

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

In re FEDEX GROUND PACKAGE SYSTEM, INC., EMPLOYMENT PRACTICES LITIGATION)	
)	
)	Cause No. 3:05-MD-527-RM
)	(MDL 1700)
)	
THIS DOCUMENT RELATES TO:)	
)	
<i>Derek Willis v. FedEx Ground</i>)	
<i>Package System, Inc.,</i>)	
Civil No. 3:05-cv-00597-RLM-CAN (PA))	
)	

**ANSWER AND ADDITIONAL DEFENSES OF
FEDEX GROUND PACKAGE SYSTEM, INC. TO PLAINTIFF'S
AMENDED CLASS ACTION COMPLAINT**

Defendant FEDEX GROUND PACKAGE SYSTEM, INC. (“FedEx Ground” or “Defendant”) on behalf of itself alone, and for no other defendant, files this Answer to the Amended Class Action Complaint (the “Amended Complaint”) served by Plaintiff DEREK D. WILLIS (“Plaintiff”). Except as expressly admitted below, Defendant denies the allegations of Plaintiff’s Amended Complaint.

INTRODUCTION

1. This is a class action complaint brought to obtain declaratory, injunctive and monetary relief on behalf of a class of employees of defendant, for violations of, *inter alia*, the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*, the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101 *et seq.*, as well as other rights, obligations, privileges and benefits owed to the class by defendant.

ANSWER: Defendant admits that Plaintiff purports to bring an action as described in Paragraph 1 of the Amended Complaint, but denies that such an action is properly brought or that Plaintiffs are entitled to any relief.

2. The class consists of FedEx Ground small package delivery drivers employed in Pennsylvania, whom defendant has improperly misclassified as “independent contractors,” but who are, in actuality, “employees” of defendant under both common and statutory law.

ANSWER: Defendant denies each and every allegation contained in Paragraph 2 of the Amended Complaint, except Defendant admits that Plaintiff purports to bring a class action as described in Paragraph 2. Defendant specifically denies that this case may be maintained as a class action.

3. This action challenges both the misclassification of these workers and defendant’s denial to plaintiff and the class of the rights, obligations, privileges and benefits owed to them as employees.

ANSWER: Defendant admits that Plaintiff purports to bring an action as described in Paragraph 3 of the Amended Complaint, but denies that such an action is properly brought or that Plaintiffs are entitled to any relief.

VENUE

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

ANSWER: Defendant alleges that the terms of the Judicial Panel on Multi-District Litigation by Transfer Order speak for themselves. Defendant denies the remaining allegations of Paragraph 4 of the Amended Complaint.

JURISDICTION

5. There is federal jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2), as amended by Public Law 109.2, 119 Stat. 4 (2005), in that this is a class action, the matter in

controversy exceeds the sum of \$5 million, exclusive of interest and costs, and members of the class are citizens of a state different from the defendant.

ANSWER: Defendant admits that this Court has subject matter jurisdiction over the above-captioned action, but denies that this case may be maintained as a class action.

PARTIES

6. Plaintiff Derek D. Willis is an individual residing in Philadelphia, Pennsylvania.

ANSWER: Defendant lacks sufficient knowledge with respect to Plaintiff's residency, and on that basis denies the allegations contained in Paragraph 6 of the Amended Complaint.

7. Like all members of the class, plaintiff Willis works as a package pick-up and delivery driver for FedEx Ground ("FedEx Ground") in Pennsylvania and has been misclassified by defendant as an "independent contractor."

ANSWER: Defendant admits that Plaintiff is an independent contractor who entered into a contract with FedEx Ground and operated his business in Pennsylvania. Defendant denies all remaining allegations in Paragraph 7 of the Amended Complaint, and specifically denies that class treatment of this action is appropriate.

8. Defendant FedEx Ground is a Delaware corporation with a place of business in Moon Township, Pennsylvania. FedEx Ground is engaged in providing small package delivery, transportation and pick-up services in, *inter alia*, Pennsylvania.

