

4. Plaintiff, Harvey L. Samuel, is a resident and citizen of Columbia, South Carolina and was a driver under contract with Defendant, FedEx Ground, from approximately March 1992 through March 2006.

5. 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 South Carolina.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over all other claims asserted in this action pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this judicial district and the Columbia division pursuant to Local Rule 3.01 because the Plaintiffs reside within this district in the Columbia division.

INTRODUCTION

8. Throughout most of the upper-tier parcel shipping industry, the drivers who actually pick up and deliver packages are the employees of the companies for which they drive. This is true, for example, for FedEx, the parent of Defendant FedEx Ground, and for FedEx's largest competitors. This designation is warranted because these shippers have developed a highly regulated set of procedures and protocols to be followed that they could not require of drivers if they were independent contractors.

9. Virtually unique in the industry, are the drivers who deliver for Defendant FedEx Ground. Though these drivers are similarly subject to highly-regulated control by FedEx Ground, they are nevertheless treated by FedEx Ground as independent contractors.

10. True independent contractor status is something that was desired by the named Plaintiffs, and probably most of the class of former and current FedEx Ground drivers described below. True independent contractor status would have permitted the named Plaintiffs and absent Class Members the freedom to operate their business as they see fit, and to run the risks and rewards of owning a business. But there is nothing “independent” about the actual job requirements imposed on drivers by FedEx Ground.

11. Accordingly, if FedEx Ground is going to treat Plaintiffs and Class Members as employees, then it must compensate them as employees, as well. Thus, this lawsuit, on behalf of the named Plaintiffs and the class described below, seeks:

- a declaration that Plaintiffs and the class were and are in fact, FedEx Ground employees; and
- 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 the FEG should have but did not pay, and Plaintiffs are entitled to the quantum meruit value of their services as employees.

FACTS

12. FedEx Ground was spun off in 2000 from its original parent corporation, FedEx Corporation. FedEx Ground is the second largest, small package ground carrier in North America, with about 35,000 employees and “independent contractors.”

13. Plaintiffs and Class Members are/were drivers for FedEx Ground. FedEx Ground is specifically defined in this Complaint to include all successors, predecessor and subsidiary entities to which these allegations pertain.

14. As a condition of employment, each FEG driver is required to sign a lengthy form contract entitled the "Pickup And Delivery Contractor Operating Agreement" (hereinafter "Operating Agreement," "OA," or "Agreement"), that mis-characterizes 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.

15. Despite Defendant's control over virtually all material aspects of the employment relationship, and despite the unequivocal command of applicable statutes and case law to the effect that workers such as Plaintiffs are entitled to the protections due employees under South Carolina law, and despite the finding of the Los Angeles Superior Court in Estrada v. FedEx Ground Package Systems, Inc. (Case # BC 210130) that these drivers are employees, Defendant continues to mis-classify their drivers as independent contractors. As a result, these drivers are deprived of the rights and protections guaranteed by South Carolina state law to employees, and they are deprived of employer-financed workers compensation coverage and unemployment insurance benefits. Furthermore, the terms and conditions of their employment contract require these drivers to purchase, operate and maintain expensive trucks for Defendant's exclusive benefit and to work under other unlawful conditions. Defendant's mis-characterization of their drivers as independent contractors, the concealment and/or non-disclosure of the true nature of the relationship between Defendant and its drivers and the attendant deprivation of substantial rights and benefits of employment are part of an on-going unlawful and fraudulent business practice by Defendant which this court should enjoin.

16. Defendant has created and regularly updated a large number of written policies and procedures outside of the Operating Agreement that drivers are never given, but nonetheless are required to follow in their work. Defendant's written policies are contained in the FedEx

Ground Manual, Operations Management Handbook, Settlement Manual and numerous other written and extra-contractual policies that are actively concealed from drivers and which Defendant fails to disclose and/or provide to drivers that govern the relationship between Defendant and the drivers. The other written handbooks and manuals and additional extra-contractual sources include, but are not limited, to written rules on “contractor” termination, directives and training provided to terminal managers, written rules on driver appearance (with illustrative poster), written and oral complaint procedures, memorandum and directives to terminal management and other rules concealed from and not provided to the drivers. When drivers do not follow an FEG rule, whether disclosed or undisclosed, known or unknown, they are subject to various types of punishment, some financial and some disciplinary, up to and including contract termination and/or non-renewal. Defendant documents such so-called violations of such rules on forms referred to as “Business Discussion Notes” and retains these documents in secret driver files called “DOT” files, along with myriad other documents which are likewise concealed from and not disclosed to the drivers.

17. Each pick-up and delivery driver (referred to by Defendant as a “P&D contractor”) must sign a “Pick-Up and Delivery Contractor Operating Agreement” and Addenda thereto (referred to hereinafter as combined as “OA” or the “Operating Agreement”) as a mandatory condition of employment. The date, time and place of execution of each driver’s Operating Agreement is within the knowledge of Defendant as each Agreement is maintained in the driver files described above, in the regular course of business. The Operating Agreement between each member of the Plaintiff Class and Defendant is the same in all material respects. The Operating Agreement between Plaintiffs and FEG contain all of the same identical material terms with only a few, minor and insubstantial differences.

18. The Operating Agreement contains various statements purporting to classify Plaintiffs and Plaintiff Class Members as independent contractors. At the same time, the Operating Agreement retains to the company, *inter alia*, the right to approve or disapprove any vehicle used to provide service, the right to approve or disapprove any driver or helper who provides service, the right to approve or disapprove the purchase or sale of any vehicle, the right to assign pickup and delivery stops to each driver, the right to temporarily or permanently transfer portions of any route to another with or without compensation, the right to determine when a driver has “too few” or “too many” packages to deliver on a given day, the right to inspect vehicles and drivers for compliance with Company-promulgated appearance standards, the right to terminate the contract upon thirty days notice or whenever the company unilaterally determines that any provision of the contract has been “violated” amounting to the right to terminate at will, the right to require the use of communication equipment and the wearing of Company uniforms, the right to take a vehicle out of service, the right to review and evaluate “customer service” and to set and change standards of such service, the right to require drivers to perform service at “times” requested by customers and determined by Defendant, the right to withhold pay for certain specified expenses, the right to require purchase of specified insurance and numerous other purchases by drivers, the right to require completion of specified paperwork, and other rights reserved to Defendant.

19. The Operating Agreement is and at all relevant times has been a contract of adhesion, drafted exclusively by Defendant and/or its legal counsel, with no negotiation with drivers, who are required to sign the Agreement as a condition of employment. Plaintiffs and Plaintiff Class Members are required to sign the form contract as is, without any changes made to the terms contained therein. Each year, drivers are required to sign additional Addenda which

are likewise not subject to negotiation and are unilaterally drafted adhesion contract provisions. The Agreement is, and at all material times has been unlawful, unconscionable and fraudulent in form and effect.

20. Defendant's right of control over Plaintiff Class Members is also retained and/or exercised by Defendant as demonstrated by concealed and/or undisclosed extra- contractual sources such as Company written rules and policies described above and unwritten practices which supplement and fill gaps in the written contract.

21. Examples of FedEx Ground's control include:

- *Minimum daily hours.* The Plaintiffs and Class Members were required to spend at least seven hours daily on the road, even if they had completed all their assigned deliveries and pickups. Plaintiffs and Class Members were docked if they left the road early, even if their deliveries are completed.
- *Required insurance.* FedEx Ground required a certain level of auto, liability and workers' compensation insurance, and further required that Plaintiffs and Class Members buy their insurance from FedEx Ground.
- *No substitute drivers.* The Plaintiffs and Class Members were not permitted to allow drivers who were not pre-approved by FedEx Ground to assume their job duties even temporarily.
- *Uniforms.* The Plaintiffs and Class Members were required to wear FedEx Ground uniforms, without any variance. Their uniform could only be purchased from FedEx Ground.
- *Truck decals.* The Plaintiffs and Class Members were required to decorate their trucks with the same standard issue FedEx Ground decals, which is only available from FedEx Ground.
- *Punching the clock.* The Plaintiffs and Class Members were required to carry an electronic scanner. The Plaintiffs and Class Members were required to electronically "punch in" at the start of their workday, and "punch out" at the conclusion. The scanner transmits throughout the day to record the whereabouts of the Plaintiffs and the Class Members.
- *Controlled departure.* The Plaintiffs and Class Members were not permitted to depart from their terminal until after the entire package sort is complete, even where Plaintiffs and Class Members had loaded and readied all of their packages that they were required to deliver. They were

required to wait until FedEx Ground completed its paperwork.

