

GIBSON, DUNN & CRUTCHER LLP
RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
JOSEPH R. ROSE, SBN 279092
jrose@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DESDNIE HESS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., an Ohio
corporation,

Defendant.

CASE NO. 21-CV-00093

**DEFENDANT UNITED PARCEL SERVICE,
INC.'S NOTICE OF REMOVAL**

[Removal from the Superior Court of California,
County of Alameda, Case No. RG20078425]

Action filed: October 30, 2020

TO THE COURT, THE CLERK OF THE COURT, PLAINTIFF, AND ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant United Parcel Service, Inc. (“UPS”), by and through its undersigned counsel and pursuant to 28 U.S.C. § 1441, *et seq.*, and in accordance with 28 U.S.C. § 1332(a) and (d), respectfully removes the above-captioned matter from the Superior Court of California, County of Alameda, to this Court. Removal is proper for the reasons set forth below.

I. BACKGROUND

1. Plaintiff Desdnie Hess commenced this action on October 30, 2020, in the Superior Court of the State of California for Alameda County. Decl. of Rachel Brass, Ex. A (“Compl.”). Plaintiff served the Complaint on UPS on December 8, 2020. *Id.* ¶ 3 & Ex. A.

2. Plaintiff alleges that she is a California resident and worked for UPS as a Local Sort Supervisor in Santa Maria, California, from “approximately October 2019 to May 2020.” Compl. ¶ 12. Plaintiff alleges that, while working for UPS, she “incurred expenses during the pandemic when she had no choice but to purchase supplies including masks and hand sanitizer.” Compl. ¶ 94. According to her Complaint, UPS “failed to offer basic PPE to its employees while forcing them to work in situations which put them . . . at tremendous risk from COVID-19.” Compl. ¶ 4. Plaintiff alleges that these failures also include not implementing “physical distancing protocols or to structure the workday and worksite in a way that makes it possible” and “fail[ing] to update ventilation systems.” Compl. ¶ 55.

3. Plaintiff seeks to maintain this action as a class action. Compl. ¶ 60. Plaintiff defines her putative class as “all current and former non-exempt workers employed by [UPS] throughout California any time starting four years prior to the filing of this Complaint until resolution of this action.” Compl. ¶ 61. Plaintiff’s proposed class includes “approximately 300 employees at the Santa Maria location,” Compl. ¶ 48, and “thousands of workers throughout California,” Compl. ¶ 2.

4. Plaintiff asserts four causes of action on behalf of herself and the putative class: (1) a cause of action for public nuisance under Cal. Civil Code §§ 3294, 3479, 3480, 3491, and 3493; (2) a cause of action under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (3) a cause of action for reimbursement of business expenses under Cal. Labor Code §§ 2800, *et seq.*;

1 and (4) a cause of action for declaratory judgment under Cal. Code Civ. Proc. §§ 1060, *et seq.* See
2 Compl. ¶¶ 21–27.

3 5. Plaintiff seeks “declaratory relief, injunctive, relief, and damages.” Compl. ¶ 90.
4 Specifically, Plaintiff seeks an injunction addressing the alleged acts and omissions underlying
5 “Defendant’s continuing creation and perpetuation of a public nuisance.” Compl. ¶ 82. This includes
6 “meeting the CDC and CDPH guidelines and other minimum public health standards necessary to stop”
7 or reduce the spread of COVID-19. Compl. ¶ 81. Plaintiff also seeks reimbursement for herself and
8 all members of her class for purchases of equipment such as hand sanitizer and masks, Compl. ¶ 104,
9 as well as “compensatory damages in an amount to be ascertained at trial,” Compl. at Prayer for Relief.
10 Plaintiff also seeks attorneys’ fees and costs. Compl. ¶ 90, 99, 107.

11 II. GROUNDS FOR REMOVAL

12 6. Removal of this action is proper on two independent grounds. First, the Court may
13 exercise subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because there is
14 complete diversity between the parties and over \$75,000 is in controversy, exclusive of interest and
15 costs. Second, the Court may exercise subject matter jurisdiction over this action under 28 U.S.C.
16 § 1332(d) because the putative class contains at least 100 members, there is minimal diversity, and the
17 amount in controversy exceeds \$5 million, exclusive of interest and costs.

18 A. The Court Has Traditional Diversity Jurisdiction.

19 7. Federal district courts may exercise jurisdiction over “all civil actions where the matter
20 in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . .
21 . citizens of different States.” 28 U.S.C. § 1332.

22 8. For purposes of diversity jurisdiction, an individual “is a citizen of the state in which
23 [s]he is domiciled.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “In a class
24 action, only the domicile of the class representative (plaintiff) is considered, rather than that of the class
25 members.” *Borgeson v. Archer-Daniels Midland Co.*, 909 F. Supp. 709, 713 (C.D. Cal. 1995).
26 Because Plaintiff alleges that she “is a resident of the County of Santa Barbara,” Compl. ¶ 12, she is a
27 citizen of California. See *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (holding that a person
28

1 is domiciled where he or she has established a “fixed habitation or abode in a particular place, and
2 [intends] to remain there permanently or indefinitely”).

3 9. A corporation such as UPS is “a citizen of every State and foreign state by which it has
4 been incorporated and of the State or foreign state where it has its principal place of business.” 28
5 U.S.C. § 1332(c)(1). UPS is an “Ohio corporation,” Compl. ¶ 13, with its headquarters and principal
6 place of business in Atlanta, Georgia. *See* Brass Decl. ¶ 4; *see also Hertz Corp. v. Friend*, 559 U.S.
7 77, 92–93 (2010) (a corporation’s principal place of business is “normally . . . where the corporation
8 maintains its headquarters”).

9 10. There is therefore complete diversity between the parties as Plaintiff is allegedly a
10 citizen of California and Defendant is a citizen of Ohio and Georgia.

11 11. Additionally, “the matter in controversy exceeds the sum or value of \$75,000, exclusive
12 of interest and costs.” 28 U.S.C. § 1332. Where, as here, the plaintiff seeks injunctive relief, “the
13 amount in controversy . . . may include ‘the cost of complying with an injunction’” *Chavez v.*
14 *JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (*quoting Gonzales v. CarMax Auto*
15 *Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016)).

16 12. Conservatively, Plaintiff’s class includes at least 4,000 members, estimating 200-300
17 employees across nineteen UPS facilities. *See* Compl. ¶¶ 2 (alleging “at least nineteen” operating
18 facilities,” and “thousands of workers throughout California”), 48 (alleging “approximately 300
19 employees at the Santa Maria location”). Plaintiff seeks, among other things, an injunction “enjoining
20 UPS from continuing to engage in . . . the wrongful acts, omission, and practices alleged herein whose
21 commission and omission constitute a public nuisance. . . .” Compl. at Prayer for Relief. These acts
22 and omissions include “fail[ing] to provide sufficient PPE.” Compl. ¶ 55. Estimating for purposes of
23 removal only the cost of procuring “PPE” including “face shields, certain types of masks, and
24 impermeable gloves,” Compl. ¶ 47, at twenty dollars (\$20) per 4,000 workers, Plaintiff seeks an order
25 requiring UPS to expend at least \$80,000 on additional equipment. Thus, the cost of complying with
26 the injunctive relief related to “PPE” alone exceeds \$75,000. To the extent that Plaintiff’s Complaint
27 alleges supposed deficiencies in UPS’s facilities, including its ventilation systems, Compl. ¶ 55,
28

1 complying with any order requiring modification or other injunctive relief would be significantly more
2 costly.

3 13. The requirements for traditional diversity jurisdiction are therefore met. And because
4 UPS is neither incorporated in California nor maintains its principal place of business in California,
5 Compl. ¶ 7, it may remove this case based on the parties' complete diversity of citizenship. *See* 28
6 U.S.C. § 1441(b)(2).

7 **B. The Court Has Jurisdiction Under the Class Action Fairness Act.**

8 14. The Class Action Fairness Act ("CAFA") permits removal where: (1) The case is a
9 "civil action . . . and is a class action"; (2) the aggregate number of putative class members is 100 or
10 greater; (3) there is diversity of citizenship between one or more plaintiffs and one or more defendants;
11 and (4) the amount placed in controversy by the Complaint exceeds, in the aggregate, \$5 million,
12 exclusive of interest and costs. 28 U.S.C. § 1332(d). Each prerequisite is met here.

13 15. First, this case is a putative "class action" under CAFA because it was brought under a
14 state statute or rule, namely California Code of Civil Procedure Section 382, authorizing an action to
15 be brought by one or more representative persons as a class action. 28 U.S.C. § 1332(d); *see also*
16 Compl. ¶¶ 1 ("This is a putative class action . . ."), 60 ("Plaintiff brings Causes of Action One through
17 Four as a class action on behalf of herself and all other similarly situated pursuant to Code of Civil
18 Procedure section 382.").

19 16. Second, the "number of members of all proposed plaintiff classes in the aggregate" is
20 far more "than 100." 28 U.S.C. § 1332(d). According to her Complaint, Plaintiff "is informed and
21 believes that the number of Proposed Class members in California exceeds 100." Compl. ¶ 64.
22 Plaintiff's proposed class includes "approximately 300 employees at the Santa Maria location,"
23 Compl. ¶ 48, and "thousands of workers throughout California" that UPS employs across "at least
24 nineteen" operating facilities, Compl. ¶ 2. Plaintiff alleges that UPS "has employed, and continues to
25 employ, Plaintiff and other members of the Proposed class throughout Defendant's California
26 locations, including at the Distribution Center where Plaintiff worked." Compl. ¶ 16.

27 17. Third, sufficient diversity exists. To satisfy CAFA's diversity requirement, the parties
28 need only be minimally diverse—that is, one putative class member must be a citizen of a state different

from that of one defendant. 28 U.S.C. § 1332(d)(2); *see also United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090–91 (9th Cir. 2010). The only named plaintiff, Ms. Hess, is a citizen of California. *See* Compl. ¶ 12. The putative class also consists solely of “workers employed by United Parcel Service, Inc., throughout California.” Compl. ¶ 61. UPS is a citizen of Ohio and Georgia. Brass Decl. ¶ 4. Therefore, sufficient diversity exists under CAFA.¹

18. Fourth, taking Plaintiff’s allegations as true, at least \$5,000,000 is in controversy. In assessing CAFA’s amount-in-controversy requirement, “a court must assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint. *Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012); *see Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020) (“To meet CAFA’s amount-in-controversy requirement, a defendant needs to plausibly show that it is reasonably possible that the potential liability exceeds \$5 million.”). Further, where attorneys’ fees are authorized by the underlying statutes, a court also may “include[] attorneys’ fees” in assessing the amount in controversy. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see also Giannini v. Northwestern Mut. Life Ins. Co.*, No. C 12-77 CW, 2012 WL 1535196, at *4 (N.D. Cal. Apr. 30, 2012) (finding reasonable estimate of future attorneys’ fees can be used in calculating the amount in controversy).

19. Plaintiff’s Third Cause of Action alleges that Plaintiff and Class members are entitled to reimbursement for “necessary expenditures and losses . . . including but not limited to hand sanitizer and masks.” Compl. ¶ 104. Plaintiff alleges that class members had to purchase their own supplies for the duration of the pandemic, Compl. ¶¶ 57, 94, which she alleges began on March 4, 2020, in California, Compl. ¶ 27, and continues to this day. Plaintiff’s allegation thus results in at least nine months’ worth of reimbursements, assuming judgment were entered in her favor on the date of this removal, January 7, 2021. Assuming \$20 worth of supplies per month multiplied by 4,000 potential Class members, the Third Cause of Action, as alleged, could account for damages exceeding \$720,000.

¹ Because UPS is not a California citizen, the home-state exception to CAFA removal does not apply. *See* 28 U.S.C. § 1332(d)(4).

20. Plaintiff's First Cause of Action alleges entitlement to "declaratory relief, injunctive relief, and damages," as well as "interest, penalties, attorneys' fees and expenses." Compl. ¶ 90. Injunctive relief includes "meeting the CDC and CDPH guidelines" related to COVID-19. *See* Compl. ¶¶ 81–2 (alleging that UPS does not ensure CDC and CDPH guidelines are met, and that immediate injunctive relief must be granted to forestall harm therefrom). Plaintiff's Complaint refers to Cal/OSHA guidance for "enclosed spaces where physical distancing is difficult to maintain" that includes: "physical or spatial barriers between workers, such as Plexiglass or other sturdy and impermeable partitions;" "increasing the number of shifts to reduce the number of personnel present at one time;" and "use of PPE such as face shields, certain types of masks, and impermeable gloves." Compl. ¶ 47. Plaintiff alleges that UPS has failed to implement these guidelines. Compl. ¶ 55. Plaintiff also alleges that UPS has failed to implement modifications to its ventilation and airflow in accordance with guidelines. Compl. ¶¶ 50, 55.

21. Plaintiff alleges that her proposed injunctive relief would apply to at least 19 facilities across California, as she asserts that UPS has "similarly failed to implement adequate safety protocols and failed to provide a safe work environment throughout its facilities in California." Compl. ¶ 51. Costs associated with enforcement of an injunction related to these supposed deficiencies in UPS's facilities would be extensive. They could include hundreds, if not thousands, of feet of impermeable barriers in areas where employees work closely together, other costly building modifications, equipment for thousands of employees, as well as potential productivity losses due to decrease in labor activity. With respect to Plaintiff's allegations regarding ventilation systems, the proposed injunctive relief could result in hundreds of thousands of dollars in physical modifications at each location, not to mention increased energy consumption. Multiplied by 19 facilities and "thousands" of employees, Compl. ¶ 2, the cost of Plaintiff's sweeping proposed injunctive relief could easily exceed \$5 million.

22. Plaintiff's First and Third Causes of Action, even before accounting for potential compensatory damages, allege well over \$5 million of potential costs to UPS. Plaintiff is also seeking "reasonable attorneys' fees and costs." Compl. at Prayer for Relief. Using "25% as a benchmark" for attorney's fees, *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019), would add at least another \$1.25 million to that amount. *See* Compl. ¶¶ 90, 99, 107, Prayer for Relief. This

total exceeds the statutory threshold and establishes “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014)).

III. TIMELINESS OF REMOVAL

23. Plaintiff served a copy of the Summons and Complaint on UPS on December 8, 2020. Brass Decl. ¶ 3 & Ex. A. Because this Notice of Removal is filed within thirty days of service of the Summons and Complaint, it is timely under 28 U.S.C. §§ 1446 & 1453. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) (holding that a “defendant’s time to remove is triggered by simultaneous service of the summons and complaint . . . , not by mere receipt of the complaint unattended by any formal service”).

IV. VENUE

24. The United States District Court for the Northern District of California is the appropriate venue for removal pursuant to 28 U.S.C. §1441(a) because it embraces the place where Plaintiff originally filed the case, in the Superior Court of Alameda County. *See* 28 U.S.C. §§ 84(a), 1441(a).

V. NOTICE

25. UPS will promptly serve this Notice of Removal on Plaintiff and will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of the State of California, County of Alameda, in which the action is pending, as required under 28 U.S.C. § 1446(d).

26. Pursuant 28 U.S.C. § 1446(a), true and correct copies of all “process, pleadings, and orders served” upon UPS as well as other documents filed in the state court action are filed concurrently with this Notice of Removal as Exhibit A to the Brass Declaration.

VI. CONCLUSION

27. For the foregoing reasons, UPS respectfully submits that this action is properly removed to this Court, and UPS respectfully requests that this Court proceed as if this case had been originally filed in this Court. If any question arises as to the propriety of the removal of this action, UPS requests the opportunity to present a brief and oral argument in support of its position that this case is subject to removal.

1 Dated: January 6, 2021

RACHEL S. BRASS
JOSEPH R. ROSE
GIBSON, DUNN & CRUTCHER LLP

4 By: /s/ Rachel S. Brass
Rachel S. Brass

6 Attorneys for Defendant UNITED PARCEL SERVICE,
7 INC.

Exhibit A

From: Vincent Yasay

Fax: 18553946767

To:

Fax: (510) 267-1546

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10/29/2020 3:15 PM

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
UNITED PARCEL SERVICE, INC.

FILED BY FAX
ALAMEDA COUNTY
October 30, 2020
CLERK OF
THE SUPERIOR COURT
By Nicole Hall, Deputy

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DESDNIE HESS, individually and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pide al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

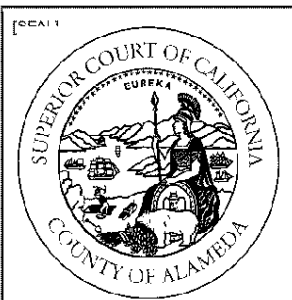
The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California, County of Alameda
René C. Davidson Courthouse
1225 Fallon St, Oakland, CA 94612

CASE NUMBER: (Número del Caso):
RG20078425

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Carolyn H. Cottrell; Kyle G. Bates, et al.
SCHNEIDER WALLACE COTTRELL KONECKY LLP, 2000 Powell St, Ste 1400 94608-1863; (415) 421-7100

DATE: (Fecha) October 30, 2020
Clerk Nicole Hall, Deputy (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date)

Page 1 of 1

From: Vincent Yasay

Fax: 18553946767

To:

Fax: (510) 267-1546

Page: 4 of 34

10/29/2020 3:15 PM

1 Carolyn Hunt Cottrell (SBN 166977)
2 Kyle G. Bates (SBN 299114)
3 Kristabel Sandoval (SBN 323714)
4 SCHNEIDER WALLACE
5 COTTRELL KONECKY LLP
6 2000 Powell Street, Suite 1400
7 Emeryville, CA 94608
8 Telephone: (415) 421-7100
9 Facsimile: (415) 421-7105
10 ccottrell@schneiderwallace.com
11 kbates@schneiderwallace.com
12 ksandoval@schneiderwallace.com

13 Attorneys for Plaintiffs and the Proposed Class

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

DESDNIE HESS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

FILED BY FAX

ALAMEDA COUNTY

October 30, 2020

CLERK OF
THE SUPERIOR COURT
By Nicole Hall, Deputy

CASE NUMBER:

RG20078425

CASE NO.

CLASS ACTION COMPLAINT:

- (1) Public Nuisance (Cal. Civ. Code §§ 3294, 3479, 3480, 3491, 3493)
- (2) Unfair Competition (Cal. Labor Code §§ 17200, *et seq.*)
- (3) Failure to Reimburse Necessary Business Expenses (Cal. Labor Code §§ 2800, 2801, 2804)
- (4) Declaratory Judgment (Cal. Civ. Proc. Code § 1060, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Desdnie Hess, by and through her undersigned attorneys, hereby brings this Class
 2 Action Complaint against United Parcel Service, Inc. (hereinafter referred to as “Defendant” or
 3 “UPS”) and alleges as follows:

4 I. NATURE OF THE CASE

5 1. This is a putative class action under the California Labor Code, California Civil
 6 Code, and California Business and Professions Code, arising from Defendant’s pattern and
 7 practice of maintaining unsafe working conditions that expose their California employees to a
 8 high risk of contracting COVID-19,¹ a highly contagious virus that has infected at least 26.4
 9 million people worldwide, and killed 870,000 people in a matter of months.

10 2. UPS is a company that provides parcel delivery services. It has 1,800 operating
 11 facilities, at least nineteen of which are in California. Plaintiff is informed and believes that UPS
 12 employs thousands of workers throughout California. UPS’s employees risk their own health
 13 and safety to ensure consumers receive packages, some of which include critical lifesaving drugs
 14 and medical devices, including personal protective equipment (“PPE”). *See* David Slotnick,
 15 BUSINESS INSIDER, “A UPS exec reveals how the pressures of the pandemic can make drone
 16 deliveries a reality as it starts flying medical supplies, PPE, and medicine” (Oct. 22, 2020),
 17 *available at* [https://www.businessinsider.com/ups-drone-delivery-health-pandemic-covid-19-](https://www.businessinsider.com/ups-drone-delivery-health-pandemic-covid-19-ignition-bala-ganesh-2020-10)
 18 [ignition-bala-ganesh-2020-10](https://www.businessinsider.com/ups-drone-delivery-health-pandemic-covid-19-ignition-bala-ganesh-2020-10) (last visited Oct. 27, 2020).

19 3. It is critical for a company like UPS to implement proper procedures to stop the
 20 spread of COVID-19 amongst their employees and the public. UPS employees must work at
 21 close distances in their warehouses, and interact with the public on a regular basis while making
 22 deliveries.

23 4. But UPS failed to offer basic PPE to its employees while forcing them to work in
 24 situations which put them and the public they serve at tremendous risk from COVID-19.

25 5. In addition to UPS’s moral obligation to take reasonable steps to keep its
 26 employees (and the public they serve) safe, UPS has a legal obligation under the California Labor
 27 Code to take appropriate measures to ensure a safe and healthful workplace for its employees.

28 ¹ COVID-19 is an infectious disease caused by a new coronavirus called SARS-CoV-2. For ease of reference this will simply be referred to herein as “COVID-19.”

1 Cal. Labor Code § 6400(a).

2 6. However, UPS has instead systematically endangered its employees' health and
3 safety daily. Among other issues and as described in further detail in Section IV *infra*, UPS has
4 failed to provide PPE to its employees, implement social distancing protocols in the workplace,
5 or adopt other programs and procedures necessary to reduce its employees' risk of contracting
6 COVID-19. UPS has failed to comply with its obligations under the California Labor Code.

7 7. Defendant's disregard for its employees' health and safety has already had dire
8 consequences. For example, at least three employees at a UPS distribution center in Santa Maria,
9 California, have contracted COVID-19. Defendant continues to put its employees, customers,
10 and the public at risk by maintaining policies that prioritize profit over the safety of its workforce.

11 **II. JURISDICTION AND VENUE**

12 8. The Court has jurisdiction over this action pursuant to Article 6, § 10 of the
13 California Constitution and California Code of Civil Procedure § 410.10.

14 9. The Court has jurisdiction over Defendant because it is a corporation authorized
15 to do business in the State of California and is registered with the California Secretary of State.
16 Defendant does sufficient business with sufficient minimum contacts in California, and/or
17 otherwise intentionally avails itself of the California market through the advertising, marketing
18 and sale of goods and services, to render the exercise of jurisdiction over Defendant by the
19 California court consistent with traditional notions of fair play and substantial justice.

20 10. Venue is proper in this judicial district pursuant to Code of Civil Procedure
21 § 395.5. Defendant employed other employees in this County, transacts business in this County,
22 and, upon information and belief, events alleged in this Complaint occurred in this County.

23 **III. THE PARTIES**

24 11. Plaintiff and the members of the Proposed Class are current and former non-
25 exempt employees who worked for Defendant in California.

26 12. Plaintiff Desdnie Hess is a resident of the County of Santa Barbara. Plaintiff
27 worked as a Local Sort Supervisor for Defendant from approximately October 2019 to May
28 2020. She worked at Defendant's Distribution Center in Santa Maria, California.

13. Defendant United Parcel Service, Inc. is a company that provides parcel delivery services. Defendant is an Ohio corporation, registered to do business in California. It may be served with process to its registered agent Corporation Services Company which will do business in California as CSC-Lawyers Incorporating Service, at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

IV. FACTUAL ALLEGATIONS

14. Plaintiff incorporates herein by reference the allegations set forth above.

15. Plaintiff worked as a Local Sort Supervisor for UPS from approximately October 2019 until May 2020. In that role, Plaintiff was required to make schedules for warehouse associates and to oversee and direct them while they unloaded delivery trucks, sorted packages, and re-loaded the sorted packages into semi-truck. She worked approximately five and a half hours per day, five days per week.

16. Defendant is a company that provides parcel delivery services. It has approximately 1,800 operating facilities, at least nineteen of which are in California. Plaintiff is informed and believes that during the relevant time period of this action, Defendant has employed, and continues to employ, Plaintiff and other members of the Proposed Class throughout Defendant's California locations, including at the Distribution Center where Plaintiff worked.

A. The COVID-19 Pandemic

17. On December 31, 2019, the Wuhan Municipal Commission reported a cluster of pneumonia cases in Wuhan, Hubei Province, China. This led to the identification of a novel coronavirus called SARS COV-2. SARS CoV-2 has caused a worldwide pandemic of the respiratory illness known as COVID-19.

18. COVID-19 symptoms can be severe and life-threatening. Even asymptomatic individuals – who Centers for Disease Control ("CDC") research estimates account for approximately 40% of cases – are 75% as infectious as symptomatic individuals and therefore are still likely to spread COVID-19.² For this reason, the CDC and other health experts have

² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

recommended that every individual take significant efforts to avoid close contact with others, whether those others appear to be infected or not. Similarly, experts agree that contact tracing is extremely important to contain the virus' spread. Social distancing and substantial modifications to the workflow of jobs across America are necessary to "flatten the curve" and slow the spread of the virus. Nat'l Pub. Radio, *U.S. Coronavirus Cases Surpass Summer Peak And Are Climbing Higher Fast* (Oct. 27, 2020) available at <https://www.npr.org/sections/health-shots/2020/10/27/928062773/u-s-cases-surpass-summer-peak-and-are-climbing-higher-fast> (last visited Oct. 29, 2020).

19. As early as April 2020, the CDC published research suggesting that a single person with COVID-19 is likely to infect five or six other individuals absent aggressive physical distancing practices.³ The CDC also reported that superspreading events, where one individual alone may infect dozens of others, are likely in crowded environments.⁴ Symptoms may appear as early as two or as late as fourteen days after initial exposure. A person with COVID-19 may be contagious for 48 to 72 hours before experiencing symptoms. Research suggests that people may be most likely to spread the virus to others during the 48 hours before they begin experiencing symptoms.

20. COVID-19 is known to cause severe respiratory problems and viral pneumonia. Patients with severe symptoms may need ventilators to survive. COVID-19 patients may at first seem stable, but then rapidly go into complete respiratory arrest, meaning they are unable to breathe at all. This is known as acute respiratory distress syndrome, and means, essentially, that the lungs are filled with fluid. One respiratory therapist described witnessing even relatively young, otherwise healthy COVID-19 patients "essentially drowning in their own blood and fluids because their lungs [we]re so full."⁵ For those fortunate enough to survive this experience, COVID-19 often causes long-term lung damage.

³ See "High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2," Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and Ruian Ke, https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287.

⁴ https://wwwnc.cdc.gov/eid/article/26/6/20-0495_article.

⁵ <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.

21. COVID-19 may also cause, *inter alia*, acute kidney damage, blood clots, multi-system organ failure, swollen toes, loss of taste and smell, strokes, cardiac injuries and arrest, nervous system damage, and death. COVID-19 survivors may experience long-term health complications beyond just lung damage, including limb amputation in the case of severe blood clots, heart damage, and neurocognitive and mental health effects.

22. The COVID-19 pandemic has severely affected the mental health of many Americans as well, with nearly half of adults in the United States reporting high levels of stress due to COVID-19. Essential workers and their families, who are at heightened risk of contracting the virus, experience significant anxiety and trauma from potential exposure to the life-threatening condition. Panic attacks are common among those who are infected and those who fear becoming infected.⁶

23. The World Health Organization (“WHO”) writes that “ALL workplaces” (emphasis in original) should implement “physical distancing of at least 1 metre [sic.] or more according to the national recommendations.” World Health Org., *What Key Measures To Protect Against COVID-19 In ALL Workplaces?*, available at <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-health-and-safety-in-the-workplace> (last visited Oct. 29, 2020). The best ways to do that are by limiting human-to-human contact (including through physical distancing) and by taking other preventative measures, such as the use of PPE and frequent handwashing and sanitization of physical objects. The CDC and Cal/OSHA in conjunction with the CDPH have provided additional workplace-specific guidelines, which are discussed in detail *infra* in paragraphs 36-47.

24. On January 30, 2020, the WHO declared COVID-19 a “public health emergency of international concern.”

25. By February 24, 2020, severe outbreaks had already occurred in China, Europe, and Iran. The next day, the CDC reported that, in their view, COVID-19 was headed towards pandemic status. By February 27, 2020, California Governor Gavin Newsom reported that the

⁶ See <https://www.nytimes.com/article/coronavirus-symptoms.html>; <https://www.sacbee.com/news/coronavirus/article241363476.html>.

1 California case count was rapidly rising, with the state monitoring at least 8,400 infected people.
2 By March 3, 2020, the number of confirmed infections worldwide surpassed 90,000.

