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FEDERAL EXPRESS CORPORATION  
Frederick L. Douglas (Admitted *Pro Hac Vice*)  
David A. Billions (Admitted *Pro Hac Vice*)  
Sandra C. Isom (SBN 157374)  
Cynthia J. Collins (Admitted *Pro Hac Vice*)  
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Attorneys for Defendant  
FEDERAL EXPRESS CORPORATION,  
dba FEDEX EXPRESS (erroneously sued herein as  
FedEx Corporation, dba FedEx Express)

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

EDWARD ALVARADO, JOHN AZZAM,  
CHARLOTTE BOSWELL, TANDA BROWN,  
BERTHA DUENAS, PERNELL EVANS,  
CHARLES GIBBS, JANICE LEWIS, MARIA  
MUNOZ, KEVIN NEELY, LORE PAOGOFIE,  
DYRONN THEODORE, LASONIA  
WALKER, and CHRISTOPHER  
WILKERSON,

Plaintiff/Counterclaim Defendant,  
GARY WHITE, and ALEX RIVERA,

Plaintiff/Counterclaim Defendant,  
KAY PARKER, MICHAEL DAVIS, ANGELA  
ALIOTO, ANGELA ALIOTO  
PROFESSIONAL LAW CORP., and BRUCE  
FUNK,

Counterclaim Defendant,

Case No. C04-0098 SI  
Case No. C04-0099 SI

**DEFENDANT'S NOTICE OF MOTION,  
MOTION AND MEMORANDUM IN  
SUPPORT OF MOTION FOR  
COUNTERCLAIM AND  
INTERPLEADER RELIEF**

**Date: December 14, 2007**

**Time: 9:00 a.m.**

**Judge: Hon. Susan Illston**

1 v. )  
 2 FEDEX CORPORATION, a Delaware )  
 Corporation, dba FEDEX EXPRESS )  
 3 )  
 Defendant/Counterclaim )  
 4 Plaintiff. )

---

**NOTICE OF MOTION AND MOTION**

7 PLEASE TAKE NOTICE that Defendant Federal Express Corporation's ("FedEx")  
8 Motion for Counterclaim and Interpleader Relief shall come on for hearing before this Honorable  
9 Court on December 14, 2007, at 9:00 o'clock a.m. before the Hon. Susan Illston.

11 Pursuant to *Fed. R. Civ. P.* 13, 19, 20 and 22, FedEx files this counterclaim motion for an  
12 order granting interpleader relief. *Grubbs v. General Elec. Credit Corp.*, 405 U.S. 699, 705 n.2  
13 (1972)("[a] defendant seeking interpleader must frame his pleading either as a cross-claim  
14 seeking relief against a co-party already in the lawsuit, or as a counterclaim seeking relief against  
15 the plaintiff.").

16 FedEx and Plaintiffs Tanda Brown, Kevin Neely, Bertha Duenas, Dyronn Theodore,  
17 Janice Lewis, Lasonia Walker and Alex Rivera (collectively referred to as "Settlement  
18 Plaintiffs") have agreed to settle all outstanding claims with prejudice. Settlement Plaintiffs have  
19 not resolved outstanding liens brought by three (3) Lienholders: Michael Davis and Kay  
20 McKenzie Parker, two former attorneys associated with Waukeen Q. McCoy, and Dr. Charlene  
21 Young, an expert witness retained on behalf of the Settlement Plaintiffs.

23 FedEx may be exposed to double or multiple claims of liability from the Settlement  
24 Plaintiffs should FedEx withhold portions of the settlement funds to protect the Lienholders, and  
25 from the Lienholders for not protecting their rights should FedEx distribute the funds to the  
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Settlement Plaintiffs.

FedEx has no interest in how the settlement funds are distributed among Settlement Plaintiffs, their current and former counsel, and the Lienholders. To protect the Lienholders, effectuate the settlement, and protect itself from double or multiple liabilities, FedEx requests an order from the Court:

1. Confirming the acceptance by the Court of a bond equal to the amount of the settlement proceeds;
2. Determining and adjudging to whom the funds belong;
3. Restraining Settlement Plaintiffs, Lienholders and their counsel from instituting any action against FedEx for the recovery of the amount of said interplead funds;
4. Dismissing all claims of Settlement Plaintiffs against FedEx with prejudice and with each party to bear its own costs, including attorneys' fees; and
5. For such other and further relief as this Court deems proper.

DATED: November 15, 2007

FEDERAL EXPRESS CORPORATION

By \_\_\_\_\_ /s/  
Frederick L. Douglas  
Lead Counsel  
Federal Express Corporation

1 **MEMORANDUM IN SUPPORT OF MOTION**

2 Defendant, Federal Express Corporation (“FedEx”), and Plaintiffs Tanda Brown, Kevin  
3 Neely, Bertha Duenas, Dyronn Theodore, Janice Lewis, Lasonia Walker and Alex Rivera  
4 (collectively referred to as “Settlement Plaintiffs”), have agreed to settle all outstanding claims  
5 with prejudice. Settlement Plaintiffs have not resolved outstanding liens brought by three (3)  
6 lienholders: Michael Davis and Kay McKenzie Parker, two former attorneys associated with  
7 Waukeen Q. McCoy, and Dr. Charlene Young, an expert witness retained on behalf of the  
8 Settlement Plaintiffs, collectively referred to as “Lienholders.”

9  
10 **I. Preliminary Statements**

11 FedEx has no interest in how the settlement funds are distributed among Settlement  
12 Plaintiffs, their current and former counsel, and the Lienholders. To protect the Lienholders,  
13 effectuate the settlement, and protect itself from double or multiple liabilities, FedEx files the  
14 instant Motion for Counterclaim and Interpleader Relief (“Motion”).

15  
16 FedEx’s Motion is to be analyzed in two steps. First, whether there is a basis to compel  
17 the Settlement Plaintiffs and Lienholders to litigate their claims to any settlement funds in one  
18 proceeding provided that the requirements to rule interpleader are met. *See Great Am. Ins. Co. v.*  
19 *Bank of Bellevue*, 366 F.2d 289, 293 (8<sup>th</sup> Cir. 1966); *Westinghouse Elec. Corp. v. United Elec.*  
20 *Radio*, 99 F. Supp. 597, 600 (D. Pa. 1951), *affirmed*, 194 F.2d 770 (3<sup>rd</sup> Cir. 1952), *cert. denied*,  
21 343 U.S. 966 (1953). The second stage of interpleader involves the determination of the  
22 respective rights of the claimants to the stake. *Texaco, Inc. v. Ponsoldt*, 118 F.3d 1367, 1370 (9<sup>th</sup>  
23 Cir. 1997); *Westinghouse Elec.*, 99 F. Supp. at 600.

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As demonstrated below, all requirements for the Motion have been met, including jurisdiction, the real and credible possibility of double or multiple liability, and the avoidance of further protracted litigation.

**II. Parties and Statement of Facts**

1. FedEx is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business in Memphis, Tennessee, and authorized to do business and doing business within the State of California. Attachment 1, Declaration of Frederick L. Douglas, ¶ 2.

2. The Settlement Plaintiffs are individuals domiciled and residing in the State of California, Doc. No. 1, and the Lienholders are individuals domiciled and residing in the State of California. Diversity of citizenship between the stakeholder (FedEx) and claimants (Settlement Plaintiffs and Lienholders) exists.

3. The Settlement Plaintiffs have pending claims against FedEx (Doc. No. 1) and agreed to resolve all their claims against FedEx for a sum certain. Douglas Declaration, ¶ 3.

4. FedEx does not in any manner by virtue of settling with the Settlement Plaintiffs, or depositing funds with the Clerk of Court, admit liability to anyone as a result of any incident, act or omission in this matter. FedEx expressly denies all allegations and liability. Nevertheless, by entering into a settlement it is the intent of FedEx to avoid the cost and uncertainty of continued protracted litigation. Douglas Declaration ¶ 4.

5. Settlement funds are subject to taxation, and by agreement with the Settlement Plaintiffs, based on the facts surrounding each claim, a portion of the settlement funds for each

1 Settlement Plaintiff is designated as wages, subject to required withholdings. The gross, pre-tax  
2 amounts payable to the Settlement Plaintiffs, total \$1,499,000. Douglas Declaration, ¶ 5.

3 6. The liens filed by Lienholders are as follows:

4 (a) Kay Parker for amounts “equal to forty percent (40%) of any recovery by  
5 plaintiff(s),” and as to plaintiffs Brown, Duenas, Lewis, Neely, Rivera, Theodore and Walker,  
6 \$348,550 in fees as to each plaintiff individually, and \$15,550 individually as to costs (Doc. Nos.  
7 375, 575);

8 (b) Michael Davis for unspecified amounts (Doc. No. 377); and

9 (c) Charlene Young for expert services in the amount of \$47,738 (Doc. No.  
10 815).

11 7. FedEx notified the Court on July 18, 2007, that it would file an interpleader  
12 action. Counsel for the Settlement Plaintiffs did not respond. Douglas Declaration ¶ 6, Ex. 1.

13 8. FedEx has a legal obligation with respect to the Lienholders’ interest which  
14 conflicts with the Settlement Plaintiffs’ interest in receiving the full amounts of all settlement  
15 proceeds. Under California law, there are certain legal obligations owed to Lienholders,  
16 including a duty to protect the interests of Lienholders when disbursing settlement proceeds. If  
17 an attorney or party has notice of a lien and disburses settlement proceeds directly to an  
18 individual, and the individual fails to pay the Lienholder, then that attorney or party could be  
19 liable to the Lienholder. *See Levin v. Gulf Ins. Group*, 69 Cal.App.4th 1282 (1999); *Epstein v.*  
20 *Abrams*, 57 Cal.App.4th 1159 (1997), *Kaiser Foundation Health Plan, Inc. v. Aguiluz*, 47  
21 Cal.App.4th 302 (1996), disapproval on other grounds in *Snukal v. Flightways Mfg., Inc.*, 23  
22 Cal.4th 754 (2000).



1 9. Counsel for Settlement Plaintiffs has agreed to an interpleader action. Douglas  
2 Declaration, ¶ 7, Ex. 2.

3 10. To FedEx's knowledge, no steps have been taken by counsel for the Settlement  
4 Plaintiffs and the Lienholders to put their clients' interest ahead of their own and resolve their  
5 disputes and ensure timely and efficient distribution of the settlement funds. Counsel for the  
6 Settlement Plaintiffs and Lienholders cannot agree on anything. Douglas Declaration, ¶ 8, Ex. 3.

7 11. The Lienholders have joined this pending action through the filing of their  
8 respective liens and intend to prosecute and defend their financial interest. See ¶6 above.

9 12. All Lienholders have agreed to the interpleader approach. Douglas Declaration, ¶  
10 9, Ex. 3, August 22, 2007 e-mail from Davis to McCoy, August 22, 2007 letter from Rosen to  
11 McCoy, and July 16, 2007 e-mails between Douglas and Funk.

12 13. FedEx has secured a bond in the amount of \$1,499,000 to cover the entire amount  
13 of the pre-tax settlement proceeds and will file the same with the Clerk of Court. Douglas  
14 Declaration, ¶ 10, Ex. 4.

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17 **III. Jurisdiction and Legal Basis for Relief.**

18 **A. Jurisdiction.**

19 The jurisdiction of this Court over the subject matter of this Motion is predicated on 28  
20 U.S.C. § 1332 and Rule 22 of the Federal Rules of Civil Procedure. The parties are of diverse  
21 citizenship as defined in 28 U.S.C. §1332(a), and the amount in controversy is in excess of  
22 \$75,000.00, exclusive of interests and costs.

23  
24 FedEx may be exposed to double or multiple claims of liability from the Settlement  
25 Plaintiffs if FedEx withholds settlement funds to satisfy the liens and from the Lienholders for

1 not protecting their rights if FedEx distributes the funds to the Settlement Plaintiffs. Diversity of  
2 citizenship between the stakeholder (FedEx) and claimants (Settlement Plaintiffs and  
3 Lienholders) exists. FedEx is a “stakeholder” because it holds the property (settlement funds)  
4 and may be subject to inconsistent claims regarding that property; pay the Settlement Plaintiffs  
5 versus payment to Lienholders. *U.S. Hodgekins*, 28 F.3d 610, 614 (7<sup>th</sup> Cir. 1994). Settlement  
6 Plaintiffs and Lienholders are claimants who assert conflicting interest in the property in the  
7 possession of the stakeholder, FedEx. *Wausau Ins. Co. v. Gifford*, 954 F.2d 1098, 1100-01 (5<sup>th</sup>  
8 Cir. 1992).

10 **B. FedEx is entitled to relief from claims of double or multiple liability through**  
11 ***Fed. R. Civ. P. 22* interpleader action.**

12 Federal Rule of Civil Procedure 22 is designed to protect FedEx from the threat of  
13 “double or multiple liability.” *Fed. R. Civ. P. 22*. The rule states, in pertinent part:

15 Persons having claims against the plaintiff may be joined as  
16 defendants and required to interplead when their claims are such  
17 that the plaintiff is or may be exposed to double or multiple  
liability. . .[and] a defendant exposed to similar liability may  
obtain such interpleader by way of cross-claim or counterclaim.

18 *Fed. R. Civ. P. 22(1)*. See *AETNA Life Insurance Co. v. Bayona*, 223 F.3d 1030, 1034 (9<sup>th</sup> Cir.  
19 2000) (“interpleader’s primary purpose is not to compensate, but rather to protect stakeholders  
20 from multiple liability as well as from the expense of multiple litigation.”).

21 Rule 22 provides for the joinder of parties for the purposes of an interpleader action. *Fed.*  
22 *R. Civ. P. 22(a)*. The joinder of parties under Rule 22, however, must be consistent with the  
23 other joinder provisions of the Federal Rules of Civil Procedure. Rule 13(h), governing joinder  
24 of parties for counterclaims, provides that “[p]ersons other than those made parties to the original  
25



1 action may be made parties to a counterclaim or cross-claim in accordance with the provisions of  
2 Rules 19 and 20." *Fed. R. Civ. P. 13(h)*. In the case at bar, the joinder of the Lienholders  
3 is proper under Rule 19(a)(2)(ii). In the alternative, FedEx has demonstrated that joinder is also  
4 proper under Rule 20.

5  
6 **C. Justification for counterclaim, joinder and interpleader relief.**

7 Interpleader relief allowing FedEx to post a bond (or deposit the settlement proceeds)  
8 with the Court protects the interest of all involved. All Lienholders have agreed to interpleader  
9 relief. In addition to security payment and agreement by all parties, other reasons justify  
10 interpleader relief.

11 First, Settlement Plaintiffs will have their debts spread over seven (7) plaintiffs and  
12 thereby avoid any one plaintiff bearing a disproportionate amount of the debt. Second, the  
13 interpleader action fully protects the interest of Lienholders. Lienholders have a vehicle by  
14 which to fully assert the value of their liens. Third, the interpleader action forces the current and  
15 former attorneys representing the Settlement Plaintiffs to protect the interest of all their current  
16 and former clients as they allocate and assert claims over the settlement funds. Fourth, through  
17 the interpleader action FedEx avoids the obvious conflict of deciding how much of the liens each  
18 Settlement Plaintiff should be liable for; given the difference in settlements among the  
19 Settlement Plaintiffs, FedEx would be forced to allocate the lien liability among the Settlement  
20 Plaintiffs using its own judgment. Finally, for FedEx, the process allows it to deposit the funds  
21 and obtain dismissal with prejudice as to the Settlement Plaintiffs thereby protecting it from  
22 vexation of multiple suits and the possibility of multiple liability.  
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2 For all involved, especially the Settlement Plaintiffs, FedEx's Motion for interpleader  
3 relief is a vehicle by which an early and effective determination of disputed questions can be  
4 reached.

5  
6 **D. Separate counterclaims and cross-claims actions (*Fed. R. Civ. P. 13*) and**  
7 **joinder actions (*Fed. R. Civ. P. 19* and *20*) are not required because the**  
8 **Lienholders have joined the action through voluntarily filing their liens, and**  
9 **in the alternative, all requirements for counterclaims, cross-claims and**  
10 **joinder have been met.**

11 First, FedEx believes there is no need for a separate counterclaim, cross claim and joinder  
12 actions pursuant to *Fed. R. Civ. P. 13, 19* and *20* because the Lienholders entered an appearance  
13 in this matter through the filing of their liens, they have agreed to the interpleader relief, and the  
14 Settlement Plaintiffs are already parties to the litigation.<sup>1</sup> The entry of appearance by the  
15 Lienholders accomplished the purpose and intent of *Fed. R. Civ. P. 13, 19* and *20*, to prevent  
16 multiple actions and achieve resolution in one action. *See Southern Constr. Co. v. Pickard*, 371  
17 U.S. 57, 60 (1962)(*Fed. R. Civ. P. 13* "was designed to prevent multiplicity of actions and to  
18 achieve resolution in a single lawsuit of all disputes arising out of common matters.").

19 Nevertheless, a supplemental counter-claim against the Settlement Plaintiffs and the  
20 Lienholders is asserted. The requirements for a counterclaim pursuant to *Fed. R. Civ. P. 13*, for  
21

22  
23 <sup>1</sup> Through entering their appearance, the Lienholders (1) consented to this Court's jurisdiction,  
24 (2) notified FedEx of their claims to any distribution of funds, and (3) made themselves available  
25 to protect their rights against the Settlement Plaintiffs.

1 purpose of Rule 22 interpleader relief, have been met.<sup>2</sup> The joinder requirements of both Rules  
 2 19 and 20 have also been met.<sup>3</sup> For the reasons articulated in Section III. C above, legitimate  
 3 factual and legal reasons exist for counterclaims, joinder and interpleader relief, including the  
 4 real and reasonable fear of FedEx being subjected to financial liability and litigation over any  
 5 amounts it deducts from the settlement proceeds to pay the Lienholders.

7 **E. Contemporaneous filing of bond and proper tax withholdings.**

8 *Fed. R. Civ. P. 22* does not require FedEx to deposit the settlement funds with the Court.  
 9 *Gelfgren v. Republic Nat'l Life Ins. Co.*, 680 F.2d 79, 82 (9<sup>th</sup> Cir. 1982); *Murphy v. Travelers*  
 10 *Ins. Co.*, 534 F.2d 1155, 1159 (5<sup>th</sup> Cir. 1976).

11 Under The Federal Interpleader Act, 28 U.S.C. 1335, "(a) the district courts shall have  
 12 original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any  
 13 person . . . if . . . (2) the plaintiff has deposited such money . . . into the registry of the court . . .  
 14 or has given bond payable to the clerk of the court in such amount[.]" FedEx may post a bond  
 15 for the entire amount of the settlement proceeds. *See Unigard Mutual Insurance Co. v. Abbott*,

17  
 18 <sup>2</sup> *Fed. R. Civ. P. 13(e)* governs the filing of counterclaims maturing or acquired after pleadings.  
 19 The Northern District of California, when determining how to apply Rule 13(e), held: "[a] claim  
 20 which either matured or was acquired by the pleader after serving a pleading may, with the  
 21 permission of the court, be presented as a counterclaim by supplemental pleading." *Kla-Tencor*  
 22 *Corp. v. Nat'l Union Fire Ins. of Pittsburgh*, 2006 U.S. Dist. LEXIS 63982 (N.D. Cal.  
 2006)(granting defendants 13(e) motion(citing *United States v. Springer*, 491 F.2<sup>nd</sup> 239, 241-42  
 21 (9<sup>th</sup> Cir. 1974)). Rule 13(e) is designed to promote economy and efficiency and to avoid a  
 22 multiplicity of trials, where these objectives can be achieved without substantial prejudice to the  
 23 right of the defendants to a fair trial. *United States v. Roselli*, 432 F.2d 879, 900 (9<sup>th</sup> Cir. 1970).

23 <sup>3</sup> Under Rule 19, the joinder of the Lienholders does not deprive the court of jurisdiction over the  
 24 subject matter, the Lienholders filed and served liens related to the instant litigation and thus  
 25 claim an interest relating to the subject of the action, and the absence of the Lienholders would  
 26 subject FedEx to a substantial risk of double or multiple liability. Under Rule 20, joinder of the  
 27 Lienholders is appropriate because the Lienholders' interest are adverse to the Settlement  
 28 Plaintiffs and FedEx, and resolution of their (Lienholders) claims will involve common questions  
 of law and fact.

1 732 F.2d 1414, 1418 (9<sup>th</sup> Cir. 9<sup>th</sup> Cir. 1984) (moving party obligated to deposit or post a bond  
2 with the court equal to the maximum claim) *citing New York Life Insurance Co. v. Lee*, 232 F.2d  
3 811, 815 (9th Cir.1956)(movant must demonstrate he has deposited such money or property or  
4 given bond payable to the clerk).

5  
6 To protect the interest of Settlement Plaintiffs and Lienholders a bond covering the  
7 amount of settlement is filed contemporaneously with the Motion.

8 Once an order is issued allocating the settlement funds among the Settlement Plaintiffs  
9 and the Lienholders, FedEx is required to withhold certain funds in compliance with federal  
10 (and other applicable) withholding requirements. For cases where the plaintiff claims lost,  
11 current, or future wages, a reasonable portion of the settlement must be allocated to the wage  
12 claim. The amount allocated to wages is subject to employment tax withholdings. In *Rivera v.*  
13 *Baker West, Inc.*, 430 F.3d 1253, 1258 (9<sup>th</sup> Cir. 2005), the court held that settlement proceeds  
14 arising out of employment discrimination claims paid to compensate a party for his lost wages  
15 are subject to income tax withholding, because they constitute gross income defined as "all  
16 income from whatever source derived," unless received on account of "personal *physical* injuries  
17 or *physical* sickness." 430 F.3d at 1256, citing 26 U.S.C. § 104(a)(2), 26 C.F.R. § 1.104-1(c),  
18 and *Mayberry v. United States*, 151 F.3d 855, 858 n.2 (8th Cir. 1998) (only damages for physical  
19 injuries or sickness, and not damages for emotional distress, were excluded from the definition of  
20 income).  
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23 Allowing FedEx to file a bond for the entire amount of the settlement proceeds preserves  
24 its legal obligation to later distribute the funds subject to the required withholdings.

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**IV. Conclusion and Requested Relief.**

FedEx requests an order from the Court:

1. Confirming the acceptance by the Court of a bond equal to the amount of the settlement proceeds;
2. Determining and adjudging to whom the funds belong;
3. Restraining Settlement Plaintiffs, Lienholders and their counsel from instituting any action against FedEx for the recovery of the amount of said interplead funds;
4. Dismissing all claims of Settlement Plaintiffs against FedEx with prejudice and with each party bearing its own costs, including attorney's fees; and
5. For such other and further relief as this Court deems proper.

DATED: November 15, 2007

FEDERAL EXPRESS CORPORATION

By \_\_\_\_\_ /s/\_\_\_\_\_  
 Frederick L. Douglas  
 Lead Counsel  
 Federal Express Corporation

Doc. No. 655607

# **ATTACHMENT 1**



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Attorneys for Defendant  
FEDERAL EXPRESS CORPORATION,  
dba FEDEX EXPRESS (erroneously sued herein as  
FedEx Corporation, dba FedEx Express)

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

EDWARD ALVARADO, JOHN AZZAM, )  
CHARLOTTE BOSWELL, TANDA BROWN, )  
BERTHA DUENAS, PERNELL EVANS, )  
CHARLES GIBBS, JANICE LEWIS, MARIA )  
MUNOZ, KEVIN NEELY, LORE PAOGOFIE, )  
DYRONN THEODORE, LASONIA )  
WALKER, and CHRISTOPHER )  
WILKERSON, )  
  
Plaintiff/Counterclaim Defendant, )  
GARY WHITE, and ALEX RIVERA, )  
  
Plaintiff/Counterclaim Defendant, )  
KAY PARKER, MICHAEL DAVIS, ANGELA )  
ALIOTO, ANGELA ALIOTO )  
PROFESSIONAL LAW CORP., and BRUCE )  
FUNK, )  
  
Counterclaim Defendant, )  
v. )  
FEDEX CORPORATION, a Delaware )

Case No. C04-0098 SI  
Case No. C04-0099 SI

**DECLARATION OF FREDERICK L. DOUGLAS IN SUPPORT OF MOTION FOR COUNTERCLAIM AND INTERPLEADER RELIEF**

**Date: December 14, 2007**

**Time: 9:00 a.m.**

**Judge: Hon. Susan Illston**

1 Corporation, dba FEDEX EXPRESS )  
 2 Defendant/Counterclaim )  
 3 Plaintiff. )

4 I, Frederick L. Douglas, hereby declare as follows:

5 1. I am over the age of twenty-one and employed by Federal Express Corporation  
 6 ("FedEx") as Lead Counsel. I am licensed to practice law in the States of Colorado, Georgia and  
 7 Tennessee, and admitted to practice before this Court *Pro Hac Vice*. I am the lead attorney of  
 8 record for defendant in the above-captioned matter.  
 9

10 2. FedEx is a corporation organized and existing under the laws of the State of  
 11 Delaware, with its principle place of business in Memphis, Tennessee, and authorized to do  
 12 business and doing business within the State of California.

13 3. FedEx and Plaintiffs Tanda Brown, Kevin Neely, Bertha Duenas, Dyronn  
 14 Theodore, Janice Lewis, Lasonia Walker and Alex Rivera (collectively referred to as "Settlement  
 15 Plaintiffs") have agreed to settle all outstanding claims with prejudice. The Settlement Plaintiffs  
 16 have pending claims against FedEx and agreed to resolve all their claims against FedEx for a  
 17 sum certain. Mr. Fred Butler, with ADR Services, Inc., conducted private mediation sessions  
 18 with each plaintiff and FedEx.  
 19

20 4. FedEx does not in any manner by virtue of settling with the Settlement Plaintiffs,  
 21 or depositing funds with the Clerk of Court, admit liability to anyone as a result of any incident,  
 22 act or omission in this matter. FedEx expressly denies all allegations and liability.  
 23 Nevertheless, by entering into a settlement it is the intent of FedEx to avoid the cost and  
 24 uncertainty of continued protracted litigation.  
 25  
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1           5.       Settlement funds are subject to taxation, and by agreement with the Settlement  
2 Plaintiffs, based on the facts surrounding each claim, a portion of the settlement funds for each  
3 Settlement Plaintiff is designated as wages, subject to required withholdings. The gross, pre-tax  
4 amounts payable to the Settlement Plaintiffs, total \$1,499,000.

5  
6           6.       FedEx notified the Court on July 18, 2007, that it would file an interpleader  
7 action. Counsel for the Settlement Plaintiffs, Mr. Waukeen Q. McCoy, did not respond. A true  
8 and correct copy of said correspondence is attached hereto as Exhibit 1.

9           7.       Counsel for Settlement Plaintiffs has agreed to an interpleader action. A true and  
10 correct copy of said correspondence is attached hereto as Exhibit 2.

11           8.       To FedEx's knowledge, no steps have been taken by counsel for the Settlement  
12 Plaintiffs and the Lienholders to put their clients' interest ahead of their own and resolve their  
13 disputes and ensure timely and efficient distribution of the settlement funds. Counsel for the  
14 Settlement Plaintiffs and Lienholders cannot agree on anything. A true and correct copy of said  
15 correspondence is attached hereto as Exhibit 3.

16  
17           9.       All Lienholders have agreed to the interpleader approach. A true and correct copy  
18 of said correspondence is attached hereto as Exhibit 3 (August 22, 2007 e-mail from Davis to  
19 McCoy, August 22, 2007 letter from Rosen to McCoy, and July 16, 2007 e-mails between  
20 Douglas and Funk).

21  
22           10.      FedEx has secured a bond in the amount of \$1,499,000 to cover the entire amount  
23 of the pre-tax settlement proceeds and will file the same with the Clerk of Court. A true and  
24 correct copy of said bond is attached hereto as Exhibit 4.

1 I declare under penalty of perjury under the laws of the United States that the  
2 foregoing is true and correct.

3  
4 DATED: November 15, 2007

FEDERAL EXPRESS CORPORATION

5  
6 By \_\_\_\_\_ /s/  
7 Frederick L. Douglas  
8 Lead Counsel  
9 Federal Express Corporation

10 Doc. No. 703521

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# **EXHIBIT 1**



July 18, 2007

**CONFIDENTIAL MEDIATION REPORT**  
**NOT FILED – SERVED VIA ELECTRONIC MAIL**  
**AND OVERNIGHT DELIVERY**

The Honorable Susan Illston  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Judge Illston's Chambers  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *Edward Alvarado et al. v. FedEx Express*  
USDC, No. Dist. of Calif.  
Case No. C04-0098 SI

Dear Judge Illston:

Pursuant to your instructions on Friday, July 13, 2007, I write only on behalf of Federal Express Corporation ("FedEx") as to its plan on moving forward as to mediations.

The liens served on FedEx are a major roadblock to continuing the mediation process. The parties are not able to agree as to whether all potential settlement funds should be interpleaded without any restrictions, or a certain percentage, and when the funds should be interpleaded, periodically or at the end of mediation.<sup>1</sup> The liens currently known to FedEx as of today were filed by (1) Kay Parker for amounts "equal to forty percent (40%) of any recovery by plaintiff(s)," and as to plaintiffs Brown, Duenas, Lewis, Neely, Rivera, Theodore and Walker, \$348,550 in fees as to each plaintiff individually, and \$15,550 individually as to costs (Doc. Nos. 375, 575); (2) Michael

---

<sup>1</sup> Mr. McCoy is taking inconsistent positions regarding how much should be interpleaded. In an e-mail dated July 16 he stated "Plaintiffs' request that the entire amount be interpled for the reasons [Mr. Douglas] stated to the Court[.] Ms. Parker, for example, is requesting an unreasonable fee of 300K per case." However, in a conference call on July 17 with the mediator (Mr. Butler) Mr. McCoy changed his position. The cases were divided for trial purposes to avoid confusing a jury with the various claims and admissible evidence. To avoid burdening the courts with potentially seven (7) different interpleader motions or actions we prefer to file one motion or action. Given the short time period between the first mediation session (August 9) and last (August 30) the delay will not be unfairly prejudicial. Furthermore, by waiting until the end, any lien amounts can equally or proportionately be divided amongst any settling plaintiffs.



Honorable Susan Illston  
Page 2  
July 18, 2007

Davis for unspecified amounts (Doc. No. 377); (3) Bruce Funk filed and served a lien for \$47,738 for expert services provided by Carlene Young (Doc. No. 815); (4) attorneys with Angela Alioto & Angela Alioto Professional Law Corporation filed and served a lien for \$71,008.47 (Doc. No. 898); and (5) Craig Pratt, another expert, sent a letter to McCoy asking for payment of around \$10,000 or \$15,000.

We also report the following:

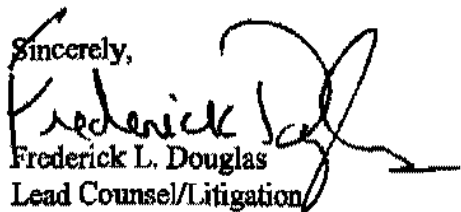
1. Based on the conference call on July 17 with Mr. Butler, the parties will commence mediation with the assistance of Mr. Butler, and the revised schedule is as follows:

Plaintiff	Mediation Time and Date
Tanda Brown	9 a.m., Wednesday, August 8
Kevin Neely	1 p.m., Friday, August 10
Bertha Duenas	9 a.m., Wednesday, August 15
Dyronne Theodore	8:30 a.m., Monday, August 27
Janice Lewis	9:30 a.m., Tuesday, August 28
Alex Rivera	8:30 a.m., Wednesday, August 29
Lasonia Walker	10:00 a.m., Thursday, August 30 (Los Angeles)

2. Within ten (10) court days of concluding the last mediation session (August 30) FedEx will either file a sealed (1) motion for interpleader under *Fed. R. Civ. P. 22*, or (2) statutory interpleader action with the U.S. Dist. Court, for the Northern District of California, pursuant to 28 U.S.C. § 2361, 28 U.S.C. § 1335 and 28 U.S.C. § 1397.

We believe the procedures and plans outlined above is the most efficient way to salvage negotiation, protect the interest of the parties, and avoid unnecessarily burdening the Court's resources.

Sincerely,

  
Frederick L. Douglas  
Lead Counsel/Litigation  
901-434-8519  
901-434-9271 (Fax)

FLD/knc

cc: Mr. Fred Butler (via e-mail)  
Mr. Waukeen McCoy (via e-mail)

Doc. no. 654286

# **EXHIBIT 2**

**Douglas, Frederick L.**

---

**From:** Waukeen McCoy [mccoyslawsf@yahoo.com]  
**Sent:** Monday, July 16, 2007 5:26 PM  
**To:** Douglas, Frederick L.  
**Subject:** RE: Alvarado/White: Proposal to Continue Mediation

Mr. Douglas:

This email will address the issues raised below:

- 1) Plaintiffs' position is that the proceeds be interplead periodically.
- 2) No. Plaintiffs' request that the entire amount be interpled for the reasons you stated to the Court. Ms. Parker, for example, is requesting an unreasonable fee of 300K per case.
- 3) In light of Ms. Parkers' unreasonable requests we are precluded from agreeing to interplead only 40%.
- 4) Again, due to the fact that we will interplead 100% of the settlement funds for each case, this should eliviate any of FedEx's concerns about liability for Young's purported lien.
- 5) The complaint for Declaratory relief will be filed tommorrow.

waukeen

**"Douglas, Frederick L." <frederick.douglas@fedex.com> wrote:**

Mr. McCoy,

Please address the following:

1. Are you suggesting that the proceeds be interpleaded periodically as we proceed through mediation (at the same time as any funds are distributed) or all at the same time after we have exhausted mediation efforts?
2. Have you communicated with the lienholders, or plan to communicate with them, regarding your 40% proposal?
3. You use the words "at most 40%," therefore, I assume you have no problem with 40% for each case resolved. Is my assumption correct?
4. What exactly do you mean "plus the amount of Young's Lien only"? Are we to reserve and interplead something above 40% for each plaintiff to protect Young's interest? How do you propose to protect Young's interest?
5. When will the complaint for declaratory relief be filed? During the mediation process or after the process concludes?

10/25/2007

Thank you for responding.

---

**From:** Waukeen McCoy [mailto:mccoyslwsf@yahoo.com]  
**Sent:** Sunday, July 15, 2007 9:05 PM  
**To:** Douglas, Frederick L.  
**Subject:** Re: Alvarado/White: Proposal to Continue Mediation

Mr. Douglas:

This email is a follow-up to the discussion related to mediation. Plaintiffs will agree to proceed with the mediations and will agree that the proceeds be interpled. Plaintiffs believe, however, that the funds interpled should be at most 40% of the settlement plus the amount of Young's Lien only.

FYI: Plaintiff, along with responding to your interpleader action, will file a complaint for declaratory relief to extinguish the liens.

I hope that we can proceed with the mediations, using the dates that we have chosen. I believe that we can complete the discussion with Neely by Phone possibly and then start with Brown on Tuesday or Wednesday of this week.

Look forward to hearing from you.

waukeen

*"Douglas, Frederick L." <frederick.douglas@fedex.com> wrote:*

Mr. McCoy,

I did not represent to the court I "received documents in relation to alleged liens." I informed the court that liens were filed and served on you and FedEx. I did not receive any documents from Parker, Davis and Young that you did not receive. Your statement infers that something occurred without your knowledge which is not correct. The docket numbers for the liens I made reference to during our telephone conversation are as follows:

Parker liens -- doc. nos. 375 and 575 (on June 14, 2007 she served on all parties, as verified in her certificate of service, a notice of supplement to notice for each plaintiff. A copy is attached).

Davis lien -- doc. no. 377

Young lien -- doc. no. 815

I look forward to receiving your proposal on Monday on how to move this matter forward through the mediation process.

---

**From:** Waukeen McCoy [mailto:mccoyslwsf@yahoo.com]  
**Sent:** Friday, July 13, 2007 1:25 PM  
**To:** Douglas, Frederick L.  
**Subject:** RE: Request For Lien Documents referred to during Court phone conference

Mr. Douglas:

You represented to the Court that you received documents in relation to alleged liens by Parker, Davis, and Young. Please forward the documents to my office. Hopefully you can send them to us by the close of business today so that we can complete our assessment of the validity of the liens over the weekend.

Thank you,

waukeen

"Douglas, Frederick L." <frederick.douglas@fedex.com> wrote:

Mr. McCoy,

Please call me at 901/434-8519 at 10:45 a.m. PST (12:45 p.m. CST).

---

**From:** Waukeen McCoy [mailto:mccoyslwsf@yahoo.com]  
**Sent:** Thursday, July 12, 2007 6:06 PM  
**To:** Tracy\_Sutton@cand.uscourts.gov  
**Cc:** Douglas, Frederick L.  
**Subject:** Re: Alvarado Mediation Process Breaksdown

Hi Tracy,

That sounds fine. Talk to you tomorrow.

Waukeen

Tracy\_Sutton@cand.uscourts.gov wrote:

Hello Mr. McCoy,

I would like you to initiate the conference call tomorrow at 10:45 a.m. Please have ALL parties on the line before you call the Judge. Please call (415) 522-4070 at 10:45 a.m. Do not call that number any other time after tomorrow.

Thanks Mucho....

Waukeen McCoy <mccoyslwsf@yahoo.com>  
07/12/2007 02:51 PM

Please respond to  
mccoyslwsf@yahoo.com

To Tracy\_Sutton@cand.uscourts.gov  
cc

Subject Alvarado Mediation Process Breaksdown

Tracy,

We need to schedule a phone conference, hopefully tomorrow with Judge Illston. We began the mediation process yesterday, but FedEx refused to pay the Plaintiff directly, but rather conditioned settlement on interpleading the funds. FedEx's position regarding interpleading the settlement funds was never told to Plaintiff's counsel or Judge Illston prior to mediation. As you know this has continued to cause delay and the Plaintiff's would to request if we can't resolve the matter by phone that the Court set the cases for trial. I will be available for a telephone conference all day tomorrow.

Waukeen



# **EXHIBIT 3**

**Douglas, Frederick L.**

**From:** Waukeen McCoy [mccoyslawsf@yahoo.com]  
**Sent:** Wednesday, August 22, 2007 5:12 PM  
**To:** msdlegal@comcast.net; Sanford Jay Rosen  
**Cc:** Douglas, Frederick L.; Babcock, Barak J.; bcfunkesq@aol.com; murlene@murlenerandle.com  
**Subject:** RE: Alvarado v. FedEx (our 1047-1) (Letter concerning proposed Interpleader

Mr. Rosen and Mr. Davis:

It is clear that your client Mr. Rosen and Cael Davis have no right to assert liens in these cases and are simply delaying the payment of settlement funds, if any, to the clients. You will not be part of the mediation process as the clients terminated Ms. Parker, and they terminated Mr. Davis in June of 2003 way before even filing the Alvarado Case.

We will proceed to extinguish your liens in State Court and will pursue all other remedies that are available to prevent this unethical conduct from further harming the clients. Mr. Rosen I am not sure if you are aware but your client Ms. Parker has been sanctioned in the past for filing improper liens in cases and was just disciplined by the California Bar Association for her failure to report the sanction.

I am filing a lawsuit in Superior Court against Mr. Davis tommorrow and at that time you will fully understand my opinions related to his motivations for his unethical actions.

waukeen mccooy

*msdlegal@comcast.net* wrote:

Counsel,

I have reviewed Mr. Rosen's letter regarding the interpleader action and his analysis, and after careful reflection join his positions, articulated on Ms. Parker's behalf, in all respects.

Cael Davis

----- Original message -----

**From:** "Sanford Jay Rosen" <srosen@RBG-Law.com>

Dear Mr. McCoy:

Attached please find my letter responding substantively to your email of August 17, 2007 to Ms. Parker (my client) and Mr. Davis concerning Interpleader issues.

<<SJR-WM re Interpleader 08-22-07 1047-1.pdf>>

Sanford Jay Rosen.

Rosen, Bien & Galvan, LLP

315 Montgomery Street

Tenth Floor

San Francisco, CA 94104

(415) 433-6830

(415) 433-7104 Fax

srosen@rbg-law.com

**We have moved to our new office. Please note our new address, 315  
Montgomery St, Tenth Floor.**

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**IRS CIRCULAR 230 NOTICE:** As required by United States Treasury Regulations, you should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.

