

1 BLECHER & COLLINS, P.C.
Maxwell M. Blecher (State Bar No. 026202)
2 mblecher@blechercollins.com
Courtney A. Palko (State Bar No. 233822)
3 cpalko@blechercollins.com
515 South Figueroa Street, Suite 1750
4 Los Angeles, California 90071-3334
Telephone: (213) 622-4222
5 Facsimile: (213) 622-1656

6 CHARLES T. COLLETT, P.C.
ctcollett@earthlink.net
7 620 Newport Center Drive, Suite 280
Newport Beach, California 92660
8 Telephone: (949) 640-7676
Facsimile: (949) 640-5858
9

Attorneys for Plaintiff AFMS LLC

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 AFMS LLC,

14 Plaintiff,

15 vs.

16 UNITED PARCEL SERVICE CO. and
17 FEDEX CORPORATION,

18 Defendants.
19
20
21

10
CASE NO. CV-05830-MMM-RC

FIRST AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATIONS OF:

(1) SHERMAN ACT § 1;
(2) SHERMAN ACT § 2;

(DEMAND FOR JURY TRIAL)

22 The above-named plaintiff files this Complaint against the above-
23 named defendants and, demanding trial by jury, complains and alleges as follows:
24

25 I.

26 JURISDICTION AND VENUE

27 1. The federal antitrust claims stated herein are filed and these
28 proceedings are instituted against the above-named defendants under Section 4 of

1 the Clayton Act (15 U.S.C. §15) to recover treble the actual damages sustained by
2 plaintiff to its business and property by reason of the above-named defendants'
3 violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) as
4 hereinafter alleged. This Court has original jurisdiction over these federal antitrust
5 claims pursuant to 28 U.S.C. §1337 and 28 U.S.C. §1332.

6 2. The interstate trade and commerce involved and affected by the
7 alleged violation of California law was carried on, in part, within this District and
8 some of the unlawful acts described herein were conceived, performed or made
9 effective within this District. Venue is appropriate in this District pursuant to 28
10 U.S.C. §1391.

11 II.

12 THE PARTIES

13 3. Plaintiff **AFMS LLC** (hereafter "AFMS") is a privately held
14 Limited Liability Company, existing under the laws of the State of Oregon, with
15 its principal place of business in Portland, Oregon. AFMS is the industry leader in
16 providing small parcel and freight consulting services and assisting shippers
17 negotiate competitive small parcel and freight contracts. AFMS conducts its
18 business through "managing directors" who act as consultants and has had the
19 largest number of such managing directors located in Southern California where
20 approximately fifty percent (50%) of its consulting business revenues were
21 generated by large shippers such as Sony, Toyota, Honda, Quiksilver, Guess,
22 Applied Bio-Systems and St. John Knits.

23 4. Defendant **United Parcel Service, Inc.** (hereafter "UPS") is a
24 corporation organized and existing under the laws of the State of Delaware, with
25 its principal place of business in Atlanta, Georgia. UPS is the world's largest
26 package delivery company delivering more than 15 million packages a day to
27 more than 6 million customers in more than 200 countries.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

FACTS COMMON TO ALL COUNTS

1
1
1
1
1
1
1
1
18
19
20

2
2
2
2
2
2

25
28

1 understand. Their respective rates depend on a variety of factors such as delivery
2 time (next day or second or more day delivery) volume of weekly or monthly
3 shipments, weight, distance, and include, without limitation, a variety of
4 surcharges for (a) fuel, (b) remote delivery area zip code charges, (c) commercial
5 versus residential delivery, (d) Saturday delivery, (e) additional handling, (f)
6 address correction for air or ground, (g) pick-up charges, (h) hazardous materials,
7 (i) large packages, (j) C.O.D., (k) declared value and (l) delivery confirmation.
8 UPS and FedEx have created a rating and fee matrix so complex that many, if not
9 most, shippers must employ specialists to help them understand the nuances of the
10 agreements and how they pertain to the parcels that shipper wishes to deliver.

