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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PRESTON EUGENE BRANUM, On Behalf of )  
Himself and All Others Similarly Situated, )

Plaintiff, )

v. )

UNITED PARCEL SERVICE, INC., and DOES )  
1-100 )

Defendants. )

Civil Action No. 04-1688

Judge \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

COMPLAINT

1. Plaintiff, Preston Eugene Branum, individually and on behalf of all others similarly situated, by his undersigned attorneys, for this class action complaint, alleges as follows. All allegations in this complaint are based upon the investigation of counsel, except the allegations pertaining to the named plaintiff, which are based upon the Plaintiff's personal knowledge. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery. Additionally, once the discovery process is underway, the roles of other unknown conspirators and participants in the wrongdoing identified herein will likely be revealed, and Plaintiff will seek leave to amend this complaint to add new parties and/or new claims.

NATURE OF THE ACTION

2. Plaintiff brings this class action on behalf of himself and all others similarly situated against United Parcel Service, Inc. ("UPS" or the "Company") for discrimination in employment under the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.* ("ADA"), by virtue of UPS's pervasive policies and practices to evade the obligations of the ADA to accommodate

its disabled employees and to engage them in the interactive process. The systemic discrimination of which Plaintiff complains manifests itself in numerous practices which include, but are not limited to, the following national practices: (a) treating employees with a disability, having a history of disability and/or who are regarded as having a disability differently and less favorably than other employees because of their disability status; (b) maintaining a de facto policy, pattern and practice of requiring employees to provide a "full" or "100%" medical release, without restrictions, before permitting them to return to duty following a medical leave of absence; (c) failing and/or refusing to engage in the required interactive process, and/or refusing to engage in the interactive process in good faith, to identify reasonable accommodations for those employees who attempt to return to work following an absence due to medical treatment or a medical condition; (d) failing and refusing to reinstate permanently disabled employees in a position that will effectively accommodate their medical restrictions without imposing an undue hardship on UPS; (e) providing accommodations, including light duty work, only to those whose *impairments and/or need for accommodations are known or expected to be of limited duration or short-term*; (f) failing and refusing to permit employees who have filed workers compensation, disability, and/or discrimination claims from returning to work; (g) preventing employees from using their union seniority to transfer to a position which accommodates their disabilities or otherwise to return to work; (h) creating job descriptions which intentionally misrepresent the essential functions of the job, including the addition of weight-lifting requirements to supervisory job descriptions, in order to exclude employees who are disabled, have a history of disability or whom UPS regards as disabled from holding any job at UPS; (i) withdrawing accommodations previously provided to disabled employees on pretextual grounds and/or forcing such employees to request consideration under UPS's 1999 "10-

step reasonable accommodation process” which UPS then uses to deny the employee the requested accommodation, and (j) directing employees to apply for disability benefits including workers compensation rather than permitting them to remain employed, to return to work, or attempting, in good faith, to provide accommodations to them.

### JURISDICTION AND VENUE

3. This Court has jurisdiction over the federal question subject matter of this civil rights action pursuant to 28 U.S.C. §1331, the ADA.

4. This Court has personal jurisdiction over defendant because the Company systematically and continuously engages in substantial interstate commercial conduct and business activity in Pennsylvania.

5. Plaintiff has complied with all conditions precedent to filing suit under the ADA, 42 U.S.C. §12117(a) and 42 U.S.C. §2000e-5(f)(1) and (3). Plaintiff filed a charge of employment discrimination based on disability status with the Equal Employment Opportunity Commission (“EEOC”) on or about April 25, 2003, within 300 days of the commission of an unlawful employment practice alleged herein. Plaintiff received a Notice of Right to Sue from the EEOC dated August 5, 2004 some time after that date. A copy of the Notice of Right to Sue is attached hereto as Exhibit A and is incorporated by reference as though fully set forth herein. This complaint is filed within 90 days of receipt of the Notice of Right to Sue.

6. Venue is proper in the Western District of Pennsylvania, pursuant to 28 U.S.C. §1391(b) and (c), and in the Pittsburgh Division, pursuant to W.D.PA.LR 3.1. The unlawful employment practices occurred and continue to occur throughout the United States, including this

judicial district, where the defendant resides and is subject to personal jurisdiction, and where the unlawful employment policy and practices remain in effect in continuous, systematic, or systemic violation of the statutes.

### PARTIES

7. Plaintiff Preston Eugene Branum is a resident of the State of Louisiana. Plaintiff was hired by UPS as a fleet mechanic in September 1981 in Lake Charles, Louisiana, performing various duties such as repairing and doing preventive maintenance on UPS vehicles. Plaintiff continued in this position for the next twenty-three years until, in 2004, UPS management forced him to go out on workers compensation as a result of a work-related injury, and he was advised that he could not return to work until he received a 100% medical release from his physician. Plaintiff is disabled and has a history of being disabled and/or UPS regards Plaintiff as being disabled. UPS has treated Plaintiff differently and less favorably in his terms, conditions, rights and privileges of employment because of his disability status.

8. Defendant UPS is a Delaware corporation, having corporate headquarters located at 55 Glenlake Parkway, NE, Atlanta, Georgia 30328. At all relevant times, UPS has continuously been an employer, a person, and a covered entity within the meaning of 42 U.S.C. §12111(2),(5) and (7).

### UPS DISCRIMINATES AGAINST PLAINTIFF

9. Plaintiff is a Vietnam veteran who has been diagnosed with major depression and post-traumatic stress disorder (“PTSD”), recognized in 1980 as a mental disorder by the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). Plaintiff has been diagnosed with delayed onset, chronic PTSD, although he has been suffering some of the

effects of PTSD since he returned from Vietnam. His mental disability makes Plaintiff extremely sensitive to sudden, unexpected loud noises and shocking events, which cause him to become extremely agitated, dizzy, confused, panicked, nauseous and nervous – sometimes for days afterwards.

10. For several years, including during the 300 days preceding the filing of Plaintiff's EEOC charge, Plaintiff was continually tortured by supervisors and co-workers who, aware of his symptoms of PTSD, sneaked up on Plaintiff, threw fire crackers and used static electricity to startle him, jumped out from behind the truck where Plaintiff was working, beat loudly and suddenly on the truck to startle him, grabbed his shoulder from behind and undertook other similar actions, causing Plaintiff symptoms of extreme physical and mental duress which on at least one occasion required an emergency hospital visit. UPS supervisors refused to stop co-workers from engaging in such actions toward the Plaintiff and indeed, themselves participated in the intentional abusive conduct. UPS supervisors intentionally and maliciously ridiculed and humiliated Plaintiff in front of co-workers when he complained of the discriminatory treatment he was made to suffer, and retaliated against him when he called the Company's hotline to report the harassment.

11. In 2004, during the pendency of Plaintiff's charge of discrimination before the EEOC, despite being aware of the existence and effects of Plaintiff's disability, Plaintiff's supervisor sneaked up on Plaintiff and punched him in the arm with such surprise and with such force that Plaintiff whirled around, injuring his neck. At that time he sought medical treatment and care, and was diagnosed with a ruptured disk in his neck and several bulging disks in his back. Because UPS thought Plaintiff's impairment was to be short-lived, he was permitted to return to work with restrictions for a short time, until he went on vacation. Upon attempting to return from a vacation, however, UPS management

contacted Plaintiff and told him he was being placed on workers compensation and that he could not return to work until he received a 100% medical release.

12. UPS discriminated against Plaintiff because of his disability, his history of disability and/or because UPS regarded him as disabled in violation of the ADA by treating him differently and less favorably than others without disabilities in the terms, conditions, rights and privileges of employment, by, *inter alia*: continually, intentionally, and maliciously harassing and tormenting Plaintiff in the workplace for a period of years creating a hostile work environment; having supervisors intentionally ridicule him in front of other co-workers; requiring unnecessary medical exams; attempting to cause the independent doctor to revoke his driver's license; and falsely claiming he had made threats of violence.

**UPS's NATIONWIDE POLICY & PRACTICE OF EMPLOYMENT DISCRIMINATION**

13. The Company generally does not provide accommodations, including light duty work, to those who are disabled, to those it regards as disabled or to those who have a history of disability; at most, on a case by case basis, UPS provides temporary light duty work only to those individuals whose injuries or disabilities UPS believes are of temporary, short-term duration. UPS's policy denies effective accommodations, both to individuals whose disabilities are chronic or long-term, as well as to those individuals whose impairments UPS perceives as likely to be chronic or long-term. When the Company has information sufficient to put it on notice that the employee might have a long-term or chronic disability, by policy, it does not engage the employee in the required interactive process. Instead, UPS uniformly asks the employee to have a physician complete a written report and to have the doctor submit the completed form directly to UPS. Next, UPS employees review the form, and on

the basis of the content of the form, UPS makes a decision as to whether it believes the individual requesting the accommodation is a "qualified individual with a disability" as a matter of law, without ever questioning the meaning of the content of the form, and without any communication directly with the individual on whose behalf the accommodation request was made.

14. The only actions UPS takes when it receives notice that an individual may have a disability and has requested, or is apparently in need of, an accommodation, is to send the individual a form for a doctor to fill out and return, and then to send back a form letter to the individual stating that the request is denied. UPS knows Plaintiff is disabled under the ADA, has a history or record of being disabled and/or is perceived by UPS as being disabled under the ADA. The interactive process requires UPS to seek information directly from the employee regarding his or her relevant education, skills, abilities, and limitations or restrictions, and whether the individual's major life activities are substantially limited by the disability. UPS fails to do so. The Company's actions and failures and/or refusals to act are in violation of the ADA's prohibition against disability discrimination and Defendant's affirmative obligation to accommodate the known disabilities of Plaintiff and the Class members.

15. Plaintiff further alleges that Defendant is liable under the ADA, which (1) prohibits discrimination against any qualified individual with a disability by an employer, *inter alia*, because of the individual's disability, record of disability, or perceived disability; (2) requires the employer to provide reasonable accommodations including reassignment to vacant positions, unless doing so would impose an undue hardship on the business; and (3) prohibits retaliation against any individual who has engaged in protected activity under the statute. Defendant has a codified practice for processing requests for accommodation in order to return to work, which when applied as written, constitutes a per se violation

of the Defendant's duty to engage with the employee in the good faith interactive process to identify reasonable accommodations under the ADA.

16. UPS does not engage in the interactive process in good faith. Defendant's written policy, the ADA Compliance Program ("Program"), provides a multi-step process which managers are directed to apply to individuals who seek to return to work following an injury or medical leave. Under the Program, after an employee notifies the Company that he or she has a physical or mental impairment and requests an accommodation, the Company's medical officer (usually a nurse) first gathers medical information from the employee's doctor on a form provided by the Company. The Defendant then makes a legal judgment as to whether the person making the request is a "qualified individual with a disability" under the ADA. Only when UPS decides that the person has a legally "qualifying disability," will the Company even superficially engage in the interactive process to determine whether an accommodation is "warranted or feasible."

17. UPS's job descriptions, with few exceptions, intentionally falsely represent that the ability to lift seventy pounds is an essential function of nearly every job. The Company's job descriptions are designed and intended to further the discriminatory practices of UPS by including as "essential duties" of these positions, activities which UPS knows in practice are rarely, if ever, required to be performed by any single individual without assistance and which are not "essential functions" as defined under the law.

18. The Company has a policy or practice of refusing to reinstate individuals, regardless of their present disability status (i.e., whether the person is or ever was a qualified individual with a disability under the law, or whether the person requests or requires any accommodation), in retaliation

for having exercised their rights under the ADA. After he complained of discrimination, Defendants' managers told Plaintiff that he cannot come back to work unless he is 100 percent.

19. UPS is one of the world's largest private mail carriers with hundreds of thousands of employees worldwide, including over 70,000 package truck drivers in the United States alone. When a UPS employee attempts to return to work following an accident or a medical leave of absence and notifies the Company of such intention, UPS requires as a routine policy and practice that such employee obtain a 100% full medical release prior to any reinstatement with the Company. UPS in fact does have positions available within the Company that could accommodate Plaintiff and the class. In the absence of the submission of a full medical release, medically restricted employees may be allowed to perform light duty work, which is less physically challenging and may comport with their restrictions and capabilities, through the Company's temporary alternative work ("TAW") program. However, as the "temporary" designation indicates, injured and medically restricted employees with a limited prospect of achieving a full recovery within a short period of time are deemed ineligible to be given the available light duty work to perform through the TAW program.

20. UPS not only denies permanently disabled employees engagement in the interactive process to determine a reasonable accommodation for them as mandated under the ADA, but, as a de facto policy, pattern and practice, denies permanently disabled and/or permanently restricted employees access to other less physically demanding work on a permanent basis within the Company. This policy, pattern and practice of non-interaction, bad faith, non-accommodation and retaliation by UPS on the basis of disability status constitutes a per se violation of the ADA. UPS arbitrarily and unilaterally denominates such permanently disabled employees who attempt to return to work from

medical leave without a full medical release as “inactive” employees, as a pretext for violating their rights, and routinely refuses to engage them in the interactive process and denies them reasonable accommodations in violation of the ADA.

21. Defendant has undertaken systematic practices to remove accommodations to disabled employees which it had provided informally before the ADA was enacted or otherwise prior to the adoption and application of the policies and practices in UPS’s 1999 ADA Compliance Manual. To achieve its discriminatory objectives, UPS invokes pretextual grounds for eliminating an accommodation, including ordering DOT physical examinations to be used in pretextual ways, and forcing the employee to formally apply for an accommodation through its “10-step reasonable accommodation process” which it then uses to eliminate effective accommodations, and often, to remove the formerly-accommodated employee from the workplace.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure initially for injunctive and equitable relief and after liability is established, under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons throughout the United States who (i) have been employed by UPS; (ii) are disabled as defined under the ADA, (iii) have been absent from work because of such disability, (iv) have at any time since May 10, 2000, attempted to return to work or continue to work at UPS or have submitted to UPS a medical release that permits the employee to work with restrictions and conditions, and (v) were harmed as a result of UPS’s policies practices and procedures described in paragraph 2 of the Complaint in violation of Title I of the ADA (the “Class”). Excluded from the Class are UPS’s officers

and directors and currently-employed management employees, their legal representatives, heirs, successors or assigns.

23. The Class consists of at least thousands of persons located throughout the United States. Class members are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. The exact number and identity of Class members is properly determined through discovery.

24. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to Class members which predominate over questions which may affect individual Class members include:

- (a) Whether Defendant's policies, procedures, acts and omissions violated, and continue to violate, the ADA;
- (b) Whether Defendant owed duties to Class members;
- (c) The nature of the duties Defendant owed to Class members; and
- (d) Whether Plaintiffs and the Class have sustained injury by reason of Defendants' acts and omissions.

25. Plaintiff's claims are typical of those of the Class because Plaintiff and Class members suffered similar harm as a result of Defendants' unlawful and wrongful conduct. Absent a class action, Class members may not receive appropriate relief and will continue to suffer losses, and the violations of law alleged herein will proceed without remedy.

26. Defendant UPS has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect

to the Class as a whole.

27. Plaintiff is committed to pursuing this action and has retained counsel experienced in class action litigation of this nature. Plaintiff will fairly and adequately represent the interests of the Class and Plaintiff has no interests which are adverse or conflict with those of the Class.

28. The prosecution of separate actions by Class members would create a risk of inconsistent adjudications establishing incompatible standards of conduct for the Defendant.

29. A class action is the superior method for fair and efficient adjudication of this controversy. Because the damages suffered by many individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually seek redress for the wrongful conduct alleged herein. Indeed, the likelihood that individual Class members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. Plaintiff's counsel, highly experienced in class actions, anticipates no difficulty in the management of this action as a class action.

### FACTUAL ALLEGATIONS

#### FIRST CLAIM:

#### Violation of the Americans with Disabilities Act of 1990,

#### as amended, 42 U.S.C. § 12101 et seq.

30. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

31. As a result of the unlawful policy, pattern and practice, and unlawful conduct of Defendant UPS as described herein, Plaintiff and Class members suffered pecuniary and non-pecuniary

damages, including lost wages and benefits, out of pocket expenses, interest, emotional distress, and reasonable attorneys fees, the exact amount of which will be determined at trial.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(A) Determining that this is a proper class action to be certified under Rule 23 of the Federal Rules of Civil Procedure;

(B) Grant a permanent injunction enjoining Defendant, its directors, officers, employees, agents, successors, heirs and assigns, and all persons in active concert or participation with them, from engaging in, ratifying, or refusing to correct, employment practices which discriminate in violation of the ADA;

(C) Order Defendant to institute and implement training programs for all managers including operations managers, on compliance with the provisions of the ADA, and to adopt, institute and enforce policies, practices and programs which ensure that the company provides equal employment opportunities for persons with present, past, or perceived disabilities;

(D) Order Defendant to make Plaintiff and the Class whole by providing reinstatement to positions consistent with their physical or mental abilities and restrictions having compensation, responsibility, and duties, commensurate with their education, experience, and skills, and appropriate back-pay with prejudgment interest, plus an additional amount necessary to offset the negative tax consequences, if any, of receiving the damages in a lump sum, in amounts to be proved at trial;

(E) Order Defendant to remove and expunge, or to cause to be removed and expunged, all negative, discriminatory, and/or defamatory memoranda and documentation from Plaintiff's and the

Class's records of employment;

(F) Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64 and 65 of the Federal Rules of Civil Procedure;

(G) Awarding Plaintiff and Class members all restitutionary and/or remedial relief;

(H) Awarding Plaintiff and Class members pre-judgment and post-judgment interest, as well as their reasonable attorneys' fees, expert witness fees and other costs; and

(I) Award such other legal and equitable relief as the court deems appropriate and just. **A jury trial is demanded as to all issues triable to a jury.**

Dated: November 4, 2004

Respectfully submitted,



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