

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Walter Wallace	)	Case No.
2202 Roberts	)	
Euclid, OH 44123	)	JUDGE
	)	
Plaintiff	)	COMPLAINT
	)	<b>Jury Demand Endorsed Hereon</b>
vs.	)	
	)	
FedEx Ground Package	)	
System, Inc.	)	
Stat. Agent: CT Corp	)	
1300 East Ninth Street	)	
Cleveland, OH 44114	)	
	)	
and	)	
	)	
FedEx Corporation	)	
Stat. Agent: CT Corp	)	
1300 East Ninth Street	)	
Cleveland, OH 44114	)	
	)	
and	)	
	)	
FedEx Home Delivery	)	
Stat. Agent: CT Corp	)	
1300 East Ninth Street	)	
Cleveland, OH 44114	)	
	)	
Defendants	)	

Now comes plaintiff and for his complaint alleges and avers as follows:

**COUNT I**  
**BREACH OF CONTRACT**

- At all times relevant plaintiff was a resident of the state of Ohio and was employed by all defendants; worked for defendants for at least 12 months and worked more than 1,250 hours in the last year, and worked in excess of eight

hours per day, five days a week, for the duration of his employment as a truck driver delivering packages for defendants.

2. All defendants are corporations, the exact nature of the relationship is not known at this time, but upon information and belief, FedEx Ground and FedEx Home Delivery are both subsidiaries of FedEx Corporation, all of which are Delaware Corporations and defendants operate a network of approximately 500 distribution hubs with at least 50 employees within a 75 mile radius.
3. All defendants (hereinafter collectively “defendants”) employ thousands of drivers such as plaintiff to pick up and deliver packages for its customers. Plaintiff was required to sign a lengthy form contract that mis-characterized him as an independent contractor, which concealed the true nature of the relationship, to wit; employer and employee.
4. Due to the mischaracterization of plaintiff as an independent contractor, plaintiff was damaged by the loss of federal and state rights, including ERISA pension benefits; Family Medical and Leave Act (FMLA); duty to pay overtime premium pay; Workers Compensation benefits; Health Care which was offered to other employees; unemployment insurance benefits; and plaintiff was further damaged by having to purchase his own equipment and maintain the equipment; plaintiff had to pay insurance premiums; and other expenses that defendants should have paid on plaintiff’s behalf, and other facts to be adduced at trial.

5. Defendants exercised control over virtually all material aspects of the employment relationship, including, but not limited to: determining what plaintiff would wear; where he could smoke; what insurance company he could utilize; his hours; how he was to conduct his business with defendants customers; what days he was to work; assignment of certain supervisory personnel at the terminal who had supervisory control over plaintiff and his paperwork; daily interaction with defendants other employees; set the prices charged to plaintiff's customers for the services that plaintiff rendered; set forth numerous policies and procedures and regularly updated those policies and procedures which governed plaintiff, and plaintiff was subject to punishment/discipline for violation of those procedures; by requiring plaintiff to have the specific logo and colors on his truck; plaintiff was an integral part of defendants business and did not have any separate or distinct occupation or business, and further interacted daily with defendants' managers and served defendants' customers only, and by delivering and picking up packages on the controlled delivery routes; using defendants scanners and other conduct; by defendants reserving the right to approve or disapprove of the following: vehicle to use, driver or helper to use, sale or purchase of any vehicle, right to assign pickup and delivery stops, right to determine when a driver had too many or too few packages for delivery, right to review or evaluate customer service of plaintiff, the right to withhold pay for certain violations; payment of bonus'; and numerous other areas of the day to day operations of the business.

6. Defendants “operating agreement” that plaintiff was forced to sign gives defendants the absolute control to unilaterally terminate plaintiff which makes the agreement an at-will employment relationship of indefinite duration.
7. Defendants further maintained “contractor check in areas” to post selected polices, notices and posters. Defendants failed to post any notices for FMLA provisions and/or Workers Compensation provisions.
8. Defendants periodically distributed memos and conducted meetings that plaintiff was strongly urged if not outright required to attend that covered various topics selected by defendants management personnel.
9. Defendants required plaintiff to work regardless of illness, family emergency etc., and threatens contractors of contract termination for requesting time off, which violates FMLA and further shows that plaintiff was an employee, not an independent contractor.
10. Defendants also concealed numerous policies and procedures from plaintiff and then would utilize those concealed procedures against plaintiff, and also would put written documentation in secret files calling them “DOT” files and other documents and did not disclose such information to plaintiff.
11. Plaintiff was further damaged by defendants requiring plaintiff to maintain an “escrow account” and an “expense account.” Defendants did not disclose to plaintiff that defendants were using the money held in those accounts for investment purposes.
12. Plaintiff did, in good faith, rely on the assurances by defendants in signing the contract “operating agreement” and did purchase over \$80,000 in delivery

trucks and other equipment for his business based upon a contract to do business with defendants.