ANSWER: Defendant admits that FedEx Ground is incorporated in Delaware and that its principal place of business is in Moon Township, Pennsylvania. Defendant also admits that FedEx Ground's business, in part, consists of providing a small package transportation and delivery service to its customers throughout the United States.

9. FedEx Ground is a subsidiary of FedEx Corporation. FedEx Ground was established in or about 1998, when the FedEx Corporation acquired FedEx Ground's predecessor, Roadway Package Systems, Inc.

ANSWER: Defendant admits that it is a subsidiary of FedEx Corporation and that FedEx Corporation acquired Roadway Package Systems, Inc. in 1998. Defendant denies all remaining allegations in Paragraph 9 of the Amended Complaint.

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of a class defined as:

All individuals who worked as FedEx Ground package pick-up and delivery drivers in Pennsylvania who were designated by defendant as "independent contractors."

ANSWER: Defendant denies each and every allegation contained in Paragraph 10 of the Amended Complaint, except Defendant admits that Plaintiff purports to bring a class action as described in Paragraph 10. Defendant specifically denies that this case may be maintained as a class action.

11. The class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

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

12. Upon information and belief, there are over 1,000 class members, each of whom worked as a FedEx Ground package pick-up and delivery driver under the conditions described herein, each of whom was improperly classified by defendant as an "independent contractor."

ANSWER: Defendant denies each and every allegation contained in Paragraph 12 of the Amended Complaint, except Defendant admits that the aggregate number of putative class members who would meet Plaintiff's proposed class definition exceeds 100.

13. The claims in this action arise exclusively from the pre-printed portions of uniform documents, and the uniform policies of defendant as described herein.

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

14. No violations are a result of any oral communications or individualized interaction between plaintiff and defendant. Rather, all policies and actions challenged herein are uniform policies directed towards and relating to the class as a whole.

ANSWER: Defendant denies each and every allegation contained in Paragraph 14 of the Amended Complaint.

15. There are common questions of law and fact affecting the rights of all class members, including, *inter alia*, the following:

- a. whether plaintiff and the class are employees of defendant;
- b. whether defendant has violated the rights of plaintiff and the class under the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*;
- c. whether defendant has violated the rights of the class under the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101 *et seq.*;
- d. whether the class is entitled to injunctive relief prohibiting defendant from making deductions from the wages of plaintiff and the class which are not authorized by law;
- e. whether plaintiff and the class are entitled to an accounting by defendant of all hours worked on behalf of defendant, all wages paid by defendant, all deductions from wages made by defendant and the basis of all such deductions;

- f. whether the class is entitled to declaratory relief declaring that they are employees of defendant;
- g. whether the class is entitled to injunctive relief requiring defendant to convey to the class the rights, privileges and benefits of employees;
- h. whether defendant has been unjustly enriched at the expense of plaintiff and the class.

ANSWER: Defendant denies each and every allegation contained in Paragraph 15 of the Amended Complaint, including its subparts.

16. Plaintiff is a member of the class he seeks to represent and his claims are not only typical of all class members, they are identical, arising from the same factual and legal basis as those of the class.

ANSWER: Defendant denies each and every allegation contained in Paragraph 16 of the Amended Complaint. Defendant specifically denies that this case can be properly maintained as a class action.

17. Plaintiff has no interest antagonistic to, or in conflict with, the class. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent him and the class.

ANSWER: Defendant denies each and every allegation contained in Paragraph 17 of the Amended Complaint.

18. All members of the class have been injured by the same actions of defendant in the same manner.

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

19. Defendant has acted and refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

ANSWER: Defendant denies each and every allegation contained in Paragraph 19 of the Amended Complaint.

20. Since defendant continues to misclassify all FedEx Ground package delivery persons in Pennsylvania as “independent contractors,” the prosecution of separate actions by individual class members will create a risk of inconsistent or varying adjudications.

ANSWER: Defendant denies each and every allegation contained in Paragraph 20 of the Amended Complaint.

21. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, the common questions will predominate, and there will be no unusual manageability issues.

ANSWER: Defendant denies each and every allegation contained in Paragraph 21 of the Amended Complaint.

FACTS GIVING RISE TO THE CAUSES OF ACTION

22. Defendant employs tens of thousands of “FedEx Ground” drivers to pick up and deliver packages for defendant’s customers throughout the United States, including drivers in the State of Pennsylvania.

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

23. As a condition of employment, each “FedEx Ground” pick-up and delivery driver employed by defendant in Pennsylvania is required to sign a lengthy form contract entitled the “Pickup and Delivery Contractor Operating Agreement” (“PDCOA”) which incorrectly and

falsely purports to classify these drivers as “independent contractors” rather than employees of defendant.

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

24. The PDCOA is a form contract, the terms of which are identical or substantially similar for every class member.

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 of defendant for any purpose. Defendant denies the remaining allegations of Paragraph 24 of the Amended Complaint.

25. The PDCOA contains various statements purporting to classify plaintiff and plaintiff class members as independent contractors. At the same time, the PDCOA 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 of defendant for any purpose. Defendant denies the remaining allegations of Paragraph 25 of the Amended Complaint.

26. The PDCOA 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. Plaintiff 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 26 of the Amended Complaint.

27. Defendant has created and regularly updated a large number of written policies and procedures outside of the PDCOA 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 rule, whether disclosed or undisclosed, known or unknown, they are subject to various types of punishment, some financial and some disciplinary, up to and including contract termination and/or non-renewal. defendant documents such so-called violations of such rules on forms referred to as “Business Discussion Notes” and retains these documents in secret driver files called “DOT” files, along with myriad other documents which are likewise concealed from and not disclosed to the drivers.

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

28. Despite the PDCOA’s mischaracterization of the class members as “independent contractors,” defendant is fully aware that plaintiff and the class were and are employees of defendant as a matter of law.

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

29. Upon information and belief, defendant's use of the misclassification of these workers is part of a scheme by which defendant seeks to deny them the benefits, rights and privileges owed to employees under the law.

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

30. At all relevant times, defendant was fully aware that the extent of defendant's direction and control over the manner and means by which class members performed their work for defendant was inconsistent with the legal definition of "independent contractors."

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

31. At all relevant times, defendant was fully aware that the extent of defendant's direction and control over the manner and means by which class members were required to perform their work for defendant created a *de facto* and *de jure* employer/employee relationship.

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

32. In particular, defendant was aware, *inter alia*, of each of the following facts.

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

33. Defendant required class members to work out of a terminal owned and operated by defendant, where defendant assigns the packages to the class for delivery and pick up each day.

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

34. Defendant prohibited class members from leaving defendant's premises without the approval of defendant's managers.

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

35. Defendant required class members to clock in and out when they enter and leave defendant's terminal, as well as to file daily reports with defendant of their activities.

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

36. Defendant required class members to purchase and wear FedEx uniforms and insignia bearing FedEx logos and to deliver packages in vehicles adorned with FedEx logos.

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

37. Defendant employs supervisors and managers at the terminal, who have extensive supervisory control over plaintiff and the class.

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

38. Defendant regulated the specific times when deliveries and pick-ups would be made by class members.

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

39. Defendant unilaterally determined how many package pick-ups and deliveries class members would make each day.

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

40. Defendant unilaterally determined how many hours class members would work each day.

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

41. Defendant unilaterally determined the amounts charged to customers for delivery of packages.

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

42. Defendant controls all aspects of the class members' work schedule: determining the times when drivers deliver and pick up packages, how many packages they deliver or pick up in a given period, what packages they pick up and deliver, and how long they work each day.

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

43. Defendant forbids plaintiff and the class from refusing to accept packages for pick-up or delivery.

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

44. Plaintiff and the class deliver packages exclusively for defendant and were prohibited by defendant from delivering packages for any other delivery companies.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiff and the purported members of his putative class delivered packages exclusively for FedEx Ground, and on that basis denies that allegation. Defendant denies the remaining allegations in Paragraph 44 of the Amended Complaint.

45. Defendant prohibited class members from using helpers or other workers to assist in the delivery or pick-up of packages, without defendant's express approval of such helpers.

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

46. Defendant provided training and training materials to plaintiff and the class regarding, *inter alia*, defendant's policies and procedures, the types of reports required by defendant, and the use of the equipment which defendant required plaintiff and the class to utilize.

ANSWER: Defendant admits that it provides certain informational materials to those who contract with Defendant to deliver and pick up packages. Defendant denies the remaining allegations contained in Paragraph 46 of the Amended Complaint.

47. Defendant promulgated written policies and procedures which class members were required to follow in their work for defendant.

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

48. Defendant "fined" and otherwise disciplined class members for failing to follow the policies and procedures set by defendant.

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

49. Defendant required plaintiff and the class to purchase and use “business support” packages from defendant, the contents of which were selected and compiled unilaterally by defendant, and which included maps, signs, training materials, modems and scanners.

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

50. Defendant required class members to purchase and maintain a delivery vehicle selected unilaterally by defendant, which was built according to defendant’s precise specifications, and adorned with FedEx logos and signage.

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

51. Defendant maintained and enforced rules for class members as to who was allowed to ride in or drive such vehicles and where such vehicles could be parked.

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

52. Defendant inspected these vehicles and drivers for compliance with appearance standards promulgated by defendant.

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

53. Plaintiff and the class are an integral part of defendant’s business, and the services they perform are essential to the conduct of that business.

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

54. Plaintiff and the class did not exercise any business management in connection with the services they performed for defendant. Moreover, defendant prohibited plaintiff and the class from exercising independent business judgment regarding the services they performed.

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

55. Defendant also received actual notice from various government entities that the FedEx ground delivery drivers they classified as “independent contractors” were, in fact, employees of defendant and their predecessor.

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

56. For example, defendant is aware that in the matter of Estrada v. FedEx Ground, Case No. BC 21130 (July 26, 2004), a court of competent jurisdiction in California found that FedEx Ground delivery drivers, working under the same conditions as plaintiff and the class, were not “independent contractors” and were “employees” of defendant.

ANSWER: Defendant admits that it is aware of the case referenced Paragraph 56 of the Complaint and alleges that the referenced decision of the Los Angeles County Superior Court speaks for itself. Defendant denies that the trial court’s decision is correct or applicable to this case. Defendant denies the remaining allegations of Paragraph 56 of the Amended Complaint.

57. Defendant is also aware that in the matter of Fed Ex Ground Package System v. Int’l Brotherhood of Teamsters, AFL-CIO, Case No. 22 RC-12508 (November 2, 2004), the Regional Director of the National Labor Relations Board found that FedEx Ground delivery

drivers in New Jersey, working under the same conditions as plaintiff and the class, were not “independent contractors” but rather “employees” of defendant.

ANSWER: Defendant admits that it is aware of the decision of the National Labor Relations Board referenced in Paragraph 57 of the Complaint, and alleges that the decision speaks for itself. Defendant denies that the decision is correct or applicable to this case. Defendant denies the remaining allegations of Paragraph 57 of the Amended Complaint.

58. Indeed, on at least three separate prior occasions, the National Labor Relations Board has expressly ruled that package delivery drivers working for FedEx Ground’s predecessor, Roadway Package Systems, were employees and not independent contractors: (“Roadway I”), 288 NLRB 196 (1988), (“Roadway II”), 292 NLRB 376 (1989), enf’d, 902 F.2d 34 (6th Cir. 1990), and most recently, (“Roadway III”), 326 NLRB 842 (1998). Defendant is aware of each of these rulings and of the fact that plaintiff and the class members work under the same conditions found to support employee status in those instances.

ANSWER: Defendant admits that it is aware of the referenced decisions of the National Labor Relations Board referenced in Paragraph 58 of the Complaint, and alleges that the decisions speak for themselves. Defendant denies that the decisions are correct or applicable to this case. Defendant denies the remaining allegations of Paragraph 58 of the Amended Complaint.

59. Defendant is also aware that in 1995, FedEx Ground’s predecessor entered into an agreement with the Internal Revenue Service, agreeing not to misclassify its package pick-up and delivery drivers as independent contractors. Defendant is aware that plaintiff and the class work under conditions that are substantially similar, if not identical, to the conditions that gave rise to that agreement.

ANSWER: Defendant admits that in 1995, the Internal Revenue Service issued a letter of assurance finding that the drivers who entered into contracts with Defendant's predecessor were independent contractors and not employees. Defendant alleges that such letter of assurance speaks for itself. Defendant denies the remaining allegations contained in Paragraph 59 of the Amended Complaint.

60. Defendant is also aware that the New Jersey Department of Labor has issued a finding that a FedEx Ground delivery driver in New Jersey, who worked under the same conditions as plaintiff and the class, was an employee and not an "independent contractor" of defendant.

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

61. Despite this knowledge, defendant persists in misclassifying plaintiff and the class as "independent contractors," with full knowledge that they are employees of defendant as a matter of law.

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

62. Defendant was and is obligated by law to provide certain benefits, rights and privileges to their employees.

ANSWER: Defendant alleges that the allegations in Paragraph 62 of the Complaint are vague and ambiguous and further alleges that Plaintiff and the purported members of his putative class are not and were not employees of Defendant, and on those grounds denies the allegations made in Paragraph 62 of the Amended Complaint.

63. These include, but are not limited to, the following:

- a. Wages, for all work performed at the direction of defendant;
- b. Overtime pay for work performed in excess of 40 hours per week;
- c. Paying employees for terminal waiting time, deadhead time and/or other time during which defendant required plaintiff and the class to be present at defendant's terminal;
- d. Providing workman's compensation and paying workman's compensation insurance contributions;
- e. Paying unemployment insurance and unemployment insurance contributions;
- f. Making Federal Insurance Compensation Act ("FICA") contributions;
- g. Providing meal, break and rest periods;
- h. Certain retirement, health and welfare benefits to which plaintiff and the class may be entitled as employees of defendant.

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

64. A significant amount of work, required for the completion of the tasks assigned by defendant, was performed by plaintiff and the class each day at defendant's terminal for which plaintiff and the class received no compensation.

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

65. Plaintiff and the class were also required by defendant to spend time waiting at defendant's terminal, for which time defendant paid no compensation.

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

66. Nor did defendant pay plaintiff and the class for time spent in training required by defendant, or for time spent filling out reports required by defendant.

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

67. Plaintiff and the class were required to work in excess of 40 hours per week without overtime pay.

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

68. At no time were plaintiff and the class provided with meal breaks or other rest periods.

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

69. At no time were plaintiff and the class provided with unemployment compensation or workman's compensation insurance.

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

70. Nor did defendant make FICA contributions on behalf of plaintiff and the class.

ANSWER: Defendant admits that it did not make FICA contributions on behalf of Plaintiff or the purported members of his putative class because Defendant was not their employer and therefore was not required to do so. Defendant denies the remaining allegations contained in Paragraph 70 of the Amended Complaint.

71. Defendant was also prohibited by law from taking unauthorized deductions from the wages of employees, such as plaintiff and the class.

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

72. Defendant nevertheless made such deductions from the wages of plaintiff and the class, including, but not limited to, deductions for delivery charges when defendant's customers alleged that a delivery was either not made or not made in a timely manner, deductions for defendant's operating expenses and other unauthorized deductions.

ANSWER: Defendant denies each and every allegation contained in Paragraph 72 of the Amended Complaint.

73. In addition, plaintiff and the class were required to pay, without reimbursement, many of defendant's operating expenses, all of which were the legal responsibility of defendant.

ANSWER: Defendant denies each and every allegation contained in Paragraph 73 of the Amended Complaint.

