in violation of the laws and public policies of  
27 the State of California.



1           2. Whenever in this complaint reference is made to  
2 any act of a corporate defendant, such allegation shall be deemed  
3 to mean that said corporate defendant and the officers,  
4 directors, agents, servants and employees of said corporate  
5 defendant did or do authorize such act or acts, while actively  
6 engaged in the management, direction, operation or control of the  
7 affairs of said corporate defendant and while acting within the  
8 course and scope of their employment.

9           3. Plaintiff is informed and believes, and upon such  
10 information and belief alleges that Trans World Airlines Inc.  
11 (hereinafter "TWA"), is a Delaware corporation with its principal  
12 place of business at Mount Kisco, New York. TWA does business  
13 throughout California. Defendant TWA, at all times mentioned  
14 herein, was and is engaged in the business of selling passenger  
15 air travel. In the course and conduct of such business,  
16 defendant TWA advertises its air travel by placing, or by causing  
17 to be placed, advertisements in the media, including, but not  
18 limited to newspapers, radio, and television. Said  
19 advertisements have been and are being disseminated by defendant  
20 TWA throughout the County of San Diego and other counties of the  
21 State of California for the purpose of inducing the buying public  
22 to patronize defendant TWA's business and purchase defendant  
23 TWA's passenger air travel.

24           4. The true names and capacities, whether individual,  
25 corporate, or otherwise, of defendants named herein as Does 1 -  
26 10 are unknown to plaintiff, who therefore sues said defendants  
27 by such fictitious names. Plaintiff will amend this complaint to

1 show the true names and capacities of such defendants when the  
2 same have been ascertained.

3 FIRST CAUSE OF ACTION

4 (Business and Professions Code section 17200)

5 5. Plaintiff restates and incorporates herein by  
6 reference all of paragraphs one through four of this Complaint as  
7 though set forth in full.

8 6. In February of 1989, defendants placed or caused  
9 to be placed display newspaper advertisements which stated, in  
10 very large type: "\$219 LONDON." In type less than 1/25 the type  
11 size used to disclose the \$219 price, the advertisement stated:  
12 "each way based on roundtrip purchase." Also, in equally small  
13 print, in a lower portion of the advertisement, under the heading  
14 "Fare Conditions," was the language "Fare does not include \$23  
15 U.S. departure tax, security surcharges, federal inspection fees  
16 and other gov't taxes." A copy of this advertisement is attached  
17 hereto as Exhibit 1.

18 7. Defendants TWA and Does 1 - 10, have engaged in  
19 the following, among other, acts of unfair competition as defined  
20 in Business and Professions Code section 17200 in that:

21 A. Defendants have violated Business and Professions  
22 Code section 17504, subdivision (a) which prohibits any company  
23 engaged in business in California that sells any consumer goods  
24 or services which are sold only in multiple units and which are  
25 advertised by price from advertising such goods or services at  
26 any price other than the minimum multiple unit price at which  
27 they are offered. Inasmuch as TWA's advertised fare can only be

1 purchased as part of a round trip fare, TWA, by advertising a one  
2 way fare, has engaged in acts of unfair competition.

3 B. Defendants have engaged in acts of unfair  
4 competition by failing to include in the advertised price the \$23  
5 charges said defendant adds to the advertised ticket price.

6 C. Defendants have violated California Business and  
7 Professions Code section 17500, as more particularly described in  
8 the Second and Third Causes of Action.

9 SECOND CAUSE OF ACTION

10 (Violation of Business and Professions Code section 17500)

11 8. Plaintiff restates and incorporates herein by  
12 reference all of paragraphs one through six of this Complaint as  
13 though set forth in full.

14 9. Defendants, with the intent to induce members of  
15 the public to purchase defendant's passenger air travel, have  
16 engaged in making or disseminating, or causing to be made or  
17 disseminated before the public, untrue or misleading statements  
18 concerning such passenger air travel, which are made unlawful and  
19 prohibited by California Business and Professions Code section  
20 17500 and which defendants at the time these statements were made  
21 knew, or by the exercise of reasonable care should have known, to  
22 be untrue or misleading, in that defendants made the following,  
23 among other, untrue or misleading statements:

24 A. Defendants made misrepresentations concerning TWA's  
25 fare to London (see Exhibit 1) in that the advertised price for  
26 the London fare failed to disclose adequately that the total  
27 price for the transportation is in fact \$461 and not the \$219

1 price advertised by defendants and that no consumer pursuant to  
2 this advertisement could purchase a ticket to London for \$219.

3 B. Defendants made misrepresentations concerning  
4 TWA's fare to London (see Exhibit 1) in that the advertisement  
5 implies that the entirety of the \$23 additional fee is a  
6 government tax, when in truth and in fact only a small portion of  
7 the fee is a government imposed tax.

8 THIRD CAUSE OF ACTION

9 (Violation of Business and Professions Code section 17500)

10 10. Plaintiff restates and incorporates herein by  
11 reference all of paragraphs one through six of this Complaint as  
12 though set forth in full.

13 11. Defendants, with the intent to induce members of  
14 the public to purchase defendant's passenger air travel, has  
15 engaged in making or disseminating, or causing to be made or  
16 disseminated before the public, untrue or misleading statements  
17 concerning the actual cost of the car rental service, which  
18 representations are made unlawful and prohibited by California  
19 Business and Professions Code section 17500 and which defendants  
20 at the time these statements were made knew, or by the exercise  
21 of reasonable care should have known, to be untrue or misleading.  
22 Defendants made the following, among other, untrue or misleading  
23 claims in that:

24 A. In February of 1989, defendants placed or caused to  
25 be placed newspaper advertisements (see Exhibit 1) which stated  
26 in bold print:

27 "Drive an Alamo rental car, 3 days free"

1 The advertisement continued in the body copy by stating:  
2 "Starting on the day you arrive in London, you can get  
3 three days free use of an Alamo economy car with  
4 unlimited mileage . . .  
5 "Just reserve the car in advance, directly with Alamo,  
6 and show your roundtrip TWA ticket when you arrive.  
7 For more information, call Alamo . . . and ask about  
8 TWA's 'London Special.'"

9 A footnote in the advertisement sets forth in much smaller type  
10 the following: "Car Offer: Fuel, taxes, optional items not  
11 included. . . ."

12 Said advertisement is untrue or misleading in that it  
13 misrepresents that the rental is free. In fact, the consumer is  
14 required to pay a mandatory fee for fuel whether or not the  
15 automobile is returned with a full tank and whether or not the  
16 consumer uses any substantial portion of the fuel supplied.

17 FOURTH CAUSE OF ACTION

18 (Violation of Business and Professions Code section 17504)

19 12. Plaintiff restates and incorporates herein by  
20 reference all of paragraphs one through six of this Complaint as  
21 though set forth in full.

22 13. Defendants have violated Business and Professions  
23 Code section 17504, subdivision (a), which prohibits any company  
24 engaged in business in California that sells any consumer goods  
25 or services which are sold only in multiple units and which are  
26 advertised by price from advertising such goods or services at  
27 any price other than the minimum multiple unit price at which

1 they are offered.

2 WHEREFORE, Plaintiff prays for judgment against defendants  
3 as follows:

4 1. That under Business and Professions Code section  
5 17536, defendants be assessed a civil penalty of two thousand  
6 five hundred dollars (\$2,500.00) for each violation of Business  
7 and Professions Code section 17500 and each violation of section  
8 17504.

9 2. That under Business and Professions Code section  
10 17206, defendants be assessed a civil penalty of two thousand  
11 five hundred dollars (\$2,500.00) for each act of unfair  
12 competition as defined in Business and Professions Code section  
13 17200.

14 3. That under Business and Professions Code section  
15 17203 and 17535, defendants be permanently enjoined and  
16 restrained from engaging in or performing, directly or  
17 indirectly, any and all of the following acts:

18 A. Advertising the price of its passenger air travel  
19 at any price other than the minimum multiple unit price at which  
20 they are offered.

21 B. In advertising any fares:

22 1. Failing to include in the advertised price  
23 for airfare any taxes, fees, or other fixed amount of money which  
24 the purchaser is required to pay to purchase the ticket.

25 2. Representing that any fee that a purchaser is  
26 required to pay as a condition of purchasing a ticket is for a  
27 government imposed tax, unless it is true.

1 C. In advertising the price of any consumer goods or  
2 services, failing to include in the price thereof any fees,  
3 taxes, or other payments which the purchaser is required to pay  
4 to utilize the consumer goods or services.

5 4. That plaintiff be awarded costs of this suit.

6 5. That plaintiff be given such other and further  
7 relief as the nature of this case may require and this Court  
8 deems proper.

9 DATED this 9th day of March, 1989, at San Diego,  
10 California.

11 Respectfully submitted,

12 JOHN K. VAN DE KAMP,  
13 Attorney General  
14 HERSCHEL T. ELKINS,  
15 Senior Assistant Attorney General  
16 ALBERT N. SHELDEN,  
17 Supervising Deputy Attorney General

18 *M. Howard Wayne*

19 M. HOWARD WAYNE  
20 Deputy Attorney General

21 Attorneys for Plaintiff  
22  
23  
24  
25  
26  
27

**Exhibit B**



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
7575 Metropolitan Dr. Suite 210  
San Diego, CA 92108  
(619)767-2032 fax(619)767-2035



# ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

To: Jose Angel Lomeli



## YOU ARE ORDERED TO APPEAR

Place: 7575 Metropolitan Drive Suite 210 San Diego, CA 92108

Date: August 18, 2011

Time: 8:30 AM

Concerning: Compliance with the Industrial Welfare Commission Orders and the California Labor Code.

