

Jeffrey K. Possinger, WSBA #30854
POSSINGER LAW GROUP, PLLC
Appearance by Pro Hac Vice
20250 144th Avenue NE, Suite 205
Woodinville, Washington 98072
(t) 206-512-8030
(e) jeffrey.possinger@possingerlaw.com
(pending Pro Hac Vice application)

Scott A. Berman, (State Bar No. 191460).
BERMAN NORTH, LLP
2001 Van Ness Ave, Ste. 300
San Francisco, CA 94109
(t) (650) 463-9488
(e) scott@bermannorth.com
Attorneys for Plaintiff, PYNQ LOGISTICS SERVICES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PYNQ LOGISTICS SERVICES, INC., a
Delaware corporation, registered as a
foreign corporation in California and
Oregon,

Plaintiff,

v.

FEDEX GROUND PACKAGING SYSTEM,
INC. a Delaware corporation,

DOES 1-10,

Defendants.

Case No.:

COMPLAINT FOR:

- (1) FRAUD, CONCEALMENT, AND FALSE PROMISE;
 - (2) NEGLIGENT MISREPRESENTATION;
 - (3) TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS;
 - (4) RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") 18 USC §§ 1961, ET. SEQ.;
 - (5) CALIFORNIA UNFAIR COMPETITION LAW BUS. AND PROF. CODE §§ 17200 ET. SEQ.;
 - (6) AND OTHER RELIEF.
- (DEMAND FOR JURY TRIAL)

1 Plaintiff, PYNQ LOGISTICS SERVICES, INC. ("PYNQ"), by and through its counsel
2 of record, Jeffrey K. Possinger of POSSINGER LAW GROUP, PLLC and Scott A. Berman
3 of BERMAN NORTH, LLP hereby complain against Defendant, FEDEX GROUND
4 PACKAGE SYSTEM, INC. ("FedEx Ground") and alleges as follows:

5 **I. INTRODUCTION**

6 Plaintiff owned and operated FedEx Ground delivery routes that dispatched out
7 of FedEx Stations located in Brookings, Oregon and Arcata, California. FedEx
8 Ground, through what can only be described as an abusive business system that it
9 has meticulously developed, fraudulently induced PYNQ to enter into contracts for
10 FedEx Ground delivery routes. Then it unreasonably, unlawfully, arbitrarily,
11 discriminatorily, and retaliatorily: (a) prevented Plaintiff from operating their routes,
12 (b) prevented Plaintiff from selling their routes to qualified purchasers, (c) falsified
13 performance numbers in order to set up Plaintiff for termination (non-renewal), (d)
14 terminated Plaintiff's contracts for its FedEx Ground Routes, and (e) otherwise acted
15 to undermine, sabotage, destroy and ultimately confiscate Plaintiff's business. All of
16 these acts occurring within the framework of an elaborate and intentionally created
17 business system that was created and maintained by FedEx Ground to induce
18 contractors with promises of "business opportunities" to own FedEx Ground routes
19 and to work for FedEx Ground as "independent contractors"; but, in reality, is an

1 abusive business system that effectively controls all business activities of its
2 “contractors” while simultaneously shifting nearly all business risk to these
3 contractors; and using its abusive business system to knowingly and intentionally
4 shift and avoid responsibility for labor and employment laws; while also violating
5 franchising laws in the marketing of business opportunities. All of these abusive and
6 illegal business practices being concealed through a deliberate use of arbitration
7 clauses, confidentiality agreements, retaliatory litigation, and other related business
8 practices to effectively silence its contractors and hide these practices from the
9 public and from prospective new contractors being recruited into FedEx Ground’s
10 business system.

11 II. PARTIES

12 1. Plaintiff, PYNQ, is a Delaware corporation, registered as a foreign
13 corporation in California and Oregon with its principal place of business in Alameda
14 County, California. PYNQ entered into contracts for FedEx Routes (as described
15 below) with FedEx Ground to deliver packages to and pick up packages from
16 residences and businesses serviced by FedEx Ground Stations located in Brookings,
17 Oregon and Arcata, California. PYNQ’s entire revenue was derived from its
18 Contracted Service Areas (“CSAs”) with FedEx Ground.

2. Defendant, FedEx Ground Package Systems, Inc., is a Delaware corporation with its principal place of business at 1000 FedEx Drive, Moon Township, Pennsylvania 15108, and it registered in California and Oregon as a foreign corporation, licensed to do business in California and Oregon.

3. DOES (1-10), Inclusive.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction and venue is proper pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds the sum of \$75,000, and there is complete diversity between Plaintiff and Defendant¹.

5. This Court has personal jurisdiction over FedEx Ground based on its continuous and systematic business activity in the State of California.

6. This Court has jurisdiction as this case is brought pursuant to the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961 et seq., and

¹ The present case does not involve a claim sounding in contract; therefore, the parties are not bound by the arbitration provision contained in the ISPA. Nevertheless, the arbitration provision of the ISPA would not be binding because PYNQ is responsible for the first and last leg of interstate and international shipments, and because PYNQ is directly responsible for supervising the transportation of goods that travel interstate, and because vehicular transportation of goods that travel interstate is vital to PYNQ's enterprise, and because a strike by the class of workers to which PYNQ would belong would disrupt interstate commerce, PYNQ is therefore exempted under 9 U.S.C. § 1 from forced arbitration. *See* 9 U.S.C. § 1; *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 536 (2019); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *Lenz v. Yellow Transp., Inc.*, 431 F.3d 348, 352 (8th Cir. 2005).

1 the Court has jurisdiction under 18 U.S.C. § 1964(c), 28 § U.S.C. § 1331, and 28 U.S.C.
2 § 1332.

3 7. This Court has supplemental jurisdiction over the subject matter of
4 Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

5 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because
6 a substantial part of the events giving rise to the claim occurred in California, in this
7 District.

8 **IV. GENERAL ALLEGATIONS**

9 **A. The FedEx Transportation Network**

10 9. FedEx Corporation is headquartered in Memphis, Tennessee and is a
11 parent holding company under which FedEx Ground Package System, Inc. ("FedEx
12 Ground") operates within a network of other FedEx portfolio companies, which
13 include FedEx Express Corporation, FedEx Freight Corporation, FedEx Corporate
14 Services, Inc., and FedEx Dataworks, Inc. All of which work together as separate
15 business segments and other business operations of FedEx's larger global
16 transportation network (the "FedEx System").

17 10. As part of its business strategy and by design, FedEx Corporation and its
18 portfolio companies outsource various aspects of its business operations to a
19 network of third-party service providers.

1 The FedEx Ground “Independent Service Provider” Business Model

2 11. FedEx Ground is an interstate motor carrier engaged in providing small
3 package pick-up, transportation, and delivery throughout the United States and
4 Canada. In the United States, FedEx Ground operates under US Department of
5 Transportation license number 265752.

6 12. FedEx Ground, as part of the larger FedEx System, has developed a “Hub-
7 and-Spoke” network for the delivery of packages. There is a network of over 700
8 sortation and distribution facilities within the FedEx Ground network. Within the
9 nomenclature of the FedEx System, these are referred to as “Hubs” and “Stations”
10 (and depending on the region “Terminals”), which are located throughout the United
11 States and Canada. Hubs and Stations are classified by FedEx Ground depending on
12 the size with some Hubs and Stations co-located. These Hubs and Stations form the
13 network of nodes between which small packages are picked up, transported, and
14 delivered to FedEx Ground’s customers, which include both business and residential
15 customers.

16 13. The various FedEx Ground Hubs and Stations are organized within
17 regions with layers of FedEx Ground regional management who oversee and direct
18 the various aspects of FedEx Ground’s operations. This includes the management of
19 the many Hubs and Stations, the various “Contracted Service Providers” (“CSPs”)

(See. *Infra* ¶ 15, 16), and other third-party service providers integrated into the larger business system. Within this framework, FedEx Ground operations are integrated into a network of interrelated business units across different levels of the organization; all of which work together as part of the FedEx Ground Model, and the larger FedEx System.

14. The FedEx Ground Station (or Terminal) is the ground level of the FedEx Ground Business Model. FedEx Ground Stations are primarily staffed by FedEx Ground employees. These typically include Station Managers (also referred to as “Senior Managers” or “Station Senior Managers”), “Sort Managers”, Package and Delivery Managers (“P&D Managers”), who directly interface with FedEx Ground’s independent contractors, among others. Other FedEx Ground employees at Stations include those employees that engage in the processing, sorting, routing, and loading of packages onto and off of Line-Haul and P&D Vehicles coming in and out of a given FedEx Ground Station.

15. FedEx Ground does not pick up and deliver packages directly. Instead, FedEx Ground as an essential feature of its business model, has developed a network of independent corporate business entities throughout the United States and Canada that provide the “Last Mile” of FedEx Ground’s Package and Delivery (“P&D”) Services. Within the framework of FedEx Ground’s business model, these

1 business entities are referred to by FedEx Ground as "Independent Service
2 Providers" ("ISPs"). FedEx Ground conducts its operations primarily with a fleet of
3 more than 100,000 vehicles owned or leased by these "Independent Service
4 Providers" or ("ISPs")

5 16. Currently, there are approximately 7,000 contracted small businesses
6 operating in this system created by FedEx Ground's, which make up their network.
7 In addition to Pickup and Delivery providers, FedEx Ground also contracts with
8 Transportation Service Providers ("TSPs") to provide linehaul services between its
9 Hubs and Stations. Together the ISPs and TSPs are referred to within the FedEx
10 Ground System as "Contracted Service Providers" ("CSPs").

11 17. As an essential part of its business system, FedEx Ground enters into
12 contracts with ISPs, which are referred to as "Independent Service Provider
13 Agreements" ("ISPAs"). These ISPAs define the "Contracted Service Areas" ("CSAs")
14 where the ISPs pick up and deliver packages on behalf of FedEx Ground. CSAs are
15 comprised of multiple "Routes" (a colloquial reference for these service areas), which
16 often correspond to Zip Codes or combinations of Zip Codes. As described more
17 fully below, these CSAs have differing values based on the purported revenue
18 generating potential of each CSA.

1 18. The FedEx Ground Business Model, including the ISPA's and other FedEx
2 Ground policies and procedures, use unique terminology and nomenclature to the
3 system they have created and maintain. As set out in detail below, the terminology
4 and nomenclature used by FedEx Ground in its business operations are used to
5 characterize various processes, roles, and business relationships in specific ways
6 whether or not that term actually reflects the actual nature of the process, role, or
7 business relationship.

8 FedEx Ground Markets FedEx Ground CSAs (Routes) Business
9 Opportunities.

10 19. The FedEx Ground Business Model is dependent on CSPs (both ISPs and
11 TSPs) in order to move packages within its web-like system and to pick up and deliver
12 packages to FedEx Ground's customers. FedEx Ground uses these CSPs to provide
13 it with a fleet of vehicles and drivers. However, as detailed below, it does this in such
14 a way to seamlessly manage these vehicles and drivers as part of FedEx Ground's
15 own operations, while maintaining a carefully devised system to simultaneously
16 separate itself from nearly all business risk for owning and operating a fleet of
17 delivery vehicles, and maintaining a low cost structure for itself. As described in
18 more detail below, FedEx Ground shifts its business risk to its 7,000+ contractors,
19 which it effectively manages and can terminate at will.

1 20. FedEx Ground actively recruits contractors to its system by marketing its
2 CSAs (Routes) to prospective contractors through a variety of means, including but
3 not limited to online marketing. As part of these marketing campaigns, FedEx
4 Ground makes various representations to prospective ISPs. FedEx Ground
5 promotes and induces potential entrepreneurs to establish businesses and to
6 contract with FedEx Ground by advertising the “outstanding revenue potential”, the
7 “flexible business operations,” and the “access to resources” promised by
8 contracting with FedEx Ground for FedEx Ground CSAs (Routes). FedEx Ground
9 further promotes in its marketing that the “explosive growth of e-commerce is
10 leading to unprecedented opportunities for P&D businesses to evolve” and further
11 promises that CSPs “have the opportunity to expand their business, diversify as
12 appropriate to their business, and increase their income potential.” Taken together,
13 FedEx Ground’s various campaigns present what appears to be a business
14 opportunity that FedEx Ground offers to potential entrepreneurs.

15 21. In recent social media campaigns, which clearly target prospective
16 women and minority business owners, FedEx Ground actively markets and recruits
17 individuals to contract with FedEx Ground to receive “opportunities” for P&D
18 businesses, with marketing messaging that includes “Capitalizing on your
19 entrepreneurial dream[,]”, “Achieving the American Entrepreneurial Dream”, and

1 encouraging individuals to “Own a P&D Business”. Such marketing campaigns direct
2 prospective ISPs to FedEx Ground hosted websites, which include
3 learnmore.buildagroundbiz.com and www.buildagroundbiz.com. Among the
4 various messages contained on those sites, statements that include, inter alia, that
5 “Pickup and Delivery service providers contracting with FedEx have the freedom to
6 manage their own businesses, deciding what types of vehicles will be used, who to
7 hire and how to manage and execute daily operations.”

8 22. Specifically, at www.buildagroundbiz.com, FedEx Ground provides
9 resources, marketing materials, and links to “Find Contracting Opportunities”,
10 namely “Open CSAs” that are available. These websites and other FedEx Ground
11 business development systems function as a recruitment funnel for prospective
12 ISPs to be brought into FedEx Ground’s contractor pipeline.

13 23. In addition to entering directly into agreements with FedEx Ground for
14 “Open CSAs”, which are marketed directly by FedEx Ground, it is well understood
15 that FedEx Ground CSAs can be assigned (bought and sold), as well as be combined
16 with other CSAs, and that these CSAs can appreciate and depreciate in value. The
17 value of any CSA (Route) or combination of CSAs is determined by a number of
18 factors, including valuations based on internal numbers provided by FedEx Ground
19
20

1 themselves. The revenue generation and other value put on these CSAs is an integral
2 part of the incentives used to induce prospective ISPs to contract for these routes.

3 24. An entire cottage industry of brokers and consultants has evolved to
4 facilitate the buying and selling of FedEx Ground's CSAs. The FedEx Ground ISPA
5 itself, along with various internal departments, policies, and procedures that are
6 managed by FedEx Ground, both contemplate and facilitate the buying and selling
7 of routes by existing and prospective ISPs in this manner.

8 25. In combination with FedEx Ground's own direct marketing efforts, this
9 network of brokers and consultants function as an additional feeder system to
10 FedEx Ground's recruitment pipeline of contractors.

11 26. This ability to buy and sell FedEx Ground CSAs is an implied promise that
12 induces prospective ISPs to invest on information and belief in many instances over
13 \$500,000.00 in vehicles, equipment, and operating capital. As is detailed, Infra, this
14 process by FedEx Ground is on information and belief regularly abused by FedEx
15 Ground in arbitrary ways that delays and prevents assignment by certain
16 contractors.

