

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:)
)

Arthur Smith, et al. v. FedEx Ground)
Package System, Inc.,)
Civil No. 3:05-cv-00600-RLM-CAN (TN))

**ANSWER AND ADDITIONAL DEFENSES OF FEDEX GROUND PACKAGE
SYSTEM, INC. TO PLAINTIFFS'
FOURTH 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 Plaintiffs’ Fourth Amended Class Action Complaint (the “Amended Complaint”) served by Plaintiffs ARTHUR SMITH, RACHELLE WESTBROOK, BUDDY D. JOHNSON, ROBERT ERBENTRAUT, and JOHN LINDSEY, (“Plaintiffs”). Except as expressly admitted below, Defendant denies the allegations of Plaintiffs’ Amended Complaint.

PARTIES

1. Plaintiffs Arthur Smith, Rachelle Westbrook, and Buddy D. Johnson are residents of Shelby County, Tennessee. Plaintiff Robert Erbentraut is a resident of Tipton County, Tennessee. Plaintiff John Lindsey is a resident of DeSoto County, Mississippi. Plaintiffs have all worked or are still working for Defendant corporations,

were hired by Defendant at a Tennessee terminal and are or were Classified as independent contractors.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiffs Smith, Westbrook, and Johnson are residents of Shelby County, Tennessee and therefore deny the same. Defendant also lacks knowledge or information sufficient to form a belief as to whether Plaintiff John Lindsey is a resident of DeSoto County, Mississippi and therefore deny the same. Defendant denies the remaining allegations contained in Paragraph 1 of the Amended Complaint.

2. Defendant FedEx Ground Package System, Inc. and FedEx Ground Package System, Inc. d/b/a FedEx Home Delivery, Inc. (hereafter collectively referred to as “Defendant” or “FEG” or “FedEx Ground”) is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. FEG is a part of the “family” of corporations controlled by Federal Express Corporation. At all relevant times, and within six years of the filing of this Complaint, FEG was engaged in providing small package information, transportation and delivery services in the United States, including in the State of Tennessee.

ANSWER: Defendant admits that FedEx Ground Package System, Inc. is a wholly-owned subsidiary of Federal Express Corporation, that it is incorporated in Delaware, and that FedEx Home Delivery is a division of FedEx Ground Package System, Inc. Defendant denies the remaining allegations contained in Paragraph 2 of the Amended Complaint.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this case pursuant to diversity, as defined by the Class action Fairness Act of 2005, Public Law 109-2, 119 Stat. 9, 28 U.S.C. § 1332(d).

ANSWER: Defendant admits that subject matter jurisdiction properly lies with this Court.

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

ANSWER: Defendant admits that venue is proper in the Northern District of Indiana pursuant to an order of the Judicial Panel on Multidistrict Litigation.

FACTS COMMON TO ALL CAUSES OF ACTION

5. Defendant employs thousands of drivers to pick up and deliver packages for its customers throughout the United States. As a condition of employment, each FEG 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 were designed to conceal the true nature of the relationship between FEG and its drivers: that of employer and employee.

ANSWER: Defendant denies each and every allegation contained in Paragraph 5 of the Amended Complaint.

6. FEG knows that Los Angeles County Superior Court has determined that FEG employees working under the alleged independent contractor agreement are, in fact, employees entitled to all of the rights and privileges of employee status. Despite this FEG continues to deny these rights and privileges to its similarly situated Tennessee employees.

ANSWER: To the extent Paragraph 6 refers to Defendant, Defendant alleges that the terms of the Los Angeles County Superior Court decision speak for themselves and deny the remaining allegations contained in Paragraph 6 of the Amended Complaint.

7. FEG employs or employed during the Class period more than 1,000 deliver and pick-up drivers in the State of Tennessee including, either currently or at material times in the past, each of the Plaintiffs.

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

8. FEG retains the right to control the manner and means by which Plaintiffs and Plaintiff Class Members perform their jobs. Drivers work from an FEG terminal, where they are assigned packages for delivery and locations for pickups each day. FEG employs a variety of managers at their terminals who have supervisory responsibility over the drivers, their daily assignments and paperwork. Drivers also interact with other FEG personnel on a daily basis.

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

9. FEG unilaterally sets the compensation to be paid to the drivers. Drivers are paid for the number of stops, deliveries and pick-ups made, as well as daily compensation for making themselves available for pickup and delivery work in geographic areas determined by FEG.

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

10. FEG unilaterally sets the prices charged to their customers for the services rendered by Plaintiffs and Plaintiff Class Members.

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

11. Plaintiffs and Plaintiff Class Members provide services which are an integral part of FEG's business enterprise and are formally identified as a part of system. Plaintiffs and Plaintiff Class Members did not and do not have any business independent from that of FEG.

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

12. As a condition of employment, Plaintiffs and Plaintiff Class Members are, or were controlled by FEG in numerous ways, including the following:

- a. required to work a minimum number of hours in a shift, often eight hours or longer;
- b. prohibited from leaving the work premises without management approval;
- c. required to identify themselves and their vehicles as a part of FEG system, with FedEx logos and signage;
- d. required to purchase, wear and maintain FedEx uniforms, logos and signage;
- e. required to purchase and maintain a vehicle selected by FEG, built to FEG's precise specifications, and identified by FEG logo and signage;
- f. required to insure the vehicles at FEG's direction and control;
- g. required to clock in and out and file daily reports with FEG;
- h. required to purchase from FEG their "business support package": including maps, signs, training, modems and scanners;

- i. required to conduct themselves according to FEG guidelines and were subject to discipline for any failures to comply with those requirements
- j. prevented from choosing when and how much they wanted to work;

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

13. The Agreement contains various statements purporting to classify Plaintiffs and Plaintiff Class Members as “independent contractors” and yet the agreement also contains policies, procedures and management discretion that ensure specific control over the manner and means by which Plaintiffs and Plaintiff Class Members are expected to achieve FEG’s desired results. For example, the Operating Agreement (also referred to as “Agreement” or “OA”) signed by Plaintiffs and Plaintiff Class Members contains a Background Statement that states, in part:

Both FedEx Ground and Contractor intent that Contractor will provide these services strictly as an independent contractor, not as an employee of FedEx Ground for any purpose. Therefore, this Agreement will set forth the mutual business objectives of the two parties intended to be served by this Agreement B which are the results the Contractor agrees to seek to achieve B but the manner and means of reaching these results are within the discretion of the Contractor, and no officer or employee of FedEx Ground will have the authority to impose any term or condition on Contractor or on Contractor’s continued operation which is contrary to this understanding.

ANSWER: Defendant denies each and every allegation contained in Paragraph 13 of the Amended Complaint, including its subparts, except Defendant alleges that the terms of any contract entered into by those contracting with Defendant speak for themselves. Defendant also alleges that those who enter into contracts to deliver packages for Defendant are properly classified as independent contractors.

14. Contrary to the language contained in the statement above, the Agreement also gives FEG the right to:

- a. approve or disapprove any vehicle used to provide service;
- b. approve or disapprove any driver or helper who provides service;
- c. approve or disapprove the purchase or sale of any vehicle;
- d. assign deliveries to each driver;
- e. temporarily or permanently transfer portions of any route to another with or without compensation;
- f. determine when a driver has “too few” or “too many” packages to deliver;
- g. inspect vehicles and drivers for compliance with Company promulgated appearance standards;
- h. 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;
- i. require the use of communication equipment and the wearing of Company uniforms;
- j. take a vehicle out of service;
- k. review and evaluate “customer service” and to set standards of such service;
- l. require driver to perform service at “times” requested by customers and determined by FEG;
- m. withhold pay for certain specified expenses;
- n. require purchase of specified insurance and numerous other purchases by drivers;
- o. require completion of specified paperwork, amid other rights reserved to FEG;

