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 13 dba FEDEX EXPRESS (erroneously sued herein as
 FedEx Corporation, dba FedEx Express)

14
 15 UNITED STATES DISTRICT COURT

16 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 EDWARD ALVARADO, JOHN AZZAM,)
 CHARLOTTE BOSWELL, TANDA BROWN,)
 18 BERTHA DUENAS, PERNELL EVANS,)
 CHARLES GIBBS, JANICE LEWIS, MARIA)
 19 MUNOZ, KEVIN NEELY, LORE PAOGOFIE,)
 DYRONN THEODORE, LASONIA)
 20 WALKER, and CHRISTOPHER)
 WILKERSON,)

Case No. C04-0098 SI
 Case No. C04-0099 SI

**DEFENDANT'S REPLY IN SUPPORT
 OF ITS MOTION FOR
 DECLARATORY RELIEF**

Date: February 1, 2008

21 Plaintiff/Counterclaim Defendant,

Time: 9:00 a.m.

22 GARY WHITE, and ALEX RIVERA,

Judge: Hon. Susan Illston

23 Plaintiff/Counterclaim Defendant,

24 KAY PARKER, MICHAEL DAVIS, ANGELA
 ALIOTO, ANGELA ALIOTO
 25 PROFESSIONAL LAW CORP., and BRUCE
 FUNK,

26 Counterclaim Plaintiff,

27 v.

28 FEDEX CORPORATION, a Delaware

1 Corporation, dba FEDEX EXPRESS)
 2 Defendant/Counterclaim)
 3 Plaintiff.)

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STATUTES/RULES/REGULATIONS:

Fed. R. Civ. Proc. 226,7

1 Defendant, Federal Express Corporation, files this reply in support of its Motion for
2 Declaratory Relief (Doc. No. 976), herein referred to as "Motion for Relief," in response to Kay
3 McKenzie Parker's Opposition to Defendant's Motion for Declaratory Relief (Doc. No. 999),
4 herein referred to as "Opposition."

5
6 **A. Preliminary statement.**

7 Through smoke and mirrors Parker attempts to convince this Court to view the issues
8 raised in FedEx's Motion for Relief as complicated, and warranting either a deferral to the
9 Special Master or denial of the relief sought. To view this dispute as complicated one must be
10 steadfastly fixed on ignoring simple undisputed facts, debunking decades of legal precedent, and
11 magically creating liabilities and recoveries so far removed from the intent of the civil rights
12 laws that only terminated lawyers benefit to the detriment of their clients. No one benefits from
13 Parker's position except Parker. Her position does not encourage lawyers to take on civil rights
14 cases but undermines the interest and will of the clients. Her Opposition is based on the
15 erroneous conclusion there is no difference between a judgment on the merits and a settlement,
16 and commitment to ignore decades of interpleader precedent while offering no legal precedent
17 for any of her erroneous assertions. As to public policy, not only is Parker undermining the
18 benefits settlements bring to the judiciary but intends to breach (with the authorization of this
19 Court) her fiduciary duty to her former clients by exposing them to indemnification claims by
20 FedEx.
21
22

23 The basis for FedEx's relief is simple—the parties settled and therefore apart from the
24 settlement agreements there is no additional relief or obligation owed by any party to their
25 current or terminated counsel. After Parker was terminated by the Settlement Plaintiffs they
26 recognized the risk and delay associated with trial and reached a settlement with FedEx without
27 the need for a trial. It goes without saying there is no judgment on the merits. All settlement
28

1 funds were interpleaded to protect lienholders, including Parker. Along comes a terminated
2 lawyer, not satisfied with \$1,499,000 of interpleaded funds, as well as the \$358,183 in funds she
3 received in the *Satchell* litigation, seeks to obtain the interpleaded funds, pretends there is a
4 judgment on the merits against FedEx in favor of Settlement Plaintiffs, ignores interpleader law,
5 and intends to assert a new lawsuit against FedEx.
6

7 The facts, law, reasoning and common sense dictate that the Motion for Relief be granted
8 in its entirety. It is now time for the madness to stop.¹

9 **B. FedEx is entitled to the relief sought because Parker failed to offer any**
10 **factual evidence in support of her extraordinary position.**

11 Parker's Opposition failed to establish any factual basis for the extraordinary claim she is
12 entitled to obtain relief through the interpleader process, and directly against the released party
13 (FedEx) with whom her former clients settled. The Opposition provides no factual testimony
14 supporting her position.

