

CTSystem

NOV 19 2004

Service of Process Transmittal Form  
New York, New York

11/18/2004

Via Federal Express (2nd Day)

TO: Angela Nardick  
FedEx Ground Package System, Inc.  
1000 Fedex Drive  
Moon Township, PA 15108  
EMAIL: ABORHAM@SHIPRPS.COM

RE: PROCESS SERVED IN NEW YORK

FOR FedEx Ground Package System, Inc. Domestic State: De

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

- 1. TITLE OF ACTION: Larry Louzau, et al Phtfa. va Fedex Ground Package System Inc., Dft.
- 2. DOCUMENT(S) SERVED: Summons, Complaint, Exhibits.
- 3. COURT: Supreme Court Of The State Of New York, County Of Westchester  
Case Number 04-17738
- 4. NATURE OF ACTION: Said wage violation of New York State Labor Law 193(1).
- 5. ON WHOM PROCESS WAS SERVED: CT Corporation System, New York, New York
- 6. DATE AND HOUR OF SERVICE: By Certified mail on 11/18/2004 with Postmarked Date 11/15/2004
- 7. APPEARANCE OR ANSWER DUE: Within 30 Days.
- 8. ATTORNEY(S): Gangemi Mango & Iacoviello LLP  
14 Penn Plaza  
New York, NY 10122
- 9. REMARKS: Papers were served on the Secretary of State of New York on 11/12/04.

SIGNED CT Corporation System  
PER Roopmatee Jairam /PK  
ADDRESS 111 Eighth Avenue  
New York, NY 10011  
SOP WS 0006780388

Information contained on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

State of New York - Department of State  
Division of Corporations

arty Served:  
FEDEX GROUND PACKAGE SYSTEM, INC.

Plaintiff/Petitioner:  
LOUZAU, LARRY

C/O CT CORPORATION SYSTEM  
111 EIGHTH AVE  
NEW YORK, NY 10011

Dear Sir/Madam:

Enclosed herewith is a legal document which was served upon the Secretary of State on 11/12/2004 pursuant to SECTION 306 OF THE BUSINESS CORPORATION LAW.

This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,  
Division of Corporations

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

RECEIVED

Index # 04-1773 OCT 27 2004

Filed: 10/27/04

Purchased:

LEONARD N. SPANO  
COUNTY CLERK  
COUNTY OF WESTCHESTER

LARRY LOUZAU, CHARLES MALKIN  
and THOMAS FRASCA,

Individually, and on behalf of all others similarly  
situated as Class Representatives,

Plaintiffs,

v.

FEDEX GROUND PACKAGE SYSTEM, INC.

Defendant

Plaintiffs designate  
Westchester County as  
the place of trial.  
Basis of venue is the county in  
which one of the plaintiffs, Larry  
Louzau, resides.

SUMMONS  
AND COMPLAINT

Plaintiff Louzau resides at  
154 Overlook Avenue, Apt. 2N  
Peekskill, New York 10566

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
October 26, 2004

GANGEMI, MANGO & IACOVIELLO, LLP

By: 

Salvatore G. Gangemi  
14 Penn Plaza, Suite 2200  
New York, New York 10122  
212.695.5454  
Attorneys for Plaintiffs

TO:

**DANIEL J SULLIVAN**  
Chairman or Chief Executive Officer  
FEDEX GROUND PACKAGE SYSTEM, INC.  
1000 FEDEX DRIVE  
MOON TOWNSHIP, PENNSYLVANIA 15108

**ROY D. PINSKY, ESQ. -- C/O PINSKY & SKANDALIS**  
Registered Agent for FEDEX GROUND PACKAGE SYSTEM, INC.  
SUITE 1020-STATE TOWER BLDG.  
109 SOUTH WARREN STREET  
SYRACUSE, NEW YORK 13202-1872

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

LARRY LOUZAU, CHARLES MALKIN,  
and THOMAS FRASCA,

Index No.: 04-17736

Individually, and on behalf of all others similarly  
situated as Class Representatives,

CLASS ACTION COMPLAINT

Plaintiffs,

v.

FEDEX GROUND PACKAGE SYSTEM, INC.

Defendant.

**RECEIVED**

OCT 27 2004  
LEONARD N. SPANO  
COUNTY CLERK  
OF WESTCHESTER

Plaintiffs Larry Louzau, Charles Malkin and Thomas Frasca, individually, on behalf of all others similarly situated, and as class representatives, by their attorneys, Gangemi, Mango & Iacoviello, LLP, complain of defendant FedEx Ground Package System, Inc. (hereinafter, "defendant" or "FedEx Ground") as follows:

NATURE OF ACTION

1. Plaintiffs allege on behalf of themselves, and other similarly situated current and former single work area pick up and delivery drivers who worked or are working for defendant in New York State, that they are entitled to (i) the return of sums unlawfully deducted from their wages in violation of New York State Labor Law §193(1); (ii) the return or reimbursement of funds which plaintiffs were required to make "by separate transaction" in violation of New York State Labor Law §193(2); and (iii) all damages authorized by New York State Labor Law §198, except for liquidated damages.

