

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

WILLIAM INDELICATO, on behalf of
himself and others similarly situated,

Plaintiffs,

v.

LIBERTY TRANSPORTATION, INC.

Defendant.

Case No. 1:18-cv-00253

Defendant's Motion to Dismiss

PLEASE TAKE NOTICE that Defendant Liberty Transportation, Inc. ("Liberty"), pursuant to Federal Rule of Civil Procedure 12(b)(2) and the Local and Individual Rules of this Court respectfully requests this Court dismiss Plaintiff's Complaint (ECF No. 1) with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(2). The basis for Liberty's request is set forth in the contemporaneously filed Memorandum of Law in Support of Motion of Dismiss and supporting Declaration of Lori Runzo, which are incorporated by reference here. In short, Liberty is not subject to personal jurisdiction in New York because it is Pennsylvania motor carrier with its principal place of business in Pennsylvania; it has no property, employees, or bank accounts, and transacts no business in New York; all contacts between Plaintiff and

Liberty occurred in Pennsylvania; and Plaintiff's wage claims do not arise out of and are not directly related to any contacts Liberty has with New York.

PLEASE TAKE FURTHER NOTICE that, unless enlarged by the Court, or agreement of the parties with Court approval, Plaintiff's deadline to respond to Liberty's motion is June 6, 2018 and that Liberty intends to file and serve reply papers prior to the return date of this motion and within the time permitted by Local Civil Rule 7(b).

Dated: May 23, 2018

Respectfully submitted,

/s/ Charles Andrewscavage
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*Counsel for Defendant Liberty
Transportation, Inc.*

Certificate of Service

The undersigned certifies that on May 23, 2018, the foregoing *Motion to Dismiss* was filed electronically. Notice of this filing will be served on all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Charles Andrewscavage
Charles Andrewscavage

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Memorandum of Law in Support of Defendant’s Motion to Dismiss

I. INTRODUCTION

This motion raises the question of whether Plaintiff William Indelicato (“Indelicato”)—a resident of New York who signed an independent contractor agreement within Pennsylvania to perform transportation services across the country—can sue Defendant Liberty Transportation, Inc. (“Liberty”)—a Pennsylvania motor carrier with its principal place of business in Pennsylvania that owns no property, has no employees, and transacts no business in the State of New York—in this Court for violations of the Fair Labor Standards Act and New York Labor Law. In brief, he cannot; the Court lacks personal jurisdiction over Liberty under both New York’s long-arm statute and the Due Process Clause. To find

otherwise, based on the Complaint and the factual record here, would require the Court to ignore well-established Supreme Court and Second Circuit precedent regarding when a Court can exercise jurisdiction over a defendant. Indelicato's Complaint must be dismissed.

II. STATEMENT OF FACTS

Indelicato is a resident of New York. *Compl.*, ¶ 4. Liberty is a Pennsylvania motor carrier with its principal place of business in Greensburg, Pennsylvania. *Compl.*, ¶ 5; *Declaration of Lori Runzo* ("Runzo Decl.") (attached as Exhibit A), ¶¶ 3, 4. Indelicato and Liberty entered into a Contractor Agreement under which Indelicato agreed to provide equipment and driving services to transport goods for Liberty's customers in exchange for compensation. *Id.*, ¶¶ 10, 12. Indelicato traveled to Pennsylvania to review and sign the Contractor Agreement in March 2017. *Id.*, ¶ 10.

All business decisions related to Indelicato and all communications by Liberty with Indelicato were made out of Liberty's facility in Greensburg, Pennsylvania. *Id.*, ¶¶ 13, 14. Liberty has facilities in six states, none of which is New York. *Id.*, ¶¶ 6-8. Liberty has no employees in New York, pays no taxes to the state, and holds no bank accounts in the state. *Id.*, ¶ 8. Liberty's independent contractor drivers occasionally deliver goods into New York and may drive through the state, but the miles Liberty's contractors travel in New York account for less than 1% of the total miles travelled each year by contractors operating under Liberty's Department of Transportation motor carrier operating authority. *Id.*, ¶ 16. Indelicato himself spent less than 10% of his time traveling on dispatched miles within New York. *Id.*, ¶ 17. Liberty entered

into independent contractor agreements with ten or fewer New York residents in the last six years. *Id.*, ¶ 9. Liberty has no other contacts with New York. *Id.*, ¶ 19.

III. ARGUMENT

A. Applicable Standard

To survive a motion to dismiss, a plaintiff must make a prima facie showing that jurisdiction exists by pleading “facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant.” *In re Terrorist Attacks on September 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (quoting *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir. 2010)). In determining whether a plaintiff has met his or her burden, a court should not “draw argumentative inferences in the plaintiff’s favor” and should not “accept as true a legal conclusion couched as a factual allegation.” *Id.* (citations omitted); *see also Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir.1993) (“The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant’s affidavits. If the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff’s favor, and the plaintiff’s prima facie showing is sufficient notwithstanding the contrary presentation by the moving party.” (internal quotation marks omitted)).

A court considering a motion to dismiss for lack of personal jurisdiction may consider “all pertinent documentation submitted by the parties” because such a motion is “inherently a matter requiring the resolution of factual issues outside of the

pleadings.” *Beeney v. InSightec, Inc.*, No. 13 CIV. 8022 GBD, 2014 WL 3610941, at *2 (S.D.N.Y. July 7, 2014).

B. The Court Should Dismiss the Complaint for Lack of Personal Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(b)(2).

A federal court entertaining a federal question has personal jurisdiction over a defendant if the exercise of such jurisdiction (1) is permitted under New York’s long-arm statute, and (2) comports with due process. *See Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 244 (2d Cir. 2007) (noting that the reach of New York’s long-arm statute does not extend to the limits of the Due Process Clause; therefore analysis of personal jurisdiction questions involve two inquiries, one statutory and one constitutional); *Beeney*, 2014 WL 3610941, at *2 (“there must be a statutory basis for the exercise of jurisdiction under the applicable state law, here New York law; and exercise of jurisdiction must comport with due process”). If jurisdiction is statutorily impermissible, a court need not reach the question of its constitutionality. *Best Van Lines*, 490 F.3d at 244.

This Court does not have personal jurisdiction over Liberty because Indelicato’s claims do not arise out of any transaction of business by Liberty in the State of New York. Even if the Court did have jurisdiction under New York’s long-arm statute, Liberty does not have sufficient minimum contacts with the state to justify the exercise of either general or specific personal jurisdiction in accordance with due process.

1. The Court Lacks Personal Jurisdiction Under New York’s Long-Arm Statute.

Under New York’s long-arm statute, a court may exercise personal jurisdiction over a non-resident defendant who, in relevant part, “transact[s] business within the state.” 35 N.Y. C.P.L.R. § 302(a)(1).¹ Further, “the claim against the non-domiciliary must arise out of that business activity.” *CutCo Indus. v. Naughton*, 806 F.2d 361, 365 (2d Cir.1986) (citing *McGowan v. Smith*, 437 N.Y.S.2d 643 (1981)). “Thus, there must be a substantial nexus between the defendant’s contact with the forum—the ‘business transaction’—and the plaintiff’s claims against the foreign party.” *Beeney*, 2014 WL 3610941, at *2–3.

¹ Indelicato asserts no facts that would support the conclusion that Liberty is subject to general personal jurisdiction in this Court pursuant to 35 N.Y. C.P.L.R. § 301, which requires a defendant to be “engaged in such a continuous and systematic course of ‘doing business’ in New York as to warrant a finding of its ‘presence’ in the state.” *Jazini v. Nissan Motor Co.*, 148 F.3d 181, 184 (2d Cir. 1998). Nor has Indelicato asserted any facts supporting the conclusion that Liberty would be subject to specific personal jurisdiction pursuant to 35 N.Y. C.P.L.R. § 302(a)(3), which permits a court to exercise jurisdiction over a cause of action arising out of a defendant’s commission of a tortious act without the state causing injury to a person in the state if the defendant “(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.” Even if the alleged failure to pay minimum wage or taking of deductions is considered a “tortious act,” Indelicato has alleged no injury in the state arising out of Liberty’s conduct. *See Mareno v. Rowe*, 910 F.2d 1043, 1046 (2d Cir. 1990) (“An injury . . . does not occur within the state simply because the plaintiff is a resident. The situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff.”) (internal citations omitted). Here, the situs of the events that allegedly caused Indelicato’s injuries all occurred in Pennsylvania, because all Liberty decisions are made there and Indelicato signed his Contractor Agreement there. *Runzo Decl.*, ¶¶ 10, 14.

For the purposes of § 302(a)(1), an individual “transacts business” when “he purposefully avails himself of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws.” *CutCo Indus.*, 806 F.2d at 365; *see also Best Van Lines*, 490 F.3d at 246. The question of whether an out-of-state defendant “transacts business” in New York is determined by considering a variety of factors, including:

(i) whether the defendant has an on-going contractual relationship with a New York corporation; (ii) whether the contract was negotiated or executed in New York and whether, after executing a contract with a New York business, the defendant has visited New York for the purpose of meeting with parties to the contract regarding the relationship; (iii) what the choice-of-law clause is in any such contract; and (iv) whether the contract requires franchisees to send notices and payments into the forum state or subjects them to supervision by the corporation in the forum state.

Agency Rent A Car Sys., Inc. v. Grand Rent A Car Corp., 98 F.3d 25, 29 (2d Cir. 1996) (internal citations omitted); *Stamper Tech., Inc. v. 3DCD, LLC*, No. 11-CV-6152-CJS, 2012 WL 12875287, at *4 (W.D.N.Y. July 11, 2012). The determination of whether a defendant transacts business for the purposes of the statute is based on the totality of the circumstances. *Id.* And it is well settled that merely mailing payments into the state, communicating with plaintiffs in the state, or advertising online is insufficient to constitute transacting business. *See, e.g., Ainbinder v. Potter*, 282 F. Supp. 2d 180, 189 (S.D.N.Y. 2003); *A.W.L.I. Grp., Inc. v. Amber Freight Shipping Lines*, 828 F. Supp. 2d 557, 566 (E.D.N.Y. 2011).

Indelicato’s sole basis for personal jurisdiction is that Liberty “conduct[s] business in this judicial district.” *Compl.* ¶ 5. This allegation is insufficient to support

a finding that Liberty transacted business in New York and that his claims arise from such transactions. *See Hume v. Lines*, No. 12-CV-6378-FPG-JWF, 2016 WL 1031320, at *12-13 (W.D.N.Y. Mar. 8, 2016) (general allegation that company conducted business in New York found insufficient to establish company transacted business in New York for the purposes of the long-arm statute).

Based on the totality of the circumstances, Liberty cannot be subject to personal jurisdiction in New York. Indelicato's claims arise from his agreement to provide equipment and driving services for Liberty. *Compl.*, ¶ 8. Indelicato and Liberty negotiated and signed the Contractor Agreement in Pennsylvania. *Runzo Decl.*, ¶ 10. No employee of Liberty ever traveled to New York regarding Indelicato's agreement or that of any other contractor. *Id.*, ¶ 18. In addition, the Contractor Agreement Indelicato signed with Liberty includes a choice-of-law clause requiring that all disputes related to the interpretation or enforcement of the agreement be brought in Pennsylvania. *Id.*, ¶ 11, Attachment 1, § 25. Moreover, Liberty's drivers perform an insignificant amount of driving through the state of New York and rarely deliver into the state. *Id.*, ¶¶ 15, 16. Indelicato himself spent the vast majority of his time performing work outside the state. *Id.*, ¶ 17. Liberty has no property or employees in New York and makes all business decisions from its headquarters in Pennsylvania. *Id.* ¶¶ 8, 14. Thus, there is no basis for this Court to exercise personal jurisdiction over Liberty.

2. The Court Lacks Personal Jurisdiction Under the Due Process Clause.

Even if this Court is reluctant to find that it has no personal jurisdiction over Liberty under New York’s long-arm statute, it should still grant Liberty’s motion under the Due Process Clause. The exercise of personal jurisdiction over a defendant comports with due process only if the defendant has “purposefully established minimum contacts within the forum state,” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985), and only so long as “the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice,’” *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1946). Personal jurisdiction can be either general or specific, and a plaintiff bears the burden of proving the court has personal jurisdiction over a defendant. *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 566-68 (2d Cir. 1996). Here, Indelicato cannot establish that this Court has general or specific jurisdiction over Liberty.

a. The Court Does Not Have General Personal Jurisdiction Over Liberty.

General jurisdiction is “all-purpose” jurisdiction; it allows a court to exercise jurisdiction over a defendant that is essentially “at home” in the forum state, regardless of where the conduct giving rise to the action took place. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). A corporation is “essentially at home” in two places: the state of the corporation’s principal place of business and the state of its incorporation. *Id.* at 137; *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016) (in only a truly “exceptional” case will a corporate defendant be subject to

general personal jurisdiction anywhere except where it is incorporated or maintains its principal place of business).

Plaintiff does not—indeed, he cannot—allege that Liberty is incorporated or domiciled in New York or is otherwise “at home” in the state. Liberty is a Pennsylvania company with its principal place of business in Pennsylvania. *Runzo Decl.*, ¶¶ 3, 4. Liberty maintains no property or employees in New York. *Id.*, ¶ 8. Less than 1% of the dispatched miles traveled by all Liberty contractors occur in New York. *Id.*, ¶ 16. Although Liberty is registered to do business in New York, that alone is not enough to subject it to general jurisdiction. *See Brown*, 814 F.3d at 629, 641 (a corporation’s contacts in a state for general jurisdiction purposes must be assessed not in isolation but in the context of the company’s overall activity, and merely registering to do business or appointing an agent for service of process is insufficient); *Spratley v. FCA US LLC*, No. 317CV0062MADDEP, 2017 WL 4023348, at *4 (N.D.N.Y. Sept. 12, 2017) (“after *Daimler*, registration to do business in New York does not amount to consent to general jurisdiction”). There is no question that Liberty is not subject to general jurisdiction in New York.

b. The Court Lacks Specific Personal Jurisdiction Over Liberty.

Specific personal jurisdiction is proper only if a defendant’s contacts with the forum state are directly related to the conduct underlying a plaintiff’s claims. *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). The defendant’s relationship with the plaintiff alone does not create a relationship between the defendant and the forum state sufficient to support specific personal jurisdiction; rather, the defendant must have

direct contacts with the forum state itself. *Id.* at 1123 (“the mere fact that [a defendant’s] conduct affect[s] [a plaintiff] with connections to the forum state does not suffice to authorize jurisdiction.”). For the same reasons this Court may not exercise personal jurisdiction under New York’s long-arm statute, it may not exercise such jurisdiction under the Due Process Clause—doing so would offend “traditional notions of fair play and substantial justice.” *Int’l Shoe*, 326 U.S. at 316. Liberty contracted with Indelicato in Pennsylvania to perform services across the country. *Runzo Decl.*, ¶¶ 10, 12. All contacts between Liberty and Indelicato occurred in Pennsylvania, and the agreement Indelicato signed specifically selected Pennsylvania law to apply to it. *Id.*, ¶¶ 10, 11, 13, 14. Liberty does not have the minimum contacts with New York required to subject it to the specific personal jurisdiction of this Court for Indelicato’s wage claims.²

² If the Court concludes personal jurisdiction turns on Indelicato’s contacts with New York, under *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S.Ct. 1773, 1777-78 (2017), the Court should dismiss the Complaint to the extent it also seeks to recover on behalf of individuals who did not reside in New York. In *Bristol-Myers Squibb Co.*, the Supreme Court confirmed that the rule requiring “a connection between the forum and the specific claims at issue” applies to each plaintiff’s claim in a multi-plaintiff case. *Id.* at 1782. It then held the California district court lacked personal jurisdiction over the claims asserted by some of the plaintiffs—namely, the plaintiffs whose claims had no connection to California—even though other plaintiffs’ claims did have the required connection to that state. Although *Bristol-Myers Squibb Co.* involved a “mass action,” some courts have extended the Supreme Court’s logic to class or collective actions. *See, e.g., McDonnell v. Nature’s Way Prods., LLC*, No. 16 C 5011, 2017 WL 4864910 (N.D. Ill. October 26, 2017) (dismissing out-of-state putative class members’ claims where complaint did not include any allegations connecting defendant’s activities in Illinois to the claims of the out-of-state plaintiffs); *Wenokur v. AXA Equitable Life Ins. Co.*, No. 17-165, 2017 WL 4357916, at *5 (D. Ariz. Oct. 2, 2017).

IV. CONCLUSION

Liberty is an out-of-state motor carrier with no presence in New York. It cannot be haled into a New York court on the sole basis that it contracted with a New York resident to provide driving services across the country. This Court lacks personal jurisdiction over Liberty under both New York's long-arm statute and the Due Process Clause. Liberty respectfully requests this Court dismiss Plaintiff's Complaint with prejudice for lack of personal jurisdiction.

Dated: May 23, 2018

Respectfully submitted,

/s/ Charles Andrewscavage
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Certificate of Service

The undersigned certifies that on May 23, 2018, the foregoing *Memorandum in Support of Defendant's Motion to Dismiss* was filed electronically. Notice of this filing will be served on all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Charles Andrewscavage
Charles Andrewscavage

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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WILLIAM INDELICATO, on behalf of
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Plaintiffs,

v.

LIBERTY TRANSPORTATION, INC.

Defendant.

Case No. 1:18-cv-00253

**Declaration of Lori Runzo in Support of Liberty Transportation, Inc.'s
Motion to Dismiss for Lack of Personal Jurisdiction**

I, **Lori Runzo**, declare and state as follows:

1. I have personal knowledge of the facts contained in this declaration and, if called as a witness, I could and would testify competently as to their accuracy.

2. I am the Senior Vice President of Liberty Transportation, Inc. (“Liberty”). I have held this position for approximately 20 years. I have been involved with the company since 1992. In my capacity as Senior Vice President, I am familiar with Liberty’s operations and have access to relevant business records.

3. Liberty is an interstate motor carrier headquartered in Greensburg, Pennsylvania.

4. Liberty is a Pennsylvania corporation.

5. Liberty’s operations include full truckload and dedicated freight, home delivery, and cross-dock warehousing.

6. Liberty has four (4) full truckload locations in (1) Greensburg, Pennsylvania (2) Dayton, Ohio; (3) Toledo, Ohio; and (4) Columbus, Ohio.

7. Liberty has nine (9) home delivery locations across the following six (6) states: Pennsylvania, Delaware, Ohio, Virginia, Maryland, and New Jersey.

8. Liberty neither owns nor leases any property in New York, has no employees in New York, and has no bank accounts in New York. While Liberty is registered to do business in New York, it has no consistent customers in the state, and its tax returns reflect that it generates no revenue from the state and pays no taxes to the state.

9. Since February 2012, Liberty has contracted with no more than ten independent contractor drivers who are, or were at the time of contracting, residents of New York.

10. On March 24, 2017, William Indelicato traveled to Liberty's corporate offices in Greensburg, Pennsylvania to review and execute an independent contractor agreement. Pursuant to this agreement, Mr. Indelicato provided equipment and driving services to transport full truckload shipments of goods that he chose to accept on behalf of Liberty's customers.

11. Mr. Indelicato's independent contractor agreement with Liberty includes a choice-of-law clause stating, "Any interpretation or enforcement of this Agreement shall be exclusively in the Court of Common Pleas of Westmoreland County applying the Laws of the Commonwealth of Pennsylvania." *See Attachment 1, § 25.*

12. Mr. Indelicato provided services to Liberty pursuant to his independent contractor agreement until March 2018. These driving services took place across many states throughout the country.

13. The dispatcher with whom Mr. Indelicato communicated regarding load opportunities, which he was free to accept, reject or negotiate, was at all times located in Greensburg, Pennsylvania.

14. All business decisions for Liberty are made out of Liberty's headquarters in Greensburg, Pennsylvania.

15. While Liberty's independent contractor drivers do occasionally make deliveries in the state of New York, such deliveries are infrequent, as Liberty has no New York-based customers.

16. In fact, Liberty's records confirm its independent contractor drivers rarely enter the state of New York. For example, in 2015, Liberty contractors in total traveled 19,957,875 miles. Only 145,228 of those miles, or approximately 0.73% were in New York. Similarly, in 2016 and 2017, New York miles accounted for approximately 0.8% of total revenue miles.

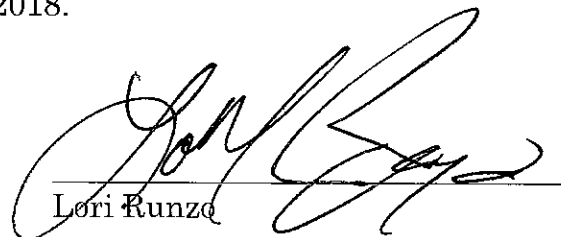
17. Liberty's records further confirm that Mr. Indelicato, despite being a resident of New York, spent less than 10% of his time transporting loads within New York.

18. No employees of Liberty travel to New York for business except occasionally to meet with vendors on matters unrelated to this lawsuit. For example, a few years ago, I went to the corporate office of a potential insurance provider in New York. No Liberty representatives have ever travelled to New York to meet with Mr. Indelicato or any other contractor regarding his or her relationship with Liberty.

19. Liberty has no other contacts with the State of New York.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 23rd day of May, 2018.


Lori Runzo

ATTACHMENT 1

6986

LIBERTY TRANSPORTATION, INC.

Contractor Agreement

August 1, 2016

Contractor VQ

CONTRACTOR AGREEMENT

Liberty Transportation, Inc. (hereinafter 'Liberty'), is a dispatching Company that seeks out Shippers needing Independent Contractor services being provided as a common and/or contract carrier by motor vehicle, authorized by the Interstate Commerce Commission and various State Commissions; and

WHEREAS, Liberty markets to Shippers the availability of specialty Independent Contractors for Shipper's requested specialty services; and

WHEREAS, 'Contractor' is the owner and/or lessee having a trucking business of certain motor vehicle(s) and one's own equipment hereinafter described, and desires to be dispatched by Liberty; and

WHEREAS, Contractor has represented to Liberty that the Contractor is capable of specialty transportation service utilizing Contractors' professionally trained drivers/operators; and

WHEREAS, Contractor desires to accept manifests from various Shippers acquired by Liberty, and Liberty desires to assist Contractor's business; and

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties do hereby agree as follows:

The parties intend to create by this Agreement a relationship within the trucking industry being Liberty as dispatching Company and Contractor as an Independent Contractor, and not that of Employer and Employee. Contractor understands that Contractor shall be and act at all times as an Independent Contractor.

1. MOTOR VEHICLE AND EQUIPMENT: Contractor agrees to comply with Shippers' specialty manifest requirements stated on Shippers' manifests if and when Contractor accepts manifests from Liberty dispatch. Contractor agrees to: a) provide motor vehicle(s) as described or according to specifications as identified in the schedule of equipment attached to this Agreement; b) provide all equipment and manpower, as well as accessories required and necessary to perform the requested services at Contractor's expense; c) own, lease, or operate motor vehicles as may be required by applicable ICC or State PUC requirements (Liberty does not require Contractor to purchase or rent any products, equipment, or services from Liberty); and d) assume complete responsibility for the operation and any and all liabilities arising with regard to the vehicles and equipment provided or owned by Contractor for the duration of this Agreement.

2. TRUCK MARKINGS: Contractor agrees to affix and keep affixed all required ICC and PUC markings and identifications to any and all vehicles operated by Contractor

when or if manifests are accepted by Contractor when offered by Liberty dispatch. Contractor does not, and is not restricted to provide exclusive contract services only to Liberty. However, it is acknowledged Federal and State trucking Laws require if Liberty's ICC and PUC Identification are used by Contractor, they must be covered when Contractor is performing contract services to others. If the Contractor has his/her own ICC and PUC registrations, Contractor shall notify Liberty. When either Contractor or Liberty chooses to no longer associate, before any final settlement of account or final payment is made, Contractor agrees to provide evidence of removal of any (if any) Liberty related truck markings.

3. DRIVING OF CONTRACTOR'S VEHICLE: Contractor warrants he/she is a professional truck contracting business, and agrees to operate the aforesaid vehicle(s) to meet the transportation requirements according to all State and Federal Laws, and all ICC and PUC rules and regulations to prove qualifications. Contractor agrees to provide prior proof of all of Contractor's drivers' (provided to Contractor accepted manifests) qualification(s) file, drug testing, and a signed-off MVR. Contractor shall provide the name(s) of only drivers and clearances used by Contractor when providing services to Liberty dispatched manifests. Contractor agrees to and shall provide any unique Shippers' required liability insurance and Workers' Compensation insurance for Contractor's provided driver(s). Contractor does perform safety inspections and audits required by Federal and State trucking Laws. Such inspections and audits copies shall be provided to Liberty. Contractor permits Liberty or any other person or entity to advise Contractor and its drivers of any safety or apparent problems, and to ensure all DOT and obvious safety issues are immediately addressed.

4. CONTRACTOR DRIVERS AND HELPERS: Contractor, at his/her option, may acquire, hire, and thereby be responsible to direct, control, and supervise, and be responsible for, at Contractor's expense, one or more drivers and/or helpers (if required by Shippers) to perform or assist in loading, driving, unloading, other complex or specialty installations, assemblies, or other accessorial services. Contractor shall be solely responsible for the hiring, firing, discipline, supervision, direction, and control of his/her employees, agents, or servants, including, but not limited to, determining and setting their wages, benefits, hours, and working conditions, and resolving their grievances. Contractor is solely liable and agrees to indemnify Liberty for Contractor's liabilities, including, but not limited to, all applicable statutory payroll taxes, Workers' Compensation required coverages, and all unemployment, and Federal, Local, City, and State income taxes. It is understood and agreed that Liberty has no control over Contractor's employees. Contractor agrees to provide Certificates of Workers' Compensation and vehicle liability insurances naming Liberty as an 'Additional Insured' on both policies prior to Contractor accepting any Liberty dispatched manifests. If the Contractor is self-Insured as permitted at Law, a Certificate of liability insurance must be on file with Liberty.

5. CONTRACTOR WARRANTIES that he/she:

A. maintains the highest vigilance for operational safety practices;

- B. is capable of providing specialty, highly skilled, and technical assemblies and/or installations requested by Shippers and as may be required by customers in their home(s);
- C. agrees to accept the end customer's needs, restricted schedulings, and safety as the Contractor's principle business purpose;
- D. acknowledges and agrees the end-user customer is not a customer or client of Liberty;
- E. provides quality/dependable services; and Contractor also agrees to the policy of 'no riders' permitted during each per-stop manifest dispatched by Liberty and accepted by Contractor;
- F. may accept or refuse any Liberty available Shippers' manifests at his/her entrepreneurial discretion;
- G. understands that his/her schedule for operations in the performance of his/her obligations under this Agreement must conform to the needs of a multitude of Shipper's and their unique shipping requests and services. Contractor may select his/her own professional driver methods, business methods, routes of travel, driver's updating to market and product safety practices (dealing with complex installations of natural gas lines, appliance water and sewage connections, proper electrical connections, assembly of large home appliances, etc.), tools of the trucking trade and equipment, vehicles, business name(s) and logo(s), its own selection and location of rest stops, gas and oil stops, and methods of Contractor payment of business expenses.

6. NO GUARANTEE OF WORK: Contractor understands and agrees that Liberty does not guarantee any minimum number of loads, manifests, or stops as this is controlled by the marketplace and Shipper's choice to offer or not offer manifests. In the trucking industry, the end user customer sets the scope of service requirements. As the Contractor knows, the marketplace rewards customer satisfaction. However, when Liberty dispatch does not have any Shippers or manifests for Contractor to consider accepting, there are no contractual obligations by or between Contractor or Liberty and there are no payments owed.

7. VEHICLE OPERATING EXPENSE AND MAINTENANCE: Contractor, as an Independent Contractor, agrees he/she is responsible to pay all direct costs and expenses incidental to the operation of the Contractor's vehicles and employees if and when utilized and committed by Contractor. (This includes, but is not restricted to, drivers, helpers, oil, fuel, tolls, repairs, ferries, liability insurance, Workers' Compensation insurance premiums, any State Unemployment Compensation premiums, all assessments, penalties, phone calls, road and fuel taxes, registrations, permits, and fines for traffic violations.) Contractor agrees to: a) maintain and keep in good mechanical and safe condition said assigned vehicles; b) keep same washed and

clean; and c) carry thereon and properly maintain all safety equipment and accessories required by Law(s) (including any DOT Laws requiring maintaining current and accurate Maintenance and Repair records for Contractor's trucks assigned to accept Liberty dispatched manifests). Contractor agrees to keep and agrees to provide those records to Liberty if needed by Liberty.

8. PAYMENT: All manifests offered by Shippers through Liberty dispatch shall be at a 'per stop' rate as declared and posted. Contractor shall receive payment after completing the Contractor's accepted manifest(s) requirements. The current marketplace offered schedule is shown as attached under Addendum Schedule B. Payments due Contractor shall be made within fifteen (15) days after the date Contractor's invoice is received. If Contractor [or Contractor's driver(s)] has incurred expense(s) or costs(s) that Contractor has approved Liberty to make payment from any Contractor's settlement payment (i.e. for insurance, insurance deductibles, fuel, cell phones, product damages, and in-home damage claims for which the Contractor is solely responsible), those payments shall be timely made.

9. LOGS, REPORTS, DELIVERY DOCUMENTS, AND COMPLIANCE WITH LAW(S): Contractor agrees to fully comply with all applicable trucking shipping Laws, rules, regulations, and orders promulgated thereunder respecting the operation and maintenance of the vehicle hereunder. It is agreed that upon completion of each trip performed by Contractor hereunder, Contractor or his/her authorized driver shall submit to Liberty all necessary documents to enable Liberty to maintain records required by ICC, DOT, and PUC regulations (when using Liberty's truck industry numbers) being: a) drivers' daily log(s); b) driver trip record form(s); and c) any shipping documents required for dispatch records. Falsified or inaccurate Shippers' or dispatch records, forms, or documents shall terminate this mutual Agreement. Contractor shall properly complete the foregoing paperwork to comply with Law. Contractor agrees to provide copies of daily vehicle inspection reports, logs, trip sheets, and manifests on a timely basis as prescribed by the trucking industry practices, including State and/or Federal regulations. Contractor agrees to immediately notify Liberty of accidents as this will enable Contractor and Liberty to fully comply with all transportation rules, regulations, and affected manifests. Accidents must be reported within two (2) hours and the Accord Loss form must be filled out at the end of that day's accepted manifests. The Contractor agrees to the provision of non-impaired drivers to protect America's highway users. Contractor or Liberty shall be authorized and both shall require any drivers to submit to a drug or alcohol test within two (2) hours of any accident resulting in physical injury to any person, causing inoperability to any vehicle, or causing damage to any property off of a paved surface.

10. FEDERAL MOTOR CARRIER SAFETY REGULATIONS: The Contractor and Liberty agree to a "zero tolerance to drug and alcohol use" workplace policy. Contractor agrees to fully comply with all provisions of the Federal Motor Carrier Safety Regulations. Contractor, Contractor's named drivers, and Liberty agree to jointly implement safety programs designed to help prevent accidents and injuries including losses from the misuse of alcohol or use of controlled substances by drivers of

commercial motor vehicles as described in the Federal Motor Carrier Safety Regulations (due to Federal highway rules and trucking industry best practices). The Contractor also agrees that a positive alcohol or drug test result shall result in the termination of Contractor's driver and/or this Agreement.

11. CONTRACTOR MANIFEST SHEETS: Liberty agrees to provide to Contractor all Contractor accepted Shippers' Manifest Sheet(s) showing industry specialty services as requested by Shippers (if any) or end-receiving customers of Contractor. The Contractor's Settlement Statement shall show all transactions performed by Contractor and how the total 'per stop' manifest commissions due to Contractor were calculated. Written objections or corrections to the entries and balances shown on said settlements must be received by Liberty within ten (10) days from the date settlements are tendered; otherwise settlements shall be conclusive and binding upon Contractor and Liberty.

12. DAMAGE TO PROPERTY BY CONTRACTOR: In the event that Contractor or Contractor's agents, servants, and/or employees damage manifest-listed customers' or any other third parties', or properties of Liberty while performing or offering Contractor's services, the Contractor shall be fully responsible and shall indemnify, defend, and save harmless Liberty from those claims.

13. CONTRACTOR NON-EXCLUSIVITY RIGHTS PRESERVED: Liberty and Contractor agree that if using Liberty ICC or Federal shipping markings, Liberty shall be the technical common and/or contract carrier of shipments hauled for the benefit of Contractor's accepted manifests or Contractor's end-customers. The use of the vehicle(s) by Contractor shall be on a non-exclusive basis as to Liberty. However, said Contractor's vehicle shall be used only for Liberty from the point of origin of any accepted Liberty sourced/dispatched manifest shipments to the completion of the last delivery of that accepted manifest. It is understood and agreed that Contractor has the right to use any of Contractor's vehicles elsewhere and at other times and for other Contractor's purposes as long as Liberty symbols, insignia, or other identifications are removed or covered. Contractor specifically agrees that it will not display Liberty's ICC, DOT, or PUC numbers at any time except when Contractor is performing work under this Agreement. If Contractor has his/her own ICC, DOT, and PUC numbers, Contractor agrees to provide Liberty with all required insurance Certificates naming Liberty as an 'Additional Insured,' along with a copy of Contractor's ICC, DOT, and PUC numbers while acting under this Agreement.

14. ASSUMPTION OF LIABILITY AND INSURANCE: Contractor will obtain and provide his/her own insurance(s) prior to considering accepting Liberty dispatch manifests. The Contractor agrees to provide Liberty with all Certificates of Insurance for the following coverages: a) Vehicle Liability; b) General Liability with combined single limits of One Million and 00/100 (\$1,000,000.00) Dollars per occurrence, including a Two Million and 00/100 (\$2,000,000.00) Dollars umbrella policy; c) insurance applying to property and load damages; and d) Workers' Compensation (if Workers' Compensation is applicable). All of the required insurances will include 'Liberty Transportation, Inc.,' as an Additional Named Insured. Contractor agrees to assume all

liabilities that arise from failure to maintain proper coverages during the period of the contract as outlined and described within. Liberty carries no physical damage insurance for owned or leased equipment. It is the Contractor's duty to obtain his/her own physical damage insurance.

15. NO BENEFITS: It is understood and agreed that Liberty does not provide Contractor with any benefits or insurance whatsoever, including, but not limited to, vacation pay, sick leave, disability, health benefits, or holiday pay.

16. FLEET LIABILITY/INSURANCE: Liberty shall maintain insurance for the protection of the public as required by the Interstate Commerce Commission (ICC) while Contractor is operating as a professional trucking business under this Agreement. To speed Contractor's clearances with marketplace trucking Shippers, Contractor shall maintain baseline limits of liability insurance as required herein being One Million and 00/100 (\$1,000,000.00) Dollars per occurrence, including a Two Million and 00/100 (\$2,000,000.00) Dollars umbrella policy. At the Contractor's option, the Contractor may solicit for vehicle liability through Contractor's own independent sources or group insurance program(s). Upon Contractor's approval, all insurance premiums may be withdrawn/deducted from Contractor's settlement check for charges. Currently because of use of Liberty's ICC and Federal DOT requirements, Liberty will assist Contractor on all accidents and manifest claims. If the Contractor participates in any trucking industry group insurances, the Contractor may request any truck finance companies or banks to be listed as an 'Additional Insured' as a loss payee on any vehicle or equipment liability and physical damage insurance policies. *Liberty's Federal DOT and dispatch insurance coverage has a Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars deductible for each occurrence that Contractor is responsible. This specific policy does not (nor does Liberty) provide for any physical damage insurance for owned or leased vehicles.*

17. INDEMNIFICATION AND HOLD HARMLESS: Contractor agrees that he/she has the necessary specialized skill to perform the services required by Contractor's accepted Shippers' manifest. Liberty shall not be held responsible for any damage to, or loss or destruction of Contractor's vehicle(s), equipment, or vehicle contents due to any reason except such as may result by the intentional tortious acts of Liberty's Officers or Liberty's administration employees. The parties expressly understand and agree that Contractor hereby specifically releases Liberty from any liabilities for any damages, losses, or destruction of Contractor's assigned vehicle(s), equipment, or vehicle contents. Contractor agrees to defend, indemnify, and hold Liberty harmless for any claims by Contractor, Contractor's employee(s), and/or any other persons/entities for any damages, lawsuits, unemployment claims or assessments, Workers' Compensation claims or assessments, taxes, and/or penalties (including any one who may have or asserts any interest, equitable or otherwise, in said vehicle(s) or equipment). This obligation to indemnify, defend and save Liberty harmless includes, but is not limited to, all judgments, costs, expenses, any tax liability assessed, and attorney's fees incurred by Liberty.

18. CONTRACTOR'S EMPLOYEES AND TAXES: Contractor agrees and understands the Contractor is responsible for any Unemployment and Workers' Compensation insurances/premiums, tax withholding, social security and Medicare withholdings, and all other liabilities and benefits concerning the Contractor, the Contractor's employees, Contractor's drivers, servants, and/or agents. If in the event any such Contractor's liabilities are presented or prosecuted against Liberty, the Contractor shall be responsible for any and all costs, attorney's fees, assessments, taxes, penalties adjudicated, together with any and all consequential damages on Liberty.

19. INDEPENDENT CONTRACTOR STATUS: It is understood and agreed that the Contractor and Liberty are dealing with each other solely for their own benefit and purposes. The parties intend to create by this Agreement a relationship of Liberty and Independent Contractor, and not that of Employer and Employee. Contractor is an Independent Contractor. Although the Contractor is subject to a manifest Shipper's and Contractor's end-user customer (i.e. satisfactory and safe delivery and highly skilled installation/assembly with completed house connections of goods to customers), the Contractor is responsible for determining the efficient/safe means and methods for accomplishing the technical installations, assemblies, connections, and customer satisfaction. Payments made to the Contractor are not to be construed as pay/wages, but are paid as Contract settlement payment for the services performed pursuant to this Agreement. Contractor and Liberty agree to an IRS form 1099 being issued for Contractor's tax purposes.

20. NOTICE OF CLAIM OR SUIT: If a claim or suit is brought against Contractor, or Contractor and Liberty arising out of the performance of services addressed under this Agreement, Contractor agrees to forward a copy immediately to Liberty. Both agree to cooperate in the investigation of all claims and/or suit.

21. ASSISTANCE AND COOPERATION OF CONTRACTOR: In the event of any claim or suit, Contractor and Liberty agree to cause themselves and their personnel to: a) cooperate with any claim investigations or claim-related hearings; b) attend hearings; c) assist in effecting settlements, securing evidence, obtaining the attendance of witnesses; and d) in the conducting of suits in connection with any action or proceeding affecting manifest Shippers or customers addressed by this Agreement. Contractor shall not: a) make any settlement; b) voluntarily make any payment; c) assume any obligations; or d) incur any expense on behalf of Liberty or its agents, servants, and/or associates.

22. BINDING ARBITRATION FOR 'CUSTOMER CLAIM SETTLEMENTS' ASSESSED TO CONTRACTOR: The Contractor may object to any claim settlement payment to homeowners-customers of Contractor that was Contractor's responsibility or deductible as a direct result of a technical install or assembly by Contractor or Contractor's driver's performed under this Agreement. Any objection to a claim settlement that cannot be resolved between Contractor or Liberty shall be litigated and resolved solely by binding Arbitration with Westmoreland Academy of Trial Lawyers. Notice shall be given in writing by Contractor of the Arbitration demand and must be

made within thirty (30) days of Notice of Settlement to Contractor. [The parties to this Agreement agree to be bound by the Laws of the Commonwealth of Pennsylvania.] It is further agreed that the exclusive jurisdiction in the interpretation, enforcement, and customer claim settlement shall be subject to **Binding** Arbitration with a Neutral Arbitrator being appointed by the President of the Westmoreland Academy of Trial Lawyers. Said Arbitrator shall be neutral, thereby being without a conflict of interest, and qualified to address the issues raised. This clause shall be initiated only after thirty (30) days of impasse and written Notice of the initiation of Arbitration. Said Notice shall be addressed to the President of the Westmoreland Academy of Trial Lawyers, c/o Westmoreland Bar Association, 129 North Main Street, Greensburg, Pennsylvania 15601. The Arbitrator shall have full authority to determine the discovery and evidentiary process and the date(s) of any hearings. The Arbitrator shall, within his/her discretion, allocate all costs and expenses of Arbitration, including Arbitrator fees/costs and other incurred costs by any party. However, all parties agree to post an advance process payment of One Thousand and 00/100 (\$1,000.00) Dollars total, prorated between each party. Failure to pay the prorata share shall incur a penalty of One Hundred and 00/100 (\$100.00) Dollars for each 30-day period of non-payment to be assessed by the Arbitrator. The Arbitrator shall issue one's Finding and Decisions in writing based upon Law and prudent/reasonable business decision(s). There shall be no right of Appeal unless Criminality or Fraud has occurred in this Arbitration process. All parties agree to waive their right to a Jury Trial or Bench Trial. Any Decision of the Arbitrator shall be entered as a Judgment at the applicable Prothonotary's Office thirty (30) days after the Decision.

23. TERM OF AGREEMENT: Contractor and Liberty agree that this Agreement shall be effective so long as: a) Contractor lists himself/herself as making himself/herself available and willing to accept Liberty dispatches; and b) Contractor accepts Shippers' manifests sourced by Liberty. This Agreement will automatically renew upon each acceptance of each Liberty sourced manifest. Either party may terminate this Agreement at any time.

24. TERMINATION OF AGREEMENT: Upon termination of this Agreement, Contractor agrees to do the following:

- A. immediately surrender to Liberty all pending manifests/bills of lading and other shipping papers;
- B. surrender all identification and documents; and
- C. surrender all merchandise belonging to a Liberty dispatch-related Shipper(s) (if Contractor terminates his/her obligation before any pending Liberty-offered Contractor-accepted manifests are complete, Contractor shall be liable for all unfinished jobs or manifest obligations, damages caused by breach, and any related consequential damages or remedies).

Complete final settlement of accounts between Contractor and Liberty shall be effected within fifteen (15) days after termination of this Agreement; provided, however, that for the period of any open claim(s) or litigation after date of termination, Contractor agrees that Liberty may, at its option, withhold an amount equal to all outstanding claims of the Contractor or monies due as per this Agreement.

25. CONSTRUCTION AND JURISDICTION: Contractor and Liberty agree that no representations have been made by either party except as are expressly set forth in this Agreement. This Agreement shall supersede and replace any other agreements between said parties. Any interpretation or enforcement of this Agreement shall be exclusively in the Court of Common Pleas of Westmoreland County applying the Laws of the Commonwealth of Pennsylvania.

26. ASSIGNMENT: This Agreement may not be assigned, in whole or in part, by Contractor or Liberty without the prior written consent of the parties.

27. HOW NOTICE SHALL BE GIVEN: Any notice given in connection with this Agreement shall be given in writing and shall be delivered both: a) by hand to the party; and b) by U.S. mail prepaid at one's last known address or one's last known email address. Any party may change its address stated herein by giving written notice of the change in accordance with this paragraph.

28. FINANCE COMPANY: Liberty and Contractor acknowledge the Contractor's chosen 'Finance Company' may possess a security interest in the vehicles that Contractor assigns to perform his/her obligations under this Agreement. The Finance Company may, by contract with Contractor, reserve the right to receive settlement proceeds, rental, and other payments hereunder. Contractor and Liberty agree that upon notice from any Contractor's Finance Company with a proven security interest, Liberty shall pay all payments due to Contractor under this Agreement directly to Finance Company.

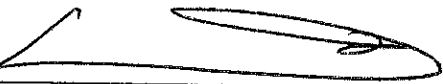
29. AMENDMENTS: This Agreement shall not be amended without the written approval by both parties to this Agreement.

30. SEVERANCE: If any specific part of this Agreement is determined to be unenforceable or void, the remaining terms and conditions shall be enforceable.

IN WITNESS WHEREOF, the respective parties have hereunto set their hands and seals agreeing to the terms and conditions of this Agreement on the day and year written below and acknowledge receipt of a copy hereof, including all addenda which are made a part of this Agreement.

'LIBERTY': LIBERTY TRANSPORTATION, INC.
POST OFFICE BOX 377
NEW ALEXANDRIA, PA 15670-0377

PRINT: 3/24/17 William Scheld

SIGNATURE:  DATED: 3/24/17

'CONTRACTOR': ADDRESS: 28 Huddle St
Chesapeake, VA, 14204

PRINT: William Scheld

SIGNATURE:  DATED: 3/24/17

ADDENDUM

Schedule A. To list equipment conducive to operations.

1. Truck(s) - description (year, make, model, tractor, straight truck)

2. Hand Tools:

Schedule B. Workers' Compensation Insurance (Policy number/insurance Liberty)
Physical Damage/Insurance (Policy number/insurance Liberty)

'LIBERTY': LIBERTY TRANSPORTATION, INC.
POST OFFICE BOX 377
NEW ALEXANDRIA, PA 15670-0377

PRINT: Jim MACH

SIGNATURE:  DATED: 3/24/17

'CONTRACTOR': ADDRESS: 70 Healy St
Chucktown, NY 14906

PRINT: Willie Zaleski

SIGNATURE:  DATED: 3/29/17