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17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

19 ORLANDO DELGADO, an  
 20 individual,

21 Plaintiff,

22 v.

23 FEDERAL EXPRESS  
 CORPORATION, a Delaware  
 24 corporation and DOES 1-10,  
 inclusive,

25 Defendants.

CASE NO.: C 08-03576 MMC

Honorable Maxine M. Chesney,  
 Courtroom 7, 19<sup>th</sup> Floor

**STIPULATION AND ORDER FOR  
 PROTECTIVE ORDER REGARDING  
 CONFIDENTIAL INFORMATION OF  
 PLAINTIFF ORLANDO DELGADO**

Complaint Filed: June 30, 2008  
 Trial Date: October 26, 2009



1 WHEREAS, plaintiff ORLANDO DELGADO (“Plaintiff”) and defendant  
2 FEDERAL EXPRESS CORPORATION (“FedEx” or “Defendant”) are presently  
3 engaged in discovery in the above-captioned case; and

4 WHEREAS, FedEx has sought or will seek testimony, information and  
5 documents that Plaintiff contends contain confidential and private information  
6 concerning Plaintiff; and

7 WHEREAS, FedEx has sought or will seek testimony, information and  
8 documents that a third party contends contains confidential and proprietary business  
9 information; and

10 WHEREAS, after engaging in a good faith effort to meet and confer the parties  
11 wish to resolve this issue informally;

12 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT  
13 THE COURT MAY, ~~AND HEREBY DOES~~, ENTER AN ORDER as follows:

14 1. The following information and documents that reflect such information,  
15 which are not generally publicly available and are designated by the Plaintiff as  
16 “Confidential,” shall be deemed “Confidential Information:”

- 17 A. Any documents served in *Delgado v. TNT USA, Inc.* Case No.  
18 CIV 455723 and removed to U.S. District Court, Northern  
19 District of California, Case No. C 06-04789 (hereinafter “the  
20 TNT action”).
- 21 B. Any transcripts from hearings or depositions in the TNT action.
- 22 C. ~~Any and all settlement agreements made between the parties in~~  
23 ~~the TNT action.~~ [E.M./R.S.]
- 24 D. Any and all deposition testimony by Delgado that concerns or  
25 relates to the TNT action.

26 2. Designation of any documents that are deemed “Confidential” shall be  
27 made by stamping each page comprising any such document, copy or excerpt thereof  
28 with the legend “CONFIDENTIAL” at the time of production.



1           3.     Good cause exists to limit the disclosure of this information and these  
2 documents. The documents purport to contain Plaintiff’s confidential and private  
3 information, including information about his health and financial status, as well as  
4 confidential and proprietary information of TNT USA Inc. (“TNT”), in that the  
5 information and documents reveal certain business practices of TNT, such as the  
6 amount of any settlement to Plaintiff in that lawsuit. As set forth herein, Plaintiff and  
7 TNT would suffer irreparable harm if the information and documents were disclosed  
8 without the protections set forth in the Stipulation and Order:

9           4.     “Qualified Person” as used herein means: (i) Federal Express  
10 Corporation, including its attorneys and employees necessary to assist counsel in the  
11 above-captioned action; (ii) any expert consulted by Plaintiff, Defendant or by  
12 Plaintiff’s or Defendant’s attorneys in the preparation of this action for trial; (iii)  
13 Plaintiff; (iv) Sudeen, Salinas & Pyle, its partners and employees; and (v) Law Office  
14 of Enrique Martinez, its partners and employees; and (vi) the Court.

15           5.     Confidential Information may only be disclosed to Qualified Persons and  
16 then only to the extent counsel in good faith believes that such disclosure is necessary  
17 to the prosecution or defense of this litigation. Confidential Information may only be  
18 disclosed to Qualified Persons after they have read this Stipulation and Order, agreed  
19 in writing to be bound by it and have signed the Acknowledgement and Agreement  
20 attached hereto as Exhibit A.

21           6.     Each Qualified Person will maintain Confidential Information in  
22 confidence and will not use it or reveal it to anyone who is not a Qualified Person  
23 without the prior written consent of opposing counsel and TNT or, in the absence of  
24 such consent, an order of the Court authorizing such disclosure.

25           7.     Counsel for the parties may, in the course of deposing a person who is  
26 not a Qualified Person, show the witness Confidential Information and examine the  
27 witness concerning such information provided that: (a) the witness and court reporter  
28 have read this Stipulation and Order agreed in writing to be bound by it and signed the



1 Acknowledgement and Agreement attached as Exhibit A; and (b) no persons are  
2 present during those portions of the examination concerning Confidential Information  
3 except the witness, Qualified Persons, persons present at the request of Defendant or  
4 Plaintiff or their counsel, and a court reporter.

5 8. The transcript of deposition testimony containing Confidential  
6 Information shall be bound separately, marked by the court reporter “Confidential”  
7 and treated as Confidential Information subject to the terms of this Stipulation and  
8 Order.

