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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, et al.,

No. C 03-02659 SI

Plaintiffs,

**ORDER GRANTING PLAINTIFFS’  
MOTION TO COMPEL, GRANTING  
PLAINTIFFS’ RULE 56(f) MOTIONS,  
AND SETTING NEW SCHEDULE**

v.

FEDEX CORPORATION,

Defendant.

Defendant FedEx Corporation (“FedEx”) has filed motions for summary judgment regarding named plaintiffs Kenneth Stevenson, Valerie Brown, Rick Gonzales, Kalini Boykin, and Kelvin Smith. The first four summary judgment motions were set for hearing on January 14, 2005, and the fifth was set for hearing on March 3, 2005. Plaintiffs filed motions for relief pursuant to Federal Rule of Civil Procedure 56(f) to continue all motions until after resolution of a pending discovery dispute and asking the Court to defer ruling on the motions until after its decision on class certification. Having carefully considered the papers submitted, the Court hereby GRANTS plaintiffs’ Rule 56(f) motions and PARTIALLY GRANTS and PARTIALLY DENIES plaintiffs’ motion to compel.

**BACKGROUND**

On October 17, 2003, plaintiffs filed a consolidated amended complaint with this Court, alleging disparate impact and disparate treatment in violation of the Title VII of the Civil Rights Act, 42 U.S.C. § 1981, and the California Fair Employment and Housing Act against defendant FedEx Express (“FedEx” or “defendant”).

On September 11, 2004, plaintiffs filed a motion to certify the class. On October 1, 2004, and

1 October 29, 2004, defendant filed motions for summary judgment as to the claims of plaintiffs Kenneth  
2 Stevenson, Rick Gonzales, Valerie Brown, and Kalini Boykin, noticing the motions for December 3, 2004.  
3 On October 7, 2004, the Court continued these summary judgment motions to January 14, 2005, the date set  
4 for hearing on the class certification motion. On December 6, 2004, defendant filed its motion for summary  
5 judgment as to plaintiff Kelvin Smith, with a hearing set for March 4, 2005.

6 Plaintiffs filed a December 16, 2004 letter brief with the Court, moving to compel discovery from  
7 defendant relating to the summary judgment motions.<sup>1</sup> In addition, plaintiffs filed a motion to continue  
8 defendant's summary judgment motions, pursuant to Fed. R. Civ. P. 56(f), on grounds that they had been  
9 unable to conduct discovery essential to their opposition to those motions.

10 Now before the Court are defendants' five summary judgment motions, plaintiffs' Rule 56(f) motion  
11 as to all summary judgment motions, and plaintiffs' motion to compel.

## 12 **LEGAL STANDARDS**

### 13 **1. Motion to compel**

14 In general, parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim  
15 or defense of any party. Fed. R. Civ. P. 26(b)(1). For good cause, the court may order discovery of any  
16 matter relevant to the subject matter involved in the action. Id. A motion to compel a discovery response is  
17 appropriate when a party disobeys a proper request by refusing to produce relevant, non- privileged discovery.  
18 See Fed. R. Civ. P. 37(a)(2). The movant must certify that it has in good faith conferred or attempted to confer  
19 with the party failing to make discovery in an effort to secure information or material without court action. See  
20 id.  
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### 22 **2. Rule 56(f)**

23 Pursuant to Federal Rule of Civil Procedure 56(f), upon a showing by the party opposing a motion for  
24 summary judgment that it "cannot for reasons stated present by affidavit facts essential to justify the party's  
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28 <sup>1</sup> Defendant responded by letter brief on January 4, 2005, and plaintiffs filed a reply on January 10,  
2005.

1 opposition," the court may deny or continue the motion for summary judgment in order to permit that party an  
2 opportunity to obtain necessary discovery. "Ordinarily, summary judgment should not be granted when there  
3 are relevant facts remaining to be discovered, but the party seeking a continuance bears the burden to show  
4 what specific facts it hopes to discover that will raise an issue of material fact." Cont'l Mar. v. Pac. Coast  
5 Metal Trades, 817 F.2d 1391, 1395 (9th Cir. 1987).

