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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

10 DEAN ALEXANDER, SUZANNE )  
11 ANDRADE, JARRETT )  
12 HENDERSON, ELY INES, JORGE )  
13 ISLA, PAUL INFANTINO, )  
14 BERNARD MENDOZA, JESSE )  
15 PADILLA, JOEY RODRIGUEZ, and )  
16 ALLAN ROSS )

Plaintiffs,

vs.

17 FEDEX GROUND PACKAGE )  
18 SYSTEM, INC., FEDEX GROUND )  
19 PACKAGE SYSTEM, INC. dba )  
20 FEDEX HOME DELIVERY, and )  
21 Does 1-20, )

Defendants.

Case No.

**RG04185578**

CLASS ACTION

COMPLAINT FOR DAMAGES, INJUNCTIVE  
AND DECLARATORY RELIEF AND  
RESTITUTION

1. Reimbursement (Cal. Lab. Code §2802)
2. Overtime (Cal. Lab Code §§510, 1194 et seq.) & Late Payment of Wages (Lab. Code §201 et seq.)
3. Meal and Rest Break Penalties (Cal. Lab Code §510, 226.7 and IWC Order 9-2001)
4. Recovery of Deductions From Wages (Cal Lab. Code §221 & 223)
5. Coercion (Cal. Lab Code-§450)
6. Intentional and/or Negligent Misrepresentation
7. Unfair Business Practices (Cal. B&P §17200)
8. Injunctive Relief (Cal. B&P Code §17203)
9. Declaratory Relief (Cal. Code of Civ. Proc. §1060)
10. Accounting

JURY TRIAL DEMANDED

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1 Plaintiffs Dean Alexander, Suzanne Andrade, Jarrett Henderson, Ely Ines, Jorge Isla,  
2 Paul Infantino, Bernard Mendoza, Jesse Padilla, Joey Rodriguez and Allan Ross, on behalf of  
3 themselves and similarly situated employees, and the general public allege as follows:

#### 4 INTRODUCTION

5 1. The California Labor Code provides legal rights to employees and requires  
6 employers to meet various legal obligations to their employees, such as the duty to reimburse  
7 their employees for all expenses necessarily incurred in connection with their employment (Lab.  
8 Code §2802), the duty to pay overtime premium pay for hours worked which exceed eight in any  
9 workday or forty in any workweek (Lab. Code §1194), the duty to provide workers compensation  
10 coverage (Lab. Code §§3200 *et seq.*), the duty to provide meal and rest breaks (Lab. Code §510,  
11 226.7), the duty to avoid coercion in purchase of necessary equipment and materials (Lab. Code  
12 §450) and other legal obligations. Under settled law, employers may not avoid these legal  
13 obligations by mis-classifying their employees as "independent contractors" if the employers  
14 treat workers as employees.

15 2. In 1999, a statewide class action entitled Estrada et al. v. Roadway Package  
16 Systems, BC 210130, was filed in Los Angeles Superior Court. (The case name was changed to  
17 Estrada v. FedEx Ground by order of the court.) A class was certified in 2001 and the case  
18 proceeded to trial in phases beginning with Phase I, tried to the court from April 16 to June 30,  
19 2004 before the Honorable Howard J. Schwab. Judge Schwab issued a Statement of Decision on  
20 July 26, 2004, finding that pick-up and delivery drivers with one route were employees, not  
21 independent contractors, and finding that FedEx Ground had not reimbursed its drivers for their  
22 work-related expenses. (A true and correct copy of that Statement of Decision is attached hereto  
23 as Exhibit A.) The class definition in Estrada v. FedEx Ground included those who were drivers  
24 at the time of the certification order and did not include drivers operating under contracts signed  
25 thereafter and also did not include those pickup and delivery drivers operating for the FedEx  
26 Ground subsidiary doing business as FedEx Home Delivery. The instant lawsuit follows the  
27 earlier Estrada case, covering those not included in that class and seeking additional relief for all  
28 pickup and delivery drivers operating under contract with FedEx Ground and FedEx Home

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1 Delivery.

2 3. Defendant FedEx Ground Package System, Inc. ("FEG"), and its division, FedEx  
3 Ground Package System, Inc. dba FedEx Home Delivery ("FHD"), is a Delaware corporation  
4 doing business as two national companies, affiliated with the Federal Express Corporation. FEG  
5 and FHD employ thousands of drivers to pick up and deliver packages for their customers  
6 throughout the United States. As a condition of employment, each FEG and FHD driver is  
7 required to sign a lengthy form contract entitled the "Pickup And Delivery Contractor Operating  
8 Agreement" that mis-characterizes each driver as an "independent contractor." These operating  
9 agreements conceal the true nature of the relationship between FEG and its drivers: that of  
10 employer and employee.

