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9 **NEVADA FLEET LLC**

10 UNITED STATES DISTRICT COURT FOR  
11 THE EASTERN DISTRICT OF CALIFORNIA

12 NEVADA FLEET LLC, a Nevada Limited  
13 Liability Company

14 Plaintiff,

15 v.

16 FEDEX CORPORATION and DOES 1 to 50,  
17 inclusive,

18 Defendants.

Case No.

**COMPLAINT FOR DAMAGES FOR:**

1. **BREACH OF CONTRACT**
2. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
3. **BREACH OF EXPRESS WARRANTY**
4. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5. **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**
6. **NEGLIGENT HIRING**
7. **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**
8. **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**
9. **NEGLIGENT INTERFERENCE WITH CONTRACTUAL RELATIONS**
10. **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**
11. **INTENTIONAL MISREPRESENTATION**
12. **NEGLIGENT MISREPRESENTATION**
13. **UNFAIR BUSINESS PRACTICES**
14. **RESTRAINT OF TRADE**
15. **HORIZONTAL RESTRAINT**
16. **WIRE FRAUD**
17. **DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
2 RECORD: Plaintiff, NEVADA FLEET LLC (hereinafter “NV FLEET”), by and through its counsel,  
3 allege as follows:

4 **PARTIES**

5 1. Plaintiff, NEVADA FLEET LLC is an Nevada Limited Liability Company with its  
6 principal place of business in Las Vegas, Nevada and regularly conducts business in the State of  
7 California in the purchase and re-sale of used commercial vehicles.

8 2. Defendant FEDEX CORPORATION (hereinafter “FEDEX”) is a Delaware  
9 Corporation with its headquarters located in Memphis, Tennessee.

10 3. At all times herein mentioned, FEDEX has purposefully availed itself of the privilege  
11 of conducting business in the State of California thus invoking the benefits and protections of its laws  
12 by conducting business in California and selling its used vehicles in California.

13 4. At all times herein mentioned, NV FLEET has purchased FEDEX vehicles advertised  
14 and sold in California for the purpose of re-selling the vehicles to clients throughout the United States.

15 5. DOES 1 through 50, inclusive, are sued herein under fictitious names pursuant to  
16 California Code of Civil Procedure Section 474. Plaintiff does not know the true names or capacities  
17 of these Defendants, but each Defendant is somehow legally and proximately responsible in some  
18 manner for the occurrences herein alleged. Plaintiff will amend this complaint to allege their true  
19 names and capacities when ascertained.

20 6. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein,  
21 each and every defendant was an agent, employee, partner, joint venture, predecessor-in-interest,  
22 successor-in-interest and co-conspirator of the other defendants, and in doing the things herein  
23 alleged, was acting within the course and scope of such agency, employment, partnership, joint  
24 venture, predecessor-in-interest, successorship-in-interest, and conspiracy, and with the permission,  
25 consent and ratification of the other defendants.

26 **JURISDICTION AND VENUE**

27 7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332 because NV  
28 FLEET is a citizen of the State of Nevada and FEDEX is a citizen on the State of Tennessee, and the

1 amount in controversy exceeds \$75,000.00.

2 8. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 and 1337 because this  
3 Complaint alleges violations of the Sherman Act, 15 U.S.C. §1, and jurisdiction is conferred by 15  
4 U.S.C. § 15.

5 9. This complaint is filed and this action is also instituted under the Cartwright Act,  
6 Business and Professions Code Section 16720 et seq., for an unlawful trust, agreement,  
7 understanding, and concert of action which NV FLEET seeks to prevent and restrain from being  
8 carried out. All claims under Federal and State law are based upon a common nucleus of operative  
9 facts, and the entire action commenced by this Complaint constitutes a single case that would  
10 ordinarily be tried in one judicial proceeding.

11 10. This Court has jurisdiction over the State claims under 28 U.S.C. § 1367 because those  
12 claims are so related to the Federal claims that they form part of the same case or controversy.

13 11. This Court has personal jurisdiction over FEDEX because FEDEX has sufficient  
14 minimum contacts with the State of California to render the exercise of jurisdiction by this Court  
15 permissible under traditional notions of fair play and substantial justice.

16 12. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. §  
17 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in  
18 this District. Plaintiff also believes, and based thereon alleges, venue is proper pursuant to 28 U.S.C.  
19 § 1391(b)(3) because FEDEX is already subject to this Court's personal jurisdiction and currently  
20 unnamed DOES may also be to this Court's personal jurisdiction.

21 **OPERATIVE FACTS**

22 ***FedEx Sells Commercial Vehicles Through Third-Parties Using Condition Reports***

23 13. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein,  
24 FEDEX is a worldwide transport and delivery company that relies on the use of commercial trucks  
25 in its business of delivering packages. As part of its custom and practice, FEDEX sells its used  
26 commercial trucks through various agents and marketing channels such as live and online auctions  
27 and direct buy websites.

28 14. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein,

1 FEDEX's agents and channels have included, but are not limited to: ARI Fleet Management  
2 Corporation (hereinafter "ARI") located in Mount Laurel, New Jersey; the "ARI BuyDirect"  
3 program; ADESA GOLDEN GATE (hereinafter "ADESA GG") located in Tracy, California;  
4 SOUTH BAY AUTO AUCTION (hereinafter "SOUTH BAY") located in Stockton, California;  
5 COPART AUCTION located in Portland, Oregon (Hereinafter "COPART - P"); DAA  
6 NORTHWEST (hereafter "DAA") located in Spokane, Washington; COPART AUCTION located  
7 in Helena, Montana (hereinafter "COPART - H"); ADESA DALLAS located in Hutchins, Texas;  
8 and MANHEIM, Inc. (hereafter "MANHEIM"), located in Atlanta, Georgia (collectively the  
9 "FEDEX AGENTS").

10 15. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein, and  
11 the FEDEX AGENTS, and each of them, have acted in furtherance of FEDEX's directives to sell  
12 their used vehicles.

13 16. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein, the  
14 FEDEX AGENTS, and each of them, acting with the knowledge and/or consent, on behalf, under the  
15 direction, and/or for the benefit of FEDEX, remove all FEDEX markings, as well as clean, and create  
16 Condition Reports of FEDEX vehicles in order to prepare them for sale. These Condition Reports  
17 (hereinafter "Condition Reports") detail the vehicle's identity by vehicle identification number  
18 (hereinafter "VIN"), and summarize the vehicle's condition and included equipment. The Condition  
19 Reports are created for FEDEX vehicles at the geographical location where the vehicle is facilitated  
20 for sale. These Condition Reports are then published and displayed on websites and in advertising  
21 to attract buyers.

