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**UNITED STATES DISTRICT COURT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA**

KAMBIZ ADIBZADEH

Plaintiff,

vs.

FEDERAL EXPRESS CORPORATION and
DOES 1-50,

Defendants.

Case No. CV 10-02761 JSW

ASSIGNED FOR ALL PURPOSES TO
JUDGE JEFFREY S. WHITE

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: March 18, 2010

Trial Date: March 5, 2012

Plaintiff KAMBIZ ADIBZADEH and Defendant FEDERAL EXPRESS CORPORATION, by and through their respective undersigned counsel of record, hereby stipulate and agree to entry by the Court of a Protective Order in the form set forth below:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not

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1 confer blanket protections on all disclosures or responses to discovery and that the
2 protection it affords from public disclosure and use extends only to the limited information
3 or items that are entitled to confidential treatment under the applicable legal principles. The
4 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
5 Protective Order does not entitle them to file confidential information under seal; Civil
6 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will
7 be applied when a party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation
10 of information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for protection under
13 Federal Rule of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House
15 Counsel (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including, among
20 other things, testimony, transcripts, and tangible things), that are produced or generated in
21 disclosures or responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
24 expert witness or as a consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action.
26 House Counsel does not include Outside Counsel of Record or any other outside counsel.

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1 2.8 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a party
4 to this action but are retained to represent or advise a party to this action and have appeared
5 in this action on behalf of that party or are affiliated with a law firm which has appeared on
6 behalf of that party.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their support
9 staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
14 and organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or extracted from
23 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
24 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
25 that might reveal Protected Material. However, the protections conferred by this Stipulation
26 and Order do not cover the following information: (a) any information that is in the public
27 domain at the time of disclosure to a Receiving Party or becomes part of the public domain

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1 after its disclosure to a Receiving Party as a result of publication not involving a violation
2 of this Order, including becoming part of the public record through trial or otherwise; and
3 (b) any information known to the Receiving Party prior to the disclosure or obtained by the
4 Receiving Party after the disclosure from a source who obtained the information lawfully
5 and under no obligation of confidentiality to the Designating Party. Any use of Protected
6 Material at trial shall be governed by a separate agreement or order.

7 4. DURATION

8 Even after final disposition of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
10 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
11 of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2)
12 final judgment herein after the completion and exhaustion of all appeals, rehearings,
13 remands, trials, or reviews of this action, including the time limits for filing any motions or
14 applications for extension of time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under this Order
18 must take care to limit any such designation to specific material that qualifies under the
19 appropriate standards. The Designating Party must designate for protection only those parts
20 of material, documents, items, or oral or written communications that qualify – so that other
21 portions of the material, documents, items, or communications for which protection is not
22 warranted are not swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper purpose
25 (e.g., to unnecessarily encumber or retard the case development process or to impose
26 unnecessary expenses and burdens on other parties) expose the Designating Party to
27 sanctions.

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1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection that Designating Party must promptly
3 notify all other Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
6 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
7 must be clearly so designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
11 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected
12 material. If only a portion or portions of the material on a page qualifies for protection, the
13 Producing Party also must clearly identify the protected portion(s) (e.g., by making
14 appropriate markings in the margins).

15 A Party or Non-Party that makes original documents or materials available for
16 inspection need not designate them for protection until after the inspecting Party has
17 indicated which material it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be deemed
19 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied
20 and produced, the Producing Party must determine which documents, or portions thereof,
21 qualify for protection under this Order. Then, before producing the specified documents, the
22 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains
23 Protected Material. If only a portion or portions of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
25 making appropriate markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings,
2 that the Designating Party identify on the record, before the close of the deposition, hearing,
3 or other proceeding, all protected testimony.

4 (c) for information produced in some form other than documentary and for any
5 other tangible items, that the Producing Party affix in a prominent place on the exterior of
6 the container or containers in which the information or item is stored the legend
7 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
8 protection, the Producing Party, to the extent practicable, shall identify the protected
9 portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 Designating Party’s right to secure protection under this Order for such material. Upon
13 timely correction of a designation, the Receiving Party must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time. Unless a prompt challenge to a Designating
18 Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
19 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
20 does not waive its right to challenge a confidentiality designation by electing not to mount a
21 challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process by providing written notice of each designation it is challenging and
24 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
25 been made, the written notice must recite that the challenge to confidentiality is being made
26 in accordance with this specific paragraph of the Protective Order. The parties shall attempt
27 to resolve each challenge in good faith and must begin the process by conferring directly (in

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1 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of
2 the date of service of notice. In conferring, the Challenging Party must explain the basis for
3 its belief that the confidentiality designation was not proper and must give the Designating
4 Party an opportunity to review the designated material, to reconsider the circumstances, and,
5 if no change in designation is offered, to explain the basis for the chosen designation. A
6 Challenging Party may proceed to the next stage of the challenge process only if it has
7 engaged in this meet and confer process first or establishes that the Designating Party is
8 unwilling to participate in the meet and confer process in a timely manner.

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
10 court intervention, the Designating Party shall file and serve a motion to retain
11 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
12 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
13 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
14 Each such motion must be accompanied by a competent declaration affirming that the
15 movant has complied with the meet and confer requirements imposed in the preceding
16 paragraph. Failure by the Designating Party to make such a motion including the required
17 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
18 confidentiality designation for each challenged designation. In addition, the Challenging
19 Party may file a motion challenging a confidentiality designation at any time if there is good
20 cause for doing so, including a challenge to the designation of a deposition transcript or any
21 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and confer
23 requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
26 harass or impose unnecessary expenses and burdens on other parties) may expose the
27 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality

1 designation by failing to file a motion to retain confidentiality as described above, all parties
2 shall continue to afford the material in question the level of protection to which it is entitled
3 under the Producing Party's designation until the court rules on the challenge.
4

5
6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this case only
9 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
10 may be disclosed only to the categories of persons and under the conditions described in this
11 Order. When the litigation has been terminated, a Receiving Party must comply with the
12 provisions of section 13 below (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons authorized
15 under this Order.

