

CV - 09 5430

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT E.D.N.Y.

-----X
MELINDA FREY, YAJAIRA RUIZ MERCEDES, and
FRANCINE PARZIALE,
Individually and on Behalf
of all other Persons Similarly Situated,

(KD)

★ DEC 11 2009 ★

LEED ISLAND OFFICE

Plaintiffs

CLASS ACTION
COMPLAINT

- against-

BEKINS VAN LINES, INC., TRIPLE CROWN
MAFUCCI STORAGE CORP, TRIPLE CROWN
MOVING & STORAGE, INC., JUDD LEVINE,
PAUL LEVINE and JOHN DOES # 1-10, JOINTLY
And SEVERALLY

Jury Trial Demanded

WEXLER, J.

WALL, M.J.

Defendants
-----X

Plaintiffs Melinda Frey, Yajaira Ruiz Mercedes and Francine Parziale bring this action seeking damages, on behalf of themselves and all others similarly situated ("Class Plaintiffs"), against Defendants Bekins Van Lines, Inc., ("Bekins") Triple Crown, Mafucci Storage Corp, Triple Crown Moving & Storage, Inc., Judd Levine, Paul Levine and John Does # 1-10 (jointly "Defendants" unless otherwise noted).

NATURE OF ACTION

1. Class Plaintiffs are shippers of household goods. Defendants are interstate carriers of household goods. Defendants have unlawfully engaged in a uniform practice of quoting shipping services to Class Plaintiffs at a much lower price than the price Defendants ultimately charged them. This is a classic case of "low-balling" a quote with the intention of charging the customer a much higher rate in the final bill. Defendants' actions violate the following federal statutes: 49 U.S.C. §§ 13704, 13707(b)(3)(A)(ii), 13708(a) and (b). Such violations by a motor

carrier operating under federal operating authority are privately actionable in federal court. 49 U.S.C. §14704(a)(2). The liability of a carrier for damages under § 14704(a)(2) is “in addition to remedies existing under other law or common law.” 49 U.S.C. § 13103. Such remedies include damages for violations of N.Y. Gen Bus L. 349-350 (unfair deceptive acts and practices) and N.Y.C.R.R. 814.7 (duties and rights of movers of household goods); unjust enrichment; fraud; negligence; negligent misrepresentation; and breach of the duty of good faith and fair dealing. Plaintiffs further request that the Defendants be enjoined from engaging in such conduct in the future.

2. The moving industry has become a multi-billion dollar industry in the United State, and an industry rife with complaints from consumers about unfair and deceptive practices by motor carriers. Due to the ease in taking advantage of unsuspecting consumers by unscrupulous and dishonest moving companies, federal, state, and municipal governments have passed a number of laws prohibiting such practices.

3. Bekins, along with the other Defendants, were not content with honestly earned profits, but resorted to fraudulent and unfair and deceptive acts and practices perpetrated on unsuspecting customers, in order to further maximize their profits. Bekins, and the other defendants, substantially overcharged their customers by: grossly overstating the weight of the freight being shipped; overcharging line haul charges; overcharging all additional changes such as fuel supplements; obtaining premiums for insurance which they in fact did not obtain; and adding fictitious charges. Ironically, through their website and other promotional material directed towards customers, Bekins boldly proclaims that it is a company with a strong reputation and one that can be “TRUSTED.” Sadly, this representation is woefully misleading.

4. The officers, directors and/or managing agents of the Defendants are jointly and

severally liable for the violations alleged herein.

JURISDICTION AND VENUE

5. Jurisdiction of this matter is granted to this court by 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1337 (proceedings arising under an act of Congress regulating commerce). The causes of action alleged arise under the laws of the United States regulating commerce and the activities of motor carriers engaged in the transport of property in interstate and foreign commerce, including 49 U.S.C. §§ 13704, 13707(b)(3)(A)(ii), 13708(a) and (b) and 14704(a)(2). This Court is granted supplemental jurisdiction by 28 U.S.C. § 1367 over the state and common law causes of action set forth in this complaint.

