

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 2014-001317

Roger D Parker t/a Courier Express
Charlotte, Inc.

Appellant,

v.

South Carolina Department of
Employment and Workforce,

Respondent,

MOTION TO WITHDRAW APPEAL AND MEMORANDUM IN SUPPORT

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v.

South Carolina Department of Respondent,
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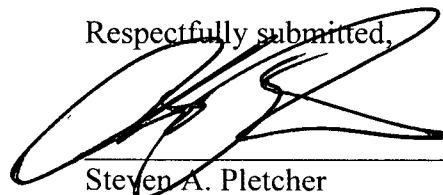
MOTION TO WITHDRAW APPEAL

Pursuant to Rules 240, 260(c), and 267 of the South Carolina Appellate Court Rules, Appellant, Courier Express Charlotte, Inc., by counsel, respectfully requests that this Court allow Appellant to withdraw the pending appeal in the above-captioned matter for the reasons set forth in the Memorandum in Support of Motion to Withdraw Appeal filed concurrently herewith

WHEREFORE, Appellant respectfully requests that this Court allow Appellant to withdraw its appeal.

July 14, 2014

Respectfully submitted,



Steven A. Pletcher
Admitted Pro Hac Vice
Attorney for Appellant
Courier Express Charlotte, Inc
Ind. Atty. No.: 16168-64

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v.

South Carolina Department of Respondent,
Employment and Workforce,

MEMORANDUM IN SUPPORT OF MOTION TO WITHDRAW APPEAL

Pursuant to Rules 240, 260(c), and 267 of the South Carolina Appellate Court Rules, Appellant, Courier Express Charlotte, Inc., by counsel, respectfully requests that this Court allow Appellant to withdraw the pending appeal in the above-captioned matter. In support of the Motion to Withdraw Appeal submitted concurrently herewith, Appellant states as follows:

1. Appellant, a licensed motor carrier operating under the authority of the United States Department of Transportation, engages under valid independent contractor agreements owner-operators that own (or hold under a bona fide lease purchase or installment purchase agreement) and provide the delivery equipment (including vehicles) and labor (including driver services) necessary to complete transportation and delivery services arranged by Appellant in South Carolina (“Owner-Operators”).

2. On May 15, 2014, the Honorable Carolyn C. Matthews of the South Carolina Administrative Law Court entered an order affirming the South Carolina Department of Employment and Workforce Appellate Panel decision deeming claimant, Brian Harper (“Claimant”), a former Owner-Operator, and “similarly-situated workers”—i.e., (at least presumably) other Owner-Operators engaged by Appellant in South Carolina—to be employees for purposes of South Carolina unemployment insurance tax law (the “May 15, 2014 Order”).

3 On June 16, 2014, Appellant submitted its timely Notice of Appeal of the May 15, 2014 Order (the “Notice of Appeal”) because Appellant respectfully submits that the substantial evidence presented at the February 28, 2008 hearing of Claimant’s benefit claim supports the conclusion Appellant properly treated Claimant as an independent contractor. Any other conclusion constitutes an error of law.

4. After the Administrative Law Court entered the May 15, 2014 Order, the General Assembly of the State of South Carolina amended South Carolina law to exempt individuals like Claimant from the definition of the term “employment” for purposes of South Carolina unemployment insurance tax law. Specifically, Section 41-27-260 of the 1976 South Carolina Code has been amended to provide that the term “employment” does not include:

An individual or entity who owns, or holds under a bona fide lease purchase or installment-purchase agreement, a tractor trailer, tractor, or other vehicle and who, under a valid independent contractor contract provides services as a driver of the tractor trailer, tractor, or other vehicle to a motor carrier.

SC LEGIS 265 (2014), 2014 South Carolina Laws Act 265 (S.B. 1099) (effective June 6, 2014) (the “Owner-Operator Exemption”).