You are required to present all documents or copies thereof in your possession or held by others for you, which will clarify or define the following:

for all past and present employees (drivers) employed by you for the periods of January 1, 2010 thru current:

- 1. X Full name of each employee (driver) for Pacer Cartage employed by you, home address, social security number, and all employment applications, rate of pay and date of hire/term for each.
- 2. X Time records for all employees showing when the employee begins and ends each work period, including split shift, meal periods and total daily hours worked. Please provide the employees actual time cards.
- 3. X Payroll records showing total wages paid each payroll period, total hours worked in the payroll period, and applicable rate of pay.
- 4. X 2010-2011 EDD Quarterly Wage & Withholding Reports
- 5. X Check stubs and/or Itemized wage statements and copies of business checks paid to all employees.
- 6. X A copy of a valid Certificate of Liability from your Workers' Compensation Insurance Company for the period of January 1, 2010 to current.

**AN APPEARANCE IS NECESSARY ON THE DATE INDICATED**

Failure to comply with the requirements of this notice will make necessary appropriate legal action by the Division (Sections 74 and 92, California Labor Code).

STATE LABOR COMMISSIONER

Date: 07/26/2011

By

Rhiannon M. Rogers  
Deputy Labor Commissioner

ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
7575 Metropolitan Dr. Suite 210  
San Diego, CA 92108  
(619)767-2032 fax(619)767-2035



## ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

To: Jose Fernando Ruiz



### YOU ARE ORDERED TO APPEAR

Place: 7575 Metropolitan Drive Suite 210 San Diego, CA 92108

Date: August 18, 2011

Time: 11:30 AM

Concerning: Compliance with the Industrial Welfare Commission Orders and the California Labor Code.

You are required to present all documents or copies thereof in your possession or held by others for you, which will clarify or define the following:

for all past and present employees (drivers) employed by you for the periods of January 1, 2010 thru current.

1. X Full name of each employee (driver) for Pacer Cartage employed by you, home address, social security number, and all employment applications, rate of pay and date of hire/term for each.
2. X Time records for all employees showing when the employee begins and ends each work period, including split shift, meal periods and total daily hours worked. Please provide the employees actual time cards.
3. X Payroll records showing total wages paid each payroll period, total hours worked in the payroll period, and applicable rate of pay.
4. X 2010-2011 EDD Quarterly Wage & Withholding Reports
5. X Check stubs and/or Itemized wage statements and copies of business checks paid to all employees.
6. X A copy of a valid Certificate of Liability from your Workers' Compensation Insurance Company for the period of January 1, 2010 to current.

**AN APPEARANCE IS NECESSARY ON THE DATE INDICATED**

Failure to comply with the requirements of this notice will make necessary appropriate legal action by the Division (Sections 74 and 92, California Labor Code).

STATE LABOR COMMISSIONER

By 

Rhiannon M. Rogers  
Deputy Labor Commissioner

ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

Date: 07/26/2011

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
7575 Metropolitan Dr. Suite 210  
San Diego, CA 92108  
(619)767-2032 fax(619)767-2035



## ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

To: Javier Maldonado

### YOU ARE ORDERED TO APPEAR

Place: 7575 Metropolitan Drive Suite 210 San Diego, CA 92108

Date: August 18, 2011

Time: 3:00 PM

Concerning: Compliance with the Industrial Welfare Commission Orders and the California Labor Code.

You are required to present all documents or copies thereof in your possession or held by others for you, which will clarify or define the following:

for all past and present employees (drivers) employed by you for the periods of January 1, 2010 thru current:

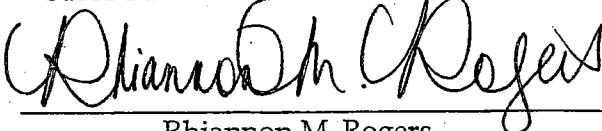
1. X Full name of each employee (driver) for Pacer Cartage employed by you, home address, social security number, and all employment applications, rate of pay and date of hire/term for each.
2. X Time records for all employees showing when the employee begins and ends each work period, including split shift, meal periods and total daily hours worked. Please provide the employees actual time cards.
3. X Payroll records showing total wages paid each payroll period, total hours worked in the payroll period, and applicable rate of pay.
4. X 2010-2011 EDD Quarterly Wage & Withholding Reports
5. X Check stubs and/or Itemized wage statements and copies of business checks paid to all employees.
6. X A copy of a valid Certificate of Liability from your Workers' Compensation Insurance Company for the period of January 1, 2010 to current.

**AN APPEARANCE IS NECESSARY ON THE DATE INDICATED**

Failure to comply with the requirements of this notice will make necessary appropriate legal action by the Division (Sections 74 and 92, California Labor Code).

Date: 07/29/2011

STATE LABOR COMMISSIONER

By 

Rhiannon M. Rogers  
Deputy Labor Commissioner

ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

AUG 01 2011

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
7575 Metropolitan Dr. Suite 210  
San Diego, CA 92108  
(619)767-2032 fax(619)767-2035



# ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

To: Miguel A. Contreras



## YOU ARE ORDERED TO APPEAR

Place: 7575 Metropolitan Drive Suite 210 San Diego, CA 92108

Date: August 19, 2011

Time: 1:30 PM

Concerning: Compliance with the Industrial Welfare Commission Orders and the California Labor Code.

You are required to present all documents or copies thereof in your possession or held by others for you, which will clarify or define the following:

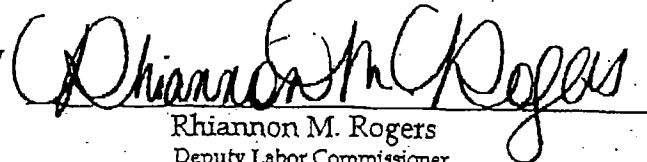
for all past and present employees (drivers) employed by you for the periods of January 1, 2010 thru current:

1. X Full name of each employee (driver) for Pacer Cartage employed by you, home address, social security number, and all employment applications, rate of pay and date of hire/term for each.
2. X Time records for all employees showing when the employee begins and ends each work period, including split shift, meal periods and total daily hours worked. Please provide the employees actual time cards.
3. X Payroll records showing total wages paid each payroll period, total hours worked in the payroll period, and applicable rate of pay.
4. X 2010-2011 EDD Quarterly Wage & Withholding Reports
5. X Check stubs and/or Itemized wage statements and copies of business checks paid to all employees.
6. X A copy of a valid Certificate of Liability from your Workers' Compensation Insurance Company for the period of January 1, 2010 to current.

**AN APPEARANCE IS NECESSARY ON THE DATE INDICATED**

Failure to comply with the requirements of this notice will make necessary appropriate legal action by the Division (Sections 74 and 92, California Labor Code).

STATE LABOR COMMISSIONER

By 

Rhianon M. Rogers  
Deputy Labor Commissioner

Date: 07/26/2011

ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER



AUG 03 2011

## ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

To: Jose Barreto

### YOU ARE ORDERED TO APPEAR

Place: 7575 Metropolitan Drive Suite 210 San Diego, CA 92108

Date: August 23, 2011

Time: 1:30 PM

Concerning: Compliance with the Industrial Welfare Commission Orders and the California Labor Code.

You are required to present all documents or copies thereof in your possession or held by others for you, which will clarify or define the following:  
for all past and present employees (drivers) employed by you for the periods of January 1, 2010 thru current:

1. X Full name of each employee (driver) for Pacer Cartage employed by you, home address, social security number, and all employment applications, rate of pay and date of hire/term for each.
2. X Time records for all employees showing when the employee begins and ends each work period, including split shift, meal periods and total daily hours worked. Please provide the employees actual time cards.
3. X Payroll records showing total wages paid each payroll period, total hours worked in the payroll period, and applicable rate of pay.
4. X 2010-2011 EDD Quarterly Wage & Withholding Reports
5. X Check stubs and/or Itemized wage statements and copies of business checks paid to all employees.
6. X A copy of a valid Certificate of Liability from your Workers' Compensation Insurance Company for the period of January 1, 2010 to current.

**AN APPEARANCE IS NECESSARY ON THE DATE INDICATED**

Failure to comply with the requirements of this notice will make necessary appropriate legal action by the Division (Sections 74 and 92, California Labor Code).

STATE LABOR COMMISSIONER

Date: 07/26/2011

By

Rhiannon M. Rogers  
Deputy Labor Commissioner

ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
7575 Metropolitan Dr. Suite 210  
San Diego, CA 92108  
(619)767-2032 fax(619)767-2035



## ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER

To: Zoltan Bodo

### YOU ARE ORDERED TO APPEAR

Place: 7575 Metropolitan Drive Suite 210 San Diego, CA 92108

Date: August 23, 2011

Time: 3:00 PM

Concerning: Compliance with the Industrial Welfare Commission Orders and the California Labor Code.

