LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations Division of Labor Standards Enforcement 300 Oceangate, Suite 302 Long Beach, CA 90802 Tel: (562) 590-5048 Fax: (562) 499-6467	For Court Use Only:
Plaintiff: RAUL VILLARREAL	Court Number
Defendant: CENTRAL FREIGHT LINES, INC., A TEXAS CORPORATION	
State Case Number **05 - 65228 EE**	**ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER**

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:
DATE: August 29, 2016 ☐ **CONTINUED TO:**
CITY: 300 Oceangate, Suite 302, Long Beach, CA 90802

2. IT IS ORDERED THAT: **Plaintiff recover from Defendant.**

$	54,058.99	for wages **(with lawful deductions)**
$		for liquidated damages pursuant to Labor Code Section 1194.2
$		Reimbursable business expenses
$	7,864.48	for interest pursuant to Labor Code Section(s) 98.1(c), 1194.2 and/or 2802(b),
$	12,119.40	for additional wages accrued pursuant to Labor Code Section 203 as a penalty *and that same shall not be subject to payroll or other deductions.*
$		for penalties pursuant to Labor Code Section 203.1 which *shall not be subject to payroll or other deductions.*
$		other (specify):
$	**74,042.87**	**TOTAL AMOUNT OF AWARD**

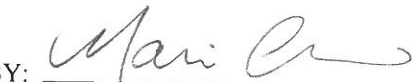
3. The herein Order, Decision or Award is based upon the Findings of Fact, Legal Analysis and Conclusions attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award of the Labor Commissioner shall become final and enforceable as a judgment in a court of law unless either or both parties exercise their right to appeal to the appropriate court* within ten (10) days of service of this document. Service of this document can be accomplished either by first class mail or by personal delivery and is effective upon mailing or at the time of personal delivery. If service on the parties is made by mail, the ten (10) day appeal period shall be extended by five (5) days. For parties served outside of California, the period of extension is longer (See Code of Civil Procedure Section 1013). In case of appeal, the necessary filing fee must be paid by the appellant and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner. If an appeal is filed by a corporation, a non-lawyer agent of the corporation may file the Notice of Appeal with the appropriate court, but the corporation must be represented in any subsequent trial by an attorney, licensed to practice in the State of California. Labor Code Section 98.2(c) provides that if the party seeking review by filing an appeal to the court is unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other party to the appeal and assess such amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.

PLEASE TAKE NOTICE: Labor Code Section 98.2(b) requires that as a condition to filing an appeal of an Order, Decision or Award of the Labor Commissioner, the employer shall first post a bond or undertaking with the court in the amount of the ODA; and the employer shall provide written notice to the other parties and the Labor Commissioner of the posting of the undertaking. Labor Code Section 98.2(b) also requires the undertaking contain other specific conditions for distribution under the bond. While this claim is before the Labor Commissioner, you are required to notify the Labor Commissioner *in writing* of any changes in your business or personal address within 10 days after any change occurs.

* SOUTH DISTRICT
Governor George Deukmejian Courthouse
275 Magnolia Avenue
Long Beach, CA 90802

LABOR COMMISSIONER, STATE OF CALIFORNIA

BY: 

Nami Chun HEARING OFFICER

DATED: October 12, 2016

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

RAUL VILLARREAL, Plaintiff, vs. CENTRAL FREIGHT LINES, INC., a Texas corporation, Defendant.	Case No. 05-65228 EE ORDER, DECISION, OR AWARD OF THE LABOR COMMISSIONER

BACKGROUND

Plaintiff filed an initial claim with the Labor Commissioner's Office on July 8, 2015. The Complaint alleges that Plaintiff is owed the following for the period of August 8, 2014 to April 30, 2015:

1. Unlawful deductions, claiming $72,467.23;
2. Liquidated damages pursuant to Labor Code section 1194.2;
3. Waiting time penalties pursuant to Labor Code section 203; and
4. Interest pursuant to Labor Code sections 98.1(c), and 1194.2.

