



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE GENERAL COUNSEL**  
Washington, D.C. 20570

March 23, 2017

Molly Dwyer, Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: *NLRB v. Livermore Auto Group, Inc.*, Board  
Nos. 32-CA-163965, 32-CA-169198, 32-CA-  
172327, 32-CA-172872, 32-CA-174891 and 32-  
CA-179232

Dear Ms. Dwyer:

I am enclosing an application of the National Labor Relations Board for enforcement of its order in this case, and a proposed judgment. Respondent expressly consented to the entry of this judgment in a stipulation contained in the record. I am also transmitting the certified record, including the order and the underlying agreement.

Please serve a copy of the application on Respondent, whose address appears on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, S.E.  
Washington, D.C. 20570  
(202) 273-2960

cc & documents to: Service List

## SERVICE LIST

### RESPONDENT'S COUNSEL:

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### CHARGING PARTY COUNSEL:

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### REGIONAL DIRECTOR

Valerie Hardy-Mahoney  
National Labor Relations Board  
Oakland Federal Bldg.  
1301 Clay Street, Rm. 300N  
Oakland, CA 94612-5224

### RESPONDENT:

Steve Lowery, Fixed Opps Director  
Livermore Auto Group, Inc.  
2266 Kitty Hawk Rd.  
Livermore, CA 94551-9562

Phone: (925) 294-7700  
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### CHARGING PARTY:

Jesse Juarez  
East Bay Automotive Machinists Lodge  
No. 1173, District Lodge 190  
10260 MacArthur Blvd.  
Oakland, CA 94605-5143

Phone: (925) 687-6421  
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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
: No.  
Petitioner :  
v. : Board Case Nos.:  
: 32-CA-163965, 32-CA-169198,  
LIVERMORE AUTO GROUP, INC. : 32-CA-172327, 32-CA-172872,  
: 32-CA-174891, 32-CA-179232  
Respondent :

APPLICATION FOR ENFORCEMENT OF AN ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD  
UPON STIPULATION OF THE PARTIES FOR CONSENT JUDGMENT

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (the “Board”), pursuant to Section 10(e)  
of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies  
to this Court for enforcement of its order against Livermore Auto Group, Inc.

(“Respondent”), issued in Board Case Nos. 32-CA-163965, 32-CA-169198, 32-CA-  
172327, 32-CA-172872, 32-CA-174891 and 32-CA-179232, on March 15, 2017.

The Board is entitled to enforcement because Respondent has expressly consented to  
entry of this judgment in a stipulation that Respondent entered into during the  
proceedings before the Board. In support, the Board shows:

**A. Jurisdiction of this Court**

This Court has jurisdiction over this application under Section 10(e) of the Act  
(29 U.S.C. § 160(e)). Venue is proper in this Circuit because the activities giving rise

to this proceeding occurred in California. The Board's final order issued on March 15, 2017.

**B. The Respondent Entered into a Stipulation  
Providing for Entry of an Order by the  
Board and a Consent Judgment by the Court**

1. The Board entered an order against Respondent pursuant to a stipulation authorizing the Board to enter an order embodying its terms. The Board's order does not vary from those terms.

2. Paragraph VII of the stipulation authorized the Board to apply to an appropriate U.S. Court of Appeals for a judgment enforcing the Board's order, and provided that Respondent "waives all defenses to the entry of the judgment . . . ."

3. In support of this application, the Board is certifying and filing with this Court the record of proceedings before the Board, including the pleadings, stipulation, findings of fact, and order of the Board.

WHEREFORE, the Board respectfully requests that the Court, after serving a copy of this application upon Respondent, enter a consent judgment enforcing the Board's order in full. A copy of the proposed consent judgment is attached.

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 23rd day of March, 2017



NATIONAL LABOR RELATIONS BOARD

v.

LIVERMORE AUTO GROUP, INC.

**ORDER**

Livermore Auto Group, Inc., Livermore, California, its officers, agents, successors and assigns, shall

1. Cease and desist from

- (a) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees at its Livermore, California facilities by making changes related to their wages, hours, and other terms and conditions of employment without first providing appropriate notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or without first bargaining with the Union to an overall good-faith impasse for an initial collective-bargaining agreement.
- (b) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees at its Livermore, California facilities, by failing to provide, or to timely provide, to the Union requested information that is relevant and necessary for the Union to perform its duties as the exclusive collective-bargaining representative of the unit employees, or by failing to timely inform the Union that requested relevant information does not exist.
- (c) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees at its Livermore, California facilities, by bypassing the Union and dealing directly with employees in the unit by meeting with and soliciting them to enroll in the New Unit Healthcare Plans.
- (d) In any like or related manner interfering with, restraining or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request by East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO, prospectively rescind any or all of the changes referred to below and return to the status quo ante; however, as indicated below in paragraphs 2(a)(2), 2(a)(3), and 2(c), this Order shall not be construed as permitting the Union to demand cancellation of any portion of any increase in unit employee compensation which is compelled by California state law:

- (1) The Single-Employee 40-Hour Workweek Guarantee granted to unit employee Ken Latrelle about May 2015;
- (2) The New Unit Pay Plan given to all unit employees on October 1, 2015; however, this portion of the Order should not be construed as requiring cancellation of any increase in unit employee compensation received as a result of this unilateral change which was compelled by California State Bill AB-1513;
- (3) The Hourly-to-Flat Rate Change and the Wage Increase from \$19.00 to \$23.00 per hour granted to unit employee Brad Lovell about October 21, 2015; however, this portion of the Order should not be construed as requiring cancellation of any increase in unit employee compensation which is compelled by state minimum wage requirements;
- (4) The Initial Wage Rate of \$35.00 per hour and the Initial Hourly Plus Flat Rate Production Bonus granted to former unit employee Thai Ly upon his rehire about October 21, 2015; however, this remedy will not be required if former unit employee Thai Ly is no longer employed by the Respondent;
- (5) The New Unit Healthcare Plans. This portion of the Order would require the Respondent, at the Union's request, to return to the status quo ante and reinstate the healthcare benefits provided to unit employees under the Three Kaiser Plans at the 2015 plan rates, and/or to provide unit employees with a substantially equivalent plan if one or more of the Three Kaiser Plans no

longer exists; and make unit employees whole for any losses they may have suffered as a result of the unilateral implementation of the New Unit Healthcare Plans, including increased co-pays, out-of-pocket expenses, and/or increased monthly premium contributions deducted from their pay over and above the amounts such employees paid in 2015 to ensure that such employees receive for their 2016 healthcare plan the same level of coverage at the same rate that they previously paid for the effective dates of the 2016 healthcare plan plus interest, if any, in amounts to be determined by evidence presented to Region 32's Compliance Officer. Within 14 days of service by the Region, the Respondent will notify all unit employees, in writing, that they are entitled to submit proof of and claim reimbursements (including interest) for any increased co-pays, out-of-pocket expenses, and/or increased monthly premium contributions for the effective dates of the 2016 healthcare plan year plus interest, if any, that they have incurred as a result of the Respondent's unilateral changes in their health insurance coverage for the 2016 healthcare plan year. In its written communication, the Respondent will inform unit employees that they have 30 days from the date of that communication to submit any such claims to Region 32's Compliance Officer by mailing those claims to: Paloma Loya, Compliance Officer, Region 32, National Labor Relations Board, 1301 Clay Street, Suite 300N, Oakland, CA 94612-5224. The Respondent will forward a copy of this written communication to Region 32's Compliance Officer at Paloma.Loya@nlrb.gov.

- (b) Upon request by the Union, bargain collectively with the Union regarding each of the unilateral changes set forth above in paragraph 2(a), including the Single-Employee 40-Hour Workweek Guarantee granted to unit employee Ken Latrelle, the New Unit Pay Plan given to all unit employees on October 1, 2015, and the Hourly-to-Flat Rate Change and Wage Increase granted to Brad Lovell, until it reaches an agreement or an overall good faith impasse for an initial collective-bargaining agreement.
- (c) Upon request by the Union, bargain collectively with the Union regarding the \$20 Hourly Plus Flat Rate Production Bonus granted to new unit employees Joseph Silva, Kyle Paradiso, Juan Cruz and David

Koehler, upon their respective dates of hire; and bargain collectively with the Union regarding the prospective wage rates and/or rate of pay and/or flat rate plus production bonus for new unit employees, including Joseph Silva, Kyle Paradiso, Juan Cruz and David Koehler; this remedy will not require the Respondent to bargain collectively with the Union with respect to unit employees Kyle Paradiso and David Koehler if unit employees Kyle Paradiso and David Koehler are no longer employed by the Respondent; this portion of the Order does not require rescission of the \$20 Hourly Plus Flat Rate Production Bonus granted to new unit employees Joseph Silva, Kyle Paradiso, Juan Cruz and David Koehler and return to the status quo ante because rescission would necessarily result in the new unit employees being paid a wage rate and/or rate of pay below the minimum which is compelled by state minimum wage requirements.

- (d) To the extent it has not done so already, within 14 days of the Board's Order, make unit employees whole for any losses incurred as a result of the Respondent's unilateral changes detailed above in paragraph 2(a).
- (e) Provide to the Union, to the extent the Respondent has not already done so, or unless the Union no longer seeks it, the Calculation Information, the Pay Statements Information, the Healthcare Plans Renewal Sheet Information, the Employee Efficiency Report Information, and the New Unit Healthcare Plan Information.
- (f) Within 14 days of service by the Region, post at its Livermore, California facilities copies of the attached Notice marked "Appendix A." Copies of the Notice, on forms provided by Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Responsible steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 2015.

