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OF ORIGINAL FILED  
Los Angeles Superior Court  
OCT 07 2005  
By  John A. Clarke, Executive Officer/Clerk  
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ANTHONY ESTRADA, JEFFREY )  
MORGAN and HARVEY ROBERTS, )  
on behalf of themselves and all persons )  
similarly situated, )  
Plaintiffs, )  
vs. )  
FED EX GROUND PACKAGE )  
SYSTEMS, INC. )  
Defendants. )

No. BC 210130

**STATEMENT OF DECISION  
REGARDING DECLARATORY  
AND EQUITABLE RELIEF**

The named plaintiffs and the single work area pick-up and delivery drivers (SWAs) seek declaratory and equitable relief relative to the court's finding that the SWAs are employees of FedEx Ground Package Systems, Inc. (FEG) and not independent contractors as set forth in its July 26, 2004 Statement of Decision, hereafter referred to as "SD." FEG raises a panoply of procedural hurdles to their request. The court will grant both declaratory and equitable relief, but not nearly as broadly or as all encompassing as that sought by the SWAs.

1 As pointed out by FEG, the only cause of action certified for class consideration was for  
2 reimbursement of expenses under California Labor Code section 2802, which is presently being  
3 handled by an accounting before a referee. As such all claims for declaratory and equitable relief  
4 must be based in the causes of action proffered by plaintiffs Anthony Estrada and Jeffrey  
5 Morgan.  
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8 FEG now for the first time, urges that neither Mr. Morgan nor Mr. Estrada have standing  
9 and that any requested declaratory relief is now moot, because the first amended complaint filed  
10 in May of 2000 reflects that neither individual presently works for FEG, both having separated  
11 from FEG in May of 1999. This issue could have been raised much earlier since the separation  
12 status of Mr. Estrada and Mr. Morgan was set forth in the original complaint filed in 1999. The  
13 court agrees with the SWAs that FEG has waived any claim of mootness, by raising this issue at  
14 such a late date.  
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18 However, even if the issue was not waived, the court finds that this matter is not moot by  
19 reasons of the importance and recurring nature of the employment issues of the SWAs as  
20 described in the SD. Torres Parkhouse v. Tire Services, Inc. (2001) 26Cal4th995, 1001; Eye Dog  
21 Foundation v. State Board of Guide Dogs For the Blind (1967) 67Cal536,541-542; Kidd v. State  
22 Foundation (1998) 62CA4th386,397-399, Application Group, Inc. v. Hunter Group, Inc. (1988) 61CA4th  
23 881,894. The finding of employment status was a precondition, not only for the issue of  
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1 reimbursement, but also those of declaratory and injunctive relief. Both Mr. Estrada and Mr.  
2 Morgan were actively involved in the litigation of the phase relative to employment status. The  
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4 court finds by reason of the importance of this recurring issue, the active involvement of the  
5 named plaintiffs in the litigation and the grossly belated objection by FEG, that there is case and  
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7 controversy and the issue is ripe for decision.

8           The court will determine declaratory relief under section 1060 of the Code of Civil  
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10 Procedure, and will enter injunctive relief under B & P section 17203.

11           The court agrees with the SWAs that class certification is not a predicate to the issuance  
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13 of declaratory or injunctive relief as such relief can be predicated upon a representation basis  
14 under B & P Section Code 17203. The court finds that there is sufficient factual basis for issuing  
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16 an injunction under that section based upon the SD.

17           The court is also cognizant that on November 2, 2004, the electorate enacted Proposition  
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19 64, which requires compliance with CCP section 382, which was not done here. There is a split  
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21 of authority on the retroactive effect of Proposition 64, which issue is presently before the  
22 California Supreme Court.

23           However the issue is ultimately decided by the California Supreme Court, the court  
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25 finds based upon the unique factual and procedural background of this particular case,  
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27 Proposition 64 should not apply herein. Proposition 64 should not be applied retroactively to  
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1 eliminate pending injunctive relief claims in primarily B & P section 17203 claims, like this, that  
2 have already been fully litigated on a representative basis. This matter was a class action and  
3 injunctive relief could have been certified as a class issue. There was no necessity to do so by  
4 reason of the language of B & P 17203 as it existed at that time. The named plaintiffs filed their  
5 law suit and tried the issue of employment status with the expectation that they were prosecuting  
6 their claims on said representative basis, without the need for class certification for injunctive  
7 relief. It was only after the issue of employment status had been fully litigated and the court  
8 issued its Statement of Decision on July 26, 2004, that the electorate in November 2 of that same  
9 year, enacted Proposition 64. When the issue of employment status was litigated, it was based  
10 upon not only reimbursement; but also that of potential declaratory and injunctive relief.  
11 Therefore by reason of the unique factual and procedural posture of this case, wherein the court  
12 had rendered a decision that would impact the issues of reimbursement, declaratory and  
13 injunctive relief before the enactment of Proposition 64, the court finds said amendment  
14 inapplicable to this case. Relief will be ordered as to all SWAs, whether or not they are class  
15 members or named plaintiffs under the provisions of B & P section 17203.  
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23           However, the declaratory and injunctive relief sought by named plaintiffs is overly broad  
24 and would in effect, force the court to administer FEG and require it to never change its  
25 employment model as described in the SD. The court is neither a "social engineer" nor a CEO,  
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1 and will retain its role as a jurist. FEG is correct in its position that it should be able to change its  
2 employment model so as to be either in compliance with or outside of the court's orders.

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4 In effect the declaratory and injunctive relief is limited to a declaration of employment  
5 status under the factual scenario of the SD and compliance with state law relating thereto under  
6 that same or substantially similar factual scenario. The injunction will not be in effect until 180  
7 days after its signing to give FEG time to implement the court's orders or change its employment  
8 model to be outside the court's orders or to seek a stay pending appellate proceedings.  
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11 Restitution will not be ordered, as it has already been limited to the named plaintiffs and  
12 class members relative to the already ordered accounting. As such the ordered relief will be  
13 narrowed to that set forth in the attached Proposed Order Granting Equitable Relief.  
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17 Dated: **OCT 07 2005**

19 **HOWARD J. SCHWAB**  
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21 Howard J. Schwab  
22 Judge of the Superior Court  
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