22 17. Plaintiff is informed, believes, and based thereon alleges, that potential buyers, when  
23 determining whether or not to purchase a FEDEX vehicle for sale, rely on the accuracy of the  
24 Condition Reports.

25 18. NV FLEET relied on the information contained in the Condition Reports, which  
26 induced them to purchase FEDEX commercial vehicles being sold by FEDEX AGENTS, under the  
27 direction and control of FEDEX.

28 19. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein,

1 FEDEX, by its standards, customs, policies, and/or practices, ratified, acquiesced, directed,  
2 controlled, permitted, and/or allowed the FEDEX AGENTS to create false Condition Reports in order  
3 to induce prospective buyers like NV FLEET to purchase FEDEX's used vehicles. FEDEX's policy,  
4 custom, and practice fails to include a proper review and monitoring of the Condition Reports that  
5 are generated on its behalf by FEDEX AGENTS to ensure that the information contained therein is  
6 accurate and not misrepresentative of the used commercial vehicles that FEDEX puts on the market  
7 for sale. Under FEDEX's knowledge, request, consent, acquiescence, direction and/or control, the  
8 FEDEX AGENTS, and each of them, mislead consumers regarding the true condition of FEDEX  
9 vehicles in order to induce them to purchase the vehicles.

10 20. Plaintiff is informed, believes, and based thereon alleges, that all times relevant herein,  
11 FEDEX authorizes, promotes, acquiesces, condones, and otherwise permits the FEDEX AGENTS to  
12 deny and refuse responsibility for the misrepresentations, refuse to resolve or compensate for the  
13 damages caused, to continually shift blame upon other FEDEX AGENTS, and even to refuse further  
14 dealings, among others, instead of working to resolve the issues in good faith.

15 21. Plaintiff is informed, believes and thereon alleges that, at all times relevant herein,  
16 FEDEX has knowingly created, directed, requested, authorized, condoned, acquiesced to and/or  
17 directly benefitted from a pattern of fraudulent behavior by its FEDEX AGENTS related to the sale  
18 of FEDEX used vehicles to auto auction customers including NV FLEET. FEDEX is motivated to  
19 act in this way because it receives a rebate in proportion with the sale price of the used vehicle sold  
20 on its behalf. The higher the sale price, the higher the rebate to FEDEX.

21 ***FEDEX Fails to Deliver the Vehicles Represented in its Condition Reports***

22 *Gasoline Ford Truck Delivered in place in Place of Diesel Freightliner Truck*

23 22. On or around April 13, 2017, NV FLEET purchased a FEDEX vehicle; disclosed as a  
24 diesel Freightliner (VIN No. FCLE49L08DA28761) located in Tracy, California and sold via  
25 ADESA GG's live block online internet auction. However, the vehicle that was delivered was a Ford  
26 gasoline truck, not a Freightliner diesel as represented in all announcement and disclosures as well  
27 as the Condition Report. The value of the 2008 Ford truck is significantly less than the 2008  
28 Freightliner diesel advertised and paid for. NV FLEET was buying this vehicle for a client. The

1 Condition Report, attached hereto as **Exhibit A** and incorporated as though fully set forth herein,  
2 represented that the vehicle was a 2008 Freightliner diesel truck. When NV FLEET contacted  
3 FEDEX AGENTS regarding the gross misrepresentation, they refused to communicate with or  
4 remedy the failure to provide the vehicle advertised.

5 *Non-Air-Conditioned Vans Sold as Having Air Conditioners*

6 23. On or around March 2017, NV FLEET was in search of used FEDEX vans to purchase  
7 for one of its clients located in Las Vegas, Nevada, where temperatures are regularly above 100  
8 degrees Fahrenheit. As part of its search, NV FLEET received approximately twenty-five Condition  
9 Reports generated by FEDEX AGENTS regarding used FEDEX vans for sale. These vans were  
10 being facilitated by FEDEX in Tracy, California through ARI and ADESA GG.

11 24. After reviewing the Conditions Reports, and in reliance on the information contained  
12 therein, NV FLEET negotiated with ARI via email and telephone conversation, then purchased  
13 eleven vans from FEDEX.

14 25. Nine of the eleven vans purchased by NV FLEET (VIN Nos. 4UZA4FF46WC973571,  
15 4UZA4FF45WC973559, 4UZA4FF47WC964457, 4UZA4FF41WC964485,  
16 4UZA4FF47WC932821, 4UZA4FF49WC964489, 4UZA4FF48WC932780,  
17 4UZA4FF45WC932817, and 4UZA4FF42WC964494) were represented in the Condition Reports to  
18 have air conditioners. The Condition Reports for the nine FEDEX vans purchased represented as  
19 having air conditioners are attached hereto as **Exhibit B** and incorporated as though fully set forth  
20 herein.

21 26. During the negotiation process to purchase the vans NV FLEET representative, Tom  
22 Layton ("Layton"), discussed on numerous occasions with ADESA GG, both verbally and through  
23 email communication, the need for air conditioners in the vans and indicated to ADESA GG  
24 employees that this was the sole reason for the purchase. NV FLEET purchased the vans out of state  
25 at additional cost specifically because the vans included air conditioners. When the vehicles arrived  
26 in Las Vegas, it was discovered that they were not, in fact, equipped with air conditioners as  
27 represented. Layton immediately contacted ARI and ADESA GG by email and telephone to report  
28 the erroneous sale and delivery. As a result of the actual condition of the vehicles NV FLEET's sale

1 and delivery to their customer was cancelled due to the vehicles not containing air conditioning.

2 27. Plaintiff believes and based thereon alleges that, and as part of its custom and practice,  
3 ARI and ADESA GG, on behalf of and under the direction, acquiescence, consent, and authority of  
4 FEDEX, denied any responsibility for the incorrect and misleading Condition Reports that induced  
5 NV FLEET to purchase vans without air conditioners to NV FLEET's detriment. These FEDEX  
6 AGENTS were unwilling to resolve the issue to the satisfaction of NV FLEET. They refused to  
7 reimburse NV FLEET for the cost of returning the vehicles or installing air conditioners. ADESA  
8 GG's arbitration department, located in Tracy, CA, declined NV FLEET's claim stating that they  
9 were performing in accordance with National Auto Auction Association ("NAAA") guidelines. ARI  
10 confirmed the same and refused further discussion or negotiation.

