# EXHIBIT 1000-1

## NORTH CAROLINA DEPARTMENT OF LABOR
## STANDARDS AND INSPECTIONS
### EMPLOYMENT DISCRIMINATION BUREAU

DATE: 06/13/09

TO: File

FROM: Name, Discrimination Investigator

**REPORT OF INVESTIGATION**

FILE NO: ###-##

DATE FILED: 12/28/08

COMPLAINANT: Teddy Jones
123 Main Street
Raleigh, NC 27699

REPRESENTED BY: Self

RESPONDENT: Movers and Shakers Inc.
12 Shaker Lane
Durham, NC 27713

REPRESENTED BY: Self
Owner, Larry Shaker

ALLEGATION: Complainant alleged he was retaliated against by Respondent because he filed a complaint with the NC Dept. of Labor about his wages, which is a protected activity under the provisions of §95-241(a)(1)b of the North Carolina Retaliatory Employment Discrimination Act (REDA).

FINDING: Merit

**SYNOPSIS:**

The complaint was filed on December 28, 2008, approximately one week after termination.

This investigation was initiated based on the timely submission of a written complaint by Teddy Jones (Complainant) alleging that he was retaliated against by Movers and Shakers Inc. (Respondent) for engaging in the protected activity of inquiring about his wages and filing a complaint with the NC Department of Labor (DOL).

**INVESTIGATIVE FINDINGS:**

**Complainant Information and Allegations:**

- Complainant was hired on August 1, 2008 as a truck driver. Complainant was terminated by Larry Shaker on December 20, 2008 around 4:00PM. See Tab B, Phone Interview with Complainant (6/6/09) and Tab C, Complainant's Questionnaire.

- Complainant states he began having issues regarding full payment of his wages within approximately one month of hire. Complainant states that Respondent shorted him approximately 4 hours in September or October 2008. Complainant states he specifically spoke to Larry Shaker, owner, about wage shortages on November 2, 5, and 12, 2008. See Tab B, Phone Interview with Complainant (6/6/09).

- Complainant contacted the Department of Labor's (DOL) Wage & Hour Division on or about December 19, 2008 to report that Respondent was not paying Complainant's wages. See Tab E, Employment Discrimination Bureau Exhibit 1 (W&H report). Complainant alleges that Respondent was aware of this complaint, as he believes that the DOL called Respondent before he was fired on December 20, 2008 to inform Respondent of the complaint. See Tab B, Phone Interview with Complainant (6/6/09).

- Complainant states he was fired in the *afternoon* on December 20, 2008, within hours of Wage & Hour contacting Respondent. Complainant believes he was fired *because* of his complaint to the DOL and not for an anonymous tip about bad driving. See Tab B, Phone Interview with Complainant (6/6/09).

**Respondent's Information and Defense:**

- Respondent admits that Complainant complained about his wages to management, but states that he was not specific as to how he was owed money. Respondent claims Complainant stated that he had been shorted upward of $380, but could not account for hours worked but not paid. See Tab B, Phone Interview with Larry Shaker (6/7/09).

- Respondent denies owing Complainant any money, but paid him $380 after the initiation of

the Wage & Hour investigation in order to make the complaint go away. See Tab B, Phone Interview with Larry Shaker (6/7/09).[1]

- Respondent denies knowing about the DOL Wage & Hour complaint prior to Complainant's termination. Respondent allege they learned about the wage complaint on or around December 26, 2008—6 days after termination. See Tab D, Respondent's Position Statement and Tab B, Phone Interview with Larry Shaker (6/7/09).

    - Respondent points to a letter from the DOL dated December 20, 2008 that was not received by Respondent until December 26, 2008, as proof of when Respondent learned of the wage complaint. See Tab D, Respondent's Position Statement and Respondent's Exhibit 1 (copy of the letter).

- Respondent alleges that Complainant received multiple complaints about his driving while working as a truck driver for them and that Complainant was *fired for those performance issues*. Furthermore, Respondent alleges that Complainant was warned about his poor driving habits. See Tab D, Respondent's Position Statement and Tab B, Phone Interview with Larry Shaker (6/7/09).

    - On August 19, 2008, Respondent received an unsafe driving complaint by an unknown person against Complainant. See Tab D, Respondent's Position Statement. No written warning was provided, though Mr. Shaker says he spoke with Complainant.

    - On September 2, 2008, Complainant was involved in an accident involving power lines, which cost Respondent $10,000 in damages. Complainant received a written warning for this accident and was informed that he may be terminated if he had any more accidents. Complainant was told to stay off the phone while driving. See Tab D, Respondent's Position Statement and Respondent's Exhibit 2 (warning).

    - On or about October 24, 2008, Complainant allegedly plowed through and destroyed a gravel speed bump on the employer's property. No written warning was provided, though Mr. Shaker says he spoke with Complainant. Tab D, Respondent's Position Statement.

    - On October 26, 2008, an owner of another trucking company, Smith Trucking, reported Complainant for poor driving on the road. See Tab D, Respondent's Position Statement. No written warning was provided, though Mr. Shaker says he spoke with Complainant.

    - On October 31, 2008, Respondent alleges they received a driving complaint from Max Trucks against Complainant for his driving. See Tab D, Respondent's Position Statement. No written warning was provided, though Mr. Shaker says he spoke with

1 The Wage & Hour complaint was not substantiated.

Complainant.

- On November 6, 2008, Respondent allegedly received a complaint from Piedmont Trucks saying they believed the state highway patrol was looking for Complainant because of his speeding. See Tab D, Respondent's Position Statement. No written warning was provided, though Mr. Shaker says he spoke with Complainant.

- On December 20, 2008, Respondent allegedly received an anonymous phone call to report Complainant's reckless driving along I-77. See Tab D, Respondent's Position Statement. Respondent has no evidence of this anonymous tip. See Tab B, Phone Interview with Larry Shaker (6/7/09).

- Respondent claims Complainant's driving issues were tolerated for so long because he was one of the most productive employees. He was fast in getting his work done and did the work of at least two employees. Respondent is sorry to have lost Complainant. See Tab B, Phone Interview with Larry Shaker (6/7/09).

- Respondent denies firing Complainant for any wage complaints, but instead states that the anonymous call about Complainant's poor driving was the final straw after a long line of driving issues and that he was terminated solely for his performance. See Tab B, Phone Interview with Larry Shaker (6/7/09).

- Respondent admits to firing Complainant sometime in the afternoon of December 20, 2008, when Complainant reported for his shift.

- Respondent states that he's fired at least one other employee for poor driving habits. (See Tab B, Phone Interview with Larry Shaker (6/7/09) and Tab D, Respondent's Exhibit 3 (2007 termination papers for other employee).

**Complainant's Rebuttal:**

- Complainant denies receiving any verbal or written warnings, with the exception of the September 2, 2008 warning pertaining to his accident. See Phone Interview with Complainant (6/10/09).

**Additional Relevant Facts:**

- A representative from the Wage & Hour Division of the NC DOL contacted Larry Shaker on December 20, 2008 at 8:26 AM to inform him of the complaint filed by Complainant. The discussion was documented by the Wage & Hour employee in a complaint database, and phone records for this DOL employee indicate the time of the call. See Tab E, Employment Discrimination Bureau Exhibits 1 and 2.

- When confronted with the discrepancy between Wage & Hour records and Respondent's

denial of knowledge, Mr. Shaker became flustered and stated that he could not recall the conversation on December 20, 2008 well enough to be certain of what he knew at the time or whether he had spoken with anyone from the DOL. See Tab B, Phone Interview with Larry Shaker (6/12/09).

**ANALYSIS OF ESSENTIAL ELEMENTS:**

**Protected Activity:** Complainant engaged in the protected activity of inquiring about his wages with management and filing a complaint with the NC DOL's Wage & Hour Division.

**Respondent's Knowledge:** Respondent had knowledge of Complainant's protected activity. Respondent admits that Complainant periodically told them that he wasn't being paid what he was owed, but Respondent denied they were aware of Complainant's contact with the NC DOL prior to Complainant's termination. However, Wage & Hour Division records indicate that Respondent was indeed aware of the complaint as of the morning of December 20, 2008, prior to or at the time of termination.

