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7 Attorneys for Defendant
 FedEx Ground Package System, Inc.
 8

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **EASTERN DIVISION**

12 KAWASKI CORLEY, individually,
 13 and on behalf of all others similarly
 14 situated,

15 Plaintiffs,

16 v.

17 FEDEX GROUND PACKAGE
 SYSTEM, INC., a Delaware
 18 Corporation; and DOES 1 to 100,
 inclusive,

19 Defendants.

Case No.

**DEFENDANT FEDEX GROUND
 PACKAGE SYSTEM, INC.'S
 NOTICE OF REMOVAL**

(28 U.S.C. §§ 1332, 1441, 1446)

(San Bernardino County Superior
 Court Case No. CIV-DS1900867)

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1 TO PLAINTIFF AND THE CLERK OF THE ABOVE ENTITLED
2 COURT:

3 PLEASE TAKE NOTICE that Defendant FedEx Ground Package System,
4 Inc. (“Defendant” or “FedEx Ground”), removes the above-referenced action of
5 Plaintiff Kawaski Corley (“Plaintiff”) from the Superior Court of the State of
6 California, County of San Bernardino, to the United States District Court for the
7 Central District of California pursuant to 28 U.S.C. sections 1332(a), 1441, and
8 1446. In support of removal, Defendant states as follows:

9 **I. PROCEDURAL HISTORY**

10 1. This is a putative wage and hour class action. On January 9, 2019,
11 Plaintiff filed the operative complaint in the Superior Court of the State of
12 California for the County of San Bernardino, entitled *Kawaski Corley v. FedEx*
13 *Ground Package System, Inc. et al.*, Case Number CIV-DS1900867 (the
14 “Complaint”).

15 2. This removal is timely under 28 U.S.C. § 1446(b). The Summons and
16 Complaint were served on Defendant no earlier than February 8, 2019. True and
17 correct copies of the Summons, Complaint, and related documents served upon
18 FedEx Ground on that date are attached as **Exhibit A** to this Notice of Removal
19 (“Notice”). Accordingly, FedEx Ground has filed this Notice of Removal within 30
20 days of service. *See, e.g., Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc ., 526*
21 *U.S. 344, 347-48 (1999).*

22 3. The Complaint purports to state causes of action for:

- 23 a. Declaratory Relief under California Code of Civil Procedure
24 § 1060;
- 25 b. Violation of California Labor Code §§ 1194, 1197 (Failure to
26 Pay Minimum Wages);
- 27 c. Violation of California Labor Code §§ 510, 1194, 1198 and
28 IWC Wage Order 9 (Failure to Pay Overtime Wages);

- d. Violation of California Labor Code §§ 226.7, 512, and IWC Wage Order 9 (Failure to Provide Meal Breaks);
- e. Violation of California Labor Code §§ 226.7, 512, and IWC Wage Order 9 (Failure to Provide Rest Breaks);
- f. Violation of California Labor Code § 2802 (Failure to Reimburse for Necessary Business Expenses);
- g. Violation of California Labor Code §§ 226, 226.2, 226.3 (Failure to Provide Adequate Wage Statements);
- h. Violation of California Wage Order (Unlawful Deductions From Wages);
- i. Violation of California Business & Professions Code §§ 17200 *et seq.* (Unfair Competition); and
- j. Quantum Meruit/Unjust Enrichment.

4. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district embracing the place and county where the State Court case was pending and where the Complaint was filed.

5. Based on information and belief, the only other pleading filed in this matter is FedEx Ground's Answer, filed on March 7, 2019, copy attached as **Exhibit B**. There are no other pleadings filed in this matter. A copy of the State Court case docket is attached hereto as **Exhibit C**.

II. NOTICE TO ADVERSE PARTIES AND STATE COURT

6. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the San Bernardino County, California Superior Court, along with a notice of that filing, a copy of which will be served on all parties.

7. Pursuant to 28 U.S.C. § 1446(d), FedEx Ground is serving written notice of the removal of this case on Plaintiff's counsel (identified below) via

1 overnight delivery, a true and correct copy of which is being attached as **Exhibit D**
2 to this Notice (without the exhibit thereto, which consists of this Notice):

3 Stanley D. Saltzman
4 Adam M. Tamburelli
5 Cody R. Kennedy
6 Marlin & Saltzman, LLP
7 29800 Agoura Road, Suite 210
8 Agoura Hills, California 91301

8 **III. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER**
9 **THIS ACTION UNDER THE CLASS ACTION FAIRNESS ACT**

10 8. The Class Action Fairness Act (“CAFA”) reflects Congress’s intent to
11 have federal courts adjudicate substantial class-action suits brought against out-of-
12 state defendants. *See* S. Rep. No. 109-14, at 42-43 (2005), *as reprinted in* 2005
13 U.S.C.C.A.N. 3, 40-41; H. Rep. No. 108-144, at 35-37 (2005). To effectuate this
14 purpose, CAFA provides that putative class actions filed in state court are
15 removable to federal court and expands federal jurisdiction over such class actions
16 by amending 28 U.S.C. section 1332 to grant original jurisdiction where, as here,
17 the putative class contains at least 100 class members, the parties are minimally
18 diverse, and the amount in controversy exceeds \$5,000,000 in the aggregate for the
19 entire class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

20 9. “Congress intended CAFA to be interpreted expansively.” *Ibarra v.*
21 *Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). When a defendant seeks
22 removal under CAFA, they “must file in the district court a notice of removal
23 ‘containing a short and plain statement of the grounds for removal’” *Id.*
24 (quoting 28 U.S.C. § 1446(a)). By design, this statute “tracks the general pleading
25 requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure.” *Dart*
26 *Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553 (2014).

27 10. This putative class action satisfies all the jurisdictional requirements
28 under CAFA. Specifically, based on the allegations in the Complaint and the

1 attached declaration, (1) the proposed class consists of 100 or more members;
2 (2) the parties are minimally diverse; (3) the amount in controversy exceeds the
3 \$5,000,000 jurisdictional threshold; (4) the primary defendants are not States, State
4 officials, or other governmental entities against whom the district court may be
5 foreclosed from ordering relief; and (5) the exceptions to CAFA do not apply here.
6 *See id.* at 552-53; *see also Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020-22
7 (9th Cir. 2007).

8 **A. The Putative Class Size Exceeds 100 Members**

9 11. CAFA requires that the putative class consist of at least 100 persons.
10 28 U.S.C. § 1332(d)(5)(B). In the Complaint, Plaintiff purports to represent all
11 “persons who at any time during the Class Period . . . (1) were designated by
12 Defendants as independent contractors; and (2) who performed work for
13 Defendants as linehaul truck drivers in the State of California.” (Compl. ¶ 18.) By
14 Plaintiff’s own admission, “[t]he members of the class are so numerous that joinder
15 of all members would be impractical, if not impossible.” (*Id.* ¶ 20.)

16 12. FedEx Ground contracts with incorporated vendors who provide
17 certain linehaul trucking services to FedEx Ground. Those vendors, in turn, employ
18 the drivers who perform the trucking services. Some owners of these vendors
19 perform driving services personally and some do not. Each linehaul vendor
20 appoints an “Authorized Officer” to conduct business with FedEx Ground under the
21 parties’ contract, and typically a vendor owner who also personally drives a truck is
22 designated as that vendor’s Authorized Officer. FedEx Ground does not employ the
23 drivers, owners, Authorized Officers, or anyone else employed by the
24 vendors. (Declaration of Stephanie Ciummo (“Ciummo Decl.”) ¶ 4, attached as
25 **Exhibit E.**)

26 13. FedEx Ground maintains certain records about the individuals who
27 provide linehaul trucking services to FedEx Ground under the vendors’ contracts
28 for a variety of reasons, including to ensure that vendors provide qualified drivers

1 who can safely operate a vehicle. These records confirm that more than 100 of the
2 vendors based in California with whom FedEx Ground has contracted have
3 Authorized Officers who personally performed driving services under the vendors'
4 contracts with FedEx Ground at some point between January 9, 2015, and the
5 present. (*Id.* ¶ 5.)

6 **B. There Is Sufficient Diversity of Citizenship**

7 14. The second CAFA requirement—that the parties be minimally
8 diverse—is readily satisfied here, because at least one putative class member is a
9 citizen of a different state than at least one defendant. 28 U.S.C. § 1332(d)(2).

10 15. Plaintiff is a citizen of the State of California. (Compl. ¶ 11.)

11 16. FedEx Ground is, and was at the time of the filing of this action, a
12 corporation organized under the laws of Delaware, with its principal place of
13 business in Moon Township, Pennsylvania. (Ciummo Decl. ¶ 3; *see also* FedEx
14 Ground Corporate Disclosure Statement (filed herewith).) FedEx Ground's top
15 leadership principals are located in Moon Township, Pennsylvania. For instance,
16 the Company's President & Chief Executive Officer, Chief Financial Officer,
17 General Counsel, and Chief Operating Officer are all located in and at all times
18 relevant to this action have been located in Moon Township, Pennsylvania. All
19 high-level decisions about FedEx Ground's business, strategy, operations, and
20 investments are made from its headquarters in Moon Township, Pennsylvania.
21 (Ciummo Decl. ¶ 3) Virtually all of FedEx Ground's high-level strategic planning,
22 decisions and analysis are performed within its headquarters in Pennsylvania, and
23 all litigation is overseen from the headquarters in Moon Township, Pennsylvania.
24 (*Id.*)

25 17. FedEx Ground is thus a citizen of Delaware and Pennsylvania for
26 purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1) (“[A] corporation
27 shall be deemed to be a citizen of every State . . . by which it has been incorporated
28 and of the State where it has its principal place of business . . .”). Accordingly,

1 because there is at least minimal diversity between the parties, the second CAFA
2 requirement is satisfied. *See id.* § 1332(d)(2).

3 **C. The Minimum Amount in Controversy Requirement Is Satisfied**

4 18. To confer subject matter jurisdiction on this Court based on diversity
5 of citizenship, the amount in controversy must exceed the sum or value of
6 \$5,000,000, exclusive of interest and costs. *Id.* Under CAFA, the claims of the
7 individuals comprising a putative class are aggregated to determine if the amount in
8 controversy exceeds the \$5,000,000 jurisdictional threshold. *Id.* § 1332(d)(6).
9 Calculation of the amount in controversy includes punitive damages as well as
10 compensatory damages. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.
11 2001), *superseded by statute on other grounds as stated in Bayol v. Zipcar, Inc.*,
12 No. 14-cv-02483-TEH, 2015 WL 4931756, at *9 (N.D. Cal. Aug. 18, 2015).

13 19. To meet the amount-in-controversy requirement, a “defendant seeking
14 removal of a putative class action must demonstrate, by a preponderance of
15 evidence, that the aggregate amount in controversy exceeds the jurisdictional
16 minimum,” if challenged. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975,
17 981 (9th Cir. 2013). Categories of damages considered in determining the amount
18 in controversy include: (1) compensatory damages, (2) punitive damages, (3) the
19 value of injunctive relief, and (4) attorneys’ fees. *Dale v. St. Paul Fire & Marine*
20 *Ins. Co.*, No. 1:12-cv-00247-REB, 2012 WL 5199666, at *2 (D. Idaho Oct. 22,
21 2012) (citing *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 839 (9th Cir. 2002)); *Simmons*
22 *v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002)). Here, this means the
23 Court can consider the statutory damages, reimbursement and disgorgement of
24 sums allegedly improperly retained by Defendant, attorneys’ fees and costs, and
25 punitive damages Plaintiff seeks on behalf of the putative class. (Compl., Prayer for
26 Relief.)

27 20. Although FedEx Ground denies employing Plaintiff, denies employing
28 any putative class member, and denies that Plaintiff or any putative class member is

1 entitled to any relief from FedEx Ground, in determining the amount in controversy
2 the Court must assume that the allegations in the Complaint are true. *Fong v. Regis*
3 *Corp.*, No. 13-cv-04497, 2014 WL 26996, at *2 (N.D. Cal. Jan. 2, 2014).

4 Furthermore, “a defendant’s notice of removal need include only a plausible
5 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
6 *Cherokee*, 135 S.Ct. at 554; *Garnett v. ADT LLC*, 74 F. Supp. 3d 1332, 1334 (E.D.
7 Cal. 2015).

8 21. Among his various claims, Plaintiff pleads an independent cause of
9 action for reimbursement of expenses on behalf of himself and each class member.
10 (Compl. ¶¶ 105-08.) Plaintiff, in particular, alleges that “Defendants maintain
11 uniform policies, procedures, and practices requiring Plaintiff and Class Members
12 to incur significant, substantial, and ongoing necessary business expenses that
13 rightfully should have been borne by Defendants, and Defendants have failed to
14 reimburse Plaintiff and Class Members for the said expenses.” (*Id.* ¶ 107.) Plaintiff
15 also alleges that “business-related expenses and costs delivery workers incurred
16 includ[e], but [are] not limited to, fuel, maintenance, repairs, uniform costs and
17 expenses, scanner fees, cell phone fees, GPS service fees, and liability and other
18 insurance covering work place injuries or property damage.” (*Id.* ¶ 74.)
19 Accordingly, allegedly unreimbursed fuel costs are properly included in estimating
20 the amount in controversy for purposes of establishing CAFA jurisdiction.

21 22. FedEx Ground maintains records that document linehaul vendors’ fuel
22 purchases related to the vendors’ provision of services to FedEx Ground. These
23 records show that K Corley Trucking, Inc., the linehaul vendor for whom Plaintiff
24 was the Authorized Officer, purchased fuel in the amounts of at least \$63,000 in
25 2015, which roughly translates to about \$1,200 per week. (Ciummo Decl. ¶ 6.)
26 Assuming only a one-year contract during the class period for a minimum of 100
27 Authorized Officers, and that each incurred \$1,200 per week in fuel costs, the
28 reimbursement claim for fuel costs alone would amount to at least \$62,400 for each

1 class member and, thus, at least \$6,240,000 for the class as a whole. *See Branch v.*
2 *PM Realty Grp., L.P.*, 647 F. App'x 743, 746 (9th Cir. 2016) (recognizing that a
3 defendant is permitted to make reasonable assumptions in calculating the aggregate
4 amount-in-controversy for purposes of CAFA jurisdiction).

5 23. Plaintiff also pleads causes of action for unpaid minimum wage and
6 overtime and demands liquidated damages, statutory penalties, and attorneys' fees,
7 as well as additional expenses like vehicle maintenance and insurance. (Compl.
8 ¶¶ 82-95, 105-12, Prayer for Relief ¶¶ 5-11, 14-15.) Thus, the amount in
9 controversy in this case easily exceeds \$6.24 million.

10 24. Accordingly, the \$5,000,000 amount-in-controversy requirement for
11 CAFA jurisdiction is satisfied.

12 **IV. THIS COURT HAS SUBJECT-MATTER JURISDICTION UNDER 28**
13 **U.S.C. §§ 1332 AND 1441**

14 25. Additionally, this Court has subject matter jurisdiction under 28 U.S.C.
15 §§ 1332 and 1441 because this is a civil action in which the amount in controversy
16 as to Plaintiff's individual claims exceeds the sum of \$75,000, exclusive of costs
17 and interest, and is between citizens of different states.

18 **A. Complete Diversity of Citizenship Exists**

19 26. As previously explained, Plaintiff is a citizen of the State of California
20 and FedEx Ground is, for the purposes of diversity jurisdiction, a citizen of
21 Delaware and Pennsylvania. (*See* ¶¶ 15-17, *supra*.)

22 27. Because the parties are citizens of different states, and FedEx Ground
23 is not a citizen of the State of California, complete diversity exists and removal is
24 proper. 28 U.S.C. §§ 1332, 1441; *see also Snyder v. Harris*, 394 U.S. 332, 340
25 (1969) (recognizing that for class actions a court should consider only the
26 citizenship of the named parties when determining whether there is complete
27 diversity).

1 **B. The Amount in Controversy for Plaintiff’s Individual Claims**
2 **Exceeds \$75,000**

3 28. The Complaint does not quantify the amount of damages Plaintiffs
4 seek to recover in this action.

5 29. To establish diversity jurisdiction, the amount in controversy must
6 exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). When, as
7 here, the complaint does not quantify the damages or requested relief, the removing
8 party has the burden to demonstrate by a preponderance of the evidence that the
9 amount in controversy exceeds \$75,000, if challenged. *Chavez v. JP Morgan Chase*
10 *& Co.*, 888 F.3d 413, 416 (9th Cir. 2018). Again, however, the defendant’s notice
11 of removal must “include only a plausible allegation that the amount in controversy
12 exceeds the jurisdictional threshold.” *Dart Cherokee*, 135 S. Ct. at 554.

13 30. The allegations in the Complaint give rise to potential individual
14 damages in excess of \$75,000, thereby establishing that the amount in controversy
15 meets the jurisdictional requirement.

16 31. Among his various causes of action, Plaintiff asserts an independent
17 cause of action for failure to reimburse his necessary business expenses, including
18 the costs of fuel. (Compl. ¶¶ 74, 105-08.)

19 32. As stated above, Plaintiff was the Authorized Officer for the vendor K
20 Corley Trucking, Inc., which contracted with FedEx Ground to provide linehaul
21 trucking services. (Ciummo Decl. ¶ 6.) FedEx Ground’s records show that K
22 Corley Trucking purchased fuel in the amounts of more than \$63,000 in 2015, more
23 than \$20,000 in 2016, and more than \$2,000 in 2017. (*Id.*) Thus, the total amount
24 of allegedly unreimbursed fuel costs at issue in this case is at least \$85,000.

25 33. Notably, this amount does not include damages related to Plaintiff’s
26 other causes of action (which include claims for unpaid minimum wage and
27 overtime); nor does it account for Plaintiff’s demands for liquidated damages,
28

1 statutory penalties, and attorneys' fees. (Compl. ¶¶ 82-95, 105-12, Prayer for Relief
2 ¶¶ 5-11, 14-15.) Plaintiff's alleged individual damages thus easily exceed \$85,000.

3 34. Accordingly, a fair reading of the allegations in Plaintiffs' complaint
4 and the underlying facts of this case show that the amount in controversy exceeds
5 \$75,000, exclusive of interest and costs.

6 **V. CONCLUSION**

7 Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, FedEx Ground hereby
8 removes the above-captioned action from the Superior Court of California for the
9 County of San Bernardino the United States District Court for the Central District
10 of California.

11
12 Dated: March 8, 2019

O'MELVENY & MYERS LLP
SCOTT VOELZ
ALEXANDER J. LARRO
CHRISTIANNNA KYRIACOU

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16 By: /s/ Scott Voelz
Scott Voelz
17 Attorneys for Defendant
18 FedEx Ground Package System, Inc.
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Exhibit A



**Service of Process
Transmittal**

02/08/2019

CT Log Number 534890462

TO: Matthew Endlish
FedEx Ground Package System, Inc.
1000 Fed Ex Dr
CORAOPOLIS, PA 15108

RE: Process Served in California

FOR: FedEx Ground Package System, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: KAWASKI CORLEY, etc., Pltf. vs. FEDEX GROUND PACKAGE SYSTEM INC., etc., et al.,
Dfts.

DOCUMENT(S) SERVED: Summons, Complaint, Cover Sheet, Instructions, Certificate, Notices, Attachments

COURT/AGENCY: San Bernardino County - Superior Court - San Bernardino, CA
Case # CIVDS1900867

NATURE OF ACTION: Employee Litigation - Discrimination

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 02/08/2019 at 13:05

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Stanley D. Saltzman
MARLIN & SALTZMAN, LLP
29800 Agoura Road, Suite 210
Agoura Hills, CA 91301
818-991-8080

ACTION ITEMS: CT has retained the current log, Retain Date: 02/08/2019, Expected Purge Date:
02/13/2019

Image SOP

Email Notification, Matthew Endlish matthew.endlish@fedex.com

Email Notification, Susan Kernan isopcomplaints@fedex.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

2/8/19 12:20p

**SUMMONS
(CITACION JUDICIAL)**

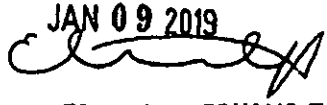
SUM-100

**NOTICE TO DEFENDANT: FEDEX GROUND PACKAGE SYSTEM INC.,
(AVISO AL DEMANDADO):** a Delaware Corporation; and DOES 1 to 100, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 09 2019



EDUARDO HERNANDEZ

**YOU ARE BEING SUED BY PLAINTIFF: KAWASKI CORLEY,
(LO ESTÁ DEMANDANDO EL DEMANDANTE):** individually, and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.


Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desearchar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SAN BERNARDINO COUNTY SUPERIOR COURT
247 W. Third Street
247 W. Third Street
San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso): **CIVD81900867**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Stanley D. Saltzman (SBN 90058); (818) 991-8080 (818) 991-8081
Adam M. Tamburelli (SBN 301902); Cody R. Kennedy (SBN 296061)
MARLIN & SALTZMAN, LLP
29800 Agoura Road, Suite 210, Agoura Hills, CA 91301

DATE: **JAN 09 2019** Clerk, by  Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010)). **EDUARDO HERNANDEZ**



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **FEDEX GROUND PACKAGE SYSTEM-INC.,**
under: CCP 416.10 (corporation) CCP 416.60 (minor) **A DELAWARE CORPORATION**
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- by personal delivery on (date): **2/8/19**

1 **MARLIN & SALTZMAN, LLP**
 2 Stanley D. Saltzman, Esq. (SBN 90058)
 3 Adam M. Tamburelli, Esq. (SBN 301902)
 4 Cody R. Kennedy, Esq. (SBN 296061)
 5 29800 Agoura Road, Suite 210
 6 Agoura Hills, California 91301
 7 Telephone: (818) 991-8080
 Facsimile: (818) 991-8081
 ssaltzman@marlinsaltzman.com
 atamburelli@marlinsaltzman.com
 ckennedy@marlinsaltzman.com

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

JAN 09 2019


EDUARDO HERNANDEZ

8 *Attorneys for Plaintiffs Kawaski Corley, individually, and*
 9 *on behalf of all others similarly situated and aggrieved*

10 **SUPERIOR COURT OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

12 **KAWASKI CORLEY, individually,**
 13 **and on behalf of all others**
 14 **similarly situated,**

Case No. **CIVDS1900867**

CLASS ACTION COMPLAINT

15 **Plaintiffs,**

1. **DECLARATORY RELIEF** (Code Civ. Proc., § 1060)

16 **v.**

2. **FAILURE TO PAY MINIMUM WAGES** (Labor Code §§ 1194, 1197);

17 **FEDEX GROUND PACKAGE**
 18 **SYSTEM INC., a Delaware**
 19 **Corporation; and DOES 1 to 100,**
 20 **inclusive,**

3. **FAILURE TO PAY OVERTIME WAGES** (Labor Code §§ 510, 1194, 1198 and Applicable Wage Order)

21 **Defendants.**

4. **FAILURE TO PROVIDE MEAL BREAKS** (Labor Code §§ 226.7, 512, And Wage Order);

5. **FAILURE TO PROVIDE REST BREAKS** (Labor Code §§ 226.7, 512, And Wage Order);

6. **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES** (Labor Code § 2802);

7. **FAILURE TO PROVIDE ADEQUATE WAGE STATEMENTS** (Labor Code §§ 226, 226.2 226.3);

8. **UNLAWFUL DEDUCTIONS FROM WAGES** (Wage Order);

9. **UNFAIR COMPETITION** (Bus. & Prof. Code § 17200 *et seq.*);

10. **QUANTUM MERIT/UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff KAWASKI CORLEY (“Plaintiff”), on behalf of himself, individually, and all
2 others similarly situated and aggrieved, brings this Complaint against Defendant FEDEX
3 GROUND PACKAGE SYSTEM INC. (“FEDEX”), and DOES 1 to 100, inclusive (collectively,
4 “Defendants”), and for causes of action against them, allege and complain as follows:

5 **INTRODUCTION**

6 1. In a scheme to increase their profits by unlawfully evading their obligations to
7 provide benefits, pay relevant taxes, and absorb various operating costs, FEDEX has misclassified
8 Plaintiff and other similarly situated and aggrieved linehaul truck drivers who signed Linehaul
9 Contractor Operating Agreements (“Class Members”) as independent contractors rather than
10 employees. By this action, Plaintiff seeks to put an end to this illegal and oppressive conduct.

11 2. Plaintiff and Class Members, are plainly employees under California law. FEDEX
12 nearly completely controls the overall operation of its business: it coordinates with customers in
13 need of trucking services, negotiates prices, sets delivery times, and provides the workers. FEDEX
14 also retains control over Class Members’ assignments, schedules, customer service standards,
15 equipment, electronic logging devices, and trucks.

16 3. Plaintiff and Class Members, as a condition precedent to employment, are required
17 to abide by uniform rules and policies promulgated by FEDEX subjecting them to strict control,
18 and incorrectly classifying them as independent contractors.

19 4. As a result of FEDEX’s misclassification, Plaintiff and Class Members are forced
20 to absorb thousands of dollars of costs appropriately borne by their employer, leaving many in a
21 financially precarious position with limited take home pay. They are also deprived of the protection
22 of workers’ compensation benefits in the event of injury, as well as other benefits to which they
23 are entitled. Moreover, because of its misclassification, FEDEX fails to properly pay California
24 taxes it owes. These actions illegally reduce FEDEX’s costs of doing business, and constitute
25 unlawful and unfair business practices in violation of California’s Unfair Competition Law.

26 5. Additionally, by willfully and intentionally misclassifying Plaintiff and Class
27 Members as independent contractors, FEDEX failed to pay them minimum wages, failed to pay
28 overtime wages, failed to provide mandatory meal and rest breaks, failed to maintain adequate

1 records, failed to reimburse employees for reasonably incurred businesses expenses, made
2 improper deductions from wages, and failed to provide accurate wage statements.

3 6. As such, FEDEX's policies, practices, and customs have resulted in violations of
4 the California Labor Code, IWC Wage Order No. 9, and laws covered by the Private Attorneys
5 General Act ("PAGA"), and constitute unlawful and/or unfair business practices, in violation of
6 the California Business & Professional Code, which have resulted in damages to Plaintiffs and
7 Class Members.

8 7. Further, Plaintiff and the Class Members rendered services to Defendants from
9 which Defendants derived benefit. Defendants, however, failed to compensate Plaintiffs and the
10 putative class members for the reasonable value of such services. Thus, FEDEX was unjustly
11 enriched.

12 JURISDICTION AND VENUE

13 8. This Court has jurisdiction over the statutory violations alleged herein, including,
14 but not limited to, violations of Labor Code §§ 200-203, 226, 226.2, 226.3, 226.7, 226.8, 510, 512,
15 1174, 1194, 1197, 1198, and 2802, as well as over the violations of Bus. & Prof. Code §§ 17200
16 *et seq.*, and the governing California IWC Wage Order No. 9 and other California Regulations.

17 9. The Court has jurisdiction over the quasi-contract/unjust enrichment claim in that
18 the services were rendered in the State of California, by California residents.

19 10. Venue is proper in this county under section 395.5 of the California Code of Civil
20 Procedure, as Plaintiff was assigned to a FEDEX terminal, which is located in the State of
21 California, County of San Bernardino.

22 PARTIES

23 11. Plaintiff KAWASKI CORLEY, is a resident of the State of California, and has been
24 employed by Defendants from on or about November 2005, to August 2017.

25 12. Plaintiff has been victimized by the policies, practices, and customs of Defendants,
26 which are complained of in this action, in ways that have deprived him of the rights guaranteed to
27 him by IWC Wage Order No. 9, the Labor Code, and the Bus. & Prof. Code.

28 13. Defendant FEDEX is a Delaware corporation doing business within the State of

1 California. Defendant has, at all relevant times, been an employer covered by the Labor Code and
2 IWC Wage Order 9.

3 14. Plaintiff does not know the true names or capacities, whether individual, partner,
4 or corporate, of the defendants sued herein as DOE defendants, and for that reason, said defendants
5 are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when
6 the true names and capacities are known. Plaintiff is informed and believes, and based thereon
7 alleges, that each of the said fictitious defendants were responsible in some way for the matters
8 alleged herein and proximately caused Plaintiff and members of the general public and putative
9 class to be subject to the illegal employment practices, wrongs, breaches, and injuries complained
10 of herein.

11 15. At all times pertinent hereto, each of the said DOE defendants participated in the
12 doing of acts hereinafter alleged to have been done by the named Defendant (“Named Defendants
13 and Doe Defendants are collectively referred to as “Defendants”); and furthermore, the
14 Defendants, and each of them, were the agents, servants, and employees of each of the other
15 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
16 within the course and scope of said agency and employment.

17 16. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 pertinent hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
19 joint venturer of, or working in concert with, each of the other co-Defendants and was acting within
20 the course and scope of such agency, employment, joint venture, or concerted activity. To the
21 extent the said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
22 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
23 Defendants.

24 17. At all times pertinent hereto, the acts and omissions of various Defendants, and
25 each of them, concurred with and contributed to the various acts and omissions of each and all of
26 the other Defendants in proximately causing the injuries and damages, as herein alleged. At all
27 pertinent times, Defendants, and each of them, ratified each and every act or omission complained
28 of herein. At all pertinent times, the Defendants, and each of them, aided and abetted the acts and

1 omissions of each and all of the other Defendants in proximately causing the injuries and damages
2 as herein alleged.

3 **CLASS ALLEGATIONS**

4 18. Pursuant to Code of Civil Procedure section 382, Plaintiff brings this action on
5 behalf of himself and the following class:

6 All persons who at any time during the Class Period: (1) were designated by Defendants
7 as independent contractors; and (2) who performed work for Defendants as linehaul truck
8 drivers in the State California.

9 19. **Class Period:** The Class Period is defined as commencing at a date that is four
10 years prior to the date of the filing of this complaint and continuing from that point forward, until
11 the date that a final judgment has been entered in this matter.

