



2. Plaintiffs file this class complaint because USPS has discriminated against hundreds, if not thousands, of deaf and hard-of-hearing employees in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq. (“Rehabilitation Act” or “Act”). USPS has engaged in a pattern and practice of failing to provide qualified sign language interpreters for its deaf and hard-of-hearing employees during work meetings. The Equal Employment Opportunity Commission (“EEOC”) has repeatedly held that USPS must provide qualified interpreters for deaf and hard-of-hearing employees as a reasonable accommodation under the Rehabilitation Act at work meetings during which safety and other important issues are discussed.<sup>1</sup> Despite these clear, repeated directives from the EEOC, USPS has continued to ignore its obligations under the Act.

3. The anthrax outbreak, which began in October 2001 and resulted in the deaths of two Brentwood employees and the closure of the District of Columbia Processing and Distribution Center located at 900 Brentwood Road, Washington, D.C. 20066 (“Brentwood” or “Brentwood facility”), has added urgency to the allegations raised herein. In light of the gravity of this ongoing situation and an increased need for effective communication given recent terrorist activity and an elevated state of alert (which may become further heightened due to the conflict in Iraq and its potential aftermath), USPS’s failure to provide qualified interpreters is not only illegal, it is dangerous.

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<sup>1</sup> See, e.g., Reiley v. Potter, Postmaster General, 2002 WL 1305759 (E.E.O.C. June 3, 2002); Handal v. Henderson, Postmaster General, 2000 WL 157349 (E.E.O.C. Feb. 2, 2000); Ortiz v. Henderson, Postmaster General, 1998 WL 745720 (E.E.O.C. Oct. 16, 1998); Feris v. Browner, Administrator, EPA, 1996 WL 421948 (E.E.O.C. Jul. 19, 1996); Jackson v. Frank, Postmaster General, 1989 WL 1006498 (E.E.O.C. Apr. 18, 1989).

## **II. Jurisdiction and Venue**

4. This Court has jurisdiction over Plaintiffs' Rehabilitation Act claims pursuant to 28 U.S.C. § 1331, 1343(a)(3), and 1343(a)(4).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

## **III. Parties**

6. Plaintiff, Bruce C. Hubbard, is a resident of Lanham, Maryland. He has been employed by USPS for over 30 years. For the past 15 years, until its closure due to anthrax contamination on October 21, 2001, Mr. Hubbard worked at the Brentwood facility in Washington, D.C. Since the closure of Brentwood, he has worked at the Suburban Processing and Distribution Center located at 16501 Shady Grove Road, Gaithersburg, Maryland 20898-9998 ("Gaithersburg facility"). Mr. Hubbard is deaf.

7. Plaintiff, Judy M. Schuld, is a resident of Fairview Park, Ohio. She has been employed by USPS for over 16 years and works at the AMC Cleveland facility located at 5801 Postal Road, Cleveland, Ohio 44181 ("Cleveland facility"). Ms. Schuld is deaf.

8. Plaintiff, Grace J. Shirk-Emmons, is a resident of East Petersburg, Pennsylvania. She has been employed by USPS for over 20 years and works at the Processing and Distribution Center located at 1400 Harrisburg Pike, Lancaster, Pennsylvania ("Lancaster facility"). Ms. Shirk is deaf.

9. Plaintiff, Lucy I. Stieglitz, is a resident of Oklahoma City, Oklahoma. She has been employed by USPS for over 18 years and works at the Oklahoma City Main Postal Facility located at 320 S.W. 5th Street, Oklahoma City, Oklahoma 73125 ("Oklahoma City facility"). Ms. Stieglitz is deaf.

10. Plaintiff, George R. Westenberger, is a resident of Harrisburg, Pennsylvania. He has been employed by USPS for over 28 years and works at the Keystone Station Branch of the Processing and Distribution Center located at 1425 Crooked Hill Road, Harrisburg, Pennsylvania 17107 ("Harrisburg facility"). Mr. Westenberger is deaf.

11. Defendant, United States Postal Service, is a federal agency with an annual operating revenue of \$658 billion that is responsible for the delivery of mail to almost 138 million homes, businesses, and post office boxes. USPS employs in excess of 750,000 career employees, including some 47,937 with disabilities, more than 2,400 of whom are deaf.

#### **IV. Procedural History**

12. On or about October 19, 1998, plaintiff Bruce C. Hubbard ("Hubbard"), a deaf USPS employee working at the Brentwood Facility, initiated administrative proceedings by filing a timely request for EEO counseling. Mr. Hubbard complained that, on September 5, 1998, and subsequently, USPS discriminated against him based upon his physical disability (deafness) when he was denied a sign language interpreter during work meetings. Thereafter, on January 12, 1999, Mr. Hubbard agreed to resolve his discrimination claim by participating in USPS's REDRESS Program. After a formal mediation in March and April 1999, Mr. Hubbard and USPS entered into an agreement pursuant to which USPS agreed, inter alia, to provide contract interpreters at daily impromptu meetings. To date, USPS has made no effort to comply with this agreement.

13. On April 24, 2000, Mr. Hubbard requested a Right to File a Discrimination Complaint, which was granted. Mr. Hubbard filed a formal EEO Complaint of Discrimination in the Postal Service with the Office of EEO Compliance and Appeals, Capital Metro Operations

on or about February 20, 2001, alleging that USPS failed to provide him with a sign language interpreter during work meetings.

14. On or about August 28, 2001, USPS informed Mr. Hubbard that it had completed its investigation of his formal complaint of discrimination. Mr. Hubbard then requested a hearing before an EEOC Administrative Judge. By Acknowledgment Order dated December 3, 2001, the EEOC Washington Field Office stated that it had received Mr. Hubbard's request for a hearing. Thereafter, the case proceeded in the EEOC Washington Field Office as EEOC No. 100-A1-8026X, Agency No. 1K-201-0037-99.

15. In October 2001, the seriousness of Mr. Hubbard's complaint was tragically underscored when USPS closed the Brentwood facility due to anthrax contamination that resulted in the deaths of two Brentwood employees.<sup>2</sup> In the year following this tragedy, USPS's mail-processing methods and the health and safety of its employees came under increased scrutiny from federal, state and local government; the media; and the public.

16. On September 27, 2002, pursuant to 29 C.F.R. § 1614.106(d) and 29 C.F.R. § 1614.204(b),<sup>3</sup> Mr. Hubbard filed a motion with the EEOC Washington Field Office to amend his individual complaint to assert class allegations and—in conjunction with the four other Plaintiffs (Ms. Schuld, Ms. Shirk, Ms. Stieglitz and Mr. Westenberger),<sup>4</sup> all of whom experienced the same discrimination as Mr. Hubbard—also moved for class certification. As a part of these filings, Plaintiffs filed an Amended Class Complaint. Mr. Hubbard, Ms. Schuld,

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<sup>2</sup> On October 21, 2001, USPS closed the Brentwood facility due to anthrax contamination. It has yet to re-open. Since that time, Mr. Hubbard has worked at the Gaithersburg facility.

<sup>3</sup> A complainant may move for class certification “at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint.” 29 C.F.R. § 1614.204(b).

<sup>4</sup> Ms. Shirk was recently married. Her name is now Shirk-Emmons.

Ms. Shirk, Ms. Stieglitz, and Mr. Westenberger were named plaintiffs in the Amended Class Complaint.

17. On October 23, 2002, Plaintiffs filed with the EEOC Washington Field Office an Amended Class Complaint (Revised) to correct a minor, non-material error in the Amended Class Complaint.

18. To date, there has been no final action taken by either USPS or the EEOC. The EEOC Administrative Judge assigned to this case has taken no action since October 23, 2002.

19. Plaintiff Bruce C. Hubbard has complied with the administrative process and has exhausted all administrative remedies.<sup>5</sup>

20. Plaintiffs are authorized to file a civil action in United States District Court.

21. This class complaint satisfies all the requirements of Rule 23 of the Federal Rules of Civil Procedure.

### **Class Action Allegations**

#### **V. Definition of the Class**

22. Plaintiffs bring this complaint on their own and on behalf of a class of persons similarly situated pursuant to the provisions of Fed. R. Civ. P. 23. The class which the Plaintiffs represent is composed of all current and future deaf and hard-of-hearing employees of the United States Postal Service who use American Sign Language ("ASL")<sup>6</sup> as their primary means of

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<sup>5</sup> At least one named plaintiff must exhaust his or her administrative remedies as a condition precedent to sustaining a class action under the Rehabilitation Act. Thomas v. Reno, 943 F. Supp. 41, 43 (D.D.C. 1996) (citing Berger v. Iron Workers Reinforced Rodmen Local 201, 843 F.2d 1395 (D.C. Cir. 1988)).

<sup>6</sup> Courts have recognized that ASL is distinct from the English language. King v. Bd. of Educ. of Allegany Co., 999 F. Supp. 750, 755 (D. Md. 1998) ("ASL does not follow spoken English word order, but instead has its own rules of grammar, syntax and semantics, which are influenced by 'subtleties' such as 'arching of the eyebrows, placement of the tongue, and rate of (continued...)")

communication and who at any time since October 19, 1998 have been denied qualified interpreters<sup>7</sup> at work meetings.<sup>8</sup>

#### VI. Systematic Discriminatory Practices Common to the Class

23. USPS has engaged, and continues to engage, in a nationwide practice of failing to provide qualified sign language interpreters for its deaf and hard-of-hearing employees during work meetings. With few exceptions, this systemic practice exists at USPS facilities all across the nation. Through such practice, USPS has discriminated against its deaf and hard-of-hearing employees based on physical handicap in violation of the Rehabilitation Act. USPS's practice contravenes repeated EEOC decisions, one of which holds that

[t]he agency shall provide complainant and all of its hearing impaired employees who can sign, with a qualified interpreter at important work related staff meetings, training sessions, safety talks, discussions on work procedures, policies or assignments, and for every disciplinary action so that the employee can understand what is occurring at any and every crucial time in his (her) employment career, whether or not s/he asks for an interpreter. The agency is ordered to retain, at all times, the services of qualified interpreters as needed in order to fully meet this reasonable accommodation obligation.

Handal v. Henderson, Postmaster General, 2000 WL 157349, \*5 (E.E.O.C. Feb. 2, 2000).<sup>9</sup>

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sign production.' ... [Every] English word does not have a corresponding sign, and every sign does not have a corresponding English word."); Tugg v. Towey, 864 F. Supp. 1201, 1206 (S.D. Fla. 1994) (same).

