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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 LEE SPREWELL, individually and on
behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 FEDERAL EXPRESS
CORPORATION; and Does 1-10,
22 inclusive,

23 Defendants.
24
25
26

Case No.: 2:20-cv-11612 SVW
(MRWx)

[Hon. Stephen V. Wilson, Courtroom
10A]

JOINT STIPULATION OF
SETTLEMENT AND RELEASE

Second Amended Complaint Filed:
8/19/21
Trial Date: 2/8/22

27 This Joint Stipulation of Settlement and Release is made and entered into
28 between Plaintiff Lee Sprewell ("Plaintiff" or "Class Representative") and Defendant

1 Federal Express Corporation (“Defendant” or “FedEx”) (collectively, the “Parties”).

2 **1. THE CONDITIONAL NATURE OF THIS STIPULATION.**

3 1.1 This Settlement and all associated exhibits or attachments are made for the
4 sole purpose of settling the above-captioned lawsuit, which is entitled *Lee Sprewell v.*
5 *Federal Express Corporation*, Case No. 2:20-cv-11612 SVW (MRWx). This Settlement
6 is made in compromise of disputed claims. Because the Parties’ settlement of this
7 Action (as defined in Section 2.1) includes a class under Federal Rule of Civil
8 Procedure 23, this Settlement must receive preliminary and final approval by the United
9 States District Court for the Central District of California (“Court”). Accordingly, the
10 settling Parties enter into this Settlement on a conditional basis.

11 1.2 Subject to the obligation(s) of mutual full cooperation set forth herein,
12 either Party may terminate this Settlement if the Court declines to enter the Preliminary
13 Approval Order, the Final Approval Order, or final judgment in substantially the form
14 submitted by the Parties, or if the Settlement as agreed to does not become final because
15 of appellate court action, or if the Court does not approve the settlement of the PAGA
16 claims and associated PAGA Payment, as defined in Section 2.24, regardless of
17 whether it approves the settlement of the other claims, or if the claims asserted in the
18 Second Amended Complaint on behalf of those outside the settlement Class are not
19 dismissed without prejudice. The terminating Party shall give to the other Party
20 (through its counsel) written notice of its decision to terminate no later than ten (10)
21 calendar days after receiving notice that one of the enumerated events has occurred.
22 Termination shall have the following effects:

- 23 1) The Settlement Agreement shall be terminated and shall have no
24 force or effect, and no Party shall be bound by any of its terms.
- 25 2) In the event the Settlement is terminated, Defendant shall have no
26 obligation to make any payments to any party, class member or
27 attorney.

- 1 3) The Preliminary Approval Order, Final Approval Order and final
2 judgment, including any order of class certification, shall be vacated.
- 3 4) The Stipulation of Settlement and all negotiations, statements and
4 proceedings relating thereto shall be without prejudice to the rights
5 of any of the Parties, all of whom shall be restored to their respective
6 positions prior to the Settlement.
- 7 5) The Settlement Agreement shall not be admissible or offered into
8 evidence in the Action or any other action for any purpose
9 whatsoever. Similarly, any conditional class certification (obtained
10 for any purpose) shall be void *ab initio* and of no force or effect, and
11 shall not be admissible in any judicial, administrative, or arbitral
12 proceeding for any purpose or with respect to any issue, substantive
13 or procedural.

14 1.3 If this Settlement is terminated or canceled pursuant to its terms, the
15 Parties to this Settlement shall be deemed to have reverted to their respective statuses as
16 of the date and time it was consummated (i.e., December 17, 2021, at 1:48 p.m.); and
17 none of the Parties to this Settlement will be deemed to have waived any claims,
18 objections, defenses, or arguments in this Action, including with respect to the issue of
19 class certification. Moreover, in the event this Settlement is terminated or canceled
20 pursuant to its terms, the Settlement Administrator shall refund all funds received by
21 Defendant into the Qualified Settlement Fund (“QSF”), and the Settlement
22 Administration Costs incurred as of the date of termination will be split evenly between
23 Plaintiff and Defendant.

24 1.4 Defendant has agreed to resolve the above-styled Action, via this
25 Agreement, but to the extent this Agreement is deemed void, is terminated, or is
26 cancelled, Defendant does not waive, but rather expressly reserves, all rights to
27 challenge all claims and allegations in the above-styled Action, upon all procedural and
28 factual grounds, including, without limitation, the ability to challenge class treatment on

1 any grounds, as well as asserting any and all other potential defenses or privileges. The
2 Class Representative and Class Counsel (as defined in Sections 2.7 and 2.4,
3 respectively) agree that Defendant retains and reserves these rights, and agree not to
4 argue or present any argument, and hereby waive any argument, that based on this
5 Agreement Defendant cannot challenge claims and allegations upon any procedural or
6 factual grounds, including, without limitation, challenging class treatment on any
7 grounds or asserting any and all other potential defenses or privileges.

8 **2. DEFINITIONS.**

9 The following terms, when used in this Settlement Agreement, have the
10 following meanings:

11 2.1 “Action” or “Instant Action” means the above stated action *Lee Sprewell v.*
12 *Federal Express Corporation*, Case No. 2:20-cv-11612 SVW (MRWx), currently
13 pending in United States District Court for the Central District of California.

14 2.2 “Settlement Share” means an individual Class Member’s potential
15 allocation of the Net Settlement Amount, as defined in Section 2.19.

16 2.3 “Class” means all Defendant’s current and former non-exempt employees
17 who worked in FedEx’s CCD Station at 687 N. Eucalyptus Avenue, in Inglewood,
18 California at any time during the Class Period.

19 2.4 “Class Counsel” means Joshua Konecky, Nathan Piller, and Sarah
20 McCracken of SCHNEIDER WALLACE COTTRELL KONECKY, LLP.

21 2.5 “Class Member” means each person eligible to participate in this
22 Settlement who is a member of the Class defined above. After a good faith and diligent
23 search of its records, Defendant has identified approximately 467 Class Members.

24 2.6 “Class Period” means January 30, 2020, to the Preliminary Approval Date
25 or January 31, 2022, whichever occurs first.

26 2.7 “Class Representative” is Plaintiff Lee Sprewell.

27 2.8 “Class Representative’s Released Claims” means any and all claims,
28 obligations, demands, actions, rights, causes of action, and liabilities, against the

1 Released Parties (as defined below), of whatever kind and nature, character, and
2 description, whether in law or equity, whether sounding in tort, contract, federal, state
3 and/or local law, statute, ordinance, regulation, common law, or other source of law,
4 whether known or unknown, and whether anticipated or unanticipated, including
5 unknown claims covered by California Civil Code § 1542, as quoted in Section 6.13.1,
6 infra, by the Class Representative, arising from the beginning of time to the date of
7 signing of this Settlement, for any type of relief that can be released as a matter of law,
8 including, without limitation, claims for wages, damages, unpaid costs, penalties
9 (including civil and waiting time penalties), liquidated damages, punitive damages,
10 interest, attorneys' fees, litigation costs, and restitution or equitable relief. The Class
11 Representative's Released Claims exclude claims for workers' compensation or
12 unemployment insurance benefits, or any claims which cannot be released as a matter
13 of law.

14 2.9 "Complaints" means Plaintiff's initial, First Amended, and Second
15 Amended Complaints for penalties and reimbursement of business expenses in the
16 above-captioned lawsuit filed with this Court by Plaintiff on September 10, 2020, June
17 9, 2021, and August 19, 2021, respectively, all of which are attached hereto as Exhibit
18 1, and incorporated herein by reference.

19 2.10 "Court" means the United States District Court for the Central District of
20 California.

21 2.11 "Data Dispute Form" shall mean the document substantially in the form
22 attached hereto as Exhibit 2.

23 2.12 "Data Dispute Deadline" shall mean forty-five (45) calendar days from the
24 initial mailing of the Notice Packet.

25 2.13 "Defendant's Counsel" means David S. Wilson, III, Lead Counsel, Federal
26 Express Corporation.

27 2.14 "Enhancement Payment" means the amount approved by the Court to be
28 paid to the Class Representative, not to exceed \$5,000.00, in addition to his Settlement

1 Share as a Settlement Class Member, in recognition of his efforts in coming forward as
2 a Class Representative and release of claims as set forth above. The Enhancement
3 Payment shall be considered non-wages for which an appropriate IRS Form 1099 will
4 be issued to the Class Representative.

5 2.15 "Final Approval Date" means the latest of the following dates: (i) if no
6 Class Member intervenes or files an objection to the Settlement on or prior to the Court
7 entering an order granting final approval of the Settlement, then the date the Court
8 enters an order granting final approval of the Settlement, including the settlement of the
9 PAGA claims and associated PAGA Payment; or (ii) if there is an objection to the
10 Settlement by a Class Member, or a Class Member intervenes, on or prior to the date
11 the Court enters an order granting final approval of the Settlement, then on the date of
12 final resolution of that objection or any appeal brought by that objector or any
13 intervenor, resulting in final judicial approval of the Settlement, including the
14 settlement of the PAGA claims and associated PAGA Payment.

15 2.16 "Final Approval and Fairness Hearing" means the hearing set by the Court
16 to (a) review the Settlement and determine whether the Court should give final approval
17 to this Settlement, (b) consider any timely objections made pursuant to Section 6.4.5 of
18 this Settlement, and all responses by the Parties, (c) consider the request for attorneys'
19 fees and expenses submitted by Class Counsel, (d) consider the Settlement
20 Administrator's Settlement Administration Costs, (e) consider the Class
21 Representative's application for an Enhancement Payment, and (f) consider the PAGA
22 Payment.

23 2.17 "Final Judgment" shall mean the order granting final approval of the
24 Settlement and judgment entered by the Court.

25 2.18 "Gross Settlement Amount" is the sum of One-Hundred Fifty Thousand
26 U.S. Dollars (\$150,000.00), which represents the total amount payable in this
27 Settlement by Defendant, and includes without limitation the Settlement Administration
28

1 Costs, attorneys' fees, litigation costs, the Class Representative Enhancement Payment,
2 and the PAGA Payment.

3 2.19 "Net Settlement Amount" is the remaining portion of the Gross Settlement
4 Amount available for distribution to Settlement Class Members after deduction of Court
5 approved attorneys' fees and litigation costs, Settlement Administration Costs, the
6 Enhancement Payment to the Class Representative, and the seventy-five percent (75%)
7 portion of the PAGA Payment being allocated to the California Labor Workforce and
8 Development Agency ("LWDA").

9 2.20 "Notice of Settlement" means the document substantially in the form
10 attached hereto as Exhibit 3.

11 2.21 "Notice Packet" means the Notice of Settlement and Data Dispute Form.

12 2.22 "Objections Deadline" shall mean forty-five (45) calendar days from the
13 initial mailing of the Notice Packet.

14 2.23 "Opt-Out Deadline" or "Exclusion Deadline" shall mean forty-five (45)
15 calendar days from the initial mailing of the Notice Packet.

16 2.24 "PAGA Payment" means Fifteen Thousand U.S. Dollars (\$15,000.00) of
17 the Gross Settlement Amount to be allocated to claims under the Private Attorneys
18 General Act of 2004, which includes Eleven Thousand Two-Hundred and Fifty U.S.
19 Dollars (\$11,250.00) being awarded to the State of California, subject to Court
20 approval, and Three Thousand Seven-Hundred and Fifty U.S. Dollars (\$3,750.00) being
21 awarded to Settlement Class Members by including that sum in the Net Settlement
22 Amount, subject to Court approval.

23 2.25 "Plaintiff" is Lee Sprewell.

24 2.26 "Preliminary Approval Date" means the date the Court approves the
25 Settlement, and the exhibits thereto, and enters an order providing for notice to the
26 Class, an opportunity to opt out of the Class, an opportunity to submit timely objections
27 to the Settlement (excluding the PAGA settlement), a procedure for submitting Data
28

1 Dispute Forms, and setting a hearing on the fairness of the terms of settlement,
2 including approval of attorneys' fees and costs.

3 2.27 "Procedural Order" means the document substantially in the form attached
4 hereto as Exhibit 4.

5 2.28 "QSF" or "Qualified Settlement Fund" means the Qualified Settlement
6 Fund set up by the Settlement Administrator for the benefit of the Settlement Class
7 Members and from which the settlement payments shall be made.

8 2.29 "Settlement Class Member" means any and all Class Members who do not
9 submit a timely and correctly completed request for exclusion, as set forth in Section
10 6.4.4.

11 2.30 "Released Claims" means all claims, including those covered by a limited
12 California Civil Code Section 1542 waiver described in Section 6.13.1, *infra*, arising at
13 any time during the Class Period that are or were asserted in the Complaints, or claims
14 relating to policies, practices and procedures concerning the health and safety of
15 employees with respect to COVID-19 and/or expense reimbursement for personal
16 protective equipment to protect against COVID-19 at work, which were or reasonably
17 could have been alleged in the Complaints arising out of the same operative facts. The
18 *res judicata* effect of the Judgement will be the same as that of the Agreement. The
19 definition of Released Claims shall not be limited in any way by the possibility that
20 Plaintiff or Class Members may discover new facts or legal theories or legal arguments
21 not alleged in the Complaints but which might serve as an alternative basis for pursuing
22 the same claims, causes of action, or legal theories of relief falling within the definition
23 of Released Claims.

24 2.31 "Releasees" means Defendant and any related entities and all of its
25 respective former, present, and future owners, parents, subsidiaries, affiliates, divisions,
26 related entities, joint venturers, partners, corporations in common control, co-
27 employers, service providers, predecessors, successors, and assigns, and past, present,
28 and future officers, directors, employees, partners, shareholders, agents, associates,

1 representatives, attorneys, insurers, and any other successors, assigns, or legal
2 representatives of any of them.

3 2.32 “Settlement Administration Costs” means the fees and expenses
4 reasonably incurred by the Settlement Administrator as a result of the procedures and
5 processes expressly required by this Settlement, and shall include all costs of
6 administering the Settlement, including, but not limited to, all tax document
7 preparation, custodial fees, and accounting fees incurred by the Settlement
8 Administrator; all costs and fees associated with preparing, issuing and mailing any and
9 all notices of settlement and other settlement correspondence to Class Members and/or
10 Settlement Class Members; all costs and fees associated with communicating with
11 Class Members, Class Counsel, and Defendant’s Counsel regarding the Settlement; all
12 costs and fees associated with computing, processing, reviewing, and paying the
13 Settlement Shares, and resolving disputed claims; all costs and fees associated with
14 printing tax forms relating to payments made under the settlement; all costs and fees
15 associated with preparing any tax returns and any other filings required by any
16 governmental taxing authority or agency; all costs and fees associated with preparing
17 any other notices, reports, or filings to be prepared in the course of administering
18 Settlement Shares; and any other costs and fees incurred and/or charged by the
19 Settlement Administrator in connection with the execution of its duties under this
20 Stipulation.

21 2.33 “Settlement Administrator” means and refers to Phoenix Settlement
22 Administrators, the entity that will be responsible for the administration of the
23 Settlement and related matters as described in this Settlement. Phoenix Settlement
24 Administrators has estimated that the Settlement Administration Costs will be
25 approximately \$9,000.

26 **3. DESCRIPTION OF THE LITIGATION.**

27 3.1 Plaintiff, a former courier employee of Defendant, brought this Action
28 alleging FedEx’s response to the COVID-19 pandemic was deficient, and asserting

1 pandemic-related claims for public nuisance under the California Civil Code, unfair
2 business practices under California's Unfair Competition Law, civil penalties under the
3 PAGA, business expense reimbursement under California Labor Code Section 2802,
4 and declaratory relief. Following three motions to dismiss brought by Defendant under
5 Rule 12(b)(6) of the Federal Rules of Civil Procedure, and associated rulings by the
6 Court, Plaintiff filed the operative Complaint, asserting claims for civil penalties under
7 the PAGA for alleged violations of California Labor Code Sections 2802, 6400, 6401,
8 6401.7, 6402, 6403, and 6404, and for business expense reimbursement under
9 California Labor Code Section 2802.

10 3.2 Through discovery, Defendant provided Class Counsel with copies of
11 numerous iterations of its COVID-19 prevention policies and procedures (plus related
12 written communications), contact information for the putative class at the CCD Station
13 where Plaintiff works, and records reflecting those Class Members' workweeks of
14 active employment during the Class Period, amongst numerous other documents, all of
15 which totaled thousands of pages. Defendant deposed Plaintiff and reviewed dozens of
16 records he produced in discovery, in addition to his copious interrogatory responses.
17 Class Counsel has not notified anybody Plaintiff seeks to represent of this Action.

18 3.3 Following this extensive discovery, the Parties negotiated this Settlement
19 after due consideration of the relevant underlying facts and evidence.

20 3.4 The agreed-upon settlement was reached after evaluating the Parties'
21 theories of potential exposure for the underlying claims. The Parties also assessed
22 appropriate discounts to the potential liability based on Defendant's contentions and
23 defenses.

24 3.5 The Parties agree that the above-described investigation and evaluation, as
25 well as discovery and the information exchanged in advance of the settlement
26 negotiations, are more than sufficient to assess the merits of the respective Parties'
27 positions and to compromise the issues on a fair and equitable basis.

28

1 **4. REASONABLENESS AND BENEFITS OF THE SETTLEMENT TO THE**
2 **PROPOSED CLASS.**

3 4.1 Based on their own independent investigations and evaluations, Class
4 Counsel are of the opinion that the settlement with Defendant for the consideration and
5 terms set forth below, in view of the Class Representative's and average Class
6 Members' claims and the risk of loss, is fair, reasonable, and adequate in light of all
7 known facts and circumstances and is in the best interests of the Class. Class Counsel
8 are also of the opinion that the total consideration and payment set forth in this
9 Settlement is adequate in light of the uncertainties surrounding the risk of further
10 litigation and the defenses that Defendant has asserted and could assert.

11 4.2 Class Counsel has weighed the monetary benefit under the Settlement to
12 the Class against the expenses and length of continued proceedings that would be
13 necessary to prosecute the Action against Defendant through trial and possible appeals.
14 Class Counsel have also taken into account the uncertain outcome and risk of any
15 litigation, especially in complex actions such as class actions, as well as the difficulties
16 and delay inherent in such litigation. Therefore, Class Counsel has determined that the
17 Settlement is in the best interests of the Class.

18 **5. POSITION OF DEFENDANT.**

19 5.1 Defendant denies any liability or wrongdoing of any kind associated with
20 the claims alleged in the Action, and further denies that, for any purpose other than
21 settling this matter, this Action is appropriate for class treatment. Defendant maintains,
22 among other things, it has complied with Federal and California law in all aspects.
23 Nothing in this Settlement shall be construed or deemed as an admission of liability,
24 culpability, negligence, or wrongdoing on the part of Defendant.

25 5.2 There has been no final determination by any court as to the merits of the
26 claims asserted by Plaintiff against Defendant, nor has there been any final
27 determination as to whether a class should be certified, other than for settlement
28 purposes only. Defendant will stipulate to the certification of class claims for

1 settlement purposes only. Defendant disputes that certification is proper for the
2 purposes of litigating the class claims proposed in or flowing from the Complaints.

3 **6. OPERATIVE TERMS OF SETTLEMENT.**

4 The Parties to this Action agree as follows:

5 6.1 Cooperation. The Parties will cooperate in obtaining, through written
6 stipulation or unopposed motion if a motion is required, an order from the Court
7 approving the Settlement. The Parties agree to use their best efforts to expedite the
8 preparation and submission of the Settlement and related documents. The Parties further
9 agree to fully cooperate in the drafting and/or filing of any further required documents
10 or filings, shall take all steps that may be requested by the Court or that are otherwise
11 necessary for the approval and implementation of this Settlement, and shall otherwise
12 use their respective best efforts to obtain Court approval of this Settlement.

13 6.2 Preliminary Approval. The Parties will seek to obtain the Court's
14 preliminary approval of the Settlement. Plaintiff's counsel will prepare and file the
15 motion documents and Defendant agrees not to oppose them, including the motion for
16 preliminary approval. The Parties will submit this Settlement to the Court for
17 preliminary approval of its terms and for approval of the steps to be taken to obtain its
18 final approval. The Parties will request that the Court's preliminary approval of this
19 Settlement be embodied in a Procedural Order, a proposed form of which is attached as
20 Exhibit 4. The Parties agree to request that the Court enter an order approving the
21 certification of a provisional settlement class after the preliminary approval hearing.

22 6.3 Notice to Class Members. The Settlement Administrator shall disseminate
23 the Notice Packet in the manner described below, with the Settlement Administration
24 Costs being paid from the Gross Settlement Amount.

25 6.3.1 No later than ten (10) calendar days after the entry of the Procedural
26 Order, for each Class Member Defendant shall provide the Settlement Administrator
27 with the name, last known mailing address, last known telephone number, Social
28 Security Number, and the dates the Class Member was actively employed as a Class

1 Member of Defendant in California during the Class Period. Any workweeks during
2 which a Class Member was employed by Defendant but not actively employed as a
3 Class Member (for example, while classified as exempt, while on a leave of absence,
4 etc.) shall be excluded. This class data, as well as any other class data provided to the
5 Settlement Administrator, shall be confidential. Except as provided for in this
6 Agreement and/or to enable Class Counsel to fulfill their duties under FRCP 23, the
7 Settlement Administrator shall not provide the class data to Class Counsel or Plaintiff or
8 any third party or use the class data or any information contained therein for any purpose
9 other than to administer this Settlement. No later than ten (10) calendar days after receipt
10 of such address information, the Settlement Administrator will perform a national
11 change of address ("NCOA") search, update the addresses per the results of the NCOA
12 search, and then mail the Notice of Settlement and Data Dispute Form, substantially in
13 the forms attached as Exhibits 3 and 2, respectively, to each Class Member by first-class
14 mail, postage prepaid.

15 6.3.2 In the event that a Notice Packet sent by mail is returned as
16 undeliverable, the Settlement Administrator will make reasonable efforts to obtain a
17 valid mailing address by using the social security number of the Class Member and
18 standard skip tracing devices to conduct a search for a correct mailing address and by
19 contacting Class Counsel and Defendant through Defendant's Counsel. The Settlement
20 Administrator shall make one (1) attempt to re-mail the Notice Packet within fourteen
21 (14) calendar days from the date of the return of the Notice Packet. Following each
22 search that results in a corrected address, the Settlement Administrator shall promptly
23 resend the original Notice Packet to the Class Member by first-class mail, postage
24 prepaid. Following each search that results in no corrected address, the Settlement
25 Administrator shall resend the Notice Packet to the Class Member, postage prepaid, to
26 the original address; only one (1) such re-mailing to the same address shall ever occur,
27 per address. In any event, such efforts must be completed no less than fourteen (14)
28 days before the date of the Final Approval and Fairness Hearing.

1 6.3.3 Class Counsel shall cooperate in good faith with the Settlement
2 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members.
3 Defendant shall cooperate in good faith with the Settlement Administrator's reasonable
4 efforts to obtain valid mailing addresses for Class Members to the extent they were
5 active employees of Defendant at the time of the Procedural Order or are active
6 employees at the time of any request made by the Settlement Administrator.

7 6.3.4 All costs of mailing of the Notice Packet, whether foreseen or not,
8 which are reasonable and court-approved, shall be paid from the Gross Settlement
9 Amount, including the cost of searching for Class Members' addresses as provided in
10 Section 6.3.2. All other reasonable costs of the Settlement Administrator shall also be
11 paid from the Gross Settlement Amount.

12 6.3.5 No later than fourteen (14) calendar days prior to the date of the Final
13 Approval and Fairness Hearing, the Settlement Administrator shall file a declaration
14 under penalty of perjury advising the Court that the requirements of Sections 6.3.1 and
15 6.3.2 of this Settlement have been fulfilled.

16 6.3.6 Compliance with these procedures shall constitute due and sufficient
17 notice to Class Members of this Settlement and shall satisfy the requirement of due
18 process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and
19 Defendant's Counsel to provide notice of the proposed Settlement.

20 6.4 Responses to Notice.

21 6.4.1 The Notice Packet shall provide Class Members with information as
22 to how they may challenge the information in the Data Dispute Form. Class Members
23 will have until the Data Dispute Deadline within which to complete and postmark their
24 Data Dispute Form for return to the Settlement Administrator. Except as provided by
25 Section 6.4.2 and 6.4.3, no Data Dispute Forms will be honored if postmarked after the
26 Data Dispute Deadline.

27 6.4.2 For Class Members who are re-mailed the Notice Packet due to it
28 being undeliverable, the deadline by which to submit a Data Dispute Form, file an

1 objection, or submit a request for exclusion will be the later of (i) fourteen (14) calendar
2 days from the date the Notice Packet was re-mailed, or (ii) the Data Dispute Deadline.

3 6.4.3 If a Data Dispute Form is timely submitted, but is deficient or
4 incomplete, the Settlement Administrator will return the Data Dispute Form (or, if
5 deemed necessary, a new Data Dispute Form) to the Class Member within five (5)
6 business days of receipt of the Data Dispute Form with a deficiency notice explaining
7 the deficiencies and stating that the Class Member will have ten (10) calendar days from
8 the date of the deficiency notice to correct the deficiencies and resubmit the Data
9 Dispute Form. Neither the Parties nor any of their counsel shall discourage any Class
10 Member from submitting a Data Dispute Form.

11 6.4.4 Class Members, with the exception of the Class Representative, may
12 opt-out of the settlement, except that Class Members may not opt out of the PAGA
13 portion of the settlement. Class Members who wish to exercise this option must submit a
14 request for exclusion to the Settlement Administrator as provided in this section. The
15 request for exclusion must (a) be in writing; (b) state the name, address and telephone
16 number of the Class Member; (c) state either the Class Member's approximate years or
17 dates of employment with Defendant, or the employee identification number given to the
18 Class Member by Defendant; (d) request exclusion from the Class saying words to the
19 effect of "I wish to opt out of the Class in: *Sprewell v. Federal Express Corporation*"; (e)
20 be sent via U.S. Mail post-marked no later than the Opt-Out Deadline; and (f) be signed
21 and dated with return address or contact information. No request for exclusion may be
22 made on behalf of a group of members of the Class. The date of the postmark on the
23 return-mailing envelope shall be the exclusive means used to determine whether a
24 request for exclusion has been timely submitted. By submitting such a Request for
25 Exclusion, a Class Member shall be deemed to have exercised his or her option to opt
26 out of the class action lawsuit. Any member of the Class who requests exclusion from
27 the Settlement will not be entitled to any share of the Settlement, will not be bound by
28 the Settlement, and will not have any right to object, appeal or comment thereon, except

1 any such member of the Class who timely and validly opts out of the Settlement will still
2 be bound by the release of PAGA claims against Defendant based on the facts alleged in
3 the Complaints. Members of the Class who fail to submit a valid and timely request for
4 exclusion shall be bound by all terms of the Settlement and the Final Judgment entered
5 in this Action, regardless of whether they otherwise have requested exclusion from the
6 Settlement. No later than fourteen (14) days before the Final Approval and Fairness
7 Hearing, the Settlement Administrator shall file a declaration under penalty of perjury
8 providing the Court with a complete list of all members of the Class who have timely
9 requested exclusion from the Settlement.

10 6.4.5 Any person who does not request exclusion but who wishes to object
11 or otherwise be heard concerning this Settlement must provide the Settlement
12 Administrator with written notice of his or her intent to object to this Settlement. To be
13 considered timely, the notice must be sent to the Settlement Administrator via U.S. Mail
14 and postmarked no later than the Data Dispute Deadline. The notice must set forth any
15 and all objections to this Settlement and include any supporting papers and arguments.
16 Any person who fails to submit such a timely written notice shall be barred from making
17 any statement objecting to this Settlement, and shall forever waive his or her objection,
18 except by special permission of the Court, but may still attend the hearing to obtain such
19 special permission. The Settlement Administrator shall promptly forward all objections
20 to the Parties and have them filed with the Court within ten (10) calendar days of the
21 Objections Deadline with any later received objections filed with the Court promptly
22 upon receipt and in any case no later than five (5) business days before the Final
23 Approval and Fairness Hearing. Either of the Parties may file a responsive document to
24 any notice of intent to object with the Court no later than five business (5) days before
25 the Final Approval and Fairness Hearing. Any person who objects to the Settlement
26 shall be bound by the order of the Court.

27 6.4.6 If any individual whose name does not appear on the updated class
28 list provided to the Settlement Administrator believes that he or she is a member of the

1 Class, he or she shall have the opportunity to dispute his or her exclusion from the Class.
2 If an individual believes he or she is a member of the Class, he or she must notify the
3 Settlement Administrator in writing no later than the Data Dispute Deadline. The Parties
4 will meet and confer regarding any such individuals in an attempt to reach an agreement
5 as to whether any such individual should be regarded as a member of the Class. If the
6 Parties so agree, the Settlement Administrator will mail a Notice Packet to the individual
7 and treat the individual as a member of the Class for all other purposes. Such an
8 individual will have all the same rights as any other member of the Class under this
9 Agreement.

10 6.4.7 If five percent (5%) or more of the total number of Class Members
11 submit timely and valid requests for exclusion, then Defendant shall have the option to
12 void the Settlement. Defendant must exercise this option within fourteen (14) calendar
13 days of receiving a report from the Settlement Administrator showing the total number
14 of timely and valid requests for exclusion exceeding 5% of Class Members. If Defendant
15 chooses to exercise this option, the effect will be precisely the same as if final approval
16 did not occur, as discussed herein. As a condition to exercise of this option, Defendant
17 must pay the Settlement Administration Costs incurred as of the date of this exercise,
18 notwithstanding other allocation of Settlement Administration Costs set forth in this
19 Settlement.

20 6.4.8 Neither the Parties nor their respective counsel will solicit or
21 otherwise encourage any Class Member, directly or indirectly, to request exclusion from
22 the Settlement or object to the Settlement.

23 6.5 Data Dispute Procedures.

24 6.5.1 Any Settlement Class Member who disputes the number of
25 workweeks listed on the Data Dispute Form shall complete the Data Dispute Form and
26 provide the completed form together with any supporting information or documentation
27 to the Settlement Administrator by the Data Dispute Deadline. A Data Dispute Form
28 will be deemed submitted (a) when postmarked, if it is mailed by first-class, registered,

1 or certified mail, postage prepaid, addressed in accordance with the instructions on the
2 form, or (b) if otherwise submitted, when it is actually received at the address designated
3 on the form. If a Settlement Class Member does not timely dispute the information
4 contained in the Data Dispute Form, the information contained in the Data Dispute Form
5 mailed to the Settlement Class Member shall govern the calculation of his or her
6 entitlement under the Settlement.

7 6.5.2 The Settlement Administrator shall provide Counsel for Defendant
8 and Plaintiff a copy of any Data Dispute Form received from a Class Member within
9 five (5) calendar days of receipt. Defendant shall review and respond to each submitted
10 Data Dispute Form disputing the number of workweeks within ten (10) calendar days of
11 receipt and shall transmit a copy of its response to the Settlement Administrator.
12 Defendant's response shall state whether Defendant agrees with or disputes the
13 information provided in the Data Dispute Form.

14 (a) If Defendant agrees with all the information provided in the
15 Data Dispute Form disputing the number of workweeks, the information and
16 documentation provided by the Settlement Class Member and attached to the Data
17 Dispute Form shall govern the calculation of the entitlement under the Settlement of the
18 person whose employment information is listed in the Data Dispute Form.

19 (b) If Defendant disagrees with any of the information provided
20 in a Data Dispute Form disputing the number of workweeks, it shall follow the
21 procedure set forth in Section 6.5.3 of this Settlement.

22 6.5.3 In the event that Defendant disagrees with the information provided
23 in a Data Dispute Form disputing the dates of employment, Defendant's Counsel will
24 promptly advise Class Counsel in writing of the dispute and provide Class Counsel with
25 copies of all information relevant to the dispute. Copies of all Data Dispute Forms and
26 correspondence with the person(s) submitting Data Dispute Forms shall be made
27 available to Class Counsel upon request. Defendant's Counsel and Class Counsel shall
28 attempt in good faith to resolve any such dispute within ten (10) calendar days of Class

1 Counsel's receipt of Defendant's Counsel's notice of a dispute as to the Data Dispute
2 Form. Class Counsel shall have full discretion on behalf of the Settlement Class
3 Members to resolve such disputes with Defendant's Counsel, except that any and all
4 payments relating to the disputed entitlement must be from the Net Settlement Amount.

5 6.5.4 In the event the Parties are unable to resolve any dispute under this
6 section, the Court shall review all information, material and documents provided by the
7 claimant, Class Counsel, and/or Defendant's Counsel, and make a decision regarding the
8 dispute. This decision shall be final and unappealable.

9 6.6 Application for Attorneys' Fees and Expenses. Class Counsel shall apply
10 to the Court for an award of fees from the Gross Settlement Amount in an amount not
11 to exceed \$37,500.00 (twenty-five percent of the Gross Settlement Amount) plus actual
12 costs. Defendant agrees not to oppose Class Counsel's application for fees and
13 expenses provided the application is made consistent with this section. To the extent
14 the Court awards less than this amount, the remainder shall become part of the Net
15 Settlement Amount to be distributed to the Settlement Class Members in accordance
16 with the allocation set forth in Sections 6.11.1-3 below. Furthermore, in the event the
17 Court reduces or does not approve the Application for Attorneys' Fees and Expenses,
18 Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to
19 appeal such order, and the Settlement will remain binding.

20 6.7 Application for Enhancement Payment.

21 6.8 Class Counsel, on behalf of Plaintiff, shall apply to the Court for an
22 Enhancement Payment from the Gross Settlement Amount, per the Court's direction, or
23 no later than the same day Plaintiff files his anticipated Motion for Final Approval of
24 Class Action Settlement. To the extent the Court awards less than the requested
25 amount, the remainder shall become part of the Net Settlement Amount to be
26 distributed to the Settlement Class Members in accordance with the allocation set forth
27 in Sections 6.11.1-3 below.

28

1 6.8.1 Any request for an Enhancement Payment may be supported by a
2 declaration from the Class Representative seeking payment and outlining the burdens
3 and obligations assumed in connection with his role as a Class Representative.
4 Defendant agrees not to oppose Class Representative's application for the Enhancement
5 Payment provided the application is made consistent with this Agreement.

6 6.8.2 Plaintiff shall be solely and legally responsible to pay any and all
7 applicable taxes on his Class Representative Service Award and hold harmless
8 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of
9 the Class Representative Service Award.

10 6.8.3 In the event the Court reduces or does not approve the requested
11 Class Representative Service Award, Plaintiff shall not have the right to revoke the
12 Settlement, and it will remain binding.

13 6.9 Final Approval and Fairness Hearing.

14 6.9.1 On the date set forth in the Notice Packet, the Court shall hold the
15 Final Approval and Fairness Hearing where objections, if any, may be heard.

16 6.10 Final Judgment. If the Court approves this Settlement, including the
17 settlement of the PAGA claims and the associated PAGA Payment, at the Final
18 Approval and Fairness Hearing, the Parties request that the Court enter the Final
19 Judgment.

20 6.11 Allocation of the Net Settlement Amount.

21 6.11.1 Each Settlement Class Member's Settlement Share shall be
22 determined based on the number of workweeks that the Settlement Class Member was a
23 member of the Class during the Class Period divided by the total number of workweeks
24 that every Settlement Class Member was a member of the Class during the Class Period
25 multiplied by the Net Settlement Amount, adjusted as described below to give greater
26 weight to claims for alleged wrongdoing from the beginning of the Class Period until
27 approximately July 31, 2020. When applying this formula, all Class Period workweeks
28 occurring between January 30, 2020 and July 31, 2020 shall be adjusted such that each

1 such workweek will count as two (2) workweeks when determining the total number of
2 workweeks for both the denominator and the numerator for each Settlement Class
3 Member. Workweeks shall be all weeks within which a Class Member was considered
4 actively employed by Defendant as a Class Member for any length of time. There are
5 no partial or fractional workweeks. Thus, any weeks during which a Class Member was
6 employed by Defendant but not actively employed (for example, while classified as
7 exempt, while on a leave of absence, etc.) are not included as workweeks. The
8 calculation of a Class Member's workweeks and a determination as to whether a Class
9 Member was actively employed in a particular pay period shall be construed from
10 Defendant's records.

11 6.11.2 The minimum Settlement Share shall be \$25.00. Thus, in the event
12 the calculation above (Section 6.11.1) results in a Settlement Share that falls below
13 \$25.00, the Class Member's Settlement Share will be increased to the \$25.00 minimum
14 and all other Class Members' Settlement Shares adjusted pro rata to account for this
15 floor.

16 6.11.3 There will be no reversion of any of the Gross Settlement Amount
17 or Net Settlement Amount to Defendant. Any Class Member who submits a valid and
18 timely request for exclusion from the Class pursuant to Section 6.4.4 supra, shall not
19 receive a Settlement Share. All Settlement Class Members will receive their Settlement
20 Share, such that 100% of the Net Settlement Amount will be paid.

21 6.11.4 The Parties recognize that the Settlement Shares to be paid to Class
22 Members reflect settlement of a dispute over claimed business expenses, interest, and
23 penalties, and that the Complaint does not include a claim for wages. Subject to Court
24 approval, the Parties further agree to the following as a reasonable and fair allocation
25 between expense reimbursement, interest and penalties: sixty percent (60%) of the
26 Settlement Shares shall be allocated for disputed business expenses; twenty percent
27 (20%) of the Settlement Shares shall be allocated to interest; and twenty percent (20%)
28 of the Settlement Shares shall be allocated to penalties, none of which represents wages.

1 Settlement Class Members shall receive a 1099 form(s) if and to the extent required by
2 law.

3 6.11.5 Settlement Class Members shall be solely responsible for the
4 reporting and payment of their share of any federal, state and/or municipal income or
5 other taxes on payments made pursuant to this Settlement. No Party has made any
6 representation to any of the other Parties as to the taxability of any payments pursuant to
7 this Settlement, including the payments to Class Members, the payments to Class
8 Counsel, and the payments to the Class Representative, or otherwise as to tax
9 implications of any provision of this Settlement.

10 6.12 Distribution of Settlement Proceeds.

11 6.12.1 Within fourteen (14) calendar days after the Final Approval Date,
12 Defendant shall electronically wire the entire Gross Settlement Amount into the QSF
13 established by the Settlement Administrator. The QSF shall be in an interest-bearing
14 account at a federally-insured bank that is mutually acceptable to the Parties and the
15 Settlement Administrator, and that is Federal Deposit Insurance Corporation-insured for
16 the full amount deposited. The final and complete delivery by Defendant to the
17 Settlement Administrator of the Gross Settlement Amount shall constitute full and
18 complete discharge of the entire obligation of Defendant under this Settlement. No
19 Released Party shall have any further obligation or liability to Class Counsel, Class
20 Representative, or Settlement Class Members.

21 6.12.2 Within fourteen (14) calendar days after wire receipt of the entire
22 Gross Settlement Amount, the Settlement Administrator shall promptly deduct and pay
23 (and, if available, electronically wire) from the Gross Settlement Amount (1) all Court-
24 awarded attorneys' fees and costs; (2) the Enhancement Payment; (3) Settlement
25 Administration Costs; and (4) the seventy-five percent (75%) PAGA Payment to the
26 LWDA. Following deduction of the amount of such payments, the Settlement
27 Administrator shall calculate and make payments to the Settlement Class Members out
28 of the QSF in accordance with this Agreement. Defendant and Defendant's Counsel

1 will not be liable for any errors or omissions in the Settlement Administrator's
2 calculation of each Settlement Class Member's Individual Settlement Payment.

3 (a) The Settlement Administrator shall wire the Court-approved
4 attorneys' fees and costs to Class Counsel. Class Counsel shall provide the Settlement
5 Administrator with the pertinent taxpayer identification number and wire instructions
6 within two (2) business days after the Final Approval Date, if not earlier.

7 (b) The Settlement Administrator shall send a check by mail for
8 the Court-approved Enhancement Payment to the Class Representative, care of Class
9 Counsel or directly to the Class Representative at an address provided by Class
10 Counsel.

11 6.12.3 Within fourteen (14) calendar days after wire receipt of the entire
12 Gross Settlement Amount, as defined herein, the Settlement Administrator shall issue
13 Settlement Shares to Settlement Class Members in the form of a check, which shall
14 become null and void if not deposited within one hundred and twenty (120) days of
15 issuance. After ninety (90) days of issuance, the Settlement Administrator shall send a
16 reminder notice to any Settlement Class Members who have not yet cashed their
17 settlement checks. If the Settlement Class Member to whom the undeposited check is
18 issued does not contact Class Counsel or the Settlement Administrator concerning his or
19 her settlement payment within one-hundred eighty (180) days of the original issuance of
20 the payment, the amount of that Settlement Class Member's Settlement Share that has
21 remained undeposited as of that time, plus any interest that has accrued on that sum from
22 the date of entry of the initial judgment in this Action, shall be transmitted to the
23 National Council for Occupational Safety and Health, a national organization whose
24 mission is to promote a safe and healthy workplace for all working people. (hereafter
25 "*Cy Pres Designee*").

26 6.12.4 The failure by a Class Member to claim or deposit any check issued
27 by the Settlement Administrator shall have no effect on that Class Member's release of
28 all Released Claims as set forth herein.

1 6.12.5 No person shall have any claim against the Settlement
2 Administrator, Defendant or any of the Released Parties, the Class Representative, the
3 Class Members, or Class Counsel based on distribution or payments made substantially
4 in accordance with this Settlement, or further orders of this Court. The Settlement
5 Administrator, however, shall be licensed and bonded in an amount sufficient to cover
6 any claims against it.

7 6.13 Release of Claims

8 6.13.1 Upon full and final payment by Defendant of the Gross Settlement
9 Amount consistent with Section 6.12.1, the Class Representative and each Class
10 Member, who did not opt out of the Settlement, shall be deemed to have fully, finally,
11 and forever released the Releasees from all Released Claims, as defined in Section 2.30,
12 supra. Such release includes a limited California Civil Code Section 1542 (“Section
13 1542”) waiver. Section 1542 states: “A general release does not extend to claims that
14 the creditor or releasing party does not know or suspect to exist in his or her favor at the
15 time of executing the release and that, if known by him or her, would have materially
16 affected his or her settlement with the debtor or released party.” The Class
17 Representative’s and the Class Members’ limited Section 1542 waiver releases all
18 claims, known or unknown, within the definition of Released Claims. However, to be
19 clear, the scope of the Section 1542 waiver is limited to the Released Claims. This
20 limited 1542 waiver was a specifically negotiated term and was specifically taken into
21 consideration in arriving at the Gross Settlement Amount.

22 6.13.2 In addition, upon full and final payment by Defendant of the Gross
23 Settlement Amount consistent with Section 6.12.1, and conditioned upon the Court
24 approving a Class Representative Service Award in any amount, the Class
25 Representative shall be deemed to have fully, finally, and forever released the Released
26 Parties from the Class Representative’s Released Claims, and the Class Representative
27 shall be deemed to have expressly waived and relinquished, to the fullest extent
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1 permitted by the law, the provisions, rights, and benefits he may otherwise have had
2 pursuant to Section 1542, as quoted in the preceding paragraph.

3 6.13.3 Furthermore, upon full and final payment by Defendant of the
4 Gross Settlement Amount consistent with Section 6.12.1, the PAGA claims falling
5 within the definition of Release claims pursuant to Section 2.30, will be released as to all
6 Class Members, including those that timely and validly opt-out of the Settlement
7 pursuant to Section 6.4.4, *supra*.

8 6.14 Miscellaneous Provisions

9 6.14.1 Unless otherwise specifically provided herein, all notices, demands,
10 or other communications given hereunder shall be in writing and shall be deemed to
11 have been duly given as of the third business day after mailing by United States certified
12 mail, return receipt requested, addressed as follows:

13
14 To the Plaintiff and the Class:
15 Joshua Konecky, Esq.
16 Nathan Piller, Esq.
17 Sarah McCracken, Esq.
18 SCHNEIDER WALLACE
19 COTTRELL KONECKY, LLP
20 2000 Powell Street, Suite 1400
21 Emeryville, CA 94608

22 To Defendant:
23 David S. Wilson, III
24 Jane M. Flynn
25 FEDERAL EXPRESS CORPORATION
26 2601 Main Street, Suite 340
27 Irvine, CA 92614

28 6.14.2 The Parties hereto agree that the terms and conditions of this
Settlement are the result of lengthy, intensive, arm's-length negotiations between the
Parties and that this Settlement shall not be construed in favor of or against any Party by
reason of the extent to which any Party or its counsel participated in the drafting of this
Settlement.

6.14.3 The Class Representative, by signing this Settlement, is bound by
the terms herein and further agrees not to request to be excluded from the Settlement and

1 not to object to any terms of this Settlement. Any such request for exclusion or objection
2 shall therefore be void and of no force or effect. Defendant, Class Counsel, and the Class
3 Representative waive their rights to file an appeal, writ, or any challenge whatsoever to
4 the terms of this Settlement.

5 6.14.4 Neither Class Counsel nor any other attorneys acting for, or
6 purporting to act for, the Class, Class Members, or the Class Representative, may
7 recover or seek to recover any amounts for fees, costs, or disbursements from the
8 Releasees or the Settlement except as expressly provided herein.

9 6.14.5 Plaintiff, Defendant, and their respective counsel will not initiate
10 any public disclosure of the Settlement or publicize the Settlement, including the fact of
11 the Settlement, its terms or contents, and the negotiations underlying the Settlement, in
12 any manner or form, directly or indirectly, to any person or entity. Notwithstanding the
13 foregoing, Class Counsel may discuss the terms of the Settlement to potential class
14 members to the extent contractually required to effectuate the terms of the Settlement as
15 set forth herein and/or to fulfill their duties as Class Counsel under FRCP 23. In
16 response to inquiries from third parties, Class Counsel may respond only that "The
17 Parties have reached an agreeable solution." Class Counsel will take all steps necessary
18 to ensure that Plaintiff is aware of, and will encourage him to adhere to, the restriction
19 against any public disclosure of the Settlement.
20

21 6.14.6 This Settlement may not be changed, altered, or modified, except in
22 writing signed by the Parties or their counsel of record hereto, and approved by the
23 Court. This Settlement may not be discharged except by performance in accordance with
24 its terms or by a writing used by the Parties hereto.

25 6.14.7 This Agreement, including exhibits, constitutes the full, complete,
26 and entire understanding, agreement and arrangement between the Class Representative
27 and Settlement Class Members on the one hand and Defendant on the other hand with
28 respect to the settlement of the Action and Released Claims against Defendant. Except

1 those set forth expressly in the Agreement, there are no other agreements, covenants,
2 promises, representations, or arrangements between the Parties with respect to the
3 settlement of the Action and the Released Claims against Defendant.

4 6.14.8 This Settlement shall be binding upon and inure to the benefit of the
5 Parties hereto and their respective heirs, trustees, executors, Settlement Administrators,
6 successors, and assigns.

7 6.14.9 This Settlement shall become effective upon its execution by the
8 Parties. The Class Representative, Class Counsel, Defendant and Defendant's Counsel
9 may execute this settlement in counterparts, and execution of counterparts shall have the
10 same force and effect as if each had signed the same instrument.

11 6.14.10 In the event one or more of the Settling Parties to this
12 Settlement institutes any legal action, arbitration, or other proceeding to enforce the
13 provisions of this Settlement or to declare rights and/or obligations under this
14 Settlement, the successful Party or Parties shall be entitled to recover from the
15 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
16 witness fees incurred in connection with any enforcement actions, under the standards
17 set forth in *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*,
18 434 U.S. 412, 417 (1978). Notwithstanding the entry of Final Judgment, the Court shall
19 retain jurisdiction of this matter for purposes of interpreting and enforcing the terms of
20 this Agreement and the Judgment.

21 6.14.11 This Settlement and the exhibits hereto shall be considered to
22 have been negotiated, executed, and delivered, and to have been wholly performed, in
23 the State of California, and the rights and obligations of the Parties to the Settlement
24 shall be construed and enforced in accordance with, and governed by, the substantive
25 laws of the State of California without giving effect to that State's choice of law
26 principles.
27
28

1 6.14.12 Paragraph titles or captions contained in the Settlement are
2 inserted as a matter of convenience and for reference, and in no way define, limit,
3 extend, or describe the scope of this Settlement, or any provision thereof.

4 6.14.13 Class Counsel will provide an opportunity for Defendant's
5 Counsel to review the Motions for Preliminary and Final Approval prior to filing with
6 the Court, including furnishing any drafts at least seven (7) days before filing or as early
7 as practicable.

8 6.14.14 Plaintiff and Class Counsel represent that they do not
9 currently intend to pursue any claims against Defendant (with the exception of those
10 claims asserted in and/or arising out of the Overpeck case pending in the Northern
11 District of California, case number 4:18-cv-07553-PHJ), including, but not limited to,
12 any and all claims relating to or arising from Plaintiff's employment with Defendant,
13 and that Class Counsel is not currently aware of any facts or legal theories upon which
14 any claims or causes of action could be brought against Defendant by Plaintiff or anyone
15 else, excepting those facts or legal theories alleged in the Complaints in this Action, any
16 of the complaints or pleadings in the Northern District case referenced above, and/or by
17 any plaintiff or putative class member in the Northern District case referenced above
18 based on facts or legal theories asserted in that case or arising out of that case. Class
19 counsel also represents that other than plaintiffs and putative class members in the
20 Northern District case referenced above, they do not currently represent any clients with
21 claims against FedEx. Class Counsel further represents that they will not market or
22 publicize this Settlement, including publishing it on any website, or direct third parties to
23 the public record in this case (either before or after any final approval of this Settlement
24 by the Court), and that they are not searching for or soliciting any former or present
25 FedEx employees to step into Plaintiff's shoes to pursue the claims asserted in the
26 Complaints on behalf of current or former FedEx employees outside the settlement
27 Class. The Parties further acknowledge, understand, and agree that this representation is
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1 essential to the Agreement and that this Agreement would not have been entered into
2 were it not for this representation.

3 6.14.15 Plaintiff has claimed and continues to claim that the Released
4 Claims have merit and give rise to liability on the part of Defendant. Defendant claims
5 that the Released Claims have no merit and do not give rise to liability. This Agreement
6 is a compromise of disputed claims. Nothing contained in this Agreement and no
7 documents referred to herein and no action taken to carry out this Agreement may be
8 construed or used as an admission by or against Defendant or Plaintiff or Class Counsel
9 as to the merits or lack thereof of the claims asserted.

10 6.14.16 With respect to all the documents produced by Defendant in
11 this litigation, Plaintiff's attorneys acknowledge that they continue to be bound by the
12 Parties' Stipulated Protective Order and that these documents must be kept confidential
13 and otherwise handled in accordance with the terms of the Protective Order.

14 6.14.17 IRS Circular 230 Disclaimer. Each Party to this Agreement
15 (for purposes of this section, the "acknowledging party" and each Party to this
16 Agreement other than the acknowledging party, an "other party") acknowledges and
17 agrees that:
18

- 19 a. No provision of this Agreement, and no written communication
20 or disclosure between or among the Parties or their attorneys and
21 other advisers, is or was intended to be, nor shall any such
22 communication or disclosure constitute or be construed or be relied
23 upon as, tax advice within the meaning of United States Treasury
24 Department circular 230 (31 CFR part 10, as amended);
25 b. The acknowledging party (a) has relied exclusively upon his, her
26 or its own, independent legal and tax counsel for advice (including
27 tax advice) in connection with this Agreement; (b) has not entered
28 into this Agreement based upon the recommendation of any other

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Party or any attorney or advisor to any other Party; (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the acknowledging party; and
(3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

6.14.19 The Parties agree that the claims asserted in the operative Second Amended Complaint on behalf of those outside the settlement Class shall be dismissed without prejudice.

IN WITNESS WHEREOF, this settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: 01/25/2022

By: Lee S
Lee Sprewell
Plaintiff

Dated: 1/20/22


By: David S. Wilson III
Federal Express Corporation
By: David S. Wilson III
Its: In-house Lead Counsel
Defendant

APPROVED AS TO FORM AND CONTENT:

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SCHNEIDER WALLACE COTTRELL
KONECKY, LLP

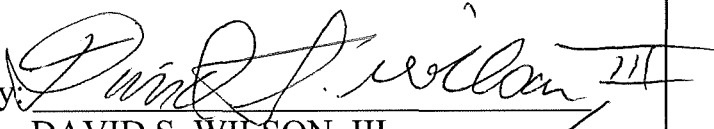
Dated: 01 / 25 / 2022

By: 

JOSHUA KONECKY
NATHAN PILLER
SARAH MCCRACKEN
Attorneys for Plaintiff

FEDERAL EXPRESS CORPORATION

Dated: 1/26/22

By: 

DAVID S. WILSON, III
Attorneys for Defendant

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