12 20. **Numerosity:** The members of the class are so numerous that joinder of all members
13 would be impractical, if not impossible. The identities of the members of the class are readily
14 ascertainable by review of Defendants' records, including, without limitation, payroll records,
15 work orders, work assignments, and other documents, vouchers and receipts issued to the Class
16 Members by Defendants.

17 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
18 to represent, fairly and adequately, the interests of the above-defined class. Plaintiff's attorneys
19 are ready, willing, and able to fully and adequately represent the class and the individual Plaintiff.
20 Plaintiff's attorneys have prosecuted, tried, and settled wage-and-hour class actions in the past and
21 currently have a number of wage-and-hour class actions pending in the California state and federal
22 courts, as well as elsewhere in the United States.

23 22. Defendants uniformly administered a company-wide policy and practice of
24 misclassifying Plaintiff and the putative Class Members as "independent contractors" and (a) not
25 paying Plaintiff and the class all wages, including minimum wages and overtime wages, earned,
26 (b) failing to provide mandatory meal and rest breaks and/or failing to pay premium wages for
27 missed meal and/or rest periods, (c) failing to keep proper records as required by the Labor Code
28 and applicable Wage Order regulations, (d) requiring Plaintiff and the class members to incur and

1 pay for Defendants' necessary business expenses, without reimbursement therefor, (e) making
2 unlawful deductions from Plaintiff and class members' wages, (f) failing to provide accurate wage
3 statements, (g) failing to compensate Plaintiff for the reasonable value of their services provided,
4 (h) engaging in unfair business practices, and (i) violating wage and hour laws that carry civil
5 penalties.

6 23. Plaintiff is informed and believes, and based thereon alleges, that this enterprise-
7 wide conduct was and is accomplished with Defendants' advance knowledge of the
8 misclassification, and arises out of Defendants' designed intent to willfully and intentionally fail
9 to accurately record proper rates of pay, hours worked, net wages, and deductions.

10 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 a consistent and uniform policy, practice, and/or procedure of willfully failing to comply with
12 Labor Code §§ Code §§ 200-203, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 1174, 1194, 1197,
13 1198, 2802, as well as other violations that constitute unfair and/or unlawful conduct under Bus.
14 & Prof. Code §§ 17200 et seq., and the governing Wage Order regulations.

15 25. **Common Questions of Law and Fact:** There are predominant common questions
16 of law and fact and community of interest amongst Plaintiff and the claims of the class, concerning
17 Defendants' treatment of them, including but not limited to:

- 18 a. Whether Class Members were improperly classified as independent contractors
19 instead of employees
- 20 b. Whether Defendants failed to pay for all time worked, by virtue of its payment
21 system that only paid piece rate for certain specified activities performed, while
22 paying nothing for time worked on other required duties;
- 23 c. Whether the Class Members performed services for Defendants;
- 24 d. Whether Defendants engaged Class Members to do work;
- 25 e. Whether Defendants suffered or permitted the Class Members to do work;
- 26 f. Whether Class Members were free from the control and direction of Defendants in
27 connection with their work;
- 28 g. Whether Class Members' work is outside the usual course of the hiring entity's

- 1 business;
- 2 h. Whether Class Members are engaged in an independently established trade,
- 3 occupation, or business of the same nature as that involved in the work they
- 4 perform;
- 5 i. Whether Defendants retained all necessary control over their business operations;
- 6 j. Whether the compensation paid to Class Members, based on hours worked, was
- 7 less than the applicable minimum wage or, where applicable, less than the proper
- 8 overtime wage;
- 9 k. Whether the Class Members were entitled to mandatory meal and rest breaks, and
- 10 if so, whether they were made available or provided, and whether premium wages
- 11 should have been paid when meal and/or rest periods were missed;
- 12 l. Whether Class Members ever received a paid rest period;
- 13 m. Whether Defendants kept adequate employment records;
- 14 n. Whether the Class Members were improperly required to incur Defendants'
- 15 necessary business expenses without reimbursement therefor;
- 16 o. Whether Defendants made illegal deductions from the Class Members' earnings;
- 17 p. Whether Defendants provided accurate and itemized wage statements;
- 18 q. Whether the Defendants' policies and practices, as described herein, were unlawful
- 19 and/or unfair business practices; and
- 20 r. Whether the Defendants were unjustly enriched by failing to pay a reasonable value
- 21 to Plaintiff and putative Class Members for their services.

22 26. **Typicality:** The claims of the Plaintiff are typical of the claims of all members of
23 the class. Plaintiff has suffered and incurred damages as a result of the alleged violations of the
24 applicable Wage Order, the Labor Code and the Bus. & Prof. Code and the failure to be reasonably
25 compensated for his services, herein alleged.

26 27. The Labor Code and Wage Order upon which Plaintiff bases his claims are remedial
27 in nature. These laws and labor standards serve an important public interest in establishing
28 minimum working conditions and standards. These laws and labor standards protect the average

1 worker from exploitation by employers who may seek to take advantage of superior economic and
2 bargaining power in setting onerous terms and conditions of employment. Such statutes and
3 regulations are designed to defeat rather than implement express or implied agreements that depart
4 from the statutory scheme, in the employment contract.

5 28. The nature of this action and the format of laws available to Plaintiff and members
6 of the class identified herein make the class action format a particularly efficient and appropriate
7 procedure to redress the wrongs alleged herein and, therefore, is the superior means of redress of
8 Defendants' alleged wrongdoings. If each Plaintiff and member of the putative class were required
9 to file an individual lawsuit, the Defendants would necessarily gain an unconscionable advantage
10 since they would be able to exploit and overwhelm the limited resources of each individual plaintiff
11 with their vastly superior financial and legal resources. Requiring each class member to pursue an
12 individual remedy would also discourage the assertion of lawful claims by workers who would be
13 disinclined to file an action against their former and/or current employer for real and justifiable
14 fear of retaliation and permanent damage to their careers at subsequent employments. The filing
15 of individual lawsuits would also create an unnecessary strain on existing judicial resources and
16 raise the potential for inconsistent findings and verdicts among the various litigations.

17 29. The prosecution of separate actions by the individual Class Members, even if
18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
19 to individual Class Members against the Defendants and which would establish potentially
20 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
21 individual Class Members which would, as a practical matter, be dispositive of the interests of
22 other Class Members not parties to the adjudications or which would substantially impair or
23 impede the ability of the Class Members to protect their interests. Further, the claims of the
24 individual members of the class are not sufficiently large to warrant vigorous individual
25 prosecution considering all of the concomitant costs and expenses.

26 30. Such a pattern, practice, and uniform administration of enterprise-wide policies and
27 practices regarding illegal and improper compensation, as described herein, creates an entitlement
28 to recovery by the Plaintiff and the Class Members identified herein, in a civil action, for the unpaid

1 balance of the full amount of unpaid and/or withheld compensation, including interest thereon,
2 applicable penalties and premium pay, reasonable attorneys' fees, and costs of suit according to
3 the mandates of, *inter alia*, Labor Code §§ 226, 1194, and Code of Civil Procedure § 1021.5.

4 31. Proof of common business practices and/or factual patterns, which the named
5 Plaintiff experienced and are representative of, will establish the right of each of the members of
6 the proposed class to recover on the causes of action alleged herein.

7 32. The putative class is commonly entitled to a specific fund with respect to the
8 compensation illegally and unfairly retained by Defendants. The class is commonly entitled to
9 restitution of those funds being improperly withheld by Defendants. This action is brought for the
10 benefit of the entire class and will result in the creation of a common fund.

11 SUBSTANTIVE ALLEGATIONS

12 Working for FEDEX

13 33. FEDEX linehaul truck drivers perform an integral and essential aspect of its
14 business: the delivery of cargo. In its Linehaul Agreements FEDEX advertises that FedEx Ground
15 Package System, Inc. is a duly licensed motor carrier engaged in providing small package
16 information, transportation, and delivery service throughout the United States.

17 34. Further, FEDEX advertises that it "wants to provide for package pick-up and
18 delivery services through a network of nationwide stations."

19 35. In short, the delivery of cargo is FEDEX's principal business operation. Without
20 its truck drivers, FEDEX could not carry on its business.

21 36. Plaintiff and Class Members are hired by FEDEX as linehaul truck drivers. They
22 provide transportation services at one or more of FEDEX's locations and cannot transport loads
23 for other companies while in the process of transporting goods for FEDEX.

24 37. FEDEX, as a matter of policy and procedure, designates Plaintiff and Class
25 Members as independent contractors.

26 38. Despite labelling these drivers as independent contractors, FEDEX retains
27 substantial control over the manner and means of work performed by Plaintiff and the Class and
28 the equipment used by Plaintiff and the Class. FEDEX retains substantial control over its linehaul

1 drivers by, among other things:

- 2 - Exerting control over their tractor color, decals required and where those decals need to
3 be placed.
- 4 - Retaining the right to require mandatory training for linehaul drivers and overseeing the
5 performance of said drivers.
- 6 - Retaining the right to demand access to linehaul driver records.
- 7 - Requiring that linehaul drivers use FEDEX's application system, exams, and selection
8 process when hiring helpers or other staff.
- 9 - Retaining the right to suspend or disqualify linehaul drivers' helpers/staff.
- 10 - Retaining control over who can/cannot be present in a linehaul driver's truck while
11 services are being performed.
- 12 - Requiring use of only services and companies approved by FEDEX (such as qualified
13 driving schools)
- 14 - Requiring the usage of specific equipment from specific vendors (i.e. electronic tracking
15 devices)
- 16 - Requiring the use of assigned parking spaces and retaining control of where linehaul
17 drivers may park their vehicles on company premises.
- 18 - Retaining the right to oversee all legal compliance.
- 19 - Providing regular announcements as to how drivers are to conduct their work, at threat of
20 discipline.
- 21 - Retaining to right to oversee maintenance and inspection schedules.
- 22 - Retaining general control over linehaul drivers through route declines and deducted
23 "points".

24 39. Plaintiff and the Class were paid on a piece rate basis that allowed for only payment
25 for the performance of specified tasks/duties. They were not compensated for any other work that
26 they regularly performed and were required to work in excess of 10 hours a day. They were not
27 provided meal breaks or rest periods by Defendants. They did not receive pay stubs that, among
28 other issues, the correct number of hours that they worked, or broke out the total hours of

1 compensable rest and recovery periods.

2 **FEDEX's Misclassification of Plaintiff and Class Members**

3 40. Under the applicable statutes and Wage Order regulations, FEDEX is the
4 "employer" of Plaintiff and Class Members because the FEDEX has engaged them to do
5 something of benefit for it or a third-party (Labor Code § 2750), and because it exercises pervasive
6 control over the drivers and retains all necessary control over their business enterprise. Further,
7 FEDEX exercised control over the wages, hours, and/or working conditions of the drivers, so as
8 to render all class members employees.

9 41. Additionally, under the applicable IWC Wage Order, a worker in California cannot
10 be an independent contractor unless the hirer can prove: (A) that the worker is free from the control
11 and direction of the hirer in connection with the performance of the work, both under the contract
12 for the performance of such work and in fact; and, (B) that the worker performs work that is
13 outside the usual course of the hiring entity's business; and (C) that the worker is customarily
14 engaged in an independently established trade, occupation, or business of the same nature as the
15 work performed for the hiring entity.

16 42. As discussed in the following paragraphs, FEDEX cannot prove that it meets any
17 of the above requirements, so FEDEX misclassifies Plaintiff and Class Members as independent
18 contractors instead of employees.

19 43. First, FEDEX retains and exercises significant control over the details of Plaintiff's
20 and Class Members' schedules, routes, deliveries, the manner and means of how the delivery work
21 is performed, and all necessary aspects of their working conditions. Among other things, FEDEX
22 holds Plaintiff and Class Members to strict standards of service pervasive throughout the entire
23 delivery process and requires them to adhere to all "customer requirements" and to meet "customer
24 service" standards regarding FEDEX customers.

25 44. Second, the service provided by Plaintiff and Class Members -- truck driving -- is
26 not an independently established trade such as a plumber or electrician. Rather, they are integral
27 and central to the operation of FEDEX's core business. FEDEX provides transportation services.
28 Plaintiff and Class Members perform these services for FEDEX: they are hired to transport and

1 deliver cargo in California based on times, locations, and for fees determined by FEDEX. Indeed,
2 FEDEX employs company drivers, who perform substantially the same duties as Plaintiff and
3 Class Members.

4 45. Third, FEDEX prevents Plaintiff and Class Members from engaging in an
5 independently established trade, occupation, or business by refusing to allow them to use their
6 trucks for any purposes other than FEDEX's business while in the act of transporting for FEDEX.
7 Thus, Plaintiff and the Class may not establish their own client-base and transport goods along
8 their own independently established routes (not created by FEDEX) which would serve multiple
9 clients at the same time.

10 46. FEDEX dictates the manner in which Plaintiff and Class Members perform their
11 work. For example, it requires Plaintiff and Class Members to transport the freight tendered to it
12 by FEDEX from point of origin to point of destination within deadlines established between
13 FEDEX and FEDEX's client. It also requires Plaintiff and Class Members to make every
14 reasonable effort to perform freight transportation services hereunder in a prompt, competent and
15 diligent manner consistent with FEDEX's standards of customer service and satisfaction, to
16 conduct all business in a professional manner with proper decorum at all times, and to cooperate
17 with FEDEX employees, customers, and other linehaul drivers. Further, Plaintiff and the Class
18 Members are required to adhere to customer service expectations that must be met in servicing
19 FEDEX's transportation needs.

20 47. Plaintiff and Class Members are required to purchase on-board computer approved
21 by FEDEX for dispatch and tracking purposes. That on-board computer tracks every movement
22 on Plaintiff's and Class Members' trucks.

23 48. Plaintiff and Class Members are uniformly required to pay many employment-
24 related expenses including, fuel, oil, tires and equipment, vehicle maintenance costs and repairs,
25 various taxes and assessments, and expenses necessary to keep their trucks in compliance with all
26 federal and state safety laws and regulations..

27 49. Defendants further retain the right to set schedules for Plaintiff and Class Members
28 at its convenience upon threat of discipline.

1 50. Additionally, FEDEX unilaterally set the prices charged to its customers, and
2 Plaintiff and Class Members have no control over those prices.

3 51. Despite the above, FEDEX knowingly and intentionally misclassifies Plaintiff and
4 Class Members as independent contractors when, under California law, they are employees who
5 are working within FEDEX's business, providing the service that FEDEX exists to provide to its
6 customers.

7 **FEDEX's Failure to Pay Overtime Wages**

8 52. At all relevant times herein, California Labor Code sections 510 and 1198 and IWC
9 Wage Order 9, section 3, make it unlawful for an employer to employ persons without
10 compensating them at one and a half times or double the employee's regular rate of pay depending
11 on the number of hours worked by the employee in a daily or weekly basis.

12 53. California Labor Code section 510 provides for overtime compensation at one-and-
13 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
14 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work.

15 54. California Labor Code section 510 also provides for overtime compensation at
16 twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess
17 of eight (8) hours in a day on the seventh day of work. For piece rate workers, the DLSE has
18 published the formula for determining overtime compensation, whereby workers receive 1 ½ times
19 their piece rate for work performed during the time that exceeds eight hours in the workday and
20 double their piece rate for work performed after the 12th hour of the workday.

21 55. IWC Wage Order 9, section 3, requires employers to pay their employees one and
22 a half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours in
23 a workday or more than forty (40) hours in a workweek.

24 56. IWC Wage Order 9, section 3, further requires that employers pay their employees
25 double the employees regular rate of pay for all hours worked in excess of twelve (12) hours in a
26 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day
27 of work in a workweek.

28 57. During the relevant time period, Plaintiff and Class Members regularly worked in

1 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty
2 (40) hours in a week, yet FEDEX failed to pay delivery workers overtime compensation in
3 violation of California Labor Code sections 510 and 1198 and IWC Wage Order 9, section 3.

4 **FEDEX's Failure to Provide Meal Periods**

5 58. At all times relevant hereto, California Labor Code sections 226.7 and 512 and IWC
6 Wage Order 9, section 11, required employers to provide employees with a first meal period of
7 not less than thirty (30) minutes during which they are relieved of all duty before working more
8 than five (5) hours and a second meal period of not less than thirty (30) minutes during which they
9 are relieved of all duty before working more than ten (10) hours per day.

10 59. At all times relevant hereto, California Labor Code section 226.7(b) and IWC Wage
11 Order 9, section 11, required employers to pay one hour of additional pay at the regular rate of
12 compensation for each employee and each workday that a proper meal period is not provided.

13 60. FEDEX did not have, maintain, or publish a compliant meal period policy.

14 61. Further, by improperly classifying Plaintiff and Class Members as independent
15 contractors, FEDEX affirmatively represented to Plaintiff and the Class that they had no rights to
16 receive the meal periods that were legally required to be provided by FEDEX.

17 62. FEDEX failed to provide breaks, keep records of break times and did not inform
18 Plaintiff and Class Members of their rights to a thirty (30) minute, uninterrupted, duty-free meal
19 break under California law.

20 63. FEDEX regularly failed to provide a timely thirty (30) minute off-duty meal period
21 to delivery workers when working more than five (5) hours in a day.

22 64. FEDEX further regularly failed to provide a second timely thirty (30) minute meal
23 period to delivery workers who worked more than ten (10) hours in a day.

24 **FEDEX Failure to Permit and Compensate for Rest Periods**

25 65. At all times relevant hereto, California Labor Code section 226.7 and IWC Wage
26 Order, 9, section 12, required employers to authorize, permit, and provide a ten (10) minute paid
27 rest period for each four (4) hours of work, during which employees are relieved of all duty. Such
28 breaks are paid and counted as hours worked.

1 66. At all times relevant hereto, California Labor Code section 226.7(b) and IWC Wage
2 Order, 9, section 12, required employers to pay one hour of additional pay at the regular rate of
3 compensation for each employee and each workday that a proper rest period is not provided.

4 67. FEDEX did not have, maintain, or publish a compliant rest period policy.

5 68. Further, by improperly classifying Plaintiff and the Class as independent
6 contractors, FEDEX affirmatively represented to Plaintiff and the Class that they had no rights to
7 receive the rest periods that were legally required to be provided by FEDEX.

8 69. FEDEX regularly failed to provide a ten (10) minute paid rest period for each four
9 (4) hours of work, during which the delivery workers should have been relieved of all duty.

10 70. As a result of FEDEX's compensation scheme, FEDEX failed to compensate their
11 delivery workers for break times when breaks were not provided. Defendants' compensation
12 scheme did not permit paid rest breaks as mandated by California law.

13 71. FEDEX regularly failed to pay one hour of additional pay at the regular rate of
14 compensation for each delivery worker each workday that a proper rest period was not provided.

15 **FEDEX's Failure to Indemnify Delivery Workers for Its Business Expenses**

16 72. At all times relevant hereto, California Labor Code section 2802 required
17 employers to indemnify their employees for "all necessary expenditures or losses incurred by the
18 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
19 the directions of the employer..."

20 73. IWC Wage Order 9, section 9, requires employers to maintain tools and equipment
21 required by the employer or that are necessary to the performance of the job.

22 74. FEDEX has failed to reimburse Plaintiff and Class Members for all business-related
23 expenses and costs delivery workers incurred including, but not limited to, fuel, maintenance,
24 repairs, uniform costs and expenses, scanner fees, cell phone fees, GPS service fees, and liability
25 and other insurance covering work place injuries or property damage.

26 75. FEDEX also takes deductions from Plaintiff's and Class Members' paychecks for
27 work-related expenditures in direct consequence of their job duties.

28 ///

1 **FEDEX's Unlawful Deductions from Delivery Workers' Wages**

2 76. At all times relevant hereto, IWC Wage Order 9, section 8, required that no
3 employer shall make any deduction from the wage or require any reimbursement from an employee
4 for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage,
5 breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

6 77. Wage statements provided by FEDEX include deductions from Plaintiff's and
7 Class Members' paychecks for work-related expenditures they incurred in direct consequence of
8 their job duties, in violation of the IWC Wage Order number 9, section 8.

9 **FIRST CAUSE OF ACTION**

10 **FOR DECLARATORY RELIEF**

11 **(Labor Code § 3357)**

12 78. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
13 this complaint, as though set forth in full at this point.

14 79. Pursuant to California Labor Code section 3357, Plaintiff and Class Members are
15 entitled to a presumption that they are in fact Defendants' employees. The same holds true under
16 the applicable wage order. *Dynamex Operations West, Inc. v. Superior Court*, 2018 WL 1999120
17 (2018).

18 80. An actual controversy has arisen between Plaintiff and the Class Members, on one
19 hand, and Defendants on the other, as to whether Defendants misclassified Plaintiff and Class
20 Members as "independent contractors" when, in fact, Plaintiff and Class Members were and are
21 Defendants' employees.

22 81. Plaintiff and the Class Members seek declaratory relief against Defendants herein
23 and in Plaintiff's favor, declaring that they were and are Defendants' employees and, further,
24 declares Defendants' practices to be unlawful, and which provides for recovery of all sums
25 determined by this Court to be owed by Defendants, and each of them, to Plaintiff and the Class
26 Members.

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SECOND CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGE
(Labor Code §§ 1194, 1197, and Wage Order)

82. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of this complaint, as though set forth in full at this point.

83. Notwithstanding the unconscionable piece-rate policies and procedures that Defendants require the linehaul drivers to agree to as a condition of employment, Plaintiff and Class Members are Defendants' employees, as heretofore alleged, because, *inter alia*, Defendants engage, suffer, or permit the linehaul drivers to work for them, yet retain all necessary control over their business and exercise significant control over the wages, hours of work, and working conditions of the Plaintiff and class members.

84. Defendants provide the quintessential "tools" for Plaintiff and Class Members, including without limitation the cargo to be transported and the terminals in which the cargo is loaded and unloaded, among others. Defendants control the rates paid, the loads assigned, the number of loads, the timing of the loads and the hours worked. Defendants demand strict compliance with Defendants' customer service and service and compliance standards when transporting cargo, and, as alleged herein, assume full control over Plaintiff's' and Class Members' vehicles.

85. When Plaintiff's and Class Members' working hours are divided into the amount of compensation paid by Defendants, the result is an hourly rate that is less than that set by the IWC Minimum Wage Order. This result is further exacerbated when the unlawful deductions and unreimbursed business expenses are deducted from the gross wages paid.

86. Furthermore, insofar as Plaintiff and Class Members are only paid for the pieces (i.e., deliveries) they complete, they are not paid at all for time worked not covered by the piece rate system such as conducting required inspections, cleaning trucks and shipping containers, detention time until a certain threshold is reached, and time attending training and other meetings. Additionally, and because Defendants have no rest break policy, the delivery workers are not paid, at all, for the rest periods that the Labor Code and Wage Order designate as "hours worked." In

1 each and every instance, the workers receive less than the minimum wage for their mandated rest
2 periods.

3 87. Labor Code § 1197 provides: “The minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.”

6 88. Labor Code § 1194 provides: “Notwithstanding any agreement to work for a lesser
7 wage, any employee receiving less than the legal minimum wage or the legal overtime
8 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
9 of the full amount of this minimum wage or overtime compensation, including interest thereon,
10 reasonable attorney's fees, and costs of suit.”

11 89. Labor Code § 1194.2(a) provides: “In any action under ... Section 1194 to recover
12 wages because of the payment of a wage less than the minimum wage fixed by an order of the
13 commission, an employee shall be entitled to recover liquidated damages in an amount equal to
14 the wages unlawfully unpaid and interest thereon.”

15 90. Insofar as Defendants, and each of them, failed to pay Plaintiff and Class Members
16 an amount that was at least the same as the applicable minimum wage, Defendants, and each of
17 them, were and are in violation of the applicable wage and hour laws.

18 91. Wherefore, Plaintiff and Class Members class are entitled to damages in the sum of
19 unpaid wages, liquidated damages, and the other relief provided by the Labor Code, in an amount
20 according to proof at the time of trial.

21 **THIRD CAUSE OF ACTION**

22 **FOR FAILURE TO PAY OVERTIME**

23 **(Labor Code §§ 510, 1194, 1198, and Wage Order)**

24 92. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
25 this complaint, as though set forth in full at this point.

26 93. Under California law, eight hours a day constitutes a day's work. Any work in
27 excess of eight hours a day or 40 hours per week must be compensated at the rate of one-and-one-
28 half times the worker's regular hourly rate. Any work in excess of 12 hours in a work day must be

1 compensated at the rate of two times the worker's regular hourly rate. (Labor Code §§ 510(a),
2 1198, and IWC Wage Order 9). Likewise, the DLSE has published the analogous formula to be
3 utilized for piece rate workers.

4 94. Plaintiff and Class Members regularly worked more than eight hours a day, and
5 often more than 12 hours a day. Plaintiff alleges on information and belief that delivery records
6 maintained by Defendants will demonstrate when they reported for work and when they concluded
7 their day's work. Plaintiff and the Class Members were entitled to premium pay, pursuant to Labor
8 Code § 510(a), for the hours worked beyond eight hours in a single work day.

9 95. Plaintiff and the members of the putative class are entitled to recover their unpaid
10 overtime wages, including interest thereon, reasonable attorneys' fees, and costs of suit, pursuant
11 to Labor Code § 1194(a).

12 **FOURTH CAUSE OF ACTION**

13 **FOR FAILURE TO PROVIDE MEAL BREAKS**

14 **(Labor Code §§ 226.7, 512, and Wage Order)**

15 96. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
16 this complaint, as though set forth in full at this point.

17 97. Under California law, and as applicable hereto, no worker may be compelled to
18 labor for a work period of five or more hours without being provided with a 30-minute, duty-free
19 meal break. Likewise, no worker may be compelled to work for more than 10 hours in a single
20 day, without being provided with a second, 30-minute, duty-free meal break. (Labor Code § 512
21 and Part 11 of Wage Order 9.)

22 98. Defendants failed to provide the required meal breaks to Plaintiff and Class
23 Members, even though they regularly labored for work periods of more than five hours, without a
24 meal break, and workdays of more than 10 hours, without a second meal break. Plaintiff alleges,
25 on information and belief, that Defendants had no policy, procedure, or practice with regard to the
26 provision of meal breaks to the delivery workers and that the lack of such policy, procedure, and
27 practice led to the result that none of the delivery workers were provided with the required meal
28 breaks.

1 99. Pursuant to Labor Code § 226.7(b), each Plaintiff and each member of the putative
2 class is entitled to recover from Defendants the sum of one hour of pay at their regular rate for
3 each meal period that was not provided by Defendants.

4 **FIFTH CAUSE OF ACTION**

5 **FOR FAILURE TO PROVIDE REST BREAKS**

6 **(Labor Code §§ 226.7, 512, and Wage Order)**

7 100. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
8 this complaint, as though set forth in full at this point.

9 101. Under California law, and as applicable hereto, employers must authorize and
10 provide a ten minute, duty-free rest break for every four hours of work in a workday. (Part 12 of
11 Wage Order 9.) The rest period shall be counted as “hours worked.” (*Ibid.*)

12 102. Defendants failed to authorize and/or provide the required rest breaks to Plaintiff
13 and the Class Members, even though Plaintiff and the Class Members regularly labored for work
14 periods of more than four hours, without a rest break, and workdays of more than 10 hours, without
15 additional rest breaks. Plaintiff alleges, on information and belief, that Defendants had no policy,
16 procedure, or practice that affirmatively authorized rest breaks to the delivery workers, and in fact
17 Defendants affirmatively represented that Plaintiff and the Class Members were Independent
18 Contractors not entitled to be provided rest breaks by FEDEX. Defendants’ uniform policies
19 procedures and practices constitute a failure to authorize such breaks and led to the result that
20 required rest breaks were not provided.

21 103. Further, as Defendants only compensated Plaintiff and the Class Members, based
22 on a piece rate and thus, did not have a mechanism to compensate Plaintiff and Class Members for
23 rest periods, even if taken, then Plaintiff and Class Members could not and did not receive paid
24 rest periods as required by California law.

25 104. Pursuant to Labor Code § 226.7(b), each Plaintiff and each member of the putative
26 class is entitled to recover from Defendants the sum of one hour of pay at their regular rate for
27 each rest period that was not authorized and/or provided by Defendants.

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

3 **(Labor Code § 2802)**

4 105. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
5 this complaint, as though set forth in full at this point.

6 106. Under California law, workers are entitled to be indemnified “for all necessary
7 expenditures or losses incurred by them in direct consequence of the discharge of their duties.”

8 107. As previously alleged herein, Defendants maintain uniform policies, procedures,
9 and practices requiring Plaintiff and Class Members to incur significant, substantial, and ongoing
10 necessary business expenses that rightfully should have been borne by Defendants, and Defendants
11 have failed to reimburse Plaintiff and Class Members for the said expenses.

12 108. Because these necessary expenses were incurred by Plaintiff and Class Members in
13 direct consequence of the discharge of their duties, Plaintiff and Class Members are entitled to be
14 indemnified, pursuant to Labor Code § 2802(b), with interest thereon beginning from the date that
15 each expense was incurred.

16 **SEVENTH CAUSE OF ACTION**

17 **FOR IMPROPER DEDUCTIONS FROM WAGES**

18 **(Labor Code § 226; Wage Order)**

19 109. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
20 this complaint, as though set forth in full at this point.

21 110. California law prohibits an employer from deducting anything from an employees’
22 wages, other than those deductions explicitly permitted by law. The fees deducted from Plaintiff’s
23 and Class Members’ wages are not explicitly permitted by law. Nevertheless, Defendants’ custom,
24 policy and practice was and is to deduct these fees from wages being paid to Plaintiff and Class
25 Members. This deduction was and is an illegal deduction from wages under California law.

26 111. Further, California law prohibits an employer, in the absence of dishonesty or gross
27 negligence, from making any deduction or requiring any reimbursement for any cash shortage,
28 breakage, or loss of equipment. However, Defendants had and have a policy, custom, and/or

1 practice of making such unlawful deductions and requiring unlawful reimbursements from
2 Plaintiff and Class Members.

3 112. Plaintiff and Class Members are entitled to recover from Defendants the amounts
4 improperly and illegally deducted from their compensation, as well as the penalty specified in
5 Labor Code § 226(e), an injunction to enjoin the continuation of this policy, practice and/or
6 custom, and an award of reasonable costs and attorneys' fees.

7 **EIGHTH CAUSE OF ACTION**

8 **FOR INADEQUATE AND/OR FAILURE TO PROVIDE**

9 **ITEMIZED WAGE STATEMENTS**

10 **(Labor Code § 226 and 226.2)**

11 113. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
12 this complaint, as though set forth in full at this point.

13 114. Labor Code § 226 makes it unlawful for an employer to fail to provide accurate and
14 itemized wage statements to its employees.

15 115. Pursuant to California Labor Code Section 226(a), Plaintiff and Class Members
16 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
17 itemized statement showing, *inter alia*: (a) gross wages earned; (b) net wages earned; (c) all
18 applicable hourly rates in effect during the pay period; and (d) the corresponding number of hours
19 worked at each hourly rate by the employee.

20 116. Pursuant to Labor Code Section 226.2(a)(2)(A), Plaintiff and the Class Members,
21 as they were paid on a piece rate basis, were also entitled to receive, an accurate itemized statement
22 showing: (a) the total hours of compensable rest and recovery periods; (b) the rate of compensation,
23 and (c); the gross wages paid for those periods during the pay period.

24 117. Defendants violated the foregoing provisions, in that Defendants failed to provide
25 Plaintiff and Class Members with accurate itemized statements in accordance with California
26 Labor Code Section 226(a) by providing Plaintiff and Class Members with wage statements with
27 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned, as a result
28 of the unlawful labor and payroll practices described herein. Defendants also violated

1 226.2(a)(2)(A) by failing to provide Plaintiff and Class Members wage statements that provided
2 the total hours of compensable rest and recovery periods, the rate of compensation for them, and
3 the gross wages paid for those periods during the pay period. Plaintiff and Class Members are
4 therefore entitled to the statutory penalty set forth in subdivision (e) of section 226, as well as an
5 injunction against Defendants, under subdivision (h), including an award of costs and reasonable
6 attorney's fees.

7 **NINTH CAUSE OF ACTION**

8 **FOR UNFAIR COMPETITION**

9 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

10 118. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
11 this complaint, as though set forth in full at this point.

12 119. Defendants have engaged and continue to engage in unfair and unlawful business
13 practices in California by practicing, employing, and utilizing the policies, customs, and practices
14 outlined above, including, to wit: (1) not paying all wages, including minimum wage, and
15 overtime; (2) failing to pay all earned wages in a timely fashion; (3) failing to pay premium wages
16 for meal and rest breaks not provided; (4) making improper deductions from compensation and
17 failing to keep proper records as required by law; (5) failing to reimburse and/or indemnify
18 Plaintiff and Class Members for Defendants' necessary business expenses; (6) improperly
19 classifying Plaintiff and Class Members as independent contractors; and (7) Failing to pay all
20 wages owed upon termination.

21 120. Plaintiff and Class Members have each suffered actual harm as a result of
22 Defendants' unfair and/or unlawful business practices. Plaintiff and the Class Members have been
23 deprived of wages actually earned but wrongfully and unlawfully retained by Defendants.

24 121. Defendants' utilization of such unfair and unlawful business practices constitutes
25 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors who
26 follow the law.

27 122. Plaintiff seeks, on his own behalf, on behalf of the Class Members, and on behalf
28 of the general public, full restitution of monies, as necessary and according to proof, to restore any

1 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
2 practices complained of herein.

3 123. The acts complained of herein occurred within the last four years preceding the
4 filing of this action.

5 124. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 pertinent hereto, Defendants have engaged in unlawful, deceptive, and unfair business practices, a
7 proscribed by Bus. & Prof. Code §§ 17200 *et seq.*, including those set forth hereinabove, thereby
8 depriving Plaintiff and other members of the general public of the wages, minimum working
9 standards and conditions due to them under California's laws and Industrial Welfare Commission
10 wage orders specifically described herein.

11 **TENTH CAUSE OF ACTION**

12 **FOR UNJUST ENRICHMENT**

13 125. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs of
14 this complaint, as though set forth in full at this point.

15 126. Plaintiff and the Class Members conferred a benefit upon Defendants by working
16 on their behalf without compensation including, but not limited to, working hours for which they
17 were not compensated.

18 127. Defendants had an appreciation or knowledge of the benefit conferred by Plaintiff
19 and the Class Members.

20 128. Defendants accepted and retained the benefit under circumstances as to make it
21 inequitable for Defendants to retain the benefit without payment of its value.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment for himself, and all others on whose behalf
24 this suit is brought, against Defendants, jointly and severally, as follows:

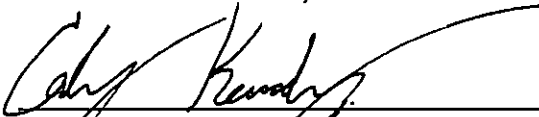
- 25 1. For an order certifying the proposed Class;
- 26 2. For an order appointing Plaintiff as the representative of the Class;
- 27 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 28 4. On the First Cause of Action, a declaration that Defendants' conduct violated and

- 1 violates California law; a declaration that Plaintiff and the class members are
2 Defendants' employees and entitled to the protections of the Labor Code and applicable
3 Wage Order; and restitution and disgorgement of all sums improperly retained by
4 Defendants as a result of their misclassification of Plaintiff and class members;
- 5 5. On the Second Cause of Action, for damages and/or penalties, including liquidated
6 damages, as provided by statute, in an amount according to proof at the time of trial;
- 7 6. On the Third Cause of Action, for damages and/or penalties, as provided by statute, in
8 an amount according to proof at the time of trial;
- 9 7. On the Fourth Cause of Action, for damages and/or penalties, as provided by law, in
10 an amount according to proof at the time of trial;
- 11 8. On the Fifth Cause of Action, for damages and/or penalties, as provided by law, in an
12 amount according to proof at the time of trial;
- 13 9. On the Sixth Cause of Action, for reimbursement of all necessary business expenses
14 advanced by Plaintiff and the class members, in an amount according to proof at the
15 time of trial;
- 16 10. On the Seventh Cause of Action, for damages and/or penalties, as provided by law, and
17 for an injunction enjoining Defendants from continuing to make unlawful deductions
18 from the delivery workers' compensation, interest thereon, and reasonable costs and
19 attorneys' fees, as provided by Labor Code § 226;
- 20 11. On the Eighth Cause of Action, for damages and/or penalties, as provided by law, in
21 an amount according to proof at the time of trial;
- 22 12. On the Ninth Cause of Action, for restitution to Plaintiff and other similarly situated
23 members of the general public of all funds unlawfully acquired by Defendants by
24 means of any acts or practices declared by the Court to be in violation of Bus. & Prof.
25 Code §§ 17200 *et seq.*, for an injunction to prohibit Defendants from engaging in the
26 unfair business practices complained of herein, for an injunction requiring Defendants
27 to give notice, to persons to whom restitution is owing, of the means by which to file
28 and make claim for restitution;

- 1 13. On the Tenth Cause of Action, for quasi-contract recovery for services rendered;
- 2 14. On all causes of action, for attorneys' fees and costs, as provided by Labor Code
- 3 §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5;
- 4 15. On all causes of action, for the penalties permitted by law; and,
- 5 16. For all such other and further relief as the Court may deem just and proper.

6
7 DATED: January 08, 2019

MARLIN & SALTZMAN, LLP


8 By: 
 9 Stanley D. Saltzman, Esq.
 10 Cody R. Kennedy, Esq.
 Attorneys for Plaintiff and the putative Class

11
12
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial on all issues so triable.


15
16 DATED: January 08, 2019

MARLIN & SALTZMAN, LLP

17 By: 
 18 Stanley D. Saltzman, Esq.
 19 Adam M. Tamburelli, Esq.
 20 Cody R. Kennedy, Esq.
 Attorneys for Plaintiffs and the putative Class

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stanley D. Saltzman (SBN 90058; Adam M. (SBN 301902); Cody R. Kennedy (SBN 296061) MARLIN & SALTZMAN, LLP 29800 Agoura Road, Suite 210 Agoura Hills, CA 91301 TELEPHONE NO.: (818) 991-8080 FAX NO.: (818) 991-8081 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT JAN 09 2019  EDUARDO HERNANDEZ
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 W. Third Street MAILING ADDRESS: 247 W. Third Street CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: Justice Center	CASE NUMBER: CIVDS1900867 JUDGE: DEPT:
CASE NAME: CORLEY v. FEDEX GROUND PACKAGE SYSTEM INC.	Complex Case Designation Counter Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15)	Contract Breach of contract/warranty (06) Rule 3.740 collections (09) Other collections (08) Insurance coverage (18) Other contract (37) Real Property Eminent domain/inverse condemnation (14) Wrongful eviction (33) Other real property (28) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) Judicial Review Asset forfeiture (05) Petition re: arbitration award (11) Writ of mandate (02) Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Ten (10)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 9, 2019

Cody R. Kennedy

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers.

If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases.

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

CASE TYPES AND EXAMPLES**Contract**

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach-Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rule 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

KAWASKI CORLEY, et al.

CASE NO.: CIVDS1900867

vs.

CERTIFICATE OF ASSIGNMENT

FEDEX GROUND PACKAGE SYSTEM INC.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the Justice Center District of the Superior Court under Rule 104 of this court for the checked reason:

- General Collection

- Nature of Action Ground
1. Adoption Petitioner resides within the district
2. Conservator Petitioner or conservatee resides within the district.
3. Contract Performance in the district is expressly provided for.
4. Equity The cause of action arose within the district.
5. Eminent Domain The property is located within the district.
6. Family Law Plaintiff, defendant, petitioner or respondent resides within the district.
7. Guardianship Petitioner or ward resides within the district or has property within the district.
8. Harassment Plaintiff, defendant, petitioner or respondent resides within the district.
9. Mandate The defendant functions wholly within the district.
10. Name Change The petitioner resides within the district.
11. Personal Injury The injury occurred within the district.
12. Personal Property The property is located within the district.
13. Probate Decedent resided or resides within the district or had property within the district.
14. Prohibition The defendant functions wholly within the district.
15. Review The defendant functions wholly within the district.
16. Title to Real Property The property is located within the district.
17. Transferred Action The lower court is located within the district.
18. Unlawful Detainer The property is located within the district.
19. Domestic Violence The petitioner, defendant, plaintiff or respondent resides within the district.
20. Other Employment Complex Litigation
21. THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT

By Fax

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

FedEx Terminal/Rialto, CA Hub 330 Resource Drive
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR ADDRESS
Bloomington CA 92316
CITY STATE ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on January 9, 2019 at Agoura Hills, California

Signature of Attorney/Party

CERTIFICATE OF ASSIGNMENT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino CA 924150210

CASE NO: CIVDS1900867

MARLIN & SALTZMAN, LLP
29800 AGOURA ROAD
SUITE 210
AGOURA HILLS CA 91301

I M P O R T A N T C O R R E S P O N D E N C E

From the above entitled court, enclosed you will find:

Initial Case Management Order & Guidelines

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice:

- Enclosed in a sealed envelope mailed to the interested party addressed above, for collection and mailing this date, following standard Court practices.
- Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.
- A copy of this notice was given to the filing party at the counter
- A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

Date of Mailing: 01/17/19

I declare under penalty of perjury that the foregoing is true and correct. Executed on 01/17/19 at San Bernardino, CA

BY: AMIE ARROYO

M A I L I N G C O V E R S H E E T

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO JUSTICE CENTER
247 W. 3RD ST
SAN BERNARDINO, CA 92415-0210

CASE NO: CIVDS1900867

<http://www.sb-court.org>

----- APPEARANCE IS MANDATORY - Unless Case is Finalized -----

Appearance Date: 03/22/19 Time: 8:30 Dept: S26

IN RE: (COMPLEX) CORLEY -V- FEDEX

NOTICE OF CASE ASSIGNMENT FOR ALL PURPOSES
NOTICE OF CASE MANAGEMENT CONFERENCE

PLEASE TAKE NOTICE, that the above-entitled case has been set for a Case Management Conference on 03/22/19 at 8:30 in Department S26. You must appear at this hearing or your case may be dismissed and monetary penalties may be imposed.

THIS CASE HAS BEEN ASSIGNED TO JUDGE DAVID COHN IN DEPARTMENT S26 FOR ALL PURPOSES.

Your Joint Statement must be filed, directly in the Complex Litigation Department, five (5) calendar days prior to the hearing.

TO THE PARTY SERVED: The setting of this date DOES NOT increase the time you have to respond to the petition. The time for response is clearly stated on the Summons.

Please see the Guidelines for the Complex Litigation Program for further information. The guidelines may be found at the Court Website: <http://www.sb-court.org>

A COPY OF THIS NOTICE MUST BE SERVED ON THE RESPONDENT

Nancy CS Eberhardt, Court Executive Officer

Date: 01/17/19

By: AMIE ARROYO

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice by:

Enclosed in an envelope mailed to the interested party addressed above, for collection and mailing this date, following ordinary business practice.

Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.

A copy of this notice was given to the filing party at the counter.

A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

DATE OF MAILING: 01/17/19

I declare under penalty of perjury that the foregoing is true and correct. Executed on 01/17/19 at San Bernardino, CA By: AMIE ARROYO

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

Complex Litigation Program

Judge David Cohn

Department S-26

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 17 2019

BY *Christina [Signature]*
DEPUTY

KAWASKI CORLEY- V- FEDEX GROUND PACKAGE

Case No. CIV-DS1900867

INITIAL CASE MANAGEMENT CONFERENCE ORDER

This case is assigned for all purposes to Judge David Cohn in the Complex Litigation Program. An initial Case Management Conference (CMC) is scheduled for MAR 22 2019 at 8:30 a.m., in Department S-26, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, California, 92415.

Counsel for all parties are ordered to attend the initial CMC. Absent prior court approval, telephonic appearances are not allowed for the initial CMC. If there are defendants who have not yet made a general or special appearance, those parties who are presently before the court may jointly request a continuance of the initial CMC to allow additional time for such non-appearing defendants to make their general or special appearances. Such a request should be made by submitting a Stipulation and Proposed Order to the Court, filed directly in Department S-26.

