

1 Thomas E. Kotoske, State Bar No. 046882
2 Law Office of Thomas E. Kotoske
3 Embarcadero Corporate Center
4 2479 East Bayshore Road, Suite 703
5 Palo Alto, CA 94303-3207
6 (650) 320-0060

7 Attorney for Plaintiff,
8 CARLOS GUILTRON

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12

13 CARLOS GUILTRON,

14 Plaintiff,

15 vs.

16 UNITED PARCEL SERVICE, INC., a
17 corporation, and ROBERT CHASE, an
18 individual,

19 Defendants.

) Case No.: 3: CV 05-00888 CRB

)
) DECLARATION OF COUNSEL IN
) SUPPORT OF PLAINTIFF'S MOTION
) FOR LEAVE TO FILE A FIRST
) AMENDED COMPLAINT

)
) Date: August 19, 2005
) Time: 10:00a.m.
) Courtroom: No. 8
) Before: Hon. Charles R. Breyer
)

20 I, THOMAS E. KOTOSKE, declare:

21 1. I am counsel for plaintiff. I know the facts recited below of my own personal
22 knowledge and I could and would testify to the truth of those facts if called upon to do so.

23 **Plaintiff's Employment History That Gives Rise to**
24 **First Amended Complaint**

25 2. The following is a time line of plaintiff's employment history at United Parcel
26 Service ["UPS"] that gives rise to plaintiff's first amended complaint.

27 1993: Plaintiff begins his employment with UPS as a driver.

28 June 2000: Plaintiff is severely injured on the job and has a skeletal muscular
disability that is well known to UPS.

1 it to be filed, to defense-attorney, Mr. John Post. A copy of that transmittal is attached as
2 Exhibit 3.

3 4. On July 13, 2005, Mr. Post transmitted the attached letter, Exhibit 4, stating that
4 he would not execute the stipulation. Mr. Post states that plaintiff is attempting to amend the
5 complaint for an “improper purpose”. Mr. Post never explains what he means by an “improper
6 purpose.

7 This motion ensues.

8
9 **No Prejudice**

10 5. No prejudice could befall defendants if the first amended complaint is filed.
11 Discovery has not started. The case management conference is set for August 5, 2005.

12
13 **There is no Bad Faith**

14 6. There is no bad faith on plaintiff's part in seeking to file the first amended
15 complaint. It is not plaintiff's fault that the defendants seek to engage in **additional** unlawful
16 conduct [discrimination and retaliation] **after** UPS had removed the original action from state
17 court to this court.

18
19 **Not Futile**

20 7. The claims alleged in the first amended complaint are cognizable state statutory
21 claims.

22 Also the defendant Robert Chase is fully liable for the retaliatory conduct alleged in the
23 first amended complaint. Peterson v. Santa Clara County Valley Medical Center, No. C98-
24 20367 JW, 2000 U.S. Dist. Lexis 953, 2000 DAR 1649 [N.D. Cal.]; Walrath v. Sprinkel, 99
25 CA4th 1237, 1239 (2002).

26
27 **No Undue Delay**

1 8. There has been no undue delay in seeking to file the first amended complaint.
2 The causes of action of disability discrimination and retaliation arose in late April 2005. Plaintiff
3 filed his charge with the DFEH on July 11, 2005 and by July 12, 2005 had presented the first
4 amended complaint to opposing counsel with a request to stipulate to its filing.

5
6 I declare under penalty of perjury under the laws of California that the foregoing is true
7 and correct, and that this declaration was executed in California.

8
9
10
11 Date: July 14, 2005

Thomas E. Kotoske
Attorney for Plaintiff