

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JEFFREY HART,

Plaintiff,

v.

FEDEX GROUND PACKAGE  
SYSTEM, INC.,

Defendant.

Civil Action

No. 60-05-16225

Code: 009

COMPLAINT IN CIVIL ACTION -  
CLASS ACTION

Jury Trial Demanded

Filed on behalf of Plaintiff:

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYER REFERRAL SERVICE  
THE ALLEGHENY COUNTY BAR ASSOCIATION  
920 CITY-COUNTY BUILDING  
PITTSBURGH, PA 15219  
TELEPHONE: (412) 261-0518

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COMPLAINT IN CIVIL ACTION - CLASS ACTION

AND NOW, comes the plaintiff, Jeffrey Hart, by and through his attorneys, and files the following complaint in civil action and, in support thereof, avers as follows:

1. This is a class action brought on behalf of all persons who were (or are) employed by defendant in the Commonwealth of Pennsylvania as local package delivery drivers and who were (or are) improperly classified by defendant as "independent contractors."

2. This class action arises under the Pennsylvania Minimum Wage Act of 1968, ("MWA") as amended, 43 Pa. C.S.A. §§ 333.101-333.115; the Pennsylvania Wage Payment and Collection Law, ("WPCL") 43 Pa. C.S.A. s 260.1 et. seq.; and Pennsylvania common law. Plaintiff in this action seeks in excess of \$25,000.00 in monetary damages, and hence the amount in dispute exceeds the amount requiring arbitration pursuant to local rule.

3. The allegations set forth in the complaint do not provide a basis for federal jurisdiction pursuant to the Class Action Fairness Act of 2005 because the defendant and greater than two-thirds of the members of the plaintiff class, if not all of the members of the plaintiff class, are citizens of Pennsylvania.

PARTIES

4. Plaintiff, Jeffrey Hart, is an adult individual residing at 1029 Spring Garden Street, Allentown, Pennsylvania, 18102.

5. Defendant, FedEx Ground Package System, Inc. ("FedEx Ground"), is a corporation with its principal place of business at 1000 FedEx Drive, Moon Township, Pennsylvania and is within the jurisdiction of this Court.

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**Defendant's Practice of Misclassifying  
Its Drivers as "Independent Contractors"**

6. Defendant's business consists of providing a small package information, transportation and delivery service throughout the United States. Defendant provides its services to businesses and, through its FedEx Home Delivery division, to residential customers.

7. Plaintiff and the class were hired by defendant as drivers to deliver and pick up packages for defendant's customers on behalf of defendant.

8. Plaintiff and the class are required to sign a "Contractor Operating Agreement" (hereinafter the "OA") with defendant as a condition of employment. A copy of the OA executed by plaintiff is attached hereto as Exhibit "A."

9. The OA attempts to classify plaintiff and the class as "independent contractors" and as a consequence of such classification, to deny plaintiff and the class members various accoutrements of employment.

10. Contrary to defendant's characterization of its drivers as "independent contractors," defendant's drivers are, in fact, employees, within the meaning of the relevant Pennsylvania statutory and common law.

11. Defendant exercises complete control over the manner and means by which its drivers perform their jobs. For instance, the drivers have no authority to refuse pick-ups or deliveries. Drivers are not permitted to make deliveries or pick-ups according to their own schedules.

12. Far from being responsible for only the result of their efforts, plaintiff and the class were controlled and directed in every aspect of their work, in, among others, the following ways:

- a. Assigned to and required to work a minimum number hours in a

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- shift, often eight hours or longer;
  - b. Prohibited from leaving the work premises without management approval;
  - c. Required to identify themselves and their vehicles as part of the defendant's system, with FedEx logos and signage;
  - d. Required to purchase, wear and maintain defendant's signage, logos and uniforms;
  - e. Required to purchase and maintain a vehicle selected by defendant, built to defendant's precise specifications, and identified by defendant's logo and signage;
  - f. Required to insure the vehicles at defendant's direction and control;
  - g. Required to clock in and out and file daily reports with defendant;
  - h. Required to purchase from defendant their "business support" package including maps, signs, training, modems and scanners;
  - i. Prohibited from refusing packages;
  - j. Prevented from work for other delivery businesses while working for defendant;
  - k. Prohibited from hiring helpers without defendant's approval;
  - l. Required to perform unpaid work outside their job classification;
  - m. Told how to conduct themselves and subject to discipline for any failures to comply with the defendant's requirements;
  - n. Prevented from choosing when and how much they wanted to work;
  - o. Defendant's controlling of the customer service areas, number of packages and number of stops.