You are required to present all documents or copies thereof in your possession or held by others for you, which will clarify or define the following:

for all past and present employees (drivers) employed by you for the periods of January 1, 2010 thru current:

1. X Full name of each employee (driver) for Pacer Cartage employed by you, home address, social security number, and all employment applications, rate of pay and date of hire/term for each.
2. X Time records for all employees showing when the employee begins and ends each work period, including split shift, meal periods and total daily hours worked. Please provide the employees actual time cards.
3. X Payroll records showing total wages paid each payroll period, total hours worked in the payroll period, and applicable rate of pay.
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6. X A copy of a valid Certificate of Liability from your Workers' Compensation Insurance Company for the period of January 1, 2010 to current.

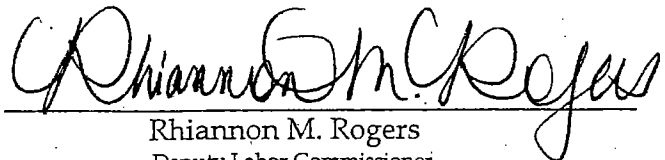
**AN APPEARANCE IS NECESSARY ON THE DATE INDICATED**

Failure to comply with the requirements of this notice will make necessary appropriate legal action by the Division (*Sections 74 and 92, California Labor Code*).

STATE LABOR COMMISSIONER

Date: 07/26/2011

By

Handwritten signature of Rhiannon M. Rogers in black ink.

Rhiannon M. Rogers  
Deputy Labor Commissioner

ORDER TO APPEAR BEFORE THE LABOR COMMISSIONER



ORIGINAL

**FILED**  
LOS ANGELES SUPERIOR COURT

OCT. 27 2008

JOHN A. CLARKE, CLERK

BY MARY GARCIA, DEPUTY

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 MARK J. BRECKLER  
Senior Assistant Attorney General  
3 JON M. ICHINAGA  
Supervising Deputy Attorney General  
4 MAURICE R. JOURDANE, State Bar No. 49349  
Deputy Attorney General  
5 CAROLYN Y. LA, State Bar No. 162945  
Deputy Attorney General  
6 300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
7 Telephone: (213) 620-2333  
Fax: (213) 897-7605

NO FILE - GOVT. CODE § 90103  
AMOUNT RECOVERABLE PURSUANT  
TO SING. GO. § 17  
AND ONE TIME ADMINISTRATIVE FEE UPON JUDGMENT  
IF THE PARTY BECOMES A JUDGMENT CREDITOR.

8 Attorneys for Plaintiff  
9 THE PEOPLE OF THE STATE OF CALIFORNIA ex  
rel. EDMUND G. BROWN JR., as Attorney General  
10 of the State of California

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

BC400654

14 THE PEOPLE OF THE STATE OF CALIFORNIA ex  
15 rel. EDMUND G. BROWN JR., as Attorney General of  
16 the State of California,  
17  
18 Plaintiff,  
19 vs.  
20 EDMUNDO JOSE LIRA, an Individual;  
21 DOES 1 through 50, inclusive,  
22  
23 Defendants.

CASE NO.  
COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
CIVIL PENALTIES  
(Business & Professions Code  
sections 17200 et seq.)

23 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., as  
24 Attorney General of the State of California, is informed and believes, and on such information  
25 and belief alleges:

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D-17  
Mary Thornton-Buse

003-111-121



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INTRODUCTION

13 1. This action is brought by Plaintiff, the People of the State of California, ex rel.  
14 Edmund G. Brown Jr., Attorney General of the State of California, against Defendant Edmundo  
15 Jose Lira ("Lira"), who operates a trucking company, to stop Lira from engaging in unfair  
16 competition. Lira has engaged in a pattern and practice of violating state law by misclassifying  
17 truck drivers working for him as independent contractors rather than as employees. By  
18 misclassifying the drivers as independent contractors, Lira has illegally lowered his cost of doing  
19 business by failing to pay state employment-related taxes and by failing to provide workers'  
20 compensation insurance. Lira's unlawful conduct not only harms law-abiding transportation  
21 companies, but also injures his employees and the taxpayers of California. This action seeks to  
22 compel Lira to cease engaging in unfair competition and to pay applicable penalties.

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PARTIES

13 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California  
14 and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is  
15 empowered by the California Constitution to take whatever action is necessary to ensure that the  
16 laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring  
17 actions in the name of the People of the State of California to enforce California's statutes  
18 governing unfair competition. (Bus. & Prof. Code, § 17204.)

19 3. Defendant Edmundo Jose Lira is an individual, and at all times relevant herein  
20 was doing business in the county of Los Angeles. Lira operates a trucking business. He owns  
21 several trucks and hires drivers to transport cargo from the Ports of Los Angeles and Long Beach.

22 4. The true names and capacities of defendants sued in the complaint under the  
23 fictitious names DOES 1 through 50, inclusive, presently are unknown to plaintiff, who therefore  
24 sues such defendants by such fictitious names. Plaintiff will seek to amend this complaint to  
25 allege the true names of DOES 1 through 50 when the same have been ascertained. Plaintiff is  
26 informed and believes, and based thereon alleges, that each of the fictitiously named defendants  
27 participated in some or part of the acts alleged herein.

28 5. Whenever reference is made in this complaint to any act of Lira, such allegations

1 shall mean that Lira, through his agents, employees, or representatives, performed or authorized  
2 such acts while they were acting within the actual or ostensible scope of their authority.

3 6. Whenever reference is made in this complaint to any act of the defendants,  
4 including those named herein as Doe defendants, such allegations shall mean that each defendant  
5 and/or Doe defendant acted individually and jointly with the other defendants, including the Doe  
6 defendants, named in this complaint.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

9 **(UNFAIR COMPETITION)**

10 **(Against All Defendants )**

11 7. The People reallege and incorporate by reference paragraphs 1 through 6 of this  
12 complaint as if set fully herein.

13 8. Defendants have violated and continue to violate Business and Professions Code  
14 section 17200, et seq. by engaging in acts of unfair competition including, but not limited to, the  
15 following:

16 a. failing to pay Unemployment Insurance taxes as required by Unemployment  
17 Insurance Code section 976;

18 b. failing to pay Employment Training Fund taxes as required by Unemployment  
19 Insurance Code section 976.6;

20 c. failing to withhold and transmit State Disability Insurance taxes as required by  
21 Unemployment Insurance Code section 986;

22 d. failing to withhold State income taxes and file a withholding return as required  
23 by Unemployment Insurance Code sections 13020 and 13021;

24 e. failing to provide workers' compensation as required by Labor Code section  
25 3700;

26 f. and failing to provide employees with itemized written statements as required  
27 by Labor Code section 226.

28 //

10/21/2011

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the People pray for the following relief:

3 1. Pursuant to Business and Professions Code section 17203, that defendants, their  
4 successors, agents, representatives, employees and all persons who act in concert with defendants  
5 be permanently enjoined from engaging in unfair competition as defined in Business and  
6 Professions Code section 17200, including, but not limited to, acts and practices alleged in this  
7 complaint;

8 2. Pursuant to Business and Professions Code section 17206, that the Court assess a civil  
9 penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of  
10 Business and Professions Code section 17200, the total amount being no less than \$50,000.00 or  
11 as proved at trial;

12 3. That the People recover their costs of suit; and

13 4. Such other and further relief that the Court deems appropriate and just.

14 Dated: October 21, 2008

Respectfully submitted,

15  
16 EDMUND G. BROWN JR.  
Attorney General of the State of California

17 MARK J. BRECKLER  
Senior Assistant Attorney General

18 JON M. ICHINAGA  
Supervising Deputy Attorney General

19 MAURICE JOURDANE  
Deputy Attorney General

20 CAROLYN Y. LA  
Deputy Attorney General

21  
22  
23 By: Carolyn Y. La  
CAROLYN Y. LA  
24 Deputy Attorney General

25 Attorneys for Plaintiff,  
26 THE PEOPLE OF THE STATE OF CALIFORNIA  
ex rel. EDMUND G. BROWN JR., as Attorney  
27 General of the State of California  
28



28

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 MARK J. BRECKLER  
 Senior Assistant Attorney General  
 3 JON M. ICHINAGA  
 Supervising Deputy Attorney General  
 4 MAURICE R. JOURDANE, State Bar No. 42893  
 Deputy Attorney General  
 5 CAROLYN Y. LA, State Bar No. 162945  
 Deputy Attorney General  
 6 300 S. Spring Street, Suite 1702  
 Los Angeles, CA 90013  
 7 Telephone: (213) 620-2333  
 Fax: (213) 897-7605  
 8 E-mail: carolyn.la@doj.ca.gov

9 *Attorneys for Plaintiff,*  
 10 *The People of the State of California*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 12 FOR THE COUNTY OF LOS ANGELES

16 THE PEOPLE OF THE STATE OF  
 CALIFORNIA ex rel. EDMUND G.  
 17 BROWN JR., Attorney General of the State  
 of California,

18 Plaintiff.

19 v.