17 27. As noted above, FedEx Ground has an internal business unit specifically
18 dedicated to this aspect of FedEx Ground's business model, namely "Business
19 Development Services" ("BDS"), which is staffed with "BDS Managers". Along with
20

1 recruiting and onboarding new ISPs, BDS Managers are directly involved in the CSA
2 and ISPA assignment process in coordination with the Station Manager (or
3 Managers) across one or more FedEx Ground Stations. On information and belief,
4 BDS Managers operate at regional levels and work across multiple FedEx Ground
5 Stations and are an integral part of FedEx Ground's system of managing and
6 controlling its assembled syndicate of contractors².

7 28. In actual practice, however, whether an assignment (either to buy or sell
8 Routes) is approved depends entirely on the approval of FedEx Ground Station
9 Manager, with coordination from the BDS manager, and at times depending on any
10 number of FedEx Ground's varied internal but undisclosed policies, an assignment
11 may require approval from regional management of FedEx Ground.

12 29. FedEx Ground's representations made during the marketing of CSAs to
13 prospective ISPs, that they are able to have "access to resources" and the FedEx
14 "brand name" in order to grow their "P&D Business", does not disclose to those
15 prospective contractors that the actual ability of a contractor to grow their business
16
17

18 ² "Syndicate" A group organized for a common purpose; esp., an associate formed to promote a common
19 interest, carry out a particular business transaction..." Black's Law Dictionary, 10th ed. West, St. Paul, MN
20 2014, pg. 1679. FedEx Gound's entire business model and organization structure depends on its
21 recruitment, coordination, and management of 7,000+ "independent contractors" to carry out its
business.

beyond a certain size is entirely under the control of FedEx Ground. See ¶83, 84, 95-100, (Infra) and ibid.

FedEx Ground's Contracting and Onboarding Process.

30. Once a prospective ISP is in the recruitment pipeline to be a FedEx Ground ISP, the ISP goes through an entire FedEx Ground process that includes entering into a contract with FedEx Ground (the "ISPA"), in order to "Stand Up" a contract to service the FedEx Ground CSA. This process involves several steps of onboarding and orientation, including what is called an "AIM Meeting" with the Station Manager and one or more BDS Managers, and the "negotiation" of the ISPA. These various steps of onboarding an ISP are facilitated by FedEx Ground staff.

31. Despite regular references made to "negotiation" and promises and assurances of opportunities for "renegotiation" of the ISPA, in practice, ISP have little to no power to negotiate the ISPA or its terms. The schedules related to compensation metrics for a given CSA (namely the revenue generating value to the ISP) are based on performance numbers and other metrics provided by FedEx Ground to the prospective ISP, and as is detailed below, these performance numbers and other representations made by FedEx Ground about the CSAs, on information and belief, often wrong and/or knowingly misrepresented. These performance numbers that are provided by FedEx Ground to the ISPs are relied

1 upon by the ISPs for their subsequent and ongoing investments in vehicles and
2 employees.

3 32. Whether a CSA is acquired by assignment of an existing ISPA or by
4 entering into a new ISPA with FedEx Ground, a prospective ISP is required to be
5 bound to the terms of the ISPA with FedEx Ground before they can fully move
6 forward and be provided access to the various “resources” of FedEx Ground. These
7 resources include access to the database of strictly internal policies and procedures
8 that actually govern the relationship between FedEx Ground and the ISP in practice.
9 As is detailed below, the ISP is already contractually committed to FedEx Ground
10 before they are even given the opportunity to know about the policies and
11 procedures that actually govern their relationship and operations. Despite being
12 incorporated by reference throughout the ISPA, it is these referenced policies,
13 procedures (along with other undocumented and regularly undisclosed FedEx
14 Ground business policies and practices) that govern the actual working relationship
15 between the ISP and FedEx Ground and FedEx Ground’s operations in practice. On
16 information and belief, many of these policies, procedures, and other business
17 practices only come into play or become apparent after the ISP has already made
18 substantial investments into the business and is already performing services for
19 FedEx Ground.

1 33. As is noted at ¶26 (Supra), and further detailed at ¶49-50, 53-54, Infra.,
2 the substantial financial investment required by an ISP to perform its obligations to
3 FedEx Ground under the ISPA immediately puts the ISP in a precarious financial
4 position vis-a-vis FedEx Ground when the contractor becomes aware of the various
5 ways that FedEx Ground can effectively (and unilaterally) change, in actual practice,
6 the terms under which the ISPs actually are expected to perform for FedEx Ground,
7 all the while being under constant threat of termination or non-renewal of its ISPA
8 for the CSAs that it has heavily invested in.

9 34. As detailed below, ISPs are effectively subjected to continually changing
10 obligations, new requirements, and changing performance, compensation, and
11 penalty metrics unilaterally imposed upon them by FedEx Ground. This includes
12 performance metrics that determine whether the ISP will have the right to have its
13 ISPA renewed at all, and if so, upon what terms as determined by FedEx Ground. All
14 of this is done within the putative framework of FedEx Ground's policies and
15 procedures that are maintained on FedEx Ground's internal systems and are
16 seldom, if ever, specifically referenced in the ISPA.

17 **V. FedEx Ground's Abusive and Illegal Business Model.**

18 FedEx Ground's "Independent Service Provider" Business Model Allows
19 FedEx Ground to Exert Near Complete Control over Its Contractors.

1 35. FedEx Ground's "Independent Service Provider" Business Model is a
2 highly complex and meticulously created system developed and maintained by
3 FedEx Ground to manage by contract and internal policy nearly every aspect of its
4 P&D Business, including its contractors and the contractor's employees.

5 36. Although the FedEx Ground ISPA reiterates an "independent contractor"
6 relationship between FedEx Ground and the ISP, the terms of the ISPA when
7 combined with FedEx Grounds policies, procedures, and actual business practices
8 render this label meaningless and leave little to no actual control in the hands of its
9 ISPs. Despite the control FedEx Ground has on the ISPs, it still imposes on the ISP
10 exceedingly high performance standards, the achievement of which are either
11 outside of the control of the ISP, controlled or unilaterally changed by FedEx Ground,
12 or affected by FedEx Ground's own performance failures.

13 37. By design, FedEx Ground's business model, through the ISPA and various
14 internal policies and procedures, puts FedEx Ground effectively in control of all
15 aspects of the ISPs business operations. While simultaneously making FedEx
16 Ground directly responsible for nearly nothing, leaving the ISP to deal with and bear
17 the business and financial consequences of FedEx Ground's decision making and
18 regularly changing policies.

1 38. Through the terms of the ISPA and its various schedules, combined with
2 internal policies, procedures, and actual business practices, ISPs are compelled to
3 become a seamless part of the FedEx Ground system which limits the ISP's use of
4 equipment and services to only approved or compatible vendors and suppliers,
5 including the use of uniforms and branding. Although the ISPA is written in such a
6 way as to appear that ISPs have options, in actual practice these options are either
7 impractical or other pressure is brought to compel ISPs to fully integrate with FedEx
8 Ground systems.

9 39. ISPs are required to use FedEx Ground's Coding Systems, which includes
10 using equipment from select suppliers. This coding system is designed to track
11 packages as they make their way through FedEx Ground's system to their final
12 destination. ISPs are responsible for applying various codes indicating the status of
13 a package loaded by FedEx Ground staff onto the ISPs vehicle. These codes are
14 directly tied to the performance metrics associated with the ISP. Yet in addition to
15 being prone to system failures, FedEx Ground's coding system is subject to overrides
16 by FedEx Ground managers, which directly affects the performance metrics of the
17 ISP. As described below, these overrides can be used by FedEx Ground to affect an
18 ISPs performance metrics which both affect compensation as well as set up the ISP
19 for termination or non-renewal with little to no recourse by the ISP when this is done.

1 40. As is alleged throughout, the substantial financial investment made by
2 the contractor in combination with FedEx Ground's actual business practices, puts
3 FedEx Contractors effectively at the mercy of FedEx Ground to comply with every
4 demand made on them under threat of termination or non-renewal of its ISPA and
5 the economic consequences of such a termination or non-renewal.

6 41. Although the ISPA on its face appears to provide safeguards against
7 wrongful termination or non-renewal of an ISPA, in actual practice, FedEx Ground
8 through its policies, procedures, and often arbitrary business practices, effectively
9 can terminate or refuse to renew the ISPA of an ISP "at will", with little to no actual
10 recourse for the ISP. Failure to meet nearly any performance standard can result in
11 either an "Opportunity to Cure" ("OTC") or "Letter of Assurance" issued by FedEx
12 Ground, the issuance of which effectively eliminates the ability of an ISP to exercise
13 its rights under the ISPA. Many of the terms contained in the ISPA are illusory in
14 practice, rendered meaningless by the actual business practices of FedEx Ground,
15 and other FedEx Ground internal policies.

16 42. The pervasiveness of these actual business practices by FedEx Ground,
17 which deviate from the way the ISPA is represented and how it is actually performed
18 and used in connection with FedEx Ground's management of its contractors, makes
19
20

1 it clear that these arbitrary deviations from the terms of the ISPA are not random
2 anomalies but are instead part of the system of control over contractors by design.

3 43. FedEx Ground's internal policies and procedures, which are voluminous
4 and often changing, are not disclosed, or made available to the ISPs at the time of
5 entering into the ISPA. Even though these policies effectively govern the actual
6 working relationship between FedEx Ground and the ISP, except for those times
7 when the terms of the ISPA are favorable to FedEx Ground. On information and
8 belief, the enforcement or waiver of these terms is arbitrary and inconstantly
9 applied by FedEx Ground Station Mangers and other management.

10 44. These policies and procedures are hosted and controlled by FedEx
11 Ground on their own servers. Access to these policies is controlled by FedEx Ground,
12 with credentials and access provided by FedEx Ground. Policies, Procedures, and
13 other Business Records of the ISP are available to the ISP on one of two sites:
14 MyGroundBiz; or MyGroundBiz Account ("MGBA"). When an ISPs relationship with
15 FedEx Ground ends, access to these accounts is immediately cut off, and by policy,
16 FedEx Ground will not provide these records to an ISP after the end of a contract
17 except by subpoena. This would require litigation on the part of the contractor to
18 gain access to both the policies that governed the actual business relationship as
19

1 well as the other business records of the ISP that FedEx Ground maintains on its
2 own servers.

3 45. In addition to those Policies and Procedures that are made available to
4 the ISPs, there are many internal FedEx Ground Policies and Procedures which are
5 actually used to manage and control FedEx Ground's ISPs which are neither
6 disclosed nor made available to the ISPs except when a dispute arises. In some
7 instances, FedEx Ground management are specifically trained not to disclose these
8 policies to ISPs at all.

9 46. FedEx Ground's Policies and Procedures regularly change, yet there are
10 very few options for the ISP, except to comply. It is known that any resistance to
11 these demands by the ISP, however reasonable, will likely influence FedEx Ground
12 to either terminate or refuse to renew an ISPA based on any of the many reasons
13 that FedEx Ground uses to arbitrarily eliminate ISPs.

14 FedEx Ground's Business Model Shifts Nearly All Business Risk to Its
15 ISPs, While Effectively Maintaining Complete Control Over the ISPs.

16 47. FedEx Ground's "Independent Service Provider" Business Model allows
17 FedEx Ground to shift onto its ISPs nearly all business risk for operating a fleet of
18 P&D delivery vehicles, including capital risk, employment risk, and insurance risk,
19 among others.

1 48. At the same time, the practical effect of the ISPA and its related policies
2 prevents the ISP from providing delivery services for anyone but FedEx Ground,
3 making FedEx Ground the contractor's only customer and sole source of revenue.

4 FedEx Ground Shifts All Fleet Capital Risk to Its Contractors

5 49. By design, FedEx Ground's "Independent Service Provider" Business
6 Model shifts the responsibility to the ISPs to purchase, finance, and maintain a fleet
7 of delivery vehicles. FedEx Ground then requires the ISP to lease the vehicles back
8 to FedEx Ground. Such vehicles must be entered into FedEx Ground's system before
9 the ISP can use the vehicle to deliver packages for FedEx Ground.

10 50. Even while taking on the capital risk of purchasing, financing, and
11 maintaining a fleet of delivery vehicles, the contractor is required to use FedEx
12 Ground's DOT Number. Through the ISPA and its related Schedules, such vehicles
13 must be exclusively used for the benefit of FedEx Ground and will often require
14 FedEx Ground specified vehicle modifications and additional equipment (such as
15 VEDR, Anti-Theft Alarms, Blindspot Cameras, and Back-Up Sensors, among others)
16 for the vehicles to synchronize with FedEx Ground's other internal systems,
17 practically rendering the vehicle usable for FedEx Ground's operations only and for
18 no other purpose.

1 51. FedEx Ground branding of vehicles is not technically required; through a
2 combination of incentives to increase the thin margins that contractors operate
3 under, and tremendous internal pressure put on them by FedEx Ground to adopt
4 FedEx Ground branding, contractors adopt FedEx Grounds branding program for
5 their vehicles. Once in this program, contractors have even less latitude to use their
6 vehicles for any business other than FedEx Ground operations.

7 52. The ISP is responsible for fuel costs, which is meant to be offset by a fuel
8 surcharge paid by FedEx Ground that is negotiated as part of the ISPA negotiation
9 and renegotiation process, but on information and belief, changes to this surcharge,
10 as detailed below, are generally unresponsive to the actual costs of fuel and other
11 economic realities faced by FedEx Ground's contractors.

12 53. Although the ISP is responsible for all maintenance and regulatory
13 compliance of its vehicles, the maintenance of the ISPs vehicles is closely controlled
14 and audited by FedEx Ground. On information and belief FedEx Ground regularly
15 reserves to itself decisional control over which vehicles the ISP can use in its
16 operations.

17 54. The size of the ISPs fleet of vehicles required to meet the changing service
18 demands and performance metrics for deliveries as required by FedEx Ground is
19 closely tied to FedEx Ground's package volume for a given CSA which can fluctuate

1 significantly. This often leaves the ISP with too few or too many vehicles to perform
2 when FedEx Ground's own estimated package volumes are wrong.

3 55. On information and belief, FedEx Ground exercises audit rights on its ISPs
4 finances to know the financial condition and to have access to all of its ISPs business
5 records during the course of its business relationship with its ISPs and uses this
6 information to its benefit during negotiations with its ISPs.

