

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

**FILED**  
2/19/04  
Date \_\_\_\_\_ Time \_\_\_\_\_  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

CASE NO.: 8:03-CV-2043-T-27TGW

and

JUAN C. FONSECA, YULY VAZQUEZ-ENRIQUEZ  
and HECTOR CEPEDA,

Plaintiff-Intervenors,

v.

CON-WAY TRANSPORTATION  
SERVICES, INC.,

Defendant.

---

**COMPLAINT**

Plaintiffs, UNITED STATES EQUAL OPPORTUNITY COMMISSION ("EEOC" or "COMMISSION") JUAN C. FONSECA, YULY VAZQUEZ-ENRIQUEZ and HECTOR CEPEDA, sue Defendant, CON-WAY TRANSPORTATION SERVICES, INC. dba CON-WAY SOUTHERN EXPRESS, and state as follows:

**COUNT I – EEOC ACTION**

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of natural origin, and to provide appropriate relief to Juan Fonseca, Hector Cepeda, and Yuly Enriquez who were adversely affected by such practices. As stated with greater particularity in paragraph 7, the United States Equal Employment Opportunity Commission (hereinafter the "EEOC" or "Commission") alleges that Juan Fonseca, Hector Cepeda and Yuly Enriquez were subjected to a

12

hostile work environment by supervisors and coworkers because of their national origin, Cuban.

### **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Middle District of Florida, Tampa Division.

### **PARTIES**

3. Plaintiff, the United States Equal Employment Opportunity Commission is the agency of the United States of America charged with the administration interpretation and enforcement of Title VII, and id expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Con-Way Transportation Services, Inc. d/b/a Con-Way Southern Express (the “Employer”), has continuously been a Michigan Corporation doing business in the State of Florida and the City of Tampa, and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

### **STATEMENT OF CLAIMS**

6. More than thirty (30) days prior to the institution of this lawsuit, Juan Fonseca, Hector Cepeda, and Yuly Enriquez filed a charge with the Commission alleging a violation of Title VII by Defendant Employer. All conditions precedent to the institution of the lawsuit have been fulfilled.

7. Since at least November 2001, Defendant Employer has engaged in lawful employment practices at its Tampa, Florida facility, in violation of Section 703(a)(1), 42 U.S.C. § 2000e-2(a) by subjecting Hispanic employees to a hostile work environment. Specifically, employees Juan Fonseca, Hector Cepeda and Yuly Enriquez were subjected to unwelcome comments based on their national origin by supervisors and coworkers which were sufficiently severe and pervasive to constitute an intimidating, hostile and offensive work environment. The offensive conduct included, but was not limited to Juan Fonseca, Hector Cepeda, and Yuly Enriquez; (a) being called ethnically offensive names, including fucking Mexicans and Ecuadorians; (b) being mocked and the subject of offensive jokes about their native accent; and (c) being repeatedly told that they did not belong in the United States and should go back to Mexico or Cuba where they belonged.

8. The Defendant knew or should have known of the harassment and failed to take prompt and appropriate remedial action to remedy the hostile environment.

9. The effect of the practice(s) complained of in paragraph 7 above have been to deprive Juan Fonseca, Hector Cepeda and Yuly Enriquez of equal employment opportunities and otherwise adversely affect their status as employees because of their national origin.

10. The unlawful employment practices complained of in paragraph 7 above were intentional.

11. The unlawful employment practices complained of in paragraph 7 above were done with malice or with reckless indifference to the federally protected right so Juan Fonseca, Hector Cepeda and Yuly Enriquez.

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in unlawful harassment and any other employment practice which discriminates on the basis of

national origin.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for all its employees regardless of national origin and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Juan Fonseca, Hector Cepada and Yuly Enriquez by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including, but not limited to, out of pocket losses, and medical expenses, in amounts to be determined at trial.

D. Order Defendant Employer to make whole Juan Fonseca, Hector Cepada, and Yuly Enriquez by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including, but not limited to, emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

E. Order Defendant Employer to pay Juan Fonseca, Hector Cepada, and Yuly Enriquez punitive damages for its malicious and reckless conduct described in paragraph 7 above, in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the Commission its costs of this action.

#### JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by Count I of this Amended Complaint.

## **GENERAL ALLEGATIONS FOR COUNTS II - V**

12. Defendant, Con-Way Transportation Services, Inc. dba Con-Way Southern Express (“Con-Way”), is a Michigan Corporation engaged in business in Tampa, Hillsborough County, Florida.

13. Plaintiffs Juan Fonseca (“Fonseca”), Yuly Vazquez-Enriquez (“Enriquez”) and Hector Cepeda (“Cepeda”) (referred to collectively as “Plaintiffs” or as “Plaintiffs”) are all former employees of Con-Way.

14. At all times relevant, Plaintiffs were employed at Con-Way working at Con-Way’s Tampa, Florida location.

### **Count II**

#### **Discrimination and Harassment – Title VII**

15. Plaintiffs Fonseca, Enriquez and Cepeda reallege allegations 12-14 as if fully alleged herein.

16. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e, *et seq*) (“Title VII”). This court has jurisdiction and such jurisdiction is invoked to secure protection of and redress deprivation of rights guaranteed by federal law, which rights provide for injunction and other relief for illegal discrimination in employment.

17. At all times relevant hereto, Defendant engaged in an industry affecting commerce and employed more than fifteen (15) regular employees.

18. At all times relevant hereto, each Plaintiff’s performance was more than satisfactory.

19. Plaintiff Fonseca began his employment at Con-Way at its Tampa location in July 2001 and remained so employed until his discharge in August of 2002.

20. Plaintiff Enriquez began his employment at Con-Way in 1998 and remained so employed at all times relevant hereto.

21. Plaintiff Cepeda began his employment at Con-Way in 2000 at its Miami, Florida location. He was employed at Con-Way's Tampa location in or around July of 2001 and remained so employed until he was compelled to resign in or around November of 2002.

22. During Fonseca's entire employment at Con-Way, he was consistently subjected to a severe and pervasive hostile work environment based on his national origin (Cuban-American/Hispanic). The hostile work environment became even more severe and pervasive beginning around November of 2001 and lasted until he was discharged in August of 2002.

23. During Enriquez's entire employment at Con-Way, he was consistently subjected to a severe and pervasive hostile work environment based on his national origin (Cuban-American/Hispanic). The hostile work environment became even more severe and pervasive beginning around November of 2001 and was lasted throughout his employment.

24. During Cepeda's entire employment at Con-Way, he was consistently subjected to a severe and pervasive hostile work environment based on his national origin (Cuban-American/Hispanic). The hostile work environment became even more severe and pervasive beginning around November of 2001 and lasted until he was compelled to resign in November of 2002.

25. At all times relevant, each Plaintiff was subjected to disparate treatment because of his national origin in terms of job assignments, route assignments, denial of scheduled breaks and unfair altering of routes during working hours. Similarly situated employees not in Plaintiffs' protected class were not so treated.

26. Con-Way managers and employees, at all times relevant, regularly called each Plaintiff racially derogatory names such as "Fucking Mexicans", "Spics" and "Fucking Ecuadorians".

27. The “Fucking Mexicans” phrase was first used against Plaintiffs by Con-Way’s managers and co-workers in November of 2001. At first Plaintiffs believed its use would be short lived and would die out on its own. When it did not die down and actually worsened, Mr. Fonseca and Mr. Cepeda, on their behalf and on the behalf of Mr. Enriquez and other Cuban-American employees, went to their supervisor Jeff Taylor and to Shawn Hamlin (both of whom also regularly used the phrase) and told them that they found the remarks racially offensive and demanded that they and everyone else stop. Jeff Taylor responded; “What the fuck are you talking about, we’re only kidding”. Not only did the comments not stop, they increased throughout the workplace.

28. Cepeda and Fonseca, for themselves and on behalf of Enriquez and other Cuban-Americans, regularly made additional complaints of discrimination and harassment to their supervisor Jeff Taylor. Again no action was taken to stop the discrimination and harassment.