Pending further order of this court, and except as otherwise provided in this Order, these proceedings are stayed in their entirety. This stay precludes the filing of

1 any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the
2 Court. Each defendant, however, is directed to file a Notice of General Appearance (or
3 a Notice of Special Appearance if counsel intends to challenge personal jurisdiction) for
4 purposes of identification of counsel and preparation of a service list. The filing of a
5 Notice of General Appearance is without prejudice to any substantive or procedural
6 challenges to the complaint (including subject matter jurisdiction), without prejudice to
7 any denial or affirmative defense, and without prejudice to the filing of any cross-
8 complaint. The filing of a Notice of Special Appearance is without prejudice to any
9 challenge to the court's exercise of personal jurisdiction. This stay of the proceedings is
10 issued to assist the court and the parties in managing this case through the
11 development of an orderly schedule for briefing and hearings on any procedural or
12 substantive challenges to the complaint and other issues that may assist in the orderly
13 management of this case. This stay shall not preclude the parties from informally
14 exchanging documents and other information that may assist them in their initial
15 evaluation of the issues.
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19 Plaintiffs' counsel is ordered to serve this Order on counsel for each defendant,
20 or, if counsel is not known, on each defendant within five days of the date of this Order.
21 If the complaint has not been served as the date of this Order, counsel for plaintiff is to
22 serve the complaint along with this Order within ten days of the date of this Order.
23

24 Counsel for all parties are ordered to meet and confer in person no later than ten
25 days before the initial CMC to discuss the subjects listed below. Counsel must be fully
26 prepared to discuss these subjects with the court.
27

28 Agenda for the Initial CMC

1. Any issues of recusal or disqualification;

- 1 2. Any potentially dispositive or important threshold issues of law or fact that, if
- 2 considered by the court, may simplify or further resolution of the case;
- 3 3. Appropriate mechanisms for Alternative Dispute Resolution;
- 4 4. A plan for the preservation of evidence and a uniform system for the identification
- 5 of documents to be used throughout the course of this litigation, including
- 6 discovery and trial;
- 7
- 8 5. A discovery plan for the disclosure and production of documents and other
- 9 discovery, including whether the court should order automatic disclosures,
- 10 patterned on Federal Rule of Civil Procedure 26(a) or otherwise;
- 11
- 12 6. Whether it is advisable to conduct discovery in phases so that information
- 13 needed to conduct meaningful ADR is obtained early in the case;
- 14
- 15 7. Any issues involving the protection of evidence and confidentiality;
- 16
- 17 8. The use and selection of an electronic service provider;
- 18 9. The handling of any potential publicity issues.
- 19 10. Any other issues counsel deem appropriate to address with the court.

19 The Joint Report

20 Counsel are ordered to prepare a Joint Report for the initial CMC, to be filed
21 directly in Department S-26 (not in the Clerk's office), no later than three court days
22 before the conference date. The Joint Report must include the following:

- 23 1. Whether the case should or should not be treated as complex;
- 24
- 25 2. Whether additional parties are likely to be added and a proposed date by which
- 26 all parties must be served;
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- 1 3. A service list (the service list should identify all primary and secondary counsel,
2 firm names, addresses, telephone numbers, email addresses, and fax numbers
3 for all counsel.)
- 4 4. Whether the court should issue an order requiring electronic service. Counsel
5 should advise the court regarding any preferred web-based electronic service
6 provider;
- 7 5. Whether any issues of jurisdiction or venue exist that might affect this court's
8 ability to proceed with this case.
- 9 6. Whether there are applicable arbitration agreements, and the parties' views on
10 their enforceability;
- 11 7. A list of all related litigation pending in this or other courts (state and federal), a
12 brief description of any such litigation, including the name of the judge assigned
13 to the case, and a statement whether any additional related litigation is
14 anticipated;
- 15 8. A description of the major factual and legal issues in the case. The parties
16 should address any contracts, statutes, or regulations on which claims or
17 defenses are based, or which will require interpretation in adjudicating the claims
18 and defenses;
- 19 9. The parties' tentative views on an ADR mechanism and how such mechanism
20 might be integrated into the course of the litigation;
- 21 22 10. A discovery plan, including the time need to conduct discovery and whether
23 discovery should be conducted in phases or limited (and, if so, the order of
24 phasing or types of limitations). With respect to the discovery of electronically
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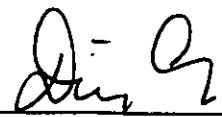
stored information (ESI), the plan should include:

- a. Identification of the Information Management Systems used by the parties;
 - b. The location and custodians of information that is likely to be subject to production (including the identification of network and email servers and hard-drives maintained by custodians);
 - c. The types of ESI that will be requested and produced, e.g. data files, emails, etc.;
 - d. The format in which ESI will be produced;
 - e. Appropriate search criteria for focused requests.
 - f. A statement whether the parties will allow their respective IT consultants or employees to participate directly in the meet and confer process.
11. Whether the parties will stipulate that discovery stays or other stays entered by the court for case management purposes will be excluded in determining the statutory period for bringing the case to trial under Code of Civil Procedure Section 583.310 (the Five Year Rule).
12. Recommended dates and times for the following:
- a. The next CMC;
 - b. A schedule for any contemplated ADR;
 - c. A filing deadline (and proposed briefing schedule) for any anticipated non-discovery motions.
 - d. With respect to class actions, the parties' tentative views on an appropriate deadline for a class certification motion to be filed.

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To the extent the parties are unable to agree on any matter to be addressed in the Joint Report, the positions of each party or of various parties should be set forth separately. The parties are encouraged to propose, either jointly or separately, any approaches to case management that they believe will promote the fair and efficient handling of this case.

DATED: 1/17/19



David Cohn,
Judge of the Superior Court

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

THE SAN BERNARDINO COUNTY COMPLEX LITIGATION PROGRAM

Department S-26 is the Complex Litigation Department for the Superior Court of the State of California, County of San Bernardino. It is located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415-0210, on the eighth floor. Judge David Cohn presides in the Complex Litigation Department. The telephone number for the Complex Litigation Department's Judicial Assistant is 909-521-3519.

DEFINITION OF COMPLEX LITIGATION

As defined by California Rules of Court, rule 3.400(a), a complex case is one that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

Complex cases typically have one or more of the following features:

- A large number of separately represented parties.
- Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve.
- A substantial amount of documentary evidence.
- A large number of witnesses.
- Coordination with related actions pending in one or more courts in other counties or states or in a federal court.
- Substantial post-judgment judicial supervision.

Complex cases may include, but are not necessarily limited to, the following types of cases:

- Antitrust and trade regulation claims.
- Construction defect claims involving many parties or structures.
- Securities claims or investment losses involving many parties.
- Environmental or toxic tort claims involving many parties.
- Mass torts.
- Class actions.
- Claims brought under the Private Attorney General Act (PAGA).
- Insurance claims arising out of the types of claims listed above.
- Judicial Council Coordinated Proceedings (JCCP).
- Cases involving complex financial, scientific, or technological issues.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT 5-26**

CASES ASSIGNED TO THE COMPLEX LITIGATION DEPARTMENT

A. Cases Designated by a Plaintiff as Complex or Provisionally Complex

Commencing July 1, 2016, all cases designated by a plaintiff as complex or provisionally complex on the *Civil Case Cover Sheet* (Judicial Council Form CM-100) will be assigned initially to the Complex Litigation Department. At the time the complaint is filed, the Court Clerk will schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for a date no later than seventy-five days after the filing of the complaint.

A plaintiff designating the case as complex or provisionally complex must file and serve a Notice of the Initial Case Management Conference and a copy of these guidelines, along with service of the summons and complaint, no later than thirty days before the conference, and must file the Notice and Proof of Service with the court.

A defendant who agrees that the case is complex or provisionally complex may indicate a "Joinder" on the *Civil Case Cover Sheet* (Form CM-100).

A defendant who disagrees that the case is complex or provisionally complex may raise the issue with the court at the Initial Case Management Conference.

B. Cases Counter-Designated By a Defendant as Complex or Provisionally Complex

Commencing July 1, 2016, all cases which were not designated by a plaintiff as complex or provisionally complex, but which are *counter-designated* by a defendant (or cross-defendant) as complex or provisionally complex on the *Civil Case Cover Sheet* (Judicial Council Form CM-100), will be assigned or re-assigned to the Complex Litigation Department. At the time the counter-designation is filed, the Court Clerk will schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for a date no later than forty-five days after the filing of the counter-designation.

A defendant or cross-defendant who files a complex counter-designation must serve a Notice of the Initial Case Management Conference and a copy of these guidelines no later than thirty days before the conference, and must file the Notice and Proof of Service with the court.

A plaintiff or other party who disagrees with the counter-designation may raise the issue with the court at the Initial Case Management Conference.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

C. Other Cases Assigned to the Complex Litigation Department

Commencing July 1, 2016, whether or not the parties designate the case as complex or provisionally complex, the following cases will be initially assigned to the Complex Litigation Department:

- All Construction Defect Cases.
- All Class Actions.
- All Cases Involving Private Attorney General Act (PAGA) Claims.¹
- All Judicial Council Coordinated Proceedings (JCCP).²

At the time the complaint is filed, the Court Clerk will schedule an Initial Case Management Conference as provided by California Rules of Court, rule 3.750, for a date no later than seventy-five days after the filing of the complaint.

The plaintiff must file and serve a Notice of the Initial Case Management Conference and a copy of these guidelines, along with service of the summons and complaint, no later than thirty days before the conference, and must file the Notice and Proof of Service with the court.

REFERRAL TO THE COMPLEX LITIGATION DEPARTMENT BY OTHER DEPARTMENTS

Commencing July 1, 2016, a judge who is assigned to a case may, but is not required to, refer the case to the Complex Litigation Department to be considered for treatment as a complex case if (1) the case was previously designated by a party as complex or provisionally complex, or (2) the referring judge deems the case to involve issues of considerable legal, evidentiary, or logistical complexity, such that the case would be best served by assignment to the Complex Litigation Department. Such a referral is not a re-assignment, but is a referral for consideration.

In any case referred by another judge to the Complex Litigation Department, the Complex Litigation Department will schedule an Initial Case Management Conference within thirty days and will provide notice to all parties along with a copy of these guidelines. If the case is determined by the Complex Litigation Department to be appropriate for treatment as a complex case, the case will be re-assigned to the Complex Litigation Department at that time. If the case is determined by the Complex Litigation Department *not* to be complex, it will be returned to the referring judge.

¹ The *Civil Case Cover Sheet* (Judicial Council Form CM-100) may not reflect the presence of a PAGA claim. PAGA claims erroneously assigned to non-complex departments are subject to re-assignment by the assigned judge to the Complex Litigation Department.

² Petitions for administrative writs of mandamus under Code of Civil Procedure section 1094 are also assigned to the Complex Litigation Department, but are not subject to these Guidelines and procedures.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

STAY OF DISCOVERY PENDING THE INITIAL CASE MANAGEMENT CONFERENCE

Commencing July 1, 2016, for cases that are assigned to the Complex Litigation Department, discovery is automatically stayed pending the Initial Case Management Conference, or until further order of the court. Discovery is not automatically stayed, however, for cases that were initially assigned to other departments and are referred to the Complex Litigation Department for consideration, unless the referring judge stays discovery pending determination by the Complex Litigation whether the case should be treated as complex.

OBLIGATION TO CONFER BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE

Prior to the Initial Case Management Conference, all parties are required to meet and confer to discuss the items specified in California Rules of Court, rule 3.750(b), and they are required to prepare a Joint Statement specifying the following:

- Whether additional parties are likely to be added, and a proposed date by which any such parties must be served.
- Each party's position whether the case should or should not be treated as a complex.
- Whether there are applicable arbitration agreements.
- Whether there is related litigation pending in state or federal court.
- A description of the major legal and factual issues involved in the case.
- Any discovery or trial preparation procedures on which the parties agree. The parties should address what discovery will be required, whether discovery should be conducted in phases or otherwise limited, and whether the parties agree to electronic service and an electronic document depository and, if so, their preferred web-based electronic service provider.
- An estimate of the time needed to conduct discovery and to prepare for trial.
- The parties' views on an appropriate mechanism for Alternative Dispute Resolution.
- Any other matters on which the parties request a court ruling.

The Joint Statement is to be filed directly in the Complex Litigation Department no later than five calendar days before the conference. This requirement of a Joint Statement is not satisfied by using Judicial Council Form CM-110, pursuant to California Rules of Court, rule 3.725(a), or by parties filing individual statements. Failure to participate meaningfully in the "meet and confer" process or failure to submit a Joint Statement may result in the imposition of monetary or other sanctions.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

THE INITIAL CASE MANAGEMENT CONFERENCE

At the Initial Case Management Conference, the court will determine whether the action is a complex case, as required by California Rules of Court, rule 3.403. If the court determines the case is complex, the court will issue further management-related orders at that time. If the court determines the case is not complex, the case may be retained by the judge in Department S-26, but not treated as a complex case, or it may be reassigned to a different department; if the case was referred by another judge and the case is found to be inappropriate for treatment as a complex case, the case will be returned to the referring judge.

At the Initial Case Management Conference, the court and counsel will address the subjects listed in California Rules of Court, rule 3.750(b), and all issues presented by the Joint Statement.

Once a case is deemed complex, the function of the Initial Case Management Conference and all subsequent Case Management Conferences is to facilitate discovery, motion practice, and trial preparation, and to discuss appropriate mechanisms for settlement negotiations.

Lead counsel should attend the Initial Case Management Conference. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if he or she is fully informed about the case and has full authority to proceed on all issues to be addressed at the conference. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed. With the exception of minor parties (e.g., subcontractors with a limited scope of work in large construction defect cases), telephonic appearances are discouraged. California Rule of Court, rule 3.670, subdivision (f)(2), authorizes the court to require attendance at hearings in person "if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case." To assist the court in making this "hearing-by-hearing" determination, any party who intends to attend the Initial Case Management Conference telephonically must notify the court of such intention no later than five court days before the hearing. The court will make a determination at that time whether or not personal attendance is required.

CASE MANAGEMENT ORDERS

In most cases, the court will issue formal, written case management orders. Typically, complex construction defect cases will proceed pursuant to such an order. Other cases involving numerous parties or unusual logistical complexity will likely be appropriate for such a written order as well. The need for a written case management order will be discussed at the Initial Case Management Conference or at later times as the need arises. The parties will prepare such orders as directed by the court.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

FURTHER CASE MANAGEMENT CONFERENCES

After the Initial Case Management Conference, the court will schedule further case management conferences as necessary and appropriate on a case-by-case basis. As issues arise during discovery and preparation for trial, the parties may also request additional case management conferences by making arrangements through the Judicial Assistant assigned to the Complex Litigation Department (909-521-3519). The court will schedule such additional case management conferences at the earliest opportunity.

As with the Initial Case Management Conference, lead counsel should attend all case management conferences. Counsel with secondary responsibility for the case may attend in lieu of lead counsel, but only if he or she is fully informed about the case and has full authority to proceed on all issues to be addressed. "Special Appearance" counsel (lawyers who are not the attorneys of record) are not allowed. With the exception of minor parties (e.g., subcontractors with a limited scope of work in large construction defect cases), telephonic appearances are discouraged. California Rule of Court, rule 3.670, subdivision (f)(2), authorizes the court to require attendance at hearings in person "If the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case." To assist the court in making this "hearing-by-hearing" determination, any party who intends to attend the Initial Case Management Conference telephonically must notify the court of such intention no later than five court days before the hearing. The court will make a determination at that time whether or not personal attendance is required.

VOLUNTARY SETTLEMENT CONFERENCES

If all parties agree, the court is available to conduct settlement conferences. Requests for settlement conferences may be made at any Case Management Conference or hearing, or by telephoning the Judicial Assistant for the Complex Litigation Department (909-521-3519).