21 EDMUNDO JOSE LIRA, an Individual,  
 and DOES 1 through 50, inclusive,

22 Defendants.

CASE NO. BC400654

23 ~~PROPOSED~~ FINAL JUDGMENT AND  
 PERMANENT INJUNCTION

Date: N/A  
 Time: N/A  
 Dept: 17  
 Judge: The Honorable Richard E. Rico  
 Trial Date: January 19, 2010  
 Action Filed: October 27, 2008

24  
 25 Plaintiff, the People of the State of California, ("Plaintiff"), appearing through California  
 26 Attorney General Edmund G. Brown Jr., by Deputy Attorneys General Maurice R. Jourdane and  
 27 Carolyn La, and Defendant Edmundo Jose Lira ("Defendant") appearing through his attorney  
 28 Law Offices of Pflaster & Berman, by Martin B. Berman, having stipulated that this Final

CONFORMED COPY

REC'D

LOS ANGELES SUPERIOR COURT  
 BEE 14 2009

DEC 01 2009

FILING WINDOW

JOHN A. ... CLERK  
 BY ANTONIO ... DEPUTY

1 Judgment and Permanent Injunction ("Judgment") may be entered, with each party waiving the  
 2 right to an adjudicative trial, without the taking of evidence on any issue of fact or law, or any  
 3 factual finding by the Court or any admission or denial of wrongdoing or guilt,

4 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

5 1. This Court has jurisdiction of the subject matter of this action and of the parties.  
 6 Venue as to all matters between the parties relating to this action is proper in this Court.

7 2. For purposes of the injunctive language set forth in paragraphs 3 and 4 below, the  
 8 party identified as Edmundo Jose Lira includes any agents or parties acting in concert with or in  
 9 participation with Edmundo Jose Lira.

10 **INJUNCTION**

11 3. Pursuant to Business and Professions Code sections 17203 and 17535, Edmundo Jose  
 12 Lira, is hereby enjoined permanently from the following act:

13 4. *Misclassifying truck drivers as independent contractors* including, but not limited to,  
 14 classifying drivers who operate trucks that are provided, owned, or leased by Edmundo Jose Lira  
 15 as independent contractors.

16 **CIVIL PENALTIES**

17 5. Payment having been made in the sum of FOUR THOUSAND, FIVE HUNDRED  
 18 DOLLARS (\$4,500.00) as a penalty, and FIVE HUNDRED DOLLARS (\$500.00) for Plaintiff's  
 19 attorney fees and costs as set forth in the Stipulation for Entry of Judgment, Defendant is deemed  
 20 to have satisfied all requirements for monetary payments for any matters actually alleged in the  
 21 Complaint.

22 6. This Judgment is to be entered by the Clerk only after Plaintiff informs the Court that  
 23 Edmundo Jose Lira has made all payments specified in the Stipulation for Entry of Judgment.

24 7. The Court retains jurisdiction as the ends of justice may require for the purpose of  
 25 enabling any party to this Judgment to apply to the Court at any time for such further orders and  
 26 directions as may be necessary or appropriate for: (a) the construction or carrying out of this  
 27 Judgment; (b) the enforcement of any provision of this Judgment; (c) the modification of the

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injunctive provisions of this Judgment; and (d) the punishment of any violations of this Judgment.

IT IS SO ORDERED:

Dated: 12/14/09

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**RICHARD E. RICO**

12/14/09





90012

A-4029

**FILED**  
Los Angeles Superior Court

DEC 29 2009

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY Deputy

D17 Richard Lico

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARK BRECKLER  
Senior Assistant Attorney General  
3 JON M. ICHINAGA  
Supervising Deputy Attorney General  
4 CAROLYN LA  
MAURICE R. JOURDANE  
5 Deputy Attorneys General  
State Bar No. 42898  
6 110 West A Street, Suite 1100  
San Diego, CA 92101  
7 P.O. Box 85266  
San Diego, CA 92186-5266  
8 Telephone: (619) 645-2218  
9 Fax: (619) 645-2271  
E-mail: Maurice.Jourdane@doj.ca.gov  
10 Attorneys for Plaintiff  
The People of the State of California

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES

BC 428934

14 THE PEOPLE OF THE STATE OF  
15 CALIFORNIA ex rel. EDMUND G.  
16 BROWN JR., Attorney General of the State  
of California,

CASE NO.  
COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES  
(Business & Professions Code sections 17200  
et seq.)

17 Plaintiff,

18 v.

19 PACIFICA TRUCKS, L.L.C., a limited  
20 liability corporation and DOES 1 through  
21 50, inclusive,

22 Defendant.

23  
24 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., as  
25 Attorney General of the State of California, is informed and believes, and on such information  
26 and belief alleges:

27 ///  
28 ///

VIA FAX

7

1 INTRODUCTION

2 1. This action is brought by Plaintiff, the People of the State of California, ex rel.  
3 Edmund G. Brown Jr., Attorney General of the State of California, against Defendant Pacifica  
4 Trucks LLC (Pacifica), a southern California fleet operator, to stop Pacifica from engaging in  
5 unfair competition. Pacifica has engaged in a pattern and practice of violating state and federal  
6 law by misclassifying truck drivers working for it as independent contractors rather than as  
7 employees. ~~By misclassifying the drivers as independent contractors, Pacifica has illegally~~  
8 lowered his cost of doing business by failing to pay state employment related taxes, failing to  
9 contribute to Social Security and Medicare, and failing to provide employee drivers with W-2  
10 forms. Pacifica's unlawful conduct not only harms law abiding transportation companies, but  
11 also injures his employees and the taxpayers of California. This action seeks to compel Pacifica  
12 to cease engaging in unfair competition and to pay applicable penalties.

13 PARTIES

14 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California and  
15 is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is  
16 empowered by the California Constitution to take whatever action is necessary to ensure that the  
17 laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring  
18 actions in the name of the People of the State of California to enforce California's statutes  
19 governing unfair competition. (Bus. & Prof. Code, § 17204.)

20 3. Defendant Pacifica is a limited liability company doing business in the State of  
21 California, including in the county of Los Angeles. Pacifica is a fleet operator, owning eight to  
22 ten trucks. It hires truck drivers to transport cargo from the Ports of Los Angeles and Long  
23 Beach.

24 4. The true names and capacities of defendants sued in the complaint under the fictitious  
25 names DOES 1 through 50, inclusive, presently are unknown to plaintiff, who therefore sues such  
26 defendants by such fictitious names. Plaintiff will seek to amend this complaint to allege the true  
27 names of DOES 1 through 50 when the same have been ascertained. Plaintiff is informed and  
28

1 believes, and based thereon alleges, that each of the fictitiously named defendants participated in  
2 some or part of the acts alleged herein.

3 5. Whenever reference is made in this complaint to any act of Pacifica, such allegations  
4 shall mean that Pacifica through his agents, employees, or representatives, performed or  
5 authorized such acts while they were acting within the actual or ostensible scope of their  
6 authority.

7 ~~6. Whenever reference is made in this complaint to any act of the defendants, including~~  
8 those named herein as Doe defendants, such allegations shall mean that each defendant and/or  
9 Doe defendant acted individually and jointly with the other defendants, including the Doe  
10 defendants, named in this complaint.

11 **FIRST CAUSE OF ACTION**

12 **BUSINESS AND PROFESSIONS CODE SECTION 17200**

13 **(Against All Defendants)**

14 7. The People re-allege and incorporate by reference paragraphs 1 through 6 of this  
15 complaint as if set fully herein.

16 8. The Defendants' truck drivers are employees who are misclassified as independent  
17 contractors. Defendants have absolute control over their truck drivers. Driving trucks which the  
18 defendants own, the drivers work exclusively for defendants. Without the use of defendants'  
19 trucks, their drivers cannot work. Defendants pay for all business expenses including liability and  
20 cargo insurance, operating expenses for the trucks, e.g. gas, repairs, and parking fees.  
21 Defendants' truck drivers do not have their own Department of Transportation permit and instead  
22 rely on Defendants' to ensure proper authorization to drive their trucks.

23 9. Defendants' pay their drivers without deducting income taxes, Social Security taxes,  
24 Medicare, or state disability insurance. Instead, defendants issue the employee drivers federal tax  
25 form 1099 rather than a form W-2.

26 10. Defendants do not contribute to the unemployment insurance fund for their driver  
27 employees, and do not contribute to funds for their employee drivers' Social Security, Medicare  
28 and state disability insurance.

1 11. Defendants do not provide their employee drives with a written record of the  
2 employee drivers hours worked, hourly rate, and social security number.

3 12. Defendants have violated and continue to violate Business and Professions Code  
4 section 17200, et seq. by engaging in acts of unfair competition including, but not limited to, the  
5 following:

6 a. failing to pay Unemployment Insurance taxes as required by Unemployment  
7 Insurance Code section 976;

8 b. failing to pay Employment Training Fund taxes as required by Unemployment  
9 Insurance Code section 976.6;

10 c. failing to withhold State Disability Insurance taxes as required by  
11 Unemployment Insurance Code section 984;

12 d. failing to withhold State income taxes as required by Unemployment Insurance  
13 Code section 13020;

14 e. failing to provide employees with itemized written statements as required by  
15 Labor Code section 226, and.

16 f. failing to provide employees with federal W-2 forms.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the People pray for the following relief:

19 1. Pursuant to Business and Professions Code section 17203, that defendants, their  
20 successors, agents, representatives, employees and all persons who act in concert with defendants  
21 be permanently enjoined from engaging in unfair competition as defined in Business and  
22 Professions Code section 17200, including, but not limited to, acts and practices alleged in this  
23 complaint;

24 2. Pursuant to Business and Professions Code section 17206, that the Court assess a civil  
25 penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of  
26 Business and Professions Code section 17200, the total amount being no less than \$50,000.00 or  
27 as proved at trial;

28 3. That the People recover their costs of suit; and,


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4. Such other and further relief that the Court deems appropriate and just.