29. In mid December 2001, Cepeda, for himself and on behalf of Fonseca, Enriquez and other Cuban-Americans, complained to Service Center Manager Buddy Shoeaf about the offensive conduct and comments and told Mr. Shoeaf that he and the other Cuban-American employees found the conduct and comments racially discriminating and offensive. Mr. Shoeaf told Mr. Cepeda that he would take care of the situation.

30. Shortly after Cepeda first complained to Mr. Shoeaf, Jeff Taylor apologized to Cepeda for his comments, however the offensive conduct and comments throughout the work place only increased.

31. A few days after Cepeda complained to Mr. Shoeaf, after it became clear that the offensive conduct was increasing, Fonseca, for himself and on behalf of Cepeda, Enriquez and other Cuban-American employees complained to Mr. Shoeaf about the discriminatory and harassing treatment the Cuban-American employees had been experiencing. This time Mr. Shoeaf reacted by telling Fonseca; “Oh, I see, you’re trying to expand this. Are you trying to

drag other drivers into this now?" Mr. Shoeaf's tone was combative and hostile. Although Mr. Fonseca's complaint was well intended and legitimate, it was clear it was unwelcomed by Mr. Shoeaf who brushed Fonseca off. Fonseca then responded; "Ok, that's all I have to say".

32. Fonseca and Cepeda complained again to Mr. Shoeaf later in December 2001 and on several occasions in January, February, March and April of 2002. Each time they told Mr. Shoeaf that the harassing and discriminatory behavior and comments had not stopped, had gotten worse, that the Hispanic employees were regularly called "Fucking Mexicans" by co-workers and by Tom Black and that the comments and hostility was done in the presence of supervisor Jeff Taylor who did nothing and condoned the conduct. Again Mr. Shoeaf and Con-Way did nothing to address or stop the discrimination, harassment or hostile work environment.

33. In July 2002, Fonseca also complained of the above discrimination, harassment and hostile work environment to Supervisor John Garcia who also did nothing to stop the conduct and comments.

34. In August of 2002, Enriquez, for himself and on behalf of Cepeda and the other Cuban-American Con-Way employees, complained to supervisor Jeff Taylor of ethnically derogatory remarks made to him and to others and complained that his co-workers had been ridiculing his accent. While some of the co-workers made tongue-in-cheek apologies, the discrimination continued.

35. Enriquez, for himself and on behalf of the Cuban-American employees, sent two complaint letters to corporate headquarters complaining of national origin discrimination, harassment and hostile work environment; the first was sent September 3, 2002, the second on November 20, 2002. Con-Way again failed to put a stop to the discrimination, harassment and the hostile work environment.



36. On October 5, 2002, Cepeda, for himself and on behalf of the other Cuban-American employees, sent a complaint letter to Con-Way. Again Con-Way did not put a stop to the discriminatory actions.

37. In August of 2002, Fonseca was fired for pretextual reasons. The real reasons being his national origin and his complaining about discrimination.

38. In 2002, Cepeda and Enriquez were given worse driving assignments, job duties and denied breaks. This and other discriminatory and retaliatory actions led to Cepeda being compelled to leave Con-Way in November of 2002.

39. Plaintiffs regularly complained to Con-Way management about the pervasive discrimination and about the hostile work environment in which they worked. Con-Way never took any action to stop the discrimination or hostility or to protect Plaintiffs from such treatment.

40. The allegations in Paragraphs 18 through 39 above represent only a fraction of the inappropriate discrimination and conduct directed against Plaintiffs.

41. Con-Way, through its agents or supervisors, engaged in a pattern and practice of unlawful national origin discrimination by subjecting Plaintiffs to unwelcome hostility and disparate treatment in violation of Title VII.

42. The above-described unwelcome conduct and disparate treatment created an intimidating, oppressive, hostile and offensive work environment which interfered with Plaintiffs' emotional well-being.

43. Con-Way at all times relevant hereto had actual and constructive knowledge of the conduct described in paragraphs 18 through 41.

44. As a result of the disparate treatment and the hostile and offensive work environment perpetrated by Defendant and maintained by Defendant's failure to protect Plaintiffs from further discrimination, Plaintiffs each suffered severe emotional distress.

45. Con-Way violated Title VII by failing to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of its managers and employees as described in paragraphs 18 through 40.

46. Con-Way failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the workplace and to prevent it from occurring in the future.

47. Plaintiffs are informed and believe, and based thereon allege, that in addition to the practices enumerated above, Con-Way has engaged in other discriminatory practices against them which are not yet fully known. At such time as said discriminatory practices become known to them, Plaintiffs will seek leave of Court to amend this Complaint in that regard.

48. Plaintiffs have each filed charges of discrimination with the EEOC against Con-Way. True and correct copies of the charges are attached hereto as Composite Exhibit "A", and incorporated herein by reference. The EEOC found in favor of each Plaintiff finding reasonable cause to believe that discrimination had occurred. Said findings are attached hereto as Exhibit "B" and incorporated herein by reference. Within 90 days of the filing of the EEOC's original complaint, the EEOC issued a Right-to Sue Notice authorizing this lawsuit. True and correct copies of the Notices are attached hereto as Composite Exhibit "C", and incorporated herein by reference. Plaintiffs have exhausted their administrative remedies.

49. As a direct and proximate result of Con-Way's willful, knowing and intentional discrimination against them, Plaintiffs have suffered and will continue to suffer pain and suffering, and extreme and severe mental anguish and emotional distress and they have suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.

50. As a further direct and proximate result of Con-Way's violation of Title VII, as heretofore described, Plaintiffs have been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with Defendant, and have thereby incurred, and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to them, who therefore will seek leave of Court to amend this Complaint in that regard when the same shall be fully and finally ascertained. Plaintiffs request that attorneys' fees be awarded pursuant to Federal law.

51. Plaintiffs are informed and believe, and based thereon allege, that the outrageous conduct of Defendant described above was done with fraud, oppression and malice, with a conscious disregard for their rights and with the intent, design and purpose of injuring them. Plaintiffs are further informed and believe that Con-Way, through its officers, managing agents and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of managers and employees. By reason thereof, Plaintiffs are entitled to punitive or exemplary damages from Defendant in a sum according to proof at trial.

52. Plaintiffs demand trial by jury on all issues so triable.

Wherefore, Plaintiffs Fonseca, Enriquez and Cepeda each pray this court award judgment in his favor against Con-Way for compensatory damages, punitive damages, pre and post judgment interest, attorneys' fees, costs and such other relief as this court deems proper.

**Count III**  
**Retaliation – Title VII**

53. Plaintiffs reincorporate and reallege paragraphs 12-14 and 16-44 as if fully alleged herein.

54. This is a Title VII action for retaliatory action taken against Plaintiffs by Defendant following their complaints of discrimination.

55. Following their complaints to Con-Way as described herein, Con-Way Management became increasingly hostile to Plaintiffs, unjustly disciplined Plaintiffs, altered Plaintiffs work routes, eliminated Plaintiffs breaks and assigned Plaintiffs to worse job duties, all in retaliation for their exercising their rights under Title VII by complaining of discrimination.

56. Following his complaints of discrimination, Con-Way discharged Fonseca for pretextual reasons in retaliation for exercising his rights under Title VII.

57. In November of 2002, Cepeda was compelled to leave Con-Way because Con-Way had made his work objectively and subjectively intolerable in retaliation for his valid protested complaints.

58. The Plaintiffs have each filed charges of retaliation with the EEOC against Con-Way. True and correct copies of the charges are attached hereto as Composite Exhibit "A" and are incorporated herein by reference. The EEOC found in favor of each Plaintiff finding reasonable cause to believe that retaliation had occurred. Said findings are attached hereto as Exhibit "B" and incorporated herein by reference. Within ninety (90) days of the filing of the EEOC's original Complaint, the EEOC has issued a Right-to-Sue Notice authorizing this lawsuit. True and correct copies of the Notices are attached hereto as Composite Exhibit "B" and are incorporated herein by reference. Plaintiffs have exhausted their administrative remedies.

59. Plaintiffs are informed and believe, and based thereon allege, that in addition to the practices enumerated above, Con-Way has engaged in other retaliatory practices against them which are not yet fully known. At such time as said retaliatory practices become known to them, Plaintiffs will seek leave of Court to amend this Complaint in that regard.

60. As a direct and proximate result of Con-Way's willful, knowing and intentional retaliation against them, Plaintiffs have suffered and will continue to suffer pain and suffering and extreme and severe mental anguish and emotional distress. Plaintiffs have suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities.

Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.

61. As a further direct and proximate result of Con-Way's violation of Title VII, as heretofore described, Plaintiffs have been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationships with Defendant, and have thereby incurred, and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to them, who therefore will seek leave of Court to amend this Complaint in that regard when the same shall be fully and finally ascertained. Plaintiffs request that attorneys' fees be awarded pursuant to Federal law.

62. Plaintiffs are informed and believe, and based thereon allege, that the outrageous conduct of Defendant described above was done with fraud, oppression and malice, with a conscious disregard for their rights and with the intent, design and purpose of injuring them.

63. Plaintiffs are further informed and believe that Con-Way, through its officers, managing agents and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of its managers and employees. By reason thereof, Plaintiffs demand punitive or exemplary damages from Defendant.

64. Plaintiffs demand trial by jury on all issues so triable.

WHEREFORE, Plaintiffs Fonseca, Enriquez and Cepeda each pray this court award judgment in his favor against Con-Way for compensatory damages, punitive damages, exemplary damages, pre and post judgment interest, attorney's fees, costs and such other relief as this court deems proper.

**Count IV**  
**Discrimination – Chapter 760**

65. This is an action brought pursuant to Florida Statute Section 760 § *et seq.* ("Chapter 760").

66. Plaintiffs reallege allegations 12-14 and 16-47 as if fully alleged herein.

67. Florida Law has recognized violations of Title VII as violations of Chapter 760. Therefore all allegations herein alleging violations of Title VII, allege violations of Chapter 760 and this court has pendent jurisdiction over this actions.

68. Plaintiffs have filed charges of discrimination with the Florida Commission on Human Relation ("FCHR") against Con-Way. True and correct copies of the charges which were filed concurrently with the EEOC charges are attached as Composite Exhibit "A". The EEOC found in favor of each Plaintiff finding reasonable cause to believe that discrimination had occurred. Said findings are attached hereto as Exhibit "B" and incorporated herein by reference. Over 180 days have passed and Plaintiffs have exhausted their administrative remedies.

69. As a direct and proximate result of Con-Way's willful, knowing and intentional discrimination against them, Plaintiffs have suffered and will continue to suffer pain and suffering and extreme and severe mental anguish and emotional distress, and they have suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.

70. As a further direct and proximate result of Con-Way's violation of Chapter 760, as heretofore described, Plaintiffs have been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationships with Defendant, and have thereby incurred, and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to them, who therefore will seek leave of Court to amend this Complaint in that regard when the same shall be fully and finally ascertained. Plaintiffs request that attorneys' fees be awarded pursuant to State law.

71. Plaintiffs are informed and believe, and based thereon allege, that the outrageous conduct of Defendant described above was done with fraud, oppression and malice, with a

conscious disregard for their rights and with the intent, design and purpose of injuring them. Plaintiffs are further informed and believe that Con-Way, through its officers, managing agents and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of its managers and employees. By reason thereof, Plaintiffs are entitled to punitive or exemplary damages from Defendant in a sum according to proof at trial.

72. Plaintiffs demand trial by jury on all issues so triable.

Wherefore, Plaintiffs Fonseca, Enriquez and Cepeda each pray this court award judgment in his favor against Con-Way for damages, punitive damages, pre and post judgment interest, attorney's fees, costs and such other relief as this court deems proper.