- *Bonus tied to FedEx Ground performance.* The Plaintiffs' and Class Members' bonuses were tied to the performance of FedEx Ground.
- *Authority over workdays.* FedEx Ground had the right to order the Plaintiffs and Class Members to work holidays and days after holidays (such as the Friday after Thanksgiving). Failure to show up to work on these required days could result in termination.
- *Authority over work assignments.* FedEx Ground assumed complete authority over which geographical area is to be serviced by Plaintiffs and Class Members. The Plaintiffs and Class Members were not permitted to exchange those assigned geographical areas among themselves.
- *Authority over work load.* FedEx Ground exercised total control over the workload of Plaintiffs and Class Members.
- *Authority over drop-offs and pickups.* FedEx Ground assumed complete control over the daily drop-off and pickup assignments of Plaintiffs and Class Members. The Plaintiffs and Class Members were not permitted to informally exchange work assignments among themselves.
- *Authority over the selling of routes.* The Plaintiffs and Class Members could not buy and sell their FedEx Ground assigned routes without prior approval by FedEx Ground.
- *No potential for entrepreneurial risks and rewards.* The Plaintiffs and Class Members were compensated on a highly structured system that gave them no ability to exercise entrepreneurship or otherwise engage in the risks and rewards associated with owning a business. Accordingly, Plaintiffs and Class Members were paid a daily stipend, based on their geographical area assigned by FedEx Ground, and were paid a set amount for each FedEx assigned stop, and separately for each FedEx-assigned delivered package.
- *No opportunity to sell FedEx Ground service.* The Plaintiffs and Class Members could not take orders from customers for FedEx Ground services.
- *No opportunity to compete.* The Plaintiffs and Class Members could not separately offer pickup and/or delivery services independent from FedEx Ground.
- *"Company store."* The Plaintiffs and Class Members received weekly paychecks from FedEx Ground. From their total owed (assigned route stipend plus assigned stops plus completed deliveries), FedEx Ground

would deduct various compulsory expenses. These business expenses are for services (such as the leasing of equipment) that Plaintiffs and Class Members could not shop around to other vendors to seek a better deal.

- *Approval requirements.* FedEx Ground required that Plaintiffs and Class Members (and those substitute drivers who Plaintiffs and Class Members would want to occasionally assume their job duties) take and pass a FedEx Ground institutional course.
- *Port-to-port control.* The Plaintiffs and Class Members were required to begin their workday at their assigned FedEx Ground terminal.

CLASS ALLEGATIONS

22. Plaintiffs brings this case on behalf of the following Class:

All current and former single work area pick up and delivery drivers who (1) are or have been dispatched from a South Carolina based terminal, and (2) performed services for FedEx Ground driving full-time (exclusive of time off for vacation and/or illness) pursuant to the terms of the Standard Contractor Operating Agreement (or, where applicable, its predecessor and/or successor) from six years prior to the commencement of this action through the present date.

The named Plaintiffs fits within this description.

23. All Class Members share an interest in ascertaining whether they should be treated as employees, or as independent contractors.

24. The named Plaintiffs will fairly and adequately represent the class. The named Plaintiffs are members of the Class, have no interest antagonistic to the members of the Class, and have retained lawyers experienced in class action litigation to prosecute the case.

25. The Class is large, numbering into the hundreds, at least. Accordingly, joinder is impracticable.

26. Nevertheless, the Class is not large enough to render class treatment unmanageable. Nearly all relevant information, *e.g.*, the identity of those Class Members, can be found in written and electronic records of FedEx Ground.

27. Pursuant to Fed. R. Civ. P. 23(a)(2) and (a)(3), there are questions of law or fact common to the Class, including, but not limited to:

- a. Whether Plaintiffs and Class Members had the requisite independence and discretion to be classified as independent contractors?
- b. Whether the uniform acts of defendant converted the Plaintiffs and the Class, by law, into “employees”?
- c. Whether Plaintiffs and the Class are entitled to their overtime, at a rate of time-and-a-half for all hours worked over 40 per week?
- d. Whether Plaintiffs and the class are entitled to be reimbursed for business expenses that they covered?
- e. Whether Plaintiffs and the class are entitled to their pension and health benefits under the various Defendant Plans because they were and/or are, in fact, employees?
- f. Whether the actions of FedEx Ground are applicable to the Class as a whole, entitling Class Members to injunctive relief?

28. The claims of Plaintiffs are typical of the claims of each member of the Class as a whole and are based on and arise out of identical conduct by FedEx Ground.

29. The Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in class action litigation. The Plaintiffs will fairly and adequately represent the interests of the members of the class.

30. The prosecution of separate actions by individual members of the Class would create a risk of establishing incompatible standards of conduct for defendant.

31. Defendant’s actions are generally applicable to the Class as a whole, and Plaintiffs seek remedies with respect to the Class as a whole.

32. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy.

CAUSES OF ACTION
FOR A FIRST CAUSE OF ACTION
(Illegal Deductions From Wages Under South Carolina Code Ann. § 41-10-40)

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

34. Plaintiffs are “employees” and are not free from the control and direction of the Defendant.

35. Defendant unlawfully withheld and diverted monies from the compensation earned by Plaintiffs and Plaintiff Class Members for business expenses of Defendant, including but not limited to vehicle expenses, cargo claims and insurance claims in violation of South Carolina Code Ann. § 41-10-40 and § 41-10-80. Plaintiffs and Plaintiff Class Members have not expressly and freely given written consent to such deductions, and these deductions are not made in response to a valid wage assignment or deduction order. Such deductions were not for the Plaintiff and Plaintiffs Class Members employees’ benefit.

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

37. As a direct and proximate result of Defendant’s conduct, Plaintiffs and Plaintiff Class Members suffered substantial losses and have been deprived of compensation to which they were entitled, including monetary damages in the amount of three times of unpaid wages, civil penalties, pre-judgment interest, costs and reasonable attorney fees.

FOR A SECOND CAUSE OF ACTION
Fraud

38. Plaintiffs reallege and reiterate the above Paragraphs 1 through 37 hereinabove, as if fully repeated herein verbatim.

39. 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 Plaintiff Class Members as to their employment status, or made such representations to Plaintiffs and Plaintiff Class Members recklessly and/or negligently, and deliberately concealed from and/or failed to disclose to the pick-up and delivery drivers the extra contractual sources (including but not limited to the FedEx Ground Manual, Operation Management Handbook and Settlement Manual, other policies and secret driver files described above) that defined the employment relationship between Plaintiffs and Defendant, all for the purpose of realizing unjust profits from Plaintiffs’ work and/or to avoid paying for its operating costs and payroll taxes to increase its competitiveness.

40. 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.

41. At all material times, Defendant intended to and did induce Plaintiffs and the Plaintiff Class Members 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.

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

FOR A THIRD CAUSE OF ACTION
Rescission of Operating Agreement

43. Plaintiffs reallege and reiterate the above Paragraphs 1 through 42 hereinabove, as if fully repeated herein verbatim.

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

45. FEG controls virtually every aspect of the Plaintiffs' work and earnings, as set forth in the general allegations hereof at paragraphs 12 through 21.

46. Despite this control and the actual status of the drivers as employees, FEG mischaracterizes the Plaintiffs and Plaintiff Class Members 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.

47. 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.

48. 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.

49. 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.

50. The Operating Agreement illegally shifts the burden of certain costs that an employer must pay.

51. 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.

52. 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.

53. 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.

54. 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 the FEG should have but did not pay, and Plaintiffs are entitled to the quantum meruit value of their services as employees.

FOR A FOURTH CAUSE OF ACTION
Declaratory Relief Against Defendant

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

56. An actual controversy has arisen between the Plaintiffs and Plaintiff Class Members, on the one hand, and Defendant, on the other hand, relating to the following matters:

- a. Whether Defendant has unlawfully misclassified Plaintiffs and Plaintiff Class Members as independent contractors, and have thus denied Plaintiffs and Plaintiff Class Members of the common benefits of employee status, such as
 - i. wages;
 - ii. holiday pay;
 - iii. workers' compensation;
 - iv. unemployment insurance;
 - v. contributions to the FedEx Ground's retirement plan;
 - vi. income tax withholding;
 - vii. meal, break and rest periods.
- b. Whether Defendant has unlawfully failed to pay benefits and compensation owing in a timely manner to Plaintiffs and Plaintiff Class Members whose employment with Defendant ended, as required by South Carolina law.
- c. What amounts Plaintiffs and Plaintiff Class Members are entitled to receive in compensation and benefits.
- d. What amounts Plaintiffs and Plaintiff Class Members are entitled to receive in interest on unpaid compensation due and owing.

- e. What amounts Plaintiffs and Plaintiff Class Members are entitled to receive from Defendant in statutory penalties and interest.

57. Plaintiffs and Plaintiff Class Members further seek entry of a declaratory judgment in their favor which declares Defendant's practices as heretofore alleged to be unlawful and which provides for recovery of all sums determined by this Court to be owed by Defendant, and each of them, to the Plaintiffs and Plaintiff Class Members.

WHEREFORE, Plaintiffs individually, and on behalf of all others similarly situated, prays for the following relief:

- A. An Order permitting them to give notice of this action to all persons who fit within the described class;
- B. An Order certifying the class as described with the named-Plaintiffs as class representatives;
- C. An award to the Plaintiffs and the class in the amount of their unpaid overtime compensation;
- D. An order requiring FedEx Ground to reimburse and/or indemnify Plaintiffs and Class Members for the FedEx Ground business expenses that they have covered;
- E. An order requiring FedEx Ground to rescind the Operating Agreement, and awarding restitution compensating for the reasonable value of the benefit provided to FEG;
- F. An award of attorneys' fees, plus the costs and expenses of this action;
- G. An award of punitive damages in an amount to be proven at trial;
- H. Prejudgment interest, as afforded by law;
- I. All other legal and equitable relief to which Plaintiffs and the class are entitled.

Dated: September 22, 2006

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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CERTIFICATE OF SERVICE

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