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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MITCH SPENCER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC.,

Defendant.

No. 14-2-30110-3 SEA

**DEFENDANT'S ANSWER TO CLASS
ACTION COMPLAINT**

Defendant FedEx Ground Package System, Inc. (hereinafter "FedEx Ground"), by and through undersigned counsel, provides the following Answer and Affirmative Defenses to Plaintiff's Class Action Complaint (hereinafter "Complaint"). All allegations not specifically admitted are denied.

I. INTRODUCTION

1.1 Nature of Action. This paragraph states Plaintiff's legal description of his lawsuit, and therefore requires no answer. Notwithstanding the foregoing, FedEx Ground specifically denies that this case is suitable for class treatment. FedEx Ground further denies that it is an employer or joint employer of Plaintiff, that Plaintiff has any cause of action under the any of the statutes invoked in the Complaint or any other legal theory, or that Plaintiff is entitled to damages, in any amount, from FedEx Ground.

1 **II. JURISDICTION AND VENUE**

2 2.1 Jurisdiction. FedEx Ground admits the allegations contained in Paragraph 2.1.

3 2.2 Venue. FedEx Ground admits the allegations contained in Paragraph 2.2.

4 2.3 Governing Law. Paragraph 2.3 states Plaintiff’s legal description of his lawsuit, and
5 therefore requires no answer. Notwithstanding the foregoing, FedEx Ground admits that Plaintiff
6 purports to bring claims under Washington State law. FedEx Ground denies that this case is suitable
7 for class treatment.

8 **III. PARTIES**

9 3.1 Plaintiff Mitch Spencer. FedEx Ground lacks knowledge or information sufficient to
10 form a belief as to truth of allegation contained in the first sentence of Paragraph 3.1, and therefore
11 denies the same. FedEx Ground denies that Plaintiff Mitch Spencer is or was employed by FedEx
12 Ground for purposes of the Washington Minimum Wage Act or for any other purpose. FedEx
13 Ground avers that Plaintiff is or was the employee (“contractor-retained driver”) of various
14 independent contractors that contract to provide package pick-up and delivery services to FedEx
15 Ground, including vehicles and drivers, pursuant to Operating Agreements with FedEx Ground.
16 FedEx Ground further admits that Plaintiff became a contractor-retained driver in approximately
17 2011. FedEx Ground admits that the independent contractors that Plaintiff worked for had a
18 proprietary interest in their service area(s) and paid Plaintiff for his work. Contractors agree to bear
19 all liability and expenses associated with payment of any retained drivers’ wages and further agree
20 to assume sole responsibility for compliance with all applicable state overtime laws and all
21 applicable state-mandated rest and meal periods. To the extent Plaintiff alleges he did not receive
22 rest breaks, meal breaks or overtime pay, his claims are only against the contractors who employed
23 him, not FedEx Ground. FedEx Ground lacks knowledge or information sufficient to form a belief
24 as to truth of the remainder of the allegations contained in Paragraph 3.1 and therefore denies the
25 same.

1 Plaintiff or the purported class could satisfy any of the class certification requirements and denies
2 each and every allegation contained in Paragraph 4.3 and its subparts.

3 4.4 Typicality. This is a legal conclusion to which no response is required. To the extent a
4 response is required, FedEx Ground denies that this case is suitable for class treatment or that
5 Plaintiff or the purported class could satisfy any of the class certification requirements and denies
6 each and every allegations contained in Paragraph 4.4.

7 4.5 Adequacy. This is a legal conclusion to which no response is required. To the extent a
8 response is required, FedEx Ground denies that this case is suitable for class treatment or that
9 Plaintiff or the purported class could satisfy any of the class certification requirements and denies
10 each and every allegations contained in Paragraph 4.5.

11 4.6 Predominance. This is a legal conclusion to which no response is required. To the extent
12 a response is required, FedEx Ground denies that this case is suitable for class treatment or that
13 Plaintiff or the purported class could satisfy any of the class certification requirements and denies
14 each and every allegations contained in Paragraph 4.6.

15 4.7 Superiority. This is a legal conclusion to which no response is required. To the extent a
16 response is required, FedEx Ground denies that this case is suitable for class treatment or that
17 Plaintiff or the purported class could satisfy any of the class certification requirements and denies
18 each and every allegations contained in Paragraph 4.7.

19 **V. SUMMARY OF FACTUAL ALLEGATIONS**

20 5.1 Common Course of Conduct: Joint Employment. FedEx Ground denies the allegations
21 contained in Paragraph 5.1.

22 5.1.1. FedEx Ground denies each and every allegation contained in Paragraph 5.1.1.

23 5.1.2. FedEx Ground denies each and every allegation contained in Paragraph 5.1.2.

24 5.1.3. FedEx Ground denies each and every allegation contained in Paragraph 5.1.3.

25 5.1.4. FedEx Ground denies each and every allegation contained in Paragraph 5.1.4.

1 5.1.5. FedEx Ground admits that scanner data tracks package delivery times and
2 locations, as well as the time that a contractor-retained driver signs into the scanner and signs out of
3 the scanner. Except as so admitted, FedEx Ground denies the remaining allegations contained in
4 Paragraph 5.1.5.

5 5.1.6. FedEx Ground avers that pursuant to the Operating Agreement, a Contractor
6 must ensure that its employees who assist in providing services under the Operating Agreement are
7 qualified pursuant to applicable federal, state and municipal safety standards and FedEx Ground
8 Safe Driving Standards, including lack of certain criminal convictions and motor vehicle violations.
9 Except as so stated, FedEx Ground denies the remaining allegations contained in Paragraph 5.1.6.

10 5.1.7. FedEx Ground avers that it maintains files that contain customer complaints
11 made with respect to its contractors, which may include complaints with respect to a contractor's
12 retained drivers. Except as so stated, FedEx Ground denies the remaining allegations contained in
13 Paragraph 5.1.7.

14 5.1.8. FedEx Ground denies each and every allegation contained in Paragraph 5.1.8.

15 5.1.9. FedEx Ground admits that Plaintiff has been employed by several contractors,
16 who had a proprietary interest in their service area(s) and paid Plaintiff for his work. Except as so
17 admitted, FedEx Ground denies each and every allegation contained in Paragraph 5.1.9.

18 5.1.10. FedEx Ground admits that some contractor-retained drivers may start and
19 end their days at FedEx Ground stations and that some may pick up a scanner and pick-up list from
20 a FedEx Ground station. Some contractor-retained drivers do not start or end their days at a FedEx
21 Ground station. FedEx Ground avers that the vast majority of a contractor-retained driver's work
22 and time takes place in vehicles owned by the contractors and the circumstances of contractor-
23 retained driver's work varies widely. Except as so admitted and stated, FedEx Ground denies the
24 remaining allegations contained in Paragraph 5.1.10.

1 5.1.11. FedEx Ground admits that FedEx Ground’s customer service department
2 receives calls from customers relating to complaints and inquiries. FedEx Ground denies that it
3 provides the investment in equipment and materials necessary for contractor-retained drivers to do
4 their work. The Contractors that retained Plaintiff and other putative class members provide the
5 vehicle used to make deliveries, bears the maintenance expense on the same, bears all costs
6 incidental to operating the same, and rent scanners for the contractor-retained drivers. Except as so
7 admitted and stated, FedEx Ground denies the remaining allegations contained in Paragraph 5.1.11.

8 5.1.12. FedEx Ground denies each and every allegation contained in Paragraph
9 5.1.12.

10 5.1.13. FedEx Ground states that Plaintiff and other putative class members are not
11 employees of FedEx Ground. FedEx Ground lacks knowledge or information sufficient to perform
12 a belief as to whether Plaintiff had no possibility of promotion with the contractor who retained him,
13 and therefore denies the same.

14 5.1.14. FedEx Ground denies each and every allegation contained in Paragraph
15 5.1.14.

