

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

| | | |
|--|---|--------------------|
| TANNER J. PARRICK, individually |) | CV 09-95-M-DWM-JCL |
| and as Personal Representatives of the |) | |
| Estate of Jerry J. Parrick, deceased, |) | |
| and on behalf of Thais D. Park and |) | |
| Maria Elliot, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| FEDEX GROUND PACKAGE SYSTEM, |) | |
| INC., BRIDGEWATER TRUCKING, LLC, |) | |
| SERGEY BUSLAYEV, and VLADIMIR |) | |
| KOCHUKOV, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

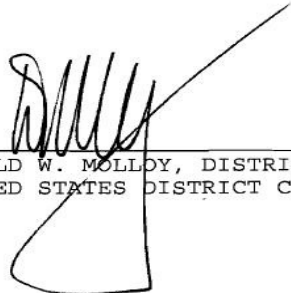
Defendant FedEx Ground Package System, Inc. brought a Motion for Partial Summary Judgment in this matter on March 31, 2010. Plaintiff Parrick has, at this point in the record, alleged a valid claim for punitive damages based on FedEx’s alleged conduct in hiring and retaining Buslayev. It cannot be said as a matter of law that Parrick’s negligent hiring and retention claim is entirely duplicative of his

respondeat superior claims. See Durben v. American Materials, Inc., 503 S.E.2d at 619 (Ga. App. 1998).

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation (dkt. 63) in this case on April 21, 2010. Defendant FedEx Ground Package System, Inc. did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commadore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch’s recommendation and therefore adopt it in full.

IT IS HEREBY ORDERED that FedEx’s Motion for Partial Summary Judgment (dkt. 48) is DENIED.

Dated this 14th day of May, 2010.


DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT