

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

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In re FEDEX GROUND PACKAGE )  
SYSTEM, INC., EMPLOYMENT )  
PRACTICES LITIGATION )

Cause No. 3:05-MD-527-RM  
(MDL 1700)

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THIS DOCUMENT RELATES TO: )

*Katrina Lee, et al. v. FedEx Ground* )  
*Package System, Inc.,* )  
Civil No. 3:05-cv-00533-RLM-CAN (MN) )  
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**ANSWER AND ADDITIONAL DEFENSES OF FEDEX GROUND PACKAGE  
SYSTEM, INC. TO PLAINTIFFS'  
SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant FEDEX GROUND PACKAGE SYSTEM, INC. ("FedEx Ground" or "Defendant") on behalf of itself alone, files this Answer to the Plaintiff's Second Amended Class Action Complaint (the "Amended Complaint") served by Plaintiffs KATRINA LEE, MAGNUS B. CONROY, GARY MIYAZAKI, GERALD PELKEY, and SERGEI SELENSKIKH et al. ("Plaintiffs"). Except as expressly admitted below, Defendant denies the allegations of Plaintiffs' Amended Complaint.

**PARTIES**

1. Plaintiffs are Katrina Lee, Magnus B. Conroy, Gary Miyazaki, Gerald Pelkey and Sergei Selenskikh. Plaintiffs all previously worked for Defendant corporations and were classified as independent contractors.

**ANSWER:** Defendant admits the identity of the Plaintiffs, but denies the remaining allegations contained in Paragraph 1 of the Amended Complaint.

2. Defendant FedEx Ground Package System, Inc. (“FEG”), and its division, FedEx Home Delivery (“FHD”) (hereinafter together referred to as “Defendant” or “Defendant”), is a Delaware corporation doing business as two national companies, affiliated with the Federal Express Corporation. At all relevant times, and within six years of the filing of this Complaint, Defendant was engaged in providing small package information, transportation and delivery services in the United States, including in the State of Minnesota.

**ANSWER:** Defendant admits that FedEx Ground Package System, Inc. is a wholly-owned subsidiary of FedEx Corporation, that it is incorporated in Delaware, that FedEx Home Delivery is a division of FedEx Ground Package System, Inc., and that FedEx Ground engages in providing small package information, transportation and delivery services in the United States, including Minnesota and denies the remaining allegations contained in Paragraph 2 of the Amended Complaint.

3. Defendant is qualified to, and does, transact business in the State of Minnesota, including locations in Hennepin County.

**ANSWER:** Defendant admits that it is qualified to, and does do business in the State of Minnesota, and denies the remaining allegations in Paragraph 3 of the Amended Complaint.

4. Defendant employs local package delivery drivers for FEG and FHD, all of whom, at FEG’s and FHD’s direction and control, perform package delivery to local businesses and residences.

**ANSWER:** Defendant denies each and every allegation contained Paragraph 4 of the Amended Complaint.

**JURISDICTION AND VENUE**

5. This is an action alleging illegal deductions from wages in violation of Minn. Stat. § 181.79; failure to keep records in violation of Minn. Stat. 177.30; violation of the Prevention of Consumer Fraud Act, Minn. Stat. §325F.69; fraud; and, rescission.

**ANSWER:** Defendant admits Plaintiff brings this action as stated in Paragraph 5 of the Amended Complaint and denies the remaining allegations in that paragraph.

6. Venue herein is proper pursuant to the order of the Judicial Panel for Multidistrict Litigation transferring this action to this Court.

**ANSWER:** Defendant admits the allegations contained in Paragraph 6 of the Amended Complaint.

**CLASS ACTION ALLEGATIONS**

7. This action is brought on behalf of a Class of persons currently and formerly employed by Defendant as employees within the definition of “employee” in the common and statutory law, but who, similar to the named Plaintiffs, are or were erroneously Classified as “contractors” or “independent contractors.” Occupations or jobs in which Class Members worked or work include route delivery drivers for FEG and FHD. The Class includes all such persons employed by Defendant within the six-year statute of limitations. The Class is specifically defined as follows:

All individuals who worked for Defendant FedEx Ground System, Inc. and/or its subsidiary FedEx Home Delivery, Inc. in Minnesota from March 21, 1999 to March 21, 2005 (the Class Period), as package pick-up and delivery drivers, and who were Classified as “independent contractors” and thereby deprived of various protections under Minnesota law.

Plaintiffs believe that the Class as defined above includes over 1,000 members.

**ANSWER:** Defendant admits that Plaintiff's purport to bring a class action as described in Paragraph 7 and denies the remaining allegations contained in that paragraph. Defendant specifically denies that this case may be maintained as a class action.

8. FEG and FHD employ 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 "Pick-up And Delivery Contractor Operating Agreement" that mischaracterizes each driver as an "independent contractor." These Operating Agreements conceal the true nature of the relationship between Defendant and its drivers: that of employer and employee.

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

9. Plaintiffs, and Plaintiff Class Members, were denied the accoutrements of employment, including, but not limited to:

- a. wages;
- b. overtime pay;
- c. holiday pay;
- d. workers' compensation;
- e. unemployment insurance;
- f. contributions to Defendant's retirement plan;
- g. participation in Defendant's Employee Stock Purchase Plan;
- h. income tax withholding; and,
- i. meal, break and rest periods.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 9 of the Amended Complaint, including its subparts.

10. Plaintiffs, and Plaintiff Class Members, were required to pay Defendant's operating expenses, all of which should have been paid by Defendant, including, but not limited to:

- a. delivery vehicle purchase;
- b. various insurances, including vehicle insurance and work accident insurance;
- c. delivery vehicle maintenance and repairs;
- d. purchase and maintenance of logos and uniforms;
- e. fuel;
- f. cargo claims; and,
- g. "business support," including maps, signs, logos, training and scanners.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 10 of the Amended Complaint, including its subparts.

11. 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 Minnesota 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 its drivers as independent contractors. As a result, these drivers are deprived of the rights and protections guaranteed by Minnesota 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 11 of the Amended Complaint.

12. The named Plaintiffs are adequate representatives of the Class because they were treated in the same manner as other Class Members by the Defendant and they have been damaged by this treatment in the same manner as other Class Members by their exclusion from employee compensation programs, plans and agreements and employee benefit plans and rights.

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

13. There are common questions of law and fact applicable to the entire Class including, but not limited to, the question whether Plaintiffs and Plaintiff Class Members are entitled to certain types of employee compensation and benefits because they are employees of Defendant as defined by common and statutory law, even though Defendant has misrepresented to Plaintiffs and Plaintiff Class Members their true employment status.

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

14. This case should be certified as a Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure because the common questions of law and fact concerning Defendant's liability predominate over any individual question over the amount of damages to each person and that:

- a. The members of the Class are so numerous that their individual joinder in a single action is impossible and/or impracticable;
- b. The central questions of law and fact involved in this action are of a common or general interest and those common legal and factual issues predominate over any questions affecting only individual members of the Class. Among the common questions of law and fact are the following:
  - i. Whether Class Members have been misclassified as independent contractors pursuant to Defendant's operating agreements;
  - ii. Whether the Defendant has violated their legal obligations under various provisions of Minnesota law;
  - iii. Whether Defendant unlawfully failed to provide workers compensation insurance benefits and unemployment insurance benefits to the Class Members in violation of Minnesota Law;
  - iv. Whether Defendant intentionally and/or negligently misrepresented to Plaintiffs and the Class they seek to represent their true employment status and thereby induced them to incur substantial expenses in reliance on such representations and;
  - v. Whether injunctive and declaratory relief and an equitable accounting are proper.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph

14 of the Amended Complaint, including its subparts.

15. The claims of the named Plaintiffs are identical to the claims of other members of the Class. The named Plaintiffs share the same interests as other members of the Class in this action because, like other Class Members, they have each been misclassified and suffered financial loss of thousands of dollars due to Defendant's wrongful misclassification. Given the significance of their losses, they have the incentive, and are committed, to vigorously prosecuting this action. They have retained competent and experienced counsel who specialize in Class action and employment litigation to represent them and the proposed Class;

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 15 of the Amended Complaint.

16. A Class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the Class to seek redress individually for the wrongful conduct alleged herein. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 16 of the Amended Complaint.

**FACTS COMMON TO ALL CAUSES OF ACTION**

17. Defendant is a corporation whose business consists of package delivery and pickup service to customers, using a single integrated nationwide network of transportation, communication and sorting facilities and integrating Class Members into that existing network of operations. Defendant hired Plaintiffs to deliver and pick up packages based on times, locations and for amounts determined solely by Defendant.

**ANSWER:** Defendant admits that it is a corporation whose business consists of providing package delivery and pickup service to customers, including the provision of certain package information to customers. Defendant denies the remaining allegations contained in Paragraph 17 of the Amended Complaint.

18. Defendant employs or employed during the Class period more than 1,000 delivery and pick-up drivers in the State of Minnesota including, either currently or at material times in the past, each of the Plaintiffs.

**ANSWER:** To Defendant denies each and every allegation contained in Paragraph 18 of the Amended Complaint.

19. 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 19 of the Amended Complaint.

20. 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 20 of the Amended Complaint.

21. 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 21 of the Amended Complaint.

22. Defendant also 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 extra-contractual 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 retain 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 22 of the Amended Complaint.

23. Defendant maintains compensation and benefit plans, agreements and programs available to persons who are "employees" of Defendant. The benefit plans include: Health Benefit Plan, Life Insurance Plan, Short-term and Long-term Disability Plans, Accidental Death & Dismemberment and Survivor Income Plan, Employee Stock Purchase Plan, Business Travel Accident Plan, and Retirement and 401 (K) Savings Plans. In addition, employees of Defendant

receive additional compensation programs, plans, rights, and benefits, including vacation, holidays, sick leave, other types of paid leave, and stock purchase rights.

**ANSWER:** Defendant admits that it maintains certain benefit plans and alleges that the eligibility requirements of those plans speak for themselves. Defendant denies the remaining allegations contained in Paragraph 23 of the Amended Complaint.

24. Plaintiffs and Plaintiff Class Members have been excluded from the foregoing compensation plans and programs and benefit plans for all or a portion of their employment at FedEx due to their misclassification as non employees.

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

25. Plaintiffs and Plaintiff Class Members have incurred expenses for equipment, insurance and other expenses that Defendant requires them to purchase under the contract.

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

**FIRST CAUSE OF ACTION:**  
**ILLEGAL DEDUCTIONS FROM WAGES IN VIOLATION OF**  
**MINN. STAT. SECTION 181.79**

26. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 25 of the Amended Complaint as if set fully forth herein.

27. Defendant has unlawfully withheld monies from the compensation earned by Plaintiffs and Plaintiff Class Members for business expenses of Defendant, including but not limited to vehicle expenses, cargo claims and insurance claims in violation of Minnesota Statute Section 181.79. Plaintiffs and Plaintiff Class Members have not expressly and freely given

written consent to such deductions, and these deductions are not made in response to a valid wage assignment or deduction order. Such deductions were not for the Plaintiff and Plaintiffs Class Members employees' benefit.

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

28. Defendant has withheld said funds unlawfully without providing Plaintiffs and Plaintiff Class Members with advance notice of the amounts, reasons or documentation to justify such deductions, and absent any lawfully sufficient reason for such conduct.

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

29. As a direct and proximate result of Defendant's conduct, Plaintiffs and Plaintiff Class Members have suffered substantial losses and been deprived of compensation to which they were entitled, including monetary damage in an amount of two times the amounts deducted, pre-judgment interest, costs and reasonable attorney fees.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 29 of the Complaint. Specifically, Defendant denies that Plaintiffs or the purported members of their putative class are entitled to any and all of the relief requested contained in Paragraph 29.

**SECOND CAUSE OF ACTION:**  
**VIOLATION OF MINNESOTA STATUTE § 177.30,**  
**FAILURE TO KEEP RECORDS**

30. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 29 of the Amended Complaint as if set fully forth herein.

31. Throughout the relevant time period, Defendant was an employer within the meaning of Minnesota Statute § 177.23, Subd. 6, and subject to the requirements of Minnesota Statute § 177.30 Subd. 1, which provides in pertinent part:

Every employer subject to sections 177.21 to 177.35 must make and keep a record of:

- (1) the name, address, and occupation of each employee;
- (2) the rate of pay, and the amount paid each pay period to each employee;
- (3) the hours worked each day and each workweek by the employee.

**ANSWER:** Defendant alleges that the terms of the Minnesota statute speak for themselves and therefore the allegations contained in Paragraph 31 of the Amended Complaint require no response. Defendant denies the remaining allegation contained in that paragraph of the Complaint.

32. Plaintiffs and Plaintiff Class Members are entitled to the protections of Minnesota Statute § 177.30, Subd. 1.

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

33. Upon information and belief, Defendant has violated the above provisions by failing to keep records of Plaintiffs' and the Plaintiff Class Members' rate of pay and hours worked each day and workweek.

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

34. Defendant is liable to Plaintiffs and Plaintiff Class Members for compensatory and liquidated damages, a civil penalty for each violation, plus costs, disbursements, witness and attorneys' fees, pursuant to Minnesota Statute § 177.27.

**ANSWER:** Defendant denies each and every allegation contained Paragraph 34 of the Complaint. Defendant specifically denies Plaintiffs or the purported members of their putative class are entitled to any and all relief requested in that paragraph of the Amended Complaint.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE PREVENTION OF CONSUMER FRAUD ACT,**  
**MINN. STAT. § 325F.69**

35. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 34 of the Amended Complaint as if set fully forth herein.

36. Defendant, through the actions described above, have violated the Minnesota Prevention of Consumer Fraud and Deceptive Business Practices Act, Minn. Stat. § 325F.69.

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

37. Defendant's marketing and recruitment materials are offered and presented to members of the general public within the State of Minnesota.

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

38. In entering into the Operating Agreement, Plaintiffs purchased their routes from Defendant. The consideration for that purchase was Plaintiffs' acquisition of the delivery truck, purchase of the business support package, or an agreement to provide services.

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

39. Defendant's representations to Plaintiffs and other members of the general public through their advertising, marketing and recruitment process were false and were false statements of intention when made, and therefore constitute misstatements of material fact.

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

40. Defendant has engaged in unconscionable commercial practices of deception, fraud, false pretense, false promise, misrepresentations and omissions in recruiting and retaining its drivers, the public at large, and the Plaintiffs and Plaintiff Class Members specifically, regarding the status of the Plaintiffs and Plaintiff Class Members as independent business owners as pled in this Amended Complaint.

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

41. Specifically, Defendant misled the Plaintiffs to believe that they were going to be "partners" with Defendant, that Plaintiffs would have an independent business, fully marketable and transferable, that Plaintiffs were investing in a business and would have a proprietary interest that would grow, along with their income, that the routes had and would have value, and other representations designed to convince Plaintiffs and members of the general public to acquire a truck and service Defendant's customers under the terms of a burdensome and nonnegotiable contract.

