

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

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4
5 MARC GARVEY, et al.,
6 Plaintiffs,
7 v.
8 FEDERAL EXPRESS CORP., et al.,
9 Defendants.

NO. C07-2505 TEH

ORDER GRANTING MOTION
FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

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11 This matter comes before the Court on Plaintiffs' motion for preliminary approval of
12 the class action settlement agreement, which was filed with the Court and docketed on July
13 25, 2012. The terms of the proposed settlement are set forth in the settlement agreement and
14 joint stipulation filed in support of Plaintiffs' motion. No oppositions to the motion have
15 been filed. Having reviewed the proposed settlement, Plaintiffs' motion, and the pleadings
16 and documents submitted in connection therewith, this Court GRANTS preliminary approval
17 of the proposed settlement pursuant to Fed. R. Civ. Proc. 23. Accordingly, IT IS HEREBY
18 ORDERED that:

19 1. Unless otherwise specified, capitalized terms used in this order shall have the
20 same meaning as set forth in the settlement agreement.

21 2. On or before **August 30, 2012**, the parties shall inform the court whether they
22 have complied with the requirements of 28 U.S.C. § 1715.

23 3. The Court preliminarily approves the proposed settlement. The proposed
24 settlement falls within the range of possible final approval, as it is the product of serious,
25 informed, non-collusive negotiations, and has no obvious deficiencies, and does not
26 improperly grant preferential treatment to the class representatives or segments of the Class.

27 4. A final approval hearing shall be scheduled for **December 17, 2012**, at 10:00
28 a.m. in courtroom 12. At or after that hearing, the court will determine whether to grant final

1 approval of the proposed settlement, including payment of incentive awards to the
2 Representative Plaintiffs, and whether to grant Plaintiffs’ counsel’s motions for attorneys’
3 fees and costs. The Court may adjourn or continue the date of the final approval hearing
4 without further notice to the Settlement Class.

5 5. For settlement purposes only, having determined that the Class meets the
6 requirements of Federal Rule of Civil Procedure 23(a) & (b)(3), the Court hereby
7 conditionally certifies the following settlement class: Plaintiffs and all other individuals who
8 worked for Defendant in a Covered Position in California at any point during the Class
9 Period, except for those persons who submit timely requests to exclude themselves from the
10 Class. As set forth in the settlement agreement, “Defendant” means Federal Express
11 Corporation. “Covered Position” means each of Defendant’s hourly employee positions with
12 “courier” in the job code title. “Class Period” means the period beginning April 15, 2006
13 and ending on the date of this order.

14 6. The following individuals shall serve as the representative plaintiffs of the
15 class: Marc Garvey and Cedric Lauderdale.

16 7. Having considered the factors set forth in Federal Rule of Civil Procedure
17 23(g), the Court appoints as counsel for the Class: Kerr & Wagstaffe LLP, 100 Spear Street,
18 Suite 1800, San Francisco, California 94105; Law Offices of Daniel Feder, 332 Pine Street,
19 Suite 700, San Francisco, California 94104; and Initiative Legal Group APC, 1800 Century
20 Park East, 2nd Floor, Los Angeles, California 90067. Each firm has demonstrated to the
21 satisfaction of the Court that it is experienced in class action litigation and will adequately
22 represent the interests of all Class Members.

23 8. The Court approves, as to form and content, the proposed Class Notice form
24 attached as Exhibit A to the settlement agreement. The Court finds that the dissemination of
25 the Class Notice, as directed by this order, constitutes the best notice practicable under the
26 circumstances, and constitutes valid, due and sufficient notice to all Class Members,
27 complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure
28 and the Constitution of the United States. The Court authorizes the parties to make minor

1 revisions to the Class Notice as they may jointly deem necessary or appropriate, and also to
2 insert dates and deadlines consistent with this order, without necessity of further Court action
3 or approval. The Class Notice shall be sent to all Class Members on the date and in the
4 manner specified below.

5 9. Gilardi & Co. LLC is hereby appointed as Settlement Administrator. The
6 Court grants preliminary approval of settlement administrator costs up to \$36,000.