- (g) Within 30 days of service by the Region, the Respondent will hold a meeting or meetings for the unit employees at its Livermore, California facilities, scheduled to ensure the widest possible attendance on each shift, at which the Respondent's Vice-President Jeff Pauley will read the Notice to Employees on work time in the presence of a Board Agent. Alternatively, a Board Agent will read the Notice to Employees at such meetings in the presence of Jeff Pauley and Steve Lowery. The Respondent will provide an opportunity for a representative of the Union to be present for the reading of the Notice to Employees. The date and time(s) of the reading must be approved by the Regional Director. The announcement of the meeting(s) will be in the same manner the Charged Party normally announces meetings and must be approved by the Regional Director.
  
- (h) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## **APPENDIX A**

### **NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER  
AND A CONSENT JUDGMENT OF ANY APPROPRIATE  
UNITED STATES COURT OF APPEALS**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

Form, join, or assist a union;  
Choose representatives to bargain with us on your behalf;  
Act together with other employees for your benefit and protection;  
Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** fail to bargain in good faith with East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) in the following unit (the unit):

All full-time and regular part-time technicians and lube technicians employed by Respondent at its facilities located at 2266 Kitty Hawk Road and 2232 Kitty Hawk Road, in Livermore, California; excluding all other employees, service writers, parts persons, sales persons, managers, office clerical employees, guards, and supervisors as defined by the Act.

**WE WILL NOT** bypass the Union and deal directly with our employees in the unit by meeting with employees to enroll them in any new health care plan without first obtaining the consent of the Union or without first bargaining to agreement or good faith impasse with the Union over offering any such new healthcare plan and the effects of offering any such new health care plan.

**WE WILL NOT**, without providing the Union with prior notice and the opportunity to bargain to agreement or impasse, unilaterally implement new healthcare plans for unit employees and unilaterally change premium rates paid by unit employees.

**WE WILL NOT**, without providing the Union with prior notice and the opportunity to bargain to agreement or impasse, unilaterally implement a new pay plan for unit employees ostensibly to comply with California State Bill AB-1513.

**WE WILL NOT**, without providing the Union with prior notice and the opportunity to bargain to agreement or overall impasse, make any unilateral changes in unit employees' terms and conditions of employment, including unilaterally changing a unit employee's rate of pay from hourly to flat rate and/or unilaterally granting a unit employee a pay raise.

**WE WILL NOT**, without providing the Union with prior notice and the opportunity to bargain to agreement or overall impasse, make any unilateral changes in unit employees' terms and conditions of employment, including unilaterally granting a unit employee a 40-hour workweek guarantee.

**WE WILL NOT**, without providing the Union with prior notice and the opportunity to bargain to agreement or overall impasse, exercise discretion in setting a re-hired unit employee's initial wage rate and/or by determining that this employee be paid hourly plus flat rate production bonus rather than a flat rate or an hourly wage rate.

**WE WILL NOT**, without providing the Union with prior notice and the opportunity to bargain, exercise discretion in setting the initial wage rate for newly hired unit employees and/or in determining that new unit employees will be paid hourly plus flat rate production bonus rather than a flat rate or an hourly rate.

**WE WILL NOT** fail and refuse to provide, or unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative, including the following information: information relating to how we have computed unit employee wages since July 1, 2014; information regarding how we kept track of hours worked and jobs performed by unit employees since July 1, 2014; copies of all pay statements for unit employees since July 1, 2015; a copy of the healthcare plans renewal sheet; information regarding unit employee efficiency in the six months prior to November 30, 2015; the current wage rates for

unit employees; an updated list of master technicians; and a copy of the new healthcare plans that we offered to employees starting about January 1, 2016.

**WE WILL NOT** refuse to bargain collectively with the Union by failing to timely inform it that requested relevant information regarding the new unit employee pay plan does not exist.

**WE WILL**, if requested by the Union, rescind the Kaiser, Sutter, and Anthem Blue Cross healthcare plans that we made available to unit employees as a health insurance option in 2015 and **WE WILL** bargain to agreement or impasse with the Union regarding replacement plans.

**WE WILL**, if requested by the Union, make diligent and reasonable efforts to enable unit employees who, effective January 1, 2016, dropped out of Kaiser healthcare plans they were enrolled in in 2015 and who wish to re-enroll in those plans, to do so, and for any employees who are able to re-enroll in these plans, **WE WILL** pay any additional premium contributions over and above the amounts such employees paid in 2015 necessary to ensure that such employees receive the same level of coverage and at the same rate that they previously had, for the effective dates of the 2016 healthcare plans.

**WE WILL** make unit employees whole for any losses suffered or expenses incurred as a result of their dropping out of the Kaiser healthcare plans that they were previously enrolled in in 2015 and their enrollment in the new Kaiser, Sutter, and Anthem Blue Cross healthcare plans that we made available to them as an option for 2016.

**WE WILL**, if requested by the Union, rescind the new pay plan for unit employees implemented on October 1, 2015 without bargaining with the Union, to the extent that it does not cancel any increase in unit employee compensation which was compelled by California State Bill AB-1513.

**WE WILL**, if requested by the Union, rescind the grant of a guaranteed 40-hour workweek to a unit employee; **WE WILL** rescind a change to a unit employee's rate of pay from hourly to flat rate; and **WE WILL** rescind a unit employee's wage increase.

**WE WILL** bargain with the Union to agreement or impasse before again setting the initial wage rates and rates of pay granted to newly hired unit employees.

**WE WILL** bargain in good faith with the Union as the collective-bargaining representative of our unit employees with respect to terms and conditions of employment, including unit employee pay plans, unit employee workweek guarantees, unit employee wage rates, and unit employee healthcare plan benefits and rates.

**WE WILL** make unit employees whole for any losses incurred as a result of unilateral changes we made without providing notice and/or opportunity to bargain to the Union.

**WE WILL** provide to the Union, unless already provided or the Union no longer seeks it, information relating to how we have computed unit employee wages since July 1, 2014; information regarding how we kept track of hours worked and jobs performed by unit employees since July 1, 2014; copies of all pay statements for unit employees since July 1, 2015; a copy of the healthcare plans renewal sheet; information regarding unit employee efficiency in the six months prior to November 30, 2015; the current wage rates for unit employees; an updated list of master technicians; and a copy of the new healthcare plans that we offered to employees starting about January 1, 2016.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

### **LIVERMORE AUTO GROUP, INC.**

The Board's decision can be found at [www.nlr.gov/case/32-CA-163965](http://www.nlr.gov/case/32-CA-163965) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 : No.  
 :  
 Petitioner :  
 v. : Board Case Nos.:  
 : 32-CA-163965, 32-CA-169198,  
 LIVERMORE AUTO GROUP, INC. : 32-CA-172327, 32-CA-172872,  
 : 32-CA-174891, 32-CA-179232  
 Respondent :

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board, Series 8 (29 C.F.R.), certifies that the documents annexed hereto constitute the entire record of a proceeding had before the Board and known upon its records as Case Nos. 32-CA-163965, 32-CA-169198, 32-CA-172327, 32-CA-172872, 32-CA-174891 and 32-CA-179232.

The attached documents are as follows:

<u>Date</u>	<u>Document Description</u>	<u>Pages</u>
03/15/17	Decision and Order, <i>Livermore Auto Group, Inc. and East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO</i> , Case Nos. 32-CA-163965, 32-CA-169198, 32-CA-172327, 32-CA-172872, 32-CA-174891 and 32-CA-179232	9

<u>Date</u>	<u>Document Description</u>	<u>Pages</u>
12/29/16	Formal Settlement, <i>Livermore Auto Group, Inc. and East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO</i> , Case Nos. 32-CA-163965, 32-CA-169198, 32-CA-172327, 32-CA-172872, 32-CA-174891 and 32-CA-179232 w/exhibits	95

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being duly authorized, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 23rd day of March, 2017.

/s/ Gary Shiners  
 Gary Shiners  
 Executive Secretary  
 NATIONAL LABOR RELATIONS BOARD

(seal)

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
: No.  
Petitioner :  
v. : Board Case Nos.:  
: 32-CA-163965, 32-CA-169198,  
LIVERMORE AUTO GROUP, INC. : 32-CA-172327, 32-CA-172872,  
: 32-CA-174891, 32-CA-179232  
Respondent :

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for enforcement, proposed judgment, certificate of record and mediation questionnaire, in the above case, has this day been served by first class mail upon the following parties at the address listed below:

John P. Boggs Esq.  
Fine, Boggs & Perkins, LLP  
80 Stone Pine Rd. Ste. 210  
Half Moon Bay, CA 94019

Steve Lowery, Fixed Opps Dir.  
Livermore Auto Group, Inc.  
2266 Kitty Hawk Rd  
Livermore, CA 94551-9562

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 23rd day of March, 2017

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

LIVERMORE AUTO GROUP, INC.

Respondent

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ITEMS SHOWN ON BOARD'S CERTIFICATE  
OF RECORD ARE CONTAINED HEREIN