

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

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)	
In re FEDEX GROUND PACKAGE)	Cause No. 3:05-MD-527-RM
SYSTEM, INC., EMPLOYMENT)	(MDL 1700)
PRACTICES LITIGATION)	
)	
-----)	
THIS DOCUMENT RELATES TO:)	
)	
<i>Percival Curritthers, et al. v.</i>)	
<i>FedEx Ground Package System, Inc.,</i>)	
Civil No. 3:05-cv-00532-RLM-CAN (MI))	
-----)	

THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs, individually and on behalf of all others similarly situated within the State of Michigan, by way of Third Amended Class Action Complaint against Defendant, allege as follows:

INTRODUCTION

1. This is a class action suit asserting claims for rescission based upon violations of public policy, illegality of contract and fraud. Plaintiff class also claims breach of implied contract, unjust enrichment and fraud.

2. Plaintiffs are Michigan truck and van drivers engaged in package delivery for the Defendant, Federal Express Ground Package Systems, Inc. (herein "FXG").

3. FXG fraudulently induced the named Plaintiffs and Class members (collectively, "Plaintiffs") to purchase a delivery truck, to insure and maintain that truck, to purchase a "business support package" and other items required by FXG, and to deliver packages for FXG, all the while representing to them that they are or would be "independent business owners" and "business partners" with FXG, and that they had or would have proprietary interests in the

delivery routes for which they contracted. These representations were false. In reality, FXG micro-manages Plaintiffs' activities in such a manner that Plaintiffs are *de facto* employees of FXG and the routes that Class members purchased therefore have no value. FXG has avoided all state and federal employment taxes, Workers' Compensation and unemployment compensation obligations and other business expenses. FXG has further avoided a panoply of statutory obligations designed to protect employees from discriminatory, retaliatory and otherwise harmful action. By this suit, the Plaintiffs seek to obtain rescission of their "Standard Contractor Operating Agreement," damages relative to their misclassification as independent contractors, punitive damages, declaratory judgment and injunctive relief, plus costs, counsel fees, interest and other appropriate relief.

THE PARTIES

4. All Plaintiffs reside or work in the State of Michigan and contracted to be pick-up and delivery drivers at Defendant FXG's Michigan terminals.

5. Plaintiff PERCIVAL CURRITHERS is an individual citizen of the State of Michigan, residing at 871 Dewey Street, Lapeer, Michigan 48446. Mr. Currithers is a former FXG Contractor/Driver at FXG's Sterling Heights, Michigan terminal.

6. Plaintiff TYRONE HAWKINS is an individual citizen of the State of Michigan, residing at 19382 Cameron, Detroit, Michigan 48203. Mr. Hawkins is a current FXG Contractor/Driver at FXG's Sterling Heights, Michigan terminal..

7. Plaintiff DANIEL LAVAKE is an individual citizen of the State of Michigan, residing at 793 South Saginaw Street, Lapeer, Michigan 48446. Mr. Lavake is a current FXG Contractor/Driver at FXG's Sterling Heights, Michigan terminal.

8. Defendant, FXG, is a Delaware corporation with its principal office in Moon Township, Allegheny County, PA. FXG operates several terminals in Michigan that are the focus of this matter.

9. At all times relevant to this action, Defendant has actively and continuously conducted business throughout the State of Michigan, employing contract drivers such as Plaintiffs and all those similarly situated and engaging in a marketing campaign directed to members of the general public to entice members of the public to become contract drivers.

FACTS COMMON TO ALL CAUSES OF ACTION

10. Defendant is a national company employing thousands of drivers to pick up and deliver packages for its customers throughout the United States.

11. FXG operates two divisions in Michigan: the Ground division routinely, but not exclusively, picks up and delivers packages to businesses. The Home Delivery division routinely, but not exclusively, delivers packages to residential locations.

12. During the time relevant to this action, FXG retained more than 300 delivery and pick-up drivers in Michigan, including either presently or at material times in the past, the Plaintiffs. FXG retains these drivers (the Class members) for the purpose of providing its customers with timely and reliable pick-up and delivery of packages.

