

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
RICHARD TIDD, KRISTI GRUHN,)	
and all others similarly situated,)	
)	
) Plaintiffs,)	
)	JURY DEMANDED
)	Civil Action No. _____
) v.)	
)	
ADECCO USA, INC., KELLY SERVICES, INC.,)	
FEDEX GROUND PACKAGE SYSTEM, INC.,)	
and FEDEX GROUND PACKAGE SYSTEM,)	
INC. d/b/a FEDEX HOME DELIVERY,)	
)	
) Defendants)	
_____)	

CLASS ACTION COMPLAINT AND JURY DEMAND

I. INTRODUCTION.

1. This is a national class action brought on behalf of pick-up and delivery drivers who were hired and employed by the defendants Adecco USA, Inc. ("Adecco") and Kelly Services, Inc. ("Kelly") to provide package pick-up and delivery work for defendants FedEx Ground Package System, Inc. and FedEx Ground Package System, Inc. d/b/a FedEx Home Delivery ("FedEx"). As alleged herein, during their employment with Adecco and Kelly, while performing delivery services for FedEx, including training, the named and class plaintiffs: (1) were not paid for all of the hours that they worked; (2) had their time records intentionally submitted incorrectly by FedEx to reflect that they had not worked overtime when in fact they had; and (3) were not paid overtime pay for all hours worked in excess of 40 hours per week.

II. **PARTIES.**

2. The plaintiff, Richard Tidd, is an adult resident of Georgetown, Massachusetts, and was employed by Defendant Adecco in the fall of 2005 and by Defendant Kelly in the spring of 2006, and at all relevant times jointly employed by FedEx, working as a package pick-up and delivery driver out of the FedEx terminal in Wilmington, Massachusetts.

3. The plaintiff, Kristi Gruhn, is an adult resident of Fairfield, Maine, and was employed by Defendant Adecco in 2005, and during her employment with Adecco, she was also jointly employed by FedEx as a package pick-up and delivery driver in the states of Vermont and New Hampshire.

4. The named plaintiffs bring this action on their own behalf and on behalf of others similarly situated, including all individuals who have been employed by Adecco or Kelly to provide package pickup and delivery services for FedEx and have not been paid properly for all of their time while performing such services, including training time. With respect to all such individuals who worked in states for which the violations alleged herein are actionable under state law, the class (and any subclasses that may be needed for manageability) meets all of the requirements of Rule 23 of the Federal Rules of Civil Procedure. Similarly situated individuals may also choose to opt-in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b).

5. The defendant, Adecco USA, Inc., is a company having a principal place of business in Melville, New York, and which provides temporary and leased employees to companies throughout the United States.

6. The defendant, Kelly Services, Inc., is a company having a principal place of business in Troy, Michigan, and which provides temporary and leased employees to companies throughout the United States.

7. The defendant, FedEx Ground Package System, Inc. and its division FedEx Ground Package System, Inc. d/b/a FedEx Home Delivery is a Delaware corporation with a principal place of business in Pittsburgh, Pennsylvania.

III. JURISDICTION AND VENUE.

8. Jurisdiction is invoked pursuant to 28 U.S.C. §1332(d)(2). This Court also has general federal question jurisdiction pursuant to 28 U.S.C. §1331, because Plaintiffs have brought a claim pursuant to the federal Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*

9. Venue is proper in this court because defendants have violated the laws of the Commonwealth of Massachusetts within Massachusetts, have obligated themselves to the plaintiffs within Massachusetts, and have specifically chosen to maintain a corporate presence within, and substantial contacts with, the Commonwealth of Massachusetts.

IV. STATEMENT OF FACTS.

10. During the time periods relevant to this action, Defendants Adecco USA, Inc. and Kelly Services, Inc. have entered into a contractual relationship with Defendant FedEx Ground Package System, Inc. for the purpose of supplying (1) employment for prospective FedEx Ground Package System, Inc. drivers during an approximately two-week time period when such drivers were required to undergo mandatory training at

various FedEx facilities; and (2) temporary and replacement package delivery drivers at various FedEx facilities throughout the United States.

11. During such periods of training and package delivery work, such individuals were employees of Adecco or Kelly, and their work and duties were controlled by FedEx, making FedEx their joint employer.

12. As stated above, before the plaintiffs could begin performing any package delivery services for the defendants, they were first required to attend an approximate two-week training program located at various FedEx facilities throughout the United States.

13. During this training plaintiffs were taught all aspects of performing package delivery services for FedEx Ground Package System, Inc. They regularly worked 10 or more hours per day.

14. On information and belief, FedEx was responsible for reporting the number of hours each trainee worked to Adecco or Kelly, so that these staffing agencies could issue paychecks to the plaintiffs. Although they worked long days, including more than eight hours per day, Adecco and Kelly would only pay the plaintiffs for eight hours or less per day, notwithstanding the actual hours that such trainees worked, and FedEx would specifically underreport the number of hours worked to Adecco and Kelly.

15. Although Adecco and Kelly were aware or had reason to be aware that the number of hours that the trainees were working was being underreported to them, Adecco and Kelly did nothing to ensure proper payment for all hours worked for such trainees.

16. After such training was completed, the plaintiffs were assigned to various FedEx terminals throughout the United States to work as "temporary drivers" delivering FedEx packages to customers and businesses when regular FedEx drivers were unavailable to perform such services, or FedEx did not have a sufficient number of drivers to complete all deliveries in geographic areas served by such terminals.

17. Although the plaintiff class members regularly worked 10 or more hours per day completing their deliveries for FedEx, Adecco, Kelly, and FedEx had a policy of not paying such temporary drivers for all hours worked, but only paying straight time pay of approximately 40 hours per week to such temporary drivers, notwithstanding that they were actually working more than 40 hours per week.

18. In addition, managers at FedEx terminals would specifically underreport the hours worked by such temporary employees to Adecco and Kelly, and Adecco and Kelly knew or should have known of such underreporting of hours.

COUNT I

(Failure to Pay All Wages Due)

The defendants' failure to pay the named and class plaintiffs all hourly wages which they earned as a result of their employment as temporary drivers and in training to become drivers, violates the wage laws of the various states within the United States, including the Massachusetts wage law, M.G.L. ch.149, §148, as enforced through § 150. To the extent that plaintiffs were not paid any wages for their training, such conduct violates the minimum wage laws of the various states within the United States and the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*

COUNT II

(Overtime During Training)

The defendants' failure to pay overtime pay to named plaintiffs and class members for hours worked greater than 40 hours per week during their training violates the overtime laws of the various states within the United States, including the Massachusetts overtime law, M.G.L. ch.151, §1A, and the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*

COUNT III

(Overtime Violations)

The defendants' failure to pay overtime pay to named plaintiffs and class members who were eligible for overtime pay by reason of their having driven trucks of less than 10,001 pounds since August 10, 2005, violates the overtime laws of the states that have adopted the Federal Motor Carrier Act Exemption, including Massachusetts, M.G.L. ch.151, §1A, , and the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*

JURY DEMAND

The plaintiffs request a trial by jury on all of their claims.

WHEREFORE, plaintiffs request that this Court enter the following relief:

1. That it certify this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, including certification of subclasses where appropriate

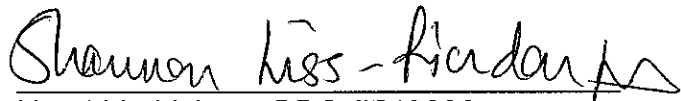
2. That it allow employees throughout the country to opt in to this action, pursuant to § 216(b) of the Fair Labor Standards Act;
3. Grant restitution for all wages and overtime pay owed to the named plaintiffs and class members;
4. Award statutory enhancement of damages and attorneys' fees as allowed by law; and
5. Allow any other relief to which the plaintiffs and class members may be entitled.

Respectfully submitted,

JOHN TIDD, KRISTI GRUHN,
and all others similarly situated,

By their attorneys,

Dated: June 29, 2007



Harold L. Lichten, BBO #549689
Shannon Liss-Riordan, BBO #640716
Maydad Cohen, BBO #647167
PYLE, ROME, LICHTEN, EHRENBERG,
& LISS-RIORDAN, P.C.
18 Tremont Street, Ste. 500
Boston, MA 02108
(617) 367-7200