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16 UNITED PARCEL SERVICE, INC.

17 UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19

20 ERIC BATES, BERT ENOS, BABARANTI
21 OLOYEDE, ERIC BUMBALA, and EDWARD
22 WILLIAMS on behalf of themselves, and on
behalf of all others similarly situated,

23 Plaintiffs,

24 v.

25 UNITED PARCEL SERVICE, INC. (d.b.a.
UPS), and DOES 1-20,

26 Defendants.
27
28

CASE NO. C 99-2216 TEH

FINAL SETTLEMENT AGREEMENT AND
RELEASE

SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement ("Agreement") is entered into between United Parcel Service, Inc., as defined in Paragraph 11.25 below ("UPS"), and the persons described in Paragraph 2.2 below (the "Driving Class"), through their respective attorneys and/or representatives (collectively, the "Parties").

1. Background

1.1. This lawsuit was commenced in May 1999. The operative complaint was filed on July 2, 2001, and answered on July 16, 2001.

1.2. In brief, the named plaintiffs (on behalf of a putative class) alleged that UPS had engaged in discrimination against employees and applicants with hearing impairments, in violation of the federal Americans with Disabilities Act ("ADA") and various California laws. Plaintiffs alleged three broad categories of claims: *accommodation* claims, *promotion* claims, and *driving* claims.

1.3. In 2001, the District Court certified the case as a class action. In 2003, plaintiffs and UPS settled the accommodation and promotion claims and the District Court approved the partial settlement. In 2004, following a trial, the District Court ruled against UPS on the driving claims. In 2007, the en banc Ninth Circuit vacated the District Court's rulings on the driving claims and remanded the case for further proceedings.

1.4. On remand from the Ninth Circuit, the Parties engaged in extensive settlement negotiations, culminating in this Agreement.

2. Settlement Class

2.1. For the purposes of settlement only, UPS withdraws its objections to the Rule 23(b)(2) class certified on plaintiffs' motion, as amended by the Court's October 21, 2004 post-trial order.

2.2. The Driving Class includes (a) the Named Claimants, as defined in Paragraph 11.17 below, and (b) those persons throughout the United States who (i) have been employed by UPS and/or have applied for a driving position with UPS at any time since June 25, 1997 through the Effective Date of the Agreement, (ii) use sign language as a primary means of communication due to hearing loss or limitation, (iii) allege that their rights have been violated under Title I of the Americans with Disabilities Act and/or California civil rights laws on account of UPS's policies and procedures related to driving, and (iv) failed or would fail the hearing standard promulgated by the Department of Transportation ("DOT") for drivers of commercial motor vehicles.

3. Relief

3.1. UPS will implement a Hearing Protocol for UPS drivers and driver applicants who do not meet the DOT hearing standard, which will potentially be available to all Class Members who are otherwise qualified.

- 3.1.1. A Hearing Protocol Expert Panel was impaneled to develop the Hearing Protocol according to agreed-upon parameters. That Hearing Protocol is attached hereto as Exhibit A.
- 3.1.2. The Hearing Protocol will be implemented for a one-year period commencing 30 days after the Preliminary Approval Date. The availability of the Hearing Protocol will be announced in the Class Notices distributed pursuant to this Agreement and will be clearly posted on UPS's employment websites during the implementation period. The Hearing Protocol will be implemented through a procedure consistent with UPS's existing Vision and Diabetes Protocols.
- 3.1.3. At the conclusion of the one-year period, UPS will provide plaintiffs' counsel with summary data relating to the implementation of the hearing protocol, including a list of those employees and applicants evaluated under the Hearing Protocol, the status of those evaluations, and the outcomes for those individuals who have completed the Hearing Protocol evaluation. After such data are provided, the Parties agree to meet and confer regarding the Hearing Protocol, including the provision of any additional data. Any disputes remaining at that time shall be resolved exclusively through binding Arbitration pursuant to Paragraph 10.
- 3.2. UPS will make monetary payments to certain individuals identified in this Agreement as the Named Claimants. UPS will not make any other monetary payments to Class Members.
- 3.2.1. UPS shall pay \$35,000 to each of the Named Claimants who has executed a release pursuant to Paragraph 5.1.2.2 within 30 days after the Preliminary Approval Date.
- 3.2.2. Named Claimants employed by UPS as of the Effective Date of the Agreement and who voluntarily resign on or before the Preliminary Approval Date will be paid an additional \$25,000 each within 30 days after the Preliminary Approval Date. Such persons agree not to seek reemployment with UPS at any time; however, should UPS acquire one of the companies where these persons work, nothing in this Agreement will require that they resign.
- 3.2.3. UPS will issue Forms 1099 for the monetary payments to the Named Claimants, who will be solely responsible for ascertaining and paying the appropriate federal and state taxes on such payments.
- 3.3. UPS will negotiate non-monetary relief separately with one individual, Babaranti Oloyede. UPS will not negotiate non-monetary relief separately with any other Class Member.
- 3.3.1. The Parties agree to negotiate in good faith to resolve Mr. Oloyede's individualized claim for non-monetary relief within 90 days after implementation of the Hearing Protocol. If they are unable to reach agreement, Mr. Oloyede's individualized claim for non-monetary relief will be submitted to Arbitration pursuant to Paragraph 10.1 of this Agreement.

3.3.2. The resolution of Mr. Oloyede's individualized claim for non-monetary relief shall have no effect on the remainder of this Agreement, regardless of the outcome or its timing.

4. Collective Bargaining Agreements

4.1. Nothing in this Agreement shall be construed to modify UPS's collectively bargained obligations to its hourly employees in the United States. Nor shall UPS's performance of these collectively bargained obligations be deemed a violation of this Agreement.

4.2. In any Arbitration pursuant to Paragraph 10 of this Agreement, the Arbitrator shall be bound by collective bargaining agreements, shop rules, and other established labor practices in the center or facility involved to the same extent as a district court hearing the same type of dispute.

4.3. The provisions of this Agreement shall apply to bargaining unit members to the fullest extent permitted by law and under applicable collective bargaining agreements.

5. Release and Covenant Not To Sue

5.1. Members of the Driving Class release all claims that were, or could have been, asserted in this lawsuit (after the previous partial settlement) by the class certified by the District Court (the "Released Driving Claims") as further defined in this section:

5.1.1. Released Driving Claims include any and all individual and/or class claims, demands, charges, complaints, rights and causes of action of any and every kind, known or unknown, which have arisen on or before the Effective Date of this Agreement, related to alleged discrimination involving driving UPS delivery vehicles or package cars on the basis of an alleged hearing or hearing-related disability.

5.1.1.1. Released Driving Claims include, but are not limited to, common law claims, contract claims (express or implied), claims based upon the covenant of good faith and fair dealing (express or implied), tort claims, public policy claims, and claims alleging violations of any federal, state or other anti-discrimination governmental statute, regulation, or ordinance, including, without limitation the Americans with Disabilities Act, 42 U.S.C., §§ 12101 *et seq.* (the ADA); the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12940 *et seq.* (the FEHA), California Business and Professions Code §§ 17200 *et seq.*, California Civil Code §§ 51, *et seq.* and § 54 *et seq.* (the Unruh Act) and/or any other federal, state or local ordinance or statute.

5.1.1.2. Released Driving Claims also include, but are not limited to, claims asserted in this lawsuit and in any charges filed by members of the Driving Class with the Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing and/or any other state agency responsible for enforcing state civil rights and employment laws prior to the Effective Date of this Agreement.

1 5.1.2. Released Driving Claims are limited to claims for injunctive or declaratory
2 relief, and do not include claims that seeking solely monetary relief,
including backpay and/or frontpay ("Unreleased Driving Claims").

