

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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In re FEDEX GROUND PACKAGE)	Cause No. 3:05-MD-527-RM
SYSTEM, INC., EMPLOYMENT)	(MDL 1700)
PRACTICES LITIGATION)	
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-----)	
THIS DOCUMENT RELATES TO:)	
)	
<i>Theodore Fleming, Jr., et al. v.</i>)	
<i>FedEx Ground Package System, Inc.,</i>)	
Civil No. 3:05-CV-00593-RLM-CAN (MS))	
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AMENDED CLASS ACTION COMPLAINT

Come now the Plaintiffs, THEODORE FLEMING, JR. and JEFFREY CARTER, individually and on behalf of a Class of all other similarly situated FedEx delivery driver employees who were wrongfully Classified as independent contractors, and file this Amended Class Action Complaint against FEDEX GROUND PACKAGE SYSTEM, INC. (hereinafter referred to as “Defendant” or “FEG” or “FedEx Ground”), and in support thereof, the Plaintiffs state as follows:

PARTIES

1. The Plaintiffs, Theodore Fleming, Jr. and Jeffrey Carter, are Mississippi residents who are currently employed by FEG as delivery drivers. The Plaintiffs are either currently Classified as a Single Work Area driver (hereinafter “SWA”) or were previously Classified as an SWA during the Class Period. The Plaintiffs bring this action individually and on behalf of all

Mississippi FEG SWA drivers who, according to the allegations of this Complaint, have been improperly Classified as independent contractors.

2. Defendant FEG and its division FedEx Home Delivery (“FHD”), is a foreign corporation organized and existing under the laws of Delaware, with its principal place of business in Pittsburgh, Pennsylvania. Defendant employs thousands of drivers to pick up and deliver packages for its customers throughout the United States. At all times relevant to this Complaint, FedEx Ground was doing business in the State of Mississippi.

3. At all relevant times, Defendant FedEx Ground served as the sponsor, within the meaning of ERISA §§ 3(16), 29 U.S.C. §§ 1002(16), and administrator of several employee benefit pension and welfare plans established under ERISA, including, but not limited to, Defendant FedEx Ground Package System, Inc. and Certain Affiliates Wealth Accumulation 401(k) Plan; Group Life and Supplemental Life Plan For Employees Of FedEx Ground Package System, Inc.; Ground Benefits Plus Short-Term Disability Plan; Group Long Term Disability Plan For The Employees of FedEx Ground Package System, Inc.; FedEx Ground Package System, Inc. Medical, Dental And Vision Care Plan; and the Dependent Care Account Of FedEx Ground Package System, Inc. (collectively, the “Plan Defendants”).

JURISDICTION & VENUE

4. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 because complete diversity exists among the parties and the amount in controversy exceeds seventy five thousand dollars (\$75,000), exclusive of interests and costs. Jurisdiction is also proper under 28 U.S.C. § 1331 because there are federal questions to be decided. Specifically, claims asserted by the Plaintiffs and Plaintiff Class arise under the Employee Retirement Income Security Act. Venue

is proper in this Court under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to this Complaint occurred in Mississippi.

CLASS DEFINITION

5. This Class Action is brought on behalf of Mississippi delivery drivers currently or formerly employed by FEG who are employees under Mississippi common and statutory law, but who were improperly Classified as independent contractors by FEG. The Class is defined as follows:

All Mississippi residents with single work area delivery routes who delivered packages in Mississippi for FedEx Ground Package System, Inc. between July 27, 1999 to July 27, 2005, who were Classified by FedEx Ground Package System, Inc. as independent contractors.

6. The Class is limited in scope and this suit seeks to compensate FEG employees who were deprived of benefits and compensation because of the improper independent contractor Classification, and other relief appropriate for the Class.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

7. FEG is a national package delivery corporation. The business conducted by FEG includes package pick-up, sorting and delivery to its nationwide and international customer base. The Plaintiffs and Plaintiff Class play an essential role in FEG's business, and without delivery personnel, the FEG would not be able to conduct business.

8. The Plaintiffs and Plaintiff Class Members were hired by FEG to perform tasks involving package delivery to Mississippi locations. In order to obtain such employment, the Plaintiffs and Plaintiff Class were required to sign a lengthy form contract, drafted by FEG, entitled the "Pick-up and Delivery Contractor Operating Agreement" (hereafter referred to as "Agreement" or "OA"). This Agreement improperly characterizes FEG employees as independent contractors.

