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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**NOTICE OF MOTION, MOTION, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: January 14, 2005
Time: 9:00 a.m.
Courtroom of the Honorable Susan Illston

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on January 14, 2005, at 9:00 a.m., Plaintiffs will move this Court for an order:

(1) Certifying two classes under Fed. R. Civ. P. 23(a) and 23(b)(2):

(a) a “Minority Employee Class” comprising all African-American and Latino Handlers, Freight Handlers, Material Handlers, Checker/Sorters, Customer Service Agents, Couriers, Swing Drivers, Ramp Transport Drivers, Ramp Area Drivers, Shuttle Drivers, Dangerous Goods Agents, Information Agents, Operations Agents, Ramp Agents, Service Assurance Agents, Truck Control Agents, Trace Representatives, Input Auditors, Team Leaders, and Dispatchers working in FedEx’s Western Region, which includes the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during the period October 17, 1999 through the date of judgment in this action, for claims of employment discrimination on the basis of race in evaluation, promotion, compensation, and discipline in violation of Title VII of the Civil Rights Act of 1964 (both disparate impact and disparate treatment), 42 U.S.C. § 1981 (1996), and, for those class members working, or who worked, in California, the California Fair Employment and Housing Act; and

(b) an “African American Lower-Level Manager Class” comprising all African-American Operations Managers in FedEx’s Western Region, which includes the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during the period October 17, 1999 through the date of judgment in this action, for claims of employment discrimination on the basis of race in evaluation, compensation, and discipline in violation of Title VII of the Civil Rights Act of 1964 (both disparate impact and disparate treatment), 42 U.S.C. § 1981, and, for those class members working, or who worked, in California, the California Fair Employment and Housing Act;

(2) appointing Valerie Brown, Rick Gonzales, Cynthia Guerrero, Rachel Hutchins, Kelvin Smith, Sr., and Ken Stevenson as Class Representatives of the Minority

1 Employee Class;

2 (3) appointing Derrick Satchell and Kalini Boykin as Class Representatives of
3 the African American Lower-Level Manager Class; and

4 (4) appointing the law firms of Lieff, Cabraser, Heimann & Bernstein, LLP;
5 Schneider & Wallace; the Law Offices of John L. Burris; the Law Offices of Michael S. Davis;
6 the Law Offices of Waukeen Q. McCoy; and the Law Offices of Kay McKenzie Parker as Class
7 Counsel, pursuant to Fed. R. Civ. P. Rule 23(g), of both the Minority Employee Class and the
8 African American Lower-Level Manager Class.

9 Plaintiffs' motion is based upon (1) this Notice of Motion, Motion, and
10 Memorandum; (2) Statistical Analysis of Race and Ethnic Patterns in Federal Express Workforce
11 by Richard Drogin, Ph.D.; (3) the Expert Report of William T. Bielby, Ph.D.; (4) Report on the
12 Basic Skills Tests and Their Use by Federal Express by Nita R. French, Ph.D.; (5) the
13 Declarations of the Proposed Class Representatives; (6) the Declarations of Eighteen Class
14 Members; (7) the Declaration of Chimène I. Keitner (attaching deposition transcript excerpts,
15 alphabetically by deponent, and FedEx documents); (8) the Declaration of Nirej S. Sekhon;
16 (7) the Declarations of the Proposed Class Counsel; (9) any argument of counsel as may be
17 presented at the class certification hearing; and (10) the pleadings and files in this action.

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MEMORANDUM

I. INTRODUCTION

FedEx Express (“FedEx”) prides itself on its speedy, on-time delivery of letters and parcels throughout the world. When it comes to providing equal opportunity for its African-American and Latino employees, however, FedEx fails to deliver at all.

African Americans and Latinos (“Minorities”) who work for FedEx find their progress stalled at the lowest levels of the company hierarchy. They experience discrimination in every aspect of their workplace, including performance evaluation, promotion, compensation, and discipline. Although FedEx has policies that purport to guarantee fair and equal treatment, the actual implementation of the policies depends on arbitrary, discretionary, and subjective decisions, rife with stereotyping and racial bias. FedEx does not systematically monitor its selection procedures for reliability, consistency, or adverse impact. When adverse impact is detected, FedEx takes no steps to identify non-discriminatory alternatives. The result is a segregated workplace where Minority workers do the laborious entry-level jobs of lifting, sorting, loading, and unloading mail and packages, but fail to advance into more lucrative, satisfying, and less physically taxing positions such as courier and management positions.

At FedEx, Minorities make up approximately 56% of “Handlers” — the workers who load and unload freight — but Minorities hold only approximately 29% of Operation Manager positions and only approximately 23% of Senior Manager positions at the company,¹ even though management positions are predominantly filled from within the Company’s workforce.² FedEx’s promotion system is infected with bias. That bias is fostered by (1) a “tap on the shoulder” system of selection for promotion to many jobs; (2) a multiple choice “skills” test, passage of which is required for certain high level hourly positions, that FedEx concedes has

¹ See Statistical Analysis of Race and Ethnic Patterns in Federal Express Workforce by Richard Drogin, Ph.D. (“Drogin Rpt.”) at ¶ 14, Tbl. 3.

² See Garcia at 27:23-29:5, Keitner Decl., Ex. 10; Speroff 7/22 at 30:2-16, Keitner Decl., Ex. 25; FedEx People Manual § 4-5, Candidate Selection— Hourly Positions (noting that “FedEx Express has a systematic means of selecting candidates for hourly positions within the Corporation for promotions and transfers”), Keitner Decl., Ex. 35.

1 `statistically significant adverse impact;’³ and (3) promotion eligibility requirements that are tied
 2 to performance evaluation scores and discipline records, even though the performance evaluations
 3 and discipline systems are arbitrary, discretionary and subjective, and have an adverse impact on
 4 Minorities that is highly statistically significant.⁴

5 The uncontrolled discretion and bias in FedEx’s performance evaluation and
 6 discipline systems also infects FedEx’s compensation system. Because compensation is tied to an
 7 employee’s performance evaluation scores and discipline records, and because those systems
 8 adversely affect Minorities, Minority employees and lower level managers are paid substantially
 9 less than their similarly-situated white colleagues — even colleagues performing the same jobs,
 10 in the same facility, and with the same seniority.

11 This action is brought on behalf of two classes of African-American and Latino
 12 employees in FedEx’s Western Region to remedy and obtain redress for FedEx’s discriminatory
 13 policies and practices during the period October 17, 1999 through the date of judgment: the
 14 “Minority Employee Class” and the “African American Lower-Level Manager Class.” FedEx’s
 15 Western Region is comprised of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana,
 16 Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming.⁵

17 The “Minority Employee Class” consists of Minority hourly employees in the
 18 following positions: Handler, Freight Handler, Material Handler, Checker/Sorter, Customer
 19 Service Agent, Courier, Swing Driver, Ramp Transport Driver (“RTD”), Ramp Area Driver,
 20 Shuttle Driver, Dangerous Goods Agent, Information Agent, Operations Agent, Ramp Agent,
 21 Service Assurance Agent, Truck Control Agent, Trace Representative, Input Auditor, Team
 22 Leader, and Dispatcher. The Minority Employee Class is suing to stop FedEx’s policies and
 23 practices of (1) providing Minority Employees with disproportionately fewer promotions to
 24

25 ³ See Hater at 78:4-22, Keitner Decl., Ex. 12; Draft Memo from Hater to Taylor, 7/19/1994,
 26 Keitner Decl., Ex. 43; Drogin Rpt. at ¶¶ 49-52; Report on the Basic Skills Tests and Their Use by
 Federal Express by Nita R. French, Ph.D., in Support of Plaintiffs’ Motion for Class Certification
 (“French Rpt.”) at 17.

27 ⁴ See Drogin Rpt. at ¶ 34.

28 ⁵ See Van Galder at 11:1-14, Keitner Decl., Ex. 27.

1 Checker-Sorter, Courier and other driving positions, and Operations Manager than fair and equal
 2 treatment would provide; (2) compensating Minority Employees less for the same work than their
 3 similarly-situated non-Minority counterparts; and (3) disciplining Minority Employees more
 4 frequently and more harshly for the same occurrences than their non-Minority counterparts.

5 The second class, the “African American Lower-Level Manager Class,” consists
 6 of African-American managers below the level of Senior Manager. These employees receive
 7 lower compensation, including less pay for the same work, and more and harsher discipline than
 8 their non-Minority counterparts.

9 Both classes assert claims under Title VII of the Civil Rights Act of 1964,
 10 42 U.S.C. § 2000(e) et seq. for disparate treatment and disparate impact, and under 42 U.S.C.
 11 § 1981. Class members working, or who worked, in California also bring claims under
 12 California’s Fair Employment and Housing Act, Government Code § 12940 et seq.

13 In support of class certification, Plaintiffs rely on (1) deposition testimony,
 14 declarations, and charges of discrimination by the named plaintiffs; (2) eighteen declarations from
 15 current and former FedEx employees; (3) FedEx documents and the testimony of FedEx’s
 16 corporate representatives; (4) the report of Richard Drogin, Ph.D., a statistician who identifies the
 17 statistically significant disparities in FedEx’s compensation, evaluation, promotion, and discipline
 18 decisions; (5) the report of William Bielby, Ph.D., a sociologist who explains how racial
 19 stereotypes infect FedEx’s human resources processes; and (6) the report of Nita French, Ph.D.,
 20 an industrial organizational psychologist, who explains that FedEx’s requirement of passage of
 21 the race-biased “Basic Skills Test” for promotion to several key jobs is not justified.⁶ This
 22 evidence demonstrates a pattern of under-promotion, under-compensation, and overdiscipline of
 23 Minority Employees and African American Lower-Level Managers throughout FedEx’s Western
 24 Region. The result of FedEx’s discriminatory policies and practices is that Minority Employees
 25 disproportionately occupy low-paid, physically demanding hourly positions and the few who do
 26 progress to driver and management positions are compensated less than similarly-situated whites.

27
 28 ⁶ Proposed Class Counsel also submit declarations regarding their adequacy.

Class certification is appropriate pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). All of the prerequisites to a class action in Rule 23(a) — numerosity, common questions, typicality, and adequacy — are satisfied. The Minority Employee Class has thousands of class members and the African American Lower-Level Manager Class has several hundred members. Common issues include whether FedEx’s uniform promotion, compensation and discipline policies have disparate impact on Minority employees and lower level managers; whether FedEx’s discrimination is intentional; and whether the pattern and practice of under-promotion, under-compensation, and overdiscipline of Class members violates the employment discrimination laws. The proposed class representatives are members of the classes they seek to represent and have claims that are typical of other class members. They will adequately represent the classes, and have retained counsel who, collectively, have the resources and experience to represent the Class effectively.

Certification is appropriate under Rule 23(b)(2) because this suit seeks meaningful declaratory and injunctive relief.⁷ The primary goal of this litigation is to alter FedEx’s performance evaluation, job posting, promotion, compensation, and discipline policies and practices so that FedEx delivers equal employment opportunities to its Minority employees and lower level managers as well as it delivers packages and letters to its customers.⁸

II. STATEMENT OF FACTS

A. Minorities At FedEx Are Relegated To The Most Physically Demanding, Lowest Paid, Jobs.

The cold statistics show that Minority Employees at FedEx are consigned to hourly labor — they perform the more physically demanding, lower paid work of loading and

⁷ As it did in Butler v. Home Depot, Case No. C 94-4335 SI, Order of Jan. 25, 1996, 1996 WL 421436 (N.D. Cal.), the Court should bifurcate the case into liability and relief phases. As in Butler, the first phase, certified under Rule 23(b)(2), would “address liability and relief applicable to the class as a whole, including declaratory and injunctive relief, and whether defendant is liable for punitive damages.” Id. at *1. After a finding of liability in Phase I, the Court should grant declaratory and injunctive relief, and equitable relief such as back pay. The Court can decide after the liability phase whether the compensatory damages phase should be certified under Rule 23(b)(3), with notice and an opportunity to opt out.

⁸ See Declarations of: Kalini Boykin at ¶ 2; Derrick Satchell at ¶ 2; Valerie Brown at ¶ 2; Rick Gonzales at ¶ 2; Rachel Hutchins at ¶ 2; Kelvin Smith, Sr. at ¶ 2; and Ken Stevenson at ¶ 2.

1 unloading packages, but are underrepresented in the less physically taxing, better paying, driver
 2 and management positions. At each step up the promotions ladder, the percentage of Minorities
 3 drops. (Drogin Rpt. at ¶¶ 12-14.)

4 Among hourly positions, the positions with the highest percentages of Minorities
 5 are the Handler, Freight Handler, and Material Handler positions — the three lowest paid
 6 positions in the Company. (Drogin Rpt. at ¶ 14, Table 3.) The representation of Minorities
 7 among the higher paid Courier and Ramp Transport Driver positions drops by almost half.
 8 Although approximately 56% of Handlers are Minorities, only approximately 30% of Couriers
 9 are Minorities. (*Id.*) The drop-off in the percentage of African Americans is particularly
 10 dramatic: although approximately 35% of Handlers are African American, only approximately
 11 13% of Couriers are African American. (*Id.*)

12 For Latinos, the drop continues into the management ranks. Latinos comprise
 13 approximately 17% of Couriers, but only 8.5% of Operations Managers, the lowest management
 14 position. (*Id.*)

15 **B. FedEx Has A Culture Of Hostility To Minorities.**

16 At the root of the statistical disparity between FedEx's Minority employees and
 17 non-Minority employees is a mix of conscious and unconscious racial bias and stereotypes. The
 18 company's sophisticated exterior masks a culture of hostility towards minorities and disregard for
 19 workplace segregation and FedEx's legal obligations. A lack of meaningful standards,⁹ controls
 20 and monitoring allows those racial biases and stereotypes to infect FedEx's performance
 21 evaluation, discipline, promotion, and compensation systems.

22 Known as the "ole boys network" or "the country club," the management of
 23 FedEx's Western Region engages in behaviors that have long since been deemed unacceptable in
 24 our society. High ranking FedEx officials, including Mike Pigors, the current Vice President for
 25 FedEx's Western Region of the AGFS Division — and the FedEx officer responsible for diversity
 26 in the region (Shannon Brown at 73:8-75:5, Keitner Decl., Ex. 3), have repeatedly, and openly,

27 ⁹ Although FedEx has written personnel policies that touch upon a variety of subjects, those
 28 policies leave large amounts of discretion to local managers.

1 used racial slurs.¹⁰

2 Those racial slurs were not isolated comments: they reflect a corporate culture,
3 and open unwritten policy at FedEx of hostility toward Minorities. Not only were the senior
4 FedEx officials who made those slurs never disciplined for making them, but a manager who
5 challenged his superiors about their use of such terms was warned that supporting Minorities
6 would be harmful to his career at FedEx. (Snyder at 52:25-56:16, Keitner Decl., Ex. 24.) When
7 former Southern California Managing Director Michael Snyder questioned whether such
8 language was appropriate, he was derided by Mr. Rebholz, his boss, as a “nigger lover.” (*Id.* at
9 54:12-24.) Mr. Rebholz then counseled Mr. Snyder about FedEx’s culture and what he needed to
10 do to fit in:

11 Q. When Mr. Rebholz made these types of comments, did you say
12 anything to him or react in any way to indicate whether you
approved or disapproved of him?

13 THE WITNESS: Yes, I reacted.

14 MR. ROOT: In what manner?

15 A. Challenging him to that thought process and whether it was
16 appropriate.

17 Q. When you did that, how did Mr. Rebholz respond?

18 A. I remember on one occasion he called me a “nigger lover.” I
recall that pretty specifically. He explained --

19 ¹⁰ Mr. Pigors referred to African Americans as “niggers.” Snyder at 75:3-8. At the time,
20 Mr. Pigors was Vice President of the Western Region of DGO. See also Rogers at 114:2-115:11,
21 719:8-19, Keitner Decl., Ex. 23, in which Mr. Rogers, a FedEx Senior Manager, testifies that Mr.
Pigors intentionally and dismissively called him “boy” during a senior managers meeting in late
2000.

22 Tim Wertner, who is currently a Managing Director for FedEx’s Los Angeles/Inland Empire
23 District, the largest in the Western Region, also referred to African Americans as “niggers.”
Snyder at 86:18-20. When asked about the statements, Mr. Wertner testified that he could “not
24 recall.” Wertner at 256:2-257:18, Keitner Decl., Ex. 28. Jerome Rogers testified that Mr.
Wertner made known his views that African Americans are inferior to whites. Rogers at 311:25-
25 313:9, 459:10-464:15, 766:14-768:11. Mr. Wertner also served as a Managing Director of the
Bay Area Metro District during the Class period.

26 David Rebholz, currently FedEx’s Executive Vice President of Operations repeatedly called
27 African Americans “niggers” when he was Operations V.P. of FedEx’s Western Region in the
1990s. Mr. Rebholz now reports directly to FedEx CEO David Bronczek. Accordingly to Mr.
Snyder, Ted Weise, who was President and CEO of FedEx during part of the class period,
28 repeatedly referred to blacks as “niggers.” Snyder at 56:22-59:7.

1 MR. COCHELL: Objection, form of the question. Go ahead.

2 THE WITNESS: -- his rationale and how the company was, and
3 that I was going to need to get used to that and understand if I
4 wanted to have a career.

4 * * * *

5 Q. BY MR. ROOT: You mentioned in your testimony that he
6 explained to you the way things were at FedEx. And I am asking
7 you what specifically he said in that regard.

8 THE WITNESS: I understand the question. To the best of my
9 recollection, that it was a southern boy mentality in upper
10 management and you had to fit in, something along those lines. I
11 don't remember the specific quotes. But kind of coaching me and
12 counseling me that -- trying to make a stand on minorities' behalf
13 was inappropriate.

14 Q. BY MR. ROOT: And by "inappropriate," did you understand
15 him to mean harmful to your career at FedEx?

16 A. Yes, I understood that's -- I think that's what he was trying to
17 tell me.

18 (Snyder at 54:12-56:16, Keitner Decl., Ex. 24.) That testimony about FedEx's culture is
19 confirmed by a statement by long-time FedEx HR advisor Sam Haskins in a human resources
20 document produced by FedEx and dated June 2, 1992 that "[i]f any adverse impact [in manager
21 hiring] indeed exists, it's probably due to Federal Express culture and management hiring
22 practices" (Memo, Haskins to Pollard, 6/2/1992, Keitner Decl., Ex. 50) and by Mr. Haskins'
23 explanation of that statement in his August 31, 2004 deposition testimony that in the 90s "we
24 were very much predominantly [a] white male management population, and that was our hiring
25 practice."¹¹

26 Where, as here, a company has a history of racial bias in its corporate culture, that

27 ¹¹ Haskins at 11:23-12:19, Keitner Decl., Ex. 11; see also Darrell Kato, former Managing Director
28 of the Coastal District, at 60:23-62:12, 130:22-140:2, Keitner Decl., Ex. 16 ("The managing
directors within the western region were considered to be a good ol' boys network.").

The culture of hostility to Minorities is manifested in other ways as well. Members of the
overwhelmingly Caucasian senior management of FedEx make no secret of their desire not to
work with Minorities. See Snyder at 54:12-56:16. The hiring process allows the exclusion of
Minorities from certain interviews. See, e.g., Kato at 124:6-125:24. On rare occasions when
Minority Employees are promoted into management, they are referred to as "tokens," Snyder at
53:25-54:2, and excluded from group e-mails and other company communications. Rogers at
768:17-770:1, Keitner Decl., Ex. 23.

1 bias is likely to continue unless the company takes strong affirmative steps to eliminate the biased
 2 culture. FedEx has taken no such steps. Instead, FedEx fails to comply with its legal obligations
 3 to monitor adverse and impact and turns a blind eye to the adverse impact that permeates its
 4 evaluation, promotion, discipline and compensation systems. As a result, the discriminatory
 5 corporate culture described by Mr. Rebholz and Mr. Haskins helps to explain the statistical
 6 disparities that currently pervade FedEx's Western Region. (Bielby Rpt. at ¶¶ 40-41.)

7 Racial bias infects every aspect of the FedEx workplace, including evaluation,
 8 promotion, compensation, and discipline. Feeding on the atmosphere established by senior
 9 management, and given human resources systems that permit application of discretionary
 10 decision-making without guidelines or controls, local managers resort to stereotypes and biased
 11 attitudes when making evaluation, promotion, compensation, and discipline decisions. (*Id.* at
 12 ¶ 42.)

13 C. FedEx's Operations Are Uniform.

14 Throughout the Western Region, and indeed throughout the United States,
 15 FedEx's operations are uniform. FedEx's distribution facilities and its workplace systems are
 16 standardized. Different facilities have largely the same categories of employees, and the job
 17 duties of those employees are the same. (*See* Van Galder at 45:16-46:9, Keitner Decl., Ex. 27;
 18 Garcia at 35:13-23, Keitner Decl., Ex. 10.) The job of a Handler is the same in Alaska as it is in
 19 Hawaii. (Van Galder at 48:12-15, 56:1-9, 60:2-17.) The job of a Courier is the same in Seattle as
 20 it is in Phoenix. An employee transplanted from Portland, Oregon to Los Angeles, California to
 21 Reno, Nevada to Spokane, Washington could make a seamless transition. As a result, employee
 22 transfers between facilities not only occur (*see* Fifer at 40:11-17, Keitner Decl., Ex. 9), but are
 23 encouraged by the Company for Managers. (*See, e.g.,* Van Galder at 56:10-57:14; Fifer at 76:23-
 24 77:7.)

25 Uniformity is more than just a feature of FedEx's operations — it is a requirement.
 26 FedEx goes to great lengths to ensure consistency in its operations. (Cioffi at 89:9-17, Keitner
 27 Decl., Ex. 5.) Only through uniformity and consistency can FedEx ensure proper service to its
 28 worldwide customers. (Moses at 32:17-33:18, Keitner Decl. Ex. 18.)

1 **D. FedEx Is Centralized and Hierarchical.**

2 FedEx has two operational Divisions in the Western Region: Air Ground Freight
3 Services (“AGFS”) and Domestic Ground Operations (“DGO”). The DGO Division includes the
4 Couriers who drive the familiar trucks and interact most frequently with the public. The AGFS
5 Division is responsible for air transport of packages after they are collected by DGO, as well as
6 for delivery of large and heavyweight packages. (See Van Galder at 27:25-28:8, Keitner Decl.,
7 Ex. 27.)

8 FedEx is also divided into geographical Regions. The FedEx Regions are headed
9 by Vice Presidents of Operations for each Division. The Vice President of the Western Region
10 for AGFS is Michael Pigors, who has referred to African Americans as “niggers.” (Snyder at
11 75:3-8, Keitner Decl., Ex. 24.)

12 Regions are divided into Districts, which are headed by Managing Directors who
13 report directly to the Vice Presidents of Operations. The Managing Director of DGO for the
14 LA/Empire District is Tim Wertner, who also has referred to African Americans as “niggers.”
15 (Id. at 86:18-20.)

16 The Districts are comprised of individual distribution/service centers in the DGO
17 division, and of “organizations” in AGFS, which may correspond to a single facility or to set of
18 operations within a larger airport based facility. Both service centers and organizations are run by
19 Senior Managers, who report directly to the Managing Directors. Senior Managers supervise
20 Operations Managers, the lowest management positions. The Vice Presidents of Operations, the
21 Managing Directors, and the Senior Managers form the senior management ranks of the
22 Company. The chains of command in the Western Region, as in all FedEx Regions, run directly
23 to FedEx corporate headquarters in Memphis. The Executive Vice President of Operations is
24 David Rebholz, who has made it clear that the “southern boy mentality in upper management”
25 will exclude anyone who speaks up on behalf of Minorities. (Id. at 52:25-56:16.)

26 **E. FedEx’s Employment Policies and Practices Are Uniform.**

27 All personnel policies, procedures, and forms are produced by and disseminated
28

1 from FedEx's corporate headquarters in Memphis.¹² Included among FedEx's standardized
 2 personnel materials are the People Manual (a comprehensive guide to uniform, mandatory
 3 policies and procedures); Best Practices guides for AGFS and DGO; a uniform, corporate-wide
 4 Legal manual; and uniform materials for employee orientation, training, and evaluation.¹³

5 Personnel decisions about hiring, evaluation, promotion, discipline, and
 6 compensation of hourly employees are primarily made by Operations Managers, who report to
 7 Senior Managers. Personnel decisions regarding Operation Managers are primarily made by
 8 Senior Managers.

9 When making these personnel decisions, local managers operate within a system
 10 that applies uniformly throughout FedEx, not only in the Western Region, but nationwide. Local
 11 managers use the same forms, administer the same tests, and apply the same policies throughout
 12 the Western Region.¹⁴

13 FedEx's policies regarding promotion, compensation, evaluation, and discipline
 14 are set forth in the People Manual. The People Manual policies apply companywide.¹⁵ No
 15 officers or managers in the Western Region have authority to alter or deviate from these policies.
 16 (Van Galder at 90:16-91:6, Keitner Decl., Ex. 27; Garcia at 9:1-8, Keitner Decl., Ex. 10.) Those
 17 policies include the eligibility requirements for promotion and the formulas for setting
 18 compensation.

19 **F. FedEx's Policies and Practices Discriminate Against Minorities.**

20 Statistical analysis of FedEx's employment policies and practices establishes that
 21 FedEx discriminates against Minority employees with respect to promotions, compensation,
 22 evaluations, and discipline, and against African American Lower-Level Managers with respect to

23 ¹² See, e.g., Speroff 7/22 at 22:7-26:7, Keitner Decl., Ex. 25; FedEx People Manual—Publication
 24 Information, Keitner Decl., Ex. 31 (indicating that all amendments to the People Manual shall be
 made by the CEO).

25 ¹³ See, e.g., Van Galder at 85:1-88:12, Keitner Decl., Ex. 27; McQueen at 92:6-93:16, Keitner
 Decl., Ex. 17.

26 ¹⁴ See, e.g., McQueen at 92:6-93:16; Garcia at 9:1-8, Keitner Decl., Ex. 10; Fifer at 13:3-14:14,
 27 Keitner Decl., Ex. 9; Speroff 7/22 at 22:7-23:16, Keitner Decl., Ex. 25.

28 ¹⁵ See, e.g., Buchanan at 20:2-20:5, Keitner Decl. Ex. 4 (referring to the People Manual as a
 FedEx manager's HR "Bible"); Presnoples at 11:24-12:11, Keitner Decl., Ex. 21.

1 evaluations, compensation, and discipline. With respect to each of these employment practices,
 2 these disparities adverse to Minorities are highly statistically significant, and could not have
 3 occurred by chance. (See Drogin Rpt.. at ¶¶ 21-66.) These statistical disparities are so powerful
 4 that they not only establish the *prima facie* case for a disparate impact claim, see Hazelwood Sch.
 5 Dist. v. U.S., 433 U.S. 299, 307-8 (1977), but form a basis for inferring intentional
 6 discrimination, see Butler v. Home Depot, 1997 WL 605754 (N.D. Cal.) at *6; Stender v. Lucky
 7 Stores, 803 F.Supp. 259, 332-34 (N.D. Cal. 1992).

8 **1. FedEx's Promotion Policies And Practices Are Discriminatory.**

9 **a. FedEx Discriminates Against Minorities with Respect to**
 10 **Promotions from "Casual" to "Permanent" Status.**

11 FedEx's pattern of discrimination begins from the moment employees are hired. A
 12 new hire can receive either a permanent or "casual" position; "casual" employees do not have
 13 regular work schedules, receive no benefits, and do not have access to the FedEx intranet, which
 14 contains on-line personnel and training materials, including the on-line Job Change Application
 15 Tracking System (JCATS) through which permanent employees apply for promotions.
 16 (Williamson at 12:1-13:16, Keitner Decl., Ex. 29; Fifer at 19:2-25, Keitner Decl., Ex. 9.)
 17 Upgrading from casual to permanent is considered a promotion.¹⁶ Permanent full-time positions
 18 provide greater stability, more prestige, and quicker promotion to other jobs within FedEx.

19 Minority "casual" employees are treated far worse than similarly situated whites
 20 with respect to promotions to permanent positions. A statistical analysis of promotions from
 21 casual to permanent, controlling for originating job, geographic location, and time in job reveals
 22 statistically significant disparities adverse to both African Americans and Latinos. (Drogin Rpt.
 23 at ¶¶ 21-31.) Focusing on the move from casual Handler to permanent Courier — the most
 24

25 ¹⁶ Although one corporate deponent described the placement of a "casual" employee into a
 26 permanent position as an external hire, suggesting that "casual" employees are somehow outside
 27 the company, see Huffer at 79:3-22, Keitner Decl., Ex. 15, the company's own databases confirm
 28 casuals are in fact employees of FedEx. The FedEx computer system contains casual employees
 in the payroll data and identifies the names of casual employees moving to a permanent position
 with the "P" code used for promotions. See Drogin Rpt. at n.6. Regardless of what this job move
 is called, Minorities fare worse.

1 common path for promotions into the Courier position¹⁷ — similarly establishes dramatic
2 disparities adverse to Minorities.¹⁸

3 Of all of FedEx's employees, casual employees are the least protected. They have
4 the least job security; they have no health care security; and they have no regular schedules. Of
5 particular relevance to this case, they have no meaningful protection from racial discrimination,
6 and cannot make use of FedEx's internal procedures for handling race discrimination
7 complaints.¹⁹

8 Unlike permanent employees, casual employees are not permitted to apply for
9 positions using FedEx's computerized job application system. (Williamson at 12:1-20, Keitner
10 Decl., Ex. 29; Huffer at 78:18-79:2, Keitner Decl., Ex. 15; Garcia at 23:10-12, Keitner Decl., Ex.
11 10.) They are not privy to the information about job postings contained in that system. (Id.) As a
12 result, permanent positions filled from the pool of "casual" employees are filled in part by
13 managers inviting certain employees to apply — a "tap-on-the-shoulder" process. (Garcia at
14 19:16-22:18; see also Huffer at 34:21-35:1, 46:6-25, 54:5-55:16; Hesser at 48:9-14, 50:12-24,
15 Keitner Decl. Ex. 14; Presnoples at 131:6-14, Keitner Decl. Ex. 21.) As Professor Bielby, the
16 immediate past President of the American Sociological Association explains, such processes are
17 susceptible to the influences of racial stereotyping and "in-group favoritism" by white
18 managers.²⁰

19 Managers are not systematically trained on how to select among casual applicants.
20 (Buchanan at 133:18-135:10, Keitner Decl., Ex. 4; Huffer at 60:21-62:10, Keitner Decl. Ex. 15.)
21 Accordingly, a Manager who chooses among casual employees has almost unfettered discretion
22 — even more than a Manager choosing among permanent employees. As Professor Bielby
23 explains, such arbitrary, discretionary and subjective decision-making often is infected by racial
24

25 ¹⁷ Of the persons promoted into Courier positions during 1999-2003, approximately 70% were
promoted from the Handler and Freight Handler jobs. Drogin Rpt. at ¶ 22.

26 ¹⁸ Id. at ¶¶ 21-26, 31 (for the years 1999-2003, the statistical disparity is -4.49 standard deviations
for African Americans; -4.34 standard deviations for Latinos).

27 ¹⁹ Dandridge at 27:4-29:7, Keitner Decl. Ex. 7 (GFT policy applies to permanent employees).

28 ²⁰ See Expert Report of William T. Bielby, Ph.D. ("Bielby Rpt.") at ¶¶ 4, 8, 20-23, 33, 42.

1 stereotypes and results in biased outcomes. (Bielby Rpt. at ¶¶ 8, 15-39, 42.) That is what
2 happens at FedEx.

3 **b. FedEx Discriminates Against Minorities with Respect to**
4 **Promotions to More Desirable Permanent Hourly Positions.**

5 Handler jobs are the most physically demanding and lowest paid jobs at FedEx.²¹
6 Accordingly, moving from Handler jobs to less physically taxing, higher paid, hourly positions
7 such as Checker/Sorter and Courier and Ramp Transport Driver is desirable.

8 A statistical analysis of the JCATS data²² establishes that both African American
9 and Latino employees are selected for promotion at rates materially lower than similarly situated
10 whites. This under-promotion is statistically significant with respect to both African Americans
11 and Latinos.²³

12 A statistical analysis of all moves from Handler to Checker/Sorter, from Handler
13 to Courier, from non-Handler to Courier, and from Handler to Material Handler, including moves
14 that do not appear in the JCATS data, confirms that Minorities are under-promoted. The
15 disparities are highly statistically significant.²⁴

16 At least three mechanisms of discrimination contribute to these disparities: (1) a
17 biased “skills” test; (2) biased performance evaluations; and (3) a biased discipline system.

18 **i. FedEx Requires Passage of a “Skills” Test that It Knows**
19 **Has Adverse Impact.**

20 To be promoted from Handler or other low level hourly positions into Courier,

21 ²¹ Checkers/Sorters are paid more than Handlers, and Couriers and Ramp Transport Drivers are
22 paid more than Checkers/Sorters. Drogin Rpt. at ¶ 14, Tbl. 3.

23 ²² The JCATS data are supposed to include all promotions of permanent hourly employees at
24 FedEx.

25 ²³ Drogin Rpt. at ¶¶ 46, 48 (-7.19 standard deviations for African Americans; -4.74 standard
26 deviations for Latinos).

27 ²⁴ Drogin Rpt. at ¶¶ 21-31 (finding statistical disparities adverse to African Americans during the
28 period 1999-2003, of -6.42 standard deviations as to promotions from Handler to Courier [-4.49
from Casual Handler to Permanent Courier and -4.59 from Permanent Handler to Permanent
Courier], -7.75 standard deviations from non-Handler to Courier, -3.37 from Handler to
Checker/Sorter, -11.34 from Handler to Material Handler; finding disparities adverse to Latinos
as to promotions from Handler to Courier of -4.43 standard deviations from Casual Handler to
Permanent Courier, and -3.72 standard deviations from any Handler position to Permanent
Courier.)

1 Ramp Transport Driver, or Service Agent positions, a FedEx employee must pass a group of tests
 2 known as the Basic Skills Tests (“BST”).²⁵ FedEx concedes that the BST has statistically
 3 significant adverse impact.²⁶ The adverse impact of the BST is extraordinarily large. For
 4 example, the BST disqualifies almost two-thirds of African Americans who apply for the Courier
 5 job; the pass rate is less than one-half the pass rate for white applicants.²⁷

6 Although FedEx claims the BST is a valid predictor of performance, Dr. Nita
 7 French, an industrial organizational psychologist who has reviewed all of the materials relating to
 8 the supposed validation of the BST, has concluded that FedEx’s use of the BST is not justified.²⁸
 9 In addition, the U.S. Department of Labor’s Office of Federal Contract Compliance Programs has
 10 found that the BST has adverse impact and is not valid.²⁹ Despite being aware that the BST has
 11 statistically significant adverse impact, FedEx has disregarded its legal obligation under the 1978
 12 Uniform Guidelines on Employee Selection Procedures (“Uniform Guidelines”) to monitor
 13 adverse impact³⁰ and to explore alternatives that have less adverse impact.³¹

14 ²⁵ See General BST Information, Keitner Decl., Ex. 39.

15 ²⁶ Hater at 78:4-79:13, Keitner Decl. Ex. 12; see also Drogin Rpt. at ¶¶ 49-52 (finding disparities
 16 so significant that the probability of them occurring by chance is “essentially zero”).

17 ²⁷ Hater at 85:1-86:5, Keitner Decl. Ex. 12; see Draft Memo from Hater to Taylor, 7/19/1994,
 18 Keitner Decl., Ex. 43.

19 ²⁸ See French Rept. at 15, 18.

20 ²⁹ Hater at 51:13-53:23; OFCCP Letter of 6/29/2000, Keitner Decl., Ex. 42.

21 ³⁰ Hater at 79:4-82:9. The Uniform Guidelines require employers to maintain records that
 22 disclose the impact of tests, such as for BST, upon employment opportunities of “persons
 23 identified by race, sex, or ethnic group.” 29 C.F.R. § 1607.4(c). “Adverse impact determinations
 24 should be made at least annually...” 29 C.F.R. § 1607.15.A(2). The Supreme Court has
 25 underscored the importance of these recordkeeping requirements. Wards Cove Packing Co. v.
 26 Atonio, 490 U.S. 642, 657-58 (1989)

27 ³¹ Hater at 82:10-83:3; see French Rpt. at 18. It is a legal duty for an employer to explore
 28 whether there is an alternative selection practice or an alternative use of a selection practice that
 has less adverse impact provided that the alternative is substantially equally predictive of job
 performance. See Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607.3(B)
 (an employer should “make a reasonable effort to become aware of . . . alternative procedures”
 with less adverse impact, and that “[w]here the user is shown an alternative selection procedure
 with evidence of less adverse impact and substantial evidence of validity of the same job in
 similar circumstances, the user should investigate it to determine the appropriateness of using or
 validating it. . .”). Accordingly, even if an employer demonstrated the validity of a test, the use
 of the test is unlawful if the plaintiff shows that the employer failed to implement an effective
 alternative selection device that would have a lesser adverse impact. Albemarle Paper Co. v
Moody, 422 U.S. 405, 425 (1975); 42 U.S.C. § 2000e-2k(1)(A)(ii).

1 FedEx has also failed to demonstrate that Service Agent, Courier, and Ramp
2 Transport Driver candidates who pass the BST perform better on the job than those who fail.
3 (See French Rpt. at 14-15.) FedEx concedes that many skills not tested on the BST are important
4 for these jobs; the BST measures only 16 of the 66 skills identified by Subject Matter Experts as
5 important to the job of Courier. (Hater at 154:10-157:25, Keitner Decl., Ex. 12; see French Rpt.
6 at 9.)

7 The BST prevents a huge percentage of Courier candidates from obtaining Courier
8 positions even though these candidates would successfully complete the mandatory Courier
9 training course. Of 102 Couriers who took the BST and Courier training in a pilot study, 96
10 candidates passed training, but only 52 candidates passed the BST. (Id. at 267:16-272:10; see
11 Validation of BST With Courier and Service Agent Training Performance, p. 7, Keitner Decl.,
12 Ex. 41.) Because this was a pilot study only, the 44 candidates who failed the BST but passed
13 Courier training went on to work as Couriers. Had the BST requirement been in place at that
14 time, 44 out of 102 Courier candidates would have been excluded from this promotional
15 opportunity even though almost all of them were able to pass training. The inability of the BST to
16 predict success on the job was underscored by Melody Weaver-Thomas, a DGO training
17 manager, in a March 6, 2000 memo in which she calculated Courier and Service Agent training
18 pass/fail rates and concluded that the “basic skills test implemented in November 1996 has not
19 shown a significant change in pass/fail rates in training programs,” meaning that the BST
20 requirement has not improved the job performance of courier trainees. (Id. at 92:8-97:8; Memo
21 from Weaver-Thomas to Distribution, 3/6/2000, Keitner Decl., Ex. 44; see French Rpt. at 6.)

22 FedEx has retained the BST requirement in the face of evidence that its use
23 confers little operational benefit while causing enormous adverse impact. (See Drogin Rpt. at
24 ¶¶ 49-52; French Rpt. at 18.) The BST requirement applies uniformly to all Service Agent,
25 Courier, and Ramp Transport Driver candidates in the Western Region and, indeed, nationwide.
26 The harm to Minorities caused by FedEx’s unjustified use of the BST gives rise to a paradigmatic
27 class claim for injunctive relief.

ii. **FedEx's Discriminatory Performance Evaluation System Causes Under-Promotion.**

In addition to requiring passage of the BST, FedEx restricts promotion eligibility to employees who obtain certain performance evaluation scores on their most recent reviews. The People Manual specifies that hourly employees must have a most recent performance evaluation score of 5 (on a 7 point scale) to be eligible for promotion.³² Because the performance evaluation system is biased against Minorities, that requirement leads to under-promotion of Minorities.

A statistical analysis of performance evaluation scores establishes that both African Americans and Latinos receive lower evaluation scores than whites in the same jobs. The results are highly statistically significant.³³ The adverse impact is so strong that the probability of it occurring by chance as to Latinos is less than one in ten to the 14th power and the probability of it occurring by chance for African Americans is far less than one chance in ten to the 53rd power.

This disparity raises the question of why the performance evaluations are biased. The answer lies in the lack of guidance given to local managers on how to conduct evaluations, and the failure to implement safeguards to ensure that managers consider the same criteria, weigh the criteria in the same way, rate consistently themselves, and rate consistently as a group.³⁴

FedEx's own industrial organizational psychologists concede that the performance evaluations are unreliable. Joel Vaslow, an industrial organizational psychologist at FedEx, harshly criticized the performance ratings in an e-mail to other HR personnel at FedEx. Vaslow stated, among other criticisms, that "[b]asically performance review ratings tend to be unreliable and it may be difficult or meaningless to compare performance reviews from one employee to the next."³⁵ David Brooks, another industrial organizational psychologist at FedEx, also harshly

³² See People Manual § 4-15, Career Opportunity at Tbl. 1, p. 187, Keitner Decl., Ex. 36; Speroff 7/22 at 65:14-67:6, Keitner Decl., Ex. 25.

³³ See Drogin Rpt. at ¶¶ 33-35 (-15.91 standard deviations for African Americans; -8.78 standard deviations for Latinos).

³⁴ See Bielby Rpt. at ¶¶ 15-29.

³⁵ See Email, Vaslow to Haskins et al., 8/10/1999, Keitner Decl., Ex. 45; see also Validation of BST With Courier Performance (1995), p. 3, Keitner Decl., Ex. 40, indicating that FedEx

1 criticized the performance ratings. For example, in the ASPIRE Follow-up Criterion Validation
2 Report for 2003, Brooks categorically described the “limitations” of the performance ratings.³⁶

3 Part of the problem is that the performance evaluation forms require the evaluation
4 of subjective criteria such as “teamwork,” lack of complaining (which listed as an indicia of
5 “teamwork”), “professionalism,” and neatness.³⁷ But even more problematic is the lack of
6 guidelines, controls, and monitoring to ensure that the subjective criteria are used in the same way
7 by different managers, and by the same manager with respect to different employees, so that the
8 evaluations are consistent and reliable and stereotypes and biases are controlled. (See Bielby
9 Report at ¶¶ 26-29.)

10 Although the evaluation forms give guidelines, the guidelines are only illustrative.
11 (Perry at 119:22-126:3, Keitner Decl., Ex. 19.) Different managers consider different things. (Id.
12 at 126:4-128:13.) A Senior Manager testified that he did not apply the criteria the same way from
13 employee to employee. (Id. at 131:1-135:3.) Because FedEx does not define the terms on
14 evaluation forms (id. at 119:22-126:3), adequately train managers about how to use them reliably
15 (id. at 124:17-126:3, 139:7-140:2), or monitor their use to ensure that they are being used reliably
16 and consistently (id. at 117:24-119:8), they have been infected by the influence of racial
17 stereotypes (id. at 118:3-119:8, 136:12-139:16).³⁸

18 FedEx has made no systematic effort to determine whether its performance
19 evaluations, which have a direct influence on compensation, eligibility for promotion, and
20 applicant ranking for promotions, are consistent, reliable, and accurate measures of job

21 _____
22 performance review ratings are characterized by “negative skew and restricted variance.” FedEx
23 has not produced, and its industrial psychologists are not aware of, any study conducted to
24 determine the reliability, consistency, or validity of performance reviews. See Hater at 303:7-12,
25 Keitner Decl. Ex. 12; Brooks at 26:7-22, Keitner Decl., Ex. 2.

26 ³⁶ PR400175-76, Keitner Decl., Ex. 49; see also Validations of Assessments for the First-Level
27 Manager Jobs at Federal Express (1998), p. 18, Keitner Decl., Ex. 48, indicating the “common
28 perception within the company that performance review ratings are inflated and sometimes lack
accuracy,” a perception that Dr. Brooks confirmed in deposition. Brooks at 83:3-84:5.

³⁷ See Individual Progress Discussion Form, Keitner Decl., Ex. 37; Courier OLPR, Keitner Decl.,
Ex. 38.

³⁸ See Bielby Rpt. at ¶¶ 26-29; see also Declarations of Boykin at ¶¶ 12-16; Satchell at ¶¶ 9-11;
James at ¶¶ 14, 15, 18, 23; Haynes at ¶¶ 25-27, 30, 34.

performance, and whether they have adverse impact.³⁹ FedEx's failure to comply with its legal obligations to determine whether its evaluation system has adverse impact further illustrates its pervasive culture of disrespect for Minorities and disregard for the law.

iii. FedEx's Biased Discipline System Causes Under-Promotion

The People Manual also provides that an employee with an active discipline warning letter or performance reminder is not eligible for promotion.⁴⁰ Warning letters can also be taken into account in performance reviews, even after the warning letter is no longer active.⁴¹ Online counselings, which remain on FedEx's PRISM system indefinitely, can also be taken into account in performance reviews.⁴² As described above, performance reviews impact eligibility for promotion. An unsatisfactory performance review in turn automatically results in the issuance of a performance reminder letter.⁴³ Thus, performance reviews and discipline are intertwined, such that bias entering into any of these decisions contaminates each of the others and reverberates through the employee's FedEx career.

Because FedEx's disciplinary system is racially biased, Minorities are disproportionately ineligible for promotion due to discipline issues. A statistical analysis of FedEx's discipline system establishes that Minorities are disciplined far more frequently than whites.⁴⁴ The overdiscipline of both African Americans and Latinos is extremely statistically

³⁹ See Hayward at 50:3-51:12, Keitner Decl. Ex. 13 (no study of adverse impact), 83:1-11 (same), 141:25-142:20 (no monitoring of how performance reviews actually used), 145:19-148:10 (no systematic training of managers), 149:8-151:1 (no systematic auditing to detect potential problems), 164:6-166:4 (little guidance provided on how to apply scale of 1-7), 175:12-177:15 (no coherent plan for how to deal with adverse impact if detected), 180:15-183:1 (no follow-up to ensure consistency in ratings), 206:13-212:17 (no written guidelines on how to interpret and apply performance categories other than forms themselves), 222:25-224:17 (no studies done to determine whether stereotypes affect performance reviews).

⁴⁰ See People Manual § 4-5, Candidate Selection—Hourly Positions, Tbl. 1, p. 181, Keitner Decl., Ex. 35. A warning letter is active for one year. See People Manual § 2-5, Acceptable Conduct, p. 54, Keitner Decl., Ex. 32. A performance reminder is active for six months. See People Manual § 2-50, Performance Improvement, p. 86, Keitner Decl., Ex. 33.

⁴¹ See People Manual Policy § 2-50, p. 86; Speroff 7/23 at 169:18-173:25, Keitner Decl., Ex. 26.

⁴² See Speroff 7/23 at 153:6-17, 171:24-173:21.

⁴³ See People Manual Policy § 2-50, pp. 86-87.

⁴⁴ Drogin Rpt. at ¶¶ 53-55, Tbl. 22 (22.49 standard deviations for African Americans and 4.38

1 significant.⁴⁵

2 Although the discipline policy provides certain examples of behavior that would
 3 warrant a warning letter, those behaviors are not exhaustive, but simply illustrative.⁴⁶ (Buchanan
 4 at 149:22-151:11, Keitner Decl, Ex. 4.) Managers have wide discretion in deciding what
 5 behavior should be disciplined and how severely it should be disciplined. For example, there are
 6 no guidelines to restrict manager discretion in deciding whether to discipline an employee
 7 informally, without creating a record, or through an online counseling, which can be considered
 8 as part of the employee's file for performance review and promotion purposes.⁴⁷ Nor are there
 9 guidelines that determine when an employee should receive verbal discipline versus a warning
 10 letter. (See Speroff 7/23 at 115:4-119:25, Keitner Decl., Ex. 26.) Moreover, different managers
 11 exercise this discretion differently, and the same managers exercise discretion differently from
 12 case to case. (See, e.g., Perry at 119:22-128:22, Keitner Decl., Ex. 19.) Such arbitrary,
 13 subjective, and discretionary decision-making is susceptible to the influence of racial stereotypes.
 14 (See Bielby Rpt. at ¶¶ 22, 30, 32-33.) That is what happens at FedEx.

15 **iv. FedEx's Requirement of Manager Approval to Apply**
 16 **for Promotion Is Arbitrary, Subjective, and**
 17 **Discretionary, and Causes Under-promotion, As Does**
 18 **Manager Discretion in Selections Among Candidates**
 19 **"Approved" to Apply.**

18 FedEx's requirement that an employee's current manager approve the employee's
 19 application for promotion provides yet another entry point for uncontrolled discretion in FedEx's
 20 promotion practices. This approval functions as the initial gateway to promotion: without it, an
 21 employee's application may not be forwarded to the hiring manager, and as a result the employee
 22 standard deviations for Latinos).

23 ⁴⁵ Id. at Tbl. 5 (less than 1 chance in 10⁸⁸ for African Americans and far less than 1 in 10,000
 24 chance for Latinos). There is also substantial anecdotal evidence of Minorities receiving
 25 disproportionately harsh and more frequent discipline. See Declarations of Mitchell McCoy at
 26 ¶¶ 11-12; Griffin at ¶ 12; Canela at ¶ 8.

25 ⁴⁶ See People Manual § 2-5; see Speroff 7/23 at 92:12-94:22, Keitner Decl., Ex. 26.

