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15 Attorneys for Plaintiffs
 Paul Bibo, Georgia Shields, Alex Galvez, Marc Garvey, Bryan
 16 Peter, and all others similarly situated

17 UNITED STATES DISTRICT COURT
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA

19
 20 PAUL BIBO, an individual, and
 GEORGIA SHIELDS, an individual, and
 ALEX GALVEZ, an individual, MARC
 21 GARVEY, an individual; BRYAN PETER,
 an individual, individually and on behalf of
 22 all other similarly situated,

23 Plaintiffs,

24 v.

25 FEDERAL EXPRESS INC., a Delaware
 Corporation, and DOES
 26 1-500, inclusive,

27 Defendants.
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Case No. C 07-02505 TEH

**STIPULATION REGARDING PROTECTION
 OF CONFIDENTIAL DISCOVERY
 MATERIALS AND ORDER THEREON**

1 The parties herein stipulate to the entry of a protective order pursuant of Fed. R. Civ. P.
2 26(c), in order to facilitate discovery and protect privacy and proprietary interests of parties and non-
3 parties. This stipulation is intended to protect specific materials not yet disclosed, as well as specific
4 materials already disclosed as identified herein, comprising primarily of, but not limited to, FAMIS
5 data and information.
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7 1. In connection with discovery proceedings in this action, the parties may reasonably
8 designate any appropriate document, thing, material, electronic data, testimony or other information
9 derived therefrom as "Confidential" under the terms of this Stipulation.

10 2. The term "Confidential Information" includes (a) proprietary technical information
11 and specifications, (b) trade secrets, (c) confidential know-how, (d) proprietary business and
12 financial information, (e) private or confidential employment or client information and documents,
13 and (f) any other information the disclosure of which is likely to have the effect of causing harm to
14 the competitive position of the person, partnership, corporation, or other organization from which the
15 information is obtained. Such information currently includes, without limitation, FAMIS user
16 manuals, FAMIS electronic time record data, and other FAMIS related documentation. This
17 stipulation is also intended to protect previously-produced FAMIS time record data, the production
18 of which inadvertently contained headings that identify employees by first and last name, as well as
19 employee number. Such information should not have been produced containing the first and last
20 name of employees and implicates the privacy interests of employees that is subject to protection.
21 Plaintiffs and their counsel agree not to further use the inadvertently produced portion of the
22 information for any purpose and have used the information only for purposes of expert consulting
23 and analysis and for deposition preparation of Rule 30(b)(6) witnesses. Plaintiffs and their counsel
24 agree to return the electronic data and any copies thereof and delete any copies saved in other
25 formats upon receipt of corrected data from the Defendant. If and when an order is entered granting
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1 certification, the parties will meet and confer regarding production of the identity of class members.

2 3. Confidential Information shall not include any material or information that has been
3 or will become lawfully in the possession of the party receiving the same ("Receiving Party")
4 through non-confidential communications other than production or disclosure in this action; has been
5 or becomes part of the public domain by publication or otherwise and not due to any authorized act
6 or omission on the part of the Receiving Party; or has been independently developed as evidenced by
7 written record.
8

9 4. All Confidential Information produced or exchanged in the course of this civil action
10 shall be used solely for the purpose of preparing for and conducting this civil action, including trial
11 and any appeals therefrom, and shall not be used in any other civil actions or for any other purposes.
12

13 5. Access to Confidential Information shall be given to:

14 (a) The attorneys of record in this action, including any necessary clerical staff,
15 support staff, and other attorneys employed by the foregoing law firms.

16 (b) Persons independent from any of the parties to this action who are consulted
17 or retained as experts under Fed. R. Civ. P. 26 in connection with this action (and secretarial and
18 clerical staff of such experts).

19 (c) Court personnel (including stenographic reporters) and any law clerk,
20 paralegal, secretarial, clerical, or other court personnel, providing the information is provided under
21 seal.
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23 (d) An officer before whom a deposition is taken, including stenographic
24 reporters, videographers and any secretarial, clerical, or other lay personnel assisting such officer,
25 provided the information is marked and maintained as separate confidential excerpts and exhibits.

26 (e) Nothing in this Order shall bar or otherwise restrict any attorney from
27 rendering advice to a party-client in this action, and in the course thereof, relying upon such
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1 attorney's examination of material or information designated as Confidential Information; provided,
2 however, that in rendering such advice and in otherwise communicating with such client, the
3 attorney shall not disclose any material or information designated as Confidential Information to any
4 person not entitled to access to the Confidential Information pursuant to the terms of paragraph 5
5 above.

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7 6. The persons entitled to have access to Confidential Information pursuant to the terms
8 of paragraph 5 shall not make available such Confidential Information to any person other than (i)
9 those persons entitled to such access pursuant to the terms of paragraph 5, (ii) the parties who
10 produced the Confidential Information, or (iii) deposition witnesses as described in paragraph 9,
11 below.

