

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
ex rel. MARY GAROFO LO,

Plaintiffs

v.

FEDEX CORPORATION AND
FEDEX EXPRESS, FEDEX GROUND,
FEDEX FREIGHT, FEDEX KINKO'S
OFFICE AND PRINT SERVICE,
FEDEX CUSTOM CRITICAL,
FEDEX TRADE NETWORKS,
FEDEX SUPPLY CHAIN SERVICES
AND FEDEX SERVICES,

Defendants.

Civil Action No. _____

Complaint and Plaintiffs'
Demand for a Jury Trial

**FILED UNDER SEAL
PURSUANT TO 31 U.S.C.
§ 3730(b)(2)
DO NOT PLACE IN PRESS BOX
DO NOT ENTER ON PACER**

**FALSE CLAIMS ACT COMPLAINT
AND DEMAND FOR JURY TRIAL**

I. Parties

1. Relator Mary Garofolo is a resident of the state of Maryland and a current employee of FedEx Express. Relator is the original source of the facts and information hereinafter set forth concerning the activities of the defendants. The facts averred herein are based upon Relator's direct, independent, and personal knowledge, upon information and belief, and also upon documents in her possession.

2. Federal Express Corporation, including its operating companies FedEx Express, FedEx Ground, FedEx Freight, FedEx Kinko's Office and Print Service, FedEx Custom Critical, FedEx Trade Networks, FedEx Supply Chain Services and FedEx Services, (hereinafter "FedEx" or "defendants") is a corporation with its principal place of business at 942 South Shady Grove Road, Memphis, Tennessee. Defendants are principally engaged in providing business services, including packing, shipping, transportation and e-commerce services. Defendants conduct business in more than 220 countries and territories, and in the United States, including in the District of Columbia.

II. Jurisdiction

3. This action arises under the False Claims Act, 31 U.S.C. Sections 3729 et seq. This Court has jurisdiction over this case pursuant to 31 U.S.C. Sections 3732(a). This court also has jurisdiction pursuant to 28 U.S.C. Sections 1331, 1345 and 1367.

III. Venue

4. Venue is proper in this District pursuant to 31 U.S.C. Section 3732(a), because acts proscribed by 31 U.S.C. Sections 3729 et seq and complained of herein took place in this district. Venue is also proper in this District pursuant to 28 U.S.C. Sections 1391 (b) and (c), because at all times material and relevant, defendants could be found, resided and transacted business in this District. Defendants continue to do so.

IV. Facts

5. The Relator has prepared and served upon the Attorney General of the United States and the United States Attorney for the District of Columbia with this complaint, a full disclosure of substantially all material facts and information relevant to this case pursuant to 31 U.S.C. Section 3730(b)(2). This disclosure statement is supported by material evidence known to Relator at her filing establishing the existence of defendants' false claims. Because the statement includes attorney-client communications and work product of Relator's attorneys, and is submitted to the Attorney General and to the United States Attorney in their capacity as potential co-counsel in the litigation, the Relator understands this disclosure to be confidential.

6. Defendants FedEx offer ground delivery and express package services within the United States, including: FedEx Same Day (delivery time depends on the flight availability); FedEx First Overnight (guarantees arrival by either 8:00 a.m. or 8:30 a.m. the following business day); FedEx Priority Overnight (guarantees arrival by 10:30 a.m., the following business day); and FedEx Standard Overnight (guarantees arrival by 3:00 p.m., the following business day).

7. Defendants FedEx offer international express and ground packages service, including: FedEx International Next Flight (delivery based on flight availability); FedEx International First (8:00 a.m. or 8:30 a.m. delivery to select European cities); and FedEx International Priority (1-3 business day delivery based on country).

8. Prices for both domestic and international FedEx services are based on package weight, shipment dimensions, destination and type of service purchased, plus special fees and surcharges, including fuel surcharges, multiple-piece shipments, oversize packages, and re-delivery service.

9. A large percentage of defendants' business consists of delivery services contracted for and paid for by the United States government and other State and local governments. Upon information and belief, defendants' annual gross revenue from government contracts amounts to hundreds of millions of dollars.

10. A large percentage of defendants' business consists of delivery services contracted for and paid for by government contractors who pass the cost of these services through to the United States government, and other State and local governments. Upon information and belief, defendants' annual gross revenues from government contractors who then pass the cost of defendants' services onto the government amount to many millions of dollars.

11. When the United States government or any customer contracts with FedEx for delivery services, an "Airbill" is filled out for each package, indicating such information as the destination, class of service and billing information. The class of service purchased indicates the delivery time for which the customer has contracted. For example, if the customer has purchased priority overnight delivery, the package is guaranteed to be delivered by 10:30 a.m. the next business day. If the customer has purchased standard delivery, the package is guaranteed to be delivered by 3:00 p.m. the next business day.

12. Each package handled by FedEx is assigned a tracking number, also known as a bar code, at the time the sender gives the package to FedEx. The bar codes on the packages are scanned at the time the packages are loaded onto delivery trucks and again when they are actually delivered to the customer. The tracking system allows FedEx to make a record of any delays that may occur in delivery. If a delay does occur, then FedEx is obligated to refund a customer.

13. FedEx's Service Failure Guarantee, promises its customers that a failure to deliver on-time will entitle the customer to a refund. FedEx defines a service failure as whenever service occurs sixty seconds or more after the published delivery commitment time for the selected service and destination.

14. A limited number of exceptions exist to FedEx's Service Failure Guarantee including delays caused by weather, a bad address on the package or delays caused by security procedures at the delivery location. The exception entered into the tracking system for delays caused by security procedures is known as a "Code 5."

15. Prior to the terrorist attacks of September 11, 2001, FedEx rarely encountered delays caused by security procedures and thus rarely used Code 5.

16. After the events of September 11, FedEx began to use Code 5 more frequently. This code was used primarily at government installations where the initial increase in security after the terrorist attacks caused genuine delays in package deliveries.

17. Sometime after September 11, 2001, delays caused by security checkpoints at government facilities subsided, yet FedEx continued to use Code 5 to excuse any delays in delivery to government services, even delays that had nothing to do with security procedures at the government facility. This practice became so rampant as to become part of FedEx's manner of doing business with the government. In many instances, entire truckloads of FedEx packages are designated as having been delayed due to a "security delay" prior to the truck having even left the FedEx facility. In such instances, the delivery person clearly has not yet encountered any security delay but fabricates the false record anyway so as to create an excuse for not delivering the service for which the federal government will be asked to pay or has already paid. If these security delays were genuine ones, then FedEx would have long ago determined (following the repetition of the same delay for months or even years) that such delivery service classes as Priority Service were simply unavailable at certain government installations.

18. FedEx presents a false claim to the United States each time it seeks payment for a delivery service not provided. Hundreds perhaps even thousands of these claims are presented each day by FedEx to the United States. Priority Service class deliveries make up the majority of these false claims, but FedEx presents false claims to the United States for other classes of delivery services as well.

19. The systematic presentation of these false claims to the United States over a period of years represents a deliberate scheme on the part of FedEx to overcharge the United States government and nets FedEx millions of dollars a year.

20. This scheme not only fraudulently nets FedEx millions of dollars directly from the federal government but also allows FedEx to subsidize its other non-federal government business at the expense of United States taxpayers. At the heart of the scheme lies FedEx's decision to callously exploit the need for increased security at government installations following the 9/11 terrorist attacks.

21. FedEx creates false records as part of its scheme to overcharge the federal government by memorializing non-existent or long-standing security delays which allegedly prevent the fulfillment of such services day after day for years at a time. The primary method by which FedEx creates these false records is through the misuse of its "Code 5" designation.

22. FedEx makes false representations to federal customers regarding its failure to provide certain classes of service such as Priority Service when it claims that a delay in delivery to a government facility was caused by a security delay when in fact the delay was caused by FedEx's own action or inaction. These false representations are also used by FedEx to avoid living up to its Service Failure Guarantee and having to refund any payments made by federal customers.

23. Despite the fact that FedEx has failed in some instances for years to deliver Priority Service to certain government installations, it continues to charge the federal government millions upon millions of dollars for a service it never delivers.

24. In addition, government contractors who pay for failed Priority Service pass on their costs to the federal government so that FedEx is directly responsible for causing the contractors to submit false claims to the United States.

25. FedEx benefits from each and every false claim and statement it submits for a failed delivery service because it is overcharging the federal government for the difference between the service purchased and the service actually received. The overall volume of the government's business with FedEx allows FedEx to overcharge the federal government by millions of dollars or more.

26. The false claims and statements also allow FedEx to subsidize its service to non-federal customers. Deliveries to non-federal customers can be prioritized over those for federal customers because FedEx depends on not having to deliver its federal customer's packages on time. This not only allows FedEx to provide better service to its non-federal customers at the expense of the federal government but also increases FedEx's profits from the non-federal sector by reducing the likelihood that its non-federal deliveries will ever be late and cause FedEx to have to provide a refund.

27. FedEx's false claims have caused the United States enormous monetary losses by asking for payment for classes of delivery service that were never provided. Further loss has occurred because the FedEx service failures have inconvenienced government workers and sometimes even impeded those workers from performing their jobs.

COUNT I
FEDERAL FALSE CLAIMS ACT VIOLATIONS
(False or Fraudulent Claim)
(31 U.S.C. Section 3729(a)(1))

28. Relator re-alleges and incorporates the allegations in paragraphs 1-27 as fully set forth herein.

29. Defendants each knowingly presented or caused to be presented to an officer or employee of the United States Government, or a member of the Armed Forces of the United States, false or fraudulent claims for payment or approval.

30. The United States Government made payment upon the false or fraudulent claims presented or caused to be presented to it by Defendants.

31. By reason of these payments, the United States Government was damaged and is owed damages and penalties by Defendants pursuant to the FCA.

**COUNT II
FEDERAL FALSE CLAIMS ACT VIOLATIONS
(False Record or Statement)
31 U.S.C. Section 3729(a)(2)**

32. Relator re-alleges and incorporates the allegations in paragraphs 1-30 as fully set forth herein.

33. Defendants each knowingly created and used false records or statements in order to get false or fraudulent claims paid or approved by the United States Government.

34. The United States Government made payment upon the false or fraudulent claims presented to it where those claims were based on false records or statements created and used by Defendants.

35. By reason of these payments the United States Government was damaged and is owed damages and penalties by Defendants pursuant to the FCA.

**COUNT III
COMMON LAW FRAUD**

36. Relator re-alleges and incorporates the allegations in paragraphs 1-35 as fully set forth herein.

37. Defendants have engaged in a pattern and practice whereby they caused claims to be submitted when they knew or should have known that these claims were false, and intended to induce the United States government to pay on those claims.

38. The United States paid these false or fraudulent claims because of the acts of Defendants.

39. By reason of these payments, the United States has been damaged in an amount to be determined at trial exclusive of interest and costs.

**COUNT IV
UNJUST ENRICHMENT**

40. Relator re-alleges and incorporates the allegations in paragraphs 1-39 as fully set forth herein.

41. Defendants' conduct has unjustly enriched them with monies which in good conscience they should not be allowed to retain.

42. Defendants have been unjustly enriched to the detriment of the United States.

43. By reason of the overpayments described above, the United States is entitled to damages in an amount to be determined at trial exclusive of interest and costs.

**COUNT V
FRAUD IN THE INDUCEMENT**

44. Relator re-alleges and incorporates the allegations in paragraphs 1-43 as fully set forth herein.

45. Defendants made material, false representations to the government, namely that it provided certain classes of delivery service to certain government installations when Defendants knew this representation was false or made it recklessly.

46. Defendants made the representations with the intent to deceive. The government did in fact rely on these representations.

47. The representation caused injury to the government, in that the government paid money for services it did not receive.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests this Court to enter judgment against defendants as follows:


- (a) That the United States be awarded damages in the amount of three times the damages sustained by the United States because of the false claims and fraud alleged within this Complaint, as the Civil False Claims Act, 31 U.S.C. §§ 3729 *et seq.* provides;
- (b) That civil penalties of \$10,000 be imposed for each and every false claim that defendants presented to the United States;
- (c) That pre- and post-judgment interest be awarded, along with reasonable attorneys' fees, costs, and expenses which the Relator necessarily incurred in bringing and pressing this case;
- (d) That the Court grant permanent injunctive relief to prevent any recurrence of the False Claims Act violations for which redress is sought in this Complaint;

- (e) That the Relator be awarded the maximum percentage of any recovery allowed to her pursuant the False Claims Act, 31 U.S.C. §3730(d)(1) and (2);
- (f) For Counts Three, Four and Five above, the United States seeks recovery of all damages it has sustained, in amounts to be determined at trial, together with such other and further relief to which it may show itself entitled; and
- (g) That this Court award such other and further relief as it deems proper.

DEMAND FOR JURY TRIAL

Relator, on behalf of herself and the United States, demands a jury trial on all claims alleged herein.

Dated: 5/2/06



COUNSEL FOR RELATOR MARY GARAFOLO
Shanlon Wu
Julie A. Grohovsky
Wheat Wu, P.L.L.C.

Steven McCool
Joseph Mallon
Mallon & McCool, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served by hand delivery copies of the complaint
this ~~1st~~ ^{3RD} day of May, 2006 on the following:

Civil Process Clerk
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530

Laurie Weinstein
Assistant United States Attorney
Civil Division
United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20630

And to be served by certified mail on the following:

Attorney General of the United States at Washington, District of Columbia

Respectfully submitted,



Shanlon Wu