A hearing was conducted in Long Beach, California, on August 29, 2016, before the undersigned hearing officer designated by the Labor Commissioner to hear this matter. Plaintiff appeared and was represented by Michael Strauss, Attorney at Law, and Rabiah A. Rahman, Attorney at Law. Central Freight Lines, Inc., a Texas corporation, was represented by Robert A. Jones, Attorney at Law, and Tim Johnson, Attorney at Law.

Jerry Coyle, Terminal Manager, appeared as a witness on Defendant's behalf. John Saunders, Vice President of Risk Management, and Tom Weeks, Director of Safety, appeared as observers.

Due consideration having been given to the testimony, documentary evidence, and arguments presented, the Labor Commissioner hereby adopts the following Order, Decision, or Award.

FINDINGS OF FACT

Plaintiff withdrew his claim for liquidated damages at the time of the hearing.

A. Plaintiff's Testimony

Plaintiff performed personal services as a truck driver for Defendant from August 8, 2014 to April 30, 2015 throughout the State of California and across state lines. Prior to that, Defendant employed Plaintiff as a "pick-up and delivery" driver in Southern California from July 2007 to February 2011. Plaintiff holds a Class A Commercial Driver's License. Plaintiff testified he regularly worked an average of 14 hours per day, six days a week, from Monday through Saturday, at a piece-rate per mile. Defendant determined the rates payable to Plaintiff.

Defendant paid Plaintiff weekly and provided a settlement statement that served as a detailed wage statement. According to proof, Plaintiff earned $9,695.61 over the period of 24 workdays during the last four pay periods in March and April 2015, equivalent to $403.98 daily.

On or about June 20, 2014, Plaintiff submitted an online application for an owner-operator driver position with Defendant. (Defendant's Exhibit B.) He did not fill out an application for an employee driver. Plaintiff testified that he filled out an owner-operator application because a dispatcher in Pico Rivera told him to do so.

After submitting his application, Plaintiff was sent for a physical examination and drug testing. Plaintiff obtained the form for the physical from Jerry Coyle, Terminal Manager. Plaintiff attended a one-day orientation in Fontana, California, where he filled out paperwork and took tests. Defendant approved Plaintiff's application, and Plaintiff took a ride with one of the owner-operators to Phoenix, Arizona to pick up a tractor.

In Phoenix, Plaintiff signed paperwork and was assigned a tractor. Plaintiff executed

an Independent Contractor Agreement to provide truck driving services to Defendant on August 12, 2014. (Plaintiff's Exhibit 1.) The Independent Contractor Agreement provides: "CONTRACTOR is not prohibited from entering into separate agreements to provide equipment and other professional truck drivers not identified as Equipment above or in an attachment and drivers not used to service this Agreement, to other motor carriers." (Plaintiff's Exhibit 1, pg. 2.)

Plaintiff also executed an Equipment Lease Agreement with Wasatch Leasing, LLC for the lease of a truck on August 12, 2014. (Defendant's Exhibit A.) The Lease Agreement required Plaintiff to authorize Defendant to deduct weekly lease payments and submit the payments to the lessor. (Defendant's Exhibit A, pg. 1, para. 2(e).) Both the Independent Contractor Agreement and Lease Agreement were presented to Plaintiff for execution by Defendant's representative in Phoenix. Plaintiff did not meet with or discuss the lease terms with anyone from Wasatch Leasing, LLC. He received the keys to the truck immediately after signing the lease agreement without a credit check. Plaintiff leased a brand new 2015 Freightliner. The truck had Defendant's logo with their Texas address on it. Plaintiff was assigned to Pico Rivera.

Plaintiff did not haul for other companies while providing services for Defendant; Defendant did not allow it. Dispatch in Texas assigned Plaintiff's loads. Plaintiff would call dispatch, and they would tell him the trailer number of the load and where to deliver the load. The dockworkers in the terminals loaded the trailers. Defendant would only pay Plaintiff for the shortest route, but Plaintiff could take any route to deliver his loads. Dispatch provided Plaintiff with the times to pick up and drop off a load. If Plaintiff was not on schedule, he would have to inform dispatch, and they would change the arrival time. Plaintiff did not have dedicated loads. Defendant could send Plaintiff anywhere.

Plaintiff would go to the terminal at midnight on Sundays. Plaintiff had to show up in order to make money and pay his truck payments. Defendant did not require Plaintiff to take certain loads. Dispatch told Plaintiff he had to be at the terminal at midnight in order to

get a load. Plaintiff took his directions from dispatch in Texas. If Plaintiff didn't call dispatch, they would call him. Other owner-operators owned more than one truck and hired other drivers. However, Plaintiff did not.

The truck had a tracking device, and Defendant knew where the truck was at all times. Defendant obtained permits for the truck and supplied Plaintiff with a book of permits for various states. Defendant also provided Plaintiff with a fuel card, which he could use at any truck stop. Plaintiff was unaware that he could purchase his own fuel. Plaintiff could get a discounted rate if he used the fuel card. Plaintiff mainly hauled loads to northern California, but also drove to other states, such as Nevada, Texas, Arizona, New Mexico, and Arkansas. Plaintiff did not have his own customers. He solely delivered to Defendant's customers.

According to Plaintiff's evidence, Defendant deducted the following for truck lease payments, Omnitrac, insurance, and fuel: (1) a total of $35,931.21 in 2014; and (2) a total of $18,127.78 in 2015. (Plaintiff's Exhibit 3.) Defendant also deducted amounts for maintenance escrow and surety bond escrow, but Defendant reimbursed Plaintiff for those amounts.

Defendant obtained the insurance for the truck, and Plaintiff had no role in obtaining the insurance. Plaintiff was not given an option to purchase his own insurance. Plaintiff was responsible for maintenance, and paid for maintenance and repairs out of the maintenance account. Plaintiff could go to any mechanic to service the truck. Plaintiff elected to put money into a maintenance escrow account for maintenance expenses.

In April 2015, Defendant terminated its relationship with Plaintiff on grounds that Plaintiff failed to report an accident that occurred in Phoenix in or about December 2014. Plaintiff testified that there was no damage. Defendant informed Plaintiff that a claim had been filed against Defendant for the incident. The dispatcher instructed Plaintiff to leave the truck. However, Plaintiff refused, stating it was his truck, and took the truck with him. Plaintiff continued to make payments on the truck, but Plaintiff eventually returned the truck due to his inability to keep up with the payments. Plaintiff contacted the lessor, and they instructed Plaintiff to return the truck to Defendant's Fontana terminal.

B. Testimony of Jerry Coyle, Terminal Manager

Jerry Coyle ("Coyle") is Defendant's Terminal Manager of the Los Angeles Terminal. Plaintiff worked under Coyle when he was a pick-up and delivery and shuttle driver. Coyle was involved in Plaintiff's discharge. Coyle recommended Plaintiff's discharge. Plaintiff did not ask Coyle to be re-employed. Coyle had no interest in re-employing Plaintiff. Coyle did not recommend Plaintiff apply as an owner-operator. They had no discussion about Plaintiff becoming an owner-operator.

LEGAL ANALYSIS

A. Burden of Proof

The plaintiff, as the party asserting the affirmative, has the initial burden of proof to establish by a preponderance of the evidence the validity of his or her claims. (Evid. Code, § 115.) However, there are defenses, if raised, that shift the burden to the party seeking to avoid liability. (Evid. Code, § 500.) Asserting that one is an independent contractor is one such burden-shifting defense. (*S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 349.)

Employment is defined broadly and there is a general presumption that any person "rendering service for another" is an employee. (Lab. Code, § 3357; *Borello, supra,* 48 Cal.3d at p. 354.) The party seeking to avoid liability has the burden of proving that the individual whose services he or she has retained are independent contractors rather than employees. (Lab. Code, § 5705(a); *Borello, supra,* 48 Cal.3d at p. 349.) Here, Defendant raised the defense that Plaintiff was at all times an independent contractor and should not be considered an employee. As such, Defendant holds the burden of proof on its affirmative defense.

B. Independent Contractor or Employee

The determination of whether an individual providing service to another is an employee or an independent contractor does not rest on a single determinative factor. Prior to 1970, the principle test was whether the person to whom the service was rendered had the right to control the manner and means of accomplishing the result desired. *S.G. Borello &*

Sons, Inc. v. Dept of Industrial Relations (1989) 48 Cal.3d 341 brought a departure from the focus on control over the work details as the determinative factor in analyzing an employee-employer relationship.

The *Borello* court identified the following additional factors that must be considered: (1) whether the person performing services is engaged in an occupation or business distinct from that of the principal; (2) whether or not the work is part of the regular business of the principal; (3) whether the principal or the worker supplies the instrumentalities, tools, and the place for the person doing the work; (4) the alleged employee's investment in the equipment or materials required by his or her task or his or her employment of helpers; (5) whether the service rendered requires a special skill; (6) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (7) the alleged employee's opportunity for profit or loss depending on his or her managerial skill; (8) the length of time for which the services are to be performed; (9) the degree of permanence of the working relationship; (10) the method of payment, whether by time or by the job; and (11) whether or not the parties believe they are creating an employer-employee relationship. (*Borello, supra,* 48 Cal.3d at p. 351.)

The individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations. (*Id.* at p. 352.) Even if the parties expressly agree in writing that an independent contractor relationship exists, the label that parties place on their employment relationship "is not dispositive and will be ignored if their actual conduct establishes a different relationship." (*Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10.)

1. Control

By statute, the question of control remains highly pertinent to the distinction between employees and independent contractors. (See Lab. Code, § 3353.) The statutory test of control may be satisfied even where "complete control" or "control over details" is lacking

when an employer retains pervasive control over the operation as a whole, the worker's duties are an integral part of the operation, and the nature of the work makes detailed control unnecessary. (*Yellow Cab Cooperative, Inc. v. Workers' Compensation Insurance Appeals Board* (1991) 226 Cal.App.3d 1288.)

The evidence shows Defendant retained pervasive control over the operation as a whole. Defendant obtained the customers and the customers paid Defendant directly. Defendant determined the rates payable to Plaintiff. Defendant controlled Plaintiff's work assignments, and Plaintiff performed whatever work was assigned to him. Defendant controlled Plaintiff's work hours. Defendant required Plaintiff to be at the terminal at midnight on Sundays in order to receive loads. Defendant provided Plaintiff with pick-up and drop-off times, and Plaintiff was required to inform dispatch if he was not on schedule.

Significantly, Defendant prohibited Plaintiff from driving the leased truck for other companies. Plaintiff testified that Defendant did not allow him to provide services for other companies. The Independent Contractor Agreement also provides: "CONTRACTOR is not prohibited from entering into separate agreements to provide equipment and other professional truck drivers *not identified as Equipment above* or in an attachment and drivers not used to service this Agreement, to other motor carriers." (Plaintiff's Exhibit 1, pg. 2, emphasis added.) "A mere lessor has no interest in restricting the lessee's freedom to render service to another." (*Yellow Cab, supra,* 226 Cal.App.3d at p. 1298.) Imposition of such a restriction demonstrates a form of control typical of employment.

Defendant argued there are details of Plaintiff's work that it did not control. Defendant did not dictate what routes Plaintiff could take or which mechanics to use to service the truck. Plaintiff was not required to accept loads. The right-to-control test does not require absolute control. Employee status may still be found where "[a] certain amount of . . . freedom is inherent in the work." (*Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923.) Further, the nature of the work makes detailed control unnecessary. The task of driving "is usually done without supervision whether the

arrangement was lessee or employee." (*Yellow Cab, supra,* 226 Cal.App.3d at p. 1299.)

