

**EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

BRUCE C. HUBBARD, 3700 S. Westport Ave., )  
 #4040 Sioux Falls, SD 57106; JAMES )  
 GRALUND, 6210 W. 108<sup>th</sup> Place, Westminster, )  
 CO 80020; JUDY M. SCHULD, 22669 )  
 Lenox Drive, Fairview Park, OH 44126; GRACE J. )  
 SHIRK-EMMONS, 1961 New Street, East )  
 Petersburg, PA 17552; LUCY I. STIEGLITZ, )  
 216 S.E. 33rd Street, Oklahoma City, OK 73129; )  
 DANIEL TIGHE, 13682 W. Utah Circle, )  
 Lakewood, CO 80228; SUSAN TIGHE )  
 13682 W. Utah Circle, Lakewood, CO 80228; )  
 GAIL WALKER, 3136 Randy Road, Lancaster, PA )  
 17601-1431; GEORGE R. WESTENBERGER, )  
 5711 Meadowbrook Drive, Harrisburg, PA 17112; )  
 DIANE WHITENER, 13682 W. Utah Circle, )  
 Lakewood, CO 80228; and ARLEN WHITSIT, )  
 301 Scranton St., Aurora, CO 80011, )  
 individually and on behalf of a class of persons )  
 similarly situated, )

*Plaintiffs,*

v.

PATRICK R. DONAHOE,<sup>1</sup> POSTMASTER )  
 GENERAL, UNITED STATES )  
 POSTAL SERVICE, )

*Defendant.*

Civil Action No: 03-1062 (RJL/JMF)

Jury Trial Demanded

**THIRD AMENDED CLASS ACTION COMPLAINT**

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<sup>1</sup> On October 25, 2010, Patrick R. Donahoe succeeded John E. Potter as Postmaster General of the United States Postal Service.

Plaintiffs, James Gralund, Bruce C. Hubbard, Judy M. Schuld, Grace J. Shirk-Emmons, Lucy I. Stieglitz, Daniel Tighe, Susan Tighe, George R. Westenberger, Diane Whitener, and Arlen Whitsit, individually and on behalf of a class of similarly situated persons, state against Defendant as follows:

**I. Introduction and Overview**

1. This lawsuit results from systematic civil rights violations committed by the United States Postal Service (“USPS” or “Postal Service”) against deaf and hard-of-hearing employees. The USPS has repeatedly denied these hearing impaired employees reasonable accommodations for their hearing impairments and ignored their complaints of discrimination.

2. Plaintiffs file this class complaint because the USPS has discriminated against hundreds, if not thousands, of hearing impaired employees in violation of § 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq. (“Rehabilitation Act” or “Act”). The USPS has engaged in a pattern and practice of failing to provide reasonable accommodations for its deaf and hard-of-hearing employees at mandatory workplace events. The reasonable accommodations that the USPS has failed to provide are necessary to enable hearing impaired employees to perform the essential functions of their jobs. The USPS has also created a hostile work environment for hearing impaired employees and has denied them necessary assistance in locating and pursuing promotional (higher level) work opportunities within the USPS.

3. Plaintiffs seek to represent two classes. The first is composed of all current and former Deaf or Hard of Hearing Employees who were employed by the Postal Service between November 14, 2001, and the present, who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied Telecommunication Devices for the Deaf (TTYs) for phone communications;

(3) they were denied emergency evacuation notification systems; (4) they were subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) they were denied promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment. The second class that Plaintiffs seek to represent is composed of all current Deaf or Hard of Hearing Employees who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied Telecommunication Devices for the Deaf (TTYs) for phone communications; (3) they were denied emergency evacuation notification systems; (4) they were subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) they were denied promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment. For purposes of this Complaint, “Deaf or Hard of Hearing Employees” is defined to include any employee who is classified by USPS under disability classification codes 15, 16, or 17. USPS disability classification code 15 is defined as “hard of hearing, corrected by hearing aid.” E.g., Postal Service Form 2489: Identification of Physical/Mental Disability. USPS disability classification code 16 is defined as “total deafness with understandable speech.” Id. USPS disability classification code 17 is defined as “total deafness with inability to speak clearly.” Id.

## **II. Jurisdiction and Venue**

4. The USPS’s national headquarters are located in Washington, D.C., and nationwide policies, including those that concern providing reasonable accommodations to hearing impaired employees, are issued from the headquarters.

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

6. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f)(3).

### **III. Parties**

7. Plaintiff James Gralund is a resident of Westminster, Colorado. Mr. Gralund has been employed by USPS as a mail handler at the Denver General Mail Facility for approximately 30 years. Mr. Gralund is hearing impaired and has been classified under USPS disability classification code 17. Mr. Gralund falls within the protected class of persons under the Rehabilitation Act.

8. Plaintiff Bruce C. Hubbard is a resident of Sioux Falls, South Dakota. Prior to retiring in November 2007, he had been employed by the USPS for over 30 years. Mr. Hubbard worked at the Brentwood facility in Washington, D.C., for 15 years, until its closure due to anthrax contamination on October 21, 2001. Following the temporary closure of the Brentwood facility, he worked at the Suburban Processing and Distribution Center, located at 16501 Shady Grove Road, Gaithersburg, Maryland 20898-9998 ("Gaithersburg facility") as a mail processing clerk. From November 2005 until his retirement, Mr. Hubbard worked at the re-opened Brentwood facility and a USPS facility located at Baltimore-Washington International Airport ("BWI facility"). Mr. Hubbard is hearing impaired and has been classified under USPS disability classification code 17. Mr. Hubbard falls within the protected class of persons under the Rehabilitation Act.