11 *Inoperable Vehicles Sold as Drivable*

12 28. Yet another example of FEDEX's failure to sell the vehicles represented on the  
13 Condition Reports is shown by **Exhibit C**, which is incorporated as though fully set forth herein.  
14 This FEDEX truck (VIN No. 4UZA4FFC0XCB81991) was represented in the Condition Report by  
15 SOUTH BAY in Stockton, California to be fully operational and drivable. In truth, the truck required  
16 towing. On behalf of FEDEX, SOUTH BAY listed the truck on the Condition Report as "Regular"  
17 when in fact they should have listed it as "Inoperable" as it was not in working condition. NV  
18 FLEET purchased the vehicle via ARI auto direct and spent a premium in order to purchase a running  
19 and drivable vehicle, not the provided inoperable vehicle.

20 29. NV FLEET did not discover that the vehicle was inoperable until the driver NV  
21 FLEET paid to pick up the vehicle was unable to do so because the vehicle was inoperable.  
22 Additionally, the driver was sent to collect the vehicle on a Saturday, SOUTH BAY would not release  
23 the vehicle because they do not release inoperable vehicles on Saturday, demonstrating that they  
24 knew the vehicle was inoperable. Further, the vehicle computer displayed error codes exposed that  
25 the vehicle had not been running for months.

26 30. Due to FEDEX AGENT SOUTHBAY's wrongdoings it took three trips, totaling over  
27 1600 miles, and at great expense in order to get the vehicle delivered by being towed onto a flatbed  
28 trailer. SOUTH BAY failed and refused to communicate or negotiate with NV FLEET regarding this

1 matter.

2 31. On or around June 28, 2017, NV FLEET purchased a 1999 diesel Freightliner Truck  
3 (VIN No. 4UZA5FFC7XCB44307), advertised in California by ARI and COPART - P. On the  
4 Condition Report, attached hereto as **Exhibit D**, which is incorporated as though fully set forth herein,  
5 it listed the vehicle in “regular” condition and “runs and drives”. On or around July 17, 2017 NV  
6 FLEET contacted COPART - P and verified that the vehicle “runs and drives” prior to incurring the  
7 expense of sending a driver to collect the vehicle. However, when a transporter was sent to pick up  
8 the vehicle the driver was advised by COPART - P’s manager that the vehicle did not run and drive.

9 32. Further, Plaintiff is informed, believes, and based thereon alleges, that the driveshaft  
10 was disconnected at the time COPART - P took possession of the vehicle. When confronted with the  
11 discrepancy in the Condition Report, the manager could not explain why the Condition Report was  
12 so grossly inaccurate and refused to reconnect the drive shaft so that the transporter, paid for by NV  
13 FLEET, could take possession of the vehicle. Once again NV FLEET had paid a premium for a  
14 vehicle that was not in the condition advertised, had further incurred the expense to collect the  
15 vehicle, and was not able to collect the vehicle purchased or be reimbursement for the expense of the  
16 transporter.

17 33. Upon learning the actual condition of the vehicle purchased on June 28, 2017, NV  
18 FLEET made numerous attempts to contact Bailey McMellon, Asset Support Specialist at Copart.  
19 NV FLEET did not receive any response from either Copart headquarters or ARI regarding this  
20 matter. COPART - P admitted error via email communication but denied any responsibility, asserting  
21 that NV FLEET purchased the vehicle from FEDEX.

22 34. On or around June 26, 2017, NV FLEET purchased a 2006 Freightliner MT-45 Truck  
23 (VIN No. 4UZAANBW86CW06696) being advertised in California by COPART – H and ARI. The  
24 Condition Report, attached hereto as **Exhibit E**, which is incorporated as though fully set forth herein,  
25 listed the Freightliner truck as “Regular” condition and the vehicle “runs and drives”. On or around  
26 August 2, 2017, prior to incurring the expense of sending a transporter to pick up the vehicle, NV  
27 FLEET obtained confirmation from COPART - H via phone call that the vehicle “runs and drives”.  
28 Once again, when the transporter arrived, the vehicle was inoperable. NV FLEET immediately



1 contacted Copart Headquarters and ARI, but received no response. NV FLEET paid for the vehicle  
2 under the false pretense that it was in running condition, paid for a transport based on the information  
3 provided in the Condition Report, was unable to pick up the vehicle, and suffered additional damages.

4 *Odometers Not as Represented on Condition Reports*

5 35. On or around January 12, 2017 NV FLEET purchased a FEDEX 2001 Freightliner  
6 MT-45 (VIN No. 4UZAANBW31CH92014) from MANHEIM through their “buy-it-now” website  
7 known as “O.V.E.” The ARI Condition Report, attached hereto as **Exhibit F**, which is incorporated  
8 as though fully set forth herein, listed the mileage as 150,135 and vehicle condition as inoperative.  
9 The high dollar sale price listed for such an inoperative vehicle indicated that the miles were  
10 accurately represented on the Condition Report. When NV FLEET received the vehicle, the  
11 odometer had been replaced and the miles listed on the Condition Report were not the actual vehicles  
12 miles or reasonably close thereto.

13 36. Based on the condition of the vehicle, and others, Plaintiff is informed, believes, and  
14 based thereon alleges, that it had operated for more miles than was represented on the odometer.  
15 Further, when the vehicle title was received, the odometer disclosure section was left blank. Once  
16 again, NV FLEET did not receive the vehicle that it had bargained and paid for. Instead it received  
17 a FEDEX vehicle with much higher mileage than what was disclosed on the Condition Report.

18 37. On or around May 25, 2017 and June 1, 2017, NV FLEET purchased two FEDEX  
19 vehicles from FEDEX AGENT DAA: 1999 Freightliner MT-45 (Vin No. 4UZA4FF41XCB81705)  
20 showing 86,115 odometer miles; and 1998 Freightliner MT-45 (Vin No. 4UZA4FF40WC897670)  
21 showing 106,349 odometer miles. The Condition Reports are attached hereto as **Exhibit G**, which  
22 is incorporated as though fully set forth herein. Both vehicles were listed at a higher price due to the  
23 advertised low odometer miles. When NV FLEET received the vehicles, the odometers had been  
24 replaced and the low miles advertised, and premium paid for, were not actual vehicle miles.

25 38. Plaintiff is informed, believes, and based thereon alleges, that it has purchased  
26 numerous other vehicles from FEDEX that contained replaced odometers and were advertised and  
27 sold as having less mileage than actually incurred by the vehicles. FEDEX has full knowledge of the  
28 odometer repairs, holds service records on each of the vehicles, but purposely omitted information

1 regarding replaced odometers in order to fetch a higher price per vehicle at auction. FEDEX and  
2 FEDEX AGENTS refuse to release the service records on these vehicles to further perpetrate this  
3 fraud. FEDEX did not represent the actual condition of the vehicles that were being sold at auction.

4 ***NV FLEET Has Been Prohibited from Purchasing More FEDEX Vehicles***

5 39. In response to the numerous unsuccessful attempts by NV FLEET's authorized  
6 representative, Layton, to resolve the misrepresentations in the Condition Reports, on or about August  
7 3, 2017, Layton received a letter from Laura Gretencord, Senior Corporate Counsel of ADESA GG's  
8 parent company, ADESA ("ADESA"), immediately terminating NV FLEET and Layton's rights to  
9 participate in "any of its physical or on-line auctions". The aforementioned letter is attached hereto  
10 as **Exhibit H** and incorporated as though fully set forth herein.

11 40. Additionally, in response to the numerous unsuccessful attempts by NV FLEET's  
12 authorized representative, Layton, to resolve the misrepresentations in the Condition Reports, on or  
13 around June 22, 2017 NV FLEET receive notice from MANHEIM that SOUTH BAY had terminated  
14 NV FLEET's right to purchase FEDEX vehicles through SOUTH BAY.

15 41. NV FLEET is continuing to receive notices from FEDEX AGENTS that NV FLEET's  
16 rights to purchase FEDEX vehicles through FEDEX AGENTS are terminated. This domino effect  
17 of FEDEX AGENTS systematically excluding NV FLEET from conducting business is a direct  
18 retaliation for NV FLEET's attempts to assert their right to recovery based on misrepresentations  
19 made in FEDEX Condition Reports.

20 42. Between August 7, 2017 and August 15, 2017 NV FLEET bid to purchased three  
21 FEDEX vehicles, VIN No. 4UZA5FAC5YCG64059, 4UZA5FFCOVC748954 and  
22 4UZA4FF42XCA60228 through ARI Auto Direct. After NV FLEET bid to purchase the vehicles,  
23 ARI sent written notifications to NV FLEET that the vehicles were already sold and no longer  
24 available for purchase. After receiving these notifications, Layton spoke to the locations where the  
25 FEDEX vehicles were being facilitated for auction and confirmed that in fact these vehicles had not  
26 been sold and were still up for auction.

27 43. The ability to purchase and re-sell used commercial vehicles is the core of NV  
28 FLEET's business, and together with that the need to provide prospective buyers with accurate and

1 true representations of the vehicles being considered and selected for purchase. As such, the  
2 immediate and permanent termination of NV FLEET from participation with FEDEX AGENTS has  
3 and will cause significant harm to its business. Plaintiff believes, and based thereon alleges, that the  
4 decision to terminate NV FLEET's participation was requested, condoned, authorized, permitted,  
5 sanctioned, and/or promoted by FEDEX to ensure that its practice and the practice of the FEDEX  
6 AGENTS, and each of them, of publishing false and inaccurate Condition Reports would continue  
7 unhindered.

8 **FIRST CAUSE OF ACTION**  
9 **Breach of Contract**

10 44. Plaintiff hereby incorporates by reference the allegations contained in the above  
11 referenced paragraphs as though fully set forth herein.

12 45. NV FLEET contracted to purchase FEDEX's used vehicles, by and through its  
13 FEDEX AGENTS under the direction and control of FEDEX. NV FLEET was provided Condition  
14 Reports from which to select used FEDEX vehicles to purchase. NV FLEET relied on the  
15 representations made on the Condition Reports which were material to its decision to purchase the  
16 vehicles. Each FEDEX vehicle purchased by Plaintiff represents a valid Contract ("Contract" or  
17 collectively "Contracts") between Plaintiff and FEDEX in that NV FLEET paid money in exchange  
18 for the used FEDEX trucks represented in the Condition Reports.

19 46. NV FLEET did all, or substantially all, of the significant things that the Contracts  
20 required it to do, or it was excused from having to do those things.

21 47. FEDEX breached the Contracts for the following reasons, at a minimum:

- 22 a. the vehicles delivered to NV FLEET were not the vehicles purchased by NV  
23 FLEET, as represented in the Condition Reports;
- 24 b. vehicles that were described in the Condition Reports as having air  
25 conditioners did not have air conditioners;
- 26 c. vehicle described as a Freightliner diesel truck was not a Freightliner truck or  
27 a diesel vehicle;
- 28 d. a vehicle that was described as in working condition was not actually in  
working condition; and

1 e. actual vehicle mileage was not accurately represented in the Condition Reports  
2 nor discloser of replaced odometers.

3 48. By reason of Defendant's breach of contract, Plaintiff has suffered and continues to  
4 suffer compensatory, consequential, incidental, and other damages according to proof. At a  
5 minimum, NV FLEET was unable to re-sell the vehicles purchased to clients who were ready to buy  
6 them. NV FLEET also incurred significant costs related to the repair of the erroneous vehicles and  
7 additional transport services. NV FLEET continues to suffer because it has not been made whole.

8 WHEREFORE, Plaintiff prays for Judgment against Defendant as more fully set forth below.

9 **SECOND CAUSE OF ACTION**

10 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

11 49. Plaintiff hereby incorporates by reference the allegations contained in the above  
12 referenced paragraphs as though fully set forth herein.

13 50. All conditions required for FEDEX's performance, by and through its FEDEX  
14 AGENTS, had occurred or were excused.

15 51. FEDEX, by and through its FEDEX AGENTS and the custom and practice FEDEX  
16 promoted, requested, acquiesced to, condoned and/or advanced, unfairly interfered with NV  
17 FLEET's right to receive the benefit of the contract when they, at a minimum:

18 a. failed and refused to pay for the costs to return the erroneously delivered  
19 FEDEX vehicles even though they admitted that the Condition Reports were  
20 in error;

21 b. failed and refused to take responsibility for resolving the problems, and passed  
22 NV FLEET off to someone else the same thing;

23 c. gave NV FLEET the "runaround" instead of actively moving towards a  
24 positive resolution; and

25 d. caused and/or contributed to the termination of Layton and NV FLEET's  
26 participation in further auctions with FEDEX AGENTS.

27 52. NV FLEET was harmed as a result of the standards, customs, policies, and/or  
28 practices, ratified, acquiesced, directed, controlled, permitted, and/or allowed by FEDEX over the  
conduct of the FEDEX AGENTS. By reason of Defendant's breach of covenant of good faith and

1 fair dealing, Plaintiff has suffered and continue to suffer, compensatory, consequential, incidental,  
2 and other damages according to proof.

3 WHEREFORE, Plaintiff prays for Judgment against Defendant as more fully set forth below.

4 **THIRD CAUSE OF ACTION**  
5 **Breach of Express Warranty**

6 53. Plaintiff hereby incorporates by reference the allegations contained in the above  
7 referenced paragraphs as though fully set forth herein.

8 54. FEDEX sold goods in the form of used vehicles to NV FLEET through the FEDEX  
9 AGENTS, and each of them. The Condition Reports on each vehicle contained affirmations of facts  
10 made on the condition of the vehicles. The FEDEX AGENTS, and each of them, on behalf of  
11 FEDEX, made warranties regarding the quality and condition of the goods by listing vehicle  
12 specifications on the Condition Reports. The Condition Reports were prepared at the request,  
13 direction, instruction, and/or with the consent, knowledge, and/or acquiescence of FEDEX.

14 55. FEDEX breached the express warranty by delivering vehicles that did not meet the  
15 standards contained in the affirmative facts and guarantees listed on the Condition Reports.

16 56. Due to FEDEX's Breach of Express Warranty, by failing the provide the quality  
17 vehicles as described in the Condition Reports, NV FLEET suffered damages according to proof.

18 WHEREFORE, Plaintiff prays judgment against defendant as more fully set forth below.

19 **FOURTH CAUSE OF ACTION**  
20 **Breach of Implied Warranty of Merchantability**

21 57. Plaintiff hereby incorporates by reference the allegations contained in the above  
22 referenced paragraphs as though fully set forth herein.

23 58. FEDEX is in the business of selling its used commercial vehicles to consumers  
24 through the FEDEX AGENTS, and each of them. NV FLEET purchased FEDEX vehicles through  
25 the FEDEX AGENTS, and each of them. The vehicles sold to NV FLEET were not the same quality  
26 as those generally accepted in the trade as they did not meet the quality conditions described on the  
27 Condition Reports. Therefore, they were not fit for the ordinary purpose for which they were  
28 purchased to be used.



1 breach of the implied warranty of fitness for a particular purpose.

2 WHEREFORE, Plaintiff pray judgment against Defendant as more fully set forth below.

3 **SIXTH CAUSE OF ACTION**

4 **Negligent Hiring**

5 67. Plaintiff hereby incorporates by reference the allegations contained in the above  
6 referenced paragraphs as though fully set forth herein.

7 68. FEDEX hired the FEDEX AGENTS, and each of them, to sell its used vehicles on its  
8 behalf.

9 69. Plaintiff is informed, believes, and based thereon alleges, that at all times herein  
10 mentioned, the FEDEX AGENTS, and each of them, were unfit and incompetent to perform the work  
11 for which they were hired. The FEDEX AGENTS incompetently created inaccurate Condition  
12 Reports on behalf of FEDEX.

13 70. FEDEX knew or should have known that the FEDEX AGENTS, and each of them,  
14 were incompetent due to the inaccuracy of the Condition Reports created to sell used FEDEX  
15 vehicles. Further, the inaccuracies in the Condition Reports would have been discovered and cured  
16 but for the negligent supervision of FEDEX.

17 71. The incompetence of the FEDEX AGENTS, and each of them, while acting on behalf  
18 of FEDEX, harmed NV FLEET and continue to harm NV FLEET in amounts according to proof.  
19 FEDEX's negligence in hiring, supervising and/or retaining the FEDEX AGENTS, and each of them  
20 was a proximate cause and substantial factor in causing NV FLEET harm.

21 WHEREFORE, Plaintiff prays for Judgment against Defendant as more fully set forth below.

22 **SEVENTH CAUSE OF ACTION**

23 **Intentional Interference with Contractual Relations**

24 **First Count – Interference Between Plaintiff and its Clients**

25 72. Plaintiff hereby incorporates by reference the allegations contained in the above  
26 referenced paragraphs as though fully set forth herein.

27 73. NV FLEET is in the business of buying and re-selling used commercial vehicles. As  
28 such it enters into valid contracts with clients wherein NV FLEET looks for and purchases the

1 vehicles that they desire, and then re-sells it to them. NV FLEET relies on the accuracy of the  
2 Condition Reports when contracting with its clients regarding the used FEDEX vehicles that will be  
3 purchased for them.

4 74. FEDEX, by and through its FEDEX AGENTS acting on behalf, and/or under its  
5 direction, authorization, instruction, request, and/or with its knowledge, acquiescence, and/or consent  
6 of FEDEX, knew about the contracts between NV FLEET and its clients, in that Layton would  
7 regularly discuss these clients with the FEDEX AGENTS in connection with NV FLEET's purchase  
8 of the vehicles on their behalf.

9 75. FEDEX allowed, authorized, directed, instructed, permitted, acquiesced to, and/or  
10 consented to false Condition Reports being used in connection with the sale of its used vehicles, with  
11 intent to or disregard for the likelihood that it would result in NV FLEET being harmed from  
12 ultimately purchasing used FEDEX vehicles that are different from what its clients intended or  
13 desired, and NV FLEET being unable to fulfill its contractual obligations to its clients.

14 76. As a proximate result of FEDEX's interference with NV FLEET's contracts with its  
15 clients, NV FLEET has suffered damages in amounts to be proven at trial.

16 77. The conduct of FEDEX was despicable and subjected NV FLEET to a cruel and unjust  
17 hardship in conscious disregard for their rights, so as to justify an award of exemplary and punitive  
18 damages.

19 **Second Count – Interference between Plaintiff and FEDEX AGENTS**

20 78. Plaintiff hereby incorporates by reference the allegations contained in the above  
21 referenced paragraphs as though fully set forth herein.

22 79. Prior to August 3, 2017, there existed a valid contract between NV FLEET and  
23 ADESA allowing NV FLEET to participate on ADESA's platforms and purchase used vehicles.

24 80. Prior to June 22, 2017, there existed a valid contract between NV FLEET and SOUTH  
25 BAY allowing NV FLEET to participate on SOUTH BAY's platforms and purchase used vehicles.

26 81. NV FLEET continues to receive notices from additional FEDEX AGENTS that NV  
27 FLEET had existing contracts with that will no longer allow NV FLEET to participate in auctions to  
28 purchase FEDEX vehicles.