Finally, Plaintiff's duty of truck driving is an integral part of Defendant's motor carrier business of transporting commodities. Without truck drivers, Defendant's business would not exist. Based on the foregoing, Defendant exercised all necessary control over Plaintiff's work, and the statutory test of control was satisfied.

2. Additional Factors

a. Distinct Occupation or Work Part of Principal's Regular Business

A finding of employment is supported where the workers are "a regular and integrated portion of [the] business operation." (*Borello, supra,* 48 Cal.3d at p. 357.) Plaintiff was not engaged in a distinct occupation or business from that of Defendant's. Plaintiff did not hold himself out as engaged in a separate business, and he did not have his own customers. Nor did he invest any capital into an independent business. Plaintiff provided transportation services solely for Defendant's customers and his work was an integral part of Defendant's regular business of transporting cargo. Indeed, Plaintiff's work is the basis for Defendant's business. Defendant obtains customers who are in need of transportation services and provides the workers who conduct the service on Defendant's behalf. Without drivers, Defendant would not be able to operate its business.

b. Instrumentalities, Tools, and Place of Work

Defendant supplied the tools necessary for Plaintiff's work, namely the truck. Defendant arranged the lease for the truck Plaintiff used to provide services to Defendant. Although Plaintiff entered into a lease agreement with Wasatch Leasing, LLC, Plaintiff did not meet with or discuss the lease terms with anyone from Wasatch Leasing, LLC. Defendant's representatives in Phoenix presented the lease agreement to Plaintiff for execution, and Plaintiff picked up the truck directly from Defendant, not from the lessor. Further, the lease agreement required Plaintiff to authorize Defendant to deduct weekly lease payments and submit the payments to the lessor. (Defendant's Exhibit A, pg. 1, para. 2(e).) The truck had Defendant's logo on it, along with Defendant's Texas address.

Defendant procured insurance for the truck, and installed a tracking device on the truck. Defendant obtained permits for the truck and supplied Plaintiff with a book of permits for various states. Defendant provided Plaintiff with a fuel card, and deducted the fuel costs from Plaintiff's settlements. Plaintiff was responsible for maintenance of the truck.

In light of the fact that Defendant arranged for the truck lease and supplied the most essential tool to Plaintiff, this factor weighs in Plaintiff's favor. (See *Ruiz v. Affinity Logistics Corp.* (9th Cir. 2014) 754 F.3d 1093, 1104 [where "Affinity supplied the drivers with the major tools of the job by encouraging or requiring that the drivers obtain the tools from them through paid leasing arrangements, this factor favored employee status.].)

c. Investment in Equipment or Materials

Plaintiff made no investment in the equipment or materials used to transport cargo for Defendant's customers. Defendant secured the truck lease for Plaintiff and had Plaintiff sign a lease agreement with Wasatch Leasing, LLC. Plaintiff had no ownership interest in the truck. This factor favors employee status.

d. Skill Required

Although truck driving is not a skilled craft, it requires abilities beyond that of a general laborer. Plaintiff's work requires a Class A Commercial Driver's License, but little other skill. Accordingly, this factor does not favor either party.

e. Work Under Principal's Direction or Without Supervision

In the locality, personal services of a truck driver are performed both by employees and independent contractors. The actual task of driving is usually performed without supervision. However, this independence from supervision is inherent in the work itself, and not necessarily because the work is highly specialized. (See *Yellow Cab, supra,* 226 Cal.App.3d at p. 1299 [the work "is usually done without supervision whether the arrangement was lessee or employee, and the skill required on the job is such that it can be done by employees rather than specially skilled independent workmen."].)

f. Opportunity for Profit or Loss

Plaintiff did not have any opportunity for profit or loss depending on his managerial skill. He was simply paid by the number of miles he drove. Plaintiff's compensation was based on a piece rate established by Defendant, and Defendant controlled Plaintiff's work load. Defendant also prohibited Plaintiff from driving the truck for other carriers, thereby denying Plaintiff the opportunity to do business with the highest bidder. Thus, Plaintiff's opportunity to earn more compensation was entirely dependent on Defendant's business needs. Plaintiff's own entrepreneurial skills and judgment did not determine how much money he could make.