3 5.1.2.1. The statute of limitations and/or administrative charging period for
4 all Unreleased Driving Claims that are not already time-barred shall
commence on the Preliminary Approval Date.

5 5.1.2.2. In partial consideration of the monetary payment referred to in
6 paragraph 3.2, the Named Claimants will execute a full release in a
form mutually agreed upon by counsel for the parties.

7 5.2. Class Members agree that they are aware of and expressly waive the protection of
8 Section 1542 of the Civil Code of the State of California and analogous statutes from
other states, which California statute states that:

9 "A general release does not extend to claims which the creditor does not know
10 or suspect to exist in his or her favor at the time of executing the release,
11 which if known by him or her must have materially affected his settlement
with the debtor."

12 5.3. Covenant Not To Sue

13 5.3.1. The Members of the Driving Class agree not to bring any Released Driving
14 Claims against UPS in any court, agency, or adjudicative body, whether
federal, state, or local.

15 5.3.2. Pursuant to the All Writs Act and the Anti-Injunction Act, 28 U.S.C.
16 §§ 1651, 2283, and Federal Rule of Civil Procedure 23, the District Court
17 shall have the authority, upon application of one of the Parties, to enjoin or
otherwise preclude the continued prosecution of a Released Driving Claim
in any forum.

18 6. Notice and Objections

19 6.1. Notice:

20 6.1.1. Mailed Notice List

21 6.1.1.1. Within 45 days after the Effective Date of this Agreement, UPS
22 shall prepare and deliver to the Settlement Administrator in
computer-readable format the full names and last-known addresses,
23 including e-mail addresses if available, of all known Class
Members employed by UPS during the period June 25, 1997,
24 through December 31, 2008, and for all such persons who applied
for employment at UPS during the period June 25, 1997 through
25 December 31, 2008 for whom UPS has such information (the
"Mailed Notice List"). UPS will make reasonable efforts to
26 identify all Members of the Driving Class, including reasonable
inquiry to the appropriate managerial personnel, to identify
27 potential Class Members who have been employed by UPS, or
applied for employment with UPS, since the time that the class list
28 was compiled as part of the previous partial settlement in this case.

1 6.1.1.2. Class Counsel shall, within 45 days after the Effective Date of this
2 Agreement, provide the Settlement Administrator in computer-
3 readable format for inclusion on the Mailed Notice List, a list of all
actual or potential Class Members then known to Class Counsel and
their addresses, including e-mail addresses if available.

4 6.1.1.3. The Settlement Administrator shall update the Mailed Notice List
5 with any new addresses for such individuals it may obtain from the
National Change of Address System.

6 6.1.1.4. The Settlement Administrator shall provide the then-current version
7 of the Mailed Notice List upon request to Class Counsel and/or
counsel for UPS.

8 6.1.2. No later than 30 days after the Preliminary Approval Date, the Settlement
9 Administrator shall mail to each person on the Mailed Notice List, via first
class United States mail, postage prepaid, the Mailed Notice in the form
10 attached to this Agreement as Exhibit B.

11 6.1.2.1. If a Mailed Notice is returned as "undeliverable," the Settlement
12 Administrator shall arrange through IRSC or a comparable service
for a computer database search for such Class Member and re-mail
13 the Mailed Notice to any additional address obtained for such Class
Member. The Mailed Notice List shall be updated to reflect such
14 additional address. UPS will provide the Settlement Administrator
with any known Social Security Numbers to assist the Settlement
Administrator in any such tracing.

15 6.1.2.2. The expenses related to preparation and mailing of the Mailed
16 Notice and tracings related to Mailed Notices returned as
undeliverable shall be paid by UPS.

17 6.1.3. As a further means of notifying Class Members of the settlement of this
18 lawsuit, UPS will publish, at its expense, the Published Notice (Exhibit C
19 hereto) in the following publications within 60 days of the Preliminary
Approval Date:

20 6.1.3.1. NADezine (1 issue).

21 6.1.3.2. Deaf Life (1 issue).

22 6.1.3.3. Deaf Digest (4 issues).

23 6.1.4. Should published notice in any of the above publications not be possible
24 within the prescribed time period, the Parties shall meet and confer to
select an appropriate substitute publication oriented towards Class
25 Members. Should the Parties not agree on an alternative publication, such
dispute shall be submitted to Arbitration pursuant to Paragraph 10 of this
Agreement.

26 6.2. Objections: Any member of the Driving Class (other than the Named Claimants) may
27 object to this Agreement in whole or in part.
28

- 1 6.2.1. Objections must be made in writing, and signed and dated by the objecting
2 individual or his or her attorney. No particular form is required for making
3 an objection.
- 4 6.2.2. Written objections must be sent to the Settlement Administrator and
5 postmarked on or before the Cut-Off Date. The Cut-Off Date shall be
6 identified in the Mailed Notice and the Published Notice.
- 7 6.2.3. The Settlement Administrator shall retain copies of all written objections in
8 its files until such time as the Settlement Administrator is relieved of its
9 duties and responsibilities under this Agreement and shall timely provide
10 copies of all objections to UPS and to Class Counsel.
- 11 6.2.4. The parties shall submit copies to the Court of any written objections
12 received as part of any Motion requesting the Court's Final Approval of the
13 Agreement.

14 7. Judicial Approval

15 7.1. Preliminary Approval

- 16 7.1.1. Not earlier than 45 days after the Effective Date, the Parties agree to file a
17 joint motion requesting the District Court to preliminarily approve the
18 settlement reflected in this Agreement as fair, reasonable, and adequate.
- 19 7.1.2. If the District Court grants preliminary approval, the date its order is
20 entered shall be the Preliminary Approval Date.
- 21 7.1.3. If the District Court does not grant preliminary approval, the Agreement
22 shall Terminate.

23 7.2. Final Approval

- 24 7.2.1. Not earlier than 30 days after the end of the one-year implementation
25 period referred to in paragraph 3.1, either or both of the Parties may file a
26 motion requesting the District Court to finally approve the settlement
27 reflected in this Agreement as fair, reasonable, and adequate.
- 28 7.2.2. At the hearing on the motion for Final Approval, any Class Member who
 has filed a timely objection may, at his or her own expense, appear and be
 heard individually or through counsel.
- 7.2.3. If the District Court grants final approval, the date its order is entered shall
 be the Final Approval Date.
- 7.2.4. If the District Court does not grant final approval, the agreement shall
 Terminate.

 8. Effective Date and Duration

- 8.1. This Agreement shall not be effective until it is executed by Class Counsel, Counsel
 for UPS, and UPS's corporate designee. It may be executed in counterparts. The
 Effective Date of this Agreement shall be no later than May 1, 2009, as set forth in the
 Supplemental Memorandum of Understanding.

1 8.2. This Agreement shall Terminate on the earlier of (a) an occurrence of an event of
2 Termination as set forth in this Agreement, or (b) 30 days after the Final Approval
3 order becomes final and unappealable (or, if an appeal is noticed, after the appeal,
4 including any petitions for rehearing and/or for certiorari, has been resolved). Certain
5 provisions of this Agreement shall survive Termination.

6 8.3. The District Court shall retain jurisdiction over this Agreement until it is Terminated
7 and any Arbitration proceedings pursuant to Paragraph 10 are resolved.

8 9. Attorneys' Fees and Expenses

9 9.1. UPS agrees to pay Class Counsel \$5,250,000 (the "Fee Award") for all attorneys' fees,
10 costs, and expenses reasonably incurred by Class Counsel related to litigation of all
11 issues not covered by the previous settlement (including securing Preliminary and
12 Final Approval, resolving any objections to this settlement in the trial or appellate
13 courts, and the meet and confer that will occur at the end of the full year
14 implementation of the Hearing Protocol).

15 9.1.1. The Parties agree that the Fee Award satisfies any arguable obligation UPS
16 may have to pay attorneys' fees, expenses, and costs to Class Counsel for
17 any and all work performed and costs and expenses incurred for all claims
18 in this lawsuit which are resolved by this Agreement, including, but not
19 limited to Mr. Oloyede's claim for non-monetary relief. With the
20 exception of Mr. Oloyede's individualized claim for non-monetary relief,
21 the Fee Award does not cover, and will not release, any future claim for
22 attorneys' fees, expenses, and costs relating to any arbitration proceedings
23 brought pursuant to Paragraph 10.

24 9.1.2. The Fee Award is not severable from the remainder of this Agreement.
25 Class Counsel agree that the Fee Award will operate as a cap on attorneys'
26 fees, costs and expenses to be paid pursuant to Paragraph 9.1.

27 9.2. Within 45 days of the Effective Date, UPS will deposit the entire amount of the Fee
28 Award into an interest-bearing escrow account held by a reputable and reliable escrow
holder agreed upon by the Parties.

9.2.1. One-half of the Fee Award (plus earned interest) will be released from
escrow to Class Counsel within two business days after the Preliminary
Approval Date.

9.2.2. The remaining one-half of the Fee Award (plus earned interest) will be
released from escrow to Class Counsel within two business days after the
Final Approval Date.

9.2.3. If Final Approval is not granted by the District Court or is overturned on
any appeal, all fees and interest shall be returned to UPS by Class Counsel
or the escrow holder.

10. Arbitration

10.1. Any dispute, claim or controversy between the Parties arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, and including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, California, before Judge Eugene Lynch (Ret.) or another single JAMS arbitrator jointly agreed to by the Parties. The Arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures.

10.2. UPS will advance the provider fees for all arbitration proceedings authorized under this Agreement. Attorneys' fees and other costs (including the provider fees) in such arbitration proceedings may be awarded by the arbitrator pursuant to the standard established in *Christianburg v. EEOC*, 434 U.S. 412 (1978).

11. Definitions

11.1. "Agreement" means this Final Settlement Agreement and Release.

11.2. "Arbitration" means the arbitration procedures specified in Paragraph 10.

11.3. "Class Counsel" means Disability Rights Advocates and Schneider Wallace Cottrell Brayton Konecky LLP.

11.4. "Class Members" "Driving Class Members" and "Members of the Driving Class" means each and every person described in Paragraph 2.2, individually and collectively unless the context requires otherwise.

11.5. "Cut-Off Date" means the date 120 days after the Mailed Notice is first sent to Class Members.

11.6. "District Court" means the United States District Court for the Northern District of California.

11.7. "Driving Class" is defined in Paragraph 2.2.

11.8. "Effective Date" is defined in Paragraph 8.1.

11.9. "Fee Award" is defined in Paragraph 9.1.

11.10. "Final Approval Date" means the entry of a final order by the District Court determining that the settlement is fair, adequate and reasonable. See Paragraph 7.2.

11.11. "Hearing Protocol" is defined in Paragraph 3.1 and attached as Exhibit A.

11.12. "Hearing Protocol Expert Panel" is defined in Paragraph 3.1.1.

11.13. "Joint Mediation" means any formal or informal communications in connection with settlement of the driving claims, including without limitation, those with Anthony Piazza, the Hon. Edward A. Panelli (Ret.), and the Hearing Protocol Expert Panel.

11.14. "Memorandum of Understanding" means the agreement entered into by Class Counsel and counsel for UPS on June 25, 2008 (Exhibit D). The Memorandum of Understanding shall be part of this Agreement as if fully incorporated herein.

11.15. "Mailed Notice" means the form of notice attached to this Agreement as Exhibit B.

1 11.16. "Mailed Notice List" is defined in Paragraph 6.1.1.

2 11.17. "Named Claimant" means the seven individuals (Elias Habib, Lester Morris, Matthew
3 Johnson, Bert Enos, Babaranti Oloyede, Eric Bumbala and Edward Williams) who
4 have participated extensively in the prosecution of the driving claims and who agree to
5 release all individual claims in return for compensation set forth in paragraph 3.2.

6 11.18. "Parties" means UPS and the Driving Class, through their respective attorneys and/or
7 representatives.

8 11.19. "Preliminary Approval Date" means the entry of a preliminary order by the District
9 Court determining that the settlement is fair, reasonable, and adequate. See Paragraph
10 7.1.

11 11.20. "Published Notice" means the form of notice attached to this Agreement as Exhibit C.

12 11.21. "Releasors" means Class Members and their heirs, estate, spouses, successors and any
13 other person who could claim through them, who release UPS as set forth in
14 Paragraph 5.1 of this Agreement.

15 11.22. "Settlement Administrator" means Rust Consulting, Inc.

16 11.23. "Supplemental Memorandum of Understanding" means the agreement entered into by
17 Class Counsel and counsel for UPS on April 21, 2009 (Exhibit E). The Supplemental
18 Memorandum of Understanding shall be part of this Agreement as if fully
19 incorporated herein.

20 11.24. "Terminate" and its cognates means that this Agreement shall thereafter no longer be
21 binding on any party except as otherwise provided expressly herein.

22 11.25. "UPS," "Defendant," and "the Company" mean United Parcel Service, Inc., and its
23 current and former officers, directors, agents, employees, representatives, attorneys,
24 parents, subsidiaries, affiliates, predecessors, successors and assigns, and all benefit
25 plan administrators and anyone acting in concert with or on behalf of any of them who
26 are released by Releasors as set forth in Paragraph 5.1 of this Agreement.

27 12. Miscellaneous

28 12.1. This Agreement reflects the compromise of disputed claims and shall not be construed
as evidence of any violation of the ADA, the FEHA, the Unruh Act, California
Government Code § 17200, California Civil Rights laws and common law, or any
other federal or state law, regulation, order, or rule, or as an admission of liability by
any of the Parties.

12.2. In the event the settlement does not receive final judicial approval nothing in this
Agreement shall operate to waive UPS's objections and defenses to class certification
or the merits of plaintiffs' claims.

12.3. Class Counsel agree that they will not disclose documents gathered or created in the
course of this litigation, including without limitation Joint Mediation, which are not
part of the public record. Any subpoena for information or documents will be
immediately referred to counsel for UPS. This provision shall survive Termination of
this Agreement.

1 12.4. The Parties agree that any and all statements made in the course of Joint Mediation are
2 to be treated as confidential settlement discussions, and that they are therefore
3 inadmissible. The Parties further agree that any statements made and information
4 disclosed to the mediators in connection with Joint Mediation are privileged, and that
5 disclosure cannot later be compelled under any circumstances. The Parties further
6 agree that all records, reports or other documents prepared by the mediators or
7 submitted to the mediators by any of the participants in connection with Joint
8 Mediation are confidential and shall not be disclosed under any circumstances. The
9 Parties further agree that the fact that an expert participated in Joint Mediation, on
10 behalf of either of the Parties, and thus came into possession of materials or
11 information used or disclosed during Joint Mediation, shall not provide the basis for
12 exclusion or disqualification in any further proceedings, including the Arbitration
described in Paragraph 10. The Parties further agree that neither of the Parties will
move to exclude or disqualify an expert because of that expert's participation in Joint
Mediation. The Parties further agree that any communications made or materials
created in connection with Joint Mediation, including a Party's communications with
its experts (whether or not disclosed to the mediator or to the other party) will be
considered inadmissible and not subject to disclosure or discovery in any further
proceedings, including the Arbitration described in Paragraph 10. This provision shall
survive Termination of this Agreement.

13 12.5. Any modification of this Agreement shall be in writing and signed by Counsel for all
14 Parties.

15 12.6. The Parties agree to use their best efforts to defend this Agreement from any legal
16 challenge, whether by appeal or collateral attack.

17 12.7. The terms of this Agreement and its Exhibits are the exclusive and final expression of
18 all agreements by the Parties with respect to the driving claims asserted in this
19 litigation. The Parties have entered into this Agreement based solely upon its written
20 terms as contained herein and not in reliance upon any representations or promises
21 other than those contained in this Agreement or explicitly incorporated herein. The
terms of this Agreement may not be contradicted either by evidence of any prior or
contemporaneous agreement or by the use of any form of extrinsic evidence
whatsoever in any judicial, administrative, or other legal proceeding involving this
Agreement.

22 12.8. All notices and other communications required by this Agreement shall be in writing
23 and delivered by United States Mail with a courtesy copy by fax or e-mail to:

24 To Named Claimants and members of the Driving Class:

25 Laurence Paradis
26 DISABILITY RIGHTS ADVOCATES
27 2001 Center Street, Fourth Floor
28 Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
larryp@dralegal.org

To UPS:

Christopher Martin
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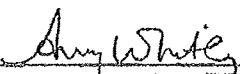
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Signature page 1 of 2 (UPS)

DEFENDANT UNITED PARCEL SERVICE, INC.

Dated:

UNITED PARCEL SERVICE, INC.
Human Resources
55 Glenlake Parkway, NE
Atlanta, Georgia 30328
Telephone: (404) 828-4269

By: 
Amy Whitley

GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, California 94304-1211
Telephone: (650) 849-5300

By: 
Christopher J. Martin

Attorneys for Defendant
United Parcel Service, Inc.

Signature page 2 of 2 (Plaintiffs)

NAMED CLAIMANTS AND CLASS COUNSEL

Dated:

4/29/09

By:



PLAINTIFF BERT ENOS

Dated:

By:

PLAINTIFF BABARANTI OLOYEDE

Dated:

By:

PLAINTIFF ELIAS HABIB

Dated:

By:

PLAINTIFF LESTER MORRIS

Dated:

By:

PLAINTIFF MATTHEW JOHNSON

Dated:

By:

PLAINTIFF ERIC BUMBALA

Dated:

By:

PLAINTIFF EDWARD WILLIAMS

Dated:

By:

Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
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Dated:

By:

Todd Schneider, Class Counsel
SCHNEIDER WALLACE COTTRELL
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San Francisco, California 94104
Telephone: (415) 421-7100

Signature page 2 of 2 (Plaintiffs)

NAMED CLAIMANTS AND CLASS COUNSEL

Dated:

By: _____
PLAINTIFF BERT ENOS

Dated: 4/30/09

By: Babaran Oloyede
PLAINTIFF BABARANTI OLOYEDE

Dated:

By: _____
PLAINTIFF ELIAS HABIB

Dated:

By: _____
PLAINTIFF LESTER MORRIS

Dated:

By: _____
PLAINTIFF MATTHEW JOHNSON

Dated:

By: _____
PLAINTIFF ERIC BUMBALA

Dated:

By: _____
PLAINTIFF EDWARD WILLIAMS

Dated:

By: _____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644

Dated:

By: _____
Todd Schneider, Class Counsel
SCHNEIDER WALLACE COTTRELL
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180 Montgomery Street, Suite 2000
San Francisco, California 94104
Telephone: (415) 421-7100

Signature page 2 of 2 (Plaintiffs)

NAMED CLAIMANTS AND CLASS COUNSEL

Dated:

By: _____
PLAINTIFF BERT ENOS

Dated:

By: _____
PLAINTIFF BABARANTI OLOYEDE

Dated:

By: Elias Habib
PLAINTIFF ELIAS HABIB

Dated:

By: _____
PLAINTIFF LESTER MORRIS

Dated:

By: _____
PLAINTIFF MATTHEW JOHNSON

Dated:

By: _____
PLAINTIFF ERIC BUMBALA

Dated:

By: _____
PLAINTIFF EDWARD WILLIAMS

Dated:

By: _____
Laurence Paradis; Class Counsel
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644

Dated:

By: _____
Todd Schneider, Class Counsel
SCHNEIDER WALLACE COTTRELL
BRAYTON KONECKY LLP
180 Montgomery Street, Suite 2000
San Francisco, California 94104
Telephone: (415) 421-7100

Signature page 2 of 2 (Plaintiffs)

NAMED CLAIMANTS AND CLASS COUNSEL

Dated:

By: _____
PLAINTIFF BERT ENOS

Dated:

By: _____
PLAINTIFF BABARANTI OLOYEDE

Dated:

By: _____
PLAINTIFF ELIAS HABIB

Dated:

4/29/09

By: Lester R. Morris
PLAINTIFF LESTER MORRIS

Dated:

By: _____
PLAINTIFF MATTHEW JOHNSON

Dated:

By: _____
PLAINTIFF ERIC BUMBALA

Dated:

By: _____
PLAINTIFF EDWARD WILLIAMS

Dated:

By: _____
Laurence Paradis; Class Counsel
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Telephone: (510) 665-8644

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Signature page 2 of 2 (Plaintiffs)

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Dated:

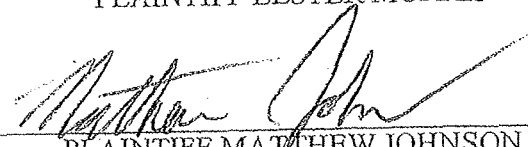
By: _____
PLAINTIFF ELIAS HABIB

Dated:

By: _____
PLAINTIFF LESTER MORRIS

Dated:

5-17-09

By:  _____
PLAINTIFF MATTHEW JOHNSON

Dated:

By: _____
PLAINTIFF ERIC BUMBALA

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By: _____
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Signature page 2 of 2 (Plaintiffs)

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By: _____
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Dated:

By: _____
PLAINTIFF MATTHEW JOHNSON

Dated:

4/30/09

By:  _____
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By: _____
PLAINTIFF EDWARD WILLIAMS

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Signature page 2 of 2 (Plaintiffs)

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Signature page 2 of 2 (Plaintiffs)

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By: _____
PLAINTIFF MATTHEW JOHNSON

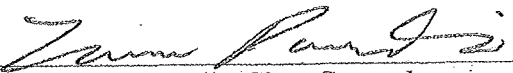
Dated:

By: _____
PLAINTIFF ERIC BUMBALA

Dated:

By: _____
PLAINTIFF EDWARD WILLIAMS

Dated: 4/28/09

By: 
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644

Dated:

By: _____
Todd Schneider, Class Counsel
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BRAYTON KONECKY LLP
180 Montgomery Street, Suite 2000
San Francisco, California 94104
Telephone: (415) 421-7100

Signature page 2 of 2 (Plaintiffs)

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By: _____
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By: _____
PLAINTIFF MATTHEW JOHNSON

Dated:

By: _____
PLAINTIFF ERIC BUMBALA

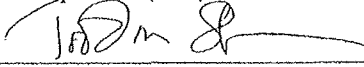
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180 Montgomery Street, Suite 2000
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Telephone: (415) 421-7100

Exhibits

- A Hearing Protocol
- B Mailed Notice
- C Published Notice
- D Memorandum of Understanding
- E. Supplemental Memorandum of Understanding

EXHIBIT A

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13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15

16 ERIC BATES, BERT ENOS, BABARANTI
17 OLOYEDE, ERIC BUMBALA, and EDWARD
18 WILLIAMS on behalf of themselves, and on
behalf of all others similarly situated,

19 Plaintiffs,

20 v.

21 UNITED PARCEL SERVICE, INC. (d.b.a.
UPS), and DOES 1-20,

22 Defendants.
23
24
25
26
27
28

CASE NO. C 99-2216 TEH

HEARING PROTOCOL EXPERT PANEL
AWARD

1 The Panel was charged with developing a "Hearing Protocol" for UPS drivers and driver
2 applicants who do not meet the hearing standard promulgated for commercial drivers by the United
3 States Department of Transportation. The Hearing Protocol will apply to all non-DOT-regulated
package delivery vehicles for a period of not less than one year following its implementation date.

4 The Panel has determined that the Hearing Protocol adopted by UPS shall contain the
5 following elements:

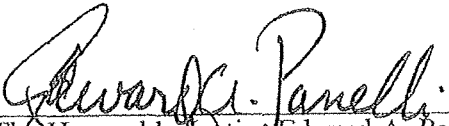
- 6 1. UPS shall adopt Exhibit A, including the following alternative standard:

7 The candidate must demonstrate, at either 1kHz or 2 kHz, a binaural sound field
8 threshold of 45 dB HL or better (ANSI-1989), with or without hearing aids, as
measured by a licensed or certified audiologist following relevant and current ANSI
standards.

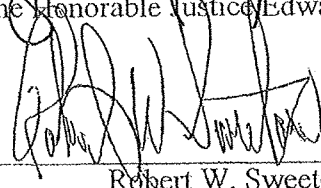
- 9 2. On-road testing and driver training to all individuals who pass the hearing protocol
10 shall be provided in non-DOT regulated package cars.

- 11 3. All UPS managers providing on road testing and driving training to individuals who
12 pass the Hearing Protocol shall participate in training developed to facilitate more
effective communication with hearing impaired drivers and driver applicants.

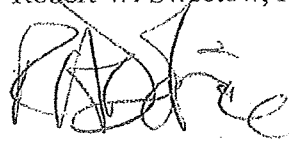
13 Dated: December 19, 2008

14 By: 
The Honorable Justice Edward A. Panelli (Ret.)

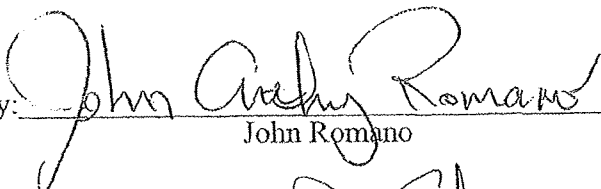
15 Dated: Dec 19, 2008

16 By: 
Robert W. Sweetow, Ph.D

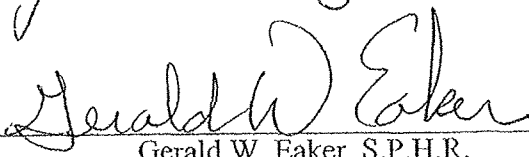
17 Dated: 12/19/08

18 By: 
Robert A. Dobie, M.D.

19 Dated: 12/19/08

20 By: 
John Romano

21 Dated: 12/19/08

22 By: 
Gerald W. Eaker, S.P.H.R.

December 19, 2008

Hearing Protocol

In the past, UPS has maintained a policy that if a driver failed any part of the D.O.T. physical, that driver would be prevented from operating a UPS vehicle. UPS has now taken a closer look at that policy and is implementing a pilot program to test a new protocol that may allow certain D.O.T. disqualified drivers the opportunity to operate specific UPS vehicles.

Driver candidates with hearing impairments will be individually assessed upon request to determine their ability to safely operate UPS vehicles weighing 10,000 pounds or less. The following is a breakdown of the steps to be utilized:

1. The employee must have a driving record that would not otherwise disqualify him or her from a UPS driving position.
2. In addition to completing a D.O.T. Medical evaluation at a designated UPS clinic, once the employee's medical board certified physician (Otolaryngologist—more commonly known as an ENT) has been provided with a complete and thorough written explanation of the specified UPS job requirements, it is the responsibility of that physician to notify UPS of any otolaryngological conditions discussed in the evaluation that would make it unsafe for the employee to drive a UPS vehicle. In addition, the employee's physician must agree to report to UPS any discrepancies that the employee exhibits that are in conflict with the reasonable accommodation guidelines. This includes, without limitation, noncompliance with the established treatment program or change in the employee's condition that may warrant removal from a driving position. Also, the employee's physician must certify that the employee has been thoroughly educated about his or her condition. For example: control, recognition and identification of problems.
3. The employee must agree to release pertinent medical records to a UPS consulting physician, and where necessary, a third doctor, in order that these physicians may, where necessary, conduct a thorough examination.
4. The employee must agree to periodic medical evaluations as defined in the protocol that are related specifically to the condition in question. This is in addition to the required routine D.O.T. physical. The frequency of these condition-related examinations may be adjusted by the UPS consulting physician after consideration and evaluation of employee safety and public safety issues. (See paragraph IV of the Hearing Evaluation Program).
5. Any necessary third doctor examinations or opinions will be rendered by a medical board certified physician in the specialty covering the medical condition in question. The decision rendered by that doctor will be final and binding as set forth in the collective bargaining agreement.
6. The employee's physician and the UPS consulting physician shall not be one and the same.
7. Any physician's evaluation involved in this accommodation process shall be conducted in accordance with the provisions of the medical evaluation worksheet furnished by UPS and enclosed in the attached binder.

This entire process is to be considered an individualized assessment of the employee's medical condition. Because this is being considered a job-related adjustment, all the collective bargaining provisions and Company ADA policies applicable to this process apply.

Hearing Evaluation Program for UPS Drivers with Hearing Impairments

I. Program Scope and Applicability

This program was developed to assess a UPS driver's hearing impairment and the effect of this impairment upon his/her ability to safely operate a package car weighing 10,000 pounds or less. This policy does NOT apply to drivers subject to 49 CFR Section 391.41 and 391.43.

II. Background

A. Objectives of the Hearing Impairment Evaluation Program

For the purposes of this manual, this program will be referred to as the Hearing Impairment Evaluation Program, or HIEP. The objectives of the HIEP are to:

1. Review minimum hearing requirements for operating a package car under 10,001 pounds;
2. Identify conditions that may impair hearing;
3. Formalize the evaluation process of the driver with these hearing impairments;
4. Characterize the hearing of the driver; and
5. Determine the fitness of the driver to operate a package car under 10,001 pounds.

B. Basis for Recommendations

This evaluation is based upon accepted standards of care by Otolaryngologists and audiologists. In this protocol, these two professional groups are known as "hearing care professionals".

C. Confidentiality of Medical Information

Maintaining confidentiality of UPS employees' medical records shall be observed at all times. The hearing care professionals shall retain all medical records, UPS summary documents and attestations. Copies of hearing care professionals attestations shall be maintained under secured conditions by UPS Occupational Health supervisors. Medical information will be shared with UPS management and Health & Safety only as this information pertains to the employee's status as having a hearing impairment.

III. Delegation of Responsibilities

A. The Employee

The employee's active participation in all aspects of the HIEP is critical to:

1. Assist his/her hearing care professionals in accurately determining his/her fitness to operate a commercial vehicle under 10,001 pounds and to perform the other essential functions of the job; and
2. Prevent, detect and control any further decline in hearing.

The employee's successful participation in the HIEP depends upon his/her good faith compliance in caring for his/her hearing, including:

1. Following the recommendations of hearing care professionals;
2. Taking medications as prescribed; and
3. Reporting changes in hearing to the hearing care professionals when they occur.

The employee shall also report any change in hearing that occurs while on duty to his/her manager.

B. The Center Manager and Health & Safety Manager

1. Driver fitness for duty and the role of hearing impairment.

The Center Manager is routinely expected to assess whether the drivers under his/her jurisdiction are fit to drive. If management determines that a driver may not be fit to drive, it is his/her responsibility to make the assessment, make the appropriate intervention, and document management's findings accordingly.

2. The Hearing Impairment Evaluation Program

The employee's manager will work closely with and cooperate with the Health & Safety manager who will have local oversight of drivers' participation in the HIEP.

C. The Health Care Professionals

All hearing care professionals shall have a thorough understanding of the job demands and essential functions of the package car driver, and how the driver's work routine interacts with the employee's hearing impairment. The success of the HIEP is based upon clear, effective communication among all members of this professional team and the driver.

D. The Occupational Health Supervisor

1. Serving as a resource for the employee's hearing care professional

The Occupational Health supervisor will communicate with the employee's hearing care professional as needed to answer any questions about the HIEP, the employee's job demands or any other information pertaining to the job. This will assure that the hearing care professionals make an accurate and informed determination about the employee's fitness to operate a commercial motor vehicle. In order to clarify policies and procedures, the region Occupational Health manager will assist the personal physician in contacting the UPS Corporate Medical Consultant as needed.

2. Quality Control

The Occupational Health supervisor will review completed hearing care professional attestation statement, and determine when the employee's next hearing evaluation should be scheduled.

E. The Corporate Medical Consultant

The Corporate Medical Consultant will be available to answer questions from the region and corporate Occupational Health manager or hearing care professional. The consultant will recruit other specialists to serve as resources or review medical records, as needed. This HIEP will be formally reviewed annually, and intercurrent policy and procedure changes will be made as indicated.

IV. Routine Diagnosis-Specific Evaluations to be Performed for Common Pathological Ear Conditions that Impair Hearing

The hearing care professional will perform the required testing using the attached HIEP form. These examinations will be performed annually for employees with progressive hearing loss, or more frequently, if changes in the employee's condition indicate the need, and every two years for employees with stable hearing loss. As used herein, **Stable** hearing loss includes hearing not expected to progress more rapidly than age-related changes and **Progressive** hearing loss includes that characterized by a substantial chance of progressive or fluctuating hearing loss.

Examples of conditions that are related to stable hearing loss include, but are not limited to hearing loss resulting from normal aging process, noise-induced hearing loss post-exposure, and congenital hearing loss. Examples of conditions that are related to progressive hearing loss include, but are not limited to Meniere's Disease, Chronic Otitis Media, Acoustic Tumors, Autoimmune Inner Ear Disease, and certain cancer treatments involving chemotherapeutic drugs. Employees with conditions related to progressive hearing loss shall be tested for protocol compliance at least annually, and more frequently if indicated for the condition.

V. The Individual must meet All of these Criteria in Order to be Qualified for Operating a Package Car Under 10,001 pounds

The candidate must demonstrate, at either 1kHz or 2 kHz, a binaural sound field threshold of 45 dB HL or better (ANSI-1989), with or without hearing aids, as measured by a licensed or certified audiologist following relevant and current ANSI standards.

All HIEP screening will involve audiometric testing, as stated above, in lieu of the forced whisper test.

United Parcel Service Employee Name:

Hearing Impairment Evaluation Program SSN#

Employee Data	DOB / / - SSN Sex M F
	Name:
Examiner	Board Certification:
Information	Facility:
	Date of Examination:
Etiology of Hearing Impairment Prognosis	
	☐ Stable: Hearing not expected to progress more rapidly than age-related changes ☐ Progressive: Substantial chance of progressive or fluctuating hearing loss (Please check the appropriate box.)

QUALIFYING CRITERIA AND RESULTS OF HEARING EXAMINATION: The individual must meet the criteria below in order to be qualified. All hearing testing must be performed by a licensed or certified audiologist following relevant and current ANSI standards.

Frequency	Required dB HL in the sound field (must pass either 1000 or 2000 Hz with or without a hearing aid)	Pass
		Y/N
1000	45	
2000	45	

Recommendations or Restrictions: Please list any hearing aids, or other requirements to comply with this Hearing Impairment Evaluation. Insert "None" if indicated:

Next Evaluation scheduled for (Date)

Hearing Care Professional's Signature
Date

Name

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Attention: All persons throughout the United States who have been employed by UPS and/or have applied for a driving position with UPS at any time since June 25, 1997 through May 1, 2009, use sign language as a primary means of communication due to hearing loss or limitation, and failed or would fail the hearing standard established by the Department of Transportation for drivers of commercial motor vehicles.

The purpose of this notice is to inform you of a proposed final settlement in a class action lawsuit brought on behalf of deaf and hard of hearing current and former United Parcel Service, Inc. (UPS) employees and applicants for driving positions who use sign language as a primary means of communication due to hearing loss or limitation and who failed or would fail the hearing standard promulgated by the Department of Transportation (DOT) for drivers of commercial motor vehicles. The class action settlement, which must be approved by the Court, was reached in connection with a lawsuit, *Bates v. UPS*, N.D. Cal. Case No. C99-2216 TEH. The lawsuit, filed in 1999, alleges that UPS engaged in discrimination in violation of the federal Americans with Disabilities Act and various California laws, by requiring all drivers and driver applicants for positions driving UPS delivery vehicles on the public roads to pass the DOT hearing standard ("Driving Claims").* UPS has denied any liability or wrongdoing.

If you are deaf or hard of hearing and a current or former UPS employee, or someone who applied for a driving position at UPS while you were deaf or hard of hearing, at any time beginning June 25, 1997, and you use sign language, you may be a member of the class affected by this lawsuit and the proposed final settlement.

This settlement covers individuals who use sign language as a primary means of non-written communication due to a hearing loss or limitation and who failed or would fail the hearing standard established by the Department of Transportation for drivers of commercial motor vehicles (hereafter "Class Members"). You have been sent this notice because you have been identified as a potential Class Member or because you have responded to an advertisement about the settlement of this lawsuit.

Please read this notice carefully because your rights may be affected:

THIS NOTICE SUMMARIZES THE PROPOSED SETTLEMENT AND ADVISES YOU OF:

- **THE STATUS OF THE LAWSUIT, INCLUDING A STATEMENT OF YOUR RIGHTS WITH RESPECT TO THE PROPOSED SETTLEMENT;**

* A previous Partial Settlement Agreement was approved in this case on November 26, 2003, which resolved all claims arising prior to that date alleging discrimination in the accommodation and promotion practices at UPS as they related to deaf and hard of hearing employees.

- **THE OPPORTUNITY TO FILE AN OBJECTION WITH THE COURT TO THE PROPOSED SETTLEMENT**

REASONS FOR THE SETTLEMENT

This Settlement Agreement resolves all remaining claims in the *Bates v. UPS* case including the claim addressing UPS's policy which requires all drivers of UPS delivery vehicles or package cars on public roads to meet the DOT hearing standard.

After ten years of extensive, hard-fought litigation, including over ten weeks of trial in 2003 and appeals to the Ninth Circuit Court of Appeals, as well as lengthy settlement negotiations, the parties have now reached a proposed final settlement. Class Counsel has concluded that the terms and conditions of the settlement are fair, reasonable, and in the best interests of Class Members. In reaching this conclusion, Class Counsel has analyzed the benefits of the settlement, the possible outcomes of further litigation of these issues, and the expense and length of continued proceedings necessary to further prosecute these issues.

SUMMARY OF THE SETTLEMENT

In connection with this settlement, UPS will implement a Hearing Protocol ("Protocol") for UPS drivers and driver applicants who do not meet the DOT hearing standard, which will be available to all Class Members who are otherwise qualified.

The Protocol was developed as an alternative safety-based qualification standard for employees who cannot pass the DOT hearing standard. The Protocol establishes a more lenient hearing standard for individuals seeking to drive UPS delivery vehicles weighing 10,000 pounds or less. This policy does NOT apply to package cars that weigh more than 10,000 pounds and are therefore subject to DOT regulations relating to commercial motor vehicles.

Under the Protocol, employees unable to pass the DOT hearing test will be provided with hearing screening by a licensed or certified audiologist in connection with their application for a driving position. All Protocol screening will involve audiometric testing and not a forced whisper test. Under the Protocol:

The candidate must demonstrate, at either 1 kHz or 2 kHz, a binaural sound field threshold of 45 dB HL or better (ANSI-1989), with or without hearing aids, as measured by a licensed or certified audiologist following relevant and current ANSI standards.

If a class member obtains a driving position under the Protocol, thereafter hearing examinations will be performed annually for employees with progressive hearing loss, or more frequently, if changes in the employee's condition indicate the need, and every two years for employees with stable hearing loss. Stable hearing loss includes hearing not expected to progress more rapidly than age-related changes and progressive hearing loss includes that characterized by a substantial chance of progressive or fluctuating hearing loss.

The Protocol will be implemented for a one-year period commencing [30 days after the Preliminary Approval Date]. At the conclusion of the one-year period, UPS will provide Class

Counsel with summary data relating to the implementation of the Protocol, including participating employees, the outcomes of their participation, and the reasons for those outcomes. After such data are provided, the Parties will meet and confer regarding the Protocol, including the provision of any additional data. Any disputes remaining at that time shall be resolved exclusively through binding Arbitration.

UPS will provide on-road testing and driver training to all individuals who pass the Protocol in non-DOT regulated package cars.

All UPS managers providing on-road testing and driving training to individuals who pass the Protocol will participate in training developed to assist in more effective communication with hearing-impaired drivers and driver applicants.

The proposed final settlement does not provide monetary relief to Class Members in connection with the Driving Claims with the exception of seven individuals who will receive \$35,000 each. Those individuals include four named plaintiffs and three union grievants who actively pursued the Driving Claim. For all other class members, if they wish to pursue an action for monetary relief they will need to file and prove their claim with the appropriate state or federal agency or court in the appropriate jurisdiction. The statute of limitations that sets a deadline for such class members to bring a claim for monetary relief, if it has not already passed, commenced on [Preliminary Approval Date].

Class Counsel will petition the Court for approval of a \$5,250,000 fee award in connection with the settlement of this lawsuit.

OBJECTIONS TO THE SETTLEMENT

The Court will schedule a hearing in the Courtroom of the Honorable Judge Thelton Henderson, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, to determine whether the Settlement Agreement is fair and reasonable and should be finally approved after the Protocol has been implemented for a full year. Although you are not required to attend, as a Class Member, you have the right to attend and assert your opinion about the settlement at this hearing. Communication services, including sign language interpreting services, shall be available at this hearing. The date and time of the Final Approval hearing will be available from Class Counsel, Counsel for UPS, or the Office Of The Clerk of the United States District Court, Northern District of California.

Any Class Member may object to the terms of the proposed final settlement by submitting a written, signed objection. If you wish to object, write to the Settlement Administrator at the address set forth below. Objections must be mailed to the Settlement Administrator and postmarked no later than [120 days after Preliminary Approval Order]. The Settlement Administrator will, prior to the final approval hearing, file with the Court all timely submitted objections.

Any Class Member who fails to submit a timely written objection may not be granted the right to appear before the Court at the hearing to assert objections to the adequacy and/or fairness of the proposed final settlement. If you do wish to appear at the hearing in person or through

your own attorney, you or your attorney must notify the Settlement Administrator and the following attorneys, postmarked by [Date]:

For the Settlement Administrator:

Bates v. UPS Settlement Administrator
Rust Consulting, Inc.
2000 Powell Street, Suite 500
Emeryville, CA 94608

For the Plaintiff Class Members:

Laurence Paradis
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
TTY: (510) 665-8716
lparadis@dralegal.org

For United Parcel Service, Inc.

Christopher Martin
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, California 94304-1211
Telephone: (650) 849-5300
Facsimile: (650) 849-5333
cjmartin@gibsondunn.com

If you submit a timely objection, you will be notified of the date set for the Final Approval Hearing.

BINDING EFFECT

The proposed Settlement, if finally approved by the Court, will bind all Class Members. This will bar any person who is a Class Member from seeking declaratory or injunctive relief regarding UPS's hearing qualification standards from the time the Court grants final approval until the Court's jurisdiction over the case terminates.

FURTHER INFORMATION

The nature of this federal lawsuit and the proposed Settlement Agreement are only summarized in this Notice. More detailed information concerning the settlement including a copy of the Settlement Agreement may be obtained at www.dralegal.org. You may also contact class counsel at the following address:

Plaintiffs and Class Members:

Laurence Paradis
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
TTY: (510) 665-8716
lparadis@dralegal.org

or by contacting the Settlement Administrator at the following address:

Bates v. UPS Settlement Administrator
Rust Consulting, Inc:
2000 Powell Street, Suite 500
Emeryville, CA 94608

or by consulting the public file on the case at the Office of the Clerk at the following address:

Clerk of the United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102-3483
Specifying: *Bates v. UPS*, C-99-2216 (TEH)

EXHIBIT C

ADVERTISEMENT

**ATTENTION DEAF AND HARD OF HEARING
CURRENT OR FORMER UNITED PARCEL SERVICE, INC. (UPS) EMPLOYEES**

**READ THIS NOTICE IF YOU USE SIGN LANGUAGE, WORKED FOR UPS OR
APPLIED FOR A DRIVING POSITION AT UPS AT ANY TIME SINCE JUNE 25, 1997, AND
FAILED OR WOULD FAIL THE HEARING STANDARD ESTABLISHED BY THE**

**DEPARTMENT OF TRANSPORTATION (DOT)
FOR DRIVERS OF COMMERCIAL MOTOR VEHICLES**

The purpose of this notice is to inform you of a proposed final settlement in a class action lawsuit brought on behalf of deaf and hard of hearing current and former United Parcel Service, Inc. (UPS) employees and applicants for driving positions who use sign language as a primary means of communication due to hearing loss or limitation and who failed or would fail the hearing standard established by the DOT for drivers of commercial motor vehicles. The class action settlement, which must be approved by the Court, was reached in connection with a lawsuit, *Bates v. UPS*, N.D. Cal. Case No. C99-2216 TEH. The lawsuit, which was filed in 1999, alleges that UPS engaged in discrimination in violation of the federal Americans with Disabilities Act and various California laws, by requiring all drivers and driver applicants for positions involving driving UPS delivery vehicles on the public roads to pass the DOT hearing standard for drivers of commercial motor vehicles ("Driving Claims"). UPS has denied any liability or wrongdoing.

If you are a current employee of UPS, or you were employed by UPS or applied for a driving position at UPS at any time beginning June 25, 1997, use sign language as a primary means of non-written communication due to a hearing loss or limitation, and failed or would fail the hearing standard established by DOT for drivers of commercial motor vehicles, you may be a member of the class affected by this lawsuit and entitled to object to the proposed settlement.

The proposed settlement Agreement is available on-line at www.dralegal.org. If you would like additional information about this lawsuit and the settlement, including a copy of the Settlement Agreement, you can also contact Class Counsel at:

Laurence Paradis
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
TTY: (510) 665-8716
lparadis@dralegal.org

If you would like to object, you or your attorney must notify the Settlement Administrator by a letter, postmarked by **[Date]** and addressed to:

Bates v. UPS Settlement Administrator
Rust Consulting, Inc.
2000 Powell Street, Suite 500
Emeryville, CA 94608

EXHIBIT D

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by counsel for the plaintiff class certified in *Eric Bates et al. v. United Parcel Service, Inc.*, No. C 99-2216 (TEH) ("the Action"), by the district court on November 5, 2001, as modified on October 21, 2004, on the one hand ("plaintiffs"), and counsel for United Parcel Service, Inc., on the other ("UPS").

In their continuing efforts to reach a negotiated resolution of this lawsuit, plaintiffs and UPS have reached the following interim agreements:

1. An expert panel will be charged with developing a "hearing protocol" for UPS drivers and driver applicants who do not meet the hearing standard promulgated for commercial drivers by the United States Department of Transportation. The hearing protocol will apply to all non-DOT-regulated package delivery vehicles, provided that UPS may elect to exclude P32s.

a. The panel will consist of five persons: Two appointed by plaintiffs, two appointed by UPS, and one selected jointly by the parties. Plaintiffs' appointees are Dr. Robert Sweetow and Mr. John Romano. UPS's appointees are Dr. Robert Dobie and Mr. Gerry Eaker. The joint appointee will be a retired judge agreed upon by July 11, 2008.

b. The panel's charter is constrained by the parties' agreement as to the appropriate scope of a hearing protocol, including the following specific parameters:

i. A hearing protocol adopted as part of the resolution of this case may involve an alternative hearing screening for those employees unable to pass the DOT's hearing test.

ii. A hearing protocol adopted as part of the resolution of this case would need to address methods for a "road test" for hearing impaired drivers, including alternative communication methods before and during the test. It may also include accommodations on the test itself.

iii. A hearing protocol adopted as part of the resolution of this case would need to address methods for providing UPS's existing classroom training to hearing-impaired drivers and any additional classroom training needed to address any safety concerns associated with impaired hearing.

iv. A hearing protocol adopted as part of the resolution of this case would need to address methods for providing UPS's existing on-road training to hearing-impaired drivers and any additional on-road training needed to address any safety concerns that may be associated with impaired hearing.

v. A hearing protocol adopted as part of the resolution of this case would need to address methods for a supervisory ride-along during a hearing impaired driver's 30-day probationary period and any additional supervisory assessment needed to address any safety concerns associated with impaired hearing.

c. The parties may make written submissions, not to exceed thirty pages inclusive of appendices and exhibits and attachments, to the panel at the formative stage concerning the issues to be addressed in developing a hearing protocol pursuant to the panel's charter. The panel in its discretion may ask the parties for additional written submissions at any time.

d. UPS shall pay the reasonable fees and costs incurred by the panel in developing the hearing protocol, including reasonable remuneration of the panel members and reasonable expenses directly related to the panel's development of a hearing protocol.

2. The panel is to complete the hearing protocol by January 1, 2009. Upon completion of the hearing protocol, the panel will be disbanded and have no further duties or obligations. The hearing protocol will be implemented for a one-year period commencing on January 2, 2009 or 60 days after the entry of an order implementing the parties' Settlement Agreement, whichever is later. At the conclusion of the one-year period, UPS will provide plaintiffs' counsel with summary data relating to the implementation of the hearing protocol, including participating employees, the outcomes of their participation, and the reasons for those outcomes. After such data are provided, the parties agree to meet and confer regarding the hearing protocol, including the provision of any additional data. Any disputes remaining at that time shall be resolved exclusively through binding arbitration as described below.

3. The hearing protocol will resolve plaintiffs' claims for injunctive relief. Plaintiffs and UPS will continue to negotiate the remaining issues in the case, including plaintiffs' claims for monetary relief and attorneys' fees, as well as other terms of a class-wide settlement.

4. Neither plaintiffs nor UPS, by agreeing to the panel and otherwise continuing in their efforts to resolve this dispute, is admitting liability (or lack thereof), or otherwise conceding the correctness of legal and/or factual arguments that have been advanced in this litigation.

5. On or before the due date for the next Case Management Statement, the parties agree to jointly inform the Court that, following voluntary mediation, they have reached a partial agreement and are hopeful of reaching a negotiated resolution of this lawsuit. The parties agree that this Memorandum of Understanding, and the specific terms of the interim agreement, will not be disclosed to the Court until the parties file a motion for preliminary approval of the Settlement Agreement. With the exception of the filing described in this paragraph, the parties will make no public statement regarding this agreement unless and until a Settlement Agreement is executed. The Settlement Agreement shall further address the public statements, if any, that may be made by the parties upon its execution.

6. Any disputes regarding either party's compliance with this Memorandum of Understanding or the resulting Settlement Agreement, including without limitation whether the hearing protocol developed by the panel materially complies with the panel's charter, shall be resolved by binding arbitration before a single arbitrator jointly selected by the parties. The arbitrator shall have discretion to include attorneys' fees pursuant to the *Christianburg* standard. The arbitrator, or a methodology for selecting the arbitrator, will be agreed upon before July 11, 2009.

7. Unless extended by written agreement of the parties, this Memorandum of Understanding shall automatically terminate if no Settlement Agreement is submitted to the Court for approval by January 1, 2009.

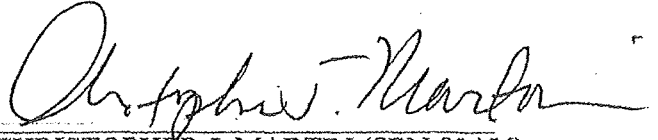
June 25, 2008.



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Attorneys for United Parcel Service, Inc.

EXHIBIT E

SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

This Supplemental Memorandum of Understanding is entered into between UPS and the Driving Class, through their respective attorneys and/or representatives.

1. The Parties have entered into a Memorandum of Understanding, dated June 25, 2008, that has been extended by mutual agreement. The Parties have also entered into an agreement-in-principle to resolve their dispute on the terms set forth in the proposed Agreement attached as Exhibit A. (All capitalized terms used in this memorandum and not otherwise defined have the same meaning as in the proposed Agreement.)
2. This Supplemental Memorandum of Understanding addresses the items that remain to be resolved before the Agreement can be finalized and submitted to the Court for approval:
 - a. Mailed Notice (§ 6.1.2.): The Parties shall agree on the form of Mailed Notice within 21 calendar days.
 - b. Published Notice (§ 6.1.3.): The Parties shall agree on the form of Published Notice within 21 calendar days.
 - c. Fee Award (§ 9.1.): The Fee Award shall be \$5,250,000.00.
3. The Parties shall execute the Agreement no later than May 1, 2009. In the unlikely event that the Parties are unable to reach agreement on the form of Mailed Notice and/or Published Notice, they shall execute the Agreement regardless of such disagreement, and submit their competing forms to the Court for decision in connection with the motion for Preliminary Approval.
4. The parties agree that no party shall make any public statements regarding the Memorandum of Understanding, Supplemental Memorandum of Understanding, Hearing Protocol, or Settlement Agreement until the Motion for Preliminary Approval is filed. The parties agree to meet and confer regarding press releases, website disclosures and other public statements prior to that date.

Dated: April 21, 2009

CLASS COUNSEL

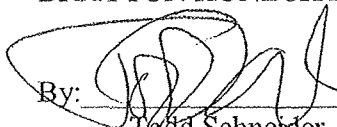
DISABILITY RIGHTS ADVOCATES

By:



Laurence Paradis, Class Counsel

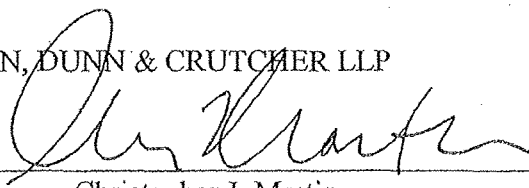
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DEFENDANT UNITED PARCEL SERVICE, INC.

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By: 

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