

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

|                              |                               |
|------------------------------|-------------------------------|
| In re FEDEX GROUND PACKAGE ) |                               |
| SYSTEM, INC., EMPLOYMENT )   | Case No. 03:05-MD-527 RM      |
| PRACTICES LITIGATION )       | (MDL 1700)                    |
| _____ )                      |                               |
| THIS DOCUMENT RELATES TO )   | CHIEF JUDGE MILLER            |
| ALL ACTIONS )                | MAGISTRATE JUDGE NUECHTERLEIN |
| _____ )                      |                               |

**PROPOSED CASE MANAGEMENT ORDER**

Plaintiffs and Defendants jointly submit the following proposed Case Management Order. Despite the parties' diligent efforts, they were unable to reach agreement on a small number of issues. In order to clarify the parties' respective positions with respect to these alternative proposals, the parties have discussed submitting brief statements of position not exceeding six pages to this Court on or before Monday, November 14, 2005, in order to provide the Court with an understanding of the parties' positions and make the November 28, 2005 status conference on the Case Management Order more productive.

Dated: November 7, 2005

Respectfully submitted,

By: s/Robert I. Harwood  
Robert I. Harwood  
WECHSLER HARWOOD LLP  
488 Madison Avenue  
Suite 801  
New York, NY  
10022

*Plaintiffs' Co-Lead Counsel*

By: s/Thomas J. Brunner

Thomas J. Brunner  
BAKER & DANIELS LLP  
205 West Jefferson Blvd., Suite 250  
South Bend, IN 46601

John H. Beisner  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006-4001

*Defendants' Liaison and Co-Lead Counsel*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
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|                            | ) |                               |

**CASE MANAGEMENT ORDER**

IT IS HEREBY ORDERED THAT the following Case Management Order shall govern all proceedings in this matter:

**I. PRETRIAL CONSOLIDATION AND COORDINATION**

**A. Consolidated Cases**

By order of the Judicial Panel on Multidistrict Litigation (“MDL Panel”), the cases listed in Exhibit A of this Order have been transferred to this forum for coordinated pretrial proceedings.

**B. Applicability of Order**

The terms of this Order shall apply automatically to the actions listed in Exhibit A and to all other cases that become a part of this proceeding by virtue of being instituted in, removed to, or transferred to this Court (including cases transferred pursuant to: (a) Local Rules; (b) 28 U.S.C. § 1404(a); or (c) 28 U.S.C. § 1407)). This Order also vacates any prior scheduling order issued by a federal court prior to transfer of a case to MDL 1700. The local rules of a

federal transferor court will not be binding on the parties once a case has been transferred to MDL-1700, so long as the case remains before this transferee court.

**C. Dissemination of Order**

1. Plaintiffs' Co-Lead Counsel (as designated below) shall within five (5) days of the date of this Order send (by overnight delivery) a copy of this Order to all plaintiffs' counsel in all actions to which this Order applies. Defendants' Liaison Counsel (as designated below) shall within five (5) days of the date of this Order send (by overnight delivery) a copy of this Order to counsel for any defendants in any newly filed action that are not defendants in any action listed in Exhibit A.

2. Upon subsequently learning that this Order is or may be applicable to any other action, Plaintiffs' Co-Lead Counsel shall immediately send (by overnight delivery) a copy of this Order to counsel in that action, and send to defendants a copy of the proof of service.

**D. Future Transfers of Tag-Along Actions**

Tag-along actions that are transferred to these MDL proceedings shall automatically be made part of these coordinated proceedings upon transfer to this Court. Prior rulings on common issues issued by this Court in these proceedings shall be automatically deemed to have been made in such newly-transferred cases. Discovery already taken at the time of transfer shall be made available in the tag-along actions. Except for good reason shown, any tag-along actions transferred to this Court will be expected to adhere to the schedule established by this Case Management Order.

**II. CASE IDENTIFICATION**

**A. Master Docket and Individual Cases**

The clerk of court will maintain a master docket case file under the style "FedEx

Ground Package System, Inc. Employment Practices Litigation, Case No. 3:05-md-527.” Papers applicable to any of the MDL cases shall be filed only in “FedEx Ground Package System, Inc. Employment Practices Litigation, Case No. 3:05-md-527.” All of the MDL cases shall nevertheless retain a separate identity and case number (*i.e.*, the number assigned when the case was filed in or removed or transferred to this court). When a filing, by its terms, applies to all of the MDL cases, this shall be indicated by the words: “This Document Relates to All Cases.” A filing that applies to fewer than all of the MDL cases shall bear the words: “This Document Relates to [here insert original case number[s] to which the paper applies].”

**B. Captions**

All orders, pleadings, motions, and other documents filed in this proceeding shall bear a caption in the following format:

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

|                            |   |                               |
|----------------------------|---|-------------------------------|
| In re FEDEX GROUND PACKAGE | ) |                               |
| SYSTEM, INC., EMPLOYMENT   | ) | Case No. 03:05-MD-527 RM      |
| PRACTICES LITIGATION       | ) | (MDL 1700)                    |
| _____                      | ) |                               |
| THIS DOCUMENT RELATES TO   | ) | CHIEF JUDGE MILLER            |
| [ACTIONS]                  | ) | MAGISTRATE JUDGE NUECHTERLEIN |
| _____                      | ) |                               |

**C. Identical Filings**

Any filing in any of these actions that is substantially identical to any other filing in another of these actions shall be sufficient if it incorporates by reference the filing to which it is substantially identical. If an argument is incorporated by reference, the Court will presume the argument is intended to apply without change if not specifically addressed or modified by the filing party.

**D. Mandatory Use of CM/ECF System**

All filing and docketing will be done electronically through the CM/ECF system. The court will use CM/ECF to correspond with counsel on case related matters. Counsel should follow the instructions and rules contained in this Court's CM/ECF Procedures Manual. Those who will be responsible for electronic filing and docketing must fully understand the CM/ECF system and be familiar with the court's practices and procedures.

**E. Courtesy Paper Copies of Longer Submissions**

Counsel are asked to submit to the judge or judges considering a particular issue two courtesy paper copies of any memorandum or other document exceeding 25 pages. The courtesy copies should be sent directly to the judge's chambers.

**III. ORGANIZATION OF COUNSEL**

**A. Plaintiffs' Co-Lead Counsel**

1. Plaintiffs' counsel hereby agree to the appointment of the following law firms as Plaintiffs' Co-Lead Counsel with the responsibilities hereinafter described:

Lynn Rossman Faris  
LEONARD CARDER, LLP  
1330 Broadway Avenue, Suite 1450  
Oakland, CA 94612  
Tel.: (510) 272-0169

Susan E. Ellingstad  
LOCKRIDGE GRINDAL NAUEN, P.L.L.P.  
100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Tel.: (612) 339-6900

Robert I. Harwood  
WECHSLER HARWOOD LLP  
488 Madison Avenue, 8<sup>th</sup> Floor  
New York, NY 10022  
Tel.: (212) 935-7400

2. Plaintiffs' Co-Lead Counsel shall be generally responsible for coordinating activities of plaintiffs during pre-trial proceedings and shall:

a) Determine (after consultation with other co-counsel as appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate), personally or by a designee, to the Court and opposing parties the position of the plaintiffs in all matters arising during pre-trial proceedings;

b) Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for plaintiffs is conducted effectively, efficiently, and economically;

c) Enter into stipulations with opposing counsel necessary for the conduct of the litigation;

d) Prepare and distribute to the parties periodic status reports;

e) Maintain adequate time and disbursement records covering services and expenditures of plaintiffs' counsel;

f) Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;

g) Maintain complete files with copies of all documents served upon them and shall make such files available to all Plaintiffs' counsel;

h) Maintain and make available to all counsel and the Court an up-to-date service list;

i) Receive and, as appropriate, distribute to co-counsel orders from the Court, and documents from opposing parties and counsel;

j) Accept service and distribute to the appropriate plaintiffs' counsel all notices, orders, pleadings, motions, discovery and memoranda;

k) Represent plaintiffs in all mediation proceedings and settlement negotiations; and

l) Perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further Order of this Court.

3. In addition, Plaintiffs' Co-Lead Counsel shall coordinate activities to avoid duplication and inefficiency in the filing, serving and/or implementation of pleadings, other court papers, discovery papers, and discovery practice.

4. Defendants' counsel may rely upon all agreements made with Plaintiffs' Co-Lead Counsel, and such agreements shall be binding on all plaintiffs whose cases are subject to the jurisdiction of the Court, to the extent that the agreements are made on their behalf.

5. Defendants' stipulation to this Case Management Order is not an indication that defendants participated in, agree with or take any position with respect to Plaintiffs' Lead Counsel's decisions concerning the allocation of responsibilities among plaintiffs and/or plaintiffs' counsel.

**B. Plaintiffs' Liaison Counsel**

1. Plaintiffs' counsel hereby designate the following law firm to act as liaison counsel:

John Hamilton  
HAMILTON LAW FIRM  
300 North Michigan Street  
Suite 454  
South Bend, Indiana 46601  
Tel.: (574) 289-9987

2. Plaintiffs' Liaison Counsel is charged with the following duties and responsibilities for the duration of this litigation:



a) Receive orders, notices, correspondence, and telephone calls from the Court and the Clerk of the Court on Plaintiffs' behalf;

b) Receive orders and notices from the Judicial Panel on Multidistrict Litigation; and

c) Coordinate and assist with electronic filing and docketing of pleadings, briefs, motions and hearings.

3. Defendants' stipulation to this Case Management Order is not an indication that Defendants participated in, agree with or take any position with respect to Plaintiffs' Liaison Counsel's decisions concerning the allocation of responsibilities among Plaintiffs and/or Plaintiffs' counsel.

**C. Plaintiffs' Steering Committee**

1. Plaintiffs' counsel hereby designate the following firms, along with co-lead counsel, to serve as members of the Plaintiffs' Steering Committee ("PSC"):

Jerald R. Cureton  
CURETON CAPLAN, P.C.  
950 B Chester Avenue  
Delran, New Jersey 08075  
Tel.: (856) 824-1001

Jordan M. Lewis  
SIEGEL, BRILL, GREUPNER, DUFFY & FOSTER, P.A.  
1845 Walnut Street, 24<sup>th</sup> Floor  
Philadelphia, PA 19103  
Tel.: (215) 814-9322

J. Gordon Rudd  
ZIMMERMAN REED  
651 Nicollet Mall, Suite 501  
Minneapolis, MN 55401  
Tel.: (612) 341-0400

2. Plaintiffs' Steering Committee, in consultation with Plaintiffs' Co-Lead Counsel, shall be responsible for:

- a) Assisting with the coordination of the activities of plaintiffs during pretrial proceedings;
- b) Monitoring the activities of co-counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;
- c) Performing such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court.

3. Defendants' stipulation to this Case Management Order is not an indication that defendants participated in, agree with or take any position with respect to Plaintiffs' Steering Committee's decisions concerning the allocation of responsibilities among Plaintiffs and/or Plaintiffs' counsel.

**D. Defendants' Co-Lead Counsel**

1. John H. Beisner and Robert M. Schwartz of O'Melveny & Myers LLP (Washington, D.C., and Los Angeles, California, respectively) shall be Defendants' Co-Lead Counsel. Defendants' Co-Lead Counsel shall discharge the following duties:

- (a) To be lead spokespersons before the Court for defendants;
- (b) To coordinate, determine, and present (in briefs, oral argument or such other fashion as may be appropriate) the positions of the defendants on all matters arising during all pretrial proceedings;
- (c) To coordinate for defendants the initiation and conduct of discovery consistent with the requirements of Fed. R. Civ. P. 26(b)(1) and (2) and (g), including the preparation of joint interrogatories and requests for production of documents and the

examination of witnesses in depositions;

(d) To direct and coordinate the work of all defendants' counsel and to make assignments of work to be performed in the prosecution of the case in a manner to assure that pretrial preparation is conducted effectively, efficiently and economically;

(e) To monitor the activities of defendants' counsel to assure that schedules are met and that unnecessary expenditures of time and expenses are avoided;

(f) To enter into stipulations with opposing counsel necessary for the conduct of the litigation;

(g) To communicate with all defendants' counsel information concerning the status of any developments in this proceeding;

(h) To call meetings of other defendants' counsel to effectuate these provisions;

(i) To receive orders and notices from the Judicial Panel on Multidistrict Litigation, pursuant to Rule 8(e) of the Panel's Rules of Procedure, on behalf of defendants, and to prepare and transmit copies of orders and notices to defendants;

(j) To serve as counsel for defendants upon whom all notices, orders, pleadings, motions, discovery and memoranda are to be served; and

(k) To perform such other duties as may be incidental to proper coordination of defendants' pretrial and trial activities or authorized by further order of the Court.

2. Plaintiffs' counsel may rely upon all agreements made with Defendants' Co-Lead Counsel, and such agreements shall be binding on all defendants whose cases are

subject to the jurisdiction of the Court, to the extent that the agreements are made on their behalf.

3. Plaintiffs' stipulation to this Case Management Order is not an indication that plaintiffs participated in, agree with or take any position with respect to Defendants' Lead Counsel's decisions concerning the allocation of responsibilities among defendants and/or defendants' counsel.

