

March 15, 2021

Victor Copelan, District Manager
California Division of Occupational Safety and Health
Los Angeles District Office
320 West 4th Street, Suite 820
Los Angeles, CA 90013
Via E-Mail: DOSHLA@dir.ca.gov

**Re: Formal Employee Health and Safety Complaint for Serious Violations of COVID-19
Emergency Temporary Standards at Deco Logistics, Inc., d.b.a. Container Connection**

Dear Mr. Copelan,

This complaint is submitted on behalf of David Averruz and Juan Carlos Giraldo, current truck drivers at Deco Logistics, Inc., d.b.a. Container Connection, headquartered at 14575 Innovation Drive, Riverside CA 92518. The above employees have designated the Los Angeles Alliance for a New Economy and the International Brotherhood of Teamsters as their representatives in all contact with Cal/OSHA and the employer for this complaint and in regard to any resulting citations.

This letter serves as a serious formal complaint against Container Connection pursuant to California Labor Code § 6309 and Cal/OSHA Policy & Procedures Manual C-7. The complaint requests that Cal/OSHA conduct an immediate on-site inspection of their workplace, including customers' warehouses, to investigate COVID-19 hazards and inadequate prevention policies and procedures implemented by Container Connection under a seemingly absent COVID-19 Prevention Program, contrary to the COVID-19 Emergency Temporary Standards, specifically § 3205(c).

The COVID-19 hazards and lack of implementation of any prevention policies and procedures have occurred since the State of Emergency issued by the Governor of California on March 4, 2020, despite specific measures required under the Worker Protection Order issued by the Mayor of Los Angeles and the Safer at Home Order for Control of COVID-19 issued by the City of Long Beach Department of Health and Human Services Department.

**I. COVID-19 Hazards at Container Connection Warrant Immediate Physical
Inspection**

The unsafe conditions at Container Connection meet the criteria for serious violations pursuant to California Labor Code § 6309 and P&P C-7 due to noncompliance of approved emergency temporary Cal/OSHA standards on COVID-19 infection prevention, as exhibited by the substantial COVID-19 hazards, exposure, and cases in the worksite and absent prevention program despite the highly contagious nature of operations.

Pursuant to P&P C-7 E.3.a., “a formal complaint alleging a serious hazard shall be investigated by a physical inspection of the subject place of employment within three working days of receipt of the complaint...” In addition to alleging a serious hazard, this complaint is a formal complaint per P&P C-7 E.2, as it is submitted by current employee representative.

PRIVATE ATTORNEY GENERAL ACT (PAGA). We may pursue remedies available pursuant to Labor Code § 2698 et. seq. if Cal/OSHA declines to inspect the workplace, either by failing to inspect or investigate the violations set forth below pursuant to the procedures and timelines of Labor Code § 6309, or if the Division sends a Letter “m” to the Employer as set further in P&P C-7 and C-7A.

If you do not believe that this matter should be classified a serious formal complaint based on the provided information or do not plan to conduct a physical inspection for any reason, please contact us as soon as possible to discuss that determination.

II. Background on Container Connection and Potential and Reported COVID-19 Exposures

Container Connection employs about 120 truck drivers. It provides drayage services of containerized goods to and from the Port of Los Angeles and the Port of Long Beach – collectively known as the San Pedro Bay Ports – for customers with warehouses primarily in the Inland Empire and the Central Valley. Based on its size and volume of container movements, it is by far one of the largest port drayage companies operating at the ports.

The company is owned by the publicly-traded multinational corporation Universal Logistics Holdings, Inc. (“Universal”). Universal owns two other companies in the Los Angeles drayage sector: Southern Counties Express, Inc. and Mason Dixon Intermodal, Inc. (d.b.a. Universal Intermodal Services, Inc.).

The nature of the operations at Container Connection presents multiple COVID-19 risks for drivers as the work requires drivers to physically interact with multiple individuals and locations throughout the course of their work day. Drivers pick up containers in the port terminals, which are international point of entries. This requires them to handle containers shipped from abroad, and utilize frequently shared public equipment, such as microphone and chassis. At customers’ warehouses, drivers exchange information in close proximity to security guards who record all entries and exits, and drivers also enter large enclosed facilities while warehouse staff perform intake of the container. Throughout the trip from the port to the warehouse, drivers rely on public truck stops for refueling and using the restroom, a public intersection among other truck drivers. Drivers usually perform about two or more trips per shift, depending on customer’s warehouse location.