### VENUE

2. Venue herein is proper under section 503(a) of the Civil Practice Law and Rules ("CPLR") because plaintiff Larry Louzau resides in Peekskill, New York, Westchester County.

### CLASS ALLEGATIONS

3. Plaintiffs sue on their own behalf and on behalf of a class of persons pursuant to Article 9 of the CPLR.

4. Plaintiffs assert their New York Labor Law claims on behalf of

all persons who worked for defendant and/or its predecessor in interest, RPS, Inc., in New York State at any time from October 27, 1998 until the entry of judgment in this case (the "Class Period"), as a Pick Up and Delivery Contractor driving full-time (exclusive of time off for vacation and/or illnesses) in a single work area dispatched from a New York State based terminal pursuant to the terms of defendant's "Pick Up and Delivery Contractor Operating Agreement." (the "Class")

5. The persons in the Class are so numerous that joinder of all members is impracticable. Although the precise number of such Class members is not currently known, and facts concerning such precise number are within the sole control of defendant, upon information and belief, there are more than 500 members of the Class during the Class Period.

6. There are questions of law or fact common to the Class which predominate over any questions affecting only individual members. Questions of law and fact common to the Class which predominate over questions solely affecting individual members of the Class include the following:

- a. Whether the Class members have been misclassified as independent contractors by defendant's operating agreements;
- b. Whether charges and deductions imposed by defendant against the wages of Class members violates Labor Law §193(1); and

c. Whether payments made by Class members, by separate transaction, which payments were required by defendant or defendant's operations, violate Labor Law §193(2).

7. The claims of the representative plaintiffs are typical of the claims of the Class. The named representative plaintiffs have suffered the same type of financial losses as other Class members in this case. Such losses stem from defendant's policy and practice of misclassifying such Class members as independent contractors in order to facilitate its practice of taking unlawful deductions from their wages in violation of New York law, and requiring them in violation of New York law to make payments that typically constitute an employer's cost of doing business.

8. The representative parties will fairly and adequately protect the interests of the Class.

9. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage litigation in which individual plaintiffs lack the financial resources to prosecute such claims effectively against a corporate defendant. The expense and burden of protracted litigation makes it impracticable for Class members to seek redress individually for defendant's unlawful conduct. Moreover, if individuals were required to institute separate actions concerning the same issues raised by this action, the Court would be unduly burdened and the risk of inconsistent rulings, which might be dispositive of legal issues affecting nonparties, would be contrary to justice.

#### PARTIES

10. Plaintiff Larry Louzau ("Louzau") is a resident of Westchester County, New York, and worked for defendant from in or about September 2002 to the present.

11. Plaintiff Charles Malkin ("Malkin") is a resident of Orange County, New York, and worked for defendant and its predecessor in interest from in or about July 1997 to the present.

12. Plaintiff Thomas Frasca ("Frasca") is a resident of Dutchess County, New York, and worked for defendant and its predecessor in interest from in or about 1998 to the present.

13. Upon information and belief, defendant FedEx Ground is a Delaware corporation doing business nationally, including in New York State.

**STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION**

14. Defendant's business consists of providing a package transportation and delivery service to its customers throughout the United States.

15. Plaintiffs and Class members were hired by defendant as drivers to deliver and pick up packages for defendant's customers on behalf of defendant.

16. Plaintiffs and Class members are required to sign a "Pick-Up and Delivery Contractor Operating Agreement" (hereinafter the "OA") with defendant as a condition of employment.

17. Upon information and belief, during the Class Period, more than 500 delivery and pick up drivers in New York State fall within the Class. Such drivers include each of the plaintiffs named herein.

18. Defendant uses drivers, including plaintiffs, for the purpose of providing its customers with the core service defendant promotes as its business.

19. Defendant exercises extensive control over the means by which its drivers perform their jobs. For instance, plaintiffs and 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. Indeed, defendant requires drivers, including plaintiffs, to make daily deliveries in the morning and pick-ups in the afternoon.

20. Moreover, plaintiffs and 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. In addition, defendant can and often does require its drivers to pick up and/or deliver packages outside of their assigned work areas.

21. The vehicles used by 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. Prior to drivers' arrival at the terminal, the vehicles are loaded by defendant's employees with packages to be delivered to the respective assigned work area of each driver.

