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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. C 99-2216 TEH

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

I. INTRODUCTION AND LITIGATION BACKGROUND

This Settlement Agreement ("Agreement") is entered into by and among defendant United Parcel Service, Inc. and Eric Bates, Bert Enos, Babaranti Oloyede, Eric Bumbala, and Edward Williams, ("Named Plaintiffs"), by and through their respective counsel of record.

On May 31, 1999, Eric Bates and Bert Enos filed a complaint individually and on behalf of other similarly situated hearing-disabled employees and applicants against United Parcel Service, Inc. ("UPS") pursuant to the Americans with Disabilities Act, 42 U.S.C., §§ 12101 *et seq.* ("the ADA"), the California Fair Employment and Housing Act ("FEHA"), Government Code §§ 12940 *et seq.*, California Civil Code § 51 and § 54 (the Unruh Act) and for violation of public policy, infliction of severe emotional distress and for declaratory relief.

The action, entitled *Bates, et al. v. United Parcel Service, Inc.*, C-99-2216, (the "Original Complaint"), brought in the United States District Court for the Northern District of California, alleged that UPS has maintained policies and practices that discriminate on the basis of disability against Eric Bates and Bert Enos and similarly situated hearing-disabled employees and applicants. UPS answered the Original Complaint and denied that it had engaged in any discrimination against Eric Bates or Bert Enos or the class they purported to represent, and maintained that hearing-disabled applicants and employees have been reasonably accommodated, have had equal employment opportunities, have been provided equal terms and privileges of employment, and have not been discriminated against with regard to promotions. UPS further denied that it unlawfully failed or refused to allow Eric Bates or Bert Enos or the class they purported to represent who do not meet the DOT hearing standard to become delivery drivers for UPS and alleged that the DOT hearing standard is a lawful qualification standard for all UPS delivery drivers.

The parties commenced discovery in August 1999 on issues regarding the suitability of Eric Bates and Bert Enos' disability discrimination claims for class treatment, the adequacy of Eric Bates and Bert Enos to represent an alleged class of UPS's hearing-disabled applicants and employees, and other class certification issues. On May 21, 2001, plaintiffs sought leave to file a First Amended Complaint, which the Court granted on June 28, 2001. The Named Plaintiffs filed their First

Amended Complaint on July 2, 2001. UPS answered the First Amended Complaint on July 16, 2001.

The First Amended Complaint is brought against UPS by the Named Plaintiffs individually and on behalf of a class of similarly situated hearing-disabled employees and applicants pursuant to the ADA, the FEHA, California public policy, the Unruh Act (Cal. Civ. Code § 51), Cal. Bus. and Prof. Code §§ 17200 *et seq.* and California common law. The Named Plaintiffs allege that they represent a class of persons employed by or who applied for employment with UPS who utilize sign language as their primary mode of communication due to a hearing impairment, and who allege that they have been discriminated against based on their hearing impairment.

The First Amended Complaint, entitled *Bates et al. v. United Parcel Service, Inc.*, C-99-2216 (TEH), alleges that UPS has engaged in systemic discrimination on the basis of disability against the Named Plaintiffs and similarly situated hearing-disabled employees and applicants, by failing to reasonably accommodate their hearing disabilities, failing to engage in the interactive process with them, failing to provide them with equal terms and privileges of employment, discriminating against them in promotions beyond entry level positions and by adopting policies and practices that illegally screen them out from promotion to delivery driving positions on the basis of their disabilities. UPS denies that it has engaged in any discrimination against the Named Plaintiffs or the class they purport to represent, and maintains that its hearing-disabled applicants and employees have been reasonably accommodated, have had equal employment opportunities, have had equal terms and privileges of employment and have not been discriminated against with regard to promotions. UPS further denies that it unlawfully failed or refused to allow Named Plaintiffs or the class they purport to represent who do not meet the DOT hearing standard to become delivery drivers for UPS and alleges that the DOT hearing standard is a lawful qualification standard for all UPS delivery drivers.

Three of the Named Plaintiffs (Bates, Enos and Oloyede) purport to represent a California sub-class that alleges that UPS discriminates against them and against similarly situated hearing-disabled employees and applicants in violation of California Civil Rights laws, including the California FEHA, California public policy, and the Unruh Act. Bates, Enos and Oloyede also brought individual claims under Cal. Bus. & Prof. Code §§ 17200 and California common law. UPS denies each and all of the allegations made relating to the Named Plaintiffs and the California Sub-

Class.

UPS contested Named Plaintiffs' Motion for Class Certification and maintained that class adjudication would not be proper. On November 1, 2001, the Court certified, under Federal Rule of Civil Procedure 23(b)(2), the following class:

> Those persons throughout the United States who (i) have been employed by and/or have applied for employment with United Parcel Service (UPS) at any time since June 25, 1997 up through the conclusion of this action, (ii) use sign language as a primary means of communication due to a hearing loss or limitation, and (iii) allege that their rights have been violated under Title I of the Americans with Disabilities Act on account of UPS's policies and procedures.

At the same time, the Court also certified a subclass under Federal Rule of Civil Procedure 23(b)(2), consisting of:

> Those persons throughout California who (i) have been employed by and/or have applied for employment with United Parcel Service (UPS) at any time since June 25, 1997 up through the conclusion of this action, (ii) use sign language as a primary means of communication due to a hearing loss or limitation, and (iii) allege that their rights have been violated under California civil rights laws on account of UPS's policies and procedures.

Plaintiffs have vigorously prosecuted this case and UPS has vigorously contested it. Plaintiffs have taken the depositions of 58 UPS managers and supervisors. UPS has taken the depositions of the five Named Plaintiffs and thirteen identified Class Members. The parties have produced over 38,000 pages of documents. UPS has produced the job histories of hundreds of thousands of UPS employees which were alleged to be relevant to the promotion issues in this case, and the parties have prepared expert statistical reports analyzing the promotion issues.

In addition, between April 8, 2003 and June 4, 2003, plaintiffs have presented at trial of this action the testimony of 30 hearing impaired UPS employees and applicants, 2 expert witnesses and 1 Union officer; have called 6 UPS managers as witnesses; and have read into the record portions of the depositions of 6 UPS managers and supervisors.

The parties have engaged in extended settlement discussions, beginning in 1998 before the EEOC, continuing on April 10, 2002 and May 7, 2002 with the assistance of court-appointed mediator Kenneth Natkin, and on October 17 and 18, December 10 and 11, 2002, and May 28, June 6

and June 9, 2003 with the assistance of Retired U.S. Magistrate Judge Edward Infante. The parties have reached the stipulations and agreements contained in this Agreement as a result of these negotiations, without reaching any conclusions or findings as to any merits of the matters at issue in this case. The parties have not mediated and have not included in this Agreement the Reserved Issue [defined in Section III.Z. below]. This Agreement preserves to the parties all rights with respect to the Reserved Issue, including the right to obtain full and complete review of this issue.

The formal and informal discovery conducted in this action, the depositions taken by both sides, the documents produced and information exchanged during the litigation process, at trial and during the settlement negotiations are sufficient to assess the merits of the respective parties' positions and to compromise the issues on a fair and equitable basis. This Agreement shall constitute a resolution of all claims asserted in the First Amended Complaint, with the exception of the Reserved Issue.

II. JURISDICTION

The Court has personal jurisdiction over the parties, federal question subject matter jurisdiction of this action under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and supplemental subject matter jurisdiction pursuant to 28 U.S.C., § 1367 over plaintiffs' state law claims. The First Amended Complaint asserts claims that, if proved, would authorize the Court to grant the equitable and monetary relief set forth in this Agreement. Venue is proper in this District.

On final approval of this Agreement under Rule 23(e), Judgment will be entered approving this Agreement and dismissing the Settled Claims with prejudice. The Court shall retain jurisdiction of this action during the Term of the Agreement for the sole purpose of enforcing the Agreement.