26 ⁴⁷ See Speroff 7/23 at 137:19-143:7; 153:6-17. Note that online counselings cannot be challenged
 27 by employees through the Guaranteed Fair Treatment ("GFT") process, and there are no other
 28 mechanisms for employees to dispute their fairness. See id. at 156:17-157:10. Nor does FedEx
 have mechanisms to ensure that managers apply online counselings consistently. See id. at
 157:11-18.

1 cannot be considered for the open position. (See Speroff 7/22 at 110:18-111:15, Keitner Decl.,
2 Ex. 25.)

3 While approval to apply is supposed to be granted if an employee meets the
4 minimum performance review and disciplinary record requirements to be eligible for promotion
5 (See id. at 53:19-55:7), in reality managers have complete discretion to approve or not approve an
6 employee's application for any reason. For instance, a manager can disapprove an application
7 because he or she finds that the employee fails to meet the "minimum acceptable standards" in a
8 "significant area of performance," even though the employee has no active disciplinary records
9 and is otherwise eligible for promotion. There are no guidelines for managers regarding what
10 constitutes such a "significant area of performance" or what the "minimum acceptable standards"
11 are. (See id. at 64:6-22, 70:15-20.) When pressed for an example, FedEx's Managing Director of
12 Human Resources for AGFS stated that an employee might be disapproved if they had an
13 undetermined number of absences shy of the number that would instigate formal discipline; how
14 close to the limit they would have to be, he could not say. (See id. at 72:1-73:17.) Such vague
15 and subjective criteria are prone to influence by racial bias and stereotypes. (See Bielby Rpt. at
16 ¶¶ 36-37.)

17 Moreover, managers are not required to record their reasons for disapproving an
18 employee's application (id. at 70:15-71:25, 74:8-13), nor does FedEx conduct any monitoring or
19 review of manager disapprovals for consistency or adverse impact, unless an employee files a
20 GFT.⁴⁸

21 Given the ample discretion permitted to managers in making the approval
22 decision, the lack of minority representation in management ranks, and the company culture of
23 hostility to minorities, it comes as no surprise that statistical analysis shows that far more white
24 employees than Minorities are approved to apply for management positions despite having active
25

26 ⁴⁸ See id. at 100:18-102:18. Despite its virtually exclusive reliance on the employee-initiated
27 GFT process as a replacement for monitoring employment decisions, FedEx has no written
28 definition of what "Guaranteed Fair Treatment" actually means. See Dandridge at 29:8-30:22,
Keitner Decl. Ex. 7.

1 discipline letters on file.⁴⁹ Under FedEx policy, such letters should render an employee ineligible
2 for promotion, but this policy is selectively enforced, to the disadvantage of Minorities.

3 Excessive discretion similarly enters into FedEx's procedures for awarding
4 promotions among approved applicants. FedEx's written policy dictates that applicants for
5 promotion be divided into two priority groups according to their current job and full-time or part-
6 time status, and that those candidates in the second priority group may only be considered if there
7 is no one in the first priority group. (People Manual § 4-5.) FedEx policy further dictates that it
8 select for promotion the candidate with the highest Credit Equivalency Value or "CEV" score, a
9 rating calculated according to a formula that takes into account an employee's time in station and
10 recent performance reviews. (*Id.*) Despite the system set forth in its policies, however, in
11 practice FedEx allows any hiring manager to pick any job applicant, regardless of CEV ranking
12 or priority group. (Williamson at 54:16-55:9, Keitner Decl., Ex. 29.) A hiring manager who
13 deviates from policy and picks lower ranked applicants is not required to obtain approval from
14 higher managers, and FedEx does not monitor or review compliance with these promotions
15 policies. (Speroff 7/22 at 72:11-16, Keitner Decl., Ex. 25; Williamson at 122:9-19, 123:11-19.)

16 This managerial discretion works to the disadvantage of Minorities. Statistical
17 analyses show that far more Minorities with higher priority or higher CEV scores are passed over
18 in favor of lower-ranked white employees than vice versa.⁵⁰ Again, the presence of discretion
19 and lack of monitoring has adverse impact on Minorities. (See Bielby Rpt. at ¶¶ 36, 38-39.)

20 **c. FedEx Discriminates Against Latinos with Respect to**
21 **Promotions from Hourly Positions to Operations Manager.**

22 The Courier job is the stepping stone to the entry-level management job of
23 Operations Manager. (Drogin Rpt. at ¶ 21.) Although approximately 17% of Couriers are
24 Latino, only 8.5% of Operations Managers are Latino. A statistical analysis of promotions from
25 hourly positions to Operations Manager establishes a statistically significant under-promotion of
26 Latinos. (*Id.* at ¶ 32 (-4.06 standard deviations for 1999-2003).) This statistical disparity results

27 ⁴⁹ Drogin Rpt. at ¶ 39.

28 ⁵⁰ Drogin Rpt. at ¶¶ 41-42.

1 from the highly discretionary system used to select Operations Managers, and the impact of race-
 2 biased performance evaluation scores and discipline records on promotion decisions. (See Bielby
 3 Rpt. at ¶¶ 9-42.)

4 i. **FedEx Selects Managers Using a Highly Discretionary**
 5 **Process Rife With Opportunities for Biased Decision-**
 6 **Making.**

7 Since 1998, FedEx has used the “ASPIRE” program to select first-line managers in
 8 both AGFS and DGO. (Brooks at 19:17-25, Keitner Decl., Ex. 2.) This multi-step process,
 9 developed primarily by FedEx in-house industrial psychologist David Brooks, allows hiring
 10 managers to exercise a high level of discretion and creates multiple opportunities for racial
 11 stereotypes to influence how managers rate candidates.

12 Aspiring managers must complete an “ASPIRE to Management” class as a pre-
 13 requisite to entering the ASPIRE program. (*Id.* at 33:7-19.) An employee cannot attend these
 14 classes without his or her manager’s permission. (*Id.* at 33:25-34:10.) Thus, an employee’s
 15 current manager has effective veto power over whether or not that employee can even attempt to
 16 apply for manager positions. In addition, an employee’s manager must sign off on the
 17 employee’s successful completion of four development classes. (*Id.* at 36:1-37:18.) FedEx has
 18 produced no evidence of studies conducted or steps taken to guard against adverse impact in this
 19 enrollment process. (*Id.* at 40:3-13.)

20 The hiring manager selects the candidates for a panel interview. There are no
 21 guidelines in place for determining how many candidates to interview; the only restriction is that
 22 the manager cannot select a candidate with a lower score on the five initial components⁵¹ than
 23 another candidate without also selecting the latter.⁵²

24 ⁵¹ The components of a candidate’s pre-interview “screening” score are: the Professional
 25 Employment Test (PET), a standardized cognitive ability test; the Peer Leadership Assessment
 26 (PLA), completed by employees chosen by the candidate’s manager; a score for Position Specific
 27 Knowledge (PSK) and for Other Related Experience (ORE); and the Management Profile (MP).

28 ⁵² The components have nominal weights on the ASPIRE score sheet. Brooks at 110:13-112:3;
 see FedEx’s New Process for Selecting Managers, p. 5, Keitner Decl., Ex. 46. However, FedEx
 admits that the different standard deviations of the scores in these five areas lead to actual weights
 that are, in fact, quite different. Brooks at 118:11-122:5. The PET, which has the greatest
 adverse impact, *id.* at 121:20-122:5, also has the highest standard deviation, *id.* at 118:11-16,
 giving it a disproportionately high actual weight in the current formula.

1 The PLA's utility in predicting success in management is purely conjectural:
 2 FedEx has not produced evidence regarding the development of the items on the PLA form and
 3 has not verified its measurement properties. (Brooks at 90:1-92:17; see PLA Forms, Keitner
 4 Decl., Ex. 47.)

5 The PSK and ORE are similarly spurious. There is no requirement in the ASPIRE
 6 process that anyone ever review the hiring manager's determination of the PSK and ORE for a
 7 particular opening. (Brooks at 50:25-52:3.) Candidates complete application forms without
 8 knowing what PSK and ORE the hiring manager is seeking (Id. at 61:24-62:5); if a hiring
 9 manager chooses to advise a particular candidate of these requirements or is already familiar with
 10 a candidate's experience, that candidate can enjoy a huge advantage in the application process.
 11 Moreover, hiring managers are not trained on how to evaluate PSK and ORE. (Buchanan at
 12 142:2-146:1, Keitner Decl., Ex. 4.) Together, PSK and ORE nominally make up almost 50% of
 13 an ASPIRE candidate's screening score. (Brooks at 60:16-61:17.) However, FedEx cannot claim
 14 on the basis of its existing studies that the PSK and ORE scores are reliable or valid. (Id. at
 15 107:19-109:9.)

16 The ASPIRE interview process is rife with opportunities for discrimination. First,
 17 there is no mandatory calibration training to ensure reliability and consistency in interview scores.
 18 (Buchanan at 105:9-108:24.) The hiring manager chooses who will sit on an interview panel
 19 (Brooks at 69:17-70:2), and there is no requirement that an HR representative participate in the
 20 interview process. (Id. at 77:16-78:14.) FedEx is aware that steps can be taken to reduce or avoid
 21 adverse impact in interviews (Id. at 17:4-16), but it has not taken these steps.

22 FedEx has never studied the racial or ethnic composition of ASPIRE interview
 23 panels (Id. at 71:20-25.) The hiring manager is supposed to select the highest-scoring candidate
 24 (id. at 68:22-69:12), but FedEx has produced no evidence that this is how the process actually
 25 works. FedEx has also disregarded its legal obligation to keep records on the adverse impact of
 26 the ASPIRE process and has no system in place for doing so. (Id. at 107:13-18, 129:1-131:1,
 27 137:14-143:5.) FedEx's own study of ASPIRE in 1998 strongly suggests that ASPIRE has
 28 adverse impact on both African-American and Hispanic applicants. (Id. at 104:22-107:12; see

1 Validation of Assessments for the First-Level Manager Jobs at Federal Express, p. 25, Keitner
 2 Decl., Ex. 48.) FedEx tracks packages all over the world, but it does not track adverse impact
 3 against its own employees, as required by law.

4 FedEx has disregarded its legal obligation to monitor the adverse impact of
 5 ASPIRE and to identify alternative selection procedures that afford equal opportunity to Minority
 6 employees. In addition, FedEx's own follow-up studies with respect to ASPIRE's validity show
 7 dwindling correlations between ASPIRE scores and job performance. (Brooks at 123:23-128:2;
 8 ASPIRE Follow-Up Criterion Validation Report for 2003, Keitner Decl., Ex. 49.)

9 **ii. FedEx's Discriminatory Performance Evaluation and**
 10 **Discipline Systems Block Minorities from Promotions**
into Management.

11 In addition to the above hurdles, FedEx employees cannot apply for management
 12 positions if they have an active warning letter on file. (Brooks at 23:6-24, Keitner Decl. Ex. 2.)
 13 FedEx has done no studies to establish the consistency or reliability of its disciplinary processes,
 14 or to determine whether such processes have adverse impact when used as selection criteria. (*Id.*
 15 at 23:25-24:11.) Manager candidates must also meet minimum performance review
 16 requirements, which also have not been validated. (Hater at 303:7-12, Keitner Decl., Ex. 12;
 17 Brooks at 26:7-22.) In fact, as indicated above, FedEx's own industrial psychologists doubt the
 18 accuracy of FedEx's performance reviews in evaluating job performance. The highly significant
 19 adverse impact of discipline and performance evaluation at FedEx permeates the operations
 20 manager selection process.

21 **2. FedEx Discriminates Against Minority Employees and Lower Level**
 22 **Managers with Respect to Compensation.**

23 FedEx's Minority employees and lower-level Managers are paid less than non-
 24 Minority employees and lower-level Managers. They are paid less both by virtue of the fact that
 25 they hold lower paid positions, and because even when they and comparable whites hold the same
 26 positions, work in the same geographic locations, and have the same seniority, Minorities are paid
 27 less. The disparities in compensation within job arise from the impact of FedEx's race-biased
 28 evaluation and discipline systems on compensation.

1 The People Manual provides that compensation is determined by a formula tied
 2 directly to performance evaluations (and indirectly to discipline, since discipline affects
 3 performance evaluations).⁵³ Thus, compensation is also part of the feedback loop through which
 4 performance evaluation and discipline echo: because Minorities are overdisciplined, they get
 5 lower performance evaluations; and because Minorities receive lower performance evaluation
 6 scores, they receive lower compensation.

7 Each year an employee gets a percentage raise based on performance evaluation.
 8 As a result, the effect of overdiscipline and lower evaluations of Minorities is cumulative. (See
 9 Bielby Report at ¶ 15.) The gap grows each year.

10 Because of the impact of FedEx's race-biased evaluation and discipline systems on
 11 its compensation system, Minority employees and lower level managers at FedEx are paid less
 12 than non-Minorities at both the hourly and salaried levels throughout the Western Region, even
 13 when relevant non-discriminatory factors are considered. For example, the results of statistical
 14 regressions on hourly pay rates for African American hourly employees show that African
 15 Americans were paid significantly less per hour than white employees in every year, 1999-2004,
 16 even after accounting for seniority, part time/full time status, casual/permanent status, job title,
 17 and facility. The results are highly statistically significant for each year studied, ranging
 18 from -8.38 standard deviations to -9.61 standard deviations. Drogin Rpt. at ¶ 59.) These
 19 disparities are many times greater than the legal threshold of two standard deviations. (See
 20 Hazelwood School Dist. v. United States, 433 U.S. at 311, n.17 (1977). The probability of such
 21 disparities occurring by chance is approximately one chance in 100 billion.

22 Similarly, the results of statistical regressions on the hourly pay rates for Latino
 23 hourly employees show that Latino hourly employees were paid significantly less per hour than
 24 white employees in every year, 1999-2004, even after controlling for job, seniority, status, and
 25 geographic location. The results are highly statistically significant, ranging from -4.91 standard
 26 deviations in 2002 to -7.07 standard deviations in 1999. (Drogin Rpt. at ¶ 60.) The probability of

27 ⁵³ See People Manual § 3-10, Merit Hourly Pay Administration, Tbl. 1, p. 112, Keitner Decl.,
 28 Ex. 34.

1 such disparities occurring by chance ranges from approximately one chance in one million to a
 2 less than one chance in one hundred million. (*Id.* at Tbl. 5.)

3 The story is similar with respect to pay disparities in the salaries of lower-level
 4 Managers. The results of regressions on the monthly salaries of lower-level Managers show
 5 statistically significant disparities adverse to African Americans in every year studied. The salary
 6 disparities range from -2.4 standard deviations in 1999 to -3.5 standard deviations in 2001. (*Id.* at
 7 ¶ 61.) The underpayment in monthly salary for African American lower-level managers ranged
 8 from \$83.78 per month in 1999 to \$185.74 per month in 2004. (*Id.*)

9 **G. FedEx's Discrimination Is Uniform And Pervasive.**

10 In sum, the statistical evidence, the documents, and the testimony all establish the
 11 same thing: FedEx discriminates against Minority Employees throughout the Western Region
 12 with respect to promotions, compensation, performance evaluation, and discipline, and against
 13 African American Lower-Level Managers throughout the Western Region with respect to
 14 compensation, performance evaluation, and discipline. (See Drogin Rpt., *passim*, and Statement
 15 of Facts, *supra*.)⁵⁴

16 **III. ARGUMENT**

17 Class actions are an important tool for remedying employment discrimination.
 18 See, e.g., *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 142 (N.D. Cal. 2004) ("This
 19 anniversary [of the U.S. Supreme Court's decision in *Brown v. Board of Education*] serves as a
 20 reminder of the importance of the courts in addressing the denial of equal treatment under the law
 21 wherever and by whomever it occurs."). Since the requirements of Rules 23(a) and (b)(2) are
 22 satisfied here, class certification is appropriate in this case.⁵⁵

23 ⁵⁴ The map attached to the Declaration of Nirej S. Sekhon in Support of Plaintiffs' Motion for
 24 Class Certification as Ex. 1 shows that the plaintiffs in this case are not alone. Hundreds of
 25 African Americans and Latinos throughout the Western region have complained of FedEx's race
 discrimination.

26 ⁵⁵ This Court is accorded broad discretion in determining whether class treatment is appropriate.
 27 *Dukes*, 222 F.R.D. at 143; *Armstrong v. Davis*, 275 F.3d 849, 872, n.28 (9th Cir. 2001); see also
 28 the California Supreme Court's recent decision in *Sav-On Drug Stores v. Superior Court*, Opinion
 No. S106718, Aug. 26, 2004 (affirming that "Any valid pertinent reason stated will be sufficient
 to uphold the [class certification] order."). Although the Court is required to undertake a
 "rigorous analysis" to determine whether the case satisfies the Rule 23 requirements, the Court

1 **A. This Case Meets The Requirements Of Rule 23(a).**

2 **1. The Classes Are Numerous.**

3 Rule 23(a) requires that the class be so numerous that joinder of all class members
4 is impracticable. The precise number of class members need not be known prior to certification.
5 See Newberg on Class Actions § 3.05 at 233-35 (4th ed. 2002) (hereinafter, “Newberg”); see also
6 Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993) (“Courts have not required evidence of
7 exact class size or identity of class members to satisfy the numerosity requirement.”); Harriss v.
8 Pan Am World Airways, Inc., 15 FEP Cases (BNA) 1640, 1652 (N.D. Cal. 1977).

9 Here, the Minority Employee Class has several thousand members. (See Drogin
10 Rpt. at ¶¶ 13-16.) The African American Lower-Level Manager Class has several hundred
11 members. (*Id.*) Such a number satisfies any standard of impracticability. See Newberg § 3.05 at
12 247 (“as few as 40 class members should raise a presumption that joinder is impracticable”).

13 **2. The Classes Share Common Questions of Fact and Law.**

14 The commonality requirement of Rule 23(a) examines the group characteristics of
15 the class as a whole and seeks to determine whether the class shares common questions of fact or
16 law. The commonality requirement should be “construed permissively.” Hanlon v. Chrysler
17 Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). Not all questions of law or fact need to be common;
18 rather, the test applied is qualitative, not quantitative, and requires only one significant common
19 issue to warrant certification. Savino v. Computer Credit, Inc., 172 F.R.D. 346, 352 (E.D.N.Y.
20 1997), *aff’d*, 164 F.3d 81 (2d Cir. 1998). Only a “minimal” showing of commonality is required;
21 where class members share a common legal issue but not common facts, or vice versa,
22 commonality is satisfied. Hanlon, *supra*, 150 F.3d at 1020. This case involves numerous
23 common issues of both fact and law. Plaintiffs raise “a common legal issue, discrimination
24 against [Minorities], and a common factual problem, discrimination as applied” by FedEx.
25 Bouman v. Block, 940 F.2d 1211, 1232 (9th Cir.), *cert. denied*, 502 U.S. 1005 (1991).

26
27 _____ may not engage in an assessment of the merits at this stage. General Tel. Co. v. Falcon, 457 U.S.
28 147, 161 (1982); Eisen v. Carlisle & Jacqueline, 417 U.S. 156, 177 (1974); Caridad v. Metro-
North Commuter R.R., 191 F.3d 283, 292 (2d Cir. 1999), *cert. denied*, 529 U.S. 1107 (2000).

1 FedEx's policies regarding promotion, compensation, discipline, and performance
 2 evaluation are all governed by the "People Manual," which applies throughout the Western
 3 Region.⁵⁶ The forms and procedures used for personnel decisions are the same throughout the
 4 Western Region.⁵⁷ The race-biased BST is used throughout the Western Region. Promotion
 5 decisions are based on race-biased performance evaluations and discipline records throughout the
 6 Western Region. Compensation decisions are tied to race-biased performance evaluations and
 7 discipline records throughout the Western Region. Statistical analyses establish that FedEx's
 8 policies and practices have an adverse impact on Minorities throughout the Western Region with
 9 respect to compensation, promotion, performance evaluation, and discipline.

10 Common questions of fact include the following: (1) whether the FedEx work
 11 force is segregated by race with respect to job categories; (2) whether FedEx's promotions,
 12 compensation, discipline and evaluation policies and practices in the Western Region are
 13 arbitrary, subjective, and discretionary and thus susceptible to discriminatory application by
 14 predominantly non-Minority managers; (3) whether FedEx denies Minorities equal promotional
 15 opportunities; (4) whether FedEx's compensation system has an adverse impact on Minorities;
 16 (5) whether FedEx's performance evaluations are race-biased; (6) whether FedEx's discipline
 17 system is applied unfairly to Minority employees and African American Operations Managers;
 18 (7) whether the Basic Skills Test has been properly validated; (8) whether performance reviews of
 19 Minority employees are based on subjective criteria that admit racial stereotyping and bias; and
 20 (9) whether FedEx's adverse treatment of Minorities is intentional.

21 The class claims will also raise common legal issues, including: (1) whether
 22 FedEx's under-compensation, under-promotion, and overdiscipline of Minorities constitutes
 23 adverse impact in violation of Title VII of the Civil Rights Act of 1964 ("Title VII") and the
 24 California Fair Employment and Housing Act ("Cal. FEHA"); (2) whether FedEx's conduct
 25 constitutes adverse treatment in violation of Title VII, § 1981, and Cal. FEHA; (3) whether

26 ⁵⁶ See, e.g., Buchanan at 20:25-21:5, Keitner Decl., Ex. 4; Presnoples at 11:24-12:11, Keitner
 27 Decl., Ex. 21.

28 ⁵⁷ See, e.g., McQueen at 92:6-93:16, Keitner Decl., Ex. 17; Garcia at 9:1-8, Keitner Decl., Ex. 10;
 Fifer at 13:3-14:14, Keitner Decl., Ex. 9; Speroff 7/22 at 22:7-23:16, Keitner Decl., Ex. 25.

FedEx's conduct can be justified as a "business necessity," or can be replaced by a less discriminatory alternative, see Stender v. Lucky Stores, 803 F.Supp. 259, 319-23, 331-36 (N.D. Cal. 1992); and (4) what injunctive relief is appropriate to remedy FedEx's discriminatory practices.

a. The Employment Policies and Practices of FedEx's Western Region are Uniform and Uniformly Arbitrary, Subjective, and Discriminatory.

Common questions of fact arise in this case because the personnel policies and structure of FedEx's Western Region are uniform and centralized. (See Bielby Rpt. at ¶¶ 8-14.) The facilities in which employees work are virtually identical. The departments, jobs, and management structure are the same in all facilities and all districts across the region. Promotion, evaluation, discipline, and compensation of employees all follow uniform policies and procedures and require use of uniform personnel forms. Common facts such as these support class certification. See Dukes, 222 F.R.D. at 145-49; Adams v. Pinole Point Steel Co., 65 FEP Cases (BNA) 774 (N.D. Cal. 1994); Thornberry v. Delta Air Lines, 30 FEP Cases (BNA) 520, 524 (N.D. Cal. 1978); Reeb v. Ohio Dept. Rehab., 221 F.R.D. 464, 477 (S.D. Ohio 2004).

In addition, the uniform policies and procedures uniformly allow arbitrary, subjective, discretionary, and biased decision-making. Non-Minority managers make evaluation and disciplinary decisions based on arbitrary, subjective, and discretionary criteria that give free reign to racial stereotypes and biases. (See Bielby Rpt. at ¶¶ 8, 15-42.) FedEx's lack of controls and absence of monitoring to ensure Equal Employment Opportunity is uniform throughout the Western Region. (Id. at ¶¶ 25-35.) This type of uncontrolled and unmonitored discretionary decision-making raises common questions of fact and is a well-recognized basis for class certification. Falcon, 457 U.S. at 159 n.15; Caridad, 191 F.3d at 291-92; Dukes, 222 F.R.D. at 149; Butler v. Home Depot, 1996 WL 421436 (N.D. Cal.) at *3; Adams, 65 FEP Cases at 781; Barefield v. Chevron U.S.A., Inc., 44 FEP Cases (BNA) 1885, 1888-90 (N.D. Cal. 1987).

b. Consistent Patterns of Under-Promotion, Under-Compensation, and Overdiscipline Raise Common Questions of Law and Fact.

Common issues of fact also arise out of plaintiffs' showing of region-wide patterns

of under-promotion, under-compensation, and overdiscipline. These consistent patterns raise common factual issues with respect to the significance of the statistical evidence, and FedEx's promotional standards and job assignment patterns. They also raise common legal issues as to the inference of discrimination that may be drawn from the existence of such segregation. Bazemore v. Friday, 478 U.S. 385, 400-04 (1985); Hazelwood School Dist. V. United States, 433 U.S. 299, 307-13 (1977); International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339-40 (1977); Dukes, 222 F.R.D. at 154-60; Butler v. Home Depot, Inc., 1997 WL 605754 at *6 (N.D. Cal. 1997); EEOC v. General Tel. Co., 885 F.2d 575, 579-82 (9th Cir. 1989), cert. denied, 498 U.S. 950 (1990).

c. Plaintiffs' Disparate Impact and Disparate Treatment Theories Raise Common Issues of Fact and Law.

Plaintiffs have alleged both disparate impact and disparate treatment theories. Under both theories, numerous common issues of fact and law underlie the discrimination claims of the class as a whole.

In proving their case, Plaintiffs will present statistical data and anecdotal evidence that brings "the cold numbers convincingly to life," International Brotherhood of Teamsters v. United States, 431 U.S. 324, at 339, expert testimony from expert sociologists and industrial organization psychologists, and testimony and documents regarding FedEx's policies and practices. The evidence on which Plaintiffs will rely is common to the classes as a whole. The inferences drawn from Plaintiffs' statistical proof and anecdotal evidence will be common to the claims of all class members and will raise common legal issues. Butler, 1996 WL 421436 at *3; Wagner v. Taylor, 836 F.2d 578, 592-93 (D.C. Cir. 1987); Penk v. Oregon Bd. of Higher Educ., 816 F.2d 458, 463-64 (9th Cir. 1987), cert denied, 484 U.S. 853 (1987); Wofford v. Safeway Stores, Inc., 78 F.R.D. 460, 481 (N.D. Cal. 1978).

Litigation of defendant's "business necessity" defense will also give rise to common issues. See Stender, 803 F.Supp. at 321-22. Once Plaintiffs have established the disparate impact of an employment practice such as use of the BST in promotions decisions, use of performance evaluations in promotions and compensation decisions, or the use of discipline

1 records in promotions and compensation decisions, the burden of proof shifts to the defendant to
 2 show that the challenged practice, despite its disparate impact, “bear[s] a demonstrable
 3 relationship to successful performance of the jobs for which it was used.” Griggs v. Duke Power
 4 Co., 401 U.S. 424, 431 (1971). The defendant must show that the employment practice is
 5 “predictive of or significantly correlated with important elements of work behavior which
 6 comprise or are relevant to the job or jobs for which candidates are being evaluated.” Albemarle
 7 Paper Co. v. Moody, 422 U.S. 405, 431 (1975). Under Title VII, the demonstration of “some
 8 rational basis for the challenged practices” is not enough. Washington v. Davis, 426 U.S. 229,
 9 246-47 (1976). “It is necessary, in addition, that they be ‘validated’ in terms of *job*
 10 *performance*.” Id. at 247 (emphasis added).

11 Even if FedEx were able to satisfy its burden with respect to job-relatedness and
 12 business necessity of employment practices with disparate impact, plaintiffs will be able to
 13 demonstrate the existence of alternative employment practices with less disparate impact within
 14 the meaning of Title VII. 42 U.S.C. § 2000e-2(k)(1)(A)(ii); Albemarle at 425. The evidence and
 15 arguments about less discriminatory alternatives raise common factual and legal issues.

16 **3. The Named Plaintiffs’ Claims Are Typical.**

17 The typicality necessary to satisfy class certification is that the named plaintiffs
 18 “possess the same interest and suffer the same injury as the class members.” Falcon, 457 U.S. at
 19 156. Typicality is satisfied when the claims of the class representatives and those of the class
 20 arise out of the same legal or remedial theory and when representative parties advance the
 21 interests of the class members by advancing their own self-interest. Barefield, 44 FEP Cases at
 22 1890. “Typicality” exists if the claims of the named plaintiffs are “reasonably coextensive” with
 23 those of absent class members; there is no requirement that their claims be identical. Hanlon v.
 24 Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). Nor is it necessary that every named
 25 plaintiff have suffered every form of discrimination challenged by the case. Rather, plaintiffs
 26 need only show that in the aggregate, they cover the waterfront of abuses alleged. Staton v.
 27 Boeing, 313 F.3d 447, 466 (9th Cir. 2002). Courts recognize that typicality overlaps with
 28 commonality, and thus much of the discussion regarding that requirement is germane to typicality

also. See Barefield, 44 FEP Cases at 1890; Harriss, 15 FEP Cases at 1649.

The eight proposed class representatives are members of the classes they seek to represent. They allege that they, and class members, were discriminated against in connection with denial of promotional opportunities (as to the hourly employee class), adverse treatment with respect to compensation, and unfair and harsh discipline. (Consolidated Amended Complaint ¶¶ 58-162.) The eighteen class member declarants claim that they were the victims of the same discriminatory practices by FedEx managers at facilities throughout the Western Region. The claims asserted by plaintiffs individually involve the same discriminatory employment practices with respect to evaluation,⁵⁸ promotion,⁵⁹ compensation,⁶⁰ and discipline⁶¹ complained of by and on behalf of class members. Accordingly, the typicality requirement is satisfied. Butler at *3.

The declarations, charges of discrimination filed with state and federal agencies, and internal complaints of discrimination of class members,⁶² and deposition testimony of the class plaintiffs evidence a systematic pattern and practice of discrimination against Minority Employees in FedEx's Western Region in connection with employment decisions, and demonstrate that the experiences of the class representatives are typical. Both the named plaintiffs and the class members have a common interest in seeking an injunction to change the unlawful aspects of FedEx's personnel system.

4. The Proposed Class Representatives and Class Counsel Are Adequate.

Rule 23(a)(4) sets forth the adequacy requirement for class certification. It is comprised of two elements: (1) the representative party's attorney must be qualified, experienced, and generally able to conduct the litigation; and (2) the interests of the plaintiffs must not be

⁵⁸ Class member declarants who have experienced discrimination in performance evaluations include: McCray at ¶ 13; Akins at ¶ 8.

⁵⁹ Class member declarants who have experienced discrimination in promotion include: Patterson at ¶ 12; Steel at ¶¶ 12-15; Hoiland at ¶ 15; Latin at ¶ 12.

⁶⁰ Class member declarants who have experienced discrimination in compensation include: Olmos at ¶¶ 5-6; McCray at ¶ 9; Foreman at ¶ 9.

⁶¹ Class member declarants who have experienced discrimination in discipline include: Mitchell McCoy at ¶¶ 11-12; Griffin at ¶ 12; Canela at ¶ 8.

⁶² See Sekhon Decl., Ex. 1.

1 antagonistic of those of the class. In re United Energy Corp. Solar Power Modules Tax Shelter
 2 Investors Sec. Litig., 122 F.R.D. 251, 257 (C.D. Cal. 1985); see also Lerwill v. Inflight Motion
 3 Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978); Harriss, 15 FEP Cases at 1649.

4 Both elements of the adequacy requirement are satisfied here. Plaintiffs have
 5 retained counsel with the requisite expertise and resources to pursue this case. See Declarations
 6 of James M. Finberg, Guy Wallace, John L. Burris, Michael S. Davis, Waukeen Q. McCoy, and
 7 Kay McKenzie Parker. In addition, both the class and the named plaintiffs share an interest in
 8 eradicating discrimination in FedEx's Western Region against its African-American and Latino
 9 employees.

10 **B. The Liability Phase of this Case and the Remedial Phase for Declaratory,**
 11 **Injunctive and Equitable Relief Should be Certified Under Rule 23(b)(2).**

12 Rule 23(b)(2) was added to class action procedure specifically to reach cases of
 13 this type, i.e., to "facilitate the vindication of civil rights through the class action device."
 14 Barefield v. Chevron U.S.A., Inc., 48 FEP Cases (BNA) 907 (N.D. Cal. 1988). See Amchem
 15 Prods. v. Windsor, 521 U.S. 591, 614 (1997) ("Civil rights cases against parties charged with
 16 unlawful class-based discrimination are prime examples" of cases where Rule 23(b)(2)
 17 certification is appropriate.); Advisory Committee Note to Rule 23(b)(2) ("Illustrative [of cases
 18 properly certified under Rule 23(b)(2)] are various actions in the civil rights field"). Certification
 19 under Rule 23(b)(2) is appropriate where, as here, meaningful declaratory and injunctive relief is
 20 sought. Fed. R. Civ. P. 23(b)(2); Molski v. Gleich, 318 F.3d 937, 949-50 (9th Cir. 2003);
 21 Robinson v. Metro-North Commuter R.R., 267 F.3d 147, 163-64 (2d Cir. 2001).

22 Plaintiffs seek declaratory and injunctive relief that would apply to and benefit the
 23 class as a whole. The injunctive relief plaintiffs seek includes orders, among other things:
 24 (1) permitting "casual" employees to apply for, and view the posting of, jobs on the Job Change
 25 Application Tracking System; (2) eliminating passage of the BST as a requirement for
 26 promotions into Courier and Ramp Transport Driver positions, and instead focus on the training
 27 for those positions; (3) modifying the performance evaluation criteria and monitoring
 28 performance evaluations to ensure that they are reliable and consistent and have no adverse

1 impact; and (4) modifying the discipline criteria, and monitoring the discipline system, to ensure
2 that discipline is applied consistently.

3 In addition, plaintiffs seek forms of equitable monetary relief available under
4 Rule 23(b)(2), including back pay and front pay. Gotthardt v. Nat'l R.R. Passenger Corp., 191
5 F.3d 1148, 1152-55 (9th Cir. 1999). Such monetary equitable relief does not defeat class
6 treatment under Rule 23(b)(2). See, e.g., Probe v. State Teachers' Ret. Sys., 780 F.2d 776 (9th
7 Cir. 1986); Salinas Roadway Express, 735 F.2d 1574, 1576 (5th Cir. 1984); Butler, 1997 WL
8 605754 at *5; see also 42 U.S.C. § 2000e-5(g) (1994).

9 In Molski v. Gleich, 318 F.3d 937 (9th Cir. 2003), the Ninth Circuit held that
10 (b)(2) class actions can include claims for monetary damages as long as such damages are not the
11 predominant relief sought. In making this determination, it is not the potential size of the
12 damages award that is at issue; rather, courts are directed to examine the "specific facts and
13 circumstances of each case," and attempt to ascertain the "intent of the plaintiffs in bringing suit."
14 Id. at 947, 950. In Molski, the court found the injunctive relief sought by the class plaintiffs to
15 be the primary relief at issue. Id. at 950.

16 Here, the evidence shows that plaintiffs' primary focus is obtaining effective
17 injunctive relief to end discrimination and engender positive change.⁶³ This change would be
18 significant. The Class Representatives hope to transform the promotion, compensation,
19 evaluation and discipline systems at FedEx so that instead of hindering equal employment
20 opportunity, they ensure it. Although punitive damages and compensatory damages are sought in
21 this case, they are not the primary relief sought. Accordingly, the liability phase and a remedial
22 phase for declaratory, injunctive and equitable relief should be certified under Rule 23(b)(2).
23 After those phases, the Court can determine whether to certify a phase regarding compensatory
24 damages, and the amount and allocation of punitive damages, under Rule 23(b)(3), with notice
25 and an opportunity to opt out. Butler, *supra*, 1997 WL 605754 at *5-6.

26
27
28 ⁶³ See Declarations of: Kalini Boykin at ¶ 2; Derrick Satchell at ¶ 2; Valerie Brown at ¶ 2; Rick
Gonzales at ¶ 2; Rachel Hutchins at ¶ 2; Kelvin Smith, Sr. at ¶ 2; and Ken Stevenson at ¶ 2.

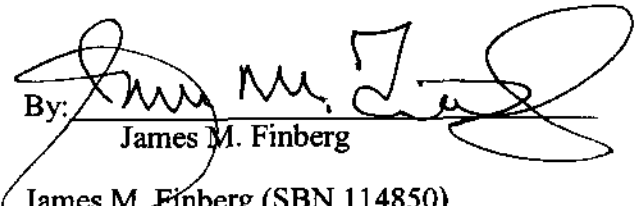
1 **IV. CONCLUSION**

2 FedEx has become a staple of modern American life. The time has come for
3 FedEx to acknowledge the promises of equal opportunity it makes to employees in its employee
4 manual — and to deliver.

5 Because this case meets all of the requirements of Rules 23(a) and 23(b)(2), this
6 Court should certify both the Minority Employee Class and the African American Lower-Level
7 Manager Class, and set this case for a liability phase trial.

8
9 Dated: September 10, 2004

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BERNSTEIN, LLP

10
11 By: 
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Attorneys for Plaintiffs and the Proposed Classes

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATIONS OF PROPOSED CLASS
COUNSEL IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

Date: January 14, 2005
Time: 9:00 a.m.
Courtroom of the Honorable Susan Illston

PROPOSED CLASS COUNSEL DECLARATIONS

	<u>Tab No.</u>
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP	1
JOHN L. BURRIS	2
MICHAEL S. DAVIS	3
WAUKEEN Q. MCCOY.....	4
KAY MCKENZIE PARKER	5
SCHNEIDER & WALLACE	6

TAB 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF VALERIE BROWN

I, Valerie Brown, declare as follows:

1. I am an African-American Service Agent and a proposed Class Representative of the Minority Employee Class. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness.

PURPOSE OF BRINGING THIS CLASS ACTION

2. I have been employed with FedEx for over 20 years. Even though I have worked tirelessly for the company, I have been unable to advance because of my race. My

1 primary goal in bringing this class action is to make the company change its practices and give
2 minorities equal opportunities with respect to promotion and compensation.

3
4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct to the best of my knowledge.

6 Executed this 6 day of September, 2004, in Tracy, CA.

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8 
9 VALERIE BROWN

TAB 2

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
19

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF RICK GONZALES

20
21 I, Rick Gonzales, declare as follows:

22 1. I am a Latino man and a proposed Class Representative of the Minority
23 Employee Class. I have personal knowledge of the facts set forth in this declaration and could
24 and would testify competently under oath if called as a witness.

25 **PURPOSE OF BRINGING THIS CLASS ACTION**

26 2. In my experience, FedEx does not live up to its own written standards
27 about equal employment opportunity for minorities. The promise of equal treatment is not
28 matched by reality. Instead, FedEx managers single out the white employees they want to move

1 forward in the company and do nothing to support minorities who are equally, if not more,
2 experienced. My primary goal in bringing this lawsuit is to force FedEx to change its practices
3 and treat minorities fairly with respect to promotion and compensation opportunities.
4

5 I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct to the best of my knowledge.

7 Executed this 8th day of September, 2004, in Temecula, CA.

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11 RICK GONZALES
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TAB 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF RACHEL HUTCHINS

I, Rachel Hutchins, declare as follows:

1. I am an African-American woman and a proposed Class Representative of the Minority Employee Class. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness.

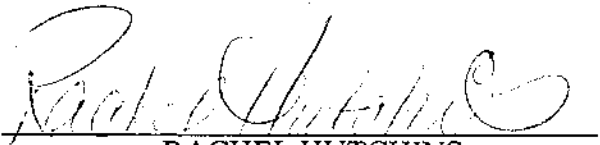
PURPOSE OF BRINGING THIS CLASS ACTION

2. I came to FedEx in 2001 because I believed it would be a good place to work. Instead, I saw white employees being given preferential treatment while I stayed in casual status and didn't even have access to the on-line job posting system so that I could learn about

1 promotion opportunities. My goal in bringing this lawsuit is to make FedEx stop discriminating
2 against employees like me who work just as hard or harder than everyone else but who don't get
3 the same benefits and the same opportunities as white employees.

4
5 I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct to the best of my knowledge.

7 Executed this ____ day of September, 2004, in Bakersfield, CA.

8
9
10 
11 RACHEL HUTCHINS

TAB 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF KELVIN SMITH, SR.

I, Kelvin Smith, Sr., declare as follows:

1. I am an African-American Handler at FedEx Express and a proposed Class Representative of the Minority Employee Class. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness.

PURPOSE OF BRINGING THIS CLASS ACTION

2. I came to FedEx hoping to make it career, but prejudice stopped me from being able to advance in the company. You spend a decade of your life working for a company and trying to make a difference, and prejudice steps in the way and crushes you. A lot of

1 minorities at FedEx are qualified for promotions, but the higher paying, better jobs go to whites
2 instead. Minorities at FedEx don't have a fair playing field. My primary goal in bringing this
3 class action is to make FedEx change its practices and give minority employees a fair shot at
4 promotion and compensation opportunities.

5
6 I declare under penalty of perjury under the laws of the United States that the
7 foregoing is true and correct to the best of my knowledge.

8 Executed this ____ day of September, 2004, in Apple Valley, CA.

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KELVIN SMITH, SR.

TAB 5

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
15 SR., and KEN STEVENSON, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 FEDEX EXPRESS, a Delaware
20 corporation,

21 Defendant.
22

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF KEN STEVENSON

23 I, Ken Stevenson, declare as follows:

24 1. I am an African-American employee of FedEx Express and a proposed
25 Class Representative of the Minority Employee Class. I have personal knowledge of the facts set
26 forth in this declaration and could and would testify competently under oath if called as a witness.

PURPOSE OF BRINGING THIS CLASS ACTION

27 2. I have been a FedEx employee since 1997 and have been unable to advance
28 in the company because of my race. My primary goal in bringing this class action is to make

1 FedEx change its work environment and practices, so that minority employees like me have equal
2 opportunities for promotion and compensation as similarly situated whites.

3
4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct to the best of my knowledge.

6 Executed this 4 day of September, 2004, in Long Beach, CA.

7
8 
9 KEN STEVENSON

TAB 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF KALINI BOYKIN

I, Kalini Boykin, declare as follows:

1. I am an African-American Operations Manager in FedEx Express's
OAKRO facility, and a proposed Class Representative of the Minority Lower Management Class.
I have personal knowledge of the facts set forth in this declaration and could and would testify
competently under oath if called as a witness.

PURPOSE OF BRINGING THIS CLASS ACTION

2. As a FedEx employee since 1995, I have observed two sets of rules at
FedEx – a written set of rules contained in the Employee Handbook, the People Manual, and

1 other personnel materials, and an unwritten set of rules and practices that treats minorities less
2 favorably than similarly situated whites. The unwritten set of rules is arbitrary, and works against
3 equal opportunity for minority employees. My goal in bringing this lawsuit is to ensure that the
4 day-to-day working environment in FedEx changes so that minorities are treated fairly and given
5 equal promotion and compensation opportunities.

6 **MANAGER DISCRETION IN COMPLETING PERFORMANCE REVIEWS**

7 3. As an Operations Manager, I am responsible for completing the
8 performance reviews of the hourly employees in my workgroup. I have typically been
9 responsible for approximately 25 employees at any given time. The employees I have supervised
10 have all been Ramp Transport Drivers ("RTDs").

11 4. FedEx policy currently requires that Operations Managers complete
12 performance reviews on an annual basis. I believe that Operations Managers have the discretion
13 to complete additional performance reviews when they feel this is warranted. I have not been
14 given training on how or when to determine that such additional reviews are warranted. I believe
15 the People Manual indicates in the Performance Improvement Process section that additional
16 reviews can be conducted at the manager's discretion.

17 5. In my experience, I have paid attention to the date on which all employees
18 are given merit increases in pay. Merit increases are given based on an employee's most recent
19 performance review rating. If an employee had a performance review score on file that wasn't as
20 high as I thought it could be, I would have a discussion with the employee about the review and
21 the potential for improvement. I would then monitor that employee's performance and complete
22 a new review with a higher score prior to the calculation of the merit increase, if the employee's
23 performance improved.

24 6. To my knowledge, FedEx did not monitor my decisions to perform these
25 additional reviews. The only feedback I received was through one of my peer managers, Donald
26 Porter, who told me that his employees were disappointed that he didn't use the same process.

27 7. I can't think of any time when I was actually trained on how to complete
28 performance reviews other than the on-road managers' checkride training course. The on-road

1 category is one category on the RTD performance review form. Other categories that I recall
2 include attendance, safety, quality, and teamwork/support.

3 8. After revisions were made to the performance reviews in September 2002,
4 managers could not assign a score of 4 or below for any category unless they had a documented
5 warning letter or a reminder letter to support the score. After 2002, it became mandatory to
6 assign a 4 or below in the relevant category to an employee who received one of these documents
7 during the review period. This policy was disseminated via e-mail and via a written "job aid."
8 Prior to 2002, it was not mandatory to mark down an employee based on a warning letter or a
9 reminder letter; this was within a manager's complete discretion.

10 9. In my experience, assigning a score from 4 to 7 on the teamwork/support
11 review category is within a manager's complete discretion. I relied on my observations of an
12 employee's performance in order to assign a score to this category. Types of observations I relied
13 on included the employee's checkride performance and my own interactions with the employee,
14 as well as my conversations with other employees and with the support management in the station
15 out of which the employee operated.

16 10. Not all managers who reviewed drivers actually performed complete
17 checkrides. In my opinion, it would be very difficult to evaluate a driver's performance without
18 conducting a checkride. For example, during approximately August 2001 through June 2002, I
19 witnessed Phil Senecal, an Operations Manager who supervised RTDs, perform "checkrides" by
20 calling a driver's name, driving around one block with the driver, and then calling the next driver
21 on his list. To my knowledge, the lack of thoroughness of Phil's checkrides and the lack of
22 observations on which to base his reviews of RTDs were never monitored or corrected; in fact,
23 Phil used to "brag" that he at least got into the cab with the drivers, unlike other managers in
24 Sacramento who were also charged with conducting performance reviews for RTDs.

25 11. The "quality" category on the RTD performance review is also
26 discretionary. If I didn't have a basis for evaluating this category, I would automatically assign
27 every employee a 7. I always tried to err on the side of the employee, and if I had no basis for
28 giving an employee a low score, I would give the employee the highest score I could. In my

1 experience receiving reviews, I felt that my managers used the opposite approach, starting with
2 the lowest score and adding points only where they observed extraordinary performance. I did
3 not receive guidelines or instructions on which of these approaches is the correct one.

4 12. The 4 – 7 scale corresponds to ratings from “satisfactory” to “outstanding.”
5 When I was a handler and a checker/sorter, I learned what my manager’s standards were from the
6 experience of being reviewed. As a manager, I had to rely on my own experience as an RTD. I
7 generally assumed that all of my employees were 7’s because they all had a long tenure as RTDs.
8 I also looked at their past scores in the “OLPR Hist” screen and expected their scores to remain in
9 the same range. The only variables that would affect one of my employee’s review scores either
10 positively or negatively would be that employee’s performance in vehicle safety, worker safety,
11 and attendance/punctuality.

12 13. To my knowledge, the review scores I assigned my hourly employees were
13 never audited, and none of my senior managers ever discussed with me how I was completing
14 performance reviews. The only thing that was audited was the date of completion of the annual
15 review.

16 14. I was never required to consult HR in completing performance reviews. In
17 a few instances, I chose to contact HR to figure out how to handle employees who had accidents
18 on their records before I became their manager.

19 15. I am not aware of any steps taken by FedEx to ensure that I was reviewing
20 employees consistently with how other managers were reviewing their employees.

21 16. I am not aware of any steps taken by FedEx to ensure that I used the same
22 standards in reviewing different employees, other than the blank performance review forms and
23 the regulations that came out in 2002 regarding the impact of performance reminders and warning
24 letters on the performance review.

25 **MANAGER DISCRETION IN DISCIPLINE**

26 17. Issuing warning letters is within management discretion, except when HR,
27 Security, or Legal instructs a manager to issue a warning letter. The Acceptable Conduct Policy,
28 section 2-5 of the People Manual, gives examples of unacceptable conduct. To my knowledge,

1 managers can also issue warning letters for conduct not listed in this section. I am not aware of
2 any other guidelines for managers on when and how to issue warning letters, except that warning
3 letters (as opposed to performance reminders) are for conduct that is wrong, not for performance
4 deficiencies.

5 18. I have issued a performance reminder for an employee based on
6 attendance. This reminder is supposed to be triggered when an employee's attendance level drops
7 below a certain point, but it is up to the manager to issue the reminder. Performance reminders
8 can be issued for any kind of performance deficiency.

9 19. Documented counselings are a less serious form of discipline, and two
10 documented counselings result in a performance reminder. Documented counselings can be for
11 any kind of performance deficiency. Issuing documented counselings is completely within a
12 manager's discretion, and different managers issue counselings for different types of behavior. In
13 my experience, one manager can decide to discipline an employee for something that another
14 manager would have ignored. I can tell this from looking at the personnel records of my
15 employees. I remember seeing a letter in one employee's file from a manager for leaving a candy
16 bar wrapper in a vehicle, which most managers would never treat as the basis for an official
17 counseling. I also remember having one part-time employee, Clifford Fong, who was in school
18 and who was written up by a manager for having a "bad attitude" when he refused to work
19 additional hours. There is no requirement that a part-time employee work additional hours, but
20 this particular manager chose to treat the employee's refusal as the basis for issuing discipline.
21 That arbitrary decision became a lasting part of Clifford Fong's personnel file.

22 20. I am not aware of anything FedEx does to ensure that managers discipline
23 employees consistently.

24 I declare under penalty of perjury under the laws of the United States that the
25 foregoing is true and correct to the best of my knowledge.

26 Executed this 3rd day of September, 2004, in Vallejo, CA.

27 
28 KALINI BOYKIN

TAB 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF DERRICK A.
SATCHELL**

I, Derrick A. Satchell, declare as follows:

1. I was an African-American Operations Manager at FedEx Express' SJCA facility in Santa Clara, CA until approximately April 16, 2002, and am a proposed Class Representative of the Minority Lower Management Class. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness.

PURPOSE OF BRINGING THIS CLASS ACTION

2. As a FedEx employee from 1992 until 2002, I experienced and witnessed differential treatment by Fedex of Minority employees as compared to my Caucasian peers with regard to job assignments and workloads, promotions, and discipline. Minority employees, including myself, were routinely assigned more difficult and labor-intensive tasks with less support than Caucasian employees; took longer than less or equally qualified Caucasians to promote to better paying positions like Courier or management, or were not promoted at all; and often were disciplined for actions that Caucasians employees were not disciplined for. The company engaged in these discriminatory practices despite personnel policies that seemed to guarantee all employees the same treatment and respect. When other Minority employees and I complained of this discriminatory treatment, we were retaliated against through increased harassment and discipline, including termination. Since my internal complaints and other efforts were unsuccessful in changing the treatment of Minority employees at Fedex, I decided to, and had no other choice but to seek changes in Fedex's practices through this action.

MANAGER DISCRETION IN COMPLETING PERFORMANCE REVIEWS

3. As an Operations Manager, I was responsible for completing the performance reviews of the hourly employees in my workgroup. I was typically responsible for approximately 15 to 30 employees depending on my workgroup(s) at any given time. The employees I supervised were Handlers, Couriers and Shuttle Drivers.

4. During my employment, FedEx policy required Operations Managers to complete performance reviews on an annual basis. Operations Managers had the discretion to complete additional performance reviews, usually within six months, if an employee received 4.0 or less on an annual performance review; however, the additional reviews were not mandatory. These additional reviews also did not impact the merit increases of employees. I did not perform additional performance reviews since my employees rarely received scores of 4.0 or less. It was my practice to provide my employees with constant feedback on their performance so that they could improve in areas where they were deficient and that would otherwise result in low overall scores. For example, with Couriers, I would post onroad performance for each Courier daily so

1 they could see how they were performing and identify areas that they could improve. I also
2 would keep notes on each employee so that I could provide meaningful coaching during the
3 review period, as well as have information for scoring performance at the end of each review
4 period.

5 5. I did not receive any specific training on when and how to perform
6 performance reviews for employees in my workgroup. The MAPS training, which covered all the
7 relevant information necessary to perform the duties of Operations Manager, provided some
8 information on performance reviews, but it was covered in less than an hour. Most of my training
9 for performance reviews came from coaching from veteran peer managers. Each of these
10 managers had their own system for reviewing employees. I also learned from my managers
11 during my own experience of being reviewed. In developing my performance review procedures,
12 I generally relied on my personal experience as a Handler, then a Shuttle Driver and finally as a
13 Courier.

14 6. In reviewing my workgroups, I began each individual review by looking at
15 the employee's last review. The past review score in each category served as the starting point for
16 the current review. If I determined from my notes and objective individual performance data that
17 an employee's performance for the review period was better than the previous period, I would
18 increase the score accordingly. On the other hand, if the employee's performance was poorer in
19 my estimation during the current review, I would reduce the score.

20 7. To the best of my recollection, there was only one category where a
21 manager had no influence on the review. The Accidents and Injuries section of the Safety
22 category was scored automatically from information downloaded from FAMIS. Several other
23 categories, such as Attendance and Punctuality and Onroad Performance, were supposed be based
24 on objective data, but managers had the ability to alter the data upon which the scores were based.
25 For example, managers at the SJCA routinely decreased the absences and tardies of employees
26 who were generally good workers, especially when the employees subsequently made
27 improvements in those areas. In addition, attendance and punctuality records were often
28 incomplete. Adjustments to attendance and punctuality data were possible because the managers

1 were responsible for entering this data onto the review so that the percentage and corresponding
2 scores could be calculated.

3 8. With regard to the Onroad Performance category, managers had the ability
4 to make exceptions to an employee's daily performance to capture variables and information that
5 was not captured by the system. For example, I have made exception days for Couriers if they
6 provided assistance to other Couriers to avoid service failures, but at the expense of their own
7 onroad productivity for the day. The onroad data from days where exceptions are posted is not
8 included among the data used in calculating an employee's review score. A manager is not
9 restricted in the number of exception days he can post for employees. Different managers have
10 different practices for using exceptions, and have made exceptions for different things. I am not
11 aware of any monitoring of exceptions made by managers. In addition, I am not aware of any
12 training that was provided as to when exceptions are proper. I was just informed that this was a
13 procedure that I could use when I believed it was warranted.

14 9. Other categories of the review such as Teamwork and Quality were based
15 completely on my own determination of how an employee should be scored in such category.
16 Factors that I used in scoring the Teamwork category included the following: how well an
17 employee balanced his load with other employees, assistance provided to others on road,
18 assistance in offloading, etc. I also factored in my interaction with the employee and the general
19 interactions of the employee with his/her peers. I was not trained on these factors, but used them
20 based on my experience and coaching from other managers. The "Quality" category on the
21 Courier performance review was also discretionary in that I determined my own factors for
22 review. I do not recall the particular criteria I used with the Quality category at this time.

23 10. To my knowledge, FedEx did not monitor my decisions in performing
24 reviews. I also am not aware of any steps taken by FedEx to ensure that I used the same
25 standards in reviewing different employees. In addition, I am not aware of any efforts by the
26 Company to assure that managers reviewed their workgroups in a consistent manner. Each
27 manager that I worked with at SJCA had a different process for reviewing employees. Managers
28 were routinely rotated among workgroups at the station; and employees review scores could, and

1 often did, change drastically depending on the particular manager providing the review. This
2 occurred even though the employee was performing the same responsibilities from manager to
3 manager.

4 11. My senior managers and HR did not audit or review me on my process for
5 reviewing my workgroup. The only thing that was audited was the date of completion of the
6 annual review.

7 **MANAGER DISCRETION AFFECTING PROMOTION DECISIONS**

8 12. I was involved in the promotion of employees to higher paying positions,
9 such as from Handler to Courier. There were many decisions that managers made that affected an
10 employee's eligibility for such promotions. For example, all applicants for Courier needed to
11 complete Courier training and a Basic Skills Test. Portions of this training were administered at
12 the station. Managers often decided which interested employees would get training or could bid
13 on open positions. Though priority in applying for jobs and attending Courier School was
14 supposed to relate to seniority or the highest CEV score, in my experience managers sent
15 employees to training based upon their performance in their current positions and other factors
16 that would suggest the employee would be a good Courier. For example, I considered the
17 following factors: the individual's attendance and punctuality, ability to follow instructions,
18 demonstrated problem solving skills, and how he works without supervision.

19 13. Managers also had the ability to groom employees for specific positions by
20 providing them with temporary assignments in positions or in support of positions the employee
21 was interested in getting. Managers had complete control over shaping the duties of their
22 employees in this manner. In addition to providing an employee with deeper position-specific
23 knowledge that resulted in advantages over employees without such knowledge, these special
24 responsibilities or leadership opportunities also served as a basis for higher performance reviews
25 and provided advantages in obtaining promotions. Fedex did not provide any guidelines to assist
26 managers in determining who to give the special job assignments to. It was entirely up to the
27 individual manager's discretion. In deciding to whom to assign such responsibilities, I considered
28 whether the individual had expressed an interest in the leadership responsibilities and had the

1 capacity to perform them. I also considered their attendance and punctuality, maturity and
2 professionalism.

3 **MANAGER DISCRETION IN DISCIPLINE**

4 14. I issued very few performance reminders when I was a manager because I
5 gave my employees constant feedback regarding their performance and worked closely with them
6 to improve performance in areas of deficiency. The one occasion that I recall issuing a
7 performance reminder was for on-road performance. In that instance, I reviewed the employees
8 AM wrap-up, his leave building time and his service on-road. The employee was failing in all
9 these areas. I also factored in the numerous verbal coaching and other opportunities that I had
10 provided the employee to meet the expectations that I had outlined. I also gave the employee at
11 least two documented counselings on the same issues. Prior to issuing the reminder, I consulted
12 my senior manager and the HR representative.

13 15. Documented counselings were a less serious form of discipline; however,
14 there was no maximum number of such counselings that an employee could get before a manager
15 was required to give them a performance reminder. My practice was to give a performance
16 reminder after at least two or three verbal counseling. I believe that it was important to give
17 employees second-chances. During my career, I had very few employees dispute my disciplinary
18 decisions, because it was always very clear to an employee that it was deserved when I issued it.
19 I gave employees countless chances and made every effort to coach on areas of deficiency.
20 Documented counselings could be given for any kind of performance deficiency. Issuing
21 documented counselings was completely within a manager's discretion, and different managers
22 issued counselings for different types of behavior.

23 16. Issuing conduct related discipline was also within management discretion.
24 The severity of discipline that a manager could give for a violation of the Acceptable Conduct
25 Policy, Section 2-5 of the People Manual, was up to the manager. The only guidance given by
26 the People Manual was that a manager could issue discipline up to and including termination.. To
27 my knowledge, managers could also issue warning letters for conduct not listed in this section. I
28 am not aware of any other guidelines for managers on when and how to issue warning letters,

1 except that warning letters (as opposed to performance reminders) are for conduct that is wrong,
2 not for performance deficiencies. In addition, I am not aware of anything FedEx did to ensure
3 that managers disciplined employees consistently. In reviewing employees' personnel files and in
4 speaking with employees, I often discovered other managers had disciplined employees for acts
5 that I would not have disciplined. For example, Dave Correia issued a warning letter to an
6 employee for a "no call, no show" when the employee did not report to work on a day that he had
7 requested to have off. The employee had placed a vacation day request with Correia, but was not
8 given a response within the 72 hours required by policy. The employee did not show up for work
9 because he believed that he had been granted the time off.

10 17. The fact that managers had so much discretion in this area of discipline was
11 acknowledged by the Regional Vice President, Tom O'Hearn, when he stated in a meeting where
12 falsification was discussed that any manager could terminate almost any employee in the
13 company, on any day for some conduct related matter.

14 18. Factors that I considered with regard to conduct matters included the
15 following: the severity the action as determined by the affect on the Company and others
16 involved in the matter. These were the two most important factors. I might also have considered
17 the attitude of the employee, prior instances of the same behavior, and any other guidance given
18 by policy or HR.

19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct to the best of my knowledge.

21 Executed this 8 day of September 2004, in Tracy, CA.

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25 DERRICK A. SATCHELL
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
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Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATIONS OF CLASS MEMBERS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

Date: January 14, 2005

Time: 9:00 a.m.

Courtroom of the Honorable Susan Illston

CLASS MEMBER DECLARATIONS

Tab No.

1	Sheila Akins	1
2		
3	Virgil Banks	2
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5	Yolanda Canela	3
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7	Bonta P. Clarke	4
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9	Eric Foreman	5
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11	Maurice Griffen.....	6
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13	Janet Haynes.....	7
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15	Eric J. Hill	8
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17	Brett Hoiland.....	9
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19	Ingrid James	10
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21	Zeno Latin	11
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23	Mitchell McCoy	12
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25	Venturi McCray, Sr.....	13
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27	Rose Moncrief.....	14
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	Antonio Norris	15
	Rosalinda Olmos	16
	Beverly Patterson	17
	Mimi Steel.....	18

TAB 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF SHEILA AKINS

I, Sheila Akins, declare as follows:

1. I am an African American woman residing in Berkeley, California. I am currently employed as a Checker/Sorter in FedEx Express's OAKH or Oakland Hub in Oakland, California.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection with that case.

1 3. I have worked at FedEx from approximately January 24, 1990 to the
2 present.

3 4. From approximately January 1990 to March 1992, I served as a permanent
4 part-time Handler at the OAKH or Oakland Hub in Oakland, California. My Operations Manager
5 was a white man named Kelly Cunningham. My Senior Manager was a white man named Mike
6 Myers.

7 5. From approximately April 1992 to February 1995 I worked as a permanent
8 part-time Checker/Sorter at the OAKH or Oakland Hub in Oakland, California. My Operations
9 Managers were a white man named Mike Dolen and a white man named Tom Osbem (the
10 spelling of whose name I do not recall precisely). My Senior Manager was a white man named
11 Mike Myers.

12 6. From approximately February 1995 to the present I have held the position
13 of permanent full-time Checker/Sorter at the OAKH or Oakland Hub in Oakland, California, and
14 at the L.L. Bean office in Freeport, Maine. My Operations Managers throughout this time period
15 included a non-minority man named Vien Lam and a non minority man named Marty Indalecio.
16 My Senior Manager is a white woman named Cher Woodward.

17 7. Throughout my employment at FedEx, I have never had a Latino Senior
18 Manager.

19 **DISCRIMINATION IN COMPENSATION**

20 8. It is my understanding that I received lower review scores than my
21 colleagues' review scores which led to my receiving lower compensation for equivalent work.
22 For example, I was disciplined more harshly for my attendance than a non-minority
23 Checker/Sorters whose attendance I observed to be equivalent to mine. Furthermore, this non-
24 minority co-worker received a higher review score of 6.9-7.0 compared to my review score of
25 5.0-6.6. I know this because my co-workers receive and have shown me a higher payout rates on
26 their "incenti-pay" checks due to their higher review scores.

DISCRIMINATION IN PROMOTION

9. In approximately June of 1999, I applied for a full-time Team Leader (FT) position at the OAKH or Oakland Hub in Oakland, California. I decided to apply for the full-time Team Leader position because of my experience and because I had an excellent professional dynamic with my team. When I expressed my interest in the full-time Team Leader position to my Operations Manager, Rhonda Thompson, she told me that this promotion was approved. However, Shirley Coleman, a white female Operations Manager and my ex-Team Leader, then denied me the position. Shirley Coleman gave no direct explanation of why she denied me this promotion. Rhonda Thompson told me that Shirley Coleman denied me the position because of my attendance. The job was given to a white man named John Charles who had been working at FedEx for approximately 5-6 years less than me. I am aware of this because my Operations Manager, Rhonda Thompson, informed me of the situation.

10. On a number of occasions, non-minority employees were hired into my station/work group for positions that had not been posted, I did not know were open, or I had inquired about and was told were not available. For example, Shirley Coleman promoted a white woman named Stacy (whose last name I do not recall) to an Information Agent (I.A.) position. The Information Agent position was not publicly posted. Karen Smith, who was resigning from the position, informed me that the position was available. When I checked the JCATS to apply for the position, Stacy had already obtained the position.

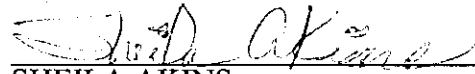
11. I have observed that most positions at FedEx are filled by a "tap on the shoulder" system, that is, the positions are filled not by the public application system, but instead by the white managers letting their white co-workers know about job openings and promoting them instead of equally or more qualified minorities. For example, a white man named Jeff Neal befriended and brought gifts to Shirley Coleman. Shirley Coleman then promoted Jeff Neal from Team Leader to Ramp Agent ahead of more experienced minority co-workers who applied for the position.

DIFFERENTIAL DISCIPLINE

12. Throughout my employment at FedEx, I have been disciplined more harshly than my non-minority colleagues. For example, Shirley Coleman often tried to intimidate me by threatening to fire me, suspend me, and/or write me up. I've been suspended numerous times for infractions that other non-minority co-workers have not been suspended for. I was suspended in December 2003 by Vien Lam for asking him for help when others were not around. Vien Lam refused to speak with me about this and suspended me without just cause. I have never seen him harass white employees in this way. When I have asked my Operations Manager and my Senior Manager about this difference in discipline, they have always ignored me. I filed a complaint with Human Resources but to my knowledge no one was ever counseled or reprimanded for this difference in discipline.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 12 day of Aug, 12, 2004, in Berkeley, California.


SHEILA AKINS

TAB 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF VIRGIL BANKS

I, Virgil Banks, declare as follows:

1. I am an African-American man residing in Phoenix, Arizona. I am currently employed as a Materials Handler in FedEx Express's ("FedEx") Phoenix, Arizona Ramp (PHXR).

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I have worked at FedEx from approximately August of 1995 to the present.

4 4. From approximately August of 1995 to January of 1997, I served as a
5 permanent part-time Checker/Sorter at the OAKH (Oakland Hub) in Oakland, California. My
6 Operations Manager was a white woman named Diana Riley.

7 5. From approximately January of 1997 to December of 1999, I served as a
8 permanent part-time Courier at the LUFA Station in Phoenix, Arizona. My Operations Managers
9 were a white man named Malcolm Rattner and a white woman named Fran Webster. My Senior
10 Manager was a white man named Dan Zinger.

11 6. From approximately January of 2000 to May of 2002, I served as a
12 permanent part-time Handler at the LUFA Station in Phoenix, Arizona. My Operations Managers
13 were a white man named Malcolm Rattner and a white woman named Fran Webster. My Senior
14 Manager was a white man named Dan Zinger.

15 7. From approximately May 2002 to the present, I have served as a permanent
16 part-time Materials Handler at the Phoenix, Arizona Ramp (PHXR). My Operations Manager is a
17 white woman named Tammy (unsure of last name). My Senior Manager is a white man named
18 Edward Sweeney. I have never had an African American or Latino manager or senior manager
19 for any substantial period of time.

20
21 **DISCRIMINATION IN PROMOTION**

22 8. During my employment at FedEx, I observed that managers refused to
23 approve minority employee applications for promotion. Approximately two years ago, my
24 Operations Manager, a white man named Scott Anderson, and my Senior Manager, a white man
25 named Edward Sweeney, refused to approve my application for promotion. When I expressed to
26 Scott Anderson and Edward Sweeney that I wanted to apply for the Heavy Weight Handler
27 position, Scott and Edward refused to sign off on my application because I had been at the
28 Phoenix Ramp for only a few months. I had been employed at FedEx, however, for nine years.

1 A white man named Randy (unsure of his last name) with six years less experience was hired for
2 the Heavy Weight Handler position.

3 9. During my employment at FedEx, I observed that equally or less qualified
4 non-minority employees routinely received positions over minority employees. It is my
5 understanding that equally or less qualified non-minority employees received promotions for
6 positions that I applied and was qualified for. In approximately November 1999, I applied for a
7 full-time Courier position at the LUFA Station in Phoenix, Arizona. I was denied the full-time
8 Courier position but a white man named Rick (unsure of last name), who was less qualified for
9 the position because he had five years less experience, was offered the position.

10
11 **DIFFERENTIAL TREATMENT**

12 10. Throughout my employment at the Phoenix Station, I observed and was
13 told that African American Couriers are assigned to service the low-income, crime-ridden areas
14 of Phoenix. I know this because all of the Courier routes are posted in the "time clock" area of
15 the station. When I asked my Operations Manager why minorities were required to service all of
16 the non-desirable and unsafe areas, he responded by saying, "because you guys know how to deal
17 with that." I took his response to mean that since we were minorities, we knew how to deal with
18 poverty and crime.

19 **DISCRIMINATORY STATEMENTS / RACIAL EPITHETS**

20 11. Recently, in approximately August of 2004, a Caucasian co-worker called
21 me "Buckwheat." When I approached my team leader John Rudd, a Caucasian man, about how
22 to handle the situation, he ignored the complaint. I then went to my Operations Manager, Scott
23 Anderson, a Caucasian man, and explained the racial epithet that was said, only to be ignored
24 again. Nothing was ever done about the situation.

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

3
4 Executed this 9th day of Sept, 2004, in Phoenix, Arizona.

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6 Virgil Banks Jr.
7 VIRGIL BANKS
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TAB 3

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
15 SR., and KEN STEVENSON, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 FEDEX EXPRESS, a Delaware
20 corporation,

21 Defendant.
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Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF YOLANDA CANELA

I, Yolanda Canela, declare as follows:

1. I am a Latina woman residing in San Jose, California. I was formerly employed as a Courier in FedEx Express's PAO Station in Menlo Park, California and the RHV Station in San Jose, California.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately April of 1997 to September of
4 2001.

5 4. From approximately April of 1997 to July of 1997, I served as a permanent
6 part-time courier at the PAO Station in Menlo Park, California. My Operations Manager was a
7 Caucasian man named Dave (unsure of last name). My Senior Manager was a Caucasian man
8 named Matt Wasco.

9 5. From approximately July of 1997 to September of 2001, I served as a
10 permanent full-time Courier at the RHV Station in San Jose, California. My Operations
11 Managers during this time included a Caucasian man named Bob (unsure of last name), and a
12 non-minority man named Greg Paler. My Senior Managers during this time included a Caucasian
13 man named Randy Farrington, and a Caucasian man named John Six.

14 6. Throughout my employment at FedEx, I never had an African-American or
15 Latino Senior Manager.

16 DISCRIMINATION IN PROMOTION

17 7. During my employment at FedEx, I observed that minority employees were
18 discouraged from applying for promotions. During my employment at FedEx, I was discouraged
19 from applying for promotions. In approximately April 1999, I filed a grievance against my Senior
20 Operations Manager, a Caucasian man named Randy Farrington, for denying me the opportunity
21 to apply or bid for a better route. Randy told me that I could not apply for the route because I had
22 signed a "commitment letter" in which I agreed to be a part-time employee for 2 years, unless I
23 was offered a full-time position. However, I had subsequently been promoted to full-time and
24 signed a new "commitment letter" that made me eligible to apply for the route. This new letter
25 superceded the old one. I showed Randy the new letter; however, he refused to honor it, which
26 forced me to have to file a grievance through the company. During the time that it took me to file
27 the grievance regarding the "commitment letter," however, the route position was filled by a
28 Caucasian man (unsure of name), who had never worked for FedEx before, and therefore had no

1 seniority. Finally, after I filed my grievance or GFT (Guaranteed Fair Treatment), and won, I was
2 allowed to apply for promotions at FedEx. Unfortunately, it was then too late to obtain the route
3 that I wanted because it had already been filled by the lesser qualified Caucasian man.

4 **DIFFERENTIAL DISCIPLINE**

5 8. Throughout my employment at FedEx, I have observed that minority
6 employees are disciplined more harshly than non-minority employees. During my employment at
7 FedEx, I was disciplined more harshly than my non-minority co-workers. For example, in
8 approximately August of 2001, a customer asked me to put a shipment of boxes on their loading
9 dock and to organize them according to the customer's system. This was not standard operating
10 procedure for FedEx, and was not within my job description. When I called my Operations
11 Manager, Greg Paler, he told me to tell the customer that we did not provide "door to door"
12 service. Later, a Caucasian Operations Manager, Randy Farrington questioned me about the
13 incident and told me that I was unprofessional. Randy Farrington supposedly talked to the
14 customer, and had the customer write up a statement about the incident. When I asked to see this
15 statement, Randy would not show it to me. According to Randy, the customer noted that I was
16 "stoic" and that I simply stated that FedEx did not perform "door to door service." Following this
17 incident, Randy Farrington terminated my employment at FedEx. Stephanie Johnson, a
18 Caucasian co-worker of mine, had over five performance letters on file, whereas I only had one,
19 however no disciplinary action was taken against her. I know this because Stephanie told me.

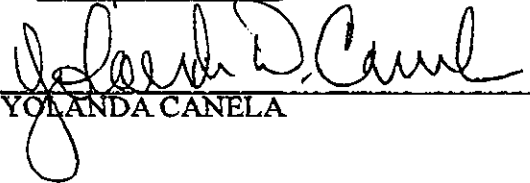
20 **DISCRIMINATORY STATEMENTS / RACIAL EPITHETS**

21 9. In 2000, I witnessed a verbal exchange between Michael Jordan, a
22 Caucasian employee, and Jacob Archuleta, a Mexican employee, in which Michael Jordan was
23 verbally abusing Jacob by using racial epithets and malicious comments about Jacob's family. I
24 reported the incident to my Caucasian Operations Manager, Greg Paler, but he said that it was
25 none of my business. I was also told by Jacob that management had told him not to make waves
26 about the incident because it would affect an upcoming transfer to another terminal that Jacob
27 was hoping for. Both Michael and Jacob told me that Michael did not receive any type of
28 disciplinary action for this, which I know to be true because when a FedEx employee receives a

1 warning letter, there is an automatic one-day suspension the next day, but Michael Jordan was at
2 work at FedEx the following day.
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5 I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct to the best of my knowledge.

7 Executed this 8 day of September, 2004, in San Jose, California.
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10 YOLANDA CANELA
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TAB 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF BONTA P. CLARKE

I, Bonta P. Clarke, declare as follows:

1. I am an African-American woman residing in Vallejo, California. I am currently employed as a permanent full-time Checker/Sorter in FedEx Express's OAKH Hub in Oakland, California.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I have worked at FedEx from approximately October 1999 to the present.

4 4. From approximately October 1999 to November 1999, I served as a
5 permanent part-time Handler at the OAKH or Oakland Hub in Oakland, California. My Senior
6 Manager was a Caucasian man named Kelly Cunningham.

7 5. From approximately November 1999 to March 2003, I served as a
8 permanent part-time Material Handler at the OAKH or Oakland Hub in Oakland, California. One
9 of my Operations Managers was a Caucasian man named Mike Bistor. My Senior Manager was a
10 Caucasian man named Kelly Cunningham.

11 6. From approximately May 2003 to June 2004, I served as a permanent part-
12 time Checker/Sorter at the OAKH or Oakland Hub in Oakland, California. My Operations
13 Manager was a non-minority man named Scott Speaker. My Senior Manager was a Caucasian
14 man named Tim Marks.

15 7. From approximately June 2004 to the present, I have served as a permanent
16 full-time Checker/Sorter in the OAKH or Oakland Hub in Oakland, California. My Senior
17 Manager is a Caucasian man named Dave Pollock (unsure of spelling).

18 8. Throughout my employment at FedEx, I have never had an African-
19 American or Latino Senior Manager.

20 **DISCRIMINATION IN PROMOTION**

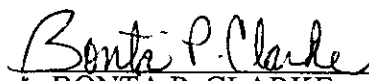
21 9. In approximately September 2003, I spoke with my Operations Manager, a
22 non-minority man named Scott Speaker, about being promoted from part-time to full-time
23 Checker/Sorter. Scott Speaker discouraged me from applying for the full-time position by telling
24 me that there was not enough work under one manager so the position required that the employee
25 work under two managers. Working under two managers is undesirable because the job demands
26 substantially more work than working under one manager. For this reason I did not apply for the
27 job. However, after the position was filled by a non-minority permanent part-time employee,
28 Leon (unsure of last name) who had worked at FedEx for less time than I had, I learned that the

1 full-time position, in fact, did not require working under two managers. I was made aware of this
2 because Leon told me that he only worked for one manager, Scott Speaker.

3 10. On August 2, 2004, my Caucasian Senior Manager, David Pollock,
4 awarded a Caucasian man named John (unsure of last name) the "BZ (Bravo Zulu) Award" for
5 excellent job performance. This award helps with promotion because it is reflected on
6 performance reviews, which are a factor in obtaining promotions and raises. John has been
7 employed at FedEx for approximately 3 months, and I have observed John performing below
8 average work. I also learned from John's African American Operations Manager, Eric Carter,
9 that that John had to be pulled off his duty because he was working too slow. I am a more
10 experienced and qualified worker than John, but have not received this award. Although I am
11 more experience and qualified than John and have never received complaints about my work
12 performance as a Checker/Sorter, David Pollock has never offered me the BZ Award for my
13 work.

14
15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct to the best of my knowledge.

17 Executed this 17 day of AUGUST, 2004, in Vallejo, California.

18 
19 BONTA P. CLARKE

TAB 5

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
19

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF ERIC FOREMAN

20
21 I, ERIC FOREMAN, declare as follows:

22 1. I am an African American man residing in Los Angeles, California. I was
23 formerly employed as a Handler and Equipment Operator in FedEx Express's LAX Hub in Los
24 Angeles, California.

25 2. I have personal knowledge of the facts set forth in this declaration and
26 could and would testify competently under oath if called as a witness. I understand that a class
27 action lawsuit alleging employment discrimination on the basis of race has been filed against
28

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately March 1994 to December 2000.

4 4. From approximately March 1994 to June 1994, I served as a permanent
5 part time Handler at the LAX Hub in Los Angeles, California. My Senior Manager was a white
6 man named Richard Duzak.

7 5. From approximately June 1994 to December 2000, I served as a permanent
8 part-time Equipment Operator at the LAX Hub in Los Angeles, California. My Senior Manager
9 was a white man named Richard Duzak.

10 **DISCRIMINATION IN COMPENSATION**

11 6. From approximately February 1996 to December 2000, I held the position
12 of Equipment Operator but was assigned to carry out the duties of a Forklift Operator. Although
13 it was posted that Forklift Operators start at approximately \$14.50 per hour, I was only paid
14 approximately \$10.00 per hour as an Equipment Operator. There were two other African
15 American men that also carried out the duties of a Forklift Operator, but were only paid as
16 Equipment Operators. One of these men was named Damon Collins and I do not recall the name
17 of the other man. The employee who was hired for the Forklift Operator position was a white
18 man. Although we were all carrying out the duties of a Forklift Operator, this white man was the
19 only one to my knowledge with the formal title and, therefore, the only one making \$14.50 per
20 hour.

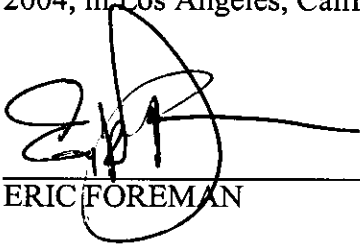
21 **DISCRIMINATION IN PROMOTION**

22 7. On about four occasions from approximately January 1995 to December
23 2000, I applied to be a Team Leader at the LAX Hub in Los Angeles, California. Even though I
24 had manager recommendations, high evaluation scores (6.5-6.8 out of 7), and had already been
25 appointed the "acting" Team Leader by my Operations Manager, Darrell Mayo, I was denied the
26 Team Leader positions. On each occasion, a white male applicant was given the Team Leader
27 position. I do not believe that any of these applicants had the same level of qualifications for the
28 job as I did. For example, none had worked as "acting" team leader as I had. Richard Duzak, a

1 white man, was my Senior Manager during the time I applied for Team Leader. On one occasion,
2 I asked my Operations Manager as to why Senior Management had not hired me for the Team
3 Leader positions. My Operations Manager told me that I was not promoted because of my
4 dreadlocks.

5 I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct to the best of my knowledge.

7 Executed this 8 day of ^{SEPT}~~August~~, 2004, in Los Angeles, California.

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11 ERIC FOREMAN
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TAB 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF MAURICE GRIFFEN

I, Maurice Griffen, declare as follows:

1. I am a Black-American man residing in Spokane, Washington. I am currently employed as a Material Handler in FedEx Express's GEGR Ramp in Spokane, Washington.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I have worked at FedEx from approximately August 1997 to the present.

4 4. From approximately August 1997 to November 1998, I served as a
5 permanent part-time Handler at the GEGR Ramp in Spokane, Washington. My Operations
6 Manager was a white man named Tim Roberts. My Senior Manager was a white man named
7 Keith Richards.

8 5. From approximately November 1998 to August 1999, I served as a
9 permanent full-time Security Officer I at the IND Ramp in Indianapolis, Indiana. My Operations
10 Manager was a white man named Brian Bird. My Senior Manager was a white man named Ed
11 Garvin.

12 6. From approximately August 1999 to Summer 2000, I served as a
13 permanent part-time Handler at the GEGR Ramp in Spokane, Washington. My Operations
14 Manager was a white man named Rob Height. My Senior Manager was a white man named Jay
15 Gass.

16 7. From approximately Summer 2000 to the present, I served as a permanent
17 part-time Material Handler at the GEGR Ramp in Spokane, Washington. My Operations
18 Managers were a white man named Tim Roberts and a white woman named Gwen Mosley. My
19 Senior Manager was a white man named Jay Gass.

20 8. Throughout my employment at FedEx, I have not had an African-American
21 or Latino Senior Manager.

22 **DISCRIMINATION IN PROMOTION**

23 9. I, like other Black-Americans, have been discouraged from seeking
24 promotions. When I expressed to my Operations Manager, a white man named Brian Bird, that I
25 wanted to apply for a Security Specialist position, Brian Bird discouraged me from applying. He
26 told me that my past use of profanity in the workplace would preclude me from ever applying for
27 the position. When Spencer Lebouris, a white worker, cursed directly at management, however,
28 his manager, a white woman named Teresa Tereano, would say, "He was having a bad day."

1 This is just one example of how I was disciplined more harshly than white employees for similar
2 conduct. Two white men named Steve Romack and Lynn Attkisson ultimately got the Security
3 Specialist positions even though they had worked for FedEx for less than six months. It is my
4 understanding that according to our FedEx policy book, employees must be employed in the same
5 position for a year before applying for a promotion or transfer.

6 10. On approximately six occasions, I applied for Security Officer positions
7 because I was interested in getting back into security work. Even though I was highly qualified,
8 had an Applied Associate of Science (AAS) in Law Enforcement, and had several years of
9 security and National Guard experience, I never got the position. On four of these occasions, I
10 was informed the day before my interview by overnight mail that my interviews were cancelled.
11 To my knowledge, many, if not all, of these Security Officer positions were filled by less
12 qualified white employees.

13 11. In approximately March 2003, I applied for a Team Leader position at the
14 GEGR Ramp in Spokane, Washington. My Senior Manager, Jay Gass, denied me the Team
15 Leader position but a white man named Brian Osborn, who was less qualified, was offered the
16 position. I worked with Brian Osborn and know that I was more qualified for the position
17 because I had three years more seniority, more training in the operations, and experience as a
18 Load Captain, Information Agent, and Marshall for aircraft. To my knowledge, Brian Osborn did
19 not have similar experience and credentials.

20 **DIFFERENTIAL DISCIPLINE**

21 12. Throughout my employment at FedEx, I have been disciplined more
22 harshly than my non-minority colleagues. For example, on May 24, 2001, I was given a written
23 warning for dropping a 300-500 pound can off of the dolly while Spencer Lebouris, a non-
24 minority employee, was not disciplined for the same behavior. I have observed Spencer Lebouris
25 drop cans 3 or 4 times and to my knowledge, he did not receive a warning letter for his behavior.
26 I believe Spencer Lebouris was not disciplined on these occasions because under FedEx's stated
27 policies, he would have been terminated had he received 3 or more warning letters. In contrast,
28

1 FedEx has used the records of this and other disciplinary action to deny me promotions which
2 have been given to less experienced and less qualified white candidates.

3 **DISCRIMINATORY STATEMENTS / RACIAL EPITHETS**

4 13. In the Summer of 2000, I observed a noose hanging in the building. It was
5 very shocking. To my knowledge, no one was ever counseled, disciplined, or reprimanded for
6 this incident.

7
8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct to the best of my knowledge.

10 Executed this 3 day of September, 2004, in Spokane, Washington.

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12 
13 MAURICE GRIFFEN

TAB 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF JANET HAYNES

I, Janet Haynes, declare as follows:

1. I am an African American woman residing in Anchorage, Alaska. I was formerly employed as an Operations Manager (Ground) and a Courier in FedEx Express's ANCA Station in Anchorage, Alaska, as an Human Capital Management Program (HCMP) Manager, Operations Manager (Hub), and an Associate Training Specialist in FedEx Express's ANC Hub in Anchorage, Alaska, and a Service Agent in FedEx Express's ANCA World Service Center (WSC) in Anchorage, Alaska.

1 2. I have personal knowledge of the facts set forth in this declaration and
2 could and would testify competently under oath if called as a witness. I understand that a class
3 action lawsuit alleging employment discrimination on the basis of race has been filed against
4 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
5 with that case.

6 3. I worked at FedEx from approximately October 1991 to May 2004.

7 4. From approximately October 1991 to April 1993, I served as a permanent
8 part-time Courier at the ANCA Station in Anchorage, Alaska.

9 5. From approximately April 1993 to October 1996, I served as a permanent
10 part-time Service Agent at the ANCA WSC in Anchorage, Alaska. My Operations Manager was
11 a White woman named Mary Evelyn Schultz. My Senior Manager was a White man named
12 Michael Hooyer.

13 6. From approximately October 1996 to July 1998, I served as a permanent
14 full-time Associate Training Specialist stationed at the ANC Hub in Anchorage, Alaska, reporting
15 to the NHOC (National Hub Operations Central). My Operations Manager was a White woman
16 named Charlotte Myers.

17 7. From approximately July 1998 to October 1998, I was the permanent full-
18 time Operations Manager (Hub) at the ANC Hub in Anchorage, Alaska. My Senior Manager was
19 a White man named Stephen Freno.

20 8. From approximately October 1998 to November 2003, I served as a
21 permanent full-time HCMP (Human Capital Management Program) Manager at the ANC Hub in
22 Anchorage, Alaska. My first Director was a White man named Dennis Bird and my second
23 Director was a White man named James Hatley.

24 9. From approximately November 2003 to May 2004, I served as an
25 Operations Manager (Ground) at the ANCA Station in Anchorage, Alaska. My Senior Manager
26 was a White woman named Susan McDonough.

DISCRIMINATION IN INITIAL JOB ASSIGNMENT

10. I was hired as a permanent part-time Courier in approximately October 1991. The only way I could find out about opportunities for promotion to permanent full-time status or to other job positions was through word of mouth. I remained a permanent part-time employee for 5 years even though I expressed an interest in becoming a permanent full-time employee.

DISCRIMINATION IN COMPENSATION

11. When I became a permanent full-time Associate Training Specialist at the ANCA Station in Anchorage, Alaska, my Senior Manager, Karen Phipps, had discretion to set my initial pay rate. She started me at approximately \$15.00 per hour, which was less than I had been making as a permanent part-time Service Agent. This initial rate was less than all of my Training Specialist co-workers because they were all Training Specialists or Senior Training Specialists. I was brought in as an Associate Training Specialist, pay grade 21, even though I had my college degree. Because I had my college degree, I should have been brought in as a Training Specialist, which was pay grade 23 (Senior Training Specialist was pay grade 26). I am aware of this because I was the only minority Training Specialist in Alaska, and I received feedback from co-workers that I was making substantially less than my non-minority colleagues. I found out about this difference in pay because there was an organizational chart that listed everyone's titles and pay grades. When I asked my Senior Manager, Karen Phipps, about this difference in pay, she told me she would work on my salary because she knew it was unfair. She also said that she had been told that "they" did not want to hire me for the position and this pay grade was the best she could do.

DISCRIMINATION IN PROMOTION

12. I was an hourly employee for approximately 7 years even though I expressed interest in becoming an Operations Manager to the entire management team on approximately 40 occasions. Specifically, I expressed this interest to Steve Hurst, my Senior Manager, approximately twelve times. When I expressed interest in management openings at the ANC Hub, I was told by my Senior Manager and Operations Manager that they were not sure that

1 I was ready to be an Operations Manager, even though I had previous managerial experience and
2 was the only college educated person at the ANCA Station. I was also told that I did not have
3 enough FedEx experience.

4 13. Other non-minority employees such as Sarah Koehler and Daniel Turner
5 were promoted to Operations Managers, even though I had been there the same amount of time
6 and had been performing the same duties as them. I am aware of this because we all wanted to be
7 promoted to Operations Manager together, but I was not promoted with them. It took me 7 years
8 to be promoted to Operations Manager, years longer than any of my non-minority counterparts.

9 14. In approximately November 2002, I applied for a Senior Manager position
10 at the ANC Hub in Anchorage, Alaska. I decided to apply for the Senior Manager position
11 because it was a good promotional opportunity. I have a Doctorate in Education and I wanted to
12 be the first African American Senior Manager at the ANC Hub. When I expressed my interest in
13 the Senior Manager position to the non-minority Senior Managers in our group, they told me that
14 it would take a lot of work before I could become a Senior Manager, and I interpreted this as
15 unwelcoming. I also expressed my interest to the Managing Director, a White man named Dennis
16 Bird. He explained to me that he was not sure I was ready to be a Senior Manager. In staff
17 meetings, Dennis Bird brought up examples of the ideal Senior Manager, and the ideal manager
18 was someone like Jim Thompson, a white man who was 50-plus years old and had 20-plus years
19 of experience with FedEx. I was further discouraged from applying for this promotion when the
20 Vice President came to the ANC Hub to interview non-minority employees who he thought were
21 ready to be Senior Managers. I was not interviewed, even though I had expressed interest in the
22 promotion to Senior Manager.

23 15. On one occasion, a non-minority employee was hired into my hub for a
24 position that I applied for and did not get. The non-minority man who got the Senior Manager
25 position was chosen ahead of time by the Director, so I was not given a fair chance at the
26 position. To be a Senior Manager, the candidate had to meet with the Vice President and fit the
27 aforementioned profile, and I believe I did not fit that profile because I am African American.
28

1 16. Minority Operations Managers were not hired at the ANC sites until 1994.
2 There was no attempt to encourage African Americans like me to apply for management positions
3 or to participate in events with other managers. For example, there was annual reporting
4 relationship meetings at Dennis Bird's home, but I was never invited to discuss my reports
5 because I was African American.

6 17. My Director, a White man named Dennis Bird, did not discourage similarly
7 situated non-minorities from applying for positions. For example, he encouraged non-minority
8 Operations Managers to be interviewed for and to apply for Senior Manager positions. I am
9 aware of this because I observed other non-minority Operations Managers, at the encouragement
10 of Dennis Bird, gain interviews with the Vice President for the Senior Manager position, while I
11 did not.

12 18. As a requirement for applying to Senior Management, I had to complete
13 my ASPIRE packet, which I did in approximately November 2002. I applied for a Senior
14 Manager position at the ANC Hub in Anchorage, Alaska. Approximately 3 or 4 weeks later, I
15 attended an interview with a White male Managing Director, Dennis Bird, a White male
16 Managing Director James Hatley, a White male Managing Director Joe Stevens, and a female,
17 Barbara Stallone. The interview lasted approximately 60 minutes. I felt bad about the interview.
18 Dennis Bird explained to me that I was not a good candidate for the job because I was not the
19 successful candidate. I was told also I did an excellent job interviewing and I could not have
20 done anything differently. When I asked for feedback, he said I did a good job with my interview
21 and my presentation. I was denied the Senior Manager position but a White man named Jimmy
22 Dale Shaw was offered the position. I know this because my denial letter told me who the
23 successful candidate was and Dennis Bird told me who the successful candidate was.

24 19. I was denied the Senior Manager position in favor of Jimmy Dale Shaw,
25 who was less qualified for the position because he had less education than I did. I know this
26 because I knew that I was the only Management employee in the building who had a Doctorate.
27 Contrary to company policy, Shaw was immediately appointed Acting Manager even though I
28 had filed a GFT about this discriminatory decision.

DISCRIMINATORY STATEMENTS / RACIAL EPITHETS

20. In approximately the early 1990's, I was often told welfare jokes by other employees (i.e., "It is good that you have this job so that you can get off welfare now."). Later in my employment, I had statements directed at me and I overheard statements such as: "I wish that these people would speak English," referring to the Latino employees. Ramp employees were commonly referred to as "Niggers" by other employees such as Elaine Baldwin, a White woman. To my knowledge, no one was ever sincerely counseled, disciplined, or reprimanded for these types comments.

MANAGER DISCRETION IN PERFORMANCE REVIEWS

21. I performed the duties of an Operations Manager in Anchorage, Alaska from approximately July 1998 until May 2004, although I also had other titles during that period. During this period, I supervised anywhere from 13-30 employees at any given time. I was responsible for giving performance reviews to between 13-15 employees at any given time.

22. I supervised employees in various categories including Handlers, Couriers, Operations Agents, Service Assurance Agents, Information Agents, Team Leaders, Quality Specialists, International DG Coordinator, and Dispatchers.

23. FedEx policy required that performance reviews be given on an annual basis. It was my understanding that I had discretion to give additional performance reviews if I thought necessary. I did so when I thought an employee's performance was not accurately reflected by his/her annual performance review. For instance, if an employee made a poor showing on the day of his/her annual performance review because of extenuating circumstances, I would give that employee an additional performance review so that he/she could make up for his/her deficient performance on the annual review.

24. I do not believe that my decision to give additional performance reviews was monitored by FedEx. Nor do I recall having received any training as to when or the circumstances under which conducting additional performance reviews was appropriate.

25. As part of the performance review process, I would fill out a pre-printed form that allowed me to rate an employee on various performance categories on a scale of 7.

1 Recently an on-line version of the form was created. I do not recall ever having received training
2 on how to assign scores to employees for the various performance categories listed on the form.

3 26. I found it very difficult to assign scores in certain categories, such as
4 "Behavioral Flexibility," "Cooperation and Teamwork," and "Planning and Organizing."
5 Assigning scores in these categories seemed to me to be quite subjective and entirely within my
6 discretion. For these categories, I would generally give employees a 6 or 7 because it seemed
7 unfair to give employees low scores given the subjective nature of these categories.

8 27. There were several categories at the end of the pre-printed performance
9 review form labeled "Optional Category" in which I could list and score anything I wanted. I do
10 not recall ever having received direction on how to fill-in the optional categories. I generally left
11 these categories blank because it seemed unfair to the work group to create a category for a
12 specific individual. It is my belief and understanding that other Operations Managers used the
13 optional categories to boost the scores of employees they liked.

14 28. In giving a performance review to a particular employee, I would look at
15 the employee's past performance reviews, attendance record, and work history. I would also
16 conduct an unannounced "service check" on a particular day and evaluate the employee's
17 performance level as part of the performance review process. There were Operations Managers
18 who used unannounced service checks as well, but would give notice of such to employees they
19 liked, thus giving those employees an unfair advantage.

20 29. For each performance review category, I would begin with the assumption
21 that everyone was a '7' and subtract points for deficient performance. I weighed scores on past
22 performance reviews heavily in scoring my employees.

23 30. My co-Managers all gave performance reviews differently. I was aware
24 that some Operations Managers spent very little time on performance reviews, and viewed them
25 as a nuisance. Other Operations Managers used performance reviews to favor employees with
26 whom they got along particularly well. For instance, one Operations Manager, Daniel Turner
27 who was a white man, gave everyone in his all-white work group 7's across the board for years.
28 This work group's members were very social with one another, with their Operations Manager,

1 Daniel Turner, and their Senior Manager, Rick Onstott . Daniel Turner's scoring practices were
2 common knowledge among the Anchorage Management Team.

3 31. When I worked as a Training Specialist, I conducted checkrides for
4 Couriers and trained Operations Managers on how to perform checkrides. During a checkride, a
5 Manager is supposed to assess a Courier's performance and whether the Courier's route is sub-
6 optimal.

7 32. It is my understanding that FedEx policy requires that Managers spend six
8 hours on checkrides.

9 33. I was aware that Operations Managers often spent considerably less than
10 six hours on checkrides and summarily gave positive reviews to favored employees. For
11 example, Daniel Turner was not certified to do checkrides, and therefore rarely went on
12 checkrides, but routinely gave drivers favorable reviews even though he had not been certified to
13 perform checkrides according to FedEx policy.

14 34. To the best of my knowledge, the performance review scores that I gave
15 employees in my work group and the checkrides I performed were not monitored or audited by
16 FedEx to ensure consistent application of review standards.

17 35. At the beginning of 2004, a new local policy was initiated in Anchorage
18 whereby Senior Managers were supposed to audit performance reviews when an employee
19 received a perfect score. The policy did not apply, however, to performance reviews when an
20 employee received anything less than a perfect score. In my experience, Senior Managers did not
21 adhere to the stated policy.

22 36. I do not recall a single instance when an Operations Manager was
23 counseled or reprimanded for doing an inadequate job on scoring a performance review.

24 **MANAGER DISCRETION IN DISCIPLINE**

25 37. As an Operations Manager, I was responsible for counseling employees
26 and issuing performance reminders and warning letters. Of the three, counseling was the least
27 serious form of reprimand. I used each of these forms of discipline at various times during my
28 tenure as Operations Manager.

1 38. I do not recall every having received training regarding the circumstances
2 under which a particular form of discipline should be used.

3 39. I was aware that the People Manual, in sections 2-5 and 2-50, contained
4 the acceptable conduct and performance improvement policies. It was my understanding that
5 Operations Managers had discretion to sanction employees for conduct not listed in the People
6 Manual. I also found the policies to be ambiguous. For example, an employee with attendance
7 problems could be sanctioned with a performance reminder or a warning letter. A warning letter
8 remains active for one-year while a performance reminder only remains active for six months. In
9 1998 or 1999 a Personnel Representative, Barbara Stallone, told me that I should use warning
10 letters to discipline attendance problems when I didn't like an employee and performance
11 reminders when I did like an employee.

12 40. It is my understanding that my decisions to discipline employees was not
13 audited or reviewed by Senior Management.

14 41. In approximately February or March of 2004, we received a memo
15 containing detailed criteria and examples as to the circumstances under which particular forms of
16 discipline should be used. This is the only instance I can recall of having received such guidance
17 with regard to the administration of discipline.

18 **MANAGER DISCRETION IN HIRING**

19 42. As an Operations Manager, I was responsible for alerting my Senior
20 Manager when I required additional employees for my work group. The Senior Manager and,
21 sometimes, Managing Director had to sign requisition orders for new employees.

22 43. Interviews for positions were usually conducted by groups of three
23 managers or less. I recall occasions where I participated in interviews and was asked by another
24 Manager to rate a particular candidate he was familiar with higher than the other candidates.

25 I declare under penalty of perjury under the laws of the United States that the foregoing is
26 true and correct to the best of my knowledge.
27
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Executed this 8th day of September, 2004, in Anchorage, Alaska.


JANET HAYNES

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TAB 8

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
19

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF ERIC J. HILL

20
21 I, Eric J. Hill, declare as follows:

22 1. I am an African American man residing in Anchorage, Alaska. I am
23 currently employed as a Material Handler in FedEx Express's ANC Hub in Anchorage, Alaska.

24 2. I have personal knowledge of the facts set forth in this declaration and
25 could and would testify competently under oath if called as a witness. I understand that a class
26 action lawsuit alleging employment discrimination on the basis of race has been filed against
27 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
28 with that case.

1 3. I have worked at FedEx from approximately May 1998 to the present.

2 4. From approximately May 1998 to the present, I have served as a
3 permanent, full-time Material Handler at the ANC Hub in Anchorage, Alaska. My Operations
4 Manager is a non-minority man named Dave Niebert. My Senior Manager have included a white
5 man named Dale Shaw and a non-minority man named Steve Freno.

6 5. Throughout my employment at FedEx, I have never had an African
7 American or Latino Senior Manager.

8 **DISCRIMINATION IN DISCIPLINE**

9 6. Throughout my employment at FedEx, I have been disciplined more
10 harshly than my non-minority colleagues. For example, I was given a written warning for my
11 involvement in a minor collision with a Transporter while other non-minority employees, were
12 not disciplined for the same behavior. I know this because minor Transporter collisions are a
13 common occurrence at the hub. When I asked my Senior Manager about this difference in
14 discipline, he made no exceptions or concessions.

15 7. In approximately 2001, I made a request to management to have my work
16 schedule adjusted—a modified Monday schedule—so that I could complete my final year of
17 college. My request was denied. However, a non-minority Material Handler was allowed to
18 adjust his work schedule in order to further his education.

19 **DISCRIMINATORY STATEMENTS/RACIAL EPITHETS**

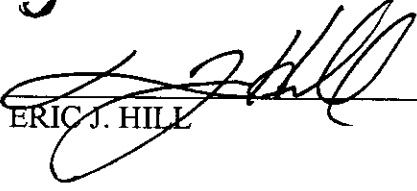
20 8. In approximately April 2000 or 2001, while I and at least two other
21 employees were looking at a calendar featuring athletes, an employee by the name of Elaine
22 Baldwin commented that she did not want to look like one of the female track and field athletes
23 shown on the calendar because the athlete had a “nigger ass”. To my knowledge, Ms. Baldwin
24 was disciplined for this remark for a period of three days.

25 9. Approximately one to two weeks after Ms. Baldwin returned from her
26 suspension, she commented to an African American employee by the name of Brandon Hinton
27 that she did not trust him not to steal something from her. I believed this comment to be
28

1 grounded in the stereotype that African Americans were thieves and not trustworthy. To my
2 knowledge, Ms. Baldwin was transferred to another facility, but still continues to work for FedEx.

3
4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct to the best of my knowledge.

6 Executed this 23 day of August, 2004, in Anchorage, Alaska.

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9 _____
10 ERIC J. HILL
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TAB 9

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
15 SR., and KEN STEVENSON, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 FEDEX EXPRESS, a Delaware
20 corporation,

21 Defendant.
22

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF BRETT HOILAND

23 I, Brett Hoiland, declare as follows:

24 1. I am an Latino man residing in Sacramento, California. I was formerly
25 employed as a Ramp Agent, Team Lead, Dangerous Goods Specialist, and Handler in FedEx
26 Express's SJC Ramp in San Jose, California.

27 2. I have personal knowledge of the facts set forth in this declaration and
28 could and would testify competently under oath if called as a witness. I understand that a class
action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately December 1994 to July 2000.

4 4. From approximately December 1994 to July 1995, I served as a permanent
5 part-time Handler at the SJC Ramp in San Jose, California. My Operations Manager was a white
6 man named Eric Erickson. My Senior Manager was a white man named Mark Randall.

7 5. From approximately July 1995 to July 1997, I served as a permanent part-
8 time Dangerous Goods Specialist at the SJC Ramp in San Jose, California. My Senior Manager
9 was a white man named Dave Perry.

10 6. From approximately July 1997 to May 2000, I served as a permanent part-
11 time Team Lead at the SJC Ramp in San Jose, California. My Operations Manager was a white
12 man named Tim Anderson. My Senior Manager was a non-minority man named Paul Ferrey.

13 7. From approximately May 2000 to July 2000, I served as a permanent part-
14 time Ramp Agent at the SJC Ramp in San Jose, California. My Operations Manager was Tim
15 Anderson. My Senior Manager was Paul Ferrey.

16 8. In approximately July 2000, I quit my job at FedEx because I was never
17 granted an interview for a managerial position.

18 9. Throughout my employment at FedEx, I never had an African-American or
19 Latino Senior Manager.

20 **DISCRIMINATION IN INITIAL JOB ASSIGNMENT**

21 10. I was hired as a permanent part-time Handler in approximately December
22 1994 by a white man named Eric Ericsson. I remained a part-time employee for five-and-a-half
23 years even though I expressed an interest in becoming a full-time employee and being promoted
24 to Operations Manager to all of my co-workers and managers approximately 50 times.

25 **DISCRIMINATION IN PROMOTION**

26 11. I expressed my interest in a promotion to a permanent full-time position to
27 my white director Dave Perry, on approximately 6 occasions. I applied to be an Operations
28 Manager approximately 29 times in two-and-a-half years. Other non-minority employees such as

1 Bill Locke and Tim Anderson were promoted from Ramp Agent to Operations Manager even
2 though I had been performing similar Ramp duties. I am aware of this because after Tim
3 Anderson was promoted, when he was on vacation, I was floated to his location to fill in for him
4 and perform his job duties, even though I was not an Operations Manager.

5 12. On approximately 7 occasions, non-minority employees were hired into the
6 organization for positions which I had inquired about and was told were available. I was
7 encouraged to submit for the promotions, but when I tried to apply for the promotion, I was told
8 that the position had already been filled. For example, in the approximately 29 times I applied for
9 the Operations Manager position, I was never granted an interview. I believe I was never granted
10 an interview because before posting the position, management had already selected a candidate to
11 be hired for the position.

12 13. In approximately June 1998, I applied for an Operations Manager position
13 at the RHV Station in Milpitas, California. When I expressed my interest in this management
14 position to Steve Seymour, a Senior Manager, he discouraged me from applying by telling me not
15 to bother applying for the Operations Manager position at RHV Station.

16 14. The RHV Station Senior Manager, a white man named Steve Seymour, did
17 not discourage similarly situated non-minorities from applying for management positions. For
18 example, Steve Seymour asked a white man named "PK," an hourly employee, to apply for
19 promotion to Operations Manager. PK received this promotion and was later promoted to Senior
20 Manager at the Bakersfield Station in California. I am aware of this because I interacted socially
21 with PK and he told me about his promotion.

22 15. In approximately 1999, I applied for an Operations Manager position at the
23 RHV Station in Milpitas, California. I was denied the Operations Manager position but a non-
24 minority woman named Angela, who was less qualified for the position because she had less
25 experience, was offered the position. As a Team Leader, I was floated around to various
26 Operations Manager positions to fill in when the regular managers were out of town. I had the
27 skills, knowledge, and experience to perform this job, but in my 29 attempts at applying for it, I
28 was not given the promotion to Operations Manager. I know that Angela got the Operations

1 Manager position because when I inquired about my interview status, I was informed that the
2 position was filled by her. Steve Seymore later promoted Angela to Senior Manager.

3 16. As a requirement for applying to management, I had to go through the
4 ASPIRE program. Once my ASPIRE packet was complete, starting in approximately January or
5 February 1998, I applied for an Operations Manager position at the RHV Station, the COA
6 Station, the SJCA Station, the SJC RT, the OAK Ramp, and the PAO Station in various cities in
7 California. Under ASPIRE, I was never granted an interview for Operations Manager. At one
8 point, my white Operations Manager, Tim Anderson, asked me why I was still trying to apply for
9 an Operations Manager position. I interpreted this statement to mean that attempts at promotion
10 were futile.

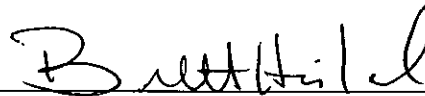
11 17. From approximately June 1995 to July 2000, I received between
12 approximately 15 - 20 documented awards for my work. From approximately June 1995 to July
13 2000, I received approximately 20 tokens of appreciation for my hard work and willingness to
14 help (including polo shirts, reversible wind breakers, and appreciation notes from managers of
15 other stations, including the corporate office). Still, out of the approximately 29 times I applied
16 for promotions to managerial positions, I was never granted an interview.

17 **DISCRIMINATORY STATEMENTS / RACIAL EPITHETS**

18 18. In approximately 1998 I heard my white Operations Manager, Tim
19 Anderson, make jokes and derogatory remarks about Mexicans and Filipinos. For example, he
20 said that "It must be the Mexican in you" in regards to my choice regarding a food or a beverage.
21 I also heard other employees complain about jokes at the expense of Latino employees.

22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct to the best of my knowledge.

24 Executed this 1st day of September, 2004, in Sacramento, California.

25 
26 BRETT HOILAND
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TAB 10

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
19

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF INGRID JAMES

20
21 I, INGRID JAMES, declare as follows:

22 1. I am an African American woman residing in Hayward, California. I was
23 formerly employed by FedEx Express ("FedEx") as a Handler, a Courier, and an Operations
24 Manager (Ground) at FedEx's OAK Ramp (Oakland), JEM Station (Emeryville), SFO Station
25 (San Francisco), and OAK Hub (Oakland), which are all in California.

26 2. I have personal knowledge of the facts set forth in this declaration and
27 could and would testify competently under oath if called as a witness. I understand that a class
28

1 action lawsuit alleging employment discrimination on the basis of race has been filed against
2 FedEx, and that this Declaration will be used by the plaintiffs in connection with that case.

3 3. I worked at FedEx from approximately October 1981 to March 2001.

4 4. From approximately October 1981 to October 1983, I served as a
5 permanent part-time Handler at the OAK Ramp (later renamed OAKA Station) in Oakland,
6 California. My Operations Manager was a white man named Jeff Moore. My Senior Manager
7 was a white man named Michael Meyers.

8 5. From approximately October 1983 to approximately 1986, I served as a
9 permanent full-time Handler/Courier at the OAKA/JEM Station in Oakland, California. My
10 Operations Manager was white man named Jeff Moore. My Senior Manager was a white man
11 named Michael Meyers.

12 6. From approximately 1986 to December 1989, I served as a permanent full-
13 time Courier at the JEM Station in Emeryville, California. My Senior Manager was a white man
14 named Dell Tullos.

15 7. From approximately December 1989 to June 1990, I served as an
16 Operations Manager (Ground) at the SFO Station in San Francisco, California. My Senior
17 Manager was a white woman named Nora Rooney.

18 8. From approximately June 1990 to November 1994, I served as an
19 Operations Manager (Ground) at the JEM Station in Emeryville, California. While I was initially
20 performing the duties of both an Operations Manager and a Senior Manager at the JEM Station,
21 my title "officially" remained Operations Manager. After an "official" Senior Manager was
22 hired, my Senior Managers were a white man named Richard Cantwell, a white man named Jim
23 Danielson, and a white man named Tim Marks.

24 9. From approximately November 1994 to March 2001, I served as an
25 Operations Manager (Ground) at the OAK Hub in Oakland, California. My Senior Managers
26 included a white man named Mike Meyers and a white woman named Vicky Frasier.

27 DISCRIMINATION IN COMPENSATION
28

10. When I became an Operations Manager at the JEM Station in Emeryville, California, my Senior Manager, Richard Cantwall, had discretion to set my initial pay rate. He started me at the pay rate known as "Grade Level 25." This initial rate was less than some of my non-minority Operations Manager co-workers who had been Operations Managers for the same period of time as myself. I am aware of this because, after he became my Senior Manager, Jim Danielson, a former Operations Manager, told me that he had been at "Grade Level 26" as an Operations Manager, which was a higher-paying position. When I asked Jim Danielson about this difference in pay, he told me to continue to increase my experience and knowledge in order to be considered for "Grade Level 26." I took on additional projects and responsibilities, but was never given "Grade Level 26."

11. After approximately two years as an Operations Manager at the JEM Station in Emeryville, California, Michael Fiarbi, a non-minority Operations Manager who was hired approximately one year after me, was given a pay raise to "Grade Level 26." I know this because Michael Fiarbi told me. When I asked my Senior Manager, Tim Marks, about this difference in pay, he mentioned Michael Fiarbi's family needs, aggressive managerial style, and my need for experience. At that time both Michael Fiarbi and I each had one child to support and I had been working as an Operations Manager for approximately one year longer than Michael Fiarbi.

12. After approximately 3-4 years as Operations Managers at the Oakland Hub in Oakland, California, Kelly Cunningham, Mike Lamadrid, Paul Ferré, and Mark Frasier, all non-minority Operations Managers, were given pay raises to "Grade Level 26." I know this because they told me. Despite having the same or greater experience than these non-minorities, I was not given a pay raise to "Grade Level 26." I did not receive a pay raise to "Grade Level 26" until 1996, almost 7 years after I became an Operations Manager.

DISCRIMINATION IN PROMOTION

13. In approximately 1996, after approximately seven years as an Operations Manager (Ground), I first expressed interest in being promoted to Senior Manager. Non-minority Operations Managers such as Jim Danielson, Kelly Cunningham, Mike Lamadrid, Paul Ferré,

1 Mark Frasier, Ann Miller, and Vicky Frasier were promoted to Senior Manager after working for
2 a lesser or equal amount of time as I had as an Operations Manager (Ground). Although I was
3 qualified, I had a difficult time being promoted and I felt that I had been passed over because of
4 my race.

5 14. Beginning in approximately April 1999, I applied for Senior Manager
6 positions on 9 occasions. I decided to apply for the Senior Manager positions because I had the
7 necessary knowledge and experience, and had filled in for Senior Managers and performed Senior
8 Manager responsibilities in the past. In approximately 1990, I had served as acting Senior
9 Manager for the JEM Station and helped train the official Senior Manager when he was selected.
10 Almost all of these positions were filled by white males many of whom I suspect were less
11 qualified than me.

12 DIFFERENTIAL DISCIPLINE

13 15. Throughout my employment at FedEx, I have been disciplined more
14 harshly than my non-minority colleagues. For example, I was given a written warning for over-
15 looking my team's failure to load one container onto an airplane while Mark Frasier, a non-
16 minority employee, was not disciplined for his team's failure to unload a full plane of cargo. I
17 know this because all of the managers knew of Mark Frasier's actions and no one knew of any
18 disciplinary measures taken against him. I did not take this issue up with my Senior Manager
19 because due to experiences in the past, I didn't feel like it would do any good to point out the
20 unfairness of the situation and the differential treatment due to race.

21 MANAGER DISCRETION IN COMPLETING PERFORMANCE REVIEWS

22 16. As an Operations Manager at the JEM Station in Emeryville, I was
23 responsible for supervising a minimum of 98 part-time Handlers, full-time Carriers, and full-time
24 Service Agents at any given time. I was responsible for completing performance reviews for all
25 of these employees.

26 17. As an Operations Manager and acting Senior Manager at the JEM Station
27 in Emeryville, I was also responsible for completing performance reviews for the part-time
28 Handlers, part-time Couriers, full-time Couriers, and Service Agents under my supervision.

1 18. FedEx policy required that performance reviews be given on an annual
2 basis. It was my understanding that I had discretion to give additional performance reviews if I
3 thought necessary. I gave an additional performance review when I thought an employee's
4 performance was not satisfactory. I never received any specific instruction or training as to when
5 additional performance reviews should be given.

6 19. I do not believe that my decision to give additional performance reviews
7 was monitored by FedEx.

8 20. As part of the performance review process, I filled out a pre-printed form
9 that allowed me to rate various performance categories on a scale of one through seven. I do not
10 recall ever having received training on how to assign scores to employees for the various
11 performance categories listed in the form. I found assigning scores in some of the categories, like
12 "Behavioral Flexibility," "Cooperation and Teamwork," and "Planning and Organizing" to be
13 quite subjective and entirely within my discretion.

14 21. There were several categories at the end of the pre-printed performance
15 review form labeled "Optional Category" in which the Operations Manager could define and
16 score anything she wanted. I do not recall ever having received direction on how to fill-in the
17 optional categories. Sometimes I used the optional categories to allow my employees to identify
18 a problem-area that they would like to work on. Other times, I used the optional category to note
19 an employee's poor attitude. These are just two examples; I could put anything in the optional
20 categories that I wanted, and I am not aware of any attempts by FedEx to monitor my use of this
21 category.

22 22. I began with the standard that for any given category my employees were a
23 "4" which is in the middle of the scale. If I believed an employee was better than average in a
24 particular category, I would add to their points; if I believed they were below average in a
25 particular category, I would subtract from their points. I did not receive any indication from
26 FedEx that my approach to scoring was correct or incorrect.

27 23. I worked as a Handler/Courier prior to becoming an Operations Manager
28 and I believe that I was a very effective Handler/Courier. Therefore, I relied upon my own

1 experiences as a Handler/Courier as a yardstick for assigning performance scores to employees in
2 my work group.

3 24. To the best of my knowledge, the performance review scores that I gave
4 employees in my work group were not monitored or audited by FedEx to ensure consistent
5 application of review standards.

6 25. When I worked as an Operations Manager at the JEM Station in
7 Emeryville, I supervised Couriers, Handlers, and Service Agents and was thus responsible for
8 conducting checkrides in addition to performance reviews. Operations Managers were required
9 to do a minimum of three checkrides per month. I do not recall having received training on how
10 long a checkride should last. I generally tried to spend an entire day with an employee, but
11 sometimes was only able to spend half of a day. It was my belief that spending anything less than
12 half of a day with a Courier would not permit me to accurately assess their performance in the
13 field.

14 26. I observed that not all Operations Managers spent as much time on
15 checkrides as I did. Some would spend an hour or less. I observed an Operations Manager, Chris
16 Ackers, on one occasion, go around the block with a Courier that he liked. The "checkride" in
17 that instance took only a few minutes.

18 27. To the best of my knowledge, Operations Managers were only monitored
19 with regards to whether they had performed their required three checkrides per month. There was
20 no monitoring or auditing of the checkrides to ensure thoroughness or consistent application of
21 review standards.

22 28. I spent a considerable amount of time doing performance reviews. I used
23 the performance review process to identify my employees' career goals and to help them achieve
24 those goals. I did this by using the performance reviews to identify my employees' weaknesses
25 which, if corrected, would allow them to advance in the company.

26 29. My co-Managers all gave performance reviews differently. I was aware
27 that some Operations Managers spent very little time on performance reviews and viewed them as
28 a nuisance. Other Operations Managers were very open about using performance reviews as

1 device to favor employees with whom they got along particularly well. For example, an
2 Operations Manager named Scott Speaker, who managed a work group in Oakland, made it clear
3 that he was going to promote a particular employee to Team Leader. Scott Speaker gave this
4 employee a high performance review score to facilitate that employee's promotion to Team
5 Leader. After the interview for the Team Leader position, Scott Speaker also asked the other
6 managers conducting the interview to give "his" candidate higher marks. I was one of the
7 managers conducting the interview. In my experience as an Operations Manager, it was a
8 common practice for managers to request that other managers give preferred candidates high
9 marks after interviews.

10 30. I do not recall a single instance where an Operations Manager was
11 counseled or reprimanded for doing an inadequate job on a performance review.

12 **MANAGER DISCRETION IN DISCIPLINE**

13 31. As an Operations Manager, I was responsible for counseling employees
14 and issuing performance reminders and warning letters. Of the three, counseling was the least
15 serious form of reprimand. I used each of these forms of discipline at various times during my
16 tenure as Operations Manager.

17 32. I do not recall every having received training on the circumstances under
18 which a particular form of discipline should be used.

19 33. Other than when a Senior Manager instructed me to reprimand an
20 employee in my work group, it was my understanding that I had complete discretion to use
21 whichever form of disciplinary action that I thought appropriate.

22 34. I was aware that the FedEx People Manual contained examples of
23 unacceptable conduct, but it was my understanding that I was not restricted by those examples.
24 In general, I did not rely upon the People Manual to determine the appropriateness of imposing
25 discipline. I do not recall ever having received training in which I was instructed or encouraged
26 to use the People Manual or told how to use the People Manual. It was my impression that my
27 Operations Manager colleagues did not rely upon the People Manual either. In my experience,
28 the People Manual was viewed as "dressing": It looked good on the shelf, but was rarely used.

1 **MANAGER DISCRETION IN HIRING**

2 35. As an Operations Manager, I was responsible for alerting my Senior
3 Manager when I required additional employees for my work group. Once a Senior Manager
4 approved hiring to fill a position, I posted the opening to JCATs, conducted interviews if
5 necessary, and selected a candidate to fill the opening.

6 36. I often encouraged employees in other work groups to apply for a position
7 in my work group if I thought they were qualified and would be good workers.

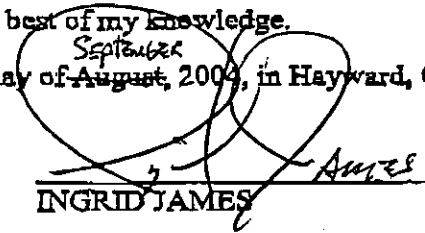
8 37. Although Senior Managers were responsible for giving clearance to hire
9 new hourly workers, in my experience, they did not monitor how Operations Managers went
10 about positing employment opportunities or selecting a candidate for hire. In this regard, I had
11 discretion in selecting favored employees for positions.

12 38. I was aware that my Operations Manager colleagues used various
13 techniques to select favored employees for open positions. Some Operation Managers did not
14 post job announcements. Others Managers posted job announcements and conducted interviews,
15 even though they had previously selected the favored employee for the job. Senior Managers did
16 not monitor or review these practices.

17 39. It is my belief that filing a GFT was the only way an employee could
18 officially bring an unfair hiring decision to Senior Management's attention. I was aware,
19 however, that some of my Operations Manager colleagues used incentives to induce employees
20 who had filed GFTs to withdraw them. Examples of incentives that Operations Managers
21 conferred included giving particular days off (i.e., weekends) and desirable shift hours (i.e.,
22 morning shifts).

23 I declare under penalty of perjury under the laws of the United States that the
24 foregoing is true and correct to the best of my knowledge.

25 Executed this 7th day of September, 2004, in Hayward, California.

26
27 
28 INGRID JAMES

TAB 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF ZENO LATIN

I, Zeno Latin, declare as follows:

1. I am an African American man residing in Portland, Oregon. I am currently employed as a Customer Service Agent in FedEx Express's PDXG Ramp in Portland, Oregon. I was previously employed as a Courier and a Dangerous Goods Agent at various sites in Oregon and Nevada.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I have worked at FedEx from approximately October 1985 to the present.

4 4. From approximately October 1985 to December 1985, I served as a
5 permanent full-time Courier at the PDX Station in Portland, Oregon. My Operations Manager
6 was a white man named Steve Banigan.

7 5. From approximately December 1985 to July 1995, I served as a permanent
8 full-time Courier at the HIO Station in Tigard, Oregon. My Operations Manager was a white
9 man named Steve Banigan.

10 6. From approximately July 1995 to November 2001, I served as a permanent
11 full-time Courier at the VGT Station in Las Vegas, Nevada. My Operations Manager was a white
12 man named Steve (unsure of last name). My Senior Manager was a white man named Bill Heff.

13 7. From approximately November 2001 to July 2003, I served as a permanent
14 part-time Dangerous Goods Agent at the PDX Ramp in Portland, Oregon. My Operations
15 Manager was a white man named Dennis Swansen. My Senior Manager was a white man named
16 Steve Halland.

17 8. From approximately July 2003 to the present, I have served as a permanent
18 part-time Customer Service Agent at the PDXG Counter in Portland, Oregon. My Operations
19 Manager is a white woman named Yvonne Mancini. My Senior Manager is a white woman
20 named Lori (unsure of last name).

21 9. Throughout my employment at FedEx, I have never had an African-
22 American or Latino Senior Manager.

23 **DISCRIMINATION IN INITIAL JOB ASSIGNMENT**

24 10. When I applied for a position at FedEx, I was interested in becoming a
25 permanent full-time Courier. However, I was hired as a part-time Courier. I was hired in
26 approximately October 1985 by a white man named Steve Banigan. When I began my
27 employment at FedEx, I did not know how to find out about promotion opportunities.

28 **DISCRIMINATION IN PROMOTION**

1 11. During my employment at FedEx, I observed that minority employees were
2 discouraged from applying for promotions. During my employment at FedEx, I was discouraged
3 from applying for promotions. In approximately January 2003, I applied for a permanent full-
4 time International Shipping Agent position at the PDX Ramp in Portland, Oregon. I decided to
5 apply for the International Shipping Agent position because I wanted to do sales for FedEx and I
6 wanted to be promoted to permanent full-time again. After I had applied for the International
7 Shipping Agent position, I then expressed my interest in the International Shipping Agent
8 position to a Hiring Manager, a white man named Sean Sistman. He verbally told me that
9 "Memphis" (FedEx headquarters) would not allow him to hire me for the International Shipping
10 Agent position. That is all he told me and I did not receive anything in writing. A white
11 employee was hired for the position.

12 12. During my employment at FedEx, my Operations Manager refused to
13 approve my application for promotion. For example, in approximately 2002, when I expressed to
14 my Operations Manager, a white man named Dennis Swanson, that I wanted to apply for a
15 Dispatching position, Dennis Swanson refused to sign off on my application and discouraged me
16 from applying by telling me that I could not apply for the promotion because I had not been a
17 Dangerous Goods Specialist for a long enough period of time. A white, less qualified employee
18 was given the position.

19 13. My Operations Manager did not discourage similarly situated non-
20 minorities from applying for positions. For example, Cheryl Lynn Mitchell, a white woman with
21 less seniority was allowed to apply for a promotion to the Team Lead position. I am aware of this
22 because she eventually got that position.

23 14. It is my understanding that equally or less qualified non-minority
24 employees received promotions for positions that I applied and was qualified for. After I
25 transferred back to the PDX Ramp in Portland, Oregon, in November 2001, I was hired as a
26 permanent part-time Dangerous Goods Agent, even though I had been permanent full-time for the
27 previous 6 years. I have remained a part-time employee for the past 3 years even though I have
28 expressed interest in being promoted to permanent full-time on approximately 10 or more

1 occasions to Dennis Swanson, my Operations Manager. For example, I have verbally expressed
 2 my interest in promotion and attaining technical training for promotion to Dennis Swanson.
 3 Other non-minority employees such as Cheryl Lynn Mitchell promoted to Team Lead, even
 4 though I had more seniority (she had been employed by FedEx for approximately three years
 5 compared to my approximately 19 years).

6 15. I trained a part-time non-minority employee, Philip Pye, for the Dangerous
 7 Goods position. In approximately 2003, Philip Pye was promoted over me, even though I had
 8 more seniority (he had been employed by FedEx for approximately three to four years compared
 9 to my approximately 19 years).

10 **DIFFERENTIAL DISCIPLINE**

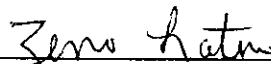
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 12 16. During my employment at FedEx, I was disciplined more harshly than my
 13 non-minority co-workers. For example, in approximately June 2002, I was given a verbal
 14 warning for talking to employees in another workgroup, while Phillip Pye, a non-minority
 15 employee, was not disciplined for the same behavior. I know this because I saw him talking to
 16 employees in another workgroup. When I asked my Senior Manager about this difference in
 17 discipline, he told me that this differential discipline was wrong, but he did not take any action.

18 **DISCRIMINATORY STATEMENTS / RACIAL EPITHETS**

19 17. In approximately June 2002 I was told by my white Operations Manager,
 20 Craig Johnson, that he did not want more than one African American employee working in the
 21 Container at the same time. I have also heard that Craig Johnson called some of the Handlers
 22 "niggers." To my knowledge, no one was ever counseled, disciplined, or reprimanded for this
 23 comment.

24 I declare under penalty of perjury under the laws of the United States that the
 25 foregoing is true and correct to the best of my knowledge.

26 Executed this 4 day of September, 2004, in Portland, Oregon.

27 
 28 ZENO LATIN

TAB 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF MITCHELL MCCOY

I, Mitchell McCoy, declare as follows:

1. I am an African-American man residing in Anchorage, Alaska. I was formerly employed as a Senior Freight Handler in FedEx Express's Anchorage Hub in Anchorage, Alaska.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately October of 1989 to August of 2003.

4 4. From approximately October of 1989 to January of 1990, I served as a
5 permanent part-time Handler at the Anchorage Hub in Anchorage, Alaska. My Managers during
6 this time included a Caucasian man named Alan May and a Caucasian man named Mike Manly.
7 My Senior Manager during this time was a Caucasian man named Chip Carl. My Director during
8 this time was a Caucasian man named Dennis Bird.

9 5. From approximately January of 1990 to June of 1991, I served as a
10 permanent part-time Checker/Sorter at the Anchorage Hub in Anchorage, Alaska. My Managers
11 during this time included a Caucasian man named Mike Manly and a Caucasian man named Greg
12 Dyson. My Senior Manager during this time was a Caucasian man named Chip Carl. My
13 Director during this time was a Caucasian man named Dennis Bird.

14 6. From approximately June of 1991 to August of 2003, I served as a
15 permanent full-time Senior Freight Handler at the Anchorage Hub in Anchorage, Alaska. My
16 Managers during this time were all Caucasian and included: Greg Dyson, Bill Ingram, Tom King,
17 Reginald Flocombe, Terry Williams, and Kathy Brady. My Senior Managers during this time
18 were also all Caucasian and included: Steve Freno, Mike Hoyer, and Kathy Brady.

19 7. In my fourteen year employment at FedEx, I never had an African-
20 American for any substantial period of time or a Latino Senior Manager at all.

21 22 **DISCRIMINATION IN PROMOTION**

23 8. During my employment at FedEx, I observed that minority employees were
24 discouraged from applying for promotions. During my employment at FedEx, I was discouraged
25 from applying for promotions. In approximately June of 1994, a Senior Freight Handler position
26 opened up. I put in a bid for this position, but was not given an interview. My Senior Manager,
27 Dennis Bird, stated that he wanted me to stay in my current position because of my experience. I
28

1 continued to express my interest in the Senior position, but was ignored and the position was
2 given instead to a Caucasian man named Tim Miller who had much less seniority than me.

3 9. After June of 1994, I expressed interest in bidding on open positions a
4 number of times, but each time I received a discipline letter for something that Caucasian
5 employees were not disciplined for, such as a seatbelt violation. These discipline letters stay in
6 an employee's file for a specified period of time, and then are supposed to be removed. FedEx
7 employees who currently have any kind of discipline letter in their files are ineligible to bid on
8 open positions within the company. I believe my managers wrote me up for infractions that are
9 not enforced against Caucasian employees in an effort to intentionally prevent me from applying
10 for open positions.

11 12 DIFFERENTIAL DISCIPLINE

13 10. Throughout my employment at FedEx, I have observed that minority
14 employees are disciplined more harshly than non-minority employees. During my employment at
15 FedEx, I was disciplined more harshly than my non-minority co-workers. For example, in
16 approximately January of 1999 I was accused of mis-sorting a container. Because of this, my
17 Manager, Tom King, called me in for a performance review and I received two warning letters
18 and a termination letter for the mis-sorted container. I was unaware that I had mis-sorted a
19 container, and when he presented me with a warning letter I questioned him about why I was
20 receiving the letter. He said it was for a mis-sorted container; however, he presented me with
21 paperwork that was not mine. I did not mis-sort the container, and the discipline I received was
22 not only false, but inconsistent with FedEx policy in that it was overly harsh. I saw white
23 employees mis-sort containers without being disciplined. Tom King also presented me with a
24 warning letter for poor attendance, but I had doctor's excuses for my attendance.

25 11. I received a letter of warning in 2002 for failing to wear a seatbelt inside
26 the terminal while I was driving a vehicle with an open top. I explained that I felt that it was
27 unsafe to wear a seatbelt in such a vehicle, because I would be unable to quickly exit the vehicle
28 if one of the airplane loads that are moved above was to fall onto the vehicle, and, unlike some of

1 the other vehicles driven in the terminal, it has no roof to protect the driver. Because I felt the
2 policy was unsafe, I grieved the policy through the Safety Board, who agreed with me and
3 changed the policy. The discipline letter was never removed from my file, however, which made
4 me ineligible to apply for any open positions until the letter expired. I believe my managers
5 intentionally left the letter in my folder so that I could not bid for another position. Because of all
6 of these warning letters, my opportunity for promotion was extremely limited, and I was viewed
7 in a negative light by management as well as my peers.

8 12. In 2002 I was written a ticket for a vehicle that had moved about a foot,
9 due to "give" in the emergency brake. My Caucasian Senior Manager, Kathy Brady admitted to
10 me that she was the first person to see the vehicle move, but she did not report the incident.
11 Instead, I received the ticket for not reporting the incident. Kathy Brady put a calendar reminder,
12 a type of discipline, in my monthly performance calendar for this incident so that this would not
13 fall on her. Basically, I was punished for Kathy Brady's infraction. She then threatened me
14 saying, "Mitchell, if any of this gets out of this office that's it for you. If you even spit on the
15 sidewalk, you are done." Following this incident, I wrote this up as an EEO complaint through
16 Fed Ex's Human Resources Department, but no action was ever taken.

18 **DISCRIMINATORY STATEMENTS / RACIAL EPITHETS**

19 13. In 2002, a Caucasian man named Travis Humboldt said, "I know you had
20 your radio on, boy." I reported this to my Caucasian Senior Manager, Kathy Brady, and Kathy
21 ignored the statement and said that "Travis is just playing." Kathy then called a meeting with
22 Travis and me, at which Travis said that he was "just playing." Kathy disregarded the seriousness
23 of the comment and did not discipline Travis.

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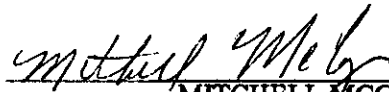
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2 I declare under penalty of perjury under the laws of the United States that the
3 foregoing is true and correct to the best of my knowledge.
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5 Executed this 7 day of Sept, 2004, in Anchorage, Alaska
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9 MITCHELL MCCOY
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TAB 13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF VENTURI McCRAY,
SR.**

I, Venturi McCray, declare as follows:

1. I am an African American man residing in Avondale, Arizona. I was
formerly employed as a Cargo Handler and a Shuttle Driver in FedEx Express's Phoenix Ramp in
Phoenix, Arizona.

2. I have personal knowledge of the facts set forth in this declaration and
could and would testify competently under oath if called as a witness. I understand that a class
action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately January 1993 to January 2002.

4 4. From approximately January 1993 to January 1996, I served as a
5 permanent part-time Cargo Handler at the Phoenix Ramp in Phoenix, Arizona. My Operations
6 Manager was a white man named Gino Scarpa. My Senior Manager was a white man named Ed
7 Sweeny.

8 5. From approximately January 1996 to November 1998, I served as a
9 permanent part-time Shuttle Driver at the Phoenix Ramp in Phoenix, Arizona. My Senior
10 Manager was a white man named Ed Sweeny.

11 6. From approximately November 1998 to January 2002, I served as a
12 permanent full-time Shuttle Driver at the Phoenix Ramp in Phoenix, Arizona. My Operations
13 Manager was a white woman named Kim Spilker. My Senior Manager was a white man named
14 Ed Sweeny.

15 7. Throughout my employment at FedEx, I never had an African American or
16 Latino Senior Manager.

17 **DISCRIMINATION IN INITIAL JOB ASSIGNMENT**

18 8. I was hired as a permanent part-time Cargo Handler in approximately
19 January 1993 by a white man named Craig. The only way I could find out about opportunities for
20 promotion to permanent status or to other job positions was through a bulletin board of job
21 postings. I remained a part-time employee for approximately 4 years even though I expressed an
22 interest in becoming full-time and being promoted to Shuttle Driver to Gino Scarpa, my
23 Operations Manager, on approximately 3 occasions.

24 **DISCRIMINATION IN COMPENSATION**

25 9. When I became a permanent full-time Shuttle Driver at the Phoenix Ramp
26 in Phoenix, Arizona, my Operations Manager, Kim Spilker, had discretion to set my initial pay
27 rate. She started me at approximately \$11.15 per hour. This initial rate was less than a man
28 named Randy, a non-minority part-time Shuttle Driver. I am aware of this because even though

1 Randy became a part-time Shuttle Driver approximately 2 years after I became a full-time Shuttle
2 Driver, he was making almost the same hourly rate as me. I only found out about this difference
3 in pay because I overheard Randy tell a co-worker how much he was making in the break room.
4 Since I had been working as a Shuttle Driver for approximately 2 years and was a full-time
5 employee, it is my understanding that my pay should have been set at a higher pay grade than
6 Randy.

7 **DISCRIMINATION IN PROMOTION**

8 10. Other non-minority employees such as E.J. Nicholas promoted permanent
9 full-time to Shuttle Driver even though I had been there longer. My non-minority co-worker, E.J.
10 Nicholas, and I both applied for a permanent full-time Shuttle Driver position at the same time.
11 Even though I had more seniority than him, I was denied the promotion. When I asked my white
12 Operations Manager, Gino Scarpa, about this, he said that I did not turn in properly completed
13 paperwork, even though I had. I am aware of this because we worked in the same department.

14 11. On approximately 2 occasions during my employment at FedEx, non-
15 minority employees were hired into my workgroup for positions that I had inquired about and was
16 told were not available. For example, on one occasion there was a posting for a Heavyweight
17 Sales Position. Myself and 2 other African-American men applied for the Heavyweight position.
18 After we expressed interest in the position, we were then told the position was unavailable, and
19 the duties were given to our white female co-worker. I believe that our white female co-worker
20 was pre-selected for the position before the positions was posted.

21 12. My Senior Manager, a white man named Ed Sweeny, did not discourage
22 similarly situated non-minorities from applying for positions. For example, when a white
23 woman, Janet, was ready for a promotion, they created a Dispatcher position for her. I am aware
24 of this because everybody at my workgroup talked about Janet's promotion.

25 13. My understanding is that I received lower review scores than my white
26 colleagues' review scores. For example, Willie and Bill, non-minority Shuttle Drivers whose
27 performance I observed to be equivalent to mine, received a higher review score of 7 compared to
28 my review score of 6.6. I know this because when I asked my Operations Manager Pete Mason

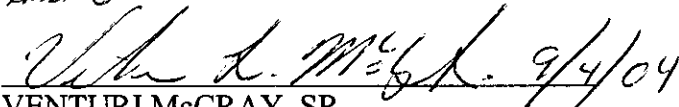
1 why their scores were higher than mine, he said that since I did not volunteer to work extra hours,
2 my score was lowered (even though I worked all of my mandatory hours).

3 **CONCRETE INSTANCES OF DIFFERENTIAL DISCIPLINE IF EGREGIOUS AND**
4 **DOCUMENTED**

5 14. Throughout my employment at FedEx, I have been disciplined more
6 harshly than my non-minority colleagues. For example, I was given 3 written discipline letters in
7 one year. Ken Kazaroff, a non-minority employee, also had 3 written discipline letters in one
8 year for similar behavior. I know this because I talked to him about it because he thought he was
9 going to get terminated because he had 3 written discipline letters. He was not terminated, but I
10 was. When I asked my white Senior Manager, Ed Sweeny, about this difference in discipline, he
11 told me that our situations were different and that Ken did not get 3 written discipline letters in
12 one year, but I know Ken did get 3 written discipline letters Ken he told me he had.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct to the best of my knowledge.

15 Executed this 4 day of ~~August~~ ^{SEPTEMBER}, 2004, in Avondale, Arizona.

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17 VENTURI McCRAY, SR.
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TAB 14

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
15 SR., and KEN STEVENSON, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 FEDEX EXPRESS, a Delaware
20 corporation,

21 Defendant.
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Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF ROSE MONCRIEF

I, Rose Moncrief, declare as follows:

1. I am an African American residing in Santa Clarita, California. I was formerly employed as a Senior Customer Service Agent in FedEx Express's BUR Ramp in Burbank, California.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately March 3, 1986 to April 22, 2002.

4 4. From approximately March 3, 1986 to April 22, 2002, I served as a
5 permanent full-time Senior Customer Service Agent at the BUR Ramp in Burbank, California. I
6 had several Operations Managers throughout my employment but a white man named Patrick
7 Giampetro was my most recent. My Senior Manager was a white man named Daine Worley.

8 5. Throughout my sixteen years at FedEx, I have only had one African
9 American Senior Manager.

10 **DIFFERENTIAL DISCIPLINE**

11 6. Throughout my employment at Fedex, I was disciplined more harshly than
12 my non-minority colleagues. As one example, in March 2002, I received a written warning for
13 allegedly making a one-minute adjustment to an employee's timecard and a written warning for
14 allegedly spending a few minutes over the hour allotted for my lunch. Both accusations were
15 false, but my Senior Manager would not waiver in his decision and issued the written warning.
16 Penny Miller, a non-minority employee who had not been there as long as I had, was not
17 disciplined for the same behavior even though Senior Management was informed of her conduct.

18 7. When, Daine Worley, a white man, became my immediate Senior
19 Manager, and I received three disciplinary letters within a six-month period. Prior to receiving
20 the three disciplinary letters, I had never had any disciplinary action taken against me throughout
21 my employment at FedEx. The third letter I received was the reason given for my suspension,
22 which ultimately led to my termination in April 2002.

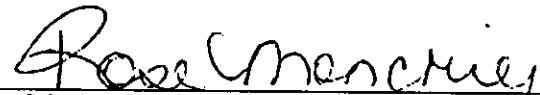
23 8. It is my understanding that FedEx Policy states that with any disciplinary
24 action, the first action is supposed to be a verbal warning. The second warning is a notation on
25 your personnel file. The third warning is a written letter. For all three letters I received, within
26 this six-month period, I did not receive any prior verbal warning. Moreover, the second
27 disciplinary letter I received was for alleged violation of an address policy which neither I nor
28

1 other Customer Service Agents had ever seen, and which FedEx did not actually distribute until
2 after my termination.

3 9. Upon my initial suspension, I submitted a GFT to Mike Pigoris, a white
4 man, challenging my suspension and informing him that I had been unfairly disciplined for the
5 same conduct that Penny Miller had engaged in several times. I also sent my GFT complaint to
6 the owner of FedEx, Fred W. Smith, in Memphis. I found the GFT process to be unfair because
7 Mike Pigoris, who worked with my Senior Manager, Daine Worley, upheld Daine Worley's
8 position. Three weeks went by from the time I sent my GFT to Fred W. Smith at Memphis
9 headquarters and the time Fred W. Smith had Bill ^{Loge} ~~Robe~~ respond to my GFT claim. By this time,
10 my suspension had turned into termination.

11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct to the best of my knowledge.

13 Executed this 8 day of September, 2004, in Santa Clarita, California.

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15 ROSE MONCRIEF
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TAB 15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF ANTONIO NORRIS

I, Antonio Norris, declare as follows:

1. I am an African American man residing in Los Angeles, California. I was formerly employed as a Handler/Courier/Shuttle Driver in FedEx Express's HHR Station in Hawthorne, California.

2. I have personal knowledge of the facts set forth in this declaration and could and would testify competently under oath if called as a witness. I understand that a class action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately July 1998 to November 2001.

4 4. From approximately July 1998 to March 1999, I served as a casual part-
5 time Handler at the HHR station in Hawthorne, California. My Operations Manager was a white
6 man named Chip Carrey. My Senior Manager was a white man named Bob Sickler.

7 5. From approximately March 1999 to March 2000, I served as a permanent
8 part-time Handler/Courier/Shuttle at the HHR station in Hawthorne, California. My Operations
9 Managers were a white man named Greg Amelino and a white man named Bob Sickler.

10 6. Except for approximately two weeks in December 2000, I was on medical
11 leave due to an on-the-job injury from approximately March 2000 to December 2001.

12 **DISCRIMINATION IN INITIAL JOB ASSIGNMENT**

13 7. When I was a casual part-time Handler at the HHR station in Hawthorne,
14 California, our station would occasionally have too many packages on the sort. Sorting packages
15 under these circumstances was one of the hardest and most dreaded jobs at FedEx. Although
16 Couriers were pulled to assist in this situation, preferential treatment was given to white Couriers
17 and they were generally not pulled for this task. The sorts were generally operated by African
18 American and Latino employees.

19 8. During my employment at FedEx, I observed that equally or less qualified
20 non-minority employees received positions over minority employees. I, as well as other African
21 American employees, bid for preferred routes, but these routes were regularly given to equally or
22 less qualified white employees. I know this to be true because most of the desirable routes
23 (upscale neighborhoods and beach regions) were filled with white employees and all of the less
24 desirable and dangerous Courier routes were filled by African American employees. Within a
25 two-year period, I bid for different routes approximately 9-10 times and was always turned down.
26 The manager for each Loop preferentially assigned desirable routes to equally or less-qualified
27 white employees even when minority employees with more years of experience were available to
28 handle them.

1 9. The desirable Courier routes that my white colleagues were promoted to
2 were easier and paid more because they were full-time positions. Because of this, equally or less-
3 qualified non-minority employees made more money than minority employees.

4 10. Even though Warren Gibson, another African American man, and I both
5 completed FedEx Courier school, we were not given Courier routes, but instead were assigned to
6 a less desirable position. There were some white male employees who graduated from Courier
7 school at the same time that we did, who only worked sort for a week and were immediately
8 placed in Courier positions. I, along with other minorities, was placed in a "made up" position,
9 Handler/Courier/Shuttle. This position entailed working the sort, covering whatever the shuttle
10 could not cover, and delivering the bulk packages to warehouses. It was essentially "grunt work."

11 **DISCRIMINATION IN PROMOTION**

12 11. It was more difficult to promote out of the "made-up"
13 Handler/Courier/Shuttle position. This is because we would get reprimanded for late packages
14 while others at different parts of the delivery chain would not, even if they had caused the
15 packages to be late. Every time a package is delivered late, points are taken off an employee's
16 record and it greatly affects an employee's review score. Our HHR station managers, Chip
17 Carrey and Greg Amelino, told us that late packages passed on to us from other Couriers would
18 not count against us. In reality, every time we delivered a late package, regardless of who caused
19 the package to be late, the Memphis headquarters docked points on the Handler/Courier/Shuttle
20 employee records. Most of the "late" packages that were passed on to us to deliver were from
21 non-minority Couriers. As a result, I would watch the performance review scores of my white
22 colleagues go up while my and my minority colleagues' review scores continued to drop. These
23 low review scores then prevented us from being promoted to the more desirable Courier
24 positions, keeping us in the dead-end and most grueling job.

25 **DIFFERENTIAL DISCIPLINE**

26 12. Throughout my employment at FedEx, I have been disciplined more
27 harshly than my non-minority colleagues. Greg Amelino, one of my Operations Managers, often
28 picked on me because of my race. For example, he would routinely take me off of my break,

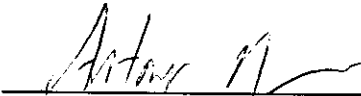
1 make me pick up the heavier packages, and follow me around. He did not act this way toward
2 other non-minority employees and I felt that he was doing everything in his power to make me
3 uncomfortable and want to leave. I did not want to complain because I was afraid that I would be
4 labeled as a troublemaker and possibly lose my job.

5 **DISCRIMINATORY STATEMENTS/RACIAL EPITHETS**

6 13. During my employment at FedEx, I heard and observed Greg Amelino
7 using phrases such as "strong bucks," "Huckleberry," "the strength of two men," and "you
8 people [African Americans] are naturally strong" in connection with African American
9 employees. Dr. Shultz, the white FedEx doctor, called me a "young buck," when I went to see
10 him. To my knowledge, no one was ever counseled, disciplined, or reprimanded for these
11 comments.

12 I declare under penalty of perjury under the laws of the United States that the
13 foregoing is true and correct to the best of my knowledge.

14 Executed this 03 day of September, 2004, in Los Angeles, California.

15 
16 ANTONIO NORRIS

TAB 16

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
19

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF ROSALINDA OLMOS

20
21 I, Rosalinda Olmos, declare as follows:

22 1. I am a Latina woman residing in San Jose, California. I am currently
23 employed as a Ramp Agent in FedEx Express's SJC Ramp in San Jose, California.

24 2. I have personal knowledge of the facts set forth in this declaration and
25 could and would testify competently under oath if called as a witness. I understand that a class
26 action lawsuit alleging employment discrimination on the basis of race has been filed against
27 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
28 with that case.

1 3. I have worked at FedEx since March 7, 1983 up to the current date. My
2 first position at FedEx was permanent part-time Cargo Handler at the OAK Ramp, in Oakland,
3 California. Since my first position, I have since held positions of Courier, Dispatcher, CTV
4 Operator, Hazard Specialist and Ramp Agent.

5 4. From approximately April 2002, until the present, I have served as a full-
6 time Ramp Agent at the SJC Station, in San Jose, California. Throughout my employment at Fed
7 Ex I have worked under predominately white Senior Managers. Throughout my 20 years
8 employed at Fed Ex, I have only had one African-American Senior Manager and one Latino
9 Senior Manager, in 1983.

10 5. When I became a part-time Ramp Agent in June 2001, my senior manager,
11 Paul Ferrey, had discretion to set my initial pay rate. For seven months, I petitioned to have my
12 pay raised to reflect my experience and he didn't pursue it. He started me at a low rate for my
13 position, but my co-worker, Steve Kalla, was given the title, and pay, of a Ramp Agent even
14 though he did not do the work of a Ramp Agent. Steve Kalla was a White male who did not have
15 any previous Ramp Agent experience, as I had. He was also exempt from rotating, as other Ramp
16 Agents were required to do.

17 6. Also, in 2001 when I was a part-time Ramp Agent, my two co-workers
18 (who were both white males) were given a lot of overtime hours, when I was constantly told to go
19 home early. Although it is policy to post any available overtime hours, they were given overtime
20 that had never been posted to notify other Ramp Agents. Tim Anderson, a white male, was my
21 Operations Manager.

22 7. In approximately March 2001, I applied for a full-time Ramp Agent
23 position at the SJC Ramp in San Jose, California. I decided to apply for the full-time Ramp
24 Agent position because I was a part-time Ramp Agent and wanted more hours. Fed Ex policy
25 stated that part-time Ramp Agents did not have to go through the interview process to apply for
26 the full-time position. When I expressed my interest in full-time Ramp Agent position my
27 Operations
28

1 Manager, Tim Anderson, and my Senior Manager, Paul Foret (who were both white), told me that
2 the policy had changed and that I would now be required to have an interview.

3 8. I interviewed for the position and did not get the job. Instead, two white
4 male applicants were hired for the open positions but, based upon my understanding, neither of
5 these men was as qualified as I because neither had the Ramp Agent experience that I had.

6 9. I immediately submitted a GFT claim. The Human Resources
7 administrator, Sharon McNeil, told me if I withdrew my GFT I would get the position. I was
8 aware of no investigation that occurred. I withdrew my GFT and was granted the full-time
9 position. I do not think it is fair that I had to jump through the hoop of submitting a GFT claim to
10 be considered for a position for which I was qualified. I know from observations in the field at
11 Fed Ex that minority employees often feel passed over for promotions and unable to submit
12 GFT's without putting their jobs at risk.

13
14 I declare under penalty of perjury under the laws of the United States that the foregoing is
15 true and correct to the best of my knowledge.

16 Executed this 8 day of September, 2004, in San Jose, CA

17
18 Rosalinda Olmos
Rosalinda Olmos

TAB 17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF BEVERLY
PATTERSON**

I, Beverly Patterson, declare as follows:

1. I am an African American woman residing in Palmdale, California. I was
formerly employed as an Operations Agent in FedEx Express's BURR RTD in Burbank,
California.

2. I have personal knowledge of the facts set forth in this declaration and
could and would testify competently under oath if called as a witness. I understand that a class
action lawsuit alleging employment discrimination on the basis of race has been filed against

1 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
2 with that case.

3 3. I worked at FedEx from approximately November 1988 to July 2001.

4 4. From approximately November 1988 to February 1989, I served as a
5 permanent part-time Handler at the BUR A Station in Burbank, California. My Operations
6 Manager was a white woman named Melanie (unsure of last name). My Senior Manager was a
7 white man named Russ Bronson.

8 5. From approximately February 1989 to May 1989, I served as a permanent
9 part-time Courier at the BUR A Station in Burbank, California. My Operations Managers were
10 white women named Melanie and Sheryl Reagan. My Senior Manager was a white man named
11 Russ Bronson.

12 6. From approximately May 1989 to February 1996, I served as a permanent
13 full-time Courier at the BUR A Station in Burbank, California. My Operations Managers were
14 white women named Melanie and Sheryl Reagan and a white man named Albert Funkstein. My
15 Senior Managers were white men named Russ Bronson and Bill Thompson.

16 7. From approximately February 1996 to September 1996, I served as a
17 permanent part-time Courier at the WJF Station in Palmdale, California.

18 8. From approximately September 1996 to December 1997, I was not
19 working because I suffered an on-the-job injury.

20 9. From approximately December 1997 to July 2001, I served as a permanent
21 part-time Operations Agent at the BURR RTD in Burbank, California. One of my Operations
22 Managers was a non-minority man named Pat Giapetro. My Senior Manager was a white man
23 named Daine Worley.

24 **DISCRIMINATION IN INITIAL JOB ASSIGNMENT**

25 10. During my employment as a permanent part-time Operations Agent at the
26 BURR RTD in Burbank, California, I worked approximately 40-45 hours per week but was
27 considered a part-time employee with partial benefits. I only received partial personal days,
28 vacation, floating holidays and sick leave because I was a part-time employee. On a daily basis, I

1 performed full-time job duties above and beyond my part-time job description. I asked to be
2 upgraded to full-time status many times. I was told that "they" needed to "check on it," but
3 nothing was ever done. One of my reviews in 1998 stated that I would be upgraded to full-time
4 status. In 1999, a Senior Manager, a white man named Daine Worley, stated that "it wasn't in the
5 budget" for me to be upgraded. So, I continued to work full-time hours without full time benefits.

6 11. I decided to leave FedEx in 2001 when my Senior Manager, a white man
7 named Daine Worley, dropped my hours down to 22-25 hours a week. Shortly after I left, I
8 understand that Penny Miller, a less experienced white woman from another station, was given
9 my Operations Agent position on a full-time basis.

10 **DISCRIMINATION IN PROMOTION**

11 12. In approximately 2000, I applied for a Service Assurance Leader (SAL)
12 position at the BURR Ramp in Burbank, California. My Operations Managers, a non-minority
13 man named Pat Giapetro, promised me the Service Assurance Leader position. Still, the position
14 was given to a less qualified white man named Edward Isaac. I was more qualified for the job
15 because I had seniority and previous experience performing Service Assurance Leader duties. To
16 my knowledge, Edward Isaac did not have similar experience.

17 I declare under penalty of perjury under the laws of the United States that the
18 foregoing is true and correct to the best of my knowledge.

19 Executed this 7 day of September, 2004, in Palmdale, California.

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21 BEVERLY PATTERSON
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TAB 18

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
19

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

DECLARATION OF MIMI STEEL

20 I, Mimi Steel, declare as follows:

21 1. I am an African American woman residing in Gardena, California. I am
22 currently employed as a Dispatcher in FedEx Express's HHR Station in Hawthorne, California.

23 2. I have personal knowledge of the facts set forth in this declaration and
24 could and would testify competently under oath if called as a witness. I understand that a class
25 action lawsuit alleging employment discrimination on the basis of race has been filed against
26 FedEx Express ("FedEx"), and that this Declaration will be used by the plaintiffs in connection
27 with that case.
28

1 3. I have worked at FedEx from approximately November 1994 to the
2 present.

3 4. From approximately November 1994 to June 1996, I served as a permanent
4 part-time Handler, Checker/Sorter, and Information Agent at the LAX Hub in Los Angeles,
5 California. My Senior Manager was a white man named Dave Vint.

6 5. From approximately June 1996 to September 1996, I served as a permanent
7 part-time Courier at the SPQ Station in Los Angeles, California.

8 6. From approximately September 1996 to March 2004, I served as a
9 permanent full-time Driver and Team Lead in the HHR Station in Los Angeles, California. There
10 was no acting Operations Manager when I transferred to the HHR Station. My Senior Manager
11 was a white man named Bob Sickler.

12 7. From approximately March 2004 to the present, I have served as a
13 permanent part-time Dispatcher at the HHR Station in Los Angeles, California. My Senior
14 Manager is a white man named Harry Fox.

15 8. Throughout my employment at FedEx, I have only had one African
16 American Senior Manager named Tony Bourne. He was terminated and currently has an
17 individual racial discrimination claim against Federal Express.

18 **DISCRIMINATION IN PROMOTION**

19 9. In approximately May 1995, while I was employed at the LAX Hub, in Los
20 Angeles, California, I began the LEAP process to become qualified to be a Manager. I met the
21 LEAP qualifications and was endorsed in approximately August 1996. When I was transferred to
22 the newly built HHR station in Los Angeles, California, my Operations Manager, Tony Bourne,
23 informed a white male Senior Manager named Bob Sickler (at HHR) that he was sending over a
24 "very qualified LEAP endorsed manager." It was under Bob Sickler, at HHR station, where I
25 experienced discrimination in my quest to become an Operations Manager. Although I tried to
26 address this discrimination through the company's GFT process, I found the GFT to be
27 ineffective and demeaning.

1 10. When I expressed to Mr. Sickler, that I wanted to apply for an Operations
2 Manager position, he discouraged me from applying by refusing to look at my application packet
3 and telling me that I wasn't qualified for the position. Bob Sickler also told me that I would not
4 be a good candidate because I was "too aggressive." His supervisor, a white man named Rick
5 Pople, said I could not be an Operations Manager because of the way I talked.

6 11. As a requirement for applying to management, I had to go through the
7 ASPIRE program. Although I was already LEAP trained and endorsed, when FedEx switched to
8 the ASPIRE process in 1999, I again approached my Senior Manager, Mr. Sickler, and inquired
9 about the ASPIRE process. Mr. Sickler said he hadn't been trained on ASPIRE and declined to
10 give me any information about ASPIRE.

11 12. In approximately July 2003, I applied for an Operations Manager position
12 at the HHR Station in Los Angeles, California. I decided to apply for the Operations Manager
13 position because as a Team Leader, I had served as acting Operations Manager for several years
14 and had trained several Managers on operations procedure. On several occasions, when I
15 expressed my interest in the Operations Manager position to Mr. Sickler, he brushed me off. For
16 example, he refused to read my ASPIRE application packet.

17 13. Mr. Sickler did not discourage similarly situated non-minorities from
18 applying for positions. For example, Mr. Sickler placed a white man named Joseph Bahm into a
19 "training code" position for three years (even though it is supposed to be a temporary status) until
20 an Operations Manager position became available. Bob Sickler also placed a white woman
21 named Tanna Carol into a position that he created until an Operations Manager position was
22 available. It is my understanding that Tanna Carol had been transferred from being a Courier into
23 the position that Bob Sickler created because she got cited for Driving Under the Influence.
24 When Tanna Carol and Joseph Bahm were both hired into Operations Manager positions, the
25 special positions created for them quickly disappeared. Neither employee had the experience or
26 qualifications that I had, yet I felt that they were being coached by Bob Sickler to become
27 Operations Managers.

28 14. In approximately July 2003, I applied for an open Operations Manager
position. Mr. Sickler never informed me when the initial interviews were being conducted. I
found out about the interviews on July 3, 2003 when I received a call from a friend saying she

1 had seen the Operations Manager applicants show up for interviews. FedEx policy states that
2 employees are to receive a written explanation as to why they have been eliminated from the
3 hiring process. I received no such letter.

4 15. On July 3, 2003, the day the interviews were held, I asked Bob Sickler why
5 I had not been granted an interview. He responded that my Professional Employment Test
6 (PET) score was low. On that same day when I returned from my Courier route, there was a letter
7 in my in box backdated to July 1, 2003 informing me that I would not be granted an interview
8 because of my "low" PET score. Because I had witnessed other non-minority Operations
9 Managers get hired with lower PET scores than mine, I called the Memphis headquarters to
10 clarify how heavily a PET score was weighed in comparison to experience. I was told that
11 experience was more important than the PET score. Joseph Bahm and Tanna Carol were both
12 granted interviews and hired into Operations Manager positions. Both of these candidates were
13 white. It is my understanding that both had less experience and fewer qualifications for the
14 Operations Manager positions than myself.

15 16. In my experience, the Guaranteed Fair Treatment (GFT) process that FedEx
16 employees are required to go through when pursuing a discriminatory complaint is ineffective and
17 unfair. In July 2003, after losing out on the Operations Manager position to two less qualified,
18 white employees, I filed a GFT.

19 17. My first GFT hearing was on July 18, 2003. Present for my hearing was
20 my white male Senior Manager, Bob Sickler, the Director, Mark Fontenot, and a white female
21 Personnel Representative named Liz Steffey. I was told at the beginning of the hearing that I was
22 not to ask any questions. I had to give my side of the story to the Director, Mark Fontenot, with
23 my Senior Manager, Bob Sickler in the room. At the conclusion of the hearing, Mark Fontenot
24 upheld Bob Sickler's position and said I was not qualified because my PET score was too low.
25 When I asked them to show me in the policy handbook where a particular PET score was part of
26 the required qualifications for the Operations Manager position, they told me that it was in a
27 handbook that I did not have access to.
28

18. At my GFT hearing, I asked Mark Fontenot, “If I am not qualified to be an Operations Manager, why have I been allowed to run the station without an Operations Manager on site?” Mark Fontenot responded by saying, “I’ll get back to you on that.” When I continued to press him for a valid explanation Mark Fontenot said, “This is a political decision. Mimi, you know it’s politics.”

19. It is my understanding that after a GFT hearing, FedEx policy requires that management take five days to investigate the charges made. I believe that management had already made a decision before my hearing date because my hearing was on a Friday and I received a letter on Monday stating that they upheld Bob Sickler's decision. Mark Fontenot and Bob Sickler were known to be close friends, so it was not surprising that Mark Fontenot upheld Bob Sickler's decision.

20. I sent my GFT decision to the legal department in Memphis. A couple of weeks went by with no response. It was only after I called them that they finally sent me a response upholding Bob Sickler's decision.

21. On approximately three occasions, non-minority employees were hired into my workgroup for positions that had not been posted. I would have applied for these positions had I known about them. For example, in approximately February 2004, Bob Sickler did not post the open position of Operations Manager and brought in a non-minority person from United Parcel Service to fill the position. The fact that Bob Sickler went outside to fill the position, knowing I had the experience and qualifications to be an Operations Manager, only confirmed that he would not allow me to become an Operations Manager.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 2 day of September, 2004, in Gardena, California.

Mimi Steel
MIMI STEEL

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 DERRICK SATCHELL, KALINI
12 BOYKIN, VALERIE BROWN, RICK
13 GONZALES, CYNTHIA GUERRERO,
14 RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 FEDEX EXPRESS, a Delaware
corporation,

18 Defendant.
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Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATIONS OF PROPOSED CLASS
COUNSEL IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

Date: January 14, 2005

Time: 9:00 a.m.

Courtroom of the Honorable Susan Illston

PROPOSED CLASS COUNSEL DECLARATIONS

	<u>Tab No.</u>
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP	1
JOHN L. BURRIS	2
MICHAEL S. DAVIS	3
WAUKEEN Q. MCCOY	4
KAY MCKENZIE PARKER	5
SCHNEIDER & WALLACE	6

TAB 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF JAMES M. FINBERG
IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

Date: January 14, 2005

Time: 9:00 a.m.

Courtroom of the Honorable Susan Illston

I, James M. Finberg, hereby declare as follows:

1. I am a partner in the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB"), in San Francisco, California, one of the firms representing plaintiffs and the proposed class in this action. I have been a member in good standing of the bar of the State of California since 1984.

2. Attached hereto as Exhibit A is a true and correct copy of LCHB's firm resume. As the descriptions in the resume state, LCHB has extensive experience in the prosecution of complex class actions and employment cases.

3. I received a Bachelor of Arts degree, with honors in history and environmental studies, from Brown University in 1980. I received a Juris Doctor degree from the University of Chicago Law School in 1983. At the University of Chicago Law School, I was the Executive Editor of the *University of Chicago Law Review*.

4. From Fall 1983 through Summer 1984, I served as a law clerk to the Honorable Charles L. Levin, a Justice of the Supreme Court of the State of Michigan.

5. LCHB is an approximately 56-attorney firm that specializes in representing plaintiffs in class action litigation. LCHB represents plaintiffs in class action litigation in federal and state courts across the country.

6. During my approximately 20 years of practice, I have served as an attorney in many complex class actions. I have represented plaintiff classes in class actions on dozens of occasions, have served as the principal, or lead, attorney representing a plaintiff class in well over a dozen cases where LCHB served as lead counsel or co-lead counsel for the plaintiff class. Those cases include the following cases described in LCHB's resume attached as Exhibit "A": Butler v. Home Depot, No. C94-4335 SI (settlement of \$87.5 million, plus comprehensive injunctive relief, in gender discrimination case in 1998); Frank v. United Airlines, No. C92 0692 MJJ (N.D. Cal.) (\$36.5 million gender discrimination settlement in 2004); Zuckman v. Allied, No. C 02-5800 SI (N.D. Cal.) (\$8 million settlement in wage/hour case in 2004); Trotter v. Perdue Farms, Case No. 99-893 (RRM) (U.S.D.C. Del.) (\$10 million settlement in wage and hour case in 2002); Thomas v. CSAA, No. CH217752 (Alameda County Sup. Ct.) (\$8 million settlement of insurance claim adjuster overtime case in 2002); Gottlieb, et al v. SBC Communications, et al., No. CV-00-4139 AHM (C.D.Cal.) (\$10 million ERISA settlement in 2002); Buttram v. UPS, No. 97-1590 MJJ (N.D. Cal.) (\$12.2 million settlement, plus comprehensive injunctive relief, of race discrimination action, in 1999); Church v. Consolidated Freightways, Inc., 1993 WL149840 (N.D. Cal.) (\$13.5 million settlement in age discrimination

1 case in 1993); Lyon v. TMP, No. 993093 San Francisco Superior Court) (improper administrative
 2 exemption case; settlement in 2000); In re California Micro Devices Securities Litigation,
 3 C-94-2817-VRW (N.D. Cal.) (\$26 million in settlements -- approximately 100% of losses); In re
 4 Network Associates, Inc. Securities Litigation, C-99-1729-WHA (N.D. Cal.) (\$30 million
 5 settlement in 2001); In re Mediavision Technology Securities Litigation, C-94-1015-EFL (N.D.
 6 Cal.) (settlements and judgments totaling \$218 million).

7 7. In September, 2003, I served as one of three primary trial counsel
 8 representing plaintiffs in a three week class and collective action liability phase trial involving
 9 approximately 2700 insurance claims adjustors in In Re: Farmers Insurance Exchange Claims
 10 Representatives' Overtime Pay Litigation, No. MDL Docket No. 1439 (D.Oregon). On
 11 November 6, 2003, Portland, OR - U.S. District Court Judge Robert E. Jones ruled in favor of the
 12 auto and low-level adjustors. The Court found that Farmers had acted willfully in violating the
 13 FLSA, and that the auto and low-level property adjustors were entitled to liquidated damages as
 14 well as actual damages. I will serve as one of the lead trial counsel in the damages phase trial,
 15 which begins on September 13, 2004.

16 8. I am currently the President-Elect of the Bar Association of San Francisco.
 17 From 2000-2001, I served as Co-Chair of the delegation of lawyer representatives for the
 18 Northern District of California to the Ninth Circuit Judicial Conference. From 1997-1998, I
 19 served as co-chair of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area.

20 9. I am author or co-author of the following articles, among others: (1) "New
 21 Overtime Regulations Require Heightened Vigilance," San Francisco Attorney, Spring 2004 (Co-
 22 author with Chimène I. Keitner); (2) "Summary of Proposed DOL Regulations Re FLSA
 23 Overtime Exemptions" (2003) (American Bar Association -- Labor and Employment Law,
 24 Federal Labor Standards Legislation Committee Annual Report) (Co-author with Chimène I.
 25 Keitner); (3) "Title VII's Remedial Scheme: Employment Discrimination Class Actions at a
 26 Crossroads," San Francisco Attorney (Aug./Sept. 2002); (4) "Certification of Employment
 27 Discrimination Class Actions after the Passage of the 1991 Civil Rights Act: Not Dead Yet"
 28 (May 2001) (NELA); (5) "Settling Employment Discrimination and Wage/Hour Class Actions

1 Lessons From the Mediations in Butler v. Home Depot, Carter v. UPS and Lyon v. TMP"
 2 (August 2000) (Glasser Legalworks); (6) "Certification of Employment Discrimination Actions
 3 After The Passage of the 1991 Civil Rights Act: (b)(2) or Not (b)(2), That Is The Question"
 4 (March 2000) (ABA); (7) "Allison v. Citgo Petroleum Corp.- A Noble Retreat," Class Actions &
 5 Derivative Suits, Vol. 9, No. 1 (Winter, 1999) (Co-author with Joshua P. Davis); (8) "The Impact
 6 of the Private Securities Litigation Reform Act: Unintended Consequences," Securities Reform
 7 Act Litigation Reporter, Vol. 6, No. 3 (Dec. 1998) (co-author with Melanie M. Piech); (9) "The
 8 Importance of Anecdotal Testimony to the Jury Trial of a Title VII Class Action: Lessons from
 9 Butler v. Home Depot" (ABA Class Action Rptr. 1998) (co-author with Karen Jo Koonan);
 10 (10) "Employment Discrimination and Securities Fraud Class Actions: Procedural Devices that
 11 Provide Access to Justice and Promote Judicial Economy" (Lorman Education Services Federal
 12 Civil Litigation Seminar 1998) (co-author with Melanie M. Piech); (11) "How Focus Groups and
 13 Mock Jury Research Can Help Prepare A Title VII Case For Trial: Lessons from Butler v. Home
 14 Depot" (NELA 1998) (co-author with Karen Jo Koonan); (12) "Settling/Mediating Employment
 15 Discrimination Class Actions" (Glasser LegalWorks, April 1998); (13) "Discovery in
 16 Employment Discrimination Class Actions" (Glasser LegalWorks, April 1998) (co-author with
 17 Kelly M. Dermody); (14) "Obtaining and Challenging Class Certification in Employment
 18 Discrimination Pattern and Practice Cases" (Glasser LegalWorks, April 1998) (co-author with
 19 Jonathan D. Selbin); (15) "How to Prevent Employment Discrimination and Securities Fraud
 20 Actions, Stanford University Directors College: (March 23, 1998); (16) "Northern District of
 21 California Requires Internet Posting of Pleadings And Key Briefs In Securities Actions,"
 22 Securities Reform Act Litigation Reporter (1997); and (17) "Class Actions: Useful Devices That
 23 Promote Judicial Economy And Provide Access To Justice," 41 New York Law School Law
 24 Review 353 (Issue 2, 1997).

25 10. I served as one of the authors of Chapter 39, "Statistical and Other Expert
 26 Proof" in Employment Discrimination Law, 4th ed. (Lindemann and Grossman, eds.) (2004) and
 27 one of the editors of the 2000 and 2002 cumulative supplements to Chapter 39, "Statistical
 28 Proof", of Employment Discrimination Law (3d ed.) (Lindemann and Grossman, eds.).

1 11. In 2003, I was selected by The Recorder legal newspaper (based on a
2 survey of judges, arbitrators, mediators, and lawyers in the field) as the top plaintiffs' securities
3 litigator in the San Francisco Bay Area. In March 2004, I was selected by The Recorder as one of
4 the top plaintiffs' employment lawyers in the San Francisco Bay Area. In August 2004, I was
5 selected by San Francisco Magazine as one of Northern California's "Super Lawyers."

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

8 Executed on this 9th day of September, 2004, in San Francisco, California

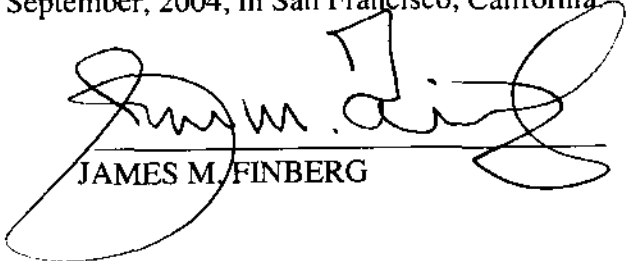
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EXHIBIT A

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FIRM PROFILE:

Lieff, Cabraser, Heimann & Bernstein, LLP, is fifty-plus attorney, AV-rated law firm founded in 1972 with offices in San Francisco, New York, Washington, D.C., Beverly Hills and Nashville. For over 30 years, Lieff Cabraser has concentrated its practice in the field of complex civil litigation, representing plaintiffs in securities and investment fraud, consumer protection, products liability and mass tort, antitrust, environmental and toxic exposures, employment discrimination and unfair employment practices, aviation law, and civil and human rights cases. The firm has tried and/or settled over 275 class actions. Lieff Cabraser has a diversified caseload that in addition to class actions includes the representation of private and public institutions in public health and securities matters, businesses and consumers in antitrust cases, and individuals in personal injury, employment and civil rights actions.

Lieff Cabraser has served as court-appointed Plaintiffs' Lead or Class Counsel in state and federal coordinated, multi-district, and complex litigation throughout the United States. With co-counsel, we have represented clients worldwide in cases filed in the United States. Our firm enjoys a national reputation for professional integrity and the efficient and responsible prosecution of our clients' claims. We possess the financial resources necessary for the handling of large, complex cases, and take pride in our cases that have achieved landmark results and precedent setting rulings.

In 2003 and 2004, the *National Law Journal* selected Lieff Cabraser as one of the top 20 plaintiffs' law firms in the nation. In compiling the list, the *National Law Journal* examined recent verdicts and settlements in addition to overall track records. The editors also contacted

plaintiff and defense counsel, as well as dozens of corporate general counsel, asking them for the names of plaintiffs' litigation firms that they would use and recommend.

CASE PROFILES:

A. Securities and Investment Fraud

1. ***In re Scorpion Technologies, Inc. Securities Litigation I***, No. C-93-20333-EAI (N.D. Cal.); ***Dietrich v. Bauer***, No. C-95-7051-RWS (S.D.N.Y.); ***Claghorn v. Edsaco***, No. 98-3039-SI (N.D. Cal.). Lief Cabraser served as Co-Lead Counsel in class action suits arising out of an alleged fraudulent scheme by Scorpion Technologies, Inc., certain of its officers, accountants, underwriters and business affiliates to inflate the company's earnings through reporting fictitious sales. In *Scorpion I*, the Court found plaintiffs had presented sufficient evidence of liability under Federal securities acts against the accounting firm Grant Thornton for the case to proceed to trial. *In re Scorpion Techs.*, 1996 U.S. Dist. LEXIS 22294 (N.D. Cal. Mar. 27, 1996). In 1988, the Court approved a \$5.5 million settlement with Grant Thornton. In 2000, the Court approved a \$950,000 settlement with Credit Suisse First Boston Corporation. In April 2002, a federal jury in San Francisco, California returned a \$170.7 million verdict against Edsaco Ltd. The jury found that Edsaco aided Scorpion in setting up phony European companies as part of scheme in which Scorpion reported fictitious sales of its software to these companies, thereby inflating its earnings. Included in the jury verdict, one of the largest verdicts in a securities fraud suit in the U.S. in 2002, was \$165 million in punitive damages. Richard M. Heimann conducted the trial for plaintiffs.

Following the *Edsaco* trial, the parties reached a settlement of the action on favorable monetary terms to the class, which included Edsaco's relinquishment of its right to appeal and the plaintiff's agreement to vacate the jury verdict. On June 14, 2002, U.S. District Court Judge Susan Illston commented on Lief Cabraser's representation: "[C]ounsel for the plaintiffs did a very good job in a very tough situation of achieving an excellent recovery for the class here. You were opposed by extremely capable lawyers. It was an uphill battle. There were some complicated questions, and then there was the tricky issue of actually collecting anything in the end. I think based on the efforts that were made here that it was an excellent result for the class. . . . [T]he recovery that was achieved for the class in this second trial is remarkable, almost a hundred percent."

2. ***In re Network Associates, Inc. Securities Litigation***, No. C-99-1729-WHA (N.D. Cal.). Following a competitive bidding process, the Court appointed Lieff Cabraser as Lead Counsel for the Lead Plaintiff and the class of investors. The complaint alleged that Network Associates improperly accounted for acquisitions in order to inflate its stock price. On May 21, 2001, the Court granted approval to a \$30 million settlement.

In reviewing the *Network Associates* settlement, U.S. District Court Judge William H. Alsup observed, “[T]he class was well served at a good price by excellent counsel . . . We have class counsel who’s one of the most foremost law firms in the country in both securities law and class actions. And they have a very excellent reputation for the conduct of these kinds of cases and their experience and views . . .”

3. ***In re California Micro Devices Securities Litigation***, No. C-94-2817-VRW (N.D. Cal.). Lieff Cabraser served as Liaison Counsel for the Colorado Public Employees’ Retirement Association and the California State Teachers’ Retirement System, and the class they represented. Prior to 2001, the Court approved \$19 million in settlements. On May 24, 2001, the Court approved an additional settlement of \$12 million, which, combined with the earlier settlements, provided class members an almost complete return on their losses. The settlement with the company included multi-million dollar contributions by the former Chairman of the Board and Chief Executive Officer.

Commenting in 2001 on Lieff Cabraser’s work in *Cal Micro Devices*, U.S. District Court Judge Vaughn R. Walker stated, “It is highly unusual for a class action in the securities area to recover anywhere close to the percentage of loss that has been recovered here, and counsel and the lead plaintiffs have done an admirable job in bringing about this most satisfactory conclusion of the litigation.” One year later, in a related proceeding and in response to the statement that the class had received nearly a 100% recovery, Judge Walker observed, “That’s pretty remarkable. In these cases, 25 cents on the dollar is considered to be a magnificent recovery, and this is [almost] a hundred percent.”

4. ***In re FPI/Agretech Securities Litigation***, MDL No. 763 (D. Haw., Real, J.). Lieff Cabraser served as Lead Class Counsel on behalf of

multiple classes of investors defrauded in a limited partnership investment scheme. The Court approved \$15 million in partial pretrial settlements. At trial, the jury returned a \$25 million verdict, which included \$10 million in punitive damages plus costs, interest, and attorneys' fees, against non-settling defendant Arthur Young & Co. on securities and tort claims arising from its involvement in the fraud. Richard M. Heimann served as Lead Trial Counsel in the class action trial. On appeal, the compensatory damages judgment was affirmed and the case was remanded for retrial on punitive damages. In December 1994, the Court approved a \$17 million class settlement with Ernst & Young.

5. ***Kofuku Bank Ltd. and Namihaya Bank Ltd. v. Republic New York Securities Corp., et al.***, No. 00 CIV 3298 (S.D.N.Y.); and ***Kita Hyogo Shinyo-Kumiai v. Republic New York Securities Corp., et al.***, No. 00 CIV 4114 (S.D.N.Y.). Lieff Cabraser represented Kofuku Bank, Namihaya Bank and Kita Hyogo Shinyo-Kumiai (a credit union) in individual lawsuits against, among others, Martin A. Armstrong and HSBC, Inc., the successor-in-interest to Republic New York Corporation, Republic New York Bank and Republic New York Securities Corporation for alleged violations of federal securities and racketeering laws. Through a group of interconnected companies owned and controlled by Armstrong – the Princeton Companies – Armstrong and the Republic Companies promoted and sold promissory notes, known as the “Princeton Notes,” to more than eighty of the largest companies and financial institutions in Japan. Lieff Cabraser’s lawsuits, as well as the lawsuits of dozens of other Princeton Note investors, alleged that the Princeton and Republic Companies made fraudulent misrepresentations and non-disclosures in connection with the promotion and sale of Princeton Notes, and that investors’ moneys were commingled and misused to the benefit of Armstrong, the Princeton Companies and the Republic Companies. In December 2001, the claims of our clients and those of the other Princeton Note investors were settled. As part of the settlement, our clients recovered more than \$50 million, which represents 100% of the value of their principal investments less money they received in interest or other payments.
6. ***Merrill Lynch Fundamental Growth Fund and Merrill Lynch Global Value Fund, Inc., v. McKesson HBOC, Inc., et al.***, No. 02-405792 (Cal. Supr Ct.). Lieff Cabraser serves as counsel for two Merrill Lynch mutual funds in a private lawsuit filed alleging that a massive accounting fraud occurred at HBOC & Company (“HBOC”) before and following its 1999 acquisition by McKesson Corporation (“McKesson”). The funds charge that defendants, including the former CFO of McKesson HBOC, the name McKesson adopted after acquiring HBOC, artificially inflated the price of securities in McKesson HBOC, through misrepresentations and omissions concerning the financial condition of HBOC, resulting in approximately \$200 million in losses for plaintiffs. In a significant discovery ruling in

2004, the California Court of Appeal held that defendants waived the attorney-client and work product privileges in regard to an audit committee report and interview memoranda prepared in anticipation of shareholder lawsuits by disclosing the information to the U.S. Attorney and SEC. McKesson HBOC, Inc. v. Superior Court, 115 Cal. App. 4th 1229 (2004).

7. ***Albert, et al. v. Alex. Brown Management Services, Inc., et al.; Baker, et al. v. Alex. Brown Management Services, Inc., et al.*** (Del. Superior Court). In May 2004, on behalf of investors in two investment funds controlled, managed and operated by Deutsche Bank and advised by DC Investment Partners, Lieff Cabraser filed lawsuits for alleged fraudulent conduct that resulted in an aggregate loss of hundreds of millions of dollars. The suits name as defendants Deutsche Bank and its subsidiaries Alex. Brown Management Services and Deutsche Bank Securities, members of the funds' management committee, as well as DC Investments Partners and two of its principles. Among the plaintiff-investors are 70 high net worth individuals.
8. ***Allocco et al. v. Gardner et al.***, No. Case No. GIC 806450 (Cal. Supr. Ct.). Lieff Cabraser represents Lawrence L. Garlick, the co-founder and former Chief Executive Officer of Remedy Corporation and 24 other former senior executives and directors of Remedy Corporation in a private (non-class) securities fraud lawsuit against Stephen P. Gardner, the former Chief Executive Officer of Peregrine Systems, Inc., John J. Moores, Peregrine's former Chairman of the Board, Matthew C. Gless, Peregrine's former Chief Financial Officer, Peregrine's accounting firm Arthur Andersen and certain entities that entered into fraudulent transactions with Peregrine. The lawsuit, filed in California state court, arises out of Peregrine's August 2001 acquisition of Remedy. Plaintiffs charge that they were induced to exchange their Remedy stock for Peregrine stock on the basis of false and misleading representations made by defendants. Within months of the Remedy acquisition, Peregrine began to reveal to the public that it had grossly overstated its revenue during the years 2000-2002, and eventually restated more than \$500 million in revenues.
9. ***In re National Century Financial Enterprises, Inc. Investment Litigation***, MDL 1565 (S.D. Ohio). Lieff Cabraser serves as Lead Counsel for the New York City Employees' Retirement System, Teachers' Retirement System for the City of New York, New York City Police Pension Fund, and New York City Fire Department Pension Fund in a securities fraud and breach of fiduciary duties lawsuit against Bank One, JPMorgan Chase Bank, Credit Suisse First Boston LLC, and additional defendants. The complaint charges that plaintiffs suffered \$89 million in losses as a result of a massive Ponzi scheme orchestrated and implemented by National Century Financial Enterprises and defendants.

10. ***Alaska State Department of Revenue, et al. v. America Online, Inc., et al.***, No. 1JU-04-503 (Alaska Supr. Ct.). Serving as co-counsel with the Alaska Attorney General, Lieff Cabraser filed a complaint in April 2004 against America Online, Inc., Time Warner, Inc., Ernst & Young, Morgan Stanley, and certain current and former officers and directors. The complaint alleges that several State of Alaska funds incurred substantial losses in their investments in AOL and Time Warner stock because the defendants misrepresented revenues and subscriber numbers before and after the merger of AOL and Time Warner.
11. ***Informix/Illustra Securities Litigation***, No. C-97-1289-CRB (N.D. Cal.). Lieff Cabraser represented Richard H. Williams, the former Chief Executive Officer and President of Illustra Information Technologies, Inc. ("Illustra"), and a class of Illustra shareholders in a class action suit on behalf of all former Illustra securities holders who tendered their Illustra preferred or common stock, stock warrants or stock options in exchange for securities of Informix Corporation ("Informix") in connection with Informix's 1996 purchase of Illustra. Pursuant to that acquisition, Illustra stockholders received Informix securities representing approximately 10% of the value of the combined company. The complaint alleged claims for common law fraud and violations of Federal securities law arising out of the acquisition. In October 1999, U.S. District Judge Charles E. Breyer approved a global settlement of the litigation for \$136 million, constituting one of the largest settlements ever involving a high technology company alleged to have committed securities fraud. Our clients, the Illustra shareholders, received approximately 30% of the net settlement fund.
12. ***In re Transmeta Corporation Securities Litigation***, No. C 01-02450 WHA (N.D. Cal.). Lieff Cabraser served as Lead Counsel in a class action lawsuit against Transmeta Corporation and several of its officers and directors for alleged violations of federal securities laws. Plaintiffs allege that defendants misrepresented both the capabilities and performance of Transmeta's principal product, the "Crusoe" line of microprocessors, and the company's true financial condition and business prospects in order to artificially inflate and maintain the price of Transmeta's stock. In March 2003, the Court granted final approval to a \$5.5 million settlement.
13. ***In re Media Vision Technology Securities Litigation***, No. CV-94-1015 (N.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel in a class action lawsuit which alleged that certain of Media Vision's officers, outside directors, accountants and underwriters engaged in a fraudulent scheme to inflate the company's earnings, and issued false and misleading public statements about the company's finances, earnings and profits. By 1998, the Court had approved several partial settlements with many of Media Vision's officers and directors, accountants and underwriters which totalled \$31 million. The settlement proceeds have been distributed to

eligible class members. The evidence that Lieff Cabraser developed in the civil case led prosecutors to commence an investigation and ultimately file criminal charges against Media Vision's former Chief Executive Officer and Chief Financial Officer. The civil action against Media Vision's CEO and CFO was stayed pending the criminal proceedings against them. In the criminal proceedings, the CEO pled guilty on several counts, and the CFO was convicted at trial. In October, 2003, the Court granted Plaintiffs' motions for summary judgment and entered a judgment in favor of the class against these two defendants in the amount of \$188 million.

14. ***In re Pre-Paid Legal Services, Inc.***, No. 02-0273-C (RJC) (W.D. Okla.). On behalf of persons who purchased an "Opportunity" from Pre-Paid Legal Services, Inc. to sell "legal insurance plans" issued by Pre-Paid Legal Services, Inc. and to recruit others into the same program. Lieff Cabraser serves as Lead Counsel in a class action lawsuit against Pre-Paid and certain of its officers for violations of the Securities Act of 1933, certain Oklahoma statutes, and various common-law claims. The complaint alleges that the purchase of Pre-Paid's "Opportunity" is an investment contract security, which is fraudulently marketed and sold as part of an alleged unlawful pyramid scheme.
15. ***Nguyen v. FundAmerica***, No. C-90-2090 MHP (N.D. Cal., Patel, J.), 1990 Fed. Sec. L. Rep. (CCH) ¶¶ 95,497, 95,498 (N.D. Cal. 1990). Lieff Cabraser served as Plaintiffs' Class Counsel in this securities/RICO/tort action seeking an injunction against alleged unfair "pyramid" marketing practices and compensation to participants. The District Court certified a nationwide class for injunctive relief and damages on a mandatory basis and enjoined fraudulent overseas transfers of assets. The Bankruptcy Court permitted class proof of claims. Lieff Cabraser obtained dual Court and Bankruptcy Court approval of settlements distributing over \$13 million in FundAmerica assets to class members.
16. ***In re First Capital Holdings Corp. Financial Products Securities Litigation***, MDL No. 901 (C.D. Cal.). Lieff Cabraser served as Co-Lead Counsel in a class action brought to recover damages sustained by policyholders of First Capital Life Insurance Company and Fidelity Bankers Life Insurance Company policyholders resulting from the insurance companies' allegedly fraudulent or reckless investment and financial practices, and the manipulation of the companies' financial statements. This policyholder settlement generated over \$1 billion in restored life insurance policies, and was approved by both federal and state courts in parallel proceedings and then affirmed by the Ninth Circuit on appeal.
17. ***In re Precious Metals Dealers/Safrabank Securities Litigation***, MDL No. 804 (C.D. Cal.) Lieff Cabraser served as Lead Counsel for a class of

purchasers who were allegedly fraudulently induced to purchase precious metal through similar high pressure sales pitches. The case resulted in a \$10 million settlement.

B. Personal Injury and Products Liability

1. ***Multi-State Tobacco Litigation.*** Lieff Cabraser represented the Attorneys' General of Massachusetts, Louisiana and Illinois, several additional states, and 18 cities and counties in California, in litigation against Philip Morris, R.J. Reynolds and other cigarette manufacturers. The suits were part of the \$206 billion settlement announced in November 1998 between the tobacco industry and the states' attorneys general. The states, cities and counties sought both to recover the public costs of treating smoking-related diseases and require the tobacco industry to undertake extensive modifications of its marketing and promotion activities in order to reduce teenage smoking. In California alone, Lieff Cabraser's clients will receive an estimated \$12.5 billion over the next 25 years.
2. ***Individual Vehicle Injury Lawsuits.*** Lieff Cabraser has an active practice prosecuting claims for clients injured, or the families of loved ones who have died, by unsafe vehicles. We are representing clients in actions involving fatalities and serious injuries due to rollover accidents of fifteen passenger vans and sports utility vehicles. Plaintiffs allege that the vans and SUVs were defectively designed because they pose an unreasonable risk of rollover during foreseeable driving conditions. We also represent clients in several other vehicle injury cases, including personal injury lawsuits based on allegations that certain models of the Jeep Grand Cherokee are defectively designed because the vehicle can shift suddenly from park into reverse, even when the engine is not running.
3. ***In re Simon II Litigation***, No. 00-CV-5332 (JBW) (E.D. N.Y.). Lieff Cabraser serves as Lead and Co-Class Counsel for a nationwide, punitive damages class of cigarette smokers. In September 2002, U.S. District Court Judge Jack B. Weinstein certified a class of persons who smoke or smoked cigarettes, and were first diagnosed by a physician with a qualifying smoking-related disease on or after April 9, 1993 to the present. *In re Simon II Litigation*, 211 F.R.D. 86 (E.D. N.Y. 2002). Plaintiffs allege that the defendant cigarette companies manufactured, marketed and sold their cigarettes while knowing, but fraudulently denying and concealing, that they were defective and posed significant health risks to those who used them. The court's certification order is limited to punitive damages only – the purpose of the case is to prove that the class is entitled to an award of punitive damages for the serious wrongful conduct of the cigarette companies. The District Court's class certification order is now under review by the Second Circuit Court of Appeals.

4. ***Fen-Phen Diet Drugs Litigation.*** In September 1997, the “Fen-Phen” diet drugs fenfluramine (formerly sold as Pondimin) and/or dexfenfluramine (formerly sold as Redux) were withdrawn from the market. Earlier, in July 1997, Lieff Cabraser filed the first nationwide class action lawsuit against the diet drug manufacturers alleging that they had failed to adequately warn physicians and consumers of risks associated with the drugs. Since the recall was announced, Lieff Cabraser has represented over 300 individuals who have suffered heart and/or lung damage, most often consisting of cardiac valve damage and/or Primary Pulmonary Hypertension, after ingesting Pondimin or Redux. In addition, Lieff Cabraser prosecuted class action claims that sought medical monitoring relief and personal injury damages for Pondimin or Redux users. In *In re Diet Drugs (Phentermine/Fenfluramine/ Dexfenfluramine) Products Liability Litigation*, MDL No. 1203 (E.D. Pa.), the Court appointed Elizabeth J. Cabraser to the Plaintiffs’ Management Committee which organized and directed the Fen-Phen diet drugs litigation filed across the nation in federal courts. In August 2000, the Court approved a \$4.75 billion settlement offering both medical monitoring relief for persons exposed to the drug and compensation for persons with qualifying damage. Lieff Cabraser also served on the Plaintiffs’ Executive Committee in the California Coordinated Proceedings in California state court, and as class counsel in the State of Washington certified medical monitoring action. Our firm continues to represent individuals pursuing personal injury claims. We dedicate substantial resources on behalf of and attention to these clients and are available for confidential consultations for anyone who ingested Redux or Pondimin.

5. ***Sulzer Hip and Knee Implants Litigation.*** In December 2000, Sulzer Orthopedics, Inc., announced the recall of approximately 30,000 units of its Inter-Op Acetabular Shell Hip Implant, followed in May 2001 with a notification of failures of its Natural Knee II Tibial Baseplate Knee Implant. In coordinated litigation in California state court, *In re Hip Replacement Cases*, JCCP 4165, Lieff Cabraser serves as Court-appointed Plaintiffs’ Liaison Counsel and Co-Lead Counsel. In the federal litigation, *In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, MDL 1410, Lieff Cabraser played a significant role in negotiating a revised settlement with Sulzer valued at more than \$1 billion. In May 2002, the Court granted final approval to the revised settlement. Lieff Cabraser serves as Class Counsel for Subclass V of the settlement (class members with unrevised reprocessed Inter-Op shells).

6. ***In re Baycol Products Litigation***, MDL No. 1431 (D. Minn.). Baycol is one of a group of drugs called statins, intended to reduce cholesterol. In August 2001, Bayer A.G. and Bayer Corporation, the manufacturers of Baycol, withdrew the drug from the worldwide market based upon reports that Baycol was associated with serious side effects and linked to the deaths of over 100 patients worldwide. In the federal multi-district

litigation, Lieff Cabraser serves as a member of the Plaintiffs' Steering Committee (PSC) and the Executive Committee of the PSC. In addition, Lieff Cabraser represented approximately 200 Baycol patients who have suffered injuries or family members of patients who died allegedly as a result of ingesting Baycol. In these cases, Lieff Cabraser reached confidential favorable settlements with Bayer.

7. ***Blood Factor VIII And Factor IX Litigation.*** Working with counsel in Asia, Europe, South America and the Middle East, Lieff Cabraser represents hundreds of hemophiliacs worldwide, or their survivors and estates, who contracted HIV and/or Hepatitis C (HCV), and Americans with hemophilia who contracted HCV, from contaminated and defective blood factor products produced by American pharmaceutical companies. In 2004, Lieff Cabraser was appointed Plaintiffs' Lead Counsel of the "second generation" Blood Factor MDL litigation presided over by Judge Grady in the Northern District of Illinois. This groundbreaking litigation follows upon a two-month trial directed by Richard M. Heimann in 2003 in California state court on behalf of a person with hemophilia who is HIV-positive. Although the jury was unable to render a verdict, the evidence produced at trial was sufficient to convince the defendant on the eve of retrial to enter into one of the largest individual settlements in the history of the blood factor litigation.
8. ***In re Silicone Gel Breast Implants Products Liability Litigation***, MDL No. 926 (N.D. Ala.). Lieff Cabraser serves on the Plaintiffs' Steering Committee and was one of five members of the negotiating committee which achieved a \$4.25 billion global settlement with certain defendants of the action. This was renegotiated in 1995, and is referred to as the Revised Settlement Program ("RSP"). Over 100,000 recipients have received initial payments, reimbursement for the explantation expenses and/or long term benefits.
9. ***In re Telectronics Pacing Systems Inc., Accufix Atrial "J" Leads Products Liability Litigation***, MDL No. 1057 (S.D. Ohio). Lieff Cabraser served on the court-appointed Plaintiffs' Steering Committee in a nationwide products liability action alleging that defendants placed into the stream of commerce defective pacemaker leads. In April 1997, the district court re-certified a nationwide class of "J" Lead implantees with subclasses for the claims of medical monitoring, negligence and strict product liability. A summary jury trial utilizing jury instructions and interrogatories designed by Lieff Cabraser occurred in February 1998. A partial settlement was approved thereafter by the district court, but reversed by the Court of Appeals. In March 2001, the district court approved a renewed settlement that included a \$58 million fund to satisfy all past, present and future claims by patients for their medical care, injuries, or damages arising from the lead.

10. ***In re Felbatol Products Liability Litigation***, MDL No. 1048 (N.D. Cal.). Lieff Cabraser served as Co-Lead Class Counsel and Plaintiffs' Liaison Counsel in this nationwide litigation asserting medical monitoring, compensatory and punitive damages claims on behalf of 100,000 users of the anti-epilepsy drug Felbatol, who alleged present and potential injuries from its serious adverse effects, including liver failure and aplastic anemia. The nationwide Plaintiff class was certified on March 15, 1995; certification was vacated for further findings by the Ninth Circuit in *Valentino v. Carter-Wallace*, 97 F.3d 1277 (9th Cir. 1996), which affirmed the viability of nationwide mass tort class actions. The litigation was settled favorably on behalf of all major injury claimants in March 1997.
11. ***In re Cordis Pacemaker Product Liability Litigation***, MDL No. 850 (S.D. Ohio). Lieff Cabraser represented a certified nationwide class of Cordis pacemaker recipients on personal injury, emotional distress, fraud, equitable relief, and pacemaker explant compensation claims. In 1995, shortly before trial, Lieff Cabraser negotiated and obtained Court approval of a \$21 million settlement of the action.
12. ***In re Copley Pharmaceutical, Inc., "Albuterol" Products Liability Litigation***, MDL No. 1013 (D. Wyo.). Lieff Cabraser served on the Plaintiffs' Steering Committee in a class action lawsuit against Copley Pharmaceutical, which manufactured Albuterol, a bronchodilator prescription pharmaceutical. Albuterol was the subject of a nationwide recall in January 1994 after a microorganism was found to have contaminated the solution, allegedly causing numerous injuries including bronchial infections, pneumonia, respiratory distress and, in some cases, death. In October 1994, the district court certified a nationwide class on liability issues. *In re Copley Pharmaceutical*, 161 F.R.D. 456 (D. Wyo. 1995). In November 1995, the district court approved a \$150 million settlement of the litigation.

C. Employment Discrimination and Unfair Employment Practices

1. ***Butler v. Home Depot***, No. C94-4335 SI (N.D. Cal.). Lieff Cabraser and co-counsel represented a class of approximately 25,000 female employees and applicants for employment with Home Depot's West Coast Division who alleged gender discrimination in connection with hiring, promotions, pay, job assignment, and other terms and conditions of employment. The class was certified in January 1995. In January 1998, the Court approved a \$87.5 million settlement of the action that included comprehensive injunctive relief over the term of a five-year Consent Decree. Under the terms of the settlement, Home Depot committed to modify its hiring, promotion, and compensation practices to ensure that interested and qualified women will be hired for, and promoted to, sales and management positions.

