

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TINA FLOYD, on behalf of herself and a class))	
of similarly situated persons)	
)	Case No.:
Plaintiffs,)	2:06-cv-429-SRW
)	
v.)	ANSWER AND ADDITIONAL
)	DEFENSES OF FEDEX
FEDEX GROUND PACKAGE SYSTEM,)	GROUND PACKAGE SYSTEM,
INC., a corporation; and FED EX GROUND)	INC.
PACKAGE SYSTEM, INC., D/B/A FEDEX)	
HOME DELIVERY, INC., a corporation)	
)	
Defendants.)	

COMES NOW Defendant FEDEX GROUND PACKAGE SYSTEM, INC. (“FedEx Ground” or “Defendant”) and files this Answer to Plaintiff’s Class Action Complaint (the “Complaint”) served by Plaintiff TINA FLOYD (“Plaintiff”). Except as expressly admitted below, Defendant denies the allegations of Plaintiff’s Complaint.

CLASS ACTION COMPLAINT

1. Defendant admits the identity of Plaintiff Tina Floyd and admits that Plaintiff is in an independent-contractor relationship with FedEx Ground. Defendant lacks information sufficient to form a belief as to Plaintiff’s residency and on that basis denies the same. Defendant denies the remaining allegations in Paragraph 1 of the Complaint.
2. Defendant admits that FedEx Ground Package System, Inc., including its division, FedEx Home Delivery, is a Delaware Corporation with its principal place of business in Moon Township, Pennsylvania, located just outside of Pittsburgh. Defendant denies that it is controlled by Federal Express Corporation. Defendant admits that it is engaged in small-package information, transportation and delivery services in the

United States, including the State of Alabama. Defendant denies the remaining allegations contained in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Defendant admits that jurisdiction is proper pursuant to 28 U.S.C. § 1332(a) and 28 U.S.C. § 1332(d). Defendant denies, however, that Plaintiff is entitled to recover for any and all of her claims.

FACTS COMMON TO ALL CAUSES OF ACTION

4. Defendant denies each and every allegation contained in Paragraph 4 of the Complaint.
5. Defendant denies each and every allegation contained in Paragraph 5 of the Complaint.
6. Defendant denies each and every allegation contained in Paragraph 6 of the Complaint.
7. Defendant denies each and every allegation contained in Paragraph 7 of the Complaint.
8. Defendant denies each and every allegation contained in Paragraph 8 of the Complaint.
9. Defendant denies each and every allegation contained in Paragraph 9 of the Complaint.
10. Defendant denies each and every allegation contained in Paragraph 10 of the Complaint.
11. Defendant denies each and every allegation contained in Paragraph 11 of the Complaint, including its subparts.
12. Defendant admits that both Plaintiff and Defendant intended to create an independent contractor relationship and not an employment relationship for any purposes. Defendant alleges that the terms of the Operating Agreement speak for themselves and denies the remaining allegations contained in Paragraph 12 of the Amended Complaint.
13. Defendant alleges that the terms of the Operating Agreement speak for themselves and denies the remaining allegations contained in Paragraph 13 of the Complaint, including

its subparts.

14. Defendant alleges that the terms of the Operating Agreement speak for themselves and denies the remaining allegations contained in Paragraph 14 of the Complaint, including its subparts.
15. Defendant denies each and every allegation contained in Paragraph 15 of the Complaint.
16. Defendant denies each and every allegation contained in Paragraph 16 of the Complaint.
17. Defendant admits that it maintains certain benefit plans for its employees. Defendant specifically denies that Plaintiff and the putative class she purports to represent are employees for any purpose. Defendant further alleges that independent contractors, such as Plaintiff, are excluded under the language of the plans referenced by Plaintiff. Defendant denies the remaining allegations contained in Paragraph 17 of the Complaint.
18. Defendant admits that Plaintiff has not received benefits available only to some or all employees of FedEx Ground. Defendant denies that Plaintiff and the putative class she purports to represent are employees for any purpose and further alleges that independent contractors, such as Plaintiff, are excluded under the language of the plans referenced by Plaintiff. Defendant denies the remaining allegations contained in Paragraph 18 of the Complaint.
19. Defendant denies each and every allegation contained in Paragraph 19 of the Complaint.
20. Defendant denies each and every allegation contained in Paragraph 20 of the

Complaint.

CLASS ACTION ALLEGATIONS

21. Defendant repeats and realleges its answers to Paragraphs 1 through 20 of the Complaint as if set fully forth herein.
22. Defendant admits that Plaintiff purports to bring an action on behalf of the class described in Paragraph 22 of the Complaint, but denies that class treatment is appropriate. Defendant denies the remaining allegations contained in Paragraph 22 of the Complaint.
23. Defendant denies each and every allegation contained in Paragraph 23 of the Complaint.
24. Defendant denies each and every allegation contained in Paragraph 24 of the Complaint.
25. Defendant denies each and every allegation contained in Paragraph 25 of the Complaint, including its subparts.
26. Defendant denies each and every allegation contained in Paragraph 26 of the Complaint.
27. Defendant denies each and every allegation contained in Paragraph 27 of the Complaint.
28. Defendant denies each and every allegation contained in Paragraph 28 of the Complaint.
29. Defendant denies each and every allegation contained in Paragraph 29 of the Complaint.
30. Defendant denies each and every allegation contained in Paragraph 30 of the

Complaint.

31. Paragraph 31 of the Complaint states the relief requested by Plaintiff and therefore requires no answer. Notwithstanding this, Defendant denies that Plaintiffs are entitled to any and all of the relief requested in Paragraph 31 of the Complaint.
32. Defendant denies each and every allegation contained in Paragraph 32 of the Complaint.
33. Defendant denies each and every allegation contained in Paragraph 33 of the Complaint.
34. Defendant denies each and every allegation contained in Paragraph 34 of the Complaint, including its subparts.

FIRST CAUSE OF ACTION:
VIOLATIONS OF THE ALABAMA DECEPTIVE
TRADE PRACTICES ACT

35. Defendant repeats and realleges its answers to Paragraphs 1 through 34 of the Complaint as if set fully forth herein.
36. Defendant denies each and every allegation contained in Paragraph 36 of the Complaint.
37. Defendant denies each and every allegation contained in Paragraph 37 of the Complaint.
38. Defendant denies each and every allegation contained in Paragraph 38 of the Complaint.
39. Defendant denies each and every allegation contained in Paragraph 39 of the Complaint.
40. Defendant denies each and every allegation contained in Paragraph 40 of the

Complaint.

41. Defendant denies each and every allegation contained in Paragraph 41 of the Complaint.

42. Defendant denies each and every allegation contained in Paragraph 42 of the Complaint.

43. Defendant denies each and every allegation contained in Paragraph 43 of the Complaint.

44. Defendant denies each and every allegation contained in Paragraph 44 of the Complaint.

45. Defendant denies each and every allegation contained in Paragraph 45 of the Complaint.

46. Defendant denies each and every allegation contained in Paragraph 46 of the Complaint.

47. Defendant denies each and every allegation contained in Paragraph 47 of the Complaint.

48. Defendant denies each and every allegation contained in Paragraph 48 of the Complaint.

49. Defendant denies each and every allegation contained in Paragraph 49 of the Complaint.

SECOND CAUSE OF ACTION:
FRAUD

50. Defendant repeats and realleges its answers to Paragraphs 1 through 49 of the Complaint as if set fully forth herein.

51. Defendant denies each and every allegation contained in Paragraph 51 of the

Complaint.

52. Defendant denies each and every allegation contained in Paragraph 52 of the Complaint.

53. Defendant denies each and every allegation contained in Paragraph 53 of the Complaint.

54. Defendant denies each and every allegation contained in Paragraph 54 of the Complaint.

THIRD CAUSE OF ACTION:
FOR AN ACCOUNTING AGAINST DEFENDANT

55. Defendant repeats and realleges its answers to Paragraphs 1 through 54 of the Complaint as if set fully forth herein.

56. Defendant denies each and every allegation contained in Paragraph 56 of the Complaint.

57. Defendant denies each and every allegation contained in Paragraph 57 of the Complaint.

58. Defendant denies each and every allegation contained in Paragraph 58 of the Complaint.

FOURTH CAUSE OF ACTION:
RESCISSION OF OPERATING AGREEMENT

59. Defendant repeats and realleges its answers to Paragraphs 1 through 58 of the Complaint as if set fully forth herein.

60. Defendant denies each and every allegation contained in Paragraph 60 of the Complaint.

61. Defendant denies each and every allegation contained in Paragraph 61 of the

Complaint.