11 9. Parcel consultants such as plaintiff AFMS gather and analyze data,
12 including the shippers' past transactions, to develop a strategy to save the shippers
13 money. Then the consultant implements that strategy by helping shippers
14 negotiate with UPS/FedEx to achieve the maximum savings for the shipper. The
15 consultants also provide logistical support for shippers in regard to selecting
16 warehouse sites, type of services to be used and technology solutions. They are
17 able to do this mainly by highlighting the hard and soft issues inherent in a very
18 complex contractual and rating environment. In the past, many, perhaps most,
19 including plaintiff AFMS, operate on a basis where their revenue from the
20 shippers depends, at least in material part of the savings achieved. Consultants
21 are, therefore, highly motivated to produce additional discounts and hence savings
22 for shippers.

23 10. A 2007 Morgan Stanley Transportation Industry Report states
24 that more than 11% of all shippers use a consultant, that 12% of all shippers
25 switched carriers demonstrating that savings may be achieved by negotiation and
26 switching and finally that 49% of all shippers using consultants enjoyed a greater
27 discount, usually in the range of 15% - 30 % as compared with shippers not using
28 consultants. The actual and potential effect of third party parcel consultants on

1 revenues and profits of UPS and FedEx is substantial and would be at least in the
2 low billions per year.

3 11. Eliminating these savings would, therefore, significantly reduce
4 discounted shipments and substantially increase UPS/FedEx revenues and profits,
5 UPS and FedEx agreeing to eliminate such consultant assisted services and
6 discounted shipments would, therefore, be a form of price fixing within the
7 meaning of United States v. Socony Vacuum Oil Co., 310 U.50 (1940).

8 12. Above and beyond the revenue/profit impact on UPS/FedEx, the
9 consultants generated more intense competition between the two companies than
10 otherwise would have existed. There is little, if any, published price competition
11 between UPS and FedEx in that historically they have each announced lock-step
12 price increases annually over a long number of years. Over the period 2007 -
13 2009, plaintiff AFMS alone found shipper customer savings of more than
14 \$100,000,000 in connection with UPS and FedEx shipments. The use of
15 consultant generated discounts has reinvigorated price competition between UPS
16 and FedEx which otherwise was at a reduced level.

17 13. UPS and FedEx, determined, that serious losses of revenues and
18 profits would result from the increasing use of third party consultants, and they
19 decided to discontinue dealing with third party consultants. At an industry event
20 in Chicago in October 2009, attended by over 200 industry people, executives
21 from both UPS and FedEx appearing on a panel announced the no third-party
22 consultant policy and did not deny collusion between the companies in reaching
23 this decision when confronted with and questioned about these newly announced
24 policies. The no third-party consultant policies were confirmed in subsequent
25 writings. On April 23, 2010, UPS published an internal memorandum entitled
26 "Procedures for Interacting with Third Party Negotiators and UPS Customers -
27 Read Only" (attached hereto as Exhibit 1) and on the very same day, April 23,
28 2010, FedEx published an internal memorandum entitled "Third Party Consultant

1 Rules of Engagement for Field Sales” (attached hereto as Exhibit 2). In another
2 incident, at or outside the premises of a customer who had traditionally done
3 business with a third party consultant located in Louisiana, the representatives of
4 FedEx and UPS actually sat and conferred with each other before separately
5 telling the customer that neither company would deal with the customer if a third
6 party consultant was involved.

7 14. The competitive impact of either FedEx or UPS unilaterally
8 terminating its dealings with third party consultants was so significant that neither
9 company would have dared to give the other such a huge potential competitive
10 advantage/opportunity without an understanding that both would terminate
11 dealings with third party consultants at or about the same time - as they did. The
12 cessation of dealing with plaintiff AFMS comes after 17 years of amicable and
13 mutually profitable business dealings between plaintiff AFMS and each defendant.

14 15. The boycott of or refusal to deal with third party consultants is
15 enforced, in part, by both UPS and FedEx respectively informing shippers that if
16 they (a) share contract data with third party consultants in violation of non-
17 disclosure agreements with UPS and FedEx, or (b) engage third party consultants
18 regardless of the sharing of data, the carriers will refuse to discuss rates and terms
19 or to negotiate any price changes and will actually raise the rates of those shippers.
20 Moreover, one AFMS managing director has been told in respect to business of a
21 customer that UPS “would not offer any different pricing because they knew
22 FedEx was not going to be pursuing the business...” Another AFMS managing
23 director was told by a representative of a customer that FedEx is not working with
24 third party consultants and that “UPS is going to be doing the same thing soon and
25 that neither carrier will be working with third parties. Such statements and
26 knowledge would be forthcoming only if there were collusion between UPS and
27 FedEx.

28

16. The delivery of time sensitive letters, documents and packages, and the third party consultant negotiations and logistical advice relating to such delivery, directly involves and directly affects interstate and foreign commerce. The violations of the antitrust laws alleged hereafter in Counts One and Two have had the effect of substantially lessening, suppressing, eliminating and interfering with competition in the business of delivering time sensitive letters, documents and packages by air or ground within the United States and to and from the United States to foreign countries.

IV.

COUNT ONE

(Violations of Section 1 of the Sherman Act, 15 U.S.C. § 1)

17. Plaintiff repeats and realleges paragraphs 1 - 16, above, with the same force and effect as though set forth in full at this point.

18. Beginning on or about the Fall of 2009 and continuing to the present, defendants have combined and conspired to unreasonably restrain trade and commerce in the delivery of time sensitive letters, documents and packages by

(a) boycotting (refusing to deal with) any third party shipping consultant (a group boycott), and

(b) by refusing to negotiate with or discuss discounts with and actually raising the prices to shippers who either share contract data with a third party consultant or actually retain such a third party consultant (a "tie-out" arrangement). Each of these agreements independently and both together violate Section 1 of the Sherman Act (15 U.S.C. § 1) and these agreements have as their purpose and effect the stabilizing and raising of prices in the delivery of time sensitive materials in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). These agreements are, in and of themselves, per se violations of said statute.

19. Because defendants are the only two significant carriers of any consequence in the United States, their agreement to boycott any third party

1 consultant company directly threatens the continued viability of any such
2 consultant. Accordingly, not to deal with third party consultants as described
3 herein operates to protect defendants from competition in violation of the Sherman
4 Act.

5 20. Defendants' acts and practices have had and, unless enjoined,
6 will continue to have the following injurious effects:

7 a. Competition among and between defendants has been
8 suppressed and diminished;

9 b. Consumer (shipper) freedom of choice has been suppressed
10 and diminished;

11 c. Competition among and between third party consultants has
12 been suppressed and diminished; and

13 d. Shippers are being forced to pay higher prices for shipping
14 letters, documents and packages.

15 21. As a direct and proximate result of the conduct alleged in this
16 Court, plaintiff has suffered and will continue to suffer substantial financial injury
17 in its business and property in that it is being deprived of its ability to function as a
18 third party consultant. As a result, plaintiff has been deprived of revenue and
19 profits it would otherwise have made. Plaintiff has not calculated the precise
20 extent of its past damages, but estimates its damages, which continue to accrue,
21 are in the estimated range of \$15,000,000 - \$20,000,000. When Plaintiff has
22 sufficient information to allege with specificity, the quantum of damages, it will
23 ask leave of the Court to amend this Complaint to insert said sums herein.

24 V.

25 **COUNT TWO**

26 **(Violations of Section 2 of the Sherman Act, 15 U.S.C. §2)**

27 22. Plaintiff repeats and realleges Paragraphs 1-21 herein with the
28 same force and effect as through set forth in full at this point.

23. Beginning in the Fall of 2009 and continuing thereafter through the filing of this Complaint and beyond, each defendant has been and is engaged in a plan and scheme to achieve or maintain monopoly power in the delivery of time sensitive letters, documents and packages in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

24. The actual monopolization, or alternatively the attempt to monopolize, has consisted of a deliberate course of action, undertaken by each defendant with the specific intent of eliminating plaintiff AFMS, and other third party consultants as factors in the market for the delivery of letters, documents and packages in the United States and in foreign commerce, as follows:

(a) Each, as a means of stabilizing and increasing prices, has refused to deal with plaintiff AFMS and other third party shipping consultants, even though they have done so for years preceding the Fall of 2009;

(b) Each has threatened shippers that if they (i) share contract data covered by a non-disclosure agreement with any third party consultant or (ii) actually use a consultant, the carrier will not negotiate rates and terms with the shipper, will not grant the shipper any discounts and will, in fact, raise the price to such shippers.

25. This course of conduct has resulted in each defendant actually monopolizing the delivery of letters, documents and packages in the United States in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2). Alternatively, if either defendants' conduct has fallen short of actually monopolizing that market, it presents a dangerous probability of success in monopolizing that market characterized by high entry barriers in terms of extraordinary capital requirements, entrenched competitors and other factors.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court adjudge and decree as follows:

1 1. That each named defendant has violated Section 1 of the Sherman
2 Act as set out in Count One and that judgment be entered against each defendant
3 for treble the amount of actual damages suffered by plaintiff and that plaintiff also
4 be awarded a reasonable attorneys' fees and recover its costs of suit, as required by
5 Section 4 of the Clayton Act.

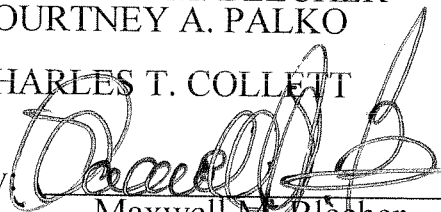
6 2. That each defendant has violated Section 2 of the Sherman Act as
7 set out in Count Two and that judgment be entered against each defendant for
8 treble the amount of actual damages suffered by Plaintiff and that plaintiff also be
9 awarded a reasonable attorneys' fees and recover its costs of suit, as required by
10 Section 4 of the Clayton Act.

11 3. That plaintiff AFMS be entitled to such other and further relief as
12 the Court may deem just and proper in the circumstances.

13 Dated: October 13, 2010

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
COURTNEY A. PALKO

CHARLES T. COLLETT

By: 
Maxwell M. Blecher
Attorneys for Plaintiff AFMS LLC

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury pursuant to the Federal Rules of Civil Procedure, Rule 38(b) (28 U.S.C. Rule 38) and Local Rule 3.4.10.

Dated: October 13, 2010

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
COURTNEY A. PALKO

CHARLES T. COLLETT

By: 
Maxwell M. Blecher
Attorneys for Plaintiff AFMS LLC

#43929

EXHIBIT 1

Corporate Business Development
55 Glenlake Parkway, NE
Atlanta, GA 30328

Memo

Date: April 23, 2010

Subject: Procedures for Interacting with Third Party Negotiators and UPS Customers - Read Only

To: Customer Solutions Sales Strategic Accounts Sales
Enterprise Sales U.S. Directors of Business Development
Global Sales

From: Gerard Gibbons John Haack Glenn Mason
Kate Gutmann Lisa LaFave

Copies: Corporate Business Development Staff UPS Freight Sales
Corporate Sales, Marketing and Communications Mail Innovations
UPS Capital U.S. District Directors of Marketing

Third Party Negotiators (3PNs) are individuals or companies that intervene between two other parties (in this context, UPS and our customer). Often, a 3PN will tell a UPS customer that it can more successfully represent the interests of the customer than the customer is able to represent themselves. 3PNs have varying degrees of experience, knowledge, and acumen. Some UPS customers consider, or use, 3PNs because of their PERCEIVED expertise in our industry.

This communication provides updated procedures to the UPS sales force for interaction with 3PNs retained by our customers. These procedures must be used by UPS package sales if responding to requests from:

- 1) 3PNs for information about a UPS customer and
- 2) Customers to provide information to 3PNs.

UPS has a legitimate business interest in avoiding improper interference with our customer relationships. Additionally, UPS must protect proprietary information from improper use and disclosure.

The following procedures ensure a uniform response when a 3PN is involved with UPS customers:

Procedures

Customer Indicates They are "Considering" Utilizing a Third Party Negotiator

If a customer indicates they are considering utilizing a 3PN to assist in the negotiation, evaluation or other advisory capacity, you should:

- Emphasize to the customer that UPS will continue to provide a competitive value proposition and UPS is best positioned to directly address the customer's issues. This will be done through a direct relationship with the customer.
- Remind the customer of the underlying cost potentially associated with using a 3PN (usually requiring upwards of 50% or more of any savings that *might* be negotiated), thereby dramatically reducing their direct savings that *might* be negotiated. UPS will not provide lower rates simply because a 3PN is involved.
- Reinforce the existing value proposition and partnership with UPS.

Possible Scenarios to Anticipate

- The 3PN might position themselves with a customer solely to negotiate better rates. There are generally no other solutions or process improvements offered by the 3PN.
- The 3PN might claim they will save the customer as much as 20% simply by negotiating better rates.
- The 3PN might insinuate that their former and/or current relationship with UPS can influence their ability to negotiate reduced rates.

Customer has "Signed" with a Third Party Negotiator

If the customer is still going to use a 3PN in any capacity, you **MUST** notify your Director of Sales **and** contact the Corporate Sales Team at 3PNSupport@UPS.com to discuss next steps before taking any other action with the customer related to the 3PN.

At a minimum be prepared to discuss:

- The type and size of the risk or opportunity for UPS
- The specific reason(s) the customer is going to use the 3PN
- The customer's expected timeframe for 3PN engagement

Unacceptable Actions Which Are Prohibited

- Providing any information to a 3PN or having any discussions with a 3PN about a UPS customer or our relationship with a UPS customer is prohibited unless the customer and the 3PN have signed a Third Party Confidentiality and Non-Disclosure Agreement (NDA) with UPS that has been approved by the Corporate Sales Team and by the Corporate Legal Department for that disclosure or series of disclosures.
- Accepting any gifts nominal or otherwise, from a 3PN is a conflict of interest, is a violation of the UPS Guidelines for Gifts and Gratuities, and is prohibited. Any violation of this policy will result in disciplinary action up to and including termination of employment.

If any additional questions arise from the situations outlined in this communication, or there are other areas of concern around the engagement of Third Parties, send your e-mail to 3PNSupport@UPS.com.

This memo has been posted to the [BD Memo website](#).

EXHIBIT 2

Third Party Consultant Rules of Engagement for Field Sales

April 23, 2010

FedEx's current position in dealing with third party consultants

- A general agreement was reached by the WWS and Corporate Sales teams that the message to the market place is "no" for direct engagement with consultants providing RFP services where the only value is price negotiation.
- FedEx's policy is to negotiate business relationships directly and exclusively with our customers, not through a third party consultant.
- It is up to Sales to be able to sell the "value" to the customer of dealing directly with FedEx.
- Field Sales is in agreement with adopting a "Say No" strategy but wants the ability to exercise limited exceptions based on the metrics outlined in this document.
- Field Sales feels that having this exception process is vital to maintaining their business.

Three general scenarios cover the bulk of sales interactions with third party consultants

	Scenario	Response	Additional Info
Scenario 1	Third party consultant asks FedEx to submit a bid	Determine if the consultant is a Value Added Provider. If yes, refer to VAP board. If no, advise "No" – not interested in submitting a bid.	
Scenario 2	Customer advises bidding their business through third party consultant – price negotiations only	No – offer to work directly with the customer	1. If new business, the response is "no". 2. If FedEx has previously done business with the consultant, advise the customer that as a favor to them we will request an exception to submit a bid.
Scenario 3	Customer advises bidding their business through third party consultant and the consultant is offering value added services.	Yes, within certain defined parameters after being approved by the VAP Board.	Refer to VAP Board for approval

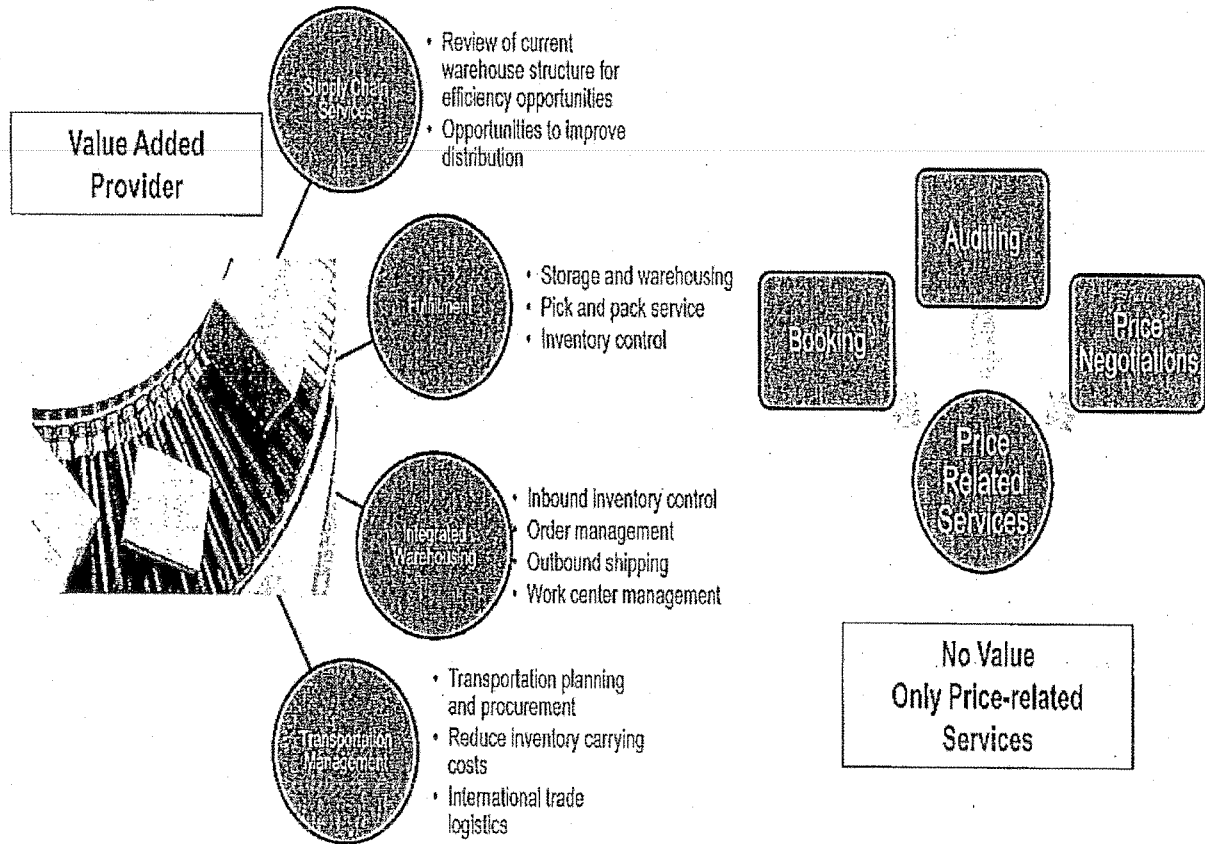
When dealing with third party consultants, knowing how to respond will send a consistent message to the marketplace

- Existing FedEx customer advises they have engaged a third party consultant to negotiate their bid:
 - If FedEx has always done business directly with the customer, advise that we believe our sales team members are the most qualified experts in discussing and providing information about our diverse shipping services, solutions and rate structures and, therefore, do not negotiate with third parties on their behalf. Offer to set up a meeting to explain the value of dealing directly with FedEx.
 - If FedEx has previously negotiated business for the customer through this consultant, advise the customer that we no longer negotiate with third parties but as a courtesy to the customer, we will request an exception to bid on the business. Ask what functions the third party will handle for the customer to determine whether or not an exception is warranted.
 - If the consultant does not qualify for the exception process but the customer continues to work with them:
 1. If the customer is on discounted rates, leave the rates in place until notified that the bid process is complete
 2. Once the successful bidder is announced, advise the customer that they will be placed on list rates.
 3. Continue to call on the customer to maintain a relationship
- New customer to FedEx using a third party consultant to bid on their FedEx business:
 - Advise the customer that we do not negotiate bids with third parties Offer to set up a meeting to explain the value derived from dealing directly with FedEx. (If legacy competitor business consult with DSM before declining.)
- Third party consultant requests FedEx to submit a bid:
 - If the third party is acting as a consultant on behalf of FedEx customers for the sole purpose of obtaining rates advise them that we only negotiate directly with our customers
 - If the third party provides services other than rate negotiation, review the characteristics of a VAP on SalesPoint and follow the steps to submit the opportunity to the VAP Review Board

Suggested phraseology for selling customers on the value of doing business directly with FedEx

- FedEx's focus is on helping our customers solve their business needs. Our ability to understand your business, develop solutions, apply FedEx service offerings and then quantify the value of these solutions to you is where we provide the greatest impact to your business.
- Dealing directly with our customers ensures confidentiality for both the customer and FedEx. Working with a third party allows information to be shared that may be proprietary.
- Our current position is that by working with third party consultants that focus strictly on rate negotiations, we don't have the opportunity to show you how FedEx can assist with reducing overall supply chain cost, which offers a much greater value than just price alone.
- FedEx feels that our representatives are most qualified to discuss incentives and provide information on our rate structures and aligned services. We feel that incentives are an important piece of any service/price discussion and would like to be able to discuss them with you in person.
- In our experience, we can help in the areas of revenue growth, profitability (managing expense), and capital utilization, which all impacts your company's financial performance.

How do you recognize whether a third party consultant is bringing value?



The steps to request the exception process

1. Identify opportunity for requesting an exception
2. Discuss with the customer the duties the third party consultant will perform for them
3. Determine if this opportunity warrants requesting the exception process
4. Discuss the opportunity with DSM
5. If approved by DSM, review with MD and VP
6. If both agree an exception is warranted, advise the consultant
7. After getting the third party consultant's agreement, proceed with negotiations
8. Results and compliance will be tracked at the VP level
9. A combined report will be reviewed at Pre-RMC meeting on a quarterly basis

FedEx requirements for doing business with a third party consultant

If it appears the consultant is bringing value, make sure the customer understands the following :

- The customer and consultant must be willing to sign a three-way Non Disclosure Agreement
- During the RFQ/Bid process the third party consultant and customer must agree that FedEx will have access to all individuals that are pertinent to the process. If access is not granted, FedEx must walk away from the negotiations as we cannot properly service this customer.
- FedEx will be allowed an opportunity to present our value proposition with our financial offer to the parties making the final decision. It is our intent to partner with our customer and discuss mutual business needs and processes.

DSM's and MD's Role in working with third party consultants

- All AEs must be trained and required to discuss FedEx's third party consultant position with customers in advance
- Require SDAEs to present a statement regarding third party consultants to all customers when presenting CBRs (*need to provide this statement*)
- If the DSM feels that not working with the consultant will cause damage, DSM will discuss proposal with MD to discuss the need for an exception
- If working with a third party consultant provides an opportunity to win an entrenched competitor customer, consider the amount of revenue the customer would move to FedEx and discuss with MD and VP.
- All exceptions must be approved on the VP level
- If exception is granted, ROE must be followed with MD oversight through the entire process
- All exceptions will be tracked to determine win/loss ratios at both the Division and Company level
- VP Analysts will compile exceptions quarterly to allow visibility to how the exception process is working and identify patterns and trends

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1750, Los Angeles, California 90071-3334. On **October 14, 2010**, I served the within:

**FIRST AMENDED COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF: (1) SHERMAN ACT § 1; (2) SHERMAN ACT §
2; DEMAND FOR JURY TRIAL**

on all interested parties in this action as follows:

BY MAIL: by placing a true copy thereof in envelopes addressed to each of the persons named below at the addresses shown below:

Andrew J. Frackman, Esq.
O'Melveny & Myers LLP
7 Times Square
New York, New York 10036

Christina J. Brown, Esq.
O'Melveny & Myers LLP
Two Embarcadero Center
28th Floor
San Francisco, CA 9411

Paul T. Friedman, Esq.
Morrison & Foerster LLP
425 MaRKET Street
San Francisco, California 94105-2482

Gergory B. Koltun, Esq.
Sean P. Gates, Esq.
Morrison & Foerster LLP
555 West Fifth Street, Suite 3500
Los Angeles, California 90013-1024

and by then sealing and placing said envelopes for collection at a designated location at Blecher & Collins's offices at 515 South Figueroa Street, Suite 1750, Los Angeles, California 90071-3334 during designated hours, for mailing on the above date, following ordinary business practices.

I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service; pursuant to that practice, envelopes placed for collection at designated locations during designated hours are deposited with the United States Postal Service with first class postage thereon fully prepaid on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

1 ☒ (Federal) I declare under penalty of perjury that the foregoing is true and correct, and
2 that I am employed in the office of a member of the bar of this Court at
whose direction the service was made.

3 ☐ (State) I declare under penalty of perjury under the laws of the State of California
4 and the United States of America that the foregoing is true and correct.

5 Executed on **October 14, 2010**, at Los Angeles, California.

6 
7 Rose Arbucci