III. DEFINITIONS

The following terms when used in this Agreement, in addition to the terms defined elsewhere in the Agreement shall have the following meanings:

A. "Agreement" means this Settlement Agreement and Release of Claims.

B. "Best Efforts" means efforts reasonably designed to achieve a specified obligation consistent with the purposes of this Agreement.

C. "California Sub-Class Members" means Class Members who were employed by, or

who applied for employment with UPS during the Liability Period in UPS facilities located in California.

D. "Claims Administrator" means Dan Rosenthal, Rosenthal & Company, LLC, 35 Leveroni Court, Suite 150, Novato, California 94949.

E. "Class Counsel" means Disability Rights Advocates and Schneider & Wallace.

F. "Class Members" as used herein means individuals who are or were employed by, or who were applicants for employment with UPS during the Liability Period, who use sign language as a primary means of communication due to a hearing loss or limitation and who allege that their rights have been violated on account of UPS's policies and procedures. "Class Members" shall include California Sub-Class Members. For purposes of this settlement, and for this Agreement only, the parties stipulate and agree that the individuals identified in Exhibit A hereto are Class Members. Exhibit A includes employees identified by UPS in response to plaintiffs' Interrogatory No. 12, hearing-impaired applicants who use sign language and who have been identified by UPS, individuals identified by plaintiffs in response to defendant's Interrogatory No. 11, and any individual who files a valid claim or otherwise receives damages pursuant to the claims distribution process. Exhibit A will be amended to include all Class Members identified through the Final Approval Date.

G. "Claims Forms" means the two forms attached to this Agreement as Exhibit C.

H. "Class Notice" means the notice of class settlement attached to this Agreement as Exhibit B.

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

J. "Date of Final Judgment" means the date on which the Court enters Judgment approving this Agreement and dismissing the Settled Claims with prejudice pursuant to Federal Rules of Civil Procedure, Rules 23(e), 54(b), 58 and 79(a).

K. "Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability" as used herein shall include allegations of: (1) disparate or unfair treatment based on an alleged hearing or hearing-related disability; (2) harassment based on alleged hearing or hearing-related disability; (3) failure to reasonably accommodate an alleged hearing or hearing-related disability; (4) failure to engage in the interactive process intended to provide reasonable accommodation of an alleged

hearing or hearing-related disability; (5) failure to provide equal terms, privileges and conditions of employment to employees who have an alleged hearing or hearing-related disability; (6) failure to promote, on the basis of an alleged hearing or hearing-related disability, employees qualified to perform the essential job functions of the positions they seek, with or without reasonable accommodation; and (7) retaliation arising from rights asserted by an individual with an alleged hearing or hearing-related disability.

L. "Effective Date" means the date after the Final Approval Date on which the earlier of either of two events occurs: (1) the expiration of the time for filing of an appeal from the Date of Final Judgment without the filing of a notice of appeal, or (2) if a timely appeal is filed, the final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Agreement. The Effective Date will not occur if pursuant to Section XI.E, Excessive Number of Opt Outs, UPS is entitled to and chooses to void the Agreement.

M. "Employee" means a person who is or was on UPS's payroll during the Liability Period. Information regarding the status of such persons shall be verified by UPS's records.

N. "Final Approval Date" means the date upon which the Court approves this Agreemer after having determined that it is fair, adequate and reasonable under Federal Rule of Civil Procedure 23(e).

O. "Liability Period" means (i) for monetary relief, the period between June 25, 1997 and the Opt-Out Date; and (ii) for injunctive relief, the period from June 25, 1997 to the expiration of this Agreement as provided in Section VIII of this Agreement.

P. "Mailed Notice Class List" means the list created by the Claims Administrator of those Class Members to whom he has mailed the Class Notice, as provided in Section XI.F of this Agreement.

Q. "Monetary Relief Fund" means the fund of $5.8 million created for the benefit of the named plaintiffs and for the benefit of Class Members who do not opt-out prior to the Opt-Out Date.

R. The "Monitor" means the person selected to monitor compliance with this Agreement as provided in Section X.E.

S. "Monitoring Period" is the period from the Effective Date to the expiration of this

Agreement as provided in Section VIII of this Agreement.

T. "Named Plaintiffs" means Eric Bates, Eric Bumbala, Bert Enos, Babaranti Oloyede, and Edward Williams.

U. "Opt-Out Date" means the date on which the Opt-Out period expires pursuant to Section XI.D.2 of this Agreement.

V. "Preliminary Approval Date" means the date upon which the Court enters an Order preliminarily approving this Agreement.

W. "Qualified Claimant" means a Class Member who has satisfied the conditions set out in Section XI.F of this Agreement.

X. "Qualified Claimant List" means the final list of all qualified claimants whose claims have been finally determined to be timely and valid, as described in Section XI.F of this Agreement.

Y. "Releasors" means Class Members and their heirs, estate, spouses, successors and any other person who could claim through them, who do not opt-out of the monetary relief provisions of this Agreement prior to the Opt-Out Date and who release the UPS Releasees as set forth in Section IX.A of this Agreement.

Z. "Reserved Issue" means alleged unlawful discrimination in refusing or failing to allow Named Plaintiffs and Class Members who do not meet the DOT hearing standard to become drivers of delivery vehicles or UPS package cars on public roads for UPS.

AA. "Residual Funds" means any funds remaining in the Monetary Relief Fund one year after the initial distribution of settlement checks.

BB "Settled Claims" means all claims settled and released in this Agreement.

CC. "Term of this Agreement" is the period from the Effective Date until the expiration of the Agreement pursuant to Section VIII.

DD. "UPS," "Defendant," and "the Company" mean United Parcel Service, Inc.

EE. "UPS Releasees" mean United Parcel Service, Inc. and its current and former officers, directors, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, predecessors, successors and assigns, and all benefit plan administrators and anyone acting in concert with or on behalf of any of them who are released by Releasors as set forth in Section IX of this Agreement.

FF. "Promotion" means advancement to part-time and full-time supervisor, part-time and full-time manager, specialist, incompatible processor, irregular processor, tug driver, shifter, fueler and car washer positions.

IV. CERTIFICATION OF DAMAGES SETTLEMENT CLASS

The Court previously certified a class and subclass under Rule 23(b)(2)for purposes of liability and equitable relief, as described above. For the sole purpose of settlement of monetary relief claims as provided in this Agreement, and conditioned upon Final Approval of the Agreement, the parties stipulate to further certification of a class under FRCP 23(b)(3) described as:

> Those persons identified on Ex. A attached hereto and as subsequently amended, excluding any individuals who file a timely request to Opt-Out of the monetary relief provisions of the Agreement.

V. PURPOSES OF THE AGREEMENT

The parties have entered into this Agreement for the following purposes:

A. To provide agreed-upon equitable and monetary relief to Class Members, in ways that do not unnecessarily burden UPS's competitive position in the package delivery business or unnecessarily disrupt UPS's operations;

B. To create an expedited procedure for providing the agreed-upon relief;

C. To avoid further expensive and protracted litigation; and

D. To provide finality to the resolution of the claims and defenses asserted in this action, except as expressly noted.

VI. NON-ADMISSION, NON-DETERMINATION

This Agreement represents the compromise of disputed claims. This Agreement does not and will not constitute 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. By agreeing to and entering voluntarily into this Agreement, there is no admission, express or implied, that UPS has violated 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. This Agreement does not contain, and will not be

interpreted or construed as containing any such admission. Thus, by way of example (and not limitation), no provision of this Agreement which requires UPS to take an action may be interpreted, cited or urged by any party in any proceeding as an admission or indication that UPS has failed to take such action in the past or is required by law to take such action. Nor will this Agreement constitute evidence of any admission by UPS that the class and/or California sub-class were properly certified.