THE RECRUITMENT PROCESS AND DEFENDANT'S MISREPRESENTATIONS

13. FXG recruits drivers by placing ads in newspapers and on the Internet, inviting members of the general public to attend meetings where FXG managers and recruiters solicit members of the public who respond to FXG's marketing to become drivers by making, among others, the following misrepresentations:

- a. That persons who enter into the "Operating Agreement" will have their own independent business that will be a "partner" with FXG;

- b. That persons who enter into the “Operating Agreement” can acquire multiple routes as part of their “business;”
- c. That contractor drivers will have the ability to determine their own level of income through their own work and effort;
- d. That contractor drivers’ so-called independent businesses will be based on delivery routes that they will own and have an entrepreneurial interest in; and,
- e. That contractor drivers’ delivery routes have economic value in excess of the cost of the truck and that they can be sold.

14. FXG misrepresents to the public and to the Plaintiffs, that contract drivers have the right to run their own business; to “be your own boss,” to “have the ability to grow your own business;” to “have the chance to partner with the fastest growing transportation company [FXG] in the country.”

15. FXG also misrepresents to the Plaintiffs and the public that they “have a proprietary interest as a FedEx Ground or Home Delivery contractor.”

16. FXG requires its drivers to sign an Operating Agreement (“Agreement”) that characterizes each driver as an “independent contractor” representing that the driver will have a proprietary and entrepreneurial interest in the route.

DEFENDANT’S OPERATING AGREEMENT

17. All Class members were required to sign an Operating Agreement. Although not identical, the Agreements for the Ground division and the Home Delivery division are substantially the same in all respects relevant to this action.

18. Both the Ground and Home Delivery Agreements characterize the drivers as independent contractors.

19. Among other things, the Agreements provide that:

- a. Plaintiffs 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, Plaintiffs must adorn the vehicle

with specific colors, logos and marks, identifying it as “part of the FXG system.” As well, Plaintiffs must maintain liability insurance for operation of the vehicle without packages on board in the amount of one million dollars, naming FXG as an insured; Plaintiffs must prepare daily driver logs and inspection reports, and such shipping documents “as FXG may from time to time designate;” drivers must deposit a “Contractor Performance Escrow Account,” to be used to reduce any debt the driver owes FXG upon termination;

- b. Plaintiffs must wear “an FXG-approved uniform;” and keep his/her personal appearance consistent with standards “promulgated from time to time by FXG;
- c. FXG may change a driver’s Primary Service Area, notwithstanding FXG’s representation and promise that each driver has a proprietary interest in the customers he or she serves. In the event that a Primary Service Area is changed, drivers must pay each other for customers gained or lost thereby according to a set schedule;
- d. After one year of service, drivers may become eligible to participate in FXG’s Customer Service Program, by which a specified monetary bonus can be earned for every four weeks in which the driver has no at-fault accidents and no customer complaints;
- e. Neither the Agreement nor its addenda and attachments may be modified, altered, changed or amended in any respect unless in writing and signed by both parties;
- f. The purpose of FXG’s requiring Class members to operate vehicles that prominently display FXG’s logo, conform to FXG’s requirements as to appearance, and to wear uniforms and use documents provided by FXG, is to promote the image and brand of FXG.
- g. FXG can terminate the Agreement at will, without good cause or notice.

20. The Agreement is and at all times mentioned herein has been a contract of adhesion, drafted by FXG and its legal counsel, printed by FXG, and distributed by FXG among drivers for mandatory signature. Plaintiffs have no opportunity to negotiate with FXG over the terms or conditions contained in the Agreement, and FXG offers its drivers no meaningful choice of terms.

21. The Agreement is, and at all material times has been, unlawful and unconscionable in form and effect.

22. While the Agreement contains an Arbitration Clause, that Clause applies only in cases of termination, is completely one-sided and allows FXG to not reinstate a terminated Class member, even if ordered to do so by the arbitrator. The Arbitration Clause is unconscionable, illegal and does not preclude Plaintiffs' claims asserted in this Complaint.

23. Despite the Operating Agreement and despite repeated representations by FXG, Plaintiffs are de facto employees, for the reasons set forth herein.