62. Defendant denies each and every allegation contained in Paragraph 62 of the Complaint.

63. Defendant denies each and every allegation contained in Paragraph 63 of the Complaint.

64. Defendant denies each and every allegation contained in Paragraph 64 of the Complaint.

65. Defendant denies each and every allegation contained in Paragraph 65 of the Complaint.

66. Defendant denies each and every allegation contained in Paragraph 66 of the Complaint.

67. Defendant denies each and every allegation contained in Paragraph 67 of the Complaint.

68. Defendant denies each and every allegation contained in Paragraph 68 of the Complaint.

69. Defendant denies each and every allegation contained in Paragraph 69 of the Complaint.

70. Defendant denies each and every allegation contained in Paragraph 70 of the Complaint.

FIFTH CAUSE OF ACTION:
DECLARATION RELIEF AGAINST DEFENDANT

71. Defendant repeats and realleges its answers to Paragraphs 1 through 70 of the Complaint as if set fully forth herein.

72. Defendant denies each and every allegation contained in Paragraph 72 of the

Complaint, including its subparts.

73. Paragraph 73 of the Complaint states the relief requested by Plaintiff and therefore requires no answer. Notwithstanding this, Defendant denies that Plaintiffs are entitled to any and all of the relief requested in Paragraph 73 of the Complaint.

SIXTH CAUSE OF ACTION:
REQUEST FOR INJUNCTIVE RELIEF

74. Defendant repeats and realleges its answers to Paragraphs 1 through 73 of the Complaint as if set fully forth herein.
75. Defendant denies each and every allegation contained in Paragraph 75 of the Complaint.
76. Defendant denies each and every allegation contained in Paragraph 76 of the Complaint.
77. Defendant denies each and every allegation contained in Paragraph 77 of the Complaint.
78. Defendant denies each and every allegation contained in Paragraph 78 of the Complaint.

FIRST WHEREFORE PARAGRAPH: The first WHEREFORE Paragraph states the relief requested by Plaintiff and therefore requires no answer. Notwithstanding this, Defendant denies that Plaintiffs are entitled to any and all of the relief requested in the first WHEREFORE Paragraph.

SECOND WHEREFORE PARAGRAPH: The second WHEREFORE Paragraph states the relief requested by Plaintiff and therefore requires no answer. Notwithstanding this, Defendant denies that Plaintiffs are entitled to any and all of the relief requested in the second WHEREFORE Paragraph.

ADDITIONAL DEFENSES

Defendant denies that Plaintiff or the purported members of the putative class are entitled to any and all of the relief contained in the Complaint, incorporates by reference the additional defenses set out below, and seeks dismissal of this action with prejudice, with Plaintiff bearing Defendant's costs and fees incurred in this litigation.

Having fully answered Plaintiff's Complaint, Defendant pleads the following defenses and/or affirmative defenses on its own behalf, without waiving any arguments that it may be entitled to assert regarding the burden of proof, legal presumptions or other legal characterizations:

FIRST ADDITIONAL DEFENSE

Failure to State a Claim

Plaintiff's Complaint fails to state a claim upon which relief may be granted as to Defendant.

SECOND ADDITIONAL DEFENSE

Lack of Particularity

The claims of the Complaint are not set forth with the particularity required under Rule 9 of the Federal Rules of Civil Procedure, and do not give sufficient notice of the nature of the claims.

THIRD ADDITIONAL DEFENSE

Statute of Limitations

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

FOURTH ADDITIONAL DEFENSE

No Class Action

Plaintiff's claims, and each of them, cannot and should not be maintained on a class action basis because those claims, and each of them, fail to meet the necessary requirements for certification as a class action, including, inter alia, numerosity, commonality, typicality, adequacy of the class representative, risk of inconsistent adjudications, risk of impairment to the interests of other class members, action or refusal to act on grounds generally applicable to the class, predominance, superiority, and similarity, and because any potential counterclaims against class members, which Defendant hereby reserves the right to raise, may render class treatment improper.

FIFTH ADDITIONAL DEFENSE

Unconstitutional Class Action

Certification of a class action under the circumstances of this case would violate the parties' rights under the United States Constitution.