<sup>7</sup> "Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 35.104.

<sup>8</sup> October 19, 1998 is the date that Mr. Hubbard requested informal EEO counseling due to USPS's failure to provide interpreters at work meetings in September 1998 and subsequently, thereby alerting USPS to the allegations raised herein.

<sup>9</sup> See also Reiley v. Potter, Postmaster General, 2002 WL 1305759 (E.E.O.C. June 3, 2002) ("The agency will ensure that complainant is provided with a **qualified** sign language interpreter when required during her employment, including **at a minimum** for safety talks, discussions on work procedures, policies or assignments, and for every disciplinary action so that the employee can understand what is occurring at any and every crucial time in the employee's employment career.") (emphasis added); Ortiz v. Henderson, Postmaster General, 1998 WL (continued...)

24. As is the case with hearing employees, in order to do their jobs safely and effectively, deaf and hard-of-hearing USPS employees must understand the important information that is provided at work meetings. Because USPS has failed to provide qualified sign language interpreters at work meetings, deaf and hard-of-hearing employees cannot understand the information that is conveyed at these meetings. This lack of information has a negative impact on their ability to do their jobs safely and effectively and has resulted in, and continues to cause, great frustration, anxiety, embarrassment and distress for hundreds, if not thousands, of deaf and hard-of-hearing employees.

25. This situation, which continues even today, was exacerbated by the anthrax crisis, during which USPS failed to provide its deaf and hard-of-hearing employees with critical information about this potentially life-threatening situation in a timely manner.

26. As noted, Plaintiffs are the following deaf USPS employees: Bruce C. Hubbard (Brentwood facility, Washington, D.C.), Judy M. Schuld (Cleveland facility, Cleveland, Ohio), Grace J. Shirk (Lancaster facility, Lancaster, Pennsylvania), Lucy I. Stieglitz (Oklahoma City facility, Oklahoma City, Oklahoma), and George R. Westenberger (Harrisburg facility, Harrisburg, Pennsylvania).

A. Bruce C. Hubbard

27. Mr. Hubbard has worked for USPS for over 30 years. For the past 15 years, until its closure on October 21, 2001, he worked at the Brentwood facility. For the past three years,

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745720 (E.E.O.C. Oct. 16, 1998) (same); Feris v. Browner, Administrator, EPA, 1996 WL 421948 (E.E.O.C. Jul. 19, 1996) (same); Jackson v. Frank, Postmaster General, 1989 WL 1006498 (E.E.O.C. Apr. 18, 1989) (same); see also Haggard v. Potter, Postmaster General, 2003 WL 137899 (E.E.O.C. Jan. 7, 2003) (“The agency cannot escape its obligation to provide complainant a reasonable accommodation simply because of the difficulty of scheduling interpreter services in a timely manner.”).



Mr. Hubbard has worked as an automation mail processing clerk. He is deaf and communicates primarily by using ASL. Mr. Hubbard can read English with great difficulty, but, as with most deaf people, it is his second language. At the time of its closure on October 21, 2001, there were approximately 23 deaf employees at Brentwood.

28. At Brentwood, Mr. Hubbard's supervisor held work meetings with employees approximately once a week. The work meetings typically lasted 30 minutes and addressed safety issues, work procedures, work assignments and USPS policies. These work meetings served as a forum where employees asked questions and received immediate feedback from supervisors and co-workers. USPS required all employees, including deaf employees, to attend these work meetings. In order to do his job safely and effectively, Mr. Hubbard must understand what his supervisors and co-workers say at these meetings.

29. USPS does not provide qualified interpreters at these weekly work meetings. Without a qualified interpreter, it is virtually impossible for Mr. Hubbard to understand what is said at, or to participate in, these work meetings. Over the course of his employment, Mr. Hubbard has made numerous requests to USPS management that qualified interpreters be provided at the weekly work meetings. USPS has generally denied these requests, often without explanation.

30. At Brentwood, USPS management held special meetings every two weeks for the deaf employees, purportedly to provide the deaf employees with important information that USPS had provided to its hearing employees over the previous two-week period. These special meetings were not effective in providing Mr. Hubbard with the information that he missed over the previous two-week period. First, USPS often cancelled the special meetings. Second, the supervisor in charge of the special meetings frequently failed to collect all of the important

information that Mr. Hubbard and other deaf employees had missed over the previous two weeks. Third, the supervisor in charge of the special meetings often failed to attend the special meetings. Fourth, the special meetings were not an adequate substitute for Mr. Hubbard's ability to participate in regular work meetings in which he could ask questions and receive immediate feedback from his supervisors and co-workers from his specific work area. Fifth, the interpreter provided for the special meetings was not hired exclusively for the purpose of interpreting the special meetings and, on many occasions, left the meeting to attend to other business. Sixth, providing Mr. Hubbard and other deaf employees with important information only once every two weeks was no substitute for the reality that USPS provided the same information to hearing employees in a timely manner.

31. On October 21, 2001, USPS closed the Brentwood facility due to anthrax contamination, and two Brentwood employees died due to anthrax exposure. In the days and weeks following the closure of Brentwood, USPS held a number of meetings to provide employees with critical information about the anthrax crisis. USPS failed to provide qualified sign language interpreters at the vast majority of these important anthrax-related meetings. Mr. Hubbard attended anthrax-related meetings on October 21, 22, 23, 29 and November 20, 23, and 28; USPS provided no qualified interpreters at these meetings. Because of the lack of a qualified interpreter, Mr. Hubbard could not understand what was said at these important meetings. He repeatedly complained to his supervisors that he could not understand what was said at these meetings without the assistance of a qualified interpreter.

32. An unqualified “signer” was present at some of these anthrax-related meetings.<sup>10</sup> The “signer” who was present was unable to use ASL to interpret what was said at the meetings in a way that was understandable to Mr. Hubbard or most other deaf people. In particular, the “signer” could not interpret the technical and specialized medical terminology used by personnel at these meetings to explain the threat posed by anthrax.

33. In order to do his job safely and effectively, Mr. Hubbard must understand the important information that USPS provides at work meetings. Because USPS has failed to provide qualified sign language interpreters at work meetings, despite Mr. Hubbard’s repeated requests, he cannot understand the important health, safety, and job information that is provided at these meetings. This lack of information has had a negative impact on Mr. Hubbard’s ability to do his job safely and effectively and has resulted in, and continues to cause, great anxiety, frustration, embarrassment and distress.

34. This situation, which is ongoing, was exacerbated by the anthrax crisis, during which USPS failed to provide Mr. Hubbard and other deaf employees with critical information about this potentially life-threatening situation in a timely manner.

35. USPS’s failure to provide qualified sign language interpreters at work meetings has been a problem ever since Mr. Hubbard began working for USPS over 29 years ago and remains a problem to this day.

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<sup>10</sup> Interpreting is not the same as “signing.” The ability to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone “signing” and convey their signed communication into spoken words. The interpreter must be able to interpret both receptively and expressively. See 28 C.F.R. § 35.104.

B. Judy M. Schuld

36. Judy M. Schuld has been employed by USPS for over 16 years. She works as a mail processing clerk at the AMC Cleveland facility located at 5801 Postal Road, Cleveland, Ohio 44181 ("Cleveland facility"). Ms. Schuld is deaf and communicates primarily by using ASL. She can read English with difficulty, but, as is the case with most deaf people, it is her second language. There are approximately seven deaf or hard-of-hearing people employed at the Cleveland facility.

37. At the Cleveland facility, there are typically daily work meetings that provide employees with timely information about important events affecting their working conditions, including workplace safety, performance, training, discipline and productivity. In addition, employees receive immediate feedback on their questions, benefit from questions asked by their co-workers, and obtain guidance from their supervisors regarding issues that affect their particular work area. The work meetings typically last between 30 and 40 minutes. In order for Ms. Schuld to do her job safely and effectively, she must understand what her supervisor and co-workers say at these work meetings.

38. USPS does not provide qualified sign language interpreters at these work meetings. Without a qualified interpreter, it is virtually impossible for Ms. Schuld to understand what is said at, or to participate in, these work meetings. Ms. Schuld has frequently requested that qualified sign language interpreters be provided at these work meetings without success. When Ms. Schuld asks her supervisors what questions were asked at a work meeting, they typically brush her off.

39. On one occasion, Ms. Schuld injured her Achilles tendon because she was pulling a mail cart. At a previous work meeting, USPS had instructed hearing employees to push mail

carts in order to avoid injury. Because USPS failed to provide a qualified interpreter at the work meeting, Ms. Schuld did not receive this important safety information.

40. USPS holds periodic meetings for deaf employees, purportedly to provide deaf employees with the information that hearing employees have received over the previous month. However, the information provided at these special meetings is inadequate, outdated, and no substitute for contemporaneous participation in work meetings with the supervisors and co-workers from Ms. Schuld's specific work area.

41. Since October 2001, USPS has faced anthrax contamination in a number of its facilities. In late fall of 2001, USPS held a meeting at the Cleveland facility at which USPS management met with all the employees for a safety talk concerning anthrax and other bio-terrorism issues. USPS provided no sign language interpreters at this important meeting. **Prior to this meeting**, Ms. Schuld had noticed that her hearing co-workers had begun to take special precautions when handling mail—for example, wearing gloves. When Ms. Schuld asked her supervisor what prompted these precautionary measures, he told her that it was because of anthrax and that he would bring Ms. Schuld a pair of gloves. Ms. Schuld did not know what anthrax was at that time. Unlike the hearing employees, it was not until a few hours **after** the anthrax meeting that USPS provided gloves to the deaf and hard-of-hearing employees.

42. In December 2001, a white substance believed to be anthrax was found at a downtown Cleveland USPS facility. Although USPS made Ms. Schuld's hearing colleagues aware of this incident, USPS did not provide similar information to deaf and hard-of-hearing employees.

43. Due to its failure to provide qualified sign language interpreters at work meetings, USPS did not provide Ms. Schuld and other deaf employees at the Cleveland facility with

adequate information about anthrax and other bio-terrorism issues. For several months, Ms. Schuld did not understand the seriousness and scope of the anthrax crisis.

44. In order to do her job safely and effectively, Ms. Schuld must understand the information that USPS provides at work meetings. Because USPS has failed to provide qualified sign language interpreters at work meetings, despite Ms. Schuld's repeated requests, Ms. Schuld cannot understand the important health, safety, and job important information that USPS conveys at these meetings. This lack of information has had a negative impact on Ms. Schuld's ability to do her job safely and effectively and has resulted in, and continues to cause, frustration, anxiety, embarrassment and distress.

45. This ongoing situation was exacerbated by the anthrax crisis during which USPS failed to provide Ms. Schuld and other deaf employees with critical information about this potentially life-threatening situation in a timely manner.

46. USPS's failure to provide qualified sign language interpreters at work meetings is a continuing problem for Ms. Schuld.

C. Grace J. Shirk-Emmons

47. Grace J. Shirk-Emmons has been employed by USPS for over 20 years. She works as a floor clerk at the Processing and Distribution Center located at 1400 Harrisburg Pike, Lancaster, Pennsylvania ("Lancaster facility"). Mrs. Shirk-Emmons is deaf and communicates primarily by using ASL. She can read English, but, as with most other deaf people, it is her second language. There are approximately 14 deaf or hard-of-hearing people employed at the Lancaster facility.

48. At the Lancaster facility, there are some daily as well as weekly work meetings at which supervisors and employees discuss important work-related issues such as safety, work

procedures, changes in work assignments and policies, disciplinary rules, and training opportunities among other topics. The work meetings typically last between 10 and 20 minutes, though they can sometimes continue up to one hour in duration. These work meetings provide employees with timely information about important events that affect their working conditions. Employees also receive immediate feedback on their questions, benefit from questions asked by their co-workers, and obtain timely guidance from supervisors regarding specific issues in their work area. In order to do her job safely and effectively, Mrs. Shirk-Emmons must understand what her supervisors and co-workers say at these meetings.

49. USPS does not provide qualified interpreters at these work meetings. Without a qualified interpreter, it is virtually impossible for Mrs. Shirk-Emmons to understand what is said at, or to participate in, these work meetings. Mrs. Shirk-Emmons has requested that qualified interpreters be provided at work meetings, but her requests have been denied.

50. At the Lancaster facility, USPS holds special meetings every two weeks for deaf employees, ostensibly to provide the deaf employees with important information that the hearing employees receive at regular work meetings. These special meetings are not effective in providing Mrs. Shirk-Emmons with the important information that she missed over the previous two-week period. Supervisors from various work areas conduct the special meetings on a rotating basis. The supervisors who conduct the special meetings typically do not have information regarding the specific area in which Mrs. Shirk-Emmons works. The supervisors tend to focus on their own specific work area and the information that is pertinent to that area. Consequently, the special meeting does not provide Mrs. Shirk-Emmons with the same information that is provided to her hearing co-workers.

51. Mrs. Shirk-Emmons' supervisors sometimes assert that she can obtain the same information as her hearing co-workers by reading summaries of the work meetings or papers explaining policies and procedures. Mrs. Shirk-Emmons communicates in ASL, and while she can read English, it is her second language. Thus, it is very difficult for Mrs. Shirk-Emmons to understand a written summary of information provided at a work meeting. Only a qualified sign language interpreter can ensure that Mrs. Shirk-Emmons and other deaf employees fully understand the important information that USPS provides at work meetings.

52. Since October 2001, USPS has faced anthrax contamination in a number of its facilities. In the days and weeks following the closure of the Brentwood facility due to anthrax contamination, the Lancaster facility held a number of meetings to provide employees with critical information about the anthrax crisis. USPS failed to provide qualified sign language interpreters at the vast majority of these anthrax-related meetings. Due to the lack of a qualified interpreter, Mrs. Shirk-Emmons could not understand what was said at these important meetings.

53. In order to do her job safely and effectively, Mrs. Shirk-Emmons must understand the important information provided at work meetings. Because USPS has failed to provide qualified sign language interpreters at work meetings, despite Mrs. Shirk-Emmons' repeated requests, Mrs. Shirk-Emmons cannot understand the important health, safety, and job information that USPS provides at these meetings. This lack of information has had a negative impact on Mrs. Shirk-Emmons' ability to do her job safely and effectively and has resulted in, and continues to cause, great anxiety, frustration, embarrassment and distress.

54. This situation, which is ongoing, was exacerbated by the anthrax crisis, during which USPS failed to provide Mrs. Shirk-Emmons and other deaf employees with critical information about this potentially life-threatening situation in a timely manner.



55. USPS's failure to provide qualified sign language interpreters at work meetings is a continuing problem for Mrs. Shirk-Emmons.

D. Lucy I. Stieglitz

56. Lucy I. Stieglitz has worked for USPS for over 18 years. She works as a mail processing clerk at the Oklahoma City Main Postal Facility located at 320 S.W. 5th Street, Oklahoma City, Oklahoma 73125 ("Oklahoma City facility"). Ms. Stieglitz is deaf and communicates primarily by using ASL. She can read English with great difficulty, since, as with most deaf people, it is her second language. There are approximately six deaf and hard-of-hearing people employed at the Oklahoma City facility.

57. At the Oklahoma City facility, there are typically weekly work meetings that provide employees with timely information about important events affecting their working conditions, such as workplace safety, performance, discipline, training, and productivity issues. In addition, employees receive immediate feedback on their questions, benefit from questions asked by their co-workers, and obtain timely guidance from their supervisors regarding issues that affect their particular work area. The work meetings typically last for one hour. In order to do her job safely and effectively, Ms. Stieglitz must understand what her supervisors and co-workers say at these meetings.