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

15. The Agreement also provides, among other things, that:
 - a. Subject to company approval of any vehicle used, drivers must provide and maintain their own vehicle paying for all costs and expenses incidental to its operation, including maintenance, gas, oil, repairs, tax, licenses and tolls. Moreover, drivers must adorn the vehicle with specific colors, logos and marks, identifying it as part of FEG system at their own expense;
 - b. Drivers must maintain liability and workers compensation insurance (sometimes referred to as “work accident insurance”) for the benefit of FEG;
 - c. Drivers must use communications equipment, i.e., a scanner, which uses FEG and/or FHD’s customized and/or proprietary tracking software and drivers must pay to rent such equipment from the Company;
 - d. Drivers must prepare and submit daily reports and such shipping documents “as FEC, FEG and FHD may from time to time designate;”
 - e. Drivers must wear an approved uniform, and keep their personal appearance and demeanor consistent with standards unilaterally “promulgated from time to time” by FEG;
 - f. FEG retains the right to change a driver’s work area on a daily basis or permanently, at its discretion, notwithstanding statements in the Agreement regarding an alleged “proprietary interest” in the customers the driver serves;
 - g. FEG issues “Settlement Statements” and settlement checks to Drivers on a weekly basis, except when the Agreement is terminated, in which case FEG determines that a final settlement check will be issued 45 days after termination. The Settlement Statement computes the total earning the Contractor is entitled to receive and itemizes all deductions from the Driver’s settlement. Deductions may include, but are not limited to, the expenses FEG has retained the right to pay, such as the cost of vehicle licenses, taxes, and fees as well as any expenses FEG has incurred in connection with their payment;
 - h. After one month of service, drivers become eligible to participate in FEG’s Customer Service Program, by which a monetary bonus can be earned for every period in which the driver has no at-fault accidents, no customer complaints and no missed-pickups and

during which the entire terminal's performance meets company assigned standards of service;

- i. FEG retains the right to control the volume of packages to be delivered and/or picked up, the locations of such deliveries and pickups, and the delivery and/or pickup times (referred to as "windows", thus controlling the drivers' work hours.
- j. All performance expectations and goals for drivers are set forth by Terminal managers and discipline is imposed for violations of company policies.

ANSWER: Defendant alleges that the terms of the agreements speak for themselves and denies the remaining allegations contained in Paragraph 15 of the Amended Complaint, including its subparts.

16. The Operating Agreement is and at all time mentioned herein has been a contract of adhesion, drafted exclusively by FEG and/or its legal counsel. Plaintiffs and Plaintiff Class Members had no bargaining power, and were not allowed to negotiate the terms of the Agreement, which they are required to sign as a condition of employment. The Agreement is, and at all material times has been, unlawful and unconscionable in form and effect.

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

17. Although the nature of the work performed by Plaintiffs and Plaintiff Class Members makes detailed control by management unnecessary, FEG in fact retain the right to control and exercise intensive control over the work of the drivers, as is necessary to fulfill FEG's commitments to their customers.

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

18. FEG maintains compensation and benefit plans, agreements and programs available to persons who are “employees” of FEG. 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 Savings Plans. In addition, employees of FEG receive additional compensation programs, plans, rights, and benefits, including vacation, holidays, sick leave, other types of paid leave, and stock purchase rights.

ANSWER: Defendant denies each and every allegation contained in Paragraph 18 of the Amended Complaint, except Defendant admits that Defendant has certain compensation and benefit plans for its employees.

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

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

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

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

21. FEG has acted, continues to act, refuses to act, and continues to refuse to act on grounds generally applicable to the Plaintiffs and the Plaintiff Class Members,

making appropriate temporary and permanent injunctive relief with respect to the Plaintiff Class as a whole.

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

CLASS ACTION ALLEGATIONS

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

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 21 of the Amended Complaint as if set fully forth herein.

23. This action is brought by the Plaintiffs on behalf of a Class of persons currently and formerly employed by FEG 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 delivery drivers for FEG and its division, FedEx Home Delivery, Inc. The Class is specifically defined as follows:

All individuals who worked for Defendant FedEx Ground Package System, Inc. and or its division FedEx Home Delivery, Inc. in Tennessee from June 15, 1999 until June 15, 2005 (the Class Period) as package pick-up and delivery drivers, and who were classified as “independent contractors.”

