

1 CHRIS A. HOLLINGER (S.B. #147638)  
 chollinger@omm.com  
 2 MEGHANN HISCOCKS (S.B. # 274766)  
 mhiscocks@omm.com  
 3 O'MELVENY & MYERS LLP  
 Two Embarcadero Center, 28th Floor  
 4 San Francisco, California 94111-3823  
 Telephone: (415) 984-8700  
 5 Facsimile: (415) 984-8701

CAROLYN KUBOTA (S.B. #113660)  
 ckubota@omm.com  
 ROBERT M. SWERDLOW (S.B. #200266)  
 rswerdlow@omm.com  
 O'MELVENY & MYERS LLP  
 400 South Hope Street  
 Los Angeles, California 90071-2899  
 Telephone: (213) 430-6000  
 Facsimile: (213) 430-6407

6 Attorneys for Defendant  
 FedEx Ground Package System, Inc.  
 7

8 BETH A. ROSS (S.B. #141337)  
 bross@leonardcarder.com  
 9 AARON D. KAUFMANN (S.B. #148580)  
 akaufmann@leonardcarder.com  
 10 ELIZABETH C. MORRIS (S.B. #260513)  
 lmorris@leonardcarder.com  
 11 LEONARD CARDER, LLP  
 1330 Broadway, Suite 1450  
 12 Oakland, California 94612  
 Telephone: (510) 272-0169  
 13 Facsimile: (510) 272-0174

14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN FRANCISCO DIVISION**

19 DEAN ALEXANDER, et al.,  
 20 Plaintiffs,  
 21 v.  
 22 FEDEX GROUND PACKAGE SYSTEM,  
 INC., et al.,  
 23 Defendant.  
 24

Case No. 3:05-cv-38 EMC

**STIPULATION AND [PROPOSED]  
 ORDER OF DISMISSAL OF PLAINTIFFS'  
 CLAIMS UNDER THE FAMILY AND  
 MEDICAL LEAVE ACT**

Judge: Edward M. Chen  
 Dept.: Courtroom 5 - 17th Floor

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
2 captioned action through their respective counsel as follows:

3 WHEREAS, the district court presiding over the multi-district litigation (“MDL”)  
4 proceeding to which this case was initially transferred, *In re FedEx Ground Package Sys., Inc.*  
5 *Employment Practices Litig.*, 3:05-md-527 (N.D. Ind.), remanded the case to this Court to  
6 adjudicate the remaining claims arising under the Family and Medical Leave Act (the “FMLA”)  
7 pursuant to 29 U.S.C. § 2601, *et seq.* (the “FMLA Claims”);

8 WHEREAS, eight of the named plaintiffs, Albert Anaya, Suzanne Andrade, Ely Ines, Paul  
9 Infantino, Erik Jeppson, Gupertino Magana, Dale Brian Rose, and Agostino Scalercio, elected to  
10 pursue their FMLA Claims while the other named plaintiffs (Dean Alexander, Peter Allen, Jarrett  
11 Henderson, Jorga Isla, Bernard Mendoza, Jesse Padilla, Joey Rodriguez, Allen Ross, Dean Wiley,  
12 and Anthony Ybarra) elected not to pursue their FMLA Claims;

13 WHEREAS, the parties, including all of the 18 named plaintiffs have agreed to settle the  
14 plaintiffs’ FMLA Claims pursuant to a Settlement and Release Agreement (the “Agreement”),  
15 under which Defendant admitted to no wrongdoing or liability and in no way waives plaintiffs’  
16 right to appeal the summary judgment entered for defendant as to the non-FMLA claims, which  
17 calls for the voluntary dismissal with prejudice of all of the FMLA Claims;

18 IT IS HEREBY STIPULATED AND AGREED by and among the parties, through their  
19 respective counsel, that all of the remaining FMLA Claims in the above-captioned action be and  
20 hereby are dismissed with prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil  
21 Procedure. The parties further stipulate that neither party is the prevailing party as to the FMLA  
22 Claims, and that each party shall be responsible for their own attorney’s fees, expert fees, and  
23 costs as to those claims. The parties further stipulate that nothing herein shall affect their rights,

24 ///

25 ///

26 ///

27 (continued on next page)

28

1 if any, to obtain applicable attorney's fees, expert fees, and costs as to the other claims in this  
2 lawsuit.

3 Dated: October 15, 2012

BETH A. ROSS  
AARON D. KAUFMANN  
LEONARD CARDER LLP

6 By: /s/ Aaron D. Kaufmann  
7 Aaron D. Kaufman  
8 Attorneys for Plaintiffs

9  
10 Dated: October 4, 2012

CHRIS A. HOLLINGER  
CAROLYN KUBOTA  
O'MELVENY & MYERS LLP

13 By: /s/ Robert M. Swerdlow  
14 Robert M. Swerdlow  
15 Attorneys for Defendant  
16 FedEx Ground Package System, Inc.

17 **Attestation**

18 I hereby attest that the other signatory listed, on whose behalf the filing is submitted,  
19 concurs in the filing's content and has authorized the filing.

20 Dated: October 15, 2012

21 /s/ Aaron D. Kaufmann  
22 Aaron D. Kaufmann  
23 Attorney for Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**[PROPOSED] ORDER OF DISMISSAL WITH PREJUDICE**

1. All claims brought under the Family and Medical Leave Act in the above-referenced action are dismissed with prejudice.

2. Each party will bear its own attorneys' fees, expert fees, and costs related to the FMLA claims in this matter. Nothing herein shall affect the parties' rights if any, to obtain applicable attorney's fees, expert fees, and costs as to the remaining claims in this lawsuit.

The Clerk of the Court is instructed to close the file in this case.

**PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.**

Dated: October 16, 2012