MANDATORY SETTLEMENT CONFERENCES

In appropriate cases, the court may order mandatory settlement conferences. Parties with full settlement authority, including insurance adjustors with full settlement authority, must attend all mandatory settlement conferences in person. Availability by telephone is not allowed at mandatory settlement conferences.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26

MANAGEMENT OF CLASS ACTIONS

In class actions and putative class actions that are deemed complex, the Initial Case Management Conference will function as the Case Conference required by California Rules of Court, rules 3.762 and 3.763.

OBLIGATION TO MEET AND CONFER REGARDING MOTIONS

In addition to any other requirement to "meet and confer" imposed by statute or Rule of Court in connection with motions, all counsel and unrepresented parties are required to "meet and confer" in a good faith attempt to eliminate the necessity for a hearing on a pending motion, or to resolve or narrow some of the issues. The moving party must arrange for the conference, which can be conducted in person or by telephone, to be held no later than four calendar days before the hearing. No later than two calendar days before the hearing, the moving party is required to file a notice in the Complex Litigation Department, with service on all parties, specifying whether the conference has occurred and specifying any issues that have been resolved. If the need for a hearing has been eliminated, the motion may simply be taken off-calendar. Failure to participate meaningfully in the conference may result in the imposition of monetary or other sanctions.

The obligation to "meet and confer" does not apply to applications to appear *pro hac vice* or to motions to withdraw as counsel of record.

FORMAT OF PAPERS FILED IN CONNECTION WITH MOTIONS

Counsel and unrepresented parties must comply with all applicable statutes, Rules of Court, and Local Rules regarding motions, including but not limited to their format. Additionally, exhibits attached to motions and oppositions must be separately *tabbed*, so that exhibits can be easily identified and retrieved.

ELECTRONIC SERVICE AND DOCUMENT DEPOSITORY

The parties, especially in cases involving numerous parties or large quantities of documents, are encouraged to agree to electronic service for all pleadings, motions, and other materials filed with the court as well as all discovery requests, discovery responses, and correspondence. Nevertheless, parties must still submit "hard" copies to the court of any pleadings, motions, or other materials that are to be filed.

INFORMAL DISCOVERY CONFERENCES

The court is available for informal discovery conferences at the request of counsel. Such conferences may address the scope of allowable discovery, the order of discovery, issues of privilege,

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

and other discovery issues that may arise. Counsel may contact the Judicial Assistant assigned to the Complex Litigation Department to schedule an informal conference (909-521-3519).

Before filing any discovery motion, the moving party is required to "meet and confer" with counsel as required by statute. If the "meet and confer" exchange fails to resolve all issues, the moving party is required to request an Informal conference with the court before filing any discovery motion.

CONFIDENTIAL DOCUMENT AND PROTECTIVE ORDERS

Proposed protective orders dealing with confidential documents should state expressly that nothing in the order excuses compliance with California Rules of Court, rules 2.550 and 2.551. Proposed protective orders that are not compliant with the requirements of the Rules of Court will be rejected.

THE PRETRIAL CONFERENCE

The court will schedule a pre-trial conference, generally thirty to sixty days in advance of the trial. Counsel and the court will discuss the following matters, which counsel should be fully informed to address:

- Whether trial will be by jury or by the court.
- Anticipated motions *in limine* or the need for other pre-trial rulings.
- The anticipated length of trial.
- The order of proof and scheduling of witnesses, including realistic time estimates for each witness for both direct and cross-examination.
- If there is a large number of anticipated witnesses, whether counsel wish to have photographs taken of each witness to refresh the jury's recollection of each witness during closing argument and deliberation.
- Whether deposition testimony will be presented by video.
- The need for evidentiary rulings on any lengthy deposition testimony to be presented at trial.
- Stipulations of fact.
- Stipulations regarding the admission of exhibits into evidence.
- If there is a large amount of documentary evidence, how the exhibits will be presented in a meaningful way for the jury.
- The use of technology at trial, including but not limited to electronic evidence.
- Any unusual legal or evidentiary issues that may arise during the trial.

GUIDELINES FOR THE COMPLEX LITIGATION PROGRAM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
JUDGE DAVID COHN
DEPARTMENT S-26**

THE TRIAL READINESS CONFERENCE

Trial Readiness Conferences are held at 8:30 a.m. on the Thursday morning preceding the scheduled trial date. Counsel and unrepresented parties must comply fully with Local Rule 411.2, unless otherwise directed by the court. Failure to have the required materials available for the court may result in the Imposition of monetary or other sanctions.

TRIALS

Trial dates are generally Monday through Thursday, 10:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m. Lengthy trials, however, may require deviation from this schedule. Unless otherwise ordered by the court, counsel and unrepresented parties must be present in the courtroom at least ten minutes before each session of trial is scheduled to begin.

Whenever possible, Issues to be addressed outside the presence of the jury should be scheduled in a manner to avoid the need for the jury to wait.

Counsel are also directed to the "Rules and Requirements for Jury Trials" for Department S-26 (known as the "Green Sheet"). Copies are available upon request in Department S-26.

Exhibit B

CIV-190307-CIV-DS1900867-AFS-131302



Scanned Document Coversheet

System Code: CIV
Case Number: DS1900867
Case Type: CIV
Action Code: AFS
Action Date: 03/07/19
Action Time: 1:13
Action Seq: 0002
Printed by: PROGE

THIS COVERSHEET IS FOR COURT
PURPOSES ONLY, AND THIS IS NOT
A PART OF THE OFFICIAL RECORD.
YOU WILL NOT BE CHARGED FOR
THIS PAGE

**Answer Filed by FEDEX GROUND PACKAGE
SYSTEM INC.; party represented by O'MELVENY &
MYERS LLP.**



NEW FILE

526
3-22-19

SCANNED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 07 2019

BY Paula Rogers
PAULA ROGERS, DEPUTY

1 SCOTT VOELZ (SBN 181415)
svoelz@omm.com
2 ALEXANDER J. LARRO (SBN 287737)
alarro@omm.com
3 CHRISTIANNA KYRIACOU (SBN 313379)
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4 O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
5 Los Angeles, California 90071-2899
Telephone: +1 213 430 6000
6 Facsimile: +1 213 430 6407

7 Attorneys for Defendant
FedEx Ground Package System, Inc.

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN BERNARDINO**

12 KAWASKI CORLEY, individually, and on
behalf of all others similarly situated,

13 Plaintiffs,

14 v.

15 FEDEX GROUND PACKAGE SYSTEM,
16 INC., a Delaware Corporation; and DOES 1 to
100, inclusive,

17 Defendants.

Case No. CIV-DS1900867

**DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES**

UNLIMITED CIVIL CASE

Judge: Hon. David Cohn
Dept: S-26

\$435-190307-0638
\$1,000-190307-0639

FAXED

①

1 Defendant FedEx Ground Package System, Inc. ("FedEx Ground") categorically denies
2 any wrongdoing and hereby answers the unverified Complaint filed on January 9, 2019 (the
3 "Complaint") with a general denial and with affirmative defenses as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30(d), FedEx Ground denies,
6 generally and specifically, each and every allegation in the Complaint. FedEx Ground further
7 denies, generally and specifically, that Plaintiff is entitled to the relief requested against FedEx
8 Ground, or that Plaintiff has been or will be damaged in any sum, or at all, by reason of any act or
9 omission on the part of FedEx Ground, or any of its past or present agents, representatives, or
10 employees.

11 **DEFENSES**

12 FedEx Ground asserts the following defenses in response to the Complaint, subject to its
13 right to amend and assert such other defenses as may become available during discovery in this
14 action. In asserting these defenses, FedEx Ground does not admit that it has the burden of proof
15 on any issue as to which Plaintiff properly bears the burden.

16 **FIRST DEFENSE**

17 **Arbitration**

18 Plaintiff's claims, or some of them, may not be litigated in court because some or all of
19 said claims are subject to individual mandatory, final, and binding arbitration.

20 **SECOND DEFENSE**

21 **Failure to State a Claim**

22 Plaintiff's Complaint fails to state a claim upon which relief may be granted.

23 **THIRD DEFENSE**

24 **Statute of Limitations**

25 Plaintiff's claims, or some of them, are barred in whole or in part by the applicable statutes
26 of limitations, including, without limitation, the statute of limitations for claims under the California
27 Business and Professions Code and the limitations periods prescribed in Sections 338 and 340 of
28 the California Code of Civil Procedure.

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FOURTH DEFENSE

Statute of Frauds

Plaintiff's claims, or some of them, are barred in whole or in part by the doctrine of the statute of frauds.

FIFTH DEFENSE

Primary Jurisdiction

Plaintiff's claims, or some of them, are subject to the primary jurisdiction of the U.S. Department of Labor, the U.S. Department of Transportation, and the California Labor Commissioner.

SIXTH DEFENSE

Preemption

Plaintiff's claims are preempted in whole or in part by federal law and the federal regulation of interstate commerce in general and the transportation industry in particular, including, without limitation, the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501(c), 49 U.S.C. § 31141, and/or the Truth-in-Leasing regulations, 49 C.F.R. §§ 376.1 *et seq.*

SEVENTH DEFENSE

Res Judicata / Estoppel

Plaintiff's claims, or some of them, are barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

EIGHTH DEFENSE

Accord and Satisfaction / Payment

Plaintiff's claims, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment.

NINTH DEFENSE

Express Contract

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff, through his business entity and on which he bases all of his claims, entered into an express contact with FedEx Ground.

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TENTH DEFENSE

Novation / Termination

Plaintiff's claims, or some of them, are barred in whole or in part by the doctrines of novation and termination in that his claims are barred in whole or in part by the express terms of the agreements between FedEx Ground and Plaintiff's business.

ELEVENTH DEFENSE

Breach of Contract

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff breached any contract that did exist between his business entity and FedEx Ground.

TWELFTH DEFENSE

Condition Precedent

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff failed, jointly or severally, to satisfy a condition precedent.

THIRTEENTH DEFENSE

Merger Agreement

Plaintiff's claims, or some of them, are barred in whole or in part by the merger agreement contained in any and all contracts at issue in this action.

FOURTEENTH DEFENSE

No Class Action

Plaintiff's claims, or some of them, cannot and should not be maintained on a class action basis because those claims fail to meet the necessary requirements for certification and/or certification would violate the parties' constitutional rights, or because of the presence of a class action waiver in the contract.

FIFTEENTH DEFENSE

No Standing

Plaintiff's claims, or some of them, are barred in whole or in part based on a lack of standing because he was not a signatory in his individual capacity to any agreement with FedEx Ground or because he assigned his interest in any agreement with FedEx Ground.

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SIXTEENTH DEFENSE

Waiver

Plaintiff's claims, or some of them, are barred in whole or in part because such claims have been waived, discharged, released, and/or abandoned.

SEVENTEENTH DEFENSE

Estoppel

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff is estopped by his own conduct to claim any right to damages or other monetary relief from FedEx Ground.

EIGHTEENTH DEFENSE

Unclean Hands

Plaintiff's claims, or some of them, are barred in whole or in part by Plaintiff's unclean hands and/or inequitable or wrongful conduct.

NINETEENTH DEFENSE

Laches

Plaintiff's claims, or some of them, are barred in whole or in part by the doctrine of laches.

TWENTIETH DEFENSE

Failure to Satisfy Declaratory Relief Requirements

Plaintiff's claim for declaratory relief is barred in whole or in part because he has failed to satisfy the declaratory relief requirements as set forth in California Civil Procedure Code § 1060.

TWENTY-FIRST DEFENSE

Declaration or Determination is Not Necessary or Proper

Plaintiff's claim for declaratory relief is barred in whole or in part because neither a declaration nor a determination is necessary or proper at this time under all the circumstances. Code Civ. Proc. § 1061; see also *C.J.L. Constr., Inc. v. Universal Plumbing* (1993) 18 Cal.App.4th 376, 390.

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TWENTY-SECOND DEFENSE

Non-Employee Status

FedEx Ground did not exercise control over Plaintiff's wages, hours, or working conditions, and thus, was not an employer of Plaintiff.

TWENTY-THIRD DEFENSE

Lack of Reasonable Reliance on Alleged Misrepresentations

Plaintiff's claims, or some of them, are barred in whole or in part to the extent they are attempting to allege fraud against FedEx Ground, because to the extent alleged misrepresentations were made by FedEx Ground, which FedEx Ground specifically denies, Plaintiff did not reasonably rely on the alleged misrepresentations as a matter of law.

TWENTY-FOURTH DEFENSE

Overtime Exemption

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, Plaintiff's claims, or some of them, including, without limitation, the claims set forth in the first cause of action in said Complaint, are barred in whole or in part because Plaintiff was at all relevant times exempt from the overtime pay requirements of California law.

TWENTY-FIFTH DEFENSE

No Prohibition on Meal / Rest Periods

Assuming, *arguendo*, that Plaintiff was an employee of FedEx Ground within the meaning of applicable law, which FedEx Ground specifically denies, the claims set forth in the Complaint, or some of them, are barred in whole or in part because Plaintiff was free to take meal and rest breaks.

TWENTY-SIXTH DEFENSE

Waiver of Meal / Rest Breaks

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff waived his rights to meal and rest breaks.

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TWENTY-SEVENTH DEFENSE

Authorized Deductions

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, Plaintiff's claims, or some of them, are barred in whole or in part on the ground that Plaintiff, through his business entity and in the contract on which he bases his claims, voluntarily authorized the deductions in writing prior to accrual of the debts in issue and/or authorization was not required by state law under the facts alleged.

TWENTY-EIGHTH DEFENSE

Unavailability of Penalties

To the extent Plaintiff seeks penalties, punitive damages, exemplary damages, or other non-restitutionary awards, he fails to state facts sufficient to support such claims, and such claims are precluded by statute and/or violate the Due Process rights of FedEx Ground.

TWENTY-NINTH DEFENSE

No Unfair or Unlawful Practices

Plaintiff claim under California Business & Professions Code §§ 17200 *et seq.* is barred in whole or in part because FedEx Ground's alleged practices are not "unfair" or "unlawful," the public was not and would not likely have been deceived by any such alleged practices, FedEx Ground would have gained no competitive advantage by engaging in such alleged practices, and the benefits of the alleged practices outweighed any harm or other impact they might have caused.

THIRTIETH DEFENSE

Unconstitutional Remedy – California Business & Professions Code §§ 17200 et seq.

Any finding of liability pursuant to the California Business & Professions Code §§ 17200 et seq. would violate the Due Process Clauses of the United States and California Constitutions because, *inter alia*, the standard of liability under the statute is unduly vague and subjective and permits retroactive, random, arbitrary, and capricious punishment that serves no legitimate governmental interest.

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THIRTY-FIRST DEFENSE

Excessive Fines

Any award pursuant to California Business & Professions Code §§ 17200 et seq. would violate the Excessive Fines and Due Process Clauses of the United States and California Constitutions.