7 FedEx Ground Shifts All Employment Risk to Its Contractors

8 56. By design, the "Independent Service Provider" Business Model also shifts
9 all responsibility for employee recruitment, training, employer related expenses,
10 including wages, salaries, benefits, employment taxes, unemployment insurance,
11 workers compensation coverage, and any other expenses mandated by local, state,
12 and federal governments, as well as responsibility for payroll deductions,
13 maintenance of payroll and employment records, and compliance with all applicable
14 local, state, and federal laws. As detailed below, this includes the added burden of
15 taking on multi-state compliance requirements when FedEx Ground changes the
16 service areas in which an ISP is designated to provide service.

17 57. Despite these responsibilities placed on the ISP in ¶156 (Supra); FedEx
18 Ground reserves the right to audit and direct various internal employment practices
19 of its ISPs with respect to its employees.

1 58. Contrary to FedEx Ground's marketing to prospective ISPs that they are
2 in control of the hiring and management of their own employees, the reality of the
3 FedEx Ground "Independent Service Provider" Business Model is very different in
4 practice. All prospective employees of an ISP must be vetted by FedEx Ground
5 through a number of FedEx Ground systems including but not limited to "First
6 Advantage," which is one of the many third-party service providers that FedEx
7 Ground contracts with for managing its operations.

8 59. FedEx Ground issues FedEx Ground "Badges" and "Identification
9 Numbers" to those drivers that have been "qualified" by FedEx Ground's systems to
10 drive the ISP's vehicles. Even owners of ISPs are required to go through this system
11 in order to drive their own vehicles.

12 60. The FedEx Ground Identification Numbers and related FedEx Ground
13 Badges that are assigned to the ISPs employees are numbers personal to the
14 individual to whom they are assigned, and not directly associated with the ISP. ISP
15 employees retain the same FedEx Ground Identification Number and Badge even if
16 they move between different contractors.

17 61. As part of FedEx Ground's system, contractors are required to designate
18 individuals to be either an "Authorized Officer" ("AO"), or a "Business Contact" ("BC"),
19 to control communications and in order to maintain the appearance of separation

1 between FedEx Ground and their contractors. On information and belief, it is an
2 internal business practice that FedEx Ground will influence contractors as to which
3 individuals are to be designated in these roles.

4 62. The process required for an ISP to recruit a potential driver, getting the
5 prospective employee through FedEx Ground's internal systems, including the
6 FedEx Ground controlled training and observation requirements in order to have
7 the driver ready to start working, can take several weeks and will often delay for the
8 contractor the onboarding and utilization of drivers by the contractor.

9 63. In addition to qualifying drivers, FedEx Ground can unilaterally (albeit by
10 design indirectly) "disqualify" a driver based on FedEx Ground's own policies and
11 procedures, often putting contractors in the position of having to effectively
12 terminate a contractor employee on the spot at the direction of FedEx Ground, while
13 bearing itself the legal risk of an employment related lawsuit. On information and
14 belief, FedEx Ground regularly and arbitrarily does not follow its own stated policies
15 and procedures with regard to "driver qualification"; further complicating and
16 frustrating its contractors performance.

17 64. By design, and through its elaborate systems, FedEx Ground maintains
18 the appearance that the contractors are in control of their employees by not directly
19 disqualifying the contractor's employees, but rather requires the contractor to

1 disqualify them. The ISP is left with no choice but to comply, because to do otherwise
2 subjects the ISP to termination or non-renewal of their ISPA.

3 65. The terms of the ISPA also prevent the ISP from utilizing any employee
4 working on behalf of the ISP for FedEx Ground from working for that ISP for any
5 other potential customer of the ISP other than FedEx Ground, which effectively limits
6 the ISPs employees to only working for FedEx Ground.

7 66. In addition to the employees recruited and onboarded by ISPs, FedEx
8 Ground essentially maintains a pool of qualified drivers, which will move from ISP
9 to ISP depending on the current composition of ISPs in a FedEx Ground Station. On
10 information and belief, it is common practice across the FedEx Ground System that
11 drivers employed by one FedEx Ground ISP will move from one ISP to another ISP
12 when FedEx Ground terminates or fails to renew an ISPs ISPA.

13 67. Like fleet size, See. ¶54 (Supra), the number of employees required by
14 the contractor to meet the service demands as required by FedEx Ground is closely
15 tied to the FedEx Ground package volumes for a given CSA, or specific Routes within
16 a given CSA. Errors made by FedEx Ground with respect to estimated package
17 volumes, combined with unilateral decisions affecting the ISPs employees, put the
18 ISP at risk of having either too many employees or too few, which greatly effects the
19 performance metrics and/or profitability of the CSA. As set out further below,

failures to achieve FedEx Ground's performance metrics subject the ISP to various back charges from FedEx Ground and/or put the ISP at risk of termination or non-renewal of the ISPA.

68. Taken together, the financial and business risk of having the right number of vehicles and qualified drivers to match FedEx Ground's continually fluctuating package volumes for a specific set of Routes within a CSA is borne entirely by the ISP, the failure of which subjects the ISP to termination or non-renewal of the ISPA.

FedEx Ground Effectively Shifts All Insurance Risk to Its Contractors.

69. By design, FedEx Ground's "Independent Service Provider" Business Model shifts insurance risk to the ISP.

70. Because FedEx Ground requires all vehicles to used and by identified by FedEx Ground's Department of Transportation ("DOT") and Motor Carrier ("MC") number, this subjects FedEx Ground to the Federal Motor Carrier Safety Administration ("FMCSA") requirements tied to the use of a DOT and MC number.

71. In accordance with FMCSA requirements, FedEx Ground is required to maintain insurance on every vehicle bearing the FedEx Ground DOT/MC number, and they do. However, FedEx Ground's ISPA effectively shifts the burdens of these requirements onto its contractors.

1 72. Under the terms of the ISPA, FedEx Ground will maintain insurance on
2 the vehicle only during times a vehicle is in use for a pick-up, delivery, in-route to or
3 from a pick-up or delivery. Requiring that the ISP also hold separate insurance
4 policies of its own on its vehicles and then only insurance policies provided through
5 FedEx Ground approved insurance carriers; requiring further that the ISP be
6 responsible for any time the vehicles is being used directly for P&D services.

7 73. In connection with this insurance arrangement, FedEx Ground has
8 implemented a “penalty and reward system” surrounding the costs of insurance and
9 damages. Again, through its various internal policies, FedEx has created a “look
10 back” period for all ISPs with respect to insurance claims. This “look back” period is
11 for FedEx Ground to evaluate claims made against their insurance policies made by
12 an a given CSA (Route) during a certain period of time, even if that period of time did
13 not involve the same ISP or with the same ISPA. Under this internal system, if an ISP
14 has a “good” record, the ISP is supposed to be rewarded with a weekly bonus of
15 sorts. However, consistent with FedEx Ground’s control over performance metrics
16 and policies related to its ISPs it is on information and belief a regular business
17 practice for FedEx Ground to find a “reason” that an ISP is not be eligible for this
18 bonus. Even when an ISP can rightfully show that it is entitled to this bonus, FedEx
19 Ground will not pay it out.

1 74. In contrast, if during this same “look back” period an ISP has made a
2 claim on FedEx Ground’s insurance, they will have to pay back to FedEx Ground a
3 weekly penalty based on a percentage of the claims made. The ISPs are required to
4 pay a significant deductible to compensate FedEx Ground for every claim made on
5 FedEx Ground’s policy.

6 75. The deductible amount FedEx Ground requires the ISP to pay for every
7 claim made then depends on FedEx Ground’s determination if the accident/loss was
8 “preventable” or “not preventable.” If FedEx Ground determines the accident/loss to
9 be “preventable”, the deductible the ISP is required to pay is substantially higher
10 than if FedEx Ground determines it to be “not preventable.” All determinations with
11 regard to the preventability of an accident are made exclusively by FedEx Ground,
12 with little to no recourse by a contractor.

13 FedEx Ground ISPs are Effectively Subject to At Will Termination

14 76. By design, within FedEx Ground’s “Independent Service Provider”
15 Business System, almost exclusive control over the ISP is in the hands of one or more
16 Station Managers³.

17
18
19 ³ As is the case involving PYNQ, a FedEx Ground ISPs may have ISPA’s and CSAs dispatching and operating
20 out of more than one FedEx Ground Station, subjecting the ISP to management by one or more Station
21 Managers.

1 77. On information and belief, Station Managers are responsible for the
2 performance metrics associated with their Station, which includes both performance
3 metrics for FedEx Ground the Station and its employees as well as the performance
4 metrics of the ISPs operating out of the Station. On information and belief, FedEx
5 Ground managers have both published performance metrics that are used to judge
6 performance of the Station as a whole, as well as “ghost metrics” that are used to
7 evaluate performance and continued contracting decisions, but these metrics are not
8 shared with ISPs.

9 78. By design, FedEx Ground’s ISPA, policies, procedures, and actual business
10 practices give FedEx Ground management wide latitude in the management and
11 treatment of their ISPs. Including the ability to take actions that can set up ISPs for
12 termination or non-renewal of their ISPA’s. The issuing of an Opportunity to Cure
13 “OTC” Letter, or an “Letter of Assurance” by FedEx Ground managers directly affects
14 the putative rights that an ISP may have for renegotiation or renewal of its ISPA.

15 79. On information and belief, it is a common FedEx Ground business
16 practice that Station Managers, along with P&D Managers, retain the right to
17 “Override” an ISPs Package Codes. These “Codes” are directly related to the ISPs
18 performance metrics for packages delivered and can both affect compensation to
19 the ISP as well as set them up for either an “OTC” or “Letter of Assurance.” Such

1 Coding Overrides can prevent an ISP from meeting their performance requirements
2 under the ISPA, setting them up for termination or non-renewal of their ISPA. On
3 information and belief, one such common override is Code #27 ("Did Not Attempt"),
4 which will be applied by FedEx Ground management during holidays or weather
5 events where delivery may have been attempted but the location was either closed
6 or impossible to reach, amongst numerous other reasons that are outside of the
7 control of the ISP.

8 80. On information and belief, it is a common practice that FedEx Ground sets
9 delivery requirements for its contractors, which include return windows to return
10 back to the Station, which are difficult to safely achieve based on factors outside the
11 control of the ISP such as weather, traffic conditions, or even events caused by FedEx
12 Ground itself such as the time required for FedEx Ground's own employees to load
13 the ISPs vehicles to be ready to leave the Station putting the ISPs start time hours
14 later than would be required to return within the designated return window. On
15 information and belief, FedEx Ground regularly holds ISPs responsible for failing to
16 meet "Delivery Metrics", even when FedEx Ground was responsible for non-delivery
17 or late delivery of packages. On information and belief, these business practices are
18 arbitrarily and inconsistently enforced. Failure to meet these "Delivery" metrics
19

1 subject the ISP to risk of termination or non-renewal of the ISPA among other
2 consequences imposed by FedEx Ground on the ISP.

3 81. FedEx Ground tracks both "Safety" metrics and "Delivery" metrics of its
4 contractors. This practice often sets expectations on ISPs that set up the ISP to fail
5 on one or the other metric when an ISP does not deliver because of either weather
6 events or unsafe conditions. On information and belief, "Safety" violations and
7 accidents (See. Insurance Liability, ¶172-75, Supra) are almost always determined by
8 FedEx Ground to be "preventable events" and thus deemed the fault of the ISP,
9 carrying with it the consequences imposed upon the ISP by FedEx Ground.

10 82. FedEx Ground maintains a "Business Discussion Record" "BDR" database
11 on all of its ISPs. This is a system that allows the Station Manager or other FedEx
12 Ground management create a record of different interactions between FedEx
13 Management and the ISP's employees, typically with the "Authorized Officer" ("AO")
14 or "Business Contact" ("BC") for the ISP. This system is analogous to an "Employee
15 File", and on information and belief FedEx Ground sets up and maintains a file on
16 each ISP from the beginning of the business relationship until the end of the contract.
17 ISPs are not given any opportunity to see the entries made into this system or given
18 the opportunity to comment or disagree with anything entered into this BDR system.
19 On information and belief, FedEx Ground management is trained specifically to not

1 inform ISPs of the existence of this system. On further information and belief these
2 BDR files are used for decisions surrounding the renewal or non-renewal of ISPA's
3 and in the event of any legal action between FedEx Ground and the ISP, FedEx
4 Ground uses the entries in the BDR to justify its termination or non-renewal
5 decisions.

6 83. Although the ISPA indicates that there is a 30-day notice requirement for
7 termination of an ISPA, on information and belief it is a common practice of FedEx
8 Ground to terminate an ISP's ISPA on as little as 24 hours' notice. On further
9 information and belief this can occur when FedEx Ground is engaged in the
10 "Renegotiation" process between the ISP and FedEx Ground, as is detailed more fully
11 below. In such instances, the ISP is left no time to wind down operations in an orderly
12 fashion or to mitigate damages of such termination.

13 84. On information and belief, it is a common business practice that news of
14 a contractor's imminent termination or non-renewal is leaked to those working in
15 the Station, whether that information is leaked to FedEx Ground station employees,
16 other contractors, or the ISPs own employees. This conduct causes the ISP's
17 employees to quit working for the ISP, sometimes seeking employment from other
18 ISPs in the same facility. This practice then leaves the contractor without enough
19 employees to be able to operate and fulfill its obligations under the ISPA and with

1 no practical ability to either recruit drivers that are already available within FedEx
2 Ground's pool of qualified drivers or to go through the process to qualify new
3 employees. As will be detailed below, this business practice will set an ISP into kind
4 of death spiral from which they cannot recover.

5 85. On information and belief, it is a common practice that when an ISP's
6 termination or non-renewal is imminent, FedEx Ground will not offer any assistance
7 to allow its ISP to be able to perform until the end of the ISPA, but instead will begin
8 reassigning parts of the CSA that the contractor is now unable fulfill to either other
9 ISPs or to Third-Party "Contingency Contractors", all under a framework that FedEx
10 Ground calls its "Right to Ensure Service". These other contractors, particularly the
11 Contingency Contractors deliver packages a higher per-stop delivery rate, which
12 FedEx Ground often back charges to the ISP. The combination of lost revenue from
13 the Routes reassigned by FedEx Ground to others, combined with the back charges,
14 accelerates the demise of the ISP, often pushing the ISP into insolvency and
15 termination.

16 FedEx Ground Will Unilaterally Change CSA (Routes) on ISPs

17 86. The value of a CSA to an ISP is based on a number of factors including
18 the size and difficulty of the Routes contained within the CSA, which include the
19 unique characteristics and geography of the Routes (e.g. urban, rural, or difficult

1 terrain or roads, etc.); and the “Average Daily Stops” (“ADS”) associated with the
2 Route. Not all Routes contained within a CSA are equally profitable, and the blended
3 value of a CSA is made up of the weighted average of the Routes under contract. On
4 information and believe, these facts are not made clear to an ISP before it enters
5 into a contract for a CSA. Changes by FedEx Ground to the composition and division
6 of routes can significantly impact the value of the CSA to the ISP as well as the ability
7 of the ISP to assign (sell) the Route.

