

[Names and Addresses of Counsel
Appear on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, TYRONE
MERRITT, 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

**THIRD CONSOLIDATED AMENDED
COMPLAINT FOR VIOLATIONS OF
TITLE VII OF THE CIVIL RIGHTS ACT
OF 1964; 42 U.S.C. § 1981; CALIFORNIA
FAIR EMPLOYMENT AND HOUSING
ACT**

JURY TRIAL DEMANDED

INTRODUCTION

Individual and representative Plaintiffs Derrick Satchell ("Satchell"), Kalini Boykin ("Boykin"), Valerie Brown ("Brown"), Rick Gonzales ("Gonzales"), Cynthia Guerrero ("Guerrero"), Rachel Hutchins ("Hutchins"), Tyrone Merritt ("Merritt"), Kelvin Smith, Sr. ("Smith"), and Ken Stevenson ("Stevenson") (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, allege as follows:

PRELIMINARY STATEMENT

1. This race discrimination class action is brought on behalf of two classes of African American and Latino ("Minority") employees of defendant FedEx Express. One class consists of 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 ("Minority Employee Class"). The second class consists of 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 ("African American Lower-Level Manager Class").

2. Representative Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, and Stevenson allege on behalf of themselves and the Minority Employee Class that FedEx Express engages in a continuing policy and practice of racial discrimination against its African American and Latino hourly employees in the Western Region through the use of subjective and arbitrary decision making and highly discretionary criteria by (1) disproportionately assigning Minority Employees to part-time and casual positions, instead of

1 to the full-time and permanent hourly positions to which similarly situated non-Minority
2 employees are sometimes initially assigned; (2) providing Minority Employees with fewer
3 promotions to full-time and part-time permanent hourly positions than provided to similarly
4 situated non-Minority employees; (3) providing Minority Employees with fewer promotions to
5 management positions than provided to similarly situated non-Minority employees; (4) providing
6 Minority Employees with less compensation, including less pay for the same work and less
7 overtime, than provided to similarly situated non-Minority employees; and (5) disciplining
8 Minority Employees for petty matters and/or for infractions unsupported or contradicted by
9 credible evidence, for which similarly situated non-Minority employees are not disciplined or are
10 disciplined less harshly.

11 3. Representative Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt,
12 Smith, and Stevenson also allege on behalf of themselves and the Minority Employee Class that
13 FedEx Express discriminates against the Minority Employee Class by requiring applicants for
14 certain promotions to pass the Basic Skills Test ("BST"), which has a disparate impact on
15 Minorities and is not a valid selection tool.

16 4. Representative Plaintiffs Derrick Satchell and Kalini Boykin allege on
17 behalf of themselves and the class of African American Lower-Level Managers that FedEx
18 Express engages in a continuing policy and practice of racial discrimination against its African
19 American Operations Managers and other managers below the level of Senior Manager ("African
20 American Lower-Level Managers") in the Western Region through the use of subjective and
21 arbitrary decision-making and highly discretionary criteria by (1) providing African American
22 Lower-Level Managers with fewer promotions to higher management grade levels and/or senior
23 management positions than provided to similarly situated non-Minority managers; (2) providing
24 African American Lower-Level Managers with less compensation, including less pay for the
25 same work, than provided to similarly situated non-Minority managers; and (3) disciplining
26 African American Lower-Level Managers for petty matters and/or for infractions unsupported or
27 contradicted by credible evidence, for which similarly situated non-Minority managers are not
28 disciplined or are disciplined less harshly.

5. This action seeks an end to these discriminatory practices, and seeks declaratory and injunctive relief, including rightful place relief, back pay, front pay, and compensatory and punitive damages for the individual Plaintiffs and members of the two classes.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 42 U.S.C. §§ 2000e-5(f)(3) and 42 U.S.C. § 1981. The action presents federal questions under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended, and 42 U.S.C. § 1981. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over plaintiffs' claims under the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12940, *et seq.*

7. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28 U.S.C. § 1391 (b) & (c). All the named Plaintiffs' claims, except for those of Plaintiff Merritt, arose in California, and many of the acts complained of herein occurred in this District and gave rise to the claims alleged. Defendant operates over 100 facilities in California and employs thousands of workers in the State of California. Defendant operates at least 10 facilities in the Northern District of California.

THE PARTIES

8. Plaintiff Derrick Satchell is an African American formerly employed by Defendant FedEx Express as a Courier Operations Manager at its distribution facility located at 335 Brokaw Road, Santa Clara, California (the "Santa Clara Facility"). Plaintiff Satchell was employed by Defendant from approximately June 1992 until April 16, 2002. Plaintiff Satchell is a resident of Tracy, California.

9. Plaintiff Kalini Boykin is an African American currently employed by Defendant as a Ramp Transport Driver ("RTD") Operations Manager, most recently at its operations facility located at 1254 Davis Street, San Leandro, California (the "San Leandro Facility"). Plaintiff Boykin has been employed by Defendant in several capacities since approximately May 1995. Plaintiff Boykin is a resident of Sacramento, California.

10. Plaintiff Valerie Brown is an African American currently employed by

1 Defendant as a part-time Customer Service Agent at 935 Performance Dr., Stockton, California
2 (the "Stockton Facility"). Plaintiff Brown has been employed by defendant FedEx Express at
3 several of its facilities and in several capacities since approximately 1982. Plaintiff Brown is a
4 resident of Tracy, California.

5 11. Plaintiff Rick Gonzales is a Latino formerly employed by Defendant
6 FedEx Express as a Courier at Defendant's facility located at 9339 Ann Street, Santa Fe Springs,
7 California (the "Santa Fe Springs Facility"). Plaintiff Gonzales was employed by Defendant from
8 approximately May 1988 until September 2002. Plaintiff Gonzales is a resident of Temecula,
9 California. Plaintiffs are informed and believe, and thereon allege, that Plaintiff is eligible for
10 rehire.

11 12. Plaintiff Cynthia Guerrero is a Latina formerly employed by Defendant
12 FedEx Express as a Courier at Defendant's Santa Fe Springs Facility. Plaintiff Guerrero was
13 employed by Defendant from approximately 1995 to July 2004. Plaintiff Guerrero currently
14 resides in Topeka, Kansas. Plaintiffs are informed and believe, and thereon allege, that Plaintiff
15 is eligible for rehire.

16 13. Plaintiff Rachel Hutchins is an African American formerly employed by
17 Defendant FedEx Express as a part-time, casual Handler at Defendant's facility located at 2103
18 Airport Drive, Bakersfield, California (the "Bakersfield Facility"). Plaintiff Hutchins was
19 employed by Defendant from approximately December 1995 through April 1996, and from
20 March 2001 through January 2004. Plaintiff Hutchins is a resident of Bakersfield, California.
21 Plaintiffs are informed and believe, and thereon allege, that Plaintiff is eligible for rehire.

22 14. Plaintiff Tyrone Merritt is an African American currently employed by
23 Defendant FedEx Express as a Field Facility Management Specialist, domiciled at Defendant's
24 facility in New Orleans, Louisiana. From the fall of 2001 to July 2005, he worked as a permanent
25 part-time Handler at Defendant's facility located at 3002 E. Old Tower Rd., Phoenix, Arizona
26 (the "Phoenix Facility"). Plaintiff Merritt has been employed by Defendant since approximately
27 September 1998. Plaintiff Merritt is currently a resident of Memphis, Tennessee, where he is
28 attending training.

15. Plaintiff Kelvin Smith is an African American formerly employed by Defendant FedEx Express as a part-time Lead Handler at Defendant's Santa Clara Facility. Plaintiff Smith was employed by Defendant from approximately November 1989 to July 2002. Plaintiff Smith is a resident of Apple Valley, California.

16. Plaintiff Ken Stevenson is an African American currently employed by Defendant FedEx Express as an Operations Manager at Defendant's facility located at 201 W. Manville St., Compton, California (the "Compton Facility"). Plaintiff Stevenson has been employed by Defendant in various positions since approximately May 1997. Plaintiff Stevenson is a resident of Long Beach, California.

17. Defendant FedEx Express is, and at all times mentioned herein was, a Delaware corporation operating express mail and package delivery and freight delivery services in the San Francisco Bay Area, as well as throughout the State of California and the United States. FedEx Express operates facilities, among other places, in Bakersfield, Emeryville, Milpitas, Oakland, San Francisco, San Jose, San Leandro, Santa Clara, Santa Fe Springs, and Sunnyvale, California.

CLASS ALLEGATIONS

18. The Representative Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of: (1) 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; and (2) 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,

1 Montana, Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during
2 the period October 17, 1999 through the date of judgment in this action.

3 A. Employee Class

4 19. Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, and
5 Stevenson are members of, and seek to represent, the Minority Employees Class.

6 20. The members of the Minority Employee Class identified herein are so
7 numerous that joinder of all members is impracticable. By the end of 2003, FedEx Express had
8 many tens of thousands of employees. Although the precise number of Minority Employees
9 affected by the discriminatory practices alleged herein is currently unknown, it is far greater than
10 can be feasibly addressed through joinder. The precise number is ascertainable from Defendant's
11 records.

12 21. There are many questions of law and fact common to the Minority
13 Employee Class, and these questions predominate over any questions affecting only individual
14 members. Common questions of fact or law include, among others: (1) whether FedEx Express'
15 policies or practices have a disparate impact on Minority Employees with respect to (a) initial job
16 assignment, (b) compensation, (c) promotion, and (d) discipline; (2) whether any disparate impact
17 is justified by business necessity; (3) whether the disparate impact constitutes a violation of
18 Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq.; (4) whether FedEx Express has
19 intentionally discriminated against Minority Employees with respect to (a) initial job assignment,
20 (b) compensation, (c) promotion, and (d) discipline; (5) whether FedEx Express has engaged in a
21 pattern and practice of disparate treatment adverse to Minority Employees; (6) whether that
22 disparate treatment violates Title VII of the 1964 Civil Rights Act; (7) whether defendant's
23 intentional discrimination against Minority Employees violates 42 U.S.C. § 1981; and (9) whether
24 injunctive relief and other equitable remedies (including back pay and front pay) and
25 compensatory and punitive damages are warranted for the Minority Employee Class.

26 22. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
27 because FedEx Express has acted and/or refused to act on grounds generally applicable to the
28 Minority Employee Class, making appropriate declaratory and injunctive relief with respect to

1 Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, and Stevenson and the Minority
2 Employee Class as a whole. The members of the Minority Employee Class are entitled to
3 injunctive relief to end FedEx Express' common, uniform, and unfair racially discriminatory
4 personnel policies and practices.

5 23. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
6 because common questions of fact and law predominate over any questions affecting only
7 individual members of the Minority Employee Class, and because a class action is superior to
8 other available methods for the fair and efficient adjudication of this litigation. The members of
9 the Minority Employee Class have been damaged and are entitled to recovery as a result of FedEx
10 Express' common, uniform, and unfair racially discriminatory personnel policies and practices.
11 FedEx Express has computerized payroll and personnel data that will make calculation of
12 damages for specific members of the Minority Employee Class relatively simple.

13 B. African American Lower-Level Manager Class

14 24. Plaintiffs Satchell and Boykin are members of, and seek to represent, the
15 African American Lower-Level Manager Class.

16 25. The members of the African American Lower-Level Manager Class
17 identified herein are so numerous that joinder of all members is impracticable. By the end of
18 2003, FedEx Express had many tens of thousands of employees. Although the precise number of
19 African American Lower-Level Managers affected by the discriminatory practices alleged herein
20 is currently unknown, it is far greater than can be feasibly addressed through joinder. The precise
21 number is ascertainable from Defendant's records.

22 26. There are many questions of law and fact common to the African American
23 Lower-Level Manager Class, and these questions predominate over any questions affecting only
24 individual members. Common questions of fact or law include, among others: (1) whether
25 FedEx Express' policies or practices have a disparate impact on African American Lower-Level
26 Managers with respect to (a) compensation, (b) promotion to senior management, and
27 (c) discipline; (2) whether any disparate impact is justified by business necessity; (3) whether the
28 disparate impact constitutes a violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C.

1 § 2000e et seq.; (4) whether FedEx Express has intentionally discriminated against African
2 American Lower-Level Managers with respect to (a) compensation, (b) promotion to senior
3 management, and (c) discipline; (5) whether FedEx Express has engaged in a pattern and practice
4 of disparate treatment adverse to African American Lower-Level Managers; (6) whether that
5 disparate treatment violates Title VII of the 1964 Civil Rights Act; (7) whether defendant's
6 intentional discrimination against African American Lower-Level Managers violates 42 U.S.C.
7 § 1981; and (9) whether injunctive relief and other equitable remedies (including back pay and
8 front pay) and compensatory and punitive damages are warranted for the African American
9 Lower-Level Manager Class.

10 27. The claims of Representative Plaintiffs Satchell and Boykin are typical of
11 the claims of the African American Lower-Level Manager Class.

12 28. Representative Plaintiffs Satchell and Boykin will fairly and adequately
13 represent and protect the interests of the members of the African American Lower-Level Manager
14 Class. Plaintiffs have retained counsel competent and experienced in complex class actions and
15 employment discrimination litigation.

16 29. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
17 because FedEx Express has acted and/or refused to act on grounds generally applicable to the
18 African American Lower-Level Manager Class, making appropriate declaratory and injunctive
19 relief with respect to Plaintiffs Satchell and Boykin and the African American Lower-Level
20 Manager Class as a whole. The members of the African American Lower-Level Manager Class
21 are entitled to injunctive relief to end FedEx Express' common, uniform, and unfair racially
22 discriminatory personnel policies and practices.

23 30. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
24 because common questions of fact and law predominate over any questions affecting only
25 individual members of the African American Lower-Level Manager Class, and because a class
26 action is superior to other available methods for the fair and efficient adjudication of this
27 litigation. The members of the African American Lower-Level Manager Class have been
28 damaged and are entitled to recovery as a result of FedEx Express' common, uniform, and unfair

1 racially discriminatory personnel policies and practices. FedEx Express has computerized payroll
 2 and personnel data that will make calculation of damages for specific members of the African
 3 American Lower-Level Manager Class relatively simple.

4 **STATEMENT OF FACTS APPLICABLE TO CLASS CLAIMS**

5 A. **FedEx Express' Discriminatory Policies and Practices Have A**
 6 **Disparate Impact On Minorities.**

7 31. Defendant FedEx Express denies Minority Employees and African
 8 American Lower-Level Managers equal assignments, promotions, training, and compensation,
 9 and over-disciplines Minority Employees and African American Lower-Level Managers, as a
 10 result of reliance on policies and practices that have an adverse impact on Minority Employees
 11 and African American Lower-Level Managers which cannot be justified by business necessity,
 12 and for which alternative policies and practices with less discriminatory impact could be utilized
 13 that would equally serve any asserted business necessity.

14 32. Plaintiffs are informed and believe that such policies and practices continue
 15 up to and including the present and include, without limitation:

16 (a) Failure to consistently post job and promotional openings to ensure
 17 that all Minority Employees and African American Lower-Level Managers have notice of and
 18 opportunity to seek advancement, higher compensation, overtime, or more desirable assignments
 19 and training;

20 (b) Reliance upon unweighted, arbitrary, and/or subjective criteria in
 21 making job assignment, training, performance review, compensation, promotion, and discipline
 22 decisions. Even where FedEx policies state objective requirements, these requirements are often
 23 applied in an inconsistent manner and ignored at the discretion of management;

24 (c) Reliance on racial stereotypes in making employment decisions
 25 involving job assignments, promotions, compensation, discipline and training;

26 (d) Pre-selection and "grooming" of non-Minority employees for
 27 promotion, favorable assignments, higher pay, and more desirable positions;

28 (e) Maintenance of largely racially-segregated job categories and

1 departments;

2 (f) Deterrence and discouragement of Minority Employees and African
3 American Lower-Level Managers from seeking advancement, training, favorable assignments
4 and higher paid, more desirable positions;

5 (g) Paying Minority Employees and African American Lower-Level
6 Managers lower compensation than similarly situated non-Minorities;

7 (h) Assigning Minority Employees to lower paying positions and
8 positions with lesser advancement potential than those given to non-Minorities (including part-
9 time and casual positions), and advancing Minority Employees more slowly from these positions
10 than similarly situated non-Minority employees;

11 (i) Providing less training and support to Minority Employees and
12 African American Lower-Level Managers than that given to non-Minority employees and
13 managers; and

14 (j) Using performance evaluations that have adverse impact and have
15 not been validated, and failing to explore alternative, non-discriminatory options.

16 33. Defendant FedEx Express also requires that applicants for certain positions
17 pass the BST, which has an adverse impact on Minority Employees and cannot be justified by any
18 business necessity, and for which alternative selection procedures with less discriminatory impact
19 could be utilized that would equally serve any asserted business necessity. The BST requirement
20 applies uniformly to all Courier, Ramp Transport Driver, Customer Service Agent, and Customer
21 Representative candidates in the Western Region.

22 34. Defendant FedEx Express engages in a pattern and practice of highly
23 subjective decision making with unfettered discretion regarding employment matters that is
24 discriminatory to Minority Employees and African American Lower-Level Managers and is
25 manifested in initial assignments (as to Minority Employees only), promotions, compensation,
26 and discipline. While Defendant has policies designed to govern these matters, many of these
27 policies involve uncontrolled subjective criteria and/or are applied by Defendant in an arbitrary
28 and capricious manner, and/or allow managers almost unlimited discretion, even with respect to

1 allegedly objective criteria. As a result, racial biases and stereotypes enter into Defendant's
2 employment decisions.

3 35. For example, although FedEx Express has objective criteria that must be
4 met before an hourly employee may apply for a promotion, managers often exercise their
5 discretion to either disapprove the promotions applications of Minority candidates who meet all
6 the objective criteria, or approve the promotions applications of non-Minority candidates who do
7 not meet all the objective criteria. Similarly, although candidates for promotion to certain
8 positions are supposed to be chosen based on allegedly objective criteria including years of
9 service and performance review scores, managers exercise their discretion to hire non-Minority
10 candidates, even when those non-Minority candidates have lower scores on the objective criteria
11 than do some Minority applicants.

12 36. Defendant has discriminated against Minority Employees by use of a dual-
13 employment track. For example, both full-time and part-time employees fill Handler positions at
14 a facility. The full-time positions are more lucrative and provide employees with more
15 opportunities for advancement, greater job security, and greater pay and benefits. By contrast, the
16 part-time positions are less desirable because they offer lower wages, lesser benefits, changing
17 and inconsistent work hours, proportionately heavier responsibilities, and more difficult work
18 conditions. Defendant has a systematic pattern and practice of relegating qualified Minority
19 Employees to part-time jobs, with lesser job security, compensation, and opportunity for
20 advancement. Defendant typically reserves the full-time, permanent, higher wage positions for
21 non-Minority employees. Consistent with Defendant's long-standing discriminatory policies and
22 practices, Defendant typically hires Minority Employees only for entry level, part-time, and
23 casual positions.

24 37. Defendant also disproportionately fails to promote qualified Minority
25 Employees from part-time, casual positions to full-time and permanent positions at the same rate
26 as their similarly situated non-Minority counterparts. Even when FedEx Express does promote
27 Minority Employees from part-time, casual positions to part-time or full-time permanent
28 positions, it does not promote them as quickly as their similarly situated non-Minority

1 counterparts.

2 38. FedEx also uses uniform performance evaluations that have adverse impact
3 and have not been validated, and that are the basis for promotion and compensation decisions
4 under FedEx policy.

5 39. Virtually all Minority Employees of Defendant FedEx Express occupy
6 entry level, hourly positions. FedEx Express disproportionately fails to promote qualified
7 Minority Employees to lower management positions such as Operations Manager, and instead
8 disproportionately promotes similarly situated or less qualified non-Minority employees to those
9 positions.

10 40. The few Minority Employees who are able to break into the management
11 ranks are themselves often subjected to discriminatory practices that minimize their opportunities
12 for further advancement. Such practices include, for example, exclusion of Minority managers
13 from "informal" email buddy lists and social gatherings that are used to communicate relevant
14 operating procedures, discuss managerial issues, and post corporate advancement opportunities.

15 41. FedEx Express disproportionately fails to promote the few qualified
16 African American Lower-Level Managers to Senior Manager positions, and instead
17 disproportionately promotes similarly situated, or less qualified, non-Minority Operations
18 Managers or other non-Minority Lower-Level Managers to Senior Manager positions. Even
19 when African American Lower-Level Managers are promoted to Senior Manager positions, they
20 are promoted less quickly than similarly situated, or less qualified, non-Minorities.

21 42. Plaintiffs are informed and believe that Minority Employees and African
22 American Lower-Level Managers are paid less than non-Minority employees who perform
23 substantially similar work and have similar or lesser skills and experience. Plaintiffs are further
24 informed and believe that non-Minority employees are more likely to be assigned to positions that
25 pay better than positions to which Minority Employees are assigned.

26 43. Plaintiffs are informed and believe that this discrimination in compensation
27 takes on several forms: requiring Minority Employees and African American Lower-Level
28 Managers to perform the job duties of higher positions without a commensurate change in their

1 title or increase in pay; paying Minority Employees and African American Lower-Level
 2 Managers less than non-Minority employees with the same job title and job duties; providing
 3 Minority Employees with fewer desired overtime hours than non-Minority employees with equal
 4 or less seniority; and not paying Minority Employees the guaranteed minimum pay.¹

5 44. Defendant has also engaged in a longstanding, widespread and
 6 discriminatory policy and practice of applying differential standards in determining whether to
 7 subject an employee to disciplinary action. Minority Employees and African American Lower-
 8 Level Managers are consistently reprimanded and disciplined for petty matters, and are
 9 disciplined for infractions unsupported or contradicted by credible evidence. Non-Minority
 10 Employees are not reprimanded or disciplined for similar matters, or for infractions which are not
 11 supported by credible evidence.

12 45. Defendant routinely terminates Minority Employees and African American
 13 Lower-Level Managers who receive three forms of written discipline within a 12-month period,
 14 even if some of the three are documented counselings or Online Compliment/Counselings
 15 ("OLCC")², rather than formal warning letters. By contrast, Defendant does not automatically
 16 terminate non-Minority employees and managers who are disciplined three times in a 12-month
 17 period. Where non-Minorities have received three disciplinary actions in a 12-month period,
 18 Defendant has allowed the non-Minority employee to continue his or her employment, has
 19 transferred the employee, or has demoted the employee.

20 46. Defendant's system of subjective and arbitrary decision making and
 21 allowance of unfettered discretion has an adverse impact on Minority Employees and African
 22 American Lower-Level Managers relative to their non-Minority peers with respect to (a) initial
 23 job assignment (as to Minority Employees only); (b) promotion to permanent and full-time
 24 positions and to management; (c) compensation; and (d) discipline. This impact is not justified
 25 by business necessity. Even if it could be so justified, less discriminatory alternatives exist that

26 ¹ Defendant guarantees its part-time employees a minimum of 17½ hours to which they are entitled even if the
 27 company does not have sufficient work to be performed. The number of hours out of the guaranteed minimum of
 28 hours which an employee did not actually work are called "excess" minimum hours.

² OLCCs are verbal warnings accompanied by a notation in a company employee database that both employee and
 manager acknowledge in writing.

1 could equally serve any alleged necessity.

2 47. Defendant's requirement that applicants for promotion to Courier, Ramp
3 Transport Driver, Customer Service Agent, and Customer Representative pass a group of tests
4 known as the Basic Skills Test ("BST") has a statistically significant adverse impact on
5 Minorities that is not justified by business necessity. Even if it could be so justified, less
6 discriminatory alternatives exist that could equally serve any alleged necessity.

