

**EXHIBIT 1**

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**CHARLES A. ASKIN**

31 LOMA VISTA  
WALNUT CREEK, CA 94597

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October 19, 2004

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180 Grand Avenue, Suite 1400  
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San Francisco, CA 94105-2173

**RECEIVED**

**OCT 20 2004**

**WR&R**

Re: UPS and Teamsters Local 278  
(Carlos Guiltron grievance)

Dear Parties,

Pursuant to the parties' stipulation at the conclusion of the hearing, and upon review of the record in this matter, the Arbitrator issues the following

AWARD

1. The Employer did not have just cause to discharge Carlos Guiltron.
2. The Employer shall offer to reinstate Mr. Guiltron to his former position, subject to his satisfactory completion of a fitness-for-duty examination (including testing for the presence of controlled substances). Grievant shall have the option, if he so chooses, to take a leave of absence for the purpose of undergoing treatment in an approved program for alcohol or substance abuse before taking the fitness-for-duty examination. The Employer shall make Grievant whole for all lost wages (less interim earnings, if any) and other contract benefits lost as a result of his termination.
3. The Arbitrator retains jurisdiction of the remedy portion of this Award, and any disputes with respect thereto.

Pursuant to the parties' authorization, a full Opinion setting forth the findings and conclusions in support of this Award will be issued as soon as I am able to do so consistent with my hearing schedule and pending decisions for other parties.

Sincerely,

  
Charles A. Askin  
Arbitrator

0001

**EXHIBIT 2**

1 Law Office of Thomas E. Kotoske  
2 Thomas E. Kotoske, State Bar No. 046882  
3 Embarcadero Corporate Center  
4 2479 E. Bayshore Road, Suite 703  
5 Palo Alto, CA 94303  
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7 Law Office of Randall Widmann  
8 Randall Widmann, State Bar No. 73154  
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10 2479 E. Bayshore Road, Suite 703  
11 Palo Alto, CA 94303  
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13 Law Office of Glynn Falcon  
14 Glynn Falcon, State Bar No. 61078  
15 2501 Park Blvd., Suite 205  
16 Palo Alto, CA 94306  
17 (650) 323-0333

18 Attorneys for Plaintiff  
19 CARLOS GUILTRON

20 **UNITED STATES DISTRICT COURT**  
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

22 CARLOS GUILTRON, ) Case No.: 3: CV 05-00888 CRB  
23 )  
24 Plaintiff, ) FIRST AMENDED COMPLAINT  
25 vs. )  
26 ) 1. Discrimination  
27 ) 2. Violation Public Policy  
28 ) 3. Retaliation  
29 )  
30 UNITED PARCEL SERVICE, INC., a )  
31 corporation, and ROBERT CHASE, an )  
32 individual, ) [Jury Trial Demanded]  
33 )  
34 Defendants. )

35 **JURISDICTION**

36 1. This action was originally filed in the San Mateo County Superior Court. The  
37 defendant ["UPS"] removed the action to this court contending that plaintiff's damages exceeded  
38 \$75,000 and that the parties were diverse pursuant to 28 USC §1332.

1 VENUE

2  
3 2. The conduct alleged below occurred within this judicial district.

4 ALLEGATIONS COMMON TO ALL COUNTS

5  
6 3. The defendant ["UPS"] is a package delivery service operating nationwide with a  
7 principal station in Menlo Park, California out of which plaintiff worked and where the bulk of  
8 the conduct alleged below occurred.

9 The defendant Robert Chase ["Chase"] is an individual which at all times herein was, and  
10 is, a resident within the judicial district of the Northern District of California; and, Chase actively  
11 participated in the retaliatory conduct alleged below.

12 The plaintiff began his employment with UPS in 1993. His performance was good. His  
13 employment with UPS ceased in September 2002. Plaintiff resumed his employment with UPS  
14 on or about October 2004. UPS terminated plaintiff's employment on or about April 2005.

15 4. At all times herein mentioned, each of the defendants was the agent and/or  
16 employee of each of the other defendants, and was at all times mentioned, acting within the  
17 course and scope of said agency and/or employment and each defendant was acting with the full  
18 knowledge and consent of her superior or principal, and each such principal or superior at all  
19 times ratified and acquiesced in each and every act of each defendant and agent thereof, and as  
20 such each defendant is bound by the other by his act and deed.

