

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
CURTIS JOHNSON and MARGARET
JOHNSON d/b/a TRINSTAR ENTERPRISES,
individually and on behalf of all others similarly
situated,

Plaintiffs,

- against -

FEDEX HOME DELIVERY and FEDEX
GROUND PACKAGE SYSTEM, INC.,

Defendants.
----- X

**VERIFIED
COMPLAINT**

Index No.: _____

Date Filed.: _____

The Plaintiffs, CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES, by their attorney, Richard Tanenbaum, complaining of the Defendants, FEDEX HOME DELIVERY and FEDEX GROUND PACKAGE SYSTEM, INC., on behalf of themselves and all other former minority contractors of Defendants in Kings County, New York, similarly situated, and allege the following:

CLASS ACTION ALLEGATIONS

1. The above entitled action is brought on behalf of the plaintiffs and on behalf of each and all other persons similarly situated pursuant to CPLR § 901. The class that the plaintiffs seek to represent is composed of all current and former minority contractors for Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGE SYSTEM, INC. in Kings County, New York. In the near past, the majority of contractors in this group were members of minority groups. Currently, the number of minority contractors

has intentionally been decreased to barely five due to the systematic maltreatment and abuse of said group by Defendants.

2. The above entitled class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable because the class is composed of over one hundred current and former minority "independent contractors" for defendants. The names of most of the hundred plus member class are unknown to plaintiffs.
3. There are questions of law or fact common to the class which predominate over any questions affecting only individual members in that the entire class has been caused to suffer damages caused by the systematic squeezing out of minorities in contract with Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGE SYSTEM, INC. in Kings County, New York.
4. The claims of the plaintiffs are typical of the claims of the above described class in that all of the members of the class have either seen their delivery routes taken from them and given to non-minority contractors, or have been systematically abused and harassed by defendants in an effort to force the contractors to quit their route so that they could be replaced by non-minority contractors. Common factual and legal questions predominate over the racial discrimination claims herein.
5. Plaintiffs will fairly and adequately represent the interests of the members of the class and are committed to the vigorous prosecution of this action. Plaintiffs interests are substantially aligned with those of the entire class.
6. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because the squeezing out of minority contractors by the defendants has been a regular, systematic course of action having similar effects on the entire class.

In addition, prosecution of these actions individually creates the risk that inconsistent decisions could be reached, and because the expense and burden of litigation may dissuade members of the class from prosecuting the action individually.

INTRODUCTION

7. The Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON, at all times herein, were and are residents of Kings County in the City and State of New York.
8. The Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON conduct and transact business under the name TRINSTAR ENTERPRISES.
9. TRINSTAR ENTERPRISES conducts and transacts business in Kings County in the City and State of New York.
10. TRINSTAR ENTERPRISES is a minority owned and operated business. The nature of the business is to deliver packages pursuant to an Agreement with Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. as detailed below.
11. The Defendant FEDEX GROUND PACKAGE SYSTEM, INC., at all times herein, was and is a foreign corporation, incorporated in Delaware, authorized to do business in the State of New York.
12. The Defendant FEDEX HOME DELIVERY is a division of Defendant FEDEX GROUND PACKAGE SYSTEM, INC.
13. The Defendant FEDEX HOME DELIVERY, at all times herein, did and continues to do business in the County of Kings in the City and State of New York.
14. This action is being brought by Plaintiffs CURTIS JOHNSON and MARGARET

JOHNSON d/b/a TRINSTAR ENTERPRISES for damages caused by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.'S racially discriminatory practices in their efforts to squeeze plaintiffs out of their highly desirable downtown Brooklyn package delivery route, which exclusively services several expensive neighborhoods, including the 11201 zip code composed of Brooklyn Heights and the Kings County Court facilities.

15. Plaintiffs are also bringing this action to recover damages for the tortious intentional interference by defendants with plaintiffs' business success.
16. Plaintiffs also seek compensation for several courses of action taken by defendants that amount to breaches of the Agreement between the parties.
17. That pursuant to a Fedex Home Delivery Standard Contractor Operating Agreement (hereafter called "The Agreement") dated October 9, 2001, Plaintiff s CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES became an "independent contractor" for Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.
18. That the two year contract term ran from October 9, 2001.
19. That the contract provided for automatic annual renewals unless either party gave notice of non-renewal.
20. That neither party has ever given notice of their intention to end the contract on any anniversary date. Accordingly, both parties are still under contract with each other.
21. That the Agreement mentioned above was entered into in order for Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES to maintain a delivery route for Defendants FEDEX HOME DELIVERY and FEDEX GROUND

PACKAGING SYSTEM, INC.

22. That upon information and belief, such Agreement was the standard form used by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC., a national package delivery service, to employ people to deliver packages for them.
23. That in reliance on said Agreement, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES expended money out of their own pocket in order to fulfill the duties and obligations they had agreed to perform.
24. That in reliance of said Agreement, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES bought a delivery van for thirty five thousand dollars in order to meet specifications required by defendants.
25. That in reliance of said Agreement, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES procured several employees in order to conduct the delivery operations contemplated under the Agreement.
26. That even though Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES were labeled an "independent contractor", Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. exerted the amount of total control and guidance normally expected of an employer in an employer-employee relationship.
27. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. controlled all aspects of Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S delivery route.
28. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING

SYSTEM, INC. controlled the locations where Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES were allowed to make their deliveries to, in particular the highly desirable 11201 zip code.

29. That pursuant to their Agreement with Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. controlled the amount of money that Plaintiffs were to receive for each delivery completed.
30. In fact, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES did not handle any money at all. Instead, at the end of each payment period, the plaintiffs would receive their statement and monetary compensation directly from Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.
31. That pursuant to said Agreement, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES spent money to buy "FEDEX" uniforms for their trained employees.
32. That pursuant to said Agreement with Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. directly supervised and controlled all aspects of the plaintiffs' delivery route.
33. That for over three years, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have conducted their delivery operations with the degree of skill, care, and diligence, that is expected of package system contractors in a similar position to their own.

34. That the above mentioned skill, care, and diligence is evidenced by Defendants renewing the Agreement at each anniversary date.
35. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. have engaged in a course of conduct designed to discourage Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S success.
36. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. have engaged in this course of conduct in order to drive Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES out of business in order to remove one of the few remaining black "independent contractors" and replace them with a white contractor.

AS AND FOR A FIRST CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

37. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through number 36 of this Complaint.
38. That as detailed below, on several occasions, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. inexplicably overbilled and overcharged Plaintiffs for expenses related to the Agreement.
39. That specifically, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have been charged for unknown and unverifiable "Cargo Claims" by Defendants FEDEX HOME DELIVERY and FEDEX GROUND

PACKAGING SYSTEM, INC.

40. That "Cargo Claims" is a trade term used to mean packages that are reported delivered by the driver, but reported to have not arrived by the recipient of the delivery.
41. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC have charged Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES for unverifiable cargo claims totaling Four Thousand Four Hundred and Thirty Two Dollars and Thirty Four Cents (\$4,432.34).
42. That pursuant to said Agreement, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. are liable to Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES for these charges in the amount of Four Thousand Four Hundred and Thirty Two Dollars and Thirty Four Cents (\$4,432.34).

AS AND FOR A SECOND CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

43. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through number 42 of this Complaint.
44. That Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have gone to great lengths and expended much money and time in training qualified new drivers for their delivery route, to stringent Fedex requirements.
45. That on three occasions, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. have, without explanation and without reference to any specific provision of the Agreement, taken the drivers trained by

Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES, and compensated the Plaintiffs a mere One Hundred Dollars (\$100.00) for each driver.

46. That as a result of the above, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have been injured by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. in the amount of Fifty Thousand Dollars (\$50,000.00).

AS AND FOR A THIRD CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

47. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through number 46 of this Complaint.
48. That on many occasions, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES rented vans from commercial vehicle rental companies in order to meet the demands of their delivery route.
49. That whenever Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES rented a van, they would purchase insurance for the vehicle through the rental company.
50. That On May 30, 2003, one of Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S rental vans was double parked while in the process of making a delivery when another driver passed too close to the truck and caused his car to take the truck's bumper off. A copy of the Police Report has been attached as Exhibit "A"

51. That after the police left the scene of the accident, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S driver took the truck's still operational bumper and placed it into the truck, in anticipation of it being easily re-attached to the truck.
52. That the above mentioned accident was entirely the fault of the other car.
53. That upon returning to the truck depot, the manager employed by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. to oversee Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S work, instructed and directed Plaintiffs to take the broken bumper to a specific garage for repair work.
54. That even though they had purchased insurance from the rental company, and the bumper was fully intact and able to be reattached to Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S rental van, they were charged by the garage for a new bumper, along with other unnecessary work.
55. That upon information and belief, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES were directed to go to the specific garage to have the repair work done because Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC., through its managerial employees, are given a monetary incentive for any repairs done at said garage.
56. That in total, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES were charged One Thousand Seven Hundred and Fourteen Dollars and Three Cents (\$1,714.03) for the work. A copy of the Invoice has been attached hereto as Exhibit "E".

57. That representative of Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. who directed and instructed Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES to have the repair work done at the above mentioned garage, without revealing the details of the understanding with the garage, perpetrated a fraud upon the Plaintiffs.
58. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. are liable to Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES for the actions of their manager in this regard.
59. That as a result of the fraudulent conduct of their manager, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. are liable to Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES in the amount of One Thousand Seven Hundred and Fourteen Dollars and Three Cents (\$1,714.03).

AS AND FOR A FOURTH CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

60. Plaintiffs repeat and reallege the allegations contained in paragraph number 1 through number 59 of this Complaint.
61. That Six Hundred and Twenty Two Dollars and Forty Cents (\$622.40) was deducted from the earnings of Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. for an alleged accident involving an insured

rental vehicle.

62. That the above mentioned accident never occurred.
63. That the driver of Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S truck is ready and willing to give testimony under oath stating that the alleged accident never occurred.
64. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. are unable to state when this alleged accident took place, let alone give further details of the alleged event.
65. That as a result of being charged for an accident that never occurred, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have been injured by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. in the amount of Six Hundred and Twenty Two Dollars and Forty Cents (\$622.40).

AS AND FOR A FIFTH CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

66. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through 65 of this Complaint.
67. That when dealing with parking tickets received by their drivers, the policy of Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC is to pay half of the fine, and have the driver pay the other half.
68. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING

SYSTEM, INC have breached the above mentioned policy with regards to Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES by their refusal to reimburse the Plaintiffs the half of the charge that they customarily reimburse.

69. That to date, there are still One thousand and Forty Nine Dollars and Eighty Four Cents (\$1,049.84) worth of parking tickets in arrears that Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC have failed to pay. A Copy of the Outstanding Parking Tickets Report is attached hereto as Exhibit "C".
70. That as a result of the foregoing, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have been injured by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC and have suffered damages in the amount of One thousand and Forty Nine Dollars and Eighty Four Cents (\$1,049.84).

AS AND FOR A SIXTH CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

71. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through 70 of this Complaint.
72. That on September 24, 2004, Plaintiffs were served with a five day notice that the primary zip code for plaintiffs' delivery route was being changed from the much covered 11201 Brooklyn Heights and Courthouse area to the less profitable and less desirable 11205 Bedford Stuyvesant section of Brooklyn. A copy of the letter has been attached

hereto as Exhibit "D".

73. That the above mentioned notice references article 6.2 of the original Agreement as giving defendants authority to make this change.
74. That section 6.2 of the Agreement, "Mutual Intention to Reduce Geographic Size of Primary Service Area" states, in pertinent part, that "Contractor recognizes that, as the customer base and package volume in the Primary Service Area increases, the geographic size of the area which Contractor will be able to serve with the Equipment can be expected to decrease...FHD shall have the authority, upon five work days' prior written notice to Contractor, to reconfigure Contractor's Primary Service Area." A copy of section 6.2 of the Agreement is attached hereto as Exhibit "E".
75. That when they made the Agreement, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES and Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. all understood section 6.2 to mean that in the future, a portion of the 11201 Primary Service Area may be taken from Plaintiffs if the amount of deliveries became overly burdensome for one Contractor to handle the area alone.
76. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC have breached the Agreement by giving notice of its' intention to completely change Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES'S Primary Service Area because section 6.2 of the Agreement merely enables Defendants to decrease the size of the Primary Service Area if it should become too burdensome for one delivery contractor.
77. That upon information and belief, Defendants FEDEX HOME DELIVERY and FEDEX

GROUND PACKAGING SYSTEM, INC have given the coveted 11201 zip code to a non-minority, white "independent contractor".

78. That the above mentioned breach of the Agreement by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC has injured Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES in the amount of Five Hundred Thousand Dollars (\$500,000.00).

AS AND FOR A SEVENTH CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

79. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through 78 of this Complaint.
80. That pursuant to section 6.4 of the Agreement, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC are required to make compensatory payments to their contractors when they reconfigure the primary service area of that contractor.
81. That Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have had their primary service area changed.
82. That the new primary service area is less profitable than Plaintiffs' old service area.
83. That as a result of the change, and pursuant to section 6.4 of the Agreement, Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC owe plaintiffs money, which have not been paid to them.
84. That as a result of the foregoing, Plaintiffs CURTIS JOHNSON and MARGARET

JOHNSON d/b/a TRINSTAR ENTERPRISES have been injured by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC in the amount of Twenty Five Thousand Dollars (\$25,000.00).

AS AND FOR AN EIGHTH CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY AND FEDEX GROUND PACKAGING SYSTEM, INC.

85. Plaintiffs repeat and reallege the allegations contained in paragraphs number 1 through 84 of this Complaint.
86. That Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON are both black Americans.
87. That Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON were both born in the country of Trinidad.
88. That when Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON became "independent contractors" for Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. the vast majority of "independent contractors" working for Defendants in the Brooklyn area were racial minorities, numbering approximately one hundred.
89. That the past year has seen significant changes in the racial makeup of the group of Contractors in the Brooklyn area who are in agreement with Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.
90. That upon information and belief as a result of these changes, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES are among

the three remaining racial minority contractors in Agreement with Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. in the Brooklyn area.

91. That upon information and belief, the current group of "independent contractors" working for Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC in the Brooklyn area are now approximately ninety eight percent white.
92. That this drastic change has occurred because of a premeditated course of conduct by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING whereby they have sought to systematically eliminate all minority "independent contractors" from the delivery routes in Kings County, New York.
93. That upon information and belief, such conduct is entirely motivated by a desire for Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. to have only white "independent contractors" working on their delivery routes in Kings County, New York.
94. That Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. are currently engaged in harassing and abusive behavior directed toward Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES, designed to thwart their business success.
95. That said harassing and abusive conduct is evidenced by the existence of the overcharges and dishonest practices contained in the preceding allegations.
96. That said harassing and abusive conduct has been designed by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. to frustrate and stifle Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR

ENTERPRISES' business success.

97. That said harassing and abusive conduct is being pursued as a means to achieve Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.'S goal of forcing Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES to breach their Agreement with the Defendants.
98. That said harassing and abusive conduct is being pursued as a means to achieve Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.'s goal of having an all white group of "independent contractors" in Brooklyn.
99. That this goal has been further evidenced by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. giving Plaintiffs former Primary Service Area, located in zip code 11201, to a white non-minority "independent contractor".
100. That said harassing and abusive conduct is discriminatory in nature, and as such, is in violation of the laws of the State of New York, as well as the laws of the United States of America.
101. That said harassing and abusive conduct has caused Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES to suffer great anguish, anxiety, and emotional distress.
102. That said harassing and abusive conduct has been further exhibited by the refusal by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. to increase the size of Plaintiffs CURTIS JOHNSON and MARGARET

JOHNSON d/b/a TRINSTAR ENTERPRISES'S delivery route, despite Plaintiffs' proven ability to handle a larger load.