22. Defendant employs Terminal Managers, Pickup and Delivery Managers, and other supervisory personnel, to coordinate and issue drivers' paperwork, together with delivery and pick-up schedules, to which drivers are strictly required to adhere. Drivers generally return to their assigned terminal at or around 4:30 p.m., in order to complete paperwork required by defendant, including, *inter alia*, daily logs and daily inspection reports, and to await management's check of each driver before such drivers are permitted to leave for the day.

23. Defendant pays its drivers based upon the number of pick up and delivery stops made. 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.

24. Plaintiffs 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.

25. The success or continuation of defendant's business depends upon the personal services performed by plaintiffs and Class members.

26. Plaintiffs and Class members render a personal and necessary service to defendant by driving vehicles displaying defendant's colors, marks and logos, by adhering to defendant's strictly controlled and assigned delivery routes, by following defendant's delivery and pick up methods on which they are extensively trained by defendant, and in other ways.

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

28. 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.

29. Furthermore, the services provided by plaintiffs and other drivers are personal in that plaintiffs do not hire their own employees to perform the services for defendant.

**The Pick-Up and Delivery Contractor Operating Agreement (OA), Defendant's Policies, Practices and Procedures, and Management Discretion Ensure Strict Control Over Drivers**

30. Upon information and belief, Exhibit A is similar in all material respects to the Operating Agreement ("OA") executed by each Class member and defendant.

31. 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, FedEx Ground Package System, Inc.** 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 FedEx Ground. FedEx Ground 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 FedEx Ground 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 FedEx Ground 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 FedEx Ground system. Both FedEx Ground and Contractor intend that Contractor will provide these services strictly as an independent contractor, and not as an employee of FedEx Ground 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 results 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 employee of FedEx Ground will have the authority to impose any term or condition on Contractor or on Contractor's continued operation which is contrary to this understanding.

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

33. Among other things, plaintiffs and Class members are required to purchase or lease vehicles that meet defendant's specific specifications, and which bear a "FedEx Ground Unit Number." At all times, defendant retains control over the selection of vehicles used by plaintiffs for defendant's intended use. Such vehicles are manufactured to a design exclusive to defendant. In addition, Plaintiffs 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 that plaintiffs

and drivers maintain liability insurance, naming defendant as an insured, in the amount of one million dollars.

34. Defendant requires that the vehicles driven by plaintiffs and other drivers be marked "with such identifying colors, logos, numbers, mark and insignia. . . or to identify the [vehicle] as a part of the FedEx Ground system." Although defendant purports to permit plaintiffs 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.

35. The OA confirms that it seeks to control the means by which plaintiffs 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 FedEx Ground may from time to time designate, and to complete and return these documents to FedEx Ground at the end of each business day."

36. The OA further requires drivers to deposit with FedEx Ground "at such time and in such manner as FedEx Ground may specify the sum of \$1,000," 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.

37. Defendant expressly dictates in the OA that drivers "wear a FedEx Ground 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

FedEx Ground." 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.

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

39. 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 in their vehicles while working for defendant, unless authorized or required 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.

40. 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 the "pick-up, delivery, handling, loading and unloading of packages and equipment. . . ." Such equipment is required to comply with defendant's specifications.

41. The OA further provides that delivery routes, referred to as a driver's "Primary Service Area," are assigned by defendant and non-negotiable.

42. 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.

43. The OA further provides for performance-based bonuses referred to as "Contractor Customer Service" payments after one year of service. Such payments are based upon a driver's avoidance of "at-fault" accidents and not receiving customer complaints.

44. Upon information and belief, the terms of the OA are not negotiable and plaintiffs and Class members are subject to its terms.

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

46. 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.

47. Furthermore, the OA states that "This Agreement, the Addenda and Attachments shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties." In reality, however, defendant has taken the position that drivers who sign the OA prior to the inclusion of an addendum are still bound by such addendum whether or not the addendum is signed by both parties.

**Effect of Defendant's Misclassification  
of Plaintiffs and Class Members as Independent Contractors**

48. Defendant misclassifies plaintiffs and Class members for a variety of reasons involving avoidance of obligations arising under state and federal tax laws, social security, state unemployment insurance laws, workers' compensation laws, and other employment laws.

49. 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 plaintiffs' compensation, which defendant characterizes as a "weekly settlement."

50. With respect to other amounts not deducted directly from the wages of plaintiffs and Class members, defendant requires that plaintiff and Class members make such payment by separate transaction.

