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 Equal Employment Opportunity Commission

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 EQUAL EMPLOYMENT
 11 OPPORTUNITY COMMISSION,

Civil Action No. C-07-04994 CW

12 Plaintiff,

13 vs.

CONSENT DECREE

14 UPS GROUND FREIGHT, INC. dba UPS
 15 FREIGHT and UNITED PARCEL
 SERVICE, INC.,

16 Defendants.

17
 18 Plaintiff Equal Employment Opportunity Commission ("Commission") filed this action
 19 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to
 20 correct alleged unlawful employment practices on the basis of discrimination based on gender and
 21 retaliation, and to provide appropriate relief to Charging Party Joanne Nijem ("Charging Party"),
 22 who the Commission alleged was adversely affected by such practices. The Commission alleged
 23 that Charging Party was subjected to hostile environment harassment based on her gender, and to
 24 retaliation after she complained about said harassment, while employed at Overnite
 25 Transportation Company ("Overnite"). Subsequent to Charging Party's employment with
 26 Overnite and subsequent to her filing of her charge of discrimination, Overnite was acquired by
 27 Defendants UPS Ground Freight, Inc. dba UPS Freight and United Parcel Service, Inc.
 28 (hereinafter referenced collectively as "Defendant UPS"). The Overnite facility where the alleged

1 events occurred is no longer in operation. The Overnite employee who allegedly harassed and
2 retaliated against Charging Party was terminated from Overnite prior to the acquisition by
3 Defendant UPS, and never has been an employee of Defendant UPS. Defendant UPS has denied
4 and denies the above allegations and claims. The Commission and Defendant UPS now seek to
5 resolve this action without further contested litigation through the instant Consent Decree. This
6 resolution does not constitute an admission of liability on the part of Defendant UPS, which
7 expressly denies any violation of law or wrongdoing. This Consent Decree does not constitute an
8 adjudication and/or finding on the merits of this lawsuit or any of the allegations stated in the
9 Commission's Complaint. This Consent Decree represents a good faith settlement of contested
10 and disputed claims.

11 The Court has reviewed this Consent Decree in light of the pleadings, the record herein,
12 and the applicable law, and now approves this Consent Decree.

13 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

14 **GENERAL PROVISIONS**

15 1. This Consent Decree constitutes a full and final resolution of the Commission's
16 claims against Defendant UPS in this action.

17 2. This Consent Decree will become effective upon its entry by the Court.

18 3. This Consent Decree is final and binding upon the parties to it, their successors
19 and assigns.

20 4. The Commission and Defendant UPS will each bear its own costs and attorneys
21 fees in this action.

22 5. The General Injunctive Relief and Special Injunctive Relief provisions of this
23 Consent Decree are limited to Defendant UPS Ground Freight, Inc. dba UPS Freight in its
24 Northern California operations. The term "UPS Freight" hereinafter refers to Defendant UPS
25 Ground Freight, Inc. dba UPS Freight in its Northern California operations.

26 **GENERAL INJUNCTIVE RELIEF**

27 6. UPS Freight and its current officers, agents, employees, and all persons in active
28 concert or participation with them is enjoined from discriminating based on gender or permitting

1 the existence of a work environment that is hostile to employees based on their gender, as
2 prohibited under Title VII.

3 7. UPS Freight and its current officers, agents, employees, and all persons in active
4 concert or participation with them is enjoined from retaliating against employees for opposing
5 discrimination based on gender, including opposition to a work environment that is hostile to
6 employees based on their gender, as prohibited under Title VII.

7 8. UPS Freight and its current officers, agents, employees, and all persons in active
8 concert or participation with them is enjoined from engaging in, implementing or permitting any
9 action, policy or practice which retaliates against Charging Party Nijem, or any other employee or
10 former employee, for having testified or participated in any manner in the Commission's
11 investigation and the proceedings in this case, as prohibited under Title VII.

12 **SPECIAL INJUNCTIVE RELIEF**

13 **Anti-Harassment Policy**

14 9. UPS Freight agrees to maintain a written anti-harassment policy, such that its
15 policy: (a) includes definitions of discriminatory harassment; (b) includes examples to
16 supplement the previously mentioned definitions of harassment; (c) provides for substantial
17 discipline and/or corrective action for incidents of harassment; (d) includes strong non-retaliation
18 language; (e) provides for substantial discipline for incidents of retaliation; (f) provides that
19 complaints of harassment and/or retaliation will be accepted irrespective of whether they are
20 made verbally or in writing; (g) explains that UPS Freight will conduct a prompt and thorough
21 investigation after a complaint is made or received and, where appropriate, will take remedial
22 action upon conclusion of an investigation; (h) encourages employees to come forward with
23 complaints about violations of its harassment policy without fear of retaliation; and (i) provides
24 convenient, confidential and reliable mechanisms for reporting incidents of harassment and
25 retaliation, including notifying employees that they may lodge a complaint with their immediate
26 supervisor, with the employee hotline or with human resources.

1 Should UPS Freight revise its policy during the term of this consent decree, UPS
2 Freight shall submit a copy of the revised policy, if any, to the EEOC within sixty (60) days of its
3 adoption.

4 10. UPS Freight's written complaint procedure will be posted, in a prominent place
5 accessible to all employees in its service centers.

6 **Training**

7 11. UPS Freight will train District Freight Manager Mark Lockamy and Director of
8 Labor Relations David Gentry concerning sex discrimination, gender based harassment, and
9 retaliation, and what to do when a complaint on these matters is raised by an employee. Said
10 trainings will take place within three (3) months of the entry of this decree, and will be of no less
11 than four hours in length.

12 **Record Keeping and Reports**

13 12. Within thirty (30) days after completing the training session(s) described in
14 Paragraphs 11, Defendant UPS will mail to counsel for the Commission a report containing the
15 date of training, an outline of the training content, who attended, and copies of all materials
16 distributed at the training.

17 **MONETARY RELIEF**

18 13. As part of the resolution of this lawsuit, Defendant UPS will pay Charging Party
19 Nijem the sum of \$120,000.00 (\$90,000 in alleged lost wages and \$30,000 for alleged emotional
20 distress) in complete satisfaction of the Commission's claims against Defendant UPS as set forth
21 in its Complaint. This sum will be paid by checks made out directly to charging Party Nijem, and
22 will be mailed to her at addresses to be provided to Defendant UPS by the Commission, with a
23 copy of the checks and any transmittal letter to counsel for the Commission. Said checks will be
24 sent by Defendant UPS within fifteen (15) days of the entry of this decree.

25 **EXPIRATION OF CONSENT DECREE**

26 14. This Consent Decree constitutes a full and final resolution of all the Commission's
27 claims against Defendant UPS in this action. This Consent Decree will be in effect for two (2)
28 years, and will expire at midnight of the date two (2) years after its entry by the Court, provided

1 that Defendant UPS has substantially complied with the terms of this Consent Decree. Defendant
2 UPS will be deemed to have complied substantially if the Court has not made any findings or
3 orders during the term of the Decree that Defendant UPS has failed to comply with any of the
4 terms of this Decree.

5 E-filing concurrence: I, Katherine Huibonhoa, attorney for Defendants UPS Freight and UPS,
6 attest that I have obtained the concurrence of Cindy O'Hara, attorney for Plaintiff Commission,
7 for the lodging of this Consent Decree.

8
9 On Behalf of Plaintiff Commission:

On Behalf of Defendants UPS Ground
Freight, Inc. & United Parcel Service, Inc.

10 Dated: September 16, 2009

Dated: September 16, 2009

11 EQUAL EMPLOYMENT OPPORTUNITY
12 COMMISSION

PAUL HASTINGS JANOFSKY & WALKER

13 /S/ William R. Tamayo
14 WILLIAM R. TAMAYO
Regional Attorney

/S/ Katherine Huibonhoa
KATHERINE HUIBONHOA
Attorneys for UPS GROUND FREIGHT,
INC. & UNITED PARCEL SERVICE, INC.

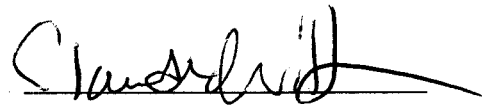
15
16 /S/ Jonathan T. Peck
JONATHAN T. PECK
Supervisory Trial Attorney

17
18 /S/ Cindy O'Hara
19 CINDY O'HARA
Senior Trial Attorney

20
21
22 **ORDER**

23 It is so ordered.

24 Dated: 9-17-09



U.S. District Court Judge