**DEFENDANT'S CONTROL OF PLAINTIFFS
AND OTHER WRONGFUL ACTS**

24. FXG exercises extensive control over the means by which Plaintiffs perform their jobs.

25. Such control is exerted in part through the Operating Agreements and provisions described above, which Plaintiffs were required to sign as a condition of employment.

26. The Agreement leaves interpretation of vague terms in the sole discretion of FDX, without meaningful recourse to Class Members.

27. FXG's complete control over Plaintiffs is also exercised by other rules and regulations, written and unwritten, including but not limited to the following:

- a. FXG requires Plaintiffs to purchase or lease a vehicle manufactured to a design exclusive to FXG and mandated by FXG to make deliveries and pick-ups;
- b. FXG requires Plaintiffs to pay for the purchase or lease of such vehicle, as well as for its maintenance and upkeep. Other vehicle-related costs required to be paid by Plaintiffs include fuel, oil, tires, repairs, taxes, insurance coverage, licenses, vehicle registration renewal fees, base plates and all highway, bridge and ferry tolls;
- c. FXG inquires that Plaintiffs' vehicles meet certain unique specifications, on both the inside and outside. At their own expense, Plaintiffs are

required to paint the vehicle with FXG's colors, and put FXG's logos on the vehicle;

- d. Although Plaintiffs could technically use the vehicles for their own commercial and personal purposes, they are not permitted to do so without removing or covering all FXG identifying logos and marks. Additionally, the hours worked by the driven generally exceed ten hours each day, leaving no time to use the vehicles for any other endeavor;
- e. Plaintiffs and other driven have no control over the prices charged FXG's customers for pick-up and delivery service;
- f. Plaintiffs and other driven do not have authority to reject deliveries or pick-ups. They are required to adhere to FXG's strict route schedules and their failure to make a pick-up or delivery subjects them to discipline;
- g. FXG mandates that Plaintiffs wear an FXG-approved uniform, and follow such other guidelines as FXG might promulgate regarding their personal appearance;
- h. FXG instructs and controls drivers as to the appearance of their vehicles requiring that they be clean and presentable and free of body damage and/or and extraneous markings;
- i. FXG requires that Plaintiffs perform maintenance on their vehicles according to a schedule set by FXG, at Plaintiffs' expense;
- j. FXG requires that Plaintiffs and other driven purchase or lease certain electronic communications equipment that complies with FXG's specifications. That equipment includes a "scanner" which contains a global positioning system" capability, which allows FXG to monitor the location of the driven at all times;
- k. FXG requires its driven to prepare daily logs and daily inspection reports, along with shipping documents and to file the originals with FXG each business day;
- l. FXG requires Plaintiffs to deposit \$1,000 per Ground driver and \$500 per Home Delivery driver into an escrow account;
- m. FXG requires Plaintiffs to provide services to FXG's customers on days and at times that are compatible with the customers schedules and requirements as accepted by FXG - the drivers have no choice but to meet the schedules set by FXG and its customer;
- n. FXG assigns Plaintiffs to a specific Primary Service Area - the area each driver is to service, the terms of which are nonnegotiable;