THIRTY-SECOND DEFENSE

Conduct Reasonable and in Good Faith / Not Willful

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, and assuming, *arguendo*, that Plaintiff is entitled to relief under applicable law, which FedEx Ground specifically denies, Plaintiff's claims, or some of them, are barred in whole or in part on the ground that FedEx Ground acted in good faith, with a good faith and reasonable belief that FedEx Ground had complied fully with applicable law, with a bona fide dispute as to the obligation of payment, and/or in conformity with, and in reliance on, written administrative regulations, orders, rulings, guidelines, approvals, and/or interpretations of federal and/or State agencies. Furthermore, assuming, *arguendo*, that a violation of applicable law occurred, which FedEx Ground specifically denies, FedEx Ground's conduct was not willful.

THIRTY-THIRD DEFENSE

Unavailability of Equitable Relief

Plaintiff's claims for equitable relief, or some of them, are precluded.

THIRTY-FOURTH DEFENSE

Adequate Remedy at Law

Injunctive relief is barred because Plaintiff has an adequate remedy at law and/or other requirements for granting injunctive relief cannot be satisfied.

THIRTY-FIFTH DEFENSE

No Punitive Damages

Plaintiff's causes of action, and each of them, fail to state facts sufficient to constitute a claim for punitive damages.

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THIRTY-SIXTH DEFENSE

Failure to Mitigate

Assuming, *arguendo*, that Plaintiff has suffered any economic damages as a result of FedEx Ground's actions, which FedEx Ground specifically denies, Plaintiff had a duty to mitigate damages and, upon information and belief, has failed to do so.

THIRTY-SEVENTH DEFENSE

Failure to Offer to Return Consideration Received

Plaintiff's cause of action for unjust enrichment is barred in whole or in part for failure to offer to return the consideration received under the agreements to which he alleges he was a party.

THIRTY-EIGHTH DEFENSE

Setoff and Recoupment

If any damages have been sustained by Plaintiff, although such is not admitted hereby or herein and is specifically denied, FedEx Ground is entitled under the equitable doctrine of setoff and recoupment to offset all obligations of the Plaintiff owed to FedEx Ground against any judgment that may be entered against FedEx Ground.

THIRTY-NINTH DEFENSE

No Jury Trial

Plaintiff is not entitled to have equitable issues or matters of law tried to a jury, and Plaintiff's demand for a jury trial should be so limited.

FORTIETH DEFENSE

Additional Defenses

FedEx Ground is informed and believes and on that basis alleges that there may be additional defenses available to FedEx Ground, which are not now fully known and of which it is not now aware. As a non-limiting example, the Complaint does not describe the claims or events with sufficient particularity to permit FedEx Ground to fully ascertain what other defenses may exist. FedEx Ground reserves the right to raise additional defenses once such additional defenses have been ascertained.

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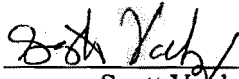
* * *

WHEREFORE, FedEx Ground prays for judgment as follows:

- (1) That the Complaint and each cause of action therein be dismissed with prejudice;
- (2) That Plaintiff take nothing by way of the Complaint;
- (3) That the Court enter judgment in favor of FedEx Ground;
- (4) That FedEx Ground be awarded its costs incurred herein, including attorneys' fees;
and
- (5) That the Court order such other and further relief for FedEx Ground as the Court may deem just and proper.

Dated: March 7, 2019

O'MELVENY & MYERS LLP
SCOTT VOELZ
ALEXANDER J. LARRO
CHRISTIANNA KYRIACOU

By: 
Scott Voelz
Attorneys for Defendant
FedEx Ground Package System, Inc.

1 I am over the age of eighteen years and not a party to the within action. I
2 am a resident of or employed in the county where the service described below occurred.
3 My business address is 400 South Hope Street, 18th Floor, Los Angeles, California
4 90071-2899. I am readily familiar with this firm's practice for collection and processing
5 of correspondence for mailing with the United States Postal Service. In the ordinary
6 course of business, correspondence collected from me would be processed on the same
7 day, with postage thereon fully prepaid and placed for deposit that day with the United
8 States Postal Service. On March 7, 2019, I served the following:

9 DEFENDANT FEDEX GROUND PACKAGE SYSTEM,
10 INC.'S ANSWER AND AFFIRMATIVE DEFENSES

11 by putting a true and correct copy thereof in a sealed envelope, with postage fully prepaid,
12 and placing the envelope for collection and mailing today with the United States Postal
13 Service in accordance with the firm's ordinary business practices, addressed as follows:

14 Stanley D. Saltzman
15 Adam M. Tamburelli
16 MARLIN & SALZTMAN, LLP
29800 Agoura Road, Suite 210
Agoura Hills, CA 91301

17
18 I declare under penalty of perjury under the laws of the State of California
19 that the above is true and correct. Executed on March 7, 2019, at Los Angeles, California.

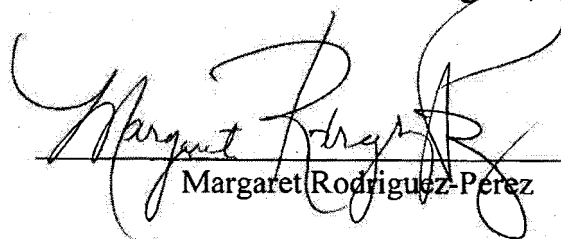
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23 Margaret Rodriguez-Perez

Exhibit C

Actions

[Home](#)
[Complaints/Parties](#)
[Actions](#)
[Minutes](#)
[Pending Hearings](#)
[Case Report](#)
[Images](#)

Case Type:

Case Number:

Case CIVDS1900867 - (COMPLEX) CORLEY -V- FEDEX






Viewed	Date	Action Text	Disposition	Image
	03/22/2019 8:30 AM DEPT. S26	COMPLEX CASE MANAGEMENT CONFERENCE. - Minutes		
	03/07/2019	DEFENDANT FEDEX GROUND PACKAGE SYSTEM INC. FIRST PAPER FEE PAID IN FULL	Not Applicable	
	03/07/2019	FILING FEE PAID BY FEDEX GROUND PACKAGE SYSTEM INC. FOR COMPLEX CASE FILING FEE	Not Applicable	
	03/07/2019	FILING FEE PAID BY FEDEX GROUND PACKAGE SYSTEM INC. FOR FIRST APPEARANCE FEES	Not Applicable	
N	03/07/2019	ANSWER FILED BY FEDEX GROUND PACKAGE SYSTEM INC.; PARTY REPRESENTED BY O'MELVENY & MYERS LLP.	Not Applicable	
	01/17/2019	NOTICE IMAGED	Not Applicable	
	01/17/2019	CORRESPONDENCE COVERSHEET GENERATED TO MAIL INITIAL CASE MANAGEMENT ORDER & GUIDELINES TO COUNSEL OF RECORD	Not Applicable	
	01/17/2019	ORDER INITIAL CASE MANAGEMENT CONFERENCE FILED	Not Applicable	
	01/09/2019	PLAINTIFF KAWASKI CORLEY FIRST PAPER FEE PREVIOUSLY PAID IN FULL.	Not Applicable	
	01/09/2019	FILING FEE PAID BY KAWASKI CORLEY FOR 1ST APPEARANCE FEE	Not Applicable	
	01/09/2019	FILING FEE PAID BY KAWASKI CORLEY FOR COMPLEX FEES	Not Applicable	
N	01/09/2019	CERTIFICATE OF ASSIGNMENT RECEIVED.	Not Applicable	
	01/09/2019	CASE ASSIGNED FOR ALL PURPOSES TO DEPARTMENT S26		
N	01/09/2019	CIVIL CASE COVER SHEET FILED.	Not Applicable	
N	01/09/2019	SUMMONS ISSUED AND FILED	Not Applicable	
N	01/09/2019	COMPLAINT AND PARTY INFORMATION ENTERED	Not Applicable	

Exhibit D

1 SCOTT VOELZ (SBN 181415)
svoelz@omm.com
2 ALEXANDER J. LARRO (SBN 287737)
alarro@omm.com
3 CHRISTIANNA KYRIACOU (SBN 313379)
ckyriacou@omm.com
4 O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
5 Los Angeles, California 90071-2899
Telephone: +1 213 430 6000
6 Facsimile: +1 213 430 6407

7 Attorneys for Defendant
8 FedEx Ground Package System, Inc.

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO**

11
12 KAWASKI CORLEY, individually, and on
behalf of all others similarly situated,

13 Plaintiffs,

14 v.

15 FEDEX GROUND PACKAGE SYSTEM,
16 INC., a Delaware Corporation; and DOES 1 to
100, inclusive,

17 Defendants.
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19

Case No. CIV-DS1900867

**DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC.'S NOTICE
OF FILING NOTICE OF REMOVAL**

UNLIMITED CIVIL CASE

Judge: Hon. David Cohn

Dept: S-26

Case Filed: January 9, 2019

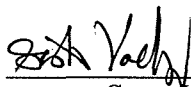
Trial Date: None Set

1 PLEASE TAKE NOTICE that on March 8, 2019, Defendant FedEx Ground Package
2 System, Inc. ("FedEx Ground") filed its Notice of Removal to remove this case from the Superior
3 Court of the State of California for the County of San Bernardino to the United States District
4 Court for the Central District of California.

5 A copy of FedEx Ground's Notice of Removal is attached as Exhibit 1.

6
7 Dated: March 8, 2019

O'MELVENY & MYERS LLP
SCOTT VOELZ
ALEXANDER J. LARRO
CHRISTIANNA KYRIACOU

8
9
10 By: 
11 Scott Voelz
12 Attorneys for Defendant
13 FedEx Ground Package System, Inc.
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PROOF OF SERVICE BY OVERNIGHT MAIL AND EMAIL

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 400 South Hope Street, 18th Floor, Los Angeles, CA 90071.

On March 8, 2019, I served the following document(s):

**DEFENDANT FEDEX GROUND PACKAGE SYSTEM,
INC.'S NOTICE OF FILING NOTICE OF REMOVAL**

addressed as follows:

Stanley D. Saltzman
Adam M. Tamburelli
Cody R. Kennedy
Marlin & Saltzman, LLP
29800 Agoura Road, Suite 210
Agoura Hills, CA 91301
ssaltzman@marlinsaltzman.com
atamburelli@marlinsaltzman.com
ckennedy@marlinsaltsman.com

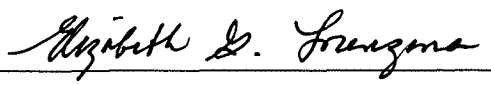
BY OVERNIGHT MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection today by the overnight courier in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of overnight courier correspondence. In the ordinary course of business, such correspondence collected from me would be processed on the same day, with fees thereon fully prepaid, and deposited that day in a box or other facility regularly maintained by Federal Express, which is an overnight carrier.

BY EMAIL: I caused to be transmitted the document(s) to the email address(es) above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 8, 2019, at Los Angeles, California.



Elizabeth G. Lorenzana

Exhibit E

1 SCOTT VOELZ (SBN 181415)
 svoelz@omm.com
 2 ALEXANDER J. LARRO (SBN 287737)
 alarro@omm.com
 3 CHRISTIANNA KYRIACOU (SBN 313379)
 ckyriacou@omm.com
 4 O'MELVENY & MYERS LLP
 400 South Hope Street, 18th Floor
 5 Los Angeles, California 90071-2899
 Telephone: +1 213 430 6000
 6 Facsimile: +1 213 430 6407

7 Attorneys for Defendant
 FedEx Ground Package System, Inc.
 8

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **EASTERN DIVISION**

12 KAWASKI CORLEY, individually,
 13 and on behalf of all others similarly
 14 situated,

15 Plaintiffs,

16 v.

17 FEDEX GROUND PACKAGE
 SYSTEM, INC., a Delaware
 Corporation; and DOES 1 to 100,
 18 inclusive,

19 Defendants.

Case No.

**DECLARATION OF
 STEPHANIE CIUMMO IN
 SUPPORT OF DEFENDANT
 FEDEX GROUND PACKAGE
 SYSTEM, INC.'S NOTICE OF
 REMOVAL**

(28 U.S.C. §§ 1332, 1441, 1446)

(San Bernardino County Superior
 Court Case No. CIV-DS1900867)

DECLARATION OF STEPHANIE CIUMMO

I, Stephanie Ciummo, hereby declare and state as follows:

1. I am over the age of eighteen and am competent to testify to and have personal knowledge of the matters contained herein. If called as a witness, I could and would testify competently to the matters set forth in this declaration.

2. I am a Paralegal in the legal department of FedEx Ground Package System, Inc. (“FedEx Ground”). In that capacity, I am involved in a variety of legal and litigation-related issues for FedEx Ground. As a result of my position within the Company, I am also familiar with the corporate structure and personnel of FedEx Ground.

3. FedEx Ground was at the time of the filing of this action, and continues to be, a corporation organized under the laws of Delaware. FedEx Ground’s top leadership are located in Moon Township, Pennsylvania. For instance, the Company’s President & Chief Executive Officer, Chief Financial Officer, General Counsel and Chief Operating Officer are all located in and at all times relevant to this action have been located in Moon Township, Pennsylvania. All high-level decisions about FedEx Ground’s business, strategy, operations and investments are made from its headquarters in Moon Township, Pennsylvania. Virtually all of FedEx Ground’s high-level strategic planning, decisions and analysis are performed within its headquarters in Pennsylvania, and all litigation is overseen from the headquarters in Moon Township, Pennsylvania.

4. FedEx Ground contracts with incorporated vendors who provide certain linehaul trucking services to FedEx Ground. Those vendors, in turn, employ the drivers who perform the trucking services. Some owners of these vendors perform driving services personally and some do not. Each linehaul vendor appoints an “Authorized Officer” to conduct business with FedEx Ground under the parties’ contract, and typically a vendor owner who also personally drives a truck is

1 designated as that vendor's Authorized Officer. FedEx Ground does not employ the
2 drivers, owners, Authorized Officers, or anyone else employed by the vendors.

3 5. FedEx Ground does maintain certain records about the individuals who
4 provide linehaul trucking service to FedEx Ground under the vendors' contracts for a
5 variety of reasons, including to ensure that the vendors provide qualified drivers who
6 can safely operate a vehicle. I have regular access to those records, and have reviewed
7 them. The records confirm that more than 100 of the vendors based in California with
8 whom FedEx Ground has contracted have Authorized Officers who personally
9 performed driving services under the vendors' contracts with FedEx Ground at some
10 point between January 9, 2015 and the present.

11 6. Plaintiff Kawaski Corley was the Authorized Officer for the vendor K
12 Corley Trucking, Inc., which contracted with FedEx Ground to provide linehaul
13 trucking services. I have reviewed records which document K Corley Trucking's fuel
14 purchases related to its provision of services to FedEx Ground. K Corley Trucking
15 purchased fuel in the amounts of more than \$63,000 in 2015, more than \$20,000 in
16 2016, and more than \$2,000 in 2017.

17 I declare under penalty of perjury under the laws of these United States of
18 America and California that the foregoing is true and correct. Executed this 7th day of
19 March, 2019 in Moon Township, Pennsylvania.

20 
21 Stephanie Ciummo

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims FedEx Misclassified Linehaul Truck Drivers as Independent Contractors](#)