g. Length of Time for Services and Degree of Permanence of Working Relationship

The longer the working relationship, the more likely the existence of an employment relationship. The right to terminate at will, without cause, is "[s]trong evidence in support of an employment relationship." (*Borello, supra,* 48 Cal.3d at p. 350, quoting *Tieberg v. Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943, 949.) Plaintiff last provided services for Defendant from August 2014 to April 2015 for nine months. Additionally, Defendant had the right to terminate and did terminate Plaintiff at will. The length of time for which Plaintiff performed services for Defendant and the right to terminate at will are indicative of a relationship that is commonly associated with employment.

h. Payment by Time or by Job

Defendant paid Plaintiff by the job, which is typically indicative of an independent contractor relationship. However, "payment may be measured by time, by the piece, or by successful completion of the service, instead of a fixed salary, and still constitute employee wages if other factors indicate an employer-employee relationship." (*Germann v. Workers' Compensation Appeals Board* (1981) 123 Cal.App.3d 776, 787.)

i. Parties' Belief

Plaintiff applied for an owner-operator position, and entered into a written independent contractor agreement with Defendant. Even if the parties expressly agree in writing that an independent contractor relationship exists, the label that parties place on their

employment relationship "is not dispositive and will be ignored if their actual conduct establishes a different relationship." (*Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10.)

Further, independent contractor agreements can be and often amount to subterfuge to avoid paying payroll and income taxes as well as workers' compensation insurance liability. Whether a person who provides services is paid as an independent contractor without payroll deductions and with income reported through an IRS 1099 form, instead of a W-2 form, is irrelevant. "These are merely the legal consequences of an independent contractor status not a means of proving it. An employer cannot change the status of an employee to one of independent contractor by illegally requiring him to assume burdens which the law imposes directly on the employer." (*Toyota Motor Sales v. Superior Court* (1990) 220 Cal.App.3d 864, 877.)

The existence of a written agreement purporting to establish an independent contractor relationship is not determinative. The Labor Commissioner and courts will look behind any such agreement in order to examine the facts that characterize the parties' actual relationship and make their determination as to employment status based upon their analysis of such facts and application of the appropriate law.

In sum, the majority of *Borello* factors weigh in favor of a finding that Plaintiff was Defendant's employee. Defendant retained all necessary control over the operation as a whole, and Plaintiff's services were an integral part of Defendant's business. Substantial evidence supports the finding that Plaintiff was functioning as an employee rather than as a true independent contractor.

C. <u>Unlawful Deductions</u>

Labor Code section 221 prohibits an employer from making any deductions from an employee's wages. Labor Code section 224 provides for four exceptions that allow an employer to make deductions from an employee's wages:

1. Deductions authorized by state or federal law;

2. Deductions expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues;

3. Deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute; and

4. Deductions to cover health and welfare or pension plan contributions that are expressly authorized by a collective bargaining or wage agreement.

(Lab. Code, § 224.)

Defendant made weekly deductions from Plaintiff's settlements for various truck related costs and fuel purchases incurred for Defendant's benefit. These deductions do not fall within the narrow parameters of lawful deductions as outlined in Labor Code section 224. Further, Labor Code section 2802 prohibits employers from passing on the expenses related to their business to employees. Thus, Defendant must reimburse Plaintiff for these business expenses that were deducted from Plaintiff's wages.

According to proof, Defendant deducted $54,058.99 from Plaintiff's compensation during the relevant claim period for truck lease payments, Omnitrac, insurance, and fuel. (Plaintiff's Exhibit 3.) Specifically, deductions amounted to $35,931.21 in 2014, and $18,127.78 in 2015. Defendant also made deductions for maintenance escrow and surety bond escrow. Plaintiff testified he was reimbursed for amounts in those accounts. Accordingly, the evidence supports an award of $54,058.99 to Plaintiff for unlawfully deducted wages.

D. Interest

Pursuant to Labor Code section 98.1, all awards granted pursuant to a hearing shall accrue interest on all due and unpaid wages. Therefore, Plaintiff is entitled to recover interest in the sum of $7,864.48.

E. Waiting Time Penalties

Labor Code section 201 requires that if an employee is discharged, all earned wages are due immediately upon termination. Labor Code section 203 provides that if an employer willfully fails to pay any earned wages of an employee in accordance with Labor Code section 201, the wages of such employee shall continue as a penalty from the due date thereof

at the same rate until paid, up to 30 days. The term "willful" as used in the statute has been defined by case law as an intentional failure to perform an act that is required under the law. There is no requirement of evil purpose or intent to defraud workers of wages, which the employer knows to be due. (*Davis v. Morris* (1940) 37 Cal.App.2d 269, 274.)

Defendant argues that a good faith dispute that any wages are due precludes imposition of waiting time penalties under Section 203. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute.'" (Cal. Code Regs., tit. 8, § 13520.)

Defendant classified Plaintiff as an independent contractor. However, the amount of control exhibited by Defendant over Plaintiff was to such a degree that Defendant knew or should have known that Plaintiff was an employee.

Plaintiff was discharged on or about April 30, 2015. As of the date of the hearing, Plaintiff had not been paid his full and final wages. Accordingly, Plaintiff is entitled to waiting time penalties for the maximum of 30 days.

Defendant paid Plaintiff weekly with settlement statements that served as detailed wage statements. (Plaintiff's Exhibit 3.) According to proof, Plaintiff earned $9,695.61 over the period of 24 workdays during the last four pay periods in March and April 2015, equivalent to $403.89 per day. Accordingly, Defendant shall pay Plaintiff waiting time penalties for 30 days at the daily rate of $403.89 in the amount of $12,119.40.

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CONCLUSION

For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant shall pay Plaintiff a total of $74,042.87, as follows:

1. $54,058.99 for wages (with lawful deductions);
2. $12,119.40 in waiting time penalties pursuant to Labor Code section 203; and
3. $7,864.48 in interest pursuant to Labor Code sections 98(c) and 1194.2.

Dated: October 12, 2016

Nami E. Chun
Hearing Officer

LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations Division of Labor Standards Enforcement 300 Oceangate, Suite 302 Long Beach, CA 90802 Tel: (562) 590-5048 Fax: (562) 499-6467	
Plaintiff: RAUL VILLARREAL	
Defendant: CENTRAL FREIGHT LINES, INC., A TEXAS CORPORATION	
State Case Number 05 - 65228 EE	NOTICE OF PAYMENT DUE

You have been served a copy of the Labor Commissioner's Order, Decision or Award.

If the full amount of the sums set forth in the Order, Decision or Award is received by this office within ten (10) days of the date the Order, Decision or Award was served upon you, no judgment will be entered in this matter.

Payment must be made by certified check, cashier's check or money order (no other tender will be accepted) made payable to the Plaintiff named in the Order, Decision or Award, and addressed to the Office of the Labor Commissioner at the address shown above.

DATED: October 12, 2016

E. Espinoza

E. Espinoza Deputy Labor Commissioner
562-590-5456

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL

I, Nelida Contreras, do hereby certify that I am a resident of or employed in the County of Los Angeles, over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

LABOR COMMISSIONER, STATE OF CALIFORNIA
300 Oceangate, Suite 302
Long Beach, CA 90802
Tel: (562) 590-5048 Fax: (562) 499-6467

I am readily familiar with the business practice of my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 12, 2016 at my place of business, a copy of the following document(s):

Order, Decision or Award

was(were) placed for deposit in the United States Postal Service in a sealed envelope, by first class mail, with postage fully prepaid, addressed to:

NOTICE TO: STRAUSS & PALAY
Attn: Andrew C. Ellison, Esq
121 North Fir Street, Suite F
Ventura CA 93001

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: October 12, 2016 at Long Beach, California

STATE CASE NUMBER: 05-65228 EE

Nelida Contreras

Nelida Contreras