11 4. Despite FEG and FHD's control over virtually all material aspects of the  
12 employment relationship, and despite the unequivocal command of applicable statutes and case  
13 law to the effect that workers such as plaintiffs are entitled to the protections due employees  
14 under California law, and despite the finding of the Los Angeles Superior Court that these drivers  
15 are employees, FEG and FHD continue to mis-classify their drivers as independent contractors.  
16 As a result, these drivers are deprived of the rights and protections guaranteed by California law  
17 to all employees and they are deprived of employer-financed workers compensation coverage  
18 and unemployment insurance benefits. The terms and conditions of their employment contract  
19 require them to purchase, operate and maintain expensive trucks for FEG and FHD's benefit and  
20 to work under other unlawful conditions. FEG and FHD's mis-characterization of their drivers  
21 as independent contractors, and the attendant deprivation of substantial rights and benefits of  
22 employment are part of an on-going unfair, and/or unlawful and/or fraudulent business practice  
23 by FEG and FHD which this court should enjoin.

24 PARTIES

25 5. Plaintiffs Dean Alexander, Suzann Andrade, Jarrett Henderson, Ely Ines, Jorge  
26 Isla, Paul Infantino, Bernard Mancuso, Jesse Padilla, Joey Rodriguez and Allan Ross are  
27 residents of Alameda, Sacramento, Orange, Butte and San Diego counties in the State of  
28 California. Paul Infantino and Joey Rodriguez were and/or are employed by FEG for all relevant

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1 times. Dean Alexander, Suzanne Andrade, Jarrett Henderson, Ely Ines, Jorge Isla, Bernard  
2 Mancuso, Jesse Padilla and Allan Ross were and/or are employed by FHD for all relevant times.  
3 Together, they sue on behalf of themselves, as representatives of all pickup and delivery drivers  
4 in the class defined below, on behalf of the public and as private attorney generals pursuant to the  
5 Unfair Business Practices Act ("UBPA"), Cal. Bus. & Prof. Code §17200, et seq. and Cal. Labor  
6 Code § 2699.

7 6. Plaintiffs are informed and believe and on that basis allege that at all times herein  
8 mentioned defendants FEG and FHD have been and are Delaware corporations authorized to do  
9 business and doing business in the state of California at various locations throughout the state  
10 including at least one location in the County of Alameda.

11 7. The true names and capacities, whether individual, corporate, association or  
12 otherwise of defendants named herein as DOES 1 THROUGH 20, inclusive, are unknown to  
13 Plaintiffs and therefor Plaintiffs sue such DOES by fictitious names. Plaintiffs are informed,  
14 believe, and on that basis allege that these DOE defendants are California residents or  
15 corporations or entities doing business in the State of California, and that each is the agent of the  
16 other Defendants and that each is responsible for some or all of the acts and omissions alleged  
17 herein. Plaintiffs will amend this complaint to show the true names and capacities of these DOE  
18 defendants when they have been determined.

19 CLASS ACTION ALLEGATIONS

20 8. Plaintiffs bring this action as a class action on behalf of all persons who are  
21 working or, since November 12, 2000, have worked for FEG and/or FHD as package pick-up  
22 and delivery drivers. Plaintiffs bring this class action on behalf of themselves and other  
23 similarly situated members of the class who have been similarly victimized by FEG and FHD in  
24 the manner described in this Complaint. The class is specifically defined as follows:

25 All individuals who worked for Defendant FEG and/or its subsidiary FHD in  
26 California from November 12, 2000 to the time of trial (the Class Period) as  
27 package pickup and delivery drivers, and who were mis-classified as "independent  
28 contractors" and thereby deprived of various protections of California law.

9. During the class period plaintiffs are informed and believed and on that basis  
allege that more than 1000 persons have worked for FEG and/or FHD as package pickup and

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1 delivery drivers in California whose identities may be ascertained from Defendants' records.

2 10. This action may be properly maintained as a class action under Cal. Code of Civ.  
3 Proc. § 382 in that:

- 4 1. The members of the class are so numerous that their individual joinder in a single  
5 action is impossible and/or impracticable;
- 6 2. The central questions of law and fact involved in this action are of a common or  
7 general interest and those common legal and factual issues predominate over any  
8 questions affecting only individual members of the class. Among the common  
9 questions of law and fact are the following:
- 10 i. Whether class members have been mis-classified as independent  
11 contractors pursuant to FEG and/or FHD's operating agreements;
- 12 ii. Whether FEG and FHD have violated their legal obligations under various  
13 provisions of the California Labor Code;
- 14 iii. Whether FEG and FHD unlawfully failed to provide workers  
15 compensation insurance benefits and unemployment insurance benefits to  
16 the class members in violation of Cal. Labor Code §§3200 *et seq.* and Cal.  
17 Unempl. Ins. Code §§100 *et seq.* respectively;
- 18 iv. Whether FEG and FHD's actions constitute violations of the Unfair  
19 Business Practices Act;
- 20 v. Whether FEG and FHD intentionally and/or negligently misrepresented to  
21 Plaintiffs and the class they seek to represent their true employment status  
22 and thereby induced them to incur substantial expenses in reliance on such  
23 representations; and
- 24 vi. Whether injunctive and declaratory relief and an equitable accounting are  
25 proper.
- 26 3. The claims of the named representative plaintiffs are typical of the claims of other  
27 members of the class. The named plaintiffs share the same interests as other  
28 members of the class in this action because, like other class members, they have

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each been mis-classified and suffered financial loss of thousands of dollars due to FEG and/or FHD's wrongful mis-classification. Given the significance of their losses, they have the incentive, and are committed, to vigorously prosecute this action. They have retained competent and experienced counsel who specialize in class action and employment litigation to represent themselves and the proposed class;

4. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the class to seek redress individually for the wrongful conduct herein alleged. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

**FACTS COMMON TO ALL CAUSES OF ACTION**

11. FEG and FHD are a national corporation and a division thereof whose businesses consist of package delivery and pick-up service to customers, using a single integrated nationwide network of transportation, sortation and communication facilities and integrating class members into those existing network of operations. Defendants FEG and FHD hired plaintiffs to timely deliver and pick up packages based at times, locations and for amounts determined solely by FEG and/or FHD.

12. FEG and FHD employ or employed during the class period more than 1,000 delivery and pick-up drivers in the State of California including, either presently or at material times in the past, each of the plaintiffs.

13. FEG and FHD retain the right to control the manner and means by which Plaintiffs and class members perform their jobs. Drivers work from a FEG or FHD terminal, where they are assigned packages for delivery and locations for pickups each day. FEG and FHD employ a variety of managers and at their terminals who have supervisory responsibility over the

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1 FHD employ a variety of managers and at their terminals who have supervisory responsibility  
2 over the drivers, their daily assignments and paperwork. Drivers also interact with other FEG  
3 and/or FHD personnel on a daily basis.

4 14. FEG and FHD unilaterally set the compensation to be paid to the drivers.  
5 Defendants pay drivers for the number of stops, deliveries and pick-ups made, as well as daily  
6 compensation for making themselves available for pickup and delivery work in a geographic  
7 areas determined by FEG and FHD.

8 15. FEG and FHD unilaterally set the prices charged to their customers for the  
9 services rendered by Plaintiffs and plaintiff class members.

10 16. FEG and FHD have a wide array of written and unwritten policies and procedures  
11 that drivers are trained in and required to follow in their work. When drivers do not follow FEG  
12 and FHD rules, they suffer various types of punishment, some financial and some disciplinary.

13 17. Plaintiffs and Plaintiff class members provide service which is an integral part of  
14 FEG and FHD's business enterprise and they have no separate or distinct occupation or  
15 business. By providing vehicles with required FEG and FHD's colors, logos and advertising, by  
16 reliably serving FEG and FHD's customers, by following FEG and FHD's controlled delivery  
17 routes and delivery and pick-up methods, by providing FEG and FHD with customer leads, by  
18 using FEG and FHD scanners which enable Defendants' customers to track their packages, and  
19 in other material ways, Plaintiffs and Plaintiff class members have rendered, and continue to  
20 render, services to defendants which are integral to the Defendants' package delivery system.

21 18. Prior to commencing employment with FEG and/or FHD, each driver must sign a  
22 "Pick-Up and Delivery Contractor Operating Agreement" and Addenda thereto (referred to as  
23 combined "OA or the Agreement") as a mandatory condition of employment. Plaintiffs are  
24 informed and believe and on that basis alleges that the Agreement is the same in all material  
25 respects between each member of the plaintiff class and FEG or FHD. The Agreements between  
26 Plaintiffs and FEG and between Plaintiffs and FHD contain essentially the same material terms  
27 with only minor, insubstantial differences.

