

2. Representative Plaintiff, STEPHEN RENBERG (hereinafter “RENBERG”), is an individual residing in Pasco County, Florida.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as whether Plaintiff Renberg resides in Pasco County, Florida and therefore denies the same.

3. Representative Plaintiffs, CARLSON; HARTING; HOUSE; RENBERG, UPMAN, and MOSHER are hereinafter referred to as “PLAINTIFFS”.

ANSWER: Defendant admits the identity of the Plaintiffs.

4. Defendant FEDEX GROUND PACKAGE SYSTEM, INC. (“FEG”), and its division, FedEx Home Delivery (“FHD”) (hereinafter together referred to as “Defendant” or “FEDEX GROUND” or “FEG”), is a Delaware corporation doing business as two national companies, affiliated with the Federal Express Corporation.

ANSWER: Defendant admits that FedEx Ground Package System, Inc. is a wholly-owned subsidiary of FedEx Corporation, that it is incorporated in Delaware, and that FedEx Home Delivery is a division of FedEx Ground Package System, Inc. Defendant denies the remaining allegations contained in Paragraph 4 of the Amended Complaint.

GENERAL ALLEGATIONS

5. Each Representative Plaintiff and each member of the proposed class responded to advertisements issued by FEDEX GROUND indicating that FEDEX GROUND was currently looking for independent contractors.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to what prompted Plaintiffs to seek to contract with Defendant.

6. PLAINTIFFS and each member of the proposed class attended an identical or virtually identical informational meeting where identical or substantially similar informational materials were distributed.

ANSWER: Defendant denies each and every allegation contained in Paragraph 6 of the Amended Complaint.

7. In these meetings, PLAINTIFFS were promised the opportunity to run their own business, the opportunity to grow “their” business and a proprietary interest in “their” business.

ANSWER: Defendant denies each and every allegation contained in Paragraph 7 of the Amended Complaint.

8. This opportunity was represented to PLAINTIFFS as needing little or no special or commercial grade equipment and as being appropriately operable from a light-duty van.

ANSWER: Defendant denies each and every allegation contained in Paragraph 8 of the Amended Complaint.

9. FEDEX GROUND represented that each driver would have an assigned area in which business could be “built” based on quality service.

ANSWER: Defendant denies each and every allegation contained in Paragraph 9 of the Amended Complaint.

10. The assigned area was later limited to a single “core zip code”, though even this was later randomly reassigned without consent of the Contractors.

ANSWER: Defendant denies each and every allegation contained in Paragraph 10 of the Amended Complaint.

11. FEDEX GROUND represented that as the business in each assigned area grew, the contractors would be able to man additional routes (delivery vans) within their assigned area.

ANSWER: Defendant denies each and every allegation contained in Paragraph 11 of the Amended Complaint.

12. FEDEX GROUND represented that as the business in each assigned area grew, the contractors would be able to hire employees of their own.

ANSWER: Defendant denies each and every allegation contained in Paragraph 12 of the Amended Complaint.

13. FEDEX GROUND agreed to provide certain support services not unlike a franchise situation. These support services were to have enabled the contractors to function in a uniform and efficient manner.

ANSWER: Defendant denies each and every allegation contained in Paragraph 13 of the Amended Complaint.

14. A contract was formed between each Plaintiff or proposed Class Member and Defendant.

ANSWER: Defendant admits the allegations contained in Paragraph 14 of the Amended Complaint.

15. Representative Plaintiff CARLSON, signed a contract with Defendant in October 2000.

ANSWER: Defendant admits that Plaintiff Carlson entered into an Operating Agreement with Defendant in September of 2001 and denies the remaining allegations in Paragraph 15 of the Amended Complaint.

16. Representative Plaintiff HARTING, signed a contract with Defendant in November 2000.

ANSWER: Defendant admits that Plaintiff Harting entered into an operating agreement with FedEx Ground in November 2000, but denies the remaining allegations contained in Paragraph 16 of the Amended Complaint.

17. Representative Plaintiff HOUSE, signed a contract with Defendant in March 2000.

ANSWER: Defendant admits that Plaintiff House entered into an operating agreement with FedEx Ground in March 2000, but denies the remaining allegations contained in Paragraph 17 of the Amended Complaint.

18. Representative Plaintiff RENBERG, signed a contract with Defendant in March 2000.

ANSWER: Defendant admits that Plaintiff Renberg entered into an operating agreement with Defendant in March 2004 and denies the remaining allegations contained in Paragraph 18 of the Amended Complaint.

19. Representative Plaintiff UPMAN, signed a contract with Defendant in March 2001.

ANSWER: Defendant admits that Plaintiff Upman entered into an operating agreement with FedEx Ground, but denies the remaining allegations contained in Paragraph 19 of the Amended Complaint.

20. Representative Plaintiff MOSHER signed a contract with Defendant in or about February 15, 1999.

ANSWER: Defendant admits that Plaintiff Mosher entered into an operating agreement with FedEx Ground in February 1999, but denies the remaining allegations contained in Paragraph 20 of the Amended Complaint.

21. Each Member of the proposed Class similarly signed a contract with Defendant.

ANSWER: Defendant lacks knowledge or information sufficient to form a basis of belief regarding purported members of the putative class.

22. Each Contract entered into by Representative Plaintiffs and the Class Members is identical.

ANSWER: Defendant denies each and every allegation contained in Paragraph 22 of the Amended Complaint.

23. Plaintiffs have performed on the contract to the best of their ability given the repeated breaches by FEDEX GROUND.

ANSWER: Defendant denies each and every allegation contained in Paragraph 23 of the Amended Complaint.

24. FEDEX GROUND has failed to perform the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 24 of the Amended Complaint.

25. Each Plaintiff has been damaged by FEDEX GROUND's failure to perform under the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 25 of the Amended Complaint.

26. FEDEX GROUND is obligated to provide accurate maps and routing, but has failed to do so.

ANSWER: Defendant denies each and every allegation contained in Paragraph 26 of the Amended Complaint.

27. FEDEX GROUND has unreasonably withheld new routes from the PLAINTIFFS from within their assigned area, in violation of their contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 27 of the Amended Complaint.

28. FEDEX GROUND has caused the existing routes to have more packages and delivery stops than is possible to make with a single vehicle.

ANSWER: Defendant denies each and every allegation contained in Paragraph 28 of the Amended Complaint.

29. Because it refused to grant new routes for the overburdened drivers, FEDEX GROUND has not paid the independent contractors their contracted vehicle allowance for the second vehicles the independent contractors were forced to buy and man.

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

30. FEDEX GROUND has deliberately mislabeled packages and packed them in an order so that it is difficult for contractors to deliver them.

ANSWER: Defendant denies each and every allegation contained in Paragraph 30 of the Amended Complaint.

31. FEDEX GROUND has wrongfully required the purchase of second insurance policies.

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

32. FEDEX GROUND has wrongfully refused to pay vehicle expenses that were required to be paid under the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 32 of the Amended Complaint.

33. FEDEX GROUND has wrongfully required the purchase of new equipment in violation of the contract and has wrongfully threatened to terminate the contracts of the PLAINTIFFS prematurely, that is, in the middle of the contract term.

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

34. FEDEX GROUND has designed the routes so that additional equipment is needed which is not compensated, which is in violation of the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 34 of the Amended Complaint.

35. FEDEX GROUND has wrongfully refused to pay bonus money earned under the contract.

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

36. FEDEX GROUND has denied the PLAINTIFFS any propriety interest in their core ZIP code.

ANSWER: Defendant denies each and every allegation contained in Paragraph 36 of the Amended Complaint.

37. FEDEX GROUND has randomly reassigned core ZIP codes and packages within core ZIP codes, despite the fact that the contract designates proprietary interest in territory and separately and particularly grants proprietary interest in the core ZIP codes.

ANSWER: Defendant denies each and every allegation contained in Paragraph 37 of the Amended Complaint.

38. FEDEX GROUND has wrongfully, unreasonably, and in bad faith refused to approve subcontract employees, needed in order to run non-compensated supplemental vans so that the contractors can deliver the packages which they are assigned.

ANSWER: Defendant denies each and every allegation contained in Paragraph 38 of the Amended Complaint.

39. On occasion, FEDEX GROUND has deliberately refused to assign core ZIP code packages to the proprietary contractor, as a method of punitive treatment.

ANSWER: Defendant denies each and every allegation contained in Paragraph 39 of the Amended Complaint.

40. FEDEX GROUND has required modifications to existing equipment inconsistent with the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 40 of the Amended Complaint.

41. FEDEX GROUND has wrongfully charged for costs, such as the expense of washing the trucks, which were never received by the contractors.

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

42. FEDEX GROUND deliberately denied granting additional routes to the proprietary contractors within their area, but rather, creates new routes for new drivers, thus undermining any proprietary interest which the independent contractors have under their contract with FEDEX GROUND.

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

43. FEDEX GROUND has repeatedly threatened to wrongfully terminate contracts for any complaint regarding FEDEX GROUND's numerous breaches.

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

44. FEDEX GROUND has deliberately interfered with sales of the Contractors' routes by unreasonably withholding approval of the proposed buyer, by refusing to transfer the route or even the "core ZIP code", by deliberately mis-assigning proposed drivers to different core areas prior to finalization of the contract and by refusing to allow the sale of the FEDEX GROUND trucks with the routes.

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

45. The overall effect of the numerous breaches by FEDEX GROUND, the gross disparity between representation and reality, the punitive and deliberate breaches rendered as retaliation for any complaint, and the substantial indebtedness which the contractors were required to enter into for non-marketable equipment, was to create a status not unlike that of indentured servitude.

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

DEFENDANT'S OPERATING AGREEMENT

46. Each pick-up and delivery driver (referred to by Defendant as a "P&D contractor") must sign a "Pick-Up and Delivery Contractor Operating Agreement" and Addenda thereto (referred to hereinafter as combined as "OA" or the "Operating Agreement") as a mandatory condition of employment. The date, time and place of execution of each driver's Operating Agreement is within the knowledge of Defendant as each Agreement is maintained in

the driver files described above, in the regular course of business. The Operating Agreement between each member of the plaintiff class and Defendant is the same in all material respects. The Operating Agreement between Plaintiffs and FEG and between Plaintiffs and FHD contain all of the same identical material terms with only a few, minor and insubstantial differences.

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

47. The Operating Agreement contains various statements purporting to classify Plaintiffs and PLAINTIFF CLASS MEMBERS as independent contractors. At the same time, the Operating Agreement retains to the company, *inter alia*, the right to approve or disapprove any vehicle used to provide service, the right to approve or disapprove any driver or helper who provides service, the right to approve or disapprove the purchase or sale of any vehicle, the right to assign pickup and delivery stops to each driver, the right to temporarily or permanently transfer portions of any route to another with or without compensation, the right to determine when a driver has “too few” or “too many” packages to deliver on a given day, the right to inspect vehicles and drivers for compliance with Company-promulgated appearance standards, the right to terminate the contract upon thirty days notice or whenever the company unilaterally determines that any provision of the contract has been “violated” amounting to the right to terminate at will, the right to require the use of communication equipment and the wearing of Company uniforms, the right to take a vehicle out of service, the right to review and evaluate “customer service” and to set and change standards of such service, the right to require drivers to perform service at “times” requested by customers and determined by Defendant, the right to withhold pay for certain specified expenses, the right to require purchase of specified insurance

and numerous other purchases by drivers, the right to require completion of specified paperwork, and other rights reserved to Defendant.

ANSWER: Defendant alleges that the terms of the Operating Agreements speak for themselves, and further admits that both Defendant and Contractor intend that the contractor will provide services strictly as an independent contractor, and not as an employee for Defendant for any purpose. Defendant denies the remaining allegations contained in Paragraph 47 of the Amended Complaint.

48. The Operating Agreement is and at all relevant times has been a contract of adhesion, drafted exclusively by Defendant and/or its legal counsel, with no negotiation with drivers, who are required to sign the Agreement as a condition of employment. Plaintiffs and PLAINTIFF CLASS MEMBERS are required to sign the form contract as is, without any changes made to the terms contained therein. Each year, drivers are required to sign additional Addenda which are likewise not subject to negotiation and are unilaterally drafted adhesion contract provisions. The Agreement is, and at all material times has been unlawful, unconscionable and fraudulent in form and effect.

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

49. Defendant's right of control over PLAINTIFF CLASS MEMBERS is also retained and/or exercised by Defendant as demonstrated by concealed and/or undisclosed extracontractual sources such as Company written rules and policies described above and unwritten practices which supplement and fill gaps in the written contract. Defendant employs thousands of drivers to pick up and deliver packages for its customers throughout the United States. As a condition of employment, each FEG and FHD driver is required to sign a lengthy

form contract entitled the “Pickup And Delivery Contractor Operating Agreement” that mischaracterizes each driver as an “independent contractor.” These operating agreements were designed to conceal the true nature of the relationship between FEG and its drivers: that of employer and employee.

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

50. Defendant has created and regularly updated a large number of written policies and procedures outside of the Operating Agreement that drivers are never given, but nonetheless are required to follow in their work. Defendant's written policies are contained in the FedEx Ground Manual, Operations Management Handbook, Settlement Manual and numerous other written and extra-contractual policies that are actively concealed from drivers and which Defendant fails to disclose and/or provide to drivers that govern the relationship between Defendant and the drivers. The other written handbooks and manuals and additional extracontractual sources include, but are not limited, to written rules on “contractor” termination, directives and training provided to terminal managers, written rules on driver appearance (with illustrative poster), written and oral complaint procedures, memorandum and directives to terminal management and other rules concealed from and not provided to the drivers. When drivers do not follow an FEG or FHD rule, whether disclosed or undisclosed, known or unknown, they are subject to various types of punishment, some financial and some disciplinary, up to and including contract termination and/or non-renewal. Defendant documents such so-called violations of such rules on forms referred to as “Business Discussion Notes” and retains these documents in secret driver files called “DOT” files, along with myriad other documents which are likewise concealed from and not disclosed to the drivers.

ANSWER: Defendant denies each and every allegation contained in Paragraph 50 of the Amended Complaint.

51. Despite Defendant's control over virtually all material aspects of the employment relationship, and despite the unequivocal command of applicable statutes and case law to the effect that workers such as plaintiffs are entitled to the protections due employees under the Florida law, and despite the finding of the Los Angeles Superior Court in Estrada v. FedEx Ground Package Systems, Inc. (Case # BC 210130) that these drivers are employees, Defendant continues to misclassify their drivers as independent contractors. As a result, these drivers are deprived of the rights and protections guaranteed by Florida law to employees, and they are deprived of employer-financed workers compensation coverage and unemployment insurance benefits. Furthermore, the terms and conditions of their employment contract require these drivers to purchase, operate and maintain expensive trucks for Defendant's exclusive benefit and to work under other unlawful conditions. Defendant's mischaracterization of its drivers as independent contractors, the concealment and/or non-disclosure of the true nature of the relationship between Defendant and its drivers and the attendant deprivation of substantial rights and benefits of employment are part of an on-going unlawful and fraudulent business practice by Defendant which this court should enjoin.

ANSWER: Defendant denies each and every allegation contained in Paragraph 51 of the Amended Complaint.

CLASS REPRESENTATION ALLEGATIONS

52. Counts I through VII of this action are brought by PLAINTIFFS as a class action on their own behalf and on behalf of all others similarly situated under provisions of Fed. R. Civ. P. 23 for injunctive relief and for damages in accordance with Counts I through VII herein.

ANSWER: Paragraph 52 contains Plaintiffs' characterization of their action and therefore requires no answer. To the extent that an answer is required, Defendant denies that Plaintiffs or the purported members of their putative class action have any claims against Defendant or have been harmed by Defendant and denies that class treatment of their claims is appropriate.

53. The proposed Class represented by PLAINTIFFS, and as to which each is a member, consists of all those persons who have entered "Independent Contractor" Agreements with FEDEX GROUND, for acquisition of a delivery route in the State of Florida ("Class Members" or the "Class").

ANSWER: Paragraph 53 contains Plaintiffs' definition of their putative class, and therefore requires no answer. To the extent an answer is required, FedEx Ground denies that class treatment is appropriate and denies that Plaintiffs can adequately represent the class.

54. Excluded from the proposed Class is Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, heirs, and successors, as well as any members of the judiciary who would preside over this matter.

ANSWER: Paragraph 54 contains Plaintiffs' further definition of their putative class, and therefore, requires no answer. To the extent an answer is required, FedEx Ground denies that class treatment is appropriate.

55. The proposed Class is numerous and geographically dispersed throughout the State of Florida so that joinder of all of its members is impractical.

ANSWER: Defendant denies each and every allegation contained in Paragraph 55 of the Amended Complaint.

56. The exact number of the members of the Class is not known as the records establishing that number are in the care custody and control of the Defendant, but is anticipated to number in excess of 100 (one hundred). The Class is so numerous that joinder of the individual members of the Class herein is impractical.

ANSWER: Defendant denies each and every allegation contained in Paragraph 56 of the Amended Complaint, except that Defendant admits that Plaintiffs' definition of their putative class encompasses over 100 people.

57. There are common questions of law and fact in this action that relate to and affect the rights of each member of the Class that predominate over any individual issues, and the relief sought is common to the members within the Class. The claims of the Class Members arise from the same events or patterns or practices and are based on the same legal theories.

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

58. The claims advanced by the PLAINTIFFS are typical of the claims of each member of the Class in that the PLAINTIFFS are "Independent Contractors" of Defendant and have paid for FEDEX GROUND's inadequate and misrepresented delivery routes and further in that Plaintiffs invested time and funds in obtaining their position, but suffer Defendant's past and continued demands for immediate addendums to the contracts, refusal to recognize proprietary interest, refusal to comply with their contracts, insistence on delineating some routes with excessive stops, and continued misleading of independent contractors to lure them into maintaining a relationship with FEDEX GROUND, in particular, given the vulnerability of the contractors who have outstanding loans to FEDEX GROUND, as set out above is against public policy and otherwise unfair and inequitable.

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

59. The PLAINTIFFS will fairly and adequately protect and represent the interest of each member of the Class, seek recovery on their own behalf and on behalf of all the members of the Class, and the PLAINTIFFS agree to act as class representative for the Class. Additionally, PLAINTIFFS are committed to protect vigorously the rights of the Class and will do so fairly and adequately.

ANSWER: Defendant denies each and every allegation contained in Paragraph 59 of the Amended Complaint.

60. PLAINTIFFS have no interests which are adverse to the interests of the Class.

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

61. As to all claims for damages set out herein below under Fed. R. Civ. P. 23(b)(1)(A) or (B), the prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendant or would, as a practical matter, be dispositive of the interests of other Class Members not a party to such adjudications or would impede the ability of other Class Members to protect their interests.