9 9. The disclosure of Confidential Information to a Qualified Person without  
10 designating it as Confidential shall not constitute a waiver of the producing party’s  
11 obligation and right to designate such information as Confidential at a later time and,  
12 if so designated, the information shall thenceforth be treated as Confidential subject to  
13 all terms of this Stipulation and Order.

14 10. If a party wishes the Court to consider a confidential document in  
15 connection with any motion filed in this action that party shall make an  
16 Administrative Motion to File Under Seal (“Administrative Motion”); any request  
17 should be made to the District Judge with an appropriate showing supporting the  
18 request to file the documents under seal. TNT shall receive notice of such  
19 Administrative Motion no later than the time of filing of such Administrative Motion.  
20 The request must comply with the requirements of Civil Local Rule 79-5, and the  
21 request will seek to file under seal only the confidential portions of such documents.

22 11. If either party wishes to use Confidential Information at trial of this  
23 action, the parties will, in advance, confer in good faith with each other and with TNT  
24 to agree upon a method to protect such Confidential Information. Either party may,  
25 with simultaneous notice to TNT, apply to the District Judge for a mechanism to  
26 maintain the confidentiality of discovery material designated as Confidential  
27 Information at trial.

28 12. At the conclusion of this lawsuit (including appeals, if any), all



1 Confidential Information in the possession of any Qualified Person or any other  
2 person who has received such information pursuant to this Stipulation and Order,  
3 together with all copies, extracts and summaries thereof, shall be returned to the party  
4 that produced it, with written confirmation provided to TNT. No Confidential  
5 Information may be used in any other judicial or other proceeding or for any other  
6 purpose, except (i) where required by legal process or by law for lawful purposes, or  
7 (ii) upon consent of the party who produced the Confidential Information and consent  
8 of TNT.

9 13. This Stipulation and Order may be modified by a later Stipulation and  
10 Court Order or, if the parties and TNT are unable to agree, by the court on the  
11 application of a party with simultaneous notice to TNT. This Stipulation and Order  
12 shall be binding on all Qualified Persons and all other persons having knowledge of  
13 its terms and any violation thereof may be punishable by contempt.

14 14. If Defendant FedEx in good faith disagrees with the Confidential  
15 designation of the documents protected herein, Defendant shall inform counsel for  
16 Plaintiff in writing of the disagreement with simultaneous notice to TNT. Unless a  
17 prompt challenge to Plaintiff's confidentiality designation is necessary to avoid  
18 foreseeable substantial unfairness, unnecessary economic burdens, or a later  
19 significant disruption or delay of the litigation, neither a Party nor TNT waives its  
20 right to challenge a confidentiality designation by electing not to mount a challenge  
21 promptly after the original designation is disclosed. Defendant must initiate a  
22 challenge in good faith and must begin the process by conferring directly (in person or  
23 by telephone) with counsel for Plaintiff and TNT, explaining the basis for its belief  
24 that the confidentiality designation was not proper and giving Plaintiff and TNT an  
25 opportunity to review the designated material, to reconsider the circumstances, and if  
26 no change in designation is offered, to explain the basis for the chosen designation.  
27 Only after this meet and confer process may Defendant seek judicial intervention, at  
28 which point Defendant may file a motion under Civil Local Rule 7 (and in compliance

1 with Civil Local Rule 79-5, if applicable) that identifies the challenged material and  
2 sets forth in detail the basis for the challenge with simultaneous notice to TNT. Each  
3 such motion must be accompanied by a declaration affirming the declarant has  
4 complied with the meet and confer requirements of this paragraph and set forth with  
5 specificity any and all grounds for the challenge. As the designating party, Plaintiff  
6 has the right to oppose the motion and bears the burden of demonstrating good cause  
7 for protection of the documents.

8 15. If any third party to the case, including but not limited to TNT, in good  
9 faith disagrees with the Confidential designation of the documents protected herein, or  
10 the failure to so designate, the third party shall inform counsel for Plaintiff and TNT in  
11 writing of the disagreement within fifteen (15) days of learning of the designation.  
12 Upon receipt of written notification of the disagreement, counsel for Defendant,  
13 Plaintiff, TNT and any other third party will confer in an effort to resolve the dispute  
14 without Court intervention. If the dispute is not resolved within fifteen (15) days of  
15 Plaintiff's receipt of the written notification, the third party may move the Court for a  
16 confidential designation modification or vacation of the Confidential designation at  
17 issue, with simultaneous notice to TNT if a third party other than TNT so moves.  
18 Such application shall describe with specificity the particular materials for which the  
19 designation or failure to designate is being challenged and set forth with specificity  
20 any and all grounds for the challenge. As the designating party, Plaintiff has the right  
21 to oppose the motion and bears the burden of demonstrating good cause for protection  
22 of the documents.

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EXHIBIT A

Acknowledgment and Agreement

I have read and agree to be bound by the terms and conditions of the foregoing  
Stipulation and Order for Protective Order Regarding Confidential Information of  
Plaintiff Orlando Delgado.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_