

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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In re FEDEX GROUND PACKAGE)	
SYSTEM, INC., EMPLOYMENT)	Case No. 3:05-MD-527 RM
PRACTICES LITIGATION)	(MDL 1700)
)	
-----)	CHIEF JUDGE MILLER
THIS DOCUMENT RELATES TO:)	MAGISTRATE NUECHTERLEIN
)	
<i>Theodore Holloway, Jr. v. FedEx Ground</i>)	
<i>Package System, Inc.,</i>)	
Civil No. 3:08-cv-00087-RLM-CAN (MD))	
-----)	

AMENDED ANSWER AND ADDITIONAL DEFENSES OF DEFENDANT FEDEX GROUND PACKAGE SYSTEM, INC. TO PLAINTIFF’S AMENDED COMPLAINT

Pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, Defendant, FEDEX GROUND PACKAGE SYSTEM, INC. (“FedEx Ground”), files this Amended Answer to the Amended Complaint of Plaintiff THEODORE HOLLOWAY, JR. FedEx Ground, by and through its attorneys, denies each and every allegation contained in the Amended Complaint except as expressly admitted below:

FedEx Ground admits that Plaintiff’s Amended Complaint purports to assert claims of breach of contract, breach of the duty of good faith and fair dealing, interference with business relationships, promissory estoppel, fraudulent misrepresentation, negligent misrepresentation, and quantum merit as well as claims of race discrimination and retaliation under 42 U.S.C. § 1981, claims of race discrimination under Title VII of the Civil Rights Act of 1964, and a claim under the Family and Medical Leave Act. To the extent that the first paragraph of the Amended Complaint contains any allegation of fact, that allegation is denied.

INTRODUCTION

FXG is a corporation whose business consists of delivering packages to residence and business addresses. In 2005, Plaintiff Theodore Holloway, Jr. attended an FXG presentation

portraying its Independent Contractor drivers as autonomous entrepreneurs with the authority to hire their own employees, and signed an agreement with FXG that repeatedly described Mr. Holloway's status as an Independent Contractor with discretion over the "manner and means" of conducting his business.

After investing in two trucks and hiring a driver to assist him in covering a very large delivery route, Mr. Holloway suffered a knee injury on the job. Mr. Holloway tried to arrange for replacement drivers to handle his route while he took leave to avoid further damaging his knee and to undergo surgery. Mr. Holloway is African-American. Instead of assisting him, as FXG has done with white Contractors, FXG deliberately interfered with the manner in which Mr. Holloway hired replacement drivers and prevented him from taking the needed medical leave. FXG ultimately cut his route in half, dictated how it should be run, and harassed his drivers. As a result of FXG's actions, Mr. Holloway was forced to sell his route and to terminate his agreement with FXG, out of economic necessity, and in order to undergo the surgery he needed.

Mr. Holloway seeks damages for the loss of his business as a result of FXG's wrongful conduct, and alternatively, for discrimination based on race, retaliation for filing an EEOC charge, and other statutory violations.

ANSWER: The unnumbered "Introduction" Paragraphs are a purported summary of the Amended Complaint, do not conform to Fed. R. Civ. P. 8(e), and therefore require no answer. To the extent that an answer is required, FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first two sentences of the second paragraph of the Introduction and on that basis denies the same. FedEx Ground denies each and every remaining allegation contained in the Paragraphs of the Introduction, except as follows: FedEx Ground admits that it is a corporation specializing in small package information, pickup and delivery services;

FedEx Ground admits that Plaintiff suffered a knee injury during the time period in which he was an independent contractor; FedEx Ground admits that Plaintiff is African-American; and, FedEx Ground admits that Plaintiff seeks damages for the allegations he describes, but denies that the allegations have merit and that any damages are appropriate.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because Defendant is incorporated in Delaware, Mr. Holloway resides and performed services for Defendant in Maryland, and he has been damaged in an amount exceeding \$75,000. Subject matter is also appropriate under 28 U.S.C. §§ 1331, 1343, and 1367.

ANSWER: FedEx Ground admits that subject matter jurisdiction is proper in this Court. FedEx Ground admits that Plaintiff seeks damages in an amount exceeding \$75,000 but denies that he has suffered any damages.

2. This Court's exercise of personal jurisdiction over Defendant comports with due process requirements.

ANSWER: FedEx Ground admits that this Court has personal jurisdiction over it.

3. Venue is proper as Mr. Holloway performed services for Defendant within the District of Maryland.

ANSWER: FedEx Ground admits that venue is proper in the United States District Court for the District of Maryland, but alleges further that this case has been properly transferred to the United States District Court for the Northern District of Indiana for coordination in Multidistrict Litigation proceedings.

PARTIES

4. Defendant FedEx Ground Package System, Inc. ("FXG") is a Delaware corporation with its principal place of business in Moon Township, Pennsylvania. FXG provides

information, transportation, and delivery of small packages to homes and businesses in the United States, including Maryland. FedEx Home Delivery is a division of FXG that provides services to residential customers. Defendant FXG is defined to include all corporate parent, subsidiary, predecessor and successor entities to which these allegations pertain.

ANSWER: FedEx Ground admits the allegations in Paragraph 4 of the Amended Complaint.

5. Plaintiff Theodore Holloway, Jr. is a resident of Baltimore, Maryland. Mr. Holloway delivered packages for FXG from its terminal in White Marsh, Maryland, from approximately April, 2005 until December, 2006.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to Plaintiff's residency and on that basis denies the same. FedEx ground admits that Plaintiff was an independent contractor with FedEx Ground from April 2005 until December 2006 in its White Marsh, Maryland terminal.

FACTS

6. Mr. Holloway is a 42-year-old former Marine and college football coach who moved to Maryland in 1996. He is an African-American.

ANSWER: Upon information and belief, FedEx Ground admits that Plaintiff is a former marine and college football coach. FedEx Ground lacks knowledge or information sufficient to form a belief as to when Plaintiff moved to Maryland and on that basis denies the same. FedEx Ground admits that Plaintiff is African-American. Upon information and belief, Plaintiff is 43 years old.

7. Mr. Holloway was exposed to FXG advertising claiming that he could work for FXG and be his own boss in his own business. In response, he met with an FXG Human Resources manager who promoted the concept of working for FXG as an Independent

Contractor. FXG explained that Independent Contractor status offered an opportunity to become an entrepreneur and business owner. FXG also represented that Independent Contractors had the freedom to run their own businesses in their own way. FXG listed the income an Independent Contractor could expect from one or more routes based on an average number of deliveries.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 7 of the Amended Complaint, except to admit that it informs prospective contractors that, as independent contractors, they will be entrepreneurs and business owners and will have control over the manner and means of running their business. FedEx Ground also admits that it sometimes provides prospective contractors information as to approximate income they can expect to earn, but denies that it promises any contractor that he or she will earn a minimum income.

8. Mr. Holloway attended a ten-day training session in Beltsville, Maryland, and ultimately entered into the standard “Pick-up and Delivery Contractor Operating Agreement” (“Operating Agreement” or “Agreement”) with FXG to deliver packages for FXG as an Independent Contractor.

ANSWER: FedEx Ground admits that Plaintiff attended a five-day training session in Beltsville, Maryland, ending on or about December 10, 2004, and that Plaintiff entered into an Operating Agreement on or about March 24, 2005. FedEx Ground denies each and every remaining allegation in Paragraph 8 of the Amended Complaint.