21 5. Since June 2000 the defendant knew that plaintiff had a disability generally  
22 described as a degenerative disc disease with accompanying spondylosthesis, an on the job injury  
23 while employed at UPS. Nevertheless, plaintiff was a qualified employee capable of doing the  
24 essential functions of the job which he did.

25 6. The conduct which the plaintiff complains of in this complaint, and which is  
26 alleged below, was carried out by the defendant with oppression and malice and was carried out  
27 with conscious disregard of plaintiff's rights as assured by state and federal law pursuant to  
28

1 which plaintiff is entitled to an award of exemplary damages.

2 7. The plaintiff has had to employ counsel to prosecute this action and has thereby  
3 incurred costs and attorney fees. Such attorney's fees and costs are necessary for the prosecution  
4 of this action for which plaintiff is entitled to an award of attorney's fees and costs in an amount  
5 according to proof.

6 **FIRST CAUSE OF ACTION**  
7 **[Discrimination]**

8 8. Plaintiff incorporates here paragraphs 1 through 7 of this complaint.

9 9. Since June 2000 the defendant knew that plaintiff had a disability generally  
10 described as a degenerative disc disease with accompanying spondylosthesis, an on the job injury  
11 while employed at UPS. Nevertheless, plaintiff was a qualified employee capable of doing the  
12 essential functions of the job which he did.

13 10. Discrimination based on an employee's disability is made unlawful by the State of  
14 California pursuant to Labor Code §132(a), the fundamental public policy of this state.

15 11. In a continuous pattern of disability discrimination, in violation of Labor Code  
16 §132(a), defendant treated plaintiff less favorably and differently than his co-employees based on  
17 plaintiff's disability in the following particulars among others:

18 a) In August 2002, UPS's management mocked and degraded plaintiff  
19 because of his disability.

20 b) In August 2002, UPS's management refused to allow plaintiff to see his  
21 doctor for treatment of his disability and threatened to fire plaintiff if he did.

22 c) In September 2002, UPS's management threatened to fire plaintiff because  
23 of his disability.

24 d) About September 12, 2002, UPS's management refused to allow plaintiff  
25 to seek medical help for his disability and threatened to fire plaintiff because of his  
26 disability.

27 12. The foregoing conduct created a hostile environment which caused plaintiff  
28

1 severe emotional distress for which he is entitled to general damages according to proof.

2  
3 **SECOND CAUSE OF ACTION**  
4 **[Disability Discrimination]**

5 13. Plaintiff incorporates here paragraphs 1 through 12 of this complaint.

6 14. At all times mentioned herein, plaintiff was a qualified person with a disability as  
7 defined by California Gov't. Code §§12900 et seq. ["Act"] and plaintiff was able to perform the  
8 essential functions of the job. Plaintiff's disability, described above, was a matter of record and  
9 was made fully aware to UPS. Plaintiff has fulfilled all administrative requirements required by  
10 law prior to bringing this action, including filing a complaint with the Department of Fair  
11 Employment & Housing who has issued plaintiff Right-to-Sue letters on July 23, 2004 and July  
12 11, 2005.

13 15. Continuously from October 2004 to April 2005, UPS, through its managers and  
14 supervisors, including Chase, discriminated against plaintiff because of his disability and refused  
15 to accommodate plaintiff's disability, refused to engage in the interactive process concerning  
16 plaintiff's, in that, among other things:

17 a) UPS demanded that plaintiff work excessive hours which in turn  
18 aggravated plaintiff's disability and caused him great pain.

19 b) UPS refused to accommodate plaintiff's disability or to engage in the  
20 interactive process concerning his disability.

21 c) When plaintiff complained of disability discrimination, UPS supervisors  
22 and/or managers, threatened to fire plaintiff.

23 d) UPS terminated plaintiff because of his disability.

24 16. As a direct result of the above described conduct, plaintiff suffered physical pain,  
25 physical injuries, severe emotional distress, loss of income and other employment benefits for  
26 which plaintiff is entitled to general and special damages according to proof.

27 **THIRD CAUSE OF ACTION**  
28 **[Retaliation]**

1 17. Plaintiff incorporates here paragraphs 1 through 16 of this complaint.

2 18. Continuously from October 2004 to April 2005, when plaintiff complained to  
3 UPS management, including the defendant Chase, of disability discrimination, said defendants  
4 retaliated against plaintiffs with adverse consequences to plaintiff as alleged in paragraph 15(a)  
5 to (d), supra, and incorporated here.

6  
7 **FOURTH CAUSE OF ACTION**  
8 **[Violation of Public Policy]**

9 19. Plaintiff incorporates here paragraphs 1 through 18 of this complaint.

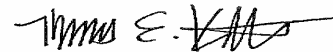
10 20. Discrimination based on an employee's disability is made unlawful by the State of  
11 California pursuant to Labor Code §132(a) and the Act and is an unlawful business practice  
12 pursuant to Bus. and Prof. Code §17200, which statutes are the fundamental public policy of this  
13 state.

14 21. In violation of the above statutes, UPS discriminated against plaintiff which  
15 discrimination was the direct cause of a hostile environment and caused plaintiff to endure severe  
16 emotional distress for which he is entitled to general damages according to proof.

17  
18 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 19 1. For lost wages and related employment benefits according to proof at trial;
- 20 2. For general damages for emotional distress and physical injuries according  
21 to proof,
- 22 3. For attorney fees according to proof at trial,
- 23 4. For punitive damages according to proof at trial,
- 24 5. For an award of interest, including prejudgment interest, at the legal rate;
- 25 6. For a jury trial on all issues, and
- 26 7. For costs of litigation.

27  
28 Date: July 12, 2005



Thomas E. Kotoske, Attorney for Plaintiff



**EXHIBIT 3**



## E-Mail Memorandum

To: John Post  
From: Thomas E. Kotoske  
Date: July 12, 2005  
Re: Guiltron v. UPS

Please see attached pleading with stipulation and letter from me.

**THOMAS E. KOTOSKE**  
A PROFESSIONAL LAW CORPORATION  
Embarcadero Corporate Center  
2479 E. Bayshore Rd., Suite 703  
PALO ALTO, CALIFORNIA 94303  
TELEPHONE (650) 320-0060  
FACSIMILE (650) 320-0080

Via E-Mail

July 12, 2005

John C. Post  
Paul, Hastings, Janofsky & Walker LLP  
55 Second Street, 24th Floor  
San Francisco, CA 94105-3441

Re: Guiltron v. UPS et al.

Dear Mr. Post:

Enclosed is the first amended complaint that was referenced in the case management conference statement as well as a stipulation concerning its filing.

Would you please execute the stipulation and return it to me and I will process the amended complaint. If you will not stipulate to the filing of the amended complaint, please advise immediately so that we can pursue the appropriate motion.

As the case management conference is fast approaching may I have your response as soon as possible. Thank you.

Sincerely,



Thomas E. Kotoske

TEK/rcm  
Enclosures

1 Law Office of Thomas E. Kotoske  
Thomas E. Kotoske, State Bar No. 046882  
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11 Attorneys for Plaintiff  
12 CARLOS GUILTRON

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15  
16 CARLOS GUILTRON, ) Case No.: 3: CV 05-00888 CRB  
17 Plaintiff, )  
18 vs. ) STIPULATION TO FILE FIRST  
19 UNITED PARCEL SERVICE, INC., a ) AMENDED COMPLAINT  
20 corporation, and ROBERT CHASE, an )  
21 individual, )  
Defendants. )

22 The parties, through counsel, stipulate that plaintiff may file a first amended complaint.  
23

24 Date: July \_\_\_\_, 2005

25 \_\_\_\_\_  
Paul Hastings, Attorney for Defendant

26 

27 Date: July 12, 2005

28 \_\_\_\_\_  
Thomas E. Kotoske, Attorney for Plaintiff

**EXHIBIT 4**

Atlanta  
Beijing  
Brussels  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
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(415) 856-7070  
johnpost@paulhastings.com

July 13, 2005

26643.00256

VIA FIRST CLASS LETTER AND E-MAIL

Thomas E. Kotoske, Esq.  
Law Offices of Thomas E. Kotoske  
Embarcadero Corporate Center  
2479 E. Bayshore Rd., Ste. 703  
Palo Alto, CA 94303

Dear Mr. Kotoske:

I am in receipt of your letter dated July 12, 2005. UPS declines to stipulate to the filing of a First Amended Complaint in this matter. Among other things, UPS believes plaintiff is seeking to amend his complaint for improper purposes.

Attached our initial Rule 26 disclosures, which we agreed to exchange on July 13, 2005, pursuant to the joint case management statement.

If you have any questions, please give me a call.

Sincerely,



John C. Post  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

JCP:pal

Attachments

SF/371956.2