13. Moreover, plaintiff and the class members are required to provide deliveries and pick-ups which are compatible with defendant's customer's schedules and requirements, which are contracted by defendant's sales employees.

14. The vehicles used by the drivers in the performance of their duties for defendant are kept at defendant's terminal unless they are being used by drivers for defendant's assigned deliveries or pick up. Defendant requires its drivers to arrive at defendant's terminal between 5:00 a.m. and 6:30 a.m. to arrange and coordinate packages in their vehicles for delivery.

15. Defendant employs Terminal Managers, Pickup and Delivery managers, and other supervisory personnel, to coordinate and issue drivers' paperwork, together

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with delivery and pick-up schedules, to which drivers are strictly required to adhere.

Drivers return to their assigned terminal at the end of their deliveries, in order to complete paperwork required by defendant, including, *inter alia*, daily logs and daily inspection reports, and to await management's evaluation of each driver before such drivers are permitted to leave for the day.

16. Defendant pays its drivers based upon the number of pick up and delivery stops made and unilaterally sets the compensation to be paid to the drivers. A driver who at the end of the day fails to check out with his supervisor, who is an employee of defendant, is not paid wages for that day despite having worked.

17. All of the tools needed to perform the work performed by plaintiff and the class were provided and/or selected by defendant, with the cost borne by plaintiff and the class.

18. Plaintiff and all drivers employed by defendant are subject to the direction and control of defendant in that their services constitute an integral part of and are indispensable to defendant's business operations and core business purpose. The work performed by the drivers is part of the regular business of defendant.

19. The success or continuation of defendant's business depends upon the personal services performed by plaintiff and the class members.

20. Such personal services are a fundamental and integral part of defendant's provision of services to its customers. The personal services provided by plaintiff and other drivers do not involve the level of expertise typically requiring the use of independent professionals with special skills as opposed to employees.

21. Other than driving the delivery vehicle, the work of plaintiff and the class

requires no special skill, and does not represent a distinct occupation.

22. Indeed, the norm in defendant's industry is that such drivers are, in fact, employees of the companies for which they deliver and pick up packages.

#### The Operating Agreement

23. Upon information and belief, the OA attached as Exhibit A is similar in all material respects to the OA executed by each class member and defendant, regardless of whether such class member is assigned to deliver "business" packages or "residential" packages under defendant's "Home Delivery" division.

24. The OA, which all drivers are required to sign as a condition of employment, sets forth the following statement, which purports to classify drivers, including the class members, as independent contractors:

**Background Statement**, [defendant] is a duly licensed motor carrier engaged in providing a small package information, transportation and delivery service throughout the United States, with connecting international service. The Contractor is an owner-operator of one or more pieces of trucking equipment suitable for use in such a service. Contractor wants to make this equipment available, together with a qualified operator for each piece of equipment, to provide daily pick-up and delivery service on behalf of [defendant]. [defendant] wants to provide for package pick-up and delivery services through a network of independent contractors, and, subject to the number of packages tendered to [defendant] for shipment, will seek to manage its business so that it can provide sufficient volume of packages to Contractor to make full use of Contractor's equipment. Contractor wants the advantage of operating within a system that will provide access to national accounts and the benefits of added revenue associated with shipments picked up and delivered by other contractors throughout the [defendant] system. In order to get that advantage, Contractor is willing to commit to provide daily pick-up and delivery service, and to conduct his/her business so that it can be identified as being a part of the [defendant] system. Both [defendant] and Contractor intend that Contractor will provide these services strictly as an independent contractor, and not as an employee of [defendant] for any purpose. Therefore, this Agreement will set forth the mutual business objectives of the two parties intended to be served by this Agreement – which are the result the Contractor agrees to seek to achieve – but the manner and means of reaching these results are within the discretion of the Contractor, and no officer or

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employee of [defendant] will have the authority to impose any term or condition on Contractor or on Contractor's continued operation which is contrary to this understanding.

