

**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 PADEN, PHILIP SMITH, ERIC THOMAS, MARAN WILSON, and JEFFREY WYNN, individually, Plaintiffs, vs. UNITED PARCEL SERVICE, INC., Defendant.**

**Case No. C-97-01590-MJJ**

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

*1999 U.S. Dist. LEXIS 23556*

**April 14, 1999, Decided April 14, 1999, Filed; April 21, 1999, Entered**

**COUNSEL:** [\*1] For Etienne Carter, William L ewis, III, Vanessa Riley, Alysia Shaw, Alicia White, Lythia Whitney, Maran Wilson, Plaintiffs: Jacqueline Eve Mottek, LEAD ATTORNEY, Coughlin Stoia Geller Rudman & Robbins LLP, San Francisco, CA; Joshua P. Davis, LEAD ATTORNEY, University of San Francisco School of Law, San Francisco, CA; Robert Y. Chan, LEAD ATTORNEY, Robert Y. Chan Law Office, San Francisco, CA; Reginald Von Terrell, John L. Burris Law Offices, Richmond, CA.

For Clayton Buttram, Jr., DeJeanne Nichols, Plaintiffs: James M. Finberg, LEAD ATTORNEY, Altshuler Berzon LLP, San Francisco, CA; Beryl M. Crumpton, Oakland, CA; John L. Burris, Reginald Von Terrell, Law Offices of John L. Burris, Oakland, CA; Jon L. Edwards, Raifman & Edwards LLP, San Francisco, CA; Jonathan David Selbin, New York, NY; Joshua P. Davis, LEAD ATTORNEY, University of San Francisco School of Law, San Francisco, CA; Kelly M. Dermody, Leiff Cabraser Heimann & Bernstein LLP, San Francisco, CA; Robert Y. Chan Law Office, San Francisco, CA.

For United Parcel Service of America, Inc., Defendant: Maurice Kirby Collette Wilcox, LEAD ATTORNEY, Paul Hastings Janofsky & Walker LLP, San Francisco, CA; Paul W. Cane, Jr., LEAD ATTORNEY, [\*2] Paul Washtings Janofsky & Walker, Los Angeles, CA.

**JUDGES:** Martin J. Jenkins, UNITED STATES DISTRICT JUDGE.

**OPINION BY:** Martin J. Jenkins

**OPINION**

**CLASS ACTION**

**REVISED ORDER APPROVING CONSENT DECREE**

The parties have submitted their proposed Consent Decree, which the Court preliminarily approved in its February 5, 1999 Order Granting Preliminary Approval To Consent Decree Regarding Injunctive Relief and Monetary Relief ("Preliminary Approval Order"). In accordance with the February 5, 1999 Preliminary

Approval Order, Class Members have been given notice of the terms of the Consent Decree and opportunity to object to it, or comment on it or to exclude themselves from the monetary relief provisions.

Having considered the proposed Consent Decree, the papers supporting the Consent Decree filed by the parties, including the Declaration of Mediator Thomas Pfister, the comments submitted by Class Members, and the argument received by the Court at the *Rule 23(e)* hearing held March 31, 1999, the Court, pursuant to *Fed. R. Civ. P. 23(e)*, will grant final approval to the Consent Decree, and will enter the proposed Consent Decree.

## **FINDINGS AND CONCLUSION RE FAIRNESS AND ADEQUACY OF SETTLEMENT**

### **A. Notice and Due Process.**

Pursuant to [\*3] the Court's February 5, 1999 Preliminary Approval Order, notice was mailed to Class Members. Current and former Class Members were sent by first class mail a notice approved by the Court. The notice informed Class Members of the general terms of the Consent Decree, their opportunity to file claims, to opt out of the monetary provisions and pursue their own remedies, and to file written objections, appear in person or by counsel at the fairness hearing, and be heard on the settlement's approval. Adequate periods of time were provided for each of these procedures. Only a handful of Class members filed written objections to the proposed settlement.

The Court finds that these procedures afforded adequate protections to Class Members and provide the basis for the Court to make an informed decision on the settlement's approval based on the responses of Class Members. The Court finds that the notice provided in this case was the best notice practicable, and satisfied the requirements of *Rule 23* and constitutional Due Process.

### **B. Final Class Certification.**

The Court finds the requirements of *Rules 23(a)(1)-(4)* are met as to both the injunctive and monetary relief classes. The findings of numerosity, [\*4] commonality, typicality, and adequacy of the Representative Plaintiffs and Class Counsel made on February 5, 1999 are confirmed. The Representative Plaintiffs and Class Counsel have competently served the interests of the Injunctive Relief and Monetary Relief Classes. In addition, the requirements of *Rule 23(b)(3)* are met as to the Monetary Relief Class, and the requirements of *Rule 23(b)(2)* are met as to the Injunctive Relief Class. Under *AmChem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 2248, 138 L. Ed. 2d 689 (1997), settlement of the action militates in favor of class certification, since trial manageability concerns are no longer present.

