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15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 PHILLIP FLORES and DARAH DOUNG,  
 18 individually and on behalf of all similarly  
 situated individuals,

19 Plaintiffs,

20 v.

21 VELOCITY EXPRESS, LLC, a wholly-  
 22 owned subsidiary of Dynamex Operations  
 East, LLC<sup>1</sup>, TRANSFORCE, INC., and  
 23 DYNAMEX OPERATIONS EAST, LLC,

24 Defendants,

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

*Assigned for all purposes to the Honorable Jon S. Tigar*

**CASE MANAGEMENT ORDER NO. 2:  
 BELLWETHER TRIALS**

Complaint Filed: November 9, 2012  
 FAC Filed: January 8, 2013  
 SAC Filed: July 17, 2013  
 TAC Filed: March 28, 2013  
 4<sup>th</sup> AC Filed: June 26, 2014

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 28 <sup>1</sup> Formerly Dynamex Operations East, Inc.

**FILED**  
 SEP 24 2015  
 SUSAN Y. SOONG  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

1 Pursuant to Case Management Order No. 1, the Parties agree to conduct three bellwether  
2 trials following the conclusion of the Plaintiff Questionnaire Process (“PQP” or “PQ”) and prior to  
3 any entry of any decertification Order by this Court. As such, this Case Management Order governs  
4 the discovery and deadlines for the Bellwether Trials.

5 1. Case Pool: By March 25, 2016, the Parties shall identify a representative case pool  
6 (“Case Pool”) consisting of six (6) total cases. Each side will select three (3) cases for inclusion in  
7 the Case Pool. Neither Party may select a Plaintiff for the Case Pool unless that Plaintiff produced a  
8 complete PQ no later than 120 days from the Court’s approval of the PQ. Only completed PQs are  
9 to be produced to Defendants by Plaintiffs, and draft versions of PQs are not discoverable. In the  
10 event that Plaintiff voluntarily dismisses a Case Pool selection or Defendant agrees to settle a  
11 bellwether case before trial, the opposing Party shall select a substitute case from the Case Pool.  
12 The Party replacing the pick shall do so in a reasonable amount of time so as not to impact the  
13 schedule set forth herein. Defendants shall waive personal jurisdiction over the Case Pool  
14 Selections.

15 2. Case-Specific Discovery: Case-specific discovery on cases selected for the Case Pool  
16 shall commence on March 28, 2016, and will be completed by June 30, 2016, with discovery in each  
17 case being governed by the Federal Rules of Civil Procedure, the local rules of this Court, and any  
18 further discovery Order(s) of this Court. Case-specific discovery shall not include witnesses called  
19 solely for purposes of establishing damages, but damages testimony will be within the scope of the  
20 depositions listed above. Expert witnesses on damages shall be deposed after the Court identifies the  
21 representative trial cases. Plaintiffs will respond to written and document discovery regarding  
22 damages during case-specific discovery; however, such written discovery shall not duplicate  
23 information provided in the PQ.  
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1 Case-specific discovery on cases selected for the Case Pool may include reasonable written  
2 discovery targeted to adduce evidence related to the relationship between the individual Plaintiff and  
3 Defendants. For purpose of case-specific discovery, the Parties may serve written discovery on all  
4 Case Pool Plaintiffs and Defendants. For purposes of this section, the three Defendants shall be  
5 construed as one Defendant. Any discovery shall be reasonable and targeted in nature. Plaintiffs  
6 may take no more than five (5) depositions of Defendants in each Case Pool case, which may  
7 include, but are not limited to, executives, regional managers, terminal managers, supervisors, and  
8 dispatchers. The topics to be explored by way of these depositions shall be specific to the Case Pool  
9 case at issue and shall not be used to duplicate or otherwise expand the scope of general merits  
10 discovery contemplated by this, or any other, case management order. All depositions for Case Pool  
11 selections shall be completed on or before June 30, 2016. Defendants may take up to five (5)  
12 additional depositions, including the deposition of the Plaintiff whose case is selected as a  
13 Bellwether Trial.  
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16 3. Selection of Cases for First Bellwether Tranche: On August 5, 2016, at or before  
17 5:00 p.m. Pacific Standard Time, each Party shall file with the Court its proposals for one (1) case  
18 from the opposing Party's selections to be included in the first wave of bellwether dispositive  
19 motions and trials (the "First Bellwether Tranche"). Plaintiffs will choose one (1) case from among  
20 the three (3) cases Defendants selected for inclusion in the Case Pool. Likewise, Defendants will  
21 choose one (1) case from among the three (3) cases Plaintiffs selected for inclusion in the Case Pool.  
22 Of the remaining four (4) cases in the Case Pool, the Court will select one (1) case to populate the  
23 First Bellwether Tranche with due regard for strength of case and geographic location. The Court  
24 will endeavor to make its selection on or before August 19, 2016. On or before September 1, 2016,  
25 each Party may file a response directed to the Court's selection. In total, the First Bellwether  
26 Tranche will include three (3) cases from the Case Pool.  
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1 The order of Bellwether Trials shall alternate between the Plaintiffs' and Defendants' picks,  
2 with the Plaintiffs' Case Pool selection being the first Bellwether Trial. In the event that a Plaintiff  
3 voluntarily dismisses a Case Pool selection or Defendants settle a bellwether case before trial, the  
4 opposing Party shall select a substitute case from the Case Pool. Delay, if any, will be limited to that  
5 reasonably necessary to prepare the new pick for trial. Any case resolved through summary  
6 adjudication or motion practice that results in a final judgment shall count as a "Trial Pick" for  
7 purposes of this paragraph.  
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9 4. Expert Reports: On or before May 2, 2016, the Parties will disclose, in writing, the  
10 identities of experts as required by Fed. R. Civ. P. 26(a)(2)(A), and will serve expert reports and  
11 other materials required by Fed. R. Civ. P. 26(a)(2)(B), for all cases in the First Bellwether Tranche  
12 (including case-specific expert reports, if any). Expert Rebuttal Reports, if any, shall be served on or  
13 before May 27, 2016. The Parties will make their designated experts available for deposition  
14 beginning June 20, 2016, through and including July 22, 2016.  
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16 5. Dispositive Motions: All dispositive motions shall be filed no later than September  
17 16, 2016. All responses to those motions shall be filed no later than October 14, 2016, and all  
18 replies shall be filed no later than October 28, 2016. The Court will hold a hearing to consider these  
19 motions on or about November 7, 2016.  
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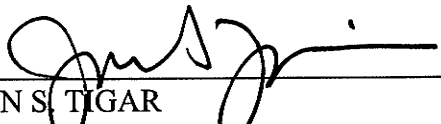
21 6. Trial Schedule: The first bellwether trial is anticipated to be ready for trial in early  
22 December 2016. The Bellwether Trials will be before a jury and the outcome of each Bellwether  
23 Trial will not have preclusive or inferential effect beyond the individual case being tried. The Court  
24 will issue a Scheduling Order governing all trial-related obligations, including motions in limine, on  
25 a future date.  
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7. Schedule Pursuant to CMO No. 2:

Event	Deadline
Party identification of Case Pool selections	March 25, 2016
Case-specific discovery for Case Pool selections begins	March 28, 2016
Expert disclosures and reports	May 2, 2016
Expert rebuttal reports	May 27, 2016
Expert deposition period begins	June 20, 2016
Case-specific discovery for Case Pool selections ends	June 30, 2016
Expert deposition period ends	July 22, 2016
Party identification of Bellwether Trial selections	August 5, 2016
Court identification of Bellwether Trial selection	August 19, 2016

SO ORDERED.

Dated: 9/24/15, 2015

  
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JON S. TIGAR  
UNITED STATES DISTRICT COURT JUDGE