**Adverse Employment Action:** Complainant was fired the afternoon of December 20, 2008.

**Causal Relationship:** Complainant contends that he was fired because of his complaints to management, but more specifically because of his call to the DOL's Wage & Hour Division about his wages. Complainant believes that Respondent learned of his complaint to the DOL on the morning of December 20, 2008, and that Complainant was let go later that day as a result of that complaint. Evidence supports Complainant's allegations.

Though there is no "smoking gun" evidence that proves Respondent fired Complainant solely for the complaint filed with the Wage & Hour Division of the DOL, facts suggest that there is real credibility to Complainant's allegation. During this REDA investigation, Respondent denied knowing about the complaint made to the Wage & Hour Division prior to Complainant's termination. Respondent denied having this knowledge on at least 2 separate occasions--in Respondent's written position statement and again months later during a phone conversation for the REDA investigation. Respondent maintained that they did not learn of the filed complaint until at least a week after termination, sometime around December 26, 2008. However, Wage & Hour records prove that a representative contacted Larry Shaker on December 20, 2008, at 8:26 AM to inform him of the complaint filed against his company. Complainant was terminated at some time in the afternoon on December 20, after that call. So, evidence shows that Respondent did indeed know about the complaint with the DOL as of December 20, 2008, prior to or at the time of termination. Respondent's denial of this knowledge taints their credibility and suggests that Respondent was attempting to hide this information in order to prevent a connection being made between the complaint filing and termination.

Respondent, however, adamantly denies firing Complainant for any wage inquires or his filed complaint with the DOL. Instead, Respondent states that Complainant was fired for poor driving

performance. Respondent received numerous complainants against Complainant regarding his driving habits, and Complainant was specifically noted as being involved in an accident and being the person who plowed through and destroyed a gravel speed bump.

Though these driving complaints taken together may at first appear to be a plausible, legitimate non-discriminatory reason for discharge, this explanation appears to be pretext when considered in light of other evidence. First, Complainant's driving issues began the same month he was hired and continued throughout his employment. Second, Respondent only gave Complainant one written warning during his time of employment—a warning for an accident that cost Respondent almost $10,000 in September 2008. No written warnings were given for any of the driving complaints. Complainant denies ever having been verbally warned. Apparently, Respondent was willing to tolerate these alleged driving issues because Complainant was one of the most productive drivers on staff and got a lot of work done. Respondent actually stated that they were sorry to lose such a productive employee. Continued tolerance for so long suggests that the driving issues weren't that big of a concern and that productivity trumped in Respondent's eyes. So, the fact that Respondent waited until December 20, 2008, the *same* day they received notice of the DOL complaint, to point to Complainant's bad driving record as being problematic is suspicious.

Because these complaints were tolerated all along, it seems that Complainant wasn't fired for the many driving complaints between August and November 2008, but instead was fired for something specific *that happened on December 20, 2008*. Respondent states that this specific event was an anonymous tip that day about Complainant's bad driving. Respondent says the tip was the final straw and that Complainant had finally proven to be a potential liability. However, Respondent has not proven that an anonymous tip was actually received against Complainant that day. What has been proven, instead, is that Respondent became aware of Complainant's wage complaint with the DOL on the morning of December 20, 2008, hours before termination.

The lack of evidence of an anonymous tip, the fact that Respondent had a practice of tolerating Complainant's bad driving in favor of high productivity, and the fact that Respondent denied knowing that a complaint had been filed with the DOL when there is evidence to the contrary, all combine to indicate that Respondent's proposed explanation for termination is a pretext. The fact that stands out among all others is that the DOL notified Respondent of Complainant's wage complaint on the morning of December 20, 2008, and Complainant was fired later that same day with no other *proven* explanation for termination.

In summary, the greater weight of the evidence supports Complainant's claim for retaliatory discharge as a result of his pay inquiries and complaint with the DOL.

**REMEDY:**

Complainant earned $20.00 / hr and worked 40 hrs / wk.
Complainant has been seeking work to no avail since the date of termination.
Complainant received $9,000 in unemployment benefits.
$800 / wk x 25 wks = $20,000 - $9,000 UI = $11,000
**Recommended Damages = $11,000 in back pay**

Recommended damages and the possibility of settlement were discussed with Respondent in the closing conference, but settlement attempts failed.

**DISPOSITION:**

This complaint is closed with Merit and Complainant is being issued a right-to-sue letter. Complainant and Respondent were notified accordingly.