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TO: Hon. John P. Sellers, III  
Administrative Law Judge

FAX NO.: 513-684-6108

FROM: Lee Seham

SUBJECT: Estabrook v. FedEx  
Case No. 2014-AIR-22

DATE: May 4, 2015

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MESSAGE:

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May 4, 2015

BY FAX

Hon. John P. Sellers, III  
Administrative Law Judge  
Office of Administrative Law Judges  
United States Department of Labor  
36 E. 7th St., Suite 2525  
Cincinnati, Ohio 45202

Re: *Estabrook v. Federal Express Corporation*  
Case No. 2014-AIR-22

Dear Judge Sellers:

We are on a path of this matter being resolved on the basis of attrition rather than on the merits; therefore, we respectfully request that, in accordance with 29 C.F.R. Part 18 and the Federal Rules of Civil Procedure, the Respondent, at a minimum, be required to respond to the Complainant's Motion for Partial Summary Judgment so that its positions on the salient issues can be properly identified and the discovery process potentially narrowed. We also request that the Respondent be required to respond to the Complainant's Motion to Compel.

Due to Respondent's failure to respond to the Complainant's First Combined Discovery, dated August 29, 2014, Complainant filed a motion to compel with this court on November 17, 2014. Pursuant to the court's request, we attempted to resolve the outstanding issues. A teleconference with Your Honor and the parties was held on December 18, 2014, during which the Respondent FedEx agreed to provide a privilege log and supplement its discovery responses later that week. However, it was not until January 15, 2015 – four and a half months after the initial discovery request – that Respondent provided a privilege log and a few additional documents.

On February 3, 2015, FedEx provided supplemental responses to the Complainant's Request for Interrogatories and Requests for Admissions, but omitted promised supplemental documents and interrogatory responses. FedEx counsel failed to respond to three email reminders sent on February 3, February 10, and February 17, 2015.

On February 18, 2015, the Complainant filed an Amended Motion to Compel seeking an order compelling FedEx to provide appropriate responses and to reimburse Complainant for all reasonable expenses arising from the motion, including attorney's fees, pursuant to FRCP 37(d). To date, the Respondent has neither filed a response nor requested an extension to respond to this motion.

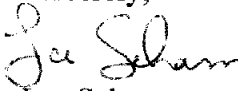
Frustrated and exhausted by these discovery delays, the Complainant filed a Motion for Partial Summary judgment on March 25, 2015. With respect to that motion as well, the Respondent has neither filed a response nor requested an extension to respond.

It is now over eight months since Complainant filed his first discovery request and, while the Court has ordered the Respondent to provide documents designated as privileged for an *in camera* review, the remaining issues raised by the Complainant's discovery motion dating back to November 17, 2014, remained unanswered. As the Court will understand, this has been a costly and discouraging process for the Complainant.

We request that the Court either grant the Complainant's Motion to Compel with respect to all issues other than the issue of privilege, or, direct the Respondent to submit its response to Complainant's Motion to Compel no later than May 18, 2015.

We also respectfully request that the Court direct the Respondent to submit a response to Complainant's Motion for Partial Summary Judgment by that date as well. Although the Court has expressed its reluctance to rule on the motion, we are certain that just obtaining the Respondent's response will serve to identify and/or narrow the issues in a manner that will lessen the burden on both the Complainant and this Court.

Thank you for your consideration of this matter.

Sincerely,  
  
Lee Seham

cc: David Knox, Esq.