

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK,
BY THE ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC.,

Defendant.

Index No. 402960/10

SETTLEMENT AGREEMENT

This Agreement shall constitute the full Settlement Agreement (“Settlement Agreement” or “Agreement”) between the People of the State of New York, by the Attorney General of the State of New York (“Plaintiff” or the “NYAG”), on behalf of certain groups of current and former FedEx drivers (defined more fully below as “Settlement Beneficiaries”), and Defendant FedEx Ground Package System, Inc. (“FXG”) (collectively, the “Parties”), to settle, fully and finally, this Action (as defined below).

A. Certain disputes and differences have arisen between the Parties concerning FXG’s alleged misclassification of package delivery drivers as independent contractors instead of employees. The NYAG alleges that based upon this classification, the Settlement Beneficiaries were, among other things, unlawfully deprived of the benefits of various employment laws, were not paid all wages due, and bore expenses that should have been borne by FXG.

B. People of the State of New York, by the Attorney General of the State of New York v. FedEx Ground Package System, Inc., Index No. 402960/10 (the “Action”), is currently pending in the Supreme Court of the State of New York, County of New York. In the operative Verified Complaint filed October 22, 2010 (the “Operative Complaint”), the NYAG brought five claims for relief against FXG, including claims alleged against its division, FedEx Home Delivery: (1) deductions from wages earned by FXG drivers, in violation of New York Labor Law § 193; (2) failure to pay spread of hours pay in violation of 12 NYCRR § 142-2.4; (3)

failure to comply with recordkeeping and wage statement requirements set forth in New York Labor Law §§ 661 and 195(3) and 12 NYCRR §§ 142-2.6 and 142-2.7; (4) failure to pay overtime to certain drivers in violation of 12 NYCRR §§ 142-2; and (5) violation of New York Executive Law § 63(12). In its answer filed December 24, 2010, FXG denied all of the substantive allegations asserted in the Operative Complaint.

C. This Agreement is made in consideration of the facts and recitals set forth herein. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of all the disputed claims at issue in the Action and that it is the desire and intention of each of the Parties to effect a final and complete resolution of the Action.

D. NYAG finds the relief and agreements contained in this Settlement Agreement appropriate and in the public interest. Therefore, NYAG is willing to accept this Agreement in lieu of continuing this Action for violations of New York law as described above. In addition, the Parties: (1) have examined and considered the benefits to be provided to Settlement Beneficiaries under the settlement provided for in this Agreement (the “Settlement,” as defined below); (2) have considered the applicable law and the claims that have been and could have been asserted in the Verified Complaint arising out of or relating to the allegations of misclassification of the Settlement Beneficiaries as independent contractors; and (3) believe the Settlement to be fair, reasonable, and adequate, and in the best interest of the Settlement Beneficiaries, taking into account the benefits provided to the Settlement Beneficiaries through the terms of the Settlement Agreement, the decisions rendered in the Action, the risks of litigation, and the length of time that would be required to complete the litigation and any appeals.

E. The Parties believe that the Settlement is fair, reasonable, and adequate. The Parties arrived at this Settlement through arm’s-length negotiations, taking into account all relevant factors. The NYAG has determined that the Settlement is in the public interest of the state and that the Settlement will materially benefit the Settlement Beneficiaries. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through discovery and trial, and any further appeals following trial. Accordingly, the Parties desire to fully, finally, and forever settle the Action.

Therefore, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

I. DEFINITIONS

As used in this Agreement, the following definitions (in addition to those set forth elsewhere herein) shall apply:

A. “Claiming Settlement Beneficiaries” means all those Settlement Beneficiaries (defined below) who timely submit a Claim Form to receive funds under the terms of this Agreement and a fully completed and executed Form W-9 (together, the “Forms,” as defined below).

B. “Claim Form” means the Form attached hereto as Exhibit A, which must be signed and submitted to the Settlement Administrator by any Settlement Beneficiary by the Final Claims Date in order to receive payment under the terms of this Agreement. The Claim Form includes a release of the Released Claims defined below.

C. “Day” is computed by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and New York State holidays; and (c) including the last day of the period, unless the last day is a Saturday, Sunday, or New York State holiday, which continues the time period until the end of the next day that is not a Saturday, Sunday, or New York State holiday.

D. “Form W-9” means the current version of the Internal Revenue Service’s Form W-9 (Request for Taxpayer Identification Number and Certification).

E. “Forms” means, collectively, the Claim Form and Form W-9 to be included with the Settlement Notice.

F. “Settlement Beneficiaries” means all Overtime Beneficiaries and Deductions Beneficiaries, as those terms are defined below:

“Overtime Beneficiaries” means all Persons who entered into an Operating Agreement with FXG on or after August 10, 2005, and provided services to FXG at any time from August 10, 2005 up to the Independent Service Provider (“ISP”) rollout in September 2016 (“Overtime Beneficiaries”).

“Deductions Beneficiaries” means all Persons who: (1) entered into an Operating Agreement with FXG at any time between October 15, 2007 through September 11, 2009, and provided services to FXG at any time during the time period up to the ISP rollout in September 2016 (“Deductions Beneficiaries”).

