

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

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In re FEDEX GROUND PACKAGE )	)	Cause No. 3:05-MD-527-RM
SYSTEM, INC., EMPLOYMENT )	)	(MDL 1700)
PRACTICES LITIGATION )	)	
	)	
----- )	)	
THIS DOCUMENT RELATES TO: )	)	
	)	
<i>Ernest White, et al. v. FedEx Ground</i> )	)	
<i>Package System, Inc.,</i> )	)	
Civil No. 3:07-cv-00411-RLM-CAN (GA) )	)	
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**AMENDED CLASS ACTION COMPLAINT**

Plaintiffs, on behalf of themselves and all others similarly situated (hereinafter collectively “Plaintiffs”), alleges upon knowledge, information and belief, formed after an inquiry reasonable under the circumstances, as follows:

**INTRODUCTION**

1. This is a suit brought by and on behalf of drivers, current and former, for one of the largest parcel delivery companies in the United States - FedEx Ground Package System, Inc. or “FEG.”

2. Throughout most of the upper-tier parcel shipping industry, the drivers who actually pick up and deliver packages are the *employees* of the companies for which they drive. This is true, for example, of FedEx, the parent of defendant FEG, and of FedEx’s largest competitors. This designation makes sense: these shippers have developed a highly regulated set of procedures and protocols that they could not require of drivers if they were independent contractors.

3. Almost unique in the industry, however, are the drivers who deliver for defendant FEG. Though these drivers who deliver are similarly subject to tightly regulated control by FEG, they are nevertheless treated by FEG as independent contractors.

4. True independent contractor status is something desired by most of the defendant's drivers, and probably most of the class described below. True independent contractor status would permit drivers certain freedoms to operate their business as they see fit and to run the risks and rewards of owning a business. But there is nothing "independent" about the actual job requirements imposed on drivers by FEG.

5. Accordingly, because FEG treated Plaintiffs and Class members as employees, then it must compensate them as employees, as well. Thus, this lawsuit, on behalf of the named Plaintiffs and the Class described below, seeks:

- a declaration that Plaintiffs and the Class are or were in fact, FEG employees;
- compensation for all of the business expenses drivers were illegally required by FEG to bear, for all of the employment taxes, unemployment compensation and workers compensation the FEG should have but did not pay, and drivers are entitled to the quantum meruit value of their services as employees; and
- the full range of benefits available to all other FEG employees.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because the matter in controversy is in excess of \$5 million, exclusive of costs and interests; the matter is a class action in which at least one member of the class is a citizen of a state different from the Defendant; an aggregate size of the proposed class is believed to be greater than 100-members. Plaintiffs bring this action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because the alleged misconduct was carried out, in significant part, in the Northern District of Georgia. After filing, upon expectation and belief this case will be transferred to the Northern District of Indiana, South Bend Division, where a Multi District Litigation action is pending.

### **PARTIES**

8. Plaintiff Ernest White, of Springfield, Georgia, was a driver for FEG from January 1999 to March 2007.

9. Plaintiff Daniel Emrick, of Athens, Georgia, is a driver for FedEx Home Delivery since August 2007.

10. Plaintiff Hadi Tresna, of Statham, Georgia, is a driver for FedEx Home Delivery since 2003.

11. Defendant FedEx Ground Package System, Inc. and FedEx Ground Package System, Inc. d/b/a FedEx Home Delivery, Inc. (hereinafter collectively referred to as “defendant” or “FEG”) is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. FEG is part of the “family” of corporations controlled by Federal Express Corporation. FEG is the second largest small package ground carrier in North America, with about 35,000 employees and independent contractors. At all relevant times, and within six years of the filing of this Complaint, FEG was engaged in providing small package information, transportation and delivery services in the United States, including in the State of Georgia. FEG can be served with service of process by serving its Registered Agent for Service of Process, Corporation Process Company, at 180 Cherokee St. NE, Marietta, GA 30060.

12. Plaintiffs and Class members are or were drivers for FEG. FEG is specifically defined in this Complaint to include all successor, predecessor, and subsidiary entities to which these allegations pertain.

### **FACTS**

13. Defendant employs thousands of drivers to pick up and deliver packages for its customers throughout the United States. As a condition of employment, each FEG driver is required to sign a lengthy form contract entitled the “Pick-up And Delivery Contractor Operating Agreement” (hereinafter “Operating Agreement”) that mischaracterizes each driver as an “independent contractor.” These Operating Agreements were designed to conceal the true nature of the relationship between FEG and its drivers: that of employer and employee.

14. Despite defendant’s control over virtually all material aspects of the employment relationship, and despite the unequivocal command of applicable statutes and case law to the effect that workers such as the Plaintiffs are entitled to the protections due employees under various state laws, and despite the finding of the Los Angeles Superior Court in Estrada v. FedEx Ground Package Systems, Inc. (Case #BC 210130) that these drivers are employees, defendant continues to misclassify their drivers as independent contractors. As a result, these drivers are deprived of the rights and protections guaranteed by Georgia law to employees, and they are deprived of employer-financed workers compensation coverage and unemployment insurance benefits. Furthermore, the terms and conditions of their employment contract require these drivers to purchase, operate and maintain expensive trucks for defendant’s exclusive benefit and to work under other unlawful conditions. Defendant’s mischaracterization of their drivers as independent contractors, the concealment and/or non-disclosure of the true nature of the relationship between defendant and its drivers and the attendant deprivation of substantial rights

and benefits of employment are part of an on-going unlawful business practice by defendant which this Court should enjoin.

15. Defendant has created and regularly updated a large number of written policies and procedures outside of the Operating Agreement that drivers are never given, but nonetheless are required to follow in their work. Defendant's written policies are contained in the FedEx Ground Manual, Operations Management Handbook, Settlement Manual and numerous other written and extra-contractual policies that are actively concealed from drivers and which defendant fails to disclose and/or provide to drivers that govern the relationship between defendant and the drivers. The other written handbooks and manuals and additional extra-contractual sources include, but are not limited, to written rules on "contractor" termination, directives and training provided to terminal managers, written rules on driver appearance (with illustrative poster), written and oral complaint procedures, memorandum and directives to terminal management and other rules concealed from and not provided to the drivers. When drivers do not follow an FEG rule, whether disclosed or undisclosed, known or unknown, they are subject to various types of punishment, some financial and some disciplinary, up to and including contract termination and/or non-renewal. Defendant documents such so-called violations of such rules on forms referred to as "Business Discussion Notes" and retain these documents in secret driver files called "DOT" files, along with a myriad of other documents which are likewise concealed from and not disclosed to the drivers.

16. Each pick-up and delivery driver (referred to by defendant as a "P&D contractor") must sign a "Pick-up and Delivery Contractor Operating Agreement" and Addenda thereto as a mandatory condition of employment. The date, time and place of execution of each driver's Operating Agreement is within the knowledge of defendant as each Operating Agreement is

maintained in the driver files described above, in the regular course of business. The Operating Agreement between each member of the Plaintiff Class and defendant is the same in all material respects. The Operating Agreement between Plaintiffs and FEG contain all of the same identical material terms with only a few, minor and insubstantial differences.

17. The Operating Agreement contains various statements purporting to classify Plaintiff and Plaintiff Class members as independent contractors. At the same time, the Operating Agreement retains to the company the right to approve or disapprove any vehicle used to provide service, the right to approve or disapprove any driver or helper who provides service, the right to approve or disapprove the purchase or sale of any vehicle, the right to assign pickup and delivery stops to each driver, the right to temporarily or permanently transfer portions of any route to another with or without compensation, the right to determine when a driver has “too few” or “too many” packages to deliver on a given day, the right to inspect vehicles and drivers for compliance with company-promulgated appearance standards, the right to terminate the contract upon thirty days notice or whenever the company unilaterally determines that any provision of the contract has been “violated” amounting to the right to terminate at will, the right to require the use of communication equipment and the wearing of company uniforms, the right to take a vehicle out of service, the right to review and evaluate “customer service” and to set and change standards of such service, the right to require drivers to perform service at “times” requested by customers and determined by defendant, the right to withhold pay for certain specified expenses, the right to require purchase of specified insurance and numerous other purchases by drivers, the right to require completion of specified paperwork, and other rights reserved to defendant.

18. The Operating Agreement is and at all relevant times has been a contract of adhesion, drafted exclusively by defendant and/or its legal counsel, with no negotiation with drivers, who are required to sign the Agreement as a condition of employment. Plaintiffs and Plaintiff Class members are required to sign the form contract as is, without any changes made to the terms contained therein. Each year, drivers are required to sign additional Addenda that are likewise not subject to negotiation and are unilaterally drafted adhesion contract provisions. The Operating Agreement is, and at all material times has been unlawful, unconscionable and fraudulent in form and effect.

19. Defendant's right of control over Plaintiffs and Plaintiff Class members is also retained and/or exercised by defendant as demonstrated by concealed and/or undisclosed extra-contractual sources such as company written rules and policies described above and unwritten practices which supplement and fill gaps in the written contract.

20. Examples of FEG's control over drivers include, but are not limited to:

- *Minimum daily hours.* Plaintiffs and Class members were required to spend at least seven hours daily on the road, even if they have completed all their assigned deliveries and pickups. Plaintiffs and Class members are and were docked if they left the road early, even if their deliveries are completed.
- *Required insurance.* FEG required a certain level of auto, liability and workers' compensation insurance, and further required that Plaintiffs and Class members buy their insurance from FEG.
- *No substitute drivers.* Plaintiffs and Class members are or were not permitted to allow drivers who are not pre-approved by FEG to assume their job duties even temporarily.
- *Uniforms.* Plaintiffs and Class members are or were required to wear FEG uniforms, without any variance. Drivers' uniforms may only be purchased from FEG.
- *Truck decals.* Plaintiffs and Class members are or were required to decorate their trucks with the same standard-issue FEG decals, which are only available from FEG.

- *Punching the clock.* Plaintiffs and Class members are or were required to carry an electronic scanner. Plaintiffs and Class members are or were required to electronically “punch in” at the start of their workday and “punch out” at the conclusion. The scanner transmits throughout the day and records the whereabouts of the drivers.
- *Controlled departures.* Plaintiffs and Class members are and were not permitted to depart from their terminal until after the entire package sort was complete, even where Plaintiffs and Class members loaded and readied all of their packages that they are required to deliver. Drivers were required to wait until FEG completed its paperwork.
- *Bonus tied to FEG performance.* Plaintiffs and Class members bonuses were tied to the performance of the FEG terminal to which the driver was assigned. Additionally, if drivers pick up and deliver packages at the same location, the drivers were not paid for two stops although FEG charges the same rates to shippers.
- *Authority over workdays.* FEG retained the right to order Plaintiffs and Class members to work holidays and days after holidays (such as the Friday after Thanksgiving). Failure to show up to work on these required days could result in termination.
- *Authority over work assignments.* FEG assumed complete authority over which geographical area was to be serviced by Plaintiffs and Class members. Plaintiffs and Class members are not permitted to exchange those assigned geographical areas among themselves. FEG, without discussion with drivers, removed and changed work areas and routes and has not compensated the drivers affected.
- *Authority over work load.* FEG exercised total control over the workload of Plaintiffs and Class members.
- *Authority over drop-offs and pickups.* FEG assumed complete control over the daily drop-off and pickups assignments of Plaintiffs and Class members. Plaintiffs and Class members were not permitted to informally exchange work assignments among themselves.
- *Authority over the selling of routes.* Plaintiffs and Class members could not buy and sell their FEG assigned routes without prior approval by FEG.
- *No potential for entrepreneurial risks and rewards.* Plaintiffs and Class members were compensated on a highly structured system that provided them no ability to exercise entrepreneurship or otherwise engage in the risks and rewards associated with owning a business. Accordingly, Plaintiffs and Class members were paid a daily stipend, based on their geographical area assigned by FEG, and were paid a set amount for each

FedEx-assigned stop, and separately for each FedEx-assigned delivered package.

- *No opportunity to sell FEG services.* Plaintiffs and Class members could not take orders from customers for FEG services.
- *“Company store.”* Plaintiffs and Class members received weekly paychecks from FEG. From their total owed (assigned route stipend plus assigned stops plus completed deliveries), FEG deducted various compulsory expenses. These business expenses included payment for services (such as the leasing of equipment) that Plaintiffs and Class members could not shop around to other vendors to seek a better deal.
- *Approval requirements.* FEG required that Plaintiffs and Class members (and those substitute drivers who Plaintiffs and Class members wished to occasionally assume their job duties) take and pass a FEG institutional course.
- *Port-to-port control.* Plaintiffs and Class members were required to begin their workday at their assigned FEG terminal.