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

42. Defendant knowingly concealed, suppressed or omitted the fact that it intended to manage Plaintiffs' work and income, that Defendant's management and control destroyed or

would destroy any perceived value of the routes, that Defendant had no intention of leaving the means and methods of work to Plaintiffs, that other jurisdictions have found that driver-contractors were actually employees, not business owners, that Defendant intended to treat Plaintiffs as employees, not entrepreneurs, and other material facts regarding the transaction.

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

43. Defendant's actions are unfair and deceptive, and constitute deception, fraud, false pretense, false promise, misrepresentation, omission, or knowing concealment, suppression or omission of material facts with the intent that the Plaintiffs, Plaintiff Class Members, and the general public rely upon concealment, suppression, or omission of facts in connection with the sale of routes to Plaintiffs and those like them.

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

44. Defendant committed affirmative misrepresentations, knowing omissions, and violations of the Minnesota Prevention of Consumer Fraud Act, entitling Plaintiffs and Plaintiff Class Members to the remedies under the Act.

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

45. As a result of Defendant's conduct, Plaintiffs entered into the Operating Agreement as described in the foregoing allegations, and made the associated and required investments, including the purchase of a truck and other equipment.

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

46. As a result of Defendant's control and management, Defendant has destroyed the potential financial value of the routes.

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

47. Plaintiffs suffered ascertainable losses as a result of Defendant's actions, including but not limited to the loss of value in the routes, lost opportunity to sell the routes, lost profits, additional insurance costs, taxes, and other expenses that should have been paid by Defendant as an employer.

**ANSWER:** Defendant denies each and every allegation contained in paragraph 47 of the Amended Complaint.

48. A causal nexus exists between Defendant's actions and Plaintiffs' losses. Defendant is liable to Plaintiffs and Plaintiff Class Members for compensatory damages, consequential damages, punitive damages, injunctive and declaratory relief, plus costs, disbursements, and attorney fees, plus pre- and post-judgment interest.

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

**FOURTH CAUSE OF ACTION:**  
**FRAUD**

49. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein, and further allege:

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 48 of the Amended Complaint as if set fully forth herein.

50. 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 50 of the Amended Complaint.

51. 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 51 of the Amended Complaint.

52. 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 52 of the Amended Complaint.

53. By its aforesaid conduct, Defendant is guilty of oppression, fraud and malice in violating Plaintiff rights and protections guaranteed by Minnesota law and other applicable law.

**ANSWER:** Defendant denies each and every allegation contained in paragraph 53 of the Amended Complaint.

**FIFTH CAUSE OF ACTION:**  
**RESCISSION**

54. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein, and further allege:

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 53 of the Amended Complaint as if set fully forth herein.

55. 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 55 of the Amended Complaint.

56. Defendant controls virtually every aspect of the Plaintiffs' work and earnings, as set forth in the general allegations hereof at paragraphs 17 through 25.

**ANSWER:** Defendant denies each and every allegation contained in paragraph 56 of the Amended Complaint.

57. 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 57 of the Amended Complaint.

58. 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 58 of the Amended Complaint.

59. 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

59 of the Amended Complaint.

60. 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 60 of the Amended Complaint.

61. 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 61 of the Amended Complaint.

62. 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 62 of the Amended Complaint.

63. 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 63 of the Amended Complaint.

64. 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 64 of the Amended Complaint.

65. 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 65 of the Amended Complaint.

**SIXTH CAUSE OF ACTION:**  
**DECLARATORY RELIEF**

66. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein, and further allege:

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 65 of the Amended Complaint as if set fully forth herein.

67. 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;
  - vii. meal, break and rest periods.
- b. Whether Defendant has unlawfully failed to pay benefits and compensation owing in a timely manner to Plaintiffs and Plaintiff Class Members whose employment with Defendant ended, as required by Minnesota law.
  - c. What amounts Plaintiffs and Plaintiff Class Members are entitled to receive in compensation and benefits.
  - d. What amounts Plaintiffs and Plaintiff Class Members are entitled to receive in interest on unpaid compensation due and owing.
  - e. 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 67 of the Amended Complaint, including its subparts. To the extent Plaintiffs seek relief under Defendant's retirement plan, such relief is preempted by ERISA. For reasons discussed at length in Defendant's accompanying Motion to Dismiss Plaintiffs' Claims for Relief Under ERISA, Plaintiffs' claims based on these plans should be dismissed.

