

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

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 5 MARC GARVEY and CEDRIC  
 LAUDERDALE,

6 Plaintiffs,

7 v.

8 FEDERAL EXPRESS  
 9 CORPORATION,

10 Defendant.

NO. C07-2505 TEH

ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT

11  
 12 On December 17, 2012, at 10:00 a.m., a hearing was held on Plaintiffs' unopposed  
 13 motion for final approval of class action settlement, attorneys' fees, and costs, and  
 14 representative plaintiffs' incentive awards. The Court has considered all papers filed and  
 15 proceedings conducted in this case, including the proposed Settlement Agreement and Joint  
 16 Stipulation ("Settlement Agreement"), which this Court preliminarily approved in its August  
 17 28, 2012 Order (the "Preliminary Approval Order"). The Court finds the settlement of this  
 18 litigation to be fair, reasonable and adequate.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Except as otherwise specified herein, the Court for purposes of this Final  
 21 Approval Order adopts all defined terms as set forth in the Settlement Agreement.
- 22 2. This Court has jurisdiction over the subject matter of this litigation and all  
 23 related matters and all claims raised in this action and released in the Settlement Agreement,  
 24 and personal jurisdiction over Federal Express Corporation and all Class Members.
- 25 3. Pursuant to the Preliminary Approval Order, a Notice of Class Action  
 26 Settlement was mailed to each Class Member. The Settlement Administrator took reasonable  
 27 steps to provide the Notice to Class Members if, and when, it learned that the address to  
 28 which those documents were mailed was no longer accurate. These documents informed

1 Class Members of the terms of the Settlement Agreement, their right to claim a share of the  
2 settlement proceeds and the procedure therefor, their right to object to the Settlement  
3 Agreement or to opt out of the Settlement Agreement and pursue their own remedies, and  
4 their right to appear in person or by counsel at the final approval hearing and be heard  
5 regarding approval of the Settlement Agreement. Notice was provided with ample time for  
6 the Class Members to follow these procedures.

7 4. This Court finds that this notice procedure afforded adequate protections to  
8 Class Members and provides the basis for the Court to make an informed decision regarding  
9 approval of the Settlement Agreement based on the response of the Class Members. Notice  
10 was accomplished in all material respects in the manner prescribed by the Settlement  
11 Agreement. The Court finds that the notice provided in this case was the best notice  
12 practicable, which satisfied the requirements of law and due process.

13 5. For the reasons stated in the Preliminary Approval Order, this Court finds that  
14 the proposed Class, as defined in 5 of the Preliminary Approval Order, as: “Plaintiffs and all  
15 other individuals who worked for Defendant in a Covered Position in California at any point  
16 during the Class Period, except for those persons who submit timely requests to exclude  
17 themselves from the Class,” (The Class Period is defined as the period beginning April 15,  
18 2006 and ending August 28, 2012; “Defendant” means Federal Express Corporation; and  
19 “Covered Position” means each of Defendant’s hourly employee positions with “courier” in  
20 the job code title) meets all of the legal requirements for class certification under Federal  
21 Rules of Civil Procedure 23 (“Rule 23”) (a) and (b)(3), and it is hereby ordered that  
22 certification of the Class is finally approved for purposes of settlement of this action.

23 6. The Court confirms as final the appointment of Plaintiffs Marc Garvey and  
24 Cedric Lauderdale as the Class Representatives.

25 7. The Court confirms as final the appointment of the Law Offices of Daniel  
26 Feder, Kerr & Wagstaffe LLP, and Initiative Legal Group APC as Class Counsel.

27 8. The Court finds that Defendant has complied with the notification requirements  
28 of 28 U.S.C. § 1715. (Dkt. No. 194.)

1           9.       On October 25, 2012, an “Objection to settlement” was filed in this Court.  
2 (Dkt. No. 196.) Having reviewed the “objection” the Court finds that the “Objection to  
3 settlement” is not to the fairness of the settlement or its terms, but rather, constitutes a dispute  
4 with respect to the number of workweeks listed in the Notice to an individual Class Member  
5 and the resulting calculation of that Class Member’s settlement payment. This objection is  
6 not relevant to the Court’s determination of the fairness, reasonableness, or adequacy of the  
7 settlement agreement as a whole. No other objections have been filed.

