



3508 SOMERSET CIR, KISSIMMEE, FL 34746

PinkCheetahExpress@yahoo.com

(347) 494-2356

October 31, 2023

The Honorable Pete Buttigieg  
Secretary of Transportation  
1200 New Jersey Ave SE,  
Washington, DC 20590

Dear Secretary Buttigieg:

I am the managing member of Pink Cheetah Express, LLC (USDOT 3284151). Unlike most independent truckers regulated by your Department, I hold a JD degree so I know how to research, interpret and apply the law.

This is a complaint to the United States Department of Transportation (USDOT) against Total Quality Logistics (TQL) regarding the issue of property broker rate transparency, which, as you know, has been an issue for hundreds of thousands of independent truckers over the past three and a half years ever since truckers protested outside the White House for three weeks starting on May 1, 2020.

On March 16, 2023, Federal Motor Carrier Safety Administration (FMCSA) approved May 2020 petitions for rulemaking from the Owner Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC) requesting enhanced 49 CFR Part 371 regulations to stop brokers' practice of coercing independent truckers and motor carriers to waive the broker rate transparency regulations in 49 CFR 371.3 as a condition for receiving loads.

On March 17, 2023, FMCSA denied an opposing petition from the Transportation Intermediaries Association (TIA) to repeal the broker rate transparency regulations codified in 49 CFR Part 371 outright.

Recently, the FMCSA advised the public it will not commence rulemaking on these petitions until October 31, 2024, more than one year from now.

On October 24, 2023, the FMCSA denied the SBTC's September 27, 2023 request for an order directing all property brokers to immediately cease and desist from evading the 49 CFR 371.3 regulation through contractual waivers as an interim enforcement measure and to compel brokers' compliance with 371.3c requests to review records. I also understand whereas SBTC requested that FMCSA commence rulemaking sooner than a year from now, that request, too, was denied.

On May 1, 2023, the SBTC through its attorney Laurence Socci wrote the letter referenced below to Total Quality Logistics (TQL) on behalf of my company Pink Cheetah Express, LLC, which had previously requested to review TQL's transactional records pursuant to 49 CFR 371.3 and was denied. The SBTC demanded on my behalf as an SBTC member that TQL immediately cease and desist from violating 49 CFR 371.3. SBTC asserted that waivers of the broker rate transparency regulation are unlawful as matters of the evasion of regulation statute (49 U.S. Code § 14506,) unreasonable restraint of trade and caselaw. Larry Minor at FMCSA was copied.

On May 7, 2023, the SBTC thereafter, filed the ethics complaint below against TQL with TIA regarding this matter also copying FMCSA. TIA responded by issuing what SBTC has characterized as a bogus cease and desist letter to SBTC alleging defamation because SBTC characterized TIA advocacy staff's lobbying actions in support of its members' attempts to evade regulation through contractual waivers as "problematic" and "underhanded," pointing to the sham petitioning exception to the *Noerr-Pennington Doctrine*, which SBTC vehemently protested in response as baseless and a futile intimidation tactic.

As indicated below, I personally received a denial from TQL in reply to my request to review transactional records on a load I hauled for TQL in violation of 49 CFR 371.3. I therefore have standing to file this complaint with you.

It appears TQL is engaging in unreasonable restraint of trade as a market manipulation scheme which is in violation of Antitrust laws.

As SBTC stated to you on September 27, 2023:

*"Simply stated, independent truckers and owner operators will not survive another year without you issuing an immediate moratorium order on brokers' unlawful practice of deregulating themselves through contractual waivers. There is sufficient case law that has established that regulated entities cannot contractually waive Federal law or regulations absent specific Congressional authority to do so (Hayes v. Delbert Services Corp 811 F.3d 666 (4th Cir. 2016))"...Delbert seeks to avoid federal law through the prospective waiver of federal law provision found in the arbitration agreement. But that provision is simply unenforceable. With one hand, the arbitration agreement offers an alternative dispute resolution procedure in which aggrieved persons may bring their claims, and with the other, it proceeds to take those very claims away. The just and efficient system of arbitration intended by Congress when it passed the FAA may not play host to this sort of farce." )"*

The SBTC advises me that nearly six months after its cease and desist letter, drivers are still reporting to SBTC that TQL continues to evade the 371.3 regulation in its contracts and rely on the waiver to deny drivers' regulatory rights to review transactional records the drivers are involved with. SBTC also advises other than an acknowledgement of receipt, it has not heard back from TIA on their ethics complaint against TQL.