Settlement Beneficiaries include Persons who were dispatched out of an FXG terminal in New York and entered into a Ground and/or a Home Delivery Operating Agreement with FXG, but do not include Persons who provided package pick-up and delivery services exclusively under an ISP agreement.

FXG shall confer with and assist the NYAG in the identification of individuals and entities who qualify as Settlement Beneficiaries and the calculation of beneficiary payments. Nothing shall prevent the Parties, through their counsel, from mutually agreeing subsequently to modify the list of Settlement Beneficiaries to correct errors or omissions therein.

G. “Settlement Fund” means the fund that will be established and maintained to resolve the claims at issue, as described in Section III.A below, and which is intended to be a qualified settlement fund within the meaning of Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1.

H. “Effective Date” means the date that the Court “so orders” the Settlement Agreement and enters the Court-approved Settlement Agreement on the Court’s docket. The

NYAG shall present the Settlement Agreement to the Court to be “so-ordered” by e-filing and delivering the Settlement Agreement to the Court within two days of the execution of the Settlement Agreement by the Parties.

I. “Final Claims Date” means the date that the Settlement Notice (defined below) establishes as the date on or before which, to meet the timing requirement for a claim to qualify as a Valid Claim, all Forms must be submitted to the Settlement Administrator through the online portal established and maintained by the Settlement Administrator or, in the alternative, placed in the United States Mail with first-class postage, addressed to the Settlement Administrator, and postmarked by the United States Postal Service.

J. “New York Attorney General” or “NYAG” means the New York State Office of the Attorney General.

K. “Persons” shall be defined to include both individuals who contracted in their own name and individuals who were the authorized officer or owner of any business entity (whether partnership, limited liability company, sole proprietorship, corporation, or other business structure) who were signatories to an Operating Agreement with FXG during the specified time periods. It shall also include business entities (of whatever type and whenever formed) which entered into, or assumed an assignment of, an FXG Operating Agreement where the authorized officer or owner of the business entity is or was a Settlement Beneficiary.

L. “Releasees” means: (a) FXG, and its consolidated subsidiaries, successors, predecessors, assigns, affiliates, parent companies, shareholders, officers, directors, agents, insurers, attorneys, and employees; and (b) FXG’s past, present, and future shareholders, officers, directors, agents, employees, attorneys, and insurers.

M. “Released Claims,” as to the NYAG and all Settlement Beneficiaries in this Action who timely submit a Claim Form and a Form W-9, on their own behalf, and on behalf of any corporation, limited liability company, sole proprietorship, and any other business entity with which they have an ownership interest, means any claims pursuant to New York Labor Law and the Fair Labor Standards Act of 1938 arising out of FXG’s alleged misclassification of the Settlement Beneficiaries as independent contractors instead of employees pursuant to New York Labor Law and the Fair Labor Standards Act of 1938, for the time period from six years prior to the commencement of this Action up to the execution of the Settlement Agreement, provided, however, that the Overtime Beneficiaries who are also putative class members in *Padovano et al. v. FedEx Ground Package System, Inc.*, No. 1:16-cv-00017-FPG-HKS (W.D.N.Y.) shall not be required to waive, or otherwise be deemed to have waived, their claims or their rights in that case.

N. “Settlement” means collectively the rights and duties of the Parties under this Agreement and the processes for payment to Settlement Beneficiaries described in this Agreement.

O. “Settlement Administrator” means Rust Consulting, which the parties designate as the qualified firm to administer the Settlement and the Settlement Fund as described in Section III.D of this Agreement.

P. “Settlement Notice” means the proposed written notice, the form of which is attached hereto as Exhibit B, to be mailed to Settlement Beneficiaries in accordance with Section II of this Agreement.

Q. “Settlement Payment” means the amount set forth in Section III.A of this Agreement that FXG will transfer to the Settlement Fund to resolve the Released Claims.

R. “Valid Claim” refers to Forms that: (i) are submitted to the Settlement Administrator, by the Final Claims Date, by a Settlement Beneficiary in accordance with the requirements of the Settlement Notice, (ii) are signed by that Settlement Beneficiary, and (iii) contain all of the information required for that person to be a Settlement Beneficiary. Settlement Beneficiaries who submit Forms that are deficient in one or more respects will receive a deficiency notice from the Settlement Administrator and will have 90 days after the mailing of the deficiency notice in which to cure the deficiency. If a Settlement Beneficiary fails to cure the deficiency within that time, the Settlement Administrator shall deem the deficient claim to be an invalid claim. The Settlement Administrator will issue payments only to Settlement Beneficiaries who submit a Valid Claim. Notwithstanding the above, NYAG retains sole discretion over the distribution of the Settlement Payment. Any remaining amount in the Settlement Fund subsequent to the completion of the Settlement Administrator’s duties will revert to NYAG, and NYAG retains sole discretion in the distribution of this amount, including over claims that the Settlement Administrator may have deemed invalid.