7 48. As a proximate result of the racially discriminatory employment practices
8 and other wrongful acts alleged herein, Plaintiffs and members of both classes have suffered loss
9 of income, loss of advancement and promotion, loss of career opportunity, and/or loss of
10 intangible job benefits.

11 49. Plaintiffs, and each of them, have experienced such racially discriminatory
12 employment practices and other racially discriminatory actions by Defendant including, without
13 limitation, the practices and actions described herein.

14 B. **FedEx Express Intentionally Discriminates Against Minorities.**

15 50. This pattern of denying Minority Employees and African American Lower-
16 Level Managers equal assignments, promotions, training, and compensation and of over-
17 disciplining Minority Employees and African American Lower-Level Managers, is not the result
18 of random or non-discriminatory factors. Rather, it is the result of an ongoing and continuous
19 pattern and practice of intentional race discrimination in assignments, compensation, promotions,
20 and discipline.

21 51. Defendant engages in intentional discrimination against Minority
22 Employees and African American Lower-Level Managers through its system of subjective and
23 arbitrary decision making and unfettered management discretion, with respect to (a) initial job
24 assignment (as to Minority Employees only); (b) promotion to permanent and full-time positions
25 and to management; (c) compensation; and (d) discipline, as demonstrated by anecdotal and
26 statistical evidence, as set forth in paragraphs 31-32 and 34-46, which are incorporated herein by
27 reference.

28 52. Defendant has condoned the discriminatory conduct of its managers by

1 failing to properly investigate formal complaints regarding discrimination, and by promoting
2 managers who engage in acts of discrimination or transferring them to other locations despite
3 repeated complaints (and in some cases, previous discrimination lawsuits) by Plaintiffs and other
4 Minority Employees and African American Lower-Level Managers.

5 53. As a proximate result of the racially discriminatory employment practices
6 and other wrongful acts alleged herein, Plaintiffs and members of both classes have suffered loss
7 of income, loss of advancement and promotion, loss of career opportunity, and/or loss of
8 intangible job benefits.

9 54. As a proximate result of the racially discriminatory employment policies,
10 practices and other wrongful acts alleged herein, Plaintiffs and members of both classes have
11 experienced pain, suffering, severe emotional and mental distress, shame, humiliation,
12 embarrassment, and related physical ailments.

13 55. Plaintiffs, and each of them, have experienced such racially discriminatory
14 employment practices and other racially discriminatory actions by Defendant including, without
15 limitation, the practices and actions described herein.

16 C. **FedEx Express' Operations**

17 56. The Plaintiffs to this action are, or have been, employed by Defendant
18 FedEx Express in its Western Region.

19 57. Defendant FedEx Express' Western Region includes the following states:
20 Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon,
21 part of Texas, Utah, Washington, and Wyoming.

22 58. Defendant employs uniform employment and personnel policies
23 throughout all its districts, regions, and/or divisions in the Western Region. Regardless of facility
24 or corporate division, there are uniform policies for employees, uniform "orientation" procedures,
25 and uniform salary, assignment, pay, training, promotion, and disciplinary policies. All facilities
26 must follow these uniform, company-wide policies and procedures.

27 59. Defendant operates numerous warehouse distribution centers in California
28 and the United States. Distribution facilities are standardized and comprised of a large warehouse

1 to which packages are delivered, sorted, stored for later delivery or pick-up, and shipped.

2 60. Defendant operates several shifts at its major distribution facilities, during
3 which packages arrive and depart the warehouse. Many thousands of packages may be handled
4 and sorted on the Line (the conveyor belt used to move packages inside a station) per hour during
5 a shift at a mid- to large-sized facility. An individual package may weigh anywhere from a few
6 ounces to 75 pounds. Crates may weigh up to 200 pounds.

7 61. Defendant employs numerous Handlers to lift, sort, scan and stack
8 packages in buckets, cans and delivery vehicles. In addition, several of the Handlers are
9 designated as "Lead" and are responsible for the coordination and efficient operation of other
10 Handlers in processing packages along a particular part of the Line.

11 62. In addition to Handlers, Defendant employs Checker/Sorters, who scan and
12 direct packages; Couriers and Swing Drivers, who operate the delivery vehicles and deliver and
13 pickup packages from customers; Shuttle Drivers, who drive shuttles or large tractor trucks to
14 pick up significant numbers of packages from institutional customers and to make trips to the
15 airport and other distribution facilities; Customer Service Agents, who interact with the public
16 and handle customer pickups and complaints; Dispatchers, who communicate with Couriers;
17 Operations Managers, who supervise the various workgroups or job classes in the Facility during
18 a shift; and Freight Handlers, Material Handlers, Ramp Agents, Ramp Area Drivers, and Ramp
19 Transport Drivers to load and unload packages and heavy freight, to transfer the cargo to and
20 from the cargo airplanes to the onsite facility for sorting or storage, and to transfer the cargo to
21 and from the large freight vehicles or smaller shuttles that transport the packages to the various
22 distribution facilities in the area, or to their ultimate destinations. FedEx also employs Dangerous
23 Goods Agents, Information Agents, Operations Agents, Service Assurance Agents, Truck Control
24 Agents, Trace Representatives, Input Auditors, and Team Leaders to assist with and coordinate
25 these operations.

26 63. The Regions for Defendant FedEx Express are headed by Vice Presidents
27 of Operations. The Districts for FedEx Express are headed by District Managers who report
28 directly to the Vice Presidents of Operations. The Districts are comprised of individual

1 distribution/service centers in the Domestic Ground Operations ("DGO") division, and of
 2 "organizations" in Air Ground Freight Services ("AGFS") division, which may correspond to a
 3 single facility or to set of operations within a larger airport based facility. Both service centers
 4 and organizations are run by Senior Managers, who report directly to the Managing Directors.
 5 Senior Managers supervise Operations Managers, the lowest management positions.

6 64. The Vice President of Operations, the District Managers and Senior
 7 Managers form the senior management ranks in a region. The various operations managers at
 8 each facility form the lower management ranks.

9 65. Defendant has limited the senior and lower management ranks primarily to
 10 non-Minorities in the Western Region. Defendant principally promotes from within and
 11 maintains a work force with significant numbers of Minority Employees in lower level jobs.
 12 Defendant, however, employs only a sparse number of Minorities in its management ranks.
 13 Plaintiffs are informed and believe, and based thereon allege, that Defendant has never employed
 14 a Minority as a Vice President of Operations in the Western Region. Plaintiffs are informed and
 15 believe that even when Minority Employees are promoted, on average they are advanced later,
 16 and then more slowly, than similarly situated non-Minority employees.

17 66. As a result of the scarcity of Minority managers in management positions
 18 in the Western Region, the managerial ranks within the District are commonly known as the "Ole
 19 Boys Network" or the "Country Club." Racial epithets have often been used by Defendant's
 20 Senior Managers.

21 67. The racial composition of Defendant's workforce with respect to its senior
 22 and lower management ranks is grossly disproportionate to the available pool of Minority
 23 workers who are qualified for positions in the senior and lower management ranks of Defendant's
 24 business.

25 **ALLEGATIONS OF NAMED PLAINTIFFS**

26 **I. MINORITY EMPLOYEE CLASS**

27 **Valerie Brown**

28

A. Class Claims

68. Plaintiff Brown was hired by Defendant in approximately 1982 as a Customer Service Agent at the distribution facility in Sunnyvale Facility and transferred to the Milpitas Facility in approximately 1987 upon closure of the former facility. In approximately 1989, Defendant employed Plaintiff Brown as the sole African American Courier at the Milpitas Facility.

69. In 2003, Defendant gave Plaintiff Brown written, disciplinary notations regarding issues for which non-Minority Couriers were not criticized, negatively affecting her performance reviews and promotability. For example, Plaintiff Brown was reprimanded for calling in sick and not speaking directly with a manager, whereas non-Minority employees were not disciplined when they called in sick and left messages for their managers with hourly employees. Plaintiff Brown was disciplined despite the objection of her direct supervisor.

70. Similarly, in July 2003, Plaintiff Brown was disciplined for a customer complaint without having had an opportunity to give her account of the incident. By contrast, Defendant has not disciplined numerous non-Minority employees who have had customer complaints made against them.

71. Plaintiff Brown made numerous complaints to the Station Manager and to human resources regarding this racially discriminatory treatment. However, Defendant did not take any action regarding the complaints, apart from questioning Plaintiff Brown.

72. In 1995, Defendant opened the current Santa Clara Facility and transferred many of the service routes that had formerly been operated from the Milpitas Facility to the new facility. In allocating the Courier routes between the two facilities, Defendant divided Plaintiff Brown's route equally between the two centers. Plaintiff Brown's route was the only service route that was split. All the routes for non-Minority Couriers were kept intact. In order to keep her service area, Plaintiff Brown was required to transfer to the Santa Clara Facility as a part-time courier, thus losing the higher full-time pay. No non-Minority employee courier was required to convert to part-time status or to give up his or her route.

73. Defendant engaged in race-based discrimination by passing over Plaintiff

1 Brown in favor of more junior, less qualified non-Minority employees for various promotions and
2 higher paying positions. In the early 1990s, Plaintiff Brown applied for several sales
3 representative positions that defendant had posted to employees. Plaintiff Brown was not hired
4 for any of the sales representative positions despite her long service with Defendant. Instead,
5 Defendant hired numerous non-Minority recent graduates, with little or no experience, and other
6 non-Minority employees from within the company. With her seniority, Plaintiff Brown should
7 have been hired; the advertisements for the positions indicated that prior sales experience was not
8 a requirement since the Company would provide necessary training.

9 74. Similarly, in 2000, Plaintiff Brown applied for two higher paying Dispatch
10 positions at the Oakland Station and the Oakland Hub. However, Plaintiff Brown did not get
11 either position. Once again, Defendant passed over her in favor of more junior, less qualified non-
12 Minority employees.

13 75. In January 2001 and February 2002, Plaintiff Brown applied for Operations
14 Manager positions at the Santa Clara Facility and the RHV Facility in San Jose, respectively. In
15 each case, Defendant promoted a non-African American to the position despite the fact that the
16 non-African American had significantly less seniority than Plaintiff Brown and only Courier
17 experience. Plaintiff Brown had Courier, acting Dispatcher, and Customer Service Agent
18 experience and had been with the Company since 1982.

19 76. Plaintiff Brown is also informed and believes, and thereupon alleges, that
20 she has been compensated less than similarly situated non-Minorities.

21 **B. Individual Claims for Harassment and Retaliation**

22 77. While Plaintiff Brown was a Courier at the Milpitas Facility, Defendant
23 discriminated against her on the basis of race, saddling her with greater responsibilities than her
24 non-Minority colleagues and thus making it more difficult for her to perform as well as them.
25 Defendant required Plaintiff Brown to deliver packages on her route, as well as perform overflow
26 responsibilities and make additional trips to pick up freight left by other Couriers. Defendant did
27 not require Plaintiff Brown's non-Minority colleagues to perform these additional duties.

28 78. Defendant harassed Plaintiff Brown by criticizing her in a manner that was

1 publicly embarrassing and humiliating. Instead of criticizing Plaintiff Brown in the privacy of an
2 office as they did with non-Minority employees, Defendant would stop the conveyor belt to draw
3 attention and criticize Plaintiff Brown while she was working among others on the Line.

4 79. In July 2002, Defendant retaliated against Plaintiff Brown for filing a racial
5 discrimination complaint with the Department of Fair Employment and Housing. In response to
6 Plaintiff Brown's complaint, Defendant disciplined Plaintiff Brown more harshly than her non-
7 Minority colleagues. Defendant disciplined Plaintiff Brown in response to a customer complaint
8 but did not discipline the non-Minority employees also mentioned in the complaint.

9 80. In addition to the foregoing, Plaintiff Brown has experienced disparate
10 treatment on the basis of race with respect to many employment practices by Defendant.

