







1 (f) The proper measure of damages sustained by plaintiffs and all other similarly  
2 situated postal inspectors.

3 **FACTS**

4 16. The Postal Service employs approximately 1,500 postal inspectors classified  
5 at the EAS Level-23/ISLE Level-13 or lower. The Postal Service classified all postal inspectors as  
6 exempt from the overtime pay requirements of the FLSA.

7 17. Postal inspectors are usually divided into teams of five (although the exact  
8 number of team members may vary), and the team is supervised by an EAS Level-24/ISLE Level-14  
9 Team Leader. There are approximately 335 Team Leaders in the United States.

10 18. Team Leaders, in turn, report to approximately 53 Assistant Inspectors in  
11 Charge, who are managed by a lesser number of Postal Inspectors in Charge. The Postal Inspectors  
12 in Charge are supervised by five Deputy Chief Inspectors, who, in turn, report to the head of the  
13 United States Postal Inspection Service, the Chief Postal Inspector.

14 19. Postal inspectors, like plaintiffs Nigg and Lewis, carry on their investigations  
15 under the oversight and supervision of their Team Leader. They do not have authority to take any  
16 discretionary actions; they do not direct the work of other Postal Service employees; they do not  
17 formulate or effectuate management policies; they do not have authority to hire or fire employees;  
18 and they do not supervise or manage any programs or personnel.

19 20. Based on the work performed by the postal inspectors, the Postal Service's  
20 classification of the postal inspectors as exempt from the FLSA's overtime compensation provision  
21 was and is improper.

22 21. Plaintiffs acknowledge that approximately twenty years ago, two district  
23 courts held that postal inspectors were exempt from the overtime provisions of the FLSA because  
24 postal inspectors were deemed "administrative employees."

25 22. However, the job duties of postal inspectors have dramatically changed in the  
26 years since those decisions. In fact, the Postal Service itself has argued that the job duties and  
27 responsibilities of postal inspectors do not involve the use of any discretion.

1           23.     Specifically, in several submissions to the Merit Systems Protection Board  
2 ("MSPB") arising out of a compensation dispute with plaintiff Nigg, the Postal Service argued that,  
3 based on the job duties and responsibilities of a postal inspector, Nigg was not "a management or  
4 supervisory employee or an employee engaged in personnel work in other than a purely non-  
5 confidential clerical capacity," and therefore not eligible to appeal a determination of the Postal  
6 Service. The Postal Service first made this argument in February 2001.

7           24.     In its decision dated June 13, 2001, the MSPB agreed with the Postal Service  
8 and concluded that a postal inspector was not "a manager, supervisor, or personnelist [sic] doing  
9 other than purely non-confidential clerical work and that [sic] has no appeal right to the [MSPB]."

10          25.     While the Postal Service may have been justified in classifying postal  
11 inspectors as exempt from the overtime provisions of the FLSA based on two prior district court  
12 decisions, as early as February 2001, the Postal Service acknowledged and admitted that the job  
13 duties of postal inspectors had dramatically changed during the twenty years since the prior  
14 decisions. Consequently, from at least February 2001, the Postal Service was willfully failing to pay  
15 postal inspectors their overtime compensation.

16          26.     Because the Postal Service litigated the job duties and responsibilities before  
17 the MSPB and the issue was decided by a final judgment before the MSPB, the Postal Service should  
18 be estopped from denying or attempting to assert the defense of administrative exemption based on  
19 the arguments it made to a federal administrative agency.

20 **The Administrative Exemption Test**

21          27.     The Postal Service did not pay postal inspectors time and one-half for hours  
22 worked in excess of forty-three (43) hours per week because it determined that they were  
23 administrative employees exempt from the FLSA.

24          28.     Both the United States Department of Labor ("DOL") and the federal  
25 government's Office of Personnel Management ("OPM") define and regulate employee exemptions  
26 under the FLSA.

