

violated the American with Disabilities Act's (ADA) and the Pennsylvania Human Relations Act's (PHRA) requirements to provide equal opportunity to individuals with disabilities in the workplace.

5. Although UPS is well aware of its statutory responsibilities towards deaf employees such as Mr. MacDonald, having settled a class action and entered an EEOC consent decree concerning similar charges, it flagrantly continues its discriminatory practices.

6. Mr. MacDonald continues to work at UPS without an ASL interpreter and other reasonable accommodations to communicate essential employment information.

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction over the subject matter of Plaintiff's claims under the Americans with Disabilities Act ("ADA") under 28 U.S.C. § 1331.

8. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to Plaintiff's federal claims that they form part of the same case or controversy.

9. This action is authorized by 42 U.S.C. § 12117.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all of the events or omissions giving rise to the claims alleged herein occurred in this judicial district.

EXHAUSTION

11. Mr. MacDonald dual-filed a complaint of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) and the Pennsylvania Human Relations Commission on January 12, 2015. Exhibit A.

12. The EEOC issued a Right to Sue letter to Mr. MacDonald on August 21, 2015. Exhibit B.

PARTIES

13. Plaintiff Michael MacDonald is a deaf individual currently residing in Philadelphia, Pennsylvania.

14. Mr. MacDonald is substantially limited in the major life activity of hearing.

15. Mr. MacDonald's hearing impairment is obvious.

16. Defendant United Parcel Service, Inc. (UPS) is an international corporation that ships packages throughout the world.

17. UPS is a publicly traded company that generated \$58,232,000,000 in revenues in 2014, according to its annual report.

18. UPS employs more than 500 individuals.

19. UPS operates a shipping facility at the Philadelphia International Airport located at 1 Hog Island Road, Philadelphia, PA. Mr. MacDonald works for UPS at this facility.

FACTS

20. Mr. MacDonald was hired as a pre-loader at the UPS Philadelphia International Airport facility in September, 2014.

21. A pre-loader sorts packages by color in the shipping facility.

22. Mr. MacDonald has been deaf since birth and his primary language is American Sign Language (ASL). Mr. MacDonald does not read or write English fluently.

23. Mr. MacDonald can communicate in short written notes or text messages to convey simple concepts between two people. Mr. MacDonald requires an ASL interpreter to translate a paragraph or more of text written in English into ASL.

24. Mr. MacDonald requires an ASL interpreter to translate spoken communications among more than two people.

25. Mr. MacDonald is otherwise qualified to perform the pre-loader job.
26. When applying for the job at UPS, before the interview process, Mr. MacDonald notified UPS that he was deaf and needed a deaf interpreter.
27. UPS told Mr. MacDonald it would provide an ASL interpreter for his mandatory pre-interview facility tour.
28. When Mr. MacDonald arrived for the initial facility tour, no interpreter was provided.
29. After he was hired, Mr. MacDonald requested UPS provide an ASL interpreter for training at the workplace.
30. When the Mr. MacDonald arrived for training, UPS had failed to provide an ASL interpreter.
31. The training was provided in English, not in ASL.
32. Mr. MacDonald sat through training with no interpreter, and only understood a fraction of the training.
33. Mr. MacDonald commenced work on a part-time basis following the training.
34. Mr. MacDonald continued to request ASL interpreters from UPS's Human Resources and from his direct supervisors.
35. Mr. MacDonald does not require an ASL interpreter for his daily tasks on the job as a pre-loader.
36. Mr. MacDonald follows co-workers to his job station and sorts packages by color. Mr. MacDonald is able to understand simple instructions from a supervisor communicated in written notes or through a text message on his phone. Accordingly, he does not need to read and write text in English to perform the essential functions of his job.

37. Mr. MacDonald does require an ASL interpreter to explain company policies and procedures, trainings, changes in his schedule, pay, terms and conditions of employment, safety and emergency procedures, notification of job openings, to understand and participate in employee meetings, to interpret any written materials, and for other communications in the workplace.

38. Several of Mr. MacDonald's supervisors have refused to communicate with him on the worksite through short written notes or text messages. UPS has done nothing to address this failure to provide reasonable accommodations to communicate in the workplace.

39. As of the date of this filing, UPS has held approximately 10 employee meetings with Mr. MacDonald and his co-workers. UPS failed to provide an ASL interpreter at any of these meetings.

40. Consequently, Mr. MacDonald was unaware of the information communicated at those meetings and how it might impact his work, safety, and opportunities for advancement.

41. Mr. MacDonald repeatedly requested an ASL interpreter from UPS after commencing work.

42. On January 11, 2015, counsel for Mr. MacDonald contacted UPS regarding its failure to provide ASL interpreters.

43. UPS responded by providing Mr. MacDonald with a form to request reasonable accommodations for his disabilities. Mr. MacDonald promptly completed and returned the form to UPS. The form provides a list of some accommodations that may be requested and a check box for "yes" or "no" beneath each request. Exhibit C.

44. In this formal, written request, Mr. MacDonald asked for "a certified sign language interpreter to go over this pamphlet with me to make sure I understand it"; "a sign

language interpreter for group meetings at UPS”; “a certified deaf interpreter for a meeting with UPS management to talk about what kinds of accommodations I need at UPS”; and “a pager and buddies to let me know when there are emergency situations and evacuations.” Exhibit C.

45. On the standard accommodations request form UPS offers employees “a sign language interpreter for group meetings at UPS that last **10 minutes or more** so that I can understand the information being presented to the group.” Exhibit C (emphasis added). UPS has told Mr. MacDonald that it does not have to provide an interpreter for meetings shorter than 10 minutes, regardless of the import of the employment information communicated in that meeting.

46. Mr. MacDonald wrote on the form that he requires an ASL interpreter for all meetings. Exhibit C.

47. UPS did not provide an ASL interpreter to review the pamphlet with Mr. MacDonald to ensure that he understood it.

48. Next to the check box titled: “I want a certified sign language interpreter for any interview and facility tour[,]” Mr. MacDonald wrote on the form that he was not given the form when he applied.

49. UPS did not respond to Mr. MacDonald’s request for reasonable accommodations.

50. In February 2015, Mr. MacDonald was erroneously terminated in a Human Resources error.

51. UPS failed to provide an ASL interpreter to communicate the change in Mr. MacDonald’s employment status.

52. UPS failed to provide an ASL interpreter to communicate the erroneous nature of the layoff and the efforts UPS made to correct the error.

53. As a result of UPS's failure to provide a reasonable accommodation to communicate the temporary loss of employment, Mr. MacDonald was confused and distraught. He knew that he had been sent home, but he did not know why.

54. Mr. MacDonald did not know whether he would return to work or whether he would be paid.

55. UPS failed to provide any accessible communication on this matter.

56. UPS's actions caused Mr. MacDonald significant stress, anger, and anxiety.

57. Mr. MacDonald is regularly isolated in the workplace as a result of UPS's failure to provide accessible communications, subjecting him to stress, embarrassment, and anxiety.

58. In March 2015, Mr. MacDonald was subjected to an erroneous temporary layoff.

59. UPS again failed to provide an ASL interpreter to explain what had happened and how it would be remedied.

60. When counsel for Mr. MacDonald learned that UPS had scheduled a hearing for a union grievance challenging Mr. MacDonald's temporary layoff, counsel wrote to UPS to demand the company provide an ASL interpreter for the union grievance hearing. Exhibit D.

61. Based on information and belief, prior to receiving communication from Mr. MacDonald's counsel, UPS had not made any provision for an ASL interpreter for the hearing, despite Mr. MacDonald's written notification in January 2015 of his need for an ASL interpreter for all meetings.