15 Based on the factual record, this Court should grant the relief requested by FedEx
16 because:

- 17 1. There has been no trial on the merits;
- 18 2. There has been no judgment issued by this Court (page 3 of the Opposition
19 concedes "[n]o entry of judgment has yet issued concerning these [settlement]
20 plaintiffs' cases");
- 21 3. There is no basis for this Court to issue a judgment on the merits given that there
22 has been no trial on the merits, and Settlement Plaintiffs voluntarily and
23 intentionally settled their claims;
- 24 4. The Settlement Plaintiffs intended that they would be responsible for
25 compensating their attorneys, including Parker because paragraph 8 of the
26 settlement agreements states that "each party will bear its own costs, including
attorney's fees, arising from this action" (emphasis added); and

27 ¹ It should be noted that Davis, like Parker is a former attorney for the Settlement Plaintiffs, who notified the Court
28 of his decision not to oppose the Motion for Relief. Doc. No. 998. This non-opposition speaks volumes as to just
how troublesome Parker's positions are in this matter.

1
2 5. The Settlement Plaintiffs warranted that they had authority to enter the Settlement
3 Agreements (Paragraph 18), and the Settlement Plaintiffs are subject to legal
4 action (including an action for indemnification) if their warrant was unreliable.

5 As to points 4 and 5 above, but for a settlement reached by her former clients, Parker
6 would have no interpleader claim to the settlement proceeds. Therefore, given that Parker's
7 interest to the interpleaded settlement funds only arises out of her client's negotiated settlement,
8 Parker is bound by the settlements, and any subsequent action against FedEx subjects her clients
9 to liability. Interestingly, Parker provided no declaration testimony that the intent of the
10 Settlement Plaintiffs was any different than what was contained in the settlement agreements or
11 FedEx's moving papers. Therefore, she cannot undermine the benefit of the settlements reached
12 by her former clients.

13 **C. The argument Parker is not bound by the settlement agreements is void**
14 **of logic and reasoning, and not supported by the cases cited in her**
15 **Opposition.**

16 All of Parker's multi-approach theories underlying her claim of not being bound by the
17 settlement agreements must fail based on the facts and the law.²

18 Parker's erroneous claim she is not bound by the settlement agreements because she has
19 received no "benefit" from the negotiated settlement (Opposition, p. 5) is not only wrong but
20 void of any logic. The "benefit" received by Parker is that she is now eligible to participate in an
21 interpleader action whereby she is entitled to some of the \$1.499 million in settlement funds.
22 But for the settlement she would not be entitled to the "benefit" of participating in the
23 interpleader action and partaking of the \$1.499 million. But for the settlement Parker would
24 have to wait for trial, and assuming her former clients prevailed on the merits, she has standing,
25

26
27 ² By addressing these arguments FedEx does not concede that any of them are legitimate and based on applicable
28 law. FedEx only addresses Parker's arguments to illustrate how they are fundamentally flawed and meritless.

1 and the verdict is upheld by the Ninth Circuit, she must then pursue those fees post-trial. The
2 settlement reached by her former clients alleviates the uncertainty and risks associated with trial.
3 There is a “benefit” to Parker. It is by reason of the settlement agreements that Parker is
4 anticipating recovering fees first from the interpleader actions, and thereafter, through a second
5 meritless action against FedEx. Therefore, her argument of not receiving any “benefit” is
6 baseless.
7

8 Second, even assuming arguendo that Parker received no benefit, the interpleader process
9 specifically reserves 40% of the amounts received by way of settlement as called for in the
10 Engagement for Legal Services and Addendum No. 1 to the Attorney Representation Agreement
11 that Parker entered with each of the Settlement Plaintiffs.³ As a result, even though Parker did
12 not participate in the settlement negotiations, her right to “40% of any amounts received or
13 recovered by way of settlement” is protected because the entire amount of the settlement
14 proceeds was interpleaded, not just 40%. The further “benefit” Parker receives from the
15 settlement is that 40% of the settlement funds are reserved in the interpleader action.
16

17 Finally, Parker’s Opposition is not only flawed in its reasoning as discussed above but is
18 also void of legal support. The five (5) judicial opinions relied on for the proposition that she
19 cannot be bound by the settlement agreements entered into by the Settlement Plaintiffs, *Waffle*
20 *House, Lebow, Polo Ralph Lauren, Hess, Souza* (See Opposition, pp. 4-5), have nothing to do
21 with circumstances where the clients intentionally enter into beneficial settlement agreements,
22
23
24

25 ³ Those contracts provide for the disposition of attorneys’ fees: “We have agreed to the following attorney fee
26 arrangement . . . 40% of any amounts received or recovered by way of settlement after . . . mediation . . .” They also
27 provide for “a lien on any and all . . . settlements . . . that are the subject of my representation under this agreement.”
Doc. No. 932, Parker Decl. ¶ 3. Parker claims such agreements were signed by all Plaintiffs and what she attached
is “an exemplar of the form agreement that was signed by all Plaintiffs[.]” Parker Decl. ¶ 3(a).

1 release all claims, the released party interpleads the proceeds of the settlement, and the
2 terminated attorney seeks fees from the released party.⁴

3 The cases cited by Parker are inapposite because they arise out of enforceability of
4 arbitration provisions under the Federal Arbitration Act (*Waffle House*); pertain to a licensing
5 agreement and subsequent claims of unfair competition, breach of contract and trademark
6 infringement (*Lebow*); discuss what recourse if any the owner of goods lost at sea has against the
7 carrier when the owner of the goods is not a named party to the bill of lading (*Polo Ralph*
8 *Lauren*); focus on obtaining a judgment, offer of compromise under California Civil Procedure
9 and mutual mistake (*Hess*); and are limited to landowners leasing farmland to tenants and
10 delinquent water charges assessed to the land (*Souza*).

11
12 For the reasons articulated above FedEx is entitled to the relief requested.

13
14 **D. Contrary to Parker's Opposition interpleader does in fact require her to
relinquish her right to statutory or quantum meruit fees recovery.**

15 Parker's position that "FedEx has not established that Ms. Parker's claims against FedEx
16 are limited by law to her share of this \$1,499,000 fund" ignores fundamental interpleader law,
17 misinterprets interpleader cases, and assumes with no legal support that interpleader law carves
18 out exceptions for California statutes and common law.

19
20 Parker is forced to state the obvious: "FedEx is correct that interpleader may be
21 appropriate in order to `resolve in one proceeding all claim to a *res*," the "*res* in question here is
22 the [settlement] sum," and "FedEx may have carried its burden to establish that entitlement to
23 this *res* is contested between plaintiffs, their counsel, and lienholders including Ms. Parker."
24 Therefore, by operation of law, Parker's claims against FedEx are limited to her share of the
25

26
27 ⁴ The absence of judicial opinions on point further highlights the extraordinary and confounding nature of Parker's
claims. No court has addressed the type of claims asserted by Parker because her claims debunk decades of legal
precedent, among other things.

1 settlement funds. Parker's Opposition cites to no judicial authority for the proposition that she is
2 entitled to pursue a separate action against the party interpleading funds under either California
3 state law or common law. Since the filing of the interpleading action on November 15, 2007
4 Parker has had an opportunity to provide case law interpreting *Fed. R. Civ. P. 22* in support of
5 her position. No cases are cited for the extraordinary relief she is requesting--participating in the
6 interpleader process and allowed to pursue a separate action.
7

8 Parker's erroneous reliance on *Great American* for the proposition that her claims against
9 FedEx are *not* limited by law to her share of the settlement funds is misguided (Opposition, p. 6),
10 and the Ninth Circuit's decision is *AETNA Life Insurance Co. v. Bayona*, 223 F.3d 1030, 1034
11 (9th Cir. 2000) is directly contrary to Parker's position.
12

13 In *Great American Insurance Co. v. Bank of Bellevue*, 366 F.2nd 289, 291 (8th Cir. 1966),
14 there were two separate properties (bonds), but one "was not mentioned in the interpleader
15 complaint nor in any of plaintiff's supporting papers." *Id.* The court allowed the defendants to
16 obtain relief outside the interpleader process because in a sworn affidavit the plaintiff issued a
17 false statement denying the existence of the additional bond. It was the concern over possible
18 fraud and failure to disclose the property that compelled the court to grant the extraordinary
19 relief -- litigation outside of the interpleader action. *Id.* at 294. In this case involving FedEx, all
20 parties admit there is but one property -- the settlement funds.⁵ Therefore, Parker's reliance on
21 *Great American* is misplaced because as to FedEx all the property (settlement funds) has been
22 disclosed, there is no additional property, and there is no fraud on this Court justifying a separate
23 action.
24

25
26
27 ⁵ There are no additional agreements or properties due the Settlement Plaintiffs. See Motion for Relief, pp. 1-2;
28 Declaration of Frederick L. Douglas, ¶ 6.

1 The Ninth Circuit's decision in *Bayona* renders Parker's argument that "FedEx has not
2 established that Ms. Parker's claims against FedEx are limited by law to her share of this
3 \$1,499,000" meaningless. In *Bayona* the deceased's insurance policy (through her employer)
4 called for are disbursement of 85% of insurance proceeds to her sister and 15% to her husband.
5 The husband informed the insurance company he would seek 50%, and in response the insurance
6 company filed an interpleader action. The husband answered the interpleader action and filed a
7 separate claim against the insurance company, employer and benefits plan. The insurance
8 company filed a motion to dismiss the claim. The district court dismissed the separate claim, and
9 the Ninth Circuit affirmed, because "interpleader's primary purpose is not to compensate, but
10 rather to protect stakeholders from multiple liability as well as from the expense of multiple
11 litigation." *Bayona*, 223 F.3d at 1034 (emphasis added).
12

13
14 Parker pronouncement that she intends to "proceed with her independent claims for
15 attorney's fees that would be filed after the entry of judgment" (Response, p. 1) is expressly
16 rejected by the Ninth Circuit in *Bayona* because the interpleader process is to protect FedEx from
17 "multiple liability as well as from the expense of multiple litigation."⁶ Therefore, given the
18 Ninth Circuit's ruling in *Bayona* of precluding "multiple litigation," FedEx is entitled to the
19 relief requested as mandated by *Fed R. Civ. P. 22*.
20

21 Parker's Opposition concedes FedEx is entitled to full interpleader relief. Parker
22 correctly notes that "[u]nder the system established by [Rule] 22, interpleader is permissible
23 when 'more than a single obligation is owed, and the possibility of a double recovery justified by
24 law is very real.'" Opposition, p. 6. The number of lienholders demonstrates that certainly more
25 than "a single obligation is owed." Is there a possibility of a double recovery? Parker concedes
26

27 ⁶ Parker is not without any relief or options because she can sue her former clients and their current counsel. Any
28 compensation owed to Parker beyond her share in the interpleaded funds must come from the Settlement Plaintiffs,
and their current counsel, who may have benefited from her work.

1 as much given her threat to file a fee application after she partakes of the interpleaded funds.
2 Parker cannot have her proverbial cake and eat it to. Parker's participation in the interpleader
3 requires the relinquishment of her alleged right to statutory or quantum meruit fees recovery.

4 **E. Parker's position undermines public policy.**

5 Parker's assertion that FedEx "does not provide any support for [its] proposition [that
6 Parker's position undermines public policy that encourages litigants to voluntarily reach
7 settlement]" (Opposition, p. 9) is baseless. Assuming there is no dispute that the courts expect
8 and are served when parties voluntarily reach a settlement, it strains the imagination to believe
9 that heaping on employers the potential for fee claims by terminated attorneys after settlement
10 would not undermine or preclude voluntary settlements. FedEx did in fact articulate for this
11 Court how Parker's position undermines public policy:
12

13
14 Allowing lienholders to seek fees from FedEx after settlement
15 would be a tremendous deterrent against settlement. Parties
16 generally enter settlement to fully and finally resolve a dispute. A
17 defendant would be reluctant to enter settlement if it were subject
18 to ongoing claims and litigation by plaintiffs' lienholders.
19 Litigation with lienholders could extend well beyond the
conclusion of the litigation with the plaintiff. A defendant would
be subject to the ongoing risk that a lienholder would claim funds
from the defendant after settlement was entered. For this reason,
Parker's argument cannot be justified.

20 See Motion for Relief, p. 6.

21 Finally, Parker is prevented from filing action against FedEx by virtue of the fiduciary
22 duties she owes to her former clients.

23 An attorney owes an absolute and complete fidelity to his or her client. *Flatt v. Superior*
24 *Court*, 9 Cal.4th 275, 289 (1994); *Yorn v. Superior Court*, 90 Cal.App.3d 669, 675 (1979).
25

26 It is...an attorney's duty to protect his client in every possible way,
27 and it is a violation of that duty for him to assume a position
adverse or antagonistic to his client without the latter's free and

1 intelligent consent ... By virtue of this rule an attorney is precluded
2 from assuming any relation which would prevent him from
devoting his entire energies to his client's interests.

3 *Santa Clara County Counsel Attys. Ass'n v. Woodside*, 7 Cal.4th 525, 548 (1994) (internal
4 quotes omitted); *Anderson v. Eaton*, 211 Cal. 113, 116 (1930). A lawyer must represent the
5 client's interests without being influenced by the lawyer's personal or financial interests or the
6 interests of other clients or third parties. *Id.*; *Earl Scheib, Inc. v. Superior Court* (1967) 253
7 Cal.App.2d 703, 706.

9 The fiduciary duty of loyalty continues after termination of the attorney-client
10 relationship. A lawyer may not act in a manner that will injure the former client with respect to
11 the matter involved in the prior representation (i.e., a lawyer cannot attack his or her prior work);
12 and cannot subsequently use information gained from the prior representation to the former
13 client's disadvantage without the former client's informed consent. *Yorn v. Superior Court*, 90
14 Cal.App.3d at 675; *Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564, 571.

16 Here, by seek attorneys' fees from Fed Ex, Parker is causing a breach of the settlement
17 agreement that could be imputed to Parker's former clients. Under the settlement agreements,
18 "Releasing Party" includes by definition agents and attorneys. Paragraph 5 of the settlement
19 agreements state that the Releasing Party released all claims for monetary and equitable relief,
20 including attorneys' fees and/or costs. Paragraph 8 of the settlement agreements state that the
21 plaintiffs are responsible for compensating their attorneys. Under paragraph 18, the plaintiffs
22 warranted that they had authority to enter the settlement agreements.

24 Moreover, an action by Parker against FedEx would subject plaintiffs to an
25 indemnification action by FedEx. Paragraph 21 of the settlement agreements provides a
26
27

1 contractual right to indemnification by FedEx against the plaintiffs in the event that litigation
2 continues.

3 Because Parker's action would cause the Settlement Plaintiffs to breach the settlement
4 agreements and subject them to an indemnification action, Parker's claims for fees against Fed
5 Ex constitute a breach of her fiduciary duty of loyalty. Parker's action against FedEx would
6 constitute a position antagonistic to the interests of her former clients and would also injure her
7 former clients with respect to the prior representation. *See e.g. Santa Clara County Counsel*
8 *Attys. Ass'n v. Woodside*, 7 Cal.4th at 548; *Anderson v. Eaton*, 211 Cal. at 116. *Yorn v. Superior*
9 *Court*, 90 Cal.App.3d at 675.

11 **F. Parker does not have standing to pursue an award for fees for work**
12 **performed on behalf of the Settlement Plaintiffs.**

13 Referral of FedEx's Motion for Relief to the Special Master is not an option.⁷

14 Parker has no standing and concedes this point. By not offering facts or law to the
15 contrary Parker concedes that the Settlement Plaintiffs did not prevail on the merits.⁸
16 Furthermore, Parker offers no evidence demonstrating how the work she performed benefitted
17

18
19
20 ⁷ As clearly stated in its motion for interpleader relief (Doc. No. 955) and objection to Parker's conditional
21 agreement to the motion for interpleader (Doc. No. 964), the interpleader only pertains to seven plaintiffs, to the
22 exclusion of Alvarado, Boswell and Evans who had their claims tried on the merits. There is no dispute that the
23 Settlement Plaintiffs are not prevailing parties on the merits of their claims. Furthermore, the Court's order
deferring the petitions for fees and sanctions motions arising out of the Alvarado, Boswell and Evans matters to the
Special Master was issued before resolution of the claims between FedEx and the Settlement Plaintiffs. The
Settlement Plaintiffs are not mentioned in the Court's order, and as stated herein the factual differences between the
two sets of Plaintiffs are legally significant.

24 ⁸ Parker's self interest in maximizing fees fatally ignores the legal significance of the existence of two separate
25 groups of Plaintiffs – one group had their claims tried and a judgment was issued on the merits, and the second,
26 voluntarily settled their claims. Parker continues to cite to cases having nothing to do with the voluntary settlement
27 of cases. Given that Parker continues to ignore the difference between claims arising out of a judgment on the
merits, and public policy encouraging parties to voluntarily settle their cases, FedEx need not again restate its
summary of why the legal authority relied on by Parker is misplaced. *See Objections to Conditional Agreement*
(Doc. No. 964), pp. 7-9.

1 FedEx. Therefore, there is no basis for a *quantum meruit* action because FedEx, taking a
2 position opposite Parker's former clients, did not receive any benefits from Parker's work.

3 **G. Conclusion.**

4 FedEx requests the Court grant its Motion for Relief, and fees associated with its filing
5 and prosecution.

6 DATE: January 17, 2008

FEDERAL EXPRESS CORPORATION

8 By /s/ Frederick Douglas
9 Frederick L. Douglas
10 Lead Counsel

11 Doc. No. 715020