### **Count V**

#### **Retaliation – Chapter 760**

73. The Plaintiffs reincorporate and reallege paragraphs 12-14, 66-44 and 56-58, as if fully alleged herein.

74. This is a Chapter 760 action for retaliatory action taken against Plaintiffs following their complaints of discrimination.

75. Florida Law has recognized violations of Title VII as violations of Chapter 760. Therefore all allegations herein alleging violations of Title VII, allege violations of Chapter 760 and this court has pendent jurisdiction over this action.

76. This is a Chapter 760 action for retaliatory action taken against Plaintiffs by Defendant following his complaints of discrimination.

77. Plaintiffs have filed charges of retaliation with the Florida Commission on Human Relations ("FCHR") against Con-Way. True and correct copies of the charges which were filed concurrently with the EEOC are attached as Composite Exhibit "A". The EEOC found in favor of each Plaintiff finding reasonable cause to believe that discrimination had occurred. Said findings are attached hereto as Exhibit "B" and incorporated herein by reference.

Over one hundred eighty (180) days have passed and Plaintiffs have exhausted their administrative remedies.

78. Plaintiffs are informed and believe, and based thereon allege, that in addition to the practices enumerated above, Con-Way has engaged in other retaliatory practices against them which are not yet fully known. At such time as said retaliatory practices become known to them, Plaintiffs will seek leave of Court to amend this Complaint in that regard.

79. As a direct and proximate result of Con-Way's willful, knowing and intentional retaliation against them, Plaintiffs have suffered and will continue to suffer pain and suffering and extreme and severe mental anguish and emotional distress. Plaintiffs have suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.

80. As a further direct and proximate result of Con-Way's violation of Chapter 760, as heretofore described, Plaintiffs have been compelled to retain the services of counsel in an effort to enforce the terms and conditions of their employment relationships with Defendant, and have thereby incurred, and will continue to incur, legal fees and costs, the full nature and extent of which are presently unknown to them, who therefore will seek leave of Court to amend this Complaint in that regard when the same shall be fully and finally ascertained. Plaintiffs request that attorneys' fees be awarded pursuant to State law.

81. Plaintiffs are informed and believe, and based thereon allege, that the outrageous conduct of Defendant described above was done with fraud, oppression and malice; with a conscious disregard for their rights and with the intent, design and purpose of injuring them. Plaintiffs are further informed and believe that Con-Way, through its officers, managing agents and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of its managers



and employees. By reason thereof, Plaintiffs are entitled to punitive or exemplary damages from Defendant in a sum according to proof at trial.

82. Plaintiffs demand trial by jury on all issues so triable.

Wherefore, Plaintiffs Fonseca, Enriquez and Cepeda each pray this court award judgment in his favor against Con-Way for damages, punitive damages, pre and post judgment interest, attorney's fees, costs and such other relief as this court deems proper.

Respectfully Submitted,

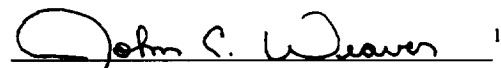
ERIC S. DREIBAND  
General Counsel

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN REAMS  
Associate General Counsel

DELNER FRANKLIN-THOMAS  
Regional Attorney


MICHAEL J. FARRELL  
Supervisory Trial Attorney

<sup>1</sup>

JOHN C. WEAVER  
Trial Attorney  
Colorado Bar No. 030333  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
One Biscayne Tower  
Two S. Biscayne Boulevard  
Suite 2700  
Miami, FL 33131  
Phone: (305) 530-6010  
Fax: (305) 536-4494

---

<sup>1</sup> EEOC's signature addresses the portion of this Amended Complaint entitled "Count I - EEOC Action."

 J. C. Weaver w/ expressed permission  
from JAMES M. THOMPSON, ESQUIRE

Nelson, Bisconti & Thompson, L.L.C.

718 W. MLK Boulevard, Suite 200

Tampa, Florida 33603-3104

(813) 221-0999 \* (813) 314-9626 Fax

FBN: 86108

Attorney for Plaintiff-Intervenors Fonseca,  
Enriquez and Cepeda