Drivers regularly use common spaces of the Employer. Drivers share a single restroom in the truck yard where they park their trucks, that is, in the truck yard of the headquarter office or in one of the three truck yards in Compton. These truck yards in Compton are shared with other drivers from other companies. Other risks at the truck yards include touching shared surfaces,

such as a document drop box, document pick up table, and door handles. Drivers frequently interact with a subcontracted security guards at all truck yards.

These risks through the workplace warrant urgent correction, as Container Connection has had several confirmed COVID-19 cases among drivers, one of whom faced severe hospitalization.

III. Extensive Record: Courts, DLSE, USDOL, and EDD have Found Container Connection Misclassifies Employees

State courts and government agencies have repeatedly found Container Connection drivers to be employees that the company had misclassified as independent contractors.

Container Connection has faced at least seven wage and hour misclassification lawsuits in California Superior Court since 2013.¹ All but one has been resolved, either through final judgments ordering Container Connection to pay damages for wage theft arising from their misclassification of drivers as independent contractors or through settlement.

The California Department of Labor Standards Enforcement has found in at least eight cases filed by drivers between 2012 and 2016 that Container Connection drivers had been misclassified as “independent contractors.”²

Four final judgments from the California Superior Court and the DLSE were collected after years of judgment enforcement efforts, culminating in Stop Work Orders.³ Container Connection appears to have attempted to evade these judgements by concealing assets through shell companies.⁴

The U.S. Department of Labor’s Wage and Hour Division found that Container Connection had violated the FLSA by misclassifying 103 port drivers and failing to pay the minimum wage after an investigation from 2009 to 2011.⁵

¹ Consolidated cases: Ricardo Arana v. Container Connection of Southern California, Case No. NC059983, Superior Court of California, County of Los Angeles (March 30, 2015), Juan Flores et al v. Container Connection of Southern California, Case No. NC060156, Superior Court of California, County of Los Angeles (July 6, 2015); Henry Cano v. Container Connection of Southern California, Case No. NC060301, Superior Court of California, County of Los Angeles (September 24, 2015)

² State of California, Division of Labor Standards Enforcement, Case Numbers 09-59519 II; 05-63568 KR; 05-66330 KR; 05-63569 KR; 05-63439 KR; 05-64344 KR; 05-64345 KR; 05-58148 KR; 05-58691 KR; 05-67413 KR; 05-67552 KR; 05-68191 KR

³ Stop Orders issued to Container Connection of Southern California, Inc., and Deco Logistics, Inc., Successor to Container Connection of Southern California, Inc., State of California Department of Industrial Relations, Labor Commissioner’s Office, File Nos. JEU17W152, JEU17W156, JEU17W160, JEU17W284. Date of Service, July 26, 2017.

⁴ Murphy, Brett. “Shell Games: How Trucking Companies that Cheat Drivers Dodge Penalties.” *USA Today*. October 26, 2017.

⁵ United States Department of Labor, Wage and Hour Division, Case ID 1634525

The California Employment Development Department has found at least three Container Connection drivers to have been employees, not independent contractors as classified by the company, after wage investigations into individual claims for unemployment or state disability insurance filed in 2020.

In June 2020, a lawsuit was filed in the County of Riverside by a former truck driver under PAGA, thus serving as a representative of the LWDA, against Container Connection for unpaid wages, breaks, and reimbursement of business expenses as the driver was willfully misclassified as an “independent contractor.”⁶ This case is still pending.

IV. Container Connection is Citable for COVID-19 Hazards at Customers’ Warehouses, Truck Yards, Diesel Stations, and the Ports

Container Connection is required to correct COVID-19 hazards at the workplace, under California Labor Code § 6309. The workplace for port truck drivers at Container Connection includes customers’ warehouses, truck yards, designated fuel stations, and the Port of Los Angeles and the Port of Long Beach (see enclosed Attachment A for list of addresses of customers’ warehouses, truck yards, designated fuel stations). Pursuant to California Labor Code § 6309, a workplace “means any place, and the premises appurtenant thereto, where employment is carried on.... (b) ‘Employment’ includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work...or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire.”

Drivers have received a text message from Container Connection management relaying a customer’s request for drivers to wear masks in the customers’ warehouse. Dated September 24, 2020, the text states (translation): “Owner operators, please make sure you are wearing a face mask when you check in with the guard at Whirlpool [the customer] and while inside the facility. It is for your and the guard’s safety” (see enclosed Attachment B).

