

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 02 2006

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
DEP. CLERK

DAVID HARRIS,

Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC., and FEDEX GROUND PACKAGE
SYSTEM, INC., d/b/a FEDEX HOME
DELIVERY,

Defendants.

4 - 06 CV 00000175
CIVIL ACTION NO. _____

SWW

**ANSWER AND AFFIRMATIVE DEFENSES OF FEDEX GROUND PACKAGE
SYSTEM, INC. TO PLAINTIFF'S COMPLAINT**

Defendant FEDEX GROUND PACKAGE SYSTEM, INC. ("FedEx Ground" or "Defendant"), on behalf of itself and FEDEX HOME DELIVERY, a division of FedEx Ground, and files this Answer to the Plaintiff's Complaint (the "Complaint") served by Plaintiff DAVID HARRIS ("Plaintiff"). Except as expressly admitted below, Defendant denies the allegations of Plaintiff's Complaint.

INTRODUCTION

1. Paragraph 1 of the Complaint states Plaintiff's characterization of the case and requires no answer. Defendant specifically denies that Plaintiff has any meritorious

cause of action against FedEx Ground and further denies that this claim may be maintained as a class action.

PARTIES

2. Defendant admits the identity of Plaintiff and that Plaintiff appears to have consented to appear in this action. Pending further discovery, Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 2 of the Complaint.
3. Defendant admits that Plaintiff purports to bring a class action and denies the remaining allegations contained in Paragraph 3 of the Complaint.
4. Defendant admits that it is Delaware Corporation and the FedEx Home Delivery is a division of FedEx Ground. Defendant alleges that it's principal place of business is Moon Township, Pennsylvania.

JURISDICTION AND VENUE

5. Defendant alleges that jurisdiction is proper in the United States District Court on the basis of federal question jurisdiction pursuant to 28 U.S.C. § 1331, diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332 and the Class Action Fairness Act ("CAFA") codified in 28 U.S.C. § 1332(d).
6. To the extent that the allegations contained in Paragraph 6 of the Complaint are meant to form the factual basis for asserting that the Circuit Court of Saline County, Arkansas has personal jurisdiction over Defendant, Defendant admits that it is subject to personal jurisdiction in Saline County, AR. Defendant specifically denies that Plaintiff or purported members of the putative class are or were employees of Defendant.

7. Defendant admits that Plaintiff seeks damages in excess of the federal minimum jurisdictional limits, but specifically denies that Plaintiff or purported members of the putative class have meritorious claims or are entitled to any relief.
8. Defendant alleges that venue is proper in the United States District Court and denies the remaining allegations contained in Paragraph 8 of the Complaint.

STATEMENT OF FACTS

9. FedEx Ground admits that it is a wholly-owned subsidiary of FedEx Corporation and denies the remaining allegations 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.
12. Defendant denies each and every allegation contained in Paragraph 12 of the Complaint.
13. Defendant denies each and every allegation contained in Paragraph 13 of the Complaint, including subparts.
14. Defendant denies each and every allegation contained in Paragraph 14 of the Complaint.
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 denies each and every allegation contained in Paragraph 17 of the Complaint.
18. Defendant denies each and every allegation 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.
21. Defendant denies each and every allegation contained in Paragraph 21 of the Complaint.
22. Defendant denies each and every allegation contained in Paragraph 22 of the Complaint.
23. Defendant denies each and every allegation contained in Paragraph 23 of the Complaint.

COUNT I

24. Defendant repeats and realleges its answers to Paragraphs 1 through 23 as if set fully forth herein.
25. Defendant denies each and every allegation contained in Paragraph 25 of the Complaint.

COUNT II

26. Defendant repeats and realleges its answers to Paragraphs 1 through 25 as if set fully forth herein.

27. Defendant denies each and every allegation contained in Paragraph 27 of the Complaint, including subparts.

COUNT III

28. Defendant repeats and realleges its answers to Paragraphs 1 through 27 as if set fully forth herein.

29. Defendant denies each and every allegation contained in Paragraph 29 of the Complaint.

COUNT IV

30. Defendant repeats and realleges its answers to Paragraphs 1 through 29 as if set fully forth herein.

31. Defendant denies each and every allegation contained in Paragraph 31 of the Complaint.

COUNT V

32. Defendant repeats and realleges its answers to Paragraphs 1 through 31 as if set fully forth herein.

33. Defendant denies each and every allegation contained in Paragraph 33 of the Complaint.

COUNT VI

34. Defendant repeats and realleges its answers to Paragraphs 1 through 33 as if set fully forth herein.

35. Defendant denies each and every allegation contained in Paragraph 35 of the Complaint.

COUNT VII

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

COUNT VIII

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

COUNT IX

40. Defendant repeats and realleges its answers to Paragraphs 1 through 39 as if set fully forth herein.
41. Defendant denies each and every allegation contained in Paragraph 41 of the Complaint.
42. Defendant admits that the Named Plaintiff was engaged in commerce.
43. Defendant denies each and every allegation contained in Paragraph 43 of the Complaint.

DAMAGES

44. Defendant admits that Plaintiff seeks the damages listed in Paragraph 44 and subparts of the complaint, but denies that Plaintiff is entitled to any or all of the relief sought

JURY DEMAND

Defendant admits the Plaintiff's request as stated

WHEREFORE PARAGRAPH

Defendant denies that Plaintiff is entitled to any or all of the requests sought in the WHEREFORE Paragraph of the Complaint, including subparts.

ADDITIONAL DEFENSES

Defendant denies that Plaintiffs or the purported members of their 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 Plaintiffs bearing Defendant's costs and fees of this litigation.