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

Ms. Schuld is hearing impaired and has been classified under USPS disability classification code

16. Ms. Schuld falls within the protected class of persons under the Rehabilitation Act.

10. Plaintiff Grace J. Shirk-Emmons is a resident of East Petersburg, Pennsylvania. She has been employed by the USPS for over 20 years and works as a mail processing clerk at the Processing and Distribution Center located at 1400 Harrisburg Pike, Lancaster, Pennsylvania (“Lancaster facility”). Mrs. Shirk-Emmons is hearing impaired and has been classified under USPS disability classification code 17. Mrs. Shirk-Emmons falls within the protected class of persons under the Rehabilitation Act.

11. Plaintiff Lucy I. Stieglitz is a resident of Oklahoma City, Oklahoma. She has been employed by the USPS for over 18 years and 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 hearing impaired and has been classified under USPS disability classification code 17. Ms. Stieglitz falls within the protected class of persons under the Rehabilitation Act.

12. Plaintiff Daniel Tighe is a resident of Lakewood, Colorado. Mr. Tighe has been employed by the USPS as a FSM clerk at the Denver General Mail Facility for approximately 30 years. Mr. Tighe is hearing impaired and has been classified under USPS disability classification code 17. Mr. Tighe falls within the protected class of persons under the Rehabilitation Act.

13. Plaintiff Susan Tighe is a resident of Lakewood, Colorado. Ms. Tighe was employed by the USPS as a TACS clerk at the Denver General Mail Facility for approximately 24 years prior to her retirement on or about January 31, 2004. Ms. Tighe is hearing impaired and

has been classified under USPS disability classification code 17. Ms. Tighe falls within the protected class of persons under the Rehabilitation Act.

14. Plaintiff Gail Walker is a resident of Lancaster, Pennsylvania. Ms. Walker has been employed by the USPS at the Lancaster facility for approximately 28 years. During her tenure, Ms. Walker has been employed in various mail processing positions. Ms. Walker is hearing impaired and has been classified under USPS disability classification code 15. Ms. Walker falls within the protected class of persons under the Rehabilitation Act.

15. Plaintiff George R. Westenberger is a resident of Harrisburg, Pennsylvania. Prior to retiring on or about October 31, 2003, Mr. Westenberger had been employed by the USPS for over 28 years. Mr. Westenberger worked in various mail processing positions at the Keystone Station Branch of the Processing and Distribution Center located at 813 Market Street, Harrisburg, Pennsylvania 17105 ("Harrisburg facility"). Mr. Westenberger is hearing impaired and has been classified under USPS disability classification code 16. Mr. Westenberger falls within the protected class of persons under the Rehabilitation Act.

16. Plaintiff Diane Whitener is a resident of Lakewood, Colorado. She has been employed by the USPS as a TACS clerk at the Denver General Mail Facility for approximately 28 years. Ms. Whitener is hearing impaired and has been classified under USPS disability classification code 17. Ms. Whitener falls within the protected class of persons under the Rehabilitation Act.

17. Plaintiff Arlen Whitsit is a resident of Aurora, Colorado. Mr. Whitsit was employed by the USPS as a TACS clerk at the Denver General Mail Facility for approximately 30 years prior to his retirement on or about May 2, 2003. Mr. Whitsit is hearing impaired and has

been classified under USPS disability classification code 17. Mr. Whitsit falls within the protected class of persons under the Rehabilitation Act.

18. Defendant, United States Postal Service, is an independent establishment of the executive branch of the federal government with an annual operating revenue of \$67.1 billion. The USPS is responsible for the delivery of mail to almost 138 million homes, businesses, and post office boxes. According to USPS records, as of March 2011, the USPS employed more than 3,000 deaf and hard of hearing employees. Additionally, there are approximately 3,000 deaf and hard of hearing individuals who were previously employed by the USPS at some point since November 2001.

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

##### A. **Plaintiff Hubbard's First EEO Complaint**

19. On or about October 19, 1998, Plaintiff Bruce C. Hubbard ("Hubbard"), a hearing impaired 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 thereafter, the USPS discriminated against him based upon his physical disability (hearing impairment) by denying him a reasonable accommodation -- specifically, a sign language interpreter -- during work meetings. Thereafter, on January 12, 1999, Mr. Hubbard agreed to resolve his discrimination claim by participating in the USPS's REDRESS Program. After a formal mediation in March and April 1999, Mr. Hubbard and the USPS agreed in principle that the USPS would, inter alia, provide contract interpreters at daily impromptu meetings. Subsequently, the USPS has made no effort to do so.

20. 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

with the USPS's Office of EEO Compliance and Appeals, Capital Metro Operations, on or about February 20, 2001, alleging that the USPS failed to provide him with a reasonable accommodation -- specifically, a sign language interpreter -- during work meetings.

21. On or about August 28, 2001, the 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.

22. In October 2001, the seriousness of Mr. Hubbard's complaint was tragically underscored when the 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, the 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.