8           10.       The Court finds that the Settlement Agreement is rationally related to the  
9 strength of Plaintiffs’ claims given the risk, expense, complexity, and duration of further  
10 litigation. The Court also finds that the Settlement Agreement is the result of arm’s-length  
11 negotiations between experienced counsel representing the interests of the Class and  
12 Defendant, after thorough factual and legal investigation. The Court further finds that the  
13 Settlement Agreement is not the product of fraud or overreaching by, or collusion between,  
14 the negotiating parties. The Court also finds that the response of the Class to the Settlement  
15 Agreement supports settlement approval. Accordingly, pursuant to Rule 23(e), the Court  
16 finds that the terms of the Settlement Agreement are fair, reasonable, and adequate to the  
17 Class and to each Class Member.

18           11.       The Court grants final approval of the Settlement Agreement, and orders the  
19 parties to implement, and comply with, its terms.

20           12.       Nothing in this Final Approval Order will preclude any action to enforce the  
21 parties’ obligations under the Settlement Agreement or under this Order.

22           13.       By operation of entry of this Final Approval Order and pursuant to the  
23 Settlement Agreement, all Class Members who have not timely opted out, shall have waived  
24 and released any Released Claims as set forth in 1.19 of the Settlement Agreement. All Class  
25 Members, including those who have timely opted out, are bound by the Final Judgment with  
26 respect to the Private Attorney General Act of 2004, Cal. Lab. Code § 2698, et seq.  
27 (“PAGA”) claims or remedies pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).  
28

1 The option to opt out does not alter the binding nature of the release of the PAGA claims or  
2 remedies pursuant to this Final Judgment.

3 14. The Court further finds that the amount of attorneys’ fees requested is fair and  
4 reasonable under the percentage-of-recovery method and finds that a fee award of one-third,  
5 or \$1,333,333.33, of the Gross Settlement Amount is consistent with awards made in similar  
6 cases and Class Counsel’s lodestar, and is warranted by the facts and circumstances of this  
7 case. Therefore, the Court hereby awards Class Counsel (Kerr & Wagstaffe LLP, Law  
8 Offices of Daniel Feder, and Initiative Legal Group APC) attorneys’ fees of \$1,333,333.33,  
9 to be paid from the Gross Settlement Amount.

10 15. The Court also finds that reimbursement of the expenses requested by Class  
11 Counsel is appropriate in these circumstances, and hereby awards Class Counsel costs in the  
12 total amount of \$25,183.89, to be paid from the Gross Settlement Amount.

13 16. Pursuant to the Settlement Agreement, the Court also awards the Settlement  
14 Administrator, Gilardi & Co., LLC, its fees and expenses in connection with the settlement  
15 administration in the amount of \$36,000, to be paid from the Gross Settlement Amount.

16 17. The Court also finds that the requested incentive payment is reasonable and  
17 appropriate, and hereby awards a total incentive payment in the amount of \$30,000,  
18 consisting of \$15,000 each to Representative Plaintiffs Marc Garvey and Cedric Lauderdale,  
19 to be paid from the Gross Settlement Amount.

20 18. Without affecting the finality of the Court’s judgment in any way, the Court  
21 retains jurisdiction over this matter for the purposes set forth in the Settlement Agreement,  
22 including the resolution of issues relating to the interpretation, administration,  
23 implementation, effectuation and enforcement of the Settlement Agreement.

24 19. By means of this Final Approval Order, the Court hereby enters final judgment  
25 in this action, and the matter shall be dismissed in its entirety, with prejudice. Each side shall  
26 bear its own costs and attorneys’ fees, except as provided by the Settlement Agreement and  
27 the Court’s orders.

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20. This document shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: 12/18/2012



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THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT