

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RANDY ANFINSON, JAMES GEIGER,
AND STEVEN HARDIE, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC., JOHN SCHNEBECK, CHERYL
PILAKOWSKI, AND JOHN DOES 1 through
10,

Defendants.

GREGORY P. CANOVA

No. **04-2-39981-5 SEA**

CLASS ACTION COMPLAINT

I. NATURE OF ACTION

1.1 This is a class action for unpaid overtime wages and for reimbursement of uniform expenses brought by three package pick-up and delivery drivers ("class representatives"), on behalf of themselves and others similarly situated who worked for defendants for the past three years, and hereafter.

1.2 This complaint alleges that this class of employees have been misclassified as independent contractors and thereby have been unlawfully deprived of overtime wages, as required by RCW 49.46.130, and who have not been reimbursed for expenses of mandatory uniforms, as required by RCW 49.12.450.

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1 **II. JURISDICTION AND AMOUNT IN CONTROVERSY**

2 2.1 The Superior Court of Washington has jurisdiction of plaintiffs' claims
3 pursuant to RCW 2.08.010 and CR 23.

4 2.2 Venue in King County is appropriate pursuant to RCW 4.12.025.

5 2.3 The named plaintiffs allege that each has been harmed in an amount that does
6 not exceed \$75,000, exclusive of interest and costs.
7

8 **III. PARTIES**

9 3.1 Plaintiff Randy Anfinson is a resident of Orting, Washington, in Pierce
10 County. Mr. Anfinson has been employed as a package pickup and delivery driver for
11 defendant since around June, 2002, and reports to the FedEx terminal in Auburn,
12 Washington. He is an employee for purposes of the Washington State Minimum Wage Act
13 ("MWA"), RCW 49.46.

14 3.2 Plaintiff James Geiger is a resident of Port Orchard, Washington, in Kitsap
15 County, Washington. Mr. Geiger was employed as a package pickup and delivery driver for
16 defendant from October, 2001 through September, 2003, and reported to the terminal in
17 Tumwater, Washington. He is an employee for purposes of the MWA.
18

19 3.3 Plaintiff Steven Hardie is a resident of Bonney Lake, Washington, in Pierce
20 County. Mr. Hardie has been employed as a package pickup and delivery driver for
21 defendant since May, 2001 and reports to the terminal in Auburn, Washington. He is an
22 employee for purposes of the MWA.
23

24 3.4 Defendant FedEx Ground Package System, Inc. ("FedEx") is a corporation
25 doing business in the State of Washington and in King County. FedEx does business as
26 "FedEx Ground" and as "FedEx Home." FedEx is an employer for purposes of the MWA.

1 **3.5** Defendant John Schnebeck is the terminal manager for the FedEx terminal in
2 Auburn, Washington, and upon information and belief is a resident of Pierce County,
3 Washington. Mr. Schnebeck is an employer for purposes of the MWA, and a vice-principal
4 and/or agent for purposes of RCW 49.52.050 and 49.52.070.

5 **3.6** Defendant Cheryl Pilakowski is the terminal manager for the FedEx terminal
6 in Tumwater, Washington, and upon information and belief is a resident of Pierce County,
7 Washington. Ms. Pilakowski is an employer for purposes of the MWA, and a vice-principal
8 and/or agent for purposes of RCW 49.52.050 and 49.52.070.

9 **3.7** John Does 1 –10 are terminal managers, vice-principals and/or agents for
10 FedEx in Washington. Upon information and belief, these individuals are all agents of
11 FedEx, are residents of Washington state, and are responsible for some or all of the acts and
12 omissions alleged in this action. Plaintiffs will amend this complaint to add the actual names
13 of these Doe defendants after they have been identified.
14

15 **IV. CLASS ACTION ALLEGATIONS**

16 **4.1** The class representatives seek to represent all persons who currently perform
17 or who have performed services for defendants in Washington as “package pick up and
18 delivery drivers” during at least a portion of the three years prior to the service and/or filing
19 of this complaint, and thereafter, each of whom signed (or through his/her corporate entity
20 signed) a FedEx contractor agreement and handled a single route; this proposed class
21 excludes persons who handled multiple routes, temporary drivers, line-haul drivers, and
22 persons who worked directly for a package pick up and delivery driver and who have not
23 entered into a FedEx contractor agreement.
24

25 **4.2** The action is properly maintainable under CR 23(a) and (b)(3).
26

1 **4.3** The class described in paragraph 4.1 is sufficiently numerous such that joinder
2 of all of them is impractical, as required by CR 23(a)(1).

3 **4.4** Pursuant to CR 23(a)(2), there are common questions of law and fact
4 including, but not limited to, whether the defendants have mis-classified class members as
5 independent contractors; whether defendants have failed to pay class members one and one-
6 half times their regular rate of pay for all hours worked over 40 in work weeks; whether
7 defendants have failed to reimburse class members for the expenses of mandatory uniforms;
8 whether class members are exempt from the MWA's overtime requirements; whether the
9 defendants have, in failing to make such overtime payments, acted willfully and with the
10 intent of depriving plaintiffs and members of the class such compensation; and whether the
11 defendants have failed to keep accurate records of time worked by employees performing the
12 above-mentioned activities as required by law.