Dated: December 29, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
MARK BRECKLER  
Senior Assistant Attorney General  
JON M. ICHINAGA  
Supervising Deputy Attorney General  
CAROLYN LA  
Deputy Attorney General



MAURICE R. JOURDAINE  
Deputy Attorney General  
*Attorneys for Plaintiff*  
*The People of the State of California*

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EDMUND G. BROWN JR.  
Attorney General of California  
MARK BRECKLER  
Senior Assistant Attorney General  
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E-mail: Maurice.Jourdane@doj.ca.gov  
*Attorneys for Plaintiff*  
*The People of the State of California*

LOS ANGELES SUPERIOR COURT  
JAN 2 2010  
JOHN A. ...  
BY ANTONIO ...

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

**THE PEOPLE OF THE STATE OF CALIFORNIA** ex rel. **EDMUND G. BROWN JR.**, Attorney General of the State of California,  
*Plaintiff,*  
v.  
**PACIFICA TRUCKS, L.L.C.**, a limited liability corporation and **DOES 1 through 50**, inclusive,  
*Defendant.*

Case No. BC428934  
**[PROPOSED] FINAL JUDGMENT**

Plaintiff, the People of the State of California, ("Plaintiff"), appearing through California Attorney General Edmund G. Brown Jr., by Deputy Attorneys General Maurice R. Jourdane and Defendant Pacifica Trucks L.L.C. ("Defendant") represented by its attorney Mark Valencia having stipulated that this Final Judgment ("Judgment") may be entered, with each party waiving the right to an adjudicative trial, without the taking of evidence on any issue of fact or law, or any factual finding by the Court or any admission or denial of wrongdoing or guilt.

EX 1

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IT IS HEREBY ORDERED, ADJUDGED; AND DECREED THAT:

1. This Court has jurisdiction of the subject matter of this action and of the parties. Venue as to all matters between the parties relating to this action is proper in this Court.

2. For purposes of the injunctive language set forth in paragraphs 3 below, the party identified as Pacifica Trucks includes any agents or parties acting in concert with or in participation with Pacifica Trucks.

INJUNCTION

3. Pursuant to Business and Professions Code sections 17203 and 17535, Pacifica Trucks is hereby enjoined permanently from misclassifying as independent contractors truck drivers who operate trucks that are provided, owned, or leased by Pacifica Trucking.

CIVIL PENALTIES

4. Payment having been made in the sum of FIVE THOUSAND DOLLARS (\$5,000) as set forth in the Stipulation for Entry of Judgment, Defendant is deemed to have satisfied all requirements for monetary payments for any matters actually alleged in the Complaint.

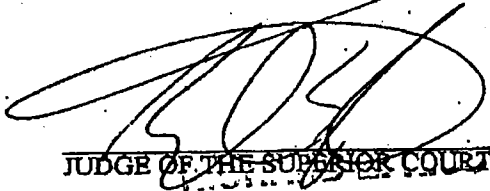
5. The Court retains jurisdiction as the ends of justice may require for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for: (a) the construction or carrying out of this Judgment; (b) the enforcement of any provision of this Judgment; (c) the modification of the injunctive provisions of this Judgment; and (d) the punishment for any violation of this Judgment.

6. The action against the defendants identified as DOE 1 through 50 is dismissed.

IT IS SO ORDERED:

Dated: \_\_\_\_\_

1/5/10



JUDGE OF THE SUPERIOR COURT





OCT. 27 2008

JOHN A. CLARKE, CLERK  
*[Signature]*  
BY MARY GARCIA, DEPUTY

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 MARK BRECKLER  
Senior Assistant Attorney General  
3 JON ICHINAGA  
Supervising Deputy Attorney General  
4 MAURICE JOURDANE, State Bar No. 49349  
Deputy Attorney General  
5 CAROLYN Y. LA, State Bar No. 162945  
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Los Angeles, CA 90013  
7 Telephone: (213) 620-2333  
Fax: (213) 897-7605

8 Attorneys for Plaintiff  
9 THE PEOPLE OF THE STATE OF CALIFORNIA ex  
rel. EDMUND G. BROWN JR., as Attorney General  
10 of the State of California

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

14 THE PEOPLE OF THE STATE OF CALIFORNIA ex  
15 rel. EDMUND G. BROWN JR., as Attorney General of  
16 the State of California,

17 Plaintiff,

18 vs.

19 NOEL A. MORENO, an Individual; EMMA R.  
20 MORENO, an Individual; DOES 1 through 50,  
21 inclusive,

22 Defendants.

CASE NO.

BC400655

COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
CIVIL PENALTIES  
(Business & Professions Code  
sections 17200 et seq.)

23 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., as  
24 Attorney General of the State of California, is informed and believes, and on such information  
25 and belief alleges:

26 //  
27 //  
28 //

NOTICE TO CREDITORS  
ALL CLAIMS AGAINST THE ESTATE OF  
EDMUND G. BROWN JR. MUST BE FILED  
WITH THE CLERK OF THE SUPERIOR COURT  
OF LOS ANGELES COUNTY, CALIFORNIA,  
WITHIN 90 DAYS OF THE DATE OF  
DEATH OF THE DECEDENT.  
EDMUND G. BROWN JR.  
DIED ON OCTOBER 27, 2008.  
D-41  
Ronald M. Sahigian

1 INTRODUCTION

2 1. This action is brought by Plaintiff, the People of the State of California, ex rel.  
3 Edmund G. Brown Jr., Attorney General of the State of California, against Defendants Noel A.  
4 Moreno and Emma R. Moreno, ("the Morenos"), who operate a trucking company called Moreno  
5 Trucking, in order to stop the Morenos from engaging in unfair competition. The Morenos have  
6 engaged in a pattern and practice of violating state law by misclassifying truck drivers working  
7 for them as independent contractors rather than as employees. By misclassifying the drivers as  
8 independent contractors, the Morenos have illegally lowered their cost of doing business by  
9 failing to pay state employment-related taxes, failing to provide workers' compensation  
10 insurance, and by failing to provide employees with itemized wage statements. The Morenos'  
11 unlawful conduct not only harms law-abiding transportation companies, but also injures their  
12 employees and the taxpayers of California. This action seeks to compel the Morenos to cease  
13 engaging in unfair competition and to pay applicable penalties.

14 PARTIES

15 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California  
16 and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is  
17 empowered by the California Constitution to take whatever action is necessary to ensure that the  
18 laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring  
19 actions in the name of the People of the State of California to enforce California's statutes  
20 governing unfair competition. (Bus. & Prof. Code, § 17204.)

21 3. Defendant Noel A. Moreno is an individual, and at all times relevant herein was  
22 doing business in the County of Los Angeles.

23 4. Defendant Emma R. Moreno is an individual, and at all times relevant herein was  
24 doing business in the County of Los Angeles. Emma R. Moreno is married to Noel A. Moreno.  
25 The Morenos own several trucks and hire drivers to transport cargo for their trucking company  
26 from the Ports of Los Angeles and Long Beach.

27 5. The true names and capacities of defendants sued in the complaint under the  
28 fictitious names DOES 1 through 50, inclusive, presently are unknown to plaintiff, who therefore

10/24/08  
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1 sues such defendants by such fictitious names. Plaintiff will seek to amend this complaint to  
2 allege the true names of DOES 1 through 50 when the same have been ascertained. Plaintiff is  
3 informed and believes, and based thereon alleges, that each of the fictitiously named defendants  
4 participated in some or part of the acts alleged herein.

5 6. Whenever reference is made in this complaint to any act of the Morenos, such  
6 allegations shall mean that the Morenos through their agents, employees, or representatives,  
7 performed or authorized such acts while they were acting within the actual or ostensible scope of  
8 their authority.

9 7. Whenever reference is made in this complaint to any act of the defendants,  
10 including those named herein as Doe defendants, such allegations shall mean that each defendant  
11 and/or Doe defendant acted individually and jointly with the other defendants, including the Doe  
12 defendants, named in this complaint.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

15 **(UNFAIR COMPETITION)**

16 **(Against All Defendants )**

17 8. The People reallege and incorporate by reference paragraphs 1 through 7 of this  
18 complaint as if set fully herein.

19 9. Defendants have violated and continue to violate Business and Professions Code  
20 section 17200, et seq. by engaging in acts of unfair competition including, but not limited to, the  
21 following:

22 a. failing to pay Unemployment Insurance taxes as required by Unemployment  
23 Insurance Code section 976;

24 b. failing to pay Employment Training Fund taxes as required by Unemployment  
25 Insurance Code section 976.6;

26 c. failing to withhold and transmit State Disability Insurance taxes as required by  
27 Unemployment Insurance Code section 986;

28 d. failing to withhold State income taxes and file a withholding return as required

1 by Unemployment Insurance Code sections 13020 and 13021;

2 e. failing to provide workers' compensation as required by Labor Code section  
3 3700;

4 f. and failing to provide employees with itemized written statements as required  
5 by Labor Code section 226.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the People pray for the following relief:

8 1. Pursuant to Business and Professions Code section 17203, that defendants, their  
9 successors, agents, representatives, employees and all persons who act in concert with defendants  
10 be permanently enjoined from engaging in unfair competition as defined in Business and  
11 Professions Code section 17200, including, but not limited to, acts and practices alleged in this  
12 complaint;

13 2. Pursuant to Business and Professions Code section 17206, that the Court assess a civil  
14 penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of  
15 Business and Professions Code section 17200, the total amount being no less than \$50,000.00 or  
16 as proved at trial;

17 3. That the People recover their costs of suit; and

18 4. Such other and further relief that the Court deems appropriate and just.

