

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by the United States of America (acting through the United States Attorney’s Office for the District of Columbia (“USAO-DC”) and on behalf of the federal government agencies and entities purchasing services under the Contracts identified in Paragraph A, below); FedEx Corporation, Federal Express Corporation, FedEx Ground Package System, Inc., FedEx Freight, Inc., FedEx Office and Print Services, FedEx Custom Critical, Inc., FedEx Trade Networks, FedEx Supply Chain Services and FedEx Corporate Services, Inc. (collectively, “FEDEX”); and Mary Garofolo (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. FEDEX and its affiliated operating companies provide logistics, transportation, and related business services to commercial and government customers. In 2001, FEDEX entered into a Multiple Award Schedule (MAS) contract (No. GS-23F-0170L) with the U.S. General Services Administration (“GSA”) to provide delivery services to civilian agencies of the United States, and that contract was renewed in 2006. Starting in March 2009, FEDEX entered into a contract (No. DJJ09-C-1806) with the U.S. Department of Justice (“DOJ”) to provide delivery services to DOJ. FEDEX also holds a Blanket Purchase Agreement (BPA) (No. F11626-2002-A-0007) with the U.S. Department of Defense (“DoD”) to provide delivery services to military agencies of the United States.

B. In May 2006, Relator filed an action in the United States District Court for the District of Columbia, captioned *United States ex rel. Garofolo v. FedEx Corp., et al.*, Civil Action No. 1:06CV00815 (EGS), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). In her complaint, Relator alleges that in the aftermath of

the September 11, 2001 terrorist attacks, FEDEX began to use a “delivery exception code” to denote when FEDEX was unable to meet its delivery commit times because of increased security measures that its couriers faced at government buildings. The exception code is known within FEDEX as a “DEX 5” or “security delay” code. While FEDEX no doubt faced legitimate security delays in the weeks and months immediately following the September 11 attacks, Relator alleges that FEDEX continued to use – and specifically, to misuse – the DEX 5 security delay codes long after security measures at government buildings subsided or became a routine part of making deliveries.

Relator’s complaint further alleges that FEDEX’s misuse of the DEX 5 code was done purposefully in order to excuse or exempt FEDEX’s own failures to make on-time deliveries to government customers, and that “Priority Overnight” deliveries, for which FEDEX generally promises a “commit time” of 10:30 a.m. the next business day, were most affected by this conduct. Relator alleges that, as a consequence of FEDEX’s false excuses of its own nonperformance, the United States paid for “Priority Overnight” delivery that was not actually provided; moreover, with respect to purchases under the GSA MAS contract, FEDEX’s misuse of the DEX 5 codes improperly exempted late packages from being eligible for the FEDEX Money Back Guarantee. The Money Back Guarantee is not applicable to deliveries made pursuant to the DoD BPA.

C. Following its investigation of the Relator’s allegations, the United States intervened in the Civil Action on March 16, 2011. On March 18, 2011, the United States asked the Court to extend the seal period, however, so that it and FEDEX might finalize this Agreement in resolution of the Civil Action.

D. The United States contends that it has certain civil claims against FEDEX arising from FEDEX's misuse of the DEX 5 "security delay" code as well as misuse of the DEX 8 "customer not in" and DEX 24 "recipient unavailable" delivery exception codes in conjunction with deliveries to government facilities between January 1, 2002 and the Effective Date of this Agreement. More specifically, the United States' claims arise from the following alleged misuses in connection with false claims for payment submitted to, as well as overpayments, refunds, or other obligations not paid to the United States, where the United States is the payor for the shipments:

