

1 Timothy J. Becker (MN Bar No. 256663)

2 tbecker@johnsonbecker.com

3 Jacob R. Rusch (MN Bar No. 391892)

4 jrusch@johnsonbecker.com

5 JOHNSON BECKER, PLLC

6 33 South Sixth Street, Suite 4530

7 Minneapolis, Minnesota 55402

8 Telephone: (612) 436-1800

9 Fax: (612) 436-1801

10 *Trial Counsel for Plaintiffs*

11 ROBERT G. HULTENG, Bar No. 071293

12 rhulteng@littler.com

13 ANDREW M. SPURCHISE, Bar No. 245998

14 aspurchise@littler.com

15 LITTLER MENDELSON, P.C.

16 650 California Street, 20th Floor

17 San Francisco, California 94108.2693

18 Telephone: (415) 433-1940

19 Fax: (415) 399-8490

20 *Attorneys for Defendants*

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 PHILLIP FLORES and DARAH DOUNG,
24 individually and on behalf of all similarly
25 situated individuals,

26 Plaintiffs,

27 v.

28 TRANSFORCE, INC. and VELOCITY
EXPRESS, LLC, a wholly-owned subsidiary of
Dynamex Operations East, LLC.

Defendants.

FILED

JUN 25 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case Nos.: 3:12-cv-05790-JST

Assigned for all purposes to the Honorable Jon S. Tigar

**STIPULATION AND ORDER RE:
PRODUCTION OF CUSTODIAL FILES
AND NON-CUSTODIAL DOCUMENTS**

This Document Relates to All Cases.

Complaint Filed: November 9, 2012

FAC Filed: January 8, 2013

SAC Filed: July 17, 2013

TAC Filed: March 28, 2014

1 This Stipulation and Order shall govern the production of custodial files and non-custodial
2 documents in this Consolidated Litigation.

3 **I. IDENTIFICATION OF RELEVANT CUSTODIANS**

4 **A. Exchange of Preliminary Custodian Lists:** On or before **June 13, 2014**, Defendant
5 shall provide a list of all known custodians who possess documents or other information responsive
6 to Plaintiffs' Request for Production of Documents (Set I & II) served on or about **January 20,**
7 **2014, and March 28, 2014, in *Flores v. TransForce, Inc., et al.*** Defendant's list shall include the
8 following information:
9

- 10 1) Whether the custodian remains employed by one of the Defendants and if so,
11 which Defendant;
- 12 2) The position(s) the custodian held with Velocity Express, LLC, Dynamex
13 Operations East, LLC, or TransForce, Inc.;
- 14 3) The anticipated size of the custodian's production in terms of pages; and
- 15 4) If the custodian is no longer in one of the Defendant's employ, the custodian's
16 last known address.
17

18 **B. Meet and Confer Regarding Initial Custodial Production:** The Parties shall meet
19 and confer in order to negotiate an agreed-to Initial Custodial Production List. This Initial Custodial
20 Production List shall include those custodians with knowledge of the facts and circumstances
21 leading to the purchase of Velocity Express, LLC and is not deemed to be the final custodial list, and
22 it is anticipated that the Parties may supplement additional custodians to the list as the litigation
23 proceeds. If the Parties successfully agree to an Initial Custodial Production List, Defendant shall
24 begin production of the relevant custodial files as set forth in Paragraph II(A) below. If the Parties
25 are unable to negotiate an agreed-to Initial Custodial Production Lists, the Parties shall submit the
26 issue to the Court for consideration.
27
28

II. PRODUCTION OF CUSTODIAL FILES

A. Schedule for Production of Custodial Files: The production of Custodial files shall commence no later than **May 30, 2014**, or in the event the Court issues an Order identifying the Initial Custodial Production List, fifteen (15) days after entry of the Order, and shall continue thereafter every thirty (30) days until complete. If agreement is reached between the parties, Defendant shall produce to Plaintiffs eight (8) complete custodial files on or before **June 6, 2014**, unless the Parties agree to a later date. Then, supplemental production shall take place thirty (30) days thereafter until completed, with nine (9) custodial files produced in June 2014, and ten (10) custodial files every month thereafter, until the entire custodial production is complete. The order of production shall begin with the most substantive witnesses as agreed by the Parties.

B. Certification of Complete Files: Upon tendering a Custodial File, Defendant shall certify that each Custodial File is complete or that no such Custodial File exists.

C. Custodial Depositions: Plaintiffs may take the deposition of any Custodian fifteen (15) days after receiving the Custodial File pursuant to Paragraph II(B), subject to meeting and conferring with respect to a specific time, date and location for the deposition. In the event Defendant's Custodial File Production is not complete, or Defendant makes a supplemental production, the Parties will meet and confer regarding whether a further deposition is necessary. Any further deposition shall be limited to the subject matter contained within the supplemental production. Plaintiffs may take a maximum of twenty (20) depositions of identified custodians related to the successor liability issue.¹ Defendant reserves the right to move for a protective order to limit the number of depositions to fewer than twenty (20) in the event it becomes apparent that further testimony would be cumulative and duplicative. Similarly, the Parties shall meet and confer if Plaintiffs determine that depositions in excess of twenty (20) are necessary. If the Parties fail to

¹ The Parties will submit a Discovery Plan to the Court for merits and class discovery following resolution of the successor liability issue.

1 reach an agreement with respect to the number of depositions, the Parties shall submit the issue to
2 the Court by Joint Letter Brief not to exceed eight (8) pages.

3 **III. PRODUCTION OF NON-CUSTODIAL FILES.**

4 **A. Identification of Source of Documents:** The Parties shall meet and confer to discuss
5 the anticipated scope of the non-Custodial documents responsive to Plaintiffs' Request for
6 Production of Documents and a time-table for completion of the production.

7 **B. Schedule for Completion:** On or before **June 13, 2014**, the Parties shall agree upon
8 a schedule related to the simultaneous production of any remaining non-custodial documents. The
9 schedule shall identify the manner in which Defendant intends to produce documents, in the event
10 Defendant intends to produce documents on a rolling basis the time interval for the production and
11 the anticipated number of pages to be produced in each production, and the date Defendants'
12 anticipate completing the non-custodial production.

13 For the Plaintiffs:

14 DATED: May 28, 2014

/s/ Jacob R. Rusch

Timothy J. Becker (MN Bar No. 256663)

tbecker@johnsonbecker.com

Jacob Rusch (MN Bar No. 391892)

jrusch@johnsonbecker.com

JOHNSON BECKER, PLLC

33 South Sixth Street, Suite 4530

Minneapolis, Minnesota 55402

Telephone: (612) 436-1800

Fax: (612) 436-1801

Jason J. Thompson (MI Bar No. P47184)

jthompson@sommerspc.com

Jesse L. Young (MI Bar No. P72614)

jyoung@sommerspc.com

SOMMERS SCHWARTZ, P.C.

One Towne Square, Suite 1700

Southfield, Michigan 48076

Telephone: (248) 355-0300

Trial Counsel for Plaintiffs


PHILLIP FLORES and DARAH DOUNG

1 For the Defendants:

2
3 DATED: May 28, 2014

/s/ Andrew M. Spurchise
ROBERT G. HULTENG
ANDREW M. SPURCHISE
Littler Mendelson, P.C.
Attorneys for Defendants
TRANSFORCE, INC. and VELOCITY
EXPRESS, LLC

4
5
6
7
8 APPROVED the 25th day of June, 2014.


9 Judge Jon S. Tigar