13 **4.5** Pursuant to CR 23(a)(3), the class representatives' overtime claims and claims
14 for reimbursement of uniform expenses, as well as defendants' anticipated affirmative
15 defenses thereto, are typical of the claims of all class members and of defendants' anticipated
16 affirmative defenses thereto.

17 **4.6** The class representatives and their counsel will fairly and adequately protect
18 the interests of the class as required by CR 23(a)(4).

19 **4.7** Pursuant to CR 23(b)(3), class certification is appropriate here because
20 common questions of law or fact common to members of the class predominate over any
21 questions affecting only individual members, and because a class action is superior to other
22 available methods for the fair and efficient adjudication of the controversy.
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1 **V. FACTUAL ALLEGATIONS**

2 **5.1** Defendants are engaged in the pick up and delivery of packages for
3 customers, using a single national network of transportation and communication facilities in
4 Washington State and throughout the United States.

5 **5.2** During the time period relevant to this complaint, plaintiffs and class members
6 worked as package pick-up and delivery drivers handling a single route.

7 **5.3** Defendants have failed and refused to pay plaintiffs and class members
8 overtime pay, i.e., one and one-half times their regular rate for all hours worked over 40 in
9 any work week.

10 **5.4** Defendants mis-classified plaintiffs and class members as independent
11 contractors, rather than treating them as “employees” as required under Washington law. In
12 all material respects, defendants retained and exercised control over the manner and means
13 by which plaintiffs and class members performed their jobs.

14 **5.5** All plaintiffs and class members work for two divisions of the company,
15 FedEx Ground and FedEx Home. In all respects relevant and material to this action, the
16 terms and conditions of employment of employees are substantially the same regardless of
17 the division for which they work.

18 **5.6** Defendants have required that plaintiffs and class members wear, as a
19 condition of employment, FedEx uniforms during work hours.

20 **5.7** Defendants failed and refused to either to furnish plaintiffs these uniforms at
21 no cost or to reimburse plaintiffs for the expenses related to such uniforms. Instead, the cost
22 of these uniforms was borne by plaintiffs.

1 **5.8** Since August 2004, after its receipt of the trial court's "Statement of
2 Decision" in Estrada v. Fed Ex Ground, No. BC 210130 (Los Angeles State Superior Court,
3 July 26, 2004), defendant has acted willfully and with intent to deprive class members of
4 their proper wages.

5
6 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY OVERTIME
7 WAGES IN VIOLATION OF THE WASHINGTON STATE MINIMUM
8 WAGE ACT, RCW 49.46**

9 **6.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1
10 through 5.8 above.

11 **6.2** The defendants' failure to pay class members one and one-half their regular
12 rate of pay for hours worked in excess of 40 in a work week constitutes a violation of RCW
13 49.46.130 and RCW 49.52.050(2).

14 **6.3** As a result of defendants' acts and omissions, class members have been
15 damaged in amounts not yet calculated.

16 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY FOR
17 EXPENSE OF MANDATORY UNIFORMS IN VIOLATION OF THE
18 WASHINGTON INDUSTRIAL WELFARE ACT, RCW 49.12**

19 **7.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1
20 through 6.3 above.

21 **7.2** Defendant's failure to furnish required uniforms at no cost, or in the
22 alternative, to compensate plaintiffs for the cost of uniforms constitutes a violation of RCW
23 49.12.450.

24 **7.3** As a result of defendants' acts and omissions, class members have been
25 damaged in amounts not yet calculated.
26

1 **VIII. REQUEST FOR RELIEF**

2 WHEREFORE, plaintiffs request that this Court enter an order certifying the class,
3 and granting them and class members the following relief:

4 A. Damages for lost wages and uniform expenses, incurred through December
5 31, 2005, in amounts to be proven at trial;

6 B. Beginning in August, 2004, exemplary damages in amounts equal to double
7 the wages due to class members, pursuant to RCW 49.52.070;

8 C. Attorneys fees and costs pursuant to RCW 49.46.090, 49.48.030 and RCW
9 49.52.070;

10 D. Prejudgment interest;

11 E. Declaratory relief finding defendant in violation of the MWA; and

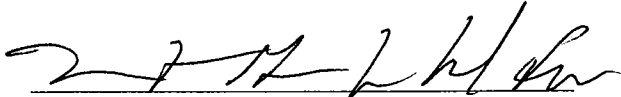
12 F. Such other and further relief as the Court deems just and proper.
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14

15 DATED this 20th day of December, 2004.

16 SCHROETER, GOLDMARK & BENDER

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18 
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