Truck drivers report delivering to warehouses where security or staff do not wear masks or take any preventative measures. Drivers interact closely with staff since drivers need to hand tickets or manifests to warehouse staff. No markings, signs, or procedures indicate a directive to maintain a distance of at least six feet. Additionally, no solid partitions are installed as a preventative measure (see enclosed Attachment C).

Basic preventative measures are not a requirement for other visitors, particularly drivers from other companies. A driver has reported that he waited in a small, enclosed waiting room for forty minutes with fifteen other drivers, some not wearing face coverings, on August 2, 2020 (see enclosed Attachment D).

Container Connection is in the sole position to identify and report hazards to customers to protect drivers’ safety and health. Container Connection drivers are hesitant to report COVID-19 hazards to customers’ warehouses because of the fear of reprisal --- having their load rejected or

⁶ Oscar I. Lopez Villareal v. Deco Logistic, Inc dba Container Connection, Case No. RIC2001519

being banned from the site. This fear is based on past experiences from drivers raising concerns on other issues.

Container Connection does not protect drivers' safety and health at their truck yards located away from their headquarters in Riverside. Container Connection has three truck yards in Compton. Drivers park their trucks at these yards overnight. Similar to customers' warehouses, Container Connection's truck yards do not establish required preventative measures to mitigate COVID-19 hazards. Drivers report that the security guards at these truck yards do not wear masks. Moreover, from March to August, drivers did not have access to a restroom or a hand-washing station at the truck yards. Despite given access to restrooms in the truck yards in August, drivers report that the restrooms are not sanitary (see enclosed Attachment E).

Container Connection exposes drivers to COVID-19 hazards in refueling stations for Container Connection due to the absence of PPE. Container Connection has designated three fuel stations for port drivers to use during their delivery. Since these fuel stations are used by other drivers from other companies and the general public, including interstate travelers, port drivers can be easily exposed to COVID-19 cases when refueling since Container Connection does not provide any basic PPE to its drivers. Two of these fuel stations are located in Ontario and one other near the route to customers' warehouses in Shafter. These three fuel stations are designated suppliers for Container Connection as these are the only stations that drivers can use their employer-provided credit cards ("Comdata Mastercard"). Container Connection then deducts the fuel charges to these credit cards from driver's paychecks (deductions that have been found to be unlawful in the above-referenced DLSE claims and lawsuits).

Container Connection further places drivers at risk of exposure due to the absence of PPE and lack preventative measures when the drivers service the Port of Los Angeles and the Port of Long Beach. Drivers pick up containers, or a "load," at one of these ports and may also return an empty container from a customer's warehouse. Drivers report touching and speaking closely in a frequently used microphone by other drivers, with no port staff cleaning the microphone after a preceding driver. Drivers have documented interacting with unmasked port staff (see enclosed Attachment F).

VIOLATIONS

IV. Ongoing and Serious COVID-19 Hazards at Container Connection

1. Employers must ensure that workers are distanced by at least 6 feet and wear employer-provided masks. 8 CRR § 3205(c)(6). § 3205(c)(7). Everyone in the workplace must wear masks. 8 CRR § 3205(c)(7)(E).

All drivers reported that they did not receive any face coverings from Container Connection. Container Connection has not put into place policies to protect drivers, including enforcing wearing of face coverings and maintaining a six-foot distance. Drivers follow general public guidance on their own volition, such as maintaining a six-foot distance, wearing a face covering, and washing their hands frequently. Face coverings are purchased out of their own pocket.

Container Connection has sought to pass on the responsibility of providing PPE to its drivers through its new employment contract. Around February 3, 2021, Container Connection issued a new employment contract to drivers titled “Contractor Services and Equipment Agreement in Compliance with U.S. DOT Regulations.” Container Connection added language requiring drivers to supply their own PPE, as evident in Section 5 “Contractor’s Responsibilities,” Subsection ii “Safe and Lawful Operations” (see enclosed Attachment G):

Contractor will supply their own: Personal Protective Equipment (PPE) including, but not limited to: Safety Shoes, Safety Glasses, Safety Vests, Hard Hat, Face Mask Gloves. (page 3)

As a condition of continued employment, Container Connection routinely obligates drivers to sign such unilateral contracts. Despite these documents being labeled as “Contractor” agreements, the above-referenced DLSE judgments have found that the true relationship of the drivers is one of employment, not a true independent contractor relationship.