SIXTH ADDITIONAL DEFENSE

No Standing

Neither Plaintiff nor the purported members of the putative class defined in the Complaint are covered by the statutes, regulations and legal theories sought to be invoked in the Complaint. Accordingly, for this and other reasons, Plaintiff's claims, or some of them, and those of the putative class, or some of them, are barred in whole or in part because Plaintiff lacks standing. Further, Plaintiff, and the purported members of the putative class, or some of them, lack standing with respect to their claims for rescission, declaratory and injunctive relief to the extent they allege to be former, not current, employees.

SEVENTH ADDITIONAL DEFENSE

Breach of Contract

Pending further discovery, Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part because Plaintiff and/or the putative class members are in breach of their agreements with Defendant.

EIGHTH ADDITIONAL DEFENSE

Estoppel

Pending further discovery, Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part because Plaintiff and the putative class members are estopped by their own conduct to claim any right to damages or other monetary relief from Defendant.

NINTH ADDITIONAL DEFENSE

Laches

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

TENTH ADDITIONAL DEFENSE

Res Judicata/Collateral Estoppel

Pending further discovery, Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred, in whole or in part, by the doctrines of res judicata, collateral estoppel, claim preclusion, and/or issue preclusion.

ELEVENTH ADDITIONAL DEFENSE

Accord and Satisfaction: Payment

Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment. Assuming, arguendo, that Plaintiff, and the purported members of the putative class defined in the Complaint, or some of them, are/were employees within the meaning of the applicable law, which Defendant specifically denies, Plaintiff's claims, or some of them, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part by the receipt of compensatory time off.

TWELFTH ADDITIONAL DEFENSE

Release

Pending further discovery, Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part by the doctrine of release because said claims have been released by the individual(s) in question.

THIRTEENTH ADDITIONAL DEFENSE

Waiver

Pending further discovery, Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part because such claims have been waived, discharged and/or abandoned.

FOURTEENTH ADDITIONAL DEFENSE

Independent Contractor Status

Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, and each of them, are barred because said individuals are/were independent

contractors, not employees, of Defendant.

FIFTEENTH ADDITIONAL DEFENSE

Unclean Hands/ In Pari Delicto

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

SIXTEENTH ADDITIONAL DEFENSE

Knowing Submission/Consent

Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part because Plaintiff and said putative class members knowingly submitted to and acquiesced in the actions alleged in the Complaint.

SEVENTEENTH ADDITIONAL DEFENSE

Unavailability of Penalties

To the extent Plaintiff or any purported member of the putative class defined in the Complaint seeks penalties, punitive damages, or exemplary damages, they fail to state facts sufficient to support such claims, and such claims are precluded by statute or violate the Due Process rights of Defendant.

EIGHTEENTH ADDITIONAL DEFENSE

Setoff and Recoupment

If any damages have been sustained by Plaintiffs, or by any purported member of the putative class defined in the Complaint, although such is not admitted hereby or herein and is

specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all obligations of Plaintiffs or putative class members owed to Defendant against any judgment that may be entered against Defendant.

NINETEENTH ADDITIONAL DEFENSE

Express Contract

Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, are barred in whole or in part because Plaintiff and said putative class members entered into an express contact with Defendant.

TWENTIETH ADDITIONAL DEFENSE

No Cause of Action for Fraud

Plaintiff's claims, and the claims of the purported members of the putative class defined in the Complaint, for fraud are barred because Defendant did not accidentally, negligently, recklessly, or intentionally mislead, or make any representations, or fail to make any disclosure it was obligated to make; Plaintiff and the purported members of the putative class defined in the Complaint, or some of them, did not reasonably rely on any representations made to them by Defendant; any representations that Defendant may have made did not play a substantial part in inducing Plaintiff and the members of the putative class, or some of them, to act as they did; and Defendant owed no affirmative legal obligation to specifically inform Plaintiff or the purported members of the putative class defined in the Complaint, or some of them, of things and matters alleged in the Complaint.

TWENTY-FIRST ADDITIONAL DEFENSE

Fraud Barred by Election of Alabama Deceptive Trade Practices Act

Plaintiff's claims, and the claims of the purported members of the putative class defined

in the Complaint, for fraud are barred because the Plaintiff's election to pursue remedies under the Alabama Deceptive Trade Practices Act ("ADTPA") serves to "exclude and be a surrender of all other rights and remedies available at common law . . . for fraud." Ala. Code § 8-19-15(a).

TWENTY-SECOND ADDITIONAL DEFENSE

Arbitration

Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, may not be litigated in court because some or all of said individuals' claims may be subject to individual mandatory, final, and binding arbitration.

TWENTY-THIRD ADDITIONAL DEFENSE

Conduct Reasonable and in Good Faith/Not Willful

Assuming, arguendo, that Plaintiff, and the purported members of the putative class defined in the Complaint, or some of them, are/were employees within the meaning of the applicable law, which Defendant specifically denies, and assuming, arguendo, that Plaintiff, and any such purported members of the putative class, or some of them, are entitled to relief under the applicable law, which Defendant specifically denies, Plaintiff's claims, and the claims of each putative class member, or some of them, are barred, in whole or in part, on the ground that Defendant acted in good faith, with a good-faith and reasonable belief that Defendant had complied fully with federal and state law, with a bona fide dispute as to the obligation of payment, and/or in conformity with, and in reliance on, written administrative regulations, orders, rulings, guidelines, approvals and/or interpretations of federal and/or State agencies. Furthermore, assuming, arguendo, that a violation of the applicable law occurred, which Defendant specifically denies, Defendant's conduct was not willful.

TWENTY-FOURTH ADDITIONAL DEFENSE

Unavailability of Equitable Relief

Plaintiff's claims, and the claims of each purported member of the putative class defined in the Complaint, or some of them, for equitable relief are precluded by acts of the Plaintiff and members of the putative class, or some of them; by Defendant's prejudicial change in position; by the existence of an adequate remedy at law; by inequitable conduct by Plaintiff and the members of the putative class, or some of them; by the lack of irreparable harm to Plaintiff and members of the putative class, or some of them; and by governing standards of equity and good conscience.

TWENTY-FIFTH ADDITIONAL DEFENSE

Preemption

Plaintiff's claims, and the claims of the purported members of the putative class defined in the Complaint, are preempted, in whole or in part, by federal law and federal regulation of interstate commerce in general and federal regulation of the transportation industry in particular (including, but not limited to, the Federal Aviation Administration Authorization Act of 1994).

TWENTY-SIXTH ADDITIONAL DEFENSE

Deduction Authorization

Assuming, arguendo, that Plaintiff, and the purported members of the putative class defined in the Complaint, or some of them, are/were employees within the meaning of the applicable law, which Defendant specifically denies, and assuming, arguendo, that Plaintiff, and any such purported members of the putative class, or some of them, are entitled to relief, which Defendant specifically denies, Plaintiff's claims, and the claims of each putative class member, or some of them, are barred, in whole or in part, on the ground that Plaintiff and the purported

members of the putative class, or some of them, voluntarily authorized the deductions in writing.

TWENTY-SEVENTH ADDITIONAL DEFENSE

ERISA Preemption

Plaintiff's claims, and the claims of the purported members of the putative class defined in the Complaint, are preempted by ERISA.

TWENTY-EIGHTH ADDITIONAL DEFENSE

Ineligibility

Plaintiff and the members of the putative class defined in the Complaint are not entitled to benefits under the terms of the employee benefit plans at issue.

TWENTY-NINTH ADDITIONAL DEFENSE

Failure to Exhaust Administrative Remedies

Plaintiff's claims, or some of them, and the claims of the purported members of the putative class defined in the Complaint, or some of them, are barred because Plaintiff and the putative class members, or some of them, have failed to exhaust administrative remedies under the employee benefit plans at issue.

THIRTIETH ADDITIONAL DEFENSE

Substantive Impropriety of Punitive Damages

Plaintiff's claims for punitive damages, or some of them, and the claims of the purported members of the putative class defined in the Complaint for punitive damages, or some of them, are barred because the conduct alleged does not create a right to punitive damages; because punitive damages are not permitted under the causes of action alleged; because the claims for punitive damages violate provisions of Title 6, Chapter 11 of the Code of Alabama; because the

claims for punitive damages violate the Alabama Constitution of 1901; because the claims for punitive damages are preempted by federal law and federal regulation of interstate commerce in general and federal regulation of the transportation industry in particular (including, but not limited to, the Federal Aviation Administration Authorization Act of 1994); and because the claims for punitive damages violate the Due Process and other clauses of the United States Constitution.