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

ANSWER: Defendant denies each and every allegation contained in Paragraph 23 of the Amended Complaint, except Defendant admits that Plaintiffs purport to

bring a class action on behalf of the putative class. Defendant specifically denies that class treatment is appropriate.

24. Plaintiffs are members of the Class they purport to represent, and have interests typical and/or identical to the other members of the Plaintiff Class.

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

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

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

26. There are common questions of law and fact applicable to the entire Class including, but not limited to:

- a. Whether Class Members have been misclassified as independent contactors pursuant to the Defendant's operating agreements;
- b. Whether Defendant has violated their legal obligations under Tennessee wage and hour law;
- c. Whether Defendant unlawfully failed to provide workers compensation insurance benefits and unemployment insurance benefits to the Class Members in violation of Tennessee law;
- d. 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;
- e. Whether the Plaintiffs and Plaintiff Class Members are entitled to injunctive and declaratory relief and an equitable accounting;

- f. Whether Plaintiffs and Plaintiff Class Members are entitled to certain additional types of employee compensation and benefits because they are employees of the Defendant as defined by common and statutory law;
- g. Whether Plaintiffs and Plaintiff Class Members are entitled to certain additional amounts of employee compensation and benefits above and beyond the types and amounts they already earn;
- h. Whether Defendant has misrepresented to Plaintiffs and Plaintiff Class Members their true employment status;
- i. Whether Defendant has unjustly enriched themselves at the expense of the Plaintiffs and Plaintiff Class Members;
- j. Whether Defendant has engaged in conduct towards the Plaintiff and Plaintiff Class Members in violation of the Tennessee Consumer Protection Act; and
- k. Whether Defendant has engaged in conduct against the Plaintiffs and Plaintiff Class Members which should be enjoined, whether on a temporary or permanent basis.

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

27. These and other questions of law and fact are central to this case, and common to all members of the Class and predominate over any question(s) affecting only individual members of the Class.

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

28. 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 28 of the Amended Complaint.

29. 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 proceeding 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 29 of the Amended Complaint.

30. Class certification is appropriate pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure because prosecution of separate actions would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Classes that would establish incompatible standards of conduct for Defendant; and
- b. adjudications with respect to individual members of the Classes which may, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or which may substantially impair or impede their ability to protect their interests.

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

31. Class certification is appropriate under Rule 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

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

32. Plaintiff seeks injunctive relief in the form of an order declaring the challenged policy exclusion null and void as contrary to Tennessee law and/or public policy. Plaintiff further seeks injunctive relief to prevent Defendant from retaliating against Plaintiffs or Plaintiff Class Members for filing this case, in the form of termination, demotion, reassignment, or reduction in pay or benefits.

ANSWER: Paragraph 32 describes Plaintiffs' claim for injunctive relief, to which no answer is required. Notwithstanding the foregoing, Defendant denies that Plaintiffs or the purported members of their putative class are entitled to any and all relief described in that paragraph of the Amended Complaint.

33. Class certification of the Plaintiff Class is appropriate under Rule 23(b) (3) because common issues of law and fact relative to Defendant's conduct predominate over individual issues.

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

34. A Class action is superior to individual litigation because thousands of separate lawsuits to challenge the validity of the policy exclusion would magnify the delay and expense for the parties and the courts. By contrast the Class action device

presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision in a single court of law.

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

35. Class certification is appropriate under Rule 23(b) (3) because a Class action is the superior procedural vehicle for the fair and efficient adjudication of these claims, given that:

- a. Common questions of law and fact overwhelmingly predominate over any individual questions that may arise and consequently, there would be enormous economies to the courts and to the parties in litigating the common issues on a Class wide basis instead of on a repetitive individual basis;
- b. This lawsuit seeks to establish liability on a Class wide basis; and
- c. No unusual difficulties are likely to be encountered in the management of this Class action in that all questions of law or fact related to liability are common to the Class.

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

FIRST CAUSE OF ACTION:
VIOLATIONS OF THE TENNESSEE CONSUMER
PROTECTION ACT OF 1977

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

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 35 of the Amended Complaint as if set fully forth herein.

37. Defendant, through the actions described above, has violated the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101 et seq.

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

38. The Plaintiffs and Plaintiff Class Members are “consumers” as defined by the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101 et seq.

ANSWER: Paragraph 38 contains a legal conclusion to which no answer is required. Notwithstanding the foregoing, Defendant denies each and every allegation in that paragraph of the Amended Complaint.

39. Defendant’s marketing and recruitment materials are offered and presented to members of the general public within the State of Tennessee.

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

40. 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 40 of the Amended Complaint.

41. 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 41 of the Amended Complaint.

42. 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 Complaint.

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

43. 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 43 of the Amended Complaint.

44. 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 FXG 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 44 of the Amended Complaint.

45. 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 45 of the Amended Complaint.

46. Defendant committed affirmative misrepresentations, knowing omissions, and violations of the Illinois Consumer Fraud and Deceptive Trade Practices Act, entitling Plaintiffs and Plaintiff Class Members to the remedies under the Act.

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

47. 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 47 of the Amended Complaint.

48. 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 48 of the Amended Complaint.

49. 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 49 of the Amended Complaint.

50. 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, costs, disbursements, and attorney fees, plus pre- and post-judgment interest.

ANSWER: Defendant denies each and every allegation contained in Paragraph 50 of the Amended Complaint. Defendant specifically denies that Plaintiffs are entitled to any and all of the relief requested in that paragraph.

SECOND CAUSE OF ACTION:
FRAUD

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

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 50 of the Amended Complaint as if set fully forth herein.

52. 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 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 52 of the Amended Complaint.

53. 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 53 of the Amended Complaint.

54. 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 54 of the Amended Complaint.

55. By its aforesaid conduct, Defendant is guilty of oppression, fraud and malice in violating Plaintiffs' rights and protections guaranteed by Tennessee law and other applicable law.

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

THIRD CAUSE OF ACTION:
FOR AN ACCOUNTING AGAINST DEFENDANT

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

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 55 of the Amended Complaint as if set fully forth herein.

57. Plaintiffs and Plaintiff Class Members are owed wages which equal the sum of overtime compensation not paid by Defendant to Plaintiffs and Plaintiff Class Members, statutory interest on all such compensation and benefits, and each of them, and waiting time penalties owed to Plaintiffs and Plaintiff Class Members whose employment terminated.

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

58. Plaintiffs do not know the precise amount of compensation due to each Plaintiff and Plaintiff Class Member. Upon information and belief, Defendant possesses books and records from which the amount of compensation due and owing to each Plaintiff and Plaintiff Class Member herein can be determined.

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

59. The amount of statutory interest and penalties owed to each Plaintiff and Plaintiff Class Member is based on the amount of compensation owed to Plaintiffs and Plaintiff Class Members.

ANSWER: Paragraph 59 of the Amended Complaint contains a conclusion of law to which no answer is required. Notwithstanding this, Defendant denies that Plaintiffs are entitled to any of the relief mentioned in that paragraph.

FOURTH CAUSE OF ACTION:
RESCISSION OF OPERATING AGREEMENT

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

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 59 of the Amended Complaint as if set fully forth herein.

61. Despite the express terms of the Operating Agreement, Plaintiffs' relationship with FEG satisfies every aspect of the test for employment, and not for independent contractor status.

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

62. FEG controls virtually every aspect of the Plaintiffs' work and earnings, as set forth in the general allegations hereof.

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

63. Despite this control and the actual status of the drivers as employees, FEG 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 63 of the Amended Complaint.

64. The Operating Agreement illegally and unfairly advantages FEG, by mischaracterizing the status of the Plaintiffs in that FEG 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 64 of the Amended Complaint.

65. The Operating Agreement between FEG 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 65 of the Amended Complaint.

66. The Operating Agreement between FEG 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 66 of the Amended Complaint.

67. 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 67 of the Amended Complaint.

68. While acting on the direct instruction of FEG and discharging their duties for FEG, 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 68 of the Amended Complaint.

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

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

70. As a direct and proximate result of FEG's conduct, FEG 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 70 of the Amended Complaint.

71. Plaintiffs are entitled to compensation for all of the business expenses they were illegally required by FEG to bear, for all of the employment taxes, unemployment compensation and workers compensation FEG 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 71 of the Amended Complaint.

FIFTH CAUSE OF ACTION:
DECLARATORY RELIEF AGAINST DEFENDANT

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

ANSWER: Defendant repeats and re-alleges its answers to Paragraphs 1 through 71 of the Amended Complaint as if set fully forth herein.

73. An actual controversy has arisen between the Plaintiffs and Plaintiff Class Members, on one hand, and Defendant, 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. overtime pay;
 - iii. holiday pay;
 - iv. worker's compensation;
 - v. unemployment insurance;
 - vi. contributions to Defendant's retirement plan;
 - vii. income tax withholding; and
 - viii. 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 Tennessee Code Annotated ' 50-2-103 or other Tennessee 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 waiting time penalties.

ANSWER: Defendant denies each and every allegation contained in Paragraph 73 of the Amended Complaint, including its subparts. To the extent Plaintiffs seek relief under Defendant's retirement plan, such relief is preempted by ERISA.

74. 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 Plaintiff and Plaintiff Class Members.

ANSWER: Paragraph 74 describes Plaintiffs' request for declaratory relief, to which no answer is required. Notwithstanding the foregoing, Defendant denies

that Plaintiffs or the purported members of their putative class are entitled to any and all relief requested in that paragraph of the Amended Complaint.

SIXTH CAUSE OF ACTION:
REQUEST FOR INJUNCTIVE RELIEF

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

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

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

ANSWER: To the extent Paragraph 76 refers to Defendant, Defendant denies each and every allegation contained in that paragraph of the Amended Complaint.

77. 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 hereto fore alleged, and Plaintiff's and Plaintiff Class Members have no adequate remedy at law.

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

78. Plaintiffs have reasonable fear that Defendant, upon receiving notice of this lawsuit, will take such action or inaction resulting in the termination, harassment, demotion, reassignment, or cut in currently paid compensation or benefits against Plaintiffs or Plaintiff Class Members, to their detriment, in retaliation for attempting to enforce their rights under Tennessee common and statutory law.

ANSWER: Defendant denies each and every allegation contained in Paragraph 78 of the Amended Complaint.

79. 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 79 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 the Defendant for the following:

1. Declaring that the Defendant's acts described in this Complaint constitute violations of the Tennessee State Law for payments of employment in private employments and 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. Temporary and/or permanent injunctive relief commanding that Defendant cease and desist their unlawful and inequitable conduct;
6. 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;

7. An order requiring Defendant to rescind the Operating Agreement, and awarding restitution compensating for the reasonable value of the benefit provided to FEG
8. Actual damages, treble damages, and attorneys' fees, as set forth by the Tennessee Consumer Protection Act;
9. Punitive damages in an amount to be determined at trial;
10. Pre- and post-judgment interest as permitted by law;
11. Discretionary and court costs as provided by law; and
12. Such other further relief as the Court may deem just and equitable.

ANSWER: Defendant denies each and every allegation contained in the Wherefore Paragraph of the Amended Complaint. Specifically, Defendant denies that Plaintiffs are entitled to any or all of the relief requested in that paragraph.

ADDITIONAL DEFENSES

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

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

FIRST ADDITIONAL DEFENSE

Failure to State a Claim

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

SECOND ADDITIONAL DEFENSE

Statute of Limitations

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

THIRD ADDITIONAL DEFENSE

No Class Action

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

FOURTH ADDITIONAL DEFENSE

Unconstitutional Class Action

Certification of a class action under the circumstances of this case would violate the parties' rights under the United States Constitution.

FIFTH ADDITIONAL DEFENSE

No Standing

Neither Plaintiffs, nor the purported members of the putative class defined in the Amended Complaint, are covered by the statutes, regulations and legal theories sought to

be invoked in the Amended Complaint. Accordingly, for this and other reasons, Plaintiffs' claims, or some of them, and those of the putative class, or some of them, are barred in whole or in part because Plaintiffs lack standing. Further Plaintiffs, or some of them, and members of the putative class, or some of them, lack standing with respect to their claims for rescission, declaratory and injunctive relief because they allege to be former, and not current employees.

SIXTH ADDITIONAL DEFENSE

Breach of Contract

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

SEVENTH ADDITIONAL DEFENSE

Estoppel

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

EIGHTH ADDITIONAL DEFENSE

Laches

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

NINTH ADDITIONAL DEFENSE

Res Judicata/Collateral Estoppel

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

TENTH ADDITIONAL DEFENSE

Accord and Satisfaction: Payment

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

ELEVENTH ADDITIONAL DEFENSE

Release

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

TWELFTH ADDITIONAL DEFENSE

Waiver

Pending further discovery, Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended Complaint, or some of them, are

barred in whole or in part because such claims have been waived, discharged and/or abandoned.

THIRTEENTH ADDITIONAL DEFENSE

Independent Contractor Status

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

FOURTEENTH ADDITIONAL DEFENSE

Unclean Hands/ In Pari Delicto

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

FIFTEENTH ADDITIONAL DEFENSE

Knowing Submission/Consent

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

SIXTEENTH ADDITIONAL DEFENSE

Unavailability of Penalties

To the extent Plaintiffs or any purported member of the putative class defined in the Amended Complaint seek penalties, punitive damages, or exemplary damages, they fail to state facts sufficient to support such claims, and such claims are precluded by statute, or violate the Due Process rights of Defendant.

SEVENTEENTH ADDITIONAL DEFENSE

Setoff and Recoupment

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

EIGHTEENTH ADDITIONAL DEFENSE

Express Contract

Plaintiffs' claims, and the claims of each purported member of the putative class defined in the Amended Complaint, or some of them, are barred in whole or in part because they entered into an express 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 Tennessee Department of Labor and other administrative remedies available under Tenn. Code Ann. § 50-6-412.

TWENTY-NINTH ADDITIONAL DEFENSE

Statute of Frauds

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 statute of frauds. Tenn. Code Ann. § 29-2-101.

THIRTIETH ADDITIONAL DEFENSE

Conditions Precedent

Plaintiffs' claims, and the claims of the purported members of the putative class defined in the Amended Complaint, or some of them, are barred by Plaintiffs' failure to comply with all conditions precedent to the commencement of this action.

THIRTY-FIRST ADDITIONAL DEFENSE

Tennessee Consumer Protection Act

Plaintiffs' claims, and the claims of the purported members of the putative class defined in the Amended Complaint, or some of them, under the Tennessee Consumer Protection Act fail to state a claim because Tenn. Code Ann. § 47-18-104 does not apply to an employee/employer relationship as alleged in the Complaint.

THIRTY-SECOND ADDITIONAL DEFENSE

Failure to Plead with Particularity

Plaintiffs' claims, and the claims of the purported members of the putative class defined in the Amended Complaint, or some of them, based on alleged fraud and/or misrepresentation are barred by Plaintiffs' failure to plead fraud and/or misrepresentation with the requisite specificity and particularity.

THIRTY-THIRD ADDITIONAL DEFENSE

Justifiable Reliance

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 because Plaintiffs did not reasonably or justifiably rely upon any alleged representations by Defendant.

THIRTY-FOURTH ADDITIONAL DEFENSE

No Reliance

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

because any reliance by Plaintiffs on alleged representations by Defendant did not substantially influence Plaintiffs' actions.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Judicial Deference

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

THIRTY-SIXTH ADDITIONAL DEFENSE

Failure to Mitigate

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

PRAYER

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

Dated: December 18, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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

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By: _____s/Thomas J. Brunner