12 7. Documents and other discovery materials containing Confidential Information shall
13 be designated as such by marking each page of each document or other discovery material with the
14 following language (or comparable language with the same meaning):
15

16 CONFIDENTIAL-
17 SUBJECT TO CONFIDENTIALITY ORDER

18 A physical specimen or thing containing Confidential Information such as a disk containing
19 electronic data shall be designated as such by marking such physical specimen or thing with a legend
20 including the phrase "CONFIDENTIAL" as appropriate. The electronic data need not contain the
21 designation.

22 8. In the event that information that a party believes is entitled to protection as
23 Confidential information is accidentally or inadvertently produced without being properly
24 designated, or any inspection proceeds without the proper designation hereunder, the Producing
25 Party may notify the Receiving Party in writing immediately, demanding its return or destruction,
26 and the Receiving Party shall thereafter treat the information as Confidential Information. Within
27 twenty (20) of notifying the Receiving Party, the Producing Party shall provide properly marked
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1 documents. Upon receipt of properly marked documents, the Receiving Party shall return or destroy
2 said unmarked documents and things and any copies thereof to the extent practicable. If, prior to
3 receiving such written notice, the Receiving Party disseminated the Confidential Information to
4 individuals not authorized to receive it hereunder, it shall notify the Producing Party immediately
5 and make a reasonable effort to retrieve the Confidential Information or to otherwise assure that the
6 recipient(s) maintain the confidentiality of the Confidential Information. Compliance with the
7 foregoing shall not prevent either party from seeking further relief from the Court.
8

9 9. Confidentiality of Depositions.

10 (a) Information disclosed at the deposition of any person who is at the time of
11 examination or was previously employed by, an agent of, or affiliated with the Producing Party or
12 any division, subsidiary, parent or affiliate of the Producing Party, or of experts retained by counsel
13 for any party for purposes of this litigation, including both testimony and exhibits, may be
14 designated as Confidential Information by indicating on the record at the deposition that the
15 testimony and/or exhibit is subject to the provisions of this Stipulation and Order. This Stipulation
16 and Order shall not prevent a party from attempting to examine as witnesses at depositions persons
17 who are not authorized, pursuant to paragraph 5, to receive material or information designated as
18 Confidential Information to which the witness has prior knowledge, as demonstrated by the
19 document itself, or by foundation testimony at deposition, or by other circumstances showing that
20 the witness would be reasonably expected to have had prior access to the document or the
21 Confidential Information, or is otherwise familiar with the Confidential Information but only to the
22 extent of that person's familiarity. This Stipulation and Order shall not prevent counsel from
23 examining a witness to determine whether he or she has prior knowledge of material or information
24 designated as Confidential Information, so long as such examination is in a manner that does not
25 disclose the details of the material or information designated as Confidential Information. In
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1 obtaining foundation testimony at deposition, if the examiner first establishes that the witness
2 previously had authorized access to the subject material or information designated as Confidential
3 Information, the witness may be shown such portions of the Confidential Information as may be
4 reasonably necessary to determine whether the witness had prior knowledge of the subject material
5 of information.
6

7 (b) A party may also designate Confidential Information disclosed at such a
8 deposition by notifying the other parties, during the course of the deposition.

9 (c) Notwithstanding anything to the contrary herein, any deponent may review the
10 transcript of his own deposition at any time.

11 10. If any party files Confidential Information (including Confidential portions of
12 documents or transcripts) or any document, pleading or brief which discloses the substance or
13 content of Confidential Information in connection with any motion, other written submission,
14 hearing or trial in this action, the filing party shall make such filing under seal and shall
15 simultaneously file a motion to seal such Confidential Information in accordance with the Local
16 Rules; provided, however, that the burden of proving that such Confidential Information should be
17 sealed under the Local Rules shall at all times remain on the party that designated the Confidential
18 Information as such.
19

20 11. The parties will use reasonable care to avoid designating as Confidential Information
21 any documents or information which have been published or can otherwise be shown to be publicly
22 available. The acceptance of materials or information designated as Confidential Information by a
23 Receiving Party shall not constitute an admission or concession or permit an inference that the
24 material or information designated as Confidential Information is, in fact, Confidential. A party
25 shall not be obligated to challenge the confidentiality of a designation as Confidential Information at
26 the time the designation is made, and a failure to do so shall not preclude a subsequent challenge to
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1 the designation. In the event of a dispute with respect to the designation of any discovery material as
2 Confidential Information, counsel shall attempt to resolve their dispute on an informal basis before
3 presenting the matter to the Court for resolution. Until such time as the challenge is resolved, such
4 Confidential Information shall be maintained in accordance with this Stipulation and Order.
5

6 12. Documents and things designated as containing Confidential Information and any
7 copies or extracts thereof, shall be retained in the custody of the attorneys of record during the
8 pendency of this action in a secure place, except as reasonably necessary to provide access to
9 persons authorized under the provisions of this Stipulation and Order. Each recipient of any
10 Confidential Information produced in this action hereby agrees to be subject to the jurisdiction of
11 this Court for the purpose of the implementation and enforcement of this Stipulation and Order.
12