103. That even though Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. have constantly refused to increase the delivery route of Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES, they have had no trouble increasing the delivery routes of the newer, white "independent contractors".
 104. That as a result of such discriminatory and abusive conduct evidenced and displayed by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC., Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have been injured in the amount of Twenty Five Million Dollars (\$25,000,000.00).
- AS AND FOR A NINTH CAUSE OF ACTION BY PLAINTIFFS CURTIS JOHNSON AND MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES AGAINST DEFENDANTS FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC.**
105. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 104 of this Complaint.
 106. That said harassing and abusive conduct is being purposely conducted in an effort by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. to sabotage the operations being conducted by Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES.
 107. That said harassing and abusive conduct by Defendants FEDEX HOME DELIVERY and

FEDEX GROUND PACKAGING SYSTEM, INC. is an effort to intentionally inflict economic harm upon Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES.

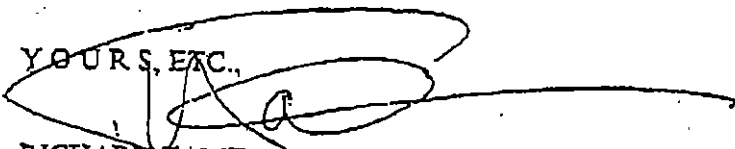
108. That as a result of said conduct, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have suffered special damages with regards to their ability to regularly conduct their delivery route.
109. That as a result of said conduct, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have suffered special damages to their reputation as a delivery driver for Defendants.
110. That said harassing and abusive conduct by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. was without excuse or justification.
111. That the harassing and abusive conduct by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. against Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES amount to a prima facie tort.
112. That as a result of such prima facie tort, Plaintiffs CURTIS JOHNSON and MARGARET JOHNSON d/b/a TRINSTAR ENTERPRISES have been injured by Defendants FEDEX HOME DELIVERY and FEDEX GROUND PACKAGING SYSTEM, INC. in the amount of One Million Dollars (\$1,000,000.00).

WHEREFORE, the plaintiffs respectfully demand judgment for themselves and the members of the Class as follows: Determining that the action is a proper class action and certifying appropriate Plaintiff classes; plaintiffs respectfully demand judgment on the first cause

of action in the amount of Four Thousand Four Hundred and Thirty Two Dollars and Thirty Four Cents (\$4,432.34); plaintiffs respectfully demand judgment on the second cause of action in the amount of Fifty Thousand Dollars (\$50,000.00); plaintiffs respectfully demand judgment on the third cause of action in the amount of One Thousand Seven Hundred and Fourteen Dollars and Three Cents (\$1,714.03); plaintiffs respectfully demand judgment on the fourth cause of action in the amount of Six Hundred and Twenty Two Dollars and Forty Cents (\$622.40); plaintiffs respectfully demand judgment on the fifth cause of action in the amount of One thousand and Forty Nine Dollars and Eighty Four Cents (\$1,049.84); plaintiffs respectfully demand judgment on the sixth cause of action in the amount of Five Hundred Thousand Dollars (\$500,000.00); plaintiffs respectfully demand judgment on the seventh cause of action in the amount of Twenty Five Thousand Dollars (\$25,000.00); awarding Plaintiffs and Class members judgment on the eighth cause of action in the amount of Twenty Five Million Dollars (\$25,000,000.00); plaintiffs respectfully demand judgment on the ninth cause of action in the amount of One Million Dollars (\$1,000,000.00); All judgments are sought with costs, fees, disbursements, interest and such other and further relief that the court may deem just, proper, and equitable under the circumstances.

Dated: Brooklyn, New York
October 12, 2004

YOURS, ETC.,


RICHARD TANENBAUM, ESQ.
Attorney for Plaintiffs
1131 McDonald Avenue
Brooklyn, NY 11230
(718) 252-3366