From: "Sanford Jay Rosen" <[srosen@RBG-Law.com](mailto:srosen@RBG-Law.com)>

To: <[mccoyslawsf@yahoo.com](mailto:mccoyslawsf@yahoo.com)>

CC: "Douglas, Frederick L." <[frederick.douglas@fedex.com](mailto:frederick.douglas@fedex.com)>, "Babcock, Barak J." <[bjbabcock@fedex.com](mailto:bjbabcock@fedex.com)>, <[msdlegal@comcast.net](mailto:msdlegal@comcast.net)>, <[bcfunkesq@aol.com](mailto:bcfunkesq@aol.com)>, <[murlene@murlenerandle.com](mailto:murlene@murlenerandle.com)>

Subject: RE: Alvarado v. FedEx (our 1047-1) (Letter concerning proposed Interpleader

Date: Wed, 22 Aug 2007 20:04:32 +0000

**Douglas, Frederick L.**

**From:** msdlegal@comcast.net  
**Sent:** Wednesday, August 22, 2007 4:31 PM  
**To:** Sanford Jay Rosen; mccoyslawsf@yahoo.com  
**Cc:** Douglas, Frederick L.; Babcock, Barak J.; bcfunkesq@aol.com; murlene@murlenerandle.com  
**Subject:** RE: Alvarado v. FedEx (our 1047-1) (Letter concerning proposed Interpleader  
**Attachments:** RE: Alvarado v. FedEx (our 1047-1) (Letter concerning proposed Interpleader

Counsel,

I have reviewed Mr. Rosen's letter regarding the interpleader action and his analysis, and after careful reflection join his positions, articulated on Ms. Parker's behalf, in all respects.

Cael Davis

----- Original message -----

From: "Sanford Jay Rosen" <srosen@RBG-Law.com>

Dear Mr. McCoy:

Attached please find my letter responding substantively to your email of August 17, 2007 to Ms. Parker (my client) and Mr. Davis concerning Interpleader issues.

<<SJR-WM re Interpleader 08-22-07 1047-1.pdf>>

Sanford Jay Rosen.  
Rosen, Bien & Galvan, LLP  
315 Montgomery Street  
Tenth Floor  
San Francisco, CA 94104  
(415) 433-6830  
(415) 433-7104 Fax  
srosen@rbg-law.com

***We have moved to our new office. Please note our new address, 315 Montgomery St, Tenth Floor.***

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**Douglas, Frederick L.**

---

**From:** Sanford Jay Rosen [srosen@rbg-law.com]  
**Sent:** Wednesday, August 22, 2007 3:08 PM  
**To:** mccoyslawsf@yahoo.com  
**Cc:** Douglas, Frederick L.; Babcock, Barak J.; msdlegal@comcast.net; bcfunkesq@aol.com; murlene@murlenerandle.com  
**Subject:** RE: Alvarado v. FedEx (our 1047-1) (Letter concerning proposed Interpleader  
**Attachments:** SJR-WM re Interpleader 08-22-07 1047-1.pdf

Dear Mr. McCoy:

Attached please find my letter responding substantively to your email of August 17, 2007 to Ms. Parker (my client) and Mr. Davis concerning Interpleader issues.

<<SJR-WM re Interpleader 08-22-07 1047-1.pdf>>

Sanford Jay Rosen.  
Rosen, Bien & Galvan, LLP  
315 Montgomery Street  
Tenth Floor  
San Francisco, CA 94104  
(415) 433-6830  
(415) 433-7104 Fax  
[srosen@rbg-law.com](mailto:srosen@rbg-law.com)

***We have moved to our new office. Please note our new address, 315 Montgomery St, Tenth Floor.***

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**IRS CIRCULAR 230 NOTICE:** As required by United States Treasury Regulations, you should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.

SANFORD JAY ROSEN \*  
MICHAEL W. BIEN  
ERNEST GALVAN

**ROSEN, BIEN & GALVAN, LLP**

ATTORNEYS AT LAW  
315 MONTGOMERY STREET, TENTH FLOOR  
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE  
(415) 433-6830

FAX  
(415) 433-7104

EMAIL  
rbg@rbg-law.com

HOLLY BALDWIN  
GAY C. GRUNFELD  
SHIRLEY HUEY \*\*  
JANE KAHN  
MEGHAN LANG  
SARAH LAUBACH  
ANNE MANIA  
NURA MAZNAVI  
MARIA MORRIS \*\*\*  
THOMAS NOLAN  
LORI RIFKIN \*\*\*\*  
LOREN STEWART  
KENNETH WALCZAK \*\*\*\*\*  
AMY WHELAN  
SARAH OLSON ZIMMERMAN \*\*\*\*\*

August 22, 2007

**VIA U.S. MAIL AND EMAIL**

Waukeen Q. McCoy, Esq.  
McCoy and Associates  
703 Market St. Suite 1407  
San Francisco, CA 94103  
mccoyslawsf@yahoo.com

Re: *Alvarado, et al. v. FedEx* (Possible Interpleader)  
Our File No. 1047-1

Dear Mr. McCoy:

As my letter of August 7, 2007 to FedEx's attorneys made clear, Ms. Parker has no interest in delaying payment to any of the plaintiffs of money that is due to them. However, she has legitimate attorney's fees and costs claims. And there are the other lien holders' claims as well.

As we made plain in the August 9, 2007 hearing, as a discharged attorney in a FEHA case, Ms. Parker's claims are not limited to a percentage-of-recovery entitlement from the plaintiffs. First, the *Flannery* and *Lindelli* cases allow her to pursue her fees under the fee shifting provisions of the FEHA directly from FedEx. Second, under quantum meruit principles, the contract percent may be a factor in any claim for fees against the clients, but it is not the only factor. An adjusted lodestar presentation is also pertinent. See, e.g., *Cazares v. Saenz*, 208 Cal.App.3d 279, 286-289 (1989); *Fergus v. Songer*, 150 Cal.App.4th 552, 576-77 (2007), citing *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

When we were all together at the hearings on August 9, 2007, I informed FedEx's attorneys that unless Ms. Parker participates in the mediation process and agrees to a final resolution of the claims (including attorneys fees claims) arising from the seven cases yet to be tried, she is not legally bound by any agreement between and among FedEx, the

\* MEMBER OF THE CONNECTICUT AND THE CALIFORNIA BAR  
\*\* MEMBER OF THE WASHINGTON, D.C. AND THE CALIFORNIA BAR  
\*\*\* MEMBER OF THE NEW YORK AND THE CALIFORNIA BAR  
\*\*\*\* MEMBER OF THE CONNECTICUT, NEW YORK AND THE CALIFORNIA BAR  
\*\*\*\*\* MEMBER OF THE ILLINOIS AND THE CALIFORNIA BAR



Waukeen Q. McCoy  
August 22, 2007  
Page 2

seven plaintiffs and you. She intends to pursue her legitimate FEHA fee shifting claims against FedEx directly in the federal court action.

This, however, does not render an Interpleader of settlement funds impossible or even unduly onerous. All that is required is that all of the settlement funds be deposited initially to an Interpleader account. Promptly thereafter, FedEx can be dismissed from the Interpleader action, and all interested parties can determine the appropriate amounts that then can promptly be released to each of the seven plaintiffs. This is how Interpleader actions were twice done in the *Gober* matter.

Forty percent (40%) is not the appropriate hold back of funds in an Interpleader account for fee and cost claimants, in part because, in addition to Ms. Parker's interest in fees, she also is entitled to her costs. There are other lien holders to consider as well. Thus, at first look, we believe 50% is likely to be the most available for distribution from an Interpleader directly to the clients.

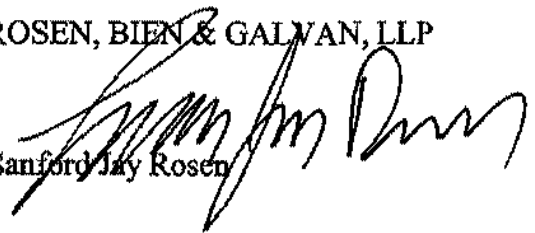
Additionally, before she can agree to any Interpleader or other mechanism for distributing settlement funds Ms. Parker needs to know the amount of the actual settlements. Moreover, we question why any distribution of settlement funds to the plaintiffs would be to them jointly with you or your office, given that the money to remain in an Interpleader account is for you and/or the lienholders. Any additional payments to you out of funds distributed to the plaintiffs may be relevant to Ms. Parker's claims. Hence, we will need to be informed on this subject too.

We have copied all interested counsel and parties on this letter. We look forward to everyone's considered responses.

Yours truly,

ROSEN, BIEN & GALVAN, LLP

By: Sanford Jay Rosen



SJR:fm

Cc: (all via email and U.S. mail)  
Barak Babcock, Esq. ([hjbabcock@fedex.com](mailto:hjbabcock@fedex.com))  
Frederick Douglas, Esq. ([frederick.douglas@fedex.com](mailto:frederick.douglas@fedex.com))  
Michael Davis, Esq. ([msdlegal@comcast.net](mailto:msdlegal@comcast.net))  
Bruce Funk, Esq. ([bcfunkesq@aol.com](mailto:bcfunkesq@aol.com))  
Angelia Alioto, Esq. ([murlene@murlenerandle.com](mailto:murlene@murlenerandle.com))

**Douglas, Frederick L.**

---

**From:** Douglas, Frederick L.  
**Sent:** Monday, July 16, 2007 12:24 PM  
**To:** 'bcfunkesq@aol.com'  
**Cc:** Douglas, Frederick L.  
**Subject:** Alvarado: Young Lien

Mr. Funk,

Thanks you for taking time to talk with me today. This confirms your position that your client (Young) has a lien for \$47,000, and you will not agree with FedEx setting aside only 40% for purposes of an interpleader. You would be in agreement if we interplead the entire amount. You want the entire amount your client is owed when the first matter is settled.

Finally, it is your position that McCoy admitted he owes your client because he filed a fee/costs petition with the court for \$47,000.

Please confirm my understanding of our conversation.

Frederick L. Douglas  
Lead Counsel/Litigation  
Federal Express Corp.  
3620 Hacks Cross Rd., Building B  
Memphis TN 38125  
Phone: 901/434-8519  
Cell: 901/848-3619  
Facsimile: 901/434-9271

**Douglas, Frederick L.**

---

**From:** BCFUNKESQ@aol.com  
**Sent:** Monday, July 16, 2007 1:18 PM  
**To:** Douglas, Frederick L.  
**Subject:** Re: Alvarado: Young Lien

Mr. Douglas:

Your e-mail of today's date accurately reflects my position on the Carlene Young lien.

Bruce

\*\*\*\*\*

Get a sneak peak of the all-new AOL at <http://discover.aol.com/memed/aolcom30tour>

# **EXHIBIT 4**

**BOND**

**Travelers Casualty and Surety Company of America  
One Tower Square, Hartford, Connecticut 06183**

LaSonia Walker, Bertha Duenas, Dyronn Theodore  
Kevin Neely, Janice Lewis, Tanda Brown and  
Alexander Rivera

Plaintiff(s)

Bond No. 104991456

against

Index or  
Cause No. C 04-0098 SI

Federal Express Corporation

Defendant(s)

C-04-0099 SI

KNOW ALL MEN BY THESE PRESENTS, that we Federal Express Corporation, as Principal, and Travelers Casualty and Surety Company of America, a corporation organized under the laws of the State of Connecticut and authorized to do business in the State of California, as Surety, are held and firmly bound unto LaSonia Walker, Bertha Duenas, Dyronn Theodore, Kevin Neely, Janice Lewis, Tanda Brown and Alexander Rivera, as Obligee(s), in the aggregate penal sum of One Million Four Hundred Ninety-Nine Thousand and 00/100-----Dollars (\$1,499,000.00), lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, presently pending are Professional Liens filed by Kay McKenzie Parker, Michael Cael Davis and Charlene Young against said settlement funds.

WHEREAS, the Defendant intends to render unto the Clerk of Court for the United States District Court for the Northern District of California the total aggregate sum of the negotiated settlements entered into by and on behalf of Plaintiffs, LaSonia Walker, Bertha Duenas, Dyronn Theodore, Kevin Neely, Janice Lewis, Tanda Brown and Alexander Rivera. Defendant is awaiting a Court Order directing the allocation of said funds between those who served Professional Liens, Plaintiff's current counsel and Plaintiffs themselves.

WHEREAS, the Defendant, as required by applicable laws is required to make certain tax withholdings on the wages portion of the settlement funds and a Bond is necessary to ensure proper tax withholdings.

NOW, THEREFORE, when a determination is made by the Court as to the allocation of the funds, Defendant will immediately deposit the full value of the this Bond minus the required taxable withholdings relative to each individual Plaintiff with the Clerk of Court for the United States District Court for the Northern District of California.

SIGNED, SEALED AND DATED this 1st day of November, 2007.

FEDERAL EXPRESS CORPORATION

By:

Frederick A. Taylor 11/5/07

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

By:

Joseph R. Poplawski  
Joseph R. Poplawski, Attorney-in-Fact

704358

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 218196

Certificate No. 001850926

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Debra Elaine Clark-Kinkead, Joseph R. Poplawski, Tara W. Mealer, and Mary Y. Volmar

of the City of Knoxville, State of Tennessee, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 18th day of January, 2007

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 18th day of January, 2007, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public



This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 1st day of November, 20 07

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

*Kori M. Johanson*  
Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.