28 19. The Agreements contain various statements purporting to classify Plaintiffs and

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1 the company, inter alia, the right to approve or disapprove any vehicle used to provide service,  
2 the right to approve or disapprove any driver or helper who provides service, the right to approve  
3 or disapprove the purchase or sale of any vehicle, the right to assign deliveries to each driver, the  
4 right to temporarily or permanently transfer portions of any route to another with or without  
5 compensation, the right to determine when a driver has "too few" or "too many" packages to  
6 deliver, the right to inspect vehicles and drivers for compliance with Company-promulgated  
7 appearance standards, the right to terminate the contract upon thirty days notice or whenever the  
8 company unilaterally determines that any provision of the contract has been "violated,"  
9 amounting to the right to terminate at will, the right to require the use of communication  
10 equipment and the wearing of Company uniforms, the right to take a vehicle out of service, the  
11 right to review and evaluate "customer service" and to set standards of such service, the right to  
12 require drivers to perform service at "times" requested by customers and determined by FEG and  
13 FHD, the right to withhold pay for certain specified expenses, the right to require purchase of  
14 specified insurance and numerous other purchases by drivers, the right to require completion of  
15 specified paperwork, and other rights reserved to FEG and FHD.

16 20. The Agreements also provide, among other things, that:

- 17 1. Subject to company approval of any vehicle used, drivers must provide and
- 18 maintain their own vehicle, paying for all costs and expenses incidental to its
- 19 operation, including maintenance, gas, oil, repairs, tax, licenses and tolls.
- 20 Moreover, drivers must adorn the vehicle with specific colors, logos and marks,
- 21 identifying it as part of the FEG or FHD system at their own expense;
- 22 2. Drivers must maintain liability and workers compensation insurance (sometimes
- 23 referred to as "work accident insurance" for the benefit of Defendant;
- 24 3. Drivers must use communications equipment, i.e., a scanner, which uses FEG
- 25 and/or FHD's customized and/or proprietary tracking software and drivers must
- 26 pay to rent such equipment from the Company;
- 27 4. Drivers must prepare and submit daily reports and such shipping documents "as
- 28 FEG may from time to time designate;"

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- 5. Drivers must wear an approved uniform, and keep their personal appearance consistent with standards unilaterally "promulgated from time to time" by Defendants;
- 6. Defendant retains the right to change a driver's work area on a daily basis or permanently, at its discretion, notwithstanding statements in the Agreement regarding an alleged "proprietary interest" in the customers the driver serves; and
- 7. After one month of service, drivers become eligible to participate in FEG's Customer Service Program, by which a monetary bonus can be earned for every period in which the driver has no at-fault accidents, no customer complaints and no missed-pickups and during which the entire terminal's performance meets company-assigned standards of service; and
- 8. Defendant retains the right to control the volume of packages to be delivered and/or picked up, the locations of such deliveries and pickups, and the delivery and/or pickup times (referred to as "windows"), thus controlling the drivers' work hours.
- 21. The Agreement is and at all times mentioned herein has been a contract of adhesion, drafted exclusively by Defendants and/or their legal counsel, with no negotiation with drivers who are required to sign the Agreement as a condition of employment. Plaintiffs and plaintiff class members are required to sign the form contract as is, without any changes made to the terms contained therein. The Agreement is, and at all material times has been, unlawful and unconscionable in form and effect.
- 22. Although the nature of the work performed by the plaintiff class makes detailed control by management unnecessary, Defendants in fact retain the right to control and exercise extensive control over the work of the drivers, as is necessary to fulfill Defendants' commitments to their customers.
- 23. Defendants' right of control over plaintiff class members is retained and/or exercised by FEG and FHD as demonstrated by Company written rules and policies and unwritten practices which supplement and fill the gaps in the written contract.

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**FIRST CAUSE OF ACTION**

(Failure to Reimburse in Violation of Labor Code §2802)

Plaintiffs hereby incorporate by reference paragraphs 1 through 23 above as if fully set forth herein, and, for a cause of action by all members of the plaintiff class, allege as follows:

24. While acting on the direct instruction of FEG and/or FHD and discharging their duties for FEG and/or FHD, Plaintiffs and plaintiff class members incurred work-related expenses for the purchase or lease, maintenance, operating costs, and adornment of vehicles; insurance, communications equipment and uniforms. Plaintiffs and class members necessarily incurred these substantial expenses as a direct result of performing their job duties for Defendants.

25. FEG and FHD have failed to indemnify or in any manner reimburse the plaintiff class members for these expenditures, and have knowingly inserted illegal contractual provisions as part of an unconscionable and illegal scheme designed to avoid its legal duty to indemnify its employees. By mis-classifying its employees as "independent contractors," and further by contractually requiring those employees to pay their own expenses, FEG and FHD have violated and continues to violate Cal. Labor Code § 2802.

26. As a direct and proximate result of FEG and FHD's conduct, Plaintiffs and Plaintiff class members have suffered substantial losses according to proof, including pre-judgment interest, costs and attorney fees for the prosecution of this action.

WHEREFORE, plaintiffs and the plaintiff class are entitled to damages in an amount to be ascertained at the trial of the matter according to proof.

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**SECOND CAUSE OF ACTION**

(Failure to pay overtime compensation in Violation of California Labor Code §§510 and 1194 et seq. and For Late Payment of Wages In Violation of California Labor §201 et seq.)

Plaintiffs hereby incorporate by reference paragraphs 1 through 26 above as if fully set forth herein, and, for a cause of action by the identified subclass of the plaintiff class, allege as follows:

27. Various Plaintiffs and plaintiff class members operate vehicles with a gross vehicle weight rating of less than 10,001 pounds, including but not limited to P350 and P400

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1 package vans. Persons who operate such vehicles are not subject to the maximum hours  
2 regulations promulgated pursuant to the Federal Motor Carrier Safety Act and are therefore not  
3 exempt from the overtime requirements established by the California Labor Code and the  
4 California Industrial Welfare Commission ("TWC") Wage Order 9.

5 28. Plaintiffs and plaintiff class members who during the class period have operated  
6 vehicles with a gross vehicle weight rating of less than 10,001 for Defendants FEG and/or FHD  
7 are legally entitled to overtime compensation for all hours worked in excess of eight hours per  
8 day and all hours worked in excess of forty per work week under the California Labor Code and  
9 the California Industrial Welfare Commission ("TWC") Wage Order 9.

10 29. Plaintiffs and plaintiff class members who operate vehicles with a gross vehicle  
11 weight rating of less than 10,001 pounds have not been paid at the rate of time and one-half their  
12 regular rate of pay for all hours of overtime worked, in violation of California Labor Code §§510  
13 and 1194 et seq. and IWC Wage Order 9.

14 30. As a direct and proximate result of the unlawful conduct of FEG and FHD, such  
15 Plaintiffs and such plaintiff class members have suffered substantial monetary losses, according  
16 to proof, and are further entitled to pre-judgment interest, recovery costs of suit and reasonable  
17 attorney fees as a result of their prosecution of this lawsuit.

18 31. As a further direct and proximate result of the unlawful failure to pay overtime  
19 compensation, such Plaintiffs and such plaintiff class members who were deprived of their  
20 overtime compensation and who have resigned or been terminated from their employment, are  
21 entitled to recover thirty additional days of pay pursuant to California Labor code §201 et seq. by  
22 virtue of FEG and FHD's failure to timely pay all wages due and owing upon resignation or  
23 termination.

24 WHEREFORE, plaintiffs and the plaintiff class are entitled to damages in an amount to  
25 be ascertained at the trial of the matter according to proof.

26 **THIRD CAUSE OF ACTION**

27 **(Failure to Provide Meal and Break Periods In Violation of California Labor Codes**  
28 **§§510, 226.7 and IWC 9)**

Plaintiffs hereby incorporate by reference paragraphs 1 through 30 above as if fully set

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1 forth herein, and, for a cause of action by all members of the plaintiff class, allege as follows:

2 32. FEG and FHD required Plaintiffs and plaintiff class members to work without any  
3 thirty minute unpaid meal period and/or either of two break periods as required by California  
4 Labor Codes §§510, 226.7 and California Industrial Welfare Commission Wage Order 9, which  
5 is applicable to Plaintiffs and the plaintiff class.

6 33. By virtue of being deprived of such meal and rest periods, Plaintiffs and plaintiff  
7 class members are entitled to recover up to two additional hours of pay at the regular rate of pay  
8 for each work day that such meal and/or rest periods were not provided. FEG and FHD have  
9 failed and refused to pay such additional compensation in violation of the aforesaid provisions of  
10 the Labor Code and IWC Wage Order 9.

11 34. As a direct and proximate result of FEG and FHD's conduct as alleged, Plaintiffs  
12 and plaintiff class members have suffered substantial monetary losses, according to proof, plus  
13 pre-judgment interest, costs and reasonable attorney fees.

14 WHEREFORE, plaintiffs and the plaintiff class are entitled to damages in an amount to  
15 be ascertained at the trial of the matter according to proof.

16 **FOURTH CAUSE OF ACTION**

17 **(Illegal Deductions From Wages In Violation Of California Labor Code §221 & 223)**

18 Plaintiffs hereby incorporate by reference paragraphs 1 through 34 above as if fully set  
19 forth herein, and, for a cause of action by all members of the plaintiff class, allege as follows:

20 35. FEG and FHD have unlawfully withheld monies from the compensation earned by  
21 Plaintiffs and plaintiff class members for business expenses of FEG and FHD, including but not  
22 limited to cargo claims and insurance claims in violation of California Labor Code §§ 221 and  
23 223.