6 A Rule 56(f) motion should be granted where the party opposing summary judgment makes a timely  
7 application that specifically identifies relevant information to be discovered, and there is some basis for believing  
8 that such information actually exists. Visa Int'l Serv. Ass'n v. Bankcard Holders, 784 F.2d 1472, 1475 (9th  
9 Cir. 1986). Granting of such a motion is particularly appropriate where the identified information is the subject  
10 of outstanding discovery requests. Id.

## 11 DISCUSSION

### 12 I. Motion to Compel

13 Plaintiffs have filed a motion to compel production of documents and responses to interrogatories  
14 related to the pending summary judgment motions. According to plaintiffs, the discovery sought is relevant to  
15 their individual claims of discrimination and consists in part of the identities and personnel files of comparators,  
16 materials submitted by plaintiffs and comparators in applying for jobs, discipline records at the FedEx stations  
17 where plaintiffs were employed, and the identities of decision-makers in the job application process.

18 Plaintiffs ask the Court to order defendant to (1) produce all documents it has agreed to produce but  
19 has not yet produced; (2) produce the complete personnel files of plaintiffs' comparators; (3) identify the other  
20 employees who applied for certain job postings, rather than providing JCATS records identifying these persons  
21 by employee number; (4) produce documents related to hiring, job applications, and promotion, including  
22 records from the ASPIRE management training program for comparators and questionnaires from the Survey  
23 Feedback Action ("SFA") program, which allows FedEx employees to comment on their managers; (5)  
24 respond to interrogatories seeking the reasons why plaintiffs were not hired for specific jobs; (6) identify the  
25 number of Caucasian employees meeting various criteria, rather than referencing JCATS records; (7) produce  
26 documents relating to the disciplinary actions taken against plaintiffs, other employees identified by plaintiffs,  
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1 African-American and Latino employees, and employees generally; (8) produce documents relating to any  
2 investigations of complaints of discrimination over the past five years, including records of conversations  
3 between plaintiffs and FedEx personnel and witness statements about any events alleged in the complaint; (9)  
4 produce documents relating to the Field Activity Management Information System (“FAMIS”), which tracks  
5 operational information like courier efficiency; (10) produce documents relating to non-African-American and  
6 Latino employees’ return to work after disability leave; (11) produce documents regarding specific employee  
7 failures to follow FedEx policies; (12) produce documents regarding customer complaints against plaintiff  
8 Valerie Brown; (13) produce documents regarding “ASTRA SOPS” falsifications; (14) produce documents  
9 regarding defendant’s denial of liability to named plaintiffs; and (15) specify the parts of Texas included in  
10 FedEx’s Western Region.<sup>2</sup>

11 Defendant argues that plaintiffs have all of the requested information in an electronic database provided  
12 in February 2004, which contains other personnel databases in addition to the JCATS records. In addition,  
13 defendant states that it has already produced the hardcopy employment files of twenty-one alleged comparators  
14 and other materials. FedEx acknowledges that it did respond to some interrogatories by referring plaintiffs to  
15 voluminous records pursuant to Fed. R. Civ. P. 33(d), but argues that it did so properly. As for plaintiffs’  
16 requests for documents from the ASPIRE, SFA, and FAMIS programs, defendant states that it has produced  
17 all ASPIRE material for plaintiffs but that ASPIRE records for comparators was not requested; that SFA  
18 materials were never requested; and that FAMIS records are irrelevant to the summary judgment motions and  
19 may be burdensome to produce. Defendant also contends that the summary judgment motions are based  
20 “almost exclusively on the plaintiffs’ own deposition testimony” and thus will not be rebutted by the information  
21 plaintiffs seek. Def.’s Letter Br. at 1-2. The parties also dispute whether they previously established that  
22 discovery would be taken on class certification issues first.

23 The Court agrees with plaintiffs that the electronic data produced for class discovery purposes is not  
24 an adequate substitute for the personnel records of comparators and other discovery sought. In addition,  
25 defendant has produced only 21 of the 33 personnel files requested. As to the ASPIRE, SFA, and FAMIS  
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28 <sup>2</sup> Plaintiffs also ask the Court to compel defendant to submit verifications for its discovery responses;  
in its letter brief, defendant states that it will provide these verifications. Accordingly, this request is moot.

