



1 in this case. First, they disagree on whether the full \$7200 that the bankruptcy court ordered  
2 Noble to pay *pro tanto* should be deducted from the amount of unsecured debt when  
3 determining the limit to Noble's recovery. As the *Cannata* court observed, "[n]either party  
4 here is entitled to a windfall." 2011 WL 2910112, at \*9. In this case, it would be inequitable  
5 to allow Noble to escape her obligations as ordered by the bankruptcy court based on  
6 information Noble presented, including her failure to include this lawsuit as a potential asset.  
7 Accordingly, the full \$7200 should be deducted when determining an appropriate limit on  
8 Noble's damages.

9       Second, the parties disagree on whether the limit on Noble's recovery should include  
10 attorneys' fees and costs under the Fair Employment and Housing Act ("FEHA"). A  
11 defendant who loses an employment discrimination case would ordinarily be liable for both  
12 damages and any statutory attorneys' fees and costs. FedEx is not entitled to a windfall by  
13 virtue of Noble's bankruptcy, and the cap on Noble's recovery therefore should not include  
14 statutory fees and costs.

15       In sum, as the parties now agree, this case may proceed despite Noble's failure to  
16 include this lawsuit as a potential asset in her original bankruptcy petition. Noble's recovery  
17 of damages shall be limited to \$37,753.77 (\$44,953.77 less \$7,200.00). If the bankruptcy  
18 trustee subsequently determines that any damages recovered are greater than the amount  
19 necessary to repay Noble's creditors, then the excess amount shall be returned to FedEx. If  
20 Noble prevails in this case and is entitled to attorneys' fees and costs by statute, such fees  
21 and costs may be awarded in addition to the maximum amount of recoverable damages.

22  
23 **IT IS SO ORDERED.**

24  
25 Dated: 11/03/11

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28 THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT