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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 **THOMAS E. PEREZ,**
 20 Secretary of Labor,
 21 United States Department of Labor,

22 Plaintiff

23 v.

24 **NATIONAL CONSOLIDATED**
 25 **COURIERS, INC.,** a corporation,
 26 **TANWEER AHMED,** an individual

27 Defendants

) Case No.

)
)
) **DECLARATION OF MARY**
) **PHAM IN SUPPORT OF**
) **APPLICATION FOR**
) **TEMPORARY RESTRAINING**
) **ORDER AND SUBPOENA**
) **ENFORCEMENT**

28 Now comes Mary Pham, and states as follows:

1. I am employed by the United States Department of Labor, Wage Hour
 Division. The facts stated here are based on my personal knowledge or my review of the

1 file in this case. If called as a witness, I could and would competently testify to the
2 following matters.

3 2. I have been an investigator with the Wage and Hour Division, U.S.
4 Department of Labor (“WH”) since 2010. I was assigned by my superiors at WH to
5 conduct an investigation of NCCI to determine if violations of the Fair Labor Standards
6 Act of 1938 (“FLSA”) had occurred and the persons responsible.

7 3. The investigation into NCCI mainly concerns whether NCCI’s couriers are
8 properly classified as independent contractors or whether they should be reclassified as
9 employees, as well as which individuals, including Tanweer Ahmed, are employers of
10 the couriers.

11 4. On February 13, 2015, I went to the San Leandro location NCCI, 14755
12 Catalina Street, San Leandro, CA 94577, to conduct interviews pursuant to the
13 investigation. One of the people I interviewed was John Prieto. I wrote down his
14 answers to the questions I asked, had him review my notes of the interview and sign it to
15 show that my notes accurately reflected his statements. Attachment 1 to this declaration
16 is a true and correct copy of my notes of the interview and Mr. Prieto’s signature.

17 5. Also on February 13, 2015, Mr. Prieto looked at his cell phone and stated
18 that Tanweer Ahmed called him on Monday, February 9, 2015 at approximately 12:00
19 Pacific time. As shown on page two of Mr. Prieto’s statement, in that phone call,
20 Tanweer Ahmed instructed Mr. Prieto to destroy all email accounts and mail boxes
21 associated with him. I believe that this phone call was made during a break in the
22 administrative investigation deposition of Mr. Tanweer Ahmed that was taken on
23 February 9, 2015 deposition as I attended that deposition, and we had a lunch break at
24 approximately 12:00 Pacific. A copy of a screen shot of the text message from Ahmed
25 to Prieto is Attachment 2 to this declaration.
26
27
28

1 6. I learned in speaking with Mr. Prieto that he has worked for Ahmed for
2 approximately 15 years, and has accessed NCCI's computers numerous times as the
3 professional that NCCI's employees call when there is a computer problem.

4 7. I learned in conducting my investigation that on February 11, 2015, Prieto
5 arrived at NCCI's San Leandro location, where many of its employees and computers
6 are located. NCCI has various locations, but the San Leandro location is the operational
7 center and where Ahmed has his office and a computer. When Prieto arrived at the San
8 Leandro location, Prieto stated that he was coming to check the system and to fix some
9 problems. Prieto accessed various employees' computers in the San Leandro facility.
10 All of these computers are owned by NCCI and contain documents relating to the work
11 performed by NCCI employees. After Prieto accessed one employee's computer, all of
12 his emails were destroyed and deleted – to the employee's distress.

13 8. Before he left on February 11, Prieto said to employees of NCCI that he
14 would return on February 13, 2015 and that he would be going to see the San Jose NCCI
15 location. It is unknown at this time if Prieto destroyed documents at the San Jose or any
16 other NCCI location.

17 9. While I was at the San Leandro facility on February 15, 2015, I verbally
18 informed Prieto to refrain from further destruction of evidence and handed him a cease
19 and desist letter dated February 15, 2015. A true and correct copy of this cease and
20 desist letter is Attachment 3 to this declaration.

21 10. On February 24, 2015, I observed Prieto confirm under oath that Ahmed
22 instructed him to delete emails and that he did delete some of Ahmed's emails. Prieto
23 further stated that some of Ahmed's emails may still exist on NCCI computers and
24 servers.

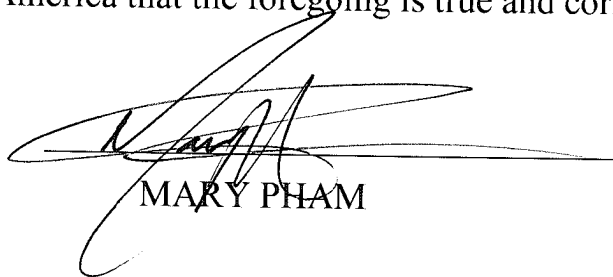
25 11. Through the course of the investigation, confidential informants who are
26 employees of NCCI have repeatedly expressed their fear of retaliation from Tanweer
27 Ahmed. One informant has repeatedly asked if the communications from the informant
28 to myself will be shared with Ahmed. This informant has also refused to provide

1 documents to the Department of Labor (“DOL”) that were subpoenaed because of fear
2 of consequences from Ahmed. Two informants have been instructed by Ahmed as to
3 what to say or not say to DOL. They were instructed by Ahmed to falsely state to DOL
4 that Ahmed was not in control of NCCI. Ahmed contacted the informants to instruct
5 them to do so.

6 12. DOL has made multiple efforts to obtain the documents requested in the
7 two administrative subpoenas prior to the date of this declaration. There are many
8 categories of documents that have not been produced, including communications to and
9 from Ahmed. Because the documents are not being produced, our investigation is being
10 impeded.

11 13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the
12 laws of the United States of America that the foregoing is true and correct.
13

14
15 Dated: March 4, 2015


MARY PHAM

ATTACHMENT 1



EMPLOYEE PERSONAL INTERVIEW STATEMENT **U.S. DEPARTMENT OF LABOR**
WAGE AND HOUR DIVISION

This report is authorized by Section 11 of the Fair Labor Standards Act and other Wage-Hour laws. While you are not required to respond, your cooperation is needed for the Wage Hour Division to make a determination of compliance under the applicable Act(s). Your identity will be kept confidential to the maximum extent possible under existing law.

2-13-2015

(Date)

estab

(Place of Interview)

John Prieto

(Name of Employee)

16350 Ella Blvd.

(Number, Street, apt. no.)

Houston

(City or town)

Tx

(State, Zip Code)

415-786-8923

(Telephone number)

 years of age (was/have been) employed by Pak Foods

17154 Butte Creek Rd,

Houston, Tx 77090

(Location of establishment)

for the approximate period

3/2014

As Vice President of Information Technology

(Occupation or description of duties)

Statement: I was an independent contractor for Pak Foods since 7-8 years. I met tanweer a while ago. It was about 2000 or 1999 that I started to work for Tanweer Ahmed. I started as install server in his house, tech components such as email for just him back then, was just personal, back up, one server small business server, and a cisco firewall, that was first thing at time he was living in Dublin.

I used to report to Sylvia Wong, from what I understand she was part owner with Mike Khalaf, who passed almost 3 years ago.

I keep the technology going, take phones, support.

I get a lot of calls from San Rafael branch office of National Consolidated, from Sajjad in San Jose branch office of NCC (National Consolidated Couriers or North Coast Couriers). From here Mario, Roy, Azaleia, Amira, for most part.

My most recent contact was Azaleia, email was down on Monday or Tuesday, and I got here on Tuesday night and got here on Wednesday. I am coming from Houston, TX.

Tanweer will pay for my travel and I have an apartment here where I stay.

When Tanweer offered me the job he offered me to stay in Houston apartment, where I did not have to pay the rent. I had about 10 clients and wanted to slow down, Tanweer was one of my accounts in Houston, Tanweer was living in Houston, still in area. I hope I can stay longer.

When I came in on Wednesday, I had to do 6-7 tasks: email maintenance, anti-virus maintenance, outlook maintenance, firewall, supposed to install servers but had problems, and anything asked. Tanweer sent me here; he bought and arranged all plane travel. Typically I manage accounts; we have a backup in the server room. On Wednesday, I ran outlook archive and minimized the information stored, the body of email, and the database. I deleted emails from Tanweer, I archived, if someone's email is over 2GB or 1.5, I will move from database and move to a local file. The local file is locally on the computers. Tanweer told me he did not need any account any more, any accounts referring to Tanweer's accounts and email, anything pertaining to Tanweer. I deleted

Tanweer told me earlier this week, he called me on my personal phone on Monday at 2:00PM CST, he told me he did not need mail accounts, he told me to delete them, he was buying my ticket, and when I could go back to Houston, supposed to be Sunday AM.