6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) in that Bekins and all other corporate Defendants are authorized to conduct and regularly do conduct business in the Eastern District of New York and a substantial part of the violations alleged in this Complaint were perpetrated by Defendants in this District.

PARTIES

7. Plaintiff, Melinda Frey (“Frey”) is a resident of Oakland, California.

8. Plaintiff, Yajaira Ruiz Mercedes (“Mercedes”) is a resident of Tucson, Arizona.

9. Plaintiff, Francine Parziale (“Parziale”) is a resident of Raleigh, North Carolina.

10. Upon information and belief, Defendant Bekins Van Lines, Inc. is organized and existing under the laws of the State of Nebraska and is a foreign corporation duly authorized to transact business in the State of New York.

11. Upon information and belief, Bekins maintains its principal place of business at 330 South Manheim Rd., Hillside, IL.

12. Upon information and belief, Defendant Triple Crown-Maffucci Storage Corp. (“Maffucci”) is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business at 140 New Highway, Amityville, NY.

13. Upon information and belief, Defendant Triple Crown Moving and Storage, Inc. (“Triple Crown”) is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business at 140 New Highway, Amityville, NY.

14. Upon information and belief, Defendant Paul Levine (“Levine”) at all relevant times is a resident of Nassau County, New York.

15. Upon information and belief, Defendant Judd Levine (“J. Levine”) at all relevant times is a resident of Nassau County, New York.

16. Upon information and belief, John Does #1-10 (“Individual Defendants”) represent the officers, directors and managing agents of the Corporate Defendants, whose identities are unknown at this time and who participated in the day-to-day operation of the Defendants and are jointly and severally liable with the Corporate Defendants for those causes of action alleging fraud and/or violations of Consumer Protection Acts under the authority of Polonetsky v. Better Homes Depot, 97 NY2d 46, 760 NE 2d 1274 (2001), as well as other causes of action.

FACTS

17. Defendants Triple Crown and/or Maffucci are the agent(s) of Defendant Bekins.

18. Defendant Paul Levine is an officer, managing director and/or majority shareholder of Defendants Triple Crown and Maffucci.

19. Defendant Judd Levine is an officer, managing director and/or majority shareholder of Defendants Triple Crown and Maffucci.

20. Upon information and belief Defendants Triple Crown, Maffucci and/or Paul Levine and/or Judd Levine own significant stock interests in Defendant Bekins.

21. Maffucci has a practice -- after having given an estimate and having picked up the household goods -- of increasing the estimate by various means, including claiming the weight was higher than the original estimate, asserting unexplained miscellaneous charges, and charging for other services that were not performed.

22. On or about October, 2007, Plaintiff Frey contacted Defendants for an estimate for moving her mother's household furniture and possessions from New York City to Oakland, California. Plaintiff Frey spoke to Defendant, Judd Levine. Levine gave her an estimate based upon 2,765 pounds of shipped goods. The total estimate was \$4059.00.

23. On or about October 31, 2007, Defendants packed boxes at Frey's residence and picked up all of the goods on or about November 1, 2007.

24. Defendants charged Frey for shipment of 3,600 pounds of goods, 835 pounds more than estimated. Upon information and belief, Defendants did not weigh the truck with the shipped goods thereon as required by federal statutes.

25. Defendants also charged and collected from Frey \$456.60 for boxes and containers and \$1,313.93 for packing. Upon information and belief, the actual total charges for all of the above should have been approximately \$300.00.

26. Defendants also charged and collected from Frey \$243.86 for crating a piece of furniture when in fact the furniture was not crated.

27. Defendants estimate also included \$276.00 for an insurance premium. Upon information and belief, Defendants never obtained such insurance coverage for Frey.

28. The total charge was \$5898.08, or \$1839.00 in excess of the original estimate given to Frey.

29. On or about December 2, 2008, Kevin White, a sales person employed by Maffucci came to the home of Plaintiff Mercedes to provide an estimate for moving her household furniture and possessions from New York, New York to Tucson, Arizona. The estimate given by White for the move was \$5287.00 based on an estimated weight of 4500 pounds. The estimate included charges for elevators, long carries and shuttle services at both the point of pick-up and delivery.

30. On or about December 18, 2008, Maffucci picked up Mercedes' household goods by driver Robert Benedict. On December 20, 2008, Benedict called Mercedes and informed her that her household goods weighed 6800 pounds and that the total charge would be \$7800.00.

31. Mercedes' household goods were never weighed. Benedict was directed by Maffucci to falsely claim that her goods weighed 6800 pounds and request the \$7800 payment.

32. Mercedes told Benedict that she did not believe the weight and that she refused to pay that amount. After further negotiations between Ruiz and Benedict/Maffucci, Maffucci told her it would drop its demand for \$7800, if she paid \$6200. Having no other options, Mercedes complied.

33. On or about January, 2009, Plaintiff Parziale contacted Defendants for an estimate for moving her household furniture and possessions from Melville, New York to Raleigh, North Carolina. The estimate was given by Defendant Levine after four separate trips to Plaintiff's residence. Defendant Levine gave her an estimate based upon 24,000 pounds of shipped goods. The total estimate was \$9521.62.

34. When the Parziale's shipment arrived in Raleigh, she was presented with a bill for \$16,561.2x. After complaining about the charges, Defendant Levine lowered the bill to \$15,000. Levine threatened to refuse to permit the unloading of the truck and returning it to New York for storage and sale. Based on that threat, Parziale, paid the \$15,000 charge.

35. When Defendants transport household goods based on a non-binding estimate dependent on shipment weight. The Defendants' drivers are required to weigh the trucks being used to transport customers' goods both before picking up the customers' goods, as well as after the goods are loaded. 49 C.F.R. § 375.509.

36. When the trucks are weighed as above, the Defendants' drivers are issued dated and sequentially numbered tickets indicating the weights of the trucks in triplicate ("weight tickets").

37. The agent Defendants are required to attach one copy of the weight ticket to their customers' bill of lading, keep the original with the customers' files which they must maintain, and send one original copy to Bekins. 49 C.F.R. § 375.519.

38. The agent Defendants also complete a file which is sent to Bekins containing the original estimate and the amount ultimately charged for every load shipped out of the agent's territory.

39. When Defendants transport household goods based on a non-binding estimate, the Defendants may not seek to collect more than 110 percent of the non-binding estimate at the time of delivery. 49 U.S.C. § 13707(b)(3)(A)(ii); 49 C.F.R. § 375.405(a)(5).

40. At all time relevant, Defendants Triple Crown and Maffucci engaged in an intentional and deliberate pattern and practice of (a) failing to weigh trucks before and after

picking up their customers' goods, and (b) submitting false, fraudulent and/or altered weight tickets to customers.

41. Alternatively, the drivers for Triple Crown and Maffucci have engaged in a pattern and practice of (a) failing to weigh trucks before and after picking up their customers' goods, and (b) submitting false, fraudulent and/or altered weight tickets to customers and to Triple Crown and Maffucci.

42. Triple Crown and Maffucci have engaged in a pattern and practice of submitting false, fraudulent and/or altered weight tickets to customers and to Bekins.

43. Triple Crown and Maffucci knew or should have known that the weight tickets submitted to it by its drivers were false, fraudulent and/or altered.

44. Triple Crown and/or Maffucci had a duty of care to its customers to examine the weight tickets submitted to it by its drivers to determine if they were false, fraudulent and/or altered.

45. Triple Crown and/or Maffucci negligently violated its duty of care to its customers by failing to inspect, reject, or correct the false, fraudulent and/or altered weight tickets and take corrective action to prevent the practice of using fraudulent weight tickets.

46. At all time relevant, Defendant Bekins engaged in an intentional and deliberate pattern and practice of authorizing or permitting its agents to (a) fail to weigh trucks before and after picking up their customers' goods, and (b) submit false, fraudulent and/or altered weight tickets to customers.