### **CLASS ALLEGATIONS**

21. Plaintiffs bring this case on behalf of the following class:

All persons who: 1) entered or will enter into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES) and/or provided or will provide package pick-up and delivery services pursuant to an executed Operating Agreement; 2) drove or will drive a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) since July 26, 2001, to provide package pick-up and delivery services pursuant to the Operating Agreement; and 3) were dispatched out of a terminal in the state of Georgia.

The named Plaintiffs fit within this description.

22. All Class members share an interest in ascertaining whether they should be treated as employees, or as independent contractors.

23. The class is large, numbering into the hundreds, at least. Accordingly, joinder is impracticable.

24. Nevertheless, the class is not large enough to render class treatment unmanageable. Nearly all relevant information, *e.g.*, the identity of those Class members, can be found in written and electronic records of FEG.

25. Pursuant to Fed. R. Civ. P. 23(a)(2) and (a)(3), there are questions of law or fact common to the class, including, but not limited to: Whether the actions of FEG are applicable to the class as a whole, entitling Class members to injunctive relief?

26. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in class action litigation. Plaintiffs will fairly and adequately represent the interests of the members of the class and are adequate representatives of the class under Fed. R. Civ. P 23(a)(4) because their interests are squarely aligned with the class. Plaintiffs have no interests antagonistic to the members of the class.

27. The prosecution of separate actions by individual members of the class would create a risk of establishing incompatible standards of conduct for defendant.

28. Defendant's actions are generally applicable to the class as a whole, and Plaintiffs seek remedies with respect to the class as a whole.

29. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy.

**CAUSES OF ACTION**

**COUNT I:  
UNJUST ENRICHMENT**

30. Plaintiffs and the Plaintiff Class adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

31. Plaintiffs and the Class they represent were purportedly hired by Defendant to work as “independent contractors” pursuant to the terms of the Operating Agreement described above. In fact, Defendant knew or should have known, at all times, that the “independent contractor” classification in the Operating Agreement was improper and that Plaintiffs and all persons similarly situated were “employees” entitled to the benefits and protections of all laws enacted for employees. Plaintiffs are informed, believe and on that basis alleges, that through the Operating Agreement defendant intentionally misled Plaintiffs and the Class they represent as to their employment status, or made such representations to Plaintiffs and Plaintiff Class members recklessly and/or negligently, and deliberately concealed from and/or failed to disclose to the pick-up and delivery drivers the extra contractual sources (including but not limited to the FEG Manual, Operation Management Handbook and Settlement Manual, other policies and secret driver files described above) that defined the employment relationship between Plaintiffs and Class members and defendant, all for the purpose of realizing unjust profits from Plaintiffs’ work and/or to avoid paying for its operating costs and payroll taxes to increase its competitiveness.

32. At all material times, defendant either knew, or should have known, that the material representation made to Plaintiffs and Class members in the Operating Agreement concerning their employment status, and the concealment and/or non-disclosure of material facts to Plaintiffs and Class members concerning their employment status and Plaintiffs corresponding obligation to assume responsibility for all of their “own” employment-related expenses including but not limited to purchasing or leasing, operating and maintaining expensive trucks were false, grossly unfair and would cause economic harm to Plaintiffs and the Plaintiff Class members.

33. At all material times, defendant intended to and did induce Plaintiffs and the class they represent to reasonably and justifiably rely to their detriment on the false and fraudulent

representations made to them by defendant in the Operating Agreement concerning their employment status and obligation to assume responsibility for all of employment related expenses including but not limited to purchasing or leasing, operating and maintaining expensive trucks and suffered damage as a direct and proximate result.

34. By its aforesaid conduct, defendant has been unjustly enriched and should be required to disgorge benefits and monies acquired by improper conduct.

**COUNT II:**  
**RESCISSION OF OPERATING AGREEMENT**

35. Plaintiffs and the Plaintiff Class adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

36. FEG controls or controlled virtually every aspect of the Plaintiffs work and earnings, as set forth in the above paragraphs.