Tanweer told me to delete the accounts and mail boxes associated to active directory accounts. When you delete the mail boxes, we back up the mail database which should be all the mail. I did no touch anything in the back up, if functioning properly the email is there but not accounts. If functioning properly it could be recovered, but I do not know. The accounts would be gone, but any mail would be in the back up if functioning properly. I deleted two of Tanweers accounts: they had his name; I do not know what he used it for.

The backup is a physical unit, with some tapes inside, 4 or 5 tapes. The backup goes back from 4 to 5 days. If time passes it could potentially be gone, or could just shut it off to preserve the information. The unit is like a big server, color silver, approx. dimension 3'D, 2'W, 3-4"H.

The last time I spoke to Tanweer was Tuesday when I was traveling. If he asks me then I give a follow up. What I deleted, is probably gone from the local computer drives, I only touched Mario Sorto Lidia, Armando (I think Gonzalez), Karina. I did not touch Amira, Roy Washington, Azalia, Victor, reception. I was in Sac yesterday, Wed & Thur in San Jose, and Wed here. I still did not do all. I did not touch Steven, I did saran, raqesh, San Jose I did Sajjad, all user in San Jose, did not do 1 user in Sac, nothing in Sac. I deleted items, ran archive on outlook, varied. However, if functioning properly I could try to restore it.

Active directory account, Microsoft exchange account, and data. We use symantic backup exec. Accounts are unique, cant restore acct, the data is backed up but not sure how to retrieve. You can find experts in Symantic who may be able to do as requested. Tanweer said to delete all his emails. But I did not touch Roy

Washington or Amira, they have all their emails, they are big players as well.

I was hired by Sylvia Wong, and was reporting to Sylvia Wong. Tanweer wasn't involved till later. I submitted invoices to him around, I was working for PC Professionals. Then Sylvia left 3-4 years later. I left PC Pro in 2000. I spent couple yrs free lancing myself, I did work for Northcoast Courriers and small firms I could pick up. The bulk was from Northcoast, but was not much and my contact was Homa zanjani. I then worked as a contractor for ProGent where I coulkd keep my own accounts, and Tanweer was one of them. After I contracted on my own and Tanweer was approx. 25%. After ProGent, I had really good business, lots of work, less than 25% was from Tanweer.

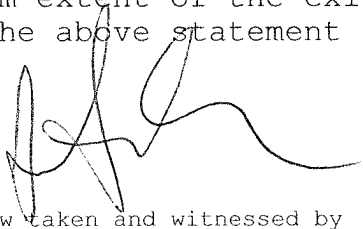
Pak Foods is owned by Tanweer Ahmed, opened around 2002 or 2003, nature of business is fast foods chains YUM, Kentucky fried chicken, long John silver, taco bell, etc. Pak Foods located of bute rd has approx. 20 employees. I became employee of Pak Foods in March 2014, and was prior a contractor to Tanweer. I can't remember, he had numerous businesses, gas station, and courier, Royal Portal or TNI. I know Tanweer since 1998 or 1999, when I was recommended and installed equipment in his house in Dublin. He is a smart guy, good man, I would not work for him. He has lots of businesses now. Back then he was quiet, good man. Tanweer did not tell me why he wanted me to delete the accounts. He said he didn't need then anymore. I did not hear from anyone that the records were to be preserved. When I left on Wednesday, Ray said Amira's been subpoenaed and this is like 6:30PM at night. He said something like if they called him and if they subpoenaed him, he'll tell the truth. I told him that if anyone is subpoenaed, they would be telling the truth.

I have been in I.T. for 25 years. Email work for pak foods owned ny Tanweer is

I have been served today, to preserve records and subpoena to appear for a deposition.

I understand that this statement will be kept confidential to the maximum extent of the existing laws. I have read and understand that the above statement is true and correct to my knowledge.

(Sign)



Interview taken and witnessed by

John Prieto

(Date)

2/13/15

Lilita Hom, WHI & Mary Pham, WHI
Wage-Hour Investigator

ATTACHMENT 2

Messages (1) | 10:11 AM | Contact

Mon, Feb 9, 2:12 PM

I'm about to rebuild your old PC. Before I proceed I need to know if you have any data on the hard drive. Once I rebuild - it is gone forever. Please let me know

Nothing there

Sorry I missed your call

Delivered

Please delete my ncc email account permanently

Please make sure to look for all ncc accounts to delete any email between me and dispatchers

ATTACHMENT 3

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
World Trade Center
350 S. Figueroa Street, Suite 370
Los Angeles, California 90071-1202
Direct: (213) 894-3284
Facsimile: (213) 894-2064
Email: Nardecchia.Natalie@dol.gov



February 13, 2015

John Prieto

By Personal Service

Re: Cease and Desist Letter and Litigation Hold Notice – Secretary of Labor adv. National Consolidated Couriers Inc., et al.

