

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In re FEDEX GROUND PACKAGE)
SYSTEM, INC., EMPLOYMENT)
PRACTICES LITIGATION)
))

THIS DOCUMENT RELATES TO:)
))
Larry Louzau, et al. v. FedEx Ground)
Package System, Inc.,)
Case No. 3:05-cv-538 RLM (NY))
))

ORDER GRANTING JOINT MOTION FOR INDICATIVE RULING GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED NEW YORK CLASS ACTION SETTLEMENT, TO APPROVE THE FORM, CONTENT AND PLAN FOR DISTRIBUTION OF NOTICE TO SETTLEMENT CLASS, APPOINT A SETTLEMENT ADMINISTRATOR, AND TO SCHEDULE A HEARING ON FINAL APPROVAL

WHEREAS, Plaintiffs filed this class action in October 27, 2004;

WHEREAS, Plaintiffs asserted a variety of common law and statutory legal claims arising from their contention that Defendant had misclassified them as independent contractors;

WHEREAS, Defendant denies Plaintiffs' allegations and contests liability with respect to any and all facts alleged and claims asserted in this action and further denies that Plaintiffs or Class Members have suffered any damages as a result of the alleged conduct;

WHEREAS, Plaintiffs and Defendant have reached agreement on the terms of a settlement on behalf of the class certified by the MDL Court in March 25, 2008 and those terms have been memorialized in a Settlement Agreement, dated June 14, 2016;

WHEREAS, the instant matter is pending before the Seventh Circuit Court of Appeal in Case No. 11-1046, divesting this Court of jurisdiction;

WHEREAS, the parties have submitted a Joint Motion for an Indicative Ruling Pursuant to Federal Rule of Civil Procedure 62.1 on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and will be submitting to the Court of Appeal a motion for limited remand pursuant to Federal Rule of Appellate Procedure 12.1 to permit entry of this order; and

WHEREAS, in the context of the proposed settlement and for settlement purposes only, Defendant are not opposing the Motion for Preliminary Approval ("Motion");

NOW, THEREFORE, having considered the Joint Motion for an Indicative Ruling and the Plaintiffs' Unopposed Motion for Preliminary Approval and supporting memorandum,

IT IS HEREBY ORDERED AS FOLLOWS:

If this case is remanded to the District Court by the Court of Appeals, this Court will grant the parties' joint motion pursuant to Rule 62.1 of the Federal Rules of Civil Procedure and proceed to enter the within order granting Plaintiffs' Unopposed Motion for Preliminary Approval of the proposed class action settlement, to approve of the form, content and plan for distribution of notice to settlement class, to appoint a settlement administrator, and to schedule a hearing on final approval on the following terms;

1. The terms of the Settlement Agreement are preliminarily approved, as set forth below, subject to further consideration at a Fairness Hearing, which shall be held before this Court on **January 23-24, 2017**. The Settlement Agreement is incorporated by reference in this Order.

2. Pursuant to Fed. R. Civ. P. 23, the terms of the Settlement Agreement are preliminarily approved as (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical and procedural considerations of the action; (b) free of collusion to the detriment of the class members; and (c) within the range of possible final judicial approval, subject to further

consideration thereof at the Fairness Hearing described in paragraph 7 of this Order. Accordingly, the Settlement is sufficient to warrant notice thereof, as set forth below, and a full hearing.

3. The Court has received and reviewed the proposed form of Notice of Settlement Class Members (“Notice”) attached to the Settlement Agreement as Exhibit 3 and the proposed form of Class and Settlement Notice attached to the Settlement Agreement as Exhibit 4. The proposed Notices in the form submitted to the Court are hereby approved. The Court further finds that notice by mail is the most effective form of notice under the circumstances of this case, where class members have been identified by Defendant’s records. As provided in the Settlement Agreement, the Settlement Administrator shall mail (or cause to be mailed) the Notice to the class members. Notice shall be mailed on or about **September 12, 2016**. If any Notice is returned as undeliverable, the Settlement Administrator shall re-mail the Notice to the forwarding address, if any, provided on the face of the returned mail. If the returned mail does not reflect a forwarding address, then neither class counsel nor any other party shall have any further obligation to re-mail the Notice.

4. Any Unnotified Class Member, as that term is defined in Section I-L of the Settlement Agreement, who wishes to be excluded from and not be bound by the Settlement Agreement must complete and mail a request for exclusion to the Settlement Administrator postmarked no later than 60 days after transmittal of the Notice with certain exceptions identified in the parties’ Settlement Agreement. For a class member’s opt-out to be valid, it must be timely (as judged by the postmark deadline set forth above) and (a) state the Class Member’s full name, address, and telephone number; (b) state unequivocally that the Class Member wishes to opt out from the settlement; and (c) include the Class Member’s signature (an attorney’s signature is not sufficient). Any Unnotified class member who does not submit a timely opt-out, and otherwise

comply with all requirements for requesting exclusion from the classes as set forth above and in the Notice, shall be bound by the Settlement Agreement, including the Release provisions therein, and any Final Approval and Final Approval Order entered in the action. Further, any Unnotified class member who is a successful opt-out will be deemed to have waived any rights or benefits under the settlement, and will have no standing to object to the settlement or to seek to intervene in the Action. Notified Class Members, as that term is defined in Section I-K of the Settlement Agreement, who have previously received notice of their membership in the Certified Class and elected not to opt-out of the class, have no right to opt-out of the class settlement. On or before the date of the Fairness Hearing, class counsel and defendants' counsel shall create and jointly file with the Court a comprehensive list of opt-outs.

5. Any class member who wishes to object to the settlement, in whole or in part, must file a written objection with the Court or to Plaintiffs' lead counsel by first class mail postmarked no later than 60 days after the Notice of Settlement issues. To be considered valid, each objection must be timely (as judged by the filing deadline set forth above) and (a) provide the class member's full name, address, signature, and telephone number; (b) explain the basis of the objection; and (c) state whether the objector intends to appear at the Final Approval Hearing. Any class member who does not submit a timely and valid objection in complete accordance with this Order, the Notice of Settlement and the Settlement Agreement shall not be treated as having filed a valid objection to the settlement. Objections that are untimely and/or otherwise invalid will not be considered by this Court. In the event any objections are filed, Plaintiffs and/or Defendant may file any responses to any objections on the due date for the filing of Plaintiffs' Motion for Final Approval and will be heard at the Fairness Hearing.

6. A Fairness Hearing shall be held before the undersigned on **January 23-24, 2017**, in the United States District Court for the Northern District of Indiana, 204 S. Main Street, South Bend, Indiana, to determine, among other things; (a) whether the proposed settlement should be approved as fair, reasonable, and adequate; (b) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (c) whether class members should be bound by the release set forth in the Stipulation and Settlement Agreement; (d) the amount of attorneys' fees and costs to be awarded to class counsel; and (e) the amount to be awarded to Plaintiffs for their services as class representatives, if any. This hearing may be postponed, adjourned, or continued by order of the Court without further written notice to the class. Class Members who have filed timely objections to the Settlement and timely notice to the Court of their intent to appear at the Fairness Hearing may appear either in person or telephonically.

7. Rust Consulting, Inc. is designated and approved as the Settlement Administrator to perform the functions identified in Sections II and V of the Settlement Agreement, including but not limited to the establishment of the Qualified Settlement Fund for the purpose of resolving the contested claims, as described more fully in Sections II and V of the Settlement Agreement pursuant to Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 CFR § 1.468B-1, *et. seq.* and this Order.

8. The class notices shall be mailed on or about **September 12, 2016**. Applications for awards of attorneys' fees, costs, settlement administration expenses, and any service awards, shall be filed with the Court on or before **September 12, 2016**. Objections and Notices to Appear shall be filed with the Court by objecting class members, if any, on or before **November 14, 2016**. Class member challenges to the estimated payment calculations, if any, shall be sent to the

Settlement Administrator no later than **November 14, 2016**. Plaintiffs' Motion for Final Approval and Memoranda in support of the settlement shall be filed on or before **December 15, 2016**.

9. All other events contemplated by the Settlement Agreement to occur after this Order and before Final Approval shall be governed by the Settlement Agreement, to the extent not inconsistent with this order.

10. The parties are authorized to establish the means necessary to administer the Settlement.

11. All proceedings in the action, other than those that may be necessary to carry out the terms and conditions of the Settlement Agreement or related and/or incidental responsibilities are stayed and suspended until further order of this Court.

12. If Final Approval of the settlement is not granted, or if the settlement is terminated for any reason, the settlement and all proceedings had in connection shall be without prejudice to the *status quo ante* rights of the parties to the action, and all orders issued pursuant to the settlement shall be vacated. In such an event, the settlement and all negotiations concerning it shall not be used or referred to in this action for any purpose whatsoever. This Order shall be of no force or effect if Final Approval does not occur for any reason, and nothing in this Order shall be construed or used as an admission, concession, or declaration by or against defendants, of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed by or against Plaintiffs or the Class Members that their claims lack merit or that the relief requested in this action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses it may have.

13. Neither the settlement nor the Settlement Agreement constitutes an admission, concession, or indication by the parties of the validity of any claims or defenses in the action; or

of any wrongdoing, liability, or violation of law by the defendants, who vigorously deny all of the claims and allegations raised in the action.

14. The Court reserves the right to approve the settlement with such modifications, if any, as may be agreed to by class counsel and defendants' counsel without future notice to the class members.

15. Between the date of the entry of this Order and the date of the Fairness Hearing, the classes and each class member shall be enjoined from initiating any claim, suit or proceeding against the defendants with respect to any claim that is the subject of the settlement.

SO ORDERED.

ENTERED: August 3, 2016

 /s/ Robert L. Miller, Jr.
Judge
United States District Court