37. Despite this control and the actual status of the drivers as employees, FEG mischaracterizes the Plaintiffs and other Class members as independent contractors. As a result, these drivers must pay substantial sums of their own money for work-related expenses, including but not limited to the purchase of leases of vehicles meeting company specifications, and all costs of operating, insuring and maintaining those vehicles.

38. The Operating Agreement illegally and unfairly advantages FEG, by mischaracterizing the status of the Plaintiffs in that FEG evades employment related obligations, such as social security contributions, workers' compensation coverage, and state disability and unemployment compensation, illegally shifting the expense of workers' compensation coverage and other expenses to Plaintiffs.

39. The Operating Agreement between FEG and Plaintiffs and each member of the Class is void as against public policy and therefore unenforceable, as failing to recognize the

employment status of the Plaintiffs and the Class members, and therefore denying them the legally cognizable benefits of employment.

40. The Operating Agreement between FEG and the Plaintiffs and each member of the class is an unconscionable contract of adhesion, which is unenforceable as contrary to the public interest, policy and law.

41. The Operating Agreement illegally shifts the burden of certain costs that an employer must pay.

42. While acting on the direct instruction of FEG and discharging their duties for FEG, Plaintiffs and the Class members incurred expenses for, *inter alia*, the purchase or lease, maintenance, operating costs and adornment of vehicles; insurance; and uniforms. Plaintiffs and the Class members incurred these substantial expenses as a direct result of performing their job duties.

43. By misclassifying its employees as “independent contractors,” and further by contractually requiring those employees to pay FEG’s own expenses, FEG has been unjustly enriched.

44. As a direct and proximate result of FEG’s conduct, FEG has received substantial benefits to which it had no entitlement, at Plaintiffs and Class Members’ expense, including lost profits, self-employment taxes, premiums for insurance to replace workers compensation and disability benefits, business expenses, compensation of replacement workers, and other expenses.

45. Plaintiffs and the Class members are entitled to compensation for all of the business expenses they were illegally required by FEG to bear, for all of the employment taxes, unemployment compensation and workers compensation FEG should have but did not pay, and

Plaintiffs and the Class members are entitled to the quantum meruit value of their services as employees.

**COUNT III:**  
**CONSTRUCTIVE TRUST & OTHER EQUITABLE RELIEF**

46. Plaintiffs and the Plaintiff Class adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

47. As a result of the denial of benefits, reimbursements and compensation to the Plaintiffs and Plaintiff Class, along with the facts alleged above, equity requires that a constructive trust be established over the unjust profits retained by the defendant. The defendant should be ordered to disgorge the rightful portion of the profits that should have been paid to the Plaintiffs and Plaintiff Class in the form of compensation, reimbursements and benefits. Additionally, Plaintiffs pray for such other equitable relief as this Court deems appropriate.

**COUNT IV:**  
**INJUNCTIVE RELIEF**

48. Plaintiffs and the Plaintiff Class adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

49. If action is not taken by this Court, the defendant will continue to mischaracterize and misclassify Georgia FEG delivery drivers as “independent contractors,” continuing to refuse to compensate the Plaintiffs and Plaintiff Class for the benefits, reimbursements, and compensation that are owed to the Plaintiffs and Plaintiff Class. Without injunctive relief, the Plaintiffs and Plaintiff Class will have no adequate remedy for the continued denial of such benefits, reimbursements and compensation.

50. The Defendant has acted, or failed or threatened to act, on grounds generally applicable to all members of the Plaintiff Class. Therefore, permanent injunctive relief is

appropriate, and necessary, in order to prevent future wrongful conduct damaging to the Plaintiffs and Plaintiff Class.

**COUNT V:  
DECLARATORY RELIEF**

51. Plaintiffs and the Plaintiff Class adopt by reference and reallege each and every allegation of this Complaint the same as though specifically set out herein again.

52. An actual controversy exists between the Plaintiffs and Plaintiff Class and the defendant, requiring declarations of the legal rights of all parties as to the following matters:

- a. Whether the defendant wrongfully characterized the Plaintiff and Plaintiff Class as independent contractors.
- b. Whether the defendant has denied the Plaintiff and Plaintiff Class compensation, reimbursements and benefits owed to employees, including the following:
  - i. Purchase of vehicles;
  - ii. Purchase of vehicle and other insurance;
  - iii. Vehicle maintenance;
  - iv. Purchase of FEG uniforms;
  - v. Purchase of FEG logos and materials;
  - vi. Purchase of gasoline;
  - vii. Purchase of business materials;
  - viii. Denial of wages
  - ix. Denial of holiday pay;
  - x. Denial of overtime pay;
  - xi. Denial of retirement plans;
  - xii. Denial of employee stock purchase options;
  - xiii. Denial of breaks;
  - xiv. Denial of unemployment insurance; and

- xv. Denial of workers' compensation insurance.
- c. The specific amounts of benefits, reimbursements and compensation that the Plaintiff and Plaintiff Class are entitled to receive, along with the amount of interest due to the Plaintiff and Plaintiff Class on the unpaid compensation.

### **DAMAGES**

53. Each member of the Plaintiff Class has incurred actual damages as a result of the defendant's wrongdoing, as aforesaid, which damages are capable of independent, objective mathematical computation. The Plaintiffs and the Plaintiff Class members should be awarded actual damages in such amounts as are sufficient to compensate in full the Plaintiffs and all members of the Plaintiff Class for the full amount of all losses and damages actually incurred as a result of the defendant's wrongdoing, including reimbursements, compensation and benefits that should have been paid by the defendant, costs and expenses incurred in the prosecution of this case, including attorneys fees and expenses, and pre- and post-judgment interest on all funds due the Plaintiffs and the Plaintiff Class members.

54. The damages sought are incidental to the declaratory and injunctive relief sought herein, and flow directly from obligations and liabilities and liability to the class as a whole on the claims forming the basis of the injunctive and declaratory relief. All of said damages are capable of uniform mathematical computation on the basis of records of the defendant in this action. Such incidental relief is capable of computation by means of objective mathematical standards, is not dependent on any intangible, subjective differences among Class members or their circumstances, and will not require any separate hearings or litigation between the defendant and any individual class member.

55. The egregious nature of the defendant's conduct also justifies imposition of punitive damages, in order to deter future wrongful conduct by FEG and other employers similarly situated.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs and Plaintiff Class request judgment of and from the defendant for the following:

1. Determination that this action is proper for Class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Entry of an order requiring Defendant to rescind the Operating Agreement, and awarding restitution compensating for the reasonable value of the benefit provided to FEG;
3. Declaratory relief establishing the legal rights and relationships of the Class Members, specifically including: (a) declaratory ruling that defendant improperly classified the Class members as independent contractors under Georgia common and statutory law, and (b) that the Class members are entitled to recover the compensation, reimbursements and benefits that they would have received if the Class members had been properly classified as employees;
4. Injunctive relief enjoining the defendant from continuing to mischaracterize the Class members and subsequent similarly situated drivers as independent contractors, and also enjoining the defendant from continuing to withhold the compensation, reimbursements and benefits that should be paid the Class members and other employee drivers who have been improperly deemed to be independent contractors;
5. Awarding Plaintiffs and members of the Plaintiff Class actual damages in such amounts as are sufficient to compensate in full the Plaintiff and all members of the Plaintiff Class for the losses and damages actually incurred as a result of the defendant's wrongdoing;
6. Awarding punitive damages in an amount adequate to punish the defendant and serve as an example to deter similar conduct by the defendant or others in the future;
7. Awarding the named Plaintiffs and members of the Plaintiff Class costs and expenses incurred in connection with this action, including reasonable attorneys fees, expert witness fees and all other costs herein, and awarding a sum by way of compensation to the named Plaintiffs for his actions in bringing the defendant to justice;

8. Awarding the named Plaintiffs and members of the Plaintiff Class prejudgment and post-judgment interests as the Court deems appropriate; and

Granting such other and further relief as the Court deems just and proper, including imposition of a constructive trust and/or such extraordinary equitable or injunctive relief as permitted by law, equity or statutory provisions as the Court deems proper to prevent unjust enrichment of the defendant and to ensure that Plaintiff and the members of the Plaintiff Class have an effective remedy for the harms they have suffered.

Dated: September 25, 2007

Respectfully Submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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