3 26. On March 4, 2020, Governor Newsom declared a state of emergency due to
4 COVID-19.

5 27. On March 11, 2020, the WHO declared COVID-19 a pandemic. The White House
6 declared a national emergency within days of that announcement.

7 28. On March 19, 2020, Governor Newsom issued a statewide shelter-in-place order
8 requiring California residents to stay home. Governor Newsom's order does not apply to
9 "essential workers" who provide necessary services to millions of Californians. Days later, the
10 federal government declared COVID-19 a major disaster in California at Governor Newsom's
11 request. By the end of the month, the United States was reported as leading the world in COVID-
12 19 cases, and at least 265 million United States residents were being asked or required to stay
13 home.

14 29. On May 28, 2020, the COVID-19 death toll in the United States surpassed
15 100,000. Within approximately two months, the death toll surpassed 150,000. As of September
16 4, 2020, there are 727,000 confirmed COVID-19 cases in California and 13,497 deaths.

17 30. There is no vaccine for COVID-19, which is highly contagious and easily
18 transmitted from person to person through respiratory droplets and other, smaller particles that
19 can remain in the air for hours and be inhaled, or that can land in other individuals' eyes, noses,
20 or mouths when in close contact with infected individuals. Research shows the virus may also
21 spread through contact with contaminated objects or surfaces. Recent news reports also suggest
22 individuals who recover from COVID-19 can later become re-infected.⁷

23 31. On July 6, 2020, two scientists, with the explicit support of 237 colleagues,
24 published an article emphasizing the risks of airborne spread, noting in particular that "the
25 problem is especially acute in indoor enclosed environments, particularly those that are crowded
26 and have inadequate ventilation"⁸ – in other words, environments like Defendant's distribution

27 ⁷ See, e.g., <https://www.nbcnews.com/health/health-news/covid-19-reinfection-reported-nevada-patient-researchers-say-n1238679>; <https://www.nytimes.com/2020/08/24/health/coronavirus-reinfection.html>.

28 ⁸ <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa939/5867798>.

centers and other similar facilities. They further noted the apparent role of airborne transmission in recent superspreading events.⁹ The authors noted that in addition to physical distancing and sanitization, attention must be paid to “provid[ing] sufficient and effective ventilation . . . supplement[ing] general ventilation with airborne infection controls . . . and avoiding overcrowding.”¹⁰

32. Amidst this pandemic UPS has, as a matter of policy and/or practice, systematically endangered its employees’ health and safety daily, in violation of the law. Among other issues and as described *infra* in further detail, Defendant has failed to provide sufficient PPE, implement social distancing protocols, or adopt other programs and procedures necessary to reduce their employees’ risk of contracting the virus. They have failed to respect clear health and safety guidelines, or the California Labor Code. UPS’s behavior has been slow and insufficient to comply with applicable laws and appropriately protect their employees. UPS continues to put its employees, customers, and the public at risk by maintaining policies that prioritize profit over the safety of their workforce.

B. Defendant Must Protect Its Employees’ Health and Safety

33. The California Labor Code requires employers to take steps to protect workers from any safety hazard, including diseases like COVID-19, which is widespread in the community. Applicable provisions with which Defendant has not complied, as described in further detail *infra*, include:

- i. Section 6400, which requires that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein;
- ii. Section 6401, which requires that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful and shall do every other thing reasonably necessary to protect the life, safety, and health of employees;
- iii. Section 6402, which prohibits any employer from requiring or permitting an

⁹ *Id.*

¹⁰ *Id.*

employee to go or be in any employment or place of employment which is not safe and healthful;

- iv. Section 6403, which requires that no employer shall fail or neglect to provide and use reasonably adequate safety devices and safeguards, adopt or use reasonably adequate methods and process, or to do every other thing reasonably necessary to protect the life, safety, and health of employees;
- v. Section 6404, which requires that no employer shall occupy or maintain any place of employment that is not safe and healthful; and
- vi. Section 6407, which requires that every employer must comply with the occupational safety and health standards, within section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division, which are applicable to his own actions and conduct.

34. General Industry Safety Orders propagated by Cal/OSHA establish minimum standards and apply to all employments and places of employment as defined by California Labor Code section 6303. Cal. Code Regs. Tit. 8, § 3202 (1974).

35. UPS's policies and practices regarding COVID-19, described in further detail *infra*, violate the following Safety and Health Standards set forth by Cal/OSHA in the California Code of Regulations, title 8:

- i. Section 3203, which requires that all employers have a written Illness Prevention Program (IPP) to protect employees from workplace hazards and to implement measures to prevent or reduce infection hazards and provide training thereon;
- ii. Section 3366, which requires that employers provide washing facilities for maintaining cleanliness;
- iii. Section 3380, which requires that employers conduct a hazard assessment to determine if COVID-19 is a hazard in the workplace necessitating the use of PPE and, given that it was and is, provide exposed employees with properly fitting PPE;
- iv. Section 5144, which requires that employers take minimum steps to ensure safe and effective use of respirators required in the workplace due to the hazard caused

1 by COVID-19; and

- 2 v. Section 8414, requiring employers to provide employees who are exposed to
3 hazards in the workplace, which cannot be eliminated through engineering and
4 administrative controls are not effective in eliminating the hazards, with PPE
5 including head protection, hand protection, and body protection.

6 36. Cal/OSHA has provided guidance setting forth necessary measures to comply with
7 the California Labor Code regarding health and safety, and COVID-19 specifically.¹¹ At
8 minimum, per these guidelines, employers must (1) create and implement injury and illness
9 prevention programs to protect employees from workplace hazards, including infectious
10 diseases; (2) establish infection prevention measures, such as encouraging sick employees to stay
11 home, implementing social distancing protocols, establishing procedures to routinely clean and
12 disinfect commonly touched surfaces and objects using EPA-approved disinfectants, and
13 providing EPA-registered disposable wipes for employees to wipe down commonly used
14 surfaces before use; (3) provide employee training; (4) provide washing facilities that have an
15 adequate supply of suitable cleansing agents, water, and single-use towels or blowers; (5) require
16 employees to wear cloth face coverings, as mandated by the State of California; and (6) conduct
17 a hazard assessment and then provide any necessary PPE to employees.

18 37. Cal/OSHA incorporates into these directives the CDC guidelines, which include
19 (1) creating a COVID-19 preparedness, response, and control plan; (2) conducting daily health
20 checks; (3) conducting a hazard assessment of the workplace; (4) determining which PPE is
21 needed for workers, and providing it; (5) encouraging employees to wear cloth face coverings in
22 the workplace; (6) implementing social distancing policies and practices in the workplace; (7)
23 improving building ventilation systems; (8) actively encouraging sick employees to stay home;
24 (9) regularly cleaning and disinfecting frequently touched surfaces using products that meet
25 Environmental Protection Agency criteria for use against SARS-Cov-2; (10) training employees

26
27 ¹¹ See <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>
28 (“Workplace safety and health regulations in California require employers to take steps to
protect workers exposed to infectious diseases like the Novel Coronavirus (COVID-19), which
is widespread in the community. Cal/OSHA has posted guidance to help employers comply
with these requirements . . .”)

on infection prevention strategies; (11) implementing flexible sick leave and supportive policies and practices; and (12) providing employees with disinfecting wipes.

38. Cal/OSHA has issued additional guidelines specific to the logistics/warehousing and delivery industries. These guidelines fall into five broad categories: (1) creating a written, workplace-specific COVID-19 prevention plan; (2) providing COVID-19-specific worker training; (3) implementing individual control measures and screening; (4) implementing cleaning and disinfecting protocols; and (5) implementing physical distancing protocols.

a. Cal/OSHA Guidelines: Workplace-Specific Plans

39. Under the broader workplace-specific prevention plan guideline, Cal/OSHA directs employers to: (1) perform a comprehensive risk assessment of all work areas and work tasks; (2) designate a person at each establishment to implement the plan; (3) incorporate the CDPH Face Covering Guidance into the plan and including a policy for handling exemptions to the general requirement to wear facial coverings; (4) identify contact information for local health departments (“LHD”) where workplaces are located for communicating information about COVID-19 outbreaks among workers or customers; (5) train and communicate with workers and worker representatives about the plan; (6) make the plan available to workers and their representatives; (7) regularly evaluate workplaces for compliance with the plan and document and correct deficiencies identified; (8) investigate any COVID-19 illness and determine if any work-related factors could have contributed to the risk of infection, then update the plan as needed to prevent further cases; (9) implement the necessary processes and protocols when a workplace has an outbreak, following CDPH guidelines; and (10) identify close contacts (within six feet for 15 minutes or more) of an infected worker and take steps to isolate COVID-19 positive worker(s) and close contacts.

40. Per CDPH guidelines, when a workplace has an outbreak of COVID-19, it is necessary to: (1) designate a workplace infection coordinator to implement COVID-19 infection prevention procedures and to manage COVID-19-related issues among employees; (2) instruct employees to stay home and report to the employer if they are having COVID-19 symptoms, were diagnosed with COVID-19, or are awaiting test results for COVID-19; (3) identify contact

1 information for the LHD in the jurisdiction where the workplace is located; (4) notify the
 2 applicable LHD if there is a known or suspected outbreak in the workplace or if there are
 3 laboratory confirmed cases of COVID-19 at the workplace; (5) communicate with the LHD on
 4 how frequently the LHD expects updates from the employer on newly identified cases and
 5 symptomatic employees in the workplace; (6) share a roster of all employees with the applicable
 6 LHD; (7) identify additional employee cases and close contacts of cases to control further spread
 7 in the workplace; (8) notify all employees who were potentially exposed to individuals with
 8 COVID-19; and (9) determine when it is appropriate for cases and contacts of cases to return to
 9 work.

10 **b. Cal/OSHA Guidelines: Illness Prevention Training**

11 41. For COVID-19-related worker training in the logistics/warehousing and delivery
 12 industries, Cal/OSHA directs employers to cover (1) information on COVID-19, how to prevent
 13 it from spreading, and which underlying health conditions may make individuals more
 14 susceptible to contracting the virus; (2) self-screening at home, including temperature and/or
 15 symptom checks using CDC guidelines; (3) when it is safe to return to work after receiving a
 16 COVID-19 diagnosis; (4) when to seek medical attention; (5) the importance of frequent
 17 handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand
 18 sanitizer with at least 60% ethanol (preferred) or 70% isopropanol) when workers cannot get to
 19 a sink or handwashing station; (6) the importance of physical distancing, both at home and at
 20 work; (7) proper use of face coverings; and (8) information on paid leave benefits workers may
 21 be entitled to receive that would make it financially easier to stay home.

22 **c. Cal/OSHA Guidelines: Individual Control Measures and Screening**

23 42. Regarding individual control measures and screening, Cal/OSHA directs
 24 employers to provide temperature and/or symptom screenings for all workers in the
 25 logistics/warehousing and delivery industries who report to a facility at the beginning of their
 26 shift or who must work their shift at a facility. Additionally, Cal/OSHA recommends providing
 27 disposable gloves where they may be helpful to supplement frequent handwashing or hand
 28 sanitizer use, for example, for workers who are screening others for symptoms or handling

commonly touched items. Cal/OSHA's guidelines further state that employers must provide and ensure workers use all required protective equipment, including eye protection and gloves where necessary.

d. Cal/OSHA Guidelines: Cleaning and Disinfecting Protocols

43. Cal/OSHA directs delivery and logistics/warehousing employers to perform thorough cleaning in high traffic areas such as break rooms, lunch areas, and areas of ingress and egress, and disinfect commonly used surfaces with EPA-approved products for use against COVID-19. Cal/OSHA further directs employers to stagger breaks to enable physical distancing as well as frequent sanitization of restrooms.

44. For delivery drivers specifically, Cal/OSHA directs employers to provide alternative restroom locations along drivers' routes and allow time for workers to use them, given that normally accessible restrooms on routes may be closed. Cal/OSHA further directs employers to place protective barriers such as disposable mats and seat coverings in shared delivery vehicles. Additionally, Cal/OSHA directs employers to provide workers with an adequate supply of materials to clean and disinfect frequently touched services of delivery vehicles, especially if they are shared. Cal/OSHA also recommends providing lined trash receptacles to be placed in delivery vehicles to properly dispose of disinfectant wipes and other items. Cal/OSHA guidelines also direct employers to ensure vehicles are cleaned between delivery routes. Similarly, the guidelines state that the employer should provide employees time to implement cleaning practices before, during, and after delivery routes and that, for any cleaning assigned to a driver, s/he must be compensated for that time. Cal/OSHA directs employers to communicate to workers where they can access soap, clean running water, and drying materials, provide alcohol-based hand sanitizers, and adjust delivery schedules to allow time for frequent handwashing.

45. Similarly, within a facility or warehouse, Cal/OSHA directs employers to have touchable surfaces cleaned between shifts or between users, whichever is more frequent, including but not limited to working surfaces, machinery, tools, equipment, shelves, storage rooms, handles, latches and locks, and controls on stationary and mobile equipment.

e. Cal/OSHA Guidelines: Physical Distancing Protocols

46. Cal/OSHA directs employers to implement measures to ensure physical distancing of at least six feet between workers, including transportation personnel and workers who are loading and unloading goods at delivery facilities. Such measures may include physical partitions or visual cues such as floor markings, colored tape, or signs to indicate where workers should stand. Cal/OSHA guidelines further recommend adjusting meetings (e.g., safety, pre-shift, or post-shift meetings) to ensure physical distance, or even cancelling such meetings or making them remote. Similarly, Cal/OSHA guidelines direct employers to implement policies and procedures to enable delivery workers to physically distance from customers (“contactless delivery”).

47. Within warehouses and at employers’ physical facilities, Cal/OSHA directs employers to stagger or adjust shifts and breaks and use other work practices to limit the number of workers on the jobsite. Similarly, Cal/OSHA guidelines direct employers to place additional limitations on the number of workers in an enclosed area at a given time. In enclosed spaces where physical distancing is difficult to maintain, Cal/OSHA guidelines direct that employers should consider and implement the following hierarchy of strategies: (1) engineering controls including creating physical or spatial barriers between workers, such as Plexiglass or other sturdy and impermeable partitions; (2) administrative controls including increasing the number of shifts to reduce the number of personnel present at one time and ensure adequate physical distancing; and (3) the use of PPE, such as face shields, certain types of masks, and impermeable gloves. Cal/OSHA further recommends closing breakrooms, using barriers, or increasing distance between tables and chairs to separate workers and discourage congregating during breaks, as well as closing common areas where personnel are likely to congregate and interact.

C. Defendant’s Policies and Practices Endanger its Employees and Violate the Law

48. From the beginning of the pandemic, UPS has repeatedly ignored and/or failed to implement physical and social distancing guidelines. Physical distancing simply does not exist at Defendant’s facilities, such as the distribution center where Plaintiff worked. For example, Plaintiff was required to make schedules for warehouse associates and to oversee and direct them

1 while they unloaded delivery trucks, sorted packages, and re-loaded the sorted packages into
2 semi-trucks. These responsibilities required her to work in close proximity to these other
3 employees, and Defendant took no measures to prevent the spread of disease between them.
4 There are approximately 300 employees at the Santa Maria location, and they must regularly
5 work side by side in the warehouse, with no social distancing protocols implemented.
6 Consequently, employees are typically only able to be 1.5-2 feet apart from one another.
7 Defendant has failed to stagger work shifts and employees' breaks or take other similar measures
8 to reduce employees' exposure to drivers, other warehouse employees, and third parties. In fact,
9 Plaintiff's schedule became busier following the onset of the COVID-19 pandemic, further
10 increasing her contact with others.

11 49. Defendant also fails to adequately sanitize its facilities or to provide adequate PPE
12 for its employees. While drivers' trucks may have been sanitized, the common areas and
13 bathrooms at Defendant's Santa Maria Distribution Center, where Plaintiff worked, are not
14 cleaned sufficiently. Defendant's employees must regularly touch potentially-contaminated
15 surfaces, pallets, and packages with no protection, such as gloves or sanitizing wipes. While UPS
16 began providing hand sanitizer to the drivers, the internal warehouse employees did not receive
17 any. Further, Defendant did not provide face coverings to its employees until May, and the
18 supply ran out almost every day before all employees were able to receive them. Further, policies
19 regarding the face masks are often not enforced.

20 50. Defendant has not modified the ventilation and airflow systems at the Santa Maria
21 facility to reduce the spread of disease, nor has Defendant provided any training or illness
22 prevention program related to COVID-19.

23 51. Based on information and belief, and given the standardized nature of UPS's
24 practices throughout its operations, Plaintiff alleges that Defendant has similarly failed to
25 implement adequate safety protocols and failed to provide a safe work environment throughout
26 its facilities in California.

27 52. Defendant's policies and practices throughout the pandemic have already resulted
28 in unchecked infection. At least three employees at the Santa Maria distribution center, where

1 Plaintiff worked for Defendant, contracted COVID-19. Management failed to take action to
2 prevent others from becoming infected.

3 53. Upon information and belief, in response to the confirmed cases of COVID-19,
4 Defendant did not conduct contact tracing, did not identify and notify employees who had been
5 in close contact with those who were infected so they could quarantine or get tested, and expected
6 employees to continue business as usual.

7 54. Defendant employs individuals who are at high risk of infection, severe
8 complications, and death because of age and/or underlying health conditions. Many also must
9 come into close contacts with dependents who rely upon them for support and care and who may
10 also be vulnerable to infection.

11 55. Defendant, as a matter of policy and practice, *inter alia*: (1) has failed to implement
12 a sufficient workplace-specific plan; (2) has not provided employees with training on COVID-
13 19 prevention; (3) is not providing temperature checks or symptom screening services; (4) has
14 failed to implement physical distancing protocols or to structure the workday and worksite in a
15 way that makes it possible; (5) fails to sanitize common areas and bathrooms with sufficient
16 regularity; (6) has failed to update its ventilation systems; and (7) has failed to provide sufficient
17 PPE. Many UPS employees, including Plaintiff, forced to fend for themselves, have had to
18 purchase their own supplies, such as masks, hand sanitizer, and the like. In sum, Defendant has
19 failed to follow public health guidelines or comply with the law.

20 56. Defendant was aware of life-threatening dangers posed by exposure to COVID-19
21 by March 2020, if not earlier, including the risk that this deadly, highly contagious, easily
22 transmitted virus could spread among workers in confined indoor environments, especially if
23 potentially infected individuals—including non-symptomatic individuals—did not have
24 adequate PPE and were not properly trained and required to perform physical distancing and to
25 stay home if symptomatic or believed to have been exposed, and if equipment and common areas
26 were not regularly sanitized.

27 57. Defendant did not provide adequate PPE, training, or sanitization, nor did it
28 institute other policies or practices that public health experts in early 2020 were urging employers

of essential workers to implement to protect works and customers from exposure to this virulent disease.