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Dated: October 27, 2008

Respectfully submitted,

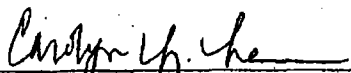
EDMUND G. BROWN JR.  
Attorney General of the State of California

MARK J. BRECKLER  
Senior Assistant Attorney General

JON M. ICHINAGA  
Supervising Deputy Attorney General

MAURICE JOURDANE  
Deputy Attorney General

CAROLYN Y. LA  
Deputy Attorney General

By:   
CAROLYN Y. LA  
Deputy Attorney General

Attorneys for Plaintiff,  
THE PEOPLE OF THE STATE OF CALIFORNIA  
ex rel. EDMUND G. BROWN JR., as Attorney  
General of the State of California

11/03/08

**Exhibit H**

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EDMUND G. BROWN JR.  
Attorney General of California  
MARK J. BRECKLER  
Senior Assistant Attorney General  
JON M. ICHINAGA  
Supervising Deputy Attorney General  
MAURICE R. JOURDANE, State Bar No. 42898  
Deputy Attorney General  
CAROLYN Y. LA, State Bar No. 162945  
Deputy Attorney General  
300 S. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 620-2333  
Fax: (213) 897-7605  
E-mail: carolyn.la@doj.ca.gov

*Attorneys for Plaintiff,  
The People of the State of California*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

**FILED**  
Superior Court of California  
County of Los Angeles

JAN 08 2010

John A. Clarke, Executive Officer/Clerk  
By [Signature], Deputy

**THE PEOPLE OF THE STATE OF CALIFORNIA** ex rel. **EDMUND G. BROWN JR.**, Attorney General of the State of California,  
  
Plaintiff,  
  
v.  
  
**NOEL A. MORENO, an Individual; EMMA R. MORENO, an Individual; and DOES 1 through 50, inclusive,**  
  
Defendants.

CASE NO. BC400655  
~~PROPOSED~~ FINAL JUDGMENT AND PERMANENT INJUNCTION  
Date: N/A  
Time: N/A  
Dept: 41  
Judge: The Hon. Ronald M. Sohigian  
Trial Date: January 19, 2010  
Action Filed: October 27, 2008

Plaintiff, the People of the State of California, ("Plaintiff"), appearing through California Attorney General Edmund G. Brown Jr., by Deputy Attorneys General Maurice R. Jourdane and Carolyn La, and Defendants Noel A. Moreno and Emma R. Moreno ("Defendants") appearing:



1 through their attorney Law Offices of Pflaster & Berman, by Martin B. Berman, having stipulated  
2 that this Final Judgment and Permanent Injunction ("Judgment") may be entered, with each party  
3 waiving the right to an adjudicative trial, without the taking of evidence on any issue of fact or  
4 law, or any factual finding by the Court or any admission or denial of wrongdoing or guilt,

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

6 1. This Court has jurisdiction of the subject matter of this action and of the parties.  
7 Venue as to all matters between the parties relating to this action is proper in this Court.

8 2. For purposes of the injunctive language set forth in paragraphs 3 and 4 below, the  
9 parties identified as Noel A. Moreno and Emma R. Moreno include any agents or parties acting in  
10 concert with or in participation with Noel A. Moreno and/or Emma R. Moreno.

11 **INJUNCTION**

12 3. Pursuant to Business and Professions Code sections 17203 and 17535, Noel A.  
13 Moreno and Emma R. Moreno, are hereby enjoined permanently from the following act:

14 4. Misclassifying truck drivers as independent contractors including, but not limited to,  
15 classifying drivers who operate trucks that are provided, owned, or leased by Noel A. Moreno  
16 and/or Emma R. Moreno as independent contractors.

17 **CIVIL PENALTIES**

18 5. Payment having been made in the sum of FOUR THOUSAND, FIVE HUNDRED  
19 DOLLARS (\$4,500.00) as a penalty, and FIVE HUNDRED DOLLARS (\$500.00) for Plaintiff's  
20 attorney fees and costs as set forth in the Stipulation for Entry of Judgment, Defendants are  
21 deemed to have satisfied all requirements for monetary payments for any matters actually alleged  
22 in the Complaint.

23 6. This Judgment is to be entered by the Clerk only after Plaintiff informs the Court that  
24 Defendants have made all payments specified in the Stipulation for Entry of Judgment.

25 7. The Court retains jurisdiction as the ends of justice may require for the purpose of  
26 enabling any party to this Judgment to apply to the Court at any time for such further orders and  
27 directions as may be necessary or appropriate for: (a) the construction or carrying out of this  
28 Judgment; (b) the enforcement of any provision of this Judgment; (c) the modification of the

1 injunctive provisions of this Judgment; and (d) the punishment of any violations of this Judgment.

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IT IS SO ORDERED:

Dated: JAN 8-8 1970

**RONALD M. SOHIGIAN**  
JUDGE OF THE SUPERIOR COURT

**Exhibit I**

---

ORIGINAL

**FILED**  
LOS ANGELES SUPERIOR COURT  
SER 05 2008  
JOHN A. CLARKE, CLERK  
BY SHAUNYA WESLEY, DEPUTY

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 MARK BRECKLER  
Senior Assistant Attorney General  
3 JON ICHINAGA  
Supervising Deputy Attorney General  
4 MAURICE JOURDANE, State Bar No. 49349  
Deputy Attorney General  
5 CAROLYN Y. LA, State Bar No.162945  
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9 Attorneys for Plaintiff  
THE PEOPLE OF THE STATE OF CALIFORNIA ex  
rel. EDMUND G. BROWN JR., as Attorney General  
10 of the State of California

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

14 THE PEOPLE OF THE STATE OF CALIFORNIA ex  
15 rel. EDMUND G. BROWN JR., as Attorney General of  
16 the State of California,

17 Plaintiff,

18 vs.

19 JOSE MARIA LIRA, an Individual and DOES I  
through 50, inclusive,

20 Defendants.  
21

BC397601  
CASE NO.

COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
CIVIL PENALTIES  
(Business & Professions Code  
sections 17200 et seq.)

22  
23 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., as  
24 Attorney General of the State of California, is informed and believes, and on such information  
25 and belief alleges:

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*D14 Jerry Green*

NO FEE GOVT CODE SEC. 8103  
AMOUNT RECOVERABLE PURSUANT  
TO 8103.5 GC \$ 52.00  
PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGEMENT  
IF THE PARTY BECOMES A JUDGEMENT CREDITOR.

RECORDED & INDEXED

INTRODUCTION

1  
2           1.       This action is brought by Plaintiff, the People of the State of California, ex rel.  
3 Edmund G. Brown Jr., Attorney General of the State of California, against Defendant Jose Maria  
4 Lira, ("Lira"), a southern California fleet operator, to stop Lira from engaging in unfair  
5 competition. Lira has engaged in a pattern and practice of violating state law by misclassifying  
6 truck drivers working for him as independent contractors rather than as employees. By  
7 misclassifying the drivers as independent contractors, Lira has illegally lowered his cost of doing  
8 business by failing to pay state employment-related taxes and by failing to provide workers'  
9 compensation insurance. Lira's unlawful conduct not only harms law-abiding transportation  
10 companies, but also injures his employees and the taxpayers of California. This action seeks to  
11 compel Lira to cease engaging in unfair competition and to pay applicable penalties.

PARTIES

12  
13           2.       Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California  
14 and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is  
15 empowered by the California Constitution to take whatever action is necessary to ensure that the  
16 laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring  
17 actions in the name of the People of the State of California to enforce California's statutes  
18 governing unfair competition. (Bus. & Prof. Code, § 17204.)

19           3.       Defendant Jose Maria Lira is an individual, and at all times relevant herein was  
20 doing business in the county of Los Angeles. Lira is a fleet operator, owning several trucks. He  
21 hires truck drivers to transport cargo from the Ports of Los Angeles and Long Beach.

22           4.       The true names and capacities of defendants sued in the complaint under the  
23 fictitious names DOES 1 through 50, inclusive, presently are unknown to plaintiff, who therefore  
24 sues such defendants by such fictitious names. Plaintiff will seek to amend this complaint to  
25 allege the true names of DOES 1 through 50 when the same have been ascertained. Plaintiff is  
26 informed and believes, and based thereon alleges, that each of the fictitiously named defendants  
27 participated in some or part of the acts alleged herein.

28           5.       Whenever reference is made in this complaint to any act of Lira, such allegations

0057-1105-105

1 shall mean that Lira through his agents, employees, or representatives, performed or authorized  
2 such acts while they were acting within the actual or ostensible scope of their authority.

3 6. Whenever reference is made in this complaint to any act of the defendants,  
4 including those named herein as Doe defendants, such allegations shall mean that each defendant  
5 and/or Doe defendant acted individually and jointly with the other defendants, including the Doe  
6 defendants, named in this complaint.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

9 **(UNFAIR COMPETITION)**

10 **(Against All Defendants )**

11 7. The People reallege and incorporate by reference paragraphs 1 through 6 of this  
12 complaint as if set fully herein.

13 8. Defendants have violated and continue to violate Business and Professions Code  
14 section 17200, et seq. by engaging in acts of unfair competition including, but not limited to, the  
15 following:

16 a. failing to pay Unemployment Insurance taxes as required by Unemployment  
17 Insurance Code section 976;

18 b. failing to pay Employment Training Fund taxes as required by Unemployment  
19 Insurance Code section 976.6;

20 c. failing to withhold State Disability Insurance taxes as required by  
21 Unemployment Insurance Code section 984;

22 d. failing to withhold State income taxes as required by Unemployment Insurance  
23 Code section 13020;

24 e. failing to provide workers' compensation as required by Labor Code section  
25 3700;

26 f. and failing to provide employees with itemized written statements as required  
27 by Labor Code section 226.

28 //

00000000000000000000

**PRAYER FOR RELIEF**

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, that defendants, their successors, agents, representatives, employees and all persons who act in concert with defendants be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200, including, but not limited to, acts and practices alleged in this complaint;
2. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17200, the total amount being no less than \$50,000.00 or as proved at trial;
3. That the People recover their costs of suit; and
4. Such other and further relief that the Court deems appropriate and just.

Dated: September 5, 2008

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California

MARK J. BRECKLER  
Senior Assistant Attorney General

JON M. ICHINAGA  
Supervising Deputy Attorney General

MAURICE JOURDANE  
Deputy Attorney General

CAROLYN Y. LA  
Deputy Attorney General

By: *Carolyn Y. La*  
CAROLYN Y. LA  
Deputy Attorney General

Attorneys for Plaintiff,  
THE PEOPLE OF THE STATE OF CALIFORNIA  
ex rel. EDMUND G. BROWN JR., as Attorney  
General of the State of California

000000000000000000000000





**ORIGINAL**

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 MARK J. BRECKLER  
 Senior Assistant Attorney General  
 3 JON M. ICHINAGA  
 Supervising Deputy Attorney General  
 4 MAURICE R. JOURDANE, State Bar No. 42898  
 Deputy Attorney General  
 5 CAROLYN Y. LA, State Bar No. 162945  
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 Fax: (213) 897-7605  
 8 E-mail: carolyn.la@doj.ca.gov

**REC'D**  
**FEB 01 2010**  
**FILING WINDOW FILED**  
**LOS ANGELES SUPERIOR COURT**  
**FEB 2 2010**  
**JOHN A. CLARKE, CLERK**  
**BY J. LORENZ, DEPUTY**

9 *Attorneys for Plaintiff,*  
 10 *The People of the State of California*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 12 **FOR THE COUNTY OF LOS ANGELES**

<p>16 <b>THE PEOPLE OF THE STATE OF CALIFORNIA</b> ex rel. <b>EDMUND G. BROWN JR.</b>, Attorney General of the State of California,          17          18 <b>Plaintiff,</b>          19          20 v.          21 <b>JOSE MARIA LIRA, an Individual and DOES 1 through 50, inclusive,</b>          22          23 <b>Defendants.</b></p>	<p>CASE NO. BC397601  <b>[PROPOSED] FINAL JUDGMENT AND PERMANENT INJUNCTION</b>          Date: N/A          Time: N/A          Dept: 14          Judge: The Honorable Terry A. Green          Trial Date: March 8, 2010          Action Filed: September 5, 2008</p>
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 25 Plaintiff, the People of the State of California, ("Plaintiff"), appearing through California  
 26 Attorney General Edmund G. Brown Jr., by Deputy Attorneys General Maurice R. Jourdane and  
 27 Carolyn La, and Defendant Jose Maria Lira ("Defendant") appearing through his attorney Law  
 28 Offices of Pflaster & Berman, by Martin B. Berman, having stipulated that this Final Judgment

1 and Permanent Injunction ("Judgment") may be entered, with each party waiving the right to an  
2 adjudicative trial, without the taking of evidence on any issue of fact or law, or any factual  
3 finding by the Court or any admission or denial of wrongdoing or guilt,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

5 1. This Court has jurisdiction of the subject matter of this action and of the parties.  
6 Venue as to all matters between the parties relating to this action is proper in this Court.

7 2. For purposes of the injunctive language set forth in paragraphs 3 and 4 below, the  
8 party identified as Jose Maria Lira includes any agents or parties acting in concert with or in  
9 participation with Jose Maria Lira.

10 INJUNCTION

11 3. Pursuant to Business and Professions Code sections 17203 and 17535, Jose Maria  
12 Lira, is hereby enjoined permanently from the following act:

13 4. Misclassifying truck drivers as independent contractors including, but not limited to,  
14 classifying drivers who operate trucks that are provided, owned, or leased by Jose Maria Lira as  
15 independent contractors.

16 CIVIL PENALTIES

17 5. Payment having been made in the sum of FOUR THOUSAND, FIVE HUNDRED  
18 DOLLARS (\$4,500.00) as a penalty, and FIVE HUNDRED DOLLARS (\$500.00) for Plaintiff's  
19 attorney fees and costs as set forth in the Stipulation for Entry of Judgment, Defendant is deemed  
20 to have satisfied all requirements for monetary payments for any matters actually alleged in the  
21 Complaint.

22 6. This Judgment is to be entered by the Clerk only after Plaintiff informs the Court that  
23 Jose Maria Lira has made all payments specified in the Stipulation for Entry of Judgment.

24 7. The Court retains jurisdiction as the ends of justice may require for the purpose of  
25 enabling any party to this Judgment to apply to the Court at any time for such further orders and  
26 directions as may be necessary or appropriate for: (a) the construction or carrying out of this  
27 Judgment; (b) the enforcement of any provision of this Judgment; (c) the modification of the

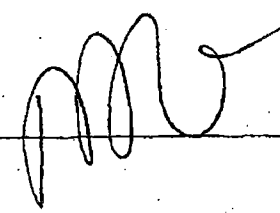
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1 injunctive provisions of this Judgment; and (d) the punishment of any violations of this Judgment.

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IT IS SO ORDERED:

Dated: 2/2/10

  
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**COPY**

1 EDMUND G. BROWN JR.  
 Attorney General of the State of California  
 2 MARK BRECKLER  
 Senior Assistant Attorney General  
 3 JON M. ICHINAGA  
 Supervising Deputy Attorney General  
 4 MAURICE JOURDANE, State Bar No. 49349  
 Deputy Attorney General  
 5 SATOSHI YANAI, State Bar No. 186355  
 Deputy Attorney General  
 6 300 South Spring Street, Suite 1702  
 Los Angeles, CA 90013  
 7 Telephone: (213) 897-0015  
 Fax: (213) 897-2801  
 8 E-mail: satoshi.yanai@doj.ca.gov  
 Attorneys for Plaintiff  
 9

**CONFORMED COPY**  
 OF ORIGINAL FILED  
 Los Angeles Superior Court

OCT 27 2008

John A. Clarke, Executive Officer/Clerk  
*M. Garcia*  
 BY MARY GARCIA, Deputy

10 SUPERIOR COURT OF CALIFORNIA

BC 400653

11 COUNTY OF LOS ANGELES  
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 13

14 THE PEOPLE OF THE THE STATE OF  
 CALIFORNIA ex rel. EDMUND G. BROWN JR., as  
 15 Attorney General of the State of California,

16 Plaintiff,

17 vs.

18 GUASIMAL TRUCKING, LLC, a Limited Liability  
 Company, and DOBS 1 through 50, inclusive,  
 19

20 Defendants.  
 21

CASE NO.

**COMPLAINT FOR  
 INJUNCTIVE RELIEF AND  
 CIVIL PENALTIES**  
 (Business & Professions Code  
 Sections 17200, et seq.)

22 Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., as  
 23 Attorney General of the State of California, is informed and believes, and on such information  
 24 and belief alleges:

25 **INTRODUCTION**

26 1. This action is brought by Plaintiff, the People of the State of California, ex rel.  
 27 Edmund G. Brown Jr., as Attorney General of the State of California ("the People"), against  
 28 Defendant Guasimal Trucking, LLC ("Guasimal") in order to stop Guasimal from continuing to

1 engage in unfair competition. Guasimal has engaged in a pattern and practice of violating state  
2 law by misclassifying truck drivers working for it as independent contractors rather than as  
3 employees. By misclassifying the drivers as independent contractors, Guasimal has illegally  
4 lowered its cost of doing business by failing to pay state employment-related taxes and to provide  
5 workers' compensation insurance for the drivers. Guasimal also fails to provide employees with  
6 a written statement of hours worked, earnings per hour, and deductions taken. Guasimal's  
7 unlawful conduct gives it an unfair competitive advantage over law-abiding transportation  
8 companies, deprives its employees of the benefits of employment, and harms the taxpayers of  
9 California. This action seeks to compel Guasimal to cease engaging in unfair competition and to  
10 pay applicable penalties.

11 **PARTIES**

12 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California and is  
13 the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is  
14 empowered by the California Constitution to take whatever action is necessary to ensure that the  
15 laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring  
16 actions in the name of the People of the State of California to enforce California's statutes  
17 governing unfair competition. (Bus. & Prof. Code § 17204.)

18 3. Defendant Guasimal is a limited liability company authorized to do business in the  
19 State of California, and at all times relevant herein was doing business in the County of Los  
20 Angeles. Guasimal is a fleet operator, owning approximately six trucks. It hires truck drivers to  
21 transport cargo from the Ports of Los Angeles and Long Beach.

22 4. The true names and capacities of defendants sued in the Complaint under the fictitious  
23 names DOES 1 through 50, inclusive, presently are unknown to the People, who therefore sues  
24 such defendants by such fictitious names. The People will seek to amend this complaint to allege  
25 the true names of DOES 1 through 50 when the same have been ascertained. Plaintiff is  
26 informed and believes, and based thereon alleges, that each of the fictitiously named defendants  
27 participated in some or part of the acts alleged herein.

28

1 5. Whenever reference is made in this Complaint to any act of Guasimal, such allegations  
2 shall mean that Guasimal, through its agents, employees, or representatives, performed or  
3 authorized such acts while they were acting within the actual or ostensible scope of their  
4 authority.

5 6. Whenever reference is made in this Complaint to any act of the defendants, including  
6 those named herein as DOE defendants, such allegations shall mean that each defendant and/or  
7 DOE defendant acted individually and jointly with the other defendants, including the DOE  
8 defendants, named in this Complaint.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

11 **(UNFAIR COMPETITION)**

12 **(Against All Defendants)**

13 7. The People reallege and incorporate by reference paragraphs 1 through 6 of this  
14 Complaint as if set forth fully herein.

15 8. Defendants have violated and continue to violate Business and Professions Code  
16 Section 17200, et seq., by engaging in acts of unfair competition including, but not limited to, the  
17 following:

- 18 a. failing to pay State Unemployment Fund contributions as required by  
19 Unemployment Insurance Code Section 976;
- 20 b. failing to pay State Employment Training Fund contributions as required by  
21 Unemployment Insurance Code Section 976.6;
- 22 c. failing to withhold and transmit State Disability Fund contributions as required by  
23 Unemployment Insurance Code Section 986;
- 24 d. failing to withhold and transmit State income taxes as required by Unemployment  
25 Insurance Code Sections 13020 and 13021;
- 26 e. failing to provide workers' compensation insurance to cover Guasimal's  
27 employees as required by Labor Code Section 3700;

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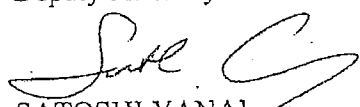
1 f. and failing to provide employees with itemized written statements of hours and  
2 pay as required by Labor Code Section 226.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the People pray for the following relief:

- 5 1. Pursuant to Business and Professions Code Section 17203, that defendants, their  
6 successors, agents, representatives, employees, and all persons acting in concert or in  
7 participation with defendants, be permanently enjoined from engaging in unfair competition as  
8 defined in Business and Professions Code Section 17200, including, but not limited to, the acts  
9 and practices alleged in this Complaint;
- 10 2. Pursuant to Business and Professions Code Section 17206, that the Court assess a civil  
11 penalty of two thousand five hundred dollars (\$2,500.00) against defendants for each violation of  
12 Business and Professions Code Section 17200, the total amount being no less than \$50,000.00, or  
13 as proved at trial;
- 14 3. That the People recover their costs of suit; and
- 15 4. Such other and further relief that the Court deems appropriate and just.

16  
17 Dated: October 27, 2008

18 Respectfully submitted,  
19 EDMUND G. BROWN JR.  
20 Attorney General of the State of California  
21 MARK BRECKLER  
22 Senior Assistant Attorney General  
23 JON M. ICHINAGA  
24 Supervising Deputy Attorney General  
25 MAURICE JOURDANE  
26 Deputy Attorney General  
27   
28 SATOSHI YANAI  
Deputy Attorney General  
Attorneys for Plaintiff





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**FILED**  
REC'D LOS ANGELES SUPERIOR COURT  
SEP 04 2009  
SEP 9 - 2009  
FILING WINDOW  
JENNIFER CLARKE, CLERK  
*H. A. Smith*  
BY H. A. SMITH, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

**THE PEOPLE OF THE STATE OF CALIFORNIA** ex rel. **EDMUND G. BROWN JR.**, as Attorney General of the State of California,  
  
Plaintiff,  
  
v.  
  
**GUASIMAL TRUCKING, LLC, a Limited Liability Company, and DOES 1 through 50, inclusive,**  
  
Defendants.

CASE NO. BC400653  
~~PREPARED~~ FINAL JUDGMENT AND PERMANENT INJUNCTION  
Date: N/A  
Time: N/A  
Dept: 37  
Judge: The Honorable Joanne B. O'Donnell  
Trial Date: November 4, 2009  
Action Filed: October 27, 2008

Plaintiff, the People of the State of California ex rel. Edmund G. Brown Jr. as Attorney General of the State of California ("PLAINTIFF") and defendant Guasimal Trucking, LLC ("GUASIMAL"), having stipulated that this Final Judgment and Permanent Injunction ("Judgment") may be entered, with each party waiving the right to an adjudicative trial, without the taking of any evidence on any issue of fact or law, or any factual finding by the Court or any admission or denial of wrongdoing or guilt,

**ORIGINAL**

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

2 1. This Court has jurisdiction over the allegations and subject matter of PLAINTIFF'S  
3 Complaint filed in this action, and the parties thereto; venue is proper in this County; and this  
4 Court has jurisdiction to enter this Judgment.

5 2. The party identified as "GUASIMAL" herein includes any successors, agents,  
6 directors, representatives, partners, current or former employees, current or former officers,  
7 assigns, parties acting in concert or in participation with GUASIMAL, or any corporation into  
8 which GUASIMAL becomes merged.

9 3. Pursuant to Business & Professions Code Section 17203, a permanent injunction is  
10 hereby issued requiring the following acts from GUASIMAL:

11 On behalf of any drivers who operate trucks owned or leased by GUASIMAL, it will

- 12 a. Pay State Unemployment Fund contributions;
- 13 b. Pay State Employment Training Fund contributions;
- 14 c. Withhold and transmit State Disability Fund contributions;
- 15 d. Withhold and transmit State income taxes;
- 16 e. Provide workers' compensation coverage; and
- 17 f. Classify and pay such drivers as employees.

18 4. Payment having been made as set forth in the Stipulation for Entry of Judgment and  
19 Order Thereon, GUASIMAL is deemed to have satisfied all requirements for monetary payments  
20 for any matters actually alleged in the Complaint.

21 5. The Court retains jurisdiction as the ends of justice may require for the purpose of  
22 enabling any party to this Judgment to apply to the Court at any time for such further orders and  
23 directions as may be necessary or appropriate for: (a) the construction or carrying out of this  
24 Judgment; (b) the enforcement of any provision of this Judgment; (c) the modification of the  
25 injunctive provisions of this Judgment; and (d) the punishment of any violations of this Judgment.

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6. This Judgment is to be entered by the Clerk only after PLAINTIFF informs the Court that GUASIMAL has made all payments specified in the Stipulation for Entry of Judgment and Order Thereon.

DATED: SEP 9 - 2009

*Joanne*  
JUDGE OF THE SUPERIOR COURT  
Joanne O'Donnell

## DECLARATION OF SERVICE

Case Name: **People v. Pac Anchor Transportation, Inc.**  
Supreme Court Case No.: **S194388**  
Court of Appeal Case No.: **B220966**

I declare:

I am employed at the law firm Sands Lerner, the office of a member of the California State Bar at whose direction this service is made. I am over the age of 18 and not a party to this action.

On **October 24, 2011**, I caused the original and thirteen (13) copies of the attached **PETITIONERS' REQUEST FOR JUDICIAL NOTICE** to be delivered to the California Supreme Court at 350 McAllister Street, San Francisco, CA 94102-4797, via Norco Overnight.

On **October 24, 2011**, I served the attached **PETITIONERS' REQUEST FOR JUDICIAL NOTICE** on the following recipients by delivering copies thereof enclosed in sealed envelopes and addressed as follows to the common carrier Norco Overnite, which promises overnight delivery by 11:00 a.m. on October 25, 2011:

Kamala D. Harris, Esq.  
Mark J. Breckler, Esq.  
Jon M. Ichinaga, Esq.  
Maurice R. Jourdane, Esq.  
Satoshi Yanai, Esq.  
Office of the Attorney General  
300 S. Spring St., Ste. 1702  
Los Angeles, CA 90013  
**Attorneys for Plaintiff-Respondent,  
People of the State of California**

Clerk of the Court  
Los Angeles County Superior Court  
Central District  
Stanley Mosk Courthouse  
111 N. Hill Street  
Los Angeles, CA 90012

Clerk of the Court  
Second District Court of Appeal,  
Division Five  
300 S. Spring Street  
Second Floor, North Tower  
Los Angeles, CA 90013

Appellate Coordinator  
Office of the Attorney General  
Consumer Law Section  
300 S. Spring Street  
Los Angeles, CA 90013-1230  
**[Bus. & Prof. Code § 17209]**

Office of the District Attorney  
County of Los Angeles  
210 West Temple Street  
Los Angeles, CA 90012  
**[Bus. & Prof. Code § 17209]**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **October 24, 2011**, at Los Angeles, California.

Diane Adams

Declarant

*Diane Adams*

Signature