23. 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 four other Plaintiffs

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<sup>2</sup> On October 21, 2001, the USPS closed the Brentwood facility due to anthrax contamination. The Brentwood facility has since re-opened and is now named the Curseen and Morris Processing & Distribution Center, in honor of the two USPS employees who passed away due to anthrax exposure at the Brentwood 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).



(Ms. Schuld, Ms. Shirk, Ms. Stieglitz and Mr. Westenberger),<sup>4</sup> all of whom are hearing impaired and had 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, Ms. Shirk, Ms. Stieglitz, and Mr. Westenberger were named plaintiffs in the Amended Class Complaint.

24. 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.

25. No final action was taken by either the USPS or the EEOC. Mr. Hubbard complied with the administrative process and exhausted all administrative remedies.<sup>5</sup>

26. As a result, Mr. Hubbard, Ms. Schuld, Ms. Shirk, Ms. Stieglitz and Mr. Westenberger (collectively, the “Hubbard Plaintiffs”) were authorized to file a civil action in United States District Court. On May 14, 2003, the Hubbard Plaintiffs filed their first federal court complaint in this matter.

**B. Plaintiff Hubbard’s Second EEO Complaint**

27. On March 14, 2002, Plaintiff Hubbard again requested a Right to File a Discrimination Complaint, which was granted. Mr. Hubbard filed a second EEO Complaint of Discrimination with the USPS’s Office of EEO Compliance and Appeals, Capital Metro Operations, on or about March 14, 2002, alleging a class-wide failure by the USPS to provide

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<sup>4</sup> Ms. Shirk has since married. Her surname is now Shirk-Emmons.

<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)).

reasonable accommodations -- specifically, sign language interpreters -- for hearing impaired employees at meetings, including anthrax-related safety meetings.

28. Following the USPS's investigation of this second formal complaint of discrimination, Mr. Hubbard requested a hearing before an EEOC Administrative Law Judge, and the case thereafter proceeded in the EEOC Washington Field Office as EEOC No. 100-A3-7447X; Agency No. 1K-201-0013-02.

29. On May 14, 2003, Mr. Hubbard informed the Administrative Law Judge presiding over his second complaint of discrimination (EEOC No. 100-A3-7447X; Agency No. 1K-201-0013-02) of his related federal court litigation filed that same day in the United States District Court for the District of Columbia.

30. By Dismissal Order dated May 22, 2003, the Administrative Law Judge dismissed Mr. Hubbard's second complaint of discrimination (EEOC No. 100-A3-7447X; Agency No. 1K-201-0013-02) "because Complainant has filed a civil action regarding the same matter." Mr. Hubbard's second EEO complaint is thus encompassed by the above-captioned case.

### **Class Action Allegations**

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

31. Plaintiffs bring this Third Amended Class Action Complaint on their own behalves and on behalf of a class of persons similarly situated, pursuant to the provisions of Fed. R. Civ. P. 23. This suit is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3). Plaintiffs represent the following classes:

- A. Class A: A Fed. R. Civ. P. 23(b)(2) class that seeks injunctive relief and is composed of all current Deaf or Hard of Hearing Employees employed by the Postal Service who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and

events; (2) they were denied Telecommunication Devices for the Deaf (TTYs) for phone communications; (3) they were denied emergency evacuation notification systems; (4) they were subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) they were denied promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment.

- B. Class B: A Fed. R. Civ. P. 23(b)(3) class that seeks monetary relief and is composed of all current and former Deaf or Hard of Hearing Employees who were employed by the Postal Service between November 14, 2001, and the present, who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied Telecommunication Devices for the Deaf (TTYs) for phone communications; (3) they were denied emergency evacuation notification systems; (4) they were subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) they were denied promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment.

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

32. The USPS has a method for identifying and classifying its disabled employees nationwide, including hearing impaired employees. Specifically, the USPS identifies deaf or hard of hearing employees using disability classification codes 15, 16, or 17. USPS disability classification code 15 is defined as “hard of hearing, corrected by hearing aid.” E.g., Postal Service Form 2489: Identification of Physical/Mental Disability. USPS disability classification

code 16 is defined as “total deafness with understandable speech.” Id. USPS disability classification code 17 is defined as “total deafness with inability to speak clearly.” Id. According to USPS documents, as of October 12, 2004, the USPS employed approximately 4,234 employees who had been classified under disability codes 15, 16, or 17. See Business Proposal for Video Relay Service and Video Remote Interpreter Service (Jan. 7, 2005).

33. The USPS has engaged, and continues to engage, in a nationwide practice of failing to provide reasonable accommodations to hearing impaired employees. With few exceptions, this systemic practice exists at USPS facilities across the country. Through such practice, the USPS has discriminated against its hearing impaired employees based on physical disability in violation of the Rehabilitation Act.

34. The USPS regularly holds mandatory work meetings, training sessions, and other workplace events that USPS employees, including those employees who are hearing impaired, are required to attend. Because attendance at these events is mandatory, they constitute an essential job function for those employees required to attend them.<sup>6</sup>

35. The USPS has routinely failed to provide reasonable accommodations for hearing impaired employees at these mandatory workplace events. As a result, hearing impaired employees cannot understand the information presented and are unable to participate in any meaningful way in these mandatory workplace events.

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<sup>6</sup> See Meyer v. Iowa Mold Tooling Co., Inc., 141 F. Supp. 2d 973, 986 (N.D. Iowa 2001) (“If meetings are *mandatory*, that requirement suggests that the employer’s judgment is that they comprise an essential function of *all* of the positions of employees required to attend.”) (emphasis in original).

36. The USPS has also created a hostile work environment for hearing impaired employees and has denied them necessary assistance in locating and pursuing promotional (higher level) work opportunities within the USPS.

37. As noted, Plaintiffs are the following current and former hearing impaired USPS employees: James Gralund (Denver General Mail Facility, Denver, Colorado), Bruce C. Hubbard (Brentwood facility, Washington, D.C.), Judy M. Schuld (Cleveland facility, Cleveland, Ohio), Grace J. Shirk-Emmons (Lancaster facility, Lancaster, Pennsylvania), Lucy I. Stieglitz (Oklahoma City facility, Oklahoma City, Oklahoma), Daniel Tighe (Denver General Mail Facility, Denver, Colorado), Susan Tighe (Denver General Mail Facility, Denver, Colorado), Gail Walker (Lancaster facility, Lancaster, Pennsylvania), George R. Westenberger (Harrisburg facility, Harrisburg, Pennsylvania), Diane Whitener (Denver General Mail Facility, Denver, Colorado), and Arlen Whitsit (Denver General Mail Facility, Denver, Colorado).

**A. James Gralund**

38. Mr. Gralund has been employed with the USPS as a mail handler at the Denver General Mail Facility for approximately 30 years. Mr. Gralund is hearing impaired and has been classified under USPS disability classification code 17.

39. Mr. Gralund's facility periodically holds required safety and staff meetings. Because these work meetings are mandatory, they constitute an essential function of Mr. Gralund's job.

40. Mr. Gralund has requested from the USPS the provision of a sign language interpreter for various workplace meetings and events. However, the USPS has repeatedly failed to provide Mr. Gralund with a reasonable accommodation, such as qualified sign language interpreters, for required safety and staff meetings. Mr. Gralund has been forced to rely on

inadequate substitutes, such as hand written notes and unreliable signed interpretation from a fellow employee who is not certified in sign language interpretation.

41. For example, on October 18, 2001, at 9:00 a.m., Mr. Gralund requested a sign language interpreter from his supervisor, Karl Bartsch. Mr. Gralund did not receive an interpreter and filed a grievance. On November 15, 2001, November 29, 2001, December 5, 2001, January 26, 2002, and February 7, 2002, Mr. Gralund again requested a sign language interpreter and again was not provided with that accommodation. On more than one occasion, Mr. Gralund was left out of work meetings because an interpreter was not obtained to translate for him.

42. Because the USPS has failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, Mr. Gralund cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Mr. Gralund's job. However, Mr. Gralund is unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Mr. Gralund's lack of access to important information and inability to participate at meetings have resulted in, and continue to cause him, great anxiety, frustration, embarrassment, and distress.

43. The USPS's failure to provide reasonable accommodations, such as qualified sign language interpreters, at mandatory workplace events is a continuing problem for Mr. Gralund.

**B. Bruce C. Hubbard**

44. Mr. Hubbard worked for the USPS for over 30 years. For 15 years, until its closure on October 21, 2001, he worked at the Brentwood facility. Following the temporary closure of the Brentwood facility, he worked at the Gaithersburg facility as a mail processing

clerk, and later at the Brentwood and BWI facilities before retiring in November 2007. Mr. Hubbard is hearing impaired and was classified under USPS disability classification code 17.

45. At the Brentwood facility, Mr. Hubbard's supervisor held mandatory work meetings with employees approximately once a week. These mandatory 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. The USPS required all employees, including hearing impaired employees, to attend these work meetings. Because these work meetings were mandatory, they were an essential function of Mr. Hubbard's job.

46. The USPS did not provide reasonable accommodations, such as qualified sign language interpreters, at these mandatory weekly work meetings. Without such an accommodation, it was virtually impossible for Mr. Hubbard to understand what was said at, or to participate in, these work and safety meetings. Over the course of his employment, Mr. Hubbard made numerous requests to the USPS management that qualified interpreters be provided at the mandatory weekly work meetings, including those where safety issues and procedures were discussed. The USPS generally denied these requests, often without explanation.

47. On October 21, 2001, the USPS closed the Brentwood facility due to anthrax contamination, and two Brentwood employees -- Joseph Curseen, Jr. and Thomas Morris, Jr. -- died due to anthrax exposure. Curseen and Morris contracted pulmonary anthrax after handling mail at the Brentwood facility. In the days and weeks following the closure of Brentwood, the USPS held a number of meetings to provide employees with critical information about the anthrax crisis. The USPS failed to provide reasonable accommodations, such as qualified sign

language interpreters, at the vast majority of these important anthrax-related meetings. Mr. Hubbard attended anthrax-related meetings on various dates in October and November 2001, including but not limited to October 21 and 29 and November 23 and 28; the USPS provided no qualified interpreters at these meetings. Because a qualified interpreter was not provided, Mr. Hubbard could not understand what was said at these important safety 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.

48. Because the USPS failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, despite Mr. Hubbard's repeated requests, Mr. Hubbard could not understand the important health, safety, and job information that was provided at these meetings. Because these meetings were mandatory, they constituted an essential function of Mr. Hubbard's job. However, Mr. Hubbard was unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Mr. Hubbard's lack of access to important information and inability to participate at meetings caused him great anxiety, frustration, embarrassment, and distress.

49. These effects were exacerbated by the anthrax crisis, during which USPS failed to provide Mr. Hubbard and other hearing impaired employees with critical information about this potentially life-threatening situation in a timely manner.

**C. Judy M. Schuld**

50. Judy M. Schuld has been employed by the USPS for over 19 years. She works as a mail processing clerk at the AMC Cleveland facility. Ms. Schuld is hearing impaired and has been classified under USPS disability classification code 16.



51. At the Cleveland facility, there are typically daily mandatory 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. Because these work meetings are mandatory, they constitute an essential function of Ms. Schuld's job.

52. The USPS does not provide reasonable accommodations, such as qualified sign language interpreters, at these mandatory work meetings, including those meetings where safety issues and procedures are discussed. Without a qualified interpreter, it is virtually impossible for Ms. Schuld to understand what is said at, or to participate in, these mandatory work meetings. Ms. Schuld has frequently requested that qualified sign language interpreters be provided at these mandatory work meetings without success. When Ms. Schuld asks her supervisors what questions were asked at a mandatory work meeting, they typically brush her off.

53. Since October 2001, the USPS has faced anthrax contamination in a number of its facilities. In late fall of 2001, the USPS held a meeting at the Cleveland facility during which the USPS management met with the employees for a safety talk concerning anthrax and other bio-terrorism issues. The USPS provided no reasonable accommodation for hearing impaired employees, such as 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 the USPS provided gloves to the hearing impaired employees.

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

55. Because the USPS has failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, Ms. Schuld cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Ms. Schuld's job. However, Ms. Schuld is unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Ms. Schuld's lack of access to important information and inability to participate at meetings have resulted in, and continue to cause her, anxiety, frustration, embarrassment, and distress.

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

57. The USPS's failure to provide reasonable accommodations, such as qualified sign language interpreters, at mandatory workplace events is a continuing problem for Ms. Schuld.

**D. Grace J. Shirk-Emmons**

58. Grace J. Shirk-Emmons has been employed by the USPS for over 20 years. She works as a mail processing clerk at the Lancaster facility, which is a Processing and Distribution

Center. Mrs. Shirk-Emmons is hearing impaired and has been classified under USPS disability classification code 17.

59. At the Lancaster facility, there are occasionally daily as well as weekly mandatory 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 mandatory 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. Because these work meetings are mandatory, they constitute an essential function of Mrs. Shirk-Emmons's job.

60. The USPS does not provide reasonable accommodations for hearing impaired employees, such as qualified sign language interpreters, at these mandatory work meetings, including those meetings where safety issues are discussed. Without a qualified interpreter, it is virtually impossible for Mrs. Shirk-Emmons to understand what is said at, or to participate in, these mandatory work meetings. Mrs. Shirk-Emmons has requested that qualified interpreters be provided at mandatory work meetings, but her requests have been denied.

61. Since October 2001, the 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 safety information about the anthrax crisis. The USPS failed to provide reasonable accommodations for hearing impaired employees, such as qualified sign language interpreters, at

the vast majority of these anthrax-related safety meetings. Because a qualified interpreter was not provided, Mrs. Shirk-Emmons could not understand what was said at these important safety meetings.

62. Because the USPS has failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, Mrs. Shirk-Emmons cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Mrs. Shirk-Emmons's job. However, Ms. Shirk-Emmons is unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Mrs. Shirk-Emmons's lack of access to important information and inability to participate at meetings have resulted in, and continue to cause Mrs. Shirk-Emmons, great anxiety, frustration, embarrassment, and distress.

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

64. The USPS's failure to provide reasonable accommodations, such as qualified sign language interpreters, at mandatory workplace events is a continuing problem for Mrs. Shirk-Emmons.

**E. Lucy I. Stieglitz**

65. Lucy I. Stieglitz has worked for the USPS for over 18 years. She works as a mail processing clerk at the Oklahoma City facility. Ms. Stieglitz is hearing impaired and has been classified under USPS classification code 17.

66. At the Oklahoma City facility, there are typically weekly mandatory 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. Because these work meetings are mandatory, they constitute an essential function of Ms. Stieglitz's job.

67. The USPS does not provide reasonable accommodations for hearing impaired employees, such as qualified sign language interpreters, at these mandatory work meetings, including those meetings where safety issues are discussed. Without a qualified sign language interpreter, it is virtually impossible for Ms. Stieglitz to understand what is said at, or to participate in, these work meetings.

68. 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 the USPS did not provide a qualified sign language interpreter. Ms. Stieglitz repeatedly requested that qualified sign language interpreters be provided at work meetings, but the USPS repeatedly denied her requests.

69. At the close of each mandatory work meeting, the 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 because, without a qualified sign language interpreter, she could not understand the information presented and discussed at these mandatory meetings.

70. Since October 2001, the USPS has faced anthrax contamination in a number of its facilities. In late fall of 2001, the USPS organized a mandatory safety 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. The USPS did not provide reasonable accommodations for hearing impaired employees, such as qualified sign language interpreters, at this important meeting. Although the USPS convened several meetings for hearing employees to discuss the anthrax crisis, the USPS invited Ms. Stieglitz and the other deaf employees to attend only one such meeting. Even at that meeting, the USPS failed to provide a qualified sign language interpreter and, instead, provided only an unqualified “signer.” As a result, Ms. Stieglitz and other deaf employees were unable to comprehend the important safety information presented at this meeting.

71. Because the USPS has failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, Ms. Stieglitz cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Ms. Stieglitz’s job. However, Ms. Stieglitz is unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Ms. Stieglitz’s lack of access to important information and inability to participate at meetings have resulted in, and continue to cause her, great frustration, anxiety, embarrassment, and distress.

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

73. The USPS's failure to provide reasonable accommodations, such as qualified sign language interpreters, at mandatory workplace events is a continuing problem for Ms. Stieglitz.

**F. Daniel Tighe**

74. Mr. Tighe has been employed as an FSM clerk at the Denver General Mail Facility for approximately 30 years. Mr. Tighe is hearing impaired and has been classified under USPS classification code 17.

75. Mr. Tighe's facility periodically holds required safety and staff meetings. Because these work meetings are mandatory, they constitute an essential function of Mr. Tighe's job.

76. Mr. Tighe has requested the provision of a sign language interpreter for various workplace meetings and events. However, the USPS has repeatedly failed to provide Mr. Tighe with a reasonable accommodation, such as qualified sign language interpreters, for required safety and staff meetings.

77. Because the USPS has failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, Mr. Tighe cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Mr. Tighe's job. However, Mr. Tighe is unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Mr.

Tighe's lack of access to important information and inability to participate at meetings have resulted in, and continue to cause him, great frustration, anxiety, embarrassment, and distress.

**G. Susan Tighe**

78. Ms. Tighe was employed as a TACS clerk at the Denver General Mail Facility for approximately 24 years prior to her retirement in 2004. Ms. Tighe is hearing impaired and was classified under USPS classification code 17.

79. Ms. Tighe's facility periodically held required safety and staff meetings. Because these work meetings were mandatory, they constituted an essential function of Ms. Tighe's job.

80. While employed, Ms. Tighe requested the provision of a sign language interpreter for various workplace meetings and events. However, the USPS repeatedly failed to provide Ms. Tighe with a reasonable accommodation, such as qualified sign language interpreters, for required safety and staff meetings.

81. Because the USPS failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety was discussed, Ms. Tighe was unable to understand the important health, safety, and job information that was provided at these meetings. Because these meetings were mandatory, they constituted an essential function of Ms. Tighe's job. However, Ms. Tighe was unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Ms. Tighe's lack of access to important information and inability to participate at meetings caused her great frustration, anxiety, embarrassment, and distress.



**H. Gail Walker**

82. Ms. Walker has been employed in various mail processing positions at the Lancaster facility for approximately 28 years. Ms. Walker is hearing impaired and has been classified under USPS classification code 15.

83. Ms. Walker's facility periodically holds required safety and staff meetings. Because these work meetings are mandatory, they constitute an essential function of Ms. Walker's job.

84. The USPS has repeatedly failed to provide Ms. Walker with a reasonable accommodation for required safety and staff meetings. Because the USPS has failed to provide reasonable accommodations at mandatory work meetings and meetings where safety is discussed, Ms. Walker cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Ms. Walker's job. However, Ms. Walker is unable to understand the information presented or participate in these meetings in any meaningful way without a reasonable accommodation. Ms. Walker's lack of access to important information and inability to participate at meetings have resulted in, and continue to cause her, great frustration, anxiety, embarrassment, and distress.

**I. George R. Westenberger**

85. George R. Westenberger worked for the USPS for over 28 years before his retirement in October 2003. He worked as a mail processing clerk at the Harrisburg facility. Mr. Westenberger is hearing impaired and was classified under USPS disability classification code 16.

86. At the Harrisburg facility, there were weekly mandatory work meetings at which employees discussed and learned about important work-related issues such as safety, procedures, changes in work assignments and policies, disciplinary rules, and training opportunities, among other topics. The mandatory work meetings typically lasted between 20 and 30 minutes. The USPS also sent Mr. Westenberger to mandatory day-long training seminars at which he could not understand anything because the USPS did not provide a qualified interpreter. The mandatory weekly work meetings provided employees with timely information about important events that affect their working conditions, including important safety information. In addition, employees received immediate feedback on their questions, benefited from questions asked by their co-workers, and obtained timely guidance from supervisors regarding issues specific to their work area. Because these work meetings were mandatory, they constituted an essential function of Mr. Westenberger's job.

87. The USPS did not provide reasonable accommodations for hearing impaired employees, such as qualified sign language interpreters, at these mandatory work meetings. Without a qualified interpreter, it was virtually impossible for Mr. Westenberger to understand what was said at, or to participate in, these mandatory work meetings. Mr. Westenberger asked for qualified sign language interpreters to be provided at mandatory work meetings, but the USPS denied his requests. Indeed, Mr. Westenberger was often asked to sign attendance registers for mandatory work meetings at the Harrisburg facility. Mr. Westenberger refused to sign these attendance registers because no qualified interpreters were provided at these mandatory work meetings.

88. Since October 2001, the 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. The USPS failed to provide reasonable accommodations for hearing impaired employees, such as qualified sign language interpreters, at all of these anthrax-related safety meetings. Mr. Westenberger asked that interpreters be provided, but the USPS denied his requests.

89. The USPS did not effectively communicate with Mr. Westenberger regarding anthrax issues. Mr. Westenberger never received any information concerning medications that he should take if he is exposed to anthrax. He saw posted and distributed to employees what appeared to be very complex medical information about the physical effects of anthrax and the medicine Ciprofloxacin, but he could not understand the information.

90. Because the USPS failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety was discussed, Mr. Westenberger was unable to understand the important health, safety, and job information that was provided at these meetings. Because these meetings were mandatory, they constituted an essential function of Mr. Westenberger's job. However, Mr. Westenberger was unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Mr. Westenberger's lack of access to important information and inability to participate at meetings caused him great frustration, anxiety, embarrassment, and distress.

91. The situation created by the USPS's general failure to provide reasonable accommodations at mandatory workplace events was exacerbated by the anthrax crisis, during which the USPS failed to provide Mr. Westenberger and other hearing impaired employees with critical information about this potentially life-threatening situation in a timely manner.

**J. Diane Whitener**

92. Ms. Whitener has been employed at the Denver General Mail Facility as a TACS for approximately 28 years. Ms. Whitener is hearing impaired and has been classified under USPS classification code 17.

93. Ms. Whitener's facility periodically holds required safety and staff meetings. Because these work meetings are mandatory, they constitute an essential function of Ms. Whitener's job.

94. Ms. Whitener has requested the provision of a sign language interpreter for various workplace meetings and events. However, the USPS has repeatedly failed to provide Ms. Whitener with a reasonable accommodation, such as qualified sign language interpreters, for required safety and staff meetings.

95. Because the USPS has failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety is discussed, Ms. Whitener cannot understand the important health, safety, and job information that is provided at these meetings. Because these meetings are mandatory, they constitute an essential function of Ms. Whitener's job. However, Ms. Whitener is unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Ms. Whitener's lack of access to important information and inability to participate at meetings have resulted in, and continue to cause her, great frustration, anxiety, embarrassment, and distress.

**K. Arlen Whitsit**

96. Mr. Whitsit was employed as a TACS clerk at the Denver General Mail Facility for approximately 28 years prior to his retirement in May 2003. Mr. Whitsit is hearing impaired and was classified under USPS classification code 17.

97. Mr. Whitsit's facility periodically held required safety and staff meetings. Because these work meetings were mandatory, they constituted an essential function of Mr. Whitsit's job.

98. Mr. Whitsit requested the provision of a sign language interpreter for various workplace meetings and events. However, the USPS repeatedly failed to provide Mr. Whitsit with a reasonable accommodation, such as qualified sign language interpreters, for required safety and staff meetings.

99. Because the USPS failed to provide qualified sign language interpreters at mandatory work meetings and meetings where safety was discussed, Mr. Whitsit was unable to understand the important health, safety, and job information that was provided at these meetings. Because these meetings were mandatory, they constituted an essential function of Mr. Whitsit's job. However, Mr. Whitsit was unable to understand the information presented or participate in these meetings in any meaningful way without the use of a qualified sign language interpreter. Mr. Whitsit's lack of access to important information and inability to participate at meetings caused him great frustration, anxiety, embarrassment, and distress.

**VII. Class Treatment**

100. 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. As

noted, the USPS's failure to provide reasonable accommodations to hearing impaired employees is a widespread problem that afflicts numerous USPS facilities across the country. The pervasive nature of USPS's discrimination against hearing impaired employees can best be addressed by class action treatment. Further, the 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.

**A. Rule 23(a)**

101. The proposed classes satisfy all of the Fed. R. Civ. P. 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation.

**1. Numerosity**

102. The proposed classes are so numerous and geographically dispersed that the pursuit of individual actions by each class member is impracticable. According to USPS records, as of March 2011, the USPS employed more than 3,000 deaf and hard of hearing employees. Additionally, there are approximately 3,000 deaf and hard of hearing individuals who were previously employed by the USPS at some point since November 2001. Both Classes A and B therefore consist of thousands of hearing impaired USPS employees from across the country who have been denied reasonable accommodations for their hearing impairment at mandatory workplace events. Joinder of all class members is impracticable.

103. 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 reasonable accommodations at mandatory workplace events) were not unique to Brentwood, but were being experienced by hearing impaired USPS employees at USPS facilities across the country. As demonstrated by the named Plaintiffs, the USPS's discrimination against its hearing

impaired employees through its failure to provide reasonable accommodations at mandatory workplace events continues to occur at USPS facilities in Washington, D.C.; Cleveland, Ohio; Lancaster, Pennsylvania; Oklahoma City, Oklahoma; Harrisburg, Pennsylvania; and Denver, Colorado. The named Plaintiffs, however, represent only a small sample of hearing impaired employees faced with the USPS's failure to provide reasonable accommodations.

## **2. Commonality**

104. There are questions of law and fact common to the classes that predominate over individual questions, including but not limited to whether the USPS has discriminated, and continues to discriminate, against its hearing impaired employees in violation of the Rehabilitation Act by engaging in a nationwide practice of failing to provide reasonable accommodations for these employees at mandatory workplace events. Mandatory workplace events occur at USPS facilities throughout the country, and the USPS's failure to provide reasonable accommodations at these meetings affects hearing impaired employees' ability to perform the essential functions of their jobs. Plaintiffs challenge the USPS's practices and systemic failures that discriminate against the two classes as a whole.

## **3. Typicality**

105. The claims of the Plaintiffs are typical of the claims of the two classes. The issues of fact presented by the allegations of each class are common to the classes as a whole (namely, the failure to provide reasonable accommodations at mandatory workplace events), 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 that they are atypical of those of the class; rather, hearing impaired USPS employees nationwide share the very complaints made by Plaintiffs. Like the putative class members, Plaintiffs: (1) meet the definition of USPS disability classification codes 15, 16 or 17;

and (2) have all been subject to the same challenged practices that are applied to the class as a whole -- namely, the USPS's failure to provide reasonable accommodations for their hearing impairments at mandatory workplace events.

#### **4. Adequacy of Representation**

106. Plaintiffs and their legal representatives will fairly and adequately protect the interests of each of the two classes. 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 classes.

107. Class counsel have extensive experience litigating class actions and are fully qualified to pursue the claims of the classes in this case. Specifically, Covington & Burling LLP ("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 cases. During the 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.

108. 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. She has more than 35 years of experience litigating civil rights cases for deaf individuals, and experience litigating major class action lawsuits involving discrimination against individuals with disabilities.

109. McCollum & Associates, LLC ("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 people. For example, attorney Carla Mathers, who previously represented the Plaintiffs in this action, has 18 years experience as an attorney working with the deaf community and is a certified sign language interpreter.

110. The Law Office of Kevin C. Flesch, LLC, is a law firm located in Englewood, Colorado. Mr. Flesch has been practicing for 15 years and has extensive experience representing plaintiffs in a variety of matters, including employment discrimination cases.

**B. Rule 23(b)(2)**

111. The proposed Class A satisfies the Fed. R. Civ. P. 23(b)(2) requirement that the defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). USPS's treatment of deaf and hard of hearing employees is governed by a single set of nationwide policies that apply generally to all current Deaf and Hard of hearing Employees. Class A seeks broad injunctive relief that would effect a nationwide change in USPS's policies and would apply uniformly to all class members. That relief does not depend on, or require, any individualized factual inquiry.

**C. Rule 23(b)(3)**

112. The proposed Class B satisfies the Fed. R. Civ. P. 23(b)(3) requirements of predominance and superiority.

113. With respect to Class B, common questions of fact and law predominate over any individualized issues. USPS's treatment of deaf and hard of hearing employees is governed by a single set of nationwide policies. This single set of policies has resulted in class-wide discrimination and denial of effective communication accommodations, and the Plaintiffs seek damages for the consequences of this single set of nationwide policies. The Plaintiffs request damages based on a single formula that applies to all class members and allocates damages based on a few generalized factors, rather than highly specific, individualized assessments.

114. It would be far superior to litigate the Class B claims as a class action than as a series of individual claims. It would be inefficient and a waste of "time, effort, and expense" to force thousands of putative class members to bring thousands of individual lawsuits challenging the same nationwide policies.

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

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

116. The USPS has repeatedly and unjustifiably denied Plaintiffs reasonable accommodations at mandatory workplace events, to which they are entitled under the Rehabilitation Act. All purported accommodations provided by USPS have been ineffective and were not reasonable under the law.

117. In doing so, the USPS has discriminated against its hearing impaired employees by preventing them from understanding and participating in mandatory work meetings, thereby impeding their ability to perform an essential job function.

118. In addition, the USPS's refusal to provide reasonable accommodations at mandatory workplace events has caused Plaintiffs and putative class members to suffer frustration, anxiety, embarrassment, and distress. These injuries took on a heightened importance in light of this country's elevated state of terrorist alert and renewed efforts to address anthrax and other bioterrorism issues that have recently and disproportionately affected USPS employees across the country.

119. The USPS has also created a hostile work environment for hearing impaired employees and has denied them necessary assistance in locating and pursuing promotional (higher level) work opportunities within the USPS.

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

**IX. Prayer for Relief**

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

- (i) Certify a class action, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), defining the class as:

All current Deaf or Hard of Hearing Employees employed by the Postal Service who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied Telecommunication Devices for the Deaf (TTYs) for phone communications; (3) they were denied emergency evacuation notification systems; (4) they were subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) they were denied promotional opportunities and/or assistance to pursue promotional opportunities within the

Postal Service due to their deafness or hearing impairment;

- (ii) Certify a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), defining the class as:

All current and former Deaf or Hard of Hearing Employees who were employed by the Postal Service between November 14, 2001, and the present, who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied Telecommunication Devices for the Deaf (TTYs) for phone communications; (3) they were denied emergency evacuation notification systems; (4) they were subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) they were denied promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment;

- (iii) Appoint the named Plaintiffs as Class Representatives;

- (iv) Designate each of the undersigned counsel as Class Counsel;

- (v) Declare that the USPS's practice of failing to provide reasonable accommodations for its hearing impaired employees at mandatory workplace events is a violation of the Rehabilitation Act;

- (vi) Enjoin the USPS nationwide from continuing to engage in discriminatory practices against its hearing impaired employees by failing to provide reasonable accommodations at mandatory workplace events in violation of the Rehabilitation Act; enabling a hostile work environment for hearing impaired employees; and denying hearing impaired employees necessary assistance in locating and pursuing promotional work opportunities within the USPS;

- (vii) Retain jurisdiction over the 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;

- (viii) Grant all Class B Plaintiffs compensatory monetary damages, pursuant to 42 U.S.C. § 1981a, in an amount to be determined at trial for the emotional pain, suffering, inconvenience,

mental anguish, and other nonpecuniary losses that Plaintiffs suffered because of the USPS's failure to reasonably accommodate them; and

(ix) 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,

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