2. Employers must establish, implement, and maintain an effective and written COVID-19 Prevention Program. 8 CCR § 3205(c)(1).

The only new policy implemented by Container Connection has been to prohibit drivers from entering the headquarters. All communication between Container Connection and drivers is through the phone. All drivers received a text message from Universal Logistics Holdings, Inc. stating (see enclosed Attachment H):

Important Notice: Universal understands that the coronavirus (COVID-19) is dominating the news. The security and well-being of all persons that we work with is a priority. Universal is taking precautions and is looking to limit social interaction between personnel and contractors. In accordance to preventative measures established by health officials, starting on Monday, March 16, 2020, all independent contractors/ owner-operators and other visitors will not be allowed to enter the office. Our employees will continue to work normally and will be available by phone....

3. All identified frequently touched surfaces and objects must be regularly cleaned and disinfected. 8 CRR § 3205(c)(8)(C)(1).

Drivers drop off required documents in a mailbox and collect any documents from management at a table in the warehouse as management directed all drivers in aforementioned text message, “We request that all documents that need to be returned should be placed in the ‘mailbox’ located in the security booth. We appreciated your support in limiting the spread of COVID-19.” Drivers have not witnessed anyone clean these frequently touched surfaces.

4. Give notice of potential COVID-19 exposure to all employees who may had had COVID-19 exposure. 8 CRR § 3205(c)(3)(B)(3)(a).

Some drivers have reported that some of their coworkers, or they themselves, have contracted the coronavirus. However, the company has never informed other drivers if a coworker has contracted the coronavirus.

5. Workers who have been exposed to COVID-19 in the workplace will continue to receive regular pay, seniority, and other rights and benefits while in quarantine. 8 CRR § 3205(c)(10)(C).

One driver contracted the coronavirus in May of last year, and was seriously ill and unable to work for four months as a result. The company did not offer him any paid sick leave nor bothered to call him. The driver believes that he caught the virus in a customer's warehouse. He urges drivers "to take care of themselves because it is a serious thing." Other drivers were informed about his case by word of mouth among drivers, not through the company.

6. Employers must screen employees for COVID-19 symptoms before report to work. 8 CRR § 3205(c)(2)(B).

Around July or August, another driver unfortunately tested positive for the coronavirus. Having minor symptoms, the driver continued reporting to work.

V. Willful Violations

Container Connection is aware of the requirement to adopt prevention measures and correction COVID-19 hazards. Multiple drivers have identified and reported COVID-19 hazards to Container Connection, particularly the need for hand washing facilities, such as restrooms, and face coverings and other personal protective equipment. At the onset of the pandemic, one driver requested PPE from an office manager who told him to call the headquarters office. When he called, the person who answered his call told him that "that I was an independent contractor and I had to provide it myself." He has since requested PPE multiple times, for example in January or February of 2021, when he called the office and was told "it's on you [to get the equipment]."

Other drivers have also raised the need for PPE with management dismissing such concern. On September 8, 2020, another driver emailed the safety department of Container Connection to request face coverings and other personal protective equipment. A staff from the safety department referred him to the sister company Southern Counties Express, Inc to only be informed that the company only can provide gloves. Following a worker organizing meeting, a set of drivers committed to call the general manager to further ask for PPE.

As evidenced by the numerous judgments and determinations finding misclassification at Container Connection, referenced above, it is also clear that Container Connection is aware that its drivers are in fact employees under the law, even though it continues to misclassify them as independent contractors. This makes Container Connection's continued misclassification of its drivers and ongoing violation of Cal/OSHA's COVID-19 ETS even further willful.

V. Investigation Procedures

The employees included in this complaint are willing to provide Cal/OSHA with additional information to assist with its investigation. Additional employees not included in this complaint are willing to speak with Cal/OSHA as well. The Los Angeles Alliance for a New Economy is happy to arrange for Cal/OSHA to meet privately with the complainants and additional employees by phone or videoconference, or a site away from the workplace if permitted by COVID-19 restrictions.

As the designated employee representative for the complainants, we request to be notified of and included in the Opening and Closing Conferences, as well as any post-citation Informal Conference, held with the employer, or to have separate Opening and Closing Conferences, or Informal Conference, with Cal/OSHA and affected employees if the employer insists on separate conferences.

To discuss the hazards in this complaint with the complainants, or for any questions or concerns regarding this complaint, please contact our representative at (213) 977-9400 Ext.123 or jdurrum@laane.org. Thank you in advance for your immediate attention to this serious matter.

