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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JACOB DANIEL TUMULTY, and TAJ
KARL UHDE, individually and on behalf
of a class of similarly situated individuals,

Plaintiffs,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC., a Delaware Corporation;
POMERANTZ STAFFING SERVICES,
LLC, a Delaware Corporation; ROYONG
ENTERPRISES, INC., a Washington
Corporation; Roy Clere and Yong Ja Clere,
Husband and Wife and their marital
Community; FAIRLEY M. SPARKS and
CAROL SPARKS and their Marital
Community.

Defendants.

CLASS ACTION

NO. 03-2-40355-5 SEA

1st Amended Complaint

Plaintiffs, by themselves and on behalf of all others similarly
situated ("The Class"), allege as follows:

I. The Parties

1.1 Plaintiff Jacob Daniel Tumulty is a Pierce County resident and a
former employee of all Defendants.

1st Amended Complaint (Proposed) - 1

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Original

1 1.2 Plaintiff Taj Karl Uhde is a King County resident and a former
2 employee of Defendants FedEx Ground Package System Inc. ("FedEx Ground") and
3 Royong Enterprises Inc. ("Royong").

4 1.3 FedEx Ground Package System Inc. ("FedEx Ground") is Delaware
5 Corporation, licensed to do business in the state of Washington, and has a registered
6 agent in King County, Washington. It provides pick-up and delivery of packages
7 transported through interstate commerce which are delivered to customers in the
8 State of Washington. All acts performed by FedEx Ground described below were
9 performed by its employees/agents while acting within the scope of their
10 employment/agency for FedEx Ground.

11 1.4 Royong Enterprises, Inc. ("Royong") is a Washington Corporation
12 doing business in the state of Washington. It is a Pick-up and Delivery Contractor
13 ("Contractor") of FedEx Ground as described below.

14 1.5 Roy Clere and Yong Ja Clere are believed to be husband and wife and
15 residents of Thurston County, Washington. Roy Clere is the owner and an officer of
16 Royong and was responsible for issuing paychecks to all Drivers employed by
17 Royong during all times relevant to this action. All acts performed by Roy Clere
18 were done for the benefit of his marital community.

19 1.6 Fairley M. Sparks ("Fairley Sparks") is the sole proprietor of a
20 company doing business in the state of Washington and was responsible for issuing
21 paychecks to all Drivers employed by him during all times relevant to this action.
22 Fairley Sparks is a Contractor of FedEx Ground, as described below. Fairley Sparks
23 and Carol Sparks are believed to be Husband and Wife and residents of King

1 County, Washington and all acts performed by Mr. Sparks were performed for the
2 benefit of his marital community.

3 1.7 Pomerantz Staffing Services, LLC, ("Pomerantz") is a Delaware
4 Corporation licensed to do business in the state of Washington. It is an employment
5 staffing agency that facilitates the placement of drivers with FedEx Ground and/or
6 Contractors of FedEx Ground.

7 **II. Individual Plaintiff Allegations**

8 2.1 At all times while Plaintiffs worked for the Defendants, FedEx
9 Ground entered into agreements with Pick-up and Delivery Contractors
10 ("Contractors") in which the latter agreed to pick-up and deliver packages for FedEx
11 Ground customers in a specific geographic area ("Primary Service Area") in
12 Washington in exchange for a fee paid by FedEx Ground.

13 2.2 Contractors sometimes hire "Drivers" such as the Plaintiffs to perform
14 this work.

15 2.3 Pomerantz also hires Drivers and supplies them to FedEx Ground.

16 2.4 From September, 2001 until January 2003, Mr. Turnulty was
17 employed as a Driver for Pomerantz, as well as a number of different Contractors,
18 including Royong and Fairley Sparks.

19 2.5 In November, 2001, Royong hired Mr. Uhde to work as a Driver.

20 2.6 From November, 2001 until January 2003, Mr. Uhde worked for
21 Royong and one other Contractor not a party to this action.

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2.7 During the entire time that Mr. Tumulty and Uhde were so employed, FedEx Ground exercised sufficient control over both to be deemed an "employer" and/or "joint employer" of both plaintiffs.

2.8 Throughout their employment, the Plaintiffs regularly worked more than 40 hours a week without being paid overtime and were denied and/or missed the opportunity to take rest periods and meal periods required by law.

2.9 All Defendants failed to compensate the Plaintiffs for overtime wages, rest periods and/or meal breaks in a knowing and willful manner with an intent to deprive them of their wages and without any good faith basis to deny them of the right to the same.

2.10 All Defendants other than Pomerantz failed to make proper withholdings from the paychecks of Plaintiffs required by law, including but not limited to state and federal taxes, FICA and Medicare.

2.11 FedEx Ground failed to provide the Plaintiffs benefits which it provided to other FedEx Ground employees.

2.12 In January, 2003, Tumulty complained to a FedEx Ground supervisor regarding the lack of overtime paid to Drivers and the above-described working conditions.

2.13 Shortly after making these remarks, FedEx Ground and/or its employee/agents fired Tumulty.

2.14 FedEx Ground fired Tumulty in retaliation for making these complaints.

1 3.5 This class also includes a subclass of Drivers like Tumulty who were
2 retaliated against by FedEx Ground in violation of state and federal law when they
3 complained about the wage violations.

4 **Basis Upon Which Plaintiffs Claim to Adequately Represent the Class**

5 3.6 Plaintiffs Tumulty and Uhde will fairly and adequately represent the
6 class because:

7 a. They share identical interests to class members in prosecuting their
8 claims against Defendants and recovering lost wages, benefits, and damages.

9 b. The named Plaintiffs have retained competent trial counsel to
10 represent them.

11 c. The named Plaintiffs have experience and knowledge with
12 Defendants' employment law violations as they experienced the same, recognized
13 the violation of their rights, complained about it, and (in terms of Tumulty) were
14 retaliated against for standing up for their rights.

15 **Common Questions of Law and Fact**

16 3.7 The following facts and issues of law are common to both Plaintiffs
17 and to all Class members:

18 a. The Defendants violated Washington state law and federal law by
19 failing to pay the Plaintiffs and Class members overtime, in failing to provide them
20 breaks and meal periods, in failing to make proper withholdings from paychecks, and
21 in failing to provide Plaintiffs the same benefits offered to other employees of the
22 Defendants.

1 b. The Defendants exercised a sufficient degree of control over the
2 Plaintiffs and Class members to render them "employers" or "joint employers" of
3 each Driver they employed, responsible for following the above statutes and law.

4 c. Defendant FedEx Ground retaliated against Drivers like Tumulty who
5 complained about the wage violations.

6 **Additional Class considerations - Rule 23(b)(3)**

7 3.8 Allowing this class to go forward will not hinder individual interests
8 because each Class member will be entitled to recover the same relief in this action
9 as he or she would be entitled to recover in an individual action, and will be able to
10 share discovery and pool resources to litigate such claims.

11 3.9 There is no known litigation pending against any Defendant regarding
12 the allegations in this Complaint.

13 3.10 This forum is a desirable as all parties reside or conduct business in
14 King County/Pierce County corridor and 4 of the 5 sets of Attorneys in this case
15 have offices in King County.

16 3.11 There are no known difficulties in managing this class action.

17 **IV. Liability**

18 4.1 Plaintiffs' claims, on their own behalf and on behalf of all Class
19 members, include but are not limited to: violation of the Fair Labor Standards Act
20 concerning overtime and retaliation. See 29 U.S.C. 201 et. seq. (including but not
21 limited to section 207, 215(a)(3), section 216(b)). These claims also include
22 violation of Washington State labor laws pertaining to overtime, paid breaks, meal
23

1 periods and retaliation, RCW 49.46 et. seq. and 49.52 et. seq. (including but not
2 limited to RCW 49.46.100(2), RCW 49.46.130, 49.52.050 and 070, and WAC 296-
3 126-092). Turnuity's termination was also in violation of Washington public policy.

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5 **V. PRAYER FOR RELIEF**

6 Plaintiffs and the Class ask that the Court to:

7 5.1 Award Plaintiffs and Class members damages for: (1) back pay; (2)
8 failure to make proper paycheck withholdings; (3) the value of lost benefits provided
9 to other employees which should have been provided to all Drivers; (4) double
10 and/or exemplary damages; (5) attorneys' fees; (6) prejudgment interest; and such
11 other relief allowed under state and federal law.

12 5.2 In addition to the above damages, Plaintiff Turnuity, and all other
13 class members retaliated against as described above, seek damages against FedEx
14 Ground and any other Defendant which retaliated against them, for: (1) lost wages;
15 (2) punitive damages; and (3) any additional or further relief as provided by state or
16 federal law.

17 5.3 Plaintiffs also ask the court to grant injunctive relief including but not
18 limited to requiring the Defendants to treat all current and future Drivers as their
19 employees, providing them with the rights and protections under state and federal
20 wage laws.

21 PHIL BRENNAN, Esq.

22 By:


PHIL BRENNAN, WSBA #25711

Attorney for Plaintiff; Date: 5/26/04