II. SETTLEMENT NOTICE

The proposed Settlement Notice is attached hereto as Exhibit B. The parties agree that the Settlement Notice provides information sufficient to inform the Settlement Beneficiaries of the material terms of this Settlement, the appropriate means for obtaining additional information regarding this Agreement and the Action, and the appropriate means for and information about obtaining a settlement payment pursuant to the Settlement. The Settlement Notice shall include the Forms and shall provide that the Forms must be submitted to the Settlement Administrator within 90 days of the date the Settlement Notice is mailed.

As soon as practicable, but no later than 30 days after the Settlement Administrator receives the Payment Calculations from the NYAG (as set forth in Section III.B.1), the Settlement Administrator shall send or cause to be sent, by first-class United States Mail, a copy of the Settlement Notice, Claim Form, and Form W-9 to every Settlement Beneficiary who can be identified through reasonable effort. Before the mailing of these documents, the Settlement Administrator will obtain or cause to be obtained address updates utilizing a national change of address database.

Within 45 days after the initial mailing of the Settlement Notice, Claim Form, and Form W-9, the Settlement Administrator shall distribute a “reminder notice” to all Settlement

Beneficiaries who have not yet submitted a Claim Form or otherwise responded to the Settlement Notice. If necessary, the Settlement Administrator may use telephone numbers or email addresses to confirm that Settlement Beneficiaries have received the Notice and to inquire whether they have any questions regarding the Settlement.

The Parties agree that the dissemination of the Settlement Notice by First Class Mail in the manner specified in this Section II satisfies the notice requirements of due process and New York law.

III. PAYMENT TO SETTLEMENT FUND AND PROCEDURES FOR PROVIDING PAYMENTS TO SETTLEMENT BENEFICIARIES

A. Payment to Settlement Fund

The Settlement Payment that FXG will transfer to the Settlement Fund for this Action is \$2,100,000.00 (the “Settlement Payment”), \$100,000 of which will be set aside to pay the Administrator’s fees pursuant to Part IV. Under no circumstances shall FXG be required to pay more to the Settlement Fund under this Settlement than the amount of the Settlement Payment as set forth herein.

No later than seven days after the Effective Date, and in accordance with the other terms of this Agreement and its exhibits, FXG shall transfer the Settlement Payment to the Settlement Fund and shall notify the NYAG of such transfer.

The Parties intend the Settlement Fund to be a “qualified settlement fund” under Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1. Accordingly, FXG shall retain no rights or reversionary interests in the Settlement Payment once transferred to the Settlement Fund.

B. Payment Calculations for Settlement Beneficiaries

1. Within 45 days of the Effective Date, FXG shall provide to OAG a list of Overtime Settlement Beneficiaries and Deductions Settlement Beneficiaries and the amounts due to each beneficiary under the parameters and calculations agreed on by the Parties. The NYAG shall be responsible for submitting to the Settlement Administrator and FXG its final Payment Calculations for the Settlement Beneficiaries. NYAG will provide these calculations no later than sixty (60) days after receipt of the list of beneficiaries and calculations from FXG as described above in this Section. The distribution formula and payment calculations will be determined by the NYAG, in consultation with and with the assistance of FXG, taking into account the dates and duration of contracting, hours and weeks of work, and other factors the NYAG may, in its judgment, deem relevant. Each Deductions Settlement Beneficiary will receive a distribution of at least \$250. FXG disclaims all responsibility and liability associated with the distribution formula and any payment calculations. The NYAG will share its distribution formula and payment calculations with FXG, but the NYAG will retain discretion as to the allocation of funds among Settlement Beneficiaries.

2. Payments will be issued only to Settlement Beneficiaries who submit a Valid Claim, as that term is defined in Section I.Q of this Agreement. Unclaimed funds will be distributed by the NYAG in its sole discretion, including, but not limited to, making them available for claimants in New York’s unclaimed property fund, or redistributing them to other Settlement Beneficiaries.

None of the Settlement Fund will revert to FXG.

3. If a Claiming Settlement Beneficiary informs the Settlement Administrator within 75 days of the mailing of settlement payment checks that his or her settlement payment check was misplaced, not received, or otherwise could not be cashed, the Settlement Administrator shall cancel the check containing the settlement payment and re-issue the settlement payment to the Claiming Settlement Beneficiary, and said Claiming Settlement Beneficiary's funds shall not be subject to the redistribution described elsewhere in this Agreement.

C. The Settlement Administrator's Duties

The Settlement Administrator shall be solely responsible for the following functions, and the fees and expenses in connection therewith, in accordance with the terms of this Agreement:

1. Mailing, by first-class United States Mail, the Settlement Notice, Claim Form, and a blank Form W-9 to all Settlement Beneficiaries who can be identified through a reasonable effort.
2. Providing to FXG and the NYAG a list identifying all Claiming Settlement Beneficiaries and a list of all Settlement Beneficiaries who were unable to be contacted and/or who failed to submit a claim.
3. Submitting the Claiming Settlement Beneficiaries' taxpayer identification numbers, as provided in the executed Form W-9's, to the Internal Revenue Service taxpayer identification number matching service, and obtaining (prior to issuing payment) a corrected Form W-9 from each Claiming Settlement Beneficiary whose taxpayer identification number does not result in a match in the above-referenced IRS process.
4. Identifying to the Parties any errors in computations for Settlement Beneficiaries, or new claims for payment from anyone not on the list of Settlement Beneficiaries, if any.
5. Mailing, by first-class United States Mail, settlement payments to Claiming Settlement Beneficiaries in accordance with the Payment Calculations for each such Claiming Settlement Beneficiary provided to the Settlement Administrator by NYAG.
6. Establishing, designating, and maintaining the Settlement Fund as a "qualified settlement fund" under Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1, for the purpose of resolving the contested claims of the NYAG and Settlement Beneficiaries.
7. Maintaining the assets of the Settlement Fund in a non-interest bearing escrow account segregated from the assets of FXG and any person related to FXG.
8. Obtaining an employer identification number (EIN) for the Settlement Fund pursuant to Treasury Regulation § 1.468B-2(k)(4).

9. Preparing and filing federal income tax returns in the name of the Settlement Fund, as well as any other tax filings the Settlement Fund must make under federal, state, or local law.
10. Cooperating with FXG to jointly file a relation-back election under Treasury Regulation § 1.468B-1(j)(2), if necessary, to treat the Settlement Fund as coming into existence as of the earliest possible date.
11. Paying and depositing the federal taxes owed by the Settlement Fund under Treasury Regulation § 1.468B-2, as well as any state or local taxes owed by the Settlement Fund.
12. Preparing, filing, and issuing all necessary tax reporting forms in the name of the Settlement Fund, including IRS Forms 1099 regarding the distribution of payments to Settlement Beneficiaries.
13. Providing FXG with copies of all tax reporting and filings made for the Settlement Fund, including copies of the checks and IRS Forms 1099 issued to Settlement Beneficiaries and any other documentation to show that the tax reporting and filings were timely transmitted to the claimants and the applicable taxing authorities.
14. Paying any additional tax liabilities (including penalties and interest) that arise from the establishment and administration of the Settlement Fund. Any such tax payment (except as set forth in Paragraph VIII.E) shall be made solely from the assets of that Settlement Fund without any recourse against FXG for additional monies.
15. Within 45 days after the payment of all Valid Claims, providing to FXG and the NYAG a statement of the total number of claims submitted, the total number of claims adjudicated to be Valid Claims, the total dollar amount paid to each Claiming Settlement Beneficiary, the identities of all Settlement Beneficiaries who were not adjudicated to be Valid Claims or otherwise failed to respond to the Settlement Notice, and a breakdown of the fees and expenses incurred in administering the Settlement (the “Final Accounting”).
16. Coordinating with the NYAG regarding the distribution of unclaimed funds and the disbursement of the Settlement Fund.
17. Addressing, and satisfying from the Settlement Fund if necessary, in consultation with the Parties, the claims of any other person or entity (including but not limited to insurers, lien holders, business partners, related business entities, or other creditors) that asserts any interest, right, or entitlement arising out of the damages alleged by the NYAG or the Released Claims.

D. Payment to Settlement Beneficiaries

Upon the due date for receipt of the Forms, the Settlement Administrator shall, as soon as thereafter reasonably practicable, but within no more than 30 additional days: mail, by first-class

United States Mail, to Settlement Beneficiaries checks in the amounts determined by NYAG pursuant to Section III.B.1 of this Agreement and drawn on the account of the Settlement Fund. Payments will only be issued to Claiming Settlement Beneficiaries who submit a Valid Claim, as that term is defined in Section I.Q.

Nothing in this paragraph shall prohibit the Settlement Administrator from cancelling and/or re-issuing a settlement payment check to a Claiming Settlement Beneficiary whose settlement payment check is lost in the mail or is otherwise unable to be cashed as provided in Section III(B)(4) above.

E. Settlement Administrator's Acceptance of Duties and Compensation

The Settlement Administrator will sign an agreement acknowledging their responsibilities under this Agreement and setting forth the price of their services, which shall be subject to the approval of the NYAG.

IV. COSTS

The Parties agree that up to \$100,000 of the Settlement Fund shall be used to reimburse the Settlement Administrator for the reasonable fees and expenses incurred in administering the Settlement. Any amount over \$100,000 incurred by the Settlement Administrator for fees and expenses in administering the Settlement will be paid solely by FXG.

Unless as otherwise provided for in Part III, Section B, Paragraph 1 of this Agreement, each party is responsible for its own costs or other expenses or fees that may be incurred by (a) defending the Agreement or the Settlement against any challenge to them, (b) defending against any challenge to any order or judgment entered pursuant to the Agreement, or (c) for any other reason.

V. RELEASE AND STIPULATION OF DISCONTINUANCE

By executing this Agreement, the NYAG releases the FXG Releasees as to the Released Claims as defined above, and agrees that it will, within two days of receipt of FXG's notice of transfer of the Settlement Payment to the Settlement Fund, file with the Court a Stipulation of Discontinuance with prejudice, executed by the Parties, in the form attached as Exhibit C.

VI. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

A. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

B. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that party

and its attorneys.

C. Each of the Parties has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, its attorneys.

D. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement or any provision hereof.

E. Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms. The Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

F. This Agreement constitutes and comprises the entire agreement among the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions.

G. The Parties agree that any dispute regarding the interpretation or enforcement of the terms of this Settlement or in connection with this Agreement shall be resolved by the Court.

H. In any action or proceeding by NYAG to enforce this Agreement or for violations of the Agreement, the Parties expressly agree and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the Effective Date of the Agreement.

VII. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT

The following is a summary of the schedule for carrying out this Settlement in accordance with the terms of this Agreement. The schedule, and terms herein, may be modified by the Parties or by Court order. In the event of such modification, the Parties shall cooperate in order to complete the Settlement procedures as expeditiously as reasonably practicable. To the extent this Section VII conflicts with one or more other provisions of this Agreement, the other provision(s) shall supersede this Section VII.

TIME REQUIRED	EVENT
Within 2 days of the execution of the Settlement Agreement by the Parties	NYAG to e-file the signed Settlement Agreement and deliver a working copy of the same to the Court
Within 20 days of the day the Court so-orders the Settlement Agreement ("Effective Date")	FXG makes Settlement Payment into Settlement Fund.

TIME REQUIRED	EVENT
Within 2 days of notification by FXG to NYAG of Settlement Payment	NYAG files a Stipulation of Discontinuance with prejudice.
Within 45 days of the Effective Date	FXG shall provide to OAG a list of Overtime Beneficiaries and Deductions Beneficiaries and the amounts due to each beneficiary under the parameters and calculations agreed on by the Parties.
Within 45 days of receipt of the list of beneficiaries and calculations from FXG	NYAG shall submit to the Settlement Administrator estimated payment amounts.
Within 30 days of the receipt by the Settlement Administrator of the estimated payment amounts from NYAG	Settlement Administrator sends or causes to be sent, by first-class United States Mail, a copy of the Settlement Notice, Claim Form, and Form W-9 to every Settlement Beneficiary who can be identified through reasonable effort.
Within 45 days of the date the Settlement Administrator sends the Settlement Notice	Settlement Administrator sends reminder of the deadline to submit the Claim Form and other required documents to any Settlement Beneficiary who had not responded to the initial notice.
Within 90 days of mailing of Settlement Notice	Forms must be submitted to the Settlement Administrator.
Within 30 days of receiving a notice that submitted Forms were deficient	Settlement Beneficiaries who timely submit Forms that are deficient in one or more respects will receive a deficiency notice from the Settlement Administrator and will have 30 days after the mailing of the deficiency notice in which to cure the deficiency.
Within 30 days of due date for Forms	Settlement Administrator mails, by first-class United States Mail, to Settlement Beneficiaries checks in the amounts determined by NYAG pursuant to Section III.B of this Agreement and drawn on the account of the Settlement Fund.
Within 75 days of mailing of settlement payment checks	Last day for Claiming Settlement Beneficiary to inform the Settlement Administrator that his or her settlement payment check was misplaced, not received, or otherwise could not be cashed, in which case the Settlement Administrator will cancel the check containing the settlement payment and re-issue the settlement payment to the Claiming Settlement Beneficiary.

TIME REQUIRED	EVENT
Within 45 days of payment of all Valid Claims	Settlement Administrator provides to FXG and the NYAG a statement of the total number of claims submitted, the total number of claims adjudicated to be Valid Claims, and the total dollar amount paid to each Claiming Settlement Beneficiary (the "Final Accounting").

VIII. MISCELLANEOUS

A. Effectiveness, Amendments, and Binding Nature

This Agreement may be amended only by written agreement signed by the Parties.

This Agreement is binding on, and shall inure to the benefit of, the Parties in the Action and the Claiming Settlement Beneficiaries who submit a Valid Claim and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest. All Releasees other than FXG, which is a Party, are intended to be third-party beneficiaries of this Agreement.

B. Cooperation in Implementation

FXG, the NYAG, and their respective counsel agree to provide each other with any information and to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

Any failure by any Party to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Parties, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed.

C. Governing Law

This Agreement shall be construed and governed in accordance with the procedural and substantive law of the state of New York, without regard to any conflict of laws principles, except the Settlement Fund's compliance with Internal Revenue Code § 468B and the Treasury Regulations thereunder shall be governed by federal income tax law.

D. No Admission of Liability or Endorsement

The Parties are entering into this Settlement for the purpose of compromising and settling disputed claims. FXG has at all times disputed, and continues to dispute, the allegations in the Lawsuit and denies any liability for any of the claims that have or could have been raised in the Lawsuit regarding the classification of the Settlement Beneficiaries as independent contractors, but believes that the Settlement as provided in this Agreement will avoid the substantial expense and disruption of continued litigation. Nothing in this Agreement or in the documents relating to the Settlement shall be construed, deemed, or offered as an admission by any of the Parties, or by

any Settlement Beneficiary, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity, and regardless of whether this Agreement ultimately becomes effective.

Acceptance of this Settlement Agreement by the NYAG is not an approval or endorsement by the NYAG of any of FXG's practices or procedures.

E. Income Tax Obligations

The Parties make no representation herein regarding the taxability of any portion of the payments made under this Agreement. Settlement Beneficiaries will be solely responsible for their own tax filing and payment obligations arising from such payments.