24 36. FEG and FHD have withheld said funds unlawfully without even providing  
25 Plaintiffs and plaintiff class members with advance notice of the amounts, reasons or  
26 documentation of any justification for such deductions and absent any lawfully sufficient reason  
27 for such conduct.

28 37. As a direct and proximate result of FEG and FHD's conduct, Plaintiffs and  
plaintiff class members have suffered substantial losses and been deprived of compensation to

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1 which they were entitled, including monetary damage, pre-judgment interest, costs and  
2 reasonable attorney fees.

3 38. As a direct and proximate result of FEG and FHD's conduct, Plaintiffs and  
4 plaintiff class members who resigned or were terminated without being paid their full  
5 compensation, by virtue of such illegal deductions, are also entitled to thirty additional days of  
6 pay pursuant to California Labor Code §201-203.

7 WHEREFORE, plaintiffs and the plaintiff class are entitled to damages in an amount to  
8 be ascertained at the trial of the matter according to proof.

9 **FIFTH CAUSE OF ACTION**

10 (For Unlawful Coercion In Violation of California Labor Code 450 et seq.)

11 Plaintiffs hereby incorporate by reference paragraphs 1 through 38 above as if fully set  
12 forth herein, and, for a cause of action by all members of the plaintiff class, allege as follows:

13 39. FEG and FHD have compelled and/or coerced Plaintiffs and plaintiff class  
14 members to patronize FEG and/or FHD requiring Plaintiffs and plaintiff class members to  
15 purchase uniforms, scanner, van washing services and other equipment and material directly  
16 from FEG and FHD in violation of California Labor Code §450.

17 40. FEG & and FHD have also compelled and/or coerced Plaintiffs and plaintiff class  
18 members to patronize other companies requiring them to do business with such companies in the  
19 purchase or lease of vehicles and/or insurance in violation of California Labor Code §450. As a  
20 direct and proximate result of FEG and FHD's coercion, Plaintiffs and plaintiff class members  
21 have suffered substantial monetary damage, according to proof.

22 WHEREFORE, plaintiffs and the plaintiff class are entitled to damages in an amount to  
23 be ascertained at the trial of the matter according to proof.

24 **SIXTH CAUSE OF ACTION**

25 (Intentional and/or Negligent Misrepresentation)

26 41. Paragraphs 1 through 40, inclusive, are incorporated by reference as if fully stated  
27 herein.

28 42. Plaintiffs and the class they represent were hired by FEG and FHD to work as

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1 independent contractors pursuant to the terms of the contract. In fact, FEG and FHD were aware  
2 or should have been aware, at all times, that the "independent contractor" classification was  
3 improper and that, in fact, plaintiffs and all persons similarly situated were "employees" entitled  
4 to all of the benefits and protections of the California Labor Code and other applicable law.  
5 Plaintiffs are informed, believe and on that basis allege, that FEG and FHD intentionally mislead  
6 plaintiffs as to their employment status, or made such representations to Plaintiffs and plaintiff  
7 class members recklessly and/or negligently, for the purpose of realizing unjust profits from  
8 plaintiffs' work.

9 43. At all material times, FEG and FHD either knew, or should have known, that the  
10 representations made to plaintiffs concerning their employment status, and plaintiffs'  
11 corresponding obligation to assume responsibility for all of their own employment related  
12 expenses were false and fraudulent.

13 44. At all material times, plaintiffs and the class they represent justifiably relied to  
14 their detriment on the false and fraudulent representations made to them by FEG and FHD  
15 concerning their employment status and obligation to assume responsibility for all of their own  
16 employment related expenses, and suffered damage as direct and proximate result.

17 45. By its aforesaid conduct, FEG and FEH are guilty of oppression, fraud and malice  
18 in violating Plaintiff rights and protections guaranteed by the California Labor Code and other  
19 applicable law.

20 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated,  
21 pray for relief as stated hereinafter.

22  
23 **SEVENTH CAUSE OF ACTION**  
24 **(Unfair Business Practices in Violation of California Business and**  
25 **Professions Code §§17200 et. seq.)**

26 Plaintiffs incorporate by reference Paragraphs 1 through 45 above as if fully set forth, and  
27 for a cause of action on behalf of all members of plaintiff class, allege as follows:

28 46. The California Unfair Business Practices Act (UBPA), Cal. Bus. & Prof. Code §

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1 17200 *et. seq.* prohibits business and/or individuals from engaging in, *inter alia*, business  
2 practices which are unlawful, unfair or fraudulent.