As you know, the FMCSA has regulations prohibiting intimidation and coercion by brokers codified at 49 CFR 390.6 with respect to various regulations, including, but not limited to, 49 CFR § 369.5 Records, which requires of motor carriers:

*"Books, records and carrier operating documents shall be retained as prescribed in 49 CFR part 379, Preservation of Records."*

I attempted in good faith to acquire records pursuant to 49 CFR 371.3 in furtherance of my obligations under 49 CFR § 369.5 but was coerced by TQL through the unlawful waiver from obtaining same in violation of 49 CFR 390.6.

Given the broker agent's tone and demeanor, I believe that I was treated in a discriminatory fashion because I am female, which makes me a minority in trucking.

As you also know, under Federal law (49 USC 13101(b)), you have a duty to carry out Congress' National Transportation Policy. I point to what I believe are the relevant sections involved in this matter below:

*§13101. Transportation policy*

*(a) In General.-To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and-*

*(1) in overseeing those modes-*

*(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;*

*(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to-*

*(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;*

*(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;*

*(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;*

*(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;*

*(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;*

*(J) promote greater participation by minorities in the motor carrier system;*

Accordingly, I hereby file this letter as a coercion complaint against TQL pursuant to 49 CFR 390.6.

Please also accept this letter as a complaint against TQL pursuant to 49 U.S. Code § 14701(b):

I hereby request USDOT conduct an investigation and issue an order enforceable by you and/or the Attorney General (and privately enforceable under 49 U.S. Code § 14704 - Rights and remedies of persons injured by carriers or brokers) directing TQL to (1) immediately provide me with copies of any and all documents for the load in question referenced below pursuant to my rights under 49 CFR § 371.3c; and (2) to cease and desist engaging in TQL's coercive practice of evasion of the 371.3 broker rate transparency regulations in any and all respects, no matter who is the carrier, and obstructing my obligation to preserve records under 49 CFR § 369.5 in violation of 49 U.S. Code § 14906. I respectfully request a copy of such an order.

I also ask you to take whatever other action USDOT deems just and proper, including assessing civil penalties and referring this matter to the USDOT Inspector General and/or the US Department of Justice's Antitrust Division.

Sincerely,

Dakota Polkowska Springfields, Managing Member

Pink Cheetah Express LLC

cc: Hon. US Senator Marco Rubio  
Hon. US Senator Rick Scott  
SBTC

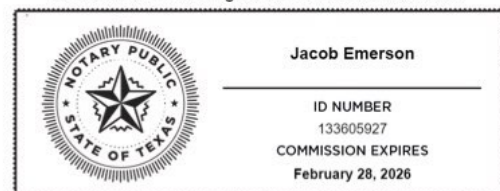
THE STATE OF TEXAS, COUNTY OF TRAVIS

Before me on this day personally appeared Dakota Polkowska Springfields, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed herein and, being by me first duly sworn, declared that the statements herein are true and correct.

Given under my hand and seal of office this 31st day of October 2023.

Jacob Emerson  
Notary Public, State of Texas

Notarized online using audio-video communication



From: "James Lamb" <james@truckers.com>

Date: Sun, May 7, 2023 2:32 pm

To: reinke@tianet.org

Cc: burroughs@tianet.org, laurence.socci@soccilawfirm.com, delpercio@tianet.org, bond@tianet.org, larry.minor@dot.gov, compliance@tql.com, info@fiata.org, legal@fiata.org, "office@nsbs.bg" <office@nsbs.bg>, "secretariat@nsbs.bg" <secretariat@nsbs.bg>, "transexpress@transexpress.bg" <transexpress@transexpress.bg>

Subject: TIA Ethics Complaint from the SBTC against TQL

Dear Ms. Reinke,

As you know, the TIA issued a model contract between brokers and carriers years ago in the spirit of "best practices."

This document contains no language suggesting brokers should ask independent truckers and motor carriers to waive their regulatory rights to documents 49 CFR 371.3 designed to afford these parties to transactions to know broker commissions, which TIA calls "margins," as a condition to do business.

Notwithstanding TIA's failed August 2020 petition to FMCSA for rulemaking to repeal 49 CFR 371.3, which, as you know, the agency denied on March 17, 2023, it therefore appears that it is NOT the policy of TIA to recommend brokers evade regulation through contracts that waive truckers' rights to broker rate transparency.

It appears FMCSA has rejected TIA's argument that brokers are somehow shippers with the right to waive regulations pursuant to 49 CFR § 14101b.

We also note that FMCSA is proceeding with our request to strengthen the broker rate transparency rule as per its March 16, 2023 petition approval letter to SBTC.

We believe it therefore now well established that brokers are not shippers entitled to waive 49 CFR § 371.3c under 49 CFR § 14101b by virtue of the ICC Termination Act of



1995 and that FMCSA's attached March 1, 2022 interim letter, which affirms that brokers should be abiding by all regulations that apply to them during the pendency of rulemaking, is now authoritative and binding upon all brokers including TQL and all other TIA members that operate as duly licensed and bonded property brokers.

Accordingly, the SBTC has issued a CEASE & DESIST letter to TQL for having language that makes waiver of 371.3 in its contracts as a condition for receiving loads from TQL.

Please see that letter below.

Comes now, the SBTC to file this non-member Ethics Complaint with TIA pursuant to your complaint procedures on behalf of the SBTC membership as many of our members have been adversely affected by what we believe is TIA's unethical if not unlawful policy contrary to your model agreement and Ethics Code.

By copy of this email, we hereby request that Polly Bond, TIA's staff member assigned to the Ethics Committee, please forward our complaint on to the Ethics Committee for adjudication.

We have duplicated your attached non-fillable PDF complaint form below and offer this complaint via email in accordance with your instructions posted at

<https://www.tianet.org/wp-content/uploads/2019/02/Ethics-Complaint-Form.pdf>

The SBTC requests your Ethics Commission please review and process our complaint and issue a determination as to whether TIA concludes TQL is indeed violating your ethics policy by circumventing we believe obviously in bad faith 49 CFR 371.3 –if not outright evading carriers' right to records in violation of 49 U.S. Code § 14906 - Evasion of regulation of carriers and brokers through waivers of 371.3 in its contracts.

Indeed, we believe this business practice does not conform to your Code of Ethics, which states:

1. A member shall deal fairly with customers, colleagues, fellow members, and the general public.
2. A member shall conduct his or her professional life in accordance with the interests of TIA, the third-party transportation services industry, and the general transportation public.
3. A member shall adhere to honesty and integrity and to generally accepted principles of professional conduct.
4. A member shall not engage in any practice, which tends to corrupt, the integrity of TIA, the third-party transportation services industry or process of government.
5. A member shall make proper, just, and prompt payment for all contractual obligations.
6. A member shall abide by all lawful agreements to which he or she is a party, including all agreements with shippers, carriers and other transportation intermediaries.
7. A member shall compete vigorously – but not unfairly – with other members.
8. If a member has evidence that another member has been guilty of unethical, illegal or unfair practices, including those in violation of this Code, the member shall present information promptly to TIA.

As we have stated to TQL we believe this practice may even raise restraint of trade issues and may result in a class action lawsuit under the existing private right of action if this practice is not immediately terminated and TOL commits on or before May 10, 2023 that it will in fact cease and desist from further engaging in this practice, which adversely affects our members and their regulatory rights.

We ask TIA please issue guidance to its members on this issue as a number of other brokers are engaged in this practice and they may be contacted by an attorney representing SBTC's in the near future if this problem persists.

Please advise us the TIA Ethics Committee's decision and whether TIA condemns or condones this waiver of 371.3 practice so that we may know how to proceed in furtherance of our members' rights under the law.

Thank you.

Sincerely,



/s/ JAMES LAMB, Executive Director  
Small Business in Transportation Coalition, Inc. ("SBTC")  
Truckers.com  
Visit our new website:  
www.smalltransportation.org  
1775 I. (Eye) Street, NW, Suite 1150  
Washington, DC 20006  
@JimLambUSA  
(202) 587-2751

TIA ETHICS COMPLAINT

Complaint Filed By: Made Against:	Complaint
Name JAMES LAMB Total Quality Logistics LLC (TQL)	Name
Company Small Business in Transportation Coalition, Inc. (SBTC) TQL MC-322572	Company
Address 1775 I. Street NW, Ste 1150 4289 IVY POINTE BLVD	Address
City/St./Zip Washington, DC 20006 CINCINNATI, OH 45245	City/St./Zip
Phone (202) 587-2751 (513) 831-2600	Phone
Fax N/A Unknown	Fax
Email James@truckers.com compliance@tql.com	Email

Signature /s/ JAMES LAMB, SBTC Executive Director

Date 7 MAY 2023

1. Nature of complaint: (Attach additional sheet(s) if necessary.)

SBTC believes TQL is violating the fairness, honesty and integrity clauses in your Code of Ethics by having language in their contracts that makes waiver of 371.3 a condition for receiving loads from TQL because it is a blatant attempt to evade regulation in violation of 49 U.S. Code § 14906. We believe there can be no reasonable finding that this business practice is ethical when it violates Federal law and existing regulation.