**E. Defendants' Liaison Counsel**

1. Thomas J. Brunner of Baker & Daniels LLP, South Bend, Indiana shall serve as Defendants' Liaison Counsel. Counsel for each defendant in this proceeding shall note their appearances with the Court. The Defendants' Liaison Counsel shall discharge the following duties:

(a) To maintain and distribute to defendants' counsel and to Plaintiffs' Co-Lead Counsel and Plaintiffs' Liaison Counsel an up-to-date service list as to defendants;

(b) To receive orders and notices from the Court on behalf of all defendants and to prepare and transmit copies of orders and notices to all defendants;

(c) To receive materials filed by plaintiffs and to distribute such materials to all defendants;

(d) To maintain complete files, with copies of all documents served upon them, and to make those files available to defendants; and

(e) To perform other such duties as necessary.

2. Plaintiffs' stipulation to this Case Management Order is not an indication that plaintiffs participated in, agree with or take any position with respect to Defendants' Liaison Counsel's decisions concerning the allocation of responsibilities among defendants and/or

defendants' counsel.

**F. Admissions to Practice**

No parties to any of these actions shall be required to obtain local counsel in this district and the requirements of Rules 83.5(c) and 83.5(d) of the Northern District of Indiana's Local Rules are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States Court.

**IV. COORDINATION WITH STATE COURT PROCEEDINGS**

**A. Identification of State Court Cases**

To facilitate this effort to achieve any appropriate informal coordination among this proceeding and any parallel state court cases, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel are requested jointly to provide this Court within ten (10) days after the issuance of this Order a list of all parallel state court cases of which they are aware and to supplement the list as appropriate.

**V. SERVICE OF DOCUMENTS**

**A. Orders**

The Clerk shall serve each Order that applies to all cases in the MDL proceeding electronically to all counsel who have registered for Electronic Service, and shall serve each Order that applies only to particular cases electronically to all counsel in those cases and to Plaintiffs' Co-Lead Counsel and Defendants' Co-Lead Counsel.

**B. Discovery Requests and Responses**

Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the Court, except when specifically ordered by the Court or to the extent they are presented in connection with a motion.

## VI. EARLY DISCOVERY AND BIFURCATION

### A. **Bifurcation of Liability and Damages**

The proceedings in the coordinated actions shall be bifurcated between liability and damages.

### B. **Discovery Guidelines**

#### 1. **Cooperation**

The parties are expected to work cooperatively and in good faith to limit the costs of discovery.

#### 2. **Production**

All document production is to be in electronic format, with both sides sharing the costs of processing and producing discovery in electronic format. The parties agree to meet and confer to discuss issues related to the format of electronic document production in an attempt to reach agreement.

### C. **Early Disclosures**

The parties have agreed to the initial phases of discovery, set forth below:

#### 1. **General Non-Testimonial Discovery**

Defendants shall produce electronically all versions of updated manuals, policies and procedures, training materials and recruitment materials maintained by FedEx Ground and FedEx Home Delivery on their company intranets, to be completed no later than December 1, 2005.

#### 2. ***Estrada* Discovery**

By January 8, 2006, defendants shall provide to plaintiffs portions of the discovery produced in *Estrada v. FedEx Ground Package System, Inc.* (Los Angeles County Superior Court Case BC 210130). This production shall include: any general materials produced, such as

policies, procedures, training or recruiting materials; deposition and trial transcripts; and trial exhibits. The parties agree to submit a joint stipulation to the *Estrada* court requesting the release of the trial transcript and exhibits by mid-November, 2005. The documents produced shall be subject to the Protective Order entered in this case. Plaintiffs' Co-Lead Counsel Faris will be responsible for ensuring that personal information contained in such production is adequately protected.

**3. Initial Disclosures**

Initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure shall be provided to each side's respective Co-Lead Counsel no later than January 8, 2006.

**4. Initial Production**

Plaintiffs shall produce all documents identified in their initial disclosures no later than January 8, 2006. Defendants shall produce all documents identified in their initial disclosures not otherwise called for in paragraphs 1, 2 and 5 herein, no later than January 8, 2006.

**5. Terminal-Specific Non-Testimonial Discovery**

Defendants shall make good faith effort to produce a substantial amount of terminal-specific documents regarding all named plaintiffs in the cases listed in Exhibit A, consisting of individual driver Department of Transportation files, "Business Discussion," files, "Unit History" files, and "Contractor Business Plans," by February 15, 2006, with the remaining documents produced by March 15, 2006.

**VII. COURSE OF PROCEEDINGS**

**A. Pending Motions**

The Motion to Amend the Complaint pending in *Tierney* is hereby granted and the

amended complaint shall be deemed filed as of the date of this Order. All other motions pending in these cases that were filed in their transferor courts are hereby withdrawn without prejudice, and may be refiled pursuant to the deadlines set forth in this Order.

**B. Amended Complaints**

1. The Plaintiffs' Co-Lead Counsel shall file any amended complaints on or before January 8, 2006. Such amended pleadings shall supersede any complaint pending in such action prior to transfer to this Court as part of MDL No. 1700.

2. Nothing in this section shall be read to limit plaintiffs' ability to move to amend their complaints pursuant to Rule 15 of the Federal Rules of Civil Procedure at a later date.

**C. Motions to Remand**

Any motion to remand shall be made no later than December 15, 2005, *[Defendants' Proposal: with opposition briefs to be due on January 12, 2006 and reply briefs to be due on January 26, 2006.] [Plaintiffs' Proposal: with opposition and reply papers being served and filed in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.]*

**D. Fed. R. Civ. P. 12 Motions**

Should any defendant decide to file a motion to dismiss any or all portions of a complaint or amended complaint to which defendants have not yet filed a responsive pleading, or move for judgment on the pleadings, such motions shall be filed by February 8, 2006. This provision does not preclude the filing of other Rule 12 motions. Plaintiffs' responses to any Rule 12 motions shall be filed and served no later than March 8, 2006, and defendants' replies (if any) shall be filed and served no later than March 23, 2006.

**E. Pleadings**

Except for good cause shown, no additional named plaintiffs or other parties may be



added to existing actions after March 30, 2006.

**F. Document Confidentiality Order**

A motion for entry of an order preserving the confidentiality of confidential documents will be submitted by the parties.

**VIII. CLASS CERTIFICATION**

The parties will have until *[Defendants' Proposal: June 1, 2006][Plaintiffs' Proposal: May 1, 2006]* to conduct non-expert discovery designed to create an evidentiary record upon which plaintiffs' class certification motions can be briefed and decided as to all cases pending in this MDL proceeding.

Plaintiffs shall identify all experts and witnesses upon whom they rely in support of their motions for class certification (including the information contemplated by Fed. R. Civ. P. 26(a)(2)(B) as to experts) and file any expert reports or affidavits upon which they rely in support of their class certification motions by *[Defendants' Proposal: June 1, 2006][Plaintiffs' Proposal: May 1, 2006]*. Defendants shall have until *[Defendants' Proposal: June 30, 2006][Plaintiffs' Proposal: May 21, 2006]* to depose Plaintiffs' class certification expert(s). Defendants shall also have until *[Defendants' Proposal: June 30, 2006][Plaintiffs' Proposal: May 15, 2006]* to identify all experts and witnesses upon whom they will rely in opposing plaintiffs' class certification motion (including the information contemplated in Fed. R. Civ. P. 26(a)(2)(B) as to experts), and file any expert reports or affidavits upon which they rely in opposing plaintiffs' class certification. Plaintiffs shall have until *[Defendants' Proposal: August 1, 2006][Plaintiffs' Proposal: June 7, 2006]* to depose Defendants' class certification expert(s).

Plaintiffs shall file their motions to certify proposed classes in this MDL proceeding in three phases. Each phase shall be comprised, so near as mathematically possible, of 1/3 of the cases for which class certification will be sought. The first phase of motions shall be filed by

*[Defendants' Proposal: August 17, 2006][Plaintiffs' Proposal: June 21, 2006]*. The second phase of motions shall be filed by *[Defendants' Proposal: September 7, 2006.][Plaintiffs' Proposal: July 14, 2006]* The final phase of motions shall be filed by *[Defendants' Proposal: September 28, 2006][Plaintiffs' Proposal: August 7, 2006]*. The staggering of class certification briefing is in recognition of the large amount of labor that will be required to adequately address the issues pertinent to each case, and is not intended to dictate the order in which the court reviews the motions. *[Defendants' Proposal: Plaintiffs shall identify to defendants which cases will comprise each phase at least 30 days in advance of filing their motions for class certification for that particular phase.] [Plaintiffs' Proposal: Plaintiffs shall identify to defendants which cases will comprise each phase at least 3 days in advance of filing their motions for class certification for that particular phase.]* To the extent that additional cases are filed for which Plaintiffs will seek class certification, the parties may petition the court for leave to amend the above schedule.

For each brief, Plaintiffs shall be permitted *[Defendants' Proposal: 50][Plaintiffs' Proposal: 30]* pages for a memorandum setting forth support for class certification in the cases pending in this MDL proceeding for which such certification is sought.

For each phase, Defendants shall have 45 days from Plaintiffs' deadline to file briefing setting forth their arguments in opposition to plaintiffs' motions, and the evidentiary basis thereof. Defendants' opposition briefs shall be limited to *[Defendants' Proposal: 75][Plaintiffs' Proposal: 50]* pages per brief.

For each phase, Plaintiffs may file reply memoranda in support of their class certification motions within 30 days of the deadline for Defendants' opposition briefs. The reply memoranda shall be limited to *[Defendants' Proposal: 25][Plaintiffs' Proposal: 40]* pages each and shall be

confined to responding to arguments made in Defendants' opposition memoranda.

After the filing of all briefing concerning plaintiffs' class certification motions, the Court shall schedule a hearing on the class certification motions.

## **IX. DISCOVERY**

Discovery for purposes of class certification and discovery for purposes of the merits of Plaintiffs' claims will take place concurrently. Discovery for purposes of class certification shall conclude by May 1, 2006. Prior to May 1, 2006, the parties are expected to give priority to discovery requests pertaining to class certification. Merits discovery shall conclude by January 31, 2007.

### **A. Non-Testimonial Discovery**

Prior to February 15, 2006, the parties will confine themselves to non-testimonial discovery (*e.g.*, document requests, interrogatories, requests for admissions).

*[Defendants' Proposal: Defendants' Co-Lead Counsel, on behalf of defendants in this proceeding, may serve on each plaintiff interrogatories (not exceeding 15 in number) and requests for admissions (not exceeding 5 in number, not including requests for document authentication or admissibility). Plaintiffs' Co-Lead Counsel, on behalf of plaintiffs in this proceeding, are entitled to serve on FedEx Ground 100 interrogatories and 50 requests for admission.]*

*[Plaintiffs' Proposal: Defendants' Co-Lead Counsel, on behalf of defendants in this proceeding, may serve on each plaintiff interrogatories (not exceeding 10 in number) and requests for admissions (not exceeding 5 in number, not including requests for document authentication or admissibility). Plaintiffs' Co-Lead Counsel may serve on each defendant interrogatories (not exceeding 10 in number) and requests for admissions (not exceeding 5 in*

*number, not including requests for document authentication or admissibility), on behalf of each plaintiff.]*

The Court expects that in formulating discovery requests, the parties will take account of the discovery taken in previous cases and will avoid duplicative discovery.

The party served shall answer and/or object to the interrogatories and requests for admission in accordance with a schedule that should be negotiated among the parties following service of the interrogatories and requests for admission.

**B. Testimonial Discovery**

Deposition notices for corporate designees will describe “with reasonable particularity the matters” on which the examination is requested. If more than one subject area is covered by any 30(b)(6) notice, each such subject area will count as one deposition for purposes of the limitations placed on depositions for the case, despite the fact that they are contained in one deposition notice. The witness produced to respond to the notice will have appropriate knowledge of the subject matter and be properly prepared to answer questions about that issue. If the witness produced does not have sufficient knowledge of the issue, regardless of the number of witnesses that must be produced to properly address the matter noticed, the deposition will be considered one deposition for purposes of the limitations on depositions.

*[Defendants’ Proposal: Defendants’ Co-Lead Counsel shall, on behalf of all Defendants, be entitled to depose each Named Plaintiff (currently 148) and take an additional 25 depositions. Counsel for plaintiffs shall be entitled to take 50 depositions.][Plaintiffs’ Proposal: Plaintiffs and Defendants’ counsel shall each be entitled to take 100 depositions.]* Each deposition shall not exceed 7 hours in length.

**X. SUMMARY JUDGMENT/EXPERT WITNESSES**

Summary judgment generally shall be divided into two phases: summary judgment or adjudication on issues relating to independent contractor/employment status and summary judgment or adjudication as to other issues. *[Defendants' Proposal: Nothing in this phrasing shall limit the ability of any party to move for summary judgment as to any issue at an appropriate time, nor dictate the order in which this Court shall address such dispositive motions.] [Plaintiffs' Proposal: No other summary judgment motions may be filed without leave of Court.]*

**1. Summary Judgment/Adjudication on Issues Relating to Independent Contractor/Employment Status**

Movants shall identify all experts and witnesses upon whom they will rely in the summary judgment phase of proceedings relating to independent contractor/employment status (including the information contemplated by Fed. R. Civ. P. 26(a)(2)(B) as to experts) and file any expert reports or affidavits upon which they rely in that phase of proceedings no later than February 15, 2007. Opponents shall have until March 15, 2007 to depose such expert(s). Opponents shall identify all experts and witnesses upon whom they will rely in the summary judgment phase of the proceedings (including the information contemplated in Fed. R. Civ. P. 26(a)(2)(B) as to experts), and file any expert reports or affidavits upon which they rely in that phase of proceedings no later than March 31, 2007. Depositions of such expert(s) must take place no later than May 1, 2007.

Movants shall have until May 31, 2007 to file motions for summary judgment or summary adjudication, including memoranda in support thereof. Memoranda in support of such motions shall not exceed 30 pages. Opponents shall have until July 14, 2007 to file memoranda in opposition to such motions. Memoranda in opposition to such motions shall not exceed 50

pages. Movants shall have until August 15, 2007 to file replies to the memoranda in opposition to such motions. Reply memoranda in support of such motions shall not exceed *[Defendants' Proposal: 20][Plaintiffs' Proposal: 40]* pages. Reply briefs shall be limited to arguments made in the opposition briefing.

The parties shall not rely on any experts in the summary judgment/summary adjudication stage of the case that are not identified in accordance with the schedule above.

**2. Additional Summary Judgment Briefing**

The parties shall meet and confer as to an appropriate schedule for summary judgment/summary adjudication motions on grounds other than employment status.

**XI. NUMBERING OF DOCUMENTS**

The parties shall develop and use a system for identifying, by unique number or symbol, each document produced or referred to during the course of litigation. Each producing party shall give each page of any document it produces a unique number, using a consistent numbering system that identifies the producing party. All reasonable efforts should be made to avoid having the same page assigned more than one identifying number except when there is a need to account for different copies of the same document or page (for example, because of special notations being placed on the document). With respect to documents previously produced in *Estrada*, they shall be renumbered for purposes of this litigation, so long as the number associated with their initial production remains visible.

In the event that documents produced by persons or entities who are not parties to this action are not, when produced, identified by a unique numbering system, the party at whose request production was made shall be responsible for numbering the documents in accordance with the above terms.

## **XII. DOCUMENT AUTHENTICATION**

Any party that produces documents and records in discovery that were either authored by that party or are shown on the document as having been received by that party shall, by doing so, admit that such documents and records are authentic, unless a party otherwise so specifies on a document-by-document basis, within 30 days of such production. However, such admission shall not be binding on another party.

## **XIII. OTHER MATTERS**

### **A. Rules Applicable to Discovery**

#### **1. Local Rules**

The foregoing requirements shall take precedence over any conflicting provisions of the Local Rules of this Court.

#### **2. Pending Requests**

All pending discovery requests in any of the constituent actions to this proceeding shall be deemed withdrawn without prejudice to being re-served in accordance with the provisions of this Order.

### **B. Rules Applicable to Depositions**

Plaintiffs' Co-Lead Counsel and Defendants' Co-Lead Counsel (or their designees) shall attempt to establish by mutual agreement a schedule for depositions that reflects a sequencing that is consistent with (a) the availability of documents from among those produced by the parties and third parties, (b) the objective of avoiding the need to subject any person to repeated depositions, and (c) efficiency. Disputes concerning the timing and scheduling of depositions may be presented to the Court. The Court expects that the use of formal notices of depositions or subpoenas with respect to party witnesses will be unnecessary in this case – that is, party

witnesses will be produced in accordance with whatever schedule is developed. The parties shall coordinate the scheduling of third-party witnesses. Absent the parties' agreement to the contrary, or for good cause shown to the Court, depositions shall take place in the city where the deponent resides.

**1. Supplemental Depositions**

The court anticipates that no witness will be deposed on the same subject more than once in this litigation. If a party seeks to take a second deposition of a witness, it shall provide the opposing party its basis for an exception to the rule along with a list of the subject matters as to which interrogation is sought. Second depositions on new subject matter shall be permitted by consent of the parties or upon order of this court authorizing such deposition based upon a showing of good cause. An individual designated and tendered by the defendants in response to a Rule 30(b)(6) deposition notice may be re-deposed at a later time upon notice by plaintiffs on new subject matter, and such deposition may proceed without plaintiffs obtaining leave of court. However, such deposition would count against the deposition limits set forth above.

**2. Deposition Disputes**

During depositions, disputes that arise that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be presented to the Court by telephone. The presentation of the issue and the Court's ruling will be recorded as part of the deposition. The undersigned will exercise by telephone the authority granted under 28 U.S.C. § 1407(b) to act as district judge in the district in which the deposition is taken.



**C. RULES CONCERNING PRIVILEGE ISSUES**

**1. Generally**

A party who, relying on any privilege or the work product doctrine, does not produce all documents that would have been produced but for the claim of privilege or work-product, must state that it is invoking a privilege. A party who invokes a privilege must specify which privilege or doctrine it is invoking.

**2. Exempted Documents**

Documents that were created or generated subsequent to the filing of the constituent actions to this proceeding, or the filing of other actions asserting allegations similar to those asserted in the constituent actions, and which concern or relate to the defense of a specific lawsuit and are privileged as communications or work product relating to these actions, need not be identified under this section.

**D. ALTERNATIVE DISPUTE RESOLUTION**

Prior to briefing on summary judgment issues, the parties shall confer as to the appropriateness of alternative dispute resolution. If the parties agree to a course of alternative dispute resolution at that time, the parties will petition the court to amend the deadlines of this Case Management Order as they pertain to summary judgment.

**SO ORDERED:**

ENTERED: \_\_\_\_\_

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Christopher A. Nuechterlein  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

| <b>Case Name</b>  | <b>Original Court</b>            |
|---|----------------------------------|
| <i>Alexander, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-20</i>   | Northern District of California  |
| <i>Anfinson, et al. v. FedEx Ground Package System, Inc., Schnebeck, Pilakowski, John Does 1-10</i>   | Western District of Washington   |
| <i>Bertram, et al. v. Federal Express Corp., FedEx Ground Package System, Inc., d/b/a FedEx Home Delivery, and their respective health benefit and pension plans, DOES 1-20</i> | Western District of Kentucky     |
| <i>Bunger, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery</i>   | District of South Dakota         |
| <i>Capers, et al. v. FedEx Ground Package System, Inc., Gaskins, Rettinger, Gelhausen, Collins, DiMaio, FedEx Corp., John Doe and Jane Doe 1-10</i>                             | District of New Jersey           |
| <i>Carlson, et al. v. FedEx Ground Package System, Inc.</i>   | Middle District of Florida       |
| <i>Carraher, et al. v. FedEx Ground Package System, Inc.</i>  | Middle District of Florida       |
| <i>Cooke v. FedEx Ground Package System, Inc.</i>   | District of South Carolina       |
| <i>Craig, et al. v. FedEx Ground Package System, Inc.</i>   | District of Kansas               |
| <i>Fleming, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-5</i>   | Northern District of Mississippi |
| <i>Gennell, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery</i>   | District of New Hampshire        |
| <i>Gregory v. FedEx Ground Package System, Inc.</i>   | Eastern District of Virginia     |
| <i>Griffin, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-20</i>  | Northern District of Illinois    |
| <i>Hart v. FedEx Ground Package System, Inc.</i>  | Western District of Pennsylvania |
| <i>Humphreys, et. al v. Federal Express Corp., FedEx Ground Package System, Inc., FedEx Home Delivery</i>   | Western District of Texas        |
| <i>Johnson, et al. v. FedEx Home Delivery, FedEx Ground Package System, Inc.</i>  | Eastern District of New York     |

| Case Name  | Original Court                   |
|--|----------------------------------|
| <i>Johnson v. FedEx Ground Package System, Inc., FedEx Home Delivery, and their respective health and benefit plans, Does 1-20</i> | Southern District of Iowa        |
| <i>Kilmartin v. Federal Express Incorporated, Federal Express (Cranbury Location), John Does 1-5 and John Does 6-10</i>            | District of New Jersey           |
| <i>Larson, et al. v. FedEx Ground Package System, Inc.</i>   | Eastern District of Wisconsin    |
| <i>Lee, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-20</i>                               | District of Minnesota            |
| <i>Lester, et al. v. Federal Express Corp., FedEx Ground Package System, Inc., FedEx Home Delivery</i>                             | Eastern District of Michigan     |
| <i>Louzau, et al. v. FedEx Ground Package System, Inc.</i>   | Southern District of New York    |
| <i>Riewe, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Respective Health Plans Does 1-20</i>     | Northern District of Indiana     |
| <i>Sheehan, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery</i>   | District of Massachusetts        |
| <i>Slayman v. FedEx Ground Package System, Inc.</i>  | District of Oregon               |
| <i>Smith, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery, Respective Health Plans Does 1-20</i>                  | Western District of Tennessee    |
| <i>Tierney, et al. v. FedEx Ground Package System, Inc.</i>  | District of Rhode Island         |
| <i>Tofaute v. FedEx Ground Package System, Inc.</i>  | District of New Jersey           |
| <i>Willis v. FedEx Ground Package System, Inc., FedEx Corp.</i>  | Eastern District of Pennsylvania |
| <i>Woomer v. FedEx Ground Package System, Inc.</i>   | Western District of Pennsylvania |
| <i>Zabrocki v. FedEx Ground Package System, Inc.</i>   | Western District of Wisconsin    |

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of November, 2005, I filed the foregoing ***Proposed Case Management Order*** with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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