Having fully answered Plaintiffs' Complaint, Defendant pleads the following defenses and/or affirmative defenses on its own behalf, without waiving any arguments which 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 any Defendant.

SECOND ADDITIONAL DEFENSE

Statute of Limitations

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

THIRD 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 members of the putative class, or some of them, lack standing with respect to their claims for declaratory and injunctive relief *because they allege to be former, and not current employees.*

FOURTH ADDITIONAL DEFENSE

Breach of Contract

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

FIFTH ADDITIONAL DEFENSE

Estoppel

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

SIXTH ADDITIONAL DEFENSE

Laches

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

SEVENTH ADDITIONAL DEFENSE

Res Judicata/Collateral Estoppel

Pending further discovery, Plaintiff's claims, or some of them, and those of the purported members of the putative class, or some of them, are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

NINTH ADDITIONAL DEFENSE

Accord and Satisfaction: Payment

Plaintiff's claims, or some of them, and those of the purported members of the putative class, 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 purported members of the putative class *are/were* employees within the meaning of the applicable law, which Defendant specifically denies, Plaintiff's claims, or some of them, and those of the purported members of the putative class, or some of them, are barred in whole or in part by the receipt of compensatory time off.

TENTH ADDITIONAL DEFENSE

Release

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

ELEVENTH ADDITIONAL DEFENSE

Waiver

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

TWELFTH ADDITIONAL DEFENSE

Independent Contractor Status

Plaintiff's claims and the claims of the purported members of the putative class are barred because said individuals are/were independent contractors, and not employees of Defendant.

THIRTEENTH ADDITIONAL DEFENSE

Unclean Hands/ In Pari Delicto

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

FOURTEENTH ADDITIONAL DEFENSE

Knowing Submission/Consent

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

FIFTEENTH ADDITIONAL DEFENSE

Unavailability of Penalties

To the extent Plaintiff and the purported members of the putative class seek 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.

SIXTEENTH ADDITIONAL DEFENSE

Setoff and Recoupment

If any damages have been sustained by the Plaintiff and the purported members of the putative class, 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 the Plaintiff and purported members of the putative class owed to Defendant against any judgment that may be entered against Defendant.

SEVENTEENTH ADDITIONAL DEFENSE

Express Contract

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

EIGHTEENTH ADDITIONAL DEFENSE

Arbitration

Plaintiff's claims, or some of them, and those of the purported members of the putative class, 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.

NINETEENTH ADDITIONAL DEFENSE

Conduct Reasonable and in Good Faith/not Willful

Assuming, arguendo, that Plaintiff and purported members of the putative class, or some of them, are/were employees within the meaning of the applicable law, which Defendant specifically denies, and assuming, arguendo, that any such person is entitled to relief under the applicable law, which Defendant specifically denies, Plaintiff's claims, 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.

TWENTIETH ADDITIONAL DEFENSE

Unavailability of Equitable Relief

Plaintiff's claims, or some of them, and those of the purported members of the putative class, or some of them, for equitable relief are precluded.

TWENTY-FIRST ADDITIONAL DEFENSE

Preemption

Plaintiff's claims, or some of them, and those of the purported members of the putative class, or some of them, are preempted, in whole or in part, by federal law, and the federal regulation of interstate commerce in general and the transportation industry in particular.

TWENTY-SECOND ADDITIONAL DEFENSE

Motor Carrier Exemption

Plaintiff's claims and those of the purported members of the putative class for violation of the Fair Labor Standards Act are barred because they are subject to the Motor Carrier Exception.

TWENTY-THIRD ADDITIONAL DEFENSE

Failure to Mitigate

Plaintiffs and the purported members of the putative class have failed to mitigate their damages.

TWENTY-FOURTH ADDITIONAL DEFENSE

Failure to Exhaust Administrative Remedies

Plaintiff's claims, or some of them, and those of the purported members of the putative class, or some of them, are barred and they are not entitled to relief because they failed to exhaust their administrative remedies.

TWENTY-FIFTH ADDITIONAL DEFENSE

No Class Action or Collective Action

Plaintiff's claims, and each of them, and those of the purported members of the putative class, and each of them, cannot and should not be maintained on a class-and/or collective action basis because those claims, and each of them, fail to meet the necessary requirements for certification as a class or collective action, including, inter alia, numerosity, commonality, typicality, predominance, superiority, adequacy of the class representatives, and similarity.

TWENTY-SIXTH 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.

TWENTY-SEVENTH ADDITIONAL DEFENSE

Primary Jurisdiction

Plaintiffs' claims, or some of them, and members of the putative class, or some of them, are subject to the primary jurisdiction of the U.S. Department of Labor, the U.S. Department of Transportation, and the Arkansas Department of Labor.

Prayer

Defendant specifically denies Plaintiffs entitlement to any and all of the relief requested contained in the Complaint and incorporates by reference the affirmative defenses set out above, and seeks dismissal of this action with prejudice, with Plaintiffs bearing Defendants' costs and fees of this litigation.

Dated: February 2, 2006

Respectfully Submitted,

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BY: 

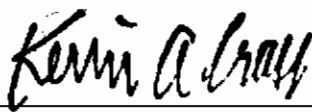
KEVIN A. CRASS

CERTIFICATE OF SERVICE

I, Kevin A. Crass, hereby certify that on February 2, 2006, the foregoing was presented to the Clerk of the Court *via* hand-delivery, for filing and uploading to the CM/ECF system, and that a copy of the document was mailed, *via* United States Postal Service, to the following counsel of record:

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