62. In June 2015, Mr. MacDonald again requested an interpreter in writing. Exhibit E.

63. UPS responded to Mr. MacDonald's request in written English with no interpreter provided to translate the written English into ASL. Exhibit F.

64. Mr. MacDonald's request for an ASL interpreter specifically stated, "I require an ASL interpreter for all communications related to my employment." Exhibit E.

65. Based on information and belief, sometime in June 2015, UPS agreed to provide a 20- to 30-minute training on workplace safety to Mr. MacDonald with an ASL interpreter. No information was provided regarding emergency evacuation, company policies and procedures, or employment benefits and other terms and conditions of employment.

66. In June 2015, after Mr. MacDonald submitted his third written request for an ASL interpreter, UPS's Human Resources again held a meeting with Mr. MacDonald without an ASL interpreter.

67. At that meeting UPS provided another ADA accommodations request form to Mr. MacDonald in written English with no ASL interpreter to explain the content of the form.

68. Mr. MacDonald completed the form to the best of his ability, again requesting an ASL interpreter for all meetings and communications related to the terms and conditions of his employment. Exhibit G.

69. Following Mr. MacDonald's submission of the second ADA accommodations request form, UPS held an employee meeting and no interpreter was provided.

70. At that employee meeting Mr. MacDonald requested UPS provide an ASL interpreter to communicate what was said at the meeting.

71. UPS refused to provide an ASL interpreter for the meeting.

72. In August 2015, Mr. MacDonald observed an open package with unknown contents spilling out into the worksite.

73. Mr. MacDonald attempted to communicate with his supervisor by showing the supervisor text messages on his phone, but his supervisor did not respond with any writing and walked away.

74. Mr. MacDonald then attempted to regain his supervisor's attention to the potentially dangerous open package by waving his arms. His supervisor saw Mr. MacDonald waving his arms, but failed to respond to him.

75. Mr. MacDonald then again approached his supervisor and tapped him on the shoulder to gain his attention and alert him to the open package spilling a substance out on the worksite. The supervisor walked away again without writing any notes to communicate with Mr. MacDonald.

76. Subsequently, Mr. MacDonald was called in to a meeting at Human Resources where he was told he could not tap anyone on the shoulder to gain their attention. With the aid of an ASL interpreter, Mr. MacDonald explained that tapping a person on the shoulder is how deaf people communicate.

77. UPS insisted that Mr. MacDonald could not tap other employees on the shoulder.

78. At the same meeting, Mr. MacDonald further explained that some of his supervisors refuse to communicate with him in short text messages and ignore his text messages, rendering him unable to communicate important emergency situations to his employer.

79. Based on information and belief, UPS has failed to provide Mr. MacDonald's supervisors and co-workers with training and information on how deaf people communicate and how to effectively communicate with Mr. MacDonald on the worksite.

80. In October 2015, UPS held a company BBQ for pre-loaders and other UPS employees on company grounds. UPS failed to provide accessible communications to notify Mr. MacDonald of this company event, effectively excluding him from participating.

81. Mr. MacDonald continues to work at UPS without the consistent aid of an ASL interpreter and other auxiliary aids and services to enable him to communicate.

82. Since he began his employment more than one year ago, UPS has provided him with an ASL interpreter a total four times. UPS has still not responded to Mr. MacDonald's request for accommodations to alert him to emergency situations and has done nothing to remedy several of his supervisors' refusal to communicate with him in an accessible manner.

83. As a direct result of UPS's failure to provide effective communications accommodations in the workplace, Mr. MacDonald has suffered stigmatization, exclusion, stress, embarrassment, and anxiety over workplace safety.

84. Mr. MacDonald's claims are part of a series of nearly-identical claims of ADA violations against UPS for failure to provide ASL interpreters to deaf employees.

85. In 2003, UPS settled a national class action charging UPS systemically failed to provide ASL interpreters and other necessary accommodations to deaf employees.