Sincerely,

David Averruz
Driver, Container Connection

Juan Carlos Giraldo
Driver, Container Connection

Eddie Rodriguez, Organizer
International Brotherhood of Teamsters

Jessica Durrum, Project Director
Los Angeles Alliance for a New Economy (LAANE)

Cc:

District Manager
San Bernardino District Office

Kathy Derham, Regional Manager
Cal/OSHA Region 3

Hassan Adan, Regional Manager
Cal/OSHA Region 4

Debra Lee, Deputy Chief
Cal/OSHA Field Enforcement

Doug Parker, Chief
Cal/OSHA

Ron Herrera, Port Division Director; International Vice President of the Western Region
International Brotherhood of Teamsters

ATTACHMENTS

A. List of Addresses of Customers' Warehouses, Fuel Stations, and Truck Yards.

1. Some customers' warehouses where drivers have witnessed security guards not wearing masks.

- Walmart Warehouses
 - 3510 East Francis Street, Ontario, CA 91761
 - 4100 Hammer Avenue, Eastvale, CA 91752
 - ML6 Sam's Club: Address available through interview.
 - 4155 Wineville Road, Jurupa Valley, CA 91752
- Hanes Warehouse
 - 3700 Indian Avenue, Perris, CA 92571
- Ross Warehouse
 - 17800 North Perris Boulevard, Moreno Valley, CA 92551

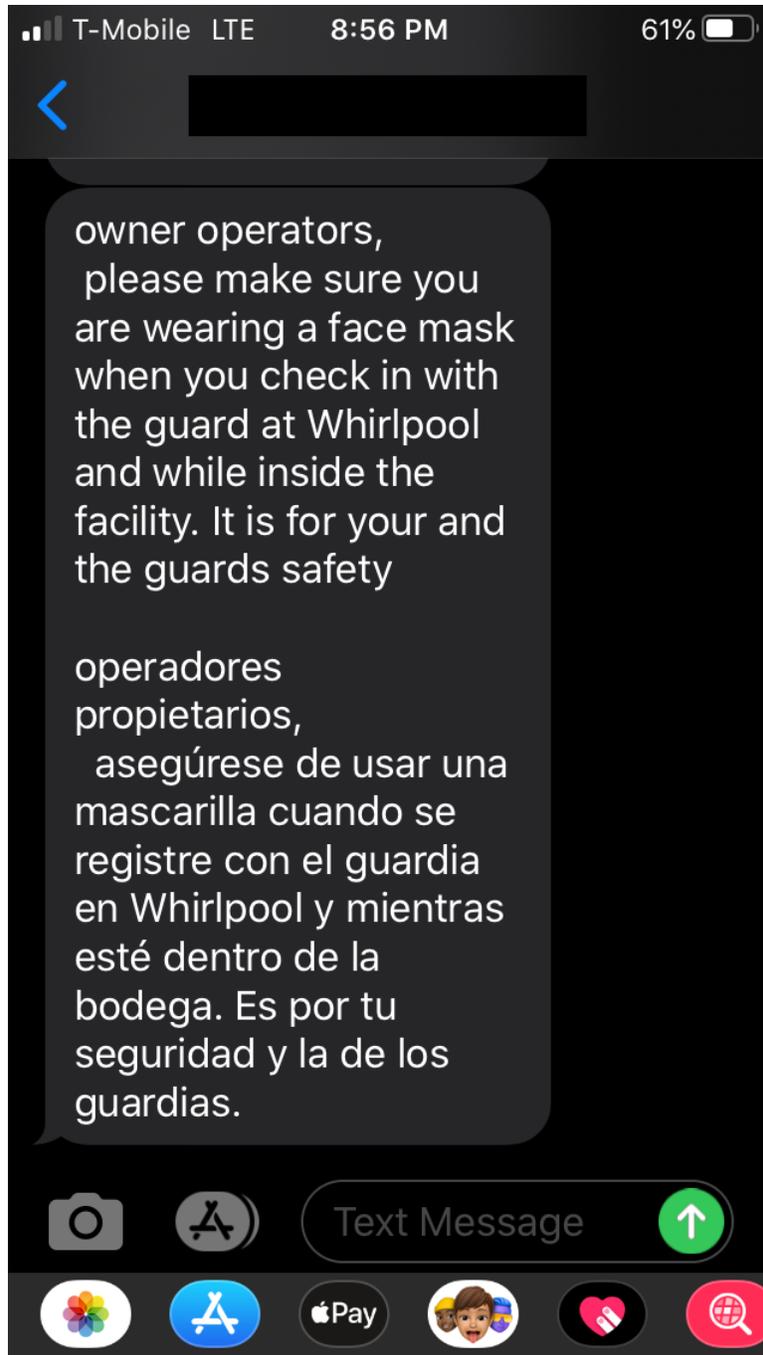
2. Designated fuel stations for drivers.