ANSWER: Defendant denies each and every allegation contained in Paragraph 61 of the Amended Complaint.

62. As to all claims for injunctive relief set out herein below and pursuant to Fed. R. Civ. P. 23(b)(2), Defendant has acted or refused to act on grounds generally applicable to all

members of the Class, thereby making final injunctive relief concerning the Class as a whole appropriate, in that a ruling as to PLAINTIFFS will affect all members of the Class.

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

63. As to all claims for damages set out herein below under Fed. R. Civ. P. 23(b)(3), the questions of law and fact common to the claims of the PLAINTIFFS and the claims of each member of the Class as a whole predominate over any questions of law or fact affecting only individual members of the Class, and class representation is superior to all other available methods for the fair and efficient adjudication of this controversy.

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

64. Notice, as and if required, can be provided to Class Members by U.S. Mail or published notice or a combination thereof in the manner commonly used for complex actions of this type.

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

65. It is desirable to concentrate the litigation of all claims of PLAINTIFFS and the members of the Class in this forum.

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

66. Absent a class action, PLAINTIFFS and the Class will continue to suffer from and be damaged by the conduct of Defendant.

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

67. Potential class management difficulties are insignificant weighed against the impossibility of affording adequate relief to the PLAINTIFFS and members of the Class through numerous separate actions.

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

COUNT I
(Violation of Deceptive and Unfair Trade Practices Acts - Damages)

68. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 67 of the Amended Complaint as if set fully forth herein. Plaintiffs' reallegation of Paragraphs 68 and 69 is circular and nonsensical, and on that basis Defendant also denies the same.

69. This is an action for damages that exceed \$15,000.00.

ANSWER: Defendant admits that Plaintiffs seek damages in excess of \$15,000.00 but denies that damages are proper.

70. This is an action for damages pursuant to the Deceptive and Unfair Trade Practices Acts of the state of Florida (hereinafter "FDUTPA").

ANSWER: Paragraph 70 contains Plaintiffs' characterization of their action and therefore requires no answer. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 70 of the Amended Complaint.

71. This count is brought by PLAINTIFFS individually and on behalf of all others similarly situated.

ANSWER: Paragraph 71 contains Plaintiffs' characterization of their action and therefore requires no answer. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 71 of the Amended Complaint.

72. PLAINTIFFS and the Class are "legitimate business enterprises" as defined in FDUTPA. Furthermore, many members of the Class have no prior business experience and are related to FEDEX GROUND as though they were consumers.

ANSWER: The first sentence in Paragraph 72 of the Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained in the first sentence of Paragraph 72 of the Amended Complaint. Defendant also denies each and every allegation contained in the second sentence of Paragraph 72 of the Amended Complaint.

73. The providing of the Service constitutes "trade or commerce" under FDUTPA.

ANSWER: Paragraph 73 of the Amended Complaint contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 73 of the Amended Complaint.

74. The actions of FEDEX GROUND in advertising, contracting and soliciting independent contractors and otherwise representing the nature of the independent contract relationship, though knowing, *inter alia*, that no real proprietary interest would be allowed to exist, that the represented profitability of the enterprise was impossible and grossly unrealistic, that the nature of the relationship would be treated as though it were a master/servant relationship rather than an "arms length" transaction, that additional equipment would be demanded at will, that the loans extended by FEDEX GROUND to the contractors would result in profound vulnerability, that any attempt by PLAINTIFFS to sell their "business" would be

subject to onerous approval and restriction and knowing that it would therefore be extremely difficult for said contractors to leave their contracts, is an unconscionable act or practice, and/or an unfair or deceptive act or practice in the conduct of any trade or commerce in violation of FDUTPA.

ANSWER: Defendant denies each and every allegation contained in Paragraph 74 of the Amended Complaint.

75. By the misrepresentations and non-disclosure of material facts alleged above, FEDEX GROUND deceived and continues to deceive existing and new FEDEX GROUND Independent Contractors. This conduct constitutes unlawful, unfair, deceptive and fraudulent business practice within the meaning of FDUTPA.

ANSWER: Defendant denies each and every allegation contained in Paragraph 75 of the Amended Complaint.

76. As a result of Defendant's misrepresentations, PLAINTIFFS and the Class have suffered damages.

ANSWER: Defendant denies each and every allegation contained in Paragraph 76 of the Amended Complaint.

77. Pursuant to FDUTPA, PLAINTIFFS and the Class are entitled to receive actual damages. Plaintiffs may also be awarded reasonable attorney's fees and court costs.

ANSWER: Defendant denies each and every allegation contained in Paragraph 77 of the Amended Complaint.

78. PLAINTIFFS have incurred attorney's costs and legal fees in bringing this action.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiffs have incurred fees in this action and therefore denies the same.

WHEREFORE, Plaintiffs and the Class pray that the conduct of FEDEX GROUND be declared to be in violation of FDUTPA and that it is likely that Defendant would continue to violated FDUTPA in the future; and that the Court enter judgment for damages, attorney's fees and costs, and for such other and further relief as the Court may deem just and proper.

ANSWER: Defendant denies that Plaintiffs and the purported members of their putative class are entitled to any and all relief stated in the WHEREFORE clause immediately following Paragraph 78 of the Amended Complaint.

COUNT II
(Violation of Deceptive and Unfair Trade Practices Acts - Injunction)

79. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 69 of the Amended Complaint as if set fully forth herein.

80. This is an action for damages pursuant to the Deceptive and Unfair Trade Practices Acts of Florida (hereinafter "FDUTPA").

ANSWER: Paragraph 80 contains Plaintiffs' characterization of their action and therefore requires no answer. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 80 of the Amended Complaint.

81. This count is brought by PLAINTIFFS individually and on behalf of all others similarly situated.

ANSWER: Paragraph 81 contains Plaintiffs' characterization of their action and therefore requires no answer. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 81 of the Amended Complaint.

82. PLAINTIFFS and the Class are “legitimate business enterprises” as defined in FDUTPA. Furthermore, many members of the Class have no prior business experience and are related to FEDEX GROUND as though they were consumers.

ANSWER: The first sentence in Paragraph 82 of the Amended Complaint states a legal conclusion to which no answer is required. To the extent an answer is required, Defendant denies each and every allegation contained in the first sentence of Paragraph 82 of the Amended Complaint. Defendant also denies each and every allegation contained in the second sentence of Paragraph 82 of the Amended Complaint.

83. The providing of the Service constitutes “trade or commerce” under FDUTPA.

ANSWER: Paragraph 83 of the Amended Complaint contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 83 of the Amended Complaint.

84. The actions of FEDEX GROUND in advertising, contracting and soliciting independent contractors and otherwise representing the nature of the independent contract relationship, though knowing, *inter alia*, that no real proprietary interest would be allowed to exist, that the represented profitability of the enterprise was impossible and grossly unrealistic, that the nature of the relationship would be treated as though it were a master/servant relationship rather than an “arms length” transaction, that additional equipment would be demanded at will, that the loans extended by FEDEX GROUND to the contractors would result in profound vulnerability, and knowing that it would therefore be extremely difficult for said contractors to leave their contracts, is an unconscionable act or practice, and/or an unfair or deceptive act or practice in the conduct of any trade or commerce in violation of FDUTPA.

ANSWER: Defendant denies each and every allegation contained in Paragraph 84 of the Amended Complaint.

85. FEDEX GROUND's past and continued demand for immediate addendums to the contracts, refusal to recognize proprietary interest, refusal to comply with their contracts, insistence on delineating some routes with excessive stops, and continued misleading of independent contractors to lure them into maintaining a relationship with FEDEX GROUND, in particular, given the vulnerability of the contractors who have outstanding loans to FEDEX GROUND, as set out above is against public policy and otherwise unfair and inequitable.

ANSWER: Defendant denies each and every allegation contained in Paragraph 85 of the Amended Complaint.

86. FEDEX GROUND continues to contract, misrepresent opportunities; demand accommodations inconsistent with the contracts; refuse to abide by the contracts; deliberately misassign "proprietary" deliveries; mismanage routing and packing as a punitive measure for complaints; demand acceptance of interim addendums and otherwise threaten "independent contractors"; and therefore continues to violate the FDUTPA and is likely to violate the Act in the future.

ANSWER: Defendant denies each and every allegation contained in Paragraph 86 of the Amended Complaint.

87. PLAINTIFFS have incurred attorney's costs and legal fees in bringing this action.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiffs have incurred fees in this action and therefore denies the same.

WHEREFORE, Plaintiffs and the Class pray that the conduct of FEDEX GROUND be declared to be in violation of FDUTPA and that it is likely that Defendant would continue to

violated FDUTPA in the future; and that the Court enter judgment: (I) enjoining DEFENDANT from retaliating against the independent contractors who are seeking to enforce their rights in this action; (ii) continuing to market to prospective contractors with misrepresentations regarding income potential; equipment requirements, proprietary interests and independence; (iii) awarding attorney's fees and costs, and (iv) for such other and further relief as the Court may deem just and proper.

ANSWER: Defendant denies that Plaintiffs and the purported members of their putative class are entitled to any and all relief stated in the WHEREFORE clause immediately following Paragraph 88 of the Amended Complaint.

COUNT III
(False Information Negligently Supplied)

88. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 69 of the Amended Complaint as if set fully forth herein.

89. This is an action for damages that exceed \$15,000.00.

ANSWER: Defendant denies that damages are proper and further denies that any damages would exceed \$15,000.00.

90. This Count is brought by PLAINTIFFS individually and on behalf of all others similarly situated.

ANSWER: Paragraph 90 contains Plaintiffs' characterization of their action and therefore requires no answer. To the extent an answer is required, Defendant denies each and every allegation contained in Paragraph 90 of the Amended Complaint.

91. In connection with selling and contracting for the Service with PLAINTIFFS and Class Members, FEDEX GROUND and its agents represented falsely that the actions of FEDEX GROUND in advertising, contracting and soliciting independent contractors and otherwise representing the nature of the independent contract relationship, though knowing, *inter alia*, that no real proprietary interest would be allowed to exist; that the FEDEX GROUND Home Delivery Independent Contractor routes would be vastly different than represented to PLAINTIFFS; that the represented profitability of the enterprise was impossible and grossly unrealistic; that the nature of the relationship would be treated as though it were a master/servant relationship rather than an “arms length” transaction; that additional equipment would be demanded at will; that the loans extended by FEDEX GROUND to the contractors would result in profound vulnerability; that any attempt by PLAINTIFFS to sell their “business would be subject to onerous approval and restriction and knowing that it would therefore be extremely difficult for said contractors to leave their contracts; that additional equipment would be demanded on a periodic basis; that amendments and addendums would be demanded at whim by FEDEX GROUND; that the potential profitability of the situation had been grossly misstated; and that FEDEX GROUND would use arbitrary guidelines as to performance or nonperformance under the contract to enforce compliance and acquiescence with any demanded modification amendment as further breach of the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 91 of the Amended Complaint.

92. At the time the above false representations were made, FEDEX GROUND knew or should have known that no real proprietary interest would be allowed to exist; that the FEDEX GROUND Contractor routes would be vastly different than represented to PLAINTIFFS; that the

represented profitability of the enterprise was impossible and grossly unrealistic; that the nature of the relationship would be treated as though it were a master/servant relationship rather than an “arms length” transaction; that additional equipment would be demanded at will; that the loans extended by FEDEX GROUND to the contractors would result in profound vulnerability; that any attempt by PLAINTIFFS to sell their “business would be subject to onerous approval and restriction and knowing that it would therefore be extremely difficult for said contractors to leave their contracts; that additional equipment would be demanded on a periodic basis; that amendments and addendums would be demanded at whim by FEDEX GROUND; that the potential profitability of the situation had been grossly misstated; and that FEDEX GROUND would use arbitrary guidelines as to performance or non-performance under the contract to enforce compliance and acquiescence with any demanded modification amendment as further breach of the contract.

ANSWER: Defendant denies each and every allegation contained in Paragraph 92 of the Amended Complaint.

93. The above false representations were made by FEDEX GROUND negligently and were made for the guidance and inducement of PLAINTIFFS and the Class Members in connection with selling the Service.

ANSWER: Defendant denies each and every allegation contained in Paragraph 93 of the Amended Complaint.

94. As a direct and proximate result of FEDEX GROUND’s false representations, PLAINTIFFS and the class have suffered pecuniary loss including lost profit.