74. Such expenses included, but were not limited to, the following:

- a. the cost of delivery vehicles;
- b. various forms of insurance, including insurance for the vehicles used for deliveries, work accident insurance, deadhead insurance;
- c. fuel;
- d. the cost of uniforms required by defendant;
- e. the cost of other equipment mandated by defendant, including maps, signs, logos, scanners and modems.

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

COUNT I
INJUNCTIVE AND DECLARATORY RELIEF

75. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 74 of the Amended Complaint as if set fully forth herein.

76. Plaintiff and the class are entitled to declaratory relief in the form of an order declaring that they are employees of defendant.

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

77. Plaintiff and the class are entitled to an order for injunctive relief:

- a. prohibiting defendant from misclassifying plaintiff and the class as independent contractors; and
- b. requiring defendant to provide plaintiff and the class with all the rights, benefits and privileges of employees.

ANSWER: Defendant denies each and every allegation contained in Paragraph 77 of the Amended Complaint. Specifically, Defendant denies that Plaintiff or the purported members of his putative class are entitled to any and all relief requested Paragraph 77 of the Complaint.

78. In addition, plaintiff and the class are entitled to an order directing defendant to make a full accounting of all hours worked by plaintiff and the class on behalf of defendant, all wages that are and were due, and all deductions made from such wages by defendant.

ANSWER: Defendant denies each and every allegation contained in Paragraph 78 of the Amended Complaint. Specifically, Defendant denies that Plaintiff or the purported

members of his putative class are entitled to any and all relief requested in Paragraph 78 of the Complaint.

COUNT II
PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW
43 P.S. § 260.1 et seq.

79. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 78 of the Amended Complaint as if set fully forth herein.

80. Defendant is obligated to pay wages to plaintiff and the class based upon the number of hours they work and to make only those deductions and withholdings from wages that are required or authorized by law.

ANSWER: Defendant denies each and every allegation contained in Paragraph 80 of the Amended Complaint.

81. Defendant breached its obligations by engaging in the conduct more specifically described in the paragraphs above.

ANSWER: Defendant denies each and every allegation contained in Paragraph 81 of the Amended Complaint.

82. Defendant has no justification for their failure and/or refusal to pay such wages and for these unauthorized deductions.

ANSWER: Defendant denies each and every allegation contained in Paragraph 82 of the Amended Complaint.

83. Defendant's conduct constitutes violations of the Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*

ANSWER: Defendant denies each and every allegation contained in Paragraph 83 of the Amended Complaint.

COUNT III
PENNSYLVANIA MINIMUM WAGE ACT
43 P.S. § 333.101 et seq.

84. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 83 of the Amended Complaint as if set fully forth herein.

85. Defendant is obligated to pay plaintiff and the class for each hour worked on behalf of defendant, including time spent at defendant's terminal, deadhead time, and performing other tasks required by defendant.

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

86. Defendant is obligated to pay plaintiff and the class overtime pay for hours worked in excess of 40 hours per week.

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

87. Defendant breached its obligations by engaging in the conduct more specifically described in the paragraphs above.

ANSWER: Defendant denies each and every allegation contained in Paragraph 87 of the Amended Complaint.

88. Defendant's conduct constitutes violations of the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101 *et seq.*

ANSWER: Defendant denies each and every allegation contained in Paragraph 88 of the Amended Complaint.

COUNT IV FRAUD

89. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 88 of the Amended Complaint as if set fully forth herein.

90. Plaintiff and the class he represents were purportedly hired by defendant to work as "independent contractors" pursuant to the terms of the PDCOA described above. In fact, defendant knew or should have known, at all times, that the "independent contractor" classification in the PDCOA was improper and that plaintiff and all persons similarly situated were "employees" entitled to the benefits and protections of all laws enacted for employees. Plaintiff is informed, believes and on that basis allege, that through the PDCOA defendant intentionally misled plaintiff and the class he represents as to their employment status, or made such representations to plaintiff and 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, Settlement Manual, and other policies and secret driver files described above) that defined the employment relationship between plaintiff and defendant, all for the purpose of realizing unjust profits from plaintiff's 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 90 of the Amended Complaint.