11 81. Plaintiff Brown filed a timely charge of discrimination with the EEOC on
12 April 16, 2003, attached hereto as Exhibit "A," which was automatically cross-filed with the
13 DFEH. Plaintiff Brown has received Notices of Right to Sue from the EEOC and from the
14 DFEH.

15 **Rick Gonzales**

16 **A. Class Claims**

17 82. Plaintiff Rick Gonzales is a Latino male who was employed by Defendant
18 FedEx Express as a Courier from May 1998 until September 2002.

19 83. Defendant has undermined Plaintiff Gonzales' attempts to attain
20 management positions, while actively supporting non-Minority candidates in their efforts to
21 secure management positions. Defendant never discussed or provided guidance to Plaintiff
22 Gonzales about the possibility or process of entering management, although he had expressed his
23 desire to advance to management several times. Further, Defendant did not offer him the support
24 provided non-Minority employees in preparing for management, such as training him on
25 computer systems or discussing a manager's operational responsibilities. Defendant's
26 discriminatory management selection practices discouraged Plaintiff Gonzales from applying for
27 management positions.

28 84. Plaintiff Gonzales observed that non-Minority employees were promoted

1 to management faster than Minority Employees, and that management steered non-Minority
2 employees into management positions. For example, during Plaintiff Gonzales' 5-year tenure at
3 Defendant's Santa Fe Springs location, several non-Minority employees became managers, while
4 only one Minority entered management. The Minority Employees were consistently given the
5 worst shifts, working at night with the newest employees. Plaintiff Gonzales observed less senior
6 non-Minority employees being promoted to management before him even though he was equally
7 if not more qualified for the positions that were open, but he did not observe his Minority peers
8 attain management positions.

9 85. Defendant has further discriminated against Plaintiff Gonzales by engaging
10 in discriminatory employment practices intended to and/or having the effect of undermining
11 Plaintiff Gonzales' efforts to advance into Defendant's management ranks. In August 2002,
12 Defendant refused to allow Plaintiff Gonzales to participate in ASPIRE, its management training
13 program, because his performance review rating was 3/10 of a point below the alleged cutoff.
14 Plaintiff Gonzales believes that Defendant manipulates such subjective and discretionary criteria
15 in order to control who may become eligible for management. However, Plaintiff Gonzales is
16 informed and believes that Defendant has permitted non-Minority employees to participate in
17 management training with performance review scores lower than that of Plaintiff Gonzales.

18 86. Defendant has discriminated against Plaintiff Gonzales by disciplining him
19 for infractions for which non-Minority employees were not similarly disciplined. For example,
20 Plaintiff Gonzales has received multiple OLCC's and warning letters for infractions such as
21 incorrect calculations, packages not returned, and timecard errors. In contrast, his non-Minority
22 peers were rarely disciplined for such conduct.

23 87. Plaintiff Gonzales is also informed and believes, and thereupon alleges,
24 that he has been compensated less than similarly situated non-Minorities.

25 B. **Individual Claim for Failure to Rehire from Disability**

26 88. Defendant discriminated against Plaintiff Gonzales by failing to assist him
27 in securing a suitable position upon return from workers compensation leave. After Plaintiff
28 Gonzales was injured on the job for the second time with a severe lower back injury, he required

1 an extended leave. When he prepared to return to work, Defendant displaced him from his prior
2 position and refused to identify a suitable position for him anywhere in Southern California,
3 despite Plaintiff Gonzales' 12-year tenure and his offer to accept any position available, including
4 those requiring relocation to Los Angeles or Las Vegas. Instead, Defendant sent Plaintiff
5 Gonzales a termination letter on approximately September 13, 2002. Defendant has routinely
6 assisted non-Minority employees who have suffered permanent and temporary disabilities to find
7 suitable job opportunities with FedEx.

8 89. In addition to the foregoing, Plaintiff Gonzales has experienced disparate
9 treatment on the basis of race with respect to many employment practices by Defendant.

10 90. Plaintiff Gonzales filed a timely charge of discrimination with the EEOC
11 on April 15, 2003, attached hereto as Exhibit "B," which was automatically cross-filed with the
12 DFEH. Plaintiff Gonzales has received Notices of Right to Sue from the EEOC and from the
13 DFEH.

14 **Cynthia Guerrero**

15 A. **Class Claims**

16 91. Defendant hired Plaintiff Guerrero in approximately 1995. Plaintiff
17 Guerrero worked for Defendant in Commerce City and Santa Fe Springs, California as a
18 Customer Service Agent and as a Courier.

19 92. Among other things, Defendant discriminated against Plaintiff Guerrero by
20 failing to promote her to positions for which she was qualified and instead promoting less senior,
21 less qualified non-Minority employees over her, and/or by paying Plaintiff Guerrero less than
22 non-Minority employees, even though Plaintiff Guerrero has comparable responsibilities and
23 more seniority and work experience. Plaintiff Guerrero was paid at the Courier/Handler rate until
24 late 2002, even though she was performing the work of a regular Courier. The difference in pay
25 between the two positions is about \$1/hour. The difference in job responsibilities is that
26 Courier/Handlers cannot exceed 8 stops per hour, while Couriers can. Plaintiff Guerrero was
27 often doing 18 stops per hour.

28 93. Upon beginning to perform the duties of a Courier, Plaintiff Guerrero

1 asked Defendant when she would be upgraded to Courier pay. Defendant told Plaintiff Guerrero
2 she could not be upgraded immediately because of a hiring freeze, but that she wouldn't have to
3 wait more than a month. In fact, Plaintiff Guerrero was not upgraded until late 2002, after she
4 filed her EEOC charge. Meanwhile, Plaintiff Guerrero's non-Minority colleagues did receive the
5 upgrade.

6 94. Defendant also discriminated against Plaintiff Guerrero by reducing her
7 work hours, thus negatively affecting her compensation, while increasing the work hours given to
8 non-Minority employees with less seniority.

9 95. Defendant further discriminated against Plaintiff Guerrero by issuing
10 formal disciplinary actions against her for petty or trivial matters, or matters unsupported or
11 contradicted by credible evidence. Defendant has given Plaintiff Guerrero over 50 calendar
12 notations for trivial matters such as failure to pull an airbill copy or forgetting to sign her time
13 card, for which non-Minority employees are not disciplined. In fact, Defendant routinely
14 overlooks late arrival, no-shows, and other more significant breaches of conduct by non-Minority
15 employees.

16 96. Defendant has systematically discriminated against the employees in
17 Plaintiff Guerrero's workgroup, called Loop 9, all of whom are Minority Employees.

18 97. Plaintiff Guerrero is also informed and believes, and thereupon alleges, that
19 she has been compensated less than similarly situated non-Minorities.

20 **B. Individual Claim for Retaliation**

21 98. Defendant has also retaliated against Plaintiff Guerrero for complaining
22 about race-based discrimination. Most recently, in July 2004, Defendant effectively terminated
23 Plaintiff Guerrero. When Plaintiff Guerrero sought to clarify her employment status, which she
24 had previously been informed was "inactive" due to long-term disability leave, Plaintiff Guerrero
25 was informed that her employment was instead terminated due to her failure to find an alternative
26 position with Defendant after she had been displaced.

27 99. In addition to the foregoing, Plaintiff Guerrero has experienced disparate
28 treatment on the basis of race with respect to many employment practices by Defendant.

100. Plaintiff Guerrero filed timely charges of discrimination with the EEOC on June 13, 2002 and June 18, 2003, attached hereto as Exhibit "C," which were automatically cross-filed with the DFEH. Plaintiff Guerrero has received Notices of Right to Sue from the EEOC and from the DFEH.

Rachel Hutchins

A. Class Claims

101. Plaintiff Rachel Hutchins is an African American woman formerly employed by Defendant as a Handler in Bakersfield, California. Plaintiff worked for Defendant from December 1995 through April 1996, and again from March 2001 through January 2004.

102. Defendant hired and/or promoted less senior, less experienced non-Minority individuals to permanent or full-time positions, whereas Plaintiff Hutchins remained a casual Handler during her more than two and a half years with Defendant.

103. Defendant passed over Plaintiff in favor of less or equally qualified non-Minority individuals in filling positions for which Plaintiff applied. Starting in approximately October 2002, Plaintiff Hutchins sought a position as a Customer Service Agent (CSA). From approximately May or June 2002 to April 2003, Plaintiff Hutchins performed the duties of a Customer Service Agent, without a commensurate change in title or salary. Although Customer Service Agent positions became available, Defendant did not place Plaintiff Hutchins in these positions.

104. Plaintiff Hutchins complained several times to Defendant about its failure to promote her to a Customer Service Agent position. Defendant offered various excuses for this failure, including that Plaintiff Hutchins could not be promoted from Casual status. However, Defendant promoted non-Minority employees to permanent Customer Service Agent and Courier positions from Casual status. In one such instance, two Customer Service Agent positions became available in approximately November 2002, and Defendant informed Plaintiff Hutchins that she would receive one of the positions. Instead, however, Defendant placed in one of the positions a non-Minority employee who had no experience as a Customer Service Agent, whom Plaintiff Hutchins herself had trained, and who had quit her job a few weeks previously.

1 105. In April 2003, Defendant informed Plaintiff Hutchins that she would
2 receive the next Customer Service Agent position that opened, without being required to apply.
3 From approximately May 2003, a Customer Service Agent position was available. Although
4 Plaintiff was qualified, Defendant still did not place Plaintiff Hutchins in a Customer Service
5 Agent position.

6 106. Defendant has discriminated against Plaintiff Hutchins with respect to
7 compensation by paying her as a Handler, while requiring her to perform the duties of a Customer
8 Service Agent. Defendant refused to offer Plaintiff Hutchins a Customer Service Agent position,
9 or to change her title or compensation to reflect her additional duties.

10 107. Defendant also discriminated against Plaintiff Hutchins with respect to
11 compensation by failing to pay her correctly for hours worked on Saturday over an approximately
12 two month period. Plaintiff Hutchins was informed and believes that according to FedEx policy,
13 temporary and casual employees are to be paid at the rate of one and a half times their hourly rate
14 for work performed on Saturday. Plaintiff is informed and believes, and on that basis alleges, that
15 non-Minority employees have been paid at the higher rate for such hours. Defendant has further
16 discriminated against Plaintiff Hutchins with respect to compensation by allowing her to work
17 fewer hours than similarly situated non-Minority employees, and by relegating her to casual
18 status.

19 108. Plaintiff Hutchins is also informed and believes, and thereupon alleges, that
20 she has been compensated less than similarly situated non-Minorities.

21 B. **Individual Claims for Termination and Retaliation**

22 109. Defendant retaliated against Plaintiff Hutchins for filing a charge of
23 discrimination with the EEOC and for participating in this lawsuit by wrongfully terminating
24 Plaintiff Hutchins on January 20, 2004.

25 110. In addition to the foregoing, Plaintiff Hutchins has experienced disparate
26 treatment on the basis of race with respect to many employment practices by Defendant.

27 111. Plaintiff Hutchins filed a timely charge of discrimination with the EEOC
28 on May 27, 2003, attached hereto as Exhibit "D," which was automatically cross-filed with the

1 DFEH. Plaintiff Hutchins has received Notices of Right to Sue from the EEOC and from the
2 DFEH. Plaintiff Hutchins supplemented this charge with a retaliation claim on August 16, 2004
3 and has received a Notice of Right to Sue on her supplemental charge.

4 **Tyrone Merritt**

5 A. **Class Claims**

6 112. Plaintiff Tyrone Merritt is an African American male employed by FedEx
7 Express since September 1998. Plaintiff Merritt worked in FedEx Express's Phoenix, Arizona
8 facility from the fall of 2001 through the summer of 2005. During that time, Plaintiff Merritt
9 worked as a permanent part-time Material Handler.