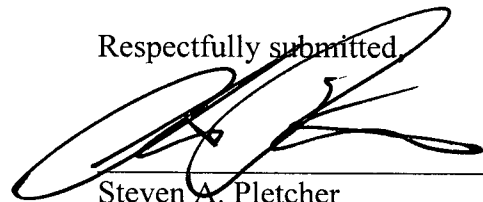
5. Appellant respectfully submits that the issues raised in this appeal have become moot as the Owner-Operator Exemption clarifies and resolves any further issues with regard to whether Owner-Operators like Claimant perform “employment” covered by South Carolina unemployment insurance tax law.

6. Pursuant to Rule 208(a)(1) of the South Carolina Appellate Court Rules, the initial Brief of Appellant is due on or before July 16, 2014, which time has not yet passed.

WHEREFORE, Appellant respectfully requests that this Court allow Appellant to withdraw its appeal.

July 14, 2014

Respectfully submitted,



Steven A. Pletcher
Admitted Pro Hac Vice
Attorney for Appellant
Courier Express Charlotte, Inc.
Ind. Atty. No.: 16168-64

THE STATE OF SOUTH CAROLINA
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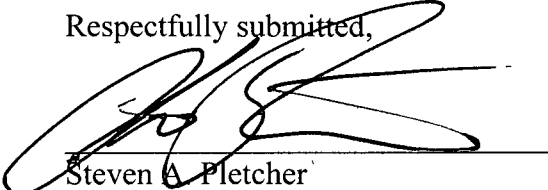
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PROOF OF SERVICE

I certify that I have served the Motion to Withdraw Appeal and Memorandum in Support (the "Motion and Memorandum") on the South Carolina Department of Employment and Workforce by depositing copies of the Motion and Memorandum in the United States Mail, postage prepaid, on July 14, 2014, addressed to its attorney of record, Patrick E. McFarland, Esq. Legal Department – Department of Employment and Workforce, Post Office Box 995, Columbia, SC 29202; the Administrative Law Court, Edgar A Brown Building, 1205 Pendleton St., Suite 224, Columbia, SC 29201; and to all other parties and attorneys of record, including Peter A Rutledge, Smith Moore Leatherwood LLP, 2 West Washington Street, Suite 1100, Greenville, SC 29601; Brian Harper, 350 Fair Forest Way, Apt. 1203, Greenville, SC 29601; and Courier Express Charlotte, Inc., 2051 Franklin Way, Marietta, GA 30067.

Respectfully submitted,



Steven A. Fletcher
Admitted Pro Hac Vice
Attorney for Appellant
Courier Express Charlotte, Inc
Ind Atty. No.: 16168-64

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July 15, 2014

Via Facsimile/(803) 734-1839
And First Class U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: Roger D. Parker t/a Courier Express Charlotte, Inc. v.
South Carolina Department of Employment and Workforce;
Case No 2014-001317

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of a Motion to Withdraw Appeal and Memorandum in Support in the above-referenced matter. Also enclosed are the following:

- (1) Proof of Service of the Motion to Withdraw Appeal and Memorandum in Support, on the Administrative Law Court, and all parties of record; and
- (2) A filing fee of \$25

Thank you for your assistance. If you have any questions or need any additional information, please do not hesitate to contact me.

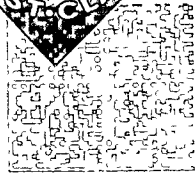
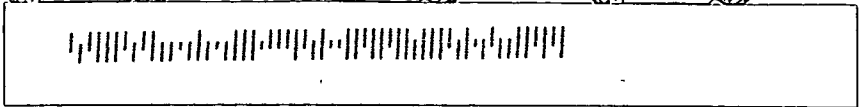
Very truly yours,


Kelli M. Block

KMB:bd
Enclosures

cc: Patrick E. McFarland, Esq.; Peter A. Rutledge, Esq.
Administrative Law Court; Brian Harper; Courier Express Charlotte, Inc.
4827-2331-4460, v 1

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Detroit ■ Spokane ■ Dallas/Fort Worth ■ Milwaukee ■ Philadelphia/Mt Ephraim



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