9. A party signing the Operating Agreement may choose a contractual period of one, two, or three years. In all cases, the Agreement automatically renews every year after the expiration of the initial period, unless either party gives notice that it wishes to voluntarily terminate the Agreement.

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that individuals may contract for one, two or three years, and that the contract has renewal provisions. FedEx Ground denies each and every remaining allegation in Paragraph 9 of the Amended Complaint.

10. The Operating Agreement describes an independent business structure for Independent Contractors. Among other things, it sets forth FXG's business objectives and states that "the manner and means of reaching these results are within the discretion of the Contractor, and no officer or employee of FedEx Ground shall have the authority to impose any term or condition on Contractor or on Contractor's continued operation which is contrary to this understanding."

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that independent contractors are responsible for the operation of their businesses, including the exclusive right to determine the manner and means of reaching the contracted-for results. FedEx Ground denies each and every remaining allegation in Paragraph 10 of the Amended Complaint.

11. While a Contractor is responsible for leasing or purchasing his own vehicle, maintaining it subject to FXG's standards, and bearing all operating expenses including insurance, the Agreement states that the Contractor is free "to determine the methods, manner and means of performing the obligations specified in this Agreement."

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that independent contractors are responsible for the operation of their businesses, including payment of business expenses and determination of the methods, manner and means of performing the obligations set forth in the Operating Agreement. FedEx Ground denies each and every remaining allegation in Paragraph 11 of the Amended Complaint.

12. The Agreement assigns responsibility to Contractors for exercising independent discretion and judgment, and provides that “no officer, agent or employee of FedEx Ground shall have the authority to direct Contractor as to the manner or means employed to achieve such objectives and results ... to prescribe hours of work, whether or when the Contractor is to take breaks, what route the Contractor is to follow, or other details of performance.”

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that independent contractors are responsible for the operation of their businesses. FedEx Ground denies each and every remaining allegation in Paragraph 12 of the Amended Complaint.

13. The Agreement also provides that a “Contractor may employ or provide person(s) to assist Contractor in performing the obligations specified in this Agreement . . . such persons shall not be considered employees of FedEx Ground.” Regarding the Contractor’s employees, the Agreement further provides that “it is Contractor’s responsibility to assure that such persons

conform fully to the applicable obligations undertaken by Contractor pursuant to this Agreement.”

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that independent contractors are responsible for the operation of their businesses, including the hiring of any employees. FedEx Ground further admits that it is the responsibility of the contractor to assure that any employees are properly qualified. FedEx Ground denies each and every remaining allegation in Paragraph 13 of the Amended Complaint.

14. FXG may elect to terminate its indemnity for liability as to a Contractor and the Contractor’s drivers, following 30-day notice, if FXG determines that the Contractor or his driver fails to meet FXG’s Safe Driving Standards, as set forth in the Agreement. In that event, absent cure, the Contractor must obtain his own insurance which includes FXG as an insured.

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement provides that its indemnity insurance may be cancelled for violations of the Safe Driving Standards and that a contractor cannot provide service without indemnity insurance. FedEx Ground denies each and every remaining allegation in Paragraph 14 of the Amended Complaint.

15. FXG assigns each Contractor a “Primary Service Area,” within which the Contractor is “responsible for the daily pick-up and delivery of packages.” FXG recognizes that

Contractors have a “proprietary interest” in the customer accounts in their Primary Service Areas.

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that independent contractors are responsible for providing service within a primary service area and that they have a proprietary interest in that service area. FedEx Ground denies each and every remaining allegation in Paragraph 15 of the Amended Complaint.

16. The Agreement provides FXG “the authority, upon five work days of prior written notice to Contractor, to reconfigure Contractor’s Primary Service Area to take account of customer service requirements. During such notice period, FedEx Ground shall give Contractor the opportunity, using means satisfactory to FedEx Ground, to continue to provide in such Primary Service Area the level of service called for in this Agreement.”

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that independent contractors are responsible for providing service within a primary service area. FedEx Ground denies each and every remaining allegation in Paragraph 16 of the Amended Complaint.

17. In the event that a Contractor does not “provide reasonable means to continue to service the Primary Service Area, FedEx Ground may, in its sole discretion, reconfigure such area.”

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that the Operating Agreement recognizes that a primary service area may be reconfigured if a contractor demonstrates that he or she is unable or unwilling to provide service. FedEx Ground denies each and every remaining allegation in Paragraph 17 of the Amended Complaint.

18. However, if FXG reduces a Contractor's Primary Service Area, either FXG or another Contractor who picks up that work is obligated to provide reimbursement to the Contractor pursuant to a formula specified in the Operating Agreement.

ANSWER: The Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground admits that a contractor relinquishing a portion of his or her service area is, under certain circumstances, entitled to receive compensation from FedEx Ground or the contractor that takes on that portion of the service area. FedEx Ground denies each and every remaining allegation in Paragraph 18 of the Amended Complaint.

19. On or about April 1, 2005, Mr. Holloway signed an Operating Agreement at the White Marsh Terminal for a three-year term. He was not permitted to keep a copy of the signed Operating Agreement or any of the amendments to that Agreement that he was periodically required to sign.

ANSWER: FedEx Ground avers that Plaintiff signed an Operating Agreement on or about March 24, 2005 and further avers that Plaintiff elected a two-year term. FedEx

Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 19 of the Amended Complaint, and on that basis denies the same.

20. Mr. Holloway obtained an extensive route in Ellicott City, Maryland for which he used two trucks. He drove one, and as of April 2005, he entered into a business agreement with Sara Paul in which she would share the cost of the second truck and drive part of the route as his business partner.

ANSWER: FedEx Ground admits that Plaintiff operated two trucks on his route and, upon information and belief, drove one of them. FedEx Ground lacks information or knowledge sufficient to form a belief as to the business relationship that may have existed between Plaintiff and Ms. Paul and on that basis denies the same. FedEx Ground denies each and every remaining allegation in Paragraph 20 of the Amended Complaint.

21. FXG had previously suspended Ms. Paul from driving following an accident. The normal period for suspension is 15 days, but in Ms. Paul's case it lasted two months. It was during this time that Ms. Paul entered into a business agreement with Mr. Holloway.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 21 of the Amended Complaint and on that basis denies the same.

22. Although Mr. Holloway had advised FXG that Ms. Paul would drive for him after her suspension period was over, FXG did not permit Ms. Paul to drive for Mr. Holloway. Instead, FXG ordered Ms. Paul to drive for a white Contractor, while that Contractor recovered from surgery. Only after Mr. Holloway threatened to bring a lawsuit did FXG reconsider and allow Ms. Paul to drive for him.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 22 of the Amended Complaint.

23. In June, 2005, Mr. Holloway slipped while making a delivery and suffered a knee injury while working.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 23 of the Amended Complaint and on that basis denies the same.

24. Mr. Holloway reported his injury to FXG that day. He continued to work even with the injury, but was urged by his doctor to have surgery.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to when Plaintiff suffered the referenced injury, and as what his doctor advised him, and on that basis denies the same. FedEx Ground denies the remaining allegations in Paragraph 24 of the Amended Complaint.

25. Shortly thereafter, he informed FXG manager Dion Bazemore that after he found a driver he would need time off from work to have knee surgery.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 25 of the Amended Complaint and on that basis denies the same.

26. In December, 2005, Mr. Holloway hired an FXG driver, Myron Stokes, to drive for him, to keep up his business before his surgery, which was scheduled for January, 2006.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 26 of the Amended Complaint and on that basis denies the same.

27. Rick Albertini, an FXG manager, insisted, however, that Mr. Stokes work for FXG, and not for Mr. Holloway. FXG then required Mr. Stokes to drive for the Terminal. Mr. Stokes subsequently resigned as an FXG driver. FXG did not appropriate the drivers of white Contractors as it did with Mr. Holloway. Lacking a full-time driver, Mr. Holloway had to postpone his surgery.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to whether or why Plaintiff postponed his surgery and on that basis denies the same. FedEx Ground denies each and every remaining allegation in Paragraph 27 of the Amended Complaint.

28. In April, 2006, Mr. Holloway hired a driver named Euel Cowan, and had him trained at FXG's training facilities. For a while, Mr. Holloway, Ms. Paul, and Mr. Cowan divided up his route three ways.

ANSWER: FedEx Ground admits that Mr. Cowan was qualified to drive in May 2006 and lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 28 of the Amended Complaint and on that basis denies the same.

29. On or around May 29, 2006, FXG ordered Mr. Holloway to fire Mr. Cowan as a driver, based on Mr. Cowan's alleged delay in reporting a minor accident in May, 2006. Mr. Holloway objected, but complied, and retained Mr. Cowan as a "jumper" (a non-driving assistant) instead.

ANSWER: FedEx Ground denies each and every allegation in the first sentence of Paragraph 29. FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 29 and on that basis denies the same.

30. Shortly after FXG told Mr. Holloway to fire Mr. Cowan, Mr. Holloway advised FXG that he needed to take time off for knee surgery. Mr. Holloway's knee surgery had been rescheduled for late June, 2006, but his doctor recommended that he stop working at the beginning of June to avoid further injury.

ANSWER: FedEx Ground denies each and every allegation in the first sentence of Paragraph 30. FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 30 and on that basis denies the same.

31. FXG managers Matt Carroll and Rick Albertini assured Mr. Holloway that FXG would "cover" his route while he was unable to work. Under the Operating Agreement, FXG may provide temporary drivers, or "flex" part of a Contractor's route to other Contractors who have elected to participate in the "Flex Program," if a Contractor cannot fulfill his obligations on his route. Mr. Holloway believed FXG would utilize this program to assist him, in light of Mr. Carroll's and Mr. Albertini's assurances.

ANSWER: FedEx Ground denies each and every allegation in the first sentence of Paragraph 31 of the Amended Complaint. With respect to the second sentence of Paragraph 31 of the Amended Complaint, the Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations and interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground denies the allegations contained in the second sentence Paragraph 31 of the Amended Complaint. FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the third sentence of Paragraph 31 of the Amended Complaint and on that basis denies the same.

32. In addition, FXG regional manager Eric LaGarda further assured Mr. Holloway that FXG would never reduce his route without notice and a meeting. The Operating Agreement also provides a Contractor with the guarantee of notice and an opportunity to continue to provide service to the Contractor's Primary Service Area.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 32 of the Amended Complaint and on that basis denies the same. With respect to the second sentence of Paragraph 32 of the Amended Complaint, the Operating Agreement speaks for itself and FedEx Ground denies any and all characterizations or interpretations of the Operating Agreement that are inconsistent with the clear language of the Operating Agreement. To the extent that an answer is required, FedEx Ground denies each and every allegation in the second sentence of Paragraph 32.

33. FXG supplied Mr. Holloway with a temporary driver for a few weeks, but on June 23, 2006, sent Mr. Holloway a letter threatening that it intended to reconfigure his Primary Service Area "to increase our ability to service our customers on a daily basis." The letter cited to a provision in the Operating Agreement that authorizes FXG to reconfigure such area if within the five day notice period the Contractor does not "continue to provide in such Primary Service Area the level of service called for in this Agreement."

ANSWER: FedEx Ground admits that it located a driver for Plaintiff's route for a period of time and subsequently notified Plaintiff in writing of FedEx Ground's intent to reconfigure his primary service area if he was not able to guarantee acceptable service within five days. As to the allegations in the second sentence in Paragraph 33, the referenced letter and the provision of the Operating Agreement cited therein speak for themselves and FedEx Ground denies any and all characterizations or interpretations of

the referenced letter and the provision of the Operating Agreement cited therein that are inconsistent with the clear language of the referenced letter and the provision of the Operating Agreement cited therein.

34. Mr. Holloway tried repeatedly to schedule a meeting with FXG to address this issue, to no avail.

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

35. Just before Mr. Holloway received the letter of FXG's intent to reconfigure his route, Tajuanna Luckman, who had been driving for FXG, had applied to work for Mr. Holloway.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 35 of the Amended Complaint and on that basis denies the same.

36. Mr. Holloway hired Ms. Luckman and she reported to the FXG Terminal to be trained by Sara Paul on June 26, 2006. On her arrival, FXG managers Tim Norton, Rick Albertini and Matt Carroll told Ms. Luckman that she was not permitted to drive for Mr. Holloway, because she worked for FXG. Under pressure from FXG, Ms. Luckman decided not to follow through on her plan to work for Mr. Holloway.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the relationship between Plaintiff and Ms. Luckman and on that basis denies the allegations in Paragraph 36 of the Amended Complaint that Plaintiff hired Ms. Luckman and that Ms. Luckman decided not to work for Plaintiff. FedEx Ground denies each and every remaining allegation in Paragraph 36 of the Amended Complaint.

37. With Ms. Luckman now unavailable, and despite FXG's earlier unequivocal representation that it would not reconfigure his route without discussing it in a meeting, FXG followed through on its plan to reduce Mr. Holloway's route, which cut his potential earnings in half.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to Ms. Luckman's availability and on that basis denies the same. FedEx Ground denies each every allegation in Paragraph 37 of the Amended Complaint, except as to admit that FedEx Ground did reconfigure Plaintiff's primary service area pursuant to § 5.2 of his Operating Agreement with FedEx Ground.

38. Contrary to the terms of the Operating Agreement, Mr. Holloway never received a formal notice of this change, nor did he ever receive the compensation to which he is entitled as a result of the reconfiguration of his Primary Service Area.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 38 of the Amended Complaint.

39. Hoping to protect his whole route, Mr. Holloway again postponed his surgery to return to driving. Terminal manager Tim Norton prevented him from returning, however, stating that "you abandoned that route. You can take what's left, and either you or Sara should drive but not both." In addition, FXG limited him to one truck, with which Sara drove the reduced route.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to Plaintiff's state of mind or whether he postponed his surgery and on that basis denies the allegations in the first sentence of Paragraph 39 of the Amended Complaint. FedEx Ground denies each and every remaining allegation in Paragraph 39 of the Amended Complaint.

40. On information and belief, on multiple occasions FXG has provided drivers for white Contractors who were injured or sick. In addition, none of those Contractors suffered repercussions in their work load or Primary Service Areas for a health-related absence. FXG has racially discriminated against Mr. Holloway by not assisting him as it assisted white Contractors.

ANSWER: FedEx Ground admits that it has, without regard to the race of the contractor, located drivers on a temporary basis for contractors' routes. FedEx Ground denies each and every remaining allegation in Paragraph 40 of the Amended Complaint.

41. On or around September 1, 2006, Mr. Holloway filed a charge of racial discrimination with the EEOC, claiming that unlike his situation, when white Contractors were injured, FXG routinely assisted them by providing drivers.

ANSWER: FedEx Ground admits that Plaintiff filed a charge of race discrimination with the EEOC on or around September 1, 2006, but denies that this charge had any merit and specifically avers that the EEOC charge speaks for itself.

42. The EEOC sent FXG a Notice of Charge of Discrimination on September 13, 2006.

ANSWER: FedEx Ground admits that the EEOC sent it a Notice of Charge of Discrimination on or around September 13, 2006.

43. On September 25, 2006, Mr. Holloway filed *a pro se* Amended Complaint in this Court. *See Holloway v. FedEx Ground Package System Inc.*, Case No. 06-cv-2500-CCB (D. Md.).

ANSWER: FedEx Ground admits the allegations in Paragraph 43 of the Amended Complaint.

44. FXG was served with Mr. Holloway's Complaint in his lawsuit on October 12, 2006.

ANSWER: FedEx Ground admits that it was served with Plaintiff's 2006 Amended Complaint on or around October 12, 2006.

45. On October 24, 2006, Ms. Paul was injured at FXG's White Marsh terminal as a result of negligence by FXG, and took off from work. As Mr. Holloway could not work, he employed two temporary drivers. Both had less experience than Ms. Paul.

ANSWER: FedEx Ground denies each and every allegation in the first sentence of Paragraph 45 of the Amended Complaint. FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 45 of the Amended Complaint and on that basis denies the same.

46. Despite the fact that FXG had caused Ms. Paul's injury, FXG manager Matt Carroll told Mr. Holloway that if Ms. Paul did not return to driving, FXG would terminate Mr. Holloway's Operating Agreement.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 46 of the Amended Complaint.

47. FXG further interfered with Mr. Holloway's business by harassing his temporary drivers and by deliberately misloading his trucks with packages that were not his, or by not loading his trucks and delaying his deliveries. FXG's actions were taken in retaliation for the Complaints that Mr. Holloway filed in federal court and with the EEOC.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 47 of the Amended Complaint.

48. In addition, and in a further act of retaliation, beginning around November, 2006, FXG unilaterally and drastically reduced the number of packages for delivery by Mr. Holloway's drivers to one-third or less of the number he normally received for delivery. In fact, after FXG deducted expenses, some of his paychecks were for \$0 and he could not pay his drivers. FXG

would not give Mr. Holloway his share of deliveries, and thus deprived him of the ability to make a living.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of Paragraph 48 of the Amended Complaint and on that basis denies the same. FedEx Ground denies each and every remaining allegation in Paragraph 48 of the Amended Complaint.

49. In addition, FXG continuously moved and misloaded Mr. Holloway's truck from its assigned parking space, and denied him bonuses because undelivered packages (which were not his to begin with) remained on his truck.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 49 of the Amended Complaint.

50. With no prospect of meaningful earnings, Mr. Holloway began to consider selling his route. He received a call from another Contractor, Keith O'Neil, who said that FXG considered Mr. Holloway a "black cloud" due to his EEOC charge, and that FXG wanted him to have Mr. Holloway's route.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 50 of the Amended Complaint and on that basis denies the same.

51. On November 18, 2006, Mr. Holloway agreed to sell his route to Mr. O'Neil.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 51 of the Amended Complaint and on that basis denies the same.

52. On December 1, 2006, Mr. Holloway gave notice to FXG that he would terminate his Operating Agreement.

ANSWER: FedEx Ground admits that Plaintiff informed FedEx Ground of his intent to terminate his contractual relationship with FedEx Ground on or about December 1, 2006.

53. Mr. Holloway applied for unemployment compensation, which he was awarded effective December 31, 2006.

ANSWER: FedEx Ground admits the allegations in Paragraph 53 of the Amended Complaint.

54. On January 25, 2007, he and FXG entered into a settlement agreement under which FXG, calling itself an insurer for “employer” Roadway Package System, agreed to pay Mr. Holloway \$15,000 to settle a disagreement over whether Mr. Holloway could receive disability insurance payments in conjunction with his worker’s compensation.

ANSWER: FedEx Ground admits that it settled Plaintiff’s worker’s compensation claim and obtained a release from Plaintiff without admitting liability or that Plaintiff was an employee of FedEx Ground for any purpose. FedEx Ground denies the remaining allegations in Paragraph 54 of the Amended Complaint.

55. On February 8, 2007, Mr. Holloway’s federal Complaint in No. 06-cv-2500-CCB was dismissed without prejudice to allow him to exhaust EEOC procedures.

ANSWER: FedEx Ground admits the allegations in Paragraph 55 of the Amended Complaint.

56. On February 16, 2007, Mr. Holloway filed a letter with the EEOC alleging he was retaliated against for filing his discrimination charge.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 56 of the Amended Complaint and on that basis denies the same.

57. On July 12, 2007, the EEOC issued a right to sue letter to Mr. Holloway, attached hereto as Exhibit 1.

ANSWER: FedEx Ground admits the allegations in Paragraph 57 of the Amended Complaint.

58. Mr. Holloway has suffered damages from FXG's wrongful conduct in an amount exceeding \$200,000.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 58 of the Amended Complaint.

59. Mr. Holloway has also endured pain and suffering, emotional distress, sleeplessness, and mental anguish over the loss of his business due to FXG's wrongful and illegal actions which adversely affected his ability to provide for and relate to his family, and also prevented him from obtaining necessary medical procedures.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 59 of the Amended Complaint.

CAUSES OF ACTION
COUNT ONE: BREACH OF CONTRACT

60. Paragraphs 1-59 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-59 as if fully set forth herein.

61. FXG breached its Operating Agreement with Mr. Holloway by, among other things,

- a) preventing Mr. Holloway from employing drivers to assist him in his route, thereby generally preventing him from exercising his business discretion in determining the "manner and means of performing the obligations specified in [the Operating] Agreement". In particular, FXG

prevented him from employing Mr. Stokes, Mr. Cowan, and Ms. Luckman as drivers, and by interfering with the business arrangement he had with Ms. Paul;

- b) reconfiguring Mr. Holloway's route without giving him notice and an opportunity to "continue to provide in such Primary Service Area the level of service called for in this Agreement," and without compensating him for the reduction, as required by the Agreement;
- c) reconfiguring Mr. Holloway's route when he did everything possible to continue to provide in such Primary Service Area the level of service called for in this Agreement, by returning to work despite his injury, and by hiring Tajuanna Luckman as a driver;
- d) preventing Ms. Luckman from driving for Mr. Holloway, and failing to provide drivers through the "Flex Program" to enable him to take leave to get his operation;
- e) making deductions strictly prohibited by Md. Code, Lab. & Empl. § 3-503.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 61 of the Amended Complaint, including subparts.

62. Mr. Holloway was injured by FXG's breaches of the Operating Agreement.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 62 of the Amended Complaint.

**COUNT TWO: BREACH OF DUTY OF
GOOD FAITH AND FAIR DEALING**

63. Paragraphs 1-62 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-62 as if fully set forth herein.

64. Since Independent Contractors provide services pursuant to the Operating Agreement “strictly as an independent contractor, and not as an employee of FedEx Ground,” the Operating Agreement is not an employment contract, but a business contract subject to the duty of good faith and fair dealing, an integral part of Maryland’s public policy.

ANSWER: Paragraph 64 of the Amended Complaint contains Plaintiff’s characterization of the law, and therefore requires no answer. To the extent an answer is required, FedEx Ground avers that the implied covenant of good faith and fair dealing, if any, cannot alter the express terms of Plaintiff’s Operating Agreement.

65. FXG breached its duty of good faith and fair dealing by intentionally interfering with Mr. Holloway’s contractual relationships with his drivers.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 65 of the Amended Complaint.

66. FXG breached its duty of good faith and fair dealing by preventing drivers who sought employment by Mr. Holloway from driving for him and by depriving Mr. Holloway of the autonomy promised in the Operating Agreement to hire drivers as he saw fit.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 66 of the Amended Complaint.

67. FXG breached its duty of good faith and fair dealing by taking half of Mr. Holloway’s route after reconfiguring his Primary Service Area without providing notice and an opportunity to continue to provide service in that area.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 67 of the Amended Complaint.

68. Mr. Holloway was injured by FXG's breaches of its duty of good faith and fair dealing.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 68 of the Amended Complaint.

**COUNT THREE: INTERFERENCE
WITH BUSINESS RELATIONSHIPS**

69. Paragraphs 1-68 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-68 as if fully set forth herein.

70. From April, 2005 forward, Mr. Holloway had a contractual relationship with Ms. Paul as a business partner.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 70 of the Amended Complaint and on that basis denies the same.

71. FXG was aware that Ms. Paul had agreed to drive for Mr. Holloway as his partner.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 71 of the Amended Complaint.

72. FXG intentionally interfered with Mr. Holloway's contractual relationship with Ms. Paul by preventing her from driving for Mr. Holloway until she finished driving for other Contractors designated by FXG, by not allowing him to share his route with her after it was reconfigured, and by threatening to terminate his Operating Agreement when she was absent from work due to an injury caused by FXG.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 72 of the Amended Complaint.

73. In December, 2005, Mr. Holloway had a contractual relationship with his driver Myron Stokes.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 73 of the Amended Complaint and on that basis denies the same.

74. FXG was aware that Mr. Stokes had agreed to drive for Mr. Holloway.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 74 of the Amended Complaint.

75. FXG intentionally interfered with Mr. Holloway's contractual relationship with Mr. Stokes by pressuring him to drive for FXG instead of for Mr. Holloway, and by causing Mr. Stokes to resign.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 75 of the Amended Complaint.

76. In April through the end of May, 2006, Mr. Holloway had a contractual relationship with his driver Euel Cowan.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 76 of the Amended Complaint and on that basis denies the same.

77. FXG was aware that Mr. Cowan had agreed to drive for Mr. Holloway.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 77 of the Amended Complaint.

78. FXG intentionally interfered with Mr. Holloway's contractual relationship with Mr. Cowan by improperly requiring his termination.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 78 of the Amended Complaint.

79. On June 26, 2006, Mr. Holloway contracted to have Tajuanna Luckman drive for him.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 79 of the Amended Complaint and on that basis denies the same.

80. FXG was aware that Ms. Luckman had agreed to drive for Mr. Holloway when she appeared at the White Marsh terminal for training that day.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 80 of the Amended Complaint.

81. FXG intentionally interfered with Mr. Holloway's contractual relationship with Ms. Luckman by forbidding her from working for Mr. Holloway.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 81 of the Amended Complaint.

82. FXG interfered with Mr. Holloway's business expectations by denying him autonomy over his business decisions, and by interfering with his employment of drivers.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 82 of the Amended Complaint.

83. FXG interfered with Mr. Holloway's business expectations by cutting his route in half without consultation or compensation.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 83 of the Amended Complaint.

84. As a result of FXG's interference, Mr. Holloway was severely damaged in his anticipated earnings from his business.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 84 of the Amended Complaint.

COUNT FOUR: PROMISSORY ESTOPPEL

85. Paragraphs 1-84 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-84 as if fully set forth herein.

86. FXG made extra-contractual promises to Mr. Holloway which it did not keep: it promised an expected income range, it promised not to reconfigure his route without a meeting, and it promised to "cover" his route while he was unable to work due to his knee injury.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 86 of the Amended Complaint.

87. FXG knew that Independent Contractors would put down money on a vehicle in detrimental reliance on their anticipated income, because they were required to do so under the Operating Agreement.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 87 of the Amended Complaint.

88. Mr. Holloway invested in and maintained two trucks in reliance on FXG's extra-contractual promises.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 88 of the Amended Complaint.

89. FXG's unlawful control over Mr. Holloway's drivers made the income level FXG had promised unattainable.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 89 of the Amended Complaint.

90. Because Mr. Holloway was not allowed to determine the methods, manner and means of performing his obligations under the Operating Agreement, he was damaged in his ability to achieve the promised and expected level of income, instead incurring significant losses.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 90 of the Amended Complaint.

91. FXG manager Eric LaGarda promised that Mr. Holloway's route would not be reconfigured without a meeting.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 91 of the Amended Complaint and on that basis denies the same.

92. Mr. Holloway was not given a meeting and an opportunity to continue to provide the level of service called for in the Agreement.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 92 of the Amended Complaint.

93. Mr. Holloway relied on FXG's promise not to reconfigure his Primary Service Area.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 93 of the Amended Complaint.

94. Mr. Holloway suffered damages when FXG took away half of his Primary Service Area, which he could have continued to fully serve.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 94 of the Amended Complaint.

95. FXG promised to cover for Mr. Holloway during his medical leave for his knee operation.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 95 of the Amended Complaint.

96. Mr. Holloway relied on that promise, based on FXG's representations, and its past practice of assisting other Contractors who were sick or injured.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 96 of the Amended Complaint.

97. Mr. Holloway was damaged by FXG's failure to assist him in arranging replacement drivers in order for him to take medical leave.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 97 of the Amended Complaint.

COUNT FIVE: FRAUDULENT MISREPRESENTATION

98. Paragraphs 1-97 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-97 as if fully set forth herein.

99. FXG falsely represented to Mr. Holloway that he would have the freedom to run his own business, and that he could expect a certain level of income from his business.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 99 of the Amended Complaint.

100. FXG knew that it was not possible for Mr. Holloway to achieve that income under the requirements of the Operating Agreement. FXG knew that the "Independent Contractor" designation was incompatible with FXG's practice of controlling the day-to-day operations of

both Independent Contractors and their drivers, who are purportedly employed by the Independent Contractors, not FXG.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 100 of the Amended Complaint.

101. FXG purposely misled Mr. Holloway about the nature of the Agreement in order to avoid paying operating expenses, payroll taxes, social security, insurance, and other normal expenses of running a business.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 101 of the Amended Complaint.

102. Mr. Holloway relied on FXG's fraudulent misrepresentations by investing in two trucks, and hiring drivers to assist him in his route. Furthermore, such reliance was inevitable as Mr. Holloway had a right to rely on the Operating Agreement, with which he complied.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 102 of the Amended Complaint.

103. Mr. Holloway suffered damages caused by FXG's willful control over his business, which directly contradicted its representations of Independent Contractors' autonomy and prevented him from implementing his business plans.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 103 of the Amended Complaint.

COUNT SIX: NEGLIGENT MISREPRESENTATION

104. Paragraphs 1-103 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-103 as if fully set forth herein.

105. By posting advertisements and meeting with Mr. Holloway to explain the business prospects for an Independent Contractor, FXG intended that persons such as Mr. Holloway would act upon FXG's representations of business autonomy and potential income.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 105 of the Amended Complaint.

106. FXG knew that persons such as Mr. Holloway seeking business opportunities would rely on FXG's statements and would incur losses if those statements were false. Furthermore, such reliance was inevitable as the Operating Agreement placed many requirements on Mr. Holloway, with which he complied.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 106 of the Amended Complaint.