58. Defendant operates multiple facilities throughout California. Plaintiff is informed and believes, and thereon alleges, that the unreasonably dangerous practices and conditions described herein also exist at numerous other facilities throughout the state of California and thus threaten the health and safety of the public at or near Defendant's facilities and the surrounding communities throughout the state of California.

D. Administrative Remedies

59. On or about July 8, 2020, Plaintiff filed a complaint with Cal/OSHA, with a copy to the Labor and Workforce Development Agency ("LWDA") and Defendant, per California Labor Code section 2699.3(b). Plaintiff's complaint to Cal/OSHA and the LWDA concerned the substance of this Complaint.

V. CLASS ACTION ALLEGATIONS

60. Plaintiff brings Causes of Action One through Four as a class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure section 382. This action satisfies that provision's ascertainability, numerosity, commonality, typicality, adequacy, predominance, and superiority requirements.

61. Class Definition: The Proposed Class that Plaintiff seeks to represent is defined as, and comprises, the following:

"All current and former non-exempt workers employed by United Parcel Service, Inc. throughout California any time starting four years prior to the filing of this Complaint until resolution of this action."

62. Ascertainability: The Proposed Class is ascertainable because it comprises a discreet, well-defined, and objectively identifiable group, as defined above. The Proposed Class members are easily identifiable from Defendant's business records.

63. Numerosity: The Proposed Class is ascertainable because it comprises a discreet, well-defined, and objectively identifiable group, as defined above. The Proposed Class members are easily identifiable from Defendant's business records.

64. Numerosity: The potential members of the class are so numerous that joinder of all the members of the Proposed Class is impracticable. Plaintiff is informed and believes that the number of Proposed Class members in California exceeds 100. This volume makes bringing the claims of each individual member of the class before this Court impracticable. Likewise, joining each individual member of the Proposed Class as a plaintiff in this action is impracticable. Furthermore, the identities of the Proposed Class will be determined from Defendant's records, as will the compensation paid to each of them. As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the Proposed Class and Defendant.

65. Existence and Predominance of Common Questions of Law and/or Fact: Common questions of law and/or fact exist as to the members of the Proposed Class and, in addition, common questions of law and/or fact predominate over questions affecting only individual members of the Proposed Class. The common questions include the following:

- i. Whether Defendant had sufficient policies and procedures to create COVID-19 preparedness, response, and control plans/worksite-specific plans for its California facilities;
- ii. Whether Defendant had sufficient policies and procedures to conduct hazard assessments of its California worksites;
- iii. Whether Defendant failed to implement proper face covering protocols;
- iv. Whether Defendant failed to implement appropriate (or any) social/physical distancing policies and practices at its California worksites;
- v. Whether Defendant had sufficient policies and procedures to actively encourage sick employees to stay home;
- vi. Whether Defendant had sufficient policies and procedures to regularly clean and disinfect frequently touched surfaces at its California worksites using products that meet Environmental Protection Agency criteria for use against SARS-Cov-2;
- vii. Whether Defendant had sufficient policies and procedures to enable employees to regularly clean and disinfect frequently touched surfaces at its California worksites

using products that meet Environmental Protection Agency criteria for use against SARS-Cov-2;

viii. Whether Defendant had sufficient training protocols and programs for the employees at its California worksites related to COVID-19;

ix. Whether Defendant had sufficient policies and procedures to provide employees at its California worksites with disinfectant wipes;

x. Whether Defendant had sufficient policies and procedures to provide sanitizing products to employees at its California worksites;

xi. Whether Defendant had sufficient policies and procedures to stagger shifts to enable social distancing at its California worksites;

xii. Whether Defendant failed to use engineering controls, as physical barriers or ventilation upgrades, to make its California worksites safer during the pandemic;

xiii. Whether Defendant had sufficient policies and procedures to provide, and did in fact provide, sufficient PPE to its California employees;

xiv. Whether Defendant failed to implement proper quarantining guidelines for its California employees;

xv. Whether Defendant failed to implement or provide symptom screening or temperature testing for its California employees;

xvi. Whether Defendant had sufficient policies and procedures to report COVID-19 infections in its California workplaces to local health authorities;

xvii. Whether Defendant had sufficient policies and procedures to notify employees who may have been exposed to COVID-19 in the workplace;

xviii. Whether Defendant had sufficient policies and procedures to respond to and contain outbreaks in its workplaces;

xix. Whether Defendant's acts, or omissions, caused its California employees to bear a heightened risk of contracting COVID-19;

xx. Whether Defendant's acts, or omissions, caused a heightened risk of COVID-19 contraction in its California employees' communities;

- xxi. Whether Defendant's acts, or omissions, pose a public health risk to employees, customers, and members of the community;
- xxii. Whether Defendant failed to follow CDC guidelines in its California workplaces;
- xxiii. Whether Defendant failed to follow CDPH guidelines in its California workplaces;
- xxiv. Whether Defendant's acts, or omissions, constitute a public nuisance;
- xxv. Whether Defendant's policies and practices have resulted in violation of one or more of the Labor Code Provisions cited herein;
- xxvi. Whether Defendant's policies and practices are unlawful, unfair and/or fraudulent business practices in violation of California Business & Professions Code §§17200, *et seq.*;
- xxvii. The injunctive and/or monetary relief to which Plaintiff and the Proposed Class may be entitled as a result of the violations alleged herein.

66. Typicality: Plaintiff's claims are typical of the claims of the Proposed Class. Defendant's common course of conduct in failing to follow public health guidelines, failing to guard against COVID-19 outbreaks in their workplaces, and failing to implement proper COVID-19 protocols and plans in their workplaces, have caused Plaintiff and the Proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Proposed Class.

67. Adequacy: Plaintiff seeks relief for state law violations perpetrated by Defendant. In that sense, Plaintiff does not have any conflicts of interest with other Proposed Class members and will prosecute the case vigorously on behalf of the Proposed Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the Proposed Class members.

68. Superiority of Class Action: The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each member of the Proposed Class, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendant economically feasible. Furthermore,

individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court, and avoids the problem of inconsistent judgments.

69. Appropriateness of Injunctive or Declaratory Relief. Final injunctive relief or corresponding declaratory relief is appropriate respecting the Proposed Class as a whole. Defendant has acted or refused to act on grounds that apply generally to the Proposed Class, such that final injunctive relief or corresponding declaratory relief may be properly applied to the Proposed Class as a whole.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Public Nuisance – Assisting in the Creation of Substantial and Unreasonable Harm to Public Health and Safety that Affects an Entire Community or Considerable Number of Persons

California Civil Code §§ 3294, 3479, 3480, 3491, 3493

California Code of Civil Procedure § 731

(By the Proposed Class and Against Defendant)

70. Plaintiff hereby realleges and reincorporates by reference the allegations set forth above as if fully set forth herein.

71. California Civil Code § 3479 defines “nuisance” as “[a]nything which is injurious to health, . . . or is indecent or offensive to the senses, . . . so as to interfere with the comfortable enjoyment of life or property.”

72. California Civil Code § 3480 defines “public nuisance” as any nuisance that “affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.”

73. To constitute a “public nuisance,” the offense against, or interference with the exercise of rights common to the public must be “substantial and unreasonable.” *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 1103, 1105 (1997).

74. The acts and omissions of Defendant alleged herein caused a considerable number

of persons to suffer increased exposures and risks of exposure to the COVID-19 virus, including but not limited to employees at Defendant's facilities, as well as customers, those employees' and customers' family members, the persons with whom employees and customers resided, and the persons with whom those employees and customers came into contact. These acts and omissions substantially and unreasonably created and substantially assisted in the creation of a grave risk to public health and safety, and wrongfully and unduly interfered with Plaintiff's and the Class' comfortable enjoyment of their lives and property. *See Cnty. of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292, 305-06 (2006).

75. The acts and omissions of Defendant alleged herein substantially and unreasonably created or assisted in the creation of the spread and transmission of grave, life-threatening disease and infection, the risk of spread and transmission of grave, life-threatening disease and infection, and the actual and real fear and anxiety of the spread and transmission of grave, life-threatening disease and infection, all of which constitutes an actionable public nuisance. *See, e.g.*, Restatement (Second) of Torts § 821B & cmt. g ("[T]he threat of communication of smallpox to a single person may be enough to constitute a public nuisance because of the possibility of an epidemic; and a fire hazard to one adjoining landowner may be a public nuisance because of the danger of a conflagration."); *Birke v. Oakwood Worldwide*, 169 Cal. App. 4th 1540, 1546 (2009) (secondhand smoke in condominium complex); *Atlantic Richfield Co.*, 137 Cal. App. 4th at 306.

76. Pursuant to California Civil Code § 3493, Plaintiff and the Class have standing to maintain an action for public nuisance because the nuisance is especially injurious to Plaintiff and the other workers UPS employs in California. Plaintiff and the Class are directly and personally exposed to dangerous working conditions at Defendant's facilities. The dangerous working conditions are particularly harmful to Class members who are especially vulnerable due to age and/or underlying health conditions. The Class members' potential exposure puts their loved ones and dependents at risk, some of whom may be especially at risk of severe symptoms and/or death. The injuries of Plaintiff and the Class are different from the nonetheless serious threat and injury this public nuisance inflicts on the community, due to the nature of their work

1 and the consequences of Defendant's actions to them, their loved ones, and their communities.

2 77. California Code of Civil Procedure § 731 and California Civil Code §§ 3491, 3493,
3 and 3495 authorize Plaintiff to bring this action for injunctive relief, equitable abatement, and
4 damages from Defendant.