SBTC also believes this does not conform to your best practices inherent within the attached model broker-carrier contract.

As TIA is a member of FIATA, we believe this practice violates FIATA policies as well

Antitrust Policy ([fiata.org](http://fiata.org))

Best Practice Guide on Contract Management by FIATA - Flipsnack

FIATA is therefore copied here for their information.

2. Nature of Ethics Code Violations (Explain which TIA Ethics provisions you believe were violated and how):

(X) A member shall deal fairly with customers, colleagues, fellow members, and the general public.

Compelling a waiver of regulatory rights through contract in violation of 49 CFR 371.3 and 49 U.S. Code § 14906 is unfair

(X) A member shall conduct his or her professional life in accordance with the interests of TIA, the third party transportation services industry, and the general transportation public.

Compelling a waiver of regulatory rights through contract in violation of 49 CFR 371.3 and 49 U.S. Code § 14906 by a rogue brokerage is unprofessional, not in the interests of TIA, the 3PL industry or the general transportation public.

(X) A member shall adhere to honesty and integrity and to generally accepted principles of professional conduct.

Evading 49 CFR 371.3 in contracts in violation of 49 U.S. Code § 14906 is dishonest and lacks integrity to generally accepted principles of professional conduct as evidenced by TIA's own model broker-carrier agreement. FMCSA seems to concur in their attached March 1, 2022 letter to the SBTC.

(X) A member shall not engage in any practice, which tends to corrupt, the integrity of TIA, the third-party transportation services industry or process of government.

We believe that compelling a waiver of regulatory rights through contract in violation of 49 CFR 371.3 and 49 U.S. Code § 14906 insults the rule of law and is corrupt.

We believe the media has raised serious concerns about past TIA leadership possibly colluding with USDOT officials in this area back in 2020:

Is FMCSA Coordinating With Brokers in Battle Over Freight Rate Transparency? - Transportation Nation Network ([archive.org](https://www.archive.org))

TIA therefore owes its members and the industry clarity on this issue and assurance it has regained its moral compass contrary to past appearances of impropriety.

(X) A member shall make proper, just, and prompt payment for all contractual obligations.

Payment made under cloak of secrecy in violation of 49 CFR 371.3 cannot be deemed "just."

(X) A member shall abide by all lawful agreements to which he or she is a party, including all agreements with shippers, carriers and other transportation intermediaries.

Agreements which evade regulation in furtherance of restraint of trade are unlawful under 15 USC §1, which states:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court."

(X) A member shall compete vigorously – but not unfairly – with other members.

TIA Members evading 49 CFR 371.3 are engaged in practices we believe constitute unfair trade practices and unfair competition with other TIA members, SBTC small broker, carrier and trucker members, and members of the industry generally.

If a member has evidence that another member has been guilty of unethical, illegal or unfair practices, including those in violation of this Code, the member shall present information promptly to TIA.

Although SBTC is a non-member, please see attached documents offered promptly after SBTC issued its cease and desist letter.

3. Remedy (Explain what you would like the Committee to do to resolve the complaint):

SBTC asks the TIA to please issue guidance to its members on this issue as a number of other brokers are engaged in what we contend is this unlawful and questionable business practice. Please advise SBTC the TIA Ethics Committee's decision in accordance with your time frame in your instructions and whether TIA condemns or

condones this waiver of 371.3 practice so that we may know how to proceed in furtherance of our members' rights under the law.

## APPENDIX A

### CEASE AND DESIST LETTER TO TQL

From: "Laurence Socci" <laurence.socci@soccilawfirm.com>

Date: Mon, May 1, 2023 7:54 pm

To: "compliance@tql.com" <compliance@tql.com>

Cc: "larry.minor@dot.gov" <larry.minor@dot.gov>

Subject: CEASE AND DESIST DEMAND

May 1, 2023

via Compliance@TQL.com & U.S. Certified Mail, R.R.R.

Total Quality Logistics, LLC

Attn: Chris Brown, Legal Department

4289 Ivy Pointe Blvd.

Cincinnati, Ohio 45245

Re: CEASE AND DESIST DEMAND

Dear Mr. Brown:

I am the attorney for the Small Business in Transportation Coalition (SBTC), Inc., a 501c6 non-profit trade organization representing the interests of small business owners in the transportation industry.

It has come to our attention that Total Quality Logistics, LLC (TQL) is engaged in a questionable business practice, which involves requiring motor carriers and

independent truckers to contractually waive their rights to shipper rate information under 49 CFR 371.3 as a condition to do business with TQL.