107. FXG had a duty to exercise reasonable care in providing accurate information that would be relied on for business expenditures. FXG breached that duty by misrepresenting the relationship between FXG and its Independent Contractors, and the amount of autonomy and potential earnings that Independent Contractors could expect, and Mr. Holloway suffered financial loss as a result.

ANSWER: Paragraph 107 of the Amended Complaint contains Plaintiff's characterization of the law, and therefore requires no answer. To the extent an answer is required, FedEx Ground avers that it's duty to exercise reasonable care, if any, cannot alter the express terms of Plaintiff's Operating Agreement. FedEx Ground denies each and every remaining allegation in that Paragraph.

**COUNT SEVEN: VIOLATIONS OF 42 U.S.C. § 1981
RACE DISCRIMINATION**

108. Paragraphs 1-107 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-107 as if fully set forth herein.

109. Mr. Holloway performed delivery services for FXG under the Operating Agreement, a contract entered into between Mr. Holloway and FXG.

ANSWER: FedEx Ground admits that a contract existed between FedEx Ground and Plaintiff and that Plaintiff provided delivery services for some period(s) of time under the Operating Agreement.

110. The Civil Rights Act of 1866 prohibits race discrimination in the making and enforcement of private contracts. "Make and enforce contracts" is defined as "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b).

ANSWER: Paragraph 110 of the Amended Complaint contains Plaintiff's characterization of the law, and therefore requires no answer.

111. Mr. Holloway, an African-American, was not given equal rights under the law, as FXG applied the Operating Agreement to Mr. Holloway more detrimentally than it did to other white Contractors, thus depriving him of his contractual rights.

ANSWER: The allegations in Paragraph 111 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 111 of the Amended Complaint contains any allegation of fact, that allegation is denied.

112. Mr. Holloway drove an FXG route and fulfilled his obligations under the Operating Agreement.

ANSWER: FedEx Ground admits that Mr. Holloway was an independent contractor with FedEx Ground and that he, for a period during that time, personally drove a vehicle

during the performance of his duties. FedEx Ground denies each and every remaining allegation in Paragraph 112 of the Amended Complaint.

113. FXG unlawfully discriminated against Mr. Holloway by requiring his driver, Sara Paul, to drive for a white Contractor instead of for Mr. Holloway, with whom she had an agreement.

ANSWER: The allegations in Paragraph 113 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 113 of the Amended Complaint contains any allegation of fact, that allegation is denied.

114. FXG's discriminatory actions were based on Mr. Holloway's race. FXG unlawfully discriminated against Mr. Holloway by interfering with his hiring of drivers while other white Contractors did not experience similar interference in hiring drivers.

ANSWER: The allegations in Paragraph 114 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 114 of the Amended Complaint contains any allegation of fact, that allegation is denied.

115. FXG unlawfully discriminated against Mr. Holloway by reducing his route and impeding him from taking medical leave by preventing him from hiring drivers of his choice.

ANSWER: The allegations in Paragraph 115 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 115 of the Amended Complaint contains any allegation of fact, that allegation is denied.

116. FXG's discriminatory actions were based on Mr. Holloway's race. FXG helped other white Contractors take medical leaves of absence by providing them with drivers while they were unable to work.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 116 of the Amended Complaint.

117. None of the white Contractors who took medical leaves of absence suffered repercussions to their routes or their drivers as a result of their temporary inability to work, whereas Mr. Holloway's route was cut in half without compensation, FXG interfered with the hiring of four of his drivers, and he was unable to take medical leave for surgery to treat a work-related injury.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 117 of the Amended Complaint.

118. Mr. Holloway suffered monetary and other injuries as a result of FXG's discriminatory acts.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 118 of the Amended Complaint.

COUNT EIGHT: VIOLATIONS OF 42 U.S.C. § 1981 - RETALIATION

119. Paragraphs 1-118 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-118 as if fully set forth herein.

120. On or around September, 2006, Mr. Holloway engaged in activity protected by the Civil Rights Act of 1866 when he filed a race discrimination claim against FXG with the EEOC, and a lawsuit claiming race discrimination in the United States District Court for the District of Maryland.

ANSWER: The allegations in Paragraph 120 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 120 of the Amended Complaint contains any allegation of fact, that allegation is denied.

121. FXG management considered Mr. Holloway a "black cloud" in light of his EEOC charge. After learning of his EEOC charge and lawsuit, and apparently in reprisal thereto, FXG

engaged in severe retaliation against Mr. Holloway, including harassing his drivers and interfering with their work.

ANSWER: The allegations in Paragraph 121 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 121 of the Amended Complaint contains any allegation of fact, that allegation is denied.

122. FXG subsequently reduced the number of packages Mr. Holloway was assigned for delivery, which reduced some of his paychecks to \$0.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 122 of the Amended Complaint.

123. Mr. Holloway suffered monetary and other injuries as a result of FXG's retaliatory acts.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 123 of the Amended Complaint.

COUNT NINE: QUANTUM MERUIT

124. Paragraphs 1-123 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-123 as if fully set forth herein.

125. FXG purportedly hired Mr. Holloway as an Independent Contractor under the terms set forth in the Operating Agreement that he signed.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 125 of the Amended Complaint, except as to admit that it intended to enter into an independent contractor relationship with Plaintiff.

126. In signing the Operating Agreement, Mr. Holloway also intended that the relationship between himself and FXG be under a legal classification of his work.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 126 of the Amended Complaint and on that basis denies the same.

127. Contrary to the designation of Independent Contractor, however, FXG controlled the conditions of Mr. Holloway's employment, including his schedule, his use of equipment, and his employment of drivers, in such a manner as to establish an employer-employee relationship between FXG and Mr. Holloway.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 127 of the Amended Complaint.

128. Mr. Holloway purchased and maintained equipment and rendered valuable services to FXG that were integral to FXG's business, and from which FXG benefited.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 128 of the Amended Complaint.

129. Accordingly, FXG is liable to Mr. Holloway for the reasonable value of his services, including overtime pay, benefits, federal and state taxes, social security, unemployment, and disability contributions, and compensation for all unlawful deductions from his paycheck, operating costs, and the cost of equipment normally borne by an employer.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 129 of the Amended Complaint.

COUNT TEN: TITLE VII VIOLATION - RACE DISCRIMINATION

130. Paragraphs 1-129 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-129 as if fully set forth herein.

131. Title VII of the Civil Rights Act of 1964 forbids employment discrimination against “any individual” based on his “race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a).

ANSWER: Paragraph 131 of the Amended Complaint contains Plaintiff’s characterization of the law, and therefore requires no answer.

132. Mr. Holloway is African-American by race.

ANSWER: FedEx Ground admits the allegations in Paragraph 132 of the Amended Complaint.

133. Mr. Holloway drove an FXG route and fulfilled his obligations under the Operating Agreement.

ANSWER: FedEx Ground admits that Mr. Holloway was an independent contractor with FedEx Ground and that he, for a period during that time, personally drove a vehicle during the performance of his duties. FedEx Ground denies each and every remaining allegation in Paragraph 133 of the Amended Complaint..

134. FXG unlawfully discriminated against Mr. Holloway by reducing his route and impeding him from taking medical leave by preventing him from hiring drivers of his choice.

ANSWER: The allegations in Paragraph 134 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 134 of the Amended Complaint contains any allegation of fact, that allegation is denied.