ANSWER: Defendant denies each and every allegation contained in Paragraph 94 of the Amended Complaint.

95. PLAINTIFFS have incurred attorney's costs and legal fees in bringing this action.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiffs have incurred fees in this action and therefore denies the same.

WHEREFORE, Plaintiffs and the Class pray that judgment be entered against Defendant for such amount as the Court may determine, plus prejudgment interest, for attorney's fees, for costs of this action, and for such other and further relief as the Court may deem just in the premises.

ANSWER: Defendant denies that Plaintiffs and the purported members of their putative class are entitled to any and all relief stated in the WHEREFORE clause immediately following Paragraph 95 of the Amended Complaint.

COUNT IV
(Breach Of Contract)

96. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 69 of the Amended Complaint as if set fully forth herein.

97. This is an action for damages that exceed \$15,000.00.

ANSWER: Defendant denies that damages are proper and further denies that any damages would exceed \$15,000.00.

98. PLAINTIFFS and the Class and Defendant entered contracts.

ANSWER: Defendant admits that Defendants entered into contracts with Plaintiffs, but denies that class treatment is appropriate.

99. PLAINTIFFS and the Class honored their obligations under the contracts.

ANSWER: Defendant denies each and every allegation contained in Paragraph 99 of the Amended Complaint.

100. Defendant FEDEX GROUND did not honor its obligations under the contracts and has breached the contract uniformly by the conduct stated in paragraphs 1 through 69, above.

ANSWER: Defendant denies each and every allegation contained in Paragraph 100 of the Amended Complaint.

101. PLAINTIFFS have been damaged as a result of Defendant's refusal to honor the contract, to wit, PLAINTIFFS have incurred economic damages such as out-of-pocket expenses and have incurred substantial lost profit and have been denied the benefit of their bargain.

ANSWER: Defendant denies each and every allegation contained in Paragraph 101 of the Amended Complaint.

102. PLAINTIFFS have incurred attorney's costs and legal fees in bringing this action.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiffs have incurred fees in this action.

WHEREFORE PLAINTIFFS and the Class pray this Honorable Court award damages for Defendant's breach of contract including economic damages, out-of-pocket costs, lost profit and the benefit of their bargain, attorney's fees and legal costs, and any other relief this Court deems equitable.

ANSWER: Defendant denies that Plaintiffs and the purported members of their putative class are entitled to any and all relief stated in the WHEREFORE clause immediately following Paragraph 102 of the Amended Complaint.

COUNT V
(Fraud)

103. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 69 of the Amended Complaint as if set fully forth herein.

104. PLAINTIFFS and the class they represent were purportedly hired by DEFENDANT to work as “independent contractors” pursuant to the terms of the OA described above. In fact, DEFENDANT knew or should have known, at all times, that the “independent contractor” classification in the Operating Agreement was improper and that PLAINTIFFS and all persons similarly situated were “employees” entitled to the benefits and protections of all laws enacted for employees. PLAINTIFFS are informed, believe and on that basis allege, that through the OA DEFENDANT intentionally misled PLAINTIFFS and the class they represent as to their employment status, or made such representations to PLAINTIFFS and PLAINTIFF CLASS MEMBERS recklessly and/or negligently, and deliberately concealed from and/or failed to disclose to the pick-up and delivery drivers the extra contractual sources (including but not limited to the FedEx Ground Manual, Operation Management Handbook and Settlement Manual, other policies and secret driver files described above) that defined the employment relationship between PLAINTIFFS and DEFENDANT, all for the purpose of realizing unjust profits from PLAINTIFFS’ work and/or to avoid paying for its operating costs and payroll taxes to increase its competitiveness.

ANSWER: Defendant denies each and every allegation contained in Paragraph 104 of the Amended Complaint.

105. At all material times, DEFENDANT either knew, or should have known, that the material representation made to PLAINTIFFS in the OA concerning their employment status, and the concealment and/or non-disclosure of material facts to PLAINTIFFS concerning their employment status and PLAINTIFFS’ corresponding obligation to assume responsibility for all

of their “own” employment-related expenses including but not limited to purchasing or leasing, operating and maintaining expensive trucks were false and fraudulent.

ANSWER: Defendant denies each and every allegation contained in Paragraph 105 of the Amended Complaint.

106. At all material times, DEFENDANT intended to and did induce PLAINTIFFS and the class they represent to reasonably and justifiably rely to their detriment on the false and fraudulent representations made to them by DEFENDANT in the OA concerning their employment status and obligation to assume responsibility for all of employment related expenses including but not limited to purchasing or leasing, operating and maintaining expensive trucks and suffered damage as a direct and proximate result.

ANSWER: Defendant denies each and every allegation contained in Paragraph 106 of the Amended Complaint.

107. By its aforesaid conduct, DEFENDANT is guilty of oppression, fraud and malice in violating Plaintiff rights and protections guaranteed by Florida state law and other applicable law.

ANSWER: Defendant denies each and every allegation contained in Paragraph 107 of the Amended Complaint.

WHEREFORE, PLAINTIFFS and the Class pray that judgment be entered against DEFENDANT for such amount as the Court may determine, plus prejudgment interest, for attorney’s fees, for costs of this action, and for such other and further relief as the Court may deem just in the premises

ANSWER: Defendant denies that Plaintiffs and the purported members of their putative class are entitled to any and all relief stated in the WHEREFORE clause immediately following Paragraph 107 of the Amended Complaint.

COUNT VI
(Rescission Of Contract)

108. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 69 of the Amended Complaint as if set fully forth herein.

109. Despite the express terms of the Operating Agreement, PLAINTIFFS' relationship with DEFENDANT satisfies every aspect of the test for employment, and not for independent contractor status.

ANSWER: Defendant denies each and every allegation contained in Paragraph 109 of the Amended Complaint.

110. DEFENDANT controls virtually every aspect of the PLAINTIFFS' work and earnings, as set forth in the general allegations hereof at paragraphs 1 through 69.

ANSWER: Defendant denies each and every allegation contained in Paragraph 110 of the Amended Complaint.

111. Despite this control and the actual status of the drivers as employees, DEFENDANT mischaracterizes the PLAINTIFFS as independent contractors. As a result, these drivers must pay substantial sums of their own money for work-related expenses, including but not limited to the purchase or lease of vehicles meeting company specifications, and all costs of operating, insuring and maintaining those vehicles.