13 13. Within sixty (60) days after final termination of this action, including all appeals,
14 each party shall assemble all documents and things furnished and designated by any other party as
15 containing Confidential Information and all copies of such materials, including electronic versions to
16 the extent feasible, and return or destroy all such material, such election to be made by the Receiving
17 Party. The attorneys of record for each party shall be entitled to retain copies of all pleadings,
18 motion papers, discovery responses, depositions and trial transcripts, exhibits, legal memoranda,
19 correspondence, attorney work product, and any other documents related to this litigation, provided
20 said attorney and the employees of said attorney shall not disclose such information except pursuant
21 to a written agreement with the disclosing party or as compelled by law.
22

23 14. This Stipulation and Order is without prejudice to the
24 right of any party to seek modification by the Court of any of the terms of this Stipulation and Order,
25 or to present to the Court any matter which is the subject of this Stipulation and Order.
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27 15. The terms of the Stipulation and Order shall survive the final termination of this civil
28 action to the extent that any Confidential Information is not or does not become known to the public.

1 16. A determination that information designated by another party as Confidential
2 Information is not Confidential Information shall not be made unilaterally by any Receiving Party,
3 but rather, a challenge to the propriety of a designation of Confidential Information shall be made in
4 accordance with paragraph 11. Until a challenge is resolved in accordance with paragraph 11, the
5 challenged information shall be treated as Confidential Information under the terms of this
6 Stipulation and Order.
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8 17. Notwithstanding the foregoing provisions, this Order shall be without prejudice to the
9 right of any party to challenge the propriety of discovery on other grounds, such as privilege, work
10 product, relevance, etc., and nothing contained herein shall be construed as a waiver of any objection
11 that might be raised as to the admissibility at trial of any evidentiary material.
12

13 18. The Stipulation and Order may be amended by the agreement of counsel for the
14 parties, subject to the approval of the Court, provided it is in the form of a stipulation that shall be
15 filed with the Clerk and made part of the record in this civil action.
16

17 19. This Stipulation and Order shall be without prejudice to the right of any party to
18 apply to the Court for such further stipulation and order under the provision of the Federal Rules of
19 Civil Procedure, the Local Rules, or as justice may require.
20

21 Dated: 12/9/08

21 Dated: 12/9/08

22 FOR PLAINTIFFS:

22 FOR DEFENDANT:

23 By: Daniel L. Feder
24 Daniel L. Feder

23 By: Sandra C. Isom
24 Sandra C. Isom

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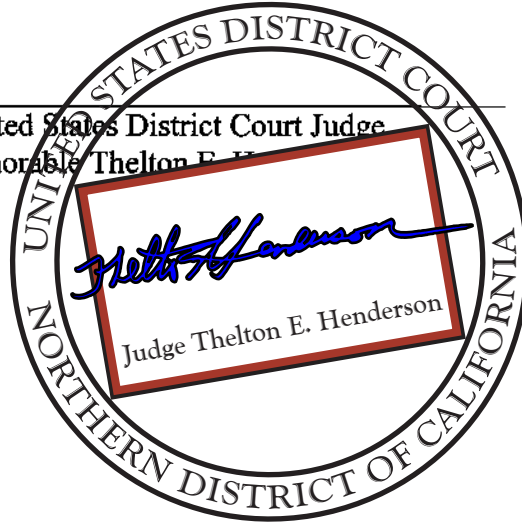
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Telephone: 901-434-8526
Fax No.: 901-434-9271
E-mail: scisom@fedex.com

ORDER ON STIPULATION

PURSUANT TO STIPULATION, IT IS SO ORDERED.

SIGNED this 11th day of December, 2008.

United States District Court Judge
Honorable Thelton E. Henderson



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1 **EXHIBIT A**

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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

6 PAUL BIBO, an individual, and
7 GEORGIA SHIELDS, an individual, and
8 ALEX GALVEZ, an individual, MARC
9 GARVEY, an individual; BRYAN PETER,
an individual, individually and on behalf of
all other similarly situated,

10 Plaintiffs,

11 v.

12 FEDERAL EXPRESS INC., a Delaware
13 Corporation, and DOES
1-500, inclusive,

14 Defendants.

Case No. C 07-02505 TEH

ACKNOWLEDGMENT OF OBLIGATION

15
16 I, _____ state:

17 I reside at _____ in the city/county of _____

18 I am presently employed as (position) _____ by (state name and address of
19 employer) _____

20
21 I have read the STIPULATION AND ORDER entered in the above action (hereinafter
22 "STIPULATION AND ORDER") and am fully familiar with and agree to comply with and
23 be bound by the provisions of that STIPULATION AND ORDER. I agree that I will not
24 divulge Confidential Information to persons other than those specifically authorized by the
25 STIPULATION AND ORDER, and will not copy, use, or disclose any such information
26 except as provided for by the STIPULATION AND ORDER. At the termination of this
27 action or at any time requested by counsel, I will return to counsel for the party by whom I
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am employed all documents and other materials, including notes, computer data, summaries, abstracts, or any other materials containing or reflecting Confidential Information which may have come into my possession, and will return all documents or things I have prepared relating to ore reflecting such Confidential Information. An accurate copy of my curriculum vitae and publication list is hereby attached.

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

Executed on _____ (date) _____ (signature)