27          29.     Before an employee will be deemed "administratively exempt" from the FLSA  
28 (and thus not entitled to overtime pay), the OPM requires the employee to be evaluated using four

1 separate tests: the primary duty test; the non-manual work test; discretion and independent judgment  
2 test; and the 80% test. If the Postal Service cannot demonstrate that postal inspectors meet all four  
3 of these tests, postal inspectors are not administratively exempt employees and the Postal Service  
4 is required to pay them overtime pay.

5           30. Under the primary duty test, an employee may be deemed administratively  
6 exempt if his work either: (1) significantly affects the formulation or execution of management  
7 programs or policies; (2) involves management or general business functions or supporting services  
8 of substantial importance to the organization serviced; or (3) involves substantial participation in the  
9 executive or administrative functions of a management official.

10           31. As a general rule, the primary duty must constitute a major part (over 50%)  
11 of the employee's work and such duty must "significantly affect[] the formulation or execution of  
12 management policies or programs."

13           32. A duty that constitutes less than 50% of the employee's work may be credited  
14 toward the primary duty for exemption purposes but only if the duty: (1) constitutes a substantial,  
15 regular part of a position; (2) governs the classification and qualification requirements of the  
16 position; and (3) is clearly exempt work in terms of the basic nature of the work, the frequency with  
17 which the employee must exercise discretion and independent judgment, and the significance of the  
18 decisions made.

19           33. The duties of postal inspectors do not meet the primary duty test because a  
20 postal inspector's duties do not affect the formulation or execution of management programs or  
21 policies; do not involve management or general business functions of a substantial importance to the  
22 Postal Service; and do not involve substantial participation in the executive or administrative  
23 functions of a management official.

24           34. The Postal Service itself has acknowledged and argued, in administrative  
25 proceedings with plaintiff Nigg, that postal inspectors are not supervisors or managers; that they do  
26 not have the authority to direct the work of other employees through the use of independent  
27 judgment; that they do not have any authority to recommend discretionary actions that effectively  
28 control or implement employer policy; and that no employee reports directly to postal inspectors.

1           35. Postal inspectors also do not "exercise discretion within, or even  
2 independently of, established employer policy" and are not "aligned with management." The Postal  
3 Service has argued that while postal inspectors initiated investigations, determined the manner in  
4 which the investigations were conducted and presented the results to prosecuting authorities, their  
5 discretion was limited because their responsibilities consisted only of the "routine discharge of  
6 professional duties in projects to which they have been assigned." According to the Postal Service,  
7 investigations and other work are performed at the direction of supervisors or Team Leaders.

8           36. Postal inspectors also do not meet the discretion and independent judgment  
9 test. Under that test, the "employee frequently exercises discretion and independent judgment, under  
10 only general supervision, in performing the normal day-to-day work."

11           37. According to DOL Regulations, the exercise of discretion and independent  
12 judgment implies that an employee has the authority or power to make an independent choice, free  
13 from immediate direction or supervision and with respect to matters of significance.

14           38. The DOL Regulations include the following example, essentially describing  
15 the work of postal inspectors:

16           A typical example of the application of skills and procedures is  
17 ordinary inspection work of various kinds. Inspectors normally  
18 perform specialized work along standardized lines involving well-  
19 established techniques and procedures which may have been  
20 cataloged and described in manuals or other sources. Such inspectors  
21 rely on techniques and skills acquired by special training or  
22 experience. They may have some leeway in the performance of their  
23 work but only within closely prescribed limits. Employees of this type  
24 may make recommendations on the basis of the information they  
develop in the course of their inspections (as for example, to accept  
or reject an insurance risk or a product manufactured to  
specifications), but these recommendations are based on the  
development of the facts as to whether there is conformity with the  
prescribed standards. In such cases a decision to depart from the  
prescribed standards or the permitted tolerance is typically made by  
the inspector's superior. The inspector is engaged in exercising skill  
rather than discretion and independent judgment.