1 records, plaintiffs argue that ASPIRE and SFA information was requested as part of the comparators'  
 2 materials, and that FAMIS data directly impacts hiring and promotion decisions. FedEx does not dispute the  
 3 relevance and discoverability of much of the information sought, but rather contends that it has already been  
 4 produced and therefore plaintiffs already have all they need to oppose summary judgment. While FedEx has  
 5 objected to some of these requests on grounds of privilege, its assertions of privilege are not before the Court  
 6 on this motion.

7 The Court hereby PARTIALLY GRANTS and PARTIALLY DENIES plaintiffs' motion to compel  
 8 and ORDERS discovery as follows:

- 9 • all documents defendant has stated it would produce but has not produced to date;
- 10 • personnel files for the remaining 12 of the 33 comparators, and complete files for all  
 11 comparators, including performance reviews;
- 12 • ASPIRE records for comparators;
- 13 • SFA records contained in the personnel files of comparators;
- 14 • handbooks and other materials relating to FAMIS;
- 15 • answers to interrogatories seeking the reasons why plaintiffs were not hired for specific jobs;
- 16 • documents relating to ASTRA SOPS falsifications that FedEx has stated it will produce;
- 17 • all documents relating to disciplinary actions taken against named plaintiffs, specific employees  
 identified by plaintiffs, African-American and Latino employees, and employees generally;
- 18 • documents relating to FedEx's internal investigation of complaints of discrimination, to the  
 extent they are not privileged;
- 19 • documents relating to non-African-American and Latino employees' return to work after  
 20 disability leave;
- 21 • documents relating to alleged customer complaints against plaintiff Valerie Brown; and
- 22 • identification of other employees who applied for job postings by name rather than JCATS  
 23 number;

24 Defendant need not produce the following materials and information:

- 25 • documents relating to specific incidents of policy violations;
- 26 • documents regarding FedEx's denial of liability to the named plaintiffs;
- 27 • further specification of the geographic boundaries of the Western Region; and
- 28 • the number of Caucasian employees in various positions and meeting various criteria, for which

1 the electronic database already provided appears sufficient.

2 Defendant must produce all responsive documents **on or before April 4, 2005.**

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4 **II. Rule 56(f) Motion**

5 Defendant has filed five motions for summary judgment as to the class and individual claims of plaintiffs  
6 Kelvin Smith, Kenneth Stevenson, Rick Gonzales, Valerie Brown, and Kalini Boykin. Plaintiffs bring their Rule  
7 56(f) motions on grounds that (1) they have not been able to conduct critical discovery to oppose the motions,  
8 and (2) ruling on all of defendant's summary judgment motions should be deferred until after the Court rules  
9 on class certification.

10 Plaintiffs argue that they understood the Court's Case Management Order to mean that they should  
11 focus on class discovery first, and therefore did so from February to September 2004, when they filed the class  
12 certification motion. According to defendant, FedEx is entitled to bring these motions, and plaintiffs' failure to  
13 conduct discovery on their individual claims is their own fault. Defendant points out that the Case Management  
14 Orders entered on December 10, 2003 and January 8, 2004 provide that defendants "may move for summary  
15 judgment as to some or all Plaintiffs . . . either before or after the class certification motion."

16 While the Court agrees that defendant is entitled to bring these motions, plaintiffs must also have an  
17 adequate opportunity to oppose them. The Ninth Circuit has held courts should grant 56(f) motions "fairly  
18 freely," particularly in employment discrimination cases where a party has not had discovery of comparators.  
19 Garrett v. City and County of San Francisco, 818 F.2d 1515 (9th Cir. 1987). The Court hereby GRANTS  
20 plaintiffs' motion for a continuance of all five summary judgment motions.

21 Plaintiffs' opposition to all summary judgment motions must be filed **on or before April 18, 2005;**  
22 defendant's reply is due **April 25, 2005.**

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25 **CONCLUSION**

26 For the foregoing reasons and for good cause shown, the Court hereby GRANTS plaintiffs' motions  
27 under Rule 56(f) and PARTIALLY GRANTS and PARTIALLY DENIES plaintiffs' motion to compel.  
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1 [Docket #s 239, 254, 304]

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3 **IT IS SO ORDERED.**

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5 Dated: March 21, 2005

S/Susan Illston  
SUSAN ILLSTON  
United States District Judge

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