- Coding packages with any of the DEX 5, 8, or 24 codes before the FEDEX delivery vehicle left the FEDEX service station.
- Coding packages with any of the DEX 5, 8, or 24 codes when the FEDEX courier encountered heavy traffic.
- Coding packages with any of the DEX 5, 8, or 24 codes prior to the FEDEX courier's arrival at the government facility to which the packages were to be delivered.
- Coding packages with any of the DEX 5, 8, or 24 codes because of a delay or inability to deliver packages at a previous destination.
- Coding all packages on a delivery vehicle with any of the DEX 5, 8, or 24 codes without regard to conditions encountered at each package's final destination.
- Coding packages with any of the DEX 5, 8, or 24 codes when the FEDEX delivery vehicle was unable to park in a government facility's loading dock or otherwise unable to find convenient parking to access the delivery point.
- Coding packages with a DEX 5 or 24 code when the government facility's security measures did not, in fact, delay delivery.
- Coding packages with a DEX 5 or 24 code where the government facility had routine, regular, or daily security procedures of which FEDEX was aware.
- Coding packages with any of the DEX 5, 8, or 24 codes where the circumstances did not justify the use of these codes.

This conduct, along with the conduct alleged in the *qui tam* complaint in the Civil Action, is referred to herein as the “Covered Conduct.”

E. FEDEX denies the allegations of the United States as set forth in Paragraph D and the claims and allegations made by Relator in the Civil Action. This Agreement represents a compromise to avoid continued litigation and its associated risks and is neither an admission of liability by FEDEX nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator’s reasonable expenses, attorney’s fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. FEDEX shall pay, by electronic funds transfer, to the United States Eight Million Dollars (\$8,000,000.00) (“Settlement Amount”), plus interest on the Settlement Amount at the federal post-judgment interest rate in effect on the Effective Date of this Agreement if payment is not made within ten (10) business days of receipt of instructions regarding the electronic funds transfer. The Office of the United States Attorney for the District of Columbia will provide FEDEX with written instructions regarding the electronic funds transfer no later than five (5) days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from FEDEX and as soon as feasible after receipt, the United States shall pay One Million Four Hundred Forty Thousand Dollars (\$1,440,000.00) to Relator by electronic funds transfer.

3. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon FEDEX's full payment of the Settlement Amount pursuant to Paragraph 1, the United States releases FEDEX, together with its predecessor corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, employees, and affiliates; and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or any other statute creating causes of action for civil damages or civil penalties which the Civil Division of the USAO-DC or the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, § 0.45(d) (1999); along with the common law theories of: breach of contract, payment by mistake, unjust enrichment, misrepresentation, and fraud, including fraud in the inducement and promissory fraud.

4. Subject to the exceptions in Paragraph 6 below, and conditioned upon FEDEX's full payment of the Settlement Amount set forth in Paragraph 1 as well as FEDEX's payment to Relator of the agreed-upon amount of Relator's reasonable expenses, attorney's fees, and costs incurred in this matter pursuant to 31 U.S.C. § 3730(d)(1) as set forth in a separate written agreement between FEDEX and Relator's Counsel, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases FEDEX, together with its predecessor corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, employees and affiliates; and the successors and assigns of any of them, from any claims (including attorney's fees, costs, and expenses of every kind and

however denominated) known or unknown, arising out of facts or circumstances existing prior to and through the Effective Date of this Agreement, that Relator has asserted, could have asserted, or may assert in the future against FEDEX, including but not limited to any civil monetary claim that Relator ever had, now has, or will ever have based on the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 or that Relator ever had, now has, or will ever have under 31 U.S.C. § 3730(h). Relator warrants that she has no other information upon which to base a False Claims Act case against FEDEX, its predecessor corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, employees and affiliates; and the successors and assigns of any of them.

5. In further consideration for the release given in Paragraph 4 above, FEDEX fully and finally releases Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) known or unknown, arising out of facts or circumstances existing prior to and through the Effective Date of this Agreement, that FEDEX has asserted, could have asserted, or may assert in the future against Relator.

6. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly provided for in Paragraph 3, any administrative liability, including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. FEDEX waives and shall not assert any defenses FEDEX may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. FEDEX fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that FEDEX has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of FEDEX, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) FEDEX's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment FEDEX makes to the United States pursuant to this Agreement and any payments that FEDEX may make to Relator, including reasonable costs and attorney's fees as provided by 31 U.S.C. § 3730(d)(1);

are unallowable costs for government contracting purposes (hereinafter referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by FEDEX, and FEDEX shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, FEDEX shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by FEDEX or any of its subsidiaries or affiliates from the United States. FEDEX agrees that the United States, at a minimum, shall be entitled to recoup from FEDEX any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine FEDEX’s books and records and to disagree with any calculations submitted by FEDEX or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by FEDEX, or the effect of any such Unallowable Costs on the amount of such payments.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Upon receipt of the payment described in Paragraph 1 above, the United States, for and on behalf of itself and Relator, shall promptly file in the Civil Action a Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41(a)(1).