In the event that this Agreement is not approved or that approval is overturned on appeal, nothing herein shall be deemed to waive UPS's objections and defenses to class certification or any other issue relating to or arising from plaintiffs' claims, and this Agreement shall not then be admissible in any court regarding the propriety of class certification or any other issue. In addition, by entering into this Agreement UPS does not waive its objections and defenses to class certification of the Reserved Issue or to the merits of the Reserved Issue.

For purposes of interpreting the Agreement, individual Class Members shall not be deemed to be third party beneficiaries of this Agreement, and shall have no right to enforce its terms except through Class Counsel.

VII. NON-DISCLOSURE OF DOCUMENTS RECEIVED OR CREATED IN *Bates v. UPS*.

Class Counsel agree that they will not disclose documents gathered or created in the course of this litigation which are not part of the public record. Any subpoena for information or documents will be immediately referred to UPS, attention Christopher Martin or Patricia Radez at Gibson, Dunn & Crutcher, One Montgomery Street, Suite 3100, San Francisco, California 94104, for response. Class Counsel will afford UPS time to evaluate and/or challenge such subpoena before they comply with it, and will cooperate in any challenge or objection to such subpoena. Class Counsel will assert the work product privilege wherever appropriate in any dispute over disclosure of documents. The agreements in this Section VII shall survive the expiration of the Term of this Agreement.

VIII. DURATION OF AGREEMENT

This Agreement shall operate for a period of three years following the Effective Date of this Agreement. The parties stipulate and agree that during this three-year term, the Court shall retain

continuing and exclusive jurisdiction over the Settled Claims solely for the purpose of enforcing the terms of this Agreement. Accordingly, the Agreement shall expire and be without force and effect three years from the Effective Date of this Agreement. At the end of this three-year term, the Court's jurisdiction over the subject matter of the Agreement shall terminate for all purposes and the Agreement shall dissolve without the need for any filing by the Court or by any party.

IX. RELEASE OF CLAIMS

A. Release of Claims for Monetary Relief by Named Plaintiffs and Class Members.

The Named Plaintiffs and Releasors fully release and forever discharge the UPS Releasees from any and all individual and/or class claims, demands, charges, complaints, rights and causes of action of any and every kind, known or unknown, whether seeking monetary and/or equitable relief of any sort, which arose on or before the Opt-Out Date and relate to alleged Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability, including but 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. All releases herein are limited to claims arising from Discrimination on the Basis of Alleged Hearing or Hearing-Related Disability.

The release of monetary relief claims is limited to the Releasors as defined above. The sole exception to this monetary relief Release will be for the Reserved Issue. It is agreed that the Reserved Issue is not released and is the subject of further litigation.

This monetary relief Release provision is final and shall survive the expiration of the Agreement's term.

As to claims of Discrimination on the Basis of an Alleged Hearing or Hearing-Related

Disability released herein, the Releasors expressly waive the protection of Section 1542 of the Civil Code of the State of California and analogous statutes from other states, which California statute states that:

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

As to the Named Plaintiffs who are no longer employed by UPS, they further agree not to re-apply or otherwise seek employment at UPS in the future. However, should UPS acquire one of the companies where these plaintiffs work, nothing in this Agreement will require that they resign.

B. Release of Equitable Relief Claims by Named Plaintiffs and Class Members.

In return for the consideration provided for in this Agreement, on the Effective Date of this Agreement, Named Plaintiffs and all Class Members shall be deemed to have fully released and forever discharged the UPS Releasees from any and all individual and/or class claims, demands, charges, complaints, rights and causes of action of any and every kind, known or unknown, for injunctive, declaratory or equitable relief of any sort, which have arisen and/or may arise on or before the expiration date of this Agreement and relate to alleged Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability, including, but 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. All releases herein are limited to claims arising from Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability.

This equitable relief release and this Agreement will bind all Named Plaintiffs and Class Members and preclude such members from receiving, in future claims, equitable, injunctive or declaratory relief arising from claims of Discrimination on the Basis of an Alleged Hearing or

Hearing-related Disability, which equitable, injunctive or declaratory relief is, or could have been included in the equitable relief afforded under this Agreement, except to the extent such claims aris out of an alleged breach of this Agreement, and except for the Reserved Issue. Should any Named Plaintiff or Class Member assert any violation of state or federal law concerning Discrimination on the Basis of an alleged Hearing or Hearing related Disability between the Effective Date and the expiration of the agreement such person may only pursue equitable relief by way of enforcement of this Agreement as set forth in the Monitoring and Enforcement section below. It is agreed that the Reserved Issue is not released and is the subject of further litigation.

As to claims of Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability released herein, the Named Plaintiffs and Class Members expressly waive the protection of Section 1542 of the Civil Code of the State of California and analogous statutes from other states, which California statute states that:

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

This Release is final and shall survive the expiration of the Agreement.

C. Covenant Not to Sue.

Pursuant to the All Writs Act and the Anti-Injunction Act, 28 U.S.C., §§ 1651, 2283, and Federal Rule of Civil Procedure 23, each and every Named Plaintiff and each and every Class Member who has not filed a timely request to opt out shall not bring any claims for monetary relief against UPS released pursuant to Section IX.A in any court, agency or adjudicative body, whether federal, state or local.

Pursuant to the All Writs Act and the Anti-Injunction Act, 28 U.S.C., §§ 1651, 2283, and Federal Rule of Civil Procedure 23, each and every Named Plaintiff and each and every Class Member shall not bring any claims for equitable or injunctive relief against the UPS releasees pursuant to Section IX.B in any court, agency or adjudicative body, whether federal, state or local.

D. No Knowledge of Additional Litigation.

Class counsel and the Named Plaintiffs represent and warrant that they have no present knowledge of any intent by any person to file a suit against UPS or any of the UPS Releasees in any

jurisdiction, raising claims which are the same or similar to the claims raised by Named Plaintiffs in *Bates v. UPS*, including but not limited to, claims under the ADA or FEHA for Discrimination on the Basis of Alleged Hearing or Hearing-Related Disability.

X. EQUITABLE RELIEF

As described above in Section I, the parties engaged in extensive mediation efforts in an attempt to resolve this litigation. As a result of those good faith efforts, agreement was reached in October 2002 on the terms of equitable relief as described herein. In the absence of complete resolution of the litigation, UPS implemented the equitable relief agreement, with a few exceptions and without comment from Class Counsel on the language of the employee information pamphlet. The agreed upon equitable relief is described in this Section X. To the extent that Class Counsel contend that the existing employee pamphlet developed by UPS is deficient, if the parties cannot agree on modifications to that pamphlet, the Monitor will resolve any remaining issues with respect to the employee pamphlet.

The parties agreed that the following equitable relief would and will be provided:

A. Training.

1. UPS has developed training materials and has trained and will continue to train operations supervisors and managers in buildings where class members work on (i) UPS's policy of accommodation, (ii) the specific accommodations available for class members, (iii) resources available to provide those accommodations (i.e., interpreters), (iv) when and how UPS shall engage in the interactive process with class members, and (v) the contact or resource person designated to answer questions. This training has been and will continue to be provided as part of an electronic training program, and the managers or supervisors who complete the training will be certified on these issues, and UPS has a record of the training.

2. UPS will amend its existing ADA training program to include information specific to the interactive process and reasonable accommodations for class members. This "live" training has been and/or will be provided to UPS managers in the areas of HR, Labor, Occupational Health and Safety and Workforce Planning.

3. UPS has included, as part of the electronic training described in 1 above,

information concerning individualized assessment as to an individual's ability to perform the essential job functions, with or without reasonable accommodation.

4. UPS has and will include in both trainings information regarding UPS's policy for responding to accommodation requests from class members.