10 113. During his tenure as a part-time Material Handler in Phoenix, Plaintiff
11 Merritt was passed over for numerous promotions, including promotions to the position of
12 Courier. Plaintiff Merritt was not able to apply for a Courier promotion because he failed the
13 Basic Skills Test ("BST") in February 2003 and again in May 2005. The BST is a requirement
14 for promotion to Courier positions even though it has tremendous adverse impact and has not
15 been validated.

16 114. Plaintiff Merritt has also been passed over for promotions to other
17 positions, including positions as a Dispatcher, full-time Material Handler, Ramp Agent, and Team
18 Leader, all of which were given to similarly situated white employees. Plaintiff Merritt was also
19 passed over for two Dangerous Goods Specialist positions, which were both filled by white
20 applicants with less seniority than Plaintiff Merritt.

21 115. Plaintiff Merritt has also been subjected to harsher discipline than similarly
22 situated white employees. For example, in approximately February 2004, Plaintiff Merritt was
23 reprimanded by his manager for a "drop can" violation because a can containing packages fell
24 from his dolly. Plaintiff Merritt is aware of two white employees who dropped cans from their
25 dollies, but received no reprimands.

26 116. Plaintiff Merritt has also been denied fair compensation because of FedEx
27 Express' racially biased policies and practices.
28

1 B. **Individual Claim for Denial of Leave Without Pay**

2 117. Plaintiff Merritt was denied leave without pay ("LWOP") in mid-2004,
3 while similarly situated white employees were permitted to take LWOP.

4 118. In addition to the foregoing, Plaintiff Merritt has experienced disparate
5 treatment on the basis of race with respect to many employment practices by Defendant.

6 119. Plaintiff Merritt filed a timely charge of discrimination with the EEOC on
7 December 2, 2004, and a supplemental charge on July 1, 2005, both attached hereto as
8 Exhibit "E." Plaintiff Merritt has received a Notice of Right to Sue from the EEOC.

9 **Kelvin Smith, Sr.**

10 A. **Class Claims**

11 120. Defendant hired Plaintiff Smith in approximately November 1989 as a
12 part-time Courier at the Santa Clara Facility. From approximately July 2000 until July 2002,
13 Plaintiff Smith was employed as a part-time Lead Handler at the Santa Clara Facility.

14 121. From April 2002 through July 2002, Plaintiff Smith acted as Operations
15 Manager for PM Sort Operations at his Facility. His duties included closing down the facility,
16 covering sick calls, enlisting Couriers to help loading, assuring that freight got on shuttles in time,
17 guiding the movement of trucks within the Facility, and coordinating the activities of Handlers,
18 Loaders and Dispatchers. The only management function that Plaintiff Smith did not perform
19 was providing performance reviews. Repeatedly, Plaintiff Smith requested that Defendant permit
20 him to complete the management training program and enable him to promote to open Operations
21 Manager positions. Defendant failed to assist Plaintiff Smith.

22 122. Defendant undermined Plaintiff Smith's efforts to obtain management
23 training while actively supporting non-Minority candidates in their efforts to secure management
24 training. Plaintiff Smith participated in the ASPIRE management training program, successfully
25 completed the program's required tests and assessments, and not only met but exceeded the
26 performance review requirements. However, Defendant failed to allow Plaintiff Smith to
27 complete the final part of the program, a peer assessment that had to be scheduled by
28 management. From April 2002 through July 2002, Plaintiff Smith's managers ignored his

1 repeated requests to complete the peer review section. By contrast, Defendant consistently
2 assisted less senior and less experienced non-Minority ASPIRE participants in completing the
3 program, thereby permitting them to apply for management positions for which Plaintiff Smith
4 remained ineligible because of Defendant's failures.

5 123. Defendant discriminated against Plaintiff Smith by paying him less than
6 less senior and/or similarly situated non-Minority employees. Defendant paid Plaintiff Smith less
7 than less experienced non-Minority Lead Handlers, even when Plaintiff Smith was required to
8 perform management duties for the PM operations.

9 124. Defendant provided inferior training to Plaintiff Smith compared with
10 similarly situated non-Minority employees. While Plaintiff Smith was acting as an Operations
11 Manager from April 2002 to July 2002, Defendant failed to provide Plaintiff Smith with the level
12 of training provided to Plaintiff Smith's non-Minority peers with respect to particular operational
13 indices in Plaintiff Smith's facility.

14 125. Defendant discriminated against Plaintiff Smith by disciplining him for
15 infractions for which non-Minority employees were not similarly disciplined. In February 2002,
16 Defendant issued Plaintiff Smith his first warning letter for administering a makeshift procedure
17 to assure that the Facility would meet performance objectives. Plaintiff Smith was also
18 suspended for a week. Plaintiff Smith had performed the procedure only upon directives from his
19 non-Minority Manager and Station Manager. However, Defendant did not discipline, either
20 verbally or with warning letters, the two non-Minority managers responsible for implementing the
21 Astra Sops procedure. African American Plaintiff Satchell was the only other person disciplined
22 in the matter. Similarly, Defendant has not disciplined non-Minority employees for actions taken
23 as a result of management directives.

24 126. In May 2002, Plaintiff Smith was again unfairly disciplined when a delay
25 caused freight to arrive late at the ramp. The non-Minority manager responsible for the delay was
26 not disciplined.

27 127. In July 2002, Defendant issued Plaintiff Smith a disciplinary warning letter
28 for a trivial time card oversight that had no practical impact on Plaintiff Smith's wages and that

1 was identified on the same day before any processing. Defendant routinely allows non-Minority
2 employees or managers to correct identified mistakes on timecards.

3 128. In this particular case, Plaintiff Smith failed to clock an authorized ten-
4 minute break to collect his children from daycare. Plaintiff Smith's Station Manger, upon seeing
5 Plaintiff Smith with his children, took it upon herself to instruct Plaintiff Smith's manager to
6 check his timecard to see if Plaintiff Smith had clocked his break. The Station Manager did not
7 permit Plaintiff Smith to correct the mistake, even though non-Minority employees routinely
8 correct mistakes on time cards. Non-Minority Employees also routinely take breaks without
9 indicating them by time codes on their time cards. Defendant does not strictly police every
10 movement of non-Minority employees, nor do Station Managers concern themselves with such
11 employee matters that are more properly handled by an Operations Manager. Finally, Defendant
12 is liberal in accommodating childcare concerns of non-Minority employees, especially when such
13 accommodation has, as in the case of Plaintiff Smith, no material impact on the employee's job
14 performance.

15 129. Plaintiff Smith is also informed and believes, and thereupon alleges, that he
16 has been compensated less than similarly situated non-Minorities.

17 **B. Individual Claims for Termination and Retaliation**

18 130. In July 2002, Defendant wrongfully terminated Plaintiff Smith for the same
19 trivial time card oversight for which Plaintiff Smith was issued a warning letter.

20 131. In June 2002, prior to his termination, Plaintiff Smith filed a complaint
21 with the Department of Fair Employment and Housing for racial discrimination and harassment.
22 Subsequently, Plaintiff Smith filed an internal discrimination complaint, as well as a
23 Guaranteed Fair Treatment ("GFT") request in connection with his discriminatory discipline and
24 wrongful termination claims dating from February 2002 through Plaintiff Smith's termination in
25 July 2002. As part of his appeal, Plaintiff Smith submitted facts supporting his claims of
26 differential treatment and discrimination at the hands of Defendant. However, Defendants
27 retaliated against Plaintiff for filing discrimination charges with the DFEH by refusing to permit
28 him to participate in the GFT proceedings when he appeared for the Step II meeting.

132. In August 2002, Defendant further retaliated against Plaintiff Smith by refusing to rehire Plaintiff Smith to his position as Lead Handler when it upheld its discriminatory discipline and wrongful termination actions against him as part of the GFT process. Defendant has overturned unfair actions and rehired non-Minority employees upon the basis of much less credible information than that provided by Plaintiff Smith.

133. In addition to the foregoing, Plaintiff Smith has experienced disparate treatment on the basis of race with respect to many employment practices by Defendant.

134. Plaintiff Smith filed a timely charge of discrimination with the EEOC on June 24, 2003, which was automatically cross-filed with the DFEH, and filed a separate timely charge with the DFEH on July 22, 2002. These charges are attached hereto as Exhibit "F." Plaintiff Smith has received Notices of Right to Sue from the EEOC and from the DFEH.

Ken Stevenson

A. Class Claims

135. Plaintiff Stevenson is an African American male currently employed by Defendant as an Operations Manager in Compton, California. Plaintiff Stevenson began working for Defendant in approximately May 1997 as a casual, part-time Courier.

136. Defendant consistently undermined Plaintiff Stevenson's efforts to attain management positions, while actively supporting non-Minority employees in their attempts to enter management. Prior to his promotion to Operations Manager in 2005, Plaintiff Stevenson had sought to apply for promotion more than ten times, without success. Rather than respond to Plaintiff Stevenson's multiple efforts to secure a management position, Defendant offered baseless excuses for its failure to promote him. For example, Senior Manager Mike Smith told Plaintiff Stevenson that he must complete management classes, but when Plaintiff indicated his willingness to begin management classes, Smith postponed the classes, and then only held them intermittently. On other occasions, Defendant told Plaintiff Stevenson there was a "hiring freeze." Meanwhile, Defendant promoted other less senior non-Minority employees over Plaintiff Stevenson, such as Tim Becker and Mike Aroz, notwithstanding the fact that Plaintiff Stevenson received a higher management assessment.

1 137. Defendant also required Plaintiff Stevenson to attend management classes
2 on his own time, while non-Minority employees, such as Becker and Aroz, were allowed to
3 attend them during work time.

4 138. Smith further told Plaintiff Stevenson that he would never be a manager as
5 long as Smith worked at the facility. Plaintiff Stevenson's co-workers told him they have heard
6 similar comments from Smith and others about Plaintiff Stevenson.

7 139. Defendant has discriminated against Plaintiff Stevenson by disciplining
8 him for infractions for which non-Minority employees were not similarly disciplined. For
9 example, Defendant has disciplined Plaintiff Stevenson for failing to tuck in his shirt, but
10 Defendant refuses to purchase shirts big enough for Plaintiff Stevenson. Defendant has further
11 used such petty infractions as barriers to Plaintiff Stevenson's promotion into management. For
12 example, on May 8, 2003, Defendant informed Plaintiff Stevenson that he could not apply for a
13 vacant manager position because his socks were too short. When Plaintiff Stevenson pointed out
14 that Mike Aroz, a non-Minority employee, wore his socks in an identical fashion, Defendant
15 simply instructed Aroz to change his socks, but did not prevent him from applying for the
16 manager position. Aroz became a manager approximately two weeks later.

17 140. Plaintiff Stevenson is also informed and believes, and thereupon alleges,
18 that he has been compensated less than similarly situated non-Minorities.

19 B. **Individual Claim for Harassment**

20 141. Defendant has used, or permitted others to use, offensive racial epithets in
21 Plaintiff Stevenson's workplace. For example, when Plaintiff Stevenson's car was stolen,
22 Operations Manager Shelley Humphrey stated, "You people drive those kind of cars." When
23 Plaintiff Stevenson reported the comment to his supervisor, Roger Fleud, Fleud said, "We all
24 have a little racism in us." When Plaintiff Stevenson filed an internal EEO complaint about these
25 comments, Defendant retaliated against him by further blocking him from being promoted to
26 management.

27 142. In addition to the foregoing, Plaintiff Stevenson has experienced disparate
28 treatment on the basis of race with respect to many employment practices by Defendant.

143. Plaintiff Stevenson filed a timely charge of discrimination with the EEOC on June 13, 2002, attached hereto as Exhibit "G," which was automatically cross-filed with the DFEH. Plaintiff Stevenson has received Notices of Right to Sue from the EEOC and from the DFEH.

II. AFRICAN AMERICAN LOWER-LEVEL MANAGER CLASS

Derrick Satchell

A. Class Claims

144. Plaintiff Satchell was hired by Defendant FedEx Express in approximately June 1992 as a part-time Handler at Defendant's Facility in Santa Clara, California. Despite repeated requests by Plaintiff Satchell for full-time employment, Defendant hired and/or promoted less senior, less experienced non-Minority individuals to Courier and other full-time positions before Defendant gave Plaintiff Satchell a full-time position.

145. Once Plaintiff Satchell finally obtained a position as an Operations Manager, Defendant also consistently issued formal disciplinary actions against Plaintiff Satchell for petty or trivial matters for which non-Minority employees were not disciplined, thus lowering Plaintiff Satchell's performance reviews and rendering him ineligible for promotion.

146. Defendant discriminated against Plaintiff Satchell by paying him less than less senior and/or similarly situated non-Minority employees. Throughout Plaintiff Satchell's employment with FedEx, Defendant paid Plaintiff Satchell less than non-Minority managers even though Plaintiff Satchell had comparable responsibilities and more seniority and management experience.

147. In approximately December 1999, when Plaintiff Satchell was a Courier Operations Manager, Plaintiff Satchell received his first warning letter for excessive late deliveries by Couriers on Mondays. Defendant disciplined Plaintiff Satchell despite the fact that the problem dated back to a prior Operations Manager's tenure and that the late deliveries were occurring only on Plaintiff Satchell's scheduled day off. Defendant has not reprimanded non-Minority managers, much less given warning letters, where the non-Minorities were not directly responsible for the infraction. In addition, Defendant had not disciplined the non-Minority

1 manager who supervised the workgroup prior to Plaintiff Satchell.

2 148. In approximately August 2001, Defendant disciplined Plaintiff Satchell for
3 insubordination for failure to submit, in a timely manner, an action plan for correcting a
4 deficiency in his operations. Plaintiff Satchell failed to submit the action plan on time because
5 Defendant had not properly notified Plaintiff Satchell of his need to submit the Plan. Plaintiff
6 Satchell was required to work through the night to prepare the plan and submitted it a day late.
7 Defendant disciplined Plaintiff Satchell even though he had proof that other non-Minority
8 managers were also failing in the cited area, but were not required to submit similar Action Plans
9 and were not otherwise disciplined.

10 149. Defendant disciplined Plaintiff Satchell again in November 2001 in
11 connection with his performance review. Defendant gave Plaintiff Satchell a written performance
12 reminder after rating his performance as 1.0 in one area of the review due to Plaintiff Satchell's
13 group's failure to improve in that area. Plaintiff Satchell's Senior Manager, Christopher
14 Matthews, refused to alter the low rating when Plaintiff Satchell produced emails from Matthews
15 commending Plaintiff Satchell's group for improvement in the area in question, and stating
16 "excellent job; now you only need to maintain it." Defendant's personnel policy states that
17 disciplinary letters should not be issued where only one or two areas of a review are deficient; a
18 performance reminder is warranted only if an entire performance review is 1.0 or below.
19 Defendant does not issue performance reminders to non-Minority managers regarding
20 performance reviews unless the entire review is unsatisfactory. Further, Defendant does not issue
21 performance reminders to non-Minorities who provide evidence contradicting an allegation of
22 unsatisfactory performance.

23 150. On December 1, 2001, Plaintiff Satchell met with District Director Steven
24 Seymour regarding the performance reminder. Seymour assured Plaintiff Satchell that the letter
25 would not be entered in the system. Based on Seymour's assurance, Plaintiff Satchell did not
26 pursue the Guaranteed Fair Treatment ("GFT") process further. When Defendant terminated
27 Plaintiff Satchell's employment in April 2002 for three active, documented disciplinary actions,
28 the warning letter in question was counted toward the three.

151. In November 2001, Defendant gave Plaintiff Satchell an OLCC because he had failed to cancel excess minimum hour pay for Couriers in his group who had not actually worked the minimum number of hours. At the time, Plaintiff Satchell informed Defendant that canceling the minimum without a waiver would violate policy. In December 2001, Seymour and Matthews informed managers at the Santa Clara Facility that they wanted excess minimum hours cancelled regardless of waivers. Again, Plaintiff Satchell objected, citing policy, but cancelled the hours anyway. Plaintiff Satchell was issued a warning letter, however, because he inadvertently failed to cancel the excess minimum hours of a few couriers. Whereas Defendant issued Plaintiff Satchell a warning letter for his inadvertent failure to cancel payment for excess minimum hours, Defendant refused to issue warning letters to non-Minority managers, such as Paul Birkenbach, who also failed a second time to cancel excess minimum hours.

152. In March 2002, Defendant issued Plaintiff Satchell another warning letter for unacceptable conduct. The basis for the warning letter was Plaintiff Satchell's knowledge that employees in his workgroup were violating scanning procedures by inputting ASTRA scans into Defendant's package tracking system for packages that had already left the facility. The employees had been directed to perform such procedures by the Senior Manager, Chris Matthew, and the non-Minority manager who previously supervised the group prior to Plaintiff Satchell assuming responsibility. Upon taking over the group, Plaintiff Satchell had objected to the practice; however, he was directed by Matthew to permit the employees to continue the practice to help the station meet district operating goals. Even though other, non-Minority managers assisted with the ASTRA scanning practice, Defendant did not issue them warning letters.

153. Plaintiff Satchell is also informed and believes, and thereupon alleges, that he has been compensated less than similarly situated non-Minorities.

B. **Individual Claims for Failure to Promote, Termination, and Retaliation**

154. Defendant undermined Plaintiff Satchell's efforts to advance within management, while actively supporting his non-Minority peer managers in their efforts to advance within management. Defendant discriminated against Plaintiff Satchell by failing to

1 advance or promote Plaintiff Satchell from a Level 25 to Level 26 Operations Manager during his
2 employment with the Company. Plaintiff had satisfied all the requirements for a Level 26
3 promotion, including having been in a Level 25 manager position for over 18 months and having
4 received successive performance reviews in excess of 3.0. By contrast, Defendant promoted
5 numerous non-Minority Operations Managers to Level 26 who joined management after Plaintiff
6 Satchell and had received equal or lower performance reviews.

7 155. Defendant excluded Plaintiff Satchell from "informal" email buddy lists
8 used by Regional, District and Station Managers to communicate relevant operating procedures
9 and corporate advancement opportunities and to informally discuss managerial issues.

10 156. Defendant provided inferior training to Plaintiff Satchell compared with
11 similarly situated non-Minority employees, adversely affecting his ability to obtain a promotion.
12 Defendant failed to provide Plaintiff Satchell with the level of training provided to Plaintiff
13 Satchell's non-Minority peer managers with respect to particular operational indices in Plaintiff
14 Satchell's facility. Defendant also failed to sufficiently staff Plaintiff Satchell's workgroup so
15 that objectives could be met in accordance with Defendant's expectations. By contrast,
16 Defendant provided Plaintiff Satchell's non-Minority peer managers with proper staffing or
17 assigned employees from other workgroups to assist the workgroups of non-Minority employees.

18 157. In March 2002, Defendant discriminated against Plaintiff Satchell by
19 terminating Plaintiff for "gross leadership failure" based on conduct for which non-Minority
20 employees were not similarly terminated. The nature of the alleged "gross leadership failure"
21 was Plaintiff Satchell's knowledge of the ASTRA scanning procedures for which he also received
22 a warning letter.

23 158. Defendant retaliated against Plaintiff Satchell for complaining of
24 discrimination. In April 2002, Plaintiff Satchell filed an internal EEO complaint and a
25 Guaranteed Fair Treatment ("GFT") request, in connection with his discriminatory discipline and
26 wrongful termination claims dating from August 2001 through termination in April 2002.
27 Plaintiff Satchell included in his complaints facts supporting his claims of differential treatment
28 and discrimination at the hands of Defendant. In June 2002, Plaintiff Satchell also filed a

1 complaint with the California Department of Fair Employment and Housing for racial
2 discrimination and harassment.

3 159. On August 28, 2002, Defendant retaliated against Plaintiff Satchell by
4 refusing to rehire him as an Operations Manager after an Appeals Board in Memphis, Tennessee
5 refused to overturn its discriminatory discipline and wrongful termination actions. Defendant has
6 rehired and overturned unfair actions against non-Minority employees upon the basis of much
7 less credible information than that provided by Plaintiff Satchell.

8 160. In December 2002, Plaintiff Satchell filed a civil complaint for race
9 discrimination in Superior Court. In response to Plaintiff Satchell's complaints, Defendant has
10 engaged in a pattern of making defamatory statements against Plaintiff Satchell to employers
11 seeking to hire Plaintiff Satchell. As a result of Defendant's defamatory statements, Plaintiff
12 Satchell had great difficulty in securing employment after his termination by Defendant. On
13 numerous occasions, prospective employers successfully completed several rounds of interviews
14 with Plaintiff Satchell, commended Plaintiff Satchell on his presentation and employment record,
15 indicated satisfaction with his references, and provided Plaintiff Satchell with strong indication of
16 their interest in employing him. However, upon speaking with or receiving letters from
17 Defendant regarding Plaintiff Satchell, the employers declined to hire Plaintiff Satchell. In June
18 2002, Airborne Express declined to hire Plaintiff Satchell after Defendant defamed Plaintiff
19 Satchell in retaliation for filing a complaint. Yellow Transportation similarly declined to hire
20 Plaintiff Satchell after Defendant's retaliatory actions. Further, after speaking with Defendant in
21 December 2002, Coca-Cola Company refused to hire Plaintiff Satchell after 6 successful
22 interviews from August 2002 to December 2002.

23 161. In addition to the foregoing, Plaintiff Satchell has experienced disparate
24 treatment on the basis of race with respect to many employment practices by Defendant.

25 162. Plaintiff Satchell filed a timely charge of discrimination with the EEOC on
26 May 6, 2003, attached hereto as Exhibit "H," which was automatically cross-filed with the
27 DFEH. Plaintiff Satchell has received Notices of Right to Sue from the EEOC and the DFEH.

28 **Kalini Boykin**

1 A. **Class Claims**

2 163. Plaintiff Boykin was hired by Defendant in approximately May 1995 as a
3 casual, part-time Handler at the Oakland Hub. Despite repeated requests for available permanent
4 and full-time positions, Defendant hired and/or promoted many less senior non-Minority
5 individuals to permanent positions before Defendant gave Plaintiff Boykin a permanent position.
6 For example, in approximately June 1997, Plaintiff Boykin applied for the full-time position of
7 Control Room Agent at the Oakland Hub; however, Defendant passed her over in favor of a
8 subsequently hired and less experienced, non-African American.

9 164. Plaintiff Boykin also interviewed for numerous other full-time positions
10 before she was finally promoted to a full-time Truck Control Agent position in January 1998.
11 Other non-Minority employees with similar qualifications and experience were promoted to this
12 position sooner than Plaintiff Boykin.

13 165. Plaintiff Boykin also was rarely permitted to earn overtime hours, while
14 non-Minority employees were permitted to work overtime when necessary, earning wages at the
15 higher overtime rate.

16 166. In 1999, Plaintiff Boykin was promoted to an RTD Driver position after
17 several unsuccessful attempts to obtain the promotion despite being qualified. As in her previous
18 positions, Plaintiff Boykin excelled as an RTD Driver. She received a consistent 7.0 out of 7.0 on
19 her performance reviews. Plaintiff Boykin also excelled in Defendant's ASPIRE management
20 training program. On each of the three program assessments, (i) the Quantitative Assessment, (ii)
21 the Psychological Assessment, and the (iii) Peer Assessment, Plaintiff Boykin scored the highest
22 possible grade, 5 on a scale of 5.

23 167. In May 2000, Plaintiff Boykin applied for one of two Operations Manager
24 positions at the San Leandro Facility. Despite Plaintiff Boykin's superior qualifications and the
25 strong recommendation of her manager, Defendant, including specifically Senior Manager Robert
26 Montez and Regional Vice President Michael Pigors, passed over Plaintiff Boykin in favor of two
27 less experienced and less qualified non-Minority applicants, Carl Bowersmith and Mark Azevedo.