THIRTY-FIRST ADDITIONAL DEFENSE

Procedural Impropriety of Punitive Damages

Plaintiff's claims for punitive damages, or some of them, and the claims of the purported members of the putative class defined in the Complaint for punitive damages, or some of them, are barred to the extent that any award of punitive damages is made pursuant to jury instructions, an evidentiary presentation, or other procedures that do not comport with procedural standards for the award of punitive damages necessitated by the common and statutory law of Alabama, the Alabama Constitution of 1901, or the United States Constitution.

THIRTY-SECOND ADDITIONAL DEFENSE

No Private Right of Action Under the Alabama Deceptive Trade Practices Act

Plaintiff's claims under the Alabama Deceptive Trade Practices Act ("ADTPA"), and the claims of the purported members of the putative class under that Act, are barred because Plaintiff has no private right of action under the ADTPA. The ADTPA is a consumer protection statute and Plaintiff has alleged that she has a right of action under the ADTPA because she is a consumer. A "consumer," however, is defined at Ala. Code § 8-19-3(2) as "[a]ny natural person who buys goods or services for personal, family or household use." Because Plaintiff did not

buy any goods or services for personal, family, or household use, she cannot state a claim under the ADTPA as a consumer.

THIRTY-THIRD ADDITIONAL DEFENSE

No Class Action under the Alabama Deceptive Trade Practices Act

The claims of the purported members of the putative class under the Alabama Deceptive Trade Practices Act (“ADTPA”) are barred because the ADTPA provides that “[a] consumer or other person bringing an action under this chapter may not bring an action on behalf of a class” Ala. Code § 8-19-10(f).

THIRTY-FOURTH ADDITIONAL DEFENSE

Failure to Meet Prerequisite for Suit Under the Alabama Deceptive Trade Practices Act

Plaintiff’s claims under the Alabama Deceptive Trade Practices Act (“ADTPA”), and the claims of the purported members of the putative class under that Act, are barred because the ADTPA provides that “[a]t least 15 days prior to the filing of any action under this section, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be communicated to any prospective respondent.” Ala. Code § 8-19-10(e). There has been no such demand on Defendant, so Plaintiff’s claims under the ADTPA, and those of each member of the putative class, must fail.

THIRTY-FIFTH ADDITIONAL DEFENSE

No Knowing Violation of the Alabama Deceptive Trade Practices Act

Plaintiff’s claims under the Alabama Deceptive Trade Practices Act (“ADTPA”), and the claims of the purported members of the putative class under that Act, are barred because

Defendant “did not knowingly commit any act or knowingly engage in any activity which constitutes a violation of any provision” of the ADTPA. Ala. Code § 8-19-13.

THIRTY-SIXTH ADDITIONAL DEFENSE

Alabama Deceptive Trade Practices Act Barred by Election of Fraud

Plaintiff’s claims under the Alabama Deceptive Trade Practices Act (“ADTPA”), and the claims of the purported members of the putative class under that Act, are barred because Plaintiff has elected to pursue “civil remedies available at common law . . . for fraud.” That election constituted a “surrender of all rights and remedies available under” the ADTPA. Ala. Code § 8-19-15(b).

THIRTY-SEVENTH ADDITIONAL DEFENSE

Frivolous and Groundless Claims under the Alabama Deceptive Trade Practices Act

Plaintiff’s claims under the Alabama Deceptive Trade Practices Act (“ADTPA”) are frivolous and groundless in fact and in law. Accordingly, pursuant to the ADTPA, Defendant demands its costs and attorney’s fees incurred in responding to Plaintiff’s First Cause of Action. Ala. Code § 8-19-10(a)(3).

Defendant reserves the right to assert other defenses as discovery proceeds.

Dated: June 7, 2006

s/ Robert K. Spotswood

Robert K. Spotswood (SPO 001)

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**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TINA FLOYD, on behalf of herself and a class)
of similarly situated persons)

Plaintiffs,)

v.)

FEDEX GROUND PACKAGE SYSTEM,)
INC., a corporation; and FED EX GROUND)
PACKAGE SYSTEM, INC., D/B/A FEDEX)
HOME DELIVERY, INC., a corporation)

Defendants.)

Case No.:
2:06-cv-429-SRW

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2006, I electronically filed the foregoing ANSWER AND ADDITIONAL DEFENSES OF FEDEX GROUND PACKAGE SYSTEM, INC., with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Christopher D. Glover, Esq.
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DATED: June 7, 2006

/s Emily J. Tidmore
Emily J. Tidmore (VAN 041)

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