B. Reasonable Accommodation.

1. UPS has provided and will continue to provide reasonable accommodations, including certified interpreters or other effective means of communication for formal training sessions, including the following events at which a class member is present:

a. Interviews and any initial orientation and/or training held at the beginning of a new position.

b. Any periodic follow-up training sessions and any other routine trainings held on a monthly, quarterly or semi-annual or annual basis, including cross-trainings.

c. Any safety certification training such as HABITS certification, safe work methods training, conveyor securing training and hazardous materials handling certification sessions.

d. STAR, Hazardous Material Responder, Air Dangerous Goods, and Unit Load Devices training sessions.

e. "CERC" meetings.

f. Any meetings in which new hazardous materials or emergency response issues are addressed, such as the sessions held in the last quarter of 2001 concerning the risks and procedures for addressing possible anthrax exposures.

g. "CHSP/safety meetings."

h. Any trainings regarding emergency evacuation procedures, including to the extent that such trainings are done in conjunction with any emergency evacuation drills.

i. Initial training provided to any class member on the use of emergency evacuation pagers.

j. Any company-sponsored events such as internal job fairs, award ceremonies, motivational events, team building events and formal social gatherings at which any

presentations are made.

k. For disciplinary proceedings of union employees, at any meeting where a shop steward is contractually required to attend. For non-union employees, at any meeting to review the employee's performance evaluation or disciplinary meeting which could be viewed as a formal disciplinary meeting.

l. UPS has distributed vibrating pagers to class members for use in emergency evacuation situations (both drills and non-drills). New Class Members who begin employment after the execution of the Agreement shall also be provided with pagers within 90 days of commencing employment. UPS has provided and/or will provide training to class members as well as other UPS employees responsible for activating the pagers, and UPS agrees that it has monitored and will monitor the system to ensure its effectiveness.

m. During annual performance reviews for UPS management personnel.

2. When a class member is initially hired, UPS has engaged in and will continue to engage in an interactive process to evaluate the individual's accommodation needs, including what reasonable accommodations, aids and/or services may be required for effective communication. UPS has engaged in and will continue to engage in this process for existing employee class members and whenever a class member is reassigned to a new job or transferred to a different facility which requires different levels or types of communication needs or responsibilities. Thereafter UPS will continue to provide appropriate reasonable accommodations as indicated by the interactive process.

3. UPS will ensure that TTYs are readily available and properly maintained in facilities where class members are located.

4. UPS will add a TTY number to the contact information provided at the UPSjobs.com website.

5. UPS has provided and will continue to provide class members with all reasonably necessary accommodations, aids and services, including certified interpreters or other effective means of communication, at each stage of the Opt-In process.

6. UPS has designated, and will designate a Human Resources person in each UPS facility at which a class member is stationed to be responsible for facilitating requests for

accommodations, providing information and guidance, answering questions, and assisting class members to receive effective communication as set forth in this Agreement. Such resource persons have been and will continue to be provided training by UPS sufficient to enable such person to fulfill these responsibilities. UPS has informed and will continue to inform each class member as to who the resource person is in such class member's facility. UPS will offer at least once per trimester to hold a meeting for each class member employee at which a sign language interpreter(s) will be provided, for the purposes of keeping Class Members oriented to work-related issues and developments, and addressing any class member's work-related concerns. UPS will make its best efforts to ensure that such interpreter(s) are appropriately certified. Appropriate operations and/or HR managers will attend such meetings as necessary. The company shall provide written notice of this meeting to class members and post a sign-in sheet at least two weeks in advance of each such meeting. Said written notice shall include the location of the sign in sheet and explain that if no one has signed up three days before the scheduled meeting, the meeting shall be canceled. The parties understand and agree that interpreters may be provided more frequently if appropriate under other provisions of this agreement.

C. Standard Information.

1. UPS has developed and distributed a pamphlet to all Class Members including applicants. Class Counsel will review the pamphlet and submit comments. To the extent that the parties cannot agree, the Monitor will approve the final form and content of the pamphlet. If modified, the pamphlet will be redistributed to all Class Members currently employed by UPS. The pamphlet informs employees and applicants that UPS will engage in an interactive process to determine accommodation needs and to provide reasonable accommodation. The pamphlet includes examples of types of accommodations available to individuals with hearing disabilities, including but not limited to those described in Section X.B of this Agreement, the process for requesting reasonable accommodation, available grievance and complaint resolution processes within UPS. It will include the telephone and TTY number of the UPS Help Line. UPS will process such calls in accord with its normal process for handling such calls. UPS will report each call to that TTY number and the outcome in its monitoring reports.

2. The training and pamphlet referred to in Section X.C describes procedures for pursuing promotional opportunities for entry-level class members, including references to a contact or resource person who would be available to answer questions on how to request specific accommodations that may be helpful in the promotion process.

3. UPS will amend the language appearing in all of the essential functions job descriptions to provide as follows: Have a sufficient ability to communicate, through sight, hearing and/or otherwise, to perform assigned tasks and maintain proper job safety conditions.

D. Tracking Related to Promotions.

1. UPS will track class members who apply for promotion. This system shall contain the number and identities of class members who submit letters of intent to become a part-time or full-time supervisor, and the number and identities of class members who are promoted to part-time or full-time supervisor.

2. For each class member who is denied a promotion to part-time or full-time supervisor position, or who files a grievance concerning promotion, UPS will provide an explanation to the class member of the basis for the denial of the application and the response to any grievance.

3. UPS will provide an explanation to the class member of any demotions or terminations of class members holding management positions which occur either during the course of the training process or after the class member has assumed the position.

E. Selection of a Monitor.

1. A third-party compliance Monitor will be selected.

2. Each party will propose four names of potential monitors. If one name appears on both lists, that individual will be the monitor.

3. If there are no names common to both parties' lists, each party may strike three names from the opposing party's list. The two remaining individuals (one from each party's list) will select the Monitor.

F. Compliance Monitoring and Enforcement.

1. The Monitor will review compliance with the obligations set forth in this Agreement during the Monitoring Period. Compliance monitoring will include semi-annual reporting

by UPS.

2. The Monitor may inspect UPS's premises at reasonable times if his/her revie of UPS reports or other factors suggests a need.

3. The Monitor may interview class members and other witnesses, and examine and copy relevant documents at reasonable times if his/her review of UPS reports or other factors suggests a need.

4. The Monitor will make compliance reports to all counsel semi-annually. If the monitor determines, in his/her discretion, that UPS has materially breached a provision of the Agreement, he/she will notify all counsel and provide UPS with a 30-day opportunity to cure the breach. Before the Monitor makes any determination that there has been a material breach which triggers this 30 day cure notification, he/she will inform UPS and provide UPS an opportunity to respond.

5. After the period for cure has elapsed, the Monitor will make a finding as to whether there has been a material breach which has not been timely cured.

6. Class counsel may only bring an enforcement action upon a finding of materi breach which was not cured to the satisfaction of the Monitor. The District Court will retain jurisdiction for such purposes. Attorneys' fees and costs may be claimed in any such proceeding in accordance with applicable law.

7. Individual Class Members may not bring enforcement proceedings except through Class Counsel and only in accordance with the provisions set forth above.

8. The reporting to the Monitor by UPS, discussed above, will include, inter alia, the following information concerning promotions, demotions and terminations of class members:

(a) the number in each semi-annual period who applied for promotion;

(b) the number granted promotion in each semi-annual period;

(c) the number demoted in each semi-annual period; and

(d) the number terminated in each semi-annual period.

9. UPS shall be responsible for payment of the Monitor's fees (time and expenses). The Monitor will carry out his/her duties described herein as economically and efficiently

as possible, using his/her best efforts to save costs. The Monitor should avoid unnecessary travel time and costs where effective communications can be achieved by other means.

10. UPS will provide the Monitor with updated names, addresses, TTY numbers and e-mail addresses (to the extent known) for all Class Members with its semi-annual reports. This information will be kept confidential and will be used only for purposes of monitoring compliance with this settlement agreement. Class Counsel reserves the right to petition the Court for updated Class Member information.