ANSWER: Defendant denies each and every allegation contained in Paragraph 111 of the Amended Complaint.

112. The Operating Agreement illegally and unfairly advantages DEFENDANT, by mischaracterizing the status of the PLAINTIFFS in that DEFENDANT evades employment related obligations, such as social security contributions, workers' compensation coverage, and state disability and unemployment compensation, illegally shifting the expense of workers' compensation coverage and other expenses to PLAINTIFFS.

ANSWER: Defendant denies each and every allegation contained in Paragraph 112 of the Amended Complaint.

113. The Operating Agreement between DEFENDANT and each PLAINTIFF and member of the class is void as against public policy and therefore unenforceable, as failing to recognize the employment status of the PLAINTIFFS and the Class Members, and therefore denying them the legally cognizable benefits of employment.

ANSWER: Defendant denies each and every allegation contained in Paragraph 113 of the Amended Complaint.

114. The Operating Agreement between DEFENDANT and each PLAINTIFF is an unconscionable contract of adhesion, which is unenforceable as contrary to the public interest, policy and law.

ANSWER: Defendant denies each and every allegation contained in Paragraph 114 of the Amended Complaint.

115. The Operating Agreement illegally shifts the burden of certain costs that an employer must pay.

ANSWER: Defendant denies each and every allegation contained in Paragraph 115 of the Amended Complaint.

116. While acting on the direct instruction of DEFENDANT and discharging their duties for DEFENDANT, PLAINTIFFS and the Class Members incurred expenses for, *inter alia*, the purchase or lease, maintenance, operating costs and adornment of vehicles; insurance; and uniforms. PLAINTIFFS and the Class Members incurred these substantial expenses as a direct result of performing their job duties.

ANSWER: Defendant denies each and every allegation contained in Paragraph 116 of the Amended Complaint.

117. By misclassifying its employees as “independent contractors,” and further by contractually requiring those employees to pay DEFENDANT’s own expenses, DEFENDANT has been unjustly enriched.

ANSWER: Defendant denies each and every allegation contained in Paragraph 117 of the Amended Complaint.

118. As a direct and proximate result of DEFENDANT’s conduct, DEFENDANT has received substantial benefits to which it had no entitlement, at PLAINTIFFS and the Class Members’ expense, including lost profits, self-employment taxes, premiums for insurance to replace workers compensation and disability benefits, business expenses, compensation of replacement workers, and other expenses.

ANSWER: Defendant denies each and every allegation contained in Paragraph 118 of the Amended Complaint.

119. PLAINTIFFS are entitled to compensation for all of the business expenses they were illegally required by DEFENDANT to bear, for all of the employment taxes,

unemployment compensation and workers compensation the DEFENDANT should have but did not pay, and PLAINTIFFS are entitled to the quantum meruit value of their services as employees.

ANSWER: Defendant denies each and every allegation contained in Paragraph 119 of the Amended Complaint.

WHEREFORE, PLAINTIFFS respectfully request that the Court enter judgment in their favor and against the DEFENDANT rescinding the Operating Agreement, and awarding restitution compensatory damages, punitive damages, consequential damages, declaratory judgment and injunctive relief, costs, counsel fees, pre- and post-judgment interest, and such further relief as may be just and proper.

ANSWER: Defendant denies that Plaintiffs and the purported members of their putative class are entitled to any and all relief stated in the WHEREFORE clause immediately following Paragraph 119 of the Amended Complaint.

COUNT VII
(Declaratory Judgment)

120. PLAINTIFFS reallege paragraphs 1 through 69 above as if fully set forth herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 69 of the Amended Complaint as if set fully forth herein.

121. An actual controversy has arisen between the PLAINTIFFS and PLAINTIFF CLASS MEMBERS, on the one hand, and DEFENDANT, on the other hand, relating to the following matters:

a. Whether DEFENDANT has unlawfully misclassified PLAINTIFFS and Plaintiff Class Members as independent contractors, and have thus denied PLAINTIFFS and Plaintiff Class Members of the common benefits of employee status, such as

- i. wages;
- ii. holiday pay;
- iii. workers' compensation;
- iv. unemployment insurance;
- v. contributions to DEFENDANT'S retirement plan;
- vi. income tax withholding; and
- vii. meal, break and rest periods.

b. What amounts PLAINTIFFS and PLAINTIFF CLASS MEMBERS are entitled to receive in compensation and benefits.

c. What amounts PLAINTIFFS and PLAINTIFF CLASS MEMBERS are entitled to receive in interest on unpaid compensation due and owing.

d. What amounts PLAINTIFFS and PLAINTIFF CLASS MEMBERS are entitled to receive from DEFENDANT in statutory penalties and interest.

ANSWER: Defendant denies each and every allegation contained in Paragraph 121 of the Amended Complaint, including its subparts. To the extent Plaintiffs seek relief under Defendant's retirement plan, such relief is preempted by ERISA.

WHEREFORE, PLAINTIFFS respectfully request that the Court enter judgment in their favor declaring DEFENDANT'S practices as heretofore alleged to be unlawful and which provides for recovery of all sums determined by this Court to be owed by DEFENDANT to the PLAINTIFFS and PLAINTIFF CLASS MEMBERS.

ANSWER: Defendant that Plaintiffs are entitled to any and all relief requested in the WHEREFORE paragraph immediately following Paragraph 121.

DEMAND FOR JURY TRIAL

PLAINTIFFS and the Class herewith demand a trial by jury of all issues so triable.

ANSWER: Defendant admits Plaintiffs' request as stated.

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 Amended 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' Amended 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

Plaintiffs' Amended Complaint fails to state a claim upon which relief may be granted as to any Defendant.

SECOND ADDITIONAL DEFENSE

Statute of Limitations

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

THIRD ADDITIONAL DEFENSE

No Class Action

Plaintiffs' 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 or collective action, including, inter alia, numerosity, commonality, typicality, predominance, superiority, adequacy of the class representatives, and similarity.

FOURTH 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.

FIFTH ADDITIONAL DEFENSE

No Standing

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

SIXTH ADDITIONAL DEFENSE

Breach of Contract

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

SEVENTH ADDITIONAL DEFENSE

Estoppel

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

EIGHTH ADDITIONAL DEFENSE

Laches

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

NINTH ADDITIONAL DEFENSE

Res Judicata/Collateral Estoppel

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

TENTH ADDITIONAL DEFENSE

Accord and Satisfaction: Payment

Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended Complaint, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment. Assuming, arguendo, that Plaintiffs, and the purported members of the putative class defined in the Amended Complaint, or some of them, are/were

employees within the meaning of applicable law, which Defendant specifically denies, Plaintiffs' claims, or some of them, are barred in whole or in part by the receipt of balancing time off.

ELEVENTH ADDITIONAL DEFENSE

Release

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

TWELFTH ADDITIONAL DEFENSE

Waiver

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

THIRTEENTH ADDITIONAL DEFENSE

Independent Contractor Status

Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended Complaint, and each of them, are barred because said individuals are/were independent contractors, and not employees of Defendant.

FOURTEENTH ADDITIONAL DEFENSE

Unclean Hands/ In Pari Delicto

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

FIFTEENTH ADDITIONAL DEFENSE

Knowing Submission/Consent

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

SIXTEENTH ADDITIONAL DEFENSE

Unavailability of Penalties

To the extent Plaintiffs or any purported member of the putative class defined in the Amended Complaint 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.

SEVENTEENTH 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 Amended 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 the Plaintiffs or putative class members owed to Defendant against any judgment that may be entered against Defendant.

EIGHTEENTH ADDITIONAL DEFENSE

Express Contract

Plaintiffs' claims, and the claims of each purported member of the putative class defined

in the Amended Complaint, or some of them, are barred in whole or in part because they entered into an express contract with Defendant.

NINETEENTH ADDITIONAL DEFENSE

Arbitration

Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended 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.

TWENTIETH ADDITIONAL DEFENSE

Conduct Reasonable and in Good Faith/not Willful

Assuming, arguendo, that Plaintiffs, and the purported members of the putative class defined in the Amended Complaint, or some of them, are/were employees within the meaning of applicable law, which Defendant specifically denies, and assuming, arguendo, that any such Plaintiffs, and any such purported members of the putative class, or some of them, are entitled to relief under applicable law, which Defendant specifically denies, Plaintiffs' 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 applicable law occurred, which Defendant specifically denies, Defendant's conduct was not willful.

TWENTY-FIRST ADDITIONAL DEFENSE

Unavailability of Equitable Relief

Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended Complaint, or some of them, for equitable relief are precluded.

TWENTY-SECOND ADDITIONAL DEFENSE

Preemption

Plaintiffs' claims, and the claims of the purported members of the putative class described in the Amended Complaint, 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-THIRD ADDITIONAL DEFENSE

Deduction Authorization

Assuming, arguendo, that Plaintiffs, and the purported members of the putative class defined in the Amended Complaint, or some of them, are/were employees within the meaning of applicable law, which Defendant specifically denies, and assuming, arguendo, that any such Plaintiffs, and any such purported members of the putative class, or some of them, are entitled to relief, which Defendant specifically denies, Plaintiffs' claims, and the claims of each putative class member, or some of them, are barred, in whole or in part, on the ground that Plaintiffs and the purported members of the putative class, or some of them, voluntarily authorized the deductions in writing prior to accrual of the debts in issue, and/or that authorization was not required by state law under the facts alleged.

TWENTY-FOURTH ADDITIONAL DEFENSE

ERISA Preemption

Plaintiffs' claims, and the claims of the purported members of the putative class

described in the Complaint, are preempted by ERISA.

TWENTY-FIFTH ADDITIONAL DEFENSE

Ineligibility

Plaintiffs and the members of the putative class are not entitled to benefits under the terms of the employee benefit plans at issue.

TWENTY-SIXTH ADDITIONAL DEFENSE

Failure to Exhaust Remedy

Plaintiffs' claims, or some of them, and members of the putative class, or some of them, are barred because they have failed to exhaust administrative remedies under the employee benefit plans at issue and/or under applicable administrative rules.

TWENTY-SEVENTH ADDITIONAL DEFENSE

Failure to Offer to Return Consideration

Plaintiffs' claims, or some of them, and members of the putative class, or some of the them, are precluded from seeking rescission because they have failed to offer to return the consideration they have received under the contracts they seek to rescind.

TWENTY-EIGHTH 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 Florida Department of Labor.

TWENTY-NINTH ADDITIONAL DEFENSE

Failure to Plead With Specificity

Plaintiffs' claims and those of the members of the putative class for fraud are barred

because Plaintiffs have failed to plead fraud with sufficient particularity.

THIRTIETH AFFIRMATIVE DEFENSE

Judicial Deference

The interpretations of the governing plan documents and the decision by Defendant to deny benefits to Plaintiffs and the purported members of the putative class described in the Complaint, or some of them, were within Defendant's reasonable discretionary authority and may not be overturned.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Fraud Allegations Insufficient

To the extent that the Plaintiffs are attempting to allege fraud against the Defendant, such claims do not satisfy Rule 9 (b) and (c) of the Federal or Rule 1.120(b) of the Florida Rules of Civil Procedure.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Lack of Reasonable Reliance

To the extent Plaintiffs are attempting to allege fraud against the Defendant, such claims are barred because to the extent alleged misrepresentations were made by Defendant, which Defendant specifically denies, Plaintiffs did not reasonably rely on the alleged misrepresentations as a matter of law.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Statute of Frauds

Pending further discovery, Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended Complaint, or some of them, are barred in whole or in part by the doctrine of the statute of frauds. Defendant reserves the right to assert by

supplemental pleading any affirmative defenses or counterclaim which matures, or is acquired by any of them, subsequent to the filing of this Answer.

THIRTY-FOURTH ADDITIONAL DEFENSE

Failure to Mitigate

Assuming, *arguendo*, while vigorously denying, that Plaintiffs and members of the putative class have suffered any economic damages as a result of defendant's actions, Plaintiffs and putative class members have a duty to mitigate damages and, upon information and belief have failed to do so.

PRAYER

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

Dated: December 18, 2006

Respectfully submitted,

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Defendants' Liaison and Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2006, I filed the foregoing ***ANSWER AND ADDITIONAL DEFENSES OF FEDEX GROUND PACKAGE SYSTEM, INC. TO PLAINTIFFS' THIRD AMENDED CLASS ACTION COMPLAINT*** with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I further certify that on the 18th day of December, 2006, I mailed the foregoing document by U.S. Mail on the following party of record:

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By: _____ s/Thomas J. Brunner