13. Plaintiff did purchase the right to deliver packages for defendants in a specified area code with a maximum limit of per day packages.
14. Upon information and belief the purpose of the maximum limits was to ensure the safety of the driver and plaintiff; to ensure that plaintiff could deliver all packages for that day, and to help plaintiff to make a livable wage.
15. In or about April, 2006, and again in or about May, 2006 Defendants did purposefully and in breach of said contract did give plaintiff over 180 packages in one day to deliver, which was impossible to do. Such amount was in violation of the maximum amount as agreed to in the terms of the contract and is impossible to accomplish.
16. Plaintiff was unable to deliver all the packages and was then disciplined/retaliated against by defendants then terminating his contract with defendants.
17. Plaintiff was wrongfully terminated from his contract with defendants in May, 2006.
18. Upon information and belief, defendants have been terminating persons such as plaintiff and then turning the route over to another person with multiple routes in an attempt to try to ensure that the designation of “independent contractor” is found rather than having these persons actually be found to be employees, as was found in numerous lawsuits throughout the country.

19. Defendants have illegally, recklessly, and/or negligently misclassified plaintiff as an independent contractor rather than an employee in an effort to avoid their legal duties under state and federal laws.
20. This court has jurisdiction over this matter pursuant to 28 U.S.C. 1331, and 1332. This court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. 1367(a). The state law claims are directly related to the federal claims and the facts in the state claims are the exact same operative facts in the federal claims and this single action serves the interests of judicial economy, convenience, and fairness to the parties. .
21. This contract was a sham contract and defendants knew or should have known that plaintiff could not make the required deliveries and would not make the amount of money as promised by defendants in inducing plaintiff to sign and invest in defendants scam.
22. Plaintiff was damaged by such breach in the form of having to pay for the equipment; loss of wages; and other damages to be adduced at trial.

**COUNT II**  
**LABOR LAW VIOLATIONS**

23. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.
24. Plaintiff worked for defendants as an independent contractor, however, plaintiff was actually an employee and as such, subject to the minimum wage laws as outlined in R.C. 4111.01 and related statutes and 29 USCS 207 and related statutes; plaintiff was denied time off for lunch breaks and other

breaks; denied overtime pay, and had deductions from his paycheck which also violated established laws.

25. As described in the aforementioned paragraphs, Defendants did misclassify plaintiff as an independent contractor when in reality plaintiff was an employee.
26. As an employee, plaintiff is entitled to back wages, including loss of overtime pay; loss of pay for lunch breaks, etc; taxes; social security payments, business expenses, and other benefits;
27. Defendants did knowingly violate the wage and hour laws because defendants were found in the case captioned *Estrada vs. FedEx Ground* (California) to be liable for the misclassification of employees as independent contractors.
28. Plaintiff may move to amend this portion of his claim to convert to a class action.

**COUNT III**  
**UNJUST ENRICHMENT**

29. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.
30. Plaintiff was required to maintain an “escrow” account with defendants with the amount of \$1,000 in it. Said account was to be maintained throughout the employment of plaintiff.
31. Plaintiff was also “strongly encouraged” and in fact, was precluded from receiving certain bonuses unless another “expense account” was maintained by plaintiff.

32. Both accounts were monies paid into by plaintiff.
33. Plaintiff also paid the insurance premiums; purchased equipment; etc. that should have been paid by defendants, but for their misclassification of plaintiff as a contractor rather than an employee.
34. Upon information and belief, defendants have taken the monies from these accounts of plaintiff (and the money from thousands of similar persons such as plaintiff which if found to be correct, plaintiff will move to convert this portion of the case into a class action) and invested said monies and have not paid plaintiff for the use of his money, nor have they disclosed that they have invested this money and that it could be lost.
35. Upon information and belief, defendants may have violated securities laws and other laws by the wrongful use of said monies by using borrowed money to invest in the stock market.
36. Defendants have been unjustly enriched and plaintiff was damaged by having to pay all the monies himself and not receiving the benefit of the return on the investment.

**COUNT IV**  
**CONVERSION**

37. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.
38. Plaintiff was required to maintain an “escrow” account with defendants with the amount of \$1,000 in it. Said account was to be maintained throughout the employment of plaintiff.

39. Plaintiff was also “strongly encouraged” and in fact, was precluded from receiving certain bonuses unless another “expense account” was maintained by plaintiff.
40. Both accounts were monies paid into by plaintiff.
41. Upon information and belief, defendants have taken the monies from these accounts of plaintiff (and the money from thousands of similar persons such as plaintiff which if found to be correct, plaintiff will move to convert this portion of the case into a class action) and invested said monies and have not paid plaintiff for the use of his money, nor have they disclosed that they have invested this money and that it could be lost.
42. Defendants have been unjustly enriched and plaintiff was damaged by having to pay all the monies himself.

**COUNT V**  
**FMLA/ERISA VIOLATIONS**

43. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.
44. Defendant willfully mis-classified plaintiff as an independent contractor, in part, to evade its responsibilities under the FMLA; interfered and restrained and discouraged the exercise of FMLA rights by, inter alia, denying that drivers have rights under the FMLA and by requiring drivers to hire replacement drivers in order to take statutorily-protected leave and/or participate in the “Time Off” Program and failed to notify and advise drivers of their FMLA rights as required by law.

45. Plaintiff did, while employed by defendants, have a serious illness, to wit; pneumonia, and was unable to seek medical treatment and further was forced to work while being extremely ill.
46. Plaintiff may move to amend this portion of his claim to convert to a class action.
47. Additionally, plaintiff did finally take one day off from work due to his serious illness, and was then disciplined by defendants.
48. Plaintiff was also denied his federal rights under ERISA and as a result, lost pension benefits due to him.

**COUNT VI**  
**FRAUD**

49. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.
50. Plaintiff was hired by defendants to work as an “independent contractor” pursuant to the contract or “operating agreement” discussed in the aforementioned paragraphs.
51. Defendants knew or should have known that the classification of plaintiff was improper, in violation of numerous laws. And that plaintiff was entitled to the benefits and protections of all laws enacted for employees.
52. Defendant did intentionally mislead plaintiff as to his employment status.
53. Upon information and belief, defendants did take monies from plaintiff, “expense account” and escrow account” and did misrepresent the true purpose of such accounts.

54. As a result of defendants conduct, plaintiff did rely on the misrepresentations to his detriment and was damaged by loss of income; having to pay for equipment, and other facts to be adduced at trial.

**COUNT VII**  
**RACE DISCRIMINATION**

55. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.

56. Plaintiff is an African-American and as such was treated differently by defendants due to his race.

57. Defendants have a history throughout this country of treating minorities differently,.

58. The only persons recently terminated at plaintiff's place of employment with defendants, was also an African-American.

59. Plaintiff was terminated, in part, due to his race and other facts to be adduced at trial.

**COUNT VIII**  
**ACCOUNTING**

60. Plaintiff hereby realleges and reavers the foregoing paragraphs as if fully rewritten.

61. Plaintiff is owed his un-unreimbursed employment expenses; pension benefits pursuant to ERISA; loss of overtime hours; as well as the statutory interest, and the monies from the investment of his money in the expense and escrow accounts.

62. Plaintiff does not know the precise amount of compensation owed him.

63. Upon information and belief, defendant possesses business records which could determine or help to determine the amount of compensation owed to plaintiff.

An accounting of defendants' books and records could determine the amount of compensation owed.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages of at least \$1,000,000.00 (One Million Dollars); prejudgment interest, plus the cost of this action, attorney fees, punitive damages; reinstatement as an employee; a permanent injunction against defendants from classifying plaintiff as an independent contractor; an permanent injunction requiring that plaintiff be classified as an employee with all benefits required by law; and any other additional relief as the Court deems proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY IN THIS ACTION.**

Respectfully submitted,

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