Our member Pink Cheetah Express LLC has provided us with the attached agreement which states, in part:

4. COMPENSATION. CARRIER agrees to perform the Services for BROKER, under CARRIER's Operating Authority exclusively, at a rate mutually agreed upon in writing in a TQL Rate Confirmation ("Rate Confirmation"), which shall be incorporated into this Agreement, or by Electronic Communications (defined in Section 20). Additionally...

c. BROKER and CARRIER shall use commercially reasonable efforts to verify the accuracy of all freight charge billings invoiced by BROKER to CUSTOMERS for the Services performed by CARRIER. BROKER shall have the right to audit, from time to time, CARRIER's freight charges, and CARRIER shall fully cooperate with any audit. BROKER is not required to disclose its charges to CUSTOMERS, commissions, or brokerage revenue, and CARRIER waives its right to receive, audit, and/or review information and documents to be kept as provided in 49 C.F.R. § 371.3..." (emphasis added).

Our member has also furnished us an email from Amy Unger, a TQL Legal Claims Specialist, dated March 17, 2023, which stated to Pink Cheetah Express:

"Please note that on June 10, 2019 Pink Cheetah Express LLC and Total Quality Logistics entered into a Broker Carrier Agreement ("Agreement"). Section 4(c) of the Agreement states in part:

BROKER is not required to disclose its charges to CUSTOMERS, commissions, or brokerage revenue, and CARRIER waives its right to receive, audit, and/or review information and documents to be kept as provided in 49 C.F.R. § 371.3."

We note that TQL is a member of the Transportation Intermediaries Association (TIA) and that TIA, as a matter of best practices, published a model broker-carrier contract many years ago, which does not include the waiver language referenced above. It therefore appears TIA does not consider your waiver language to be reasonable and customary.



As you know, the FMCSA recently approved the SBTC's May 6, 2020 petition to open rulemaking on this matter and denied the Transportation Intermediaries Association's request to open rulemaking to repeal 49 CFR 371.3, thereby dismissing TIA's misguided argument that property brokers are shippers for the purposes of 49 CFR § 14101b with waiver rights under the law. We expect the rulemaking on our petition to commence shortly.

SBTC's position is that brokers licensed and regulated by the FMCSA may not circumvent duly promulgated regulations without being in violation of 49 U.S. Code § 14906 - Evasion of regulation of carriers and brokers. We note with respect to those brokers that do evade regulation, the statute clearly states:

"A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of at least \$2,000 for the first violation and at least \$5,000 for a subsequent violation, and may be subject to criminal penalties."

Furthermore, the SBTC received the attached letter from FMCSA dated March 2, 2022 which we believe affirmed carriers' rights under 49 CFR 371.3 in 2022. Please note FMCSA stated last year:

"As to your request for guidance on compliance with Part 371 during the pendency of the related rulemaking petitions filed by SBTC, the Owner-Operator Independent Drivers Association (OOIDA), and the Transportation Intermediaries Association (TIA), all brokers remain subject to any requirements that are applicable to them. As to your request for guidance "on how motor carriers and independent truckers should handle situations in which they are told they may not have loads if the[y] choose to exercise their right to broker transparency," FMCSA will consider this request in connection with SBTC's May 2020 petition for rulemaking (emphasis added)."

Now that the TIA's request that FMCSA repeal 49 CFR 371.3 is off the table, we contend this letter is now authoritative and that TQL must abide by 49 CFR 371.3.

Lastly, as you know, "restraint of trade" is generally defined as any activity that prevents another party from conducting business as they normally would without such a restraint. We contend the caselaw is clear when it comes to evasion of federal regulation through

contract for the purpose of engaging in restraint of trade. We remind TQL that 15 USC §1 states:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court."

We offer this 2022 summary of actions before SCOTUS on the matter of unreasonable restraint of trade:

<https://supreme.justia.com/cases-by-topic/antitrust/>

With many of our members affected by TQL's evasion of regulation through contact, it would appear that this matter is now ripe for a class action.

Accordingly, and on behalf of independent truckers and small carriers many of which, are dues paying members of the SBTC, the SBTC hereby DEMANDS that TQL IMMEDIATELY CEASE AND DESIST from continuing to engage in this unlawful practice of requiring carriers waive their regulatory rights to rate transparency under 49 CFR 371.3 as a condition to receive loads from TQL and immediately advise the SBTC in writing no later than May 15, 2023 that it has terminated what we believe is this unlawful and abusive practice so that we may know how to proceed.

Thank you for your anticipated cooperation.

Sincerely,

Laurence Socci, Esq.

cc: Larry Minor@dot.gov