16 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
18 Party may disclose any information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
21 the information for this litigation and who have signed the "Acknowledgment and
22 Agreement to Be Bound" that is attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel) of the
24 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
26
27

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock
6 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
7 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
12 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
13 Protected Material must be separately bound by the court reporter and may not be disclosed
14 to anyone except as permitted under this Stipulated Protective Order.

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this action as
21 “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or order
26 is subject to this Protective Order. Such notification shall include a copy of this Stipulated
27 Protective Order; and

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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by
2 the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this action as
5 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
6 issued, unless the Party has obtained the Designating Party’s permission. The Designating
7 Party shall bear the burden and expense of seeking protection in that court of its confidential
8 material – and nothing in these provisions should be construed as authorizing or
9 encouraging a Receiving Party in this action to disobey a lawful directive from another
10 court.

11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
12 IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a
14 Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced
15 by Non-Parties in connection with this litigation is protected by the remedies and relief
16 provided by this Order. Nothing in these provisions should be construed as prohibiting a
17 Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party’s confidential information in its possession, and the Party is subject to
20 an agreement with the Non-Party not to produce the Non-Party’s confidential information,
21 then the Party shall:

22 1. promptly notify in writing the Requesting Party and the Non-Party
23 that some or all of the information requested is subject to a confidentiality agreement with a
24 Non-Party;

25 2. promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
27 specific description of the information requested; and

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1 3. make the information requested available for inspection by the
2 Non-Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court
4 within 14 days of receiving the notice and accompanying information, the Receiving Party
5 may produce the Non-Party's confidential information responsive to the discovery request.
6 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
7 information in its possession or control that is subject to the confidentiality agreement with
8 the Non-Party before a determination by the court.¹ Absent a court order to the contrary, the
9 Non-Party shall bear the burden and expense of seeking protection in this court of its
10 Protected Material.

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
13 Protected Material to any person or in any circumstance not authorized under this Stipulated
14 Protective Order, the Receiving Party must immediately (a) notify in writing the
15 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
16 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
17 unauthorized disclosures were made of all the terms of this Order, and (d) request such
18 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
19 attached hereto as Exhibit A.

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
21 PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other protection, the
24

25
26 ¹ The purpose of this provision is to alert the interested parties to the existence of
27 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect
its confidentiality interests in this court.

1 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
2 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
3 established in an e-discovery order that provides for production without prior privilege
4 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
5 agreement on the effect of disclosure of a communication or information covered by the
6 attorney-client privilege or work product protection, the parties may incorporate their
7 agreement in the stipulated protective order submitted to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to disclosing
13 or producing any information or item on any ground not addressed in this Stipulated
14 Protective Order. Similarly, no Party waives any right to object on any ground to use in
15 evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested persons,
18 a Party may not file in the public record in this action any Protected Material. A Party that
19 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.
20 Protected Material may only be filed under seal pursuant to a court order authorizing the
21 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
22 sealing order will issue only upon a request establishing that the Protected Material at issue
23 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.
24 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
25 Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the
26 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.
27

1 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,
2 as defined in paragraph 4, each Receiving Party must return all Protected Material to the
3 Producing Party or destroy such material. As used in this subdivision, “all Protected
4 Material” includes all copies, abstracts, compilations, summaries, and any other format
5 reproducing or capturing any of the Protected Material. Whether the Protected Material is
6 returned or destroyed, the Receiving Party must submit a written certification to the
7 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60
8 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
9 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
10 copies, abstracts, compilations, summaries or any other format reproducing or capturing any
11 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
12 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
13 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
14 product, and consultant and expert work product, even if such materials contain Protected
15 Material. Any such archival copies that contain or constitute Protected Material remain
16 subject to this Protective Order as set forth in Section 4 (DURATION).

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: August 29, 2011

19 Respectfully submitted,

20
21
22 By: /s/ Jane M. Flynn
23 Jane M. Flynn

24 Attorney for Defendant

25 FEDERAL EXPRESS CORPORATION


26
27 Respectfully submitted,

1 DATED: August 29, 2011
2
3

4 By: /s/ Michael J. Reed
5 Michael Reed
6 Attorney for Plaintiff
7 KAMBIZ ADIBZADEH
8
9

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.
11

12
13 DATED: August ³⁰____, 2011
14

15 
16 _____
17 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, _____ [print or type full name], of
 2 _____ [print or type full address], declare under penalty of perjury that I have
 3 read in its entirety and understand the Stipulated Protective Order that was issued by the
 4 United States District Court for the Northern District of California on [date] in the case of
 5 _____ **[insert formal name of the case and the number and initials assigned to it**
 6 **by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated
 7 Protective Order and I understand and acknowledge that failure to so comply could expose
 8 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
 9 disclose in any manner any information or item that is subject to this Stipulated Protective
 10 Order to any person or entity except in strict compliance with the provisions of this Order.
 11 I further agree to submit to the jurisdiction of the United States District Court for the
 12 Northern District of California for the purpose of enforcing the terms of this Stipulated
 13 Protective Order, even if such enforcement proceedings occur after termination of this
 14 action.

15 I hereby appoint _____ [print or type full name] of
 16 _____ [print or type full address and telephone
 17 number] as my California agent for service of process in connection with this action or any
 18 proceedings related to enforcement of this Stipulated Protective Order.
 19

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 [printed name]

24 Signature: _____

25 [signature]

26 (D268.074)

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