

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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BRUCE C. HUBBARD, JAMES  
GRALUND, JUDY M.  
SCHULD, GRACE J. SHIRK-  
EMMONS, LUCY I. STIEGLITZ,  
GEORGE R. WESTENBERGER,  
DANIEL TIGHE, SUSAN TIGHE,  
GEORGE WESTENBERGER, DIANE  
WHITENER, ARLEN WHITSIT,  
and GAIL WALKER  
individually and on behalf of a class  
of persons similarly situated,

Plaintiffs,

v.

PATRICK R. DONAHOE,  
POSTMASTER GENERAL,  
UNITED STATES  
POSTAL SERVICE,

Defendant.

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

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***GLOBAL SETTLEMENT AGREEMENT***

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## **EXHIBITS**

- Exhibit 1 – *Hubbard* Plaintiffs' Third Amended Complaint
- Exhibit 2 – Notice of Proposed Class Action Settlement and Fairness Hearing
- Exhibit 3 – Communication Accommodation Request Form
- Exhibit 4 – Communication Accommodation Plan
- Exhibit 5 – Sample Release Form
- Exhibit 6 – Plaintiffs' Unopposed Motion for Conditional Certification of Settlement Classes
- Exhibit 7 – Proposed Order Granting Plaintiffs' Unopposed Motion
- Exhibit 8 – Sample Claim Form
- Exhibit 9 – Sample Excel Tracking Workbook
- Exhibit 10 – Notice of Order Granting Final Approval of the Global Settlement Agreement
- Exhibit 11 – Notice of Ineligibility
- Exhibit 12 – Sample SF 1153



## 1. INTRODUCTION

This settlement agreement (Global Settlement Agreement) is entered into by, Bruce C. Hubbard (Hubbard), James Gralund (Gralund), Judy M. Schuld (Schuld), Grace J. Shirk-Emmons (Emmons), Lucy I. Stieglitz (Stieglitz), Daniel Tighe (D. Tighe), Susan Tighe (S. Tighe), George R. Westenberger (Westenberger), Diane Whitener (Whitener), Arlen Whitsit (Whitsit) and Gail Walker (Walker) as the settlement class agents (the "Class Representatives"), and the United States Postal Service ("Postal Service" or "USPS") (collectively, the "Parties"). This Global Settlement Agreement resolves all claims asserted by Hubbard, Gralund, Schuld, Emmons, Stieglitz, D. Tighe, S. Tighe, Westenberger, Whitener, Whitsit, and Walker, individually and on behalf of all other persons similarly situated in two separate disability discrimination class action cases: (1) a federal court class action captioned as *Bruce C. Hubbard, et al., v. Patrick R. Donahoe, PMG*, Civil Action No. 03-1062 (RJL/JMF) (D.D.C) (*Hubbard Class Action*); and (2) an Equal Employment Opportunity Commission (EEOC) administrative class action captioned as *Daniel Tighe v. Patrick R. Donahoe, PMG*, EEOC No. 320-2005-00065X; Agency No. 1E-801-0070-04 (*Tighe Class Action*). In the interest of resolving the issues between the Parties presented in the *Hubbard* and the *Tighe* Class Actions without the expense, delay, and inconvenience of further litigation of the issues raised in these two actions; in reliance upon the representations, mutual promises, covenants, and obligations set out in this Global Settlement Agreement; for good and valuable consideration also set out in this Global Settlement Agreement; and subject to Rule 60(b) of the Federal Rules of Civil Procedure, the Parties, through their undersigned counsel of record, hereby stipulate and agree as follows:

## 2. DEFINITIONS

Unless otherwise noted, the following terms used in this Global Settlement Agreement shall have the meanings defined below:

### 2.1.1 "ADRIA"

Alternative Dispute Resolution Inclusiveness Analyst as defined and discussed in greater detail in Section 9.9 of this Global Settlement Agreement.

### 2.1.2 "Agreement in Principle"

Written agreement entered into on November 10, 2010, between the Postal Service, the *Hubbard* Plaintiffs, the *Tighe* Plaintiffs and the respective classes they represent. The terms of the Agreement in Principle are incorporated into this Global Settlement Agreement. Both the Global Settlement Agreement and the Agreement in Principle resolve fully and finally all issues and claims in the *Hubbard Class Action* and the *Tighe Class Action*.

### 2.1.3 “Amended *Hubbard* Class Action”

Upon the filing of the Third Amended Complaint (which incorporates or merges all allegations asserted in both the *Hubbard* Class Action and the *Tighe* Class Action), attached hereto as **Exhibit 1**, the action to be captioned as *Hubbard, et al. v. Patrick R. Donahoe*, Civil Action No. 03-1062 (RJL/MJF) (D.D.C.).

### 2.1.4 “Area”

Any of seven (7) Postal Service groups of Postal Service Districts, specifically: Capital Metro Operations, the Eastern Area, the Great Lakes Area, the Northeast Area, the Pacific Area, the Southwest Area and the Western Area.

### 2.1.5 “ASL”

American Sign Language.

### 2.1.6 “Best Efforts”

Efforts reasonably designed to achieve a specified obligation consistent with the purposes of this Global Settlement Agreement and Agreement in Principle.

### 2.1.7 “Claim”

A claim by any Eligible Damages Class Member seeking monetary compensation for damages suffered due to: (1) the alleged denial of communication accommodations, including interpreters, for critical workplace meetings and events; (2) the alleged denial of Telecommunication Devices for the Deaf (TTYs) for phone communications; (3) the alleged denial of emergency evacuation notification systems; (4) being allegedly subjected to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) the alleged denial of promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment. All causes of action asserted by each Eligible Damages Class Member constitute one Claim. There is only one Claim per Eligible Damages Class Member.

### 2.1.8 “Claim Form”

A written form used by an Eligible Damages Class Member to initiate his or her Claim for monetary relief pursuant to the Claims Process set forth in Section 7 of this Global Settlement Agreement.

### 2.1.9 “Class Claims Administrator” or “Class Administrator”

The firm or entity that will be selected by Class Counsel, as provided by this Global Settlement Agreement, to assist in the administration of the Global Settlement Agreement.

#### 2.1.10 "Class Counsel"

All counsel of record, individually or collectively, who are signatories to this Global Settlement Agreement on behalf of the Class and are signatories to demonstrate their consent to the payment of attorneys' fees, expenses and costs as set forth in this Global Settlement Agreement. They are as follows: Thomas S. Williamson, Jr., Esq., Covington & Burling, LLP, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004; Elaine Gardner, Esq., Washington Lawyers' Committee for Civil Rights and Urban Affairs, 11 Dupont Circle, N.W., Suite 400, Washington, D.C. 20036; James E. McCollum, Jr., Esq., McCollum & Associates, LLC, 7309 Baltimore Avenue, Suite 117, College Park, MD 20741; and Kevin C. Flesch, Esq., Law Office of Kevin Flesch, 333 W. Hampden Avenue, Ste. 710, Englewood, CO 80110.

#### 2.1.11 "Class Period" or "Liability Period"

November 14, 2001, to the Effective Date of this Global Settlement Agreement.

#### 2.1.12 "Class Representatives"

Hubbard, Schuld, Emmons, Stieglitz, and Westenberger. Upon the filing of the Third Amended Complaint, Gralund, D.Tighe, S. Tighe, Whitener, Whitsit and Walker will be added as additional Class Representatives. No other Eligible Class Members may be added as additional Class Representatives.

#### 2.1.13 "Communication Accommodations"

Reasonable accommodations provided by the Postal Service to Deaf and Hard of Hearing Employees which allow Deaf and Hard of Hearing Employees to effectively communicate with their supervisors, managers and co-workers during certain specified workplace events.

#### 2.1.14 "Communication Accommodation Request Form"

A form that can be used by Deaf or Hard of Hearing Employees to request reasonable Communication Accommodations from the Postal Service. A sample Communication Accommodation Request Form is attached hereto as **Exhibit 3**.

#### 2.1.15 "Communication Accommodation Plan"

A form that will be used by Deaf or Hard of Hearing Employees and the Postal Service to document the Communication Accommodations that will be provided to each Deaf and Hard of Hearing Employee who submits an oral or written request for a communication accommodation to his or her supervisor, manager or respective District Disability Coordinator. A sample Communication Accommodation Plan is attached hereto as **Exhibit 4**.

#### 2.1.16 "Counsel for the Postal Service"

Beverly Russell, Assistant United States Attorney, District of Columbia and David B. Ellis, Chief Counsel, Postal Service.

#### 2.1.17 "Court" or "District Court"

The United States District Court for the District of Columbia.

#### 2.1.18 "Damages Settlement Class"

All current and former Deaf or Hard of Hearing Employees who were employed by the Postal Service between November 14, 2001, and the Effective Date, who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied TTY 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.

#### 2.1.19 "Deaf Employee"

A Postal Service employee who meets the definition of Postal Service disability classification code 16 (total deafness with understandable speech) or code 17 (total deafness with inability to speak clearly).

#### 2.1.20 "Distribution Plan/Settlement Formula"

The plan utilized to distribute Settlement Shares to Eligible Damages Class Members that is set forth in Section 8 of this Global Settlement Agreement.

#### 2.1.21 "DRAC"

District Reasonable Accommodation Committee. This is a multi-disciplinary committee in each of the Postal Service's Districts which *inter alia* engages in interactive discussions with Deaf and Hard of Hearing Employees to ensure that the Postal Service provides communication accommodations as set forth in Section 9 of this Global Settlement Agreement.

#### 2.1.22 "EEO"

Equal Employment Opportunity.

#### 2.1.23 "EEOC" or "Commission"

United States Equal Employment Opportunity Commission.

2.1.24 “Effective Date”

The date upon which the Court enters an Order Granting Final Approval of the Global Settlement Agreement.

2.1.25 “Eligible Class Member”

Any Deaf or Hard of Hearing Employee who meets the “Damages Settlement Class” definition in Section 2.1.18 of the Global Settlement Agreement and/or the “Injunctive Settlement Class” definition in Section 2.1.34 of the Global Settlement Agreement.

2.1.26 “Eligible Damages Class Member”

Any Deaf or Hard of Hearing Employee who meets the “Damages Settlement Class” definition in Section 2.1.18 of the Global Settlement Agreement.

2.1.27 “Eligible Injunctive Class Member”

Any Deaf or Hard of Hearing Employee who meets the “Injunctive Settlement Class” definition in Section 2.1.34 of the Global Settlement Agreement.

2.1.28 “FCC”

Federal Communications Commission.

2.1.29 “Final Approval Date”

The date upon which the Court enters an Order Granting Final Approval under Fed.R.Civ.P. 23(e), finding that the Global Settlement Agreement is fair, adequate, and reasonable.

2.1.30 “Global Settlement Agreement”

This Global Settlement Agreement.

2.1.31 “Hard of Hearing Employee”

A Postal Service employee who meets the definition of Postal Service disability classification code 15 (total deafness in one ear or inability to hear ordinary conversation, correctable with a hearing aid).

2.1.32 “Hubbard Class Action”

A federal court class action captioned as *Bruce C. Hubbard, et al., v. Patrick R. Donahoe, PMG*, Civil Action No. 03-1062 (RJL/MJF) (D.D.C).

#### 2.1.33 "Implementation Costs"

The administrative costs associated with the implementation of this Global Settlement Agreement, including the fees and costs of the Class Administrator. Implementation Costs do not include attorneys' fees, costs and expenses.

#### 2.1.34 "Injunctive Settlement Class"

All current Deaf or Hard of Hearing Employees employed by the Postal Service as of the Effective Date, who allege that: (1) they were denied communication accommodations, including interpreters, for critical workplace meetings and events; (2) they were denied TTY 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.

#### 2.1.35 "Interpreter"

An individual who is qualified to interpret spoken or written English into American Sign Language or another form of sign language and vice versa.

#### 2.1.36 "MSPB"

Merit Systems Protection Board.

#### 2.1.37 "Non-Class Counsel"

Private counsel retained by Eligible Class Members other than the Class Representatives.

#### 2.1.38 "Non-Presumed Workplace Events"

Five (5) workplace events set forth in Section 9.2.1 of this Global Settlement Agreement. The Postal Service will provide Communication Accommodations for the Non-Presumed Workplace Events in a descending order or priority, as further discussed in Section 9.2 of this Global Settlement Agreement.

#### 2.1.39 "Notice of Proposed Class Action Settlement and Fairness Hearing"

Notice to the Damages Settlement Class and Injunctive Settlement Class after the Court enters a Preliminary Approval Order under Rule 23(e), Fed.R.Civ.P., attached hereto as **Exhibit 2**.

2.1.40 “Notice of Order Granting Final Approval of the Global Settlement Agreement”

Notice to the Damages Settlement Class and Injunctive Settlement Class after the Court enters an Order Granting Final Approval under Rule 23(e), Fed.R.Civ.P., attached hereto as **Exhibit 10**.

2.1.41 “Objections”

Any disagreement filed by a potential Eligible Class Member with the Court expressing disagreement with the Global Settlement Agreement as further discussed in Section 7.1.1 of this Global Settlement Agreement.

2.1.42 “Party”

Bruce C. Hubbard (Hubbard), James Gralund (Gralund), Judy M. Schuld (Schuld), Grace J. Shirk-Emmons (Emmons), Lucy I. Stieglitz (Stieglitz), Daniel Tighe (D. Tighe), Susan Tighe (S. Tighe), George R. Westenberger (Westenberger), Diane Whitener (Whitener), Arlen Whitsit (Whitsit) and Gail Walker (Walker) as the Class Representatives, or the Postal Service.

2.1.43 “Parties”

Bruce C. Hubbard (Hubbard), James Gralund (Gralund), Judy M. Schuld (Schuld), Grace J. Shirk-Emmons (Emmons), Lucy I. Stieglitz (Stieglitz), Daniel Tighe (D. Tighe), Susan Tighe (S. Tighe), George R. Westenberger (Westenberger), Diane Whitener (Whitener), Arlen Whitsit (Whitsit), and Gail Walker (Walker) as the Class Representatives, and the Postal Service.

2.1.44 “Plaintiffs”

The individual plaintiffs named in the Amended *Hubbard* Class Action.

2.1.45 “Postal Service” or “USPS”

The United States Postal Service and the Postmaster General in his or her official capacity.

2.1.46 “PRAAC”

Postal Service Reasonable Accommodation Assistance Center as defined in greater detail in Section 9.9 of this Global Settlement Agreement.

2.1.47 “Preliminary Approval Date”

The date upon which the Court enters an Order Granting Preliminary Approval of the Global Settlement Agreement under Rule 23(e), Fed.R.Civ.P.

#### 2.1.48 “Presumed Workplace Events”

Six (6) workplace events listed in Section 9.1.1 of this Global Settlement Agreement for which it is presumed that an ASL interpreter or another sign language equivalent will be provided for Deaf and Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication so long as the employees have first submitted an oral or written request for a communication accommodation to their immediate supervisor, manager, or respective District Disability Coordinator as discussed more fully in Section 9.10.4(1) below.

#### 2.1.49 “Reasonable Attorneys’ Fees, Expenses and Costs”

The sum of one million five-hundred-fifty-thousand dollars (\$1,550,000) to be paid by the Postal Service for all attorneys’ fees and costs incurred by Plaintiffs’ counsel of record in the *Hubbard* Class Action, the *Tighe* Class Action and the Amended *Hubbard* Class Action.

#### 2.1.50 “Release Form”

The form to be signed by an Eligible Damages Class Member prior to the issuance of the particular Eligible Damages Class Member’s Settlement Share. A sample Release Form is attached hereto as **Exhibit 5**.

#### 2.1.51 “Settlement Proceeds”

Four million five hundred fifty thousand dollars (\$4,550,000) or the entire amount of monetary relief to be paid under this Global Settlement Agreement.

#### 2.1.52 “Settlement Share”

The amount of monetary relief provided to individual Eligible Damages Class Members pursuant to the Distribution Plan set forth in Section 8 of this Global Settlement Agreement.

#### 2.1.53 “Seventy-Two-Hour Period”

The period during which the Postal Service has to reschedule a Presumed Workplace Event for a Deaf or Hard of Hearing Employee with an Interpreter in the event that the Interpreter was not available for the initial Presumed Workplace Event.

#### 2.1.54 “Term of this Global Settlement Agreement”

The period from the Effective Date until the expiration of the Global Settlement Agreement pursuant to Section 9.11.1 of this Global Settlement Agreement.



#### 2.1.55 “Tighe Class Action”

An EEOC administrative class action captioned as *Daniel Tighe v. Patrick R. Donahoe, PMG*, EEOC No. 320-2005-00065X; Agency No. 1E-801-0070-04.

#### 2.1.56 “TRS”

Telecommunications Relay Service. TRS is a Communication Accommodation that allows a Deaf or Hard of Hearing Employee to communicate with communications assistants (CA) in order to facilitate telephone calls with individuals who are not Deaf or Hard of Hearing. With a typical TRS system, a Deaf or Hard of Hearing Employee uses a TTY to call the CA at the relay center. The CA then relays the text communication with the non-Deaf or Hard of Hearing individual orally and then communicates with the Deaf or Hard of Hearing individual using text communication.

#### 2.1.57 “Ubi Duo”

A pair of devices that facilitate improved communication between Deaf or Hard of Hearing people and hearing people. Each person using the device has a keyboard and attached screen, and the conversation appears in front of both of them in real time. This device can be used to facilitate communication between some hearing and hearing-impaired individuals in the event that an interpreter is not readily available.

#### 2.1.58 “Unclaimed Funds”

Any Eligible Damages Class Member’s Settlement Share that is not claimed for any reason, including but not limited to, because the Eligible Damages Class Member cannot be located or the Eligible Damages Class Member does not cash a Settlement Share check within one year of the date of its issuance.

#### 2.1.59 “VRI”

Video Remote Interpreting. This is a Communication Accommodation that allows a Deaf or Hard of Hearing Employee to communicate with an Interpreter via a webcam and high speed internet access. The Interpreter then interprets into spoken English what the Deaf or Hard of Hearing Employee is communicating via ASL or other sign language equivalent and vice versa.

#### 2.1.60 “VRS”

Video Relay Service or Video Phone. This is a Communication Accommodation that affords Deaf or Hard of Hearing Employees the ability to communicate via phone with hearing people in real time, using an Interpreter. A Deaf or Hard of Hearing Employee uses a videophone or webcam to connect via broadband internet to a Video Relay Service. The caller is routed to a sign language interpreter in front of a camera or videophone. The interpreter then places calls

and interprets as a neutral, non-participating third party. Anything that the audio user says is signed to the video user, and anything signed by the video user is spoken to the audio user.

### 3. RECITALS

#### 3.1 Brief Summary of Litigation

##### 3.1.1 *Hubbard Class Action*

The *Hubbard Class Action* is a proposed nationwide district court class action involving current and former Deaf Employees. Hubbard, Schuld, Emmons, Stieglitz and Westenerger (the "*Hubbard Plaintiffs*") allege they have been subjected to disability discrimination in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791, *et seq.* (Rehabilitation Act) in that they have been denied sign language interpreters at safety and mandatory workplace meetings and events.

The *Hubbard Plaintiffs* filed their original class complaint in the United States District Court for the District of Columbia on or about May 14, 2003. They then filed two amended class complaints thereafter. The Second Amended Complaint was filed on or about July 10, 2006. In their Second Amended Complaint, the *Hubbard Plaintiffs* defined the proposed *Hubbard Class Action* to include:

All former, current, and future USPS mail processing clerks or mail handlers employed by USPS on or after November 14, 2001, who meet the definition of USPS disability classification code 16 ("total deafness with understandable speech") or USPS disability classification code 17 ("total deafness with inability to speak clearly"), who use ASL.

The Postal Service answered all three complaints and denied that it had engaged in any discrimination against the *Hubbard Plaintiffs* or the class they seek to represent. Further, the Postal Service asserted that it has provided reasonable communication accommodations to the *Hubbard Plaintiffs* in accordance with the provisions of the Rehabilitation Act. The *Hubbard Plaintiffs* and the Postal Service engaged in extensive written and oral discovery after the Second Amended Complaint was filed. The *Hubbard Plaintiffs* and the Postal Service then filed a joint motion with the Court requesting a stay of litigation in order to engage in settlement discussions with a private mediator. The Court subsequently stayed the *Hubbard Class Action* to enable the parties to pursue mediation. At the time the *Hubbard Class Action* was stayed by the Court, the *Hubbard Plaintiffs* had not moved for class certification pursuant to Federal Rule of Civil Procedure 23.

##### 3.1.2 *Tighe Class Action*

The *Tighe Class Action* is a proposed nationwide EEOC administrative class action involving Deaf Employees and Hard of Hearing Employees with claims

similar to the *Hubbard* Plaintiffs, plus some additional claims as discussed below. The *Tighe* Class Action was filed pursuant to 29 C.F.R. §1614.204(c). In the *Tighe* Class Action, Gralund, D. Tighe, S. Tighe, Whitener and Whitsit (the “*Tighe* Plaintiffs”) assert that the Postal Service systematically fails to provide sign language interpreters for Deaf Employees during critical workplace meetings and training sessions. The *Tighe* Plaintiffs further allege that the Postal Service has routinely failed to provide other reasonable accommodations to Deaf and Hard of Hearing Employees including: (1) emergency evacuation notification systems; (2) TTY for phone communications where non-disabled Postal Service employees have access to phone service; and (3) closed captioning on required safety and training videos. Finally, the *Tighe* Plaintiffs contend that the Postal Service’s alleged discriminatory actions have: (1) created a hostile work environment for Deaf and Hard of Hearing Employees; and (2) denied Deaf and Hard of Hearing Employees necessary assistance in locating and pursuing promotional (higher level) work opportunities within the Postal Service.

The *Tighe* Plaintiffs filed their administrative class complaint against the Postal Service on or about July 29, 2004. The *Tighe* Plaintiffs then made a request for a hearing before an EEOC administrative judge to address their class complaint. On or about December 6, 2004, EEOC administrative judge Dickie Montemayor was assigned to handle the *Tighe* Class Action. Thereafter, the *Tighe* Plaintiffs filed a motion for class certification, seeking to represent a class of Deaf and Hard of Hearing Employees who: (1) have been denied reasonable accommodations, including communication accommodations, as set forth above; (2) have been subjected to a hostile working environment; and (3) have been denied promotional work opportunities with the Postal Service. In their motion for certification, the *Tighe* Plaintiffs also requested authorization to conduct pre-certification discovery. Judge Montemayor granted the *Tighe* Plaintiffs’ request to conduct discovery, but did not address the *Tighe* Plaintiffs’ request for class certification. Thereafter, the Postal Service filed a motion to stay further litigation of the *Tighe* Class Action pending resolution of the class certification issue in the *Hubbard* Class Action. Judge Montemayor issued an Order on March 6, 2007, granting the Postal Service’s motion for a stay. The *Tighe* Class Action has been held in abeyance since March 6, 2007, and to date, the *Tighe* Plaintiffs’ motion for class certification has not been ruled on by Judge Montemayor.

### 3.2 Mediation and Settlement

The Parties entered into extensive global settlement negotiations with mediator Kenneth Feinberg, Esq., beginning in April 2010 and continuing through November 10, 2010. The Parties jointly selected Mr. Feinberg to serve as the mediator. After six (6) months of extensive negotiations, the Parties reached an agreement in principle to globally resolve all issues alleged in the *Hubbard* and *Tighe* Class Actions on November 10, 2010. The *Hubbard* and *Tighe* Plaintiffs were represented by Thomas S. Williamson, Jr., Esq., Elaine Gardner, Esq., Carla Mathers, Esq., and Kevin Flesch, Esq. The Postal Service was represented by Beverly Russell, Esq., Assistant United States Attorney,

Department of Justice, and David B. Ellis, Esq., Chief Counsel, National Employment Litigation Unit, United States Postal Service.

As a result of these negotiations, the Parties entered into a written agreement in principle (Agreement in Principle), the stipulations and agreements of which are contained in this Global Settlement Agreement. This Global Settlement Agreement supplants the terms of the Agreement in Principle and represents the Parties' final agreement to resolve all issues between the Parties in the *Hubbard* Class Action, the *Tighe* Class Action and the Amended *Hubbard* Class Action.

### 3.3 Fairness of the Global Settlement Agreement

The *Hubbard* and *Tighe* Plaintiffs believe that the terms of this Global Settlement Agreement are fair, reasonable and adequate; that this Global Settlement Agreement provides substantial benefits to the proposed Settlement Classes and Eligible Class Members; and that the settlement of both the *Hubbard* and *Tighe* cases on the terms set forth in this Global Settlement Agreement is in the best interests of the proposed Settlement Classes, as defined in Section 4, and the Eligible Class Members.

### 3.4 Purpose of the Global Settlement Agreement

The purpose of this Global Settlement Agreement is to make a full, complete and final resolution of all claims and causes of action that have been or could have been asserted against the Postal Service by the Settlement Classes, as defined in Section 4, relating to discrimination they allegedly suffered because of their status as Deaf or Hard of Hearing Employees. This Global Settlement Agreement represents a complete compromise of all claims. It reflects the Parties' recognition that litigation of these claims would severely burden all concerned and would require an extraordinary commitment of time, resources, and money.

### 3.5 Denial of Liability

The Postal Service expressly denies any wrongdoing or liability with regard to the allegations contained in the *Hubbard* Class Action, the *Tighe* Class Action or the Amended *Hubbard* Class Action. This Global Settlement Agreement represents a compromise of disputed claims. It reflects the Parties' recognition that litigation of these claims would severely burden all concerned and would require an extraordinary commitment of time, resources, and money. The Global Settlement Agreement and the payment of the Settlement Shares under the Global Settlement Agreement do not constitute an admission by any Party, as to the merits, validity or accuracy, or lack thereof, of any of the allegations or claims in the *Hubbard* Class Action, the *Tighe* Class Action or the Amended *Hubbard* Class Action.

Neither the Court nor the EEOC has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations or claims

alleged in the *Hubbard* Class Action, the *Tighe* Class Action or the Amended *Hubbard* Class Action. Except as provided in this paragraph, no part of this Global Settlement Agreement may be used by anyone in any proceeding of any kind as evidence of discrimination or prohibited retaliation, or as evidence of any violation of Title VII; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794 *et seq.*; the common law of any jurisdiction; another federal, state or local law, statute, ordinance, regulation, rule, or executive order; or any obligation or duty at law or in equity, including collective bargaining agreements. Similarly, except as provided in this paragraph, none of the communications made concerning this Global Settlement Agreement, nor information and statements submitted during its negotiation or related mediation, nor any action taken to implement it, may be used by anyone other than the Party who created or originally provided such materials to establish a violation of any federal, state or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity including collective bargaining agreements. Documents, data, and information prepared for negotiations and/or mediation and exchanged by the Parties in connection with the *Hubbard* Class Action, the *Tighe* Class Action and the Amended *Hubbard* Class Action may not be used for any purpose other than in connection with fairness proceedings or in any manner by anyone (other than the Party who created such documents, data or information) in this or in any other case, except that documents or information specifically relating to the intent of the Parties in crafting a particular provision in this Global Settlement Agreement may be used solely with respect to enforcement of that provision if a court or Administrative Judge determines that such use is necessary to resolve a fundamental dispute regarding the meaning of such provision.

In the event that final approval of this Global Settlement Agreement is not obtained or the Global Settlement Agreement is deemed null and void for any reason, nothing herein shall be deemed to waive any of the Eligible Class Members' claims or the Postal Service's objections and defenses (including, without limitation, objections to the Third Amended Complaint and class certification), and neither this Global Settlement Agreement, Plaintiffs' Unopposed Motion for Conditional Certification of Settlement Classes, related briefing or the Third Amended Complaint shall be admissible in any court regarding the propriety of class certification or regarding any other issue or subject of the *Hubbard* Class Action, the *Tighe* Class Action or the Amended *Hubbard* Class Action.

#### **4. THE SETTLEMENT CLASSES**

The Parties agree, for purposes of this Global Settlement Agreement only, to a "Damages Settlement Class" and an "Injunctive Settlement Class" (collectively, the "Settlement Classes"), as follows.

#### 4.1 Damages Settlement Class

The Parties agree, for purposes of this Global Settlement Agreement only, to a Rule 23(b)(3), Fed.R.Civ.P., opt-out settlement class, as defined in Section 2.1.18 of this Global Settlement Agreement. If this Global Settlement Agreement is approved by the Court, all persons within the Damages Settlement Class are bound by its terms, except those Eligible Damages Class Members who exercise the right to opt out of the Damages Settlement Class pursuant to subsection 6.1.3 of this Global Settlement Agreement. Eligible Damages Class Members who elect to opt out must do so in writing, in the manner and by the date specified in the Notice of Proposed Class Action Settlement and Fairness Hearing.

#### 4.2 Injunctive Settlement Class

The Parties agree, for purposes of this Global Settlement Agreement only, to a Rule 23(b)(2), Fed.R.Civ.P., no opt-out settlement class, as defined in Section 2.1.34 of this Global Settlement Agreement. If this Global Settlement is approved by the Court, all persons within the Settlement Class are bound by its terms.

### 5. COURT APPROVAL OF THE SETTLEMENT CLASSES AND THE GLOBAL SETTLEMENT AGREEMENT

#### 5.1 Plaintiffs' Unopposed Motion for Conditional Certification of Settlement Classes

Concurrent with the filing of this Global Settlement Agreement with the Court for preliminary approval, Plaintiffs will file an Unopposed Motion for Conditional Certification of Settlement Classes (Unopposed Motion), attached hereto as **Exhibit 6**. In the Unopposed Motion, the Plaintiffs will request that the Court:

(a) Grant the *Hubbard* Plaintiffs leave to file a Third Amended Complaint, adding the *Tighe* Plaintiffs and Walker as named Plaintiffs in the *Hubbard* Class Action and containing all allegations asserted in both the *Hubbard* and *Tighe* Class Actions (the "Amended *Hubbard* Class Action");

(b) Conditionally certify the Settlement Classes for settlement purposes only;

(c) Approve Hubbard, Gralund, Schuld, Emmons, Stieglitz, D. Tighe, S. Tighe, Westenberger, Whitener, Whitsit and Walker as Class Representatives;

(d) Appoint Thomas S. Williamson, Jr., Esq., Elaine Gardner, Esq., James E. McCollum, Jr., Esq., and Kevin Flesch, Esq. as Class Counsel;

(e) Enter an Order granting preliminary approval of the Global Settlement Agreement and its attachments and authorize the issuance of the Parties' proposed "Notice of Proposed Class Action Settlement and Fairness Hearing;" and

(f) Set a date for a Fairness Hearing, at which time the Court will determine whether the Global Settlement Agreement should be finally approved under Rule 23(e) of the Federal Rules of Civil Procedure.

The Plaintiffs will attach to the Unopposed Motion the following exhibits:

- (a) This Global Settlement Agreement;
- (b) The *Hubbard* Plaintiffs' Third Amended Complaint, attached hereto as **Exhibit 1**.
- (c) Proposed Order Granting Plaintiffs' Unopposed Motion, attached hereto as **Exhibit 7**; and
- (d) Notice of Proposed Class Action Settlement and Fairness Hearing, attached hereto as **Exhibit 2**.

#### 5.2 Dismissal of the *Tighe* Class Action

Within five (5) business days after the entry of the Order granting the relief requested in the Parties' Joint Motion, the *Tighe* Plaintiffs counsel will file a motion with the EEOC administrative judge in the *Tighe* Class Action, requesting that the *Tighe* Class Action be dismissed without prejudice pursuant to 29 C.F.R. § 1614.107, on the grounds that the *Tighe* Plaintiffs have joined the Amended *Hubbard* Class Action as co-class representatives on behalf of themselves and the classes they seek to represent. In the event the Court does not grant final approval of the Global Settlement Agreement, the *Tighe* Plaintiffs' counsel shall have ninety (90) days from the date of the order denying final approval to move to reinstate the *Tighe* Class Action with the EEOC. In the event the Court declines to grant final approval of the Global Settlement Agreement, the Postal Service shall not oppose reinstatement of the *Tighe* Class Action with the EEOC.

#### 5.3 Fairness Hearing

At the Fairness Hearing, the Parties will jointly request that the Court finally approve the Global Settlement Agreement. The Parties agree to take all actions necessary to obtain approval of this Global Settlement Agreement.

#### 5.4 Dismissal of the Amended *Hubbard* Class Action

The Parties stipulate that, if the Court grants final approval of the Global Settlement Agreement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Amended *Hubbard* Class Action will be dismissed with prejudice pursuant to Rules 23(e) and 41(a)(1)(A)(ii); provided, however, that the dismissal with prejudice will be stayed for a period of three (3) years to allow the Court to retain jurisdiction with respect to enforcement of the terms of the Global Settlement Agreement. Within ten (10) calendar days of the expiration of said three-year period, the Parties will file a notice of dismissal with prejudice of the Amended *Hubbard* Class Action to be effective on the date of entry.

### 6. GENERAL PROVISIONS

#### 6.1 Scope of the Global Settlement Agreement

##### 6.1.1 Persons Covered By Global Settlement Agreement

This Global Settlement Agreement fully resolves the Claims of the Class Representatives and all Eligible Class Members, subject to the “opt out” rights of Eligible Damages Class Members, pursuant to subsection 6.1.3 of this Global Settlement Agreement.

##### 6.1.2 Opt Out Rights for the Injunctive Settlement Class

Members of the Injunctive Settlement Class have no right to “opt out” of the terms of this Global Settlement Agreement that provide for injunctive relief, as specified in Section 9, because the Injunctive Settlement Class will be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

##### 6.1.3 Opt Out Rights for the Damages Settlement Class

Members of the Damages Settlement Class shall have the right to “opt out” of the terms of this Global Settlement Agreement that provide for monetary relief, as specified in Section 8, because the Damages Settlement Class will be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

##### 6.1.4 Release/Bar of Claims

To receive his or her Settlement Share, as set forth in Section 8 of this Global Settlement Agreement, each Eligible Damages Class Member must execute a Release Form and either: (a) deposit the Settlement Share check; or (b) cash the Settlement Share check.

#### 6.2 Total Settlement Amount

In full settlement of all Claims, the Parties agree to a total settlement of four million five hundred fifty thousand dollars (\$4,550,000) (Settlement Proceeds).



The Settlement Proceeds will be distributed as follows:

- (1) a class fund of two million eight hundred ninety thousand dollars (\$2,890,000) (Class Fund) will be distributed to Eligible Damages Class Members as set forth in Section 8 of this Global Settlement Agreement;
- (2) a reserve in the amount of one hundred ten thousand dollars (\$110,000) (Reserve) as set forth in Section 6.3 of this Global Settlement Agreement; and
- (3) attorneys' fees and costs for Class Counsel in the amount of one million five hundred fifty thousand dollars (\$1,550,000).

#### 6.3 Reserve

The one hundred ten thousand dollar (\$110,00) Reserve covers all anticipated costs and expenses of the Class Administrator for services rendered in performing the tasks and responsibilities set forth in Sections 7 and 8 of this Global Settlement Agreement. Class Counsel shall be entitled to reimbursement from the Reserve of all reasonable expenses incurred subsequent to the execution date of this Global Settlement Agreement for administration of the Global Settlement Agreement, including but not limited to, any amounts advanced by Class Counsel to the Class Administrator under the terms of this Global Settlement Agreement.

#### 6.4 Approval of Global Settlement Agreement as Written

It is an express condition of this Global Settlement Agreement that the Global Settlement Agreement be approved by the Court as written. The Parties have bargained for the terms in this Global Settlement Agreement. Except as provided in Sections 11.6 and 12 in this Global Settlement Agreement, no section or subsection of this Global Settlement Agreement may be modified or stricken, and no section or subsection may be added to this Global Settlement Agreement unless agreed to by all Parties to this Global Settlement Agreement.

#### 6.5 Interpretation of Global Settlement Agreement

This Global Settlement Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Global Settlement Agreement is the United States District Court for the District of Columbia. For purposes of construing this Global Settlement Agreement, this Global Settlement Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

## 6.6 Voidability or Stay of Global Settlement Agreement

### 6.6.1 Judicial Annulment

- a. This Global Settlement Agreement shall be null and void if either of the following occurs: (a) the Court fails to enter an Order Granting Final Approval of the Global Settlement Agreement; or (b) any federal court of competent jurisdiction finds that this Global Settlement Agreement is void or not enforceable, in whole or in part. This Global Settlement Agreement is not severable.
- b. In the event the Court or any federal court, administrative tribunal or arbitrator issues a final decision invalidating any part of the Global Settlement Agreement or Congress enacts legislation that invalidates any provision of the Global Settlement Agreement such that the invalidation materially alters the terms of the Global Settlement Agreement, the Parties agree to meet promptly to re-negotiate the part or provision of the Global Settlement Agreement that has been invalidated.

### 6.6.2 Effective Date & Stay

If any appellate court docketed an appeal from the Global Settlement Agreement that specifically implicates the validity of the Global Settlement Agreement (as opposed to raising purely individual issues), either the Plaintiffs or the Postal Service may stay this Global Settlement Agreement by giving written notice to the other Party within five (5) business days of receiving notice of the docketing of an appeal by an appellate court of competent jurisdiction. Any such stay shall remain in effect until the federal appeals court has resolved any docketed appeal challenging the validity of the Global Settlement Agreement and the United States Supreme Court resolves any petition for writ of certiorari, assuming one is filed and granted, that challenges the validity of the Global Settlement Agreement.

## 6.7 Right to Appeal

All Eligible Class Members who have filed timely objections to the Global Settlement Agreement have the right to appeal the Order Granting Final Approval of the Global Settlement Agreement to the U.S. Court of Appeals for the District of Columbia Circuit.

## 6.8 Duty to Cooperate

The Parties agree to cooperate with each other to facilitate the implementation of this Global Settlement Agreement. The Parties will assist the Class Administrator as needed to ensure that the distribution process described in Section 8 below is completed in an efficient manner. Class Counsel will respond to any reasonable Eligible Class Member inquiries received by the Class Administrator that are forwarded to Class Counsel.

## 7. NOTICE TO CLASS

### 7.1 Notice of Proposed Class Action Settlement and Fairness Hearing and Claim Forms

#### 7.1.1 Mailing

The Parties shall jointly prepare a list containing the last known addresses for all Eligible Class Members and provide it to the Class Administrator within ten (10) days of the issuance date of the Order Granting Preliminary Approval of the Global Settlement Agreement. The Class Administrator shall, using the mailing list provided by the Parties, mail a Notice of Proposed Class Action Settlement and Fairness Hearing (Notice of Settlement) and Claim Form to all Eligible Class Members within fourteen (14) days of the date on which the Parties provide the list containing the last known addresses for all Eligible Class Members. A sample Claim Form is attached hereto as **Exhibit 8**.

The Notice of Settlement will inform all Eligible Class Members that Claim Forms will also be available on the Class Administrator's website and, upon request, can be provided in hard copy. No Eligible Class Member shall be permitted to submit any documents other than a completed Claim Form, unless the Class Administrator or Class Counsel, in their sole and absolute discretion, requests additional information.

The Notice of Settlement will inform Eligible Class Members that all Objections to the Global Settlement Agreement (Objections) must be filed with the Court within forty-five (45) days after the issuance date of the Order Granting Preliminary Approval of the Global Settlement Agreement. The Notice will further provide that all Objections must also be mailed to Counsel for the Plaintiffs and Counsel for the Postal Service within forty-five (45) days after the issuance date of the Order Granting Preliminary Approval of the Global Settlement Agreement.

The Notice of Settlement will inform Eligible Damages Claim Members of their right to opt out of the Damages Settlement Class, pursuant to subsection 6.1.3 of this Global Settlement Agreement. The Notice will explain to Eligible Damages Claim Members that if they exercise their right to opt out, they will not be entitled to any monetary relief under the terms of the Global Settlement Agreement. The Notice will instruct Eligible Damages Class Members that to exercise their right to opt out, they must inform the Class Administrator of their decision to opt out

within sixty (60) days of the issuance date of the Order Granting Preliminary Approval of the Global Settlement Agreement. The Notice will further instruct Eligible Damages Class Members on the required procedure for informing the Class Administrator of their decision to opt out.

Finally, the Notice of Settlement will inform Eligible Class Members that the Claim Form must be postmarked within sixty (60) days after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement.

#### 7.1.2. Tracking

The Class Administrator shall track the status of: (1) all mailings made by the Class Administrator required by Section 7.1.1 of this Global Settlement Agreement; (2) receipt by the Class Administrator of returned Claim Forms; (3) name, address, and date of mailing of any Claim Forms requested by unknown persons; (4) receipt by the Class Administrator of all letters from Eligible Damages Class Members requesting to opt out of the Damages Settlement Class; and (5) ultimately, the receipt of Release Forms as set forth in Section 7.3.5 of this Global Settlement Agreement.

The Class Administrator shall provide Class Counsel and Counsel for the Postal Service with the information listed in items 1-5 above in an updated Excel workbook similar in format to **Exhibit 9**. The Class Administrator shall also provide Class Counsel and Counsel for the Postal Service with copies, sent via electronic mail, of all letters received by the Class Administrator from Eligible Damages Class Members requesting to opt out of the Damages Settlement Class, as referenced in Section 7.1.2 (4) above. The Class Administrator shall provide Class Counsel and Counsel for the Postal Service with the listed information and letters by 12:00 p.m. (ET) Friday on a weekly basis, following the mailing date of the Notice of Settlement and Claim Forms, as set forth in Section 7.1.1 above. The Class Administrator shall continue to provide Class Counsel and Counsel for the Postal Service with the information and letters identified in Section 7.1.2 on a weekly basis until otherwise notified in writing by either Party that the frequency of transmittal of the identified information and letters should be increased, decreased or ceased altogether to the requesting Party. Any such request shall not affect the frequency of transmittal of the identified information and letters to the non-requesting Party. The non-requesting Party is free to serve a written request to the Class Administrator asking for a similar increase or decrease in the frequency of transmittal of the identified information and letters at any time. Counsel for the Postal Service shall have the same access to all information maintained by the Class Administrator that is available to Class Counsel.

#### 7.1.3 Website Posting

The Postal Service shall post the Notice of Settlement on [www.liteblue.usps.gov](http://www.liteblue.usps.gov) and [www.keepingposted.com](http://www.keepingposted.com). A video clip will also be posted on these two

websites in which the Notice of Settlement will be interpreted in ASL. Class Counsel will be afforded an advance opportunity to view the video the clip to confirm its accuracy. The Notice will remain posted on both websites for a period of at least thirty (30) days from the original date of posting.

#### 7.1.4 Claim Form Deadlines

Claim Forms submitted to the Class Administrator must be postmarked within sixty (60) days after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement.

The mailing required by subsection 7.1.1 shall expressly state that Claim Forms postmarked after the sixtieth (60th) day following the issuance date of the Order Granting Final Approval of the Global Settlement shall not be considered in any distribution of settlement proceeds. The Class Administrator and Class Counsel may jointly, in their discretion, and for good cause shown, consider Claim Forms postmarked by the seventy-fifth (75th) day after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement.

Claim Forms shall be sent prior to the Court's issuance of an Order Granting Final Approval of the Global Settlement Agreement. However, pursuant to the provisions of this subsection, the sixty (60) day time period for returning Claim Forms shall not begin to run until after the Court issues an Order Granting Final Approval of the Global Settlement Agreement.

#### 7.1.5 Remailing

If the Notice of Settlement sent to any Eligible Class Member is returned undelivered, the Class Administrator will make one attempt to determine the Eligible Class Member's current address via a social security number search using credit bureau data and then, if a more current address is located, re-mail the Notice to that address. The Class Administrator shall, on a bi-weekly basis, inform Class Counsel and Counsel for the Postal Service of any returned mail that is undeliverable after remailing. The postmark deadline for filing a Claim Form by an Eligible Damages Class Member who receives a remailed Notice of Settlement under Section 7.1.5 of this Global Settlement Agreement shall be extended until the seventy-fifth (75th) day after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement. Additionally, the Class Administrator and Class Counsel may jointly, in their discretion, and for good cause shown, consider Claim Forms received from Eligible Damages Class Members under this section that are postmarked no later than the eighty-fifth (85th) day after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement.

The postmark deadline for exercising the right to opt out of the Damages Settlement Class by an Eligible Damages Class Member who receives a remailed Notice of Settlement under Section 7.1.5 of this Global Settlement

Agreement shall be extended until the seventy-fifth (75th) day after the issuance date of the Order Granting Preliminary Approval of the Global Settlement Agreement.

## 7.2 Website

The Class Administrator shall maintain a World Wide Web page to assist in communicating with the Eligible Class Members until the Settlement Share distribution process is complete (*Hubbard* Settlement Website). The *Hubbard* Settlement Website shall be [www.HubbardSettlement.com](http://www.HubbardSettlement.com).

### 7.2.1 Maintenance of the *Hubbard* Settlement Website

The *Hubbard* Settlement Website and any other internet tools accessible to the Eligible Class Members must meet all requirements of Section 508 of the Rehabilitation Act.

### 7.2.2 Contents of the *Hubbard* Settlement Website

The Class Administrator shall post the Notice of Settlement, Claim Form, Global Settlement Agreement and all relevant Global Settlement Agreement documents on the *Hubbard* Settlement Website. The *Hubbard* Settlement Website shall also contain an explanation of the *Tighe* Class Action, the *Hubbard* Class Action, the Amended *Hubbard* Class Action and the significant provisions of the Global Settlement Agreement, including the injunctive relief that will be provided as more fully set forth in Section 9 of this Global Settlement Agreement. The documents referenced in Section 7.2.2 of this Global Settlement Agreement will remain posted on the *Hubbard* Settlement Website for a period of at least seventy-five (75) days after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement.

## 7.3 Notice of Order Granting Final Approval of the Global Settlement Agreement and Settlement Shares

### 7.3.1 Mailing of Notices of Final Approval

- a. When the Court issues the Order Granting Final Approval of the Global Settlement Agreement, the Class Administrator shall, within ten (10) days, mail to all Eligible Class Members, and publish via the *Hubbard* Settlement Website referenced in Section 7.2 above, the Notice of Order Granting Final Approval of the Global Settlement Agreement. The Notice of Order Granting Final Approval of the Global Settlement Agreement to all Eligible Class Members will include a reminder that all Claim Forms must be submitted to the Class Administrator and postmarked within sixty (60) days after the issuance date of the

Order Granting Final Approval of the Global Settlement Agreement. A copy of the proposed Notice of Order Granting Final Approval of the Global Settlement Agreement is attached hereto as **Exhibit 10**.

- b. The Class Administrator shall track the date of mailing for each notice required by this Section and provide this information to Class Counsel and Counsel for the Postal Service as requested.

#### 7.3.2 Calculation of Settlement Shares

The Class Administrator shall calculate the Settlement Share for each Eligible Damages Class Member who returns a Claim Form, in accordance with Section 8 of this Global Settlement Agreement. Such calculations shall be made within ninety (90) days after the Court's entry of the Order Granting Final Approval of the Global Settlement Agreement.

#### 7.3.3 Mailing of Release Forms

- a. Unless this Global Settlement Agreement is voided pursuant to Section 6.6.1 and except as provided below, after calculation of each Eligible Damages Class Member's Settlement Share, the Class Administrator will mail individual Release Forms to each Eligible Damages Class Member who is entitled to a share of the Class Fund. The Release Forms shall be in the form attached hereto as Exhibit 5. However, the Class Administrator will not mail individual Release Forms prior to the Court's issuance of its Order Granting Final Approval of the Global Settlement Agreement. The mailing of the Release Form shall occur within ninety (90) days after the Court's entry of its Order Granting Final Approval of the Global Settlement Agreement.
- b. The Release Form shall specify for each Eligible Damages Class Member the amount of his or her Settlement Share under the Distribution Plan/Settlement Formula. The Eligible Damages Class Member's execution of the Release Form releases all of the Eligible Damages Class Member's claims in the Amended *Hubbard* Class Action. Each Eligible Damages Class Member's Settlement Share shall be determined pursuant to the Distribution Plan

set forth in Section 8 of this Global Settlement Agreement.

The Release Form shall state that the Release Form must be postmarked within thirty (30) days of the mailing date by the Class Administrator.

After the period to return the Release Forms has expired, the Class Administrator will be allowed twenty (20) days to review the Release Forms and to determine whether all Release Forms are valid and enforceable. After the review period has expired, the Class Administrator will forward a list containing the names and calculation of Settlement Shares of every individual who provided a valid Release Form to Class Counsel and Counsel for the Postal Service (the "Release List"). The Release List will be provided to Class Counsel and Counsel for the Postal Service no later than the one hundred fortieth (140th) day after the issuance date of the Court's Order Granting Final Approval of the Global Settlement Agreement. The Release List will include the damage allocations for each Eligible Damages Class Member as more fully discussed in Section 8 of this Global Settlement Agreement. The Release List should be sent to Class Counsel and Counsel for the Postal Service via electronic mail.

#### 7.3.4 Release Form Deadlines

The Release Form will require that any Eligible Damages Class Member must return the Release Form postmarked within thirty (30) days of the mailing date of the Class Administrator, or his/her right to any share of the settlement proceeds shall be waived and forfeited.

#### 7.3.5 Notification of Signed Release Forms

The Class Administrator shall track which Eligible Class Members have returned executed Release Forms. Every fourteen (14) days after the initial mailing of the Release Forms specified herein, the Class Administrator shall forward any additional executed original Release Forms to Counsel for the Postal Service, via Postal Service Express Mail, with copies to Class Counsel. The Class Administrator shall track the additional executed Release Forms. Counsel for the Postal Service shall have the same access to all information maintained by the Class Administrator that is available to Class Counsel.

Notwithstanding the foregoing, Settlement Share checks will not be mailed to any Eligible Damages Class Member who has elected to appeal the Court's Order Granting Final Approval of the Global Settlement Agreement. The Settlement Share checks will contain a special mailing reminder indicating that cashing or depositing the Settlement Share check shall constitute an accord and satisfaction of all claims in the Amended *Hubbard* Class Action.



#### 7.3.6 Remailing

The Class Administrator shall trace and re-mail any returned copy of the Court's Order Granting Final Approval of the Global Settlement Agreement. The addresses of Eligible Class Members whose Release Forms have been returned shall also be traced, and if a valid address is determined, each Release Form shall be re-mailed. The Class Administrator shall track all remailings provided for in this section. A Release Form by an Eligible Class Member who receives a re-mailed Release Form under Section 7.3.6 of this Global Settlement Agreement shall be postmarked no later than the one-hundred-thirty-fifth (135th) day after the issuance date of the Order Granting Final Approval of the Global Settlement Agreement.

#### 7.3.7 Ineligible Class Members

A Notice of Ineligibility in the form attached hereto as **Exhibit 11** shall be mailed to: (i) any person who completes a Claim Form, but is determined by the Class Administrator and Class Counsel to not be an Eligible Class Member; and (ii) any Eligible Damages Class Member who completes a Claim Form, but who has exercised the right to opt out of the Damages Settlement Class. Each Notice of Ineligibility will be sent via U.S. First Class Mail.

### **8. MONETARY RELIEF**

#### 8.1 Distribution of Class Fund to Eligible Damages Class Members

Eligible Damages Class Members who satisfy the conditions set forth in this Global Settlement Agreement for payment of monetary relief, and who do not exercise the right to opt out of the Damages Settlement Class, shall be entitled to a Settlement Share of the Class Fund. The Class Administrator and Class Counsel shall determine Settlement Shares for each Eligible Damages Class Member who has not opted out and has timely returned a Claim Form based upon the Distribution Plan set forth below. The determination of the Class Administrator and Class Counsel as to the share of each Eligible Damages Class Member shall be final, and there shall be no right of appeal to any forum, including but not limited to the Court.

The Class Fund defined in Section 6.2 of this Global Settlement Agreement will be distributed as follows:

##### 8.1.1 Base Distribution

Each Eligible Damages Class Member shall be entitled to receive a base distribution of two-hundred-fifty dollars (\$250) from the Class Fund.

### 8.1.2 Class Representative Distribution

In addition to the distribution set forth in Section 8.1.1, Eligible Damages Class Members who are Class Representatives in the Amended *Hubbard* Class Action shall receive an additional distribution from the Class Fund in the amount of ten-thousand dollars (\$10,000) each.

### 8.1.3 Remaining Distribution by Settlement Shares

After the separate distributions set forth in Sections 8.1.1 and 8.1.2 are determined, the remainder of the funds in the Class Fund (the "Remaining Funds") shall be allocated and distributed to the Eligible Damages Class Members in proportion to the number of Shares held by each Eligible Damages Class Member, as set forth in this Section. The Class Administrator will determine the proportional shares for each Eligible Damages Class Member based upon the responses provided by each Eligible Damages Class Member in his or her Claim Form.

Each Eligible Damages Class Member shall be allocated a discrete number of Settlement Shares in accordance with the following methodology:

- (1) Each Eligible Damages Class Member shall receive five (5) Shares for each full month of employment during which he or she was employed by the Postal Service during the Class Period.
- (2) Each Eligible Damages Class Member who certifies that on at least one (1) occasion during the Class Period, the Postal Service denied his or her request for a workplace accommodation for his or her deafness or hearing-related impairment shall receive an additional one hundred (100) Shares.
- (3) Each Eligible Damages Class Member who certifies that on more than three (3) occasions during the Class Period, the Postal Service denied his or her request for a workplace accommodation for his or her deafness or hearing-related impairment shall receive an additional one hundred (100) Shares.
- (4) Each Eligible Damages Class Member who certifies that on at least one (1) occasion during the Class Period, he or she was denied a promotional opportunity due to the failure of the Postal Service to provide a reasonable communication accommodation for his or her deafness or hearing-related impairment shall receive an additional fifty (50) shares.
- (5) Each Eligible Damages Class Member who certifies that he or she suffered emotional distress as a result of any of the actions listed in (1)-(4) above or as the result of harassment due to deafness or hearing-related

impairment at any point during the Class Period shall receive an additional fifty (50) Shares.

(6) Each Eligible Damages Class Member who certifies that he or she sought medical assistance as a result of emotional distress caused by the Postal Service's denial of his or her request for a workplace accommodation for his or her deafness or hearing-related impairment at any point during the Class Period shall receive an additional one hundred (100) Shares.

Each individual Eligible Damages Class Member shall receive a distribution from the Remaining Funds that is equal to the Remaining Funds divided by the total number of Shares allocated to all Eligible Damages Class Members multiplied by the number of Shares allocated to the individual Eligible Damages Class Member.

#### 8.1.4 Eligible Damages Class Members Who Opt Out

Any Eligible Damages Class Member who exercises the right to opt out of the Damages Settlement Class, pursuant to subsection 6.1.3 of this Global Settlement, shall not receive any distribution from the Class Fund under the terms of subsections 8.1.1, 8.1.2, and 8.1.3 of this Global Settlement Agreement and shall not be allocated any Settlement Shares under the terms of subsection 8.1.3 of this Global Settlement Agreement.

#### 8.2 Tax Treatment of Disbursements – Wage and Non-Wage Amounts

The Class Administrator shall review each completed Claim Form to determine whether the Eligible Class Member asserts that: (1) he or she only sustained non-wage compensatory damages (answered "yes" to questions 2, 3, 5 and/or 6 in their Claim Form); (2) he or she only sustained wage loss damages (answered "yes" to question 4 in their Claim Form); or (3) he or she sustained both non-wage compensatory and wage loss damages (answered "yes" to questions 2, 3, 5 or 6 and 4 in their Claim Form). If an Eligible Damages Class Member completes the Claim Form and indicates that he or she only sustained non-wage compensatory damages, then one hundred percent (100%) of the damages will be apportioned to non-wage compensatory damages, and the Postal Service shall prepare and send a Tax Form 1099-MISC to the Eligible Damages Class Member for the Settlement Share payment.

If an Eligible Damages Class Member completes the Claim Form and indicates that he or she only sustained wage loss damages (only answered "yes" to question 4 in their Claim Form), then one hundred percent (100%) of the damages will be apportioned to wage loss damages, and the Postal Service shall prepare and send a Tax Form W-2 to the Eligible Damages Class Member for the Settlement Share payment. If an Eligible Damages Class Member completes the Claim Form and indicates that he or she sustained both non-wage

compensatory and wage loss damages (answered "yes" to questions 2, 3, 5 or 6 and 4), then twenty percent (20%) of the Settlement Share for that Eligible Damages Class Member will be apportioned to wage loss damages and eighty percent (80%) of the Settlement Share shall be apportioned to non-wage loss damages. The Class Administrator will provide Class Counsel and Counsel for the Postal Service with the allocations for each Eligible Damages Class Member who claims that he or she sustained both non-wage compensatory and wage loss damages, consistent with the allocations described herein. The Postal Service shall prepare a Tax Form 1099-MISC for the eighty percent (80%) non-wage compensatory damage Settlement Share payment and a Tax Form W-2 for the twenty percent (20%) wage loss damage Settlement Share payment.

8.3 Release List With Non-Wage Compensatory and Wage Loss Damages

The Class Administrator will forward the Release List containing the names and calculation of Settlement Shares of every individual who provided a valid Release Form to Class Counsel and Counsel for the Postal Service. The Release List will be provided to Class Counsel and Counsel for the Postal Service on the one hundred fortieth (140th) day after the date of entry of the Court's Order Granting Final Approval of the Global Settlement Agreement. The Release List will include the damage allocations for each Eligible Damages Class Member as more fully discussed in Section 8.1 of this Global Settlement Agreement. The Release List should be sent to Class Counsel and Counsel for the Postal Service via electronic mail.

8.4 Mailing of Settlement Shares Pursuant to Signed Release Forms

8.4.1 Effect of Release Form

Any Eligible Class Member who signs a Release Form waives all Claims in the *Tighe* Class Action, the *Hubbard* Class Action and/or the Amended *Hubbard* Class Action, regardless of whether the Global Settlement Agreement is ultimately approved, rejected or voided. No Eligible Class Member executing a Release Form shall be permitted to object to or appeal the Order Granting Preliminary Approval or the Order Granting Final Approval of the Global Settlement Agreement. The Postal Service shall honor executed Release Forms, regardless of whether or not the Global Settlement Agreement is approved, rejected, stayed or voided.

8.4.2 Mailing of Settlement Shares by the Postal Service

The Postal Service shall have until the one hundred ninety-fifth (195th) day after the date of entry of the Court's Order Granting Final Approval of the Global Settlement Agreement to mail Settlement Share checks to all Eligible Damages Class Members who provided executed valid Release Forms as reflected in the Release List provided by the Class Administrator as provided for in Section 8.3 of

this Global Settlement Agreement. The Postal Service shall mail the Settlement Share checks via First Class Mail to each Eligible Damages Class Member.

8.5 Payment to Eligible Damages Class Members Who File Appeals

The Postal Service shall not be obligated to send Settlement Share checks to any Eligible Damages Class Member who files an appeal of the Court's Order Granting Final Approval of the Global Settlement Agreement to a U.S. Court of Appeals until seventy (70) days after the federal appellate court issues a decision on the appeal or a decision on reconsideration, if one is filed, whichever date is later.

8.6 Unclaimed Funds

In the event that there are unclaimed funds, for whatever reason, as set forth in Section 2.1.58 of this Global Settlement Agreement, such funds shall be distributed as follows:

8.6.1 Division of Remainder of Unclaimed Funds

Any unclaimed funds, including but not limited to uncashed checks, shall be paid by the Postal Service to Eligible Damages Class Members who submitted timely and properly completed Claim Forms and Release Forms. The Class Administrator shall calculate the individual distributions of Unclaimed Funds based on the methodology set forth in Section 8.1.3 herein after one (1) year has elapsed since the mailing of the final Settlement Share pursuant to 8.4.2. The Class Administrator shall provide these calculations, along with the allocations specified in Section 8.2 herein for each Eligible Damages Class Member, to the Parties, and the Postal Service shall then issue and mail checks distributing the Unclaimed Funds consistent with the allocations provided by the Class Administrator for each Eligible Damages Class Member.

8.7 Deceased Eligible Damages Class Members

If an Eligible Damages Class Member is deceased, his/her estate shall be entitled to receive the decedent's Settlement Share upon execution and mailing of a Form SF 1153 to the Class Administrator. A sample SF 1153 is attached hereto as **Exhibit 12**.

8.8 Reporting

The Postal Service shall provide one report to the Class Administrator and Class Counsel identifying the names for each Eligible Damages Class Member who has not cashed his or her Settlement Share check within one (1) year of the mailing of the Settlement Shares by the Class Administrator. The report will be sent via electronic mail by the Postal Service to Class Administrator and Class Counsel.

## 9. INJUNCTIVE RELIEF

### 9.1 Provision of American Sign Language Interpreters, Other Sign Language Equivalent Interpreters and Video Remote Interpreting for Workplace Events

The Postal Service acknowledges that it has responsibilities under the Rehabilitation Act of 1973, as amended, and its collective bargaining agreements to provide reasonable communication accommodations to employees and applicants who are deaf or hard of hearing. Reasonable communication accommodations should be provided at certain types of workplace events and in certain other situations generally affecting the workplace so that employees can fully participate in the work environment. The Parties have agreed to the following injunctive relief in order to: (1) establish the availability of communication accommodations for the Injunctive Settlement Class; and (2) establish Postal Service management structures, controls and processes designed to ensure that communication accommodations are provided effectively to the Injunctive Settlement Class.

#### 9.1.1. Presumed Workplace Events

There shall be a presumption that an in-person qualified sign language interpreter, in either ASL or another sign language equivalent (Interpreter), will be provided for Deaf or Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication, for the six workplace events listed below (Presumed Workplace Events). However, the employee must first request an Interpreter by submitting a signed Communication Accommodation Request Form to the Postal Service, as discussed more fully below.

- (1) During critical elements of the selection process, including interviews and instructions for testing;
- (2) During formal training sessions for new and existing employees;
- (3) During investigatory interviews which may reasonably lead to discipline and formal discussions with a supervisor on job performance evaluations, corrective actions or conduct;
- (4) During Combined Federal Campaign and savings bond drive kickoff meetings;
- (5) During EEO counseling sessions that may occur face to face or during meetings involving the completion of paperwork necessary for Deaf Employees to file claims for workers' compensation benefits (such as U.S. Department of Labor Forms CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation and

CA-2, Notice of Occupational Disease and Claim for Compensation, and PS Form 1769/301 - Accident Report); and

(6) During significant safety instruction, other than safety reminders.

Significant Safety Instruction is defined to include safety instruction regarding the following workplace issues:

Talk	Audience	Frequency	Apprx Duration
<i>Asbestos</i>	<i>Plants &amp; CS Sites</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>Bloodborne Pathogens</i>	<i>Plants &amp; CS Sites</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>Confined Space</i>	<i>Limited to employees identified by the Postal Service as requiring this instruction</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>Emergency Action Plan</i>	<i>General Talk</i>	<i>Annual</i>	<i>15 minutes</i>
<i>Hazard Communication</i>	<i>General talk</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>Hearing Conservation</i>	<i>Limited to employees identified by the Postal Service as requiring this instruction</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>HAZWOPER</i>	<i>General Talk</i>	<i>Annual</i>	<i>10-15 minutes</i>
<i>Lead</i>	<i>Limited to employees identified by the Postal Service as requiring this instruction</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>Lockout/Tagout</i>	<i>Limited to employees identified by the Postal Service as requiring this instruction</i>	<i>Annual</i>	<i>5-10 minutes</i>
<i>Powered Industrial Equipment (PIT)</i>	<i>Limited to employees identified by the Postal Service as requiring this</i>	<i>Quarterly</i>	<i>10-15 minutes</i>

	<i>instruction</i>		
<i>Personal Protective Equipment (PPE)</i>	<i>Limited to employees identified by the Postal Service as requiring this instruction</i>	<i>As needed. Job specific and required upon change of bid to a position with a PPE assignment and task</i>	<i>5-15 minutes</i>
<i>Respiratory Equipment</i>	<i>Limited to sites where program is required. If in an installation where employee voluntarily asks to wear a filtering mask, training would be as needed.</i>	<i>Annual and as needed if employee voluntarily asks and is authorized to wear a filtering mask.</i>	<i>5-10 minutes</i>

#### 9.1.2 The Postal Service Will Make Best Efforts to Provide an Interpreter for Presumed Workplace Events

The Postal Service will make best efforts to secure and provide an Interpreter for the Presumed Workplace Events identified in Section 9.1.1. above. As a part of its best efforts obligation, the Postal Service shall ensure that every installation with one or more Deaf or Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication has either contracted with an Interpreter service for the provision of on-site interpretation for Presumed Workplace Events or, if a formal contract is not required, has otherwise made arrangements for an Interpreter service to provide on-site interpretation for Presumed Workplace Events. The presumption that an Interpreter will be provided for a Presumed Workplace Event may be overcome if the Postal Service can demonstrate that the Postal Service has undertaken diligent and timely efforts to obtain an Interpreter, including contracting with a local Interpreter service, but that no Interpreter is available due to the timing of the Presumed Workplace Event and/or the location of the installation at which the Presumed Workplace Event is to occur.

#### 9.1.3 Unavailability of Interpreter for Presumed Workplace Events

In the event that an Interpreter is not available for a Presumed Workplace Event, the Postal Service will provide the following alternative communication accommodations for Deaf or Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication in connection with the Presumed Workplace Events listed in Section 9.1.1 above. These alternative communication accommodations may include, but are not limited to:



- (1) For employees who have requested an Interpreter in their Communication Accommodation Plan, the Postal Service will use best efforts to schedule an Interpreter for the particular Presumed Workplace Event. If an Interpreter is not available for the initial Presumed Workplace Event, then the Postal Service will reschedule the Presumed Workplace event for the employee with an Interpreter within 72 hours of the original start time for the Presumed Workplace Event (72-Hour Period).
- (2) The Postal Service shall not be deemed to be in violation of this Global Settlement Agreement if it is not able to schedule an Interpreter within the 72-Hour Period because there are no available Interpreters within the meaning of Section 9.1.2 above. In the event that an Interpreter cannot be scheduled within the 72-Hour Period, the Postal Service will continue to use best efforts to schedule an Interpreter for the rescheduled Presumed Workplace Event for the employee as soon as an Interpreter is available. Deaf or Hard of Hearing Employees who have requested an Interpreter in their Communication Accommodation Plan can continue to wait until an Interpreter becomes available and the Postal Service is able to schedule the Interpreter for the rescheduled Presumed Workplace Event; however, in the alternative, such employees can elect in their Communication Accommodation Plan to use VRI or other alternative communication accommodation tools, devices or technologies which are section 508, 29 U.S.C. §794d, as amended, compliant for the rescheduled Presumed Workplace Event.

## 9.2 Provision of Communication Accommodations for Deaf or Hard of Hearing Employees During Non-Presumed Workplace Events

The Postal Service will use best efforts to provide communication accommodations to Deaf or Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication for the Non-Presumed Workplace Events listed in Section 9.2.1 of this Global Settlement Agreement.

### 9.2.1 Non-Presumed Workplace Events

“Non-Presumed Workplace Events” include the following:

- (1) Service talks of a duration in excess of five minutes;
- (2) Weekly safety talks;
- (3) Meetings to discuss work procedures, policies, assignments, or health benefit options and retirement issues;
- (4) Management initiated personnel actions (Ex., reassignment); and
- (5) Specialized staff meetings for Deaf Employees held at an alternative time.

### 9.2.2 Communication Accommodations for Non-Presumed Workplace Events

The Postal Service will use best efforts to provide communication accommodations to Deaf or Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication for the Non-Presumed Workplace Events listed above. The following communication accommodations will be considered for the Non-Presumed Workplace Events. These communication accommodations are listed in descending order of priority:

- (1) VRI (Video Remote Interpreting). The Postal Service shall provide at least one VRI unit or an equivalent accommodation tool, device or technology, at every Postal Service installation with one or more Deaf Employees that: (a) has access to a high speed internet connection; or (b) has access to the Postal Service intranet system. The Postal Service shall not be obligated to offer VRI service or provide a VRI unit at any installation that does not have access to a high speed internet connection or access to the Postal Service's intranet system. The Parties recognize that communication accommodation technology for Deaf and Hard of Hearing Employees continues to develop and advance at a rapid rate. The parties agree that the Postal Service can substitute another equally effective accommodation tool, device or technology in place of VRI, to the extent that such effective communication tools, devices or technologies become available in the future.
- (2) Interpreter (only if requested by the Deaf or Hard of Hearing Employee and agreed upon in his/her Communication Accommodation Plan and in the event that VRI is unavailable at the Deaf or Hard of Hearing Employee's installation);
- (3) Face to Face Communicator (Ubi Duo or similar device); or
- (4) Other communication accommodation tools, devices or technologies which are section 508, 29 U.S.C. § 794d, as amended, compliant.

### 9.3 Hard of Hearing Employees Who Do Not Use ASL or Another Sign Language Equivalent - Provision of Communication Accommodations for Hard of Hearing Employees During Workplace Events

The Parties acknowledge that there are no presumed communication accommodations during the workplace events identified in Sections 9.1.1 (1)-(6) and 9.2.1 (1)-(5) of this Global Settlement Agreement, for employees who: (1) are Hard of Hearing (self-identified to the Postal Service as Disability Status Code 15 (total deafness in one ear or inability to hear ordinary conversation, correctable with a hearing aid); and (2) do not use ASL or another sign language

as their primary means of communication. This is in recognition of the individualized nature of these Hard of Hearing Employees' hearing restrictions, limitations, and reasonable accommodation needs. The Postal Service will use best efforts to provide the following listed communication accommodations to Hard of Hearing Employees for all workplace events as provided for in the Hard of Hearing Employee's agreed upon Communication Accommodation Request Forms.

- (1) Ubi Duo;
- (2) Other communication tools or devices; and
- (3) Written communications.

#### 9.4 Deaf and Hard of Hearing Employee Applicants

The Postal Service will provide Interpreters or other communicative accommodations requested by Deaf and Hard of Hearing applicants during critical elements of the employee selection process, including interviews and instructions for testing. Applicants must request the provision of a reasonable accommodation prior to an interview or testing, either orally or in writing, as discussed more fully below in Section 9.10.4. Providing communication accommodations for the test questions themselves is a separate accommodation issue outside the scope of this Global Settlement Agreement. If a Deaf or Hard of Hearing applicant requests further accommodation during the examination process, the Postal Service shall consider such requests on a case-by-case basis, pursuant to the provisions set forth in Postal Service Handbook EL-307, Reasonable Accommodation, An Interactive Process.

#### 9.5 Deaf and Hard of Hearing Employees - Other Technological Resources

The following technological resources are additional resources which the Postal Service will make use of in appropriate circumstances. The technological resources listed below are not intended to limit the Postal Service's use of any newly-developed technology that is equal or superior to the listed services as a communication accommodation.

- (1) VRS (Video Relay Service) - The Postal Service shall provide one VRS (video phone) unit at every Postal Service installation with five or more Deaf or Hard of Hearing Employees who use ASL. The Postal Service will not be liable for the cost of VRS for employees' personal, non-work usage in the event that the Postal Service is charged a fee to use VRS (video phone) by the Federal Communications Commission (FCC) or the service provider.
- (2) Open or Closed Captioned Videotapes/Films - The Postal Service shall ensure that all videotapes or films designed for the training or

instruction of regular work force employees created after the date of final approval of this Global Settlement Agreement shall be open or closed captioned.

- (3) Visual Warning Lights/Industrial Equipment - The Postal Service shall ensure that visual warning lights are installed on all moving industrial equipment powered by electric motor or internal combustion motors in all Postal Service facilities employing Deaf or Hard of Hearing employees in the regular work force.
- (4) Emergency Action Plan and Employee Alarm System - The Postal Service will ensure that an emergency action plan is developed and implemented for all Postal Service facilities nationally. This emergency action plan will address the requirements for an employee alarm system that complies with 29 C.F.R. § 1910.165. In particular, the emergency action plan will address the requirements for alarm systems that are designed to give all employees at the worksite adequate warning so that the employee can take the appropriate emergency action as called for in the emergency action plan, or to safely escape the workplace or immediate work area, or both. 29 C.F.R. § 1910.165 (b)(1).

#### 9.6 Maintenance of Effort

The objective of the Parties entering into this Global Settlement Agreement is to ensure that the Postal Service provides effective communication and reasonable accommodation to all Deaf and Hard of Hearing Employees. To that end, the Postal Service agrees that it may not use this Global Settlement Agreement as a basis to reduce or eliminate the accommodations currently provided to Deaf or Hard of Hearing Employees, pursuant to the terms of existing federal court, EEO, Merit Systems Protection Board (MSPB) or labor grievance settlement agreements.

#### 9.7 Exigent Circumstances

The parties jointly acknowledge that communication accommodations for both Deaf and Hard of Hearing Employees during workplace events cannot be provided under all circumstances. When the Postal Service is presented with exigent circumstances, the inability to provide communication accommodations to Deaf and Hard of Hearing Employees under Sections 9.1-9.5 of this Global Settlement Agreement shall not constitute a breach of this Global Settlement Agreement. Such exigent circumstances include, but are not limited to:

- (1) Natural disasters/acts of God;
- (2) Security breaches/acts of terrorism;
- (3) Cancellation or failure of an Interpreter to appear as scheduled; and

- (4) Malfunction or failure of communication accommodation equipment tools or technological resources.

The Postal Service agrees to supply the identified communication accommodations to Deaf and Hard of Hearing Employees within a reasonable period of time once the exigency passes, provided that the provision of the accommodation is part of the Deaf or Hard of Hearing Employee's agreed upon Communication Accommodation Plan. The time period within which the Postal Service will be able to reasonably provide an accommodation under this provision is fact specific and will vary on a case-by-case basis.

9.8 Training of Postal Service Supervisory Employees

The Postal Service shall, within six (6) months following the Effective Date, develop appropriate procedures to ensure that all supervisors of Deaf and/or Hard of Hearing Employees will obtain appropriate training regarding effective communication with Deaf or Hard of Hearing Employees, provision of qualified Interpreters, and use of VRI/VRS equipment. The Postal Service shall complete the training process within twelve (12) months after the Effective Date. The Postal Service shall provide the ombudsman, referenced in Section 9.11.1 of this Global Settlement Agreement, and Class Counsel with written certification that the training contemplated by Section 9.8 of this Global Settlement Agreement has been completed, including the completion date.

9.9 Creation of Postal Service Reasonable Accommodation Assistance Center

The Postal Service will create a new organizational unit known as the "Postal Service Reasonable Accommodation Assistance Center" (the "PRAAC") to monitor compliance and enforcement of this Global Settlement Agreement as well as the provision of reasonable accommodations for disabled employees, including Deaf and Hard of Hearing Employees. The PRAAC will initially have two technical specialists domiciled at the Postal Service headquarters installation in Washington, DC, consisting of one Disability Program Manager and one Disability Program Specialist. In addition, the PRAAC will have a complement of Alternative Dispute Resolution Inclusiveness Analysts (ADRIAs) who are Headquarters employees domiciled in the field with assigned geographic areas of responsibility. The PRAAC staff will report to the Postal Service Manager, National Diversity Initiatives.

The Headquarters Disability Program Manager and the Disability Program Specialist will be experienced and knowledgeable in dealing with reasonable accommodations in the workplace, including reasonable accommodations for Deaf and Hard of Hearing Employees. The Headquarters Disability Program Manager and the Disability Program Specialist will provide technical support and guidance to the seven ADRIAs.

Each ADRIA will work with assigned Postal Service District employees (hereinafter the "District Disability Coordinator") in his or her assigned Postal Service Area to monitor accommodation issues for Deaf and Hard of Hearing Employees. The District Disability Coordinator position assignments created under the terms of this Global Settlement Agreement will be "ad hoc" and will be designated by each District Human Resources Manager.

The Parties recognize that communication accommodation technology for Deaf and Hard of Hearing Employees continues to develop and advance at a rapid rate. The Parties recognize and agree that the staffing and or structures (e.g. the PRAAC) provided for in Sections 9.9 and 9.10 of this Global Settlement Agreement may change in the future depending upon the operational needs of the Postal Service and the advanced communication accommodation technology that likely will be available in the future for Postal Service Deaf and Hard of Hearing Employees. In light of these factors, the Postal Service may need or want to modify or change certain staffing or structures, such as the PRAAC or the District Reasonable Accommodation Committees (DRAC), discussed more fully in Section 9.10 below, as deemed necessary by the Postal Service. The Parties agree that the Postal Service may make any necessary changes to the staffing or structures provided for in Sections 9.9 and 9.10 of this Global Settlement Agreement in the future, as deemed necessary by the Postal Service, provided that the Postal Service continues to ensure that reasonable communication accommodations are provided to Deaf and Hard of Hearing Employees for the workplace events outlined in Sections 9.1, 9.2, 9.3 and 9.4 of this Global Settlement Agreement.

9.10 Role of the Headquarters Diversity Coordinators and District Deaf and Hard of Hearing Coordinators in Each District

9.10.1 DRAC

The District Disability Coordinators in each District will join the established DRAC in his or her District and will engage in interactive discussions with Deaf and Hard of Hearing Employees to discuss accommodation issues for individual Deaf and Hard of Hearing Employees in each District and to ensure that the Postal Service is in compliance with the provisions of this Global Settlement Agreement.

9.10.2 Purpose of the DRAC

Each District is currently required to have a DRAC, which serves as a multifunction task force that helps management to: (1) determine the eligibility of employees and applicants for reasonable accommodations; and (2) assess the availability and feasibility of specific reasonable accommodations for all disabled employees.

#### 9.10.3 DRAC Membership

The DRAC membership, as revised by this Global Settlement Agreement, will include the following

- (1) Manager, Labor Relations (or designee);
- (2) Human Resources Generalist (or designee);
- (3) Manager, Safety or Manager, Health Resource Management (or designee);
- (4) Postal Service Medical Doctor (if available);
- (5) Occupational Health Nurse;
- (6) Operations Manager (or designee); and
- (7) District Disability Coordinators.

#### 9.10.4 Processing Requests For Communication Accommodations from Deaf and Hard of Hearing Employees

The DRACs, with the assistance of the individual District Disability Coordinators in each District, will develop and implement agreed upon Communication Accommodation Plans for all Postal Service Deaf and Hard of Hearing Employees nationwide who request communication accommodations. The Communication Accommodation Plans will list the types of accommodations available and the agreed-upon accommodations to be provided to individual Deaf or Hard of Hearing employees for the different workplace events identified in Sections 9.1 to 9.4 of this Global Settlement Agreement. The Communication Accommodation Plans will also address the availability of the technological resources outlined in Section 9.5 of this Global Settlement Agreement.

- (1) Each Deaf or Hard of Hearing Employee who seeks a communication accommodation must submit an oral or written request for a communication accommodation to his or her immediate supervisor, manager, or respective District Disability Coordinator. The District Disability Coordinators will provide Deaf and Hard of Hearing Employees with Communication Accommodation Request Forms upon oral or written request of the Deaf or Hard of Hearing Employee. If the Deaf or Hard of Hearing Employee submits an oral or written request for a communication accommodation to his or her supervisor or manager, then the supervisor or manager will forward the oral or written communication accommodation request to the respective District Disability Coordinator. The District Disability Coordinator will then

forward the oral or written accommodation request to the applicable DRAC for review. The District Disability Coordinator, or his/her designee, will then schedule an Interpreter for any meetings held between the Deaf Employee and the DRAC.

- (2) The DRACs, including the respective District Disability Coordinators in each District, will meet with every Deaf and Hard of Hearing Employee who submits an oral or written request for a communications accommodation within thirty (30) calendar days of the DRAC's receipt of the oral or written request for a communications accommodation. A Deaf or Hard of Hearing Employee's immediate supervisor or manager may participate in DRAC meetings as necessary. The DRAC members who meet with Deaf and Hard of Hearing Employees to discuss employee communication accommodation requests will have the discretion to conduct meetings via VRS, TTY or in person. For those Deaf Employees who submit an oral or written request for an Interpreter as a communication accommodation, the District Disability Coordinator will schedule an Interpreter for the DRAC meeting.
- (3) The DRACs will prepare a Communication Accommodation Plan for every Deaf and Hard of Hearing Employee who submits an oral or written request for a communication accommodation. Each Communication Accommodation Plan will be reviewed with the Deaf or Hard of Hearing Employee and the employee's immediate supervisor by the DRAC. Each Deaf and Hard of Hearing Employee who submits an oral or written request for a communication accommodation will be asked to sign an agreed upon Communication Accommodation Plan. Each Communication Accommodation Plan will be co-signed by the respective DRAC Chairperson, the respective District Disability Coordinator and the Deaf or Hard of Hearing Employee's supervisor before becoming effective. If the requesting Deaf or Hard of Hearing Employee does not agree to sign the Communication Accommodation Plan, the Postal Service will ensure that the communication accommodations selected for the Deaf or Hard of Hearing Employee in the Communication Accommodation Plan meet the requirements of the Rehabilitation Act.
- (4) All agreed upon Communication Accommodation Plans will be reviewed annually for a three (3) year period, beginning from the date signed by the Deaf or Hard of Hearing Employee or the date signed by the respective DRAC Chairperson, the respective District Disability Coordinator and the Deaf or Hard of Hearing Employee's supervisor, in the event the Deaf or Hard of Hearing Employee declines to sign the original Communication Accommodation Plan. During these annual reviews, each DRAC will ensure the agreed



upon Communication Accommodation Plan remains current and continues to meet the communication accommodation needs of each particular Deaf or Hard of Hearing Employee. The DRAC members will revise the Communication Accommodation Plans as needed and will consider and incorporate new technology resources into the Communication Accommodation Plans as warranted to better serve the communication needs of each Deaf and Hard of Hearing Employee. The Deaf or Hard of Hearing Employee will be asked to sign any revised Communication Accommodation Plan prepared for the Deaf or Hard of Hearing Employee following an annual review. If the Deaf or Hard of Hearing Employee does not agree to sign the revised Communication Accommodation Plan, the Postal Service will ensure that any communication accommodations selected for the Deaf or Hard of Hearing Employee in the revised Communication Accommodation Plan meet the requirements of the Rehabilitation Act.

- (5) Deaf and Hard of Hearing Employees can raise concerns and issues regarding their communication accommodation(s) with the District Disability Coordinators at any time as necessary. The District Disability Coordinators, along with the DRAC, will work with the Deaf or Hard of Hearing Employee, his or her immediate supervisor or manager, and Postal Service management, as necessary, to ensure that each particular Communication Accommodation Plan is adequate to meet the accommodation needs for each Deaf or Hard of Hearing Employee.

#### 9.10.5 Addressing Ongoing Accommodation Concerns and Interface between District, Area and Headquarters Disability Coordinators and Managers

District Disability Coordinators will work with District and Area management personnel to address accommodation needs for Deaf and Hard of Hearing Employees, as necessary. The ADRIAs and the District Disability Coordinators, along with the remaining DRAC members, will address accommodation concerns raised by Deaf and Hard of Hearing Employees and will work with the Headquarters Disability Program Manager and Disability Program Specialist, as needed.

The Headquarters Disability Program Manager and Disability Program Specialist will provide daily technical support and guidance to the ADRIAs and the DRACs regarding accommodation issues for Deaf and Hard of Hearing Employees. The Headquarters Disability Program Manager and Disability Program Specialist will also investigate, research, test, and implement newly developed accommodation technologies and resources for Deaf and Hard of Hearing Employees, as they become available.

## 9.11 Monitoring

### 9.11.1 Ombudsman Contract

The Postal Service will create a monitoring process that will report to the Manager, National Diversity Initiatives or the person holding a successor position. The Headquarters Disability Program Manager or the person holding a successor position, and an independent Deaf and Hard of Hearing ombudsman (Ombudsman) will also be established to jointly monitor compliance with the injunctive relief provided for in Section 9 of this Global Settlement Agreement and to report information received concerning compliance with this Global Settlement Agreement. The Postal Service will select a candidate to fill the Headquarters Disability Program Manager position. The Postal Service will competitively select and enter into a professional/consulting contract with the Ombudsman within two (2) months following the Effective Date of the Global Settlement Agreement (Ombudsman Contract). The Ombudsman shall have at least five years of experience as a mediator, ombudsman or monitor of class action litigation. The Ombudsman shall be selected from a pool composed of five candidates proposed by the Postal Service and five candidates proposed by the Plaintiffs. In addition, the Parties agree that Jacqueline Zins is an acceptable candidate and her name will be included in the pool of eligible candidates. The Ombudsman Contract will continue for a period of three (3) years from the date the Ombudsman Contract is fully signed. The monitoring process will begin no sooner than ninety (90) days after the Effective Date and will terminate three (3) years after the Effective Date.

### 9.11.2 Resolution of Comments and Concerns, Tracking and Reports

During the three year period set forth in Section 9.11.1 of this Global Settlement Agreement, Deaf and Hard of Hearing Employees will be advised that they can register a comment or concern about communication accommodation issues through a toll-free number or other device. These employees will be notified that use of the toll-free number or device to register a comment or concern does not affect their rights to file a grievance or complaint in any other process, nor does it serve as an initial contact for any other process such as a grievance or EEO pre-complaint processing pursuant to 29 C.F.R. § 1614.105.

During the three year period set forth in Section 9.11.1 of this Global Settlement Agreement, the comments and concerns filed pursuant to the process created by Section 9.11.1 of this Global Settlement Agreement will be logged and referred by the Headquarters Disability Program Manager or the person holding a successor position to the appropriate Alternative Dispute Resolution Inclusiveness Specialist(s) and District Disability Coordinator(s) for a response and/or resolution. To the extent there are any issues in resolving the particular comment or concern, consistent with the terms of this Global Settlement Agreement, the comment or concern will be referred by the Disability Program

Manager to the Manager, National Diversity Initiatives for a final response or resolution. Furthermore, the resolution, if any, of comments and concerns filed pursuant to the preceding paragraph of this Agreement will be tracked. The Disability Program Manager, or the person holding a successor position, the Manager, National Diversity Initiatives, or the person holding a successor position, and the Ombudsman will receive regular reports from the monitoring process. Aggregate information (including the substance of each comment or concern filed pursuant to the preceding paragraph, the number of comments and concerns by district and installation, and the status or outcome, if any, of each comment and concern) on comments or concerns received from Deaf and/or Hard of Hearing Employees concerning issues related to the provision of communication accommodations will be supplied to Class Counsel.

During the three year period set forth in Section 9.11.1 above, Class Counsel and the Ombudsman will also be provided quarterly reports on: (1) the total number of new Accommodation Request Forms submitted by Deaf and Hard of Hearing Employees; (2) the number of communication accommodations provided by the Postal Service to Deaf and Hard of Hearing Employees for Presumed and Non-Presumed Workplace Events by Postal Service district and installation; (3) the number of instances in which communication accommodations could not be provided due to exigent circumstances; (4) the types and numbers of other technological resources procured or provided to installations for accommodating Deaf and/or Hard of Hearing Employees or applicants; and (5) any technological changes or advances that are introduced by the Postal Service to enhance or improve the communication accommodations for Deaf and Hard of Hearing Employees; and (6) the aggregate number of formal EEO complaints filed with the Postal Service that allege denial of communication accommodations for Deaf or Hard of Hearing Employees.

The information reported in the preceding paragraph will be provided to Class Counsel and the Ombudsman on a district and installation basis within ten (10) calendar days after the end of each quarter.

The Parties agree that the monitoring of the commitments set forth in this Global Settlement Agreement will be accomplished through the activities spelled out in Section 9.11 of this Global Settlement Agreement.

## **10. ATTORNEYS' FEES PAYMENT AND ADMINISTRATION RESERVE**

### **10.1 Payment of Attorneys' Fees**

- a. The Postal Service shall have until the seventieth (70th) day after the Court's entry of the Order Granting Final Approval of the Global Settlement Agreement to pay Class Counsel the sum of one million five-hundred-fifty-thousand-dollars (\$1,550,000) for their attorneys' fees and costs incurred in the *Hubbard* Class Action, the *Tighe* Class Action and the

Amended *Hubbard* Class Action. In exchange for this payment, Class Counsel agrees to waive any further claims for attorneys' fees or costs against the Postal Service, except for any claims to expenses and costs advanced by Class Counsel to the Class Administrator during the administrative process, which amounts shall be drawn from the Reserve, as set forth in Section 10.2 of this Global Settlement Agreement. As such, the Postal Service will not be responsible for payment of any additional attorneys' fees, claims or expenses to Class Counsel nor for any claims for attorneys' fees, costs or expenses that may be made by attorneys representing individual Eligible Class Members.

- b. Payment of the one million five hundred fifty thousand dollars (\$1,550,000) shall be allocated as follows:
  - i. One million one hundred sixty thousand dollars (\$1,160,000) to Covington & Burling LLP, to be paid to the Covington & Burling IOLTA Trust Account c/o Thomas Williamson Jr., Esq. at 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004 -2401
  - ii. One hundred twenty-five thousand dollars (\$125,000) to the Washington Lawyers' Committee for Civil Rights and Urban Affairs, c/o Elaine Gardner, Esq. at 11 Dupont Circle, N.W., Suite 400, Washington, D.C. 20036
  - iii. One hundred twenty-five thousand dollars (\$125,000) to the firm of McCollum & Associates, LLC c/o James E. McCollum, Jr., at P.O. Box 1717, 7309 Baltimore Avenue, College Park, MD 20741; and
  - iv. One hundred forty thousand dollars (\$140,000) to Kevin C. Flesch, c/o Law Office of Kevin Flesch, 333 W. Hampden Avenue, Suite 710, Englewood, CO 80110.

The Postal Service shall prepare and issue appropriate tax reporting documents (Tax Form 1099-MISC) for the payment of the above amounts.

#### 10.2 Reserve

- a. The Postal Service shall have until thirty (30) days after the date the Court issues an Order Granting Preliminary Approval of the Global Settlement Agreement, to pay Class

Counsel the Reserve in the amount of one hundred ten thousand dollars (\$110,000) for administrative costs and expenses of the Class Administrator and Class Counsel (Reserve).

- b. The one hundred ten thousand dollars (\$110,000) sum for the Reserve is the anticipated amount of claims administration fees and costs, but not damages, and is included within the total settlement amount for compensatory damages of three million dollars (\$3,000,000). The Class Administrator, and any payees from the Reserve, shall be solely responsible for any taxes due, if any. The Postal Service shall prepare and issue appropriate tax reporting documents (Tax Form 1099-MISC) for the payment of the one hundred ten thousand dollar (\$110,000) Reserve payment to the Class Administrator.

### 10.3 Reimbursement

Class Counsel and the Class Administrator shall draw upon the Reserve, as set forth in Sections 6.3 and 10.2 of this Global Settlement Agreement, for all reasonable costs and expenses advanced by Class Counsel to the Class Administrator and all reasonable costs and expenses by the Class Administrator to perform the mailing and related administrative functions required by this Global Settlement Agreement. In no event may Class Counsel be entitled to reimbursement of these costs beyond the one hundred ten thousand dollars (\$110,000) contained in the Reserve.

## 11. **APPLICABLE CONTRACT PRINCIPLES**

### 11.1 Counterparts

This Global Settlement Agreement may be executed in one or more counterparts, and each executed copy shall be deemed an original, which shall be binding upon all Parties to this Global Settlement Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic means by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

### 11.2 Headings

The headings in this Global Settlement Agreement are for the convenience of the parties only and shall not limit, expand, modify, amplify, or aid in the interpretation or construction of this Global Settlement Agreement.

### 11.3 Entire Agreement

This Global Settlement Agreement, including Exhibits, comprises the full and exclusive agreement and understanding of the Parties with respect to this Global Settlement Agreement and supersedes any and all prior written or oral agreements. No representations or inducements to compromise this action have been made, other than those recited in this Global Settlement Agreement. This Global Settlement Agreement does not impose any obligations on the Parties beyond the terms and conditions stated herein.

### 11.4 No Waiver

The waiver by any Party of any term, condition, covenant or representation of this Settlement Agreement or the breach of any term, condition, covenant or representation herein, in any one instance, shall not operate as or be deemed to be a waiver of the right to enforce any other term, condition, covenant or representation. The failure by any Party at any time to enforce or require performance of any provision of this Global Settlement Agreement shall not operate as a waiver of or limit such Party's right at a later time to enforce or require performance of such provisions or of any other provisions of this Global Settlement Agreement.

In the event that the Court does not grant final approval of the Global Settlement Agreement or the Global Settlement Agreement is deemed to be null and void for any other reason, nothing herein, with the exception of a Release Form executed by an Eligible Class Member, shall be deemed to waive any of the Eligible Class Members' claims or the Postal Service's objections and defenses, and neither this Global Settlement Agreement nor the Order Granting Preliminary Approval or the Order Granting Final Approval of the Global Settlement Agreement shall be admissible in any court regarding the propriety of class certification or regarding any other issue or subject of the *Tighe* Class Action, the *Hubbard* Class Action or the Amended *Hubbard* Class Action.

### 11.5 Notice to Parties

Whenever this Global Settlement Agreement provides for notice to be given to the Parties, such notice shall be served on the Parties as follows:

**Notice To The Class Shall Be Sent By Mail  
and Email**

**To:**

Thomas S. Williamson, Jr., Esq.  
Covington & Burling, LLP  
1201 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20004

Kevin C. Flesch, Esq.  
Law Office of Kevin Flesch  
333 W. Hampden Avenue, Ste. 710  
Englewood, CO 80110.

**Notice To the Postal Service Shall Be Sent  
By Mail and Email**

**To:**

Beverly Russell, Esq.  
Assistant United States Attorney  
United States Department of Justice  
555 Fourth Street, NW, Room E-4915  
Washington, DC 20530

David B. Ellis, Esq.  
Chief Counsel, NELU  
Employment and Labor Law  
United States Postal Service  
475 L'Enfant Plaza, SW, Room 6238  
Washington, DC 20260-1149

11.6. Modifications

Except as provided in Section 12 below, this Global Settlement Agreement may not be amended or modified except with the express, prior written consent of Class Counsel for the Postal Service and Class Counsel and with the approval of the Court.

11.7 Binding Agreement

This Global Settlement Agreement is binding on all Parties and their successors, assigns, representatives and trustees.

11.8 Computation of Time

11.8.1 Calendar Days

All time periods in this Global Settlement Agreement that are stated in terms of days are based on calendar days unless otherwise expressly stated.

11.8.2 Verification of Timely Mailing

Unless otherwise specified in this Global Settlement Agreement, a document shall be deemed timely if it is received, postmarked or bears a similar verification of delivery before the expiration of the applicable period, or in the absence of a

legible postmark, if it is received by mail within five (5) days of the expiration of the applicable period.

#### 11.8.3 Calculation of Time

The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

### **12. MODIFICATIONS OF THE PROCESS BY AGREEMENT**

The Parties may modify, by joint written agreement, the sequences and timing of the notice and payment processes to the Eligible Class Members outlined in Sections 7 and 8 above, to effectively deal with issues that may arise under this Global Settlement Agreement (i.e., unforeseen circumstances, etc.).

### **13. SIGNATURE PAGES**

SO AGREED:

For the Class:

Bruce C. Hubbard  
Bruce C. Hubbard, Class Representative

Date: 10/17/2011

Judy M. Schuld, Class Representative

Date: \_\_\_\_\_

Grace J. Shirk-Emmons, Class Representative

Date: \_\_\_\_\_

For the USPS:

RONALD C. MACHEN JR.  
United States Attorney for the District of Columbia

RUDOLPH CONTRERAS  
Chief, Civil Division

By:

BEVERLY M. RUSSELL  
D.C. Bar No. 454257

MICHELE LO  
Assistant United States Attorneys  
U.S. Attorney's Office for the  
District of Columbia, Civil Division  
555 4th Street, N.W.  
Washington, D.C. 20530

Date: \_\_\_\_\_



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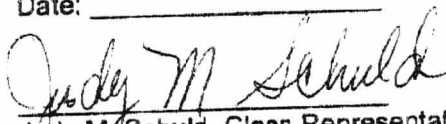
### 13. SIGNATURE PAGES

SO AGREED:

For the Class:

\_\_\_\_\_  
Bruce C. Hubbard, Class Representative

Date: \_\_\_\_\_

  
Judy M. Schuld, Class Representative

Date: 10/16/2011

\_\_\_\_\_  
Grace J. Shirk-Emmons, Class Representative

Date: \_\_\_\_\_

For the USPS:

RONALD C. MACHEN JR.  
United States Attorney for the District of Columbia

RUDOLPH CONTRERAS  
Chief, Civil Division

By: \_\_\_\_\_

BEVERLY M. RUSSELL  
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MICHELE LO  
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\_\_\_\_\_  
Bruce C. Hubbard, Class Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Judy M. Schuld, Class Representative

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Grace J. Shirk-Emmons, Class Representative

Date: 10/14/11

For the USPS:

RONALD C. MACHEN JR.  
United States Attorney for the District of  
Columbia

RUDOLPH CONTRERAS  
Chief, Civil Division

By:

\_\_\_\_\_  
BEVERLY M. RUSSELL  
D.C. Bar No. 454257

MICHELE LO  
Assistant United States Attorneys  
U.S. Attorney's Office for the  
District of Columbia, Civil Division  
555 4th Street, N.W.  
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Judy M. Schuld, Class Representative

Date: \_\_\_\_\_

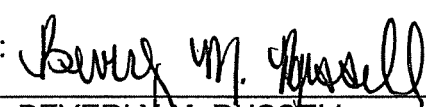
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Grace J. Shirk-Emmons, Class Representative

Date: \_\_\_\_\_

For the USPS:

RONALD C. MACHEN JR.  
United States Attorney for the District of  
Columbia 

RUDOLPH CONTRERAS   
Chief, Civil Division

By:   
\_\_\_\_\_  
BEVERLY M. RUSSELL  
D.C. Bar No. 454257

MICHELE LO  
Assistant United States Attorneys  
U.S. Attorney's Office for the  
District of Columbia, Civil Division  
555 4th Street, N.W.  
Washington, D.C. 20530

Date: 10/12/2011

\_\_\_\_\_  
Lucy I. Stieglitz, Class Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
George R. Westenberger,  
Class Representative

Date: \_\_\_\_\_

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Daniel Tighe, Class Representative

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Susan Tighe, Class Representative

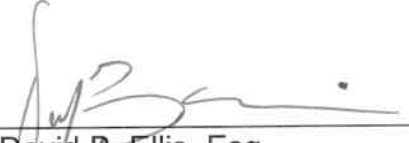
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James Gralund, Class Representative

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Diane Whitener, Class Representative

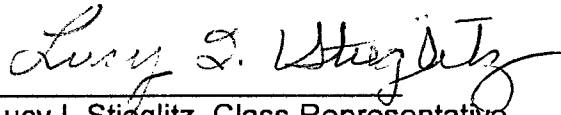
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David B. Ellis, Esq.,  
USPS, Chief Counsel

Date: 10/13/11

  
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Kathryn A. Good, Esq.

Date: 10-13-11



Lucy I. Stieglitz, Class Representative

Date: October 18, 2011

\_\_\_\_\_  
David B. Ellis, Esq.,  
USPS, Chief Counsel

Date: \_\_\_\_\_

\_\_\_\_\_  
George R. Westenberger,  
Class Representative

Date: \_\_\_\_\_

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Kathryn A. Good, Esq.

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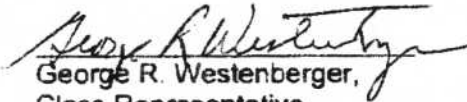
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Diane Whitener, Class Representative

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Lucy I. Stieglitz, Class Representative

Date: \_\_\_\_\_

  
George R. Westenberger,  
Class Representative

Date: 10-13-2011

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David B. Ellis, Esq.,  
USPS, Chief Counsel

Date: \_\_\_\_\_

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Kathryn A. Good, Esq.

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Lucy I. Stieglitz, Class Representative

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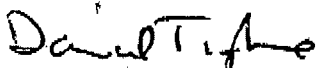
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George R. Westenberger,  
Class Representative

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Kathryn A. Good, Esq.

Date: \_\_\_\_\_



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Daniel Tighe, Class Representative

Date: 10/14/11



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Susan Tighe, Class Representative

Date: 10/14/11

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James Gralund, Class Representative

Date: \_\_\_\_\_

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Diane Whitener, Class Representative

Date: \_\_\_\_\_

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Lucy I. Stieglitz, Class Representative

Date: \_\_\_\_\_

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Date: \_\_\_\_\_

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Class Representative

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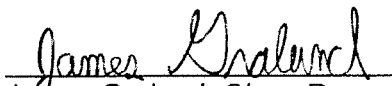
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Daniel Tighe, Class Representative

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James Gralund, Class Representative

Date: 10-17-11

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Diane Whitener, Class Representative

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Lucy I. Stieglitz, Class Representative

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Class Representative

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Susan Tighe, Class Representative

Date: \_\_\_\_\_

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James Gralund, Class Representative

Date: \_\_\_\_\_

Diane Whitener  
Diane Whitener, Class Representative

Date: 10/19/11



Allen Whitsit, Class Representative

Date: 10-17-11

\_\_\_\_\_  
Gail Walker, Class Representative

Date: \_\_\_\_\_

\_\_\_\_\_  
Thomas S. Williamson, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_



Kevin C. Flesch, Esq.  
Class Counsel

Date: 10/17/11

\_\_\_\_\_  
Elaine Gardner., Esq.  
Class Counsel

Date: \_\_\_\_\_

\_\_\_\_\_  
James E. McCollum, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_

Arlen Whitsit, Class Representative

Date: \_\_\_\_\_

Gail Walker  
Gail Walker, Class Representative

Date: 10/15/11

Thomas S. Williamson, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_

Kevin C. Flesch, Esq.  
Class Counsel

Date: \_\_\_\_\_

Elaine Gardner., Esq.  
Class Counsel

Date: \_\_\_\_\_

James E. McCollum, Jr., Esq.  
Class Counsel

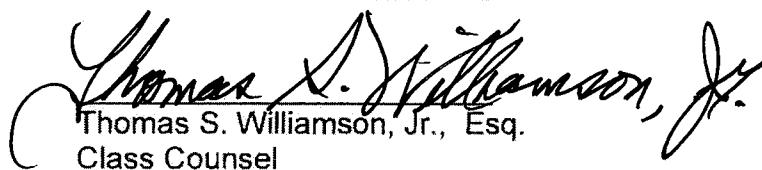
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Arlen Whitsit, Class Representative

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Gail Walker, Class Representative

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Thomas S. Williamson, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_

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Kevin C. Flesch, Esq.  
Class Counsel

Date: \_\_\_\_\_

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Elaine Gardner., Esq.  
Class Counsel

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James E. McCollum, Jr., Esq.  
Class Counsel

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Arlen Whitsit, Class Representative

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Gail Walker, Class Representative

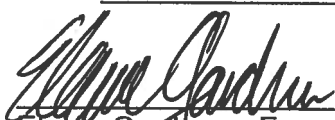
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Thomas S. Williamson, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_

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Kevin C. Flesch, Esq.  
Class Counsel

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Elaine Gardner, Esq.  
Class Counsel

Date: 10/20/11

\_\_\_\_\_  
James E. McCollum, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_

Arlen Whitsit, Class Representative

Date: \_\_\_\_\_

Gail Walker, Class Representative

Date: \_\_\_\_\_

Thomas S. Williamson, Jr., Esq.  
Class Counsel

Date: \_\_\_\_\_

Kevin C. Flesch, Esq.  
Class Counsel

Date: \_\_\_\_\_

Elaine Gardner., Esq.  
Class Counsel

Date: \_\_\_\_\_

James E. McCollum, Jr.  
James E. McCollum, Jr., Esq.  
Class Counsel

Date: October 20, 2011

EXHIBIT 1

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/MJF)

Jury Trial Demanded

THIRD AMENDED CLASS ACTION COMPLAINT

<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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Attorneys for Plaintiffs

October 21, 2011

## Exhibit 2

### **Amended Hubbard Class Action – Global Settlement Agreement**

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**THIS NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS  
HEARING HAS BEEN TRANSLATED INTO AMERICAN SIGN LANGUAGE (ASL)  
AND IS AVAILABLE AT [WWW.HUBBARDSETTLEMENT.COM](http://WWW.HUBBARDSETTLEMENT.COM)**

**If You Are Deaf or Hard of Hearing and Were A Postal Employee On or After  
November 14, 2001,**

**You Could Receive Benefits from a Class Action Settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- A \$4,550,000 settlement with the United States Postal Service (Postal Service) has been reached in connection with the following two proceedings:
  1. A federal court class action captioned as *Bruce C. Hubbard, et al. v. Patrick R. Donahoe, PMG*, Civil Action No 03-1062 (RJL/MJF) (D.D.C.) (*Hubbard Class Action*); and
  2. An Equal Employment Opportunity Commission (EEOC) administrative class action captioned as *Daniel Tighe, et al. v. Patrick R. Donahoe, PMG*, EEOC No. 320-2005-00065X; Agency No. 1E-801-0070-04 (*Tighe Class Action*).

In these two separate actions, Bruce C. Hubbard (Hubbard), Judy M. Schuld (Schuld), Grace J. Shirk-Emmons (Emmons), Lucy I. Stieglitz (Stieglitz), George R. Westenberger (Westenberger), James Gralund (Gralund), Daniel Tighe (D. Tighe), Susan Tighe (S. Tighe), Diane Whitener (Whitner), Arlen Whitsit (Whitsit), and Gail Walker (Walker) (collectively the “Class Representatives”) claim that between November 14, 2001 and \_\_\_\_\_, 2011 the Postal Service:

- (1) denied them communication accommodations, including interpreters for critical workplace meetings and events;
- (2) denied them telecommunications devices for the deaf (TTY) for phone communications;
- (3) denied them emergency evacuation notification systems;
- (4) subjected them to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or

(5) denied them promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment.

- The Class Representatives and the Postal Service have reached a Global Settlement Agreement. In connection with the proposed settlement reached by the Class Representatives and the Postal Service (hereinafter the Global Settlement Agreement), the U.S. District Court for the District of Columbia (Court) has granted leave to the Class Representatives to file a Third Amended Complaint on behalf of the *Hubbard* and the *Tighe* class members (the Amended *Hubbard* Class Action). The Court has approved this Notice and authorized the parties to mail the Notice to the all putative class members in the Amended *Hubbard* Class Action.
- The Global Settlement Agreement creates two separate classes: a “Damages Settlement Class” (for purposes of the monetary relief provided under the settlement) and an “Injunctive Settlement Class” (for purposes of the programmatic relief provided under the settlement). The definitions of these classes overlap and many individuals will be members of both classes. However, there will be some individuals — namely, former employees of the Postal Service—who qualify only for the Damages Settlement Class.
- Under the terms of the Global Settlement Agreement, you may be eligible for a monetary payment of at least two hundred fifty dollars (\$250) and likely more if you are Deaf or Hard of Hearing and you were employed by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011.
- The Postal Service also has agreed, under the terms of the Global Settlement Agreement, to adopt various policies and practices intended to improve the means by which the Postal Service provides reasonable communications accommodations to current Deaf and Hard of Hearing employees.
- The Global Settlement Agreement will affect your rights, if approved. It includes a broad release of claims against the Postal Service. Accordingly, you will be precluded from pursuing certain individual claims against the Postal Service unless you take the steps described in this Notice to exclude yourself from the Global Settlement.
- You may object to any aspect of the Global Settlement Agreement to the Court. The Court will hold a hearing (the Fairness Hearing) to consider whether the settlement is fair, reasonable, and adequate, and to decide whether to give final approval to this settlement. If the Global Settlement Agreement is granted final approval by the Court, the Court’s judgment will be final and binding.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN CONNECTION WITH THE GLOBAL SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM TO THE CLASS ADMINISTRATOR</b>	This is the only way to be eligible to receive money from the Global Settlement.
<b>EXCLUDE YOURSELF FROM THE GLOBAL SETTLEMENT</b>	<p>If you are a member of the Damages Settlement Class, you may affirmatively exclude yourself from the provisions of the Global Settlement that provide for monetary relief by sending a letter to the Class Administrator requesting to be excluded. If you affirmatively exclude yourself, you will not receive any money under the Global Settlement. If you do not affirmatively exclude yourself, you will give up the right to file and/or continue to pursue similar claims against the Postal Service for monetary relief.</p> <p>If you are a member of the Injunctive Settlement Class, you may <u>not</u> affirmatively exclude yourself from the provisions of the Global Settlement that provide for injunctive relief (described in response to Question # 9 below).</p>
<b>OBJECT/COMMENT</b>	Write to the Court about any concerns you have about the Global Settlement.
<b>GO TO THE HEARING</b>	Ask to speak in Court about the fairness of the Global Settlement. <b>You must also submit a written objection or response with the Court to participate in the Fairness Hearing.</b>
<b>DO NOTHING</b>	<b>If you do nothing, you will receive no money from the Global Settlement and you will give up certain rights,</b> such as your ability to file or continue to pursue individual claims against the Postal Service which are similar to the claims in the Amended <i>Hubbard</i> Class Action. However, if you are a current employee, you will still be entitled to the benefits of the injunctive relief.

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Global Settlement Agreement. If the Court grants final approval and that determination is not appealed, class members will receive payments upon the completion of a claims process. **Please be patient.**

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## BASIC INFORMATION

### 1. Why is there a Notice?

You have a right to know about the proposed Global Settlement Agreement, and about your options, before the Court decides whether to grant final approval of the Global Settlement Agreement.

The Court in charge of the Amended *Hubbard* Class Action case is the United States District Court for the District of Columbia, and the Amended *Hubbard* Class Action is captioned as *Bruce C. Hubbard, et al., v. Patrick R. Donahoe*, Civil Action No. 03-106. The people who sued are called Plaintiffs, and the person they sued, the Postmaster General in his official role with the Postal Service, is called the Defendant.

### 2. What is the Amended *Hubbard* Class Action about?

This Global Settlement resolves all claims asserted in the Amended *Hubbard* Class Action. In the Amended *Hubbard* Class Action, the Plaintiffs allege that, between November 14, 2001 and \_\_\_\_\_, 2011, the Postal Service: (1) denied them communication accommodations, including interpreters for critical workplace meetings and events; (2) denied them TTY for phone communications; (3) denied them emergency evacuation notification systems; (4) subjected them to a hostile work environment and/or harassment due to their deafness or hearing impairment; and/or (5) denied them promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to their deafness or hearing impairment.

The Global Settlement does not mean the Postal Service violated any laws. The Postal Service denies it did it anything wrong.

### 3. Why is the Amended *Hubbard* Class Action being pursued as a class action?

In a class action, one or more people, called class representatives or named plaintiffs (in this case, Bruce C. Hubbard, Judy M. Schuld, Grace J. Shirk-Emmons, Lucy I. Stieglitz, George R. Westenberger, Daniel Tighe, James Gralund, Susan Tighe, Diane Whitener, Arlen Whitsit and Gail Walker) sue on behalf of people who have similar claims. All of these people may make their claims together in a “class” as “class members,” and one court resolves the issues for all class members who have filed a claim.

## WHO IS COVERED BY THE GLOBAL SETTLEMENT?

To see if you are entitled to benefits from the Global Settlement Agreement, you first have to determine if you are an eligible class member under the terms of the Global Settlement Agreement. As described above, the Global Settlement Agreement creates two separate classes, including a “Damages Settlement Class” for individuals who are eligible for certain monetary relief (money damages) provided under the settlement (Eligible Damages Class Member) and an “Injunctive Settlement Class” for those individuals who are eligible for certain injunctive or programmatic relief provided under the settlement (Eligible Injunctive Class Member). Many individuals will be members of both classes. However, there will be some individuals — namely, former employees of the Postal Service — who qualify only for the Damages Settlement Class.

#### **4. How do I know if I am an Eligible Class Member?**

You are an **Eligible Damages Class Member** if it is determined that:

- You are Deaf or Hard-of- Hearing (as defined in response to Question #5 below);
- You were employed by the Postal Service at any time between November 14, 2001 and \_\_\_\_\_, 2011; and
- During this time period: (1) you were denied reasonable communication accommodations, including interpreters, for critical workplace meetings and events; (2) you were denied TTY for phone communications; (3) you were denied emergency evacuation notification systems; (5) you were denied closed captioning on safety and training videos; (4) you were subjected to a hostile work environment and/or harassment due to your deafness or hearing impairment; and/or (5) you were denied promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to your deafness or hearing impairment.

You are an **Eligible Injunctive Class Member** if it is determined that you were employed by the Postal Service at any time between November 14, 2001 and \_\_\_\_\_, 2011, you remain employed by the Postal Service at the time of this Notice, and you are Deaf or Hard-of- Hearing (as defined in response to Question #5 below).

#### **5. Who is considered Deaf and Hard of Hearing?**

For purposes of the Global Settlement Agreement, a Deaf employee is a Postal Service employee who meets the definition of Postal Service disability classification code 16 (total deafness with understandable speech) or Postal Service disability classification code 17 (total deafness with inability to speak clearly).

For purposes of the Global Settlement Agreement, a Hard of Hearing employee is a Postal Service employee who meets the definition of Postal Service disability classification code 15 (total deafness in one ear or inability to hear ordinary conversation, correctable with a hearing aid).

#### **6. I'm still not sure if I'm included.**

If you are still not sure whether you are included in the Global Settlement Agreement, you can contact Class Counsel at (800) XXX-XXXX?, or you can visit the website [www.HubbardSettlement.com](http://www.HubbardSettlement.com), call the Class Administrator at 1 (800) XXX-XXX or send a letter to the Class Administrator at the following address:

[Insert Class Administrator Address]

#### **7. May I submit more than one claim?**

No. This Global Settlement resolves all claims contained in the Amended *Hubbard* Class Action. You can only submit one claim under the terms of the Global Settlement Agreement.

## THE GLOBAL SETTLEMENT BENEFITS

### 8. What does the Global Settlement provide for the Damages Settlement Class?

The Postal Service has agreed to provide \$4,550,000 to settle the Amended *Hubbard* Class Action (the Settlement Proceeds) with respect to the Damages Settlement Class. The Settlement Proceeds will be distributed as follows: (1) a class fund of \$2,890,000 will be distributed to Eligible Damages Class Members who submit timely, complete Claim Forms (the Class Fund); (2) a reserve in the amount of \$110,000 will be allocated to cover costs and expenses of the Class Administrator (the Reserve); and (3) \$1,550,000 in attorneys' fees and costs will be paid to counsel representing the Class Representatives and the class in the Amended *Hubbard* Class Action (Class Counsel).

If any money remains in the Class Fund or the Reserve after all payments have been made to Eligible Damages Class Members and Class Counsel and all expenses have been paid, such remaining funds, if any, shall be distributed *pro-rata* to each Eligible Damages Class Member who submitted a timely, completed Claim Form and who provided a valid address.

### 9. What does the Global Settlement provide for the Injunctive Settlement Class?

The Postal Service has also agreed to adopt various policies and practices intended to enhance the provision of reasonable communication accommodations to Eligible Injunctive Class Members. This type of non-monetary relief is referred to as injunctive relief. As part of this injunctive relief, the Postal Service will provide certain communications accommodations to Deaf and Hard of Hearing Employees who submit an oral or written request for a communication accommodation to their supervisor, manager or respective District Disability Coordinator.

- *Significant Workplace Events.* The Postal Service has agreed that it will make best efforts to provide an in-person sign language interpreter, for Deaf and Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication for the following six workplace events: (1) during critical elements of the selection process including interviews and instructions for testing; (2) during formal training sessions; (3) during investigatory interviews that may lead to discipline and formal discussions with a supervisor on job performance evaluations or corrective actions; (4) during Combined Federal Campaign and savings bond drive kickoff meetings; (5), during limited Equal Employment Opportunity counseling sessions and for completion of paperwork for Office of Workers Compensation claims; and (6) during significant safety instruction, other than safety reminders. In the event that an interpreter is not available for one of these events, the Postal Service will reschedule the event for the employee with an interpreter or use Video Remote Interpreting (VRI) or another alternative communication accommodation. As a part of its best efforts obligation, the Postal Service shall ensure that every installation with one or more Deaf or Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication has either contracted with an Interpreter service for the provision of on-site interpretation for Presumed Workplace Events or, if a formal contract is not required, has otherwise made arrangements for an Interpreter service to provide on-site interpretation for the above workplace events. The presumption that an Interpreter will be provided for a Presumed Workplace Event may be overcome if the Postal Service can demonstrate that the Postal Service has undertaken

diligent and timely efforts to obtain an Interpreter, including contracting with a local Interpreter service, but that no Interpreter is available due to the timing of the Presumed Workplace Event and/or the location of the installation at which the Presumed Workplace Event is to occur.

- *Provision of Communication Accommodations for Other Workplace Events.* The Postal Service has agreed that it will also provide communication accommodations to Deaf and Hard of Hearing Employees who use ASL or another sign language equivalent as their primary means of communication for the following workplace events: service talks of a duration in excess of five minutes; weekly safety talks; meetings to discuss work procedures, policies, assignments, or health benefit options and retirement issues; management initiated personnel actions; and specialized staff meetings for such employees. The possible reasonable communication accommodations for these events include the following, in descending order of priority: VRI, an in-person interpreter (only if requested and if the VRI is unavailable at the employee's installation), Ubi Duos or similar devices, or another reasonable communication accommodation, tool and/or technology. For Hard of Hearing Employees (self identified to the Postal Service as Disability Status Code 15) who do not use sign language as their primary means of communication, the Postal Service will make best efforts to provide the following communication accommodations upon request: (1) Ubi Duo; (2) other communication tools or devices; and (3) written communications.

The Postal Service has also agreed to the following measures:

- *Contract with Interpreter Service.* The Postal Service will ensure that every installation with one or more Deaf or Hard of Hearing Employees has contracted with an interpreter or made other arrangements for an interpreter service to provide on-site interpretation when needed.
- *VRI and Video Phones Capabilities.* The Postal Service will provide at least one VRI unit or comparable tool at every Postal installation with one or more Deaf or Hard of Hearing Employees that has access to a high speed Internet connection or the Postal Service's Intranet system. It will also provide at least one video phone at every installation with five or more Deaf or Hard of Hearing Employees who use ASL.
- *Training Videos.* The Postal Service will ensure that all training or instructional videotapes or films created after the date of the final approval of the Global Settlement Agreement will be open or closed captioned.
- *Visual Warning Lights/Industrial Equipment.* The Postal Service will ensure that visual warning lights are installed on all moving industrial equipment powered by electric motor or internal combustion motors in all Postal Service facilities employing Deaf or Hard of Hearing Employees in the regular work force.
- *Emergency Action Plan and Employee Alarm System.* The Postal Service will ensure that it develops and implements an emergency action plan for all its facilities nationally. The plan will address emergency alarm systems which will give Deaf and Hard of Hearing Employee's adequate warning in the event of an emergency.

- *Improve Training For Supervisors.* The USPS will ensure that all supervisors of Deaf or Hard of Hearing Employees obtain training regarding effective communication with Deaf or Hard of Hearing Employees, provision of qualified interpreters, and use of VRI/VRS equipment.

The Postal Service has also agreed to take the following steps designed to ensure that it complies with the terms of this Global Settlement Agreement and its obligation to provide reasonable communications accommodations to Deaf and Hard of Hearing Employees:

- *Toll-Free Number or Device.* The Postal Service will create a toll-free number or device that will allow Deaf and Hard of Hearing Employees to provide comments or register concerns about communication accommodation issues for a three (3) year period.
- *Postal Service Reasonable Accommodation Assistance Center.* The Postal Service has created an organizational unit known as the Postal Service Reasonable Accommodation Assistance Center (PRAAC) to monitor compliance with, and enforcement of the Global Settlement Agreement and to ensure that disabled employees, including Deaf and Hard of Hearing Employees, are provided reasonable accommodations.
- *District Disability Coordinator.* The ad hoc position of District Disability Coordinator will also be established and Deaf and Hard of Hearing Employees can raise concerns and issues about their accommodation(s) with this individual. Further, Disability Coordinators will now be members of the established District Reasonable Accommodation Committees (DRACs) and will work with the DRACs to ensure that a Deaf or Hard of Hearing Employee is receiving the communication accommodations provided for in his or her Communication Accommodation Plan.
- *Interactive Discussions with Deaf and Hard of Hearing Employees.* The District Disability Coordinators in each District will join the established DRAC in his or her District and will engage in interactive discussions with Deaf and Hard of Hearing Employees to discuss accommodation issues for individual Deaf and Hard of Hearing Employees in each District and to ensure that the Postal Service is in compliance with the provisions of this Global Settlement Agreement.
- *The Position of Ombudsman.* In addition, an independent Deaf and Hard of Hearing ombudsman (Ombudsman) will be established for a three (3) year period to monitor the Postal Service's compliance in providing the injunctive relief specified under the terms of the Global Settlement Agreement. The Ombudsman will receive concerns or comments from Deaf or Hard of Hearing Employees concerning issues relating to compliance with the injunctive relief terms of the Global Settlement Agreement and will forward these comments and concerns to the Postal Service for a response and/or resolution. The Ombudsman will also receive quarterly reports regarding the Postal Service's compliance with the terms of the Global Settlement Agreement for a three (3) year period.

## 10. How much money can I get?

The precise amount of your actual payment cannot be determined yet. The amount of money you may be eligible to receive will depend in part on the total number of Eligible Damages Class Members who timely

submit complete Claim Forms and the responses to the Claim Form. If you are an Eligible Damages Class Member, as defined in the response to Question #4 above, and you timely submit a complete Claim Form, you will receive a minimum payment of at least \$250. You may then be eligible for additional money depending upon the information contained in your completed Claim Form. The Class Administrator will determine how much money you are entitled to receive based on the information in your completed Claim Form and the distribution formula described in response to Question #11 below.

#### **11. How will my payment be determined?**

A Class Administrator retained by Class Counsel will review your Claim Form and determine: (1) whether you are an Eligible Damages Class Member, and if so, (2) how much money you will be entitled to receive from the Class Fund based on the information contained in your Claim Form and the distribution formula set forth below. If the Class Administrator determines that you are an Eligible Damages Class Member, you will be awarded at least \$250. This minimum distribution of \$250 will be awarded to all Eligible Damages Class Members who submit timely, complete Claim Forms. The remainder of the Class Fund will then be distributed to Eligible Damages Class Members in proportion to the number of shares awarded to each Eligible Damages Class Member by the Class Administrator, as set forth below. The Class Administrator will determine your proportional shares in accordance with the following formula:

- five (5) settlement shares for each month of employment that you were employed by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011;
- one hundred (100) settlement shares if you were denied a request for a workplace accommodation for your deafness or hearing-related impairment on at least one (1) occasion between November 14, 2001 and \_\_\_\_\_, 2011;
- one hundred (100) settlement shares if you were denied a request for workplace accommodation for your deafness or hearing-related impairment on more than three (3) occasions between November 14, 2001 and \_\_\_\_\_, 2011;
- fifty (50) settlement shares if you were denied a promotional opportunity due to the failure of the Postal Service to provide a reasonable communication accommodation for your deafness or hearing-related impairment on at least one (1) occasion between November 14, 2001 and \_\_\_\_\_, 2011;
- fifty (50) settlement shares if you have suffered emotional distress as a result of any of the actions listed above or as the result of workplace harassment due to your deafness or hearing-related impairment; and
- one hundred (100) settlement shares if you certify that you sought medical assistance as a result of emotional distress caused by the Postal Service's denial of your request for a workplace accommodation for your deafness or hearing-related impairment at any point between November 14, 2001 and \_\_\_\_\_, 2011.



## **12. What will the Class Representatives Receive?**

The Court has approved eleven (11) named Class Representatives for the Amended *Hubbard* Class Action. These Class Representatives have deferred their individual EEO complaints and any relief they were entitled to receive, for approximately ten (10) years. They have also dedicated substantial time and energy to assisting Class Counsel in ensuring that the class was adequately represented. Because of these factors, the Class Representatives will each receive a service award of \$10,000 in addition to their proportional share as Eligible Damages Class Members based on their responses on the Claim Form.

### **HOW TO GET BENEFITS – SUBMITTING A CLAIM**

## **13. How do I submit a claim?**

**In order to receive a settlement share payment from the Class Fund, Eligible Damages Class Members must complete the Claim Form attached to this Notice and return it to the Claims Administrator, postmarked by no later than sixty (60) days after the Court issues an Order Granting Final Approval of the Global Settlement. Claim Forms received later than the sixtieth (60th) day after the date the Court issues an Order Granting Final Approval of the Global Settlement will not be considered in any distribution of settlement proceeds. Claim Forms are being sent to you prior to the Court issuing an Order Granting Final Approval of the Global Settlement Agreement in an effort to expedite the settlement process. However, the deadline for you to mail Claim Forms is not until sixty (60) days after the Court issues an Order Granting Final Approval of the Global Settlement Agreement.**

Eligible Injunctive Class Members do not need to do anything to receive the benefits of the programmatic or injunctive relief discussed above (e.g., interpreter services) in response to Question # 9. However, you will not receive any monetary relief (i.e., money damages) unless you complete the Claim Form and return it to the Class Administrator, **postmarked by no later than sixty (60) days after the Court issues an Order Granting Final Approval of the Global Settlement.**

In addition to completing and timely submitting a Claim Form, each Eligible Damages Class Member seeking to participate in the Global Settlement must complete and timely submit a release form (Release Form) before receiving his or her settlement share payment from the Class Fund. The Class Administrator will mail Release Forms to each Eligible Damages Class Member who is entitled to a share of the Class Fund within ninety (90) days after the date the Court enters an Order Granting Final Approval of the Global Settlement Agreement. The Release Form will specify for each Eligible Damages Class Member the amount of his or her settlement share payment as calculated using the distribution formula set forth in response to Question #12 above. The Eligible Damages Class Member must then return the Release Form to the Class Administrator on or before the return date indicated on the Release Form (which deadline will be thirty (30) days after the date on which the Class Administrator mails the Release Form). The Class Administrator will use the postmarked date on the envelope containing the Release Form to determine whether the Release Form was timely returned. The Eligible Class Member's execution and return of their Release Form will release all of the Eligible Damages Class Member's claims against the Postal Service as alleged in the Amended *Hubbard* Class Action. **Only Eligible Damages Class Members, who have**

**completed, signed and timely returned a Release Form shall be eligible to receive a monetary settlement share under the Global Settlement Agreement.**

If you are submitting a Claim Form and Release Form for someone who is deceased, you will need to provide a death certificate for that individual and proof that you are that person's legal representative. If no one has been chosen to be the legal representative, then you need to state this in the Claim Form, or submit a separate sworn statement explaining, why you think you will be appointed the legal representative of his or her estate. In either situation, you will also need to submit a Standard Form (SF) 1153 - "Claim For Compensation of Deceased Civilian Employee." The Class Administrator will send you an SF 1153 if needed.

In addition to the information above, if you are submitting a Claim Form for someone who has a physical or mental limitation, you will need to provide proof that you are that person's legal representative, or submit a separate sworn statement explaining why that person is not able to submit his or her own Claim Form and why you think you have the right to submit a Claim Form for that person.

#### **14. Can I get help filing a claim?**

Yes. You can get free help [by contacting Class Counsel at 1 (800) XXX-XXXX?], or you can visit the website [www.HubbardSettlement.com](http://www.HubbardSettlement.com), call the Class Administrator at 1 (800) XXX-XXX or send a letter to the Class Administrator at the following address:

[Insert Class Administrator Address]

#### **15. What documentation is required to support my claim?**

To be entitled to a monetary award, you must timely submit a complete, signed Claim Form and Release Form to the Class Administrator, as discussed more fully in response to Question #13 above.

#### **16. When will I get my payment?**

Payment will not be provided until the Court grants final approval of the Global Settlement Agreement, you have submitted your timely, completed and signed Claim Form and Release Form and after all Claim Forms are reviewed by the Class Administrator. The Postal Service will have until the one hundred ninety-fifth (195th) day after the date the Court issues an Order Granting Final Approval of the Global Settlement Agreement to mail settlement share checks to all Eligible Class Members who provided executed Release Forms. **Please be patient.**

### **REMAINING IN THE SETTLEMENT**

#### **17. What happens if I do nothing?**

If you do nothing, you will not get any money from the Global Settlement, but you will not be permitted to pursue past claims similar to those contained in the Amended *Hubbard* Class Action that are based on incidents or events that occurred prior to \_\_\_\_\_, 2011.



**18. What am I giving up by submitting a Claim Form and Release Form to obtain monetary relief (i.e., money damages)?**

If the Court approves the Global Settlement Agreement as proposed by the parties, you will forfeit your right to initiate or pursue any individual claim that is similar to the claims contained in the Amended *Hubbard* Class Action *unless* you have effectively excluded yourself from the settlement in accordance with Question # 20. This means that, unless you exclude yourself from the settlement, as of the date the Court grants final approval of the Global Settlement, any similar claims that you may have will be extinguished; and the Postal Service will be forever released from liability to you for those claims. This global release of claims against the Postal Service will apply regardless of whether you submit a Claim Form and/or a Release Form. However, as noted above, you will *forfeit* your right to any money damages under the terms of the Global Settlement Agreement unless you submit a Claim Form and Release Form. If the Court does not approve the Global Settlement Agreement, the Claim Form will have no effect. However, regardless of whether the Global Settlement Agreement is ultimately approved, rejected or voided, any Class Member who signs a Release Form will be deemed to waive all claims in the *Tighe* Class Action, the *Hubbard* Class Action and/or the Amended *Hubbard* Class Action. The Postal Service has agreed to honor executed Release Forms (and provide the monetary and injunctive relief specified under the terms of the Global Settlement Agreement to class members who release their claims), regardless of whether or not the Global Settlement Agreement is approved, rejected, stayed or voided.

**EXCLUDING YOURSELF FROM THE MONETARY TERMS OF THE SETTLEMENT**

**19. Am I permitted to exclude myself and sue the Postal Service for the same thing later?**

Yes, if you are an Eligible Damages Class Member, you may exclude yourself from the provisions of the Global Settlement that provide monetary relief. You may do this if you do not want a payment from the Global Settlement and you want to keep the right to sue or continue to sue the Postal Service for money damages on your own based on the legal issues in this case. This is called excluding yourself — or “opting out” of the Damages Settlement Class.

However, even if you opt out of the Damages Settlement Class, if you are a current employee of the Postal Service who is an Eligible Injunctive Class Member, you may not exclude yourself from provisions of the Global Settlement Agreement that provide injunctive relief -- i.e., the changes in policy that the Postal Service has agreed to implement that are described in response to Question # 9 above. You may only exclude yourself from the monetary relief portions of the Global Settlement.

**20. How do I exclude myself from the Global Settlement?**

To exclude yourself from the Global Settlement, you must send a letter that includes the following:

- Your name, address, and telephone number,

- A statement that makes clear that you want to be excluded from *Hubbard v. Donahoe*, Civil Action No 03-1062, and
- Your signature.

You must mail your exclusion request, postmarked **no later than** \_\_\_\_\_ [sixty (60) days after the Court issues an Order Granting Preliminary Approval of the Global Settlement], to:

Hubbard Settlement Exclusions  
C/O Class Administrator  
Class Administrator Address

**21. If I don't exclude myself, can I sue the Postal Service for the same thing later?**

No. Unless you exclude yourself from the money damages portions of the Global Settlement, you give up the right to sue the Postal Service for the claims that the Global Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from the Damages Settlement Class to continue your own lawsuit.

**22. If I exclude myself, can I still get benefits from the Global Settlement?**

You will not get any money if you exclude yourself from the monetary relief portions of the Global Settlement. However, to the extent you are an Eligible Injunctive Class Member, you will still benefit from the changes in policy that the Postal Service has agreed to implement pursuant to the Global Settlement.

**THE LAWYERS REPRESENTING YOU**

**23. Do I have a lawyer in this case?**

Yes. Thomas S. Williamson, Jr., Esq., of the law firm of Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004; Kevin Flesch, Esq., of the Law Office of Kevin Flesch, 333 W. Hampden Avenue, Ste. 710, Englewood, CO 80110; Elaine Gardner, Esq., of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, 11 Dupont Circle, N.W., Suite 400, Washington, D.C. 20036; and James E. McCollum, Jr., Esq., of the law firm of McCollum & Associates, LLC, 7309 Baltimore Avenue, Suite 117, College Park, MD 20741, are your lawyers in this case, and they are referred to collectively as "Class Counsel." You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and have that lawyer appear in Court for you in this case, you may hire one at your own expense.

**24. How will the lawyers be paid?**

Class Counsel will ask the Court to approve an award of attorneys' fees and expenses in the amount of one million five hundred fifty thousand dollars (\$1,550,000). This sum was agreed to by the parties to cover Class Counsel's attorneys' fees and reimbursement of expenses. Class Counsel has pursued these claims on behalf of Named Plaintiffs and the Class without receiving any compensation for its services or

reimbursement of its out-of-pocket expenses, and the award that the parties have agreed to is substantially less than the approximately three million three hundred thousand dollars (\$3.3 million) in legal fees and expenses that class counsel has incurred over the course of the nine-year representation of the Named Plaintiffs and the Class. Class Counsel will also ask the Court to award at least \$10,000 to each of the named Class Representatives, who helped the lawyers on behalf of the whole class.

If you choose to hire your own attorney, you need to remember that you will have to pay that attorney with your own money; and your attorney will have to follow the Court's orders in this case.

### **COMMENTING ON THE GLOBAL SETTLEMENT**

You can tell the Court that you don't agree with the Global Settlement or some part of it.

#### **25. How do I tell the Court what I think about the Global Settlement?**

If you have comments about, or disagree with, any aspect of the Global Settlement, including the requested attorneys' fees, you may express your views in writing to the Court. The written response should include your name, address, telephone number, the case name and number (*Hubbard et al. v. Donahoe*, Civil Action No. 03-1062); a brief explanation of your reasons for objecting; and your signature. You must send your written response, if any, in writing to the Court at the following address:

The Honorable Richard T. Leon  
United States District Court for the District of Columbia  
333 Constitution Avenues, N.W.,  
Washington, DC 20001

You must file your written response with the Court by \_\_\_\_\_ [45 days after the Order Granting Preliminary Approval of the Global Settlement Agreement] to be considered timely. You also must send copies of your written responses to Class Counsel and Counsel for the Postal Service as follows:

#### **Class Counsel:**

Thomas S. Williamson, Jr., Esq.  
Covington & Burling, L.L.P.  
1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004

Kevin C. Flesch, Esq.  
Law Office of Kevin Flesch  
333 W. Hampden Avenue, Ste. 710 Englewood, CO 80110.

#### **Counsel for the Postal Service:**

Beverly Russell, Esq.  
Assistant United States Attorney  
United States Department of Justice  
555 Fourth Street, NW, Room E-4915

Washington, DC 20530

David B. Ellis, Esq.  
Chief Counsel, NELU  
Employment and Labor Law  
United States Postal Service  
475 L'Enfant Plaza, SW, Room 6238  
Washington, DC 20260-1149

Anyone who does not timely file a response objecting to the terms of the Global Settlement Agreement in the foregoing manner shall be deemed to have waived all objections and shall be foreclosed from making any objections to the Global Settlement Agreement.

### THE COURT'S FAIRNESS HEARING

#### **26. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing at [INSERT TIME AND DATE] at the United States District Court for the District of Columbia (333 Constitution Avenues, N.W., Washington, DC 20001) in the courtroom of the Honorable Richard J. Leon. There will be a sign language interpreter at the hearing. The Fairness Hearing may be moved to a different date or time without additional notice, so class members intending to attend the Fairness Hearing should (in addition to complying with all instructions and requirements above) confirm the date, time and location of the Fairness Hearing with Class Counsel or by checking for updates on [www.HubbardSettlement.com](http://www.HubbardSettlement.com). At this hearing the Court will consider whether the Global Settlement is fair, reasonable and adequate. The Court will also evaluate the proposed attorneys' fee award. If there are objections or comments, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Global Settlement. We do not know how long the Court's decision will take after the Fairness Hearing is concluded. **Please be patient.**

#### **27. Do I have to come to the hearing?**

No. Your attendance is not required if you properly mailed a written response. Class Counsel is prepared to answer the Court's questions on your behalf. If either you or your personal attorney wants to attend the hearing, you may attend at your own expense. As long as any objection or written comment you filed was postmarked before the deadline, the Court will consider it.

#### **28. May I ask for permission to speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying it is your "Notice of Intent to Appear in the *Hubbard, et al, v. Donahoe* class action case." The letter must include your name, address, telephone number, and signature as well as the name and address of your lawyer, if one is appearing for you. Your Notice of Intent to Appear must be postmarked no later than \_\_\_\_\_, and sent to the addresses listed in response to Question #25 above.

**29. If the Court grants final approval to the Global Settlement, may I appeal its decision?**

Yes, but only if you are:

(1) an Eligible Damages Class Member who has not opted out of the Global Settlement, and you have filed a **timely objection** to the Global Settlement Agreement by taking the steps discussed in response to Question # 25 above;

OR

(2) an Eligible Injunctive Class Member and you have filed a **timely objection** to the Global Settlement Agreement by taking the steps discussed in response to Question # 25 above.

If you meet these criteria, then you will have the right to appeal the Court's final order granting approval to the Global Settlement to the U.S. Court of Appeals for the District of Columbia Circuit.

**GETTING MORE INFORMATION**

**30. How do I get more information?**

This Notice summarizes the Global Settlement. You can get more information about the Global Settlement by contacting Class Counsel at 1 (800) XXX-XXXX. You can also visit the website [www.HubbardSettlement.com](http://www.HubbardSettlement.com), call the Class Administrator at 1 (800) XXX-XXX or send a letter to the Class Administrator at the following address:

[Insert Class Administrator Address]

A copy of the Claims Form is attached to this Notice and you can also download a copy from the Hubbard Settlement website [www.HubbardSettlement.com](http://www.HubbardSettlement.com).

This Notice is only a summary of the Global Settlement and related matters, including the conditions under which any claims similar to those contained in the Amended *Hubbard* Class Action will be released. If there is any inconsistency between this Notice and the actual Global Settlement Agreement, the Global Settlement Agreement governs. More detailed information about this litigation, including the Global Settlement Agreement, key pleadings and filings of the Parties and the orders and rulings entered by the Court may be obtained on the *Hubbard* Settlement website at [www.HubbardSettlement.com](http://www.HubbardSettlement.com).

**Again, the important deadlines are:**

- **Last Day to Submit a Written Objection or Response to the Global Settlement:**  
\_\_\_\_\_ [45 days after the Order Granting Preliminary Approval of the Global Settlement Agreement].

- **Last Day to Exclude Yourself From Global Settlement: Must be postmarked by \_\_\_\_\_ [60 days after the Order Granting Preliminary Approval of the Global Settlement Agreement].**
- **Last Day to Submit a Claim Form: Must be postmarked within sixty (60) days of the Order Granting Final Approval of the Global Settlement Agreement.**
- **Last Day to Submit Release Form: Must be postmarked within thirty (30) days of the date on which it is mailed to you. (It is required to be mailed to you within ninety (90) days after the Court's entry of its Order Granting Final Approval of the Global Settlement Agreement.)**



## Communication Accommodation Request Form

### A. Purpose

To identify and establish individual communication accommodations that will be provided by the Postal Service for employees who are deaf or hard of hearing who request communication accommodations.

### B. Instructions

#### Employee Making Request:

- Every employee requesting a communication accommodation must submit an oral or written request for a communication accommodation to his or her immediate supervisor, manager or applicable District Disability Coordinator. If you elect to use this Communication Accommodation Request Form as your written request for communication accommodations, sign and date this form, and return it to the District Disability Coordinator at the address provided below.
- Within 30 calendar days of receipt of the completed form, the District Disability Coordinator will contact you to review and discuss your accommodation request.
- Be sure to read the Privacy Act Statement and Important Notice on page 2.

**District Disability Coordinator:** Provide the return address information requested below.

Name of District Disability Coordinator

Physical Address

Mailing Address (Include number, street, city, state, and ZIP Code™)

Telephone Number

FAX Number

e-Mail Address

### C. Employee Contact Information

Requesting Employee's Name

Position/Job Title

Installation Name and ZIP Code

Telephone Number

e-Mail Address

Employee's Mailing Address (Street, Number, City, State, ZIP Code)

### D. Manager/Supervisor Contact Information

Name of Requesting Employee's Manager or Supervisor

Title

Telephone Number

e-Mail Address

### E. Communication Profile and Language Preferences

Please select all that apply and mark with an X. If necessary, use page 2.

1. I am...	Deaf <input type="checkbox"/>	Late Deafened <input type="checkbox"/>	Hard of Hearing <input type="checkbox"/>	Other <input type="checkbox"/>
2. My first language is...	English <input type="checkbox"/>	Other Spoken Language <input type="checkbox"/> _____	American Sign Language <input type="checkbox"/>	Other Sign Language <input type="checkbox"/> _____
3. I use...	English <input type="checkbox"/>	Other Spoken Language <input type="checkbox"/> _____	American Sign Language <input type="checkbox"/>	Other Sign Language <input type="checkbox"/> _____
4. I prefer...	English <input type="checkbox"/>	Other Spoken Language <input type="checkbox"/> _____	American Sign Language <input type="checkbox"/>	Other Sign Language <input type="checkbox"/> _____
5. I can...	Read English <input type="checkbox"/>		Write English <input type="checkbox"/>	Lip-read English <input type="checkbox"/>

**F. Types of Communication Accommodations**

Accommodation	Describe Accommodation Needs
Sign Language Interpretation	
Written Communication	
UbiDuo™	
TTY/TDD, Text Telephone, or Captioned Telephone	
Video Phone	
Telephone Headset	
Assistive Listening Device (ALD)	
Other	
Requestor's Signature	Date (MM/DD/YYYY)

**Use this space to provide additional information, if necessary.**

**Privacy Act Statement:** Your information will be used to identify and establish individual communication accommodations. Collection is authorized by 39 U.S.C. 401, 410, 1001, 1005, and 1206.

Providing the information is voluntary, but if not provided, we may not process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service (USPS) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel.

**Important Notice**

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers from requesting genetic information about their employees except as specifically allowed by this law. The Postal Service is not seeking genetic information about you in this Communication Accommodation Request Form. Please do not provide any genetic information about yourself in this form.

"Genetic information" means information about: (1) your genetic tests; (2) the genetic tests of your family members; (3) your family medical history (which means the manifestation of a disease or disorder in your family members); (4) your request for or receipt of genetic services; (5) your participation or a family member's participation in clinical research that includes genetic services; or (6) genetic information of a fetus carried by you or a family member or an embryo lawfully held by you or a family member receiving assistive reproductive services.





## Communication Accommodation Plan for Employees Who Are Deaf or Hard of Hearing

Requesting Employee's Name *(Please Print)*

Installation Name and ZIP Code™

Request Number (RADAR)

**Instructions:** Be sure to read the Privacy Act Statement and Important Notice on page 2

### A. Communication Accommodations for Presumed Workplace Events

Presumed Workplace Event	Accommodation
1. Elements of selection process, including interviews.	
2. Formal training sessions.	
3. Investigatory interviews that may lead to discipline and discussions with supervisor about job performance evaluations, corrective actions or conduct.	
4. Combined Federal Campaign and Savings Bond drive kickoff meetings.	
5. Limited Equal Employment Opportunity (EEO) counseling sessions that may occur face to face or during meetings involving the completion of paperwork necessary to file Office of Workers' Compensation Program claims.	
6. Significant safety instruction (other than safety reminders).	
7. Instructions during in-service testing or examinations. <i>(Note: Testing accommodations for the test questions themselves must go through the process described in Handbook EL-307.)</i>	
8. Other	

### B. Communication Accommodations for Non-Presumed Workplace Events

Non-Presumed Workplace Event	Accommodation
1. Service talks of a duration in excess of 5 minutes.	
2. Weekly safety talks.	
3. Meetings to discuss work procedures, policies or assignments	
4. Other	

### C. Signatures of Agreement

**This Communication Accommodation Plan is established between the following parties:**

Role/Position	Name <i>(Please Print)</i>	Signature	Date <i>(MM/DD/YYYY)</i>
Requesting Employee			
Requesting Employee's			
District Disability Coordinator			
DRAC Chairperson			

**D. Postal Reasonable Accommodation Assistance Center (PRAAC) Review**

Name (Please Print)

Title

Date (MM/DD/YYYY)

Follow-up meeting/contact date

Participants

Notes

Changes to accommodations

Follow-up meeting/contact date

Participants

Notes

Changes to accommodations

**Annual Review — Year 1**

Date (MM/DD/YYYY)

Location

Method

Interpreter provided

Participants

Notes

Changes to accommodations

**Annual Review — Year 2**

Date (MM/DD/YYYY)

Location

Method

Interpreter Provided

Participants

Notes

Changes to accommodations

**Annual Review — Year 3**

Date (MM/DD/YYYY)

Location

Method

Interpreter provided

Participants

Notes

Changes to accommodations

**Privacy Act Statement:** Your information will be used to identify and establish an individual communication accommodation plan. Collection is authorized by 39 U.S.C. 401, 410, 1001, 1005, and 1206.

Providing the information is voluntary, but if not provided, we may not process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service (USPS) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel.

**Important Notice**

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**EXHIBIT 5****Exhibit 5****Amended Hubbard Class Action - Global Settlement Agreement****Eligible Damages Class Member Release (Release Form)****SECTION 1: CONTACT INFORMATION**

**Please provide the requested information.**

<b>NAME</b>	<i>(will be pre-populated on each form)</i>
<b>STREET ADDRESS CITY, STATE, ZIP</b>	
<b>SOCIAL SECURITY NUMBER</b>	
<b>TELEPHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>	

**SECTION 2: RELEASE OF CLAIMS**

Please read this Release Form carefully and complete it if you decide you want to be part of the Global Settlement Agreement entered into by the class representatives (Class Representatives) and the United States Postal Service (Postal Service) in the Amended *Hubbard* Class Action. The Global Settlement Agreement resolves all claims contained in two separate nation-wide disability discrimination class action cases: (1) a federal court class action captioned as *Bruce C. Hubbard et al v. Patrick R. Donahoe, PMG*, Civil Action No 03-1062 (RJL/MJF) (D.D.C.) (*Hubbard* Class Action); and (2) an Equal Employment Opportunity Commission (EEOC) administrative class action captioned as *Daniel Tighe, et al v. Patrick R. Donahoe, PMG*, EEOC No. 320-2005-00065X; Agency No. 1E-801-0070-04 (*Tighe* Class Action). All claims alleged in the *Hubbard* Class Action and the *Tighe* Class Action are now consolidated in the Amended *Hubbard* Class Action, and the *Tighe* Class Action has now been dismissed by the EEOC. **In order to receive your share of the settlement funds under the terms of the Global Settlement Agreement, you must sign and return this Release Form to the Class Administrator by \_\_\_\_\_, 2011.**<sup>1</sup>

<sup>1</sup> Under the terms of the Global Settlement Agreement, this Release Form must be postmarked within thirty (30) days of the mailing date of the Class Administrator. The Class Administrator mailed this Release Form to you on \_\_\_\_\_, 2011. Therefore, the deadline for the return of this Release Form to the Class Administrator is \_\_\_\_\_, 2011.

The Class Administrator will then have a twenty (20) day period to review the Release Forms and to determine whether all Release Forms are valid and enforceable. The review period expires on \_\_\_\_\_, 2011.

After the twenty (20) day review period has expired, the Class Administrator will forward a list (Release List) containing the relevant information of every individual who provided a valid Release Form to the Postal Service. The Class Administrator will provide the Release List to the Postal Service by \_\_\_\_\_, 2011. *(Section 7.3.3 of the Global Settlement Agreement - Release List to be provided by the Class Administrator to Class Counsel and Counsel for the Postal Service on or before the one-fortieth (140th) day after date of entry of the Court's Order Granting Final Approval of the Global Settlement Agreement).*

The Postal Service will have until \_\_\_\_\_, 2012, to provide the Settlement Share Checks for all Eligible Damages Class Members identified on the Release List to the Class Administrator. *(Section 7.3.3 of the Global Settlement Agreement - Postal Service will have until the one hundred eighty-fifth (185th) day after the date of entry of the Court's Order Granting Final Approval of the Global Settlement Agreement to mail Settlement Share Checks to the Class Administrator for further handling).* The Class Administrator will mail Settlement Share checks to all Eligible Damages Class Members who timely returned completed and signed Release Forms by \_\_\_\_\_, 2012. *(Section 8.3.2 of the Global Settlement Agreement - Class Administrator shall have until the one hundred ninety-fifth (195th) day after the date of entry of the Court's Order Granting Final Approval of the Global Settlement Agreement to mail Settlement Share Checks to the Eligible Damages Class Members who provide executed valid Release Forms).*

\* \* \*

I, \_\_\_\_\_, was employed by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011 (the "Class Period") and I am an Eligible Damages Class Member of the Settlement Class under the terms of the Global Settlement Agreement. I filed a Claim Form seeking monetary compensation for damages suffered due to any or all of the following: (1) the alleged denial of communication accommodations, including interpreters, for critical workplace meetings and events by the Postal Service during the Class Period; (2) the alleged denial of Telecommunication Devices for the Deaf (TTYs) by the Postal Service during the Class Period; (3) the alleged denial of emergency evacuation notification systems by the Postal Service during the Class Period; (4) being allegedly subjected to a hostile work environment and/or harassment by the Postal Service due to my deafness or hearing impairment during the Class Period; and/or (5) the alleged denial of promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service during the Class Period due to my deafness or hearing impairment, allegedly in violation of the Rehabilitation Act (hereinafter "Claim").

I have agreed to accept from the Postal Service [INSERT COMENSATORY DAMAGE AMOUNT] and/or [INSERT BACK PAY AMOUNT] in back pay, less any applicable income tax and withholdings, to fully settle my Claim. I understand that if I return this Release Form, fully signed and dated, to the Class Administrator by \_\_\_\_\_, 2011, payment will be mailed to me by \_\_\_\_\_, 2012. I believe that \$\_\_\_\_\_ is a fair, reasonable, and adequate amount to settle my Claim. I acknowledge that I am aware that if I have questions concerning the Global Settlement Agreement or this Release Form, I can visit the website [www.HubbardSettlement.com](http://www.HubbardSettlement.com), call the Class Administrator at 1 (800) XXX-XXX or send a letter to the Class Administrator at the following address: [Insert Class Administrator Address].

My signature upon this Release Form constitutes a permanent and unconditional settlement and release by me, my heirs, executors, administrators, or assigns, of all outstanding claims, complaints, administrative complaints, grievances and appeals that I have filed or could have filed arising from any or all of the following: (1) the alleged denial of communication accommodations, including interpreters, for critical workplace meetings and events by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011; (2) the alleged denial of TTY for phone communications by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011; (3) the alleged denial of emergency evacuation notification systems by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011; (4) being allegedly subjected to a hostile work environment and/or harassment by the Postal Service between November 14, 2001 and \_\_\_\_\_, 2011, due to my deafness or hearing impairment during the Class Period; and/or (5) the alleged denial between November 14, 2001 and \_\_\_\_\_, 2011 of promotional opportunities and/or assistance to pursue promotional opportunities within the Postal Service due to my deafness or hearing impairment allegedly in violation of the Rehabilitation Act. I understand that by signing this Release Form, I am waiving any right I may have to challenge the terms of the Global Settlement Agreement entered into by the Class Representatives and the Postal Service to resolve all claims now consolidated in the Amended *Hubbard* Class Action.

This waiver includes claims against the Postal Service and the Postal Service's officers, executives, agents, managers, supervisors, employees and representatives relating to events that occurred on or before the Effective Date of the Agreement and that arose from my hearing-related impairment. In addition, the claims that I am permanently waiving include, but are not limited to, those for front pay, back pay, compensatory damages, interest, and claims for attorneys' fees and costs which may be advanced by any counsel other than the counsel representing the Class Representatives in the Amended *Hubbard* Class Action (hereinafter "Class Counsel"). This means that any attorney, other than Class Counsel, may not recover any attorneys' fees or costs from the Postal Service for their services in representing me in connection with any dispute I may have had relating to my Claim. I understand that by signing this Release Form and receiving payment from the Postal Service, I am waiving all rights described herein, regardless of whether the Global Settlement Agreement is approved by the U.S. District Court Judge assigned to handle the Amended *Hubbard* Class Action. This Release Form does not require me to waive any claims for worker's compensation benefits that I have filed, or might file.

I acknowledge and affirm that I have read this Release Form. I understand this Release Form in its entirety and I have signed it willingly and freely, and without coercion, threat, or duress. I understand that this Release Form is a full and final resolution of all matters described above, and that there are no other terms and conditions that are not set forth in this Release Form. I further acknowledge and agree that the Postal Service has made no representations regarding the tax consequences of any amounts received by me pursuant to this Release Form. Finally, I agree to pay federal and/or state taxes, if any, which are required by law.

If any labor union has filed, or files in the future, any grievance(s) and/or arbitration(s) relating to my Claim, I will instruct the union to withdraw any such grievance(s) or arbitrations pending at any level of the grievance-arbitration process. In the event that any labor union disregards my instructions, I shall refuse to accept any remuneration or relief which may be ordered as a result of any such grievance. In the event that I nonetheless receive such remuneration, I shall refund that remuneration to the Postal Service within 14 days of the receipt of such benefits. The repayment of such funds shall not be a basis for opening or reopening any claim arising from my employment with the Postal Service through the date that I sign this Release Form. The term "remuneration" shall include, but not be limited to, pay of any kind, annual leave and sick leave. The term "relief" shall include, but not be limited to, restoration of employment with the Postal Service.

I acknowledge and affirm that I have read this Release Form. I understand this Release Form in its entirety and I have signed it willingly and freely, and without coercion, threat or duress. I understand that this Release Form is a full and final resolution of all matters described above, and that there are no other terms and conditions that are not set forth in this Release Form. I further acknowledge and agree that the Postal Service has made no representations regarding the tax consequences of any amounts received by me pursuant to this Release Form. Finally, I agree to pay federal and/or state taxes, if any, which are required by law.

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PLEASE MAIL THIS SIGNED RELEASE IN A SEALED ENVELOPE TO:**

Class Administrator  
[Insert Class Administrator Address]