135. FXG’s discriminatory actions were based on Mr. Holloway’s race. FXG helped other white Contractors take medical leaves of absence by providing them with drivers while they were unable to work.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 135 of the Amended Complaint.

136. None of the white Contractors who took medical leaves of absence suffered repercussions to their routes or their drivers as a result of their temporary inability to work, whereas Mr. Holloway's route was cut in half without compensation, FXG interfered with the hiring of four of his drivers, and he was unable to take medical leave for surgery to treat a work-related injury.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 136 of the Amended Complaint.

137. Mr. Holloway suffered monetary and other injuries as a result of FXG's discriminatory acts.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 137 of the Amended Complaint.

COUNT ELEVEN: TITLE VII VIOLATION - RETALIATION

138. Paragraphs 1-137 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-137 as if fully set forth herein.

139. Title VII also contains an anti-retaliation provision which forbids an employer from discriminating against an employee because that individual "made a charge, testified, assisted, or participated in" a Title VII proceeding or investigation. 42 U.S.C. § 2000e-3(a).

ANSWER: Paragraph 193 of the Amended Complaint contains Plaintiff's characterization of the law, and therefore requires no answer.

140. On or around September, 2006, Mr. Holloway engaged in activity protected by Title VII when he filed a claim against FXG with the EEOC, and a lawsuit claiming Title VII violations in the United States District Court for the District of Maryland.

ANSWER: The allegations in Paragraph 140 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 140 of the Amended Complaint contains any allegation of fact, that allegation is denied.

141. FXG management considered Mr. Holloway a “black cloud” in light of his EEOC charge. After learning of his EEOC charge and lawsuit, and apparently in reprisal thereto, FXG engaged in severe retaliation against Mr. Holloway, including harassing his drivers and interfering with their work.

ANSWER: FedEx Ground denies the allegations in the first sentence of Paragraph 141 of the Amended Complaint. The remaining allegations in Paragraph 141 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that the remaining allegations in Paragraph 141 of the Amended Complaint contains any allegation of fact, that allegation is denied.

142. FXG subsequently reduced the number of packages Mr. Holloway was assigned for delivery, which reduced some of his paychecks to \$0.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 142 of the Amended Complaint.

143. Mr. Holloway suffered monetary and other injuries as a result of FXG’s retaliatory acts.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 143 of the Amended Complaint.

**COUNT TWELVE: VIOLATIONS OF THE FAMILY
AND MEDICAL LEAVE ACT**

144. Paragraphs 1 - 143 are incorporated by reference as is set forth herein.

ANSWER: FedEx Ground hereby incorporates and realleges each of its answers to Paragraphs 1-143 as if fully set forth herein.

145. Mr. Holloway injured himself on the job in June, 2005, resulting in a serious knee injury requiring surgery.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 145 of the Amended Complaint and on that basis denies the same.

146. After consulting with a physician, he provided notice to FXG of his injury and his need to take leave in order to undergo surgery.

ANSWER: FedEx Ground admits that Plaintiff notified FedEx Ground that he sought time off in order to undergo surgery. FedEx Ground lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 146 of the Amended Complaint and on that basis denies the same.

147. Under the FMLA, an employee is entitled to up to 12 weeks job-guaranteed leave during a 12 month period to care for his own serious health condition. 29 U.S.C. §§ 2612, 2614.

ANSWER: Paragraph 147 of the Amended Complaint contains Plaintiff's characterization of the law, and therefore requires no answer.

148. Between December, 2005 and May, 2006, FXG continually interfered with Mr. Holloway's arrangements to employ temporary drivers and effectively prevented him from taking leave. In addition, FXG reduced his Primary Service Area, thus removing a large portion of his income.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 148 of the Amended Complaint.

149. On or around the end of May, 2006, Mr. Holloway repeated his request for time off in order to undergo surgery, which he had rescheduled for June, 2006.

ANSWER: FedEx Ground lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 149 of the Amended Complaint and on that basis denies the same.

150. Despite its promise to “cover” his route while Mr. Holloway was unable to work, FXG denied him the opportunity to take medical leave.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 150 of the Amended Complaint.

151. Moreover, FXG reduced Mr. Holloway’s route, such that he could not have taken leave and returned to the same or equivalent job.

ANSWER: FedEx Ground denies each and every allegation in Paragraph 151 of the Amended Complaint.

152. FXG’s actions prevented Mr. Holloway from taking medically necessary leave for surgery to correct a knee injury sustained on the job, and modified his job, willfully violating the FMLA.

ANSWER: The allegations in Paragraph 152 of the Amended Complaint contain legal conclusions, which FedEx Ground need not admit or deny. To the extent that Paragraph 152 of the Amended Complaint contains any allegation of fact, that allegation is denied.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Theodore Holloway, Jr. requests that the Court grant him the following relief:

1. An Order requiring FXG to compensate Plaintiff for lost income and for all unlawful deductions from his paycheck from the date he signed his Operating Agreement forward, in an amount to be determined at trial;

2. Alternatively, an Order requiring FXG to compensate Plaintiff for the reasonable value of his services, including overtime pay, benefits, federal and state taxes, social security, unemployment, and disability contributions, plus compensation for operating costs and the cost of equipment normally borne by an employer but paid by Plaintiff, from the date of his Operating Agreement forward;

3. An award of compensatory damages for the pain and suffering, emotional distress, mental anguish, and other consequential damages suffered as a result of FXG's wrongful actions;

4. An award of attorneys' fees, costs, and expenses of this action, including those to which Plaintiff is entitled under Maryland and federal law;

5. An award of punitive damages to be determined at trial, to which Plaintiff is entitled under Maryland and federal law;

6. Prejudgment interest; and

7. All other relief that the Court finds just and proper.

ANSWER: Defendant denies that Plaintiff is entitled to any of the relief requested in the Prayer for Relief paragraph, including its subparts.

JURY DEMAND

Plaintiff demands a trial by jury.

ANSWER: The "Jury Demand" section of the Amended Complaint is a demand for a jury trial, which FedEx Ground need not admit or deny.

* * *

ADDITIONAL DEFENSES

Defendant denies that Plaintiff is 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 Plaintiff bearing Defendant's costs and fees of this litigation.

Having fully answered Plaintiff's 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

Arbitration

Plaintiff's claims, or some of them, may not be litigated in court because some or all of his claims may be subject to mandatory, final, and binding arbitration.

SECOND ADDITIONAL DEFENSE

Failure to State a Claim

Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

THIRD ADDITIONAL DEFENSE

No Standing

Plaintiff is not covered by the statutes, regulations, and legal theories sought to be invoked in the Amended Complaint. Accordingly, for this and other reasons, Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff lacks standing.

FOURTH ADDITIONAL DEFENSE

Breach of Contract

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff breached his agreement with FedEx Ground.

FIFTH ADDITIONAL DEFENSE

Res Judicata/Collateral Estoppel

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

SIXTH ADDITIONAL DEFENSE

Accord and Satisfaction: Payment

Pending further discovery, Plaintiff's claims, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment.

SEVENTH ADDITIONAL DEFENSE

Release

Pending further discovery, Plaintiff's claims, or some of them, are barred in whole or in part because said claims have been released by Plaintiff.

EIGHTH ADDITIONAL DEFENSE

Waiver

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

NINTH ADDITIONAL DEFENSE

Independent Contractor Status

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff was an independent contractor, and not an employee of FedEx Ground.

TENTH ADDITIONAL DEFENSE

Unclean Hands/ *In Pari Delicto*

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

ELEVENTH ADDITIONAL DEFENSE

Unavailability of Penalties

To the extent Plaintiff seeks punitive or exemplary damages, he fails to state facts sufficient to support such claims, and such claims are precluded by statute or violate the Due Process rights of FedEx Ground.

TWELFTH ADDITIONAL DEFENSE
Setoff and Recoupment

If any damages have been sustained by Plaintiff, although such is not admitted hereby or herein and is specifically denied, FedEx Ground is entitled under the equitable doctrine of setoff and recoupment to offset all obligations of Plaintiff to FedEx Ground against any judgment that may be entered against FedEx Ground.

THIRTEENTH ADDITIONAL DEFENSE
Express Contract

Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff entered into an express contract with FedEx Ground.

FOURTEENTH ADDITIONAL DEFENSE
Fraud Allegations Insufficient

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

FIFTEENTH ADDITIONAL DEFENSE
Lack of Reasonable Reliance

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

SIXTEENTH ADDITIONAL DEFENSE
Statute of Frauds

Pending further discovery, Plaintiff's claims, or some of them, are barred in whole or in part by the doctrine of the statute of frauds.

SEVENTEENTH ADDITIONAL DEFENSE
Failure to Mitigate

Assuming, *arguendo*, that Plaintiff has suffered any economic damages as a result of FedEx Ground's actions, which FedEx Ground specifically denies, Plaintiff had a duty to mitigate damages and, upon information and belief, has failed to do so.

EIGHTEENTH ADDITIONAL DEFENSE
Estoppel

Pending further discovery, Plaintiff's claims, or some of them, are barred in whole or in part because Plaintiff is estopped by his own conduct to claim any right to damages or other monetary relief from FedEx Ground.

NINETEENTH ADDITIONAL DEFENSE
Conduct Reasonable and in Good Faith/ Not Willful

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, and assuming, *arguendo*, that Plaintiff is entitled to relief under applicable law, which FedEx Ground specifically denies, Plaintiff's claims are barred, in whole or in part, on the ground that FedEx Ground acted in good faith, with a good-faith and reasonable belief that FedEx Ground had complied fully with federal and state law 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 FedEx Ground specifically denies, FedEx Ground's conduct was not willful.

TWENTIETH ADDITIONAL DEFENSE
Failure to Exhaust Administrative Remedies

Plaintiff's claims, or some of them, are barred because Plaintiff failed to exhaust his administrative remedies.

TWENTY-FIRST ADDITIONAL DEFENSE
Not an “Employer” Under Title VII

FedEx Ground is not an “employer” under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”), and therefore cannot be liable to Plaintiff.

TWENTY-SECOND ADDITIONAL DEFENSE
Not Eligible For Protections of FMLA

Plaintiff’s FMLA claim is barred because, at all relevant times, he was not eligible for the protections of the Family and Medical Leave Act.

TWENTY-THIRD ADDITIONAL DEFENSE
No Qualifying Reason for Leave

Plaintiff’s FMLA claim is barred because he did not seek leave for a reason that is permitted and protected by the Family and Medical Leave Act.

TWENTY-FOURTH ADDITIONAL DEFENSE
No Serious Health Condition

Plaintiff’s FMLA claim is barred because, at all relevant times, he did not have a serious health condition as defined under the Family and Medical Leave Act.

TWENTY-FIFTH ADDITIONAL DEFENSE
Failure to Satisfy Notice Obligations

Plaintiff’s FMLA claim is barred because he did not satisfy his obligation to provide FedEx Ground with notice of his alleged need for leave under the Family and Medical Leave Act, or to coordinate the timing of his leave in a manner that would minimize the disruption of FedEx Ground’s business.

TWENTY-SIXTH ADDITIONAL DEFENSE
Mixed Motive Defense

Plaintiff is not entitled to relief because Defendant would have taken the same alleged action regardless of any alleged improper or illegal motive.

TWENTY-SEVENTH ADDITIONAL DEFENSE
No Adverse Employment Action or Tangible Employment Action

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, certain of the actions described in Plaintiff's Amended Complaint do not as a matter of law constitute adverse employment actions or tangible employment actions.

TWENTY-EIGHTH ADDITIONAL DEFENSE
Legitimate, Non-Discriminatory Reason

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, FedEx Ground had legitimate, nondiscriminatory and non-pretextual reasons for the actions described in Plaintiff's Amended Complaint.

TWENTY-NINTH ADDITIONAL DEFENSE
Non-Discrimination and Non-Retaliation Policy; No Knowledge of Unlawful Discrimination or Retaliation

Assuming, *arguendo*, that Plaintiff was an employee within the meaning of applicable law, which FedEx Ground specifically denies, FedEx Ground, at all times relevant to this action, maintained a non-discrimination policy that prohibited unlawful discrimination based upon race and unlawful retaliation. FedEx Ground had no knowledge of any unauthorized conduct that constituted unlawful discrimination based on race or retaliation against Plaintiff.

THIRTIETH ADDITIONAL DEFENSE
Failure to Avoid Harm

Plaintiff unreasonably failed to take advantage of the preventive and corrective opportunities provided by FedEx Ground or to avoid harm otherwise.

THIRTY-FIRST ADDITIONAL DEFENSE
Prompt, Remedial Action

FedEx Ground exercised reasonable care at all times to prevent and correct promptly any unlawful conduct, including unlawful harassment, of which it became aware.

THIRTY-SECOND ADDITIONAL DEFENSE
Statutes of Limitations and/or Laches

The Amended Complaint, or portions thereof, is barred by the applicable statutes of limitations, laches, or both.

THIRTY-THIRD ADDITIONAL DEFENSE
Damages Unavailable

Some or all of the damages sought by Plaintiff are not available under the causes of action he alleges.

THIRTY-FOURTH ADDITIONAL DEFENSE
Justification or Excuse

The wrongs alleged, if any, were justified and/or excused under the circumstances.

THIRTY-FIFTH ADDITIONAL DEFENSE
Privilege

The Amended Complaint, or portions thereof, is barred because FedEx Ground was privileged to do (and acted rightfully and with justifiable cause in doing) what it did.

* * *

FedEx Ground reserves the right to assert by supplemental pleading any affirmative defenses or counterclaim which matures or is acquired subsequent to the filing of this Answer.

Dated: April 18, 2008

Respectfully submitted,

By: s/Robert M. Schwartz
Robert M. Schwartz

John H. Beisner
Robert M. Schwartz
Evelyn L. Becker
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006-4001

Thomas J. Brunner
Alison G. Fox
BAKER & DANIELS LLP
205 West Jefferson Blvd., Suite 250
South Bend, IN 46601

Defendants' Liaison and lead Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of April, 2008, the foregoing was filed with the Clerk of the Court using the CM/ECF system. Notice of this filing was sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Susan E. Ellingstad
sellingstad@locklaw.com

Lynn R Faris
lfaris@leonardcarder.com

Robert I Harwood
rharwood@whesq.com

Peter W. Overs, Jr.
povers@whesq.com

Peter J. Agostino
agostino@aaklaw.com

Jeffrey A Bartos
jbartos@geclaw.com

Soye Kim
skim@geclaw.com

The undersigned further certifies that the foregoing document was mailed by United States Postal Service to the following non-CM/ECF participants:

Clayton D Halunen PHV
Halunen & Associates
220 S Sixth St Suite 2000
Minneapolis, MN 55402

By: s/Robert M. Schwartz
Robert M. Schwartz