

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CLAYTON BUTTRAM, JR., DeJEANNE
NICHOLS, JEROME OTIS, VANESSA
RILEY, ALYSIA SHAW, ALICIA WHITE,
LYTHIA WHITNEY, and **KEVIN WINSTON**,
on behalf of themselves and all others similarly
situated, and ETIENNE CARTER, ERSKINE
GARRETTE, REGINALD GREEN WILLIAM
LEWIS III, TIMOTHY MAPFUMO,
MICHAEL McZEEK, MARLON LYNN
PAYDEN, PHILLIP SMITH, ERIC THOMAS,
MARAN WILSON AND JEFFREY WYNN,
individually,

Plaintiffs,

vs.

CASE NO. C-97 01590 MJJ

UNITED PARCEL SERVICE, INC.,

Defendant.

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT AND
CONSENT DECREE**

MAILED NOTICE

**TO: ALL AFRICAN-AMERICANS WHO WERE EMPLOYED BY UPS IN ITS
NORTHWEST OR PACIFIC REGIONS AS PART-TIME HOURLY EMPLOYEES AT ANY
TIME BETWEEN JANUARY 27, 1996 AND FEBRUARY 5, 1999**

READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

UPS, Inc. ("UPS") has agreed to settle an employment discrimination class action lawsuit now pending in the United States District Court in San Francisco, California. The lawsuit, which has been brought by eight (8) African-American current or former part-time hourly employees of UPS's Pacific and Northwest Regions on behalf of themselves and similarly situated individuals, as well as eleven (11) African-American current and former employees not employed in part-time hourly positions, claimed that UPS discriminated against African-American part-time hourly employees in its Pacific and Northwest Regions. UPS denied these claims.

THE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF:

- THE STATUS OF THE LAWSUIT, INCLUDING A STATEMENT OF YOUR RIGHTS WITH RESPECT TO A PROPOSED SETTLEMENT OF THE CASE;
- THE OPPORTUNITY TO FILE A CLAIM FOR A MONETARY AWARD;
- THE OPPORTUNITY TO FILE WITH THE COURT ANY OBJECTIONS YOU MAY HAVE TO THE SETTLEMENT; AND
- THE OPPORTUNITY TO EXCLUDE YOURSELF FROM THE MONETARY PORTION OF THE PROPOSED SETTLEMENT BY "OPTING OUT."

You have received this Notice because UPS' records reflect that you were employed by UPS as a part-time hourly employee in its Pacific or Northwest Regions between January 27, 1996 and February 5, 1999. The fact that you have received this Notice does not alone mean that you are eligible to receive any monetary award under the proposed settlement. **1. The Affected Class.** The Court has certified a Settlement Class for purposes of monetary relief pursuant to Fed. R. Civ. P. 23(b)(3). Also, pursuant to Fed. R. Civ. P. 23(b)(2), the Court has certified a Settlement Class for purposes of various forms of equitable relief provided in the proposed Consent Decree. The Settlement Class for purposes of monetary relief is defined as follows:

ALL AFRICAN-AMERICANS WHO WERE EMPLOYED BY UPS IN ITS NORTHWEST OR PACIFIC REGIONS AS PART-TIME HOURLY EMPLOYEES AT ANY TIME BETWEEN JANUARY 27, 1996 AND FEBRUARY 5, 1999, EXCLUDING ANY SUCH PERSON WHO HAS FILED A TIMELY REQUEST TO OPT OUT OF THE MONETARY RELIEF PROVISIONS OF THIS DECREE.

If you are included in the Monetary Relief Settlement Class defined above, you may be entitled to receive the benefits of the proposed settlement, including an individual monetary award. Additionally, if you are currently employed by UPS in its Pacific and Northwest Regions, you will be affected by the injunctive relief provided by the Consent Decree.