16 5.1.15. FedEx Ground denies each and every allegation contained in Paragraph
17 5.1.15.

18 5.2 Common Course of Conduct: Overtime Violations. FedEx Ground denies each and every
19 allegation contained in Paragraph 5.2.

20 5.2.1. FedEx Ground denies each and every allegation contained in Paragraph 5.2.1.

21 5.2.2. The allegations in this paragraph contain a legal conclusion to which no
22 response is required.

23 5.2.3. FedEx Ground denies that it is an employer or joint employer of, or that it has
24 any obligation to pay overtime to, Plaintiff or any of the purported members of the putative class.
25 Answering further, FedEx Ground states that Contractors agree to bear all liability and expenses

1 associated with payment of any retained drivers' wages and further agree to assume sole
2 responsibility for compliance with all applicable state overtime laws and all applicable state
3 mandated rest and meal periods. To the extent Plaintiff alleges he did not receive rest breaks, meal
4 breaks or overtime pay, his claims are only against the contractors who employed him, not FedEx
5 Ground.

6 5.2.4. FedEx Ground denies each and every allegation contained in Paragraph 5.2.4.

7 5.2.5. FedEx Ground denies each and every allegation contained in Paragraph 5.2.5.

8 5.3 Common Course of Conduct: Failure to Provide Proper Rest Breaks. FedEx Ground
9 denies that it is an employer or joint employer of Plaintiff or any of the purported members of the
10 putative class. Answering further, FedEx Ground states that Contractors agree to bear all liability
11 and expenses associated with payment of any retained drivers' wages and further agree to assume
12 sole responsibility for compliance with all applicable state overtime laws and all applicable state-
13 mandated rest and meal periods. To the extent Plaintiff alleges he did not receive rest breaks, his
14 claims are only against the contractors who employed him, not FedEx Ground. Except as so stated,
15 FedEx Ground denies the remaining allegations contained in Paragraph 5.3.

16 5.3.1. FedEx Ground denies that it is an employer or joint employer of Plaintiff or any of
17 the purported members of the putative class. Answering further, FedEx Ground states that
18 Contractors agree to bear all liability and expenses associated with payment of any retained drivers'
19 wages and further agree to assume sole responsibility for compliance with all applicable state
20 overtime laws and all applicable state-mandated rest and meal periods. To the extent Plaintiff alleges
21 he did not receive rest breaks, his claims are only against the contractors who employed him, not
22 FedEx Ground.

23 5.3.2. FedEx Ground denies each and every allegation contained in Paragraph 5.3.2.

24 5.3.3. FedEx Ground lacks knowledge or information sufficient to form a belief as
25 to truth of the allegations contained in Paragraph 5.3.3 and therefore denies the same.

1 5.3.4. FedEx Ground denies each and every allegations contained in Paragraph 5.3.4.

2 5.4 Common Course of Conduct: Failure to Provide Proper Meal Breaks. FedEx Ground
3 denies that it is an employer or joint employer of Plaintiff or any of the purported members of the
4 putative class. Answering further, FedEx Ground states that Contractors agree to bear all liability
5 and expenses associated with payment of any retained drivers' wages and further agree to assume
6 sole responsibility for compliance with all applicable state overtime laws and all applicable state-
7 mandated rest and meal periods. To the extent Plaintiff alleges he did not receive meal breaks, his
8 claims are only against the contractors who employed him, not FedEx Ground. Except as so stated,
9 FedEx Ground denies the remaining allegations contained in Paragraph 5.4.

10 5.4.1. FedEx Ground denies each and every allegation contained in Paragraph 5.4.1.

11 5.4.2. FedEx Ground denies that it requires contractor-retained drivers to deliver
12 packages. FedEx Ground lacks knowledge or information sufficient to form a belief as to truth of
13 the remaining allegations contained in Paragraph 5.4.2 and therefore denies the same.

14 **VI. FIRST CLAIM FOR RELIEF**
15 **(Violations of RCW 49.46.130 – Failure to Pay Overtime Wages)**

16 6.1. FedEx Ground reincorporates every admission and denial set forth above as though fully
17 repeated herein.

18 6.2. FedEx Ground denies each and every allegation contained in Paragraph 6.2.

19 6.3. FedEx Ground states that this paragraph merely quotes a portion of RCW 49.46.130,
20 which is a written statute that speaks for itself, and therefore no response is required.

21 6.4. FedEx Ground denies each and every allegation contained in Paragraph 6.4.

22 6.5. FedEx Ground denies each and every allegation contained in Paragraph 6.5.

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1 **VII. SECOND CLAIM FOR RELIEF**
2 **(Violations of RCW 49.12.020 and WAC 296-126-092 –**
3 **Failure to Provide Rest and Meal Periods)**

4 7.1. FedEx Ground reincorporates every admission and denial set forth above as though fully
5 repeated herein.

6 7.2. FedEx Ground denies each and every allegation contained in Paragraph 7.2

7 7.3. FedEx Ground states that this paragraph merely quotes a portion of RCW 49.12.010,
8 which is a written statute that speaks for itself, and therefore no response is required.

9 7.4. FedEx Ground states that this paragraph merely quotes a portion of RCW 49.12.020,
10 which is a written statute that speaks for itself, and therefore no response is required.

11 7.5. FedEx Ground states that this paragraph merely quotes portions of 49.12.005 and WAC
12 296-126-002, , which are written statutes and regulations that speak for themselves, and therefore
13 no response is required.

14 7.6. FedEx Ground states that this paragraph contains a legal conclusion to which no
15 response is required.

16 7.7. FedEx Ground denies each and every allegation contained in Paragraph 7.7.

17 7.8. FedEx Ground denies each and every allegation contained in Paragraph 7.8.

18 **VIII. THIRD CLAIM FOR RELIEF**
19 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**

20 8.1. FedEx Ground reincorporates every admission and denial set forth above as though fully
21 repeated herein.

22 8.2. FedEx Ground states that this paragraph merely quotes a portion of RCW 49.52.050,
23 which is a written statute that speaks for itself, and therefore no response is required.

24 8.3. FedEx Ground denies each and every allegation contained in Paragraph 8.3.

25 8.4. FedEx Ground states that this paragraph contains a legal conclusion to which no
response is required.

1 8.5. FedEx Ground denies each and every allegation contained in Paragraph 8.5.

2 8.6. FedEx Ground denies each and every allegation contained in Paragraph 8.6.

3 **IX. PRAYER FOR RELIEF**

4 Answering Plaintiff's Prayer for Relief and its subparts, FedEx Ground denies that this cause
5 is suitable for class treatment or that or that Plaintiff or the purported class could satisfy any of the
6 class certification requirements. FedEx Ground further denies that it is the employer or joint
7 employer of Plaintiff or any member of the putative class, that Plaintiff or any putative class
8 members have a cause of action against FedEx Ground under the statutes or legal theories invoked
9 in the Complaint, or that Plaintiff or any putative class members are entitled to damages (in any
10 amount), attorneys' fees, or any form of relief against FedEx Ground.

11 **AFFIRMATIVE DEFENSES**

12 Having fully answered Plaintiff's Complaint, FedEx Ground pleads the following defenses
13 and/or affirmative defenses against all causes of action purported to be set forth against FedEx
14 Ground by Plaintiff on his behalf or on behalf of the purported members of the putative class.

15 **FIRST AFFIRMATIVE DEFENSE**

16 **- Failure to State a Cause of Action -**

17 Plaintiff's Complaint, brought on behalf of Plaintiff and the purported members of the
18 putative class set forth in the Complaint, fails to state facts sufficient to constitute a cause of action
19 against FedEx Ground.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **- Statute of Limitations -**

22 Plaintiff's claims, and the claims of the purported members of the putative class defined in
23 the Complaint, or some of them, are barred in whole or in part by the applicable statutes of limitations.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **- Lack of Standing -**

3 Plaintiff's claims, and the claims of the purported members of the putative class defined in
4 the Complaint, or some of them, are barred in whole or in part due to lack of standing.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **- Not a Proper Class Representative -**

7 Plaintiff is not competent to act as a proper representative of the purported class defined in
8 the Complaint because Plaintiff's interests and circumstances are not representative of the individuals
9 that Plaintiff seeks to represent.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 **- No Class Action -**

12 Plaintiff's claims cannot and should not be maintained on a class-action basis because those
13 claims, and each of them, fail to meet the necessary requirements for class certification.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **- Unconstitutional Class Action -**

16 Certification of a class action under the circumstances of this case would violate FedEx
17 Ground's rights under the Constitutions of both the United States and the state of Washington,
18 including, but not limited to, its rights to a trial by jury and to due process of law.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 **- Failure to Mitigate -**

21 If Plaintiff, or any purported members of the putative class defined in the Complaint, suffered
22 any damage, although such is not admitted hereby or herein, Plaintiff and the purported members of
23 the putative class had a duty to mitigate any damages they may have suffered, and they have failed
24 to do so.

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 - Consent -

3 Plaintiff's claims, and the claims of each purported members of the putative class defined in
4 the Complaint, or some of them, are barred in whole or in part on the ground of consent.

5 **NINTH AFFIRMATIVE DEFENSE**

6 - No Harm Caused By FedEx Ground -

7 Plaintiff's claims, and the claims of each purported members of the putative class defined in
8 the Complaint, or some of them, are barred in their entirety because the alleged injuries, if any, were
9 the result of actions of Plaintiff, purported members of the putative class, or third parties. In the
10 alternative, to the extent that persons or entities other than FedEx Ground are at least partially at fault
11 with respect to the matters complained of, although no fault of FedEx Ground or any other person or
12 entity is admitted hereby or herein, any recovery by Plaintiff, or the purported members of the putative
13 class, should be reduced by the proportion of such damages, if any, caused by such other persons or
14 entities.

15 **TENTH AFFIRMATIVE DEFENSE**

16 - Failure to Join Necessary Parties -

17 Plaintiff's claims, and the claims of each purported members of the putative class defined in
18 the Complaint, or some of them, are barred, in whole or in part, as a result of the non-joinder of
19 necessary and indispensable parties. In addition, Plaintiff's claims, and the claims of each purported
20 member of the putative class defined in the Complaint, or some of them, are barred because said
21 claims seek to impose duties on and/or affect the rights of absent third parties, which is contrary to
22 law and in violation of the Constitutions of the United States and the state of Washington.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 - Federal Preemption -

25 Plaintiff's claims, and the claims of each purported members of the putative class defined in
the Complaint, or some of them, are preempted, in whole or in part, by federal law, including, without

1 limitation, by the federal regulation of interstate commerce in general and the transportation industry
2 in particular.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 - Estoppel -

5 Plaintiff's claims, and the claims of each purported member of the putative class defined in
6 the Complaint, or some of them, are barred in whole or in part because Plaintiff and/or the purported
7 class members are estopped by their own conduct to assert that FedEx Ground was their employer or
8 "joint employer," or to claim any right to damages or other monetary relief from FedEx Ground.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 - Unclean Hands -

11 Plaintiff's claims, and the claims of each purported member of the putative class defined in
12 the Complaint, or some of them, are barred in whole or in part by the doctrine of unclean hands.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 - Laches -

15 Plaintiff's claims, and the claims of each purported member of the putative class defined in
16 the Complaint, or some of them, are barred in whole or in part by the doctrine of laches.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 - Accord and Satisfaction; Payment -

19 Plaintiff's claims, and the claims of each purported member of the putative class defined in
20 the Complaint, or some of them, are barred in whole or in part by the principles of accord and
21 satisfaction, and payment. Moreover, assuming, *arguendo*, that Plaintiff and the purported members
22 of the putative class defined in the Complaint, or some of them, are/were employees of FedEx Ground
23 within the meaning of Washington law, which FedEx Ground specifically denies, and assuming,
24 *arguendo*, that Plaintiff and the purported members of the putative class defined in the Complaint, or
25 some of them, are entitled to overtime pay under Washington law, which FedEx Ground also

1 specifically denies, then the amounts of overtime pay allegedly owed to Plaintiff and the purported
2 members of the putative class shall reflect the fact that Plaintiff and the purported members of the
3 putative class defined in the Complaint, or some of them, already have received overtime pay and/or
4 have been compensated at a straight time rate for all hours “worked” in every work week.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 **- Release -**

7 Plaintiff’s claims, and the claims of each purported member of the putative class defined in
8 the Complaint, or some of them, are barred in whole or in part because said claims have been released.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 **- Waiver -**

11 Plaintiff’s claims, and the claims of each purported member of the putative class defined in
12 the Complaint, or some of them, are barred in whole or in part because such claims have been waived,
13 discharged and/or abandoned.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 **- Overtime Exemption -**

16 Assuming, *arguendo*, that Plaintiff and the purported members of the putative class defined
17 in the Complaint, or some of them, are/were employees of FedEx Ground within the meaning of
18 Washington law, which FedEx Ground specifically denies, said individuals’ claims, or some of them,
19 are barred in whole or in part because said individuals were exempted from Washington’s overtime
20 pay requirements by law, including, but not limited to, by Wash. Rev. Code § 49.46.130(f).

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 **- Conduct Reasonable and in Good Faith/Not Willful -**

23 Assuming, *arguendo*, that Plaintiff and the purported members of the putative class defined
24 in the Complaint, or some of them, are/were employees of FedEx Ground within the meaning of
25 Washington law, which FedEx Ground specifically denies, said individuals’ claims, or some of them,

1 are barred, in whole or in part, on the ground that FedEx Ground acted in good faith, and in conformity
2 with, and in reliance on, written administrative regulations, orders, rulings, guidelines, approvals
3 and/or interpretations of government agencies, and on the basis of a good-faith and reasonable belief
4 that it had complied fully with Washington law.

5 **TWENTIETH AFFIRMATIVE DEFENSE**
6 **- Setoff and Recoupment -**

7 If any damages have been sustained by Plaintiff, or by any purported member of the putative
8 class defined in the Complaint, although such is not admitted hereby or herein and is specifically
9 denied, the equitable doctrine of setoff and recoupment entitles FedEx Ground to offset all obligations
10 of Plaintiff or purported class members owed to FedEx Ground against any judgment that may be
11 entered against FedEx Ground.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
13 **- Indemnification -**

14 FedEx Ground reserves the right to seek indemnification for any fees and damages related to
15 this matter.

16 **RESERVATION OF ADDITIONAL DEFENSES**

17 Due to the general nature of Plaintiff's allegations, and the necessarily varying circumstances
18 of each alleged claim and each purported member of the putative class defined in the Complaint, there
19 may be additional affirmative defenses of which FedEx Ground is not aware at this time. FedEx
20 Ground therefore reserves the right to assert additional affirmative defenses.

21 WHEREFORE, FedEx Ground prays for judgment as follows:

- 22 (1) That the Complaint and each cause of action therein be dismissed with prejudice;
23 (2) That Plaintiff take nothing by way of his Complaint;
24 (3) That FedEx Ground be awarded its costs incurred herein, including attorneys' fees;

25 and

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies as follows:

3 1. I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys for
4 Defendants herein.

5 2. On December 10, 2014, I caused a true and correct copy of the foregoing
6 document to be served on the following parties in the manner indicated below:

7 Toby J. Marshall **By Email Only**
8 Marc C. Cote
9 Terrell Marshall Daudt & Willie PLLC
10 936 North 34th Street, Suite 300
11 Seattle, WA 98103
12 tmarshall@tmdwlaw.com
13 mcote@tmdwlaw.com
14 *Attorney for Plaintiffs*

15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct.

17 DATED: December 10, 2014, at Seattle, Washington.

18 *s/Leslie Nims*
19 _____
20 Leslie Nims