47. Alternatively, Bekins knew or should have known that its agents (a) failed to weigh trucks before and after picking up their customers' goods, and (b) submitted false, fraudulent and/or altered weight tickets to customers.

48. Bekins had a duty of care to its customers to examine the weight tickets submitted to it by Triple Crown and/or Maffucci and other agents to determine if they were false, fraudulent and/or altered.

49. Bekins negligently violated its duty of care to its customers by failing to inspect, reject, or correct the false, fraudulent and/or altered weight tickets and take corrective action to prevent the practice of using fraudulent weight tickets.

50. The moving documentation that customers were given contained a Bekins 800 telephone number. When Maffucci customers called this number to register a complaint, Bekins was put on notice of the complaint. Typically, Bekins handled the complaint by referring it back to Maffucci.

51. Bekins is intimately involved with its agents' operations, including the operations of Maffucci. All operating permits for its agents' owner-operator trucks were obtained through Bekins. The agents' owner-operator truck drivers report all miles they drive to Bekins for the purpose of reporting fuel tax obligations to state taxing authorities. These reports by the drivers give Bekins information on all movements by its agents' owner-operators.

52. The Defendants have a pattern and practice of overtly and/or fraudulently misrepresenting to their customers the true and accurate weight of the goods that their customers were shipping and/or fraudulently concealing the true weight of the shipped goods.

53. The Defendants have engaged in a pattern and practice of charging more than 110 percent of the non-binding estimate at the time of delivery.

54. Upon information and belief, the above described practices are continuing to the present and are likely to continue to the future.

55. Paul Levine, Judd Levine, and John Does #1-10 are the officers, directors, and managing agents of the Defendants and participated in the day-to-day operations of Maffucci, Triple Crown and/or Bekins and the activities of these Defendants which gave rise to the instant action.

CLASS ACTION ALLEGATIONS

56. Plaintiffs bring this action on behalf of themselves and a class of all other persons similarly situated, pursuant to Fed. R. Civ. P. 23.

57. The class consists of all persons or entities whose household goods were shipped by the Defendants.

58. This action is properly brought and may be maintained as a class action pursuant to Fed. R. Civ. P. 23 for the following reasons:

A. The class action consists of hundreds and possibly thousands of persons so numerous that joinder of all members whether otherwise required or permitted is impractical. The persons who had their goods shipped by the Defendants reside throughout the United States.

B. There are questions of law and facts which are common to all members of the class, which questions predominate over any questions affecting only individual Class Members. These include the following questions of law and fact:

1. Whether Defendants routinely engaged in fraudulent and/or deceptive acts and practices and course of business by overcharging their customers for household goods shipped by them;
2. Whether the Defendants charged the Plaintiffs and Members of the Class more than 110 percent of the original estimates given to each Plaintiff and Class Member.
3. Whether Defendants routinely engaged in fraudulent and/or deceptive acts and practices and course of business by either failing to weigh its trucks as required and/or by submitting false, fraudulent and/or altered weight tickets;
4. Whether Defendants engaged in a scheme of overcharging customers

through fraudulent concealment of material facts;

5. Whether the Defendants misled and/or misrepresented to consumers the true weight of the goods that they were shipping;

6. Whether the Plaintiffs and Members of the Class have sustained damages and the proper measure of damages.

- C. Defendants have engaged in a cause of conduct generally applicable to the class;
- D. The claims asserted by the Plaintiffs are typical of the claims of the Members of the Class;
- E. Plaintiffs will fairly and adequately protect the interests of the class, and Plaintiffs have retained as counsel attorneys that are experienced in class action and complex litigation;
- F. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:
1. Given the size of individual class members' claims, few, if any, Class Members could afford to seek legal redress individually for the wrongs committed by Defendants against them;
 2. When the liability of Defendants has been adjudicated, claims of all Members of the Class can be determined by the court;
 3. This action will cause an orderly and expeditious administration of the class claims, economies of time, effort and expense will be fostered and uniformity of decisions will be insured;
 4. Other available means of adjudicating the claims of Plaintiffs and Members of the Class - - such as thousands of individual actions brought separately and pursued independently in courts across the county - - are impracticable and inefficient, and would create a risk of either inconsistent or varying adjudications concerning individual Members of the Class which would establish incompatible standards of conduct for the party opposing the class or adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other Members of the Class who are not parties to the adjudications, or substantially impair or impede the ability of other Members of the Class who are not parties to the adjudications to protect their interests and;
 5. Without a class action, the class members will continue to suffer damages and Defendants will continue to retain and reap the proceeds of its