58. USPS does not provide qualified sign language interpreters at these work meetings. The practice among Ms. Stieglitz's supervisors is to use USPS employees who have some ability to sign. These employees are not qualified interpreters.<sup>11</sup> Without a qualified sign

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<sup>11</sup> Supra notes 6-7 and 9-10.

language interpreter, it is virtually impossible for Ms. Stieglitz to understand what is said at, or to participate in, these work meetings.

59. Ms. Stieglitz worked in the Automation group for approximately one year, until February 2002. Her supervisor would call work meetings every week, but would not announce them to Ms. Stieglitz. Often, Ms. Stieglitz was left alone at her work station while her hearing co-workers were at a work meeting. When Ms. Stieglitz was aware of a work meeting, she would attend, but do little more than sit and stare at the ceiling since she could not understand what was said because of the lack of a qualified sign language interpreter. Ms. Stieglitz repeatedly requested that qualified sign language interpreters be provided at work meetings, but USPS repeatedly denied her requests.

60. At the close of each work meeting, USPS expected Ms. Stieglitz to sign a form attesting that she had attended the meeting and understood the contents of what was discussed. Ms. Stieglitz regularly refused to sign this form.

61. In February of 2002, Ms. Stieglitz moved from the Automation group to a flat sorter position, where she worked for approximately one to two months. During her time in that job, Ms. Stieglitz attended weekly work meetings at which an unqualified "signer" was present.<sup>12</sup>

62. At present, Ms. Stieglitz works as a mail processing clerk handling priority mail. USPS provides neither a qualified interpreter nor even an unqualified "signer" at the work meetings. After each hour-long work meeting, Ms. Stieglitz's supervisor provides her with a two- or three-line written summary. Clearly, this alleged summary does not provide Ms. Stieglitz with information that is comparable to what USPS provided to her hearing co-workers

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<sup>12</sup> Supra notes 6-7 and 9-10.

during the hour-long work meeting. Nor does the two- to three-line summary allow Stieglitz to understand the questions asked by her co-workers and the answers provided by her supervisors.

63. At the Oklahoma City facility, USPS conducts occasional meetings for deaf employees only, purportedly to provide deaf employees with the important information that hearing employees have already received at the regular work meetings over the last month. However, the information that USPS provides at these special meetings is inadequate and out-of-date. Moreover, such special meetings simply heighten the isolation and segregation of deaf employees from their hearing colleagues.

64. Since October 2001, USPS has faced anthrax contamination in a number of its facilities. In late fall of 2001, USPS organized a mandatory meeting at the Oklahoma City facility at which a physician from the Centers for Disease Control met with all employees for a safety talk concerning anthrax and other bio-terrorism issues. USPS did not provide sign language interpreters at this important meeting. Although USPS convened several meetings for hearing employees to discuss the anthrax crisis, USPS invited Ms. Stieglitz and the other deaf employees to attend only one such meeting. Even at that meeting, USPS failed to provide a qualified sign language interpreter and, instead, provided only an unqualified "signer."

65. In order to do her job safely and effectively, Ms. Stieglitz must understand the important information that USPS provides at work meetings. Because USPS has failed to provide qualified sign language interpreters at work meetings, despite Ms. Stieglitz's repeated requests, Ms. Stieglitz cannot understand the important health, safety, and job information that USPS provides at these meetings. This lack of information has had a negative impact on Ms. Stieglitz's ability to do her job safely and effectively and has resulted in, and continues to cause, great frustration, anxiety, embarrassment and distress.

66. This situation, which still continues even today, was exacerbated by the anthrax crisis, during which USPS failed to provide Ms. Stieglitz and other deaf employees with critical information about this potentially life-threatening situation in a timely manner.

67. USPS's failure to provide qualified sign language interpreters at work meetings is a continuing problem for Ms. Stieglitz.

E. George R. Westenberger

68. George R. Westenberger has worked for USPS for over 28 years. He works as a clerk at the Keystone Station Branch of the Processing and Distribution Center located at 1425 Crooked Hill Road, Harrisburg, Pennsylvania 17107 ("Harrisburg facility"). Mr. Westenberger is deaf and communicates primarily by using ASL. He can read English with great difficulty since it is his second language. There are approximately 15 deaf people employed at the Harrisburg facility.

69. At the Harrisburg facility, there are weekly work meetings at which employees discuss and learn about important work-related issues such as safety, procedures, changes in work assignments and policies, disciplinary rules, and training opportunities, among other topics. The work meetings typically last between 20 and 30 minutes. USPS has also sent Mr. Westenberger to day-long training seminars at which he could not understand anything because USPS did not provide a qualified interpreter. The weekly work meetings provide employees with timely information about important events that affect their working conditions. In addition, employees receive immediate feedback on their questions, benefit from questions asked by their co-workers, and obtain timely guidance from supervisors regarding issues specific to their work area. In order to do his job safely and effectively, Mr. Westenberger must understand what his supervisors and other co-workers say at these meetings.

70. USPS does not provide qualified interpreters at these work meetings. Without a qualified interpreter, it is virtually impossible for Mr. Westenberger to understand what is said at, or to participate in, these work meetings. Mr. Westenberger has asked for qualified sign language interpreters to be provided at work meetings, but USPS has denied his requests.