- o. FXG determines the volume of deliveries and pick-ups each driver makes;
- p. The volume of deliveries and pick-ups given to each driver prevents them from developing any new business on their own;
- q. FXG can unilaterally reconfigure Plaintiffs' Primary Service Areas;
- r. FXG requires Plaintiffs to make reasonable efforts to retain and increase FXG's customer base and the number of packages handled, but does not compensate Plaintiffs for any customer leads;
- s. If a package can not be delivered on the day mandated by FXG, FXG requires the driver to return the package to FXG on the same day or the next day and to make notations as for the reason for non-delivery, with the drivers being subjected to discipline if they do not or cannot attempt the delivery;
- t. Plaintiffs are not given any sick or vacation leave. If Plaintiffs or other drivers get sick, FXG requires that they find substitutes. FXG must first give approval for these substitutes, even though Plaintiffs are required to pay such substitutes' wages;
- u. FXG may and does terminate drivers at will and without cause;
- v. FXG requires drivers to give thirty (30) days written notice before terminating their obligations under the Agreement. If drivers fail to do so, Defendant requires drivers to pay it the escrow as liquidated damages;
- w. FXG requires Plaintiffs to submit all claims of wrongful termination to arbitration, stating that the arbitrator has no power to award plaintiffs their routes or punitive damages. The plaintiffs must pay for their own counsel and their portion of the arbitrators' fees;
- x. FXG offers a group vehicle insurance program to Class members at very low rates. Individual vehicle insurance is so expensive that the result of FXG's termination of insurance is to effectively terminate the Agreement. FXG has terminated the group vehicle insurance for individual Class members as a method of controlling the class.
- y. Plaintiffs must submit to a test of intoxication or impairment requested by FXG;
- z. Plaintiffs may not carry non-authorized passengers while on FXG' business;
- aa. Plaintiffs must complete a thorough physical examination confirming physical fitness to operate a commercial vehicle at least every two years, and following any physical or mental impairment from injury or disease,

regardless of whether the driver is subject to DOT requirements.. These examinations must be completed by a physician approved by FXG;

- bb. Plaintiffs must submit to a drug screen administered at whatever time and place and in whatever manner dictated by FXG; and
- cc. Drivers must cooperate fully with FXG in the conduct of any legal action, regulatory hearing or other similar process arising from or in any way related to any matter found within the safe driving provisions of the Agreement. Such cooperation includes, without limitation, attendance at hearings, trials, and meetings, the securing of evidence and obtaining the attendance of witnesses.
- dd. FXG employs Terminal Managers, Pickup and Delivery Managers, Safety Managers and other supervisory personnel to process the drivers' paperwork and to give each driver his or her delivery and pick-up schedules.

28. FXG assigns Plaintiffs to deliver packages outside their geographical "primary service areas" without their consent.

29. FXG's assignment of packages and unilateral modification of pay structures effectively and efficiently controls Plaintiffs' earnings and ability to complete their work.

30. Drivers have no say in whether to accept or decline packages assigned by FXG in a given day, even if outside his contracted "primary service area," FXG disciplines or terminates drivers who fail to deliver packages outside his or her Primary service area that FXG assigns.

31. Drivers typically commence their workday in the early morning and finish their routes around 6 p.m. to 7:00 p.m.

32. FXG pays its drivers on a piece rate system, for the number of stops, deliveries and pick-ups made.

33. Plaintiffs' delivery of packages is an active, integral and indispensable part of FXG's business enterprise. By driving vehicles with FXG's colors and logos, by reliably serving FXG's customers, by following FXG's controlled delivery routes and delivery and pick-up methods, by providing FXG with customer leads, and in other ways, Plaintiffs and

other delivery drivers have rendered, and continue to render, valuable services to Defendant FXG.

34. The personal services described immediately above:
 - a. confer substantial benefits on FXG;
 - b. are an integral part of the process which enables FXG to offer its customers timely and reliable pick-up and delivery services; and
 - c. do not involve the kind of expertise which requires entrustment to an independent professional, as opposed to an employee.

35. The skills required of the Plaintiff Class in rendering services to FXG (picking up and delivering packages) are such that said services can be rendered by employees, rather than by specially-skilled independent workers. While FXG prefers to employ drivers with at least one year of commercial driving experience, FXG will and does employ drivers with no experience.

CLASS ACTION ALLEGATIONS

36. Plaintiffs bring this class action on behalf of themselves and other similarly situated persons who have been similarly harmed by FXG in the manner described herein.

37. Specifically, Plaintiffs bring this action as a class action on behalf of all persons who worked for Defendant FXG at its Ground Division and/or Home Delivery Division terminals in Michigan, from October 25, 1998 to the time of trial (the "Class Period") as package delivery drivers and/or package pick-up drivers, and who were signatory to an operators Agreement with Defendant FXG.

38. Upon information and belief, the number of members of the Plaintiff Class exceeds 300 during the Class Period.

39. The Plaintiff Class is so numerous that their individual joinder into a single action is impracticable. Although the exact number of Class members cannot be properly determined

without further discovery, the number and identity of the Class members can easily be ascertained from Defendants' records.