Nothing in this paragraph is intended to alter the duties of the Settlement Administrator set forth in this Agreement.

F. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. The Parties represent and warrant, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized. A signature, or copy of a signature, transmitted electronically, including by facsimile or email, shall serve as an original for all purposes.

APPROVED AND ACKNOWLEDGED:



New York Attorney General

Date: December 19, 2018

APPROVED AND ACKNOWLEDGED:

Counsel for FedEx Ground Package System, Inc.

Date: _____

The Court, having reviewed the foregoing Agreement, including Exhibits A-C, finds the FLSA release to be fair and reasonable, and, therefore, it is.

SO ORDERED:

J.S.C.


Date: _____

APPROVED AND ACKNOWLEDGED:

New York Attorney General

Date: _____

APPROVED AND ACKNOWLEDGED:



Counsel for FedEx Ground Package System, Inc.

Date: 12/19/2018

The Court, having reviewed the foregoing Agreement, including Exhibits A-C, finds the FLSA release to be fair and reasonable, and, therefore, it is.

SO ORDERED:

J.S.C.

Date: _____

EXHIBITS

- A. Form of Claim Form
- B. Form of Settlement Notice
- C. Form of Stipulation of Discontinuance with Prejudice

EXHIBIT A TO SETTLEMENT AGREEMENT

Form of Claim Form

[First Last]
[Business Name]
[Address1]
[Address2]
[Claim #]
[City, State, Zip]

CLAIM FORM

If you want to receive a payment from the Settlement described below, you must complete and submit this claim form no later than _____, 2019.

I. INSTRUCTIONS

This Claim Form is being sent to you because of a settlement reached in a lawsuit between the New York Attorney General (the "NYAG") and FedEx Ground Package System, Inc. ("FedEx Ground") (the "Settlement"). The Settlement provides for the settlement of certain claims on behalf of certain pickup and delivery drivers for FedEx Ground and FedEx Home Delivery in the state of New York.

FedEx Ground has identified persons who entered into an Operating Agreement with FedEx Ground or FedEx Home Delivery in New York on or after August 10, 2005 and meet other criteria (as described below). You are getting this Claim Form because FedEx Ground's records indicate that you are one of those persons and you may be eligible for a payment from the Settlement Fund.

If you wish to obtain a payment from the Settlement Fund, you must complete this Claim Form in its entirety, sign where indicated, and submit your completed Claim Form along with the provided IRS Form W-9 by United States Mail, with first-class postage paid, postmarked no later than _____, 2019, to RUST CONSULTING [INSERT ADDRESS].

If you fail to timely submit your Claim Form and the Form W-9, your claim may be rejected and you may not receive any money in connection with the Settlement. Any Claim Forms submitted after the deadline will be considered on a case-by-case basis in the sole discretion of the NYAG.

II. PERSONAL INFORMATION

PLEASE PROVIDE THE FOLLOWING INFORMATION. PLEASE PRINT CLEARLY.

NAME	
BUSINESS NAME (if applicable)	
MAILING ADDRESS	
TELEPHONE NUMBER	

EMAIL ADDRESS	
TAXPAYER ID/SOCIAL SECURITY NUMBERS	

III. CLAIM INFORMATION

The payment you receive is based on information derived from FedEx Ground's records. That information indicates that you qualify under the Settlement Agreement for [an Overtime payment] or [a Deductions payment] [or] [both Overtime and Deductions payments] since these records show:

A. For an Overtime payment:

1. You entered into an Operating Agreement with FedEx Ground or FedEx Home on or after August 10, 2005 and provided services to FedEx Ground or FedEx Home at any time from August 10, 2005 up to September 2016;
2. You drove vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less;
3. You were dispatched out of a terminal in New York; and
4. During that time period you drove at least one week of over 40 hours.

B. For a Deductions payment:

1. You entered into an Operating Agreement with FedEx Ground or FedEx Home on or after August 10, 2007 to September 11, 2009 and provided services to FedEx Ground or FedEx Home at any time during this time period up to September 2016;
2. You were dispatched out of a terminal in New York; and
3. During that time period you drove:
 - i. More than 16 hours per week; or
 - ii. Never drove more than 16 hours per week.

Based on this information, **your *estimated* payment under the Settlement will be:**
_____.

Your estimated payment is based on the following calculations:

1. For an Overtime payment, your settlement benefit was initially calculated as a pro rata share of the settlement based on each additional hour you drove over 40 hours in a workweek and discounted to reflect the final settlement.

2. For a Deductions payment, your settlement benefit was initially calculated as a pro rata share of the settlement by the number of weeks you drove 16 or more hours per week. The aggregate number was also discounted to reflect the final settlement. Drivers in this category who did not personally drive more than 16 hours in any workweek during the recovery period will receive a flat minimum payment of \$250.

The amount ultimately disbursed to you could increase, in the sole discretion of NYAG, in the event all eligible drivers do not submit valid Claim Forms.