71. USPS sometimes provides Mr. Westenberger and other deaf and hard-of-hearing employees with a written summary of the information that was discussed at a work meeting. However, Mr. Westenberger can only read English with great difficulty. Only a qualified sign language interpreter can ensure that Mr. Westenberger and other deaf employees fully understand the important information that USPS provides at work meetings.

72. Since September 11, 2001, USPS has held monthly deaf-only staff meetings at the Harrisburg facility. These meetings, however, are not effective in providing Mr. Westenberger with the information that he misses during the weekly work meetings at which USPS provides no qualified interpreters. The supervisors who run the deaf-only meetings do not have information that is specific to Mr. Westenberger's work area. Instead, the supervisors focus on their own work area or provide only very basic and general information. These meetings are no substitute for contemporaneous participation in work meetings with the supervisors and co-workers from Mr. Westenberger's specific work area.

73. Since October 2001, USPS has faced anthrax contamination in a number of its facilities. At the Harrisburg facility, USPS management conducted numerous meetings regarding the dangers of anthrax and the precautions that should be taken. USPS failed to provide qualified sign language interpreters at all of these anthrax-related work meetings. Mr. Westenberger asked that interpreters be provided, but USPS denied his requests.

74. USPS has not effectively communicated with Mr. Westenberger regarding anthrax issues.

75. Mr. Westenberger has never received any information concerning medications that he should take if he is exposed to anthrax. He has seen posted and distributed what appears to be very complex medical information about the physical effects of anthrax and the medicine Ciprofloxacin, but he cannot understand the information.

76. In order to do his job safely and effectively, Mr. Westenberger must understand the important information that USPS provides at work meetings. Because USPS has failed to provide qualified sign language interpreters at work meetings, despite Mr. Westenberger's repeated requests, Mr. Westenberger cannot understand the important health, safety, and job information that USPS provides at work meetings. This lack of information has had a negative impact on Mr. Westenberger's ability to do his job safely and effectively and has resulted in, and continues to cause, great frustration, anxiety, embarrassment, and distress.

77. This ongoing situation was exacerbated by the anthrax crisis, during which USPS failed to provide Mr. Westenberger and other deaf employees with critical information about this potentially life-threatening situation in a timely manner.

78. USPS's failure to provide qualified sign language interpreters at work meetings is a continuing problem for Mr. Westenberger.

## **VII. Class Treatment**

79. A class action is superior to other available methods for the fair and efficient resolution of this controversy. Requiring class members to pursue their claims individually would entail a host of actions, with duplication of costs, attorneys' fees, and resources. Moreover, as noted, the EEOC has issued numerous decisions that require USPS facilities to

provide qualified sign language interpreters at work meetings as required by the Rehabilitation Act. Despite these decisions aimed at individual facilities, USPS has failed to change its widespread practice of not providing its deaf and hard-of-hearing employees with qualified sign language interpreters at work meetings. This intransigence on the part of the USPS can best be addressed by means of a class action.

80. The proposed class satisfies all the requirements of numerosity, commonality, typicality, and adequacy of representation.

A. Numerosity

81. The proposed class is so numerous and geographically dispersed that the pursuit of individual actions by each class member is impracticable. According to USPS documents, as of September 8, 2000, USPS had more than 2,400 deaf employees. The class consists of at least hundreds, if not thousands, of deaf and hard-of-hearing USPS employees from across the country who have been denied qualified sign language interpreters during work meetings. Joinder of all class members is impracticable.

82. In the months following the anthrax outbreak in October and November 2001, USPS's safety policies and work procedures became the focus of increased governmental and media scrutiny. During this period, it became evident that the precise issues that formed the basis of Mr. Hubbard's February 20, 2001 complaint against USPS (i.e., failure to provide qualified interpreters at work meetings) were not unique to Brentwood, but were being experienced by deaf and hard-of-hearing USPS employees at USPS facilities around the nation. As demonstrated by the named Plaintiffs, USPS's discrimination against its deaf and hard-of-hearing employees through its failure to provide qualified sign language interpreters at work meetings is occurring at USPS facilities in Washington, D.C; Cleveland, Ohio; Lancaster,

Pennsylvania; Oklahoma City, Oklahoma; and Harrisburg, Pennsylvania. The named Plaintiffs, however, represent only a small sample of the employees faced with USPS's failure to provide effective interpreting services.

B. Commonality

83. There are questions of law and fact common to the class that predominate over individual questions, including, but not limited to whether USPS discriminates against its deaf and hard-of-hearing employees in violation of the Rehabilitation Act by engaging in a nationwide practice of failing to provide qualified sign language interpreters for these employees during work meetings. Work floor or similar work-related meetings occur at USPS facilities throughout the nation and USPS's failure to provide qualified interpreters at these meetings affects deaf and hard-of-hearing employees across the nation. Special deaf-only meetings offered by a minority of facilities provide incomplete information to deaf employees and are but one example of USPS's continuing failure to provide deaf employees with the reasonable accommodation to which they are entitled. Plaintiffs challenge USPS practices and systemic failures that discriminate against the class as a whole.

C. Typicality

84. The claims of the Plaintiffs are typical of the claims of the class. The issues of fact involved are common to the class as a whole (namely the failure to provide qualified interpreters at work meetings), and turn on questions of law that are applicable in the same manner to each member of the class. There is nothing about the nature of Plaintiffs' claims, nor the circumstances surrounding them, that suggests they are atypical of those of the class; rather, deaf and hard-of-hearing USPS employees across the nation share the very complaints made by Plaintiffs. Like the putative class members, Plaintiffs use ASL as a primary means of



communication and have all been subject to the same challenged practices that are applied to the class as a whole.

D. Adequacy of Representation

85. Plaintiffs and their legal representatives will fairly and adequately protect the interests of the class. Plaintiffs' interests are not antagonistic to, but rather in unison with, the interests of the other class members; there is no evidence of any conflicts of interest between Plaintiffs and any members of the proposed class.

86. Class counsel have extensive experience in litigating class actions and are fully qualified to pursue the claims of the class in this case. Specifically, Covington & Burling ("Covington") is a leading international law firm with over 500 lawyers practicing in Washington, D.C., New York, San Francisco, London, and Brussels, with expertise in all types of complex litigation and alternative dispute resolution proceedings. The lead attorney on this case, Covington partner Thomas S. Williamson, Jr., a former Solicitor of Labor for the United States Department of Labor, has broad experience in employment law matters and has previously handled complex class action litigations. During the past four years ending on September 30, 2002, he served as Chair of the Chevron Texaco Task Force on Equality and Fairness, an independent group of special masters established by Judge Charles L. Brieant of the Southern District of New York to oversee implementation of the settlement of a major class action race-discrimination case.

87. The Washington Lawyers' Committee for Civil Rights and Urban Affairs ("Lawyers' Committee") is a public interest organization that, for over thirty years, has represented individuals and groups denied equal employment opportunities. The Lawyers' Committee has handled over 5,000 civil rights cases and has been counsel to classes of plaintiffs

in dozens of class actions that proceeded administratively and/or judicially, many of which were against federal agencies. Elaine Gardner is the Director of the Lawyers' Committee's Disability Rights Project and has 25 years of experience litigating civil rights cases for deaf individuals. Susan Huhta is the Director of the Lawyers' Committee's Equal Employment Opportunity Project and has experience in litigating major class action lawsuits involving employment discrimination.

88. James E. McCollum, Jr., & Associates, P.C. ("the McCollum firm") is a law firm located in College Park, Maryland with an active employment law practice. The McCollum firm has particular experience and expertise in litigating cases to ensure the civil rights of deaf and hard-of-hearing people.

89. Class counsel, described above, are working in consultation with the National Association of the Deaf Law Center ("NAD Law Center"). The NAD Law Center has safeguarded the rights of deaf and hard-of-hearing people since 1976. The NAD Law Center has significant experience bringing cases in federal courts and before administrative bodies in order to protect the civil rights of all deaf and hard-of-hearing Americans.

90. USPS has acted, and continues to act, in a manner generally applicable to the class as a whole, thereby making final injunctive relief appropriate to the class.

**VIII. Cause of Action - Violation of the Rehabilitation Act of 1973, 29 U.S.C. §791 et seq**

91. Plaintiffs reallege and incorporate by reference each and every allegation set forth above.

92. USPS has repeatedly and unjustifiably denied Plaintiffs the benefits of qualified sign language interpreters at critical work-related meetings, a reasonable accommodation to which they are entitled under the Rehabilitation Act.

93. In doing so, USPS has discriminated against its deaf and hard-of-hearing employees by denying them important work-related information that it provides to its hearing employees.

94. USPS's refusal to provide qualified interpreters has injured all class plaintiffs, causing them to suffer frustration, anxiety, embarrassment, and distress. These injuries take on a heightened importance in light of this country's elevated state of terrorist alert, current military activities in Iraq and Afghanistan, and renewed efforts to address anthrax and other bioterrorism issues that have recently and disproportionately affected USPS employees across the country.

95. The Rehabilitation Act provides redress for Plaintiffs' injuries.

**IX. Prayer for Relief**

96. WHEREFORE, Plaintiffs, on behalf of the class, pray that the Court enter judgment against Defendants as follows:

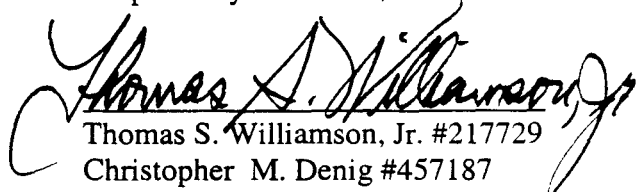
- (i) Certify this action as a class action, certify Plaintiffs as class representatives, and designate their counsel as class counsel;
- (ii) Declare that USPS's practice of failing to provide qualified interpreters for its deaf and hard-of-hearing employees during work meetings is a violation of the Rehabilitation Act;
- (iii) Enjoin USPS nationwide from continuing to engage in discriminatory practices against its deaf and hard-of-hearing employees by failing to provide qualified sign language interpreters at work meetings in violation of the Rehabilitation Act;
- (iv) Retain jurisdiction over USPS until such time as the Court is satisfied the unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur; and

(v) Grant Plaintiffs' reasonable attorneys' fees, costs, and litigation expenses, and such other relief as may be just and equitable.

X. **Jury Demand**

Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas S. Williamson, Jr.", is written over the typed name and address.

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