28 168. Because of Plaintiff Boykin's superior qualifications, Defendant

1 improperly conducted the interviews so as to minimize the advantages that Plaintiff Boykin
2 possessed over the two non-Minority applicants. Contrary to Defendant's policy, Defendant
3 conducted the interviews at separate locations and with separate panels.

4 169. In response to the discriminatory hiring procedures, Plaintiff Boykin filed a
5 GFT. After an investigation, Defendant was directed to conduct the interviews again, and
6 interviews were scheduled for the following week at another facility before the same panel.

7 170. At the second interview, Defendant once again selected Bowersmith and
8 Azevedo for the two Operations Manager positions. Defendant was unable to explain why
9 Bowersmith and Azevedo were more qualified than Plaintiff Boykin when she raised the issue
10 with manager Montez.

11 171. After being passed over a second time, Plaintiff Boykin filed another GFT
12 request together with an EEO discrimination complaint. Defendant failed to properly investigate
13 Plaintiff Boykin's discrimination complaint. Even though Defendant scheduled an arbitration to
14 explore Plaintiff Boykin's allegations, they failed to follow up or report any findings to Plaintiff
15 Boykin. Moreover, no one ever contacted Plaintiff Boykin from Employee Relations at
16 Defendant's Memphis headquarters to discuss the complaint with Plaintiff Boykin. Instead,
17 Defendant offered Plaintiff Boykin a third operations manager position that had become available
18 in exchange for her agreement to withdraw her complaints.

19 172. Plaintiff Boykin is informed and believes, and thereupon alleges, that she
20 has been compensated less than similarly situated non-Minorities. Even after Plaintiff Boykin
21 ultimately was made a manager after several attempts, Defendant continued to discriminate
22 against her on the basis of race. While Defendant paid Carl Bowersmith a salary in the first
23 quartile for managers in their grade (Level 25), Plaintiff Boykin was paid at the lowest rate in
24 Level 25. Plaintiff was paid at a lower rate despite being assigned greater management
25 responsibilities than the two non-Minority managers. Upon becoming a manager, Plaintiff Boykin
26 assumed all the responsibilities of the manager who had stepped down and more. She was
27 responsible for the PM operations for RTD drivers in the entire South Bay and mid-Peninsula
28 service area, which includes both San Francisco stations, the South San Francisco Facility, Palo

1 Alto, the San Jose Facility, the Santa Clara Facility, the Sunnyvale Facility, the Oakland Hub, and
2 the San Jose and San Francisco Ramps. The operations for which she was responsible lasted from
3 3:00 PM to midnight. Plaintiff Boykin was responsible for over 100 routes daily and 24
4 employees.

5 173. By contrast, Bowersmith was given a relatively easy management
6 assignment. Bowersmith was made responsible for the Weekend Operation, a 20-hour operation
7 on Saturdays and Sundays. The Weekend Operation involves nine employees, all moving freight
8 from the San Leandro Facility to the Oakland Hub.

9 174. Defendant also discriminated against Plaintiff Boykin by failing to provide
10 management support to Plaintiff Boykin, making it more difficult for her to perform her job
11 duties. Montez spent little time with Plaintiff Boykin, instead focusing his attention on assisting
12 Bowersmith to develop as a manager.

13 175. Despite her lack of support from Defendant, Plaintiff Boykin excelled in
14 her management responsibilities. In her first year as a manager, Plaintiff Boykin turned the
15 extremely uncooperative workgroup that she inherited from Mike Kelly, the previous non-
16 Minority manager, into a highly productive group. In that first year, Plaintiff Boykin received a
17 Survey Feedback Score ("SFA") of 97 from her group, and a SFA score of 94 in the second year.³
18 Moreover, Plaintiff Boykin received a leadership average of 4.9 in her first year and one of 4.7 in
19 her second year. Plaintiff Boykin also received a commendation from the Senior Vice President
20 for her management abilities.

21 176. Nevertheless, Defendant took additional steps to undermine her
22 advancement in Defendant's management ranks. Montez refused to timely perform Plaintiff
23 Boykin's performance reviews, which are essential to pay rate and grade level increases. Plaintiff
24 Boykin was scheduled for a 3-month performance review prior to taking a maternity leave.
25 Though Montez timely performed the performance reviews for Bowersmith, he delayed Plaintiff
26 Boykin's review until she returned from her maternity leave. At that time, he gave Plaintiff

27
28 ³ A SFA is an hourly employee's review of his or her manager. SFA are considered in determining a manager's
promotability and performance reviews.

1 Boykin a three-month review and the two non-Minority managers six-month reviews.

2 177. Montez also discriminated against Plaintiff Boykin by providing her with
3 an unreasonably low review of 2.8. Defendant initially attempted to give Plaintiff Boykin a rating
4 of 2.5, but Plaintiff Boykin rebutted each and every basis for Montez's grading. Defendant rated
5 Plaintiff Boykin below 3.0, despite her exemplary performance as reflected in her SFA scores, in
6 order to preclude her from receiving any pay or grade level increases. By contrast, the two non-
7 Minority managers were given higher scores and pay increases. Defendant has routinely delayed
8 Plaintiff Boykin's pay and grade level increases, requiring her to take extra measures in order to
9 receive the same benefits as the two non-Minority managers.

10 178. In March 2001, Defendant continued its discrimination against Plaintiff
11 Boykin by disciplining her for a trivial matter for which it has routinely refused to discipline non-
12 Minority employees. Montez informed Plaintiff Boykin that she had failed to provide for an ad
13 hoc, unscheduled pick-up for an institutional customer. As a result of attempting to assure that the
14 Sacramento route was covered in light of Defendant's failure to provide her with sufficient RTD
15 Drivers, Plaintiff Boykin had inadvertently missed the order. However, the AM Operations
16 Manager with Plaintiff Boykin's responsibilities, had the order picked up the next morning. Since
17 the package was an economy order, there was no failure by Defendant to meet its delivery
18 deadlines.

19 179. As a result of the missed pick up, Montez threatened to give Plaintiff
20 Boykin a written warning letter. Defendant's standard disciplinary practice is to provide written
21 warning letters only after an employee has committed previous acts deserving discipline.
22 Defendant has not provided documented counseling to non-Minority managers or employees
23 upon their first offense. In response to Plaintiff Boykin's pleas for fairness, Montez indicated that
24 he would give Plaintiff Boykin only a verbal warning if she would prepare a corrective action
25 plan to address the oversight.

26 180. Plaintiff Boykin submitted the action plans as requested and was informed
27 by District Manager Robin VanGalder and Montez that it was insufficient. Defendant insisted on
28 giving Plaintiff Boykin a documented counseling despite earlier assurances that she would only

1 get a verbal warning. Furthermore, VanGalder and Montez informed Plaintiff Boykin that she had
2 been guilty of "gross leadership failure" and that she was a bad manager. Non-Minority managers
3 have frequently failed to have packages picked up on time yet have not been disciplined, much
4 less given OLCCs or written warnings or accused of "gross leadership failure."

5 **B. Individual Claims for Working Conditions and Retaliation**

6 181. Defendant assigned more burdensome job duties and shifts to Plaintiff
7 Boykin than to non-Minority employees, thus making it more difficult for her to perform as well
8 as her non-Minority peers. While a part-time Handler, Defendant discriminated against Plaintiff
9 Boykin on the basis of race by routinely assigning her to work on the busiest conveyor belts, or
10 "slides" as they are called at the Oakland Hub, where thousands of packages are processed. By
11 contrast, many stronger non-Minority employees were permitted to work on less taxing slides
12 where packages numbered in the hundreds, not thousands.

13 182. In November 2003, after Plaintiff Boykin had filed her charge with the
14 EEOC, Defendant retaliated against Plaintiff Boykin by changing her schedule from her regular
15 time of 1:30 PM to 10:30 PM to a more undesirable shift, 1:00 AM to 10:00 AM. Defendant did
16 not adversely change the hours of the non-Minority Operations Managers with the same seniority
17 as Plaintiff Boykin.

18 183. Defendant has further retaliated against Plaintiff Boykin for complaining
19 about race-based discrimination, for filing a charge with the EEOC, and for participating in this
20 lawsuit, by suspending her without cause and failing to offer her a suitable position after a
21 medical leave of absence.

22 184. In addition to the foregoing, Plaintiff Boykin has experienced disparate
23 treatment on the basis of race with respect to many employment practices by Defendant.

24 185. Plaintiff Boykin filed a timely charge of discrimination with the EEOC on
25 May 6, 2003, and filed a timely charge with the DFEH in July 31, 2002, attached hereto as
26 Exhibit "I." Plaintiff Boykin has received Notices of Right to Sue from the EEOC and from the
27 DFEH.
28

FIRST CLAIM FOR RELIEF
CLASS CLAIM FOR VIOLATION OF TITLE VII
DISPARATE IMPACT

186. Plaintiffs incorporate by reference the allegations of paragraphs 1-49, 56-76, 81-87, 90-97, 100-108, 111-116, 119-129, 134-140, 143-153, 162-180, 185 as though fully set forth herein.

187. This claim is brought on behalf of all Plaintiffs and the class of Minority Employees and the class of African American Lower-Level Managers.

188. The class period for the Minority Employee Class for this Claim for Relief is from June 20, 2002 through the date of judgment. The class period for the African American Lower-Level Manager Class for this Claim for Relief is from July 10, 2002 through the date of judgment.

189. Plaintiffs Satchell, Boykin, Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith and Stevenson filed timely charges of discrimination with the Equal Employment Opportunity Commission, received right to sue letters, and timely filed the instant claim.

190. Defendant has maintained a system for making decisions about promotions, assignments (as to the Minority Employee Class), compensation, and discipline which is excessively subjective and allows managers virtually unfettered discretion, which has had a disparate impact on Plaintiffs, the Minority Employee Class, and the African American Lower-Level Manager Class. This system cannot be justified by business necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

191. Defendant's requirement that applicants for promotion to Courier, Ramp Transport Driver, Customer Service Agent, and Customer Representative must pass the BST, has a disparate impact on Plaintiffs and the Minority Employee Class. The BST requirement cannot be justified by business necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

192. Defendant's discriminatory policies and practices as described above have denied Plaintiffs and the classes they represent promotions, desirable job assignments (as to the

Minority Employee Class), and compensation to which they were and are entitled; and have caused Plaintiffs and the classes they represent to be disciplined when they should not have been, resulting in the loss of past and future wages and other job benefits.

193. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.*

194. Plaintiffs request relief as provided in the Prayer for Relief below.

**SECOND CLAIM FOR RELIEF
CLASS CLAIM FOR VIOLATION OF TITLE VII
DISPARATE TREATMENT**

195. Plaintiffs incorporate by reference the allegations of paragraphs 1-32, 34-46, 48-112, 114-185, as though fully set forth herein.

196. This claim is brought on behalf of all Plaintiffs and the class of Minority Employees and the class of African American Lower-Level Managers.

197. The class period for the Minority Employee Class for this Claim for Relief is from June 20, 2002 through the date of judgment. The class period for the African American Lower-Level Manager Class for this Claim for Relief is from July 10, 2002 through the date of judgment.

198. Plaintiffs Satchell, Boykin, Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith and Stevenson filed timely charges of discrimination with the Equal Employment Opportunity Commission, received right to sue letters, and timely filed the instant claim.

199. Defendant has engaged in a pattern and practice of intentional discrimination against Plaintiffs and the classes in promotions, assignments (as to the Minority Employee Class), compensation, and discipline.

200. Defendant's discriminatory policies and practices as described above have denied Plaintiffs and the classes they represent promotions, desirable job assignments (as to the Minority Employee Class), and compensation to which they were and are entitled; and have caused Plaintiffs and the classes they represent to be disciplined when they should not have been, resulting in the loss of past and future wages and other job benefits; and have caused Plaintiffs and the classes they represent to suffer humiliation, embarrassment and emotional distress.

201. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.*

202. Plaintiffs request relief as provided in the Prayer for Relief below.

THIRD CLAIM FOR RELIEF
NON-CLASS CLAIMS FOR DISPARATE TREATMENT IN VIOLATION OF TITLE VII

203. Plaintiffs incorporate by reference the allegations of paragraphs 1-32, 34-46, 48-112, 114-185, above, as though fully set forth herein.

204. This claim is brought on behalf of the named Plaintiffs individually for their non-class claims.

205. Defendant intentionally discriminated against named Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, Stevenson, Satchell, and Boykin on the basis of their race.

206. Defendant subjected named Plaintiffs Brown, Gonzales, Guerrero, Merritt, Smith, Stevenson, Satchell, and Boykin to a racially hostile work environment.

207. Defendant intentionally discriminated against Plaintiff Brown by subjecting her to more burdensome work conditions than similarly situated non-Minority employees, subjecting her to harassment, and retaliating against her for filing a discrimination complaint.

208. Defendant intentionally discriminated against Plaintiff Gonzales by failing to rehire him from disability.

209. Defendant intentionally discriminated against Plaintiff Guerrero by retaliating against her for complaining about race-based discrimination and by terminating her.

210. Defendant intentionally discriminated against Plaintiff Hutchins by retaliating against her for filing a discrimination complaint and by terminating her.

211. Defendant intentionally discriminated against Plaintiff Merritt by denying him leave without pay.

212. Defendant intentionally discriminated against Plaintiff Smith by retaliating against him for filing a discrimination complaint and terminating him.

213. Defendant intentionally discriminated against Plaintiff Stevenson by subjecting him to harassment.

214. Defendant intentionally discriminated against Plaintiff Satchell by retaliating against him for filing a discrimination complaint and terminating him.

215. Defendant intentionally discriminated against Plaintiff Boykin by subjecting her to more burdensome work conditions than similarly situated non-Minority employees, and by retaliating against her for filing a discrimination complaint and failing to offer her a suitable position after returning from leave of absence.

216. Defendant's discriminatory and retaliatory practices have resulted in the loss of past and future wages and other job benefits, and have caused Plaintiffs to suffer humiliation, embarrassment and emotional distress.

217. The foregoing conduct violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.*

218. Plaintiffs request relief as provided in the Prayer for Relief below.

FOURTH CLAIM FOR RELIEF
CLASS CLAIMS FOR VIOLATION OF 42 U.S.C. § 1981

219. Plaintiffs incorporate by reference the allegations of paragraphs 1-32, 34-46, 48-112, 114-185, as though fully set forth herein.

220. This claim is brought on behalf of all Plaintiffs and the Minority Employee Class and the African American Lower-Level Manager Class.

221. The class period for both the Minority Employee Class and the African American Lower-Level Manager Class for their compensation and discipline claims is from October 17, 1999 to the date of judgment in this action. The class period for the Minority Employee Class's promotion claims with respect to denial of promotion from one permanent hourly position to another permanent hourly position is October 17, 1999. The class period for the Minority Employee Class's promotion claims with respect to denial of promotion from casual positions to permanent positions or from permanent hourly positions to permanent salaried positions is January 1, 2002.

222. FedEx Express has engaged in a pattern and practice of intentional discrimination against Plaintiffs and the classes with respect to initial assignments (as to the Minority Employee Class only), promotion, compensation, and discipline.

223. Defendant's discriminatory policies and practices as described above have denied Plaintiffs and the classes they represent promotions, desirable job assignments (as to the Minority Employee Class), and compensation to which they were and are entitled; and have caused Plaintiffs and the classes they represent to be disciplined when they should not have been, resulting in the loss of past and future wages and other job benefits; and have caused Plaintiffs and the classes they represent to suffer humiliation, embarrassment and emotional distress.

224. The foregoing conduct constitutes illegal intentional discrimination with respect to the making, performance, modification, and termination of contracts prohibited by 42 U.S.C. § 1981.

225. Plaintiffs request relief as provided in the Prayer for Relief below.

FIFTH CLAIM FOR RELIEF
NON-CLASS CLAIMS FOR VIOLATION OF 42 U.S.C. § 1981

226. Plaintiffs incorporate by reference the allegations of paragraphs 1-32, 34-46, 48-112, 114-185, as though fully set forth herein.

227. This claim is brought on behalf of the named Plaintiffs individually for their non-class claims.

228. Defendant intentionally discriminated against named Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, Stevenson, Satchell, and Boykin on the basis of their race.

229. Defendant intentionally discriminated against Plaintiff Brown by subjecting her to more burdensome work conditions than similarly situated non-Minority employees, subjecting her to harassment, and retaliating against her for filing a discrimination complaint.

230. Defendant intentionally discriminated against Plaintiff Gonzales by failing to rehire him from disability.

231. Defendant intentionally discriminated against Plaintiff Guerrero by retaliating against her for complaining about race-based discrimination and by terminating her.

232. Defendant intentionally discriminated against Plaintiff Hutchins by retaliating against her for filing a discrimination complaint and by terminating her.

233. Defendant intentionally discriminated against Plaintiff Merritt by denying him leave without pay.

234. Defendant intentionally discriminated against Plaintiff Smith by retaliating against him for filing a discrimination complaint and terminating him.

235. Defendant intentionally discriminated against Plaintiff Stevenson by subjecting him to harassment.

236. Defendant intentionally discriminated against Plaintiff Satchell by retaliating against him for filing a discrimination complaint and terminating him.

237. Defendant intentionally discriminated against Plaintiff Boykin by subjecting her to more burdensome work conditions than similarly situated non-Minority employees and by retaliating against her for filing a discrimination complaint and failing to offer her a suitable position after returning from leave of absence.

238. Defendant's discriminatory and retaliatory practices have resulted in the loss of past and future wages and other job benefits, and have caused Plaintiffs to suffer humiliation, embarrassment and emotional distress.

239. Plaintiffs request relief as provided in the Prayer for Relief below.

SIXTH CLAIM FOR RELIEF
VIOLATION OF CALIFORNIA FEHA—NON-CLASS CLAIMS

240. Plaintiffs incorporate by reference the allegations of paragraphs 1-32, 34-46, 48-112, 114-185, as though fully set forth herein.

241. This claim is brought on behalf of the named Plaintiffs employed and/or residing in California individually for their non-class claims.

242. Defendant intentionally discriminated against named Plaintiffs Brown,

1 Gonzales, Guerrero, Hutchins, Smith, Stevenson, Satchell, and Boykin on the basis of their race.

2 243. Defendant subjected named Plaintiffs Brown, Gonzales, Guerrero,
3 Hutchins, Smith, Stevenson, Satchell, and Boykin to a racially hostile work environment.

4 244. Defendant intentionally discriminated against Plaintiff Brown by
5 subjecting her to more burdensome work conditions than similarly situated non-Minority
6 employees, subjecting her to harassment, and retaliating against her for filing a discrimination
7 complaint.

8 245. Defendant intentionally discriminated against Plaintiff Gonzales by failing
9 to rehire him from disability.

10 246. Defendant intentionally discriminated against Plaintiff Guerrero by
11 retaliating against her for complaining about race-based discrimination and by terminating her.

12 247. Defendant intentionally discriminated against Plaintiff Hutchins by
13 retaliating against her for filing a discrimination complaint and by terminating her.

14 248. Defendant intentionally discriminated against Plaintiff Smith by retaliating
15 against him for filing a discrimination complaint and terminating him.

16 249. Defendant intentionally discriminated against Plaintiff Stevenson by
17 subjecting him to harassment.

18 250. Defendant intentionally discriminated against Plaintiff Satchell by
19 retaliating against him for filing a discrimination complaint and terminating him.

20 251. Defendant intentionally discriminated against Plaintiff Boykin by
21 subjecting her to more burdensome work conditions than similarly situated non-Minority
22 employees.

23 252. Defendant's discriminatory and retaliatory practices have resulted in the
24 loss of past and future wages and other job benefits, and have caused Plaintiffs to suffer
25 humiliation, embarrassment and emotional distress.

26 253. Plaintiffs request relief as provided in the Prayer for Relief below.

27 **RELIEF ALLEGATIONS**

28 254. Plaintiffs and the classes they represent have no plain, adequate or

1 complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in
 2 this action is the only means of securing complete and adequate relief. Plaintiffs and the classes
 3 they represent are now suffering and will continue to suffer irreparable injury from Defendant's
 4 discriminatory acts and omissions.

5 255. The actions on the part of Defendant have caused and continue to cause
 6 Plaintiffs and the classes substantial losses in earnings, other compensation, desirable job
 7 assignments, promotions, and other employment benefits, in an amount to be determined
 8 according to proof.

9 256. The actions on the part of Defendant have caused Plaintiffs and the classes
 10 to suffer humiliation, embarrassment and emotional distress.

11 257. Defendant acted or failed to act as herein alleged with malice or reckless
 12 indifference to the protected rights of Plaintiffs and members of the classes. Plaintiffs and
 13 members of the classes are thus entitled to recover punitive damages in an amount to be
 14 determined according to proof.

15 PRAYER FOR RELIEF

16 **WHEREFORE**, Plaintiffs, and the classes, pray for relief as follows:

17 1. Certification of the case as a class action on behalf of the proposed Plaintiff
 18 classes, and designation of Plaintiffs as representatives of the classes and their counsel of record
 19 as Class Counsel;

20 2. For both classes' disparate impact claim under Title VII (Claim One),
 21 equitable relief for all harm the individual Plaintiffs and the classes have sustained as a result of
 22 Defendant's conduct, including back pay and front pay,

23 3. For both classes' other claims (Claims Two and Four), damages and
 24 equitable relief for all harm the individual Plaintiffs and the classes have sustained as a result of
 25 Defendant's conduct, including back pay, front pay, compensatory damages for emotional
 26 distress, and general and special damages for lost compensation and job benefits that they would
 27 have received but for the discriminatory practices of Defendant, and punitive damages, according
 28 to proof;

1 4. For Plaintiffs' individual, non-class claims, damages and equitable relief
2 for all harm that Plaintiffs have sustained as a result of Defendant's conduct, including
3 reinstatement, back pay, front pay, general and specific damages for lost compensation and job
4 benefits they would have received but for the discriminatory practices of Defendant,
5 compensatory damages for emotional distress, and punitive damages, according to proof;

6 5. Exemplary and punitive damages in an amount commensurate with
7 Defendant's ability to pay and to deter future discriminatory conduct;

8 6. A preliminary and permanent injunction against Defendant and its
9 directors, officers, owners, agents, successors, employees and representatives, and any and all
10 persons acting in concert with it, from engaging in each of the unlawful practices, policies,
11 customs and usages set forth herein;

12 7. A declaratory judgment that the practices complained of in this complaint
13 are unlawful and violate 42 U.S.C. § 2000(e), *et seq.*, Title VII of the Civil Rights Act of 1964;

14 8. A declaratory judgment that the practices complained of in this complaint
15 are unlawful and violate 42 U.S.C. § 1981;

16 9. An order restoring and/or promoting Plaintiffs and the classes to their
17 rightful positions;

18 10. An order assigning Plaintiffs and the classes to those jobs they would now
19 be occupying but for Defendant's discriminatory practices;

20 11. An order adjusting the wage rates and benefits for Plaintiffs and the classes
21 to that level which Plaintiffs and the classes would be enjoying but for Defendant's
22 discriminatory practices;

23 12. An order expunging disciplinary records for Plaintiffs and the classes that
24 relate to discipline decisions resulting from Defendant's discriminatory practices;

25 11. Costs incurred, including reasonable attorneys' fees, to the extent allowable
26 by law;

27 12. Pre-Judgment and Post-Judgment interest, as provided by law; and
28

13. Such other and further legal and equitable relief as this Court deems
necessary, just and proper.

Dated: September 29, 2006

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure with respect to Claims Two, Three, Four, Five and Six.

Dated: September 29, 2006

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