25           39. Postal inspector duties do not include the use of discretion or independent  
26 judgment and their work is limited to that assigned to them by their Team Leaders. According to  
27 the Postal Service, Team Leaders, Program Managers and others, all the way up to the Chief Postal  
28 Inspector, supervise, manage and effectuate the benefits, policies and programs of the Postal Service,

1 while postal inspectors simply perform the duties of an investigator when directed to do so by  
2 management.

3 40. The Postal Service has argued (and succeeded) in demonstrating that:

4 [A Postal Inspector] has the authority and discretion to manage his  
5 own investigations with the oversight and supervision of a Team  
6 Leader. Besides that, [a Postal Inspector] supervises or manages no  
7 programs or personnel.

### 8 The Salary Basis Test

9 41. In addition to the four tests enumerated above, to be administratively exempt,  
10 the DOL requires that the employee be paid on a "salary basis."

11 42. An employee is not considered a "salary-based" employee if his or her  
12 compensation is subject to reductions based on "variations in the 'quality or quantity' of the work  
13 performed." Generally, salary-based employees may only be disciplined by being fired, demoted or  
14 given restricted assignment, not through piecemeal deductions in their salary.

15 43. The DOL has determined that "variations in the 'quality or quantity' of work  
16 performed" means that an employer cannot impose a monetary penalty on an employee for any  
17 reason other than "for infractions of safety rules of major significance."

18 44. If an employer has an "actual practice of making [payroll] deductions or an  
19 employment policy that creates a 'significant likelihood' of such deductions" for reasons other than  
20 a major safety infraction, the employer cannot claim that the employee meets the criteria for an  
21 administrative exemption under the FLSA.

22 45. The Postal Service makes deductions from postal inspectors' pay for a number  
23 of types of conduct that are not "infractions of safety rules of major significance."

24 46. For example, the Postal Service will dock a postal inspector's pay if he: uses  
25 a Postal Service vehicle for personal activities while he is "off the clock," including while driving  
26 to and from work; fails to respond or does not timely respond while on "duty assignment"; fails to  
27 restrict his personal activities while on "duty assignment"; or fails to carry and secure his weapon  
28 and postal equipment.

1           47.     Postal inspectors are also subject to losing availability pay (premium pay for  
2 working on-call) if they do not meet certain eligibility requirements.

3           48.     These deductions are reductions in compensation for reasons other than major  
4 safety infractions.

5           49.     Since at least February 2001 (the date of the Postal Service's submission to  
6 the MSPB), the Postal Service knew that the job duties of its postal inspectors had drastically  
7 changed over the last twenty years and that they were no longer entitled to the "administrative  
8 exemption" of the FLSA. From at least February 2001, postal inspectors were entitled to overtime  
9 compensation for hours worked in excess of forty-three (43) hours.

10          50.     In their position as postal inspectors, plaintiffs and all other postal inspectors  
11 worked more than forty-three (43) hours per week.

12          51.     The Postal Service failed to pay plaintiffs and all other similarly situated  
13 postal inspectors their proper overtime pay when they worked more than forty-three (43) hours per  
14 week.

15          52.     In addition to failing to pay proper overtime compensation, the Postal Service  
16 required postal inspectors to work "off the clock." Specifically, postal inspectors were required to  
17 work, without pay, during times when they were on "duty assignment."

18          53.     Duty assignment required postal inspectors to work, or to be specifically  
19 available to work ("on-call"), 24 hours a day, for a seven day period. Depending on the location at  
20 which the postal inspector worked, duty assignment could occur as frequently as every several weeks  
21 or as infrequently as once or twice a year. The frequency of duty assignment varied according to the  
22 number of postal inspectors at any given location.

23          54.     During duty assignment, the personal activities of postal inspectors are  
24 extremely restricted. Postal inspectors on duty assignment are specifically instructed to restrict their  
25 personal activities to be able to respond immediately to emergency criminal investigations and other  
26 similar situations.

27          55.     Postal inspectors are not paid while on duty assignment unless they are  
28 actually called to perform work.







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**JURY DEMAND**

Plaintiffs, on behalf of themselves and all others similarly situated, demand a trial by jury on all issues so triable.

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