40. Through the above-referenced campaign, FXG induces and has induced individuals, including Plaintiffs, to become drivers for FXG by representing that the drivers will be independent businesses in partnership with FXG, that they will be licensed to use FXG's trade name, trade mark and related characteristics: that they will acquire delivery routes that have intrinsic value, that said routes can grow in value with the delivery business and that said routes can be sold. These representations are false and misleading, as FXG controls the routes and the drivers in such a manner that the routes have virtually no value and the drivers cannot grow their business.

41. In its Operating Agreements, as in the marketing materials discussed above, Defendant conceals the true nature of the relationship between FXG and its drivers: that of employer and employee.

42. As a result of Defendant's misrepresentations, the Plaintiffs pay substantial sums of their own money for the purchase or lease of vehicles that meet FXG specifications, as well as all costs of operating and maintaining those vehicles.

43. FXG's drivers who sign the Operating Agreement do not receive workers' compensation coverage or unemployment insurance benefits. FXG does not pay employment taxes on behalf of the Plaintiffs. The drivers are excluded from all of the benefit programs that FXG affords its other employees, including without limitation vacations, holidays, sick days, personal days, medical insurance and retirement programs.

44. FXG has fraudulently mischaracterized its relationship with its drivers as one of an independent contractor, thereby inducing Plaintiffs to expend tens of thousands of dollars to acquire and maintain vehicles, and expend their own funds for work related services.

45. In fact, and as described above, FXG systemically controls virtually all aspects of the relationship with Plaintiffs in such a manner and extent that the drivers are in fact employees of FXG.

46. FXG has deprived Plaintiffs of the value of their “businesses” by making them employees, despite FXG’s characterization of them as independent contractors and businesspersons.

47. FXG uses the same recruitment and management scheme throughout the State of Michigan.

48. The Defendant’s actions have inflicted the same types of harm upon each and every member of the Class.

49. There are questions of law and fact that affect and are common to all Class members. The central questions of law and fact involved in this action are of a common or general interest.

50. Common legal and factual issues predominate over any questions affecting only individual members of the class.

51. Among the common questions of law and fact are the following:

- a. Whether FXG misled Class members into believing they were acquiring an independent business and were independent contractors;
- b. Whether the contractor drivers are actually employees based upon FXG’s level of control of their work;
- c. Whether FXG unlawfully forced Plaintiffs to pay for business expenses that rightfully should have been paid for by their employer, FXG;

- d. Whether FXG was unjustly enriched by failing to compensate the Class as employees, to provide employment benefits and emoluments of employees, by evading employment taxes, and by wrongfully benefiting from its requirement that the Class pay for FXG's business expenses.
- e. Whether FXG unlawfully failed to provide workers' compensation insurance benefits to the Class members;
- f. Whether FXG unlawfully failed to provide unemployment insurance benefits to the Plaintiff Class members;
- g. Whether FXG unlawfully failed to pay the employment portion of all employment taxes that would have been due if it accurately classified Plaintiffs as employees instead of independent contractors;
- h. Whether injunctive and declaratory relief are proper; and
- i. Whether the agreement permitting FXG to shift the burden of employment expenses, taxes, and insurances is illegal and therefore void.

52. The claims of the named representative Plaintiffs are typical of the claims of other members of the Plaintiff 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 suffered financial loss of thousands of dollars due to FXG's conduct.

53. The Class Representatives have an incentive and are committed to vigorously prosecute this action because they have actually suffered losses as a result of Defendant's actions.

54. Plaintiffs have retained qualified counsel, experienced in class action practice, to represent them in this matter.

55. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members, may be relatively small, in comparison with the expense and burden of individual litigation makes it impracticable for members of the Class to seek redress individually for the wrongful conduct herein alleged. Were each individual member required to bring a separate lawsuit, the

resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the court. The prosecution of separate actions would also create the risk of inconsistent rulings, which may be dispositive of the interest of Class members who are not parties to the adjudication and/or may substantially impede Class members' ability to protect their interests, and therefore would be contrary to the interest of justice and equity.

56. This action should proceed as a class action because the prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendant.

57. This action should also proceed as a class action because the prosecution of separate actions by or against individual members of the Class would create a risk of adjudications with respect to individual members of the Class that would as a practical matter be dispositive of the interests of the other members who are not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

58. This matter should also proceed as a class action because Defendant's acts and/or omissions apply generally to members of the Class warranting a declaratory judgment that Defendant's actions constitute a scheme, fraud, misrepresentation, and/or unconscionable conduct in violation of applicable Michigan law and an injunction prohibiting such acts and/or omissions in the future.

COUNT I
DECLARATORY ACTION TO RESCIND
CONTRACT BASED UPON VIOLATIONS OF
PUBLIC POLICY, ILLEGALITY AND FRAUD IN THE INDUCTION

59. Plaintiff Class restates and realleges paragraphs 1 through 59, above as though fully stated herein.

60. Plaintiff Class is entitled to rescission of the “Standard Operating Agreement” because 1) the contract violates public policy, 2) the contract is illegal and/or 3) there was fraud in the induction of the contract. Plaintiff Class further seeks declaratory judgment of this court declaring the parties’ relationship to be one of employee and employer.

61. The equitable remedy of rescission is appropriate where a contract violates public policy, is illegal, or induced by fraud.

62. The “Standard Contractor Operating Agreement” violates the public policy of the State of Michigan in various particulars in that the mischaracterization and mis- treatment of the relationship by FXG (as one of an “independent contractor” as opposed to an employment relationship) is designed to speciously circumvent the panopoly of protections afforded employees under Michigan law - protections to which they would be entitled but for the mischaracterization and mistreatment of the relationship by FXG, including, but not limited to:

- a. The Elliott Larsen Civil Rights Act, MCL 37.2101 et seq. and the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq. (discriminatory treatment);
- b. The Michigan Payment of Wages and Fringe Benefits Act, MCL 408.471 et. seq.
- c. The Michigan Occupational Safety & Health Act (MIOSHA), MCL 408.1001 et seq.
- d. The Whistleblowers Protection Act, MCLA 15.362 et seq.
- e. The Bullard-Plawecki Employee Right to Know Act, MCL 423.501 et seq;
- f. The Polygraph Protection Act of 1981, MCL 37.201 et seq;
- g. The Michigan Workers’ Disability Compensation Act, MCL 418.101 et. seq.;
- h. The Michigan Employment Security Act, MCL 421.1 et seq.

63. By enactment of the above statutes and others, the Michigan Legislature has expressed a clear intent to provide protections to employees as a matter of public policy.

64. Said public policy is violated where FDX, as here, intentionally misleads the Plaintiff Class, and others, as to the nature of the parties' relationship in order to avoid compliance with the laws.

65. Where contract and declared public policy are in conflict, the former must yield to the latter. Contracts against public policy are therefore void.

66. Moreover, the "Standard Contractor Operating Agreement" is illegal in that it results in non-compliance with the statutes listed above.

67. The Operating Agreement is illegal in that it mischaracterizes and mistreats Plaintiffs as independent contractors instead of employees in order to shift the burden of costs that an employer is legally obligated to pay, e.g. the failure to insure Plaintiff's against work injuries, the failure to pay unemployment insurance, the failure to withhold taxes, etc.

68. Despite this control and the actual status of the drivers as employees, FXG mischaracterizes and mistreats 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.

69. Plaintiffs' relationship with FXG satisfies every aspect of the test for employment, and not for independent contractor status, as set forth above.

70. The "Standard Contractor Operating Agreement" was fraudulently induced by FDX for all those reasons set forth in the section entitled, "THE RECRUITMENT PROCESS AND DEFENDANT'S MISREPRESENTATIONS," above.

71. Where a contract is induced by fraud, the Courts are empowered to rescind the contract and do equity as necessary to make the wronged party whole.

72. Under these facts, the relationship between the parties, as determined by the control asserted over the Plaintiff Class and the economic realities of the relationship with FDX, is clearly one of employer and employee and should be treated as such.

73. An actual and substantial controversy exists between the parties. Therefore this Court may declare the rights and other legal relations of any interested party seeking such declaration.

WHEREFORE the Plaintiff class requests rescission of the “Standard Operating Agreement,” a declaratory judgment of this court declaring the parties’ relationship to be one of employee and employer and any other equitable relief and/or compensation allowed in law, along with attorneys’ fees and costs.

COUNT II
BREACH OF IMPLIED CONTRACT
(FAILURE TO PAY PLAINTIFFS AS EMPLOYEES)

74. Plaintiff Class restates and incorporates herein by reference, paragraphs 1 through 73 of this Complaint as though fully stated herein.

75. In every employment relationship in Michigan there is an implied contract.

76. The Plaintiff Class performed services to the benefit of FDX with the expectation that it would be paid for same.

77. Defendant FDX induced the performance of services for its benefit expecting to pay for said benefit.

78. The implied agreement between the parties was that FDX would be the reasonable value of the services provided by the Plaintiff Class.

79. Defendant FDX breached the implied contract between the parties by systematically avoiding the payment of the reasonable value of the services provided, otherwise

avoiding the costs associated with the employment relationship and by shifting the costs of doing business to the Plaintiff class.

WHEREFORE the Plaintiff Class prays for Judgment against Defendant, in whatever amount the Court or jury determines to be reasonable value for its services, together with interest, costs, and attorney fees.

COUNT III
UNJUST ENRICHMENT

80. Plaintiffs hereby incorporate by reference paragraphs I through 79 of this Complaint as if fully set forth herein.

81. While acting on the direct instruction of FXG and discharging their duties for FXG, 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.

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

83. As a direct and proximate result of FXG’s conduct, Plaintiffs have suffered substantial losses, including lost profits, self-employment taxes, premiums for insurance to replace workers compensation and disability benefits, business expenses that should have been paid by the employer, and other damages.

84. Plaintiffs are entitled to compensation for all of the business expenses they were illegally required by FXG to bear, for all of the employment taxes, unemployment compensation

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

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against the Defendant for compensatory damages, punitive damages, consequential damages, declaratory judgment and injunctive relief, plus costs, counsel fees, pre- and post-judgment interest, and such further relief as may be just and proper.

COUNT IV
FRAUDULENT MISREPRESENTATION

85. Plaintiffs hereby incorporate by reference paragraphs I through 84 of this Complaint as if fully set forth herein.

86. The Defendant FDX made a number of material misrepresentations to the Plaintiff Class as enumerated above, including but not limited to:

- a. That persons who enter into the “Operating Agreement” will have their own independent business that will be a “partner” with FXG;
- b. That persons who enter into the “Operating Agreement” can acquire multiple routes as part of their “business;”
- c. That contractor drivers will have the ability to determine their own level of income through their own work and effort;
- d. That contractor drivers’ so-called independent businesses will be based on delivery routes that they will own and have an entrepreneurial interest in;
- e. That contractor drivers’ delivery routes have economic value in excess of the cost of the truck and that they can be sold;
- f. That contract drivers have the right to run their own business; to “be your own boss;” to “have the ability to grow your own business;” to “have the chance to partner with the fastest growing transportation company [FXG] in the country.”; and
- g. That they “have a proprietary interest as a FedEx Ground or Home Delivery contractor.”

87. Each of the representations listed above are false.

88. The Defendant FDX knew the representations were false when made or, at least, made said representations recklessly, without knowledge of its truth and as a positive assertion.

89. Said representations were made with the intention to induce reliance by the Plaintiff Class.

90. The Plaintiff Class relied on the misrepresentations.

91. The Plaintiff Class suffered a loss as a result of said reliance.

WHEREFORE, the Plaintiff Class respectfully requests that the Court enter judgment in their favor and against the Defendant for compensatory damages, punitive damages, consequential damages, plus costs, counsel fees, pre- and post-judgment interest, and such further relief as may be just and proper.

Dated: December 1, 2006

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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CERTIFICATE OF SERVICE

I, Susan E. Ellingstad, hereby certify that on December 1, 2006, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which sent notification of such filings to the following:

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