

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|--|---|--------------------------|
| MARK HOHIDER and ROBERT DIPAOLO, |) | |
| On Behalf of Themselves and All Others |) | |
| Similarly Situated, |) | |
| |) | |
| Plaintiffs, |) | Civil Action No. 04-0363 |
| |) | |
| v. |) | |
| |) | |
| UNITED PARCEL SERVICE, INC., and |) | Judge Joy Flowers Conti |
| DOES 1-100, |) | |
| |) | |
| Defendants. |) | Electronic Filing |

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|-------------------------------------|---|
| PRESTON EUGENE BRANUM, |) |
| On Behalf of Himself and All Others |) |
| Similarly Situated, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| UNITED PARCEL SERVICE, INC., and |) |
| DOES 1-100, |) |
| |) |
| Defendants. |) |

CONSENT ORDER

WHEREAS, on August 13, 2008, Plaintiffs Mark Hohider, Robert DiPaolo, Preston Eugene Branum and unnamed members of the class previously certified by the Court on July 16, 2007 (hereinafter collectively referred to as "Plaintiffs") re-filed their Motions for an Order to Preserve Evidence and for Sanctions ¹; and

¹ Plaintiffs filed these motions on October 12, 2007. [Doc. 231]. On August 6, 2008, the Court denied Plaintiffs' motions without prejudice to re-file them, and required Plaintiffs to re-file their motions no later than August 13, 2008. [Doc. 268].

WHEREAS, following the filing of their motions , Plaintiffs and Defendant United Parcel Service, Inc. (“UPS” or the “Company”), along with the participation and guidance of Jeffrey J. Joyce, the Special Master appointed by the Court, engaged in good faith discussions and negotiations in an effort to resolve all issues which formed the basis for the portion of Plaintiffs’ Motions to Preserve Evidence and for Sanctions which dealt with the preservation of evidence from the date that this Consent Order is entered going forward (“Preservation of Evidence Portion”); and

WHEREAS, Plaintiffs and UPS have resolved all issues relating to the Preservation of Evidence Portion under the terms and conditions described below and wish to have the Court sign and enter this Consent Order documenting such resolution;

IT IS HEREBY ORDERED THAT:

1.

Within ten (10) days of the entry of this Consent Order or January 9, 2009 (whichever is later), UPS shall publish by electronic mail to all of the Company’s employees employed at the level of Full-Time Supervisor or above (hereinafter referred to as “Full-Time Management Personnel”), which currently numbers over 20,000 UPS employees, a copy of the Court-Ordered Litigation Hold Mandate, which has been jointly drafted and agreed to by the parties. (The Court-Ordered Litigation Hold Mandate and any amendments thereto are hereinafter referred to as the “Litigation Hold Mandate”). All copies of the Litigation Hold Mandate and any amendments thereto shall be designated “Confidential – Subject to Court Order” and are subject to the protections set forth in the Stipulation and Order Regarding Confidentiality [Doc. 49].

2.

The Litigation Hold Mandate may only be amended upon the written agreement of both parties to this action. In the event that the Litigation Hold Mandate is amended, the amended mandate shall replace the Litigation Hold Mandate originally agreed to by the parties, and shall be designated “Confidential – Subject to Court Order” and be subject to the protections set forth in the Stipulation and Order Regarding Confidentiality [Doc. 49]. The parties agree that the advent of new technologies or the more extensive use of existing technologies, such as cell phone messages and instant messages (“IM”), may require an amendment to the Litigation Hold Mandate during the course of this litigation to address and include a description of such technologies in the Litigation Hold Mandate. If the parties are unable to agree to any proposed amendment to the Litigation Hold Mandate, the matter shall be referred to the Special Master, who shall seek to resolve the issue and any concerns between the parties through informal discussions and negotiation. If the Special Master is unable to resolve the issues through informal means, he shall prepare and file a written Report and Recommendation concerning his recommended disposition of the issues in accordance with Fed.R.Civ.P. 53. The parties will be provided twenty (20) days from the filing of the Report and Recommendation in which to file objections thereto. The Court shall review all findings of fact and conclusions of law contained in the Special Master’s Report and Recommendation de novo.

3.

UPS shall require all Full-Time Management Personnel to whom the Litigation Hold Mandate is published in accordance with Paragraph 1 above to acknowledge their receipt, understanding and compliance with the Litigation Hold Mandate through a Company-hosted, internal website. This website has been reviewed by the Special Master, and any future revisions to this website must be first approved by the Special Master. Within thirty (30) days after the Litigation Hold Mandate has been published in accordance with Paragraph 1 above, UPS shall contact any member of the Full-Time Management Personnel who has not acknowledged his or her compliance with the Litigation Hold Mandate via the Company's website and use the Company's best efforts to obtain such acknowledgment.

4.

Following the dissemination of the initial Litigation Hold Mandate described in Paragraph 1, UPS shall republish via electronic mail or by an equally effective manner every three (3) months the Litigation Hold Mandate to all Full-Time Management Personnel. In addition, commencing in January 2011 and at a minimum of every two (2) years thereafter, UPS shall require that all Full-Time Management Personnel to whom the Litigation Hold Mandate has been republished acknowledge their receipt, understanding and compliance with the mandate in the manner described in Paragraph 3 above. UPS's obligation to republish the Litigation Hold Mandate in the manner described in this Paragraph 4 shall continue throughout the course of this litigation and shall terminate only under the terms and conditions described in Paragraph 17 below.

5.

In addition to the periodic republication of the Litigation Hold Mandate described in Paragraph 4 above, UPS shall require that all new Full-Time Management Personnel formally acknowledge their receipt, understanding and compliance with the Litigation Hold Mandate through the Company-hosted, internal website described in Paragraph 3 above. Within 30 days after the Litigation Hold Mandate has been published, UPS shall also contact any new member of the Full-Time Management Personnel who has not acknowledged his or her compliance with the Litigation Hold Mandate via the Company's website and use its best efforts to obtain such acknowledgment. For purposes of this Paragraph 5, an employee shall be considered to be a "new" member of the "Full-Time Management Personnel" when he or she has been hired, promoted or reassigned into a Full-Time Management position since UPS's publication of the most-recent Litigation Hold Mandate.

6.

UPS shall continue to journal all e-mail communications for managers involved in the administration of the Company's ADA, workers' compensation and disability policies, including the District Human Resources Managers, District Workforce Planning Managers, District Occupational Health Managers, District Labor Relations Managers, District Case Management Coordinators, District Risk Management Supervisors, District Health and Safety Supervisors/Managers, Region Human Resources Managers, Region Workforce Planning Managers, Region Occupational Health Managers, Region Risk Managers and Region Health and Safety Managers (hereinafter collectively referred to as

“ADA Managers”) in the same manner that UPS began journaling their e-mail communications in 2007. In the event that UPS changes or alters any of the job titles of the ADA Managers described above, and the personnel holding the positions in the changed or altered job titles perform the same responsibilities as those with the titles listed above, UPS shall commence journaling all e-mail communications from those personnel in the same manner as if their job titles were part of the original list above. In addition, when any of the ADA Managers leaves a job described in this Paragraph 6 and either leaves the Company’s employment or moves to a job that is not described in this Paragraph 6, UPS shall be permitted to stop journaling such individual’s e-mail communications on a going forward basis.

7.

Beginning no later than January 1, 2009, and every three (3) months thereafter, UPS shall identify and journal all e-mail communications for all new ADA Managers. For purposes of this Paragraph 7, an employee shall be considered to be a “new” ADA Manager when he or she has been hired, promoted or reassigned into an ADA Manager position during the previous three (3) months.

8.

Within thirty (30) days after this Consent Order has been entered, UPS shall identify and journal all e-mail communications for no fewer than 25% of all Full-Time Supervisors in operations in the five (5) UPS “sample districts” (i.e., Laurel Mountain, Gulf South, Georgia, Southeast California and Illinois) in which limited discovery was permitted during the class certification phase of this case.

9.

As soon as practicable but no later than sixty (60) days after this Consent Order has been entered, UPS shall implement policies and procedures to ensure that all potentially relevant information contained on a desktop or laptop computer assigned to Full-Time Management Personnel shall be imaged and stored in a manner to ensure its safekeeping prior to the time that such computer is taken out of service for any reason, including the promotion, reassignment or termination of the individual to whom it is assigned or a change in any hardware or software. Prior to the implementation date of these policies and procedures, UPS shall use its best efforts to ensure that no desktop or laptop computer of any Full-Time Management Personnel is destroyed or scrubbed of any data.

10.

Beginning no later than January 1, 2009, and every six (6) months thereafter, UPS shall publish or republish a Litigation Hold Letter (in the form agreed to by the parties) to any third party with whom UPS contracts to administer any of the Company's workers' compensation insurance and disability insurance policies. All copies of the Litigation Hold Letter and any amendments thereto shall be designated "Confidential – Subject to Court Order" and are subject to the protections set forth in the Stipulation and Order Regarding Confidentiality [Doc. 49].

11.

UPS shall maintain the "hotline" that was established as a means for employees who receive the Litigation Hold Mandate to seek guidance and have compliance

questions answered (“Hold Hotline”). UPS shall also continue to monitor and document all calls received through the Hold Hotline.

12.

Within sixty (60) days after this Consent Order has been entered, UPS shall develop and implement a training program for all new Full-Time Management Personnel, which shall include instruction on compliance with UPS’s Records Management Procedures Manual, Company-issued litigation hold mandates and the Litigation Hold Mandate in this case.

13.

Within sixty (60) days after this Consent Order has been entered, UPS shall develop and implement for all Full-Time Management Personnel “Frequently Asked Questions,” which shall provide guidance and instruction on meeting the requirements of the Litigation Hold Mandate. The Frequently Asked Questions shall be approved by the Special Master prior to distribution, and shall be disseminated by UPS along with the Litigation Hold Mandate at the times required in this Consent Order.

14.

The entry of this Consent Order shall not be construed to be an admission by UPS that it has failed to meet any obligation to preserve potentially relevant information at any time in the past. Likewise, the entry of this Consent Order shall not be construed to be an admission by Plaintiffs that UPS has met its obligations to preserve potentially relevant evidence at any time in the past, nor shall the entry of this Consent Order impact Plaintiffs’ pending Motion for Sanctions.

15.

In the event that UPS fully adheres to the terms and conditions of this Consent Order, which includes making reasonable efforts based upon best practices to preserve the information described in the Litigation Hold Mandate and Litigation Hold Letter, Plaintiffs shall not file any future motions for a preservation order in this case. Nothing in this Consent Order shall preclude or restrict Plaintiffs' right to file a motion for sanctions.

16.

In the event that Plaintiffs believe that UPS is in violation of any of the terms of the Consent Order, including the Litigation Hold Mandate and Litigation Hold Letter, Plaintiffs shall first notify UPS of their position and seek to resolve their concerns through a good faith "meet and confer" conference. If the parties are unable to resolve Plaintiffs' concerns through the "meet and confer" conference, the matter shall be referred to the Special Master, who shall seek to resolve the issues and any concerns between the parties through informal discussions and negotiation. If the Special Master is unable to resolve the issues through informal means, he shall prepare and file a written Report and Recommendation concerning his recommended disposition of the issues in accordance with Fed.R.Civ.P. 53. The parties will be provided twenty (20) days from the filing of the Report and Recommendation in which to file objections thereto. The Court shall review all findings of fact and conclusions of law contained in the Special Master's Report and Recommendation de novo.

17.

All of the parties' obligations under this Consent Order shall continue until further order of this Court or until the above-captioned case has been finally and fully resolved and a final order of dismissal has been entered and all applicable time periods for appeal have expired.

This _____ day of December, 2008.

Joy Flowers Conti
United States District Judge
Western District of Pennsylvania

Consented to:

s/ Judy Scolnick

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