

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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5 ERIC BATES, BERT ENOS, BABARANTI
6 OLOYEDE, ERIC BUMBALA, and
7 EDWARD WILLIAMS on behalf of
themselves and all others similarly situated,

8 Plaintiffs,

9 v.

10 UNITED PARCEL SERVICE, Inc.
11 Defendant.

Case No. C 99-2216 (TEH)

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL TO FINAL
SETTLEMENT AGREEMENT AND
RELEASE; DIRECTING DISTRIBUTION
OF NOTICE; SETTING SCHEDULE FOR
FINAL APPROVAL PROCESS; AND
APPROVING INTERIM FEE PAYMENT

DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, FOURTH FLOOR
BERKELEY, CALIFORNIA 94704-1204
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13 This matter came before the Court on June 29, 2009 on the Parties' Joint Motion
14 Requesting Order: Granting Preliminary Approval to Final Settlement Agreement and Release;
15 Directing Distribution of Notice; and Setting Schedule for Final Approval Process. The Court
16 has carefully reviewed all the Documents filed by the Parties in this action in support of the
17 settlement and considered the parties' oral submissions in support of the motion at the hearing.
18 The Court has determined that that the proposed settlement is fundamentally fair, adequate, and
19 reasonable and within the range of possible approval, such that Notice to the Class is appropriate.
20 The Court therefore GRANTS preliminary approval of the settlement. The Court hereby finds,
21 concludes, and orders as follows:

22 1. This Order incorporates by reference the definitions in the Final Settlement
23 Agreement and Release (hereafter "Agreement") and all terms defined therein shall have the
24 same meaning in this Order as set forth in the Agreement.

25 2. For the purpose of determining whether the terms of the proposed settlement
26 should be approved as fair, reasonable and adequate, the Court has evaluated the settlement with
27 respect to the following Class certified by the Court and expressly defined in the parties'
28 Agreement at § 2.2:

1 Named Claimants and those persons throughout the United States
2 who (i) have been employed by UPS and/or have applied for a
3 driving position with UPS at any time since June 25, 1997 through
4 the Effective Date of the Agreement, (ii) use sign language as a
5 primary means of communication due to hearing loss or limitation,
6 (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 vehicles.

7 3. Named Plaintiffs Bert Enos, Babaranti Oloyede, Eric Bumbala and Edward
8 Williams continue to act as representatives of the Class as previously appointed and designated
9 in the Court's November 1, 2001 Order.

10 4. Disability Rights Advocates and Schneider Wallace Cottrell Brayton Konecky
11 LLP continue to act as Class Counsel for the class as previously appointed and designated in the
12 Court's November 1, 2001 Order.

13 5. The Court appoints Rust Consulting, Inc., to act as Settlement Administrator to
14 assist the parties in providing individual mailed notice to the class, receiving and retaining
15 written objections to the settlement, and forwarding such objections to UPS and Class Counsel
16 for submission to the Court in connection with any motion requesting the Court's Final Approval
17 of the parties' settlement.

18 6. Notice to the Class shall be provided in the following manner consistent with the
19 terms of the Agreement:

20 a. No later than 30 days after the Preliminary Approval Date, the Settlement
21 Administrator shall mail to each person on the Mailed Notice List, via first
22 class United States mail, postage prepaid, the Mailed Notice in the form
23 attached to the Agreement as Exhibit B.

24 b. If a Mailed Notice is returned as "undeliverable," the Settlement
25 Administrator shall arrange through IRSC or a comparable service for a
26 computer database search for such Class Member and re-mail the Mailed
27 Notice to any additional address obtained for such Class Member. The
28 Mailed Notice List shall be updated to reflect such additional address.

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UPS will provide the Settlement Administrator with any known Social Security Numbers to assist the Settlement Administrator in any such tracing.

- c. The expenses related to preparation and mailing of the Mailed Notice and tracings related to Mailed Notices returned as undeliverable shall be paid by UPS.
- d. As a further means of notifying Class Members of the settlement of this lawsuit, UPS will publish, at its expense, the Published Notice attached to the Agreement as Exhibit C, in the following publications within 60 days of the Preliminary Approval Date:
 - i. NADezine (1 issue).
 - ii. *Deaf Life* (1 issue).
 - iii. *Deaf Digest* (4 issues).

7. The Court finds that the dissemination of the Notice and the procedure for submitting objections under the terms provided for in this Order constitutes the best notice practicable under the circumstances; is due and sufficient notice for all purposes to all persons entitled to such notice; and fully satisfies the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable laws. Prior to the final settlement approval hearing, a declaration shall be filed with the Court confirming that Notice was given in accordance with the terms of this Order.

8. Objections to the proposed settlement must be made in writing, and signed and dated by the objecting individual and his or her attorney. No particular form is required for making an objection. Objections shall be heard, and the Court shall consider any papers or briefs submitted in support of said objections, in its discretion, only if they comply with the objection procedures set forth in the Mailed or Published Notice. Specifically, members of the Class who wish to object to the Settlement must send their objections to the Settlement Administrator, postmarked on or before the Cut-Off Date, [120 days after the Mailed Notice is first sent to class

1 members]. The address of the Settlement Administrator and the Cut-Off Date shall be clearly
2 identified in the Mailed Notice and the Published Notice.

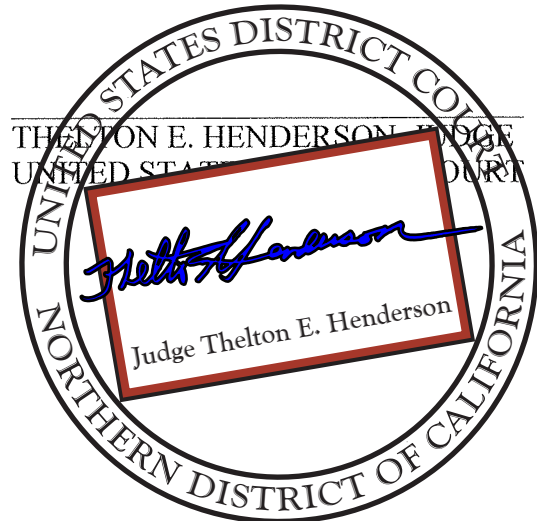
3 9. Not earlier than 30 days after the end of the one-year implementation of the
4 Hearing Protocol, as specified in § 3.1 of the Agreement, either or both of the parties may file a
5 motion requesting that the Court grant Final Approval of the settlement as fair, reasonable and
6 adequate. The motion seeking Final Approval will notice the date upon which the Final
7 Approval Hearing will take place. The Final Approval Hearing may be postponed, adjourned,
8 transferred, or continued without further notice to the Class. Upon motion of any party, the
9 Court may, for good cause, extend any of the deadlines set forth in this Order without further
10 Notice to the Class.

11 10. Any individual submitting a timely objection to the Settlement Administrator
12 shall be promptly notified by first class mail once a motion seeking Final Approval of the
13 Agreement is filed. Such notification shall include a copy of the motion seeking final approval
14 and clearly state the Final Approval Hearing date noticed in the motion so that objecting
15 individuals will have the opportunity to appear at the Final Approval Hearing and assert any
16 objections to the adequacy, fairness or reasonableness of the proposed settlement.

17 11. The parties' request for Court approval of an interim fee payment to Class
18 Counsel in the amount of \$2,625,000 is approved. Class Counsel shall submit a motion for
19 approval of the total Fee Award, pursuant to Rule 23(h), in conjunction with any motion seeking
20 Final Approval of the Agreement.

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22 **IT IS SO ORDERED.**

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24 Dated: 06/29/09



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