11. The Monitor shall keep information gained in monitoring compliance with this Agreement confidential and shall not disclose, or use in any way against UPS outside the monitoring process, any of the information obtained pursuant to the agreement, and shall notify UPS promptly in the event a subpoena is served on the Monitor requesting such information; provided, however, that Class Counsel and/or UPS may use such information in an action to enforce the Agreement.

12. The Monitor will perform the duties and obligations described herein during the Monitoring Period, after which time the Monitor shall have no further authority, responsibilities or duties.

G. General Equitable Provisions.

1. UPS has not and shall not engage in any act, policy, practice or procedure which unlawfully discriminates, retaliates or has the purpose of unlawfully discriminating or retaliating against any Named Plaintiff or Class Member who has opposed and/or may oppose any employment practice of UPS on the ground that such practice is discriminatory. Employees complaining of alleged violations of the provisions set forth in this Agreement, including those set forth in this Section, may use the procedures set forth in Section X.F of this Agreement, may use UPS's internal complaint procedures, or may file charges with the EEOC, or the state or local fair employment practices ("FEP") agency.

2. The UPS EDR program will continue to be made available to all non-represented employees, and is posted in each UPS facility. The grievance procedure made available to union-represented employees is part of the applicable collective bargaining agreement.

3. Compliance with the terms of this Agreement by UPS shall be deemed consistent with

and in accordance with the ADA and all federal and state statutes, laws, regulations and ordinances concerning hearing related disability discrimination for Class Members within UPS's U.S. Operations.

XI. MONETARY RELIEF

A. Monetary Relief Fund .

UPS shall pay the sum of $5.8 million ("Monetary Relief Fund ") for the benefit of the Monetary Relief Class, to compensate the class for alleged Discrimination on the Basis of an Alleged Hearing or Hearing-related Disability during the Liability Period. By July 16, 2003, provided that this Agreement has been finalized and executed by the parties, UPS shall deposit the sum of $5.8 million into an interest-bearing escrow account held by a reputable and reliable escrow fund which has been agreed upon by the parties. Joint instructions to the escrow holder will be established, such that any release of funds from escrow to Qualified Claimants pursuant to Section XI.B below will require the agreement of both parties. If this Agreement does not become effective, the funds in this escrow account shall revert to UPS.

B. Distribution of Monetary Relief Funds.

1. Claims Administrator.

Dan Rosenthal, an experienced class action claims administrator, will be used to assist Class Counsel and UPS: (i) in formatting and finalizing the form of Class Notice and the Claims Form; (ii) to prepare and mail Class Notices and Claim Forms to potential Class Members as required by this Agreement; (iii) in the receipt of objections and opt-out requests; and (iv) in the claims procedure in accordance with the provisions of this Agreement. Class Counsel, UPS and the Claims Administrator shall agree on the procedures the Claims Administrator shall employ to discharge its duties under this Agreement. All fees for costs and expenses incurred by the Claims Administrator shall be paid by UPS.

2. Monetary Relief to Class Members.

a. To be eligible for a payment from the Monetary Relief Fund, a Named Plaintiff or Class Member must do all of the following:

(i) Return a Claim Form (one of the forms included in Exhibit C

attached to this Agreement), signed under penalty of perjury and postmarked no later than October 1, 2003;

(ii) For those claimants who are not named in Exhibit A, state (and upon challenge based on reasonable grounds, establish) that he/she uses sign language as a primary means of non-written communication due to a hearing loss or limitation and was employed by UPS or applied for employment with UPS during the Liability Period;

(iii) Provide his or her full name, current address, current day and evening telephone/TTY numbers, e-mail address, social security number, any other name(s) he or she used while employed by UPS, the dates and locations of any application to UPS, and the dates, location of and positions held during his or her employment with UPS; and

(iv) Have his or her claim determined to be timely and valid by the Claims Administrator in accordance with the provisions of Section XI.B and F.

b. Any Class Member who has previously executed a release of his/her claims of Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability in favor of UPS is ineligible to receive any monetary relief under this Agreement, unless such release specifically provides for recovery in this case. If UPS challenges any claim for monetary relief on the grounds that the claim has been previously released, UPS will notify the Claims Administrator and will provide Class Counsel with the relevant portions of any release which UPS contends bars the claim.

c. Any Class Member who timely Opts-Out from the Monetary Relief portion of this Agreement is ineligible to receive any monetary relief under this Agreement.

d. Claims made on behalf of deceased Class Members will not be paid until the individual making the claim has supplied, at his or her cost, the documentation required by applicable state law to ensure that he or she is the rightful recipient of the award.

3. Distribution of Monetary Relief Fund to Qualified Claimants.

Named Plaintiffs and Class Members who satisfy the conditions set forth in this Agreement for payment of monetary relief shall be entitled to a share of the Monetary Relief Fund. The Monetary Relief Fund described in Section XI.A shall be distributed as follows:

A. After the separate allocations set forth in subparts B, C and D below are addressed, the remaining funds under the Monetary Relief Fund shall be divided equally amongst Class Members based on the number of weeks each Class Member worked at UPS during the Class Period.

B. Separately, Class Members who actively participated in the litigation shall be entitled to an additional share of the Monetary Relief Fund under the following allocation formula which takes into account Class Members' relative levels of participation and thus relative levels of risk. Class Members may recover for each of the following applicable categories, in addition to their recovery under the general pool described in subpart (A) above:

(i) Class Members who were disclosed (by class counsel) but did not testify: $500 each

(ii) Class Members who were disclosed (by class counsel) and were deposed and/or submitted a declaration in this action: an additional $2,500 each

(iii) Class Members who were disclosed (by class counsel) and testified at trial: an additional $5,000 each

(iv) A separate pool shall be established for Class Members to recover from in the event that they were subject to harassment and/or retaliation at UPS. This pool shall total $125,000 from whic each Class Member making a claim of harassment/retaliation shall recover an equal share which shall not total more than $2,500 per person.

(v) A separate pool shall be established for Class Members to recover from in the event that they sought a Promotion, but were denied or deterred from obtaining such a Promotion at UPS. This pool shall total $500,000 from which each Class Member claiming that they were denied a Promotion or deterred from obtaining such a Promotion shall recover an equal share which shall not total more than $5,000 per person.

C. Based on their share of the foregoing bases for recovery including their tenure at UPS, their time and effort participating in this litigation, and the substantial risk they took on by participating, each Named Plaintiff shall recover $60,000.

D. A separate pool of $50,000 shall be established for applicant Class Members. Applicant Class Members shall recover from this pool in equal shares which shall not total more than $1,000 per Class Member. Any funds remaining in this pool shall go to the *cy pres* recipients.

4. **Individual Payment Cap.**

No Named Plaintiff or Class Member may receive a total gross cash award from the Monetary Relief Fund that exceeds $60,000. Amounts exceeding this individual payment cap will be placed back into the Monetary Relief Fund.

5. **Tax Treatment.**

Fifteen percent (15%) of all awards paid from the Monetary Relief Fund shall be treated by UPS as wage payments subject to federal and state tax withholdings and shall be reported to the IRS on a Form W-2 and to state taxing authorities on equivalent state forms. UPS, Named Plaintiffs and Class Members shall bear his, her or its required portion of such taxes. The remaining portions of the awards paid from the Monetary Relief Fund are taxable income to the Named Plaintiffs and Class Members, but are not subject to payroll withholding; accordingly, UPS will issue Forms 1099 reporting payments made to Named Plaintiffs and Class Members not characterized as wage payments. The parties stipulate and agree that UPS has relied on the representations of Named Plaintiffs and Class Counsel as to the characterization of payments made to Named Plaintiffs and Class Members for tax purposes. However, UPS shall have no right of indemnification from Plaintiffs, Class Members, or Class Counsel concerning such representation.