8 87. As a matter of business practice, FedEx Ground reserves the right to
9 make changes to CSAs and associated Routes through what is called “Re-
10 Engineering”, which can change and reassign portions of the CSA across ISPA’s and
11 different ISPs. This can have a material adverse effect on the profitability of a CSA,
12 as well as the performance metrics of an ISP. This business practice both materially
13 changes the economic terms of the investment made by the ISP, and also often sets
14 in motion the ultimate failure of an ISP within the FedEx Ground System.

15 88. Such “Re-Engineering” of an ISP’s Routes by FedEx Ground is generally
16 done outside of the “Renegotiation” process, and ISPs have little to no bargaining
17 power to prevent this.

18 89. In connection with the process of “Re-Engineering” Routes, FedEx
19 Ground retains for itself a “Right to Ensure Service”, which allows it to assign Routes
20

1 to other ISPs or to Contingency Carriers (who deliver at significantly higher rates),
2 the costs of which are then shifted to the ISP. (See. ¶85, Supra) This FedEx Ground
3 business practice often will set in motion the ultimate failure of the ISP, who both
4 loses revenue from the Re-Engineered Routes, all the while bearing the burden of
5 having fleet vehicles and drivers on payroll that no longer have Routes to service.

6 90. Although FedEx Ground will sometimes waive its requirements for select
7 ISPs depending on FedEx Ground's own needs at a given Station, on information and
8 belief this is done in an arbitrary fashion.

9 91. These business practices affect both the value of the CSA (Routes) to the
10 ISP, but also the ability of the ISP to assign (sell) the CSA (Routes).

11 FedEx Ground Will Unilaterally Change Conditions Required for
12 Renegotiation and Renewal of ISPAs.

13 92. FedEx Ground ISPAs are generally for terms ranging between 12 to 18
14 Months; by the terms of the ISPA and other internal policies, there is only at best a
15 six-month period when normal renegotiation can take place, absent a waiver of
16 procedures by FedEx Ground. Within its system, FedEx Ground controls the entire
17 renegotiation process if there is any renegotiation at all. FedEx Ground's own
18 internal processes for renegotiation require set time frames within which to
19

1 operate. Any delays or non-responsiveness by FedEx Ground often cause FedEx
2 Ground's own designated deadlines to pass.

3 93. On information and belief, there is very little substantive "Renegotiation"
4 of ISPA's between FedEx Ground and its ISPs between contracting cycles, except to
5 make changes beneficial or necessary to FedEx Ground.

6 94. Because FedEx Ground regularly and unilaterally changes its own
7 internal policies, including policies related to the conditions and requirements for
8 ISPs to exercise certain renewal rights, it is often practically impossible for the ISP to
9 meet FedEx Ground's new requirements before contracting deadlines pass. On
10 information and belief, this business practice of continually "moving goal posts" on
11 ISPs is widespread across the FedEx Ground System. On further information and
12 belief, FedEx Ground will waive requirements depending on FedEx Ground's own
13 needs with respect to a given Station or ISP.

14 95. On information and belief, because ISPs seldom can meet FedEx
15 Ground's exacting and ever-changing performance standards, few ISPs enter the
16 renegotiation process with exclusive renegotiation rights.

17 96. On information and belief, it is a common business practice of FedEx
18 Ground to either intentionally appear to enter renegotiations with an ISP or slow-
19 walk the renegotiation process with an ISP while simultaneously being in

1 negotiations with a different current ISP or prospective ISP. On further information
2 and belief, this is done for the purpose of obtaining continued services from the ISP
3 while already knowing that the ISP's ISPA will not be renewed and the ISPA will be
4 terminated.

5 97. Even if an ISP enters into renegotiations having maintained its rights to
6 exclusive renegotiations, on information and belief, it is a common business practice
7 for FedEx Ground to give its ISPs the alternative of either picking from one of "Three
8 Options" or to engage in "Traditional Renegotiations." The latter carries the risk that
9 if agreement cannot be reached within the short window set by FedEx Ground, the
10 ISPA terminates, and the ISP is left without an agreement. Like the ISPA itself, the
11 terms of the "Three Options" provided to an ISP during the Renegotiation Process
12 are non-negotiable, and are on further information and belief these "Options"
13 contain financial numbers provided by FedEx Ground related to the CSA that are
14 inaccurate and/or misleading.

15 FedEx Ground Can Unilaterally and Arbitrarily Change the Conditions
16 and/or Requirements for the Assignment of Routes

17 98. On information and belief, FedEx Ground controls the size that they
18 allow ISPs to grow their business. Based on internal metrics, FedEx Ground
19 determines how large they will allow any single ISP's business to grow; based on a

1 formula that includes the ISPs business as percentage of the Station's size and
2 package volume. An ISP that is too large under FedEx Ground's internal formula is
3 deemed "Overscale" and is prevented from acquiring new CSAs or assigning (selling)
4 its CSAs to another ISP unless the CSA is broken up into smaller parts or otherwise
5 "Re-Engineered."

6 99. On information and belief, the factors that go into the "Overscale"
7 formula change over time, the "Overscale" threshold for any given ISP changes over
8 time, and whether an ISP is in an "Overscale" status is not disclosed to the ISP, nor
9 what is required by the ISP to change this status.

10 100. In contradiction to FedEx Ground's representations that an ISP is able to
11 grow its P&D Business, FedEx Ground effectively prevents ISPs growing and/or being
12 able to assign (sell) their CSA (Routes) to other ISPs except on the terms and
13 conditions set by FedEx Ground. On information and belief, FedEx Ground waives
14 these requirements with respect to certain ISPs depending on FedEx Ground's
15 needs.

16 101. For an ISP that either wants to get out of its investment in a FedEx P&D
17 Business, or realizes that FedEx Ground intends to either terminate or not renew its
18 ISPA, FedEx Ground's refusal to either allow the ISP to assign its interests to another
19 ISP or to simply allow the ISPA to expire (through non-renewal), so that FedEx

1 Ground can create and post an "Open CSA" to contract with a new ISP, which leaves
2 an ISP either losing its entire investment, or required to compete, like a new
3 contractor, with other ISPs or prospective ISPs for what had previously been its CSA.

4 102. On information and belief, FedEx Ground makes arbitrary exceptions to
5 its internal procedures and deadlines, which includes among other things,
6 extending deadlines beyond termination dates to allow some ISPs that have either
7 been terminated or not renewed to assign their interests after these supposed
8 deadlines have passed, if doing so benefits the FedEx Ground Station.

9 103. As with other aspects of FedEx Ground's internal operations, FedEx
10 Ground does not disclose to its ISPs such information, including the internal criteria
11 used in this process described in ¶ 98-102, Supra. On information and belief, many
12 of the decisions made by FedEx Ground's managers in the renegotiation and
13 assignment process are often arbitrary and inconsistent with the terms of the ISPA
14 and other FedEx Ground policies and procedures.

15 Financial Consequences to ISPs for Termination or Non-Renewal

16 104. The consequences to an ISP of either Termination, Non-Renewal, or
17 FedEx Ground preventing the assignment of the ISPs CSAs (Routes) to other ISPs is
18 often financially devastating to the ISP and its owners.

1 105. ISPs are required to make substantial investments to buy a P&D Business
2 and to be able to perform services for FedEx Ground as a contractor.

3 106. Although these investments can vary, they can be as much as
4 \$500,000.00 or more, often requiring SBA Loans and Personal Guarantees on the
5 part of the owners of these small businesses. As part of its system, and during the
6 contracting process, FedEx Ground dictates the form of business entity that an ISP
7 must be as well as other requirements imposed as a condition of contracting.

8 107. By the terms of the ISPA and other related policies, an ISP cannot
9 practically have any other customers or source of revenue other than FedEx Ground.

10 108. ISPs continue to have liability for employees, employment taxes, and
11 other liabilities following the end of an ISPA, either by termination or non-renewal.

12 109. ISPs are then left with a fleet of vehicles and other equipment that have
13 been retrofitted to work primarily if not exclusively with FedEx Ground systems and
14 are not practically usable for any other market than to other ISPs that may want to
15 purchase them, often at a significant discount.

16 110. The consequences are particularly devastating in those instances where
17 FedEx Ground terminates an ISPA with less than 30 days' notice, which on
18 information and belief can occur on as little as 24 hours' notice.

111. On information and belief, because of the typical circumstances surrounding either the termination or non-renewal of an ISPA, ISPs are often left with invoices from FedEx Ground with charges for Third-Party Contingency Contractors, which are often used as retaliatory counterclaims for ISPs that bring any kind of legal action against FedEx Ground.

112. On information and belief, termination or non-renewal commonly results in both business and personal bankruptcy for the ISP and its owners.

FedEx Ground's ISPA and Business System is Designed to Eliminate Any Actual Remedies for Contractors

113. By design, FedEx Ground's system, using its ISPA in combination with its other Policies, Procedures, and business practices effectively eliminates any remedies for its contractors, even in those instances where FedEx Ground is in breach of contract.

114. On information and belief, FedEx Ground's standard legal position with respect to its contractors is through the ISPA, FedEx Ground owes no contractual duties to its contractors.

115. FedEx Ground's system utilizes the ISPA, by its own terms, to eliminate nearly all damages and remedies available in standard commercial contracts, including attorney's fees. In light of FedEx Ground's relative size to its contractors,

1 substantial litigation budgets, and aggressive litigation tactics, this makes even the
2 most meritorious claims against FedEx Ground economically unviable.

3 116. FedEx Ground systematically utilizes the ISPA's Arbitration Clause, and
4 its restrictive rules significantly limit the ability of any contractor to effectively litigate
5 any case against FedEx Ground's on either breach of contract or for its unlawful
6 business practices, as well as to conceal these practices from appearing in any public
7 record.

8 117. FedEx Ground systematically utilizes the ISPA to effectively eliminate any
9 kind of actual relief to a contractor, regardless of how egregious the conduct of
10 FedEx Ground.

11 118. By design, the FedEx Ground systematic use of the ISPA is an essential
12 part of FedEx Ground's illegal and abusive business system, intended to both conceal
13 its actual business practices and avoid any legal consequences for its pervasive
14 misconduct.

15 FedEx Ground Intentionally and Knowingly Uses its ISPA Used to
16 Conceal Illegal Activities and to Prevent Legal Exposure of its Business
17 Practices.

18 119. FedEx Ground is very committed to its business model despite the fact
19 that the "Independent Service Provider" Business Model has been the subject of

1 intense litigation⁴ for violations of law with regard to labor, employment, and
2 franchise laws. In this way, FedEx Ground uses its ISPA and related policies,
3 procedures, and other business practices to maintain a business model that, in
4 practice, violates multiple areas of law.

5 120. The FedEx Ground ISPA provides a thin legal cover by having a written
6 contract that appears on its face to describe certain business relationships in a
7 carefully worded way to appear to comply with the law, while hiding its actual
8 business practices, which if seen without the pretext of an independent contractor
9 agreement directly violate numerous laws.

10 121. The FedEx Ground ISPA, on paper, and with the various legal
11 contrivances it requires from its contractors, attempts to avoid violating
12 misclassification rules for employees and independent contractors; but the actual
13 business practices of FedEx Ground effectively treat their “independent contractors”
14 as “at will” employees with the degree of control over every aspect of the services
15 that are provided to it. The FedEx Ground “Independent Service Provider” Business
16

17 ⁴ FedEx Corporation’s 2023 10-K for the fiscal year ending May 31, 2023, reports at p. 14 under the Section
18 Titled FedEx Ground Segment, Operations “FedEx Ground is defending lawsuits in which it is alleged that
19 FedEx Ground should be treated as an employer or joint employer of drivers employed by service
20 providers engaged by FedEx Ground. We continue to believe that FedEx Ground is not an employer or
21 joint employer of the drivers of these independent businesses. The status of the drivers employed by
theses service providers could be further challenged in connection with our one FedEx consolidation
plan.” FedEx Ground has a long history of litigation involving issues of misclassification and franchise law.

1 Model combines the worst parts of the employee and independent contractor
2 relationships into one and does so with the intention of avoiding the obligations and
3 protections of employment laws as well as the benefits of truly being an
4 independent contractor.

5 122. FedEx Ground knowingly and intentionally engages in business practices
6 that would be illegal in an employment setting, such as maintaining “dirt files” (See.
7 ¶85, Supra) on each its contractors that it maintains to support breach of contract
8 claims against them. This is a reason why FedEx Ground goes to great lengths to
9 defend its classification of its contractors as “independent contractors” and not
10 employees.

11 123. FedEx Ground knowingly and intentionally engages in retaliatory
12 conduct directed against contractors that would be clearly illegal in the employment
13 setting. This is a reason why FedEx Ground goes to great lengths to defend its
14 classification of its contractors as “independent contractors” and not employees.

15 124. FedEx Ground knowingly and intentionally constructed a system that
16 effectively has created a pool of drivers, used by its ISPs, but has carefully structured
17 this system through thousands of separate contracts to avoid labor laws and labor
18 organizing laws.

1 125. The FedEx Ground “Independent Service Provider” Business Model is
2 marketed and promoted as a “business opportunity,” with all the trappings of a
3 franchise, and various promises and representations about the value of investing in
4 a P&D Business. But all of those promises and representations are ultimately
5 contracted and disclaimed away in the ISPA, and further made meaningless by the
6 undisclosed policies and procedures that actually govern the relationship between
7 FedEx Ground and its contractors.

8 126. The FedEx Ground “Independent Service Provider” Business Model
9 misrepresents its true nature to would-be small business persons, with the
10 appearances of an “investment”, and then guides it through the steps to set up a
11 business form and enter into carefully constructed agreements that get them to
12 invest substantial amounts to provide the vehicles and drivers for FedEx Ground’s
13 package and delivery fleet, but in the end, ultimately prevents them from seeking
14 any remedies from FedEx Ground after FedEx Ground has used them for as long as
15 they were useful to FedEx Ground.

16 127. The FedEx Ground “Independent Service Provider” Business Model
17 engages in myriad unfair and bad faith business practices, which obtain the services
18 of individuals that take on the business risk of financing vehicles, equipment, and
19

1 labor to FedEx Ground, only to be left without any real control or ability to operate
2 its own business.

3 128. The FedEx Ground “Independent Service Provider” Business Model, by
4 controlling the size and ability of its ISPs to control its own business, its own
5 employees, and controlling how large its ISPs are allowed to grow, constitutes illegal
6 restraints of trade.