7 10. Within the time frame set forth below, Federal Express shall provide the
8 Settlement Administrator and Class Counsel the information about Class Members required
9 in section 12.1 of the settlement agreement.

10 11. Any Class Member who wishes to be excluded from the class must make a
11 written request for exclusion pursuant to the instructions contained in the Class Notice. Any
12 request for exclusion must be returned postmarked on or before the date specified below.
13 Requests for exclusions do not apply to the claims release pursuant to Cal. Lab. Code § 2699,
14 et. seq. All persons who properly submit a completed Class Notice requesting exclusion
15 shall not be Settlement Class members and shall have no standing to appear at the final
16 approval hearing.

17 12. Any member of the Settlement Class to whom notice was mailed who does not
18 timely request exclusion and who objects to approval of the proposed settlement in
19 compliance with the requirements of the settlement agreement may appear at the final
20 approval hearing in person, or through counsel, to show cause why the proposed settlement
21 should not be approved as fair, reasonable, and adequate. Specifically, Class Members or
22 their counsel may object to the settlement and entry of the final judgment approving the
23 settlement, the application by Class Counsel to the Court for approval of attorneys' fees and
24 costs and/or of entry of an order approving such application, and any application by the
25 Representative Plaintiffs for an incentive award in connection with the prosecution of this
26 action. Objections will only be heard and considered by the Court if, on or before the date
27 set forth below, the Class Members making such objections have filed with the Court and
28 served on the parties notice of their intention to appear, along with copies of all papers in

1 support of their position, which must clearly set forth each objection and the basis for such
2 objection. Any member of the Settlement Class who does not make his or her objection to
3 the settlement, in the manner provided in the settlement agreement and in compliance with
4 applicable laws, shall be deemed to have waived such objection for purposes of appeal,
5 collateral attack, or otherwise, and shall lack standing to appear at the final approval hearing.

6 13. Any Class Member to whom notice is mailed who does not timely request
7 exclusion from the Class shall, upon the occurrence of the Effective Date, be barred from
8 asserting any Released Claim(s) against any of the Released Persons, and each and all Class
9 Member(s) shall be deemed to have released any and all such Released Claims as against all
10 of the Released Persons.

11 14. The dates of performance of this order are as follows:

12 a. On or before **September 17, 2012**, Federal Express shall provide the
13 Settlement Administrator and Class Counsel with the information about Class members
14 required in section 12.1 of the settlement agreement.

15 b. Dissemination of the Class Notice to all Class Members by first class
16 United States mail shall be completed on or before **September 27, 2012**.

17 c. Requests for exclusion from the Class must be returned postmarked on
18 or before **October 27, 2012**.

19 d. Objections to the settlement, requests for intervention, and notices of
20 intention to appear at the final approval hearing shall be deemed timely only if filed with the
21 Court and served on the parties on or before **October 29, 2012**.

22 e. Class counsel's motion for attorneys' fees and costs, and Representative
23 Plaintiffs' applications for incentive awards shall be filed with the Court on or before
24 **November 12, 2012**. Copies shall be served on current counsel of record by personal
25 delivery or Federal Express, and on all other persons who have filed a notice of their
26 intention to appear at the final approval hearing by first class mail.

27 f. Counsel for the class shall file their papers in support of final approval
28 of the settlement by **November 12, 2012**. Copies of all such papers shall be served on

1 current counsel of record by personal delivery or Federal Express and on all other individuals
2 who have filed a notice of their intention to appear at the final approval hearing by first class
3 mail.

4 g. Any opposition by Class Members to counsel's motion for attorney fees
5 and costs or Representative Plaintiffs' applications for incentive awards shall be filed on or
6 before **November 26, 2012**.

7 h. Any reply to the opposition to the settlement itself, counsel's motion for
8 attorneys' fees and costs, or Representative Plaintiffs' applications for incentive awards shall
9 be filed on or before **December 3, 2012** and served on counsel of record and those Class
10 Members who file opposition papers with the Court.

11 15. Pursuant to the Court's order dated July 24, 2012, the settlement-related
12 documents and pleadings are now UNSEALED.

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14 **IT IS SO ORDERED.**

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16 Dated: 08/28/2012



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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT