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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 DERRICK SATCHELL, *et al.*,  
17 Plaintiffs,  
18  
19 v.  
20 FEDEX EXPRESS, a Delaware Corporation,  
21 Defendant.

22 PATRICIA CALDWELL, *et al.*  
23 Plaintiffs,  
24 v.  
25 FEDEX EXPRESS, a Delaware Corporation,  
26 Defendant.

Case Nos.: C03-2659 SI; C 03-2878 SI

CLASS ACTION

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND FOR  
FINAL CERTIFICATION OF  
SETTLEMENT CLASSES**

Date: August 9, 2007  
Time: 3:30 p.m.  
Place: Courtroom 10, 19th Floor  
Judge: Hon. Susan Illston

1 Plaintiffs respectfully submit this reply in support of their Motion for Final Approval of  
 2 Class Action Settlement and for Final Certification of Settlement Classes. Defendant FedEx  
 3 Express does not oppose this motion. Plaintiffs submit this reply to: (1) provide the Court with  
 4 the latest information regarding claims submitted and requests for exclusion; and (2) address three  
 5 objections received after plaintiffs filed their motion for final approval.

## 6 ARGUMENT

### 7 **I. Class Member Responses Received After Plaintiffs Filed Their Motion** 8 **Provide Further Support for Final Approval.**

9 Plaintiffs filed their motion for final approval of the parties' class action settlement and  
 10 proposed Consent Decree on July 5, 2007. *See Satchell* Doc. 751. As plaintiffs explained in their  
 11 motion, the Consent Decree provides comprehensive injunctive relief and monetary relief totaling  
 12 approximately \$55,000,000. *See* Mot. at 1-10 (describing the relief provided). The terms of the  
 13 Decree easily satisfy the fair, reasonable, and adequate standard for settlement approval under  
 14 Federal Rule of Civil Procedure 23(e). *See id.* at 12-22.

15 At the time plaintiffs moved for final approval, the claims administrator had received  
 16 8,426 completed claim forms, 10 requests for exclusion, two requests to rescind earlier opt-outs,  
 17 and one objection. *See* Decl. of Mark Patton with Respect to Mot. for Final Settlement Approval  
 18 ¶¶5-9 (*Satchell* Doc. 754). As of July 27, 2007, the claims administrator had received 10,582  
 19 claim forms, 16 timely requests for exclusion,<sup>1</sup> and three objections. *See* Second Decl. of Mark  
 20 Patton with Respect to Mot. for Final Settlement Approval ¶¶5-8 & Exs. B, C, D. The claims  
 21 administrator received one untimely objection on August 2, 2007. *See* Declaration of Loree  
 22 Kovach with Respect to Motion for Final Settlement Approval, Ex. E. The Settlement Class's  
 23 high claims rate (over 44 %) and low opt-out and objection rates (each much less than 1%)  
 24

25 <sup>1</sup> Twenty-seven class members timely requested exclusion, but 11 of those requested to rescind  
 26 their opt-outs. (Two of the eleven submitted their requests to rescind after the deadline for  
 27 rescissions set forth in the preliminary approval order, but the parties jointly recommend that the  
 28 Court permit those two – Herman Savage and Michelle Swallow – to rescind their opt outs. The  
 parties also agree that four class members – Nicholas Benavente, Eloisa Blandon, Hector Garcia,  
 and Richard Zapata – who expressed an intention to opt out, but did not use the precise language  
 required by the preliminary approval order, should be permitted to opt out.)

1 provide further support for final approval of the parties' settlement. *See Hanlon v. Chrysler*  
2 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (reaction of the class is one factor to be considered  
3 when deciding whether to grant final approval to a class action settlement). Significantly, not a  
4 single class member has objected to the injunctive relief provisions of the Consent Decree.

5  
6 **II. The Three Additional Objections Submitted by Class Members are Without  
Merit and Should Be Overruled.**

7 The claims administrator received two timely objections and one untimely objection to the  
8 settlement and Consent Decree after plaintiffs filed their motion for final approval. None of the  
9 objections has merit.<sup>2</sup>

10 Class member LaKeysha Dorsey submitted an objection stating that in her view "[t]here is  
11 no stipulation for those class members, other than the named members, who[] may have been  
12 more adversely affected by the actions of FedEx." *See* Second Patton Decl. Ex. D. It appears  
13 that Ms. Dorsey may feel that she has a particularly strong claim of discrimination. *See id.*

14 Ms. Dorsey's objection is similar to Mr. Hoiland's and should be rejected for the same  
15 reasons. First, the parties have agreed on a point system to determine individual payments that  
16 takes into account several factors that serve as a proxy for the strength of individual damage  
17 claims. *See* Consent Decree Section XXII(L); Mot. at 14-15. This procedure strikes an  
18 appropriate balance between taking fair account of the differing strengths of individual claims and  
19 permitting class members to claim damages without imposing onerous burdens of proof on each  
20 individual claimant. Second, to the extent Ms. Dorsey believed that she had a stronger claim and  
21 could recover more in a separate suit than she could in this case, Ms. Dorsey was free to opt out  
22 of the settlement and pursue her claim independently. The Notice of Class Action Settlement  
23 notified all Settlement Class members of this option and explained how to request exclusion. *See*  
24 Second Patton Decl. Ex. A at 7-8, Section I (Notice of Class Action Settlement mailed to class  
25 members).

26  
27 <sup>2</sup> The deadline for postmarking objections was July 7, 2007. *See* Patton Decl. ¶9. The claims  
28 administrator had received one objection – from Brett Hoiland – at the time plaintiffs filed their  
motion for final approval. Plaintiffs addressed Mr. Hoiland's objection at pages 16-17 of their  
original brief. *See Satchell* Doc. 751.

1 Class member Rosa Olmos – one of the 18 declarants for whom plaintiffs have requested  
2 \$5,000 service awards – submitted an objection stating her view that she should be treated as a  
3 class representative. Ms. Olmos appears to object to receiving a \$5,000 service award instead of  
4 the \$30,000 award plaintiffs have requested for class representatives. Ms. Olmos does not appear  
5 to have any objection to the terms of the settlement or Consent Decree, except with respect to the  
6 service payments motion. Accordingly, plaintiffs address Ms. Olmos’s objection in their reply in  
7 support of their motion for service awards. As plaintiffs explain in that brief, the distinction  
8 drawn in the Consent Decree between class representatives and the 18 non-class representative  
9 declarants is well supported by the Ninth Circuit’s decision in *Staton v. Boeing*, 327 F.3d 938,  
10 976-77 (9th Cir. 2003).

11 The Claims Administrator also received multiple letters from class member Maurice A.  
12 Smith that did not originally appear to be objections. *See* Kovach Dec. and exhibits thereto.  
13 Indeed, in one letter Mr. Smith stated “my ‘suggestion’ was not an ‘objection’ but a ‘realistic’  
14 expectation based on the facts presented to me.” Kovach Dec. Ex. C. However, on August 2,  
15 2007, the Claims Administrator received a letter from Mr. Smith, postmarked on July 30, 2007,  
16 which stated “I object to settle for ‘\$1,000’ or anything that ‘small’ compared to \$38.5 million,”  
17 and demanded that he be paid \$1.14 million from the Settlement Fund. Kovach Dec. Ex. E. Mr.  
18 Smith’s objection was postmarked on July 30, 2007, well after the July 7, 2007 postmark date for  
19 objections. Accordingly, it should be overruled as untimely. To the extent that the Court is  
20 inclined to consider Mr. Smith’s untimely objection, it should be overruled for the same reasons  
21 that the objections filed by Mr. Hoiland and Ms. Dorsey should be overruled: the Plan of  
22 Allocation is a reasonable method for distributing funds to class members, and if Mr. Smith  
23 believed he had particularly strong claims that merited individual adjudication and greater  
24 damages, he could have opted out of the case. He chose not to, and instead filed a claim.  
25 Accordingly, his objection should be overruled.

### 26 CONCLUSION

27 For the reasons stated in plaintiffs’ motion, in addition to the reasons given above,  
28 plaintiffs respectfully request that the Court grant final approval to the parties’ settlement, grant

1 final certification to the proposed classes, and sign and enter plaintiffs' revised proposed final  
2 approval order, revised proposed final judgment, and the proposed Consent Decree.<sup>3</sup>

3  
4 Dated: August 2, 2007

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23 *Class Counsel*

24  
25 <sup>3</sup> Plaintiffs are submitting a revised final approval order together with this reply brief. The  
26 revised order overrules all four objections submitted by class members, not just the single  
objection submitted by Brett Hoiland that had been received at the time plaintiffs filed their  
27 motion.

28 Plaintiffs are also submitting a revised final judgment that excludes from the release all  
class members who have now submitted opt-out requests, not just those who had requested to be  
excluded at the time plaintiffs filed their motion.