The Claims Administrator, Class Counsel, UPS, and its attorneys are not obligated to provide tax advice to any Named Plaintiffs or Class Members.

C. **Notice.**

1. **Class Action Settlement Notice and Monetary Relief Claim Forms.**

a. **Mailed Notice to Class Members.**

Within 5 business days preceding the Preliminary Approval Date, or as soon as practicable thereafter, UPS shall prepare and deliver to the Claims Administrator a computer disk containing the full names and last-known addresses, including e-mail addresses if available, of all Named Plaintiffs and Class Members employed by UPS during the period June 25, 1997 through June 15, 2003, and for all Class Members who applied for employment at UPS during the period June 25, 1997 through June 15, 2003 for whom UPS has such information (the "Mailed Notice Class List"). Class Counsel shall, within 5 business days preceding the Preliminary Approval Date, provide the Claims

Administrator in computer-readable format for inclusion on the Mailed Notice Class List, a list of all Class Members known to Class Counsel (other than those included on UPS's list) and their address including e-mail addresses if available. Prior to mailing the notice to individuals on the Mailed Notice Class List, the Claims Administrator shall update the Mailed Notice Class List with any new addresses for such individuals it may obtain from the National Change of Address System. By August 1, 2003 the Claims Administrator shall mail, via first class United States mail, postage prepaid: (i) Class Notice in the form attached to this Agreement as Exhibit B; and (ii) Claim Forms, on the appropriate form attached to this Agreement as Exhibit C, to each person on the Mailed Class Notice List.

b. Tracing.

Not later than seven (7) days after receipt of any Class Notice and/or Claim Form mailed under Section XI.C returned as "undeliverable," the Claims Administrator shall arrange through IRSC or a comparable service, for a computer database search for such class member and remail the Class Notice and/or Claim Form to any additional address obtained for such Class Member. UPS will provide the monitor with any known social security numbers to assist the monitor in any such tracing. The expenses related to preparation and mailing of the Class Notice and Claim Forms and tracings related to mailed Class Notices and Claim Forms returned as undeliverable shall be paid by UPS.

c. Published Notice.

As a further means of notifying Class Members of the partial settlement of this lawsuit and the claims process described in this Agreement, UPS will publish, at its expense, the Class Notice (Exhibit B hereto) in the following publications within 30 days of the Preliminary Approval Date:

(1) NADezine.

(2) Deaf Life: August 2003 issue.

(3) Deaf Digest: In each weekly issue published in August 2003.

Should published notice in any of the above publications not be possible within the prescribed time period, the parties shall meet and confer to select an appropriate substitute publication oriented to the Deaf community. Should the parties not agree on an alternative publication, such dispute shall

be submitted to Hon. Edward Infante for final and binding determination.

D. Objections and Exclusions.

1. Objections.

Class Members who wish to present objections to this Agreement must do so in writing. Written objections shall be mailed to the Claims Administrator at *Bates v. UPS* c/o Rosenthal & Company, P.O. Box 6177, Novato, California 94948-6177. Written objections must be sent to the Claims Administrator and postmarked on or before October 1, 2003. The Claims Administrator shall stamp the date received on the original of any objections it receives and serve copies of the objections on Class Counsel and UPS's counsel not later than two (2) business days after receipt thereof and shall file the date-stamped originals of any objections with the Clerk of the Court no later than five (5) business days prior to the date of the final approval hearing. The Claims Administrator shall retain copies of all written objections in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.

2. Opt-Outs.

Any Class Member may request exclusion ("opt-out") from the monetary relief provisions of this Agreement. No Class Member may opt-out of the equitable relief provisions of this Agreement. No Named Plaintiff may opt-out.

a. Class Members who wish to opt-out from the monetary relief provisions of this Agreement must do so in writing, by filing with the Claims Administrator a signed and dated "opt-out" request. Written opt-out requests shall be mailed to the Claims Administrator at *Bates v. UPS* c/o Rosenthal & Company, P.O. Box 6177, Novato, California 94948-6177. As set forth in the Class Notice attached as Exhibit B, requests must be sent to the Claims Administrator and postmarked on or before October 1, 2003. As set forth in the Class Notice attached as Exhibit B, opt-out requests shall, at a minimum, contain the following language:

> I understand that by requesting to opt-out of the monetary relief portion of the settlement of this case, I will receive no money from the Monetary Relief Fund created in accordance with the Settlement Agreement entered into by the parties. I understand that if I opt-out from the class monetary settlement, I may bring a separate action seeking damages, however, I may receive nothing or less than I would have received if I had filed a claim under the class monetary relief provisions of this settlement.

Only those Class Members who opt-out in the time and manner set forth herein shall be excluded from the monetary relief provisions of this Agreement. Class members who opt-out shall not be permitted to participate in or object to the damages distribution provisions of the Agreement.

b. The Claims Administrator shall stamp the date received on the original of any opt-out request received and serve copies of the requests on Class Counsel and UPS's counsel not later than two (2) business days following receipt thereof and shall file the date-stamped originals of any written opt-out requests with the Clerk of the Court not later than five (5) business days prior to the date of the final approval hearing. Not later than 5 (five) business days after the Claims Administrator's receipt of an opt-out request, the Claims Administrator shall cause to be mailed, via first class United States Mail, postage prepaid, to each Monetary Relief Class member who has submitted an opt-out request, written notice that his or her opt-out request has been received. The Claims Administrator shall retain copies of all opt-out statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.

c. The terms and provisions of this Agreement concerning monetary relief shall have no binding effect on any person who makes a timely opt-out request in the manner required by this Agreement.

E. Excessive Number of Opt-Outs.

If more than ten percent (10%) of the Class Members, or alternatively, more than ten percent (10%) of the California Sub-Class Members, as identified in the updated version of Exhibit A to this Agreement as of the Opt-Out Date, properly submit a request for exclusion and opt-out of the monetary relief provisions of this Agreement, UPS shall have the right, but not the obligation, to unilaterally and in its sole discretion declare this Agreement null and void, and either proceed to trial, or attempt to re-negotiate the terms of a settlement agreement.

F. Claims Determination Procedure.

1. Distribution of Claim Forms.

In addition to mailing Claim Forms to Class Members as provided in Section XI.C, above, the Claims Administrator also shall make a Claim Form available to any other individual identifying himself or herself as a potential Class Member who submits a written or oral request for a Claim

Form. The Claims Administrator shall mail requested Claim Forms via first class United States Mail, postage prepaid, to individuals requesting them, not later than two (2) business days after the Claims Administrator's receipt of a request therefore. In the event that Class Counsel, UPS or its counsel receive a written or oral request for a Claim Form from a potential Class Member, the potential Class Member shall be provided the name, address and toll-free 800 TTY number of the Claims Administrator and advised that all requests for Claim Forms must be directed to the Claims Administrator. The Claims Administrator shall retain copies of all written requests for Claim Forms and the envelopes in which they were mailed and a record of all oral or TTY requests for Claim Forms in its files until relieved of its duties under this Agreement.

2. Submission of Claim Forms.

a. Class Members must complete a Claim Form, and the Claim Form must be filed with the Claims Administrator by mailing the Claim Form and Release to the Claims Administrator at Bates v. UPS c/o Rosenthal & Company, P.O. Box 6177, Novato, California 94948-6177. The Claim Form must be postmarked on or before October 1, 2003 in order to be considered timely. Failure by any Class Member to timely submit a Claim Form (for any reason whatsoever) in a timely manner may bar the Class Member from having his or her claim considered and from receiving a monetary award from the Monetary Relief Fund. The Claims Administrator shall establish a toll-free 800 TTY line and be available to respond to requests from Class Members for assistance in completing and filing Claim Forms. UPS shall be responsible for the costs associated with the establishment and maintenance of the Claims Administrator's 800 TTY number. In addition, Class Counsel shall be available to consult with and provide assistance regarding the claim filing requirements to Class Members.

3. Notice of Untimely Claim Form.

Not later than October 14, 2003 the Claims Administrator shall email and/or TTY call each Class Member whose Claim Form is determined to be untimely under the provisions of this Agreement, to provide notice that such claimant's Claim Form was not timely, and provide notice that such claimant may request review in accordance with Section XI.F. Where email and/or TTY communication is not possible or not practical, the Claims Administrator shall cause to be mailed

such notice, via first class United States Mail, postage prepaid, to each claimant described above.

4. Provision of Information Regarding Claimants by UPS.

The Claims Administrator may request additional information from UPS and Class Counsel reasonably related to determining whether a claim is valid. Such requests shall be made in writing. UPS and Class Counsel shall promptly provide the additional information, but in any event no later than 14 days after receipt of the request or November 4, 2003, whichever comes first.

5. Initial Claim Determination Process.

The Claims Administrator shall make a preliminary determination as to whether each claim is valid. Such determination shall be based upon the Claim Form submitted, and any other pertinent information presented by the claimant or by UPS. Each Friday during the Claim Determination Process, the Claims Administrator shall provide UPS and Class Counsel with a list of each claim and his determination thereon made to date. In addition, the Claims Administrator may request additional information from the claimant which the Claims Administrator believes to be necessary to determine whether a claim is valid. Such requests for additional information shall be made via email or TTY call. Where email or TTY communication is not possible or not practical, the Claims Administrator shall cause to be mailed such request for further information, via first class United States Mail, postage prepaid, to each claimant described above. The claimant must provide the requested information or notify the Claims Administrator as to why he or she cannot provide the requested information on or before twenty-one (21) days after the date on which the request was made. The claimant shall be notified of the date by which the information must be received by the Claims Administrator. Such additional information shall be deemed to be part of the claimant's Claim Form. The failure of a claimant to timely respond to the request for information may result in the denial of the claim. For purposes of this preliminary determination, a claim shall be valid if the claimant meets the criteria set forth in Section XI.B and F. The Claims Administrator shall complete its review and determination of claims ten (10) days after receipt of additional information or after expiration of the 21 day period.

6. Challenges by UPS.

UPS may challenge the Claims Administrator 's preliminary determination on a claim by

notifying Class Counsel and the Claims Administrator in writing of the basis of the challenge together with copies of any documents or other evidence in support thereof not later than twenty-one (21) days after receipt of the Claimant Lists containing a finding as to that claim. Claims which were preliminarily determined to be valid by the Claims Administrator that are not challenged by UPS under this provision, shall be finally determined to be valid in accordance with the Claims Administrator's preliminary determination.

7. Notification to Claimant of Claim Determination.

As he completes his review and determination of claims, the Claims Administrator shall cause written determination notice to be mailed to each claimant with a copy of the notice of determination sent to Class Counsel and counsel for UPS. Such notice shall advise each claimant whether his or her claim has been determined to be valid and, if not, the reason(s) for such determination. The determination of the Claims Administrator shall be final and binding.

G. Class Monetary Relief Distribution.

1. Class Monetary-Relief Distribution List.

Not later than November 18, 2003, the Claims Administrator shall prepare and submit to Class Counsel and UPS for their information, a final list of the names of all Qualified Claimants whose claims have been finally determined to be valid ("Qualified Claimant List") and the gross amount of each claimant's monetary award based upon the formula set forth above, and provide to Class Counsel and UPS a report including the name, social security number, and amount of the gross monetary award to each claimant on the Qualified Claimant List. Not later than thirty (30) days after the provision to Class Counsel and UPS of the Qualified Claimant List, or fourteen (14) days after the Effective Date, whichever is later, UPS shall cause to be mailed via first class United States Mail, postage prepaid, checks in the amounts calculated to each claimant on the Qualified Claimant List approved by the Claims Administrator, less applicable tax withholdings as determined in accordance with the provisions of Section XI.B. Such checks may be accompanied by a cover letter that explains to the claimant the basis on which the monetary award and deductions were calculated, W-2 forms, and any other written information the parties may deem to be pertinent or necessary. All checks shall be negotiable for not more than six (6) months from the date of mailing, and each check and

accompanying cover letter shall so indicate. The envelope in which each check is mailed shall have on it the Claims Administrator's address as the return address. For each check that is returned to the Claims Administrator as "undeliverable," the Claims Administrator, not later than fourteen (14) days after receipt thereof, shall conduct an IRSC or comparable database search, and if such search is unsuccessful in locating the claimant, the check shall be held by the Claims Administrator for not more than six (6) months, after which they will be voided. All returned checks to claimants for whom no additional address is obtained, or whose check is returned after an additional address has been obtained, shall be held by the Claims Administrator for not more than six (6) months, after which they will be voided. The value of any checks not negotiated shall revert to the Residual Fund.

2. Residual Funds/*Cy Pres* Award.

To the extent any funds remain in the Monetary Relief Fund one year after initial distribution of monetary relief checks, all remaining funds which are unclaimed shall be deemed Residual Funds and shall be distributed in equal shares to Gallaudet University in Washington, DC; the National Technical Institute for the Deaf in Rochester, NY; and Toolworks: Tools and Resources for People with Disabilities in San Francisco, California. Any such *cy pres* distribution will be characterized to the receiving institutions and the applicable tax authorities as a charitable donation by UPS.

XII. ATTORNEYS' FEES, COSTS AND EXPENSES.

A. Amount of Attorneys' Fees.

UPS agrees to pay Class Counsel $4.1 million dollars in complete settlement of all attorneys' fees, costs and expenses incurred by Class Counsel related to litigation of the Settled Claims on behalf of the Named Plaintiffs and Class Members.

The parties agree that this amount satisfies any arguable obligation UPS may have to pay attorneys' fees, expenses and costs to Class Counsel for any and all work performed and costs and expenses incurred for all claims in this lawsuit which are resolved by this Agreement. This payment does not include fees, costs and expenses associated with or arising from litigation of the Reserved Issue.

B. **Payment of Attorneys' Fees**

1. UPS will deposit $4.1 million dollars for payment of attorneys' fees into an interest-bearing escrow account held by a reputable and reliable escrow holder agreed upon by the parties; the parties have agreed to use a separate escrow fund from the one selected to hold the Monetary Relief Fund. This amount will be deposited by July 16, 2003, provided that this Agreement has been finalized and executed by the parties. Half of this amount ($2,050,000 plus earned interest) will be released from escrow to Class Counsel within two business days after: (i) submission of proposed findings of fact and conclusions of law following the trial of the Reserved Issue, including any rebuttals or replies, or (ii) one year from the date this Agreement is executed, whichever occurs first; provided, however, that in no event shall this amount be released prior to the Final Approval Date. The remaining one half of the attorneys' fees settlement amount ($2,050,000 plus earned interest) shall be invested through the escrow account in a secure investment instrument designated by Class Counsel and approved by UPS. This remaining one half of the attorneys' fees settlement amount shall be released from escrow to Class Counsel on: (i) submission of proposed findings of fact and conclusions of law following the trial of the Reserved Issue, including any rebuttals or replies, or (ii) one year from the date this Agreement is executed, whichever occurs first; provided, however, that in no event will this amount be released to Class Counsel prior to the Effective Date of this Agreement. Joint escrow instructions will be drafted in accordance with the above. 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 the escrow holder or, if already released to Class Counsel, then by Class Counsel.

2. UPS will also deposit $100,000 by July 16, 2003, provided that this Agreement has been finalized and executed by the parties, in an interest bearing escrow account for attorneys' fees and costs, if any, incurred by Class Counsel for work performed in monitoring this Agreement after the Effective Date. Payment shall be made as fees and costs are incurred, but no more often than monthly. When this fund is exhausted, UPS shall have no further obligation to pay Class Counsel for fees or costs incurred in monitoring compliance with this Agreement with the exception of those fees contemplated in Section X(F) above, if applicable. If the fund is not exhausted, any

residual amounts shall be returned to UPS at the termination of the Agreement. If final approval is not granted by the District Court or is overturned on any appeal, the fees shall be returned to UPS by the escrow holder.

XIII. MISCELLANEOUS PROVISIONS

A. Calculation of Time.

In computing any period of time prescribed or allowed by this Agreement, unless otherwise stated, such computation or calculation shall be made pursuant to Federal Rule of Civil Procedure 6(a).

B. Modification.

Named Plaintiffs, Class Counsel and UPS may jointly agree to modify this Agreement. Any agreed upon modification shall be in writing signed by all parties.

C. Severability.

Whenever possible, each provision and term of this Agreement shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event that after Final Approval hereof any provision or term of this Agreement should be determined to be or rendered unenforceable, all other provisions and terms of this Agreement and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law. If any application of any provision or term of this Agreement to any specific person or circumstance should be determined to be invalid or Unenforceable, the application of such provision or term to other persons or circumstances shall remain unaffected to the extent permitted by law.

D. Duty to Defend the Agreement.

The Named Plaintiffs, Class Counsel, and UPS each agree to use their Best Efforts to defend this Agreement from any legal challenge, whether by appeal or collateral attack.

E. Deadlines.

The parties recognize that from time to time unforeseen events, including, but not limited to, exigent business circumstances and personnel issues, cause delays in the accomplishments of objectives no matter how well intentioned and diligent the parties may be. Accordingly, with regard to the provisions of this Agreement that require certain acts to be taken within specified time periods,

the parties understand and agree that in the event that any party determines that an action required by this Agreement cannot be taken within the specified time period, that party shall promptly notify the other party that it anticipates a delay, the reasons for the delay, and a proposed alternative deadline. The parties shall endeavor to cooperate in reasonably rescheduling such deadlines; however, if the other party does not agree to the proposed delay, the dispute shall be submitted to the Monitor for final resolution.

F. Section Headlines.

The Section headings in this Agreement shall have no substantive meaning whatsoever. Only the textual provisions in this Agreement and in its Exhibits shall be interpreted or construed to have substantive meaning.

G. Entire Agreement.

The terms of this Agreement and its Exhibits are the exclusive and final expression of all agreements by Named Plaintiffs, Class Counsel on behalf of the Class and UPS with respect to any and all claims of Discrimination on the Basis of an Alleged Hearing or Hearing-Related Disability by the Named Plaintiffs and by Class Members, with the exception of the Reserved Issue. The Parties have entered into this Agreement based solely upon its written terms as contained herein and not in reliance upon any representations or promises other than those contained in this Agreement. 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.

XIV. APPLICATION OF THIS AGREEMENT TO BARGAINING UNIT MEMBERS

Nothing herein 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 collective bargained obligations be deemed a violation of this Agreement. The provisions of this Agreement shall apply to bargaining unit members to the fullest extent permitted by law and under applicable collective bargaining agreements.

XV. NOTICES

All notices and other communications required by this Agreement shall be in writing and delivered either personally or by depositing the same, postage prepaid, in the United States Mail, addressed to the party hereto to whom the same is directed at the following addresses:

To Named Plaintiffs and Settlement Class:

Larry Paradis, Alison Aubrejuan and Caroline Jacobs
DISABILITY RIGHTS ADVOCATES
449 15th Street, Suite 303
Oakland, CA 94612

With a Copy to

Todd Schneider
SCHNEIDER & WALLACE
1700 California Street, Suite 340
San Francisco, CA 94109

To United Parcel Service, Inc.

Nicole Pierre, Esq.
UNITED PARCEL SERVICE, INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328

With a Copy to

Christopher Martin, Esq. and Patricia Radez, Esq.
GIBSON, DUNN & CRUTCHER, LLP
One Montgomery Street, Suite 3100
San Francisco, CA 94104

Ryan Swift
UNITED PARCEL SERVICE, INC
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328

The parties may from time to time change their address for the purpose of this Section by providing written notice, return receipt requested, of such change to the other parties.

DEFENDANT, UNITED PARCEL SERVICE, INC.

Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By: _____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By: _____
PLAINTIFF ERIC BATES

Dated: By: _____
PLAINTIFF BERT ENOS

Dated: By: _____
PLAINTIFF BABARANTI OLOYEDE

Dated: By: _____
PLAINTIFF ERIC BUMBALA

Dated: By: _____
PLAINTIFF EDWARD WILLIAMS

Dated: By: _____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By: _____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: 7-17-03

By:_____
PLAINTIFF ERIC BATES

Dated:

By:_____
PLAINTIFF BERT ENOS

Dated:

By:_____
PLAINTIFF BABARANTI OLOYEDE

Dated:

By:_____
PLAINTIFF ERIC BUMBALA

Dated:

By:_____
PLAINTIFF EDWARD WILLIAMS

Dated:

By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated:

By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By:_____
PLAINTIFF ERIC BATES

Dated: 7-21-03 By: Bert J Enos
PLAINTIFF BERT ENOS

Dated: By:_____
PLAINTIFF BABARANTI OLOYEDE

Dated: By:_____
PLAINTIFF ERIC BUMBALA

Dated: By:_____
PLAINTIFF EDWARD WILLIAMS

Dated: By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By:_____
PLAINTIFF ERIC BATES

Dated: By:_____
PLAINTIFF BERT ENOS

Dated: 7-21-03 By: Babaranti Oloyede.
PLAINTIFF BABARANTI OLOYEDE

Dated: By:_____
PLAINTIFF ERIC BUMBALA

Dated: By:_____
PLAINTIFF EDWARD WILLIAMS

Dated: By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

40179787_1.DOC

Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By:_____
PLAINTIFF ERIC BATES

Dated: By:_____
PLAINTIFF BERT ENOS

Dated: By:_____
PLAINTIFF BABARANTI OLOYEDE

Dated: July 17, 2003 By: Eric J Bumbala
PLAINTIFF ERIC BUMBALA

Dated: By:_____
PLAINTIFF EDWARD WILLIAMS

Dated: By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By:_____
PLAINTIFF ERIC BATES

Dated: By:_____
PLAINTIFF BERT ENOS

Dated: By:_____
PLAINTIFF BABARANTI OLOYEDE

Dated: By:_____
PLAINTIFF ERIC BUMBALA

Dated: July 17th, 2003 By: Edward J. Williams
PLAINTIFF EDWARD WILLIAMS

Dated: By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By:_____
PLAINTIFF ERIC BATES

Dated: By:_____
PLAINTIFF BERT ENOS

Dated: By:_____
PLAINTIFF BABARANTI OLOYEDE

Dated: By:_____
PLAINTIFF ERIC BUMBALA

Dated: By:_____
PLAINTIFF EDWARD WILLIAMS

Dated: 7-16-03 By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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Dated:

UNITED PARCEL SERVICE. INC.
Legal Department
55 Glenlake Parkway, NE
Atlanta, GA 30328
Telephone: (404) 828-4729

By:_____
Teri McClure

Attorneys for Defendant
United Parcel Service

PLAINTIFFS AND CLASS COUNSEL

Dated: By:_____
PLAINTIFF ERIC BATES

Dated: By:_____
PLAINTIFF BERT ENOS

Dated: By:_____
PLAINTIFF BABARANTI OLOYEDE

Dated: By:_____
PLAINTIFF ERIC BUMBALA

Dated: By:_____
PLAINTIFF EDWARD WILLIAMS

Dated: By:_____
Laurence Paradis, Class Counsel
DISABILITY RIGHTS ADVOCATES

Dated: By:_____
Todd Schneider, Class Counsel
SCHNEIDER & WALLACE

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