9. The Agreement signed by the SWAs outline numerous controls being asserted by FEG over the work being performed by the Plaintiffs and Plaintiff Class. The OA is an adhesion, take-it-or-leave-it, contract forced upon the Plaintiffs and Plaintiff Class if they wish to be employed by FEG as delivery drivers, as signing the Agreement is a condition of employment. The Plaintiffs and Plaintiff Class have no bargaining power, and are without any authority to suggest or negotiate any changes or additions. Although the OA clearly sets out an employer-employee relationship, dominated by the controls of FEG, the Agreement improperly Classifies the Plaintiffs and Plaintiff Class Members as independent contractors.

10. FEG retains almost absolute control over the work being performed by the Plaintiffs and Plaintiff Class. The Plaintiffs and Plaintiff Class Members are assigned a single delivery route by FEG. The specific geographic delivery area is determined solely by FEG. The Plaintiffs and Plaintiff Class are told what packages to deliver each day, and are only allowed to work out of FedEx delivery terminals.

11. The Plaintiffs and Plaintiff Class are employed solely by FedEx, required to wear FedEx uniforms, forced to display FedEx logos, required to display "FedEx" prominently on their vehicles, and forced to take orders from the supervisory personnel at the terminals. In fact, the drivers have no discretion, and instead, are bound to do exactly what they are told by the FedEx terminal supervisory personnel. Furthermore, FEG imposes numerous requirements on the drivers, which involve penalties if the policies and procedures are not followed to the satisfaction of FEG.

12. FEG imposes numerous requirements on the Plaintiffs and Plaintiff Class, including: (1) Minimum per-day work hours requirement; (2) The requirement that they place FedEx logos on the delivery vehicles; (3) The requirement that they purchase and wear FedEx

uniforms; (4) Prohibition from exiting FedEx premises without management approval; (5) Requirement to purchase a delivery vehicle, which must meet the specifications, and be approved by, FEG; (6) Required to obtain FedEx approved vehicle insurance; (7) Requirement to clock in daily; (8) Requirement to file reports daily; (9) Requirement to purchase numerous delivery-related items directly from FedEx; (10) Not allowed to deny acceptance of any packages; (11) Mandated to perform their responsibilities and conduct themselves according to rules and regulations promulgated by FEG; (12) Subject to disciplinary action by FEG if the FedEx rules and regulations were not followed to the satisfaction of FEG; (13) Requirement to pay for virtually all vehicle-related expenses, including gas and fees; (14) Requirement to maintain workers' compensation insurance; (15) Requirement to maintain liability insurance; (16) Requirement to rent and use FedEx mandated communications equipment; (17) Requirement to submit daily shipping documents; (18) Requirement to abide by whatever work-related changes FedEx deems appropriate; and (19) Requirement to abide by numerous other FedEx rules and regulations.

13. Compensation for the Plaintiffs and Plaintiff Class is set by FEG, with the drivers having no bargaining power or discretion in such compensation matters. FedEx also unilaterally decides the fees charged to the customers for the work performed by the Plaintiffs and Plaintiff Class.

14. Unlike traditional independent contractor agreements, the Agreement specifically prohibits drivers from working for other delivery companies. Furthermore, FedEx prohibits the Plaintiffs and Plaintiff Class from hiring any help, without the approval of FedEx. The Agreement specifically precludes any authority of the driver in setting the terms and provisions of the contract. At the same time, the Agreement places almost absolute discretion in the hands

of the FEG regarding the drivers' performance of their specified tasks. In essence, the drivers are required to abide by and consent to all FedEx terms, but have no power to suggest or bargain for any terms that would be advantageous to the driver.

15. Although the drivers have no discretion or bargaining power with regard to the alleged "independent contractor" agreement, FEG retains the following controls and powers: (1) Control over the approval of the drivers' vehicles; (2) Control over the sale or purchase of any delivery vehicles; (3) The power to inspect vehicles to assure the satisfaction of FEG; (4) The power to remove a vehicle from delivery service; (5) Control over the approval of any driver or assistant; (6) Control over what packages are assigned for delivery; (7) Control over the number of packages assigned; (8) Control over what delivery routes the drivers are assigned; (9) Control over reassignment of delivery routes, regardless of the opinion of the drivers; (10) The power to terminate the Agreement, with only thirty days' notice; (11) The power to terminate the Agreement if FedEx makes a determination that the Agreement was violated in any way; (12) Control over what equipment will be used; (13) Control over what uniforms will be worn; (14) Control over what logos will be displayed by the drivers; (15) Control over customer service standards; (16) The power to force drivers to perform certain deliveries at certain times; (17) The power to withhold compensation for certain expenses; (18) The power to force the drivers to purchase numerous items; and (19) Control over what papers were utilized and how the documents were filled out by the drivers.

