



September 10, 2014

Via Certified Mail, R.R.R.

United States Department of Justice
Assistant Attorney General, Civil Rights Division
950 Pennsylvania Avenue, Northwest
Washington, DC 20530

Re: Request for 'Pattern and Practices' Investigation of Georgia Motor Carrier Compliance Division; Civil Application Pursuant to Title 42, U.S.C., Section 14141

Dear Sir/Madam:

I am the founder and chairman of the *Small Business in Transportation Coalition* ("SBTC"), a national, not-for-profit trucking industry trade group ("business league") incorporated under the laws of the state of Florida, in accordance with IRC 501(C)(6).

By way of background, the SBTC is a network of 450 transportation professionals, associations, and industry suppliers that is on the front lines when it comes to issues that affect transportation professionals in small business. We seek to promote and protect the interests of small businesses in the transportation industry. We support teamwork, unity, cooperation, transparency, and partnerships among truckers, carriers, brokers, forwarders, and shippers and seek to promote ethical business practices and do business lawfully, with the utmost integrity.

In terms of my background, I am a former New York State Department of Transportation Motor Carrier Investigator charged, in part, with enforcing the Federal Motor Carrier Safety Regulations codified at 49 CFR 350-399. I have been a practitioner duly licensed by the United States Surface Transportation Board since 1999. I have over twenty years of experience in the motor carrier industry.

In talking with one of our members, Mr. Kenny Capell, it is my understanding that the Georgia Motor Carrier Compliance Division is currently engaged in a pattern of conduct worthy of Federal investigation under the **Police Misconduct Statute** (Title 42, U.S.C., Section 14141).

As we understand the facts, Mr. Capell, a commercial motor vehicle driver, has been repeatedly woken up by Georgia Motor Carrier Compliance Division officers in recent months while he has been engaged in Federally-mandated sleep pursuant to 49 CFR 395 for the sole purpose of conducting a Department of Transportation (“DOT”) inspection. We further understand that on one occasion, on April 15, 2014, after sustaining prior alleged abuse from the same officer, Officer Leigh A. Parsons, Badge # 7554, Mr. Capell refused to violate the Federally-mandated “Hours of Service” rule he is obligated to comply with, at which time he was arrested by Georgia Motor Carrier Compliance Division Officer Parsons for “obstruction of justice” under Case Number 2014-SU-CR-000330. Mr. Capell advises he was awoken by Officer Parson just a few weeks prior thus making this a pattern of abuse worthy of federal investigation, rather than a mere isolated incident. We understand the officer’s supervisor was indifferent.

A trial is scheduled for October 10, 2014. SBTC has offered to file an amicus brief in support of Mr. Capell or appear at the trial to offer expert testimony.

As you know, 49 CFR 395.3 --enclosed, along with a Federal Motor Carrier Safety Administration (“FMCSA”) summary-- specifically requires an operator of a commercial motor vehicle to obtain 10 hours off duty time, of which 8 hours must be in the sleeper berth, before he may drive up to 11 hours. It is the position of the SBTC that it is inappropriate, unlawful, and unreasonable interference with interstate commerce for a state law enforcement officer that does not possess “reasonable suspicion” under Terry v. Ohio to interfere with a driver’s Federally-mandated sleep for the sole stated purpose of merely conducting a DOT inspection. **We further believe that any and all results of such unlawful interference fall under the ‘fruit of the poisonous tree’ doctrine and that justice requires the case against Mr. Capell be dismissed.** SBTC contends drivers have a reasonable expectation not to be disturbed while complying with Federal DOT regulations and that such disturbance and interference with sleep unlawfully deprives them of rights protected by the US Constitution, federal law and regulations.

As you know, a citizen may make civil application to the Department of Justice under Title 42, U.S.C., Section 14141, which makes it unlawful for state or local law enforcement agencies to allow officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or U.S. laws. This law, commonly referred to as the **Police Misconduct Statute**, gives the Department of Justice authority to seek civil remedies in cases where law enforcement agencies have policies or practices that foster a pattern of misconduct by employees. This action is directed against an agency, not against individual officers. The types of issues which may initiate a **pattern and practice investigation** include:

- **Lack of supervision/monitoring of officers’ actions; and**
- **Lack of, or improper training of, officers.**

United States Department of Justice
September 10, 2104
Page 3 of 3

SBTC hereby requests that you please commence a 'Pattern and Practice' investigation into this matter insofar as this state law enforcement agency has failed to properly supervise and train its officers that it is unlawful to arbitrarily and capriciously wake up a driver of a commercial motor vehicle --who is obviously engaged in Federally-mandated sleep-- without just cause and, if you determine appropriate, seek civil remedies against this agency under said statute.

Alternatively, your criminal division may wish to treat this complaint as a "Color of Law" abuse complaint insofar as the arrest of Mr. Capell that resulted from this improper stop is concerned. As you know, the Fourth Amendment of the U.S. Constitution guarantees the right against unreasonable searches or seizures. While a law enforcement official using authority provided under the color of law is allowed to stop individuals and, **under certain circumstances**, to search them, it is in the abuse of that discretionary power—such as an unlawful detention—that a violation of a person's civil rights may occur. Falsely arresting an individual also violates the color of law statute, taking away the person's rights of due process and unreasonable seizure.

We note a similar incident highlighted on the website www.dontwakemeup.org involving trucker Martin Hill resulted in a Federal Civil Rights Lawsuit, a complaint to your Department, and an admission of impropriety from the Texas law enforcement agency involved. Perhaps an internal affairs investigation is also warranted in this instance.

The SBTC believes unlawfully waking a commercial motor vehicle driver up can contribute to driver fatigue, which can be detrimental to public safety. Please note I am coping Mr. Scott Darling, Acting Administrator of the FMCSA, for his information insofar as 49 CFR 303 ("Civil Rights") may be concerned. Please also see outgoing FMCSA Administrator's enclosed comments, which highlights the importance of driver sleep to fight driver fatigue. Lastly, I offer my *Respecting the Sanctity of Sleep* article in furtherance of this application, which suggests government, law enforcement and industry should follow the 'community-oriented' approach to policing and trucking to avoid future incidents such as this one. By copy of this letter, we would respectfully ask the law enforcement agency to please engage in better training and supervision of its officers moving forward in the interest of justice and public safety.

Sincerely,

/s/JAMES P. LAMB,
SBTC Chairman

cc: The Honorable Scott Darling; Kenny Capell; Martin Hill; Georgia Motor Carrier Safety Division; Georgia Prosecutor; Lewis B. Oliver, Esq.; Trucking Media