- TA
 - Address: 4265 East Guasti Road, Ontario, CA 91761
- Petro Stopping Center
 - Address: 4325 East Guasti Road, Ontario, CA 91761
- Shafter
 - Address available through interview.

3. Truck yards where drivers park their trucks overnight.

- 2727 East Del Amo Boulevard, Compton, CA 90221
- 225 East Manville Street, Compton, CA 90220
- 18020 South Santa Fe Avenue, Compton, CA 90221

B. Company Text Message Regarding Customer's Request



C. Photos of Unmasked Customers' Warehouse Staff Captures by Drivers at Container Connection (Faces Partially Blurred for Privacy; Originals and Videos Available Upon Request)

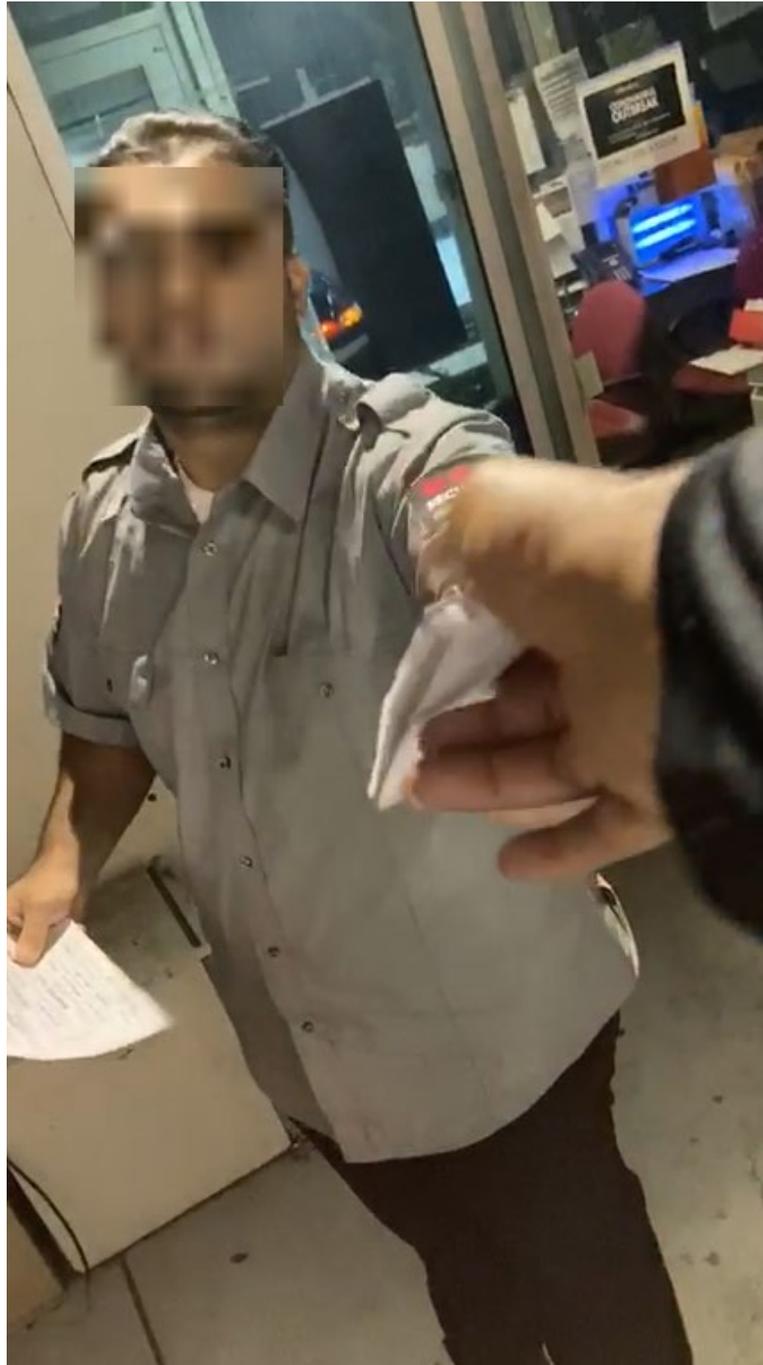
1. A security guard not wearing a mask at a customer's warehouse returns the identification card of a driver at Container Connection during the night shift around the week of October 25, 2020.



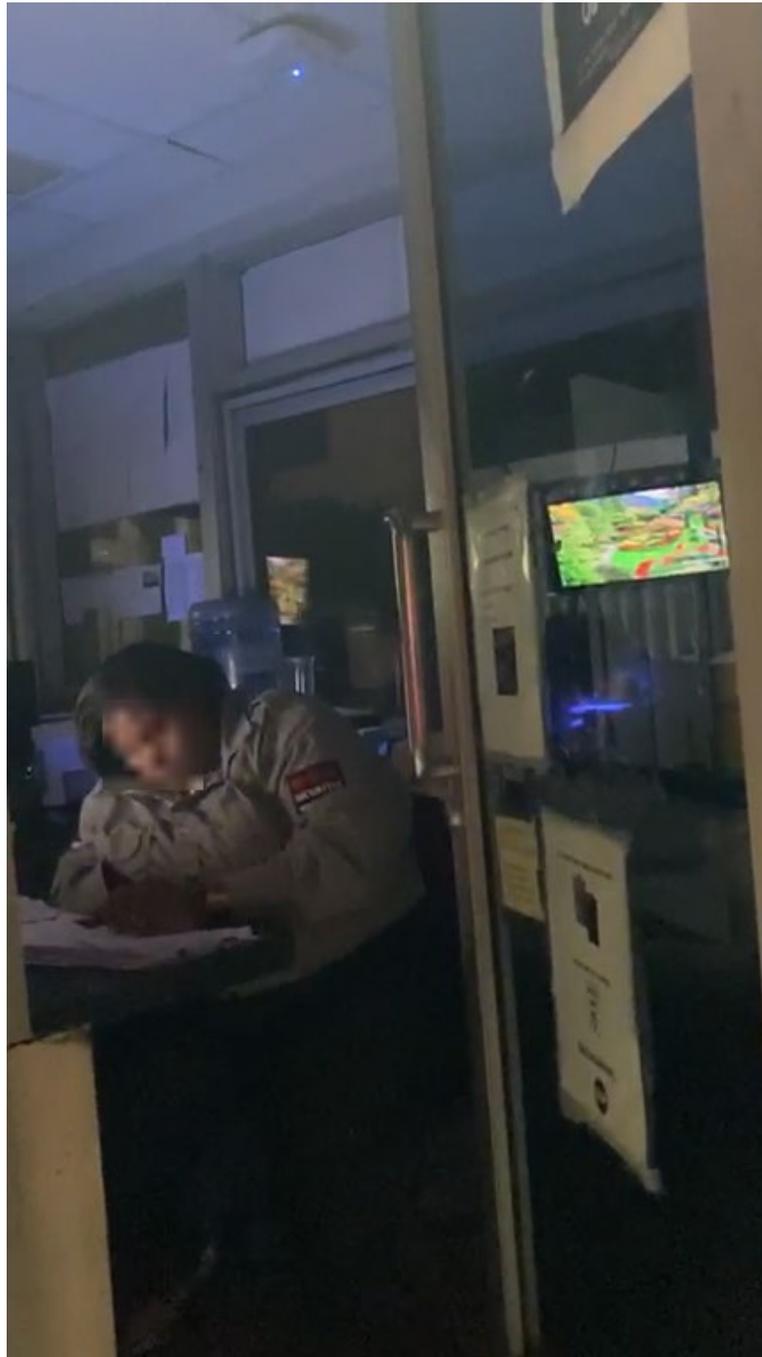
2. A second security guard also not wearing a mask at such customer's warehouse returns the identification card of a driver at Container Connection on a different day around the week of October 25, 2020.



3. A security guard without a mask from a different customer's warehouse exits the security booth to hand the manifest to a driver at Container Connection around the week of October 25, 2020.



4. A security guard without a mask at the warehouse of the customer Whirlpool completes the manifest for a driver at Container Connection around the week of October 25, 2020.