1 clients and buyers of used commercial vehicles, in that Layton would regularly discuss the nature of  
2 his business with the FEDEX AGENTS while purchasing from them.

3 89. FEDEX allowed, authorized, directed, instructed, permitted, acquiesced to, and/or  
4 consented to false Condition Reports being used in connection with the sale of its used vehicles, with  
5 intent to or disregard for the likelihood that it would result in harm to NV FLEET from ultimately  
6 purchasing used FEDEX vehicles that are not as represented on Condition Reports and being unable  
7 to make accurate representations to its existing clients and prospective buyers regarding the used  
8 vehicles NV FLEET can provide.

9 90. As a proximate result of FEDEX's interference with NV FLEET's prospective  
10 economic relationships with its existing clients and buyers of used commercial vehicles, NV FLEET  
11 has suffered damages in amounts to be proven at trial.

12 91. The conduct of FEDEX was despicable and subjected NV FLEET to a cruel and unjust  
13 hardship in conscious disregard for their rights, so as to justify an award of exemplary and punitive  
14 damages.

15 **Second Count – Interference between Plaintiff and FEDEX AGENTS**

16 92. Plaintiff hereby incorporates by reference the allegations contained in the above  
17 referenced paragraphs as though fully set forth herein.

18 93. At all times herein mentioned, there existed a prospective economic relationship  
19 between NV FLEET and the FEDEX AGENTS in that NV FLEET transacted with the FEDEX  
20 AGENTS through various platforms in the purchase and re-sale of used FEDEX commercial vehicles.

21 94. Plaintiff is informed, believes, and based thereon alleges, that, at all times herein  
22 mentioned, FEDEX knew of the existence of the prospective economic relationships between NV  
23 FLEET and the FEDEX AGENTS because NV FLEET was purchasing FEDEX's used vehicles  
24 through the FEDEX AGENTS, and the FEDEX AGENTS are authorized representatives of FEDEX.

25 95. Plaintiff is informed, believes, and based thereon alleges, that FEDEX has allowed  
26 false Condition Reports to be generated and relied upon in connection with the sale of its used  
27 vehicles, and has further promoted, allowed, condoned, and/or authorized a custom and practice  
28 among the FEDEX AGENTS whereby they refuse responsibility for the false Condition Reports and

1 shift blame for the fraudulent sales of FEDEX vehicles, all with the intent to or disregard for the  
2 likelihood that it would cause harm to NV FLEET and result in a breakdown of the prospective  
3 economic relationships between NV FLEET and the FEDEX AGENTS. FEDEX AGENTS have  
4 already terminated their future prospective economic relationship with Plaintiff because of FEDEX's  
5 conduct.

6 96. As a proximate result of FEDEX's interference with NV FLEET's prospective  
7 economic relationships with the FEDEX AGENTS, NV FLEET has suffered damages in amounts to  
8 be proven at trial.

9 97. The conduct of FEDEX was despicable and subjected NV FLEET to a cruel and unjust  
10 hardship in conscious disregard for their rights, so as to justify an award of exemplary and punitive  
11 damages.

12 WHEREFORE, Plaintiff prays for Judgment against Defendant as more fully set forth below.

13 **NINTH CAUSE OF ACTION**

14 **Negligent Interference with Contractual Relations**

15 **First Count – Interference Between Plaintiff and its Clients**

16 98. Plaintiff hereby incorporates by reference the allegations contained in the above  
17 referenced paragraphs as though fully set forth herein.

18 99. FEDEX, by and through its FEDEX AGENTS acting on behalf, and/or under its  
19 direction, authorization, instruction, request, and/or with its knowledge, acquiescence, and/or consent  
20 of FEDEX, sells used FEDEX vehicles that are then purchased and re-sold by NV FLEET to its  
21 clients.

22 100. FEDEX knew or should have known that its failure to provide or instruct the FEDEX  
23 AGENTS to provide accurate Condition Reports for their used vehicles for sale would result in a  
24 disruption in NV FLEET's contracts with its clients.

25 101. FEDEX nevertheless allowed, authorized, directed, instructed, permitted, acquiesced  
26 to, and/or consented to false Condition Reports being used in connection with the sale of its used  
27 vehicles.

28 102. As a proximate result of FEDEX's negligence, NV FLEET has suffered damages in

1 amounts to be proven at trial.

2 **Second Count – Interference between Plaintiff and FEDEX AGENTS**

3 103. Plaintiff hereby incorporates by reference the allegations contained in the above  
4 referenced paragraphs as though fully set forth herein.

5 104. FEDEX knew or should have known that its failure to monitor the accuracy of the  
6 Condition Reports and its promotion, authorization, request, acquiescence, and/or consent to the  
7 FEDEX AGENTS denying responsibility and shifting blame would result in a disruption in NV  
8 FLEET’s contracts with the FEDEX AGENTS.

9 105. FEDEX nevertheless has allowed false Condition Reports to be generated and relied  
10 upon in connection with the sale of its used vehicles, and has further promoted, allowed, condoned,  
11 and/or authorized a custom and practice among the FEDEX AGENTS whereby they refuse  
12 responsibility for the false Condition Reports and fraudulent sales and shift blame.

13 106. As a proximate result of FEDEX’s negligence, NV FLEET’s contract with FEDEX  
14 AGENTS have been disrupted, and NV FLEET has suffered damages in amounts to be proven at  
15 trial.

16 WHEREFORE, Plaintiff prays for Judgment against Defendant as more fully set forth below.

17 **TENTH CAUSE OF ACTION**

18 **Negligent Interference with Prospective Economic Relations**

19 **First Count – Interference Between Plaintiff and Prospective Clients**

20 107. Plaintiff hereby incorporates by reference the allegations contained in the above  
21 referenced paragraphs as though fully set forth herein.

22 108. FEDEX knew or should have known that its failure to provide or instruct the FEDEX  
23 AGENTS to provide accurate Condition Reports for their used vehicles for sale would result in a  
24 disruption in NV FLEET’s prospective economic relationships with existing clients and others in the  
25 market for used commercial vehicles.

26 109. FEDEX nevertheless allowed, authorized, directed, instructed, permitted, acquiesced  
27 to, and/or consented to false Condition Reports being used in connection with the sale of its used  
28 vehicles.

1 110. As a proximate result of FEDEX's negligence, NV FLEET has suffered damages in  
2 amounts to be proven at trial.

3 **Second Count – Interference between Plaintiff and FEDEX AGENTS**

4 111. Plaintiff hereby incorporates by reference the allegations contained in the above  
5 referenced paragraphs as though fully set forth herein.

6 112. FEDEX knew or should have known that its failure to monitor the accuracy of the  
7 Condition Reports and its promotion, authorization, request, acquiescence, and/or consent to the  
8 FEDEX AGENTS denying responsibility and shifting blame would result in a disruption in NV  
9 FLEET's prospective economic relationships with the FEDEX AGENTS.

10 113. FEDEX nevertheless has allowed false Condition Reports to be generated and relied  
11 upon in connection with the sale of its used vehicles, and has further promoted, allowed, condoned,  
12 and/or authorized a custom and practice among the FEDEX AGENTS whereby they refuse  
13 responsibility for the false Condition Reports and fraudulent sales and shift blame.

14 114. As a proximate result of FEDEX's negligence, NV FLEET has suffered damages in  
15 amounts to be proven at trial.

16 WHEREFORE, Plaintiff prays for Judgment against Defendant as more fully set forth below.

17 **ELEVENTH CAUSE OF ACTION**  
18 **Intentional Misrepresentation**

19 115. Plaintiff hereby incorporates by reference the allegations contained in the above  
20 referenced paragraphs as though fully set forth herein.

21 116. Plaintiff is informed, believe, and based thereon alleges, that, at all times herein  
22 mentioned, the FEDEX AGENTS, and each of them, who made the false representations on the  
23 Condition Reports, are the authorized representatives of FEDEX with regard to the sale of used  
24 FEDEX vehicles and, at the times the representations were made, were acting in the course and scope  
25 of their employment and authority with FEDEX.

26 117. The representations made on the Condition Reports attached hereto as Exhibits and  
27 incorporated as though fully set forth herein, were false. Vehicles that were represented as having  
28 working air conditioners did not have air conditioners. A vehicle that was represented as being a

1 Freightliner diesel truck was, in actuality, a Ford gasoline engine truck. Vehicles that were listed as  
2 “runs and drives” were inoperative and required towing. Vehicles with replaced odometers were not  
3 represented as such.

4 118. Plaintiff is informed, believes, and based thereon alleges, that, at the time the  
5 representations were made, FEDEX promoted, authorized, requested, acquiesced, and/or consented  
6 to policies, practices, and procedures by the FEDEX AGENTS wherein they knew the representations  
7 made were false, and made them with the intent to induce prospective buyers of FEDEX used vehicles  
8 such as NV FLEET to act in reliance on the representations, or with the expectation that they would  
9 so act. FEDEX further consented to the false Condition Reports in order to attain a higher price per  
10 vehicle from buyers.

11 119. At the time the representations on the Condition Reports were made, NV FLEET was  
12 ignorant of their falsity and believed them to be true. In reliance on the representations in the  
13 Condition Reports, NV FLEET was induced to, and did, in fact, purchase several vehicles, as  
14 described above. Had NV FLEET known the actual facts, it would not have purchased any of the  
15 vehicles or purchased that at a greatly reduced price. NV FLEET’s reliance was justified because it  
16 was not uncommon for commercial vehicle dealers to purchase vehicles from distant locations and  
17 to rely on Condition Reports instead of a physical inspection when purchasing their vehicles.

18 120. As a proximate result of the fraudulent conduct of FEDEX, NV FLEET was forced to  
19 expend additional money to repair and transport purchased vehicles that were inaccurately  
20 represented in their Condition Reports. Additionally, as a result of FEDEX’s conduct NV FLEET  
21 was unable to fulfill obligations made to its clients and suffered other injury and damage to be proven  
22 at trial.

23 121. The conduct of Defendants, and each of them, were despicable and subjected NV  
24 FLEET to a cruel and unjust hardship in conscious disregard for their rights, so as to justify an award  
25 of exemplary and punitive damages.

26 WHEREFORE, Plaintiff prays judgment against Defendant as more fully set forth below.

27 //

28 //

**TWELFTH CAUSE OF ACTION**  
**Negligent Misrepresentation**

1  
2  
3 122. Plaintiff hereby incorporates by reference the allegations contained in the above  
4 referenced paragraphs as though fully set forth herein.

5 123. Plaintiff is informed, believes, and based thereon alleges, that, at the time the  
6 representations were made, FEDEX promoted, authorized, requested, acquiesced, and/or consented  
7 to policies, practices, and procedures by the FEDEX AGENTS wherein they had no reasonable  
8 grounds for believe that the representations they were making on the Condition Reports were true in  
9 that the misrepresented conditions were obvious and easy to detect on the vehicles, such as whether  
10 the air conditioning or the vehicle itself was operational.

11 124. Defendants, and each of them, made the representations with the intention of inducing  
12 prospective purchasers of FEDEX used vehicles such as NV FLEET to act in reliance on the  
13 representations, or with the expectation that they would so act.

14 125. At the time the representations on the Condition Reports were made, NV FLEET was  
15 ignorant of their falsity and believed them to be true. NV FLEET's reliance was justified because it  
16 was not uncommon for commercial vehicle dealers to purchase vehicles from distant locations and  
17 to rely on Condition Reports instead of a physical inspection when purchasing their vehicles. In  
18 reliance on the representations in the Condition Reports, NV FLEET was induced to, and did, in fact,  
19 purchase several vehicles, as described above. Had NV FLEET known the actual facts, it would not  
20 have purchased any of the vehicles or purchase them at a reduced price.

21 126. As a proximate result of the fraudulent conduct of FEDEX, NV FLEET was forced to  
22 expend additional money to repair and transport vehicle that were not as represented in their  
23 Condition Reports, unable to fulfill obligations made to its clients, and suffered other injury and  
24 damage to be proven at trial.

25 WHEREFORE, Plaintiff prays judgment against Defendant as more fully set forth below.

26  
27 **THIRTEENTH CAUSE OF ACTION**  
**Unfair Business Practices**

28 127. Plaintiff hereby incorporates by reference the allegations contained in the above

1 referenced paragraphs as though fully set forth herein.

2 128. The above described conduct by the FEDEX that constitutes unfair business practices  
3 in violation of California Business and Professions Code §17000, *et seq.*

4 129. Plaintiff was harmed and suffered damages as a proximate result of the wrongful  
5 conduct of Defendants, and each of them, in amounts to be proven at trial.

6 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as more  
7 fully set forth below.

8 **FOURTEENTH CAUSE OF ACTION**

9 **Restraint of Trade**

10 130. Plaintiff hereby incorporates by reference the allegations contained in the above  
11 referenced paragraphs as though fully set forth herein.

12 131. Plaintiff is informed, believes, and based thereupon alleges, that FEDEX acted in  
13 combination, conspiracy, and concert with the FEDEX AGENTS to falsely increase the prices of  
14 used FEDEX vehicles through the creation and publication of inaccurate Condition Reports, and the  
15 refusal to deal with any purchaser who tries to expose their fraudulent practices. This constitutes an  
16 unreasonable restraint of trade of interstate commerce in violation of the Sherman Act, 15 U.S.C. §  
17 1. FEDEX's business activities have a substantial effect on interstate commerce, and the buying and  
18 selling of used FEDEX vehicles involves a substantial amount of interstate commerce.

19 132. Plaintiff is informed, believes, and based thereupon alleges, beginning at a time  
20 currently unknown to NV FLEET, and continuing to the present, FEDEX and FEDEX AGENTS,  
21 and each of them, entered into and engaged in a continuing unlawful trust in restraint of trade and  
22 commerce, and described herein, in violation of California Business and Profession Code Section  
23 16720, in the manner described above.

24 133. The combination and conspiracy has had, among other things, the effect of  
25 suppressing competition for used commercial vehicles because it promotes false advertising,  
26 fraudulent sales, and reduces the number of prospective purchasers to those who are willing to deal  
27 in bad business practices. NV FLEET has been injured and will continue to be injured with fewer  
28 opportunities to purchase used commercial vehicles as a direct and indirect result of the actions of



1 FEDEX and the FEDEX AGENTS.

2 134. As a direct and proximate result of the violations of the Sherman Act and the  
3 Cartwright Act, as described herein, Plaintiff is entitled to injunctive relief and the costs of suit.

4 WHEREFORE, Plaintiff prays judgment against Defendant as more fully set forth below.

5 **FIFTEENTH CAUSE OF ACTION**  
6 **Horizontal Restraints**

7 135. Plaintiff hereby incorporates by reference the allegations contained in the above  
8 referenced paragraphs as though fully set forth herein.

9 136. NV FLEET is informed and believes and thereupon alleges that FEDEX AGENTS,  
10 acting under the direction and control of FEDEX, agreed not to deal with NV FLEET or to deal with  
11 NV FLEET so long as they did not assert claims against or try to recover damages as a result of them  
12 misrepresentations made on FEDEX vehicle Condition Reports.

13 137. FEDEX AGENTS, under the direction and control of FEDEX, agreed to refuse to sell  
14 to NV FLEET.

15 138. As a result of FEDEX's refusal to sell to NV FLEET, NV FLEET was harmed and  
16 continues to be harmed.

17 139. FEDEX's conduct was a substantial factor in causing NV FLEET's harm.

18 WHEREFORE, Plaintiff prays judgment against Defendant as more fully set forth below.

19 **SIXTEENTH CAUSE OF ACTION**  
20 **Wire Fraud**

21 140. Plaintiff hereby incorporates by reference the allegations contained in the above  
22 referenced paragraphs as though fully set forth herein.

23 141. FEDEX voluntarily and intentionally devised and participated in a scheme to defraud  
24 customers purchasing FEDEX vehicles via interstate commerce from FEDEX AGENTS under the  
25 direction and control of FEDEX by misrepresenting the condition of FEDEX vehicles being sold.

26 142. FEDEX did so with an intent to defraud, in violation of 18 U.S.C. § 1343. By  
27 misrepresenting the condition of the FEDEX vehicles being sold FEDEX, and FEDEX AGENTS  
28 working under the direction and control of FEDEX were able to procure higher profits. In turn

1 FEDEX was able to realize a higher rebate per vehicle sold.

2 143. It was reasonable foreseeable that interstate wire communications would be use  
3 because the FEDEX vehicles were advertised and sold throughout the United States over the internet.

4 144. Interstate wire communications were in fact used. FEDEX vehicles were advertised  
5 and misrepresented Condition Reports were disseminated over the internet through various FEDEX  
6 AGENTS' websites under the direction and control of FEDEX. NV FLEET purchased FEDEX  
7 vehicles located across state lines by viewing Condition Reports on FEDEX vehicles on the internet  
8 and then making purchases based on the advertised Condition Reports over the phone and through  
9 internet websites.

10 145. NV FLEET was damages as a result.

11 WHEREFORE, Plaintiff prays judgment against Defendant as more fully set forth below.

12 **SEVENTEENTH CAUSE OF ACTION**

13 **Declaratory Relief**

14 146. Plaintiff hereby incorporates by reference the allegations contained in the above  
15 referenced paragraphs as though fully set forth herein.

16 147. An actual controversy has arisen and now exists between NV FLEET and FEDEX  
17 AGENTS regarding NV FLEET's right to purchase vehicles sold by FEDEX AGENTS under the  
18 direction and control of FEDEX. FEDEX AGENTS have barred NV FLEET from purchasing  
19 vehicles. The ability to purchase and re-sell used commercial vehicles is the essential to NV  
20 FLEET's business. As such, the termination of NV FLEET from participation with FEDEX  
21 AGENTS has and will cause significant harm to its business.

22 148. NV FLEET desires a judicial determination as to the rights of NV FLEET to purchase  
23 FEDEX vehicles through FEDEX AGENTS.

24 149. A judicial declaration is necessary and appropriate at this time in order that the parties  
25 may ascertain their respective rights and duties regarding the NV FLEET's right to purchase FEDEX  
26 vehicles through FEDEX AGENTS.

27 //

28 //

**PRAYER FOR RELIEF**

1. For reliance, restitution and/or expectation damages, according to proof;
2. For special and general damages, according to proof;
3. For punitive and exemplary damages, according to proof;
4. For prejudgment interest and post-judgment interest as allowed by law, according to proof; and
5. A declaration that the unlawful combination and conspiracy alleged in this complaint is an unreasonable restraint of trade or commerce in violation of the Cartwright Act.
6. An injunction enjoining, preliminarily and permanently, Defendants from continuing the unlawful combination and conspiracy alleged in this complaint.
7. An award to Plaintiff of damages, as provided by law, and judgment in favor of Plaintiff against Defendant, in an amount to be trebled in accordance with antitrust law.
8. Reinstatement of NV FLEET's right to purchase FEDEX vehicles through FEDEX AGENTs.
9. For costs of suit herein incurred;
10. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action on all issues so triable.

Dated: August 18, 2017

GALLAGHER JONES LLP



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KATHLEEN GALLAGHER

Attorney for Plaintiff  
NEVADA FLEET LLC