John Prieto:

As you are aware, NCCI is under federal investigation for violations of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. (the “FLSA”). Specifically, NCCI is being investigated for violations of the minimum wage, overtime, record keeping, and child labor provisions of the FLSA.

You are REQUIRED TO CEASE AND DESIST FROM FURTHER DESTRUCTION, ALTERATION OR DELETION OF EVIDENCE regarding or relating in any way to NCCI. This includes all evidence relating to or regarding NCCI. This also includes anything contained on any computers, computer software, email programs, text messages on phone, and all other electronically stored information. This also includes hard copies of documents. You also cannot harm or remove any computers or other equipment or items from any NCCI premises.

As potential litigants, NCCI and its agents, officers, representatives, employees, custodians, contractors, successors, parties in interest (including, but not limited to you, LBZ Inc., Royal American, LLC, A N D Enterprises LLC, CVBS Enterprises, and DDGN Enterprises) and all others with evidence that is potentially relevant to the aforementioned federal investigation (and any ensuing litigation) are under an obligation to preserve and not destroy such evidence. NCCI also has an obligation to instruct all individuals with potentially responsive documentation to affirmatively preserve and retain such documentation. See, e.g., Wm. T. Thompson Co. v. GNC, 593 F. Supp. 1443, 1455 (C.D. Cal.1984) (litigant or potential litigant is under a duty to preserve evidence in his possession that he knows or should know is relevant to litigation or which might lead to the discovery of admissible evidence); Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 216 (S.D.N.Y. 2003) (“The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.”); In re Napster, Inc. Copyright Litig., 462 F.Supp.2d 1060, 1067 (N.D. Cal. 2006) (“[a]s soon as a potential claim is identified, a

litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action.”)

Please take further notice that NCCI is under an obligation to “suspend [any] routine document retention/destruction policy and put in place a litigation hold to ensure the preservation of relevant documents.” In re Napster, Inc., 462 F. Supp. 2d at 1070.

Accordingly, please take all necessary steps to put in place effective litigation holds to ensure that all potentially relevant documents and other evidence are preserved – and that all persons who may possess or have control or access to such evidence are notified of this duty. This includes, but is not limited to, preserving the following types of evidence:

- All documents (including hard copies and electronically stored data, text messages, emails, and files, and information on the Foxpro software) related to drivers, routes, dispatches, delivery assignments, delivery instructions or details, daily manifests or invoices, orders from NCCI’s customers for deliveries, invoices to NCCI’s customers for deliveries, customer or client lists, customer or client contacts;
- All records (including electronic and hard copies) for drivers, office personnel, and payroll personnel showing: hours worked, hours on standby, payments made, pay stubs, check stubs, any deductions made to pay, work schedules, tax records issued to employees and those classified by NCCI as independent contractors such as forms W-2 and 1099;
- All rate sheets for drivers (showing amounts paid per dispatch or delivery or pickup) and rate sheets for customers (showing amounts charged to NCCI’s clients per delivery or pickup);
- All files (including electronic and hard copies) for all drivers, office personnel, and payroll personnel;
- All board and officer lists for NCCI, LBZ Inc., Royal American, LLC, A N D Enterprises LLC, CVBS Enterprises, and DDGN Enterprises;
- All board and officer meeting minutes for NCCI, LBZ Inc., Royal American, LLC, A N D Enterprises LLC, CVBS Enterprises, and DDGN Enterprises;
- Any and all communications (including emails and text messages) among NCCI, LBZ Inc., Royal American, LLC, A N D Enterprises LLC, CVBS Enterprises, and DDGN Enterprises and their officers, directors, employees, and agents;
- Any and all communications (including emails and text messages) between NCCI (and its agents and employees) and its drivers, office personnel, and/or payroll personnel;
- Any and all contracts or agreements between NCCI and its customers or clients;
- Any and all contracts or agreements between NCCI and its drivers, office personnel, and/or payroll personnel; and
- Any and all policies, practices, procedures, rules, and/or requirements NCCI has for its drivers, office personnel, and/or payroll personnel.

Contact Andrew Schultz if you have any questions at (415) 625-7745.

Sincerely,

JANET M. HEROLD
Regional Solicitor

SUSAN SELETSKY
Counsel for FLSA

ANDREW SCHULTZ
Trial Attorney

NATALIE NARDECCHIA
Trial Attorney