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

52. The wages of plaintiffs and Class members were subjected to deductions or charges for, among other things, the purchase or lease, required maintenance, fuel costs and enhancement of vehicles according to defendant's specifications; equipment required by defendant; insurance; uniforms; and \$1,000 for deposit in defendant's so-called Contractor Performance Escrow Account.

53. In addition, the wages of plaintiffs 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

54. In a class action filed in California Superior Court for the County of Los Angeles captioned, *Estrada v. Fed Ex Ground*, No. BC 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 FedEx Ground had the right to control the manner and means by which the drivers provided services.

55. The class members in *Estrada* performed the same duties and were subject to the same control, material terms and conditions as plaintiffs 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.

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

[FedEx Ground] 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 [FedEx Ground] is comprised of platitudes and guidelines. This, in effect, leaves its interpretation in the sole hands of [FedEx Ground], 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 [FedEx Group'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.

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

57. Furthermore, the *Estrada* court found, based upon the testimony of defendant's head of Contractor Relations as well as the testimony of defendant's San Diego and Anaheim terminal managers that the "OA was in effect a contract that relied upon a myriad of outside sources beyond the document itself in order to be implemented." (*Id.*) Defendant's head of Contractor Relations testified that such outside sources include, but are not limited to, the following: verbal information; posters on bulletin boards, welcome packets sent to new drivers; information given to new drivers as to customer expectations and company procedures; memoranda from management; audiotapes; News Network and the "Scanner"; Round Table



Presentations; Information from Contractor Relations personnel as they traveled to the various facilities; Internet and Website; Custom; and under certain circumstances, the Operations Management Handbook and FedEx Ground Manual.

58. With respect to defendant's Contractor Relations department, the court in *Estrada* found that it was "nothing more than a mere branch of management" and that "[a]ny decision by Contractor Relations is subject to higher management's approval or veto." According to the court, "Contractor Relations must be seen in a role akin to Human Relations over employees, wherein the highest levels of management have the final say." (*Id.*)

#### FIRST CAUSE OF ACTION

59. Plaintiffs incorporate by reference all of the preceding paragraphs.

60. At all times material hereto, the compensation paid by defendant to plaintiffs and Class members constituted "wages" within the meaning of Labor Law §§190(1) and 193 . . .

61. Other than deductions required by law, government rules or regulations (*e.g.*, payroll taxes, child support orders, or wage garnishments), section 193 of the Labor Law prohibits an employer from making any deduction from an employee's wages, except those which the employee expressly authorizes in writing and are for that employee's benefit.

62. Section 193 of the Labor Law expressly limits such "authorized deductions" to amounts for "insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee." (Labor Law §193(1)(b))

63. Defendant deducted amounts directly from the wages of plaintiffs and Class members, which do not fall within the categories of authorized deductions.

64. Defendant's ongoing deduction of amounts not constituting authorized deductions from the wages of plaintiffs and Class members constitutes a violation of Labor Law §193(1).

65. As a proximate result of the foregoing, plaintiffs and Class members have been deprived of such amounts deducted from their wages and have incurred damages thereby.

#### **SECOND CAUSE OF ACTION**

66. Plaintiffs incorporate by reference all of the preceding paragraphs.

67. Section 193(2) of the Labor Law prohibits employers from requiring an "employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction of wages under [Labor Law §193(1)]."

68. Defendant required plaintiffs and Class members to make payments by separate transaction to defendant and/or third parties on behalf of defendant in connection with charges that would not have constituted authorized deductions pursuant to Labor Law §193.

69. Defendant's requirement that plaintiffs and Class members make such payments constitutes a violation of Labor Law §193(2).

70. As a proximate result of the foregoing, plaintiffs and Class members have been deprived of such amounts deducted from their wages and have incurred damages thereby.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs and Class members demand the following relief:

- (a) Certification of this case as a class action pursuant to Article 9 of the CPLR;
- (b) A declaration that plaintiffs and Class members are employees of defendant;
- (c) An award of actual damages in an amount to be determined at trial for amounts deducted from plaintiff's wages that do not constitute authorized deductions under Labor Law §193;

(d) An award of actual damages in an amount to be determined at trial for payments plaintiffs and Class members were required to make by separate transaction that did not qualify as authorized or permitted charges under Labor Law §193.

(e) An award of plaintiff costs, pre and post judgment interest, expert witness fees, and reasonable attorneys' fees pursuant to Labor Law §198 and CPLR R. 909; and

(f) Any other relief this Court deems to be just and proper.

Dated: New York, New York  
October 26, 2004

Respectfully submitted,

**GANGEMI, MANGO & IACOVIELLO, LLP**

By: 

Salvatore G. Gangemi

14 Penn Plaza, Suite 2200  
New York, New York 10122  
(212) 695-0494

**Attorneys for Plaintiffs**