5 78. Defendant's failure to comply with minimum health and safety standards in its
6 facilities has caused, and is reasonably certain to cause, community spread of the COVID-19
7 infection. Such community spread has not been, and will not be, limited to the physical location
8 of Defendant's facilities or to the customers or employees receiving packages originating from
9 those facilities, as infected workers have gone home and will go home to interact with their
10 family members, co-residents, neighbors, and others with whom they must necessarily interact
11 as they undertake essential daily activities such as shopping, doctor's visits, and childcare.

12 79. This community spread has resulted in increased disease and will continue to result
13 in increased disease.

14 80. Defendant's conduct as alleged herein unreasonably interferes with the common
15 public right to public health and safety.

16 81. Defendant's decision to conduct business as usual without ensuring minimum
17 health and safety standards at its facilities, including meeting the CDC and CDPH guidelines and
18 other minimum public health standards necessary to stop or substantially reduce the spread of
19 COVID-19, is reasonably certain to cause further spread of COVID-19 infection and the
20 reasonable and severe fear of the further spread of COVID-19 to Plaintiff, the Class, and other
21 community members.

22 82. If immediate injunctive relief is not granted, Plaintiff and the Class face a
23 significant risk of irreparable harm in the form of physical and emotional injuries and death from
24 Defendant's continuing creation and perpetuation of a public nuisance. Plaintiff and other Class
25 members employed at Defendant's California facilities are vulnerable to severe bodily injury or
26 death because of their workplace exposures. Many Class members are also vulnerable to severe
27 bodily injury or death because of age and/or underlying health conditions. Others have family
28 members or other loved ones who face special vulnerability because of medical conditions and/or

age. Such injuries cannot be adequately compensated through an award of damages or otherwise remedied at law.

83. The risk of injury Plaintiff and the Class face outweighs the cost of reasonable measures included in Plaintiff's proposed injunction.

84. Defendant is a substantial contributor to the public nuisance alleged herein.

85. Defendant's past and ongoing conduct is a direct and proximate cause of the Plaintiff's and the Class' injuries and threatened injuries.

86. Defendant should have known that its conduct as alleged herein would be the direct and proximate cause of the injuries alleged herein to Plaintiff and the Class.

87. Defendant's conduct as alleged herein constitutes a substantial and unreasonable interference with and obstruction of public rights and property, including the public rights to health, safety and welfare of the Plaintiff and Class, and those who come into contact with them, whose safety and lives are at risk due to Defendant's failure to adopt and implement proper procedures for protecting workers, customers, and others from exposure to the COVID-19 virus.

88. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and the Class have been damaged in an amount according to proof at trial.

89. Cal/OSHA's decision to investigate the Santa Maria facility at which Plaintiff worked corroborates the claims herein. However, that investigation only scratches the surface of the far-reaching violations occurring systematically throughout Defendant's California facilities.

90. In addition to declaratory relief, injunctive relief, and damages as alleged herein, Plaintiffs are entitled to interest, penalties, attorneys' fees and expenses pursuant to Code of Civil Procedure § 1021.5, and costs of suit.

SECOND CAUSE OF ACTION
Violations of California's Unfair Competition Law
California Labor Code §§ 17200, *et seq.*
(By the Proposed Class and Against Defendant)

91. Plaintiff hereby realleges and reincorporates by reference the allegations set forth above as if fully set forth herein.

92. Defendant's acts and omissions constituting a public nuisance, as well as its

1 violations of the California Labor Code and Cal/OSHA regulations, as alleged herein also
2 constitute unfair and unlawful business practices under California Business and Professions
3 Code §§ 17200 *et seq.*

4 93. Defendant's aforementioned acts and omissions constitute business practices in
5 that Defendant has engaged in them repeatedly over a significant period of time and in a
6 systematic manner, to the detriment of Plaintiff and the Class and to Defendant's economic
7 benefit.

8 94. Defendant's aforementioned acts and omissions have caused economic injury to
9 Plaintiff and the Class, including but not limited to lost wages after being precluded from coming
10 to work by the unsafe conditions, medical expenses, cost of healthcare supplies and PPE, and
11 child and family care expenses. Plaintiff for example, has incurred expenses during the
12 pandemic when she had no choice but to purchase supplies including masks and hand sanitizer.

13 95. Defendant's acts and omissions have been unlawful because they have violated
14 the requirements of the California Labor Code, Cal/OSHA regulations, and CDPH directives.
15 Defendant has operated its facilities, equipment, and vehicles without providing adequate and
16 appropriate PPE, handwashing supplies, and cleaning supplies to employees; ensuring that
17 employees properly use face coverings at all times; requiring or adopting a plan that allows
18 maintenance of a minimum six-foot distance between individuals at all times where possible;
19 regularly disinfecting high-touch surfaces; conducting temperature or symptom screenings at the
20 beginning of each work shift; directing or allowing employees who have been in close contact
21 with others who are sick or symptomatic to remain home and follow appropriate guidelines for
22 quarantining; regularly cleaning and disinfecting commonly used surfaces and areas; cleaning
23 and sanitizing all shared equipment and touchable surfaces between uses; providing training to
24 employees; conducting contact tracing; notifying local health authorities and affected employees
25 about new infections and about whether employees have come into close contact with infected
26 individuals; creating a worksite-specific plan to prevent infections; implementing engineering
27 controls that would help reduce infection.

28 96. Defendant's actions also constitute "unfair" business practices because it has

1 foregone the necessary protective measures required by applicable law that could have prevented
2 the unsafe conditions. Defendant did so to gain an unfair competitive advantage against law-
3 abiding employers by foregoing the costs of such protective measures and requiring that business
4 go on unabated, despite the unsafe conditions and documented infections in the workplace.

5 97. Because of Defendant's unfair and unlawful business practices, Defendant has
6 gained an unfair competitive advantage over other logistics, warehousing, and delivery service
7 providers that adequately protect the health and safety of their employees, customers, and the
8 public, and has reaped and continues to reap unfair and illegal profits at the expense of Plaintiff,
9 the Class, and members of the public.

10 98. Because of Defendant's unfair and unlawful business practices, Plaintiff and the
11 Class have lost money or property, including in the form of lost wages and unreimbursed
12 expenses.

13 99. Defendant's unfair and unlawful business practices entitle Plaintiff to seek
14 preliminary and permanent injunctive relief, restitution, interest, penalties, attorneys' fees and
15 expenses pursuant to Code of Civil Procedure § 1021.5, and costs of suit.

16 **THIRD CAUSE OF ACTION**
17 **Reimbursement of Business Expenses**
18 **California Labor Code §§ 2800, 2801, 2804**
(By the Proposed Class and Against Defendant)

19 100. Plaintiff hereby realleges and incorporates by reference the allegations set forth
20 above as if fully set forth herein.

21 101. At all relevant times, Plaintiff, and members of the Class, were employees covered
22 by Labor Code §§ 2800, 2802, and 2804.

23 102. California Labor Code § 2800 provides: "An employer shall in all cases indemnify
24 his employee for losses caused by the employer's want of ordinary care."

25 103. California Labor Code § 2802 provides: "An employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
28 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful."

- d. For preliminary and permanent injunctive relief enjoining Defendant from continuing to engage in, and from refraining from engaging in, the wrongful acts, omissions, and practices alleged herein whose commission and omission constitute a public nuisance, unfair business practice, and/or violation of the California Labor Code;
- e. For a declaration that Defendant have committed a public nuisance and unfair business practices by the wrongful acts, omissions, and practices alleged herein whose commission and omission constitute a public nuisance and unfair business practices;
- f. That the Court find that Defendant has been in violation of Labor Code sections 2800, 2802, 6400, 6401, 6401.7, 6402, 6403, and 6404;
- g. For compensatory damages in an amount to be ascertained at trial;
- h. For restitution of all monies due to Plaintiff and the Class;
- i. For civil and statutory penalties available under the law;
- j. For punitive damages pursuant to Civil Code section 3294, due to, *inter alia*, Defendant's failure to be forthcoming about infections in the workplace, failure to comply with the law and public safety standards, and disregard for the health and safety of their employees and the public.
- k. For reasonable attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5, Labor Code section 2802(c), and/or any other applicable provisions providing for attorneys' fees and costs;
- l. For prejudgment interest pursuant to Labor Code section 2802 and Civil Code sections 3287, 3288, and/or any other applicable provision providing for prejudgment interest; and
- m. For such other and further relief as this Court deems just and proper.

Date: October 29, 2020

Respectfully submitted,



Carolyn Hunt Cottrell (SBN 166977)
Kyle G. Bates (SBN 299114)
Kristabel Sandoval (SBN 323714)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
kbates@schneiderwallace.com
ksandoval@schneiderwallace.com

Attorneys for Plaintiff and the Proposed Class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

Date: October 29, 2020



Carolyn Hunt Cottrell (SBN 166977)
Kyle G. Bates (SBN 299114)
Kristabel Sandoval (SBN 323714)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
kbates@schneiderwallace.com
ksandoval@schneiderwallace.com

Attorneys for Plaintiff and the Proposed Class

From: Vincent Yasay

Fax: 18553946767

To:

Fax: (510) 267-1546

Page: 2 of 34

10/29/2020 3:15 PM

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Carolyn Hunt Cottrell (SBN 166977); Kyle G. Bates (SBN 299114), et al.
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell St, Ste 1400, Emeryville, CA 94608-1863

TELEPHONE NO.: (415) 421-7100

FAX NO. (Optional): (415) 421-7105

ATTORNEY FOR (Name): Plaintiff DESDNE HESS

FOR COURT USE ONLY

FILED BY FAX
ALAMEDA COUNTY

October 30, 2020

CLERK OF
THE SUPERIOR COURT
By Nicole Hall, DeputyCASE NUMBER:
RG20078425

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

STREET ADDRESS: 1225 Fallon St

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland 94612

BRANCH NAME: René C. Davidson Courthouse

CASE NAME:

DESDNE HESS v. UNITED PARCEL SERVICE, INC.

CIVIL CASE COVER SHEET

☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)
 ☐ **Limited**
(Amount
demanded is
\$25,000)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse
condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)
Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400–3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 4

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 29, 2020

Kyle G. Bates

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: DESDNIE HESS v. UNITED PARCEL SERVICE, INC.

Case Number:

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

[] Hayward Hall of Justice (447)

[x] Oakland, Rene C. Davidson Alameda County Courthouse (446)

[] Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	[] 34 Auto tort (G) Is this an uninsured motorist case? [] yes [] no
Other PI /PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	[] 75 Asbestos (D) [] 89 Product liability (not asbestos or toxic tort/environmental) (G) [] 97 Medical malpractice (G) [] 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	[] 79 Bus tort / unfair bus. practice (G) [] 80 Civil rights (G) [] 84 Defamation (G) [] 24 Fraud (G) [] 87 Intellectual property (G) [] 59 Professional negligence - non-medical (G) [] 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36) Other employment (15)	[] 38 Wrongful termination (G) [x] 85 Other employment (G) [] 53 Labor comm award confirmation [] 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	[] 04 Breach contract / Wrnty (G) [] 81 Collections (G) [] 86 Ins. coverage - non-complex (G) [] 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	[] 18 Eminent domain / Inv Cdm (G) [] 17 Wrongful eviction (G) [] 36 Other real property (G)
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	[] 94 Unlawful Detainer - commercial [] 47 Unlawful Detainer - residential [] 21 Unlawful detainer - drugs Is the deft. in possession of the property? [] Yes [] No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	[] 41 Asset forfeiture [] 62 Pet. re: arbitration award [] 49 Writ of mandate Is this a CEQA action (Publ.Res.Code section 21000 et seq) [] Yes [] No [] 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	[] 77 Antitrust / Trade regulation [] 82 Construction defect [] 78 Claims involving mass tort [] 91 Securities litigation [] 93 Toxic tort / Environmental [] 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	[] 19 Enforcement of judgment [] 08 Confession of judgment
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	[] 90 RICO (G) [] 88 Partnership / Corp. governance (G) [] 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	[] 06 Change of name [] 69 Other petition

[Schneider Wallace Cottrell Konecky] LLP Attn: Cottrell, Carolyn H 2000 Powell Street, Suite 1400 L Emeryville, CA 94608 _____]	[United Parcel Service, Inc.]
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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Hess <div style="text-align: right; margin-right: 50px;">Plaintiff/Petitioner(s)</div> VS. United Parcel Service, Inc. <div style="text-align: right; margin-right: 50px;">Defendant/Respondent(s)</div> (Abbreviated Title)	No. <u>RG20078425</u> <p style="text-align: center;">NOTICE OF HEARING</p>
---	--

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:

DATE: 12/15/2020 TIME: 03:00 PM DEPARTMENT: 23

LOCATION: Administration Building, Fourth Floor
 1221 Oak Street, Oakland

Case Management Conference:

DATE: 01/19/2021 TIME: 03:00 PM DEPARTMENT: 23

LOCATION: Administration Building, Fourth Floor
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.


All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 11/12/2020

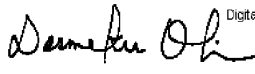
Chad Finke Executive Officer / Clerk of the Superior Court

By  ^{Digital}
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 11/13/2020.

By  ^{Digital}
Deputy Clerk



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- ***Faster*** – Litigation can take years to complete but ADR usually takes weeks or months.
- ***Cheaper*** – Parties can save on attorneys' fees and litigation costs.
- ***More control and flexibility*** – Parties choose the ADR process appropriate for their case.
- ***Cooperative and less stressful*** – In mediation, parties cooperate to find a mutually agreeable resolution.
- ***Preserve Relationships*** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- ***You may go to court anyway*** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- ***Mediation*** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
 - **Judicial Arbitration Program** (non-binding): The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
 - **Private Arbitration** (binding and non-binding) occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedsrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – **S**ervices that **E**ncourage **E**ffective **D**ialogue and **S**olution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)	FOR COURT USE ONLY
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 24405 Amador Street, Hayward, CA 94544 or Fax to (510) 267-5727.

1. Date complaint filed: _____. An **Initial Case Management Conference** is scheduled for: _____.

Date:

Time:

Department:

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (*check one*):

- ☐ Court mediation ☐ Judicial arbitration
- ☐ Private mediation ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

_____	▶	_____
(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT)

Date:

_____	▶	_____
(TYPE OR PRINT NAME)		(SIGNATURE OF ATTORNEY FOR DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Carolyn Cottrell, 166977 Schneider Wallace Cottrell Konecky LLP 2000 Powell Street, Suite 1400 Emeryville, CA 94608 TELEPHONE NO.: (415) 421-7100 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Alameda County 1221 Oak Street, 3rd and 4th floors Oakland, CA 94612	
PLAINTIFF/PETITIONER: Desdnie Hess, et al. DEFENDANT/RESPONDENT: United Parcel Service, Inc.	CASE NUMBER: RG20078425
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: 102110

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action. **BY FAX**
 2. I served copies of:
 Summons, Complaint, Civil Case Cover Sheet, Civil Case Cover Sheet Addendum, Notice of Hearing, Alternative Dispute Resolution (ADR) Information Packet

3. a. Party served: United Parcel Service, Inc.

b. Person Served: CSC - Lai Saevang - Person Authorized to Accept Service of Process

4. Address where the party was served: 2710 Gateway Oaks Drive, Suite 150N
 Sacramento, CA 95833

5. I served the party

a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12/08/2020 (2) at (time): 1:30PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

United Parcel Service, Inc.
 under: CCP 416.10 (corporation)

7. Person who served papers

a. Name: Tyler Anthony DiMaria
 b. Address: One Legal - P-000618-Sonoma
 1400 North McDowell Blvd, Ste 300
 Petaluma, CA 94954

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 40.00

e I am:

- (3) registered California process server.
 (i) Employee or independent contractor.
 (ii) Registration No.: 2006-06
 (iii) County: Sacramento

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 12/08/2020



Tyler Anthony DiMaria
 (NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

GIBSON, DUNN & CRUTCHER LLP
RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
JOSEPH R. ROSE, SBN 279092
jrose@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

DESDNIE HESS, on behalf of herself and
others similarly situated,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., an Ohio
corporation,

Defendant.

CASE NO. RG20078425

**STIPULATION AND [PROPOSED] ORDER
TO CONTINUE CASE MANAGEMENT
CONFERENCE**

Action Filed: October 30, 2020
Trial Date: None set

1 Plaintiff Desdnie Hess ("Plaintiff") and Defendant United Parcel Service, Inc. ("UPS")
2 (together, the "Parties"), by and through their respective counsel of record, hereby agree and stipulate
3 as follows:

4 WHEREAS, on October 30, 2020, Plaintiff filed the Complaint in this action in the Superior
5 Court of California, County of Alameda;

6 WHEREAS, the Complaint was served on UPS on December 8, 2020;

7 WHEREAS, on December 14, 2020, the Court issued an Order continuing the Complex
8 Designation Hearing to January 19, 2020, at 3:00 p.m. in Department 23;

9 WHEREAS, the initial case management conference is currently scheduled for January 19,
10 2020, at 3:00 p.m. in Department 23;

11 WHEREAS, the Parties agree that it is reasonable to continue the Case Management
12 Conference so that the Parties may further consider the factual allegations and legal issues arising out
13 of the Complaint before meeting to confer on issues under California Rule of Court 3.724;

14 NOW, THEREFORE, the Parties, through their undersigned counsel, hereby stipulate, agree,
15 and respectfully request that the Court enter an Order continuing the initial case management
16 conference to February 23, 2021.

17 **IT IS SO STIPULATED.**

18
19 DATED: December 17, 2020

GIBSON, DUNN & CRUTCHER LLP

20
21 By: 

Joseph R. Rose

22 Attorneys for Defendant UNITED PARCEL SERVICE,
23 INC.

24 DATED: December 17, 2020

SCHNEIDER WALLACE COTTRELL
KONECKY LLP

25
26 By: 

Kyle G. Bates

27 Attorneys for Plaintiff DESDNIE HESS
28

[PROPOSED] ORDER

IT IS SO ORDERED.

The case management conference previously scheduled for January 19, 2021, shall be continued to February 23, 2021, unless otherwise ordered by the Court.

Date: _____, 2020

Hon. Brad Seligman

PROOF OF SERVICE

I, Joseph R. Rose, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State. On December 17, 2020, I served the following document(s):

**STIPULATION AND [PROPOSED] ORDER TO CONTINUE CASE
MANAGEMENT CONFERENCE**

on the parties stated below, by the following means of service:

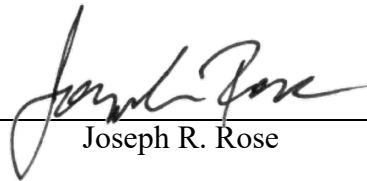
Carolyn Hunt Cottrell
Kyle G. Bates
Kristabel Sandoval
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608

- ☒ **BY UNITED STATES MAIL:** I caused a true copy to be placed in a sealed envelope or package addressed to the persons as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 17, 2020.



Joseph R. Rose

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Targets Alleged 'Unsafe Working Conditions' at Calif. UPS Facilities Amid Pandemic](#)