2. Terms of Proposed Settlement.

a. Injunctive Relief. Subject to Court approval, Representative Plaintiffs Clayton Buttram, DeJeanne Nichols, Vanessa Riley, Alysia Shaw, Alicia White, Lythia Whitney, and **Kevin Winston** and UPS have agreed to the entry of a Consent Decree by the Court that (i) establishes a process for providing information to applicants for entry-level part-time hourly positions regarding the location(s) which may consider their applications as well as the operations and shifts within these locations and that permits the applicants to indicate a preferred work time frame; (ii) establish a process for providing information to part-time hourly employees regarding the processes by which they can obtain job opportunities; (iii) monitors the rate at which African American employees are promoted to part-time supervisor over the next three years; (iv) monitors the rate at which African American employees pass driver training over the next three years; (v) provides that UPS will enhance its efforts to inform UPS employees and managers that Race Discrimination and Race Harassment will not be tolerated by UPS, and that violations of UPS's anti-discrimination policy will lead to discipline, up to and including termination; (vi) provides that employees will be informed that UPS's 1-800 business conduct

line may be used for complaints about Race Discrimination or Race Harassment; (vii) provides that UPS will continue to train managers about Race Harassment and will provide copies of the training materials to Lead Class Counsel; and (viii) provides certain other items of injunctive and equitable relief. Attachment A contains a somewhat more detailed summary of the injunctive relief provisions.

b. Monetary Relief. Subject to Court approval, the Consent Decree will also provide classwide monetary relief. Pursuant to the proposed Consent Decree, UPS has agreed to pay a Class Monetary Award totaling \$8.2 million to qualified Settlement Class Members. Each qualified Settlement Class Member who files a timely claim that is determined to be valid shall be entitled to a monetary award. The exact individual monetary award to each qualified class member will be determined by the claim procedure, eligibility requirements, and other member limitations set forth in the Decree. This relief will be in final settlement of all claims by the Plaintiffs and Settlement Class Members against UPS for alleged Race Discrimination, Race Harassment and/or retaliation on the basis of race that were raised or could have been raised in this case. The claims being released are described in section 2.c., below.

In addition, UPS has agreed to pay an aggregate amount of \$150,500 to Representative Plaintiffs Clayton Buttram, DeJeanne Nichols, Vanessa Riley, Alysia Shaw, Alicia White, Lythia Whitney, and Kevin Winston. UPS has not reached agreement on a monetary award with Representative Plaintiff Jerome Otis. UPS has reached settlement agreements with seven other African American employees of UPS who sued UPS together with the Representative Plaintiffs, but who are not Class Members (i.e., they worked in positions other than part-time hourly positions). UPS and two other individual plaintiffs have agreed to arbitrate their disputes. UPS has not reached agreement on a monetary award with two other non-class Member plaintiffs.

Pursuant to the proposed Decree, UPS also has agreed to pay Class Counsel's attorneys' fees in the amount of \$2,440,000 for work performed on this litigation, and to reimburse Class Counsel's litigation, costs and expenses in the amount of approximately \$725,000. UPS has further agreed to pay Class Counsel \$150,000 over the term of the three-year Consent Decree for claims administration and for monitoring the terms of the Consent Decree.

The very brief and general summary of the proposed Consent Decree in this notice does not include all of the terms and conditions of the proposed settlement. The only complete statement of the terms of the proposed settlement is found in the actual Consent Decree provisionally approved by the Court. Copies of the proposed Consent Decree are available for inspection or copying at your expense during regular office hours at the Office of the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102.

c. Release of Claims. Upon the Effective Date of this Decree, the Representative Plaintiffs, members of the Monetary Relief Class who do not timely request exclusion from monetary relief provisions of this Decree, and their heirs, successors, and estates (hereafter "Releasers") shall be deemed to have fully released and forever discharged UPS and its directors, officers, managers, agents, employees, attorneys, successors and assigns, and all benefit plan administrators and anyone acting in concert with or on behalf of any of them ("UPS"), from any

and all individual and/or class claims, demands, charges, complaints, rights and causes of action of any and every kind, known or unknown, whether seeking monetary and/or equitable relief of any sort, which arose on or before the Effective Date of this Decree out of alleged Race Discrimination, including but not limited to, common law claims, contract claims (express or implied), claims based upon the covenant of good faith and fair dealing (express or implied), tort claims, public policy claims, and claims alleging violations of any federal, state or other anti-discrimination governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*; (2) 42 U.S.C. § 1981; (3) the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12900 *et seq.*; (4) the Utah Anti-Discrimination Act; (5) the Washington Law Against Discrimination; and/or any other federal or state law prohibiting Race Discrimination, whether statutory, pursuant to local ordinance or at common law.

This Release is final and shall survive the expiration of the Decree's term.

As to claims of Race Discrimination, the Releasors expressly waive the protection of Section 1542 of the Civil Code of the State of California, which states that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Under the Decree, "Race Discrimination" or "Discriminating on the basis of race" shall be understood to include: (1) disparate treatment on the basis of Race; (2) disparate impact on the basis of Race; (3) racial harassment; and (4) retaliation for opposing alleged racial harassment or for participating in a process designed to obtain relief for alleged racial harassment.

3. Reasons for Settlement. After extensive litigation, Class Counsel have concluded that the terms and conditions of the settlement are fair, reasonable, adequate and in the best interests of the Settlement Class. In reaching this conclusion, Class Counsel have analyzed the benefits of the settlement, the risk of an unfavorable outcome to the litigation in this case, as well as the expense and length of continued proceedings necessary to prosecute this action through a trial and possible appeals. UPS does not admit any wrongdoing or liability by entering into this settlement, and has agreed to these settlement terms because it wishes to avoid further costly, disruptive and time-consuming litigation and desires to obtain complete and final settlement of the claims of the Plaintiffs and the Settlement Class Members. **4. Filing A Claim for Monetary Award.** If you are a member of the Settlement Class as defined in Section 1 above, and you wish to file a claim for a monetary award under the proposed settlement, you must return a completed Claim Form signed under penalty of perjury to the Claims Administrator: Gilardi & Co., P.O. Box 8060, San Rafael, CA 94912-8060, postmarked no later than April 16, 1999.

A CLAIM FORM AND INSTRUCTIONS ARE ENCLOSED WITH THIS NOTICE.

If you do not mail the enclosed Claim Form with a postmark date of no later than April 16, 1999, you will not be eligible to receive a monetary award under the proposed settlement. Whether or not you submit a Claim Form postmarked by April 16, 1999, you will be bound by the proposed Decree, if finally approved by the Court, if you do not exclude yourself from the

monetary portion of the Settlement pursuant to the procedure described in paragraph 6. Please note that filing your Claim Form by the deadline does not guarantee that you will receive a monetary award. The law prohibits retaliation against any person who files a claim for monetary payment.

Your claim will be reviewed and you will be notified whether it is determined to be valid. Claimants whose claims are rejected will have the right to appeal to a Special Master appointed under the proposed settlement. All decisions of the Special Master will be final, binding and non-appealable.

5. Binding Effect. The proposed Decree, if finally approved by the Court, will be binding on all members of the Monetary Relief Class and will bar any person who is a member of the Monetary Relief Class from seeking relief from UPS, other than as provided for in the Decree, for all claims of alleged Race Discrimination, Race Harassment, and/or retaliation on the basis of race, arising prior to the Effective Date of the Decree, unless he or she excludes himself or herself from the individual monetary portion of the Decree pursuant to the following opt-out procedure. This is true whether or not the Class Member files a timely Claim Form and/or receives a monetary award. **6. Opt-Out Procedure.** If you wish to exclude yourself from the monetary portion of the settlement, you must file a written Opt Out statement with the Claims Administrator at Gilardi & Co., P.O. Box 8060, San Rafael, CA 94912-8060. Your Opt-Out statement must be sent to the Claims Administrator, and postmarked, on or before March 15, 1999. You should note the name of the case, Buttram v. UPS, Case No. C97 01590 MJJ, on your opt-out statement.

If you opt out of this lawsuit, (a) you will have no right to file a claim for or to receive any money under the settlement of this case; (b) you will not be bound by the individual monetary relief provisions of the settlement in this lawsuit; and (c) you may bring a separate lawsuit against UPS yourself.

If you opt out of this lawsuit and bring a separate lawsuit, you may lose your case and receive nothing, or you may obtain less money than you can get under this lawsuit even if you prevail, and it may take several years to obtain any such money in any individual suit you may bring.

To opt out of this lawsuit, you must submit your full name, address, day and evening telephone numbers, Social Security number, and a signed and dated copy of the following statement:

"I am a Settlement Class Member in the lawsuit of Buttram v. UPS, Case No. C97 01590 MJJ. I wish to opt out of the monetary portion of the settlement of this case. I understand that by requesting to be excluded from the Class Monetary Settlement I will receive no money whatsoever from UPS under the Consent Decree entered into by UPS and Representative Plaintiffs Clayton Buttram, DeJeanne Nichols, Vanessa Riley, Alysia Shaw, Alicia White, Lythia Whitney, and **Kevin Winston** and preliminarily approved by the Court as fair and reasonable on February 5, 1999. I understand that I may bring a separate lawsuit, in which I will not be represented by Class Counsel and I understand that in any separate lawsuit I may receive nothing, or, I may receive less than I would have received if I had filed a claim under the Class Monetary Settlement Procedure in the Consent Decree. I also understand that I cannot seek

exclusion from the class for non-monetary relief, and that I will be bound by the class-wide equitable relief provisions of the Consent Decree entered into by UPS and Representative Plaintiffs, if the Decree is finally approved by the Court."

7. Objections to the Consent Decree. If you believe that the proposed Consent Decree should not be finally approved by the Court for any reason, you may object to the proposed Decree. If you want to object to the proposed Decree, you must file an objection in writing with the Claims Administrator at Gilardi & Co., P.O. Box 8060, San Rafael, CA 94912-8060 on or before March 15, 1999, in which you state the basis of your objection. You also may appear at the hearing to be held on March 31, 1999 at 3:00 p.m. at the United States District Court, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California to have your objection heard by the Court, but objections not previously filed in writing will not be considered. Any attorney who will represent an individual objecting to the Decree must file a notice of appearance with the Court and serve counsel for all parties (see below) on or before March 15, 1999. All objections or other correspondence must state the name and number of the case, which is Buttram v. UPS, Case No. C97 01590 MJJ. Your objection also should include your full name, address and day and evening telephone numbers. The names and addresses of counsel for all parties are:

James M. Finberg
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111

Lead Class Counsel

M. Kirby C. Wilcox, Esq.
PAUL, HASTINGS, JANOFSKY &
WALKER, LLP
345 California Street, 29th Floor
San Francisco, CA 94104

Attorneys for Defendants, UPS, Inc.

8. Class Counsel. The law firm of Lieff, Cabraser, Heimann & Bernstein, 275 Battery St., 30th Floor, San Francisco, CA 94111 has been designated by the Court as Lead Counsel for the Class. **9.**

Additional Information.

a. Questions Regarding the Settlement or Filing a Claim. If you have any questions about the proposed settlement, including the process for filing a claim for a monetary award under the proposed settlement, you may call or write the office of the Claims Administrator at the following address and toll-free number:

Buttram v. UPS, Inc.
Claims Administrator
c/o Gilardi & Co. LLC

P.O. Box 8060
San Rafael, CA 94912-8060
(800) 396-6057

b. Reporting Changes of Address. It is very important for the Claims Administrator to have your current address in order to be able to send you other mailings regarding the lawsuit. You should report any change of address in writing to the Claims Administrator at the following address:

Buttram v. UPS, Inc.
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8060
San Rafael, CA 94912-8060

Your written change of address notice should include your full name, old and new addresses, day and evening telephone numbers and Social Security number.

Failure to report a change of address could result in forfeiture of any monetary award you may otherwise be entitled to receive under the proposed settlement.

10. If the Decree is Not Approved. If the Consent Decree is not approved by the Court, the conditional settlement will be voided, no money will be paid, and the case will proceed to trial. However, if that happens there is no assurance: (a) that any decision at trial would be in favor of class members; (b) that a favorable trial decision, if any, would be as favorable to the class members as this settlement; or (c) that any such favorable trial decision would be upheld if any appeal was filed. Dated this 5th day of February, 1999

Hon. Martin J. Jenkins
United States District Judge
Northern District of California

PLEASE DO NOT CONTACT THE CLERK OF THE
COURT WITH QUESTIONS REGARDING THE SETTLEMENT