68. Plaintiffs and Plaintiff Class Members further seek entry of a declaratory judgment in their favor which declares 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, and each of them, to the Plaintiffs and Plaintiff Class Members.

**ANSWER:** Paragraph 68 describes Plaintiffs' request for declaratory relief, to which no

answer is required. Notwithstanding the foregoing, Defendant denies that Plaintiffs or the putative members of their purported class are entitled to any and all relief requested in Paragraph 68 of the Amended Complaint.

**SEVENTH CAUSE OF ACTION**  
**REQUEST FOR INJUNCTIVE RELIEF**

69. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein, and further allege:

**ANSWER:** Defendant repeats and realleges its answers to Paragraphs 1 through 68 of the Amended Complaint as if fully set forth herein.

70. Defendant will continue to misclassify Plaintiffs and Plaintiff Class Members as independent contractors and unlawfully deny them the common benefits of employee status;

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 70 of the Amended Complaint.

71. Plaintiffs and Plaintiff Class Members have been injured and damaged, and are threatened with injury and damage, by Defendant's continued misclassification and unlawful refusal to pay all compensation and benefits as heretofore alleged, and Plaintiffs and Plaintiff Class Members have no adequate remedy at law.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 71 of the Amended Complaint.

72. Defendant has acted, and threatened to act, on grounds generally applicable to the individual members of the Class, thereby making appropriate preliminary and permanent injunctive relief enjoining Defendant and their agents from practicing the unlawful practices heretofore alleged.

**ANSWER:** Defendant denies each and every allegation contained in Paragraph 72 of the

Amended Complaint. Specifically, Defendant denies that Plaintiffs are entitled to any and all relief requested in that paragraph of the Amended Complaint.

**WHEREFORE**, Plaintiffs request that judgment be entered against Defendant for the following:

1. Declaring that the Defendant's acts described in this Complaint constitute violations of Minn. Stat. §§ 181.79 , 177.30, 325F.69 and Minnesota common law.
2. An award of benefits due them under the programs, agreements and plans described above with an appropriate award of interest;
3. An award of damages for their erroneous exclusion from the programs, agreements and plans described above with an appropriate award of interest;
4. Clarification and enforcement of their rights under these programs, agreements and plans;
5. An award of damages for all out-of-pocket expenses incurred by Plaintiffs and Plaintiff Class Members necessary to perform their jobs for Defendant described above with an appropriate award of interest;
6. Rescinding the Operating Agreement, and awarding restitution compensating for the reasonable value of the benefit provided to Defendant; and,
7. Attorney fees and costs as provided by law;
8. Punitive damages in an amount to be determined at trial; and,
9. Such other further relief as the Court may deem just and equitable.

**ANSWER:** Defendant denies that Plaintiff is entitled to any of the relief requested in the forgoing paragraph, including its subparts. To the extent Plaintiffs seek relief under Defendant's retirement plan, such relief is preempted by ERISA. For reasons discussed at length in

Defendant's accompanying Motion to Dismiss Plaintiffs' Claims for Relief Under ERISA, Plaintiffs' claims based on these plans should be dismissed.

### **ADDITIONAL DEFENSES**

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

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

#### **FIRST ADDITIONAL DEFENSE**

##### **Failure to State a Claim**

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 contact 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 Minnesota 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.

**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 Defendants' costs and fees of this litigation.

Dated: June 19, 2006

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of June, 2006, I filed the foregoing ***ANSWER AND ADDITIONAL DEFENSES OF FEDEX GROUND PACKAGE SYSTEM, INC. TO PLAINTIFFS' SECOND 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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