3  
4 47. By all of the foregoing alleged conduct of failing to indemnify plaintiffs and class  
5 members for work-related expenses, by failing and refusing to provide plaintiffs and class  
6 members with workers compensation insurance and unemployment insurance benefits, by failing  
7 to pay overtime compensation to Plaintiffs and plaintiff class members who operate trucks with a  
8 gross vehicle weight rating of less than 10,001 pounds, by failing and refusing to provide meal  
9 and/or rest periods, by unlawfully deducting money from wages and coercing Plaintiffs and  
10 plaintiff class members to patronize Defendants and allied companies, by intentionally, reckless  
11 and/or negligently misrepresenting to Plaintiffs and plaintiff class members the true nature of  
12 their employment status, and by engaging in the other acts and conduct alleged above, FEG and  
13 FHD have committed, and are continuing to commit, ongoing unlawful, unfair and fraudulent  
14 business practices within the meaning of Cal. Bus. & Professions Code §17200 *et seq.*

15  
16  
17 48. As a direct and proximate result of the unfair business practices described above,  
18 Plaintiffs, members of the plaintiff class and the general public have all suffered significant  
19 losses and Defendants have been unjustly enriched.

20  
21 49. Pursuant to Cal. Bus. & Prof. Code §17203, Plaintiffs, members of the plaintiff  
22 class, and the general public are entitled to: (a) restitution of money acquired by defendants by  
23 means of their unfair business practices, in amounts not yet ascertained but to be ascertained at  
24 trial; (b) injunctive relief against defendants' continuation of their unfair business practices, and  
25 (c) a declaration that defendants' business practices are unfair within the meaning of the statute.

26 WHEREFORE, plaintiffs and the plaintiff class are entitled to relief as more fully set  
27 forth below.  
28

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**EIGHTH CAUSE OF ACTION**  
**(Injunctive Relief -- Cal. Bus. & Prof. Code §17203)**

Plaintiffs incorporate Paragraphs 1 through 49 of this Complaint as though fully set forth, and for a cause of action on behalf of themselves and all persons similarly situated, allege as follows:

50. By failing to indemnify plaintiffs and class members for work-related expenses, by failing and refusing to provide plaintiffs and class members with workers compensation insurance and unemployment insurance benefits, by failing to pay overtime compensation to Plaintiffs and plaintiff class members who operate trucks weighting less than 10,000 pounds, by failing and refusing to provide meal and/or rest periods, by unlawfully deducting money from wages and coercing Plaintiffs and plaintiff class members to patronize Defendants and allied companies, and by engaging in the other acts and conduct alleged above, FEG has committed, and is continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning of Cal. Bus. & Professions Code §17200 et seq. Defendants, if not enjoined by this Court, will continue to engage in the said unlawful, unfair and fraudulent business practices in derogation of the rights of plaintiffs, of class members and of the general public to be free from such improper and anti-competitive conduct.

51. Absent injunctive relief enjoining defendants from engaging in the unlawful, unfair and fraudulent business practices described above, plaintiffs, members of the class and the general public will be irreparably injured, the extent, nature and amount of such injury being impossible to ascertain.

52. Plaintiffs have no plain, speedy and adequate remedy at law.

53. For these reasons, preliminary and permanent injunctive relief is appropriate.

WHEREFORE, plaintiffs and plaintiff class are entitled to injunctive relief as more fully set forth below.

**NINTH CAUSE OF ACTION**  
**(Declaratory Relief -- Cal. Code of Civil Procedure §1060)**

Plaintiffs incorporate Paragraphs 1 through 53 above as if fully set forth, and, for a cause

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1 of action, allege as follows:

2  
3 54. An actual and substantial controversy exists between Plaintiffs and members of  
4 the Plaintiff class on the one hand, and defendants FEG and FHD on the other hand, as to the  
5 following matters:

- 6 1. Whether FEG and FHD mis-classified drivers as independent contractors when  
7 they were in fact employees;
- 8 2. Whether FEG and FHD failed to reimburse pickup and delivery drivers for their  
9 necessarily incurred employment expenses, in violation of Labor Code §2802;
- 10 3. Whether FEG and FHD have unlawfully refused to provide workers compensation  
11 and /or unemployment insurance benefits under applicable law;
- 12 4. Whether FEG and FHD have unlawfully failed to pay overtime compensation  
13 required by California law;
- 14 5. Whether FEG and FHD have unlawfully prohibited Plaintiffs and plaintiff class  
15 members from taking meal and/or rest periods as required by law;
- 16 6. Whether FEG and FHD have made unlawful deductions from the compensation  
17 paid to Plaintiffs and plaintiff class members in violation of California law;
- 18 7. Whether FEG and FHD have coerced or compelled Plaintiffs and plaintiff class  
19 members to patronize FEG, FHD and/or other companies in the purchase or lease  
20 of vehicles, uniforms, scanners, insurance and other equipment and materials in  
21 violation of California law; and
- 22 8. Whether FEG and FHD have engaged in unlawful, unfair or fraudulent business  
23 practices in violation of California law.

