

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

MANJUNATH A. GOKARE, P.C.,
on behalf of itself and a class of all persons,
which includes all entities, similarly situated,

Plaintiff,

v.

FEDERAL EXPRESS CORPORATION,

Defendant.

Civil Action File No.
2:11-CV-2131-BBD-CGC

CLASS ACTION
JURY TRIAL

**ORDER DISMISSING MOTION WITHOUT PREJUDICE AND REFERRING PARTIES
TO MAGISTRATE JUDGE TO DEVELOP DISCOVERY PLAN**

On February 18, 2011, Manjunath A. Gokare, P.C. (“Plaintiff”) filed a complaint on behalf of itself and other putative class members, alleging breach of contract by Defendant Federal Express Corporation (“FedEx”). Plaintiff contends that FedEx frequently extracts overpayments from its customers by imposing residential delivery surcharges on shipments to non-residential destinations and that FedEx denies requests for adjustments when it is notified of the overcharges. Plaintiff further avers that these overcharges, taken individually, give rise to small-dollar claims that are uneconomical to pursue but which, considered in the aggregate, impose a financial injury on the putative class that exceeds \$5 million.

On May 18, 2011, FedEx filed a motion to deny class certification and strike the class allegations from Plaintiff’s complaint. (D.E. #17.) FedEx also moved for and was granted a stay of discovery pending resolution of its motion. Consequently, no discovery has been conducted in this case. Plaintiff filed a response in opposition to FedEx’s motion to deny class certification

on June 13, 2011. The Court held a hearing on the motion on July 13, 2011. In support of its motion, FedEx argues that its contract with Plaintiff and the other putative class members includes provisions that preclude class certification, including a prohibition on class actions and strict notice requirements. FedEx further argues that immediate denial of class certification, without the benefit of discovery, is appropriate because the effect of these provisions involves pure questions of law. In response, Plaintiff argues that the contractual provisions on which FedEx relies are unconscionable.

Rule 23(c)(1) of the Federal Rules of Civil Procedure states that the determination of class certification should occur “at an early practicable time.” In making this determination, district courts must conduct a “‘rigorous analysis’ into whether the prerequisites of Rule 23 are met.” In re Am. Med. Sys., 75 F.3d 1069, 1078-79 (6th Cir. 1996) (quoting Gen. Tel. Co. v. Falcon, 457 U.S. 147, 161 (1982)). “As a practical matter, the Court’s determination of [class certification] should usually be predicated on more information than the complaint itself affords.” 7AA Charles Alan Wright et al., Federal Practice and Procedure § 1785.3 (3d. 1998). Indeed, the Sixth Circuit has instructed district courts to “defer decision on certification pending discovery if the existing record is inadequate for resolving the relevant issues.” In re Am. Med. Sys., 75 F.3d at 1086 (quoting Chateau de Ville Prods., Inc. v. Trams-Witmark Music Library, Inc., 586 F.2d 962, 966 (2d Cir. 1978)).

After considering the parties’ arguments and the applicable case law and rules, the Court finds that FedEx’s motion is premature and that discovery is necessary for an informed judgment on class certification in this case. Notably, the issue of whether the applicable contract provisions are unconscionable is subject to review by the Court in the context of the factual circumstances of the case, which cannot be gleaned from the existing record. The Court will

therefore dismiss the motion without prejudice. The parties will be allowed to conduct limited discovery on the certification issue under the supervision of the Magistrate Judge. The Court lifts the stay on discovery and refers the parties to the Magistrate Judge for a discovery conference in order to develop a threshold discovery plan.

It is so ORDERED this the 25th day of August, 2011.

s/Bernice B. Donald
Bernice B. Donald
United States District Judge