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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 INTERNATIONAL WHOLESALE
10 SUPPLY, INC., an Arizona corporation,

11 Plaintiff,

12 vs.

13 FEDERAL EXPRESS CORPORATION,
14 a Delaware corporation; FEDEX
15 GROUND PACKAGE SYSTEM, INC., a
16 Delaware corporation; and ARIZONA
17 ACCOUNTING AND INFORMATION
18 SERVICES, INC., an Arizona
19 corporation,

20 Defendants.

No. CV07-00751-PCT-SMM

AMENDED COMPLAINT

(Contract)

(Assigned to the Honorable
Stephen M. McNamee)

20 Plaintiff International Wholesale Supply, Inc. (hereinafter referred to as "Plaintiff
21 IWS"), by and through its undersigned counsel, hereby complains against Defendants
22 Federal Express Corporation and FedEx Ground Package System, Inc., (hereinafter
23 collectively referred to as "Defendants FedEx"), and Defendant Arizona Accounting
24 and Information Services, Inc. (hereinafter referred to as "Defendant AAIS") as
25 follows:
26

1 **PARTIES AND JURISDICTION**

2 1. Plaintiff IWS is an Arizona corporation and distributor of goods to various
3 retailers across the United States. Plaintiff IWS's domestic address and principal
4 place of business is located at 3006 London Bridge Road, Lake Havasu City, Arizona.
5

6 2. Defendants FedEx are both Delaware corporations sharing a foreign
7 address of 1209 Orange Street, Wilmington, Delaware. Defendants FedWx are both
8 registered to conduct business in the State of Arizona and they share a domestic
9 address and statutory agent located at 2394 E. Camelback Road, Phoenix, Arizona.
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11 3. Defendant Arizona Accounting and Information Services, Inc., is an
12 Arizona corporation in good standing with the Arizona Corporation Commission, and
13 doing business within the State of Arizona.

14 4. Defendants FedEx availed themselves to Mohave County, Arizona for the
15 purpose of providing shipping services under a contract with Plaintiff IWS. A dispute
16 concerning that contract forms the basis of this Complaint. Defendant AAIS
17 contracted to perform services within Mohave County, which services are the basis for
18 Plaintiff IWS' claims against Defendant AAIS. The parties have not otherwise agreed
19 to submit themselves to the jurisdiction of another court and the amount in
20 controversy exceeds \$5,000.00. Jurisdiction and venue are therefore proper in this
21 Court.
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1 **COUNT I – BREACH OF CONTRACT**

2 5. Plaintiff IWS hereby fully incorporates all foregoing averments in this
3 Count I as though fully set forth and restated herein.
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5 6. On or about February 28, 2005, Plaintiff IWS and Defendants FedEx
6 entered into a written contract entitled "FedEx Pricing Agreement" (hereinafter
7 referred to as "Agreement") whereby Defendants FedEx agreed to provide shipping
8 services to Plaintiff IWS. The Agreement incorporated various other documents,
9 including a "U.S. Domestic Earned Discount Attachment," a "Ground Pricing
10 Attachment," a "Ground Multiweight Pricing Attachment," and a "2005 Net Rate
11 Schedule." For reasons of confidentiality, the contract documents and their specific
12 terms are not attached as part of this Complaint.
13

14 7. The Agreement was present to Plaintiff IWS and was executed on behalf
15 of Defendants FedEx by an agent Delaware corporation, FedEx Corporate Services,
16 Inc., which at the time the parties entered the Agreement was a duly authorized agent
17 acting on behalf of and with full authority of Defendants FedEx.
18

19 8. The Agreement provided that Plaintiff IWS was to receive certain
20 incentives and discounts for its use of Defendants FedEx's shipping services,
21 including revenues from the difference between the "list" shipping rates and "discount"
22 shipping rates, i.e., the rates charged to Plaintiff IWS's customers and the rates billed
23 to Plaintiff IWS by Defendants FedEx.
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1 9. In order to facilitate the services it provided under the Agreement,
2 Defendants FedEx installed and maintained two shipping label printers at Plaintiff
3 IWS's distribution facility at 3006 London Bridge Road, Lake Havasu City, Arizona,
4 and as part of its contractual duties Defendants FedEx were to maintain and update
5 the software and data necessary to ensure the accurate printing of shipping labels
6 and invoicing pursuant to the list and discount rates in its Agreement with Plaintiff
7 IWS.
8

9
10 10. Defendants FedEx are believed to have hired and coordinated with a
11 third party or parties to integrate its hardware and software with Plaintiff IWS's existing
12 systems at its distribution facility. The integration performed by Defendants FedEx
13 and/or its agents or contractors caused a series of billing discrepancies, in breach of
14 the parties' Agreement, beginning in early 2005, resulting in rates being charged to
15 Plaintiff IWS and its customers that were not in accord with the Agreement.
16

17 11. As a result of the billing discrepancies, Defendant FedEx has breached
18 the Agreement, and Plaintiff IWS suffered damages, by way of losing revenues and
19 therefore not receiving the full benefit of its bargain under the parties' Agreement, in
20 an amount believed to be a minimum of \$65,702.16, but to be more particularly
21 ascertained at trial. Plaintiff IWS is entitled to interest at a rate of 10% per annum on
22 all revenue lost as a result of Defendants FedEx's breaches.
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1 12. Defendants FedEx are vicariously liable to Plaintiff IWS for the acts of
2 any third parties it hired or contracted to assist it in the systems integration at Plaintiff
3 IWS's distribution facility.
4

5 **COUNT II – BREACH OF IMPLIED COVENANT OF GOOD FAITH**

6 13. Plaintiff IWS hereby fully incorporates all foregoing averments in this
7 Count II as though fully set forth and restated herein.
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9 14. Defendants FedEx at all times relevant to the events complained of in
10 this action had an implied contractual duty of good faith and fair dealing to Plaintiff
11 IWS.
12

13 15. Defendants FedEx are closely affiliated with FedEx Corporation, a
14 Delaware corporation doing business internationally and publicly traded on the New
15 York Stock Exchange.
16

17 16. On or about October 31, 2006, officers and employees of Plaintiff IWS
18 met with certain employees or agents of Defendants FedEx to discuss the accounting
19 discrepancies and were told by Defendants FedEx's employees or agents that they
20 did not have the "means" to compensate Plaintiff IWS for its lost revenue, which it
21 acknowledged amounted to \$65,702.16 over a seventeen month period.
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23 17. Defendants FedEx's statements were untruthful and demonstrate a lack
24 of good faith and fair dealing, in breach of the parties' implied contractual duties.
25
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1 18. Plaintiff IWS has been damages by Defendants FedEx's breaches of
2 contract and subsequent failure to compensate it for its losses, which derive from
3 Defendants FedEx's breach of the implied covenant of good faith and fair dealing.
4

5 19. This action arises out of a breach of contract and Plaintiff IWS is entitled
6 to recover its reasonable attorneys' fees and costs expended in the bringing of this
7 action if it is the successful party, pursuant to Ariz. Rev. Stat. Ann. §§ 12-341, 12-
8 341.01.
9

10 **COUNT III – UNJUST ENRICHMENT**

11 20. Plaintiff IWS hereby fully incorporates all foregoing averments in this
12 Count III as though fully set forth and restated herein.
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14 21. Plaintiff IWS solicited Defendants FedEx to retain Defendant AAIS, with
15 whom Plaintiff IWS was acquainted through continuing business relations, to install
16 Defendants FedEx's hardware and software at Plaintiff IWS's premises, in furtherance
17 of the Agreement.

18 22. Defendants FedEx did retain Defendant AAIS to install the hardware and
19 software necessary under the Agreement, at Plaintiff IWS's premises.
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21 23. Plaintiff IWS conferred a benefit upon Defendant AAIS by recommending
22 Defendants AAIS for the work required to install Defendants FedEx's hardware and
23 software at Plaintiff IWS's premises.
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1 24. Plaintiff IWS has been impoverished by Defendant AAIS's failure to
2 properly install, program, and/or maintain the hardware and software installed at
3 Plaintiff IWS's premises in furtherance of the Agreement.
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5 25. There is a connection between Defendant AAIS's enrichment and Plaintiff
6 IWS's impoverishment.
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8 26. There is no justification for Defendant AAIS's enrichment and Plaintiff
9 IWS's impoverishment.
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11 27. There is no remedy provided by law to correct Plaintiff IWS's
12 impoverishment and Defendant AAIS's corresponding enrichment.
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14 28. Plaintiff IWS is therefore entitled to seek partial restitution from
15 Defendants AAIS in the amount of the contract price Defendant AAIS charged
16 Defendants FedEx for the installation and preparation of Defendants FedEx's
17 hardware and software at Plaintiff IWS's premises, in furtherance of the Agreement.
18

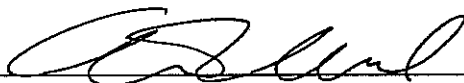
19 WHEREFORE, Plaintiff IWS prays for the judgment of this Court against
20 Defendants FedEx and Defendant AAIS, and each of them, as follows:
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- 22 A. For monetary damages against Defendants FedEx for breach of
23 contract in an amount to make Plaintiff IWS whole under the
24 parties' Agreement, alleged to be at least \$65,702.16;
- 25 B. For interest at a rate of 10% per annum against Defendants FedEx
26 for Plaintiff IWS's lost revenues.

- 1 C. For the recovery of Plaintiff IWS's reasonable attorneys' fees and
2 costs against Defendants FedEx, expended in bringing this action,
3 alleged to be a minimum of \$3,000.00.
4
5 D. For recovery of restitution against Defendant AAIS in the amount of
6 Defendant AAIS's contract for services with Defendants FedEx.
7

8 DATED this 3rd day of August, 2007.
9

10 SHORALL McGOLDRICK BRINKMANN

11
12 By 
13 Asa W. Markel
14 Attorneys for Plaintiff

15 ORIGINAL of the foregoing e-filed
16 this 3rd day of August, 2007, with:

17 Clerk of Court
18 U.S. District Court for the
19 District of Arizona
401 West Washington
Phoenix, Arizona 85003

20 COPIES of the foregoing e-served
21 this 3rd day of August, 2007, on:

22 The Hon. Stephen M. McNamee
23 U.S. District Court for the
24 District of Arizona
401 West Washington
Phoenix, Arizona 85003

25 Kenneth Lynn Gregory, Esq.
26 LENKOWSKY BIDWELL & KELLEY

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16 Lisa L. Steele, Esq.
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20 Attorneys for Defendant FedEx Ground
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