24  
25 55. Plaintiffs contend that in various ways, as alleged above, defendants have violated  
26 California law. Defendant FEG contends the opposite. Declaratory relief is therefore  
27  
28

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1 appropriate.

2 WHEREFORE, plaintiffs pray for relief as more fully set forth below.

3  
4 **TENTH CAUSE OF ACTION**  
5 **(For an Accounting)**

6 Plaintiffs incorporate Paragraphs 1 through 55 of this complaint as though fully set forth  
7 herein, and for a cause of action, allege as follows:

8 56. Plaintiffs and members of the plaintiff class are owed the un-reimbursed  
9 employment expenses as well as other amounts due, and statutory interest thereon.

10 57. Plaintiffs do not know the precise amount of compensation due to them and to  
11 each member of the class. Upon information and belief, Defendants FEG and FHD possess  
12 business records from which the amount of compensation due and owing to plaintiffs and  
13 members of the class can be determined.

14 58. The amount of statutory interest owed to plaintiffs and to each member of the  
15 class is based on the amount of compensation allegedly owed. This amount can only be  
16 determined by an accounting of defendants FEG's books and records.

17  
18 WHEREFORE, plaintiffs and plaintiff class pray for relief as more fully set forth below.

19  
20 **PRAYER FOR RELIEF**

21 Plaintiffs, on their own behalf, on behalf of each member of the plaintiff class, and as  
22 private attorneys general on behalf of the public, pray for judgment as follows:

23 1. For an order by the Court certifying the First, Second, Third, Fourth, Fifth, Sixth,  
24 Seventh, Eighth, Ninth, and Tenth cause s of action as class action claims pursuant to California  
25 Code of Civil Procedure Section 382;

26 2. As to the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action, for an  
27 award to plaintiffs and all members of the class of compensatory and punitive damages and other  
28

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1 penalties in an amount which may be proven at trial, together with prejudgment interest at the  
2 maximum rate allowed by law, costs and reasonable attorney fees;

3  
4 3. As to the Sixth Cause of Action for Intentional Misrepresentation, for an award  
5 punitive damages in an amount to be proven at trial;

6 4. As to the Seventh Cause of Action, for an order by the Court restoring and/or  
7 returning to plaintiffs and members of the class all of defendants' unfairly or illegally gotten  
8 profits measured by un-reimbursed expenses incurred, workers compensation premiums, unpaid  
9 unemployment insurance benefits, money withheld from wages, unpaid overtime, a portion of  
10 self-employment tax paid by Plaintiffs and plaintiff class members which should have been paid  
11 by Defendants and other money due as part of a full restitutionary remedy;

12 5. As to the Eighth Cause of Action, for an order by the Court preliminarily and  
13 permanently enjoining defendants from continuing their unfair, unlawful and/or fraudulent  
14 conduct;

15 6. For a declaration that defendants' conduct violates California law and that  
16 Plaintiffs and the plaintiff class are employees under California law;

17 7. For an accounting;

18 8. For an award to plaintiffs of all of their costs and expenses incurred in this action,  
19 including reasonable attorneys' pursuant to applicable California law, including but not limited to  
20 Cal. Code of Civil Procedure §1021.5 and Labor Code §2802, 1194, and other laws; and

21 9. For such other and further relief as this Court deems just and proper.

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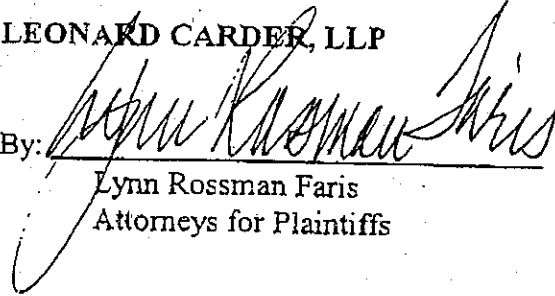
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all claims as to which they are entitled to jury trial.

Dated: November 12, 2004

LEONARD CARDER, LLP

By:   
Lynn Rossman Faris  
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