wrongful conduct.

- G. This action presents no difficulties that would impede their management by the court as a class action.

FIRST CAUSE OF ACTION

49 U.S.C 13707(b)(3)(A)(ii)

59. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

60. The Defendants violated 49 U.S.C. § 13707(b)(3)(A)(ii) by charging Class Plaintiffs more than 110 percent of the initial estimate they quoted to Class Plaintiffs for interstate shipment of Class Plaintiffs' household goods.

61. The Class Plaintiffs have been damaged by Defendants in an amount to be determined at trial.

SECOND CAUSE OF ACTION

49 U.S.C. § 13708(a)

62. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

63. The Defendants were required pursuant to 49 U.S.C. § 13708 (a) to disclose to the person responsible for the payment of shipping charges the actual rates and charges thereof.

64. The Defendants violated 49 U.S.C. § 13708 (a) by failing to disclose to Class Plaintiffs the actual rates and charges for transportation services.

65. The Class Plaintiffs have been damaged by Defendants in an amount to be determined at trial.

THIRD CAUSE OF ACTION

49 U.S.C. § 13708 (b)

66. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though

fully set forth herein.

67. Defendants are prohibited under 49 U.S.C § 13708(b) from presenting “false or misleading information on a document about the actual rate, charge” for transportation services.

68. Defendants violated 49 U.S.C. § 13708(b) by presenting Class Plaintiffs with documents that contained false or misleading information about the actual rate or charge for transportation services.

69. The Class Plaintiffs have been damaged by Defendants in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
BREACH OF CONTRACT

70. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

71. Defendants entered into contracts with the Plaintiffs and the similarly situated Members of the Class for transportation services

72. Defendants breached the aforesaid contracts by charging the Plaintiffs and the other similarly situated members of the class higher fees and charges than was agreed upon.

73. The Plaintiffs and the other similarly situated Members of the Class have become damaged by Defendants in an amount to be determined upon a trial of this action for damages occurring during the six years preceding the file of this complaint.

FIFTH CAUSE OF ACTION
N.Y. Gen. Bus. L. §§ 349-350

74. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

75. Plaintiffs and the similarly situated Members of the Class are “consumers” as

defined in N.Y. Gen. Bus. L.

76. The acts and practices of the Defendants as set forth herein were deceptive or misleading in a material way and the Plaintiffs and the similarly situated Members of the Class have been damaged thereby in amounts to be proven in a trial of this action.

77. The acts and practices of the Defendants were willful or knowing and the damages sustained by the Plaintiffs and the similarly situated Members of the Class should be trebled up to \$1,000 per violation.

78. The acts and practices of the Defendants as described herein had a broad impact on consumers at large and constitute consumer-oriented conduct entitling Plaintiffs and the other similarly situated Members of the Class to attorneys' fees and costs.

79. In addition, Defendants have used print and other media to promote its transportation services through false and deceptive representation as well as material non-disclosures as alleged herein, which constitutes unfair competition and unfair, deceptive, untrue or misleading advertising within the meaning of N.Y. Gen. Bus L. §§ 349-350.

80. As a direct and proximate result of the Corporate Defendants and the individual defendants' active deceptive conduct, as alleged above, Plaintiffs and the other similarly situated Members of the Class have been damaged in amounts to be proven upon the trial of this action, for which the individual defendants are also jointly and severally liable with the Corporate Defendants.

SIXTH CAUSE OF ACTION
N.Y.C. R.R. § 814.7

81. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

82. The acts and practices of the Defendants as alleged above constitute a violation of

N.Y.C. R.R. § 814.7.

83. The Plaintiffs and the other similarly situated members of the class have become damaged by Defendants in an amount to be determined upon a trial of this action for damages occurring during the four years preceding the filing of this complaint.

SEVENTH CAUSE OF ACTION
UNJUST ENRICHMENT

84. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

85. Defendants have unlawfully and unfairly become unjustly enriched by the amounts that they overcharged the Plaintiffs and the other similarly situated Members of the Class.

86. As a result of the Defendants actions, they have become unjustly enriched and these actions of the Defendants were the direct and proximate cause of economic damages to the Plaintiffs and the other class members in an amount which will be proven upon the trial of this action.

87. As a result of Defendants egregious and unconscionable conduct, Plaintiffs are entitled to receive punitive damages from the Defendants in a sum of not less than ten (10) times the amount of compensatory damages which will be proven upon the trial of this action, as well costs and disbursements and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION
FRAUD

88. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

89. Plaintiffs' seventh cause of action is for common law fraud.

90. Upon information and belief, all Defendants have committed and continue to commit fraud and to suppress and/or conceal material facts from the Plaintiffs and the other Members of the Class by, among other things, failing to disclose to its customers the true weight of the goods shipped by Defendants.

91. Upon information and belief, the individual Defendants participated in and/or had knowledge of the acts and practices of the Corporate Defendants alleged herein.

92. Representations made by Defendants with respect to the charges in their transportation services in advertising were also deceptive and fraudulent.

93. The foregoing concealment and/or representations were material, and were made with falsity, with knowledge of their falsity and/or with reckless disregard for the truth.

94. The foregoing concealment and/or representations were made with intent to mislead the Plaintiffs and other Members of the Class.

95. The Plaintiffs and the other Members of the Class justifiably relied upon the foregoing concealment and/or representations or should be presumed to have relied upon same.

96. Because of its superior knowledge in the providing of transportation services, the Defendants had a duty to disclose the facts set forth above.

97. As a direct and proximate result of the Plaintiffs and the other Members of the Class' justifiable reliance upon the Defendants' fraudulent commencement and/or representations, Plaintiffs and the other Members of the Class have been damaged by the Defendants, jointly and severally, in an amount which shall be proven upon the trial of this action.

98. As a result of Defendants egregious and unconscionable conduct, Plaintiffs are entitled to receive punitive damages from the Defendants in a sum of not less than ten (10) times

the amount of compensatory damages which will be proven upon the trial of this action, as well as costs and disbursements and reasonable attorneys' fees.

NINTH CAUSE OF ACTION
NEGLIGENCE

99. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

100. Triple Crown and/or Maffucci received false, fraudulent and/or altered weight tickets from their drivers.

101. Triple Crown and/or Maffucci had a duty of care to examine the weight tickets to ensure that they were not false, fraudulent and/or altered.

102. Bekins received false, fraudulent and/or altered weight tickets from Triple Crown and/or Maffucci and other agents.

103. Defendants' had a duty of care to examine the weight tickets to ensure that they were not false, fraudulent and/or altered.

104. Defendants' negligently breached its duty of care to ensure that the weight tickets were not false, fraudulent and/or altered.

105. The Plaintiffs and the other Members of the Class suffered damages because of Defendants' failure to ensure that the weight tickets were not false, fraudulent and/or altered. Had Triple Crown and/or Maffucci and other agents not used false, fraudulent and/or altered weight tickets the Plaintiffs and the other Members of the Class would have paid for the transportations services at substantially lower prices.

106. The Plaintiffs and the other similarly situated Members of the Class have become damaged by Defendants in an amount to be determined upon a trial of this action for damages occurring during the time preceding the file of this complaint.

TENTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

107. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

108. Defendants represented to Plaintiffs and the other Members of the Class that they would be charged for transportation services based upon the real and accurate weight of the goods shipped.

109. Said representations were false.

110. These misrepresentations were made through both affirmative statements and misleading omissions.

111. Defendants negligently and carelessly made the misrepresentations and misleading omissions alleged herein.

112. The Plaintiffs and the other Members of the Class, at the time of the misrepresentations and misleading omissions, were ignorant of their falsity or misleading nature, and believed them to be true. In actual and justifiable reliance upon their misrepresentation and misleading omissions of material facts, and ignorance of the true facts, Plaintiffs and the other Members of the Class used the transportation services of the Defendants. Had the Plaintiffs and the other Members of the Class known the true facts, they would not have used the transportation service of the Defendants and/or would have paid for the services at substantially lower prices.

113. The Plaintiffs and the other similarly situated Members of the Class have become damaged by Defendants in an amount to be determined upon a trial of this action for damages occurring during the time preceding the file of this complaint.

ELEVENTH CAUSE OF ACTION
VIOLATION OF GOOD FAITH AND FAIR DEALING

114. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

115. There exists a duty imposed upon the Defendants to act in good faith and to deal fairly with the Plaintiffs and the other Members of the Class.

116. Upon information and belief, Defendants knowingly and intentionally participated in a scheme or artifice to defraud in order to obtain money or property by means of false or fraudulent pretenses, representations or promises in that the Defendants intentionally misrepresented to the Plaintiffs and the other Members of the Class that they would be charged for transportation services based upon the real and actual weight of the goods that they were shipping when in fact they were charged substantially higher sums which were not based upon the real and actual weight of the goods shipped.

117. As a result of the Defendants actions, they have become unjustly enriched and these actions of the Defendants were the direct and proximate cause of economic damages to the Plaintiffs and the other class members in an amount which will be proven upon the trial of this action.

118. As a result of Defendants egregious and unconscionable conduct, Plaintiffs are entitled to receive punitive damages from the Defendants in a sum of not less than ten (10) times the amount of compensatory damages which will be proven upon the trial of this action, as well costs and disbursements and reasonable attorneys' fees.

TWELFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

119. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint as though fully set forth herein.

120. Upon information and belief, Defendants have and will continue to violate

applicable statutory and legal requirements for the providing of transportation services as alleged herein.

121. Plaintiffs and the other Members of the Class have no adequate remedy at law.

122. By virtue of the foregoing, Plaintiffs and the other Members of the Class are entitled to an injunction permanently and forever enjoining Defendants from charging customers for transportation services any sums other than sums based upon the true and accurate weight of the goods shipped.

123. Plaintiffs and other Members of the Class are also entitled to attorneys' fees and costs and disbursements.

PRAYER FOR RELIEF

A) An Order certifying this action as a class action pursuant to Fed. R. Civ. P. 23 and appointing Plaintiffs and their undersigned counsel as counsel to represent the class;

B) On the FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, ,TENTH and ELEVENTH causes of action, for a judgment against Defendants, jointly and severally, for damages in an amount to be proven upon a trial of this action;

C) On the FIFTH cause of action, for a judgment against Defendants, jointly and severally for damages to be trebled up to \$1,000 per violation;

D) On the SEVENTH, EIGHTH, NINTH, TENTH and ELEVENTH causes of action for judgment against Defendants, jointly and severally for punitive damages in an amount to be determined upon a trial of this action, but not less than ten (10) times the amount of compensatory damages proven at the trial;

E) On the TENTH cause of action for an order permanently and forever enjoining

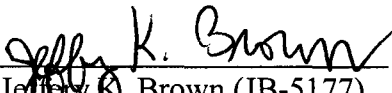
the Defendants from engaging in any unlawful or wrongful practices as more fully set forth herein;

- F) The costs and disbursements of this action, including experts' fees;
- G) Prejudgment and Postjudgment interest;
- H) Attorneys' fees; and
- I) For such other, further and different relief as this Court claims just and proper.

JURY REQUEST

Plaintiffs request a trial by jury on all issues so triable.

Dated: December 9, 2009


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