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6 **ATTORNEYS FOR** Defendant
 FEDERAL EXPRESS CORPORATION

7 UNITED STATES DISTRICT COURT
 8
 9 NORTHERN DISTRICT OF CALIFORNIA

10 GEORGE B. VAKLIN,
 11
 12 vs.
 13 FEDERAL EXPRESS CORPORATION, A
 Delaware Corporation; XYZ Corporations,
 14 Partnerships and Limited Liability Companies 1-
 10; and DOES 1 through 10, inclusive.

Case No. 4:13-CV-04182 JD

STIPULATED PROTECTIVE ORDER

17 **1. PURPOSES AND LIMITATIONS.**

18 Disclosure and discovery activity in this action are likely to involve production of
 19 confidential, proprietary, or private information for which special protection from public
 20 disclosure and from use for any purpose other than prosecuting this litigation may be
 21 warranted. Accordingly, the defendant FEDERAL EXPRESS CORPORATION (“FedEx”)
 22 and third-party U.S. XPRESS, INC. hereby stipulate to and petition the court to enter the
 23 following Stipulated Protective Order.

24 The parties acknowledge that this Order does not confer blanket protections on all
 25 disclosures or responses to discovery and that the protection it affords from public disclosure and
 26 use extends only to the limited information or items that are entitled to confidential treatment
 27 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
 28 below, that this Stipulated Protective Order does not entitle them to file confidential information

1 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
2 standards that will be applied when a party seeks permission from the court to file material under
3 seal.

4 **2. DEFINITIONS**

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
9 of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
11 well as their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items that it
13 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other things,
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
17 responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
19 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
20 consultant in this action.

21 2.7 House Counsel: attorneys who are employees of a party to this action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
24 entity not named as a Party to this action.

25 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
26 action but are retained to represent or advise a party to this action and have appeared in this
27

1 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
2 that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 2.12 Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
9 organizing, storing, or retrieving data in any form or medium) and their employees and
10 subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL.”

13 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 **3. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only Protected Material
17 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
18 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
19 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

20 However, the protections conferred by this Stipulation and Order do not cover the following
21 information: (a) any information that is in the public domain at the time of disclosure to a
22 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
23 result of publication not involving a violation of this Order, including becoming part of the public
24 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
25 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
26 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
27 use of Protected Material at trial shall be governed by a separate agreement or order.

1 **4. DURATION**

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

9 **5. DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
11 or Non-Party that designates information or items for protection under this Order must take care
12 to limit any such designation to specific material that qualifies under the appropriate standards.
13 The Designating Party must designate for protection only those parts of material, documents,
14 items, or oral or written communications that qualify – so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

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

21 If it comes to a Designating Party’s attention that information or items that it designated
22 for protection do not qualify for protection, that Designating Party must promptly notify all other
23 Parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
25 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
27 designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
4 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
5 a portion or portions of the material on a page qualifies for protection, the Producing Party also
6 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
7 margins).

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

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

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

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party’s
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is
5 treated in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process by providing written notice of each designation it is challenging and describing the basis
15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
16 notice must recite that the challenge to confidentiality is being made in accordance with this
17 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
18 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
19 forms of communication are not sufficient) within 14 days of the date of service of notice. In
20 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
21 designation was not proper and must give the Designating Party an opportunity to review the
22 designated material, to reconsider the circumstances, and, if no change in designation is offered,
23 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
24 stage of the challenge process only if it has engaged in this meet and confer process first or
25 establishes that the Designating Party is unwilling to participate in the meet and confer process
26 in a timely manner.

1 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
3 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
4 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
5 process will not resolve their dispute, whichever is earlier. Each such motion must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
8 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
9 shall automatically waive the confidentiality designation for each challenged designation. In
10 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
11 time if there is good cause for doing so, including a challenge to the designation of a deposition
12 transcript or any portions thereof. Any motion brought pursuant to this provision must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
16 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file
19 a motion to retain confidentiality as described above, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing Party's
21 designation until the court rules on the challenge.

22 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
24 or produced by another Party or by a Non-Party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order.
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1 When the litigation has been terminated, a Receiving Party must comply with the provisions of
2 section 13 below (FINAL DISPOSITION).

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
8 disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, employees (including House Counsel) and insurers of
14 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

19 (d) the court and its personnel;

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

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
25 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

26 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
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1 Material must be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this Stipulated Protective Order.

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

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION**

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

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

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

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

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

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1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
2 **IN THIS LITIGATION**

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

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

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement with a
14 Non-Party;

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

18 (3) make the information requested available for inspection by the
19 Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this court
21 within 14 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party’s confidential information responsive to the discovery request. If the
23 Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement with the
25 Non-Party before a determination by the court. Absent a court order to the contrary, the Non-
26 Party shall bear the burden and expense of seeking protection in this court of its Protected
27 Material.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this Order, and (d) request such person or persons to execute the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order that provides for production without prior privilege review. Pursuant to Federal Rule of
16 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of
17 a communication or information covered by the attorney-client privilege or work product
18 protection, the parties may incorporate their agreement in the stipulated protective order
19 submitted to the court.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
26 no Party waives any right to object on any ground to use in evidence of any of the material
27 covered by this Protective Order.
28

1 12.3 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
5 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
6 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
7 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
8 to protection under the law. If a Receiving Party's request to file Protected Material under seal
9 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
10 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
11 by the court.

12 **13. FINAL DISPOSITION**

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

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4

5 Dated: June 5, 2014

6 By: /s/
7 Pamela Bracher
8 Litigation Counsel for U.S. Xpress, Inc.


9 Dated: June 10, 2014

CODDINGTON, HICKS & DANFORTH

10
11 By: /s/ Jonathan Harriman
12 Richard G. Grotch (*)
13 Jonathan C. Harriman
14 Attorneys for Defendant
15 Federal Express Corporation

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 Dated: 6/12/14

18 
19 _____
20 Honorable James Donato
21 United States District Judge

22 (*) I hereby attest that I have received
23 authority to affix any signatures
24 indicated by a “conformed” signature (/s/)
25 within this e-filed document.
26
27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I have
6 read in its entirety and understand the Stipulated Protective Order that was issued by the
7 United States District Court for the Northern District of California on [date] in the case of
8 *George B. Vaklin v. Federal Express Corporation, 4:13-CV-04182 JD.*

9 I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
12 in any manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Northern District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

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

21
22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25
26 Signature: _____
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