7 129. On information and belief, the current form of the FedEx Ground
8 “Independent Service Provider” Business Model is a system that FedEx Ground has
9 evolved over decades in response to regulatory and court actions. The changes that
10 FedEx Ground has made during this period have not corrected the underlying
11 business model and illegal practices. But has instead simply become more refined
12 at eliminating the remedies available to its contractors and concealing its conduct
13 through confidentiality agreements, arbitration, and aggressive litigation tactics to
14 silence its contractors and former contractors.

15 130. The constant refining of the ISPA over time has resulted in a contract that
16 on its face appears to be an “independent contractor” agreement, but in
17 combination with its policies, procedures, and actual business practices, conceals
18 the actual relationship between the parties to the contract or its performance in
19 practice.

1 **VI. PYNQ's Business Relationship with FedEx Ground**

2 131. PYNQ Logistics Services, Inc. ("PYNQ") was formed in August 2020 as a
3 female- and minority-owned and operated company in a business sector that
4 commonly lacks diversity. As a founder and owner of PYNQ, Tara Wright has a
5 background in the transportation industry spanning over 30 years as a commercial
6 airline pilot. Wanting to utilize her expertise in the transportation industry and
7 seeking a business of her own following retirement, she looked for various business
8 opportunities.

9 **Researching the FedEx Ground Business Opportunity**

10 132. Prior to entering into a contract with FedEx Ground, Wright did extensive
11 research on several different companies with varying business opportunities. One
12 of those options identified was FedEx Ground. Wanting to explore this option more,
13 Wright reached out to a CSA route broker, Route Consultants, who is one of the
14 leading brokers of FedEx Ground routes, to discuss further details of what investing
15 in a CSA would entail.

16 133. Wright even went so far as to take online classes offered by Route
17 Consultants titled "FedEx Routes for Sale 101" to better educate herself prior to
18 committing to this investment. After extensive research of her various options,
19 Wright dismissed all other companies she had researched and opted for FedEx

1 Ground, believing that, because of the marketing of FedEx Ground P&D Businesses,
2 the contract that was touted, and the various promised systems apparently in place
3 by FedEx Ground, this would be the most stable and risk-averse business
4 opportunity of her identified options.

5 134. Even though the initial required investment and start-up costs for a
6 FedEx Ground CSA tremendously exceeded the other options, Wright specifically
7 chose FedEx Ground due to the promoted growth potential and resale value of the
8 routes, versus those of other business models offered with other companies. Wright
9 believed that FedEx Ground's contract would ensure a long-term relationship and
10 very little chance of early termination, unlike the other companies she had
11 evaluated.

12 135. Other companies Wright evaluated seemed to be clear in the possibility
13 that they would not be long-term contracts and could easily be terminated without
14 the security of longevity. FedEx Ground and those promoting indicated a longer-
15 term business relationship.

16 136. In addition to the online classes and educational information provided
17 through Route Consultants, Wright researched FedEx Ground extensively through
18 as many as five other sources, including FedEx Ground's own website
19

1 BuildAGroundBiz.com. Wright was also able to purchase reports for the most
2 recently sold routes and their valuations.

3 137. Beginning in July 2020, discussions between Wright and the broker
4 began regarding the purchase of a specific CSA route from a seller, JMS Delivery
5 Service Inc. (Magarino Enterprises Inc.). Seeking even more preparation and
6 education prior to the decision to buy, on September 1, 2020, Wright and her
7 husband, Wayne Wright, attended a seminar titled "New Investor Summit" which is
8 a full-day course highlighting how to operate a FedEx Ground business.

9 138. Following that seminar, on September 4, 2020, Wright purchased a
10 model Request for Information ("RFI") from Route Consultant for submission to
11 FedEx Ground for the acquisition of the CSA. At this point, Wright had already
12 incurred significant expenses to ensure that she had a full understanding and
13 preparation of the business she was about to get into. In July 2020, Wright began
14 attending weekly meetings through Route Consultant which highlighted different
15 topics and current events happening within the FedEx Ground business.

16 Business Discussions with FedEx Ground

17 139. Communication and negotiations continued through November 2020.
18 As outlined above, FedEx Ground has their own requirements for any new ISP to
19 come onboard. During this time, Wright submitted to FedEx Ground her RFI. This

1 was reviewed and accepted, and an “AIM Meeting” was scheduled for and held on
2 October 8, 2020. Present at this meeting were Tara Wright, Wayne Wright, Olivia
3 Wright, their daughter and business partner at the time, along with FedEx Ground
4 managers Maya Freeman and Regina Wallace, the latter who was the outgoing
5 Station Manager. At this meeting, which lasted approximately three hours, Freeman
6 and Wallace asked various questions regarding the RFI that Wright had previously
7 submitted..

8 140. Between the conclusion of the AIM Meeting and the ultimate assignment
9 of the ISPA from the previous ISP to PYNQ, Wright communicated regularly with
10 FedEx Ground to complete the many additional requirements to get started as a
11 FedEx Ground ISP. This included setting up their CSP profile, signing the initial
12 compliance documents, getting cleared through First Advantage, and the
13 assignment being processed and approved through FedEx Ground’s internal
14 systems.

15 Standing Up the FedEx Ground Contract

16 141. On November 7, 2020, PYNQ took over the ISP Agreement (“ISPA”) for
17 CSA 301493 through assignment of the previous owner’s agreement. This CSA was
18 dispatched out of Arcata, CA through the Eureka terminal and services the
19 McKinleyville and Crescent City, CA areas (the “Eureka Route”). The final and

1 completed transfer of the business between PYNQ and Magarino was completed on
2 January 28, 2021. PYNQ would later enter their own ISPA on April 3, 2021. The
3 investment for PYNQ to purchase these routes was approximately \$1,125,000.00.

4 142. Soon after taking over the ISPA, the main road to Crescent City was
5 blocked with no forecast of reopening. This effectively prevented delivery out of the
6 Eureka Station, and because of this, PYNQ and FedEx Ground jointly decided to split
7 the route to dispatch the Crescent City area out of a new Station in Brookings,
8 Oregon (the "Brookings Route"). This change was to occur as the next contract
9 renewal period.

10 143. As the first ISPA approached an end, a new ISPA was signed on August 2,
11 2021. This contract officially split the Eureka Route to be dispatched from two
12 different stations now, but contractually remained as one CSA contracted through
13 one ISPA.

14 144. The Eureka Route was now being dispatched out of the Eureka Station
15 955 and the Brookings Station 965. The route being dispatched out of the Brookings
16 station began to be referred to as the "Brookings Route" and the route being
17 dispatched out the of Eureka Station began to be referred to as the "Eureka Route".

18 145. PYNQ continued to operate under these new arrangements through the
19 end of that contract, which was due for renewal around June 2022.

1 146. With the next renewal phase approaching, PYNQ received a renewal
2 offer from FedEx Ground outlining the standard “3 Options” to pick from. However,
3 the options received were all decreasing in value from the current contract and
4 Wright knew these options would not be enough to maintain a profit with the way
5 these routes were being split up. Wright hired a third-party consultant to review and
6 evaluate the new proposed contracts options and assist in negotiations with FedEx
7 Ground. The third-party identified and reported back to Wright several issues,
8 including that the rates presented by FedEx Ground were based on package levels
9 that were projected to increase over the span of the next year, but the reality was
10 that the package levels were not increasing over the year as presented by FedEx
11 Ground.

12 147. The third-party evaluation also identified the package count FedEx
13 Ground was using for its “Options” was not correct. Both of these errors resulted in
14 options that would decrease revenue and compensation from FedEx Ground by as
15 much as 10-30% to PYNQ. Wright went back to the FedEx Ground contract
16 negotiator and pointed out the problems with the “Options” offered by FedEx
17 Ground for renewal.

18 148. The FedEx Ground Negotiator provided only an ultimatum to pick from
19 the “3 Options” or decline them and return to the “Traditional Negotiations” model.

1 Based on Wright's research, Wright came to understand that the traditional
2 negotiations model came with a strict timeline for negotiations to be completed. If
3 negotiations failed within that short timeframe, the contractor would lose their CSA
4 altogether and FedEx Ground would put the route up for giveaway (as an "Open
5 CSA") on buildagroundbiz.com.

6 149. Fearing the worst while under extreme pressure from FedEx Ground,
7 Wright went with another option altogether. Under the previous arrangement with
8 FedEx Ground, PYNQ was servicing the same area under one contract but out of two
9 different FedEx Ground Stations. The current contract did not account for any of the
10 additional time and expense of having to travel back and forth between the two
11 Stations so often. Wright believed that by separating the contract into two different
12 contracts, each covering only the Station out of which it was being dispatched, this
13 would ultimately save costs and provide for a more representative expense and
14 revenue report, and making for a better contract. Separating the contract into two
15 contracts had initially been discussed in early 2021 when the road closure had
16 happened and the decision to dispatch out of the Brookings station had been made.

17 150. Wright took this suggestion to the BDS Manager, and the contracts were
18 split. The contracts then went back to the FedEx Ground Negotiator who then
19 presented 3 "new" Options for each of the routes. These new Options offered by

1 FedEx Ground again represented a significant decline in revenue. Because FedEx
2 Ground had not originally planned to separate the single Eureka Route into two
3 separate contracts, FedEx Ground granted an extension on the renewal deadlines
4 to allow time to work out the details. With these sub-optimal "Options", PYNQ was
5 put under enormous pressure from FedEx Ground to sign not just one, but both of
6 the new contracts, threatening that if they did not sign both of them, FedEx Ground
7 could refuse to renew the ISPA's with PYNQ and simply take away their CSA's out
8 from under them and put them up as "Open CSAs".

9 151. PYNQ attempted to exercise their rights of first negotiation as to rates,
10 based on their expected operating expenses as the ISPA appeared on its face to
11 allow. However, this was attempt was rejected by FedEx Ground and Wright was
12 compelled into signing both contracts, under threat of non-renewal, even though
13 they knew the new Options for Eureka route was substantially less than what was
14 required to operate the business.

15 152. At the same time, right before these new contracts were to be signed,
16 FedEx Ground informed Wright that PYNQ could not sign the Brookings contract
17 because PYNQ was not registered as a foreign corporation or licensed to do
18 business in Oregon, as their route required PYNQ to enter Oregon at various times
19 to park, load, and unload packages.

1 153. PYNQ scrambled to quickly register PYNQ and obtain a new business
2 license to continue to operate as they always had been doing previously. On June
3 25, 2022, PYNQ signed both new ISPA's for the new Brookings Route and the now
4 separated Eureka Route, both of which were desperately unprofitable under the
5 newly contract rates.

6 154. Based on what had previously been represented about renegotiations
7 with FedEx Ground, PYNQ attempted to bring up renegotiation of the contracts as
8 soon as July 2022. The Brookings Senior Manager, Paul Bickett ("Bickett"), seemed
9 open to discussions about this, so Wright and Bickett continued to discuss this over
10 the next several months, but made no real progress. Around the same time, Wright's
11 attempts of renegotiation discussions with the Eureka Senior Manager, Cooper
12 Harding ("Harding"), were going nowhere. Because of this, Wright instead opted to
13 submit an "official" Request for Renegotiation. At the end of July, Wright submitted
14 this Request for Renegotiation through the MGBA portal for the Eureka Route only.

15 155. As Wright came to discover after beginning work as an ISP, FedEx Ground
16 is continually changing the policies, rules, and procedures, often without any notice
17 or acceptance of the new requirements by the contractors. As was the case with
18 many other things that occurred during PNYQ's contracts with FedEx Ground, these
19 changing policies occurred with renegotiations.

1 156. Around the time she was seeking renegotiation, FedEx Ground
2 introduced a new policy regarding renegotiations themselves, requiring now that a
3 contractor must have their drivers on the road at least 8 hours per day each, not
4 counting “non-delivery time”. Based on the knowledge and experience of the third-
5 party negotiator PYNQ had worked with, this meeting this requirement was typically
6 considered by FedEx Ground in the timeframe of the 3 months prior to a
7 renegotiation request. However, like many other new policies with FedEx Ground,
8 this time frame was never actually clearly communicated by FedEx Ground. Wright
9 knew that Brookings was not within that 3-month time frame, so between June-Sept
10 2022, PYNQ adjusted its routes to meet FedEx Ground’s new requirements. When
11 September arrived, FedEx Ground once again moved the goal posts on its
12 requirements for renegotiations, increasing the 8.0-hour requirement to 8.5 hours
13 per day per driver.

14 157. Based on the reality of actual package volumes flowing through the
15 Station, in August 2022, PYNQ submitted a new “Schedule F” to the ISPA, that would
16 allow FedEx Ground to reduce PYNQ’s daily stop threshold from 1051 stops to 909.
17 The effect of this changed requirement is tied to many aspects of the ISPA, including
18 performance standard percentages and “per stop” charges paid to PYNQ by FedEx
19 Ground.

1 158. Through September 2022, PYNQ continued to express their need for the
2 renegotiation of the contract by having ongoing conversations via email and in
3 person with Bickett, the Brookings Senior Manager. Towards the end of September,
4 Bickett and Wright were on the floor of the Brookings Station together at an
5 impromptu meeting. Wright asked Bickett to discuss and help create a better
6 dispatching system to enable PYNQ to work more efficiently. The Brookings Station
7 is a very small FedEx Station with only one other ISP other than PYNQ operating out
8 of it.

9 159. When PYNQ was "Reassigned" by FedEx Ground to dispatch from the
10 Brookings Station they were not received kindly. FedEx Ground already had a system
11 in place to accommodate only the one ISP operating out of the Station and didn't
12 adjust for PYNQ's being reassigned there as a second contractor. Because of this,
13 the other contractor got the first load and dispatch of the day leaving PYNQ to not
14 be dispatched until much later in the morning, often not being dispatched until 10-
15 11 AM, and sometimes even later if a linehaul truck was late in arriving to the Station.
16 This regularly occurring "delayed start" caused many cascading issues for PYNQ,
17 which were both costly and affected their performance metrics. Some of these
18 issues included lowered safety ratings due to being out later at night and in the dark
19

1 more often, especially during winter months, and a decreased ability to make
2 deliveries due to businesses no longer being open in the later hours of the day.

3 160. Bickett's response to PYNQ's request to rearrange the schedule for
4 dispatch was that he would only do this if PYNQ would do something for him. Bickett
5 then asked that all pickups be returned to the station by 5:00 PM daily, even though
6 FedEx Ground staff were almost never on-site at "End of Day" (or "EOD"). Wright
7 responded to this request, emphasizing the need for renegotiations, answering that
8 they could agree to Bickett's request if they were compensated enough to cover the
9 added costs which would necessarily be required to make that request happen.

10 161. PYNQ expressed to Bickett that they were currently losing \$3,000 -
11 \$4,000 per week and with the Brookings station because of it being over 30 minutes
12 away from the start of their service area, and they could not afford to carry the extra
13 expenses of having to hire another driver, the additional fuel, truck maintenance,
14 and more. Bickett's response included further pressure and questioning as to why
15 Wright would even sign the new contract if she knew it did not cover these expenses
16 (even though these were new requests being made by FedEx Ground outside the
17 written agreement) Wright reminded Bickett again that they felt extremely
18 pressured to sign both contracts, because at the time it was clear that if they had
19 not signing both contracts, they would have lost both contracts along with

1 everything they had invested into the business already. She also stated that she had
2 signed both contracts based on the promise that continued negotiations on the
3 rates would soon be coming. This pattern of new requests by FedEx Ground
4 managers in exchange with promises to renegotiate terms, which never
5 materialized, was a continued practice during PYNQ's business relationship with
6 FedEx Ground.

7 162. Wright continued to exchange many emails, calls, and in-person
8 meetings with Bickett throughout September 2022. Bickett finally sent Wright a
9 blank document at the end of September, asking her to fill in detailed information
10 regarding Brookings expenses and the "Unique Characteristics" of the Brookings
11 route.

12 163. Within the FedEx Ground System, FedEx Ground claims to allow for
13 adjustments to the rates of a route based on what they refer to as "Unique
14 Characteristics". This would include identifying factors of a CSA that are outside of
15 the norm and out of the control of FedEx Ground or the ISP, which would decrease
16 or increase the value of the route. Examples of "Unique Characteristics" would
17 include a route which is spaced out much further than others or a route which has
18 long-term road closures which require an extended route in order to service the
19 areas assigned.

1 164. The Brookings route specifically identified its unique characteristics,
2 which included the later dispatching issues outlined above, as well as the
3 significance of the uncommon roads they were required to regularly travel. At least
4 40% of the roads in the Brookings routes are unpaved roads. This has a huge impact
5 on the cost of maintenance of the trucks. Additionally, the presence of rain or snow
6 made these roads difficult if not impossible to drive on. Finally, because these were
7 unpaved roads, PYNQ's drivers had to reduce the rate of speed significantly in order
8 to drive safely. The FedEx Ground "Dynamic Route Optimization" System (or "DRO")
9 did not account for any of these factors. Therefore, FedEx Ground's computer
10 generated calculations of actual time needed to drive these routes was significantly
11 miscalculated and set unreasonable performance metrics for PYNQ. It is for these
12 reasons that these "Unique Characteristics" were so important to the performance
13 standards being imposed on PYNQ.

14 165. When entering the "Pre-PEAK" season of 2022, which usually begins in
15 September, PYNQ continued to face multiple challenges with FedEx Ground. Their
16 renegotiation efforts continued to go unanswered and ignored by the FedEx Ground
17 management. The requested Schedule F change request to lower the daily stop
18 threshold had also gone unanswered. At the same time, fuel costs were rising
19 significantly and due to the current FedEx Ground dispatch arrangement, which

PYNQ had made multiple requests to address, and their need for this rearrangement in order to perform their work more efficiently, FedEx Ground's performance metrics for PYNQ began to drop.

166. At the same time, PYNQ's performance metrics for September and October were dropping due to issues created by FedEx Ground itself. At this time, gas prices in the area were upwards of \$7.00+ per gallon⁵ and the volume of packages in need of pick-up and delivery services went from 450-600 stops per day down to 250-300 stops per day, with some days even being lower than 200 packages per day. In order to understand the practical effect of these changes to PYNQ during this period, one must understand the coverage area that PYNQ was contracted to provide services for. The Eureka station relied heavily on the larger nearby town to subsidize the cost of services to the areas outside of town. However, these areas were not simply "outside of town". PYNQ had to service areas that were at times over 3 hours away, in very remote areas, often through very rough terrain. These remote areas often would only have a few packages that needed to be delivered or picked up. During normal volume times, PYNQ could schedule a driver on those routes every day, knowing that part of their schedule would also include areas with

⁵ At this time of increased gas prices, FedEx Ground increased fuel charges to FedEx Ground customers by 6.9%, but none of this increase was passed on to its ISPs.

1 a much higher volume to offset the expenses to reach the remote areas. However,
2 during a time when volume was low, it was not financially or even physically possible
3 for PYNQ to reach these remote areas every single day. In response, PYNQ arranged
4 a plan to cover the remote areas every couple of days instead. The impact of this
5 was that, for every day these remote areas were not reached, PYNQ took a hit to
6 their performance score of 7-9 packages per day. When FedEx Ground package
7 volumes increased again, PYNQ returned to their normally scheduled routes.

8 167. While all of these events were occurring, FedEx Ground's Pre-PEAK
9 season was also beginning. ("PEAK season" for FedEx Ground is known to be a yearly
10 period of time with an average 30-40% increase in pick-up and delivery needs. PEAK
11 season covers the day after Thanksgiving to New Years Day, each year.) Preparing
12 for PEAK season requires the hiring and training of new drivers, added vehicles, and
13 other related expenses to meet the anticipated increased needs.

14 168. Because of FedEx Ground's numerous requirements, as described,
15 Supra, it can take a minimum of 6 weeks to get a new driver hired and onboard,
16 including clearance through the "First Advantage" background check, physical, road
17 test, drug test, the required training, and getting them approved through the other
18 parts of the various mandated FedEx Ground systems before they are ready to drive.
19 The FedEx Ground ISPA purportedly allows for an additional weekly allowance

1 during pre-PEAK and PEAK season to account for added expenses related to this
2 onboarding. The ISPA appears to allow for 11 weeks of Pre-PEAK season additional
3 fees to prepare for the upcoming PEAK season.

4 169. The additional costs for PYNQ during this Pre-PEAK season were an
5 average of \$1,000.00 per week. However, FedEx Ground indicated that it was only
6 going to pay an extra \$75.00 per week. Wright brought this to the attention of
7 Harding and explained \$75.00 per week was simply not enough to cover the added
8 costs. Harding then stated “there would be no PEAK season this year”, even though
9 projected numbers provided by FedEx Ground for Eureka were showing a package
10 volume 10% higher than the previous year’s PEAK season. Harding confirmed that
11 these projections were correct and that more drivers would be needed, but also in
12 a contradictory fashion, continued to insist there was not going to be a PEAK season.

13 170. Wright and Harding spoke about these issues multiple times. Harding
14 finally did go up to FedEx Ground management to address the issues and received
15 approval for an increase to \$300.00 per week.

16 171. FedEx Ground’s increase did not happen until the end of September or
17 beginning of October, which made it too late to seek out, hire, and train new drivers,
18 leaving PYNQ without adequate staff or vehicles going into PEAK season. At the
19 Brookings Station, projections for PEAK season were never provided to PYNQ at all.

1 Despite the repeated statements by Harding that “there would be no PEAK season,”
2 Eureka Senior Manager Harding demanded PYNQ sign a “Letter of Assurance” that
3 PYNQ would not fail to perform its obligations during PEAK season. When PYNQ
4 presented a counter request to FedEx Ground to sign a Letter of Assurance
5 regarding the projected volumes, FedEx Ground refused to agree to this, leaving
6 PYNQ yet again forced into signing and committing to a requirement to guarantee
7 services for package volumes that FedEx Ground refused to even disclose, much less
8 confirm.

9 172. In the end, there was in fact a PEAK season exactly as predicted.
10 Performance numbers dropped for both Eureka and Brookings stations during PEAK
11 because they were not able to perform at the required levels, due to FedEx Ground’s
12 own refusal to provide appropriate resources to meet this increased demand for
13 package deliveries.

14 173. At the beginning of November 2022, PYNQ was still communicating to
15 FedEx Ground their need to renegotiate the Brookings route. Wright had submitted
16 the previously requested document with details of Brookings expenses to Bickett.
17 Given the ongoing communication with Bickett about renegotiations over the past
18 several months, Wright did not want to derail any progress that was being made.
19 She chose to believe Bickett was acting in good faith and continued working with

1 him directly, rather than submitting an official request for renegotiation through
2 MGBA.

3 174. The official request which was made through MGBA for the renegotiation
4 of the Eureka route had gone unanswered since July. Finally, on November 22, 2022,
5 Harding provided PYNQ with the same form to outline expenses and unique
6 characteristics, this time for the Eureka route.

7 175. It was not until the end of December 2022 that PYNQ received an email,
8 phone message, and then a notification on MGBA from the Brookings Senior
9 Manager, Bickett, which stated that, due to PYNQ's performance rates having
10 dropped below 99.0% during the previous July and August, they had now lost their
11 rights to both renegotiate and first rights of renewal. This position was taken by
12 FedEx Ground, even though their contracted performance percentage requirement
13 was 98.5%. PYNQ was informed that no further decisions around renegotiations
14 would be entertained by FedEx Ground.

15 176. Immediately following this, the Eureka Senior Manager, Harding,
16 informed PYNQ via MGBA that because PYNQ'S September and October rate had
17 fallen below 99.0%, they had lost all rights to renew the Eureka contract in June 2023
18 as well.

1 177. Shortly after these events, Bickett then informed PYNQ via phone call
2 that he had gotten approval to renew the contract with PYNQ and expressed an
3 interest to continue to work with PYNQ rather than move on to a new contractor. At
4 this point, PYNQ understood by this communication that their first rights to
5 negotiate a new contract had somehow been restored.

6 178. Beginning In January 2023, a new system was introduced to contractors
7 by FedEx Ground called the "Medals System." This system was to use metrics to rank
8 the contractors into "Gold", Silver", or "Bronze" Categories. A contractor's ability to
9 continue with FedEx Ground was now going to be based on these categories with
10 "Gold" receiving highest priority on renewal and the best rates. However, if a
11 contractor was in the "Bronze" category for 3 months or more, the contractor would
12 lose its right to negotiate and could possibly face immediate termination of its
13 contract. This new system was launched with no introduction and no stated criteria
14 on the ranking system identified. At no point was this new ranking system
15 incorporated into the terms of the ISPA.

16 179. Wright had seen a "Metrics Dashboard" through the Eureka Station
17 Manager a couple times and was told that this dashboard should be available for
18 contractors to view soon through MGBA, but as of the time PYNQ ultimately left
19 working FedEx Ground, this "dashboard" was not available to contractors. At no time

1 after the Medals System was supposedly implemented by FedEx Ground was PYNQ
2 ever informed of the standards being used for the metrics of this ranking system,
3 even though the continuance of their entire business relied upon it.

4 180. Monthly "Medals Meetings" with contractors started in January. Each
5 month's data was apparently based on the previous month's numbers, so January
6 results were based on December data (at a time before contractors were even
7 informed of the new system being introduced). The system also titled accounts as
8 "Trending" for the next month as it predicted where the metrics would be going in
9 the future. The first meeting with Harding in January revealed that, based on the
10 December data, PYNQ was Bronze and "Trending" Bronze for the next month. Every
11 month following that, until their contracts terminated, PYNQ was in the Silver
12 category.

13 181. During the time that PYNQ worked with FedEx Ground, there were
14 several occasions of FedEx Ground system failures which directly impacted PYNQ's
15 performance metrics. One regular occurrence of this is when a package would be
16 incorrectly placed on a truck for PYNQ's delivery route, despite the address on the
17 package not being within PYNQ's service area. The driver would code these packages
18 as "Code 12", which is an Error Code meaning "Not on Correct Truck" and return the
19 package to FedEx Ground Station for correct dispatch. However, FedEx Ground

1 management would then override and recode the package as “Code 27” which is the
2 code for “Did Not Attempt”. A “Code 27” is one of the worst codes and most harmful
3 to a contractor’s performance metrics.

4 182. Another major instance of system-wide failures includes a time when
5 FedEx Ground had a complete systemwide outage, forcing drivers to use written
6 “hand sheets” instead of the electronic scanners and computer systems that FedEx
7 Ground normally requires its contractors to use to track packages, deliveries, pick-
8 ups, and schedules. When the FedEx Ground system eventually came back online,
9 the hand sheets for all services for this day were never entered by FedEx Ground.
10 The effect of this was a severe distortion of PYNQ’s delivery rates and numbers for
11 that day, bringing down their entire performance percentage. PYNQ was also not
12 properly compensated by FedEx Ground for the services provided that day until
13 several weeks after.

14 183. After receiving the news from both stations at the end of December that,
15 due to performance rates being below 99.0% (again not the contracted 98.5%
16 delivery rate), renegotiations would no longer be entertained by FedEx Ground, both
17 contracts went down very separate paths.

18 184. On January 31, 2023, Eureka Senior Manager, Harding called Wright to
19 discuss options. At this time, he expressed that even though PYNQ no longer had
20

1 first rights to renewal, he still had intentions of continuing to work with PYNQ.
2 Harding then outlined the process which Wright would have to complete to continue
3 with her contract.

4 185. Harding explained to Wright that when you lose your first right of
5 renewal, the CSA would be put up on buildagroundbiz.com for any other contractor
6 to bid on, and if PYNQ wanted to continue with this contract, they effectively had to
7 completely start over by bidding on their own contract, coming in for another AIM
8 Meeting, and going through the entire onboarding process with FedEx Ground
9 again. Wright understood and thought about these options. She later came back to
10 ask Harding when the CSA would be listed to bid on. Harding then seemed to be in
11 a bit of panic by this question, as he realized that the CSA had never been posted.
12 He then made some phone calls which resulted in the CSA finally being posted on
13 buildagroundbiz.

14 186. Wright then reapplied on buildagroundbiz.com. Another AIM Meeting
15 was held on April 10, 2023. Present at that meeting were Tara and Wayne Wright,
16 Harding, and Art Nunez, the Eureka BDS Manager. Wright had previously submitted
17 her Request for Information ("RFI"), which was the primary focus of discussion at this
18 meeting. Nunez remained silent the entire meeting. When asked to comment at the
19 end of the meeting it was obvious that Nunez had his phone or computer connected

1 to the call but was either not listening or not even in the room/office while the
2 meeting was happening. After this experience, Wright did not feel confident in the
3 process of getting her CSA back.

4 187. Simultaneously throughout this period beginning in January 2023,
5 comments were made from FedEx Ground managers to Wright that Wright should
6 just sell her CSAs. Although Wright did not want to sell and hoped to continue with
7 FedEx Ground, it was becoming clear that the intentions of FedEx Ground may not
8 be aligned.

9 188. Based on these comments from FedEx Ground managers, Wright began
10 looking for potential buyers to acquire her CSAs (Routes). And began negotiations
11 with a potential buyer in May 2022, reaching what appeared to be an agreement in
12 Mid-May.

13 189. At the same time as Wright was led to believe that she was renegotiating
14 the Eureka contract, the Brookings contract had been negotiated with FedEx Ground
15 and Wright had signed a new ISPA which was set to standup on May 20, 2023.

16 190. The challenges that PYNQ was facing with the Eureka Route continued
17 to come to a head throughout May 2023. With the end of the Brookings contract
18 approaching on May 19, 2023, and renegotiations having ramped up. During this
19 same time, FedEx Ground was starting to utilize a new "AI System" to evaluate the

1 valuations of routes. This new system was not disclosed to Wright until a much later
2 time when it was too late for them to understand and make any changes that would
3 impact this new system. This information was then used by FedEx Ground to “Re-
4 Engineer” the Routes as needed to ensure their profitability and efficiency, with one
5 of the metrics being that CSA must have a set minimum of \$1.0 MM in annual
6 revenue as a minimum profitability mark. This new “AI based system” effectively put
7 every contract under review, regardless of the ISP and CSA’s performance ratings.

8 191. At the beginning of May 2023, PYNQ was informed that the Eureka route
9 was undergoing “Re-Engineering.” These actions were taken by FedEx Ground with
10 no consultation from PYNQ who had been contracted to run this route day in and
11 day out. PYNQ also discovered at this time that the “Unique Characteristics” that
12 Wright had previously prepared for the Eureka route, had not been put into this new
13 evaluation system. The inclusion of these “unique characteristics” were vital to the
14 valuation of a route, yet FedEx Ground both chose to ignore them altogether and
15 then denied that they had ever been provided.

16 192. The newly implemented “AI System” then determined that the Eureka
17 route was “not profitable”, as Wright had been communicating to FedEx Ground
18 since July of the previous year. When Wright asked what would happen if the route
19 remained unprofitable after Re-Engineering, Harding explained the current contract

1 rates would not be increased to cover the additional expenses, but the CSA would
2 simply be absorbed into another ISP's contracted Routes – effectively terminating
3 PYNQ's contract through no fault of PYNQ. Wright expressed her frustration with
4 this newly provided information and was certain that this was retaliation for their
5 ongoing requests for renegotiation over the previous year.

6 193. It was then communicated to PYNQ via phone call with a Station
7 Manager that if the new AI System values a Route at less than \$1.0MM annually, the
8 route would not be renewed and PYNQ would not be able to keep it. This
9 information was communicated to Wright verbally only and PYNQ was never
10 provided any documentation of any FedEx Ground policies to support what she had
11 been told.

12 194. With the route still undergoing Re-Engineering and the end of the
13 contract fast approaching, PYNQ was now informed that the Re-Engineering process
14 may extend beyond May 17, 2023, and that an extension on the contract may be
15 needed. However, ultimately, an extension was not provided by FedEx Ground.

16 195. During this time that Re-Engineering was occurring, Wright made
17 repeated attempts to get an update on the status of the Re-Engineering process, of
18 which any response she did receive was that there was "no update." As is detailed
19 below, FedEx Ground knowingly and intentionally withheld information from Wright

1 regarding the Re-Engineering process as to her CSA. And had already negotiated and
2 given way PYNQ's CSA to another contractor, something that could not have
3 occurred without the Re-Engineering having been completed.

4 196. PYNQ was now even closer to the end of their contract, still having no
5 answers as to the status of their future with FedEx Ground. At the same time, PYNQ
6 had been given no reason at this point to think that a renewal of the contract would
7 not happen and thus continued to provide services to FedEx Ground as usual,
8 making no plans relating to losing their business, or the hundreds of thousands of
9 dollars invested, or the idea of leaving a number of drivers unemployed. At the time,
10 PYNQ was still actively recruiting and interviewing new drivers.

11 197. During this time, Wright made repeated attempts to contact the FedEx
12 Ground management to get answers as to the status of the Re-Engineering and
13 renewal process of PYNQ's two contracts. These attempts to gain answers were
14 ignored for weeks leaving Wright with the impossible decision to renew only one of
15 the contracts (Brookings) while the other (Eureka) was still in limbo going through
16 Re-Engineering. At the end of the last meeting between Harding and Wright over a
17 week before, Harding had told Wright that he would have an answer by the
18 "following Monday." However, when that Monday came and no answer was
19 received, Wright reached out only to find Harding had the week scheduled off.

1 Finally, with only days before the Brookings standup date, Wright received a text
2 from Harding only saying he would “find out what is going on.”

3 198. This left PYNQ in the position of having only one of the two contracts
4 settled. Eureka was still in limbo after Wright had been forced to reapply for the CSA
5 and she had been told that the Re-Engineering was still not complete. Because of
6 the decisions on the Brookings contract, and with no word to the contrary, Wright
7 assumed FedEx Ground intended to renew both contracts with PYNQ.

8 199. At noon on May 16, 2023, only 4 days before the contract end date, the
9 Eureka BDS Manager, Art Nunez, informed Wright that he still had “no answers”,
10 stating that the decision-making responsibility belonged between the “Engineer”
11 and the “Regional Manager.” Wright communicated back to the BDS Manager,
12 Nunez, that, if the Eureka contract did not get finalized, it would be economically
13 unviable for her to stand-up the Brookings contract because it continued to be
14 subsidized by the Eureka contract. She even suggested putting the contracts back
15 together again if they did not individually meet FedEx Ground’s new AI driven
16 “standards” of needing a CSA to be worth a minimum of \$1.0 MM. The BDS Manager
17 then told her that this was a possible avenue but was not very likely to be pursued.
18 Wright explained that she had over \$1.4MM invested into this business and not
19 getting renewed would mean losing everything.

1 200. Later that same day, Senior Manager Harding called Wright to tell her
2 that FedEx Ground had given the Eureka contract to another contractor right out
3 from under them and that the new ISPA had already been signed between FedEx
4 Ground and the new contractor. This meant that the entire time PYNQ had been
5 communicating with Harding and Nunez and working to “Re-Engineer” the CSA to be
6 valued at over \$1.0 MM so PYNQ could keep it, FedEx Ground had just been using
7 PYNQ to keep operations going while FedEx Ground was in the process of
8 conducting an AIM Meeting and lining up another contractor for the route directly
9 with FedEx Ground. None of these negotiations were ever disclosed to PYNQ in any
10 way. To the contrary, Harding had continued to communicate to Wright in various
11 ways during this time that he and FedEx Ground intended to continue working with
12 PYNQ for the Eureka contract.

13 201. This unilateral decision by FedEx Ground left Wright with only one route
14 (Brookings), which FedEx Ground already knew was not profitable on its own and
15 could not sustain itself. Harding indicated that it had been a “unanimous decision”
16 between all the FedEx Ground management involved. Inquiring into the reason why
17 FedEx Ground had done this, Harding stated it was because the new contractor was
18 “bigger and more flexible.” Yet, Wright had a strong indication this was actually due
19 to the constant pressure for renegotiations and line adjustments PYNQ had made

1 throughout the previous year. On information and belief, FedEx Ground regularly
2 targets and eliminates contractors that do not simply go along with FedEx Grounds
3 inconsistent and changing demands.

4 202. Wright spoke to the Brookings Station Manager, Bickett, and informed
5 him that without the Eureka contract, she could not continue her contract with
6 Brookings.

7 203. Wright then received a "Request for Assurance" for both the Brookings
8 Route and the Eureka Route, asking that PYNQ continue to provide services after
9 May 19, 2023. These two Requests for Assurance had a response deadline of 5:00
10 pm the next day.

11 204. On May 17, 2023, the last day of service on the contract, Wright learned
12 that the new contractor had already begun contacting and recruiting PYNQ's drivers
13 without any knowledge or consent from Wright, or even giving Wright time to let her
14 employees know they were going to be out of a job with PYNQ. Wright didn't even
15 get to tell her own employees about the updates which had just occurred the night
16 before.

17 205. By May 18, 2023, official "Termination Letters" were issued by FedEx
18 Ground to PYNQ for both the Eureka route and the newly signed Brookings route,
19 in direct violation of the ISPA's own terms, which required a 30 day notice for
20

1 termination. However, the Eureka contract didn't expire until June 9, 2023. On that
2 day, Wright received notice that the contract had expired and was not going to be
3 renewed due to "performance issues." However, during the entire time PYNQ had
4 run the Eureka route, Wright had never received any notices about performance,
5 never once having receiving an "Opportunity to Cure" or any "Letters of Assurance"
6 regarding performance concerns.

7 206. Wright's access rights to MGBA were quickly revoked without any
8 notification and before she even had a chance to recover any of PYNQ's normal
9 business records, which FedEx Ground requires that ISPs store on FedEx Ground's
10 systems. When Wright requested that FedEx Ground provide her with these
11 business records, FedEx Ground's response was that she would need to issue a
12 subpoena for them⁶.

13 FIRST CAUSE OF ACTION

14 FRAUD, CONCEALMENT, AND FALSE PROMISE

15 207. The Plaintiff realleges and incorporates by reference all preceding
16 paragraphs of this Complaint as if fully set forth herein.

17
18
19 ⁶ FedEx Ground's removal of access rights to PYNQ's MGBA Account, and refusal to provide access to
20 PYNQ's business records stored on FedEx Ground's computer systems, is itself another violation by FedEx
21 Ground of its own ISPA.

1 208. FedEx Ground's Independent Service Provider Business Model Relies on
2 a pipeline of contractors to provide package and delivery services to FedEx Ground
3 as part of its business system; this business model systematically, knowingly, and
4 intentionally misrepresents the nature of the business relationship to prospective
5 contractors, like Plaintiff, PYNQ, in order to fraudulently entice them into FedEx
6 Grounds contractor system. These business practices continue throughout different
7 stages of the business relationship from the marketing and promotion through
8 termination of the contractor's relationship with FedEx Ground.

9 209. FedEx Ground's fraudulently marketed and promoted to potential
10 contractors like Plaintiff, PYNQ, making material representations that PYNQ, like
11 other contractors, would be investing in "business opportunity" to purchase a P&D
12 Business, and operate as an independent contractor, among other representation
13 and promised, including that PYNQ would have full control over its own operations,
14 employees, and business growth. The reality was that FedEx Ground knowingly and
15 intentionally has created a system to fully control contractors like PYNQ, including
16 PYNQ's employees, and ability to grow its business.

17 210. From the initial point of communication between the Plaintiff, PYNQ and
18 FedEx Ground, starting at the negotiations of the ISPA, the Defendant, FedEx
19 Ground, knowingly and intentionally concealed material information relating to the

1 policies, procedures, and business practices that FedEx Ground expects from its
2 contractors in the performance of services for FedEx Ground nor disclosed the true
3 nature of the relationship between the Plaintiff, FedEx Ground and its contractors.

4 211. FedEx Ground's Initial Negotiations of the ISPA are the starting point of
5 FedEx Ground's fraud, concealment, and false promise with respect to its
6 contractors like PYNQ. As the ISPA makes reference to numerous polices,
7 procedures, and practices to which the prospective contractor, like PYNQ, has no
8 access to until after the ISPA is executed; and even after a contractor has executed
9 the ISPA FedEx Ground retains for itself the right to unilaterally change numerous
10 these polices, procedures, and practices at will, which regularly supersede or
11 otherwise override the terms of the ISPA as presented to contractors, such as PYNQ,
12 and which render the ISPA meaningless to the contractor in practice. The true nature
13 of the contractor's relationship to FedEx Ground in practice does not become clear
14 until after the contractor begins working for FedEx Ground. Many of the policies that
15 actually control the contractor are only brought to the attention of contractor after
16 FedEx Ground uses the policy against the contractor to either control the contractor
17 or eliminate the contractor from FedEx Ground's system.

18 212. FedEx Ground's business model systematically, knowingly, and
19 intentionally suppresses and prevents the disclosure to potential contractors the

1 true nature of the relationship FedEx Ground has with its contractors, FedEx
2 Ground's business practices surrounding CSAs (Routes) or the other business
3 practices that it engages in with its contractors.

4 213. Material information about the CSAs, financial projections provided to
5 contractors as an incentive, as well as other FedEx Ground business practices which
6 would be material to a contractor such as Plaintiff, PYNQ's decision to enter into an
7 ISPA with FedEx Ground are and were systematically, knowingly, and intentionally
8 not disclosed to Plaintiff, PYNQ before it entered into the ISPA.

9 214. FedEx Ground had a duty to disclose such material information to
10 Plaintiff, PYNQ, as it was essential to the basis of the bargain.

11 215. Throughout the course of PYNQ's business relationship with FedEx
12 Ground, FedEx Ground systematically, knowingly, and intentionally engaged in
13 deceptive business practices with respect to its contractors, including Plaintiff,
14 PYNQ, in order to obtain concessions and extra-contractual services and induce
15 continued investments in equipment and employees, in order to provide continued
16 performance of services to FedEx Ground based on knowingly false promises of a
17 continued contractual relationship, when FedEx Ground does not actually intend to
18 continue such relationships.

1 216. FedEx Ground engaged in a pattern of systematic, knowing, and
2 intentionally fraudulent conduct when it fundamentally changed the terms relating
3 to the renegotiation, renewal, and valuation of Plaintiff, PQNQ's CSA (Routes); and
4 knowingly misled Plaintiff with regard to such renegotiation, renewal, and valuation
5 of Plaintiff, PYNQ's CSA (Routes); and unilaterally contracted these routes to another
6 contractor, while representing to Plaintiff, PYNQ, that FedEx Ground intended to
7 continue contracting with it.

8 217. As the direct and proximate cause of FedEx Ground's aforementioned
9 acts and business practices and the good faith reliance by Plaintiff, PYNQ, PYNQ has
10 suffered injuries and damages.

11 218. Due to FedEx Ground's systematic, knowing, and intentional conduct,
12 PYNQ has suffered substantial damages in an amount over \$1.0MM, an exact
13 amount to be determined at trial.

14 **SECOND CAUSE OF ACTION**

15 **NEGLIGENT MISREPRESENTATION**

16 219. The Plaintiff realleges and incorporates by reference all preceding
17 paragraphs of this Complaint as if fully set forth herein.

18 220. FedEx Ground's fraudulently marketed and promoted to potential
19 contractors like Plaintiff, PYNQ, making material representations that PYNQ, like
20

1 other contractors, would be investing in “business opportunity” to purchase a P&D
2 Business, and operate as an independent contractor, among other representation
3 and promised, including that PYNQ would have full control over its own operations,
4 employees, and business growth. The reality was that FedEx Ground knowingly and
5 intentionally has created a system to fully control contractors like PYNQ, including
6 PYNQ’s employees, and which has internal policies that prevent the growth of a
7 contractor’s business beyond a size determined by FedEx Ground.

8 221. From the initial point of communication between the Plaintiff, PYNQ and
9 FedEx Ground, starting at the negotiations of the ISPA, the Defendant, FedEx
10 Ground, knowingly and intentionally concealed material information relating to the
11 policies, procedures, and business practices that FedEx Ground expects from its
12 contractors in the performance of services for FedEx Ground nor disclosed the true
13 nature of the relationship between the Plaintiff, FedEx Ground and its contractors.

14 222. FedEx Ground’s Initial Negotiations of the ISPA are the starting point of
15 FedEx Ground’s fraud, concealment, and false promise with respect to its
16 contractors like PYNQ. As the ISPA makes reference to numerous policies,
17 procedures, and practices to which the prospective contractor, like PYNQ, has no
18 access to until after the ISPA is executed; and even after a contractor has executed
19 the ISPA FedEx Ground retains for itself the right to unilaterally change numerous

1 these policies, procedures, and practices at will, which supersede the terms of the
2 ISPA as presented to the contractors, such as PYNQ, and which render the ISPA
3 meaningless to the contractor in practice. The true nature of the contractor's
4 relationship to FedEx Ground in practice does not become clear until after the
5 contractor begins working for FedEx Ground. Many of the policies that actually
6 control the contractor are only brought to the attention of contractor after FedEx
7 Ground uses the policy against the contractor to either control the contractor or
8 remove the contractor from FedEx Ground's system.

9 223. FedEx Ground's business model systematically, knowingly, and
10 intentionally suppresses and prevents the disclosure to potential contractors the
11 true nature of the relationship FedEx Ground has with its contractors, FedEx
12 Ground's business practices surrounding CSAs (Routes) or the other business
13 practices that it engages in with its contractors.

14 224. Material information about the CSAs, financial projections provided to
15 contractor as an incentive, as well as other FedEx Ground business practices
16 material to a contractor such as Plaintiff, PYNQ's decision to enter into an ISPA with
17 FedEx Ground are and were systematically, knowingly, and intentionally not
18 disclosed to Plaintiff, PYNQ before it entered into the ISPA.

1 225. FedEx Ground had a duty to disclose such material information to
2 Plaintiff, PYNQ, as it was essential to the basis of the bargain.

3 226. Throughout the course of PYNQ's business relationship with not actually
4 FedEx Ground systematically, knowingly, and intentionally engaged in deceptive
5 business practices with respect to its contractors, including Plaintiff, PYNQ, in order
6 to obtain concessions and extra-contractual services and continued investments in
7 equipment and employees, in order to provide continued performance of services
8 to FedEx Ground based on knowingly false promises of a continued contractual
9 relationship, when FedEx Ground does not actually intend to continue such
10 relationships.

11 227. FedEx Ground engaged in a pattern of systematic, knowing, and
12 intentionally fraudulent conduct when it fundamentally changed the terms relating
13 to the renegotiation, renewal, and valuation of Plaintiff, PYNQ's CSA (Routes); and
14 knowingly misled Plaintiff with regard to such renegotiation, renewal, and valuation
15 of Plaintiff, PYNQ's CSA (Routes); and unilaterally contracted these routes to another
16 contractor, while representing to Plaintiff, PYNQ, that FedEx Ground intended to
17 continue contracting with it.

228. As the direct and proximate cause of FedEx Ground's aforementioned acts and business practices and the good faith reliance by Plaintiff, PYNQ, PYNQ has suffered injuries and damages.

229. Due to FedEx Ground's systematic, knowing, and intentional conduct, PYNQ has suffered substantial damages in an amount over \$1.0MM, an exact amount to be determined at trial.

THIRD CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

230. The Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

231. PYNQ had both existing and prospective business and/or contractual relations with its employees.

232. FedEx Ground in connection with the contractor that it wrongfully entered into an ISPA with for the Eureka Route, engaged in Tortious Interference, by, including but not limited to, preventing, or interfering with PYNQ's ability to carry its contractual and legal obligations to its employees and to otherwise interfere in the performance of its operations and ability to perform.

233. As a direct and proximate cause of FedEx Ground's Tortious Interference, PYNQ has suffered injuries and damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

(18 USC §§ 1961, ET SEQ.)

234. The Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

235. FedEx Ground's systematic, knowing, and intentional conduct is part of a larger and systematic pattern of illegal and wrongful business practices and is a violation of the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. FedEx Ground has violated § 1962(a) and § 1962(c) of RICO.

236. FedEx, through FedEx Ground and other corporate entities, is an enterprise engaged and whose activities affect interstate commerce. FedEx Ground is associated with the enterprise.

237. FedEx Ground agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding Plaintiff. Specifically: FedEx Ground induced the Plaintiff to enter a contract with FedEx Ground that was fraudulently induced and fraudulent on its face; FedEx Ground defrauded the Plaintiff by unilaterally and arbitrarily changing the area covered by the CSA, an asset that Plaintiff had bid on and purchased as part of the original contract it signed with

1 FedEx Ground; FedEx Ground fraudulently maintained that it was negotiating an
2 extension to Plaintiff's contract while it negotiated a contract with a replacement ISP.

3 238. Pursuant to and while furthering their fraudulent scheme FedEx Ground,
4 through its agents and employees committed multiple related acts of Mail Fraud, in
5 violation of 18 U.S.C. §1341; Wire Fraud, in violation of 18 U.S.C. §1343; and Felony
6 Extortion in violation of California state law Cal. Penal Code §518, et seq.

7 239. The acts of Mail Fraud, in violation of 18 U.S.C. §1341; Wire Fraud, in
8 violation of 18 U.S.C. §1343; and Felony Extortion in violation of California state law
9 Cal. Penal Code §518, et seq. set forth above constitute a pattern of racketeering
10 activity pursuant to 18 U.S.C. § 1961(5).

11 240. FedEx Ground has directly and indirectly conducted and participated in
12 the conduct of the enterprise's affairs through the pattern of racketeering activity
13 described above in violation of 18 U.S.C. §1962(c).

14 241. As a direct and proximate result of FedEx Ground, through it's agents
15 and employees, racketeering activities and violations of 18 U.S.C. § 1962 (c), Plaintiff
16 has been injured in their business and property in that: Plaintiff was induced to enter
17 a fraudulent contract as an independent contractor but FedEx treats them in effect
18 as an employee, invested over \$1,125,000.00 into the business opportunity, forwent
19 entering other contracts, provide FedEx Ground with both a fleet of vehicles and

1 drivers to provide package and delivery services; but which allows FedEx Ground to
2 both control this fleet of vehicles and drivers with no direct responsibility for them,
3 and to wrongfully shift all business risk to contractors for a business scheme
4 marketed as a business opportunities to these would be contractors. and lost its
5 investment in a CSA.

6 242. FedEx's entire business model facilitates this racketeering activity. FedEx
7 has constructed a unique system of contracts to straddle different areas of law,
8 while attempting to avoid any of obligations these legal frameworks should impose
9 on it. Thus, FedEx, through FedEx Ground has created a system resembling a
10 franchise-like arrangement, in which it allows its contractors to provide services
11 integrated into the FedEx Ground system and under the FedEx Ground brand, but
12 as set out below carefully attempts to contract away the obligations that would
13 otherwise apply to its actual business conduct.

14 243. As part of its elaborate contracting process, FedEx further requires its
15 contractors to represent that they are each an independent contractor, for the
16 purpose of the agreement between them (namely the "ISPA"), however, in practice
17 FedEx's system (as governed by other extra-contractual policies, procedures, and
18 actual business practices, many of which not disclosed until they are weaponized
19 against a contractor) empowers FedEx to exercise the same level of control over the

1 operations of the contractors and their employees an employer would. The system
2 integrates the contractors into the FedEx Ground system with very little practical
3 distinction between FedEx Ground's operations and that of its contractors, except
4 on paper.

5 244. This system has been carefully and meticulously created to shift nearly
6 all the business risk; namely capital investment, employment law, employment
7 taxation, regulatory and insurance risk of owning and operating a fleet of package
8 and delivery vehicles onto approximately 7,000 separate small businesses who
9 FedEx Ground can effectively hire, direct, and terminate at will; without the normal
10 obligations of directly owing and maintaining such a fleet, or having employees.

11 245. FedEx Ground engages in business activities in relation to its contractors
12 that would be patently illegal under employment law in most States where FedEx
13 Ground operates.

14 246. All business risks of seasonal and other fluctuating package volumes;
15 including a vehicle fleet, maintenance, fuel, and staffing requirements among others
16 are shifted to and borne by FedEx Ground's contractors; and the variable
17 profitability of different Routes in FedEx Grounds system syndicated and borne by
18 these contractors.

1 247. FedEx Ground, by using a combination of carefully crafted contract terms
2 and other policies, requires its contractors to form corporations as condition to
3 contracting, requires its pool of qualified drivers employed by the contractor and
4 not directly employed by FedEx Ground; and systematically preventing contractors
5 from growing their business beyond a size as dictated by FedEx Ground's own
6 policies, FedEx Ground is able to effectively control its contractors and drivers and
7 simultaneously prevent labor organizing by its contractors and drivers; many of the
8 owners of ISPs being drivers themselves.

9 248. FedEx ground shifts to its contractors and shields itself from all
10 responsibility for the employment, benefits, and employment taxes of a pool of
11 drivers, who all are contractually obligated effectively to work for FedEx Ground
12 exclusively, through the contractor's agreement with FedEx Ground.

13 249. FedEx Ground's system allows it to change business policies and
14 requirements without the need to compensate its contractors for any losses they
15 may encounter as a result of such a policy change. FedEx Ground can simply
16 terminate or not renew a contract with a contractor and offer its routes to a new
17 contractor, who will take on its own set of financial risks, and in some cases take on
18 the employees of the previous contractor. Leaving the previous contractor bearing
19 the financial losses of the unprofitable business policy; or unprofitable route.

1 250. FedEx Ground's systematic, knowing, and intentional use of systems to
2 limit the operations, growth, and size of its contractors constitutes an illegal restraint
3 of trade, that it contracts for and conceals by use of its system and the ISPA.

4 251. Although FedEx Ground's actual business relationship with its
5 contractors operates independently of the ISPA, FedEx Ground uses its elaborately
6 drafted ISPA and other policies working together as a part of its complete system as
7 both a sword (to control its contractors) and a shield to eliminate any practical
8 means for a contractor to seek a remedy as well as to conceal FedEx Ground's
9 business practices and illegal conduct.

10 252. FedEx Ground knowingly and intentionally threatens and intimidates
11 contractors, including contractors that it terminates as part of this system of control.
12 Contractors that have been terminated by FedEx Ground, who have not been
13 allowed to assign (sell) their CSAs are regularly left financially devastated with little
14 to no recourse.

15 253. PYNQ brings this case for actual damages, treble damages, attorney's
16 fees and equitable relief under 18 U.S.C. § 1964, for violations of 18 U.S.C. § 1961, et
17 seq.

FIFTH CAUSE OF ACTION

CALLIFORNIA UNFAIR COMPETITION LAW

(Business and Professions Code §§ 17200 et seq.)

254. The Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

255. Business and Professions Code § 17200, the “California Unfair Competition Law” or “UCL” prohibits any unlawful, unfair, or fraudulent business practices. An “unlawful” business practice includes any Violation of the law. By the acts alleged above, including FedEx Ground’s false advertising and its fraudulent business acts, FedEx Ground’s conduct was unlawful and fraudulent, in Violation of Civil law.

256. The Plaintiff, PYNQ is the of the class of plaintiffs intended to be protected by the ULC.

257. FedEx Ground’s conduct, as alleged above, directly harmed Plaintiff, PYNQ, as PYNQ was a victim of such unlawful and unfair, and fraudulent business practices.

258. As a direct and proximate cause of FedEx Ground’s violations of the UCL, PYNQ has suffered injuries and damages in an amount to be proven at trial.

1 SIXTH CAUSE OF ACTION

2 CIVIL CONSPIRACY

3 259. The Plaintiff realleges and incorporates by reference all preceding
4 paragraphs of this Complaint as if fully set forth herein.

5 260. FedEx Ground's systematic, knowing, and intentional conduct and
6 business practices, described above, by and through various officers and managers
7 of FedEx Ground (DOES 1-10, inclusive), constitutes a civil conspiracy in the
8 furtherance of the knowing and intentional illegal and wrongful activities alleged.

9 SEVENTH CAUSE OF ACTION

10 DECLARATORY RELIEF

11 261. The Plaintiff realleges and incorporates by reference all preceding
12 paragraphs of this Complaint as if fully set forth herein.

13 262. An actual controversy has arisen and presently exists between PYNQ and
14 FedEx Ground concerning their employment relationship.

15 263. Although FedEx Ground requires its contractors to represent that they
16 are independent contractors as part of the ISPA, FedEx Ground's management and
17 treatment of its so-called contractors is not consistent with an independent
18 contractor relationship, but rather an employer-employee relationship.

264. FedEx Ground has full discretion and authority to direct its contractors on how to engage in delivering the packages, which employees the contractors can hire and which they need to terminate.

265. PYNQ therefore requests a judicial determination that the relationship between PYNQ and FedEx Ground is that of an employer-employee, not an independent contractor.

EIGHTH CAUSE OF ACTION

INJUNCTIVE RELIEF

266. The Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

267. The Plaintiff, PYNQ, requests that the Court enter findings of fact and conclusions of law permanently enjoining FedEx Ground from continuing in the illegal and other wrongful business practices described throughout the Complaint.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for the following relief:

1. For Money Judgement against FedEx Ground in a specific amount to be determined at trial;
2. Exemplary Damages, as authorized by 18 USC §§ 1961, ET SEQ ("RICO"), and Calif. Business and Professions Code §§ 17200 et seq.

3. Punitive Damages, against FedEx Ground in connection with Plaintiff's claims for Fraud, Concealment, and False Promise; Negligent Misrepresentation; and Tortious Interference.

4. Pre-Judgment Interest at the statutory rate allowable;

5. Plaintiff's reasonable attorney's fees and costs of litigation as provided by statute;

6. For such other and further relief as the Court may deem just and equitable;

7. Plaintiffs specifically reserve the right to amend these pleadings, including the naming of additional parties, upon such information that is obtained during the course of litigation, through the process of formal discovery, to conform with the evidence, or as otherwise appropriate in the interests of justice.

8. Plaintiff specifically reserves the right to seek class certification of the claims brought in this Complaint.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues.

////

////

2 || */////*

3	
---	--

4 || DATED this 14th day of November, 2023.

5

6

7

POSSINGER LAW GROUP, PLLC

8

Jeffrey Rosenberg

Jeffrey Possinger, WSBA #30854

9

Appearance by Pro Hac Vice

10

20250 144th Avenue NE, Suite 205

11

Woodinville, Washington 98072

12

(t) 206-512-8030

13

(f) 206-569-4792

14

(e) jeffrey.possinger@possingerlaw.com

15

BERMAN NORTH, LLP

16

Scott Berman

17

Scott A. Berman, CA SB #191460

18

2001 Van Ness Ave, Ste. 300

19

San Francisco, CA 94109

20

(t) (650) 463-9488

21

(e) scott@bermannorth.com

Attorneys for the Plaintiff