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**UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

Mark Estabrook, Complainant, v. Federal Express Corporation, Respondent.	CASE NO. 2014-AIR-00022 (Hearing Date: TBA) COMPLAINANT'S FIRST COMBINED DISCOVERY INTERROGATORIES, REQUESTS FOR DOCUMENTS, AND REQUESTS FOR ADMISSIONS
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TO: Respondent, by and through its attorney of record, David P. Knox, Esq., Senior Counsel, David.Knox@fedex.com, FedEx, Legal Department, 3620 Hacks Cross Road, Building B, 3rd Floor, Memphis, TN 38125, Tel. (901) 434-8600.

Pursuant to 29 C.F.R. §§ 18.13, 18.14, 18.16, 18.18, 18.19, 29, and 18.20, hereby served upon Respondent are the Complainant's First Combined Discovery Interrogatories, Requests for Documents, and Requests for Admissions, to be responded to in accordance with the foregoing citations and below stated instructions:

DEFINITIONS

- A. The term 'you' (or any form thereof) shall mean the Respondent to this action, Federal Express Corporation, and shall include its employees, officers, executives, directors, contractors, consultants, experts, agents, and, to the extent not privileged, its attorneys.

- B. The word '**document**' shall have the same meaning as provided in Fed. R. Civ. P. 34(a).
- C. The term '**electronically stored information**' or '**ESI**' shall have the same meaning as provided in Fed. R. Civ. P. 34(a).
- D. The term '**possession, custody or control**' shall mean documents that you actually possess, or that you have a legal right or claim to obtain on demand, or that are held by your attorney, expert, insurance company, accountant, spouse, contractor, or agent, or that are held by your subsidiary, affiliated corporation or branch office, or that are owned by a third person but possessed by you, or that you may release by providing authorization.
- E. The term '**tangible thing**' shall have the same meaning as provided in Fed. R. Civ. P. 34(a)(1)(B).
- F. The term '**day**' shall mean calendar days (not work days).
- G. The term '**related to**' (or any form thereof) shall have as broad an application, but not broader, than the scope of discovery allowed under Fed. R. Civ. P. 26(b)(1). Subject to this, this term includes: constituting, consisting, reflecting, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or relevant to. This term necessarily also includes information that is in opposition to, as well as in support of, the position(s) and claim(s) of Complainant in this action.
- H. The term '**communication**' means any manner or form of information, memorandum or notes or message transmission, however produced or reproduced, whether by 'document' as herein defined or orally or otherwise, which is made in your name or in concert with others, or which is distributed or circulated between or among persons, or data storage or processing units and any and all documents containing, consisting of, or relating or referring, in any way, either directly or indirectly to, a communication as herein defined.
- I. As used herein, '**and**' as well as '**or**' shall be construed either disjunctively or conjunctively as necessary to bring documents within the scope of this Request for Production which might otherwise be construed to be outside its scope.
- J. As used herein, '**identify**' means to provide the name, job title, and address.
- K. As used herein, '**produce**' means to make a document or item available according to the instructions herein below.
- L. As used herein, '**wrote**' means to write or cause to be written by any method, or generate by any method, a document as defined herein.

- M. As used herein, ‘**Complaint**’ means the complaint filed by Captain Mark Estabrook on October 3, 2013, with the United States Department of Labor, that is the subject of the Department’s letter of July 15, 2014, and Captain Estabrook’s Objections dated August 12, 2014.

INSTRUCTIONS

- A. **TIME OF RESPONSE:** All Interrogatories, Requests for Documents and Requests for Admissions are to be answered in writing, under oath, within thirty (30) days of service, counting from one day after the date of service of this Combined Request (i.e. the day after service is day one).
- B. **SUPPLEMENTATION.** Pursuant to 29 C.F.R. § 18.16(a), responses are to be timely supplemented in the same manner that the original response is made.
- C. **AMENDMENT.** Pursuant to 29 C.F.R. § 18.16(b), responses are to be timely amended in the same manner original that the response is made.
- D. **PRODUCTION OF DOCUMENTS:** By delivering identical reproductions of responsive documents, either in a paper, hardcopy format or in a digital format on any removable storage medium (ex. CD ROM, or USB drive), through the means of either U.S. mail, third party carrier service, or email attachment, to:

LEE SEHAM, Esq.
Email:
lseham@ssmplaw.com
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

- E. **FORM OF PRODUCED ELECTRONICALLY STORED INFORMATION:** Pursuant to Fed. R. Civ. P. 34(b)(1)(C), all ESI documents may be produced in either of two forms: i) hard-copy (paper) form *in lieu* of ESI, or; ii) in electronic form in “pdf” format, or in a reasonably usable format within the meaning of Fed. R. Civ. P. 34(b)(E)(ii).

INTERROGATORIES

Interrogatory No. 1. Identify each person you have interviewed to obtain facts relating to the Complaint.

Interrogatory No. 2. Identify each person with first-hand knowledge of any fact upon which you might rely in defense of the Complaint.

Interrogatory No. 3. Identify each person you intend to call to testify in your case in chief.

Interrogatory No. 4. Identify each person you might call to testify in your rebuttal case.

Interrogatory No. 5. Identify the custodian of any recorded conversations in which the Complainant was a party relating to the Laredo Departure referenced in paragraphs 4 through 8 of the Complaint.

Interrogatory No. 6. Identify any persons involved in the decision to place the Complainant on not qualified (NOQ) status on or about August 5, 2013.

Interrogatory No. 7. State the reasons why the Complainant was placed on NOQ status on or about August 5, 2013.

Interrogatory No. 8. Identify all efforts made to preserve recorded conversations between the FedEx GOCC, the Flight Duty Officer and the Complainant on April 10, 2013, and record conversations between the Complainant and Manager of A300/310 Fleet Operations, Captain Rob Fisher on August 9, 2013.

Interrogatory No. 9. Identify any persons who prepared or assisted in the preparation of your answers to any of these interrogatories.

Interrogatory No. 10. With respect to any denial in response to the Requests for Admissions below, identify the person you intend to call to testify to support your denial.

Interrogatory No. 11. Identify all efforts made by you to identify the individual posting as Mayday Mark after August 5, 2013.

REQUESTS FOR DOCUMENTS

Request for Document No. 1. Produce each document in your possession that you reviewed to obtain facts relating to the Complaint.

Request for Document No. 2. Produce each document in your possession that you might rely upon in defense of the Complaint.

Request for Document No. 3. Produce each document in your possession that you intend to offer in your case in chief.

Request for Document No. 4. Produce each document in your possession that you might offer in your rebuttal.

Request for Document No. 5. Produce each document in your possession that you identified in your answers to the Complainant's interrogatories.

Request for Document No. 6. Produce each document in your possession related to or referencing the Laredo Departure referenced in paragraphs 4 through 8 of the Complaint, including any document originating from, or recorded telephone call involving, Chief Pilot Bill McDonald or Rob Fisher.

Request for Document No. 7. Produce each document in your possession relating your knowledge of any terrorist organization targeting your operations or the operations of another cargo aircraft operator and the measures taken by you, if any, to respond to this threat.

Request for Document No. 8. Produce each document in your possession relating to the Complainant's request of August 4, 2013, for a meeting with you and/or the arrangements for the requested meeting.

Request for Document No. 10. Produce each document in your possession that you brought to your meeting with the Complainant on August 9, 2013.

Request for Document No. 11. Produce each document in your possession addressing the issue as to whether the Complainant was "Mayday Mark."

Request for Document No. 12. Produce each document in your possession referencing Mayday Mark.

Request for Document No. 13. Produce the documents referenced in paragraph 16 of the Complaint.

Request for Document No. 14. Produce each document referencing the Complainant originating between on or before August 4, 2013 through and including August 9, 2013.

Request for Document No. 15. Produce each document in your possession relating to correspondence, or any other communications, between you and Dr. Thomas Bettes relating in any way to the Complainant.

Request for Document No. 16. Produce each document in your possession relating to correspondence, or any other communications, between you and Dr. George Glass relating in any way to the Complainant.

Request for Document No. 17. Produce any correspondence or communication in your possession from January 1, 2008, to the present date referencing Auburn Calloway.

Request for Document No. 18. Produce each document in your possession referencing any connection between the Complainant and Russia or the Soviet Union.

Request for Document No. 19. Produce each document relating to the decision to place on the Complainant on NOQ status on or about August 5, 2013.

Request for Document No. 20. Produce each document in your possession referencing the basis or rationale for your determination in August, 2013, that Complainant should be required to submit to psychiatric evaluation.

Request for Document No. 21. Produce any correspondence between you and Investigator Jason Brush.

Request for Document No. 22. With respect to any denial in response to the Requests for Admissions below, produce any document you relied upon to support that denial.

Request for Document No. 23. Produce each document in your possession relating to the Complainant's military service.

Request for Document No. 24. Produce each document in your possession relating to Company's reference to Mr. Fred Smith, Chairman and Executive Officer of FedEx Corporation, by the single name "Fred."

Request for Document No. 25. Produce each document in your possession relating to the Complainant's raising of safety and security issues in his capacity as a union representative.

Request for Document No. 26. Produce each document in your possession relating to any effort made by you to identify the individual posting as Mayday Mark after August 5, 2013.

Request for Document No. 27. Produce each document, including any recording or ESI information, related to conversations between the FedEx GOCC, the Flight Duty Officer and the Complainant on April 10, 2013, and recorded conversations between the Complainant and Manager of A300/310 Fleet Operations, Captain Rob Fisher on August 9, 2013.

Request for Document No. 28. Produce each document in your personnel file for the Complainant.

Request for Document No. 29. Produce each document in your possession relating to any meetings between the Complainant and FedEx Express COO Bill Logue in 2002.

REQUESTS FOR ADMISSIONS

Request For Admission No. 1. That Complainant has been employed by you since 1989.

Request For Admission No. 2. That you have never terminated Complainant.

Request For Admission No. 3. That you have never suspended Complainant without pay.

Request For Admission No. 4. Complainant. That prior to 2013, you have not imposed any discipline on

Request For Admission No. 5. That Complainant's immediate supervisor in 2013 was Captain Rob Fisher.

Request For Admission No. 6. That on August 9, 2013, in response to Complainant's question as to why he was being required to submit to a psychiatric examination, Captain Rob Fisher stated to the Complainant: "all they said was that you know too much."

Request For Admission No. 7. That the reason for placing Captain Estabrook on NOQ status on or about August 5, 2013, was that you suspected him of being the individual identified as Mayday Mark.

Request For Admission No. 8. That at your meeting with the Complainant on August 9, 2013, the Complainant referenced the fact that his military service included the tracking of Soviet aircraft.

Request For Admission No. 9. That at your meeting with the Complainant on August 9, 2013, the Complainant stated his belief that the Respondent's practice of providing up-to-date package tracking information facilitated and maximized the criminal destruction of cargo, aircraft and human lives by granting terrorists the ability to carefully select the time of detonation.

Request For Admission No. 10. That at your meeting with the Complainant on August 9, 2013, the Complainant stated his belief that Respondent's practice of providing up-to-date package tracking information had the result of encouraging terrorists to view the Respondent as a particularly effective means of utilizing explosive, incendiary and other destructive devices by placing in the terrorists' hands the ability to select the most optimum timing for detonation.

Request For Admission No. 11. That at your meeting with the Complainant on August 9, 2013, the Complainant expressed an interest in improving the Respondent's security.

Request For Admission No. 12. That Mr. Fred Smith, Chairman and Executive Officer of FedEx Corporation, is commonly referred to by your pilots by the single name "Fred."

Request For Admission No. 13. That the Complainant served as the Security Chairman of the Fedex Pilots Association (FPA), which was the certified labor representative of the FedEx pilots from 1996 to 2002.

Request For Admission No. 14. That, in his capacity as Security Chairman of the FPA, the Complainant requested that Respondent cease publishing package tracking information on the grounds that such publication would give potential terrorists assistance that would facilitate timing the detonation of bombs or incendiary devices.

Request For Admission No. 15. That, in his capacity as Security Chairman of the FPA, the Complainant met with FedEx Express COO Bill Logue in 2002 and expressed the Complainant's concern that the publication of real-time tracking information in the aftermath of the 9-11 terrorist attacks was the equivalent of providing valuable intelligence to the enemy.

Request For Admission No. 16. That, prior to December 4, 2013, you declined to respond to the repeated requests of the Complainant and his legal counsel to provide the "reasonable basis" for Respondent's directive that Complainant submit to psychiatric evaluation.

Request For Admission No. 17. That your placement of the Complainant on NOQ status on August 5, 2013, resulted in the Complainant's loss of flight privileges and overtime opportunities.

Respectfully submitted this 29th day of August, 2014.

/s/ Lee Seham

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*Attorneys for Captain Mark Estabrook,
Complainant*

CERTIFICATE OF SERVICE

A copy of the foregoing document was personally served on this date by email and Federal Express overnight delivery to:

David P. Knox, Esq.,
Senior Counsel
David.Knox@fedex.com,
FedEx, Legal Department
3620 Hacks Cross Road,
Building B, 3rd Floor
Memphis, TN, 38125
Tel. (901) 434-8600.

Date: 29th day of August, 2014

/s/ Stanley Silverstone

Stanley Silverstone, Esq.