25. In addition, the OA contains specific provisions intended to control the manner and means by which plaintiff and drivers are expected to achieve defendant's results.

26. Among other things, plaintiff and class members are required to purchase or lease vehicles that meet defendant's specific specifications, including the placement of a "unit number" on the exterior of the vehicle. At all times, defendant retains control over the selection of vehicles used by plaintiff for defendant's intended use. Such vehicles are manufactured to a design exclusive to defendant. In addition, Plaintiff and drivers are required, at their sole cost and expense, to maintain the vehicles in accordance with defendant's standards and to submit to defendant proof of timely maintenance and inspection of such vehicles. Defendant also requires the drivers maintain liability insurance, naming defendant as an additional insured.

27. Defendant requires that the vehicles driven by plaintiffs and other drivers be marked "with such identifying colors, logos, numbers, marks and insignia. . . [and] to identify the [vehicle] as part of the [defendant's] system." Although defendant purports to permit plaintiff and class members to use the vehicle for other purposes, when it is not being used for defendant, defendant requires that "all such identifying numbers, marks, logos and insignia will be removed or masked. . . when the [vehicle] is so used," thus rendering any such use impractical.

28. The OA confirms that it seeks to control the means by which plaintiff and other drivers achieve defendant's business results by requiring drivers to prepare daily driver logs and daily inspection reports" and "such shipping documents as [defendant] may from time to time

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designate, and to complete and return these documents to [defendant] at the end of each business day.”

29. The OA further requires drivers to deposit with [defendant] “at such time and in such manner as [defendant] may specify the sum of \$500,” which defendant deposits in a so-called “Contractor Performance Escrow Account.” Such sum is collected by defendant and used to reduce any “indebtedness” defendant deems a driver may allegedly owe to defendant upon a driver’s termination. The sum is also retained by defendant as liquidated damages if a driver fails to provide defendant with thirty days written notice of termination of the OA.

30. Defendant expressly dictates in the OA that drivers “wear a [defendant] approved uniform” and “keep his/her personal appearance consistent with reasonable standards of good order as maintained by [defendant’s] competitors and promulgated from time to time by [defendant].” Thus, in addition to the OA, defendant incorporates other obligations and requirements which are set forth in its other written and unwritten policies, procedures and practices.

31. Defendant requires that drivers maintain the vehicles “in a clean and presentable fashion free of body damage and extraneous markings.”

32. Defendant requires that drivers adhere to its strict guidelines concerning driver safety. Among other things, defendant prohibits drivers from refusing to submit to intoxication and drug tests; carrying passengers not authorized by defendant; failing to complete or undergo, at least every two years, physical examinations by a physician approved by defendant, confirming fitness to operate their vehicles.

33. The OA directs that drivers purchase or lease electronic communications equipment so that they are able “to cooperate” with defendant’s employees in connection with

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the “pick-up, delivery, handling, loading and unloading of packages and equipment. . .” Such equipment is required to comply with defendant’s specifications.

34. The OA further provides that delivery routes, referred to as a driver’s “Primary Service Area,” are assigned by defendant and non-negotiable.

35. Despite defendant’s statement that drivers have a “proprietary interest” in the customers within their Primary Service Area, defendant is permitted to change a driver’s work area at any time.

36. Upon information and belief, the terms of the OA are not negotiable and plaintiff and class members are subject to its terms.

37. In addition to the OA, defendant controls its drivers, including plaintiff, through other extraneous written and unwritten rules, policies and practices.

38. For instance, although the OA purports to limit defendant’s right to terminate drivers only for cause, the practices and extraneous policies used by defendant in interpreting the OA and in training its management employees in the supervision of drivers, gives defendant almost absolute unilateral control over contract termination rendering drivers subject to termination at-will.

**Effect of Defendant’s Misclassification of  
Plaintiff and Class Members as Independent Contractors**

39. Defendant misclassifies plaintiff and the class members for a variety of reasons, including avoidance of obligations arising under state and federal wage and hour laws, state and federal tax laws, social security, state unemployment insurance laws, workers’ compensation laws, and other employment laws.

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40. In addition, defendant saves money in avoiding the expenses associated with its core business, *i.e.*, the delivery and pick-up of packages, by deducting sums for such expenses from plaintiff's compensation, which defendant characterizes as a "weekly settlement."

41. With respect to other amounts not deducted directly from the wages of plaintiff and class members, defendant requires that plaintiff and class members make such payments by separate transaction.

42. The sums either deducted by defendant directly from plaintiff and class members' wages or paid by plaintiff and class members by separate transaction are not for the benefit of plaintiff and class members, but, rather, are for the benefit of defendant and its business.

43. The wages of plaintiff and class members were subjected to a deduction, either directly or by separate transaction, for the following expenses:

- a. Purchase or rent of their vehicle to perform pick-up and delivery service;
- b. Operating expenses for that vehicle such as fuel, oil, tires, business, taxes, cleaning, insurance, and registration;
- c. Maintenance of that vehicle;
- d. Marking of the vehicle with logos, colors, numbers, marks, and insignia;
- e. Payments to the Contractor Performance Escrow Account;
- f. Licensing of that vehicle;
- g. Purchase, rent or cleaning of uniforms;
- h. Purchase or other payments for use of communications equipment such as scanners;
- i. Liability insurance premiums and payments; and
- j. Workers compensation premiums and payments.

44. In addition, the wages of plaintiff and class members were subjected to deductions for errors, omissions and/or work defendant or its customers deemed improperly performed.

Prior Determination of Employee Status

45. In a class action filed in California Superior Court for the County of Los Angeles captioned, *Estrada v. FedEx Ground*, , No. BX 210130, a class of pick-up and delivery drivers,

who performed services for defendant and/or its predecessor in interest in the State of California, were determined to be employees rather than independent contractors, based upon the fact that defendant had the right to control the manner and means by which the drivers provided services.

46. The class members in *Estrada* performed the same duties and were subject to the same control, material terms and conditions as plaintiff and class members herein. In addition, the drivers in *Estrada* were required to sign an operating agreement that was similar in all material respects to the OA at issue in this case.

47. In concluding that the drivers in *Estrada* were, in fact, common law employees and not independent contractors despite defendant's classification of them as such, the court stated, among other things, that

[Defendant] not only has the right to control, but has close to absolute control over the SWAs [defined as single work area pick up and delivery drivers in California] based upon interpretation and obfuscation. . . . A close reading of the OA, which all SWAs must sign in order to be able to work for [defendant] is comprised primarily of platitudes and guidelines. This, in effect, leaves its interpretation in the sole hands of [defendant], without any meaningful recourse to the SWAs but with potential severe penalties and remedies that are intentionally kept uncertain and murky. . . . The description of the workings of the OA, which in effect gives almost absolute control over the SWAs (and even its own employees) is borne out by the testimony of [defendant's] management team. It should be noted in the beginning that the OA is a brilliantly drafted contract creating the constraints of an employment relationship with SWAs in the guise of an independent contractor model. . . [T]o think that the average SWA would be sophisticated enough to so interpret the OA is ludicrous. . . In conclusion, while on its surface the description of the SWA appears to be that of an independent contractor, the pervasive control by [defendant] creates an employment relationship.

(*Estrada, et al. v. FedEx Ground*, No. BC210130, Statement of Decision, filed and dated July 26, 2004)(Superior Court of the State of California, Los Angeles County).

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Plaintiff Hart

48. Plaintiff Hart executed an OA and began working for defendant in July, 2002, in Allentown, Pennsylvania.

49. During his tenure as a delivery driver for defendant, Plaintiff Hart was subjected to all of the provisions of the OA, and all of defendant's practices with regard to its delivery drivers, as set forth in detail herein.

50. During his tenure as a delivery driver for defendant, Plaintiff Hart was subjected to all of the pay provisions and financial obligations set forth in detail herein.

51. In December, 2002, Plaintiff Hart was injured while working for defendant and, ultimately, was terminated by defendant, due to his injury.

CLASS ACTION ALLEGATIONS

52. Paragraphs 1-51 are incorporated by reference as if the same were fully set forth herein.

53. Plaintiff brings this action on behalf of himself and all other persons similarly situated pursuant to Pennsylvania Rules of Civil Procedure 1701-1716.

The class consists of:

All individuals who worked for Defendant (including its "Home Delivery" division) in Pennsylvania as package pickup and delivery drivers, and who were classified by defendant as "independent contractors."

Upon information and belief, plaintiff believes that the definition of the class will be further refined following discovery of defendant's books and records.

54. Plaintiff is unable to state the exact number of the class without discovery of defendant's books and records but estimates the class to exceed several hundred individuals.

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55. There are questions of law and fact common to the class which predominate over any questions affecting individual members only. These factual and legal questions include the existence and legality of defendant's policy of mischaracterizing plaintiff and the class as "independent contractors," as well as the appropriate injunctive relief needed to remedy such illegal policy. More specifically, such issues are:

- a. Whether plaintiff and the class are properly characterized as "independent contractors;"
- b. Whether defendant's conduct in treating plaintiff and the class as "independent contractors" resulted in a denial of appropriate minimum wages;
- c. Whether defendant's conduct in treating plaintiff and the class as "independent contractors" resulted in improper wage deductions, in violation of the WPCL;
- d. Whether the OA is unenforceable because it represents a contract of adhesion;
- e. Whether the OA is unenforceable because it is illegal and contrary to public policy;
- f. Whether defendant has been unjustly enriched at the expense of plaintiff and the class.

56. Defendant has acted and refused to act on grounds generally applicable to the class.

57. The claims of the representative plaintiff are typical of the claims of the class in that plaintiff was denied statutorily-mandated wages and defendant was unjustly enriched as a result of defendant's policy of mischaracterizing plaintiff and the class as "independent contractors." This is the predominate issue which pertains to the claims of each and every class member.

58. The class action is superior to other available methods for a fair and efficient adjudication of the controversy.

59. Plaintiff will fairly and adequately protect the interests of the class, as his interests are in complete alignment with those of the entire class, i.e., to prove and then eradicate

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defendant's illegal employment practice of classifying its drivers as "independent contractors."

60. Counsel for plaintiff will adequately protect the interests of the class. Such counsel is experienced with employment/class litigation and has previously served as class counsel in employment litigation.

61. Employment of the class action device in this lawsuit will provide a fair and efficient method for adjudication of this controversy. In particular,

- a) The common questions of law and fact raised by this lawsuit, set forth above, predominate over questions affecting only individual members of the class;
- b) The class in this case will not be difficult to manage as a class action. Due to the predominance of common questions, e.g., whether defendant has engaged in an illegal policy, pattern, and practice of classifying its employees as "independent contractors," resulting in a violation of Pennsylvania law, as well as the method of proof required to address such common questions, trial of the issue in a single action should be less complex than multiple non-class lawsuits;
- c) The prosecution of separate actions by members of the class would create a significant risk of inconsistent or varying adjudications as to each member of the class, thereby confronting defendant with incompatible standards of conduct. Additionally, such separate actions would create a risk that an adjudication by an individual member regarding the existence of defendant's illegal employment policy may be dispositive of the interest of the remaining members of the class and/or may impede or substantially impair the remaining class members' ability to protect their interests;
- d) While, upon information and belief, there are several claims against defendant in other states for violation of the federal Fair Labor Standards Act, as well as other state laws, there is, to the best of plaintiff's knowledge, currently no litigation between defendant and any other member of the class involving the issues raised herein, i.e., whether defendant has violated the MWA, the WPCL or Pennsylvania common law;
- e) This Court provides an appropriate forum for the litigation of the claim of the entire class, as defendant is headquartered in Allegheny County.
- f) Given the nature of the issues in this case and the method of proof to be employed (i.e. proving a policy, pattern and practice of misclassifying employees as "independent contractors"), which will, by necessity, involve a fairly sophisticated analysis of defendant's workforce, the separate claims of each

individual member of the class, while easily significant enough to justify the expense and effort of maintaining this action as a class action, are not so large that they justify the expenditure of costs and attorney's fees that would be involved if each individual member were to attempt to establish, through the use of statistics or otherwise, the existence of defendant's policy, pattern and practice in their own individual lawsuit;

g) In systematically avoiding the payment of statutorily-mandated minimum wages and becoming "unjustly enriched" at the expense of the plaintiff class, defendant has refused to act on grounds generally applicable to the class as a whole, making final injunctive or declaratory relief appropriate.

62. Plaintiff and the class he represents have suffered and will continue to suffer irreparable damage from the illegal policy, practice and custom regarding defendant's employment practices.

63. Defendant has engaged in a continuing violation of Pennsylvania law.

64. Plaintiff, as well as the individuals he represents, was denied statutorily-mandated wages as a result of defendant's employment practices. This violation was intended by defendant and was willfully done.

65. Defendant's action in denying statutorily-mandated wages to plaintiff was intentional and constitutes a willful violation of the MWA and WPCL.

#### COUNT I - MWA

66. The allegations set forth in paragraphs 1 through 65 are incorporated herein.

67. The MWA provides, in relevant part, as follows:

Every employer shall pay to each of his employee's wages for all hours worked at a rate of not less than [the federally mandated minimum wage].

43 P.S. §333.104(a)

68. As a consequence of defendant's employment practices regarding its drivers, plaintiff and the class were denied statutory minimum wages.

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69. While working for defendant, each delivery driver is required to pay for various operating expenses, which are properly the expenses of defendant.

70. Each delivery driver is obligated to pay for such expenses and the cost of such expenses are not reimbursed in any way by defendant.

71. In calculating delivery drivers' wages, no deduction or credit is made for the cost of the expenses which each delivery driver is required to pay.

72. The cost of the such expenses, however, when deducted or credited against each employee's weekly wages during the week in which the purchases are made, has, at times, resulted in such employee being paid less than the appropriate minimum wage under Pennsylvania law.

73. Plaintiff and the class were employees of defendant within the meaning of the MWA and, as such, were entitled to the benefits of the MWA's minimum wage requirements.

74. Defendant is an employer within the meaning of the MWA.

75. Defendant's policy of requiring its delivery drivers to pay for various operating expenses which were properly the expenses of defendant, while not reimbursing the delivery drivers for such payments, and not crediting such expenditures against the employee's wages for purposes of calculating minimum wages, represents and results in a violation of the MWA's minimum wage requirements.

76. Defendant has failed to pay appropriate minimum wages under the MWA.

WHEREFORE, plaintiff respectfully prays that this Court:

- a) declare defendant's conduct to be a violation of the MWA;
- b) grant plaintiff and the class he represents a permanent injunction enjoining defendant, its officers, agents, successors, employees, attorneys, assigns and other representatives, and all those acting in concert with it at its direction, from engaging in any employment policy or practice which violates the MWA;

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- c) order defendant to make whole those persons adversely affected by the policies and practices described herein by providing appropriate back pay, and reimbursement for lost wages in an amount to be shown at trial;
  - d) order defendant to pay appropriate back pay to plaintiff and the class he represents;
  - e) award counsel for plaintiff reasonable attorney's fees and costs; and
  - f) award any further relief which the Court deems appropriate under the circumstances.

COUNT II - WPCL

- 77. The allegations set forth in paragraphs 1 through 76 are incorporated herein.
- 78. The WPCL provides, in relevant part, as follows:

Every employer shall pay all wages, other than fringe benefits and wage supplements, due to his employees on regular paydays designated in advance by the employer. . . All wages, other than fringe benefits and wage supplements, earned in any pay period shall be due and payable within the number of days after the expiration of said pay period as provided in a written contract of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period. The wage shall be paid in lawful money of the United States or check, except that deductions provided by law, or as authorized by regulation of the Department of Labor and Industry for the convenience of the employer, may be made. . .

43 P.S. §260.3

79. Plaintiff was an employee of defendant within the meaning of the WPCL and, as such, was entitled to timely payment of wages due to him.

80. Defendant is an employer within the meaning of the WPCL.

81. Defendant's policy of deducting, either directly or by separate transaction, amounts from the wages of plaintiff and the class for operating expenses which are properly the obligation of defendant, results in a violation of the WPCL.

82. Plaintiff and the class have entered into an agreement with defendant (the OA)

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pursuant to which plaintiff and the class are to receive certain wages, in compensation for their work as delivery drivers for defendant.

83. Defendant's deduction from the wages due to plaintiff and the class are not authorized deductions within the meaning of the WPCL and, upon information and belief, have not been authorized by the Pennsylvania Department of Labor and Industry.

84. Any consent or agreement by plaintiff and the class related to the aforesaid deductions from their wages is unenforceable as contrary to public policy, as set forth in the WPCL.

WHEREFORE, plaintiff respectfully prays that this Court:

- a) declare defendant's conduct to be a violation of the WPCL;
- b) grant plaintiff and the class he represents a permanent injunction enjoining defendant, its officers, agents, successors, employees, attorneys, assigns and other representatives, and all those acting in concert with it at its direction, from engaging in any employment policy or practice which violates the WPCL;
- c) order defendant to make whole those persons adversely affected by the policies and practices described herein by providing appropriate back pay, and reimbursement for lost wages in an amount to be shown at trial;
- d) order defendant to pay appropriate back pay and appropriate liquidated damages to plaintiff and the class he represents;
- e) award counsel for plaintiff reasonable attorney's fees and costs; and
- f) award any further relief which the Court deems appropriate under the circumstances.

### COUNT III – UNJUST ENRICHMENT

85. The allegations set forth in paragraphs 1 through 76 are incorporated herein.

86. Plaintiff brings this Count III in the alternative to his claim under the WPCL.

87. The OA is and at all times mentioned herein has been a contract of adhesion, drafted exclusively by defendant and/or their legal counsel, with no negotiation with drivers who

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are required to sign the OA as a condition of employment. Plaintiff and the class members are required to sign the form contract as is, without any changes made to the terms contained therein. Plaintiff and the class had no meaningful choice about whether to accept the provisions of the OA and such provisions are oppressively one-sided in favor of defendant. The OA is, and at all material times has been, unlawful and unconscionable in form and effect, and therefore unenforceable.

88. The OA represents an illegal contract because its provisions violate the public policy of this Commonwealth, intended to protect employees from being denied the accoutrements of employment, as detailed herein. The OA is unenforceable because it is illegal.

89. Plaintiff, and all members of the class, were required to pay operating expenses which were properly the expenses of defendant, including but not limited to: uniforms, delivery vehicle purchase, various types of insurance, including vehicle insurance, work-accident insurance, vehicle maintenance and repair, fuel, cellular phones, and "business support" including logos, maps, signs, training, modems and scanners.

90. Plaintiff, and members of the class, were paid a below-market price for defendant's use of their vehicles.

91. Defendant retained these benefits under circumstances which rendered it inequitable and unjust for the defendant to retain the benefits without paying for their value.

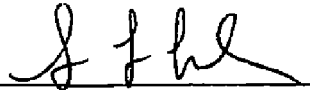
92. Defendant was unjustly enriched by requiring the plaintiff, and other members of the class, to pay its operating expenses.

WHEREFORE, plaintiff respectfully prays that this Court:

- a) declare the OA to be illegal and unenforceable;
- b) declare defendant to have been unjustly enriched;

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- c) order defendant to pay back to plaintiff and the class the amounts representing its unjust enrichment;
  - d) order defendant to make whole those persons adversely affected by the policies and practices described herein in an amount to be shown at trial; and
  - e) award any further relief which the Court deems appropriate, *in excess of arbitration limits.*

Respectfully submitted,



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Mt. Pleasant, SC 29464

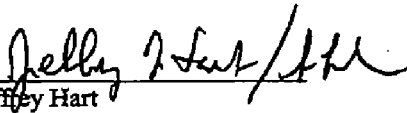
**JURY TRIAL DEMANDED**

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VERIFICATION

I, Jeffrey Hart, state that the averments of facts contained in the foregoing Complaint are true and correct to the best of my information, knowledge, and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

  
Jeffrey Hart