16. The Plaintiffs and Plaintiff Class are told by the Defendant when to work, where to work, and how to work. The controls are asserted by FedEx through the voluminous powers and restrictions included in the Agreement, as well as unwritten policies and rules that are implicitly imposed upon all drivers. FEG monitors and controls each and every delivery stop

along the drivers' routes with highly advanced tracking systems. FEG interrogate drivers about the lengths of stops, if FEG determines the stops to be too lengthy. FEG also imposes oppressive fines upon drivers if the drivers arrive at stops a few minutes behind schedule, or even a few minutes before schedule. These excessive fines are so burdensome that drivers have no choice but to follow the mandates of FEG down to the minute. FEG also allow very little time between stops, which prevents drivers from taking needed breaks. FEG also rearranges the route regardless of the drivers' opinions, while retaining the power to force drivers to stay late to pick up and deliver packages after normal business hours. The drivers are also required to purchase vehicles and equipment, including scanners and other FedEx materials, many of which are required to be purchased or rented directly from FedEx. FEG maintains strict equipment specification compliance policies, and drivers are pulled from their routes if FEG notice even inconsequential or cosmetic problems with the equipment. The extensive controls allow FEG to refuse breaks and overtime pay to the drivers, while decreasing the capital costs that are necessary to maintaining delivery routes. Because of the substantial control asserted by FEG over the Plaintiffs and Plaintiff Class, Mississippi common and statutory law defines the Plaintiffs and Plaintiff Class as employees, not independent contractors.

17. FEG grants individuals deemed "employees" of the company substantial and wide-ranging benefits and compensation, which are denied to the Plaintiffs and Plaintiff Class Members. For instance, FedEx Corporation drivers are deemed employees, unlike the drivers for FEG. The denied benefits include health insurance, life insurance, accident insurance, disability plans, stock-purchase options, travel reimbursements, retirement savings plans, holiday pay, sick day pay, paid leave, and numerous other benefits and compensation that are denied to the drivers. Plaintiffs and Plaintiff Class have further incurred numerous expenses that would have been

reimbursed if FEG had properly Classified the Plaintiffs and Plaintiff Class as employees, and not independent contractors.

18. FEG misrepresents the nature and scope of the employment, as well as the benefits and responsibilities of the Plaintiffs and Plaintiff Class. Numerous hidden fees, equipment costs, and fines are concealed by Defendant prior to execution of the Agreement. After the Agreement is entered into, SWA drivers must purchase extremely expensive delivery vehicles, which must meet the extensive specification requirements of FedEx.

19. The FedEx scheme of misclassification from which this suit arises is lucrative and beneficial to FEG, at the expense of the SWA drivers. The Plaintiffs and Plaintiff Class are subject to extreme controls by FEG, which disallow any additional opportunities that a true independent contractor would have, while at the same time stripping the Plaintiffs and Plaintiff Class of the substantial benefits and compensation that FedEx pays to its other workers that are actually Classified as employees.

CLASS ALLEGATIONS

20. The relief sought consists of a combination of declaratory, injunctive, and monetary relief, all of which is a direct and proximate result of the Defendant's conduct toward the Plaintiffs and Plaintiff Class. This case is appropriate for certification under Rule 23(a) of the Federal Rules of Civil Procedure because: (1) The Class is so numerous that joinder of all members is impracticable; (2) There are questions of law or fact common to the Class; (3) The claims of the Class representatives are typical of the claims of the Class; and (4) the representative parties will fairly and adequately protect the interests of the Class.

21. This case is appropriate for certification under Rule 23(a)(1)(A) of the Federal Rules of Civil Procedure because inconsistent or varying adjudications among individual members would establish incompatible standards of conduct for the party opposing the Class.

