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Attorneys for Defendants, TForce Final Mile, LLC  
(erroneously sued as TForce Final Mile, LLC and  
TForce Critical), and TForce Logistics, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

GUSTAVO DIAZ, an individual, on behalf  
of the State of California, as a private  
attorney general,

Plaintiff,

vs.

TFORCE FINAL MILE, LLC; BEAVEX,  
INC.; TFORCE LOGISTICS, LLC;  
TFORCE CRITICAL; and DOES 1 through  
50, inclusive,

Defendants.

CASE NO.: 30-2021-01209725-CU-OE-CXC

**DECLARATION OF STEVEN C. RICE IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR APPROVAL OF REPRESENTATIVE  
ACTION SETTLEMENT**

Assigned for all purposes to: Hon. William  
Claster, Dept. CX-104

Date: November 5, 2021

Time: 9:00 am

Dept.: CX104

**Reservation No.: 73590306**

Complaint Filed: July 9, 2021

Trial Date: None Scheduled

I, Steven C. Rice, declare as follows:

1. I am an attorney with the law firm of Marron Lawyers, APC, which represents Defendants TForce Final Mile, LLC and TForce Logistics, LLC (collectively "TForce") in the above-captioned matter. I am duly licensed to practice law before all courts of the State of California. I have personal knowledge of all the matters set forth herein, except as to those matters stated upon information and belief, as to those matters, I am informed and believe them to be true.

1           2.     The alleged “similarly aggrieved employees” whose interests Plaintiff Diaz has  
2 claimed to represent in this Private Attorney General Act (“PAGA”) action consist entirely of  
3 delivery contractors whose agreements were with defendant BeavEx Inc. (“BeavEx”) (which is a  
4 named defendant, but not a party to the settlement) or non-party JNJW Enterprises. As shown by  
5 documents provided to Plaintiffs’ counsel, TForce had “assumed” the contracts between the  
6 aggrieved employees and BeavEx or JNJW Enterprises as part of an asset-only sale on terms  
7 approved by the US Bankruptcy Court and effective April 27, 2019. This situation lasted for less  
8 than one year, and all BeavEx Contracts were terminated on or before January 2, 2020.

9           3.     The TForce parties did not purchase BeavEx and JNJW Enterprises. These  
10 companies were discharged in bankruptcy. After purchase by TForce these operations were  
11 assigned to TForce Final Mile West, LLC (“TFFMW”). The assets included a going concern  
12 which continued in operation with TFFMW assuming the BeavEx/JNJW contracts for the drivers  
13 that wished to continue to operate.

14           4.     The basis for treating all the TForce parties as a single “defendants” entity for  
15 settlement purposes is that the Complaint alleges all defendants acted together. There are no  
16 individual company allegations. Accordingly, all of the named Defendants have negotiated to  
17 settle all claims jointly. While the Complaint alleges that all defendants employed the plaintiffs,  
18 that issue is hotly contested by defendants. This settlement is in compromise, recognizing risks of  
19 litigation of these issues, particularly under the “evolving” laws of California.

20           5.     Plaintiffs have alleged facts asserting a basis for liability of BeavEx and JNJW  
21 Enterprises. This raises a potential issue that entities holding the rights of these companies  
22 (obtained through Bankruptcy proceedings) might be required to demand indemnity or otherwise  
23 to subject Defendants to liability, unless they are included in the release. Defendants have also  
24 raised the defense that BeavEx and JNJW Enterprises have been discharged in full for any liability  
25 and therefore have no legal liability. This release of BeavEx and JNJW Enterprises was, and is,  
26 important to the settlement agreement which resolves this issue.

27           6.     Plaintiff’s individual settlement was based on his individual Labor Code claims as  
28 well as the value of his personal claims for PAGA penalties and possibility additional unrelated

1 claims—all of which were rolled into the settlement. Accordingly, the release obtained in his  
2 individual settlement was a general release with a waiver of all future claims—which adds value  
3 when compared to the limited release of PAGA-penalty only claims.

4 7. The issue central to this case is whether the “aggrieved” plaintiffs were  
5 misclassified as independent contractors. The Defendants have been prepared to present evidence  
6 directly proving or establishing through circumstantial evidence or inference, the following facts:

7 a. Among the contractors alleged to be “similar to Lim” were business entities as  
8 well as individuals. Contractors were offered opportunities to provide delivery  
9 services, but they were not required to do any work. They could and did refuse  
10 offers without penalty. Contractors had no contractual obligation to continue  
11 with their BeavEx contracts when they were assumed by TForce. In fact, three  
12 chose not to do so. Contractors had histories of working as independent  
13 contractors during the BeavEx/JNJW era, and operations continued in the same  
14 manner for the approximately eight months of operations by Defendants.

15 b. Each BeavEx Contractos, was free to decline to provide his/her/its  
16 transportation services to any TForce customer. For example, records show that  
17 Mr. Diaz performed a variety of deliveries including regular routes for Bank of  
18 America/Merrill Lynch and US Bank, for which he had an account, Iron  
19 Mountain, BevMo, and Kaiser. For BevMo, Mr. Diaz accepted deliveries from  
20 individual stores to individual customers. With Kaiser, Mr. Diaz made  
21 deliveries between pharmacies and/or from pharmacy to customer.  
22 Significantly, Mr. Diaz did not accept all delivery requests referred to him when  
23 contacted by TForce, but instead exercised his discretion in deciding which  
24 offers to accept. He could use drivers and other employees to perform deliveries  
25 he had accepted. When he accepted an offer to provide transportation of any  
26 item(s), he would use his own vehicle, and operate under his own supervision,  
27 subject only to compliance with the terms of his contracts. Diaz, like the other  
28 Contractors, therefore, were free to fully control their own schedules for each

1 “work day” and each “work week.” They managed their own businesses. The  
2 Contractors’ records generally show significantly inconsistent work patterns, as  
3 reflective of their own control.

4 c. Defendants merely stepped into the shoes of BeavEx in regard to Diaz and other  
5 BeavEx operators. Defendants had not operated with the BeavEx system  
6 previously and were not “in the business” of delivering packages using the  
7 BeavEx system. For the short eight-month period Defendants acted solely as a  
8 brokering agent in facilitating communications and the pre-existing business  
9 relationships between BeavEx’s customers and the owner-operator contractors  
10 like Diaz, under contracts created by BeavEx, not Defendants.

11 d. Diaz was, at all times relevant to this matter, an independent contractor in the  
12 business of transporting packages pursuant to operating agreements by contract  
13 or common carriers. At no time did TForce transport any items for the  
14 customers. On the other hand, like others alleged to be “similar” to him, that  
15 task was Mr. Diaz’s *only* role in his business dealings with Defendants.

16 e. The contractors’ ability to contract with others was unrestricted. In fact, Diaz’  
17 BeavEx Contract clearly protected his rights in this regard: “Nothing contained  
18 in this Contract is intended, nor shall any provision be construed or interpreted,  
19 to require Owner/Operator [Diaz] to provide its services exclusively to or for  
20 Broker [JNJW], and Owner/Operator is free to provide services to other brokers  
21 [e.g., direct competitors of JNJW], customers or the public.” (Exh. A, p. 2,  
22 ¶1(d)). This was language standard among all other BeavEx/JNJW Contractors.  
23 Some, likely most, BeavEx contractors actually did perform commercial  
24 transportation services unrelated to those provided under the Contract.

25 f. Moreover, all responsibility for regulatory compliance and obtaining all  
26 licensing needed for their operations fell to the contractors – and were not  
27 controlled or handled in any way by BeavEx or TForce.  
28

8. A factor affecting Plaintiffs’ “best case” analysis is that the Labor Code 2802 claims must be evaluated under the “control test” of *Borello*, rather than the ABC Test established in the *Dynamex* decision. See, *Garcia v. Border Transp. Group*, 28 Cal.App.5th 558, 571 (2018); *Estrada v. FedEx Ground*, 154 Cal.App.4th 1, 10 (2007) (“Because the Labor Code does not expressly define ‘employee’ for purposes of section 2802, the common law test of employment [under *Borello*] applies”).

I declare under penalty of perjury under the laws of California that the foregoing facts are true and correct and personally known to me, except where indicated on information and believe, in which case I have actually been informed of this fact and believe it to be true.

Executed this date, October 27, 2021, at Long Beach, California.

Dated: October 27, 2021

  
Steven C. Rice, declarant

(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On October 27, 2021, I served all interested parties in this action the following documents described as: **DECLARATION OF SETVEN C. RICE IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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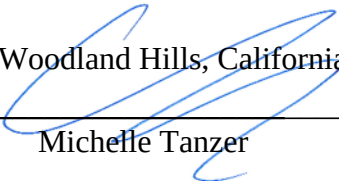
*Attorneys for Plaintiff*

**[XX] (BY ELECTRONIC MAIL TRANSMISSION):** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

**[XX] (BY ELECTRONIC SERVICE):** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

**[XX] (STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 27, 2021, at Woodland Hills, California.

  
\_\_\_\_\_  
Michelle Tanzer