IV. SWORN CERTIFICATION(S) (*You will not be eligible for any settlement payment unless you sign and date the following*):

A. CERTIFICATION FOR ALL CLAIMANTS:

I swear, under the penalties of perjury recognized by the laws of the United States, that I, on behalf of myself and on behalf of any business entity with which I am or was affiliated: 1) entered into an Operating Agreement with FedEx Ground or FedEx Home Delivery on or after August 10, 2005 to provide package pick-up and delivery services pursuant to the Operating Agreement; and 2) that I drove a truck that was dispatched out of a terminal in the state of New York.

SIGNATURE

DATE

B. CERTIFICATION OF RELEASE:

By submitting this Claim Form and a completed Form W-9, I agree, on behalf of myself and on behalf of any corporation, limited liability company, sole proprietorship, and any other business entity with which I am or was affiliated, that I release FedEx Ground and parties related to it from any claims that I may have against them based on New York Labor Law and the federal Fair Labor Standards Act arising out of FedEx Ground's alleged misclassification of pickup and delivery drivers as independent contractors instead of employees.

Specifically, I agree to release these claims against: (1) FedEx Ground and its consolidated subsidiaries, successors, predecessors, assigns, affiliates, parent companies, shareholders, officers, directors, agents, insurers, attorneys, and employees; and (2) FedEx Ground's past, present, and future shareholders, officers, directors, agents, employees, attorneys, and insurers.

This release of claims is made in consideration of my receipt of funds from this settlement. The release shall become effective upon my drawing of settlement funds.

SIGNATURE

DATE

PLEASE REMEMBER TO:

*Fill out this Form in its entirety;

*Sign and date all applicable Sworn Certifications in Part IV, above;

*Fill out the W-9 on the back in its entirety; and

*Submit the completed Form, including the W-9 enclosed with this Form, to the Settlement Administrator ***no later than*** _____, **2019** by First Class Mail to: RUST CONSULTING, [INSERT ADDRESS].

EXHIBIT B TO SETTLEMENT AGREEMENT

Form of Settlement Notice

NOTICE OF SETTLEMENT

Supreme Court of the County of New York

*People of the State of New York, by the
Attorney General of the State of New York v.
FedEx Ground Package System, Inc., Index
No. 402960/10*

**If you were a FedEx Ground or FedEx
Home Delivery Pick-up and Delivery Driver
in the state of New York and entered into
an Operating Agreement with FedEx
Ground or FedEx Home on or after August
10, 2005, you could be eligible for a
payment from the settlement of a lawsuit.**

A settlement has been reached in a lawsuit brought by the New York Attorney General (“NYAG”) against FedEx Ground Package System, Inc. (“FedEx Ground”). The lawsuit alleged that FedEx Ground unlawfully misclassified FedEx Ground and FedEx Home Delivery (“FedEx Home”) pick-up and delivery drivers as independent contractors instead of as employees, and, thus, violated the New York Labor Law by failing to pay overtime and by making unlawful deductions from drivers’ wages.

FedEx Ground disputes the allegations and denies any liability for any of the claims. Nevertheless, the parties have entered into this settlement for the purpose of compromising and settling the claims. To avoid the substantial expense and disruption of continued litigation, FedEx Ground has agreed to create a Settlement Fund of \$2.1 million to be distributed to eligible drivers.

You are receiving this notice because you may be eligible to receive payment from the Settlement Fund. The amount you receive from the Settlement Fund will be determined by NYAG,

based on FedEx Ground's records, derived from a consideration of the following factors mutually agreed to by NYAG and FedEx Ground: (1) the date you entered an Operating Agreement with FedEx Ground or FedEx Home; (2) the length of time you were a FedEx Ground or FedEx Home contractor; (3) the number of hours per week and weeks that you personally drove for FedEx Ground or FedEx Home; and (4) the type of vehicle you drove. Your final amount may increase if less than all eligible persons claim their share.

The enclosed Claim Form package contains everything you need to submit a claim. To qualify for a payment, you need to meet the eligibility criteria and send in a Claim Form and the enclosed W-9 by [DATE].

ADDITIONAL INFORMATION

1. Why did I receive this notice?

You received a notice because FedEx Ground's records show that you may be eligible for payment from the Settlement Fund because you entered into a FedEx Ground or Home Delivery Pick-up and Delivery Operating Agreement, on or after August 10, 2005, and that you drove for FedEx Ground or FedEx Home at any time during that period up to September 2016.

2. What is this lawsuit about?

The NYAG filed this lawsuit against FedEx Ground in 2010. The lawsuit alleged that FedEx Ground misclassified drivers as independent contractors instead of employees, and that by doing so, FedEx Ground violated the New York Labor Law, including by failing to pay overtime and by making unlawful deductions from drivers' wages.

FedEx Ground denies the NYAG's allegations. It maintains that the independent contractor classification is appropriate and denies that it has broken any laws.

3. Why is there a settlement?

The Court has not issued a final decision in this case. Instead of continuing litigation, which could have taken many more years with no certainty of the outcome, both sides agreed to a settlement. The

settlement provides compensation sooner and allows both sides to avoid the cost and uncertainty of a trial and appeals.

4. How do I know if I am part of the settlement?

You are part of the settlement if you entered into a FedEx Ground or FedEx Home Delivery Operating Agreement on or after August 10, 2005 and meet the other criteria described in paragraph 6.

5. What does this settlement provide?

FedEx Ground has agreed to create a \$2.1 million Settlement Fund. The Settlement Administrator, the company that is responsible for administering the settlement and distributing the proceeds, will receive up to \$100,000 from the Fund for its services. The remainder of the Fund, \$2 million, will be distributed to eligible drivers.

6. How much will my payment be?

Your share of the Fund will be based on a number of factors, including the hours you drove during the relevant period, the number of weeks you drove, how frequently within the week you drove, and the type of vehicle you drove. Note that the amount you receive is discounted and proportioned to the amount of the Settlement Fund and may not reflect your actual lost wages.

Drivers receiving payment from the Settlement Fund may have failed to receive overtime compensation and/or may have had wages unlawfully deducted from their pay.

You are entitled to a share of the proceeds as Overtime payments if: (1) you entered into an Operating Agreement with FedEx Ground or FedEx Home on or after August 10, 2005 and provided services to FedEx Ground or FedEx Home at any time from August 10, 2005 up to September 2016; (2) you drove vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less; (3) you were dispatched out of a terminal in the State of New York; and (4) you drove over 40 hours for at least one week. The initial payment calculation for Overtime payments was calculated as a pro rata share of the settlement based on each additional hour you drove over 40 hours. The amount you receive for an Overtime payment may be discounted to reflect the settlement.

You are entitled to a share of the proceeds as Deductions payments if: (1) you entered into an Operating Agreement with FedEx Ground or FedEx Home on or after August 10, 2007 to September 11, 2009 and provided services to FedEx Ground or FedEx Home at any time during this time period up to September 2016; and (2) you were

dispatched out of a terminal in New York State. The initial payment calculation for Deductions payments was initially calculated as a pro rata share of the settlement based on the number of weeks you drove more than 16 hours per week. The amount you receive may be discounted to reflect the final settlement. Drivers in this category who did not personally drive more than 16 hours in any workweek during the recovery period will receive a flat minimum payment of \$250.

In the event that not all qualifying drivers make a claim, NYAG may, in its sole discretion, make an additional proportional distribution of the remaining funds among those drivers who did submit valid initial claims.

7. How do I qualify for a payment?

Records from FedEx Ground indicate that you are eligible for payment based on the criteria outlined above. To qualify for a payment, you must submit a valid Claim Form showing that you meet the eligibility criteria in No. 4 above and a Form W-9 by the deadline. A Claim Form and blank W-9 are included with this notice.

8. When would I get my payment?

It is expected that settlement checks will be mailed within 30 days of the deadline for submitting Claim Forms, [ADD DATE].

9. What am I giving up to get a payment?

Under the terms of the settlement agreement, you will be releasing FedEx Ground and its related parties from any claims you may have against them based on the New York Labor Law or the federal Fair Labor Standards Act. The Claim Form that you sign and submit to receive a payment includes the release language that you must agree to.

10. Who do I contact with additional questions?

Rust Consulting

EXHIBIT C TO SETTLEMENT AGREEMENT

Form of Stipulation of Discontinuance

With Prejudice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X	:	
	:	
PEOPLE OF THE STATE OF NEW YORK,	:	Index No. 402960/10
by THE ATTORNEY GENERAL OF THE STATE:	:	Part 32
OF NEW YORK,	:	Hon Arlene P. Bluth
	:	
Plaintiff,	:	
	:	
-against-	:	SO-ORDERED
	:	STIPULATION
	:	<u>OF DISCONTINUANCE</u>
FEDEX GROUND PACKAGE SYSTEM, INC.,	:	
	:	
Defendant.	:	
	:	
----- X	:	

WHEREAS Plaintiff People of the State of New York by the Attorney General of the State of New York (“NYAG”) and Defendant FedEx Ground Package System, Inc. (“FedEx Ground”) have entered into a Settlement Agreement, dated December __, 2018, which was so-ordered by the Court on _____, 2019; and

WHEREAS paragraph III.V of the Settlement Agreement provides that within two days of receipt by NYAG of a Notice of Transfer of the Settlement Payment to the Settlement Fund from FedEx Ground, NYAG shall file with the Court a Stipulation of Discontinuance of the above-captioned action with prejudice; and

WHEREAS FedEx Ground provided Notice of Transfer to NYAG on _____, 2019;

NOW IT IS HEREBY STIPULATED AND AGREED by Plaintiff and Counsel for Defendant FedEx Ground:

1. That the above-entitled action be, and the same is hereby, discontinued with prejudice and without costs to either Plaintiff or Defendant.

2. This Stipulation may be signed with electronic signatures, and in counterparts,
and be so filed and accepted by the Court as if an original.

Dated: New York, New York

_____, 2019

GOODWIN PROCTER LLP

PEOPLE OF THE STATE OF NEW YORK

By: _____
James C. Rehnquist, Esq.
Goodwin Procter LLP
Exchange Place
Boston, MA 02109
(617) 570-1000

By: _____
Lawrence J. Reina, Esq.
Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005
(212) 416-6383

*Attorneys for Defendant
FedEx Ground Package System, Inc.*

*Attorneys for Plaintiff
People of the State of New York*

SO ORDERED:

J.S.C.