22. This case is appropriate for certification under Rule 23(b)(2) of the Federal Rules of Civil Procedure since the Defendant has acted on grounds generally applicable to the Class members, thereby making appropriate the injunctive, declaratory and/or monetary relief with respect to the Class as a whole. The relief sought is primarily declaratory and/or injunctive in nature, and the monetary damages being sought are incidental or ancillary to the declaratory and injunctive relief. Final relief of a declaratory and injunctive nature, protecting the interests of the Class Members and settling the legality or illegality of the Defendant's conduct with respect to the Class as a whole, is appropriate under Rule 23(b)(2).

23. This case is also appropriately certified under Federal Rule 23(b)(3) of the Federal Rules of Civil Procedure since questions of law or fact common to the Class Members predominate over individual issues, and Class relief is superior to any other form of relief, in order to fairly and efficiently adjudicate the matter presently before the Court.

24. Questions of law or fact common to the Class Members, which predominate over individual questions, include the following:

- a. Whether Plaintiffs and Plaintiff Class Members were improperly Classified as independent contractors, instead of employees;
- b. Whether Plaintiffs and Plaintiff Class Members are entitled to obtain the compensation, reimbursements and benefits that they would have received if they had been Classified as employees;
- c. Whether the Defendant has failed to provide workers' compensation insurance benefits, as required by Mississippi law;
- d. Whether the Defendant has failed to provide unemployment insurance, as required by Mississippi law;

- e. Whether the Defendant has intentionally and/or negligently misrepresented the employment status, scope, benefits, and earnings potential to the Class Members;
- f. Whether injunctive relief is appropriate as to the Class as a whole; and
- g. Whether declaratory relief is appropriate in order to clarify the legal rights and relationships affecting the Class as a whole.

25. Class certification is appropriate under Rules 23(b)(1)(A), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure.

CAUSES OF ACTION

COUNT I: **VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT**

26. Plaintiffs adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

27. The Defendant wrongfully Classified Plaintiffs and the Plaintiff Class as employees under the Employee Retirement Income Security Act (ERISA). Plaintiffs and Plaintiff Class were wrongfully denied retirement benefits and vacation time, among other benefits, and Plaintiffs and Plaintiff Class are entitled to receive compensation for the wrongfully withheld benefits under ERISA.

COUNT II: **FRAUD**

28. Plaintiffs adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

29. Plaintiffs and the Class they represent were purportedly hired by Defendant to work as “independent contractors” pursuant to the terms of the OA described above. In fact, Defendant knew or should have known, at all times, that the “independent contractor” classification in the Operating Agreement was improper and that Plaintiffs and all persons

similarly situated were “employees” entitled to the benefits and protections of all laws enacted for employees. Plaintiffs are informed, believe and on that basis allege, that through the OA Defendant intentionally misled Plaintiffs and the Class they represent as to their employment status, or made such representations to Plaintiffs and Plaintiff Class members recklessly and/or negligently, and deliberately concealed from and/or failed to disclose to the pick-up and delivery drivers the extra contractual sources (including but not limited to the FedEx Ground Manual, Operation Management Handbook and Settlement Manual, other policies and secret driver files described above) that defined the employment relationship between Plaintiffs and Defendant, all for the purpose of realizing unjust profits from Plaintiffs’ work and/or to avoid paying for its operating costs and payroll taxes to increase its competitiveness.

30. At all material times, Defendant either knew, or should have known, that the material representation made to Plaintiffs in the OA concerning their employment status, and the concealment and/or non-disclosure of material facts to Plaintiffs concerning their employment status and Plaintiffs’ corresponding obligation to assume responsibility for all of their “own” employment-related expenses including but not limited to purchasing or leasing, operating and maintaining expensive trucks were false and fraudulent.

31. At all material times, Defendant intended to and did induce Plaintiffs and the Class they represent to reasonably and justifiably rely to their detriment on the false and fraudulent representations made to them by Defendant in the OA concerning their employment status and obligation to assume responsibility for all of employment related expenses including but not limited to purchasing or leasing, operating and maintaining expensive trucks and suffered damage as a direct and proximate result.

32. By its aforesaid conduct, Defendant is guilty of oppression, fraud and malice in violating Plaintiff rights and protections guaranteed by Mississippi law and other applicable law.

COUNT III:
RESCISSION OF OPERATING AGREEMENT

33. Plaintiffs adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

34. Despite the express terms of the Operating Agreement, Plaintiffs' relationship with FEG satisfies every aspect of the test for employment, and not for independent contractor status.

35. FEG controls virtually every aspect of the Plaintiffs' work and earnings, as set forth in the general allegations hereof at paragraphs 6 through 18.

36. Despite this control and the actual status of the drivers as employees, FEG mischaracterizes the Plaintiffs as independent contractors. As a result, these drivers must pay substantial sums of their own money for work-related expenses, including but not limited to the purchase or lease of vehicles meeting company specifications, and all costs of operating, insuring and maintaining those vehicles.

37. The Operating Agreement illegally and unfairly advantages FEG, by mischaracterizing the status of the Plaintiffs in that FEG evades employment related obligations, such as social security contributions, workers' compensation coverage, and state disability and unemployment compensation, illegally shifting the expense of workers' compensation coverage and other expenses to Plaintiffs.

38. The Operating Agreement between FEG and each Plaintiff and member of the Class is void as against public policy and therefore unenforceable, as failing to recognize the

employment status of the Plaintiffs and the Class Members, and therefore denying them the legally cognizable benefits of employment.

39. The Operating Agreement between FEG and each Plaintiff is an unconscionable contract of adhesion, which is unenforceable as contrary to the public interest, policy and law.

40. The Operating Agreement illegally shifts the burden of certain costs that an employer must pay.

41. While acting on the direct instruction of FEG and discharging their duties for FEG, Plaintiffs and the Class Members incurred expenses for, *inter alia*, the purchase or lease, maintenance, operating costs and adornment of vehicles; insurance; and uniforms. Plaintiffs and the Class Members incurred these substantial expenses as a direct result of performing their job duties.

42. By misclassifying its employees as “independent contractors,” and further by contractually requiring those employees to pay FEG’s own expenses, FEG has been unjustly enriched.

43. As a direct and proximate result of FEG’s conduct, FEG has received substantial benefits to which it had no entitlement, at Plaintiffs and the Class Members’ expense, including lost profits, self-employment taxes, premiums for insurance to replace workers compensation and disability benefits, business expenses, compensation of replacement workers, and other expenses.

44. Plaintiffs are entitled to compensation for all of the business expenses they were illegally required by FEG to bear, for all of the employment taxes, unemployment compensation and workers compensation the FEG should have but did not pay, and Plaintiffs are entitled to the quantum meruit value of their services as employees.

COUNT IV:
CONSTRUCTIVE TRUST & OTHER EQUITABLE RELIEF

45. Plaintiffs adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

46. As a result of the denial of benefits, reimbursements and compensation to the Plaintiffs and Plaintiff Class, along with the facts alleged above, equity requires that a constructive trust be established over the unjust profits retained by the Defendant. The Defendant should be ordered to disgorge the rightful portion of the profits that should have been paid to the Plaintiff and Plaintiff Class in the form of compensation, reimbursements and benefits. Additionally, Plaintiffs pray for such other equitable relief as this Court deems appropriate.

COUNT V:
INJUNCTIVE RELIEF

47. Plaintiffs adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

48. If action is not taken by this Court, the Defendant will continue to mischaracterize and misclassify Mississippi FedEx delivery drivers as “independent contractors,” continuing to refuse to compensate the Plaintiffs and Plaintiffs Class for the benefits, reimbursements, and compensation that is owed to the Plaintiffs and Plaintiff Class. Without injunctive relief, the Plaintiffs and Plaintiff Class will have no adequate remedy for the continued denial of such benefits, reimbursements and compensation.

49. The Defendant has acted, or failed or threatened to act, on grounds generally applicable to all members of the Plaintiff Class. Therefore, permanent injunctive relief is

appropriate, and necessary, in order to prevent future wrongful conduct damaging to the Plaintiffs and Plaintiff Class.

