

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

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

Theodore Holloway Jr., by and through undersigned counsel, brings this Complaint against Defendant FedEx Ground Package System, Inc. (“FXG”) for damages resulting from FXG’s breach of contract, breach of the duty of good faith and fair dealing regarding the business relationship between Mr. Holloway and FXG, misrepresentations, interference with Mr. Holloway’s business, violations of the Civil Rights Act of 1866, 42 U.S.C. §1981, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.*, the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, and Maryland law.

**INTRODUCTION**

FXG is a corporation whose business consists of delivering packages to residence and business addresses. In 2005, Plaintiff Theodore Holloway, Jr. attended an FXG presentation portraying its Independent Contractor drivers as autonomous entrepreneurs with the authority to hire their own employees, and signed an agreement with FXG that repeatedly described Mr. Holloway’s status as an Independent Contractor with discretion over the “manner and means” of conducting his

business.

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

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

### **JURISDICTION AND VENUE**

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

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

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

### **PARTIES**

4. Defendant FedEx Ground Package System, Inc. (“FXG”) is a Delaware corporation with its principal place of business in Moon Township, Pennsylvania. FXG provides information, transportation, and delivery of small packages to homes and businesses in the United States, including Maryland. FedEx Home Delivery is a division of FXG that provides services to residential customers. Defendant FXG is defined to include all corporate parent, subsidiary, predecessor and successor entities to which these allegations pertain.

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

### **FACTS**

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

7. Mr. Holloway was exposed to FXG advertising claiming that he could work for FXG and be his own boss in his own business. In response, he met with an FXG Human Resources manager who promoted the concept of working for FXG as an Independent Contractor. FXG explained that Independent Contractor status offered an opportunity to become an entrepreneur and business owner. FXG also represented that Independent Contractors had the freedom to run their own businesses in their own way. FXG listed the income an Independent Contractor could expect from one or more routes based on an average number of deliveries.

8. Mr. Holloway attended a ten-day training session in Beltsville, Maryland, and ultimately entered into the standard “Pick-up and Delivery Contractor Operating Agreement”

(“Operating Agreement” or “Agreement”) with FXG to deliver packages for FXG as an Independent Contractor.

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

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

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

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

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

further provides that “it is Contractor’s responsibility to assure that such persons conform fully to the applicable obligations undertaken by Contractor pursuant to this Agreement.”

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

15. FXG assigns each Contractor a “Primary Service Area,” within which the Contractor is “responsible for the daily pick-up and delivery of packages.” FXG recognizes that Contractors have a “proprietary interest” in the customer accounts in their Primary Service Areas.

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

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

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

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

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

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

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

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

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

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

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

27. Rick Albertini, an FXG manager, insisted, however, that Mr. Stokes work for FXG, and not for Mr. Holloway. FXG then required Mr. Stokes to drive for the Terminal. Mr. Stokes

subsequently resigned as an FXG driver. FXG did not appropriate the drivers of white Contractors as it did with Mr. Holloway. Lacking a full-time driver, Mr. Holloway had to postpone his surgery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47. FXG further interfered with Mr. Holloway’s business by harassing his temporary drivers and by deliberately misloading his trucks with packages that were not his, or by not loading

his trucks and delaying his deliveries. FXG's actions were taken in retaliation for the Complaints that Mr. Holloway filed in federal court and with the EEOC.

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

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

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

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

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

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

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

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

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

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

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

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

**CAUSES OF ACTION**  
**COUNT ONE: BREACH OF CONTRACT**

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

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

- a) preventing Mr. Holloway from employing drivers to assist him in his route, thereby generally preventing him from exercising his business discretion in determining the "manner and means of performing the obligations specified in [the Operating] Agreement". In particular, FXG prevented him from employing Mr. Stokes, Mr. Cowan, and Ms. Luckman as drivers, and by interfering with the business arrangement he had with Ms. Paul;

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

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

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

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

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

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

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

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

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

**COUNT THREE: INTERFERENCE  
WITH BUSINESS RELATIONSHIPS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **COUNT FOUR: PROMISSORY ESTOPPEL**

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT FIVE: FRAUDULENT MISREPRESENTATION**

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

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

100. FXG knew that it was not possible for Mr. Holloway to achieve that income under the requirements of the Operating Agreement. FXG knew that the "Independent Contractor" designation was incompatible with FXG's practice of controlling the day-to-day operations of both Independent Contractors and their drivers, who are purportedly employed by the Independent Contractors, not FXG.

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

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

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

**COUNT SIX: NEGLIGENT MISREPRESENTATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **COUNT NINE: QUANTUM MERUIT**

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

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

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

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

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

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

**COUNT TEN: TITLE VII VIOLATION – RACE DISCRIMINATION**

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

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

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

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

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

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

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

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

**COUNT ELEVEN: TITLE VII VIOLATION – RETALIATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **PRAYER FOR RELIEF**

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

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

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

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

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

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

6. Prejudgment interest; and

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

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: March 28, 2008

Respectfully submitted,

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