On January 14, 1998, U.S. District Judge Susan Illston commented that the settlement provides "a very significant monetary payment to the class members for which I think they should be grateful to their counsel, but even more significant is the injunctive relief that's provided for . . ." By 2003, the injunctive relief created thousands of new job opportunities in sales and management positions at Home Depot, generating the equivalent of over approximately \$100 million per year in wages for female employees.

2. ***Frank v. United Airlines, Inc.***, No. C-92-0692 MJJ (N.D. Cal.). Lieff Cabraser and co-counsel obtained a \$36.5 million settlement in February 2004 for a class of female flight attendants who were required to weigh less than comparable male flight attendants.

Former U.S. District Court Judge Charles B. Renfrew (ret.), who served as a mediator in the case, stated, "As a participant in the settlement negotiations, I am familiar with and know the reputation, experience and skills of lawyers involved. They are dedicated, hardworking and able counsel who have represented their clients very effectively." U.S. District Judge Martin J. Jenkins, in granting final approval to the settlement, found "that the results achieved here could be nothing less than described as exceptional," and that the settlement "was obtained through the efforts of outstanding counsel." Judge Jenkins observed that Lieff Cabraser partner James Finberg "in particular, and his firm, in particular, are very sophisticated in handling matters of this type."

3. ***Barnett v. Wal-Mart***, No. 01-2-24553-SNKT (Wash.); ***Gamble v. Wal-Mart***, No. 7121-01 (N.Y.). Lieff Cabraser and co-counsel represent proposed classes of hourly wage earners at Wal-Mart in Washington and New York who allegedly have been forced to work "off-the-clock" (without pay). Plaintiffs, current and former Wal Mart employees, allege that, in violation of state wage and hour laws, Wal-Mart forces employees to work through breaks and to work without pay after they have clocked out.
4. ***In Re Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation***, MDL No. 1439 (D. Or.). Lieff Cabraser and co-counsel represent personal lines claims representatives of Farmers' Insurance Exchange seeking unpaid overtime. In November 2003, after a three week

liability phase trial, the Court held that Farmers' claims adjusters who handle auto and low level property claims are entitled to overtime. 300 F.Supp. 2d 1020 (2003). The Court further found that Farmers' actions were willful and were not taken in good faith, entitling plaintiffs to seek double damages on the lost overtime wages during the upcoming damages phase of the trial. Lieff Cabraser partner James M. Finberg serves as one of the lead trial counsel for plaintiffs.

5. ***Gonzalez et al. v. Abercrombie & Fitch Stores, Inc. et al.***, No. C03-2817 SI (N.D. Cal.). In June 2003, Lieff Cabraser filed a nationwide, employment discrimination class action lawsuit against Abercrombie & Fitch Stores, Inc. (Abercrombie), with co-counsel the Mexican American Legal Defense and Educational Fund, the Asian Pacific American Legal Center and the NAACP Legal Defense and Educational Fund, Inc. The young men and women named as class representatives charge that Abercrombie engages in systematic discrimination against Latinos, Asian Americans, and African Americans at its Abercrombie, Abercrombie Kids, and Hollister stores in hiring, initial job assignments, and other terms and conditions of employment.
6. ***Trotter v. Perdue Farms, Inc.***, No. C 99-893-RRM (JJF) (MPT) (D. Del.). Lieff Cabraser represented a class of chicken processing employees of Perdue Farms, Inc., one of the nation's largest poultry processors, for wage and hour violations. The suit challenged Perdue's failure to compensate its assembly line employees for putting on, taking off, and cleaning protective and sanitary equipment in violation of the Fair Labor Standards Act, various state wage and hour laws, and the Employee Retirement Income Security Act. In October, 2002, the Court granted final approval of a settlement resolving the action. Under the settlement, Perdue paid \$10 million for wages lost by its chicken processing employees and attorneys' fees and costs. The settlement was in addition to a \$10 million settlement of a suit brought by the Department of Labor in the wake of Lieff Cabraser's lawsuit.
7. ***Gottlieb v. SBC Communications***, No. CV-00-04139 AHM (MANx) (C.D. Cal.). With co-counsel, Lieff Cabraser represented current and former employees of SBC and Pacific Telesis Group ("PTG") who participated in AirTouch Stock Funds, which were at one time part of PTG's salaried and non-salaried savings plans. After acquiring PTG, SBC sold AirTouch, which PTG had owned, and caused the AirTouch Stock Funds that were included in the PTG employees' savings plans to be liquidated. Plaintiffs allege that in eliminating the AirTouch Stock Funds, and in allegedly failing to adequately communicate with employees about the liquidation, SBC breached its duties to 401k plan participants under the Employee Retirement Income Security Act. In December 2002, the Court granted final approval to a \$10 million settlement for all PTG

salaried and non-salaried plan participants who had a balance in AirTouch Stock Funds on December 31, 1997.

8. ***Thomas v. California State Automobile Association***, No. CH217752 (Cal. Superior Court, Alameda County). With co-counsel, Lieff Cabraser represented 1,200 current and former field claims adjusters who worked for the California State Automobile Association ("CSAA"). Plaintiffs alleged that CSAA improperly classified their employees as exempt, therefore denying them overtime pay for overtime worked. In May 2002, the Court approved an \$8 million settlement of the case.
9. ***Church v. Consolidated Freightways***, No. C90-2290 DLJ (N.D. Cal.). Lieff Cabraser was the Lead Court-appointed Class Counsel in this class action on behalf of the exempt employees of Emery Air Freight, a freight forwarding company acquired by Consolidated Freightways in 1989. On behalf of the employee class, Lieff Cabraser prosecuted claims for violation of the Employee Retirement Income Security Act ("ERISA"), the securities laws, and the Age Discrimination in Employment Act ("ADEA"). The case settled in April 1993 for \$13.5 million.
10. ***Buttram v. UPS, Inc.***, No. C-97-01590 MJJ (N.D. Cal.). Lieff Cabraser and several co-counsel represented a class of approximately 14,000 African-American part-time hourly employees of UPS's Pacific and Northwest Regions alleging race discrimination in promotions and job advancement. In April, 1999, Judge Jenkins approved a \$12.14 million settlement of the action. Under the injunctive relief portion of the settlement, among other things, Class Counsel continues to monitor the promotions of African-American part-time hourly employees to part-time supervisor and full-time package car driver.
11. ***Lyon v. TMP Worldwide, Inc.***, No. 993096 (San Francisco Superior Ct.). Lieff Cabraser served as Class Counsel for a class of certain non-supervisory employees in an advertising firm. The suit alleged that TMP failed to pay overtime wages to these employees. The Hon. David A. Garcia certified the class in November 1999, and granted final approval to a settlement in 2000, that provided almost a 100% recovery to class members.
12. ***Kahn v. Denny's***, No. BC177254 (Los Angeles Superior Ct.). Lieff Cabraser brought a lawsuit alleging that Denny's failed to pay overtime wages to its General Managers and Managers who worked at company-owned restaurants in California. The Court certified the class and the case settled in 2000 for \$4 million.
13. ***Foster v. The Great Atlantic & Pacific Tea Company, Inc. ("A&P")***, No. 99 Civ. 3860 (CM) (S.D.N.Y.). Lieff Cabraser, along with co-counsel, represented approximately 870 current and former employees of New

York area supermarkets suing under the Fair Labor Standards Act. The Opt-In Plaintiffs in the certified collective action sought unpaid overtime compensation resulting from Defendants' alleged failure to compensate employees for work performed "off-the-clock." In May 2004, the Court approved a settlement providing \$3.11 million to the Opt-In Plaintiffs. In June 2004, Lieff Cabraser filed a new lawsuit against defendants in New York state court seeking certification of a class of current and former full-time hourly employees of The Great Atlantic & Pacific Tea Company, Inc. in New York for past six years. The plaintiffs allege that defendants fail to pay overtime wages and delete hours actually worked from time records in violation of New York labor law.

14. ***Satchell, et al. v. FedEx Express***, No. C 03-2659 SI; C 03-2878 SI (N.D. Cal.). Lieff Cabraser, with co-counsel, represents African American and Latino employees of FedEx Express in its Western Region in a class action lawsuit. Plaintiffs allege that FedEx Express has discriminated against minority employees on the basis of race with respect to initial job assignment, compensation, promotion and discipline.
15. ***Giles v. Allstate***, JCCP Nos. 2984 and 2985. Lieff Cabraser represented a class of Allstate insurance agents seeking reimbursement of out-of-pocket costs. The action settled for approximately \$40 million.
16. ***Bogan v. Fleetwood Enterprises, Inc.***, No. CIV 00-0440-S-BLW (D. Idaho). Lieff Cabraser, along with co-counsel, represents a nationwide class of women production associates who allegedly have been discriminated against on the basis of sex with respect to promotions and compensation, and who allegedly have been subjected to rampant sexual harassment. In 2002, the Court approved a settlement that included comprehensive injunctive relief.
17. ***Dupree v. The Prudential Insurance Co., et al.***, No. 99-8337-CIV (AJJ) (S.D. Fla.) With co-counsel, Lieff Cabraser represents a group of retired employees of Prudential who are participants in Prudential's Retirement Plan. The Plan provides pension benefits to thousands of retirees who used to work for Prudential. Those benefits are protected by a federal statute called the Employee Retirement Income Security Act (ERISA), which was enacted by Congress to prevent employers from exercising improper control over the assets of their retirement plans. The plaintiff retirees allege that Prudential violated ERISA by using (and continuing to use) the Retirement Plan's assets to benefit Prudential, instead of its retirees. After the Court denied defendants' motions for summary judgment, trial commenced on February 17, 2004. The trial concluded in March, and closing arguments are scheduled for September. Plaintiffs request that the Court make Prudential restore to all Plan participants the funds allegedly taken out of the Retirement Plan in violation of the law.

Lieff Cabraser attorneys have also had experience working on several other employment cases, including cases involving race, gender, and age discrimination, ERISA, breach of contract claims, and wage/hour claims. Lieff Cabraser attorneys frequently write amici briefs on cutting-edge legal issues involving employment law. Lieff Cabraser is currently investigating charges of race, gender and/or age discrimination, and wage/hour violations against several companies.

D. Consumer Protection

1. ***Avery v. State Farm Mutual Auto Insurance Co.***, No. 97-L-114 (Williamson County Circuit Ct., Ill.). With co-counsel, Lieff Cabraser challenged State Farm's practice of specifying non-original-equipment manufacturer (non-OEM) imitation "crash" parts on repair estimates for millions of its insureds' vehicles. Trial in the case commenced on August 10, 1999. On October 4, 1999, the jury awarded \$456 million in compensatory damages to plaintiffs for their breach of contract claim. On October 8, 1999, the trial court agreed that State Farm had breached its contract and found that State Farm's practice of using imitation parts and claiming they were of like kind and quality violated the Illinois Consumer Fraud Act. The trial court awarded an additional \$130 million in compensatory damages, and ordered State Farm to pay an additional \$600 million in punitive damages. State Farm appealed the judgment. On April 5, 2001, the Appellate Court of Illinois, in a unanimous opinion, upheld the verdict. 321 Ill. App. 3d 269; 746 N.E.2d 1242 (2000). The Appellate Court found no error in either the trial of the action as a class action or the conduct of the trial court. The Appellate Court, however, reduced the original \$1.18 billion judgment entered by the trial court by \$130 million to subtract what it felt was an overlapping award on the two separate counts. The total remaining award of \$1.05 billion is one of the largest verdicts ever upheld on appeal. The case is now pending before the Illinois Supreme Court.
2. ***Providian Credit Card Cases***, No. JCCP 4085 (San Francisco Superior Ct.). Lieff Cabraser served as Co-Lead Counsel for a certified national Settlement Class of Providian credit cardholders who alleged that Providian had engaged in widespread misconduct by charging cardholders unlawful, excessive interest and late charges, and by promoting and selling to cardholders "add-on products" promising illusory benefits and services. In November 2001, the Court granted final approval to a \$105 million settlement of the case, which also required Providian to implement substantial changes in its business practices. The \$105 million settlement, combined with an earlier settlement by Providian with Federal and state agencies, represents the largest settlement ever by a U.S. credit card company in a consumer protection case.
3. ***In re Tri-State Crematory Litigation***, MDL No. 1467 (N.D. Ga.). In March 2004, trial commenced with Lieff Cabraser partner Kathryn E. Barnett delivering the opening statement in a class action by families

whose loved ones were improperly cremated and desecrated by Tri-State Crematory in Noble, Georgia. The families also asserted claims against the funeral homes that delivered the decedents to Tri-State Crematory for failing to ensure that the crematory performed cremations in the manner required under the law and by human decency. One week into trial, settlements with the remaining funeral home defendants were reached and brought the settlement total to approximately \$37 million. Since March 2004, all of the settlements with the funeral homes have been preliminarily or finally approved. The Marsh defendants, however, withdrew from the tentatively approved settlement. Trial on the class members' claims against the Marsh defendants is set to begin on August 23, 2004. Earlier, the Court granted plaintiffs' motion for class certification in a published order. 215 F.R.D. 660 (2003).

4. ***Kline v. The Progressive Corporation***, Circuit No.: 02-L-6 (Circuit Court of the First Judicial Circuit, Johnson County, Illinois). Lief Cabraser served as settlement class counsel in this nationwide consumer class action involving challenges to the Progressive Corporation's private passenger automobile insurance sales practices, where plaintiffs alleged that the Progressive Corporation wrongfully concealed from class members the availability of lower priced insurance for which they qualified. The Settlement Class was certified and the settlement was granted final approval in 2002, and is valued at approximately \$450 million, including both cash and equitable relief. The claims program, implemented upon a nationwide mail and publication notice program, was completed in early 2003.
5. ***Citigroup Loan Cases***, JCCP No. 4197 (San Francisco Superior Ct.). In April 2003, the Court granted final approval to a settlement that provided approximately \$240 million in relief to former Associates' customers across America. Prior to its acquisition in November 2000, Associates First Financial, referred to as The Associates, was one of the nation's largest "subprime" lenders. Lief Cabraser represented former customers of The Associates charging that The Associates added on mortgage loans unwanted and unnecessary insurance products and engaged in improper loan refinancing practices.
6. ***In re Synthroid Marketing Litigation***, MDL No. 1182 (N.D. Ill.). Lief Cabraser served as Co-Lead Counsel for the purchasers of the thyroid medication Synthroid in litigation against Knoll Pharmaceutical, the manufacturer of Synthroid. The lawsuits charge that Knoll misled physicians and patients into keeping patients on Synthroid despite knowing that less costly, but equally effective drugs, were available. Specifically, Knoll's predecessor, Boots Laboratories, sponsored a university study to determine whether Synthroid and a number of less expensive thyroid hormone products were "bioequivalent." The authors of the study concluded in 1990 that Levoxyl and two generic

thyroid hormone products were bioequivalent to Synthroid, and could therefore be substituted for Synthroid at substantial cost savings. Knoll denied the authors permission to publish the study, and its contents were not revealed until 1997. In 2000, U.S. District Court Judge Elaine E. Bucklo gave final approval to a \$87.4 million settlement with Knoll and its parent company, BASF Corporation, on behalf of a class of all consumers who purchased Synthroid at any time from 1990 to 1999. In 2001, the Court of Appeals upheld the order approving the settlement and remanded the case for further proceedings. 264 F. 3d 712 (7th Circ. 2001). The settlement proceeds were distributed in the Fall of 2003.

7. ***Curry v. Fairbanks Capital Corporation***, No. 03-10895-DPW (D. Mass.). In May 2004, the Court approved a \$55 million settlement of a class action lawsuit against Fairbanks Capital Corporation arising out of charges against Fairbanks of misconduct in servicing its customers' mortgage loans. The settlement also required substantial changes in Fairbanks' business practices and established a default resolution program to limit the imposition of fees and foreclosure proceedings against Fairbanks' customers. Lieff Cabraser served as nationwide Co-Lead Counsel for the homeowners.
8. ***Reverse Mortgage Cases***, JCCP No. 4061 (San Mateo County Sup. Ct., Cal.). Transamerica Corporation, through its subsidiary Transamerica Homefirst, Inc., sold "reverse mortgages" marketed under the trade name "Lifetime." The Lifetime reverse mortgages were sold exclusively to seniors, *i.e.*, persons 65 years or older. Lieff Cabraser, with co-counsel, filed suit on behalf of seniors alleging that the terms of the reverse mortgages were unfair, and that borrowers were misled as to the loan terms, including the existence and amount of certain charges and fees. In 2003, the Court granted final approval to an \$8 million settlement of the action.
9. ***Fischl v. Direct Merchants Credit Card Bank, N.A., Metris Companies and Metris Direct***, No. CT 00-007129 (Hennepin County District Ct., Minn.). Lieff Cabraser served as Plaintiffs' Co-Counsel in a national consumer class action filed on behalf of millions of Direct Merchants' credit cardholders who allege that defendants engaged in unfair, deceptive and misleading practices and violated state consumer protection statutes in connection with the sale and marketing of their credit cards and fee based services and products. In May 2002, the Court granted final approval to a settlement that requires defendants to modify or cease certain business practices; offer certain free products, services or benefits to former cardholders or ServiceEdge members who are not current cardholders; and offer participation in a Customer Satisfaction Guarantee Program to current cardholders, in which current cardholders may resolve the complaints, including for monetary credits in an amount between \$10.00 and \$70.00.

10. ***In re American Family Enterprises***, MDL No. 1235 (D. N.J.). Lieff Cabraser served as co-lead counsel for a nationwide class of persons who received any sweepstakes materials sent under the name "American Family Publishers." The class action lawsuit alleged that defendants deceived consumers into purchasing magazine subscriptions and merchandise in the belief that such purchases were necessary to win an American Family Publishers' sweepstakes prize or enhanced their chances of winning a sweepstakes prize. In September 2000, the Court granted final approval of a \$33 million settlement of the class action. In April 2001, over 63,000 class members received refunds averaging over \$500 each, representing 92% of their eligible purchases. In addition, American Family Publishers agreed to make significant changes to the way it conducts the sweepstakes.
11. ***In re Sears Automotive Center Consumer Litigation***, Civ. No. C-92-2227 RHS (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Co-Lead Counsel for a certified nationwide class of Sears auto center customers for purposes of approval of a combined injunctive relief/refund settlement. As part of the settlement, Sears distributed to class members merchandise coupons valued at \$25 million.
12. ***Roberts v. Bausch & Lomb***, Civ. No. 94-C-1144-W (N.D. Ala.). Lieff Cabraser was designated as one of several Class Counsel in November 1994 in this nationwide consumer fraud class action involving deceptive marketing of contact lenses. In 1996, the Court approved a settlement valued at \$68 million (\$34 million cash and \$34 million in eye care products).
13. ***In re Miracle Ear Consumer Litigation***, Civ. No. 94-1696 (4th Jud. Dist. Minn.). Lieff Cabraser served as Co-Lead Class Counsel in a nationwide class action certified in late 1994 involving claims arising from misrepresentations regarding performance of a hearing aid device. State courts in Minnesota and Alabama granted final approval to the nationwide settlement.

E. Non-Personal Injury Defective Products

1. ***Behr Wood Sealant Cases***, JCCP Nos. 4132 & 4138 (San Joaquin County Superior Ct., Cal.). With co-counsel, Lieff Cabraser represents homeowners and other consumers that purchased and applied the Behr wood sealant products Super Liquid Raw-Hide or Natural Seal Plus to exterior wood surfaces within the United States since January 1, 1991. In May 2003, the Hon. Carter P. Holly granted final approval to a \$107.5 million settlement to provide compensation for mildew damage to wood surfaces that Class members incurred.

2. ***Richison v. American Cemwood Corp.***, No. 005532 (San Joaquin Superior Ct., Cal.). Lieff Cabraser served as Co-lead Class Counsel for an estimated nationwide class of 30,000 owners of homes and other structures on which defective Cemwood Shakes were installed. In November 2003, the Court granted final approval to a \$75 million Phase 2 settlement in the American Cemwood roofing shakes national class action litigation. This amount was in addition to a \$65 million partial settlement approved by the Court in May 2000, and brought the litigation to a conclusion. The claims period runs through 2015.
3. ***Williams v. Weyerhaeuser***, No. 995787 (San Francisco Superior Ct.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of hundreds of thousands or millions of owners of homes and other structures with defective Weyerhaeuser hardboard siding. A California-wide class was certified for all purposes in February 1999, and withstood writ review by both the California Court of Appeal and Supreme Court of California. In December 2000, the Court granted final approval to a global, nationwide settlement of the case which provides class members with compensation for their damaged siding, based on the cost of replacing or, in some instances, repairing, damaged siding. The settlement has no cap, and requires Weyerhaeuser to pay all timely, qualified claims over a nine year period. No class member's recovery will be reduced for attorneys' fees or costs. The claims program is underway and paying claims.
4. ***Foothill/DeAnza Community College District v. Northwest Pipe Company***, No. C-00-20749 (N.D. Cal.). In June 2004, the court approved the creation of a settlement fund of up to \$14.5 million for property owners nationwide with Poz-Lok fire sprinkler piping that fails. Since 1990, Poz-Lok pipes and pipe fittings were sold in the U.S. as part of fire suppression systems for use in residential and commercial buildings. After leaks in Poz-Lok pipes caused damage to its DeAnza Campus Center building, Foothill/DeAnza Community College District in California retained Lieff Cabraser to file a class action lawsuit against the manufacturers of Poz-Lok. The college district charged that Poz-Lok pipe had manufacturing and design defects that resulted in the premature corrosion and failure of the product. Under the settlement, owners whose Poz-Lok pipes are leaking today, or over the next 15 years, may file a claim for compensation.
5. ***ABS Pipe Litigation***, JCCP No. 3126 (Contra Costa County Superior Ct., Cal.). Lieff Cabraser served as Lead Class Counsel on behalf of property owners whose ABS plumbing pipe was allegedly defective and caused property damage by leaking. Six separate class actions were filed in California against five different ABS pipe manufacturers, numerous developers of homes containing the ABS pipe, as well as the resin supplier and the entity charged with ensuring the integrity of the product. Between

1998 and 2001, we achieved 12 separate settlements in the class actions and related individual lawsuits for approximately \$78 million.

Commenting on the work of Lief Cabraser and co-counsel in the case, California Superior Court (now appellate) Judge Mark B. Simons stated on May 14, 1998, "The attorneys who were involved in the resolution of the case certainly entered the case with impressive reputations and did nothing in the course of their work on this case to diminish these reputations, but underlined, in my opinion, how well deserved those reputations are."

6. ***Cox v. Shell***, No. 18,844 (Obion County Chancery Ct., Tenn.). Lief Cabraser served as Class Counsel on behalf of a nationwide class of approximately 6 million owners of property equipped with defective polybutylene plumbing systems and yard service lines. In November 1995, the Court granted final approval to a settlement involving an initial commitment by Defendants of \$950 million to provide compensation for past and future expenses incurred as a result of pipe leaks, and to provide replacement pipes to eligible claimants. The settlement claims program continues well past 2010, under the continuing supervision of the trial court.
7. ***Naef v. Masonite***, No. CV-94-4033 (Mobile County Circuit Ct., Ala.). Lief Cabraser Heimann & Bernstein served as Class Counsel on behalf of a nationwide Class of an estimated 4 million homeowners with allegedly defective hardboard siding manufactured and sold by Masonite Corporation, a subsidiary of International Paper, on their homes. The Class was certified in November 1995, and the Alabama Supreme Court twice denied extraordinary writs seeking to decertify the Class, including in *Ex Parte Masonite*, 681 So. 2d 1068 (Ala. 1996). A month-long jury trial in 1996 established the factual predicate that Masonite hardboard siding was defective under the laws of most states. The case settled on the eve of a second Class-wide trial, and in January 1998, the Court approved a Class Settlement. Under the Settlement, Class members with failing Masonite hardboard siding installed and incorporated in their property between January 1, 1980 and January 15, 1998 can make claims over a multi-year claims program and have their homes evaluated by independent inspectors. Class members with qualifying damage to their siding recover damages associated with the siding. To date, the Settlement has paid out over \$550 million to homeowners across the country, and claims continue to be made and paid.
8. ***In re Louisiana-Pacific Inner-Seal Siding Litigation***, No. C-95-879-JO (D. Or.). Lief Cabraser served as Co-Lead Class Counsel on behalf of a nationwide class of homeowners with defective exterior siding on their

homes. Plaintiffs asserted claims for breach of warranty, fraud, negligence, and violation of consumer protection statutes. On April 26, 1996, U.S. District Judge Robert E. Jones entered an Order, Final Judgment and Decree granting final approval to a nationwide settlement requiring Louisiana-Pacific to provide funding up to \$475 million to pay for inspection of homes and repair and replacement of failing siding over the next seven years. The claims period is not closed, and class members have available to them any remaining Louisiana-Pacific warrant on their siding.

9. ***In re Intel Pentium Processor Litigation***, No. CV 745729 (Santa Clara Superior Ct., Cal.). Lieff Cabraser served as one of two court appointed Co-Lead Class Counsel, and negotiated a settlement, approved by the Court in June 1995, involving both injunctive relief and damages having an economic value of approximately \$1 billion. The chip replacement program has been implemented, and is ongoing.
10. ***Gross v. Mobil***, No. C 95-1237-SI (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Class Counsel in this nationwide action involving an estimated 2,500 aircraft engine owners whose engines were affected by Mobil AV-1, an aircraft engine oil. Plaintiffs alleged claims for strict liability, negligence, misrepresentation, violation of consumer protection statutes, and for injunctive relief. Plaintiffs obtained a preliminary injunction requiring Defendant Mobil Corporation to provide notice to all potential class members of the risks associated with past use of Defendants' aircraft engine oil. In addition, Plaintiffs negotiated a proposed Settlement, granted final approval by the Court in November 1995, valued at over \$12.5 million, under which all Class Members were eligible to participate in an engine inspection and repair program, and receive compensation for past repairs and for the loss of use of their aircraft associated with damage caused by Mobil AV-1.
11. ***In re General Motors Corp. Pick-Up Fuel Tank Products Liability Litigation***, MDL No. 961. Lieff Cabraser served as court-appointed Co-Lead Counsel representing a class of 4.7 million plaintiffs who owned 1973-1987 GM C/K pickup trucks with allegedly defective gas tanks. The Consolidated Complaint asserted claims under the Lanham Act, the Magnuson-Moss Act, state consumer protection statutes, and common law. In April 1995, the Third Circuit vacated the District Court settlement approval order and remanded the matter to the District Court for further proceedings. In July 1996, a new nationwide class action was certified for purposes of an enhanced settlement program valued at a minimum of \$600 million, plus funding for independent fuel system safety research projects. Final approval was granted in November 1996.
12. ***Hanlon v. Chrysler Corp.***, No. C-95-2010-CAL (N.D. Cal.). In 1995, the district court approved a \$200+ million settlement enforcing Chrysler's

comprehensive minivan rear latch replacement program, and to correct alleged safety problems with Chrysler's pre-1995 designs. As part of the settlement, Chrysler agreed to replace the rear latches with redesigned latches. The settlement was affirmed on appeal by the Ninth Circuit in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (1998).

F. Antitrust/Trade Regulation/Intellectual Property

1. ***Natural Gas Antitrust Cases***, J.C.C.P Nos. 4221, 4224, 4226 & 4228 (Cal. Supr. Ct.). In a landmark victory for California consumers and businesses, the Court approved a \$1.5 billion settlement in December 2003 of class action litigation against El Paso Natural Gas Co. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel for residential and business consumers of natural gas. Plaintiffs charged that during the California energy crisis in 2000-2001, El Paso manipulated the market for natural gas pipeline transmission capacity into California to enable its energy trading subsidiary to acquire the capacity, and then used the capacity to drive up natural gas prices on the spot market.
1. ***Microsoft Private Antitrust Litigation***. Lieff Cabraser is prosecuting cases on behalf of businesses and consumers against Microsoft Corporation in various state courts across the country, including Florida, New York, North Carolina, and Tennessee. Plaintiffs allege that Microsoft engaged in anticompetitive conduct and/or violated state deceptive and unfair business practices statutes to harm competition and monopolize the markets for Intel-compatible, personal computer operating system software, as well as word processing and spreadsheet software. In November 2003, in the Florida Microsoft litigation, the Court granted final approval to a \$202 million settlement, one of the largest antitrust settlements in Florida history. In June 2004, the Court in the Tennessee action granted final approval to a \$64 million settlement. In August 2004, the Court in the North Carolina action granted final approval to a settlement valued at over \$89 million.
2. ***In re Western States Wholesale Natural Gas Antitrust Litigation***, MDL No. 1566 (D. Nev.). Lieff Cabraser represents natural gas consumers who allege that Reliant Energy and other natural gas trading companies inflated the price of natural gas at the California border by engaging in "wash trades" and reporting false prices to the trade press which calculate daily price indices.
3. ***In re Buspirone Antitrust Litigation***, MDL No. 1413. In November 2003, Lieff Cabraser obtained a \$90 million cash settlement for individual consumers, consumer organizations, and third party payors that purchased BuSpar, a drug prescribed to alleviate symptoms of anxiety. Plaintiffs alleged that Bristol-Myers Squibb Co. (BMS), Danbury Pharmacal, Inc., Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. entered into an

unlawful agreement in restraint of trade under which BMS paid a potential generic manufacturer of BuSpar to drop its challenge to BMS' patent and refrain from entering the market. Lieff Cabraser served Plaintiffs' Co-Lead Counsel.

4. ***Ciprofloxacin Federal and State Antitrust Litigation***, In MDL No. 1383 (E.D.N.Y.), Lieff Cabraser serves as Co-Lead Counsel for consumers who purchased Cipro, the top selling antibiotic in the world. Plaintiffs allege that Bayer Corporation, Barr Laboratories, two other generic drug companies, and other defendants entered into an unlawful agreement to keep a generic version of the drug off the market that allowed Bayer to sell Cipro at inflated prices. Lieff Cabraser also represents purchasers of Cipro in a class action lawsuit filed in California state court. In July 2004, the California Court of Appeal upheld in main part the trial court's grant of class certification of an antitrust and unfair competition action against defendants.
5. ***In Re Lupron Marketing and Sales Practices Litigation***, MDL No. 1430. Lieff Cabraser serves as Co-Lead Counsel for patients prescribed Lupron, a prescription drug used to treat prostate cancer. Plaintiffs charge that the manufacturers of Lupron, Abbott Laboratories, Takeda Chemical Industries and TAP Pharmaceuticals, conspired to overstate the drug's average wholesale price ("AWP"). The AWP is the rate upon which Medicare bases the reimbursement and co-payment. As a result, the Medicare program and Medicare patients paid artificially inflated prices for Lupron. Plaintiffs also allege that Defendants provided physicians with free samples of Lupron, while instructing physicians to bill the Medicare program and patients for the free samples. In November 2003 in the federal court lawsuit, the court denied the majority of defendants' arguments raised in support of their motion to dismiss the lawsuit. the court Lieff Cabraser also serves as counsel in an action against TAP and other companies in Illinois State Court. In October 2003, the Illinois Appellate Court upheld an order certifying a nationwide class of consumers against TAP based on claims for unjust enrichment and violation of the Illinois Consumer Fraud Act. The private litigation seeks to obtain a recovery for Medicare and non-Medicare patients that paid inflated, out of pocket costs for Lupron.
6. ***California Vitamin Cases***, JCCP No. 4076 (San Francisco Superior Ct.). Lieff Cabraser served as Co-Liaison Counsel and Co-Chairman of the Plaintiffs' Executive Committee on behalf of a class of California indirect vitamin purchasers in every level of the chain of distribution. In January 2002, the Court granted final approval of a \$96 million settlement with certain vitamin manufacturers in a class action alleging that these and other manufacturers engaged in price fixing of particular vitamins.

7. ***Pharmaceutical Cases I, II, and III***, JCCP Nos. 2969, 2971, and 2972 (San Francisco County Ct.). Lieff Cabraser served as Co-Lead and Co-Liaison Counsel representing a certified class of indirect purchasers (consumers) on claims against the major pharmaceutical manufacturers for violations of the Cartwright Act and the Unfair Competition Act by allegedly fixing discriminatory prices on prescription drugs to retail pharmacists in comparison with the prices charged to certain favored purchasers, including HMOs and mail order houses. In April 1999, the Court approved a settlement providing \$148 million in free, brand-name prescription drugs to health agencies that serve California's poor and uninsured. In October 2001, the Court approved a settlement with the remaining defendants in the case, which provided an additional \$23 million in free, brand-name prescription drugs to these agencies.
8. ***In re Nifedipine Antitrust Litigation***, MDL No. 1515 (D.D.C.). Lieff Cabraser serves as Co-Lead Counsel for class of consumers who purchased the drug Adalat. Plaintiffs allege Biovail and Elan, the generic manufacturers of Adalat entered into an agreement that substantially reduced competition in violation of the Sherman Act.
9. ***In re Electrical Carbon Products Antitrust Litigation***, MDL No. 1514 (D.N.J.). Lieff Cabraser represents the City and County of San Francisco and a class of direct purchasers of carbon brushes and carbon collectors on claims that producers fixed the price of carbon brushes and carbon collectors in violation of the Sherman Act.
10. ***Electrical Carbon Products Cases***, J.C.C.P. No. 4294 (San Francisco Superior Court). Lieff Cabraser represents the City and County of San Francisco and a class of indirect purchasers of carbon brushes and carbon collectors on claims that producers fixed the price of carbon brushes and carbon collectors in violation of the Cartwright Act and the Unfair Competition Law. Lieff Cabraser also represents the People of the State of California in claims arising from the Unfair Competition Law, including claims for civil
11. ***In re Compact Disc Antitrust Litigation***, MDL No. 1216 (C.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel for the direct purchasers of compact discs on claims that the producers fixed the price of CDs in violation of the federal antitrust laws.
12. ***In re Carpet Antitrust Litigation***, MDL No. 1075 (N.D. Ga.). Lieff Cabraser served as Class Counsel and a member of the trial team for a class of direct purchasers of twenty-ounce level loop polypropylene carpets. Plaintiffs, distributors of polypropylene carpet, alleged that Defendants, seven manufacturers of polypropylene carpet, conspired to fix the prices of polypropylene carpet by agreeing to eliminate discounts and

charge inflated prices on the carpet. In 2001, the Court approved a \$50 million settlement of the case.

13. ***In re Lasik/PRK Antitrust Litigation***, No. CV 772894 (Santa Clara Superior Ct., Cal.). Lief Cabraser served as a member of Plaintiffs' Executive Committee in class actions brought on behalf of persons who underwent Lasik/PRK eye surgery. Plaintiffs alleged that defendants, the manufacturers of the laser system used for the laser vision correction surgery, manipulated fees charged to ophthalmologists and others who performed the surgery, and that the overcharges were passed onto consumers who paid for laser vision correction surgery. In December 2001, the Court approved a \$12.5 million settlement of the litigation.
14. ***In re Toys 'R' Us Antitrust Litigation***, MDL No. 1211 (E.D.N.Y.). Lief Cabraser served as Co-Lead Counsel representing a class of direct purchasers (consumers) who alleged that Toys 'R' Us conspired with the major toy manufacturers to boycott certain discount retailers in order to restrict competition and inflate toy prices. In February 2000, the Court approved a settlement of cash and product of over \$56 million.
15. ***In re Travel Agency Commission Antitrust Litigation***, MDL No. 1058 (D. Minn.). Lief Cabraser served as Co-Lead Counsel for a certified class of U.S. travel agents on claims against the major U.S. air carriers, who allegedly violated the federal antitrust laws by fixing the commissions paid to travel agents. In 1997, the Court approved an \$82 million settlement.
16. ***Sanitary Paper Cases I & II***, JCCP Nos. 4019 and 4027 (San Francisco Superior Ct.). Lief Cabraser served as Liaison Counsel on behalf of indirect purchasers of commercial paper products. Plaintiffs alleged that from 1993 to 2000 Defendants fixed the price of commercial tissue, toilet paper, toilet seat covers, and other commercial paper products in violation of the Cartwright Act and Unfair Competition Act. In February 2001, the Court approved a \$3 million settlement of the case.
17. ***Schwartz v. National Football League***, No. 97-CV-5184 (E.D. Pa.). Lief Cabraser served as counsel for individuals who purchased the "NFL Sunday Ticket" package of private satellite transmissions in litigation against the National Football League for allegedly violating the Sherman Act by limiting the distribution of television broadcasts of NFL games by satellite transmission to one package. In August 2001, the Court approved of a class action settlement that included: (1) the requirement that defendants provide an additional weekly satellite television package known as Single Sunday Ticket for the 2001 NFL football season, under certain circumstances, for one more season, and at the defendants' discretion thereafter; (2) a \$7.5 million settlement fund to be distributed to class members; (3) merchandise coupons entitling class members to

discounts at the NFL's Internet store which the parties value at approximately \$3 million; and (4) \$2.3 million to pay for administering the settlement fund and notifying class members.

18. ***In re Commercial Explosives Antitrust Litigation***, MDL No. 1093 (D. Utah). Lieff Cabraser served as Class Counsel on behalf of direct purchasers of explosives used in mining operations. In 1998, the Court approved a \$77 million settlement of the litigation.
19. ***In re California Indirect-Purchaser X-Ray Antitrust Litigation***, No. 960886 (San Francisco Superior Ct.). Lieff Cabraser served as Class Counsel on behalf of indirect purchasers (consumers) of medical x-ray film who alleged violations of the Cartwright and Unfair Competition Acts. In 1998, the Court approved a \$3.75 million settlement of the litigation.
20. ***In re Brand Name Prescription Drugs***, MDL No. 997 (N.D. Ill.). Lieff Cabraser served as Class Counsel for a class of tens of thousands of retail pharmacies against the leading pharmaceutical manufacturers and wholesalers of brand name prescription drugs for alleged price-fixing from 1989 to 1995 in violation of the federal antitrust laws. Class Plaintiffs charged that defendants engaged in price discrimination against retail pharmacies by denying them discounts provided to hospitals, health maintenance organizations, and nursing homes. In 1996 and 1998, the Court approved settlements with certain manufacturers totaling \$723 million.
21. ***In re K-Dur Prescription Drug Antitrust Litigation***, MDL No. 1419. Lieff Cabraser serves as Co-Lead Counsel on behalf of indirect purchasers of K-Dur, a potassium supplement often prescribed in conjunction with high blood pressure medication. K-Dur is the fourth most frequently prescribed drug to seniors. The complaint alleges the defendants illegally agreed not to compete in the sale of K-Dur which prevented any generic version of K-Dur from coming onto the market.
22. ***In re Flat Glass Antitrust Litigation***, MDL 1200 (W.D. Pa.). Lieff Cabraser serves as Class Counsel on behalf of a class of direct purchasers of flat glass.
23. ***In re Linerboard Antitrust Litigation***, MDL 1261 (E.D. Pa.). Lieff Cabraser serves as Class Counsel on behalf of a class of direct purchasers of liner board.
24. ***In re High Pressure Laminates Antitrust Litigation***, MDL No. 1368 (S.D.N.Y.). Lieff Cabraser serves as Trial Counsel on behalf of a class of direct purchasers of high pressure laminates.

25. ***Bromine Cases***, J.C.C.P. No. 4108. Lieff Cabraser serves a Lead Counsel on behalf of indirect purchasers of bromine, a chemical used as a fire-retardant. Lieff Cabraser was chosen by the court as the most qualified candidate of all firms that submitted sealed bids.
26. ***Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.***, No. CV-99-07796 (C.D. Cal.). In August, 1999, Lieff Cabraser and its co-counsel filed a class action lawsuit on behalf of direct purchasers of carbon fiber. The suit alleges that the major United States manufacturers and distributors of carbon fiber conspired to raise, fix, and maintain artificially high prices of carbon fiber in violation of the federal Sherman Antitrust Act.
27. ***Methionine Cases I and II***, JCCP Nos. 4090 and 4096 (Stanislaus County Superior Ct., Cal.). Lieff Cabraser serves as Co-Lead Counsel on behalf of indirect purchasers of methionine, an amino acid used primarily as a poultry and swine feed additive to enhance growth and production. Plaintiffs allege that the companies illegally conspired to raise methionine prices to super-competitive levels.
28. ***Pier 23 Restaurant v. PG&E Energy Trading***, No. 318343 (San Francisco Superior Ct). Lieff Cabraser and its Co-Counsel were retained by businesses to prosecute claims on behalf of indirect purchasers of wholesale electricity sold in California. The complaint alleges that the wholesale providers of electricity conspired to sell electricity at artificially-inflated prices. Lieff Cabraser recently was successful in obtaining remand of its cases to California state court.
29. ***Sample v. Monsanto***, No. 4:01CV65RSW (E.D. Mo.). Lieff Cabraser serves as Co-Lead Counsel in a class action lawsuit against Monsanto Co. alleging that the company participated in an international conspiracy to monopolize the worldwide biogenetically-altered seeds trade, and to push genetically altered seeds to market without adequate environmental and health testing. The suit alleges that Monsanto, using its biotechnology patents, conspired with other biotech companies to fix prices and force farmers to use genetically altered seeds.
30. ***Tortola Restaurants, L.P. v. Minnesota Mining and Manufacturing***, No. 314281 (San Francisco Superior Ct). Lieff Cabraser serves as Co-Lead Counsel on behalf of indirect purchasers of Scotch-brand invisible and transparent tape. Plaintiffs allege that defendant 3M conspired with certain retailers to monopolize the sale of Scotch-brand tape in California.

G. Environmental and Toxic Exposures

1. ***In re Unocal Refinery Litigation***, No. C 94-04141 (Contra Costa Superior Ct., Cal.). Lieff Cabraser served as one of two Co-Lead Class Counsel

and on the Plaintiffs' Steering Committee in this action against Union Oil Company of California ("Unocal") arising from a series of toxic releases from Unocal's San Francisco refinery in Rodeo, California. The action was settled in 1997 on behalf of approximately 10,000 individuals for \$80 million.

2. ***Kentucky Coal Sludge Litigation.*** On October 11, 2000, near Inez, Kentucky, a coal waste storage facility ruptured, spilling 300 million gallons of coal sludge (a wet mixture produced by the treatment and cleaning of coal) into waterways in the region and contaminating hundreds of properties. This was one of the worst environmental disasters in the Southeastern United States. With co-counsel, Lieff Cabraser represented over 400 clients in property damage claims, including claims for diminution in the value of their homes and properties. In April 2003, the parties reached a confidential settlement agreement on favorable terms to the plaintiffs.
3. ***Toms River Childhood Cancer Incidents.*** With co-counsel, Lieff Cabraser represented 69 families in Toms River, New Jersey, each with a child having cancer, that claimed the cancers were caused by environmental contamination in the Toms River area. Commencing in 1998, the parties – the 69 families, Ciba Specialty Chemicals, Union Carbide and United Water Resources, Inc., a water distributor in the area – participated in an unique alternative dispute resolution process, which lead to a fair and efficient consideration of the factual and scientific issues in the matter. In December 2001, under the supervision of a mediator, a confidential settlement favorable to the families was reached.
4. ***In re Exxon Valdez Oil Spill Litigation*** (District of Alaska/Alaska Sup. Ct.). The Exxon Valdez ran aground in March of 1989, spilling 11 million gallons of oil into Prince William Sound. Lieff Cabraser served as one of the court-appointed Plaintiffs' Class Counsel. The class consisted of 32,000 fisherman, Alaska natives, landowners and others whose livelihoods were gravely affected by the disaster. In addition, Lieff served on the Class Trial Team in 1994. A class action jury trial was held in federal court in 1994. That jury awarded \$5 billion in punitive damages to the plaintiff class. The punitive damages award has been on repeated appeal by the Exxon Corporation ever since. In 2001, the Ninth Circuit Court of Appeals ruled that the original \$5 billion punitive damages verdict was excessive. In 2002, U.S. District Court Judge H. Russell Holland reinstated the award at \$4 billion. Judge Holland stated that, "Exxon officials knew that carrying huge volumes of crude oil through Prince William sound was a dangerous business, yet they knowingly permitted a relapsed alcoholic to direct the operation of the Exxon Valdez through Prince William Sound." In 2003, the Ninth Circuit again directed Judge Holland to reconsider the punitive damages award under United States Supreme Court punitive damages guidelines. In January 2004,

Judge Holland issued his order finding that recent Supreme Court decisions did not change the court's earlier analysis. The court specifically found that a punitive damages award of \$4.5 billion plus \$2.25 billion in interest was in accordance with Supreme Court authority. Exxon has again filed an appeal of the punitive damages award. To date, the plaintiffs and victims of the Exxon Valdez disaster have waited 15 years for the resolution of their case.

5. ***West v. G&H Seed Co., Aventis CropSciences USA, LLP, et al.***, No. 99-C-4984-A (La. State Ct). With co-counsel, Lieff Cabraser represented a class of 1,500 Louisiana crawfish farmers. The farmers sued Bayer CropScience LP claiming the pesticide ICON killed their crawfish and caused economic ruin. In May 2004, the Court granted final approval to a \$45 million settlement. The settlement was reached after the parties had presented nearly a month's worth of evidence at trial, and were on the verge of making closing arguments to the jury.
6. ***Craft v. Vanderbilt University***, Civ. No. 3-94-0090 (M.D. Tenn.). Lieff Cabraser served as Lead Counsel of a certified class of over 800 pregnant women and their children who were intentionally fed radioactive iron without their consent while receiving prenatal care at defendant Vanderbilt's hospital in the 1940's. The facts surrounding the administration of radioactive iron to the pregnant women and their children *in utero* came to light as a result of Energy Secretary Hazel O'Leary's 1993 disclosures of government sponsored human radiation experimentation during the Cold War. Defendants' attempts to dismiss the claims and decertify the class were unsuccessful. The case was settled in July 1998 for a total of \$10.3 million and a formal apology from Vanderbilt.
7. ***In re GCC Richmond Works Cases***, JCCP No. 2906. Lieff Cabraser served as Co-Liaison Counsel and Lead Class Counsel in coordinated litigation arising out of the release of a massive toxic sulfuric acid cloud which injured an estimated 50,000 residents of Richmond, California on July 26, 1993. The Coordination Trial Court granted final approval to a \$180 million class settlement for exposed residents.
8. ***In re Sacramento River Spill Cases I and II***, JCCP Nos. 2617 and 2620 (San Francisco County Superior Ct.). Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel, Lead Class Counsel, and chaired the Plaintiffs' Litigation Committee in an action arising out of a July 14, 1991 Southern Pacific train derailment and toxic spill near Dunsmuir, California. Settlement proceeds of approximately \$16 million were distributed pursuant to Court approval of a plan of allocation to four certified plaintiff classes: personal injury, business loss, property damage/diminution, and evacuation.

H. Aviation Law

1. ***Air Algerie Boeing 737 Accident.*** Working with French co-counsel, Lieff Cabraser is assisting in the representation of families of passengers who died on March 6, 2003 in a crash of a Boeing 737 airplane operated by Air Algerie. The aircraft departed the southern Algerian city of Tamanrasset and crashed soon after takeoff, with one of the engines reportedly on fire.
2. ***Aeroflot-Russian International Airlines Airbus Disaster.*** Lieff Cabraser represented the families of passengers who were on Aeroflot-Russian International Airlines Flight SU593 that crashed in Siberia on March 23, 1994. The plane was in route from Moscow to Hong Kong. All passengers on board died. According to a transcript of the cockpit voice record, the pilot's two children entered the cockpit during the flight and took turns flying the plane. The autopilot apparently was inadvertently turned off during this time, and the pilot was unable to remove his son from the captain's seat in time to avert the plane's fatal dive. Lieff Cabraser, alongside French co-counsel, filed suit in France, where Airbus, the plane's manufacturer, was headquartered. All the families Lieff Cabraser represented obtained substantial economic recoveries in settlement of the action.
3. ***United Airlines Boeing 747 Disaster***, MDL No. 807 (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Liaison Counsel on behalf of the passengers and families of passengers injured and killed in the United Airlines Boeing 747 cargo door catastrophe near Honolulu, Hawaii on February 24, 1989. Lieff Cabraser organized the litigation of the case, which included claims brought against United Airlines and Boeing Corporation. Among our work, we developed a statistical system for settling the passengers' and families' damages claims with certain defendants, and coordinated the prosecution of successful individual damages trial for wrongful death against the non-settling defendants.
4. ***German Air Force Lockheed F-104 Star Fighter Litigation:*** In the late 1960s and extending into the early 1970s, the United States sold F-104 Star Fighter jets to the German Air Force that were manufactured by Lockheed Aircraft Corporation in California. The F-104 Star Fighter was designed for high-altitude fighter combat, but used in Germany and other European countries for low-level bombing and attack missions. Consequently, the aircraft had an extremely high crash rate, with over 300 pilots killed. Commencing in 1971, the law firm of Belli Ashe Ellison Choulos & Lieff filed hundreds of lawsuits for wrongful death and other claims on behalf of the widows and surviving children of the pilots. Robert Lieff continued to prosecute the cases after the formation of our firm. In 1974, the lawsuits were settled with Lockheed on terms favorable to the plaintiffs. This litigation helped establish the principle that citizens of foreign countries could assert claims in United States courts, and obtain

substantial recoveries, against an American manufacturer based upon airplane accidents or crashes occurring outside of the United States.

I. International and Human Rights

1. ***Holocaust Cases.*** Lief Cabraser is one of the leading firms that prosecuted claims by Holocaust survivors and the heirs of Holocaust survivors and victims against banks and private manufacturers and other corporations who enslaved and/or looted the assets of Jews and other minority groups persecuted by the Nazi Regime during the Second World War era. We serve as Settlement Class Counsel in the case against the Swiss banks that the Court approved a U.S. \$1.25 billion settlement in July 2000. Lief Cabraser donated its attorneys' fees in the Swiss Banks case, in the amount of \$1.5 million, to endow a Human Rights clinical chair at Columbia University Law School. We were also active in slave labor and property litigation against German and Austrian defendants, and Nazi-era banking litigation against French banks. In connection therewith, Lief Cabraser participated in multi-national negotiations that led to Executive Agreements establishing an additional approximately U.S. \$5 billion in funds for survivors and victims of Nazi persecution. Our website provides links to the websites of settlement and claims administrators in these cases.

Commenting on the work of Lief Cabraser and co-counsel in the litigation against private German corporations, entitled *In re Holocaust Era German Industry, Bank & Insurance Litigation* (MDL No. 1337), U.S. District Court Judge William G. Bassler stated on November 13, 2002:

Up until this litigation, as far as I can tell, perhaps with some minor exceptions, the claims of slave and forced labor fell on deaf ears. You can say what you to say about class actions and about attorneys, but the fact of the matter is, there was no attention to this very, very large group of people by Germany, or by German industry until these cases were filed. . . . What has been accomplished here with the efforts of the plaintiffs' attorneys and defense counsel is quite incredible. . . I want to thank counsel for the assistance in bringing us to where we are today. Cases don't get settled just by litigants. It can only be settled by competent, patient attorneys.

2. ***Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al.***, No. 01-0892-CRB (N.D. Cal.). In April 2001, Lief Cabraser filed a class action on behalf of contract workers (known as "Braceros") who came from Mexico to the United States pursuant to bilateral agreements from

1942 through 1949 to aid American farms and industries hurt by employee shortages. The agreements provided that ten percent of the Braceros' wages would be withheld from them and transferred via United States and Mexican banks to savings accounts for each Bracero. Plaintiffs claim they were never reimbursed for the portion of their wages placed in the forced savings accounts. On August 28, 2002, U.S. District Court Judge Charles Breyer dismissed the claims against the Mexican government and bank defendants, while granting plaintiffs leave to file an amended complaint against the U.S. government. Judge Breyer nevertheless wrote: "I do not doubt that many Braceros never received savings fund withholdings to which they were entitled." Plaintiffs have filed motions to amend the complaint and for reconsideration in light of intervening Ninth Circuit authority. These motions will be set for hearing on June 27, 2003.

3. ***Jae Wong Jeong v. Onoda Cement Co., Ltd.***, No. BC217805 (Los Angeles Superior Ct.). Lieff Cabraser, along with co-counsel, is prosecuting the claims of Jae Won Jeong, one of thousands of Korean civilians allegedly forced by Japanese companies to perform forced/slave labor during World War II. On January 15, 2003, the California Court of Appeal upheld the right of Californians to sue corporations that subjected them to forced or slave labor during World War II in California state court. The court rejected the position of the U.S. State Department that the case should be dismissed because it interfered with the President's exclusive power over foreign affairs. Subsequently, the California Supreme Court granted review, and asked the parties to brief the issues. No hearing date has been scheduled yet.

FIRM BIOGRAPHY:

PARTNERS

ROBERT L. LIEFF, born Bridgeport, Connecticut, September 29, 1936. Admitted to practice in California, 1966; U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit, 1969; U.S. Supreme Court, 1969; U.S. Court of Appeals, Seventh Circuit, 1972; U.S. Tax Court, 1974; U.S. District Court, District of Hawaii, 1986. *Education*: Columbia University (M.B.A., 1962; J.D., 1962); Cornell University; University of Bridgeport (B.A., 1958). Member, Board of Visitors, Columbia Law School, 1992-present. *Member*: Bar Association of San Francisco; State Bar of California (Member: Committee on Rules of Court, 1971-74; Special Committee on Multiple Litigation and Class Actions, 1972-73); American Bar Association (Section on Corporation, Banking and Business Law); Lawyers Club of San Francisco; San Francisco Trial Lawyers Association; California Trial Lawyers Association; Consumer Attorneys of California; Association of Trial Lawyers of America.

ELIZABETH J. CABRASER, born Oakland, California, June 23, 1952. Admitted to practice in California, 1978; California and U.S. Supreme Court; U.S. District Court, Northern,

Eastern, Central and Southern Districts of California; U.S. Court of Appeals, Second, Third, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits and U.S. Tax Court; U.S. District Court, District of Hawaii; U.S. District Court, District of Arizona. *Education*: Boalt Hall School of Law, University of California (J.D., 1978); University of California at Berkeley (A.B., 1975). *Awards and Honors*: University of California, Berkeley School of Law Citation Award, 2003; "Top 100 Lawyers" and "Top 30 Women Litigators," *California Daily Journal*, 2002; *Distinguished Jurisprudence Award*, Anti-Defamation League, 2002; "Top Ten Women Litigators," *National Law Journal*, 2001; "One Hundred Most Influential Lawyers in America," *National Law Journal*, 2000 and 1997; "California Law Business Top 100 Lawyers," *California Daily Journal*, 1998-2000; *Matthew O. Tobriner Public Service Award*, Legal Aid Society, 2000; *Presidential Award of Merit*, Consumer Attorneys of California, 1998; "Fifty Most Influential Women Lawyers," *National Law Journal*, 1998; "Lawyers of the Year," *California Lawyer*, 1998; *Public Justice Achievement Award*, Trial Lawyers for Public Justice, 1997. *Publications*: Editor in Chief, *California Class Actions Practice and Procedures* (2003); Co-author with Fabrice N. Vincent, "Ethics and Admissibility: Failure to Disclose Conflicts of Interest in and/or Funding of Scientific Studies and/or Data May Warrant Evidentiary Exclusions," *Mealey's December Emerging Drugs Reporter* (December 2002); Co-author with Fabrice N. Vincent, "The Shareholder Strikes Back: Varied Approaches to Civil Litigation Claims Are Available to Help Make Shareholders Whole," *Mealey's Emerging Securities Litigation Reporter* (September 2002); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," *Survey of State Class Action Law* (ABA 2000), updated and re-published in *5 Newberg on Class Actions* (2001-02); Coordinating Editor and Co-Author of California section of the ABA State Class Action Survey (2001-02); "Unfinished Business: Reaching the Due Process Limits of Punitive Damages in Tobacco Litigation Through Unitary Classwide Adjudication," *36 Wake Forest Law Review* 979 (Winter 2001); "Symposium: Enforcing the Social Contract through Representative Litigation," *33 Connecticut Law Review* 1239 (Summer 2001); "Equity for the Victims, Equity for the Transgressor: The Classwide Treatment of Punitive Damages Claims," *74 Tulane Law Review* 2005 (June 2000); "Class Action Trends and Developments After *Amchem* and *Ortiz*," in *Civil Practice and Litigation Techniques in Federal and State Courts* (ALI-ABA Course of Study 1999); Contributor/Editor, *Moore's Federal Practice* (1999); "Life After *Amchem*: The Class Struggle Continues," *31 Loyola Law Review* 373 (1998); "Recent Developments in Nationwide Products Liability Litigation: The Phenomenon of Non-Injury Products Cases, the Impact of *Amchem* and the Trend Toward State Court Adjudication," *Products Liability* (ABA February 1998); Contributor/Editor, *California Causes of Action* (1998); "Beyond Bifurcation: Multi-Phase Structure in Mass Tort Class Actions," *Class Actions & Derivative Suits* (Spring 1997); "The Road Not Taken: Thoughts on the Fifth Circuit's Decertification of the *Castano* Class," SB24 ALI-ABA 433 (1996); "Getting the Word Out: Pre-Certification Notice to Class Members Under Rule 23(d)(2)," *Class Actions & Derivative Suits Newsletter* (October 1995); "Mass Tort Class Action Settlements," *24 CTLA Forum* 11 (Jan./Feb. 1994); "Do You Know the Way from San Jose? The Evolution of Environmental and Toxic Nuisance Class Actions," *Class Actions & Derivative Suits* (Spring 1994); "An Oracle of Change? Realizing the Potential of Emerging Fee Award Methodologies for Enhancing The Role and Control of Investors in Derivative and Class Action Suits," *Principles of Corporate Governance* (ALI October 1994); "How To Streamline Complex Litigation: Tailor a Case Management Order to Your Controversy," *21 The Brief* 12 (ABA/TIPS Summer 1992); "The Applicability of the Fraud-On-The-Market Theory to

'Undeveloped' Markets: When Fraud Creates the Market, 12 *Class Action Reports* 402 (1989); "The Applicability of the Fraud-On-The-Market Theory to 'Undeveloped' Markets: When Fraud Creates the Market," 12 *Class Action Reports* 402 (1989); "Mandatory Certification of Settlement Classes," 10 *Class Action Reports* 151 (1987). *Member:* American Bar Association (Co-Chair, Committee on Mass Torts; Committee on Class Actions and Derivative Suits; Tort and Insurance Practice Section (TIPS); Past Vice-Chair, Rules & Procedures Committee, Contributor, Civil Procedure & Evidence News Letter; Business Law Section, Corporate & Litigation Group); Federal Bar Association, Northern District of California Chapter; Bar Association of San Francisco (Past President, Securities Litigation Section; Board of Directors, 1997-1998; Past Member, Judiciary Committee); American Law Institute Council; Advisor, American Law Institute International Jurisdiction and Judgments Project; California Constitution Revision Commission, 1993-1996; National Center for State Courts Mass Tort Conference Planning Committee; Northern District of California Civil Justice Reform Act (CJRA) Advisory Committee, and Advisory Committee on Professional Conduct; Lawyer-Delegate, Ninth Circuit Judicial Conference, 1992-1995; Bar Association of San Francisco (Past President, Securities Litigation Section; Board of Directors); American Bar Association (Litigation Section and Committee on Class Actions and Derivative Suits; Co-Chair, Committee on Mass Torts); Consumer Attorneys of California (CAOC); Trial Lawyers for Public Justice (TLPJ); Bar Association of the Fifth Federal Circuit; Association of Trial Lawyers of America (ATLA) (California State Liaison, Women Trial Lawyers Caucus); California Women Lawyers; Lawyers Club of San Francisco; Queens Bench; Association of Business Trial Lawyers; Bay Area Lawyers for Individual Freedom; ABA National Institute on Class Actions (Organizer/ Participant, 1997-2000).

RICHARD M. HEIMANN, born Miami, Florida, August 23, 1948. Admitted to practice in Pennsylvania, 1972; District of Columbia, 1974; California, U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit, 1975; U.S. Supreme Court, 1980; U.S. Court of Appeals, Second Circuit, 1980; U.S. District Court, District of Hawaii, 1986. *Education:* Georgetown University (J.D., 1972); *Georgetown Law Journal*, 1971-72; University of Florida (B.S.B.A., with honors, 1969). *Employment:* Mr. Heimann served as Deputy District Attorney and Acting Assistant District Attorney for Tulare County, California, and as an Assistant Public Defender in Philadelphia, Pennsylvania, 1972-74. As a private civil law attorney, Mr. Heimann has tried over 30 civil jury cases, including complex cases such as the successful *FPI/Agretech* and *Edsaco* securities class action trials. In April 2002 in the *Edsaco* case, a federal jury in San Francisco, California returned a \$170.7 million verdict against Edsaco Ltd., which included \$165 million in punitive damages. Following the *Edsaco* trial, the parties reached a settlement of the action on favorable monetary terms to the class, which included Edsaco's relinquishment of its right to appeal and the plaintiff's agreement to vacate the jury verdict. *Member:* State Bar of California; Bar Association of San Francisco.

WILLIAM BERNSTEIN, born York, Pennsylvania, July 5, 1950. Admitted to practice in California, 1975; U.S. Court of Appeals, Ninth Circuit, 1975; New York and U.S. Supreme Court, 1985; U.S. District Court, Central and Eastern Districts of California, 1991; U.S. District Court, Southern District of California, 1992. *Education:* University of San Francisco (J.D. 1975); *San Francisco Law Review*, 1974-75; University of Pennsylvania (B.A., general honors, 1972). *Community Service:* Judge Pro Tem for San Francisco Superior Court, 2000-present;

Marin Municipal Court, 1984; Discovery Referee for the Marin Superior Court, 1984-89; Arbitrator for the Superior Court of Marin, 1984-1990. *Publications*: Co-author with Donald C. Arbitblit, "Effective Use of Class Action Procedures in California Toxic Tort Litigation", 3 *Hastings West-Northwest Journal of Environmental Law and Policy*, No. 3 (Spring 1996). *Member*: State Bar of California; State Bar of New York; Marin County Bar Association (Admin. of Justice Committee, 1988); Bar Association of San Francisco.

JAMES M. FINBERG, born Baltimore, Maryland, September 6, 1958. Admitted to practice in California, 1984; U.S. District Court, Northern District of California, 1984; U.S. Court of Appeals, Ninth Circuit, 1987; U.S. Court of Appeals, Federal Circuit, 1987; U.S. District Court, Eastern District of California, 1987; U.S. District Court, District of Hawaii, 1988; U.S. District Court, Central District of California, 1992; U.S. District Court, Southern District of California, 1992; U.S. Court of Appeals, Tenth Circuit, 1992; U.S. Supreme Court, 1994; U.S. Court of Appeals, Eleventh Circuit, 1999; U.S. District Court, District of Colorado, 2001; U.S. Third Circuit Court of Appeals, 2001; U.S. District Court, Southern District of Texas, 2003. *Education*: University of Chicago (J.D., 1983); Executive Editor, *University of Chicago Law Review*, 1982-83; Brown University (B.A., 1980). *Employment*: Law Clerk to Justice Charles L. Levin, Michigan Supreme Court, 1983-84. *Publications*: Co-Author with Chimène I. Keitner, "New Overtime Regulations Require Heightened Vigilance," *San Francisco Attorney Magazine*, Spring 2004; "Title VII's Remedial Scheme: Employment Discrimination Class Actions at the Crossroads," *San Francisco Attorney* (August/September 2002); "Certification of Employment Discrimination Actions After The Passage of the 1991 Civil Rights Act: (b)(2) or Not (b)(2), That Is The Question," *Class Actions & Derivative Suits*, Vol. 10 (March 2000); Co-Author with Joshua P. Davis, "Allison v. Citgo Petroleum Corp. - A Noble Retreat," *Class Actions & Derivative Suits*, Vol. 9, No. 1 (Winter 1999); Co-Author with Kelly Dermody, "Discovery in Employment Discrimination Class Actions," in *Litigation and Settlement of Complex Class Actions* (Glasser Legal Works 1998); Co-Author with Melanie M. Piech, "The Impact of the Private Securities Litigation Reform Act: Unintended Consequences," *Securities Reform Act Litigation Reporter*, Vol. 6, No. 3 (Dec. 1998); Co-Author with Karen Jo Koonan, "The Importance of Anecdotal Testimony to the Jury Trial of a Title VII Class Action: Lessons from *Butler v. Home Depot*," *Class Actions & Derivative Suits*, Vol. 8, No. 3 (Summer 1998); "Northern District of California Requires Internet Posting of Pleadings And Key Briefs In Securities Actions," "*Securities Reform Act Litigation Reporter*" (1997); "Class Actions: Useful Devices That Promote Judicial Economy And Provide Access to Justice," 41 *New York Law School Law Review* 353 (1997); Co-Author (with Melvin R. Goldman), "Deposing Expert Witnesses" in *Taking Depositions* (ABA) (1989); Co-Author (with George C. Weickhardt), "New Push For Chemical Weapons," *Bulletin of the Atomic Scientist* (Nov. 1986); Comment, "The General Mining Law and The Doctrine of Pedis Possessio: The Case For Congressional Action," 49 *University of Chicago Law Review* 1027 (1982). *Member*: Bar Association of San Francisco (President-elect, 2004; Treasurer, 2003; Secretary, 2002; Board of Directors, 1998-2000; Judicial Evaluation Committee, 1994); Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Board of Directors, 1992-98; Co-Chair 1997-98; Finance Chair, 1992-95; Secretary, 1996); ACLU of Northern California (Board of Directors, 1994-95); Northern District of California Advisory Committee on Local Rules Under the Securities Litigation Reform Act, 1996-present; American Bar Association (Member, Class Actions and Derivative Suits Committee; Chair, Securities Subcommittee, 1998-2001; Chair, Plaintiff Program, Equal Employment Opportunity Committee, 2000-present); Ninth Circuit Judicial Conference (Lawyer

Representative 1998-2000; Co-Chair of Northern District of California Lawyer Representative Delegation, 1999-2000); Ninth Circuit Public Information Outreach Committee (Member, 2001-present); Standing Committee on Legal Services to the Poor of the State Bar of California (1990-94; Vice Chair, 1993-94). *Awards and Honors:* In 2003, he was selected by The Recorder legal newspaper (based on a survey of judges, arbitrators, mediators, and lawyers in the field) as the top plaintiffs' securities litigator in the San Francisco Bay Area; 2001-2002 Outstanding Subcommittee Chair for the Class Actions & Derivative Suits of ABA Section of Litigation.

JOSEPH R. SAVERI, born San Francisco, California, August 18, 1962. Admitted to practice in California, 1987; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. Court of Appeals, Seventh Circuit; U.S. Court of Appeals, Eighth Circuit; U.S. Court of Appeals, Ninth Circuit. *Education:* University of Virginia (J.D., 1987); University of California at Berkeley (B.A., 1984). *Publications:* Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003); "RICO Update," 22 *Review of Securities and Commodities Regulation*, No. 18 (Oct. 25, 1989). *Member:* Bar Association of San Francisco; State Bar of California; Italian American Bar Association; Lawyers Club of San Francisco.

DONALD C. ARBITBLIT, born Jersey City, New Jersey, May 5, 1951. Admitted to practice in Vermont, 1979; California and U.S. District Court, Northern District of California, 1986. *Education:* Boalt Hall School of Law, University of California (J.D., 1979); Order of the Coif; Tufts University (B.S., *magna cum laude*, 1974). *Publications:* "Comment on Joiner: Decision on the Daubert Test of Admissibility of Expert Testimony," 6 *Mealey's Emerging Toxic Torts*, No. 18 (December 1997); Co-author with William Bernstein, "Effective Use of Class Action Procedures in California Toxic Tort Litigation," 3 *Hastings West-Northwest Journal of Environmental Law and Policy*, No. 3 (Spring 1996); "The Plight of American Citizens Injured by Transboundary River Pollution," 8 *Ecology Law Quarterly*, No. 2 (1979). *Appointments:* Member of the Federal Court-appointed Science and Expert Witness Committees in *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation*, MDL No. 1203 (E.D. Pa.), *In re Baycol Products Litigation*, MDL No. 1431 (D. Minn.) and *Rezulin Products Liability Litigation*, MDL No. 1348 (S.D. N.Y.). *Member:* Bar Association of San Francisco; State Bar of California.

STEVEN E. FINEMAN, born Los Angeles, California, February 13, 1963. Managing Partner. Admitted to practice in California, 1989; U.S. District Court, Northern, Eastern and Central Districts of California and U.S. Court of Appeals, Ninth Circuit, 1995; U.S. Court of Appeals, Fifth Circuit, 1996; New York, U.S. District Court, Eastern and Southern Districts of New York, U.S. Court of Appeals, Second Circuit and U.S. Supreme Court, 1997; District of Columbia, 1997. *Education:* University of California, Hastings College of the Law (J.D., 1988); University of California, San Diego (B.A., 1985); Stirling University, Scotland (English Literature and Political Science, 1983-84). *Honors/Appointments:* "40 under 40", *National Law Journal*, 2002, recognized as one of the nation's most successful young litigators; Board of Directors, Trial Lawyers for Public Justice (July 2002-present); Board of Trustees, Civil Justice Foundation (January 2004-present); Board of Directors, New York State Trial Lawyers Association (July 2001-July 2004); Lexis/Nexis – Mealey's Toxic Tort Advisory Council (January 2002-present). *Publications/Presentations:* Stanford University Law School, The Stanford Center on Conflict and Negotiation, Interdisciplinary Seminar on Conflict and Dispute

Resolution, Guest Lecturer, *In Search of "Global Settlements": Resolving Class Actions and Mass Torts with Finality* (March 16, 2004, Stanford, California); Lexis/Nexis, Mealey's Publications and Conferences Group, Wall Street Forum: Mass Tort Litigation, Co-Chair of Event (July 15, 2003, New York, New York); Northstar Conferences, The Class Action Litigation Summit, Panel Member on Class Actions in the Securities Industry, and Paper, *Practical Considerations for Investors' Counsel - Getting the Case* (June 27, 2003, Washington, D.C.); The Manhattan Institute, Center for Legal Policy, Forum Commentator on Presentation by John H. Beisner, "Magnet Courts: If You Build Them, Claims Will Come" (April 22, 2003, New York, New York); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's Courses on Complex Litigation ("Selecting The Forum For a Complex Case -- Strategic Choices Between Federal And State Jurisdictions") and Alternative Dispute Resolution ("ADR In Mass Tort Litigation") (March 4, 2003, Stanford, California); American Bar Association, Tort and Insurance Practice Section, Emerging Issues Committee, Member of Focus Group on Emerging Issues in Tort and Insurance Practice (coordinated event with New York University Law School and University of Connecticut Law School, August 27, 2002, New York, New York); Duke University and University of Geneva, *Debates Over Group Litigation in Comparative Perspective*, Panel Member on Mass Torts and Products Liability (July 21-22, 2000, Geneva, Switzerland); New York Law Journal, Article, *Consumer Protection Class Actions Have Important Position, Applying New York's Statutory Scheme* (November 23, 1998); Leader Publications, Litigation Strategist, "Fen-Phen" Articles, *The Admissibility of Scientific Evidence in Fen-Phen Litigation* and *Daubert Developments: Something for Plaintiffs, Defense Counsel* (June 1998, New York, New York); The Defense Research Institute and Trial Lawyer Association, Toxic Torts and Environmental Law Seminar, Article and Lecture, *A Plaintiffs' Counsels' Perspective: What's the Next Horizon?* (April 30, 1998, New York, New York); Lexis/Nexis, Mealey's Publications and Conference Group, Mealey's Tobacco Conference: Settlement and Beyond 1998, Article and Lecture, *The Expanding Litigation* (February 21, 1998, Washington, D.C.); New York State Bar Association, Expert Testimony in Federal Court After Daubert and New Federal Rule 26, Article and Lecture, *Breast Implant Litigation: Plaintiffs' Perspective on the Daubert Principles* (May 23, 1997, New York, New York). *Member:* American Bar Association; New York Bar Association; California Bar Association; District of Columbia Bar Association; Trial Lawyers for Public Justice; Association of the Bar of the City of New York; Association of Trial Lawyers of America; Supreme Court Historical Society; New York State Trial Lawyers Association, Lawyers' Committee for Human Rights, aka Human Rights First.

ROBERT J. NELSON, born New York, New York, October 20, 1960; admitted practice in California, 1987; U.S. District Court, Central District of California, 1987; U.S. District Court, Northern District of California, 1988; U.S. Court of Appeals, Ninth Circuit, 1988; U.S. Court of Appeals, Sixth Circuit, 1995; District of Columbia, 1998; New York, 1999; U.S. District Court, Eastern District of New York, Southern District of New York, 2001. *Education:* N.Y.U. School of Law (J.D., 1987); Root-Tilden Scholarship Program, N.Y.U. School of Law; Order of the Coif, N.Y.U. School of Law; Articles Editor, *New York University Law Review*; Cornell University (A.B., *cum laude* 1982); Member, Phi Beta Kappa, Cornell; Member, College Scholar Honors Program, Cornell; London School of Economics (General Course, 1980-81). *Employment:* Law Clerk to Judge Stephen Reinhardt, U.S. Court of Appeals, Ninth Circuit, 1987-88; Assistant Federal Public Defender, Northern District of California, 1988-93; Legal

Research and Writing Instructor, University of California-Hastings College of the Law, 1989-91; Faculty Member, Stanford Law School Advocacy Skills Workshop, 1994-95. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003); "To Infer or Not to Infer a Discriminatory Purpose: Rethinking Equal Protection Doctrine," 61 *New York University Law Review* 334 (1986). *Member*: State Bar of California; Bar of the District of Columbia; State Bar of New York; Bar Association of San Francisco; Association of Trial Lawyers of America; American Bar Association.

MORRIS A. RATNER, born San Jose, California, November 13, 1966. Admitted to practice in California, 1991; District of Columbia, 1999; New York, 2000; U.S. District Court, Northern, Central and Southern Districts of California; and U.S. Court of Appeals, Second, Third, Sixth and Ninth Circuits. *Education*: Harvard University (J.D., 1991); Stanford University (B.A., with distinction, 1988); Phi Beta Kappa. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003); "Factors Impacting the Selection and Positioning of Human Rights Class Actions in United States Courts: A Practical Overview," 58 *New York University Annual Survey of American Law* 623 (2003); "The Settlement of Nazi-Era Litigation Through the Executive and Judicial Branches," 20 *Berkeley Journal of International Law* 212 (No. 1, March 2002). *Member*: State Bar of California; State Bar of New York; Bar of the District of Columbia; Bar Association of San Francisco.

KELLY M. DERMODY, born Ithaca, New York, June 16, 1967. Admitted to practice in California, 1994; U.S. District Court, Northern District of California, 1995; U.S. Third Circuit Court of Appeals, 2001. *Education*: Boalt Hall School of Law, University of California, Berkeley (J.D. 1993); Moot Court Executive Board (1992-1993); Articles Editor, *Industrial Relations Law Journal/Berkeley Journal of Employment and Labor Law* (1991-1992); Harvard University (A.B. *magna cum laude*, 1990), Senior Class Ames Memorial Public Service Award. *Employment*: Law Clerk to Chief Judge John T. Nixon, U.S. District Court, Middle District of Tennessee, 1993-1994; Adjunct Professor of Law, Golden Gate University School of Law, Employment Law (Spring 2001). *Publications/Presentations*: "Class Actions: Latest Developments in Litigating and Settling Employment Discrimination Class Actions" (American Bar Association Labor and Employment Section Equal Opportunity Committee, Mid-Year Meeting, 2001); Co-Author with James M. Finberg, "A Road Map to Discovery in Employment Discrimination and Wage/Hour Class Actions" (Glasser Legal Works Seminar, 2000); "Employment Discrimination Class Actions in the Wake of Allison v. Citgo Petroleum Corp." (American Bar Association Litigation Section Annual Meeting, 2000); "Employment Discrimination Class Actions in the Wake of Allison v. Citgo Petroleum Corp. and Fed. R. Civ. P. 23(f)" (Federal Bar Association Convention, 1999); Co-Author with James M. Finberg, "Discovery in Employment Discrimination Class Actions," in *Litigation and Settlement of Complex Class Actions* (Glasser Legal Works 1998). *Member*: American Bar Association (Labor and Employment Law Section and Equal Employment Opportunity Committee (Co-Chair, 2003-present; Mid-Year Meeting, Planning Committee, 2000-present)); ABA Young Lawyers Division Labor and Employment Committee (Vice-Chair, 1997-1999); Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Board of Directors, 1998-present; Secretary, 1999-2003; Co-Chair, 2003-present); National Center for Lesbian Rights (Board of Directors, 2002-present); Board of Directors, Pride Law Fund (Secretary, 1995-1997; Chairperson, 1997-2002); Equal Rights Advocates (Litigation Committee, 2000-2002); Bar

Association of San Francisco (Litigation Section, Executive Committee, 2002-present); State Bar of California; Consumer Attorneys of California; National Employment Lawyers' Association; Bay Area Lawyers for Individual Freedom.

JONATHAN D. SELBIN, born Baton Rouge, Louisiana, May 11, 1967. Admitted to practice in California; District of Columbia; New York; U.S. Court of Appeals, Fifth Circuit; U.S. District Court, Northern District of California; U.S. District Court, Central District of California; U.S. District Court, Southern District of New York. *Education*: Harvard University (J.D., *magna cum laude*, 1993); University of Michigan (B.A., *summa cum laude*, 1989). *Employment*: Law Clerk to Judge Marilyn Hall Patel, U.S. District Court, Northern District of California, 1993-95. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003); "Bashers Beware: The Continuing Constitutionality of Hate Crimes Statutes After R.A.V.," 72 *Oregon Law Review* 157 (Spring, 1993). *Member*: State Bar of California; Bar of the District of Columbia; State Bar of New York; American Bar Association; New York State Trial Lawyers Association.

BARRY R. HIMMELSTEIN, born Philadelphia, Pennsylvania, March 14, 1958. Admitted to bar, 1992, California; U.S. District Court, Northern District of California, 1992. *Education*: Hastings College of the Law (J.D., *magna cum laude*, 1991); Note and Articles Editor, *Hastings Law Journal* (1990-91); University of Michigan at Ann Arbor (B.G.S., with distinction, 1982). *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003). *Employment*: Law Clerk to Judge Charles A. Legge, U.S. District Court, Northern District of California, 1991-92. *Member*: State Bar of California; Bar Association of San Francisco.

ROBERT G. EISLER, born Philadelphia, Pennsylvania, January 6, 1964. Admitted to bar, 1989, Pennsylvania; 1989, U.S. District Court, Eastern District of Pennsylvania; 2000, New York; 2001, U.S. District Court, Southern District of New York. *Education*: Villanova University School of Law (J.D., 1989); LaSalle University (B.A., 1986). *Member*: American Bar Association, Bar Association of the City of New York, Pennsylvania Bar Association, Philadelphia Bar Association.

MICHELE C. JACKSON, born Redwood City, California, January 17, 1954. Admitted to bar, 1979, California; U.S. District Court, Northern District of California, 1979; United States Supreme Court; U.S. Court of Appeals, Ninth Circuit, 1981; U.S. District Court, Central District of California, 1985; U.S. Court of Appeals, Fifth Circuit, 1989. *Education*: University of San Francisco School of Law (J.D., *cum laude*, 1979); Stanford University (B.A., with honors, 1976). *Employment*: Judicial Extern to Justice Wiley W. Manuel, California Supreme Court, Summer 1977. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003). *Awards and Honors*: Recipient of State Bar Board of Governors Award. *Appointments*: Executive Committee Member, State Bar of California Antitrust and Unfair Competition Section (term beginning September 9, 2001). *Member*: American Bar Association; State Bar of California; Bar Association of San Francisco; McAuliffe Law Honor Society.

MICHAEL W. SOBOL, born Mt. Kisco, New York, October 5, 1961. Admitted to practice in Massachusetts, 1989; California, 1998; United States District Court, District of

Massachusetts, 1990; U.S. District Court, Northern District of California, 2001. *Education*: Boston University (J.D., 1989); Hobart College (B.A., *cum laude*, 1983). *Employment*: Lecturer in Law, Boston University School of Law, 1995-1997. *Member*: State Bar of California; Bar Association of San Francisco.

MELANIE M. PIECH, born Los Angeles, California, April 18, 1964. Admitted to practice in California, 1989; U.S. Court of Appeals for the Ninth Circuit, 1990; U.S. District Court, Central District of California, 1990; U.S. District Court, Northern District of California, 1991. *Education*: Hastings College of the Law, University of California (J.D., 1989); Loyola Marymount University (B.A., *magna cum laude*, 1986). *Publications*: Co-Author with James M. Finberg, "The Impact of the Private Securities Litigation Reform Act: Unintended Consequences," *Securities Reform Act Litigation Reporter*, Vol. 6, No. 3 (Dec. 1998). *Member*: State Bar of California; Bar Association of San Francisco.

FABRICE N. VINCENT, born Paris, France, June 15, 1966. Admitted to practice in California, 1992; U.S. District Court, Northern District of California, Central District of California, Eastern District of California, Ninth Circuit Court of Appeals, 1992. *Education*: Cornell Law School (J.D., *cum laude*, 1992); University of California at Berkeley (B.A., 1989). *Publications*: Co-Editor, *California Class Actions Practice and Procedures* (2003-04); Co-Author, "Ethics and Admissibility: Failure to Disclose Conflicts of Interest in and/or Funding of Scientific Studies and/or Data May Warrant Evidentiary Exclusions," *Mealey's December Emerging Drugs Reporter* (December 2002); Co-author with Elizabeth J. Cabraser, "The Shareholder Strikes Back: Varied Approaches to Civil Litigation Claims Are Available to Help Make Shareholders Whole," *Mealey's Emerging Securities Litigation Reporter* (September 2002); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," *Survey of State Class Action Law* (ABA 2000-2004), updated and re-published in 5 *Newberg on Class Actions* (2001-04); Coordinating Editor and Co-Author of California section of the ABA State Class Action Survey (2001-02); Co-Editor-In-Chief, *Fen-Phen Litigation Strategist* (Leader Publications 1998-2000) and author of "Off-Label Drug Promotion Permitted" (Oct. 1999); Co-Author, "The Future of Prescription Drug Products Liability Litigation in a Changing Marketplace," and "Six Courts Certify Medical Monitoring Claims for Class Treatment," 29 *Forum 4* (Consumer Attorneys of California 1999); Co-Author, *Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation* (ALI-ABA Course of Study 1999); Co-Author, "How Class Proofs of Claim in Bankruptcy Can Help in Medical Monitoring Cases," (Leader Publications 1999); Co-Author, Introduction, "Sanctioning Discovery Abuses in the Federal Court," (LRP Publications 2000); "With Final Approval, Diet Drug Class Action Settlement Avoids Problems That Doomed Asbestos Pact," (Leader Publications 2000). *Member*: State Bar of California; Bar Association of San Francisco; American Bar Association; Association of Trial Lawyers of America; Association of Business Trial Lawyers.

DAVID S. STELLINGS, born New Jersey, April 23, 1968. Admitted to practice in New York, 1994; New Jersey, 1994; U.S. District Court, Southern District of New York, 1994. *Education*: New York University School of Law (J.D., 1993); Editor, *Journal of International Law and Politics*; Cornell University (B.A., *cum laude*, 1990). *Member*: State Bar of New York; State Bar of New Jersey; Bar Association of the City of New York; New York State Bar Association; American Bar Association.

ERIC B. FASTIFF, born San Francisco, California, March 22, 1968. Admitted to practice in California, 1996; District of Columbia, 1997; U.S. Court of Appeals for the Ninth Circuit, U.S. District Courts for the Northern and Central Districts of California, District of Columbia; U.S. Court of Federal Claims, 1997. *Education*: Cornell Law School (J.D., 1995); Editor-in-Chief, *Cornell International Law Journal*; London School of Economics (M. Sc. Econ, 1991); Tufts University (B.A., *cum laude, magno cum honore in thesi*, 1990). *Employment*: Law Clerk to Hon. James T. Turner, U.S. Court of Federal Claims, 1995-1996. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003); "The Proposed Hague Convention on the Recognition and Enforcement of Civil and Commercial Judgments: A Solution to Butch Reynolds's Jurisdiction and Enforcement Problems," 28 *Cornell International Law Journal* 469 (1995). *Member*: State Bar of California; District of Columbia Bar Association; Bar Association of San Francisco; Bar of the U.S. Court of Federal Claims; Editorial Board Member, *Journal of Generic Medicines*, 2003-present.

WENDY FLEISHMAN, born Philadelphia, Pennsylvania, 1954. Admitted to practice in Pennsylvania, 1977; New York, 1992. *Education*: University of Pennsylvania (Post-Baccalaureate Pre-Med, 1982); Temple University (J.D., 1977); Sarah Lawrence College (B.A., 1974). *Employment*: Skadden, Arps, Slate, Meagher & Flom LLP in New York (Counsel in the Mass Torts and Complex Litigation Department), 1993-2001; Fox, Rothschild O'Brien & Frankel (partner), 1988-93 (tried more than thirty civil, criminal, employment and jury trials, and AAA arbitrations, including toxic tort, medical malpractice and serious injury and wrongful death cases); Ballard Spahr Andrews & Ingersoll (associate), 1984-88 (tried more than thirty jury trials on behalf of the defense and the plaintiffs in civil personal injury and tort actions as well as employment- and construction-related matters); Assistant District Attorney in Philadelphia, 1977-84 (in charge of and tried major homicide and sex crime cases). *Publications*: Co-Author, "From the Defense Perspective," in *Scientific Evidence*, Chapter 6, (Aspen Law Pub, 1999); American Bar Association, Editor, *Trial Techniques Newsletter*, Tort and Insurance Practices Section, 1995-96; and 1993-94. *Member*: American Bar Association (2000, Affair Chair, ABA Annual Meeting, Torts & Insurance Practices Section, NYC; 1997, Chair, Trial Techniques Committee, Tort & Insurance Practices; 1996, Chair Elect, Trial Techniques Committee, Tort & Insurance Practices); Pennsylvania Bar Association (Committee on Legal Ethics and Professionalism, 1993-Present; Committee on Attorney Advertising, 1993-Present; Vice-Chair, Task Force on Attorney Advertising, 1991-92); State Bar of New York, Federal Bar Association; Member, Gender and Race Bias Task Force of the Second Circuit, 1994-present; Deputy Counsel, Governor Cuomo's Screening Committee for New York State Judicial Candidates, 1993-94; New York State Trial Lawyers Association; New York Women's Bar Association; Association of the Bar of the City of New York; New York County Lawyers; ATLA; NYTLA; PATLA; Philadelphia Bar Association (Member of Committee on Professionalism 1991-92).

RICHARD T. SEYMOUR, born Grand Rapids, Michigan, August 22, 1942. Admitted to practice in the District of Columbia, 1968; U.S. Court of Appeals, D.C. Circuit, 1969; U.S. Court of Appeals 4th Circuit, 1971; U.S. Court of Appeals Former 5th Circuit, 1971; U.S. Supreme Court, 1972; U.S. District Court for the Northern District of Mississippi, 1975; U.S. Court of Appeals Current 5th Circuit, U.S. Court of Appeals 11th Circuit, 1981; U.S. Court of Appeals 3rd Circuit, U.S. Court of Appeals 10th Circuit, 1993; U.S. District Court for the Northern District of New York, 1994; U.S. Court of Appeals 6th Circuit, U.S. Court of Appeals 9th Circuit, U.S. District Court for the Southern District of Texas, 1997. *Education*: Harvard Law

School (J.D., 1968); Aquinas College (B.A., 1965). *Employment*: U.S. Commission on Civil Rights, Office of General Counsel, June 1968 - Sept. 1969 (attorney); Washington Research Project (predecessor of the Children's Defense Fund), Oct. 1969 - Sept. 1973 (attorney); Solo practice, Oct. 1973 - Jan. 1977; Lawyers' Committee for Civil Rights Under the Law, Jan. 1977 - Feb. 2001 (Director, Government Employment Project to 1979; Director, Employment Discrimination Project to 2001); Adjunct Professor, Georgetown University Law Center, Graduate Program, 1991-93. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser editor in chief, 2003); "The Sixteen Summary-Judgment Commandments," 28 *Trial* (Dec. 2000); Co-Author with Barbara Berish Brown, *Equal Employment Law Update* (BNA), Summer 1996 edition, Spring 1997 edition, Fall 1997 edition, Spring 1998 edition, Fall 1998 edition, Spring 1999 edition, Fall 1999 edition; "Roundtable and Dialogue on the Effects of *Ellerth* and *Faragher*," *Employment Discrimination Report* (BNA Aug. 19, 1998); "The Use of 'Proof of Claim' Forms and Gag Orders in Employment Discrimination Class Actions," 10 *Connecticut Law Review* 920 (1978); "Strategic Effects of the Weber Decision on Employers," reprinted in *Equal Employment Practice Guide*, Vol. 1, Chapter 3 (Federal Bar Association 1980); *Affirmative Action by Public Employers Under the Terms of a Court Order* (ABA, National Institute on Affirmative Action, 1980); *Post-Certification Problems in Class Actions* (Practicing Law Institute Handbook, Federal Civil Rights Litigation, 1982); "Why Plaintiffs' Counsel Challenge Tests, and How They Can Successfully Challenge the Theory of 'Validity Generalization,'" 33 *Journal of Vocational Behavior* 331 (1988); "Predictability in EEO Litigation," in *Promoting Minorities and Women: A Practical Guide to Affirmative Action for the 1990s* (BNA 1989); "The Loss of Predictability in EEO Litigation, and Further Questions to be Resolved," in *Employment Discrimination After the 1989 U.S. Supreme Court Rulings* (Prentice Hall 1989). *Member*: American Bar Association (Labor and Employment Law Section, 1998-present, Member of Council; 1995-98-present, Co-Chair CLE Committee; 1994-95, Co-Chair Annual Meeting Subcommittee; 1991-94, Co-Chair Equal Employment Opportunity Committee; 1988-91, Co-Chair Subcommittee on Liaison with Department of Labor; 2000-01, Council Task Force on Multidisciplinary Practice; 2000-01, Council Task Force on Government Fellowship Program; 1997-98, Council Task Force on Investments; 1998-2000, Council Task Force on Law Student Recruitment; 2000-Present, Council Liaison to Task Force on Judicial Law Clerk Education; 1998-Present, Council Liaison to the Alliance for Education in Dispute Resolution); Association of Lawyers of America (Committee on the Courts; 1999-2000; Executive Committee of Employee Rights Division, 1999-2000; College of Labor and Employment Lawyers, Fellow, Governor, 1998-Present; Chair, Committee on Standards of Practice, 1998-2000).

BILL LANN LEE, admitted to practice in California and New York, the Federal District courts of the Central and Northern Districts of California, the Courts of Appeal for the D.C., Second, Third, Fourth, Fifth, Sixth, Ninth and Eleventh Circuits, and the Supreme Court of the United States. *Education*: Columbia Law School (J.D. 1974), Stone Scholar, Best Moot Court Brief Prize; Yale College (B.A. 1971), Phi Beta Kappa, *magna cum laude* in History. *Employment*: Visiting Scholar, Columbia Law School, New York, NY, Feb.-Oct. 2001; Assistant Attorney General for Civil Rights, United States Department of Justice, Washington D.C., Dec. 1997-Jan. 2001; Western Regional Counsel, NAACP Legal Defense and Educational Fund, Inc., Los Angeles, CA, 1988-97; Supervising Attorney for Civil Rights Litigation, Center for Law in the Public Interest, Los Angeles, CA, 1983-88; Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc., 1974-82; Counsel, Asian American Legal Defense and

Education Fund, New York, NY, 1979-80; Adjunct Professor of Political Science, Fordham University, New York, NY, 1977-80. *Awards and Honors*: Pearlstein Civil Rights Award, Anti-Defamation League, 2002; Honorary Doctorates in Law from City University of New York Law School, 2001; North Carolina Central University, 2000 and Wesleyan University, 1999; John Randolph Distinguished Service Award, United States Department of Justice, 2001; Pioneer Award, Organization of Chinese Americans, 2000; Trailblazer Award, National Asian Pacific American Bar Association, 1999; Judge Delbert E. Wong Distinguished Service Award, Southern California Chinese Lawyers Association, 1998. *Publications/Presentations*: Symposium Addresses: "Reason, Passion & the Progress of Law: Remembering and Advancing the Constitutional Vision of Justice William T. Brennan," Dinner Address, 300 *Harvard Civil Rights-Civil Liberties Law Review* 321 (1998); Book Review, "In Search of Equality, The Chinese Struggle Against Discrimination in Nineteenth Century America" by Charles J. McClain, 21 *Amerasia Journal* 205 (1995); "For Affirmative Action, Richmond Decision is a Detour, Not a Dead End," Op-ed, *Los Angeles Times*, Feb. 8, 1989, at p. 7 (with Jack Greenberg); "The Disparate Impact Model and Subjective Criteria in Employment Discrimination Litigation," 5 *Labor & Employment Law News*, (Spring 1986) (with Pearl Lattaker); "A Right to An Integrated Education: A Survey," 14 *Urban Lawyer* 423 (1982), "Eliminating Barriers to Communications Between Class Action Counsel and Members in Actions Brought Pursuant to Rule 23, Federal Rules of Civil Procedure," *Report of the Committee on Civil Rights of the Association of the Bar of the City of New York* (1980); "Racial Discrimination in the United States," *Helsinki Watch Committee* (1980); "Yung Wing and the Americanization of China," 1 *Amerasia Journal* 25 (1971). *Member*: American Bar Association (Co-Chair, Committee on Class Action and Derivative Suits, Litigation Section, 1992-94; Association of the Bar of the City of New York, 1975-83, Member, Civil Rights Committee, 1979-83); Los Angeles County Bar Association, 1983-97; Ninth Circuit Judicial Conference, Central District California Lawyer Representative, 1990-93; Southern California Chinese Lawyers Association, 1988-97, Member, Board of Governors, 1988-90.

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UCLA Journal of International Law and Foreign Affairs, Vol. 6, No. 1 (Spring/Summer 2001); "National Self-Determination in Historical Perspective 1789/1989: Insights from the French Revolution for Today's Debates," *International Studies Review*, Vol. 2, Issue 3 (Fall 2000); "The 'False Promise' of Civic Nationalism," *Millennium: Journal of International Studies*, Vol. 28, No. 2 (1999); "Nationalism and War in the French Revolution," *The ASEN Bulletin*, No. 17 (Summer 1999); "Power and Identity in Nationalist Conflicts," *Oxford International Review*, Vol. VIII, No. 2 (Spring 1997). *Member*: State Bar of California; American Bar Association (Section of Litigation); Bar Association of San Francisco; Association of Trial Lawyers of America; American Society of International Law.

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DAVID MARCUS, born Rochester, New York, March 23, 1976. Admitted to practice in New York, 2003; California, 2004. *Education*: Yale Law School (J.D., 2002); Articles and book review editor, *Yale Journal of International Law*; Harvard University (B.A., *magna cum laude*, 1998). *Employment*: Law Clerk to the Hon. Allyne R. Ross, United States District Judge, Eastern District of New York, 2002-03. *Publications*: "Famine Crimes in International Law," *American Journal of International Law*, April 2003. *Member*: State Bar of New York.

PAULA A. MOORE III, born Kailua, Hawaii, January 1, 1966. Admitted to practice in Maryland. *Education*: University of Virginia (J.D., 1998); George Mason University -- Institute for Conflict Analysis and Resolution (M.S.C.A.R., 1994); Georgetown University (B.S.F.S., 1990). *Employment*: Trial Attorney, U.S. Department of Justice - Antitrust Division, 1998-2004. *Member*: State Bar of Maryland, American Bar Association.

SCOTT P. NEALEY, born Champaign, Illinois, July 28, 1966. Admitted to practice in California, 1997; U.S. District Court, Northern District of California, 1998; U.S. District Court, Eastern District of California, 1998; U.S. Court of Appeals, Ninth Circuit, 1999; U.S. District Court, Central District of California, 2000. *Education*: Boalt Hall School of Law, University of California (J.D., 1996); University of California at Berkeley (B.A., 1988). *Employment*: Law Clerk to Chief Justice Joseph R. Weisberger, Supreme Court of Rhode Island, 1996-97. *Publications*: Contributing Author, *California Class Actions Practice and Procedures* (Elizabeth

J. Cabraser editor in chief, 2003). *Member*: Bar Association of San Francisco; State Bar of California.

DANIEL H. ROSE, born New Rochelle, New York, June 30, 1958. Admitted to practice in California, 1984; U.S. District Court, Northern District of California, 1984. *Education*: University of California, Hastings College of Law (J.D., 1984); Constitutional Law Quarterly (1983-1984); University of Colorado at Boulder (B.A., Economics, *Magna Cum Laude*, *Phi Beta Kappa*, 1980). *Employment*: Judicial Extern, Honorable Thelton E. Henderson, United States District Judge, Northern District of California, 1984. *Publications*: "National Beverage Container Deposit Legislation: A Cost-Benefit Analysis," 12 *Journal of Environmental Systems* 71 (1982-83) *Member*: State Bar of California; Bar Association of San Francisco.

JAHAN C. SAGAFI, born Philadelphia, Pennsylvania, December 26, 1971. Admitted to practice in California, 2003. *Education*: Harvard Law School (J.D., 2001); Senior Editor, *Harvard Civil Rights-Civil Liberties Law Review*, 1999-2001; President, Board of Student Advisers; Harvard College (B.A., *magna cum laude*, 1994). *Employment*: Law Clerk to Judge William W. Schwarzer, U.S. District Court, Northern District of California, 2001-02. *Member*: State Bar of California.

NIREJ SEKHON, born Long Beach, California, July 3, 1973. Admitted to practice in California, 2001; Washington, 2002. *Education*: New York University School of Law (J.D., 2000); Associate Editor, *NYU Law Review*; Cornell University (B.A. Economics, 1995; B.A. Government, 1995). *Publications*: "A Birthright Rearticulated: The Politics of Bilingual Education," 74 *NYU Law Review* 1407 (1999). *Employment*: Staff Attorney, The Defender Association, 2002-2004; Law Clerk to Hon. M. Margaret McKeown, 9th Circuit Court of Appeals, 2001-02; Law Clerk to Hon. Carlos Moreno, U.S. District Court, Central District of California, 2000-01. *Member*: State Bar of California.

ERIK L. SHAWN, born New York, New York, May 3, 1970. Admitted to practice in New York, 1996. *Education*: Fordham University School of Law (J.D., 1995); Brandeis University (B.A., *cum laude*, 1992). *Member*: State Bar of New York; American Bar Association; New York State Bar Association - Entertainment, Arts and Sports Law Section; New York County Lawyers Association - Entertainment, Media, Intellectual Property and Sports Law Section - Co-Chair, Sports Law Committee; Intellectual Property Committee; Co-Chair, Brandeis Lawyers Network; Fordham Law School - Recent Graduates Committee.

Notice on the Firm's AV Rating: AV is a registered certification mark of Reed Elsevier Properties, Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies. Martindale-Hubbell is the facilitator of a peer review process that rates lawyers. Ratings reflect the confidential opinions of members of the Bar and the Judiciary. Martindale-Hubbell Ratings fall into two categories – legal ability and general ethical standards.

TAB 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF JOHN L. BURRIS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

Date: January 14, 2005
Time: 9:00 a.m.
Judge: Honorable Susan Illston

I, JOHN L. BURRIS, declare:

1. I am an attorney duly licensed and admitted to practice before this Court and all courts of the State of California. I make this Declaration on personal knowledge in support of Motion for Class Certification.

BACKGROUND AND CREDENTIALS

2. I was licensed to practice law in the State of California in 1976 and in the State of Illinois in 1974. I am admitted to practice in the United States District Courts for the Northern, Eastern, and Central Districts of California, the District Court of Hawaii, the Eastern

1 District of Illinois, the District Court of Nevada and the United States Courts of Appeals for the
2 Ninth and Seventh Circuits.

3 3. I obtained my law degree in 1973 from Boalt Hall School of Law.
4 Immediately following my graduation from Boalt Hall, I was employed as an associate with the
5 law firm of Jenner & Block in Chicago, Illinois, where I assisted in the litigation of Title VII
6 employment discrimination, criminal, anti-trust and securities cases.

7 4. Subsequently, I became an Assistant State Attorney in Cook County,
8 Illinois, where I prosecuted numerous criminal cases, most of them involving court trials. I was
9 designated as a Special Prosecutor to handle high visibility, impact cases for the West and South
10 Side district offices. In December 1976, I became a Deputy District Attorney with the Alameda
11 County District Attorney's Office where I litigated serious felony jury trials.

12 5. I have been engaged in the private practice of law in Oakland, California
13 since March 1979. My practice is primarily civil rights, with an emphasis on police misconduct,
14 employment and criminal defense cases. Over the course of my practice, I have mostly ethnic
15 minority clients. A representative sample of those civil rights cases is as follows:

16 SUMMARY OF CIVIL RIGHTS CASES

- 17 • Freitag vs. Department of Correction,
18 United States District Court, Northern District: Female correctional officer
19 was victim of hostile work environment related to her supervisor's failure to
20 respond effectively to inmate exhibitionist masturbation. Jury awarded
21 \$600,000. The court through a special master has ordered injunctive relief that
22 includes an organizational plan to respond to the inmate behavior and protect
23 employees as much as possible. The case is on appeal but the injunctive relief
24 aspect has been implemented.
- 25 • Allen, Mack, Higgs, et al. v. City of Oakland, et al.,
26 United States District Court, Northern District. Lead attorney in Class Action
27 Police Brutality suit against officers known as the "Riders." In the City of
28 Oakland Also represented 119 individual plaintiffs (eight cases) all settled
with award of damages and attorneys' fees. Injunctive relief obtained through
settlement agreement which includes an independent monitor.
- Dunlap v. County of Mendocino, et al.,
United States District Court, Northern District. Wrongful death, jail suicide.
Case settled with an award of attorneys' fees.

- 1 • Robert Bass, Jr. v. County of Solano, et al.,
2 United States District Court, Eastern District. Schizophrenic man incarcerated
3 for six weeks due to a mistaken identity; Settled.
- 4 • Breazell, et al. v. City of Oakland, et al.,
5 United States District Court, Northern District. Group of innocent bystanders
6 beaten by Oakland police officers because they did not disperse quickly
7 enough after the annual "Festival at the Lake" event; jury verdict for plaintiffs
8 plus attorneys' fees.
- 9 • Casillas, et al. v. County of Napa, et al.,
10 United States District Court, Northern District. Wrongful Death; Death
11 resulting from injuries sustained while in custody by Napa Department of
12 Corrections. Settled.
- 13 • Esters, et al. v. City of Oakland, et al.,
14 United States District Court, Northern District. Wrongful Death; Semi-
15 conscious man shot and killed by Oakland police officers. Settled.
- 16 • Cardell Grays v. City of Modesto, et al.,
17 United States District Court, Eastern District. Police brutality; unarmed man
18 shot in the face by Modesto police. Settled.
- 19 • Hankston, et al. v. City and County of San Francisco, et al.,
20 United States District Court, Northern District. Wrongful death; man shot in
21 back of head by San Francisco police officer who was holding his gun in his
22 hand while he tried to handcuff decedent. Settled.
- 23 • Hernandez, et al. v. City of Huron, et al.,
24 United States District Court, Eastern District. Wrongful death; man shot to
25 death on New Year's Eve by Huron police. Settled.
- 26 • Hull, et al. v. City of Oakland, et al.,
27 United States District Court, Northern District. Wrongful death; 19-year-old
28 shot to death by Oakland police officer in the course of attempting to question
him. Mr. Hull ran in an apparent effort to conceal firearms on his person and
was shot in the back by the officer. Settled.
- Keller Dean, et al. v. City of Oakland, et al.,
United States District Court, Northern District. Sexual assault by Oakland
police officers. Settled.
- Letbetter, et al. v. City of Brentwood, et al.,
United States District Court, Northern District. Police brutality. Pinole Valley
High School basketball team members, coaches and parents who were pepper
sprayed and assaulted by Brentwood Police officers. Settled.
- McDade, et al. v. City of Oakland, et al.,
United States District Court, Northern District. Police misconduct; illegal
entry by Oakland police officers into family residence by Oakland police.
Settled.
- Moore, et al. v. City of Oakland, et al.,
United States District Court, Northern District. Police brutality; seven African
American sorority sisters from U.C. Berkeley and U.C. Davis were punched,

hit with batons, kicked, choked and chased by Oakland police officers while attempting to attend a fraternity party at the Henry J. Kaiser Auditorium. Case pending.

- Vaughn, et al. v. City of Seaside, et al.,
United States District Court, Northern District. Wrongful death; schizophrenic man shot and killed by Seaside police after social worker called because he would not agree to voluntary commitment. Settled.
- Venerable v. Sacramento Police Department et al.,
United States District Court, Eastern District. Wrongful death; unarmed man holding a cell phone was shot and killed by police officers who mistakenly believed cell phone was a gun. Settled.
- Dwayne Wiggins v. City of Oakland, et al.,
United States District Court, Northern District. Police misconduct; member of Grammy award winning group Toni, Tony, Tone choked by Oakland police officer. Settled. Portion of settlement used to develop workshops between police and children in the Oakland community.
- Williams, et al., v. City and County of San Francisco, et al.,
United States District Court, Northern District. Police misconduct, wrongful death case. Death caused by asphyxiation due to chokehold restraint. Settled.
- Wu, et al., v. City of Rohnert Park, et al.,
United States District Court, Northern District. Wrongful death. Man shot and killed by Rohnert Park police officers. Settled.
- Diane Zum Brunnen v. Mission Ranch, et al.,
United States District Court, Northern District (San Jose). Highly publicized wheelchair accessibility case involving defendant actor Clint Eastwood. Defendant found by jury to have committed three access violations but jury denied any actual damages; injunctive relief issues.
- Tupac Shakur v. City of Oakland, et al.,
United States District Court, Northern District. Police brutality. Rap superstar assaulted by Oakland police. Settled.
- Rodney Glenn King v. City of Los Angeles, et al.,
United States District Court Central District. Police misconduct case where a 25-year-old African American man was beaten by Los Angeles Police Department officers after a vehicle chase. A videotape of the incident shows King shot with "tasers" 55 times. On completion of criminal trial against the officers, this case was brought in federal district court seeking compensatory and punitive damages for the beating he received. Phase 1 Compensatory Damages – jury verdict award of \$3,816,535; Phase 2 Punitive Damages; no damages awarded. Award of Attorneys' fees.
- GCC Richmond Works Cases,
Contra Costa County Superior Court, No. J.C.C.P. 2906. Toxic litigation; member of seven-firm management team in a class/direct action lawsuit against General Chemical Corporation; 60,000 plaintiffs were injured by toxic spill in 1993. Represented 7,000 of the plaintiffs. Settled.

- 1 • Abbott, et al. v. Safeway Stores, Inc.,
2 Alameda County Superior Court No. 6-75356-0. Coordinated direct action
3 cases. Represented 3,000 minor plaintiffs who suffered from toxic inhalation
4 following a catastrophic fire at the Safeway Stores warehouse in Richmond,
5 California. Settled for \$15,000,000.00.
- 6 • Marcus Felder v. Cherry Hills Photo,
7 United States District Court, Northern District. Employment discrimination
8 involving "Black Santa Claus." Settled.
- 9 • Washington v. Duty Free shoppers,
10 United States District Court, Northern District. Racial discrimination in retail
11 setting. Settled, including attorneys' fees.
- 12 • Godbold v. Sears,
13 Alameda Superior Court No. 635983-4. Retail race discrimination, Unruh Act.
14 Settled.
- 15 • Clayton Betrand Jr. et al. v. UPS,
16 United States District Court, Northern District. Class action employment
17 discrimination under Title VII. Settled for monetary damages and consent
18 decree. Member of management committee.

19 6. I presently have numerous other cases involving police misconduct and
20 employment discrimination pending in state and federal courts throughout the State of California.
21 More than ninety-percent (90%) of my work presently involves civil rights and at least two of
22 them of class action claims.

23 7. Additionally, during my practice I have represented numerous public
24 figures such as Earl Sanders, the Police Chief of San Francisco; Elihu Harris, Mayor of Oakland,
25 Gary Payton, Latrell Spreewell and Jason Kidd, professional basketball players; Aaron Goodwin,
26 professional sports agent; Delroy Lindo, professional actor; and many other public officials
27 whose names can be given if it is deemed necessary.

28 8. I am frequently referred cases by, called upon to consult with, and asked to
associate with, other attorneys in cases involving police misconduct and employment. On more
than one occasion I have been asked to be an expert witness on police issues.

9. In the late 1970s and early 1980s, I served on the faculties of the National
Institute for Trial Advocacy and the Hastings College of the Law Center for Trial and Appellate
Advocacy. For approximately the last 5 years I have served as an instructor in Stanford Law
School's Trial Advocacy program. I have participated in numerous panels discussing issues of

1 police abuse, discrimination, and criminal law as well as ADA cases. Listed are organizations for
 2 which I have given speeches or made a presentation regarding civil rights and trial practice issues:

3 National Lawyers Guild, National Police Accountability Project,
 4 American Bar Association, California Association of Human
 Relations Organization, San Joaquin County Bar, Humphreys
 5 College School of Law San Joaquin, State Bar of California, Office
 of the Attorney General-State of Arizona, San Francisco Trial
 6 Lawyers Association, California Association of Black Lawyers,
 U.S. Department of Justice- Community Relations, Institute for
 7 Social Justice, FBI Color of Law/Civil Rights Section Conference
 (Quantico, Virginia), Berkeley Police Review Commission,
 8 Stanford Law School, National Organization of Black Law
 Enforcement Executives (NOBLE), American Business Trial
 9 Lawyers, American Trial Lawyers Association, Alameda-Contra
 Costa Trial Lawyers Association, Bay Area Police Watch, Lorman
 10 Group, North Carolina Central University Law School, and
 National Association of Black Journalists, Golden Gate College
 11 School of Law and International Association of Law and Mental
 Health (Siena, Italy and Amsterdam, The Netherlands)

12
 13 10. I also practice criminal defense law. Although I no longer participate in
 14 court appointed criminal defense programs, I was a member of the Criminal Justice Panel for the
 15 Northern District of California and a member of the Alameda County Court Appointed Program.
 16 for several years, I was certified as a Class 1 attorney, thereby getting assignments of the most
 17 difficult and serious felonies, including but not limited to death penalty cases.

18 11. I am the recipient of numerous awards for my contribution to the legal
 19 profession and various communities. Set forth herein is a representative sample of my awards:
 20 1989 *Loren Miller Award* as an Outstanding Civil Rights Attorney given by the California
 21 Association of Black Lawyers; 1986 *Clinton W. White Award* as an Outstanding Trial Lawyer
 22 from the Charles Houston Bar Association; In May 1992, the NAACP Legal Defense Fund's *Pro*
 23 *Bono Legal Services Award*. In July 1992, designated and honored as a "*Local Hero*" by the San
 24 Francisco Bay Guardian Newspaper; 1994, UC Berkley, Black Alumni Award; In 2001, "*Hero of*
 25 *the Year*" award from People United for a Better Oakland (PUEBLO). In 2002, the *Distinguished*
 26 *Community Service Award* from the Center for African Peace and Conflict Resolution at
 27 California State University, Sacramento. In 2003, the Clinton W. White Advocacy Award
 28

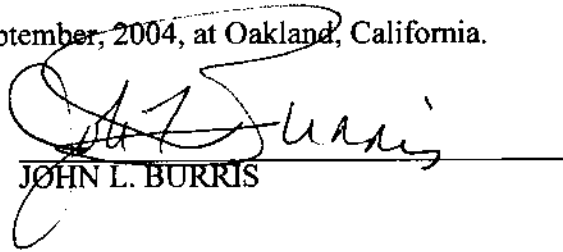
1 presented by the Charles Houston Bar Association. In 2004, The SCOUT'S award presented by
2 the Boy Scouts of America Bay Area Outreach.

3 12. In 1999, I published a book entitled *Blue vs. Black: Let's End the Conflict*
4 *Between Cops and Minorities*, (St. Martin's Press (1999)), that discussed local and national police
5 and community issues. Since the publication of the book, I have spoken to many police and
6 community groups as well as doing a national book tour where I made numerous appearances at
7 book stores talking about police issues. Many of the issues of reform set forth in the book served
8 as my framework for discussing the "reforms" in the Riders case.

9 13. Based upon my experience as a civil rights attorney, and having previously
10 been involved with other class actions, I submit that I am qualified to be appointed as one of the
11 class counsel presenting the plaintiffs in this action.

12 I declare under penalty of perjury under the laws of the State of California and the
13 United States of America that the foregoing is true and correct. If called as a witness, I could and
14 would testify competently to the matters stated herein.

15 Executed this 7 day of September, 2004, at Oakland, California.

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17 JOHN L. BURRIS
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TAB 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF MICHAEL S. DAVIS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

Date: January 14, 2005

Time: 9:00 a.m.

Courtroom of the Honorable Susan Illston

I, Michael S. Davis, hereby declare as follows:

1. I am an attorney duly licensed and admitted to practice before the United States District Courts for the Northern, Eastern, and Central and Southern Districts of California, and the United States Courts of Appeals for the Ninth Circuit. I have been a member in good standing with the Bar Association of the State of California since 1992.

2. I graduated *magna cum laude* from Wake Forest University in 1987, with a Bachelor of Arts and Honors degree in history. I received a Juris Doctorate from Stanford Law School in 1992. At Stanford Law School, I was a Section Editor for the *Law and Policy Journal*.

1 3. Since approximately 2001, I have practiced law as the Law Offices of
2 Michael S. Davis, successfully representing numerous plaintiffs in Title VII discrimination cases
3 against employers such as Sony Electronics, Fedex Express, Fedex Ground and 24-Hour Fitness.
4 I have also served as plaintiff or defense counsel in several complex commercial cases. In August
5 2002, over the course of three months, I was first chair in the trial of three consolidated attorneys'
6 fee actions arising out the *Carroll v. IBC* race discrimination case, including *Waukeen McCoy v.*
7 *Angela Alioto; and Alioto v. McCoy, Rachell Smith.*

8 4. From 2000 through 2002, I served as General Counsel for Accordus, Inc., a
9 San Francisco enterprise software company. At Accordus, I directed the successful resolution of
10 *McKesson v. MedChannel, Inc.*, a \$25 million trade secrets case, and defended several
11 employment matters.

12 5. From 1996 through 2000, I was a senior associate with Morgenstein &
13 Jubelirer in San Francisco, where I was lead attorney for approximately 75% of my case load. I
14 litigated over 30 complex business, employment, and anti-trust actions for Fortune 500 clients
15 (e.g., Walt Disney, McDonald's Restaurant, Emerson Electric, Cellular One, Centex Homes,
16 Hobart Corp, Southern Pacific Railroad). Discrimination cases (employment and housing)
17 comprised approximately 30% of my case load. I was also a defense attorney in a class action
18 involving Cellular One and its distributors and dealers. In 1999, I served as first chair in the trial
19 of two cases for Centex Homes, a Title VII race discrimination case and a construction defect
20 case. Moreover, I was first chair in the successful arbitration of *CellularOne v. Nextel*, a multi-
21 million dollar contract case, as well as in several asbestos cases for Owens-Illinois. Furthermore,
22 I assisted in the development of the national trial strategy for McDonald's Restaurants' hot coffee
23 products liability cases.

24 6. From 1994 until spring of 1996, I was General Counsel for Bioxy Inc., a
25 pharmaceutical company based in Raleigh, North Carolina. I served as co-lead counsel in *Bioxy*
26 *v. Vulcan Materials*, a \$50 million patent infringement case, and as lead counsel for other Title
27 VII employment and complex commercial cases. I was also lead counsel for the 3-week
28 arbitration of *Messer v. Governor's Club of North Carolina*, an intellectual property matter.

EXHIBIT A

Accordus, Inc – Defended client against claims of misappropriation of trade secrets and wrongful solicitation in connection with hiring of plaintiff's key personnel.

Bioxy, Inc. – Prosecuted cases against competitors for patent infringement, unfair business practices and misappropriation of trade secrets. Defended against a wrongful termination and age discrimination claim of former CEO.

Cellular One. – Represented plaintiff in commercial arbitration against the distributor of client's cellular telephones and accessories for breach of contract and unfair business practices. Co-counsel in class action brought by distributors and dealers for unfair trade practices.

Centex Homes – Defended client against negligence and breach of contract claims in a construction defect action brought by buyer. First chair at trial.

Centex Homes – Defended client against claims by unsuccessful buyer for housing discrimination.

Emerson Electric – Defended client against product defect and personal injury actions.

Fontillas– Represent former employee in action for gender discrimination and workplace harassment.

GranCare Corporation –Defended company against claims of breach of contract and securities fraud.

Hobart Corporation – Defended client against product defect and personal injury actions.

Hughes Aircraft Company – Defended client against claims of employment discrimination. Hired by client three weeks before trial date, after the termination of previous counsel, to complete discovery and prepare for trial. Second chair at trial.

Hughes Aircraft Company –Defended client in the arbitration of claims brought by an independent contractor developer for breach of contract, conversion, misappropriation of trade secrets, and fraud;

Lewis Homes – Successfully defended client against claims of employment discrimination.

Lockheed Corp –Defended client in 3-month trial of claims of breach of contract unfair business practices and various business tort arising out of the sale of subsidiary to IBM. Second chair at during trial.

McDonalds Restaurant – Assisted in development of national trial strategy for litigating copycat hot coffee cases. Defended client in first hot coffee case in California.

Rogers v. Fedex Express – Represented former employee in action for discrimination and wrongful termination.

Smith v. Sony – Represented former employee in action for discrimination and workplace harassment.

Southern Pacific Railroad – Defended client in class action involving toxic torts and property contamination at a site formerly owned by client.

Walt Disney Corp. – Defended client against breach of contract and personal injury claims.

TAB 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, KELVIN SMITH,
SR., and KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF COMMISSIONER
WAUKEEN McCOY IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION**

Dated: January 14, 2005

Time: 9:00 a.m.

Dept: Courtroom 10, 19th Floor

Honorable Susan Illston

I, Waukeen McCoy, declare:

1. I am a Partner in the Law Offices of Waukeen McCoy and have been a Partner in that firm since December of 1993. My firm is one of the firms representing the plaintiffs and the proposed classes in this action. I have been a member in good standing of the bar of the State of California since December of 1993. Currently, I supervise three associate attorneys in the Firm, four law interns, and an office administrator. Ninety five percent of the

1 firm's work is related to litigating issues related to employment discrimination and discrimination
2 in any form based on protected classes.

3 2. I am also currently a Commissioner of the San Francisco Ethics Commission.
4 I have been working in this position since February of 2002 and meet with the Commission
5 members at least one time each month. I was appointed to this position by the Honorable Willie
6 Brown Jr., during his administration as Mayor of the City and County of San Francisco. There
7 are five appointments to this Commission, which are made by the Mayor, Assessor, Board of
8 Supervisors, City Attorney and District Attorney. The commission serves the public, city
9 employees and officials and candidates for public office through education and enforcement of
10 ethics laws. The Mission of the Ethic's commission is to practice and promote the highest
11 standards of ethical behavior in government. The commission acts as filing officer for, and
12 auditor of, financial disclosure statements filed by political candidates and committees and
13 designated City and County Employees. The Commission assesses fees and penalties for failure
14 to adhere to deadlines and requirements, audits statements to ensure compliance with contribution
15 limits, administers an education program, it oversees registration and regulation of campaign
16 consultants, lobbyists, investigates ethics complaints, provides advice on ethical matters and
17 publishes statistical reports.

18 3. Since December of 1993, I have been dedicated to representing plaintiffs in
19 employment discrimination actions and have accomplished successful results for my clients in the
20 California Superior Courts, Trial Courts of New York, United States District Courts, in state
21 agencies, and federal agencies. Most notably, I was lead plaintiffs' counsel in *Carroll v.*
22 *Interstate Brands Corporation*, Case No. 995728, 304142 (August of 2000), winning one of the
23 largest Jury Verdicts ever given in a racial discrimination case, \$133 million dollars. In
24 September of 2000, the Honorable Mayor Willie Brown, Jr. of the City and County of San
25 Francisco awarded me and proclaimed September 1, 2000 as Waukeen McCoy day in the City
26 and County of San Francisco for my legal work. On December 8, 2000, I was featured in the Los
27 Angeles Daily Journal and labeled a "Controversial Crusader" by Leonard Novarro.

28 4. In 1996, I was lead counsel in a case entitled Robinson v. Louie, which set the

1 precedent on the issue of non-disclosure of HIV to a partner. This precedent extended the
2 disclosure of contagious diseases to include HIV and AIDS. In addition, I was the lead plaintiff's
3 counsel and appellant setting precedent in the published decision Interstate Brands v. McCoy, et
4 al., regarding jurisdiction relating to attorneys' liens.

5 5. Prior to enrolling in law school, I worked as a paralegal clerk for the law firm
6 of Pillsbury, Madison and Sutro (now known as Pillsbury, Winthrop) for two years. After leaving
7 Pillsbury, I worked for the Ninth Circuit U.S. Court of Appeals, as a procedural motions deputy
8 clerk until I began studying law at the University of California, Hastings College of Law in San
9 Francisco in the fall of 1989 and became the Vice-President of the student body. I graduated
10 from Hastings College of Law in May of 1992. While attending Hastings, I worked for a law
11 firm in San Francisco Specializing in Employment litigation for 2 years, became a certified intern
12 at the Legal Aid Society of Alameda County and represented the economically disadvantaged. I
13 also taught street law at Mark Twain High School in San Francisco during my law school career.
14 I also have a International Law Certificate from the Tulane Law School European Institute, Paris,
15 France. In June of 2002, I was given the CLEO Achievement Award while serving as Keynote
16 speaker at the Mid-Summer Seminar, Thurgood Marshall legal Educational Opportunity Program
17 (which had over 200 students in the program from across the United States). In April 2004, I
18 was honored by The AIDS Legal Referral Panel for 10 years of service for protecting the legal
19 rights of Bay area residents living with HIV and AIDS.

20 6. I am a Board Member of the California Association of Black Lawyers, was
21 nominated California lawyer of the Year in 2000 by Charles Houston Bar Association, nominated
22 California Lawyer of the Year in 2000 by the National Black Lawyers Association and the
23 California Association of Black Lawyers. I am a member of the California Employment Lawyers
24 Association, the National Bar Association, American Bar Association, and the Charles Houston
25 Bar Association. I served as co-Chair of the Bay Area Lawyers for Individual Freedom for
26 approximately two years. I have served as an legal expert in the study at the University of
27 Chicago related to job opportunities for applicants with ethnic sounding names, and have
28 appeared on National Public Radio, KBLX, SoulBeat, Cable Channel 29 regarding job

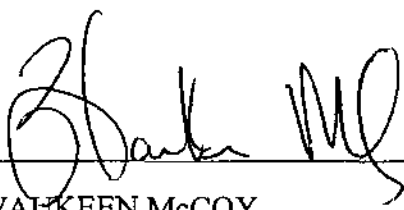
1 discrimination in the workplace, CNN, and on all of the San Francisco Local Stations. In
2 addition, the media has featured numerous cases that I have handled in newspapers across the
3 United States and in Europe related to violations of civil rights.

4 5. Because of my work for civil rights and reputation in the community, the
5 Federal Express employees contacted my office for legal representation in July of 2002. I was
6 instrumental in bringing aboard all of the attorneys representing the plaintiffs in this action after I
7 was contacted by the clients. The attorneys have agreed in writing, that in the best interest of the
8 class we all will act as co-lead counsel to represent the members and that no one law firm will be
9 appointed lead.

10 6. I have participated in preparing the pleadings and papers in this case and
11 intend to be available for the duration of this action to represent the plaintiffs at all stages of the
12 litigation, up to and including trial.

13 I declare under penalty of perjury under the laws of the United States and the State
14 of California that the above information is true and correct.

15 Dated: September ⁹~~8~~, 2004

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19 WAUKEEN McCOY

TAB 5

KAY McKENZIE PARKER (State Bar No. 143140)
LAW OFFICES OF KAY McKENZIE PARKER
1318 East Shaw Avenue, Suite 415
Fresno, California 93710
Telephone: (559) 222-1509
Facsimile: (559) 222-9045

Attorney for Plaintiffs

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

DERRICK SATCHELL, et al, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

FEDEX EXPRESS, a Delaware corporation,
Defendant.

CASE NO: C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF ATTORNEY
KAY McKENZIE PARKER IN SUPPORT
OF MOTION FOR CLASS CERTIFICATION**

**Date: January 14, 2005
Time: 9:00 am
Honorable Susan Illston**

I, KAY McKENZIE PARKER, hereby declare and certify that:

1. I am an attorney in good standing and have been duly licensed to practice in all courts in the State of California since December, 1989.
2. For approximately 15 years, I have been dedicated to representing plaintiffs in employment discrimination actions and have accomplished successful results for my clients in the California Superior Courts, United States District Courts, in state agencies, including the California Department of Fair Employment and Housing (DFEH), and federal agencies, including the United States Equal Employment Opportunity Commission (EEOC).

3. The following are a few of the employment discrimination cases in which I obtained successful results for the plaintiff employee:

- a) Brenda Smith v. Great Western Bank - Bank teller. Race discrimination disparate treatment under Title VII, 42 U.S.C. §1981 and FEHA. Northern District Court of California (San Jose). Defense counsel: Brobeck, Phleger & Harrison, San Francisco.
- b) Frank Hong v. Circadian Systems - Vice President Engineering. Retaliation for opposing racial discrimination under Title VII and FEHA. Northern District Court of California (San Jose). Defense counsel: Wilson, Sonsini, et al., Palo Alto.
- c) Jerry Warmsley v. San Jose State University - Mechanic. Race and age discrimination under Title VII and ADEA. Settled pre-filing at EEOC. Defense counsel: Attorney General, State of California, Long Beach.
- d) Diane Alvarez v. Circadian Systems - Supervisor. Race and gender discrimination under FEHA and common law. Superior Court of California, Santa Clara County. Defense counsel: Wilson, Sonsini, et al., Palo Alto.
- e) Richard Schnaidt v. Dept. of Veterans Affairs - Grounds Keeper. Race and disability discrimination under federal law. Office of Federal Operations, Washington, D.C. Defense counsel: U.S. Attorney's Office, San Jose.
- f) Janet Chen v. Quickturn Systems - Accounting Manager. National origin and gender discrimination under FEHA and common law. Settled pre-filing at DFEH. Defense counsel: Wilson, Sonsini, et al., Palo Alto.
- g) Brenda Starks v. Sequoia Community Hospital - Director of Nursing. Race discrimination under FEHA and common law. Superior Court of California, Fresno County. Defense counsel: Bullivant, Houser & Bailey, Sacramento; Wild, Carter & Tipton, Fresno. [Co-counsel for plaintiff: Waukeen McCoy]
- h) Franz Criego v. West Fresno School District - Superintendent of Schools. Race discrimination under FEHA and common law. Superior Court of California, Fresno County. Defense counsel: Myers, Overstreet & Mayfield, Fresno.
- i) Jeremy Ealand v. SimplexGrinnell - Pipe Fabricator. Disability discrimination under FEHA and Labor Code. Superior Court of California, Fresno County. Defense counsel: Ropers, Majeski, et al. San Jose. [Co-counsel for plaintiff: Waukeen McCoy]
- j) Currently pending multi-plaintiff case - Chisolm, et al. v. Interstate Brands Corp. Race discrimination under Title VII, 42 U.S.C §1981 and the Ohio Civil Rights Act. *Pro hac vice* admission - U. S. District Court, Northern District of Ohio. [Co-counsel for plaintiff: Waukeen McCoy and Shapero & Roloff, Cleveland, Ohio]

1 4. Simultaneous with my employment law practice, during the past 15 years, I have also
2 successfully represented plaintiffs in other civil rights matters, from police misconduct cases against
3 the California Department of Corrections, Santa Clara County Sheriff's Office and City of San Jose
4 Police Department to racial discrimination in education against the San Jose Unified School District.
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6 5. In addition, I worked as a court appointed counsel for the Sixth District Court of Appeal in
7 San Jose for approximately four years, representing convicted felony appellants.
8

9 6. I am currently an active member of the California Employment Lawyers Association and
10 the Central California Trial Lawyers Association, attending seminars and lectures for continuing
11 education on a regular basis.
12

13 7. I have participated in preparing the pleadings and papers in this case and I intend to be
14 available for the duration of this action to represent the plaintiffs at all stages of the litigation, up to
15 and including trial.

16 I declare under penalty of perjury under the laws of the United States and the State of
17 California that the above information is true and correct.
18

19 Date: September 8, 2004

/s/ KAY McKENZIE PARKER

20 KAY McKENZIE PARKER
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TAB 6

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 Bill Lann Lee (SBN 108452)
 Lexi J. Hazam (SBN 224457)
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
 BOYKIN, VALERIE BROWN, RICK
 GONZALES, CYNTHIA GUERRERO,
 RACHEL HUTCHINS, KELVIN SMITH,
 SR., and KEN STEVENSON, on behalf of
 themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
 corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**DECLARATION OF GUY B. WALLACE
 IN SUPPORT OF PLAINTIFFS' MOTION
 FOR CLASS CERTIFICATION**

Date: January 14, 2005
 Time: 9:00 a.m.
 Place: Courtroom 10

1 I, Guy B. Wallace, declare:

2 1. I am an attorney licensed to practice law in all the courts of the State of California
3 and in this Court. I am counsel of record in the above-captioned matter. The facts contained in
4 this Declaration are within my personal knowledge, and I could and would competently testify to
5 those facts if called as a witness in this case.

6 **EXPERIENCE AND BACKGROUND**

7 2. I graduated from Harvard Law School in 1993. From 1993 to 1994, I was a
8 Skadden Fellow at the Disability Rights Education and Defense Fund (DREDF). From 1994 to
9 1998 I was a Skadden Fellow and then Staff Attorney at Disability Rights Advocates. Between
10 March 1998 and June 2000, I was a Staff Attorney at the Legal Aid Society of San
11 Francisco/Employment Law Center and served as head of the disability right practice at ELC. I
12 became a partner in the firm of Schneider & Wallace in June 2000 and have held that position
13 since that time.

14 3. During my eleven years of practice I have had extensive experience in class
15 actions and other complex litigation regarding the civil rights of members of minority groups. In
16 particular, I have specialized in disability civil rights class actions and in employment
17 discrimination matters. I have served as lead counsel, co-lead counsel or class counsel in more
18 than eleven civil rights class actions, and have done so through trial and on appeal. These cases
19 have included, among others, the following:

- 20 • Lopez, et al. v. San Francisco Unified School District, et al., Case No C-99-3260
21 SI (N.D. Cal.): lead counsel in class action regarding physical and programmatic
22 access to the San Francisco public schools on behalf of students and adults with
23 mobility and/or vision disabilities.
- 24 • Singleton, et al. v. Regents of the University of California, Case No. 807233-1
25 (Alameda Sup. Ct., Complex Cases Dept.): class counsel in employment
26 discrimination action against Lawrence Livermore National Laboratory for gender
27 discrimination against women in promotion, compensation and other terms and
28 conditions of employment.

- 1 • Siddiqi, et al. v. Regents of the University of California, et al., Case No. C 99-
2 0970 SI (N.D. Cal.), 2000 WL 33190435 (N.D. Cal.), 81 F.Supp.2d 972 (N.D. Cal.
3 1999) : lead counsel in class action against two campuses of the University of
4 California for failing to adopt and implement appropriate policies and procedures
5 regarding auxiliary aids and services for students who are deaf or hard of hearing
6 as required by the Americans with Disabilities Act.
- 7 • Campos v. Trustees of the California State University, Case No. Civ. 97-02326
8 MMC (MEJ) (N.D. Cal.), 1999 WL 1201809 (N.D. Cal.), 1998 US Dist. LEXIS
9 22615: co-lead counsel in class action on behalf of students and faculty members
10 with mobility and/or visual impairments against the San Francisco State University
11 for denial of programmatic access.
- 12 • Gustafson v. Regents of the University of California, Case No. C-97-4016 BZ
13 (N.D. Cal.): co-lead counsel in class action on behalf of students with mobility
14 and/or vision disabilities against the Regents of the University of California for
15 denial of physical and programmatic access at the University of California at
16 Berkeley campus.
- 17 • C.P. v. City and County of San Francisco, San Francisco Superior Court (Case No.
18 976437): lead counsel in class action challenge to policy cutting off child care
19 benefits to foster children with disabilities. The case was resolved with the entry
20 of a permanent injunction against the policy after plaintiffs successfully sought a
21 TRO from the superior court.
- 22 • Guckenberger v. Boston University, 974 F. Supp. 106 (D.Mass. 1997), 957
23 F.Supp. 306 (D. Mass. 1997): class action on behalf of students with learning
24 disabilities against a private university for policies limiting access to reasonable
25 accommodations. The case was tried with plaintiffs obtaining substantial changes
26 in defendants' policies and damages for named plaintiffs.
- 27 • Thomas v. BASS, Alameda County Superior Court (Case No. 733496-8): class
28 counsel in class action on behalf of all BASS Tickets patrons in Northern

California with mobility disabilities denied equal access to defendant's ticket selling services. The action settled with plaintiffs obtaining changes in defendant's policies and damages.

- Putnam v. Oakland Unified School District, Case No. Civ. 93-3772 CW (N.D. Cal.), 1995 US Dist. LEXIS 22122, 1995 WL 873734 (N.D. Cal.): class action against large urban school district under state and federal law for District's failure to make its programs and facilities accessible to students with disabilities. Plaintiffs' motion for summary judgment was granted. The case was settled requiring the defendant to make at least 25 of its schools fully accessible.
- Walsh v. Tamalpais Union High School District, Case No. Civ. C-96 03037 CAL (N.D. Cal.): class action against school district for failure to make its programs and facilities accessible to students with disabilities.

I serve as a member of the Board of the ACLU-Northern California and as a member of the Board of Directors of The San Francisco Trial Lawyers Association. I am a member of the bar of the Ninth Circuit Court of Appeals and of the United States Supreme Court. I have served as counsel in both of those courts on matters relating to employment and disability civil rights.

THE FIRM OF SCHNEIDER & WALLACE

4. The firm of Schneider & Wallace has an extensive practice in the areas of race discrimination, gender discrimination, wage and hour violations, disability civil rights (including both employment discrimination and access to public entities and public accommodations), and actions brought on behalf of consumers under both federal and state law. Class action litigation is a major focus of the firm. The firm of Schneider & Wallace is a partnership. Todd Schneider founded the firm in 1993. Schneider & Wallace employs ten attorneys and has acted or is acting as class counsel on numerous cases, including those identified on the firm resume. The firm has represented plaintiffs at all levels including the federal and state trial courts, the California Court of Appeal, the California Supreme Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court. A true and correct copy of the most recent firm resume of Schneider & Wallace is attached herewith as Exhibit A.

1 5. Mr. Schneider received his Juris Doctor degree from the University of Denver
 2 College of Law in December 1990. In June 1992, he was licensed to practice law in California.
 3 He has an extensive background in both employment and consumer rights litigation. Mr.
 4 Schneider has been lead counsel in hundreds of actions filed under the FEHA, Title VII and
 5 analogous statutes, including numerous cases raising issues of first impression. He has argued
 6 cases before the California Courts of Appeal and the Ninth Circuit Court of Appeals. Mr.
 7 Schneider has tried numerous cases in both federal and state court, including actions involving
 8 race, gender, national origin and disability discrimination. Cases in which Mr. Schneider acted as
 9 lead counsel, co-lead counsel and/or class counsel include, among others, the following:

- 10 • Bates, et al. v. UPS, Case No. C-99-02216 TEH (N.D. Cal), 204 F.R.D. 440
 11 (N.D. Cal. 2001): Mr. Schneider served as co-lead counsel and co-lead trial
 12 counsel during an eight month bench trial before the Honorable Thelton E.
 13 Henderson in this cutting edge national class action on behalf of deaf and hard of
 14 hearing employees of UPS.
- 15 • Singleton, et al. v. Regents of the University of California, Case No. 807233-1
 16 (Alameda Sup. Ct., Complex Cases Dept.): class counsel in employment
 17 discrimination action against Lawrence Livermore National Laboratory for gender
 18 discrimination against women in promotion, compensation and other terms and
 19 conditions of employment.
- 20 • Lenahan, et al. v. Sears Roebuck, Case No. 3-02-CV-00045/SRC (JJH) (D.N.J.):
 21 co-lead counsel in a class and collective action pursuant to the FLSA and New
 22 Jersey state law regarding wage and hour violations.
- 23 • Desoto, et al. v. Sears Roebuck, Case No. RG03096692 (Alameda Sup. Ct.,
 24 Complex Cases Dept.): counsel in a wage and hour case in which plaintiffs have
 25 filed a motion for class certification.
- 26 • Molieri v. South San Francisco Police Department, San Mateo County Superior
 27 Court, Case No. 399497: lead trial counsel in jury trial involving plaintiff's claims
 28

1 of race discrimination against the police department. The jury returned a verdict
2 of \$1.9 million in favor of the plaintiff.

3 Mr. Schneider serves as counsel in numerous wage and hour cases brought on behalf of a
4 class of employees, including *McMaster v. BCI Coca-Cola Bottling*, Case No. RG04173735
5 (Alameda Sup. Ct., Complex Cases Dept.), and *Marin v. CostCo*, Case No. RG04150447
6 (Alameda Sup. Ct., Complex Cases Dept.). Mr. Schneider serves as counsel in numerous
7 consumer actions brought on behalf of the public or on behalf of a class of consumers, including
8 among others, the following actions: *Ental v. Intuit*, Case No. 1-04-CV-020277 (Santa Clara
9 County Sup. Ct.); *Flannery v. Intuit*, Case No. 1-04-CV-016394; and *Eichorn v. Palm One*, Case
10 No. 1-04-CV-026091 (Santa Clara County Sup. Ct.). Mr. Schneider is also a published author on
11 the litigation of class action matters and employment matters. He serves on the Board of
12 Directors of The San Francisco Trial Lawyers Association and the Board of Governors At Large
13 of the Consumer Attorneys of California.

14 6. This year Joshua Konecky joined the firm of Schneider & Wallace as a senior
15 associate. Mr. Konecky has litigated class actions since 1997, and has extensive experience
16 regarding the legal standards that apply to class action litigation. His areas of specialization are
17 employment discrimination, minimum wage & hour, and disability access. He has appeared for
18 these types of cases on the trial and appellate level in both federal and state court, including the
19 recent trial of a disparate impact, race discrimination class action in the Eastern District of Texas.
20 Mr. Konecky is a former Skadden Public Interest Law Fellow, U.S. Fulbright Scholar in
21 Argentina, and judicial law clerk for the Honorable Lawrence K. Karlton, U.S. District Court for
22 the Eastern District of California. Mr. Konecky holds a J.D. from New York University School
23 of Law (1995) and a B.A. from Haverford College (1990).

24 **THIS ACTION IS SUITABLE FOR CLASS CERTIFICATION**

25 7. I believe the class of plaintiffs in this case is far too numerous for joinder to be
26 practicable. In this case I consider a class action superior to any other method because the risk of
27 substantial prejudice from separate actions is high, and because numerous common questions of
28 law and/or fact are presented. Without certification, plaintiffs may only pursue numerous

1 individual lawsuits, creating undue hardship on the various plaintiffs, defendants, and the courts.
2 Certification, I believe, would avoid the prejudice present in separate actions by eliminating
3 inconsistent decisions and affording all class members relief through a single proceeding.
4 Because of the efficiency of the class action mechanism in this regard, I believe that class
5 certification would be in the best interests of plaintiffs, defendants, and the Court.

6 8. The firm of Schneider & Wallace is committed to the full preparation of this case
7 through the performance of any necessary and reasonable discovery, and is willing to take this
8 case to trial should that become necessary. Our firm is committed to acting in the best interests of
9 the class, and understands our duties in that regard under applicable federal law.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct. Executed at San Francisco, California on September 10, 2004.

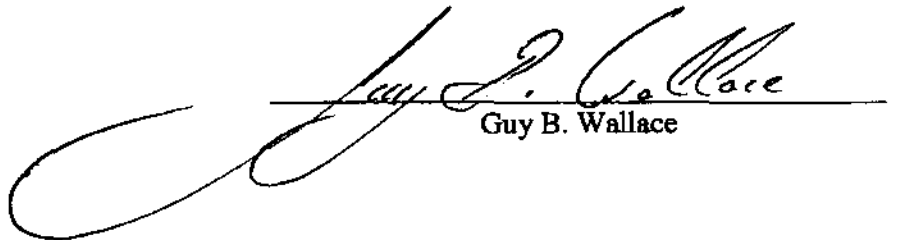
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EXHIBIT A

Schneider & Wallace

Firm Profile

The firm of Schneider & Wallace is a partnership. Todd Schneider founded the firm in 1993. Guy Wallace joined the firm in 2000. Schneider & Wallace employs ten other attorneys and has or is acting as class counsel on numerous cases. *See e.g. Siddiqi v. Regents* 99-0790 SI (N.D. Cal.); *Lopez v. San Francisco* C-99-03260 SI (N.D. Cal.); *Bates v. UPS* C 99-02216 TEH (N.D. Cal); *Campos v. San Francisco State University* C-97-02326 MCC (N.D. Cal); *Lenahan v. Sears* 3-02-CV-00045/SRC (JJH) (D.N.J.) (certification pending). The firm has represented plaintiffs at all levels including the Federal and State trial courts, the California Court of Appeal, the Ninth Circuit Court of Appeals and the United States Supreme Court.

Professional Qualifications

TODD M. SCHNEIDER

Mr. Schneider received his Juris Doctor degree from the University of Denver College of Law in December 1990. In June 1992 he was licensed to practice law in California. Mr. Schneider founded the firm in 1993. He has an extensive background in both employment and consumer rights litigation. Mr. Schneider has been lead counsel in hundreds of actions filed under the FEHA, Title VII and analogous statutes, including numerous cases raising issues of first impression. He has argued cases before the California Courts of Appeal and the Ninth Circuit Court of Appeals. He was also one of the attorneys representing Robert Barnett in *U.S. Airways v. Barnett* before the United States Supreme Court on writ of *certiorari*. *See U.S. Airways v. Barnett* (2000) 122 S.Ct. 1516.

Mr. Schneider has an extensive background in employment litigation, and has tried and won numerous cases involving race, gender, national origin and disability discrimination. Mr. Schneider is also a published author on the litigation of class action matters and employment matters. He serves on the Board of Directors of The San Francisco Trial Lawyers Association and the Board of Governors At Large of the Consumer Attorneys of California. Mr. Schneider is a member of the American Bar Association, The State Bar of California, The Association of Trial Lawyers of America, The National Employment Lawyers Association and The California Employment Lawyers Association. He is a frequent lecturer on civil rights matters and regularly appears as a panelist at MCLE seminars regarding civil rights, class actions and employment matters.

GUY B. WALLACE

Guy Wallace graduated from Harvard Law School in 1993. From 1993 to 1994, he was a Skadden Fellow at the Disability Rights Education and Defense Fund (DREDF). From 1994 to 1998 he was a Skadden Fellow and then Staff Attorney at Disability Rights Advocates. In March 1998, Mr. Wallace became a Staff Attorney at the Legal Aid Society of San Francisco/Employment Law Center. In 2000, he joined the firm of Schneider & Wallace as a partner.

Mr. Wallace has extensive experience in class action and impact litigation on behalf of persons with disabilities and other protected classes, and has tried and won cases in those areas. His expertise includes both disability access and employment class action cases. He is a frequent lecturer on disability law issues and impact litigation, and he has authored various publications on the topic. He has been lead counsel or class counsel in numerous class actions.

Representative Cases

The firm and/or its partners have been lead counsel or class counsel in the following cases:

Singleton v. Regents of the University of California

In this class action law suit, charging that thousands of female employees were denied equal pay and promotional opportunities at Lawrence Livermore National Laboratory (the "Lab"), a national security research facility managed by the Regents for the U.S. Department of Energy, Schneider & Wallace, with co-counsel The Sturdevant Law Firm; Trial Lawyers For Public Justice; and Gwilliam, Ivory, Chiosso, Cavalli & Brewer, was successful in securing a \$10.6 million settlement on behalf of 3,200 female employees of the Lawrence Livermore National Laboratory who alleged that they were discriminated against in pay and promotions.

Bates v. United Parcel Service

Schneider & Wallace, with co-counsel Disability Rights Advocates, represents current and former United Parcel Service employees with hearing disabilities in this nationwide lawsuit. The case challenges discriminatory employment practices by UPS, such as its failure and refusal to provide qualified sign language interpreters for interviews, training, and staff and safety meetings, as well as UPS' failure to promote deaf workers beyond entry level and part time positions. This is the first such employment class action brought on behalf of deaf workers throughout the country concerning such workplace discrimination. UPS has recently agreed to a landmark \$5.8 million settlement of the part of this case alleging unequal terms and conditions of employment, but continues to refuse to allow its deaf employees to drive any UPS vehicle. The parties are currently awaiting a ruling in this case following an eight month bench trial before the Honorable Thelton E. Henderson.

Siddiqi, et al. v. Regents of the University of California, et al.

In this class action, Schneider & Wallace, with co-counsel The Legal Aid Society - Employment Law Center, successfully challenged policies and communication barriers that made it impossible for deaf and hard of hearing students to gain equal and meaningful access to the educational opportunities offered by the University of California at Berkeley and Davis. The

court has granted final approval of a class settlement in this matter which has revolutionized the way in which deaf and hard of hearing students are treated at the Universities.

Lopez, et al. v. San Francisco Unified School District

In this class action law suit, Schneider & Wallace with co-counsel Jose R. Allen and the Legal Aid Society - Employment Law Center, are representing students and adults with disabilities against the San Francisco Unified School District. With this case, Schneider & Wallace sought to remove the physical barriers that prevent San Francisco's disabled school children from enjoying the full and equal benefits of San Francisco's public education system. The case has been resolved by a Stipulated Judgment that will create the largest fully accessible urban public school system in the United States. As part of the Stipulated Judgment, at least 96 of San Francisco's aging public schools will be brought into compliance with the Americans with Disabilities Act disability access design standards for new construction at a cost estimated to be in excess of \$100 million.

Campos v. Trustees of the California State University (San Francisco State University)

In this class action law suit, Schneider & Wallace, with co-counsel Disability Rights Advocates and The Legal Aid Society - Employment Law Center, was successful in forcing San Francisco State University to bring its campus into compliance with the ADA's physical and programmatic access requirements. The case settled in late 2001 after nearly four years of protracted litigation.

Gustafson v. Regents of the University of California

Mr. Wallace acted as co-lead counsel in this class action on behalf of students with mobility disabilities against the University of California, Berkeley for denial of structural and programmatic access. The parties have reached a settlement agreement that will require the University of California at Berkeley to spend more than \$30 million on disability access improvements over the course of the next thirteen years.

C.P. v. City and County of San Francisco

Mr. Wallace served as lead counsel in this class action challenge to the City and County's policy cutting off child care benefits to foster children with disabilities. The case was resolved with the entry of a permanent injunction against the policy after plaintiffs successfully sought a TRO.

Guckenberger v. Boston University

Mr. Wallace served as counsel in this class action brought against the university on behalf of students with learning disabilities who challenged defendants' policies limiting access to reasonable accommodations. The case was tried with plaintiffs obtaining substantial changes in defendants' policies and damages for named plaintiffs.

Putnam v. Oakland Unified School District

Mr. Wallace served as class counsel in this class action against a large urban school district. The suit was brought under state and federal law for the District's failure to make its programs and facilities accessible to students with disabilities. Plaintiffs' motion for summary judgment was granted. The case was settled, requiring the defendant to make at least 25 of its schools fully accessible.