91. At all material times, defendant either knew, or should have known, that the material representation made to plaintiff and the class in the PDCOA concerning their employment status, and the concealment and/or non-disclosure of material facts to plaintiff and the class concerning their employment status and plaintiff's and the class' 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 91 of the Amended Complaint.

92. At all material times, defendant intended to and did induce plaintiff and the class he represents to reasonably and justifiably rely to their detriment on the false and fraudulent representations made to them by defendant in the PDCOA 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 92 of the Amended Complaint.

93. By its aforesaid conduct, defendant is guilty of oppression, fraud and malice in violating plaintiff's rights and protections guaranteed by Pennsylvania state law and other applicable law.

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

COUNT V
PENNSYLVANIA WORKMAN'S COMPENSATION ACT
77 P.S. 501(a)(d)

94. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 93 of the Amended Complaint as if set fully forth herein.

95. As an employer, defendant was required by 77 P.S. § 501(a)(1) to insure payment of compensation to employees through the State Workman's Insurance Fund or an insurance company authorized to insure such liability in Pennsylvania.

ANSWER: Defendant denies each and every allegation contained in Paragraph 95 of the Amended Complaint.

96. Defendant did not make workman's compensation contributions or otherwise secure such benefits to plaintiff and the class.

ANSWER: Defendant admits that it did not make or secure workmen's compensation contributions to Plaintiff or the purported members of his putative class, and denies that it was obligated to do so. Defendants denies the remaining allegations contained in Paragraph 96 of the Amended Complaint.

Pursuant to, *inter alia*, 77 P.S. § 501d), plaintiff and the class are entitled to relief compelling defendant to comply with their obligations under this statute.

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

**COUNT VI
RESCISSION OF OPERATING AGREEMENT/PDCOA**

97. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 96 of the Amended Complaint as if set fully forth herein.

98. Despite the express terms of the PDCOA, plaintiff's 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 98 of the Amended Complaint.

99. Defendant controls virtually every aspect of the plaintiff's work and earnings, as set forth in the general allegations hereof.

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

100. Despite this control and the actual status of the drivers as employees, defendant mischaracterizes the plaintiff and the class 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 100 of the Amended Complaint.

101. The PDCOA illegally and unfairly advantages defendant, by mischaracterizing the status of the plaintiff and the class 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 plaintiff and the class.

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

102. The PDCOA 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 plaintiff and the class members, and therefore denying them the legally cognizable benefits of employment.

ANSWER: Defendant denies each and every allegation contained in Paragraph 102 of the Amended Complaint.

103. The PDCOA between defendant and 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 103 of the Amended Complaint.

104. The PDCOA illegally shifts the burden of certain costs that an employer must pay.

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

105. 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. Plaintiff 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 105 of the Amended Complaint.

106. 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 106 of the Amended Complaint.

107. As a direct and proximate result of defendant’s conduct, defendant has received substantial benefits to which it had no entitlement, at plaintiff 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 107 of the Amended Complaint.

108. Plaintiff and the class 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 plaintiff and the class are entitled to the *quantum meruit* value of their services as employees.

ANSWER: Defendant denies each and every allegation contained in Paragraph 108 of the Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, plaintiff asks this court to:

- a. Certify this matter as a class action pursuant to Fed.R.Civ.P. 23;
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter an order requiring defendant to rescind the PDCOA, and awarding restitution compensating for the reasonable value of the benefit provided to FedEx Ground;
- d. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- e. Award plaintiff reasonable attorneys' fees and costs;
- f. Award plaintiff and the class punitive damages in an amount to be determined at trial; and
- g. Grant such other and further legal and equitable relief as the court deems just and necessary.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

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

ADDITIONAL DEFENSES

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

Having fully answered Plaintiff's Complaint, Defendant pleads the following defenses and/or affirmative defenses on its own behalf, without waiving any arguments which it may be

entitled to assert regarding the burden of proof, legal presumptions or other legal characterizations.

FIRST ADDITIONAL DEFENSE

Failure to State a Claim

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

SECOND ADDITIONAL DEFENSE

Statute of Limitations

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

THIRD ADDITIONAL DEFENSE

No Class Action or Collective Action

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

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 Plaintiff, nor the purported members of the putative class defined in the Complaint, are covered by the statutes, regulations and legal theories sought to be invoked in the Complaint. Accordingly, for this and other reasons, Plaintiffs' claims, or some of them, are barred in whole or in part because Plaintiffs lack standing. Further, 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 a former, and not current, employee.

SIXTH ADDITIONAL DEFENSE

Breach of Contract

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

SEVENTH ADDITIONAL DEFENSE

Estoppel

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

EIGHTH ADDITIONAL DEFENSE

Laches

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

NINTH ADDITIONAL DEFENSE

Res Judicata/Collateral Estoppel

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

TENTH ADDITIONAL DEFENSE

Accord and Satisfaction: Payment

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

ELEVENTH ADDITIONAL DEFENSE

Release

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

TWELFTH ADDITIONAL DEFENSE

Waiver

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

THIRTEENTH ADDITIONAL DEFENSE

Independent Contractor Status

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

FOURTEENTH ADDITIONAL DEFENSE

Unclean Hands/ *In Pari Delicto*

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

FIFTEENTH ADDITIONAL DEFENSE

Knowing Submission/Consent

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

SIXTEENTH ADDITIONAL DEFENSE

Unavailability of Penalties

To the extent Plaintiff or any purported member of the putative class defined in the 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 Plaintiff, or by any purported member of the putative class defined in the Complaint, although such is not admitted hereby or herein and is specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all obligations of the Plaintiff or putative class members owed to Defendant against any judgment that may be entered against Defendant.

EIGHTEENTH ADDITIONAL DEFENSE

Express Contract

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

NINETEENTH ADDITIONAL DEFENSE

Arbitration

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

TWENTIETH ADDITIONAL DEFENSE

Conduct Reasonable and in Good Faith/not Willful

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

TWENTY-FIRST ADDITIONAL DEFENSE

Unavailability of Equitable Relief

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

TWENTY-SECOND ADDITIONAL DEFENSE

Preemption

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

TWENTY-FOURTH ADDITIONAL DEFENSE

Failure to Offer to Return Consideration

Plaintiff's 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-FIFTH ADDITIONAL DEFENSE

Primary Jurisdiction

Plaintiff's 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 Pennsylvania Department of Labor.

TWENTY-SIXTH ADDITIONAL DEFENSE

Failure to Plead Fraud with Particularity

Plaintiff has failed to plead his averments of fraud with the requisite degree of particularity required under Pennsylvania law.

TWENTY-SEVENTH ADDITIONAL DEFENSE

Failure to Plead Malice

Plaintiff's fraud claim fails due to the failure to plead the requisite level of malicious intent necessary to sustain such a claim under Pennsylvania law.

TWENTY-EIGHTH ADDITIONAL DEFENSE

Failure to Plead Fraud with Particularity

Plaintiff has failed to plead his averments of fraud with the requisite degree of particularity required under Pennsylvania law.

TWENTY-NINTH ADDITIONAL DEFENSE

Failure to Plead Malice

Plaintiff's fraud claim fails due to the failure to plead the requisite level of malicious intent necessary to sustain such a claim under Pennsylvania law.

Prayer

Defendant specifically denies Plaintiff's 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 Plaintiff bearing Defendants' costs and fees of this litigation.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2006, I filed the foregoing *Answer and Additional Defenses to Plaintiff's Amended Class Action Complaint* with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I further certify that on the 27th day of January, 2006, I mailed the foregoing document by U.S. Mail on the following party of record:

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By: s/Alison G. Fox