COUNT VI:
DECLARATORY RELIEF

50. Plaintiffs adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

51. An actual controversy exists between the Plaintiffs and Plaintiffs Class and the Defendant, requiring declarations of the legal rights of all parties as to the following matters:

- a. Whether the Defendant wrongfully characterized the Plaintiffs and Plaintiff Class as independent contractors.
- b. Whether the Defendant has denied the Plaintiffs and Plaintiff Class compensation, reimbursements and benefits owed to employees, including the following:
 - i. Purchase of vehicles;
 - ii. Purchase of vehicle and other insurance;
 - iii. Vehicle maintenance;
 - iv. Purchase of FedEx uniforms;
 - v. Purchase of FedEx logos and materials;
 - vi. Purchase of gasoline;
 - vii. Purchase of business materials;
 - viii. Denial of wages;
 - ix. Denial of holiday pay;
 - x. Denial of overtime pay;
 - xi. Denial of retirement plans;
 - xii. Denial of employee stock purchase options;
 - xiii. Denial of breaks;
 - xiv. Denial of unemployment insurance; and

- xv. Denial of workers' compensation insurance.
- c. The specific amounts of benefits, reimbursements and compensation that the Plaintiffs and Plaintiff Class are entitled to receive, along with the amount of interest due to the Plaintiffs and Plaintiff Class on the unpaid compensation.

DAMAGES

52. Each member of the Plaintiff Class has incurred actual damages as a result of the Defendant's wrongdoing, as aforesaid, which damages are capable of independent, objective mathematical computation. The Plaintiffs should be awarded actual damages in such amounts as are sufficient to compensate in full the Plaintiffs and all members of the Plaintiff Class for the full amount of all losses and damages actually incurred as a result of the Defendant's wrongdoing, including reimbursements, compensation and benefits that should have been paid by the Defendant, costs and expenses incurred in the prosecution of this case, including attorneys fees and expenses, and pre- and post-judgment interest on all funds due the Plaintiffs.

53. The damages sought are incidental to the declaratory and injunctive relief sought herein, and flow directly from obligations and liabilities and liability to the Class as a whole on the claims forming the basis of the injunctive and declaratory relief. All of said damages are capable of uniform mathematical computation on the basis of records of the Defendant in this action. Such incidental relief is capable of computation by means of objective mathematical standards, is not dependent on any intangible, subjective differences among Class members or their circumstances, and will not require any separate hearings or litigation between the Defendant and any individual Class Member.

54. The egregious nature of the Defendant's conduct also justifies imposition of punitive damages, in order to deter future wrongful conduct by FEG and other employers similarly situated.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs and Plaintiff Class request judgment of and from the Defendant for the following:

1. Determination that this action is proper for Class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Entry of an order requiring Defendant to rescind the Operating Agreement, and awarding restitution compensating for the reasonable value of the benefit provided to FEG,;
3. Declaratory relief establishing the legal rights and relationships of the Class Members, specifically including: (a) a declaratory ruling that Defendant improperly Classified the Class Members as independent contractors under Mississippi common and statutory law, and (b) that the Class Members are entitled to recover the compensation, reimbursements and benefits that they would have received if the Class Members had been properly Classified as employees;
4. Injunctive relief enjoining the Defendant from continuing to mischaracterize the Class Members and subsequent SWA drivers as independent contractors, and also enjoining the Defendant from continuing to withhold the compensation, reimbursements and benefits that should be paid the Class Members and other employee drivers who have been improperly deemed to be independent contractors;
5. Awarding Plaintiffs and members of the Plaintiff Class actual damages in such amounts as are sufficient to compensate in full the Plaintiffs and all members of the Plaintiff Class for the losses and damages actually incurred as a result of the Defendant's wrongdoing;
6. Awarding punitive damages in an amount adequate to punish the Defendant and serve as an example to deter similar conduct by the Defendant or others in the future;
7. Awarding the Named Plaintiffs and members of the Plaintiff Class their costs and expenses incurred in connection with this action, including reasonable attorneys fees, expert witness fees and all other costs herein, and awarding a sum by way of compensation to the Named Plaintiffs for their actions in bringing the Defendant to justice;
8. Awarding the Named Plaintiffs and members of the Plaintiff Class pre-judgment and post-judgment interest as the Court deems appropriate; and
9. Granting such other and further relief as the Court deems just and proper, including imposition of a constructive trust and/or such extraordinary equitable or injunctive relief as permitted by law, equity or statutory provisions as the Court deems proper to prevent unjust enrichment of the Defendant and to ensure that

Plaintiffs and the members of the Plaintiff Class have an effective remedy for the damage caused and injury suffered as a result of the Defendant's wrongdoing as aforesaid.

Dated: January 9, 2006

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Susan E. Ellingstad

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Susan E. Ellingstad, hereby certify that on January 9, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants::

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Dated: January 9, 2006

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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