13. Except as separately agreed to by FEDEX and Relator regarding Relator's reasonable expenses, attorney's fees, and costs pursuant to 31 U.S.C. § 3730(d)(1), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on FEDEX's successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.


21. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 04/29/11

BY:



Laurie Weinstein
Assistant United States Attorney
for the District of Columbia

FEDEX CORPORATION

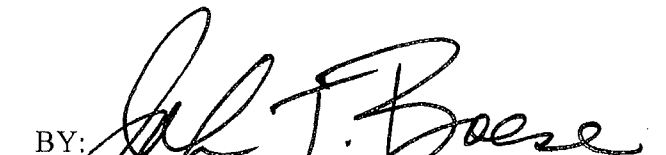
DATED:

BY:

James H. Ferguson
Corporate Vice President, Customer/Business Transactions
FedEx Corporation

DATED:

BY:



John T. Boese
Fried Frank Harris Shriver & Jacobson LLP
Counsel for FedEx Corporation

MARY GARAFOLO

DATED:

BY:

Mary Garafolo

THE UNITED STATES OF AMERICA

DATED:

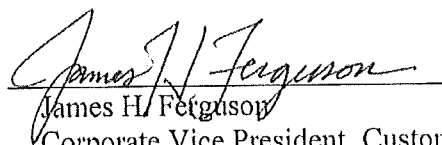
BY: _____

Laurie Weinstein
Assistant United States Attorney
for the District of Columbia

FEDEX CORPORATION

DATED: 04/29/11

BY: _____


James H. Ferguson

Corporate Vice President, Customer/Business Transactions
FedEx Corporation

DATED:

BY: _____

John T. Boese
Fried Frank Harris Shriver & Jacobson LLP

Counsel for FedEx Corporation

MARY GARAFOLO

DATED:

BY: _____

Mary Garafolo

DATED:

BY: _____

Joseph T. Mallon, Jr.
Steven J. McCool

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

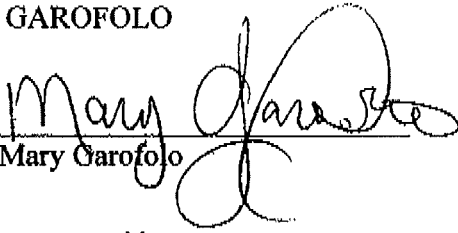
DATED: BY: _____
Laurie Weinstein
Assistant United States Attorney
for the District of Columbia

FEDEX CORPORATION

DATED: BY: _____
James H. Ferguson
Corporate Vice President, Customer/Business Transactions
FedEx Corporation

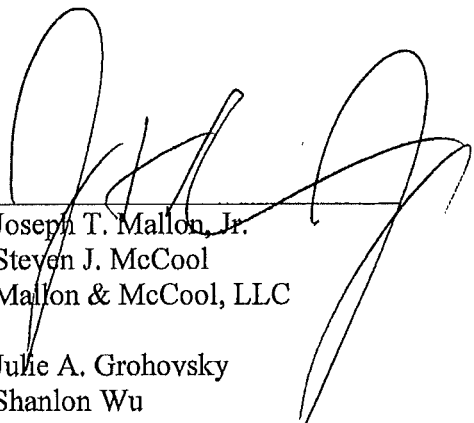
DATED: BY: _____
John T. Boese
Fried Frank Harris Shriver & Jacobson LLP
Counsel for FedEx Corporation

MARY GAROFOLO

DATED: BY:  4-29-2011
Mary Garofolo

DATED:

BY:



Joseph T. Mallon, Jr.
Steven J. McCool
Mallon & McCool, LLC

Julie A. Grohovsky
Shanlon Wu
Wu, Grohovsky & Whipple

Counsel for Mary Garafolo