#### **1. Final Certification of the Class for Injunctive Relief.**

The Consent Decree adopts the Court's definition of the Class under *Rule 23(b)(2)*, as specified in the February 5, 1999 Preliminary Approval Order for purposes of injunctive relief. That certification and class definition are now confirmed and made final.

#### **2. Final Certification of Settlement Class for Monetary Relief.**

The proposed Consent Decree defines a monetary relief Settlement Class, pursuant to *Rule 23(b)(3)*, that allows persons falling within the Class definition (i.e., all African Americans employed [\*5] by UPS in its Northwest or Pacific Regions as part-time hourly employees at any time between January 27, 1996 and February 5, 1999) to opt out. That monetary relief Class was conditionally certified by the Court's February 5, 1999 Preliminary Approval Order. Notice has now been provided to the Class, and Class Members have had an opportunity to opt out. The monetary relief class set forth in the February 5, 1999 Preliminary Approval Order is confirmed and made final, except that the monetary relief class shall not include the persons listed on Attachment A who timely opted out of the monetary relief settlement class.

As to *Rule 23(b)(3)*, the Court confirms its finding on February 5, 1999 that questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The *Rule 23(b)(3)* class for purposes of monetary relief is therefore finally certified.

**C. The Adequacy of the Settlement Terms.**

The Court has reviewed the terms of the proposed Consent Decree and the papers submitted in support of

the proposed Consent Decree, [\*6] including the Declaration of Thomas Pfister, the independent mediator who helped the parties to negotiate the Consent Decree, and is familiar with the facts and law of this case from the pre-trial litigation before the Court. Based on that review, and familiarity, the Court finds that the Consent Decree is fair, reasonable, and adequate, and that it satisfies the criteria for class action settlement approval enumerated by the Ninth Circuit in *Officers for Justice v. Civil Service Com'n*, 688 F.2d 615, 625 (9th Cir. 1982).

The Consent Decree grew out of years of intensive litigation, after the completion of substantial deposition discovery, document discovery, interrogatory discovery, and after the completion of statistical analyses. At this stage of the case, the parties were fully able to assess their positions, and the Court has a full record on which to review the settlement.

The Court finds that the proposed Consent Decree provides injunctive relief, monetary relief, attorneys' fees, and payments to Representative Plaintiffs that are fair, adequate, and reasonable. The continued litigation of this action would have an uncertain outcome and involved a long delay before a final judgment [\*7] would be achieved. The Consent Decree provides immediate injunctive relief and distribution of a large class settlement fund within 18 months. There can be no assurance that the alternative of continued litigation would have produced a better result for the Class. There is great benefit from implementing the Consent Decree's injunctive relief provisions now.

The Consent Decree's negotiations were conducted by a skilled mediator, and have been shown to be arm's length and non-collusive. Both Class Counsel and the mediator have submitted declarations stating their opinions that the Settlement terms are fair and were arrived at fairly. The Court is entitled to give weight to these declarations in evaluating the Consent Decree. *Cotton v. Hinton*, 559 F.2d 1326, 1334 (5th Cir. 1977).

Based on all of these factors, and for the reasons set forth by the Court at the hearing in the matter, the Court finds the terms of the Proposed Consent Decree fair, reasonable, and adequate.

### **CONCLUSION**

Based on the foregoing findings and conclusions, the Court finds that the proposed Consent Decree is reasonable, fair, and adequate, and in the best interests of the Class. The proposed Consent Decree is therefore [\*8] GRANTED FINAL APPROVAL, and shall be entered as the Court's Judgment. The eight persons listed on Exhibit A have timely requested exclusion from the monetary relief portion of the settlement, and have not requested to rescind their exclusion requests; pursuant to paragraph 14 of this Court's February 5, 1999 Order and Section VIII of the Decree, those eight persons have not released their claims.

### **IT IS SO ORDERED.**

Dated: 4/14/99

/s/ Martin J. Jenkins

MARTIN J. JENKINS

UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

**OPT-OUT CLAIMANTS**

1. Raymond Duronslet	Filed Timely
2. Derek Hoskin	Filed Timely
3. Yeman Negash	Filed Timely
4. Nicole Powell	Filed Timely
5. Roderick Hodge	Filed Timely
6. Keith Lighthall	Filed Timely
7. Edward Morris	Filed Timely
8. Melvin Phillips	Filed Timely