D. Photo of Unmasked Drivers in Waiting Room Recorded by a Container Connection Driver (Video Available Upon Request)



E. Photos of Unsanitary Restroom Conditions at Truck Yards Taken by a Driver at Container Connection

1. No paper towels available in the restroom.



2. Unclean toilet.



F. Contract Language Requiring Drivers to Supply their own PPE (Full New Contract and Prior Contract Available Upon Request)

Contractor for and exceeds all costs associated with operation of the Equipment by Contractor pursuant to this Agreement, whether those costs are paid for through chargebacks and deductions or paid directly by Contractor. The parties agree that in no event will the Compensation for Equipment be deemed wages or any other form of compensation for labor.

4. EFFECT OF TERMINATION. On the termination of this Agreement Contractor shall remove all CONTAINER CONNECTION identification from the Equipment and return all of CONTAINER CONNECTION's property, including trailers, paperwork, load securement equipment and freight, to CONTAINER CONNECTION's nearest terminal. The parties agree that the termination of this Agreement will not void or otherwise alter the obligations of either party incurred while the Agreement was in effect.

5. CONTRACTOR'S RESPONSIBILITIES.

(a) Compliance with Pertinent Laws and Regulations.

i. Drivers. Contractor shall provide competent and properly licensed Drivers who meet all of the requirements of the U.S. and applicable state Departments of Transportation including but not limited to, familiarity and compliance with state and federal motor carrier safety laws and regulations.

ii. Safe and Lawful Operations. Contractor agrees to operate the Equipment in a safe and prudent manner at all times in accordance with the laws of the various jurisdictions in which the Equipment will be operated and pursuant to the operating authorities of CONTAINER CONNECTION, and in accordance with all rules related to traffic safety, highway protection and road requirements. Moreover, Contractor agrees that all Drivers and/or workers employed by Contractor will comply with the terms of this Agreement while operating the Equipment on behalf of Contractor. As required by Federal regulations, Contractor shall ensure that a copy of this Agreement is carried in the Equipment at all times.

Contractor will supply their own:
Personal Protective Equipment (PPE) including, but not limited to: Safety Shoes, Safety Glasses, Safety Vests, Hard Hat, Face Mask, Gloves.

(b) Operating Expenses.

i. Equipment Expenses. Contractor shall, at its sole cost and expense, provide the Equipment ready to

muestra en el Anexo B será la compensación por toda el trabajo proporcionado por el (la) Contratista y sus Conductores. Las partes acuerdan que la "Compensación por el Equipo" que se muestra en el Anexo B intenta compensar al Contratista por y excede todos los costos asociados con el Contratista operando el Equipo conforme al Acuerdo presente, ya sea que esos costos sean pagados a través de cobros de reembolso y deducciones o que sean pagados directamente por el Contratista. Las partes acuerdan que en ningún caso la Compensación por el Equipo será considerada como salario o cualquier otra forma de compensación por trabajo.

4. EFECTOS DE TERMINACION. Al término del Acuerdo presente, el Contratista removerá del Equipo toda identificación de CONTAINER CONNECTION y regresará toda la propiedad de CONTAINER CONNECTION, incluyendo remolques, papelería, equipo de aseguramiento de carga y flete, en la sucursal de CONTAINER CONNECTION que se encuentre más cercana. Las partes acuerdan que el término del Acuerdo presente no anulará o de otra manera alterará las obligaciones en que cada parte incurrió mientras el Acuerdo presente estuvo en efecto.

5. RESPONSABILIDADES DEL CONTRATISTA.

(a) Cumplimiento de las Leyes y Reglamentos pertinentes.

i. Conductores. El Contratista proporcionará Conductores competentes y con debida licencia que reúnan todos los requisitos de los Departamentos de Transporte de California y de los Estados Unidos incluyendo pero no limitando a, familiaridad y cumplimiento de las leyes y reglamentos estatales y federales de seguridad de transportista motorizado.

ii. Operaciones Seguras y Legítimas. El Contratista acuerda operar el Equipo de una manera segura y prudente en todo momento conforme a las leyes de las diversas jurisdicciones en las cuales el Equipo será operado y conforme a las autoridades operantes de CONTAINER CONNECTION, y conforme a las regulaciones relacionadas con la seguridad del tráfico, protección en autopista y requisitos de carretera. Adicionalmente, el Contratista acuerda que todos los Conductores y/o trabajadores empleados por el Contratista cumplirán con los términos del Acuerdo presente durante el tiempo que estén operando el Equipo en representación del

G. Text Message from Parent Company Universal Logistics Holdings, Inc.