86. In the class settlement agreement, UPS agreed to provide "class members with all reasonably necessary accommodations, aids and services, including certified interpreters or other effective means of communication." Exhibit H.

87. In the class settlement UPS further agreed to provide "certified interpreters or other effective means of communication for formal training sessions, including . . . [i]nterviews and any initial orientation and/or training held at the beginning of a new position. . . [a]ny trainings regarding emergency evacuation procedures, including to the extent that such trainings

are done in conjunction with any emergency evacuation drills . . . [i]nitial training provided to any class member on the use of emergency evacuation pagers . . . [and a]ny company-sponsored events such as internal job fairs, award ceremonies, motivational events, team building events and formal social gathering . . .” to provide “vibrating pagers to class members for use in emergency evacuation situations (both drills and non-drills) . . .,” and “to train operations supervisors and managers in buildings where class members work on” responding to accommodation requests from class members. Exhibit H.

88. The class included deaf employees at the Philadelphia International Airport facility. The class period ended in 2006. Exhibit H.

89. In 2010, the Ninth Circuit Court of Appeals reversed a grant of summary judgment to UPS, because it found UPS was obligated to provide ASL interpreters for company meetings and to translate documents written in English for a deaf junior clerk in its accounting department. Exhibit I.

90. Following the Ninth Circuit opinion, UPS entered into a Consent Decree with the EEOC and agreed to designate an ADA Coordinator to review and revise policies with respect to reasonable accommodations; ensure that deaf or hard-of-hearing employees understand their right to receive effective accommodations and do receive them; engage in the interactive process with employees who request accommodations, including face-to-face meetings to discuss potential accommodations; provide prompt and thorough investigation of complaints of disability discrimination and/or retaliation; conduct live sensitivity training on how to accommodate deaf and hard-of-hearing individuals for all supervisors and managers, with enhanced training for those in the human resources and occupational health departments; create and maintain an

accommodation log to track the handling of accommodation requests; and post a notice of the consent decree at each facility, among other relief. Exhibit J.

91. Mr. MacDonald's claims against UPS have been exhausted by a charge of discrimination filed with the EEOC on January 12, 2015. Exhibit A.

FIRST CLAIM FOR RELIEF
Violation of the Americans with Disabilities Act

92. All previous paragraphs are incorporated as though fully set forth herein.

93. Title I of the Americans with Disabilities Act (ADA) prohibits discrimination against individuals on the basis of disability in regard to the terms, conditions, and privileges of employment. 42 U.S.C. § 12112(a).

94. Discrimination includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.” 42 U.S.C. § 12112(b)(5).

95. “The term ‘reasonable accommodation’ may include . . . the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.” 42 U.S.C. § 12111(9).

96. “The term ‘auxiliary aids and services’ includes—(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.” 42 U.S.C. § 12103(1).

97. At all relevant times, Mr. MacDonald has had a physical impairment (deafness) that substantially limits his major life activity of hearing, such that he is an individual with a disability within the meaning of the ADA. 42 U.S.C. § 12102.

98. In addition, UPS regarded Mr. MacDonald as an individual with a disability within the meaning of the ADA, as his impairment is obvious and he repeatedly notified UPS of his impairment. 42 U.S.C. § 12102(3).

99. Mr. MacDonald is otherwise qualified to perform the pre-loader job, as he was hired for the position and successfully performed the essential functions of the job for more than one year.

100. UPS is an employer “engaged in an industry affecting commerce [and] has 15 or more employees” and is a covered employer obligated to comply with ADA mandates to provide reasonable accommodations to employees with disabilities. 42 U.S.C. § 12111(5)(A).

101. Mr. MacDonald’s disability was known to UPS, as Mr. MacDonald’s hearing impairments are obvious.

102. Mr. MacDonald’s disability was known to UPS, as Mr. MacDonald explicitly informed UPS of his hearing impairments prior to and during the course of his employment.

103. Mr. MacDonald’s need for accommodations was known to UPS as his difficulty in communicating in the workplace was and is obvious.

104. Mr. MacDonald requested such reasonable accommodations to perform the essential functions of his job from UPS in person and in writing on numerous occasions.

105. UPS discriminated against Mr. MacDonald by repeatedly failing to make reasonable accommodations for his known disabilities.

106. UPS was aware of its obligation to provide ASL interpreters for deaf employees to communicate in the workplace.

107. Providing auxiliary aids and services to hearing impaired employees to enable to them to communicate in the workplace is a reasonable accommodation.

108. Providing auxiliary aids and services in the workplace does not impose an undue burden on UPS, as UPS had more than \$35 billion in assets in 2014.

109. The Ninth Circuit ruled that UPS has an obligation to provide ASL interpreters for deaf employees to translate communications written and spoken in English.

110. In the settlements of prior lawsuits in 2003 and 2011, UPS had agreed to provide ASL interpreters for deaf employees and applicants to interview for positions, during facility tours, training sessions, at company meetings, and to communicate company policies and information. UPS further agreed to train its managers and Human Resources staff on providing reasonable accommodations in the workplace.

111. UPS recklessly disregarded its obligation to provide ASL interpreters and other reasonable communications accommodations to deaf applicants and employees, including Mr. MacDonald.

112. UPS's discrimination directly and proximately caused Mr. MacDonald to sustain severe and lasting emotional and psychological harm.

SECOND CLAIM FOR RELIEF
Violation of the Pennsylvania Human Relations Act

113. All previous paragraphs are incorporated as though fully set forth herein.

114. At all relevant times, Mr. MacDonald has had a physical impairment (deafness) that substantially limits his major life activity of hearing, such that he is an individual with a disability within the meaning of Section 2(p) of the Pennsylvania Human Relations Act (PHRA). 43 Pa. C.S. Ann. § 955.

115. In addition, UPS regarded Mr. MacDonald as an individual with a disability within the meaning of Section 2(p) of the PHRA.

116. Mr. MacDonald is otherwise qualified to perform the essential functions of the pre-loader job.

117. UPS is an entity “employing four or more persons within the Commonwealth” and is an employer under the meaning of Section 4(b) of the PHRA.

118. Mr. MacDonald requires reasonable accommodations to communicate in the work place due to his disability.

119. Mr. MacDonald requested such reasonable accommodations in person and in writing on numerous occasions.

120. UPS’s repeated failure to provide reasonable accommodations to Mr. MacDonald constitutes unlawful discrimination on the basis of disability in violation of Section 5(a) of the PHRA.

121. Mr. MacDonald seeks all appropriate remedies under Section 9 of the PHRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- (a) Defendant, its agents, and employees, be enjoined from unlawfully discriminating against Plaintiff based on his disability;
- (b) Defendant, its agents, and employees, promptly provide reasonable accommodations to Plaintiff, including American Sign Language interpretation, emergency pagers and other evacuation accommodations, and other effective means of communication in the workplace;
- (c) Defendant, its agents, and employees, develop and effectively implement a written anti-discrimination policy, ensuring that all deaf employees and applicants receive access to American Sign Language interpretation, emergency pagers and other evacuation accommodations, and other reasonable accommodations to communicate in the workplace;
- (d) Defendant, its agents, and employees, conduct mandatory training for all supervisors and Human Resources staff at the Philadelphia International Airport facility regarding the provision of reasonable accommodations, and identifying and responding to requests for reasonable accommodations;

- (e) Defendant, its agents, and employees conduct mandatory sensitivity training for all staff at the Philadelphia International Airport facility regarding communicating with deaf individuals;
- (f) Compensatory and actual damages to Plaintiff in an amount to be determined at trial;
- (g) Punitive damages in an amount to be determined at trial;
- (h) Costs and reasonable attorneys' fees; and
- (i) Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury on all matters as to which he is entitled by law.

Dated: November 16, 2015

Respectfully submitted,

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