

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>MICHAEL MACDONALD</p> <p>Plaintiff,</p> <p>v.</p> <p>UNITED PARCEL SERVICE, INC.,</p> <p>Defendant.</p>	<p>Case No. 2:15-cv-06132-CMR</p> <p>JURY TRIAL DEMANDED</p>
--	--

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant United Parcel Service, Inc. (hereafter “UPS” or “Defendant”), by and through its counsel, Reed Smith, LLP, hereby answers the Complaint of Plaintiff Michael MacDonald (“Plaintiff”) and asserts its Affirmative Defenses as follows:

INTRODUCTION AND BACKGROUND STATEMENT

1. Denied in part; admitted in part. Defendant admits only that it is a corporation. All remaining factual allegations in Paragraph 1 are denied.
2. Admitted in part, denied in part. Defendant admits the allegations regarding Plaintiff’s name, age, date and location of employment, and job position. Defendant denies the blanket assertions that preloaders simply sort packages or, when sorting, simply sort “by color.”
3. Denied. Defendant is without sufficient knowledge as to Plaintiff’s belief regarding where this action “stems from,” and therefore that allegation is denied. All remaining factual allegations in Paragraph 3 are denied.
4. Denied.

5. Denied in part; admitted in part. Defendant admits only that it is aware of its statutory responsibilities towards deaf employees. The remaining factual allegations in Paragraph 5 are denied.

6. Denied.

JURISDICTION AND VENUE

7. Denied in part; admitted in part. Paragraph 7 contains conclusions of law to which no response is required. Defendant admits, however, that this Court has jurisdiction over the subject matter of this Complaint.

8. Denied in part; admitted in part. Paragraph 8 contains conclusions of law to which no response is required. Defendant admits, however, that this Court has jurisdiction over the subject matter of this Complaint.

9. Denied in part; admitted in part. Paragraph 9 contains conclusions of law to which no response is required. Defendant admits, however, that this Court has jurisdiction over the subject matter of this Complaint.

10. Denied in part; admitted in part. Paragraph 10 contains conclusions of law to which no response is required. Defendant admits, however, that venue is proper in this Court.

EXHAUSTION

11. Admitted.

12. Admitted.

PARTIES

13. Admitted. Upon information and belief, Defendant admits that Plaintiff is a deaf individual currently residing in Philadelphia, Pennsylvania, as stated in Paragraph 13.

14. Denied. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14, and therefore they are deemed denied.

15. Denied as stated. Defendant objects to the term “obvious,” as it is subject to a variety of interpretations. Upon information and belief, Defendant admits that Plaintiff has a hearing impairment.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted in part, denied in part. Defendant admits that it operates a facility at the Philadelphia International Airport located at 1 Hog Island Road, Philadelphia, PA. and that Plaintiff is a UPS employee working at that facility. Defendant denies the characterization that Defendant’s facility is a “shipping facility.”

FACTS

20. Admitted.

21. Denied. By way of further answer, a preloader may perform multiple functions, including, but not limited to, loading package cars, and sorting is only one of such functions. Furthermore, not all sorting functions are limited to sorting “by color.”

22. Admitted in part; denied in part. Upon information and belief, Defendant admits that Plaintiff is deaf. Defendant is without sufficient knowledge to form a belief as to whether American Sign Language (ASL) is Mr. MacDonald’s primary language or whether Mr. MacDonald can read or write English fluently, and therefore these allegations are denied.

23. Denied in part; admitted in part. Defendant admits that Mr. MacDonald can – and indeed does – communicate via written notes and text messages. Defendant is without sufficient knowledge to form a belief as to the remaining allegations in Paragraph 23, and therefore they are deemed denied.

24. Denied. Defendant is without sufficient knowledge to form a belief as to the allegations in Paragraph 24, and therefore they are deemed denied.

25. Denied. The allegation that Plaintiff is “qualified” constitutes a conclusion of law to which no responsive pleading is required, and it is therefore denied. Defendant admits only that Plaintiff has been performing the job of preloader with the accommodations Defendant already has been providing to him.

26. Denied as stated. Defendant admits only that Plaintiff asked for – and received – an ASL interpreter for his initial interview with Defendant.

27. Denied.

28. Admitted.

29. Denied as stated. Defendant admits only that Mr. MacDonald requested an ASL interpreter for his workplace training months after his initial workplace training took place. During his initial workplace training, he was provided with alternative reasonable accommodations, including closed captioned videos and written notes. Mr. MacDonald waited months to alert Defendant that he was claiming that he did not understand this training.

30. Admitted. By way of further answer, Mr. MacDonald was provided with alternative reasonable accommodations, including closed captioned videos and written notes, during his training. Mr. MacDonald waited months to alert Defendant that he was claiming that he did not understand this training. After Plaintiff asserted this position, he was re-trained with an ASL interpreter.

31. Admitted. By way of further answer, Mr. MacDonald was provided with alternative reasonable accommodations, including closed captioned videos and written notes, during his training. Mr. MacDonald waited months to alert Defendant that he was claiming that

he did not understand this training. After Plaintiff asserted this position, he was re-trained with an ASL interpreter.

32. Admitted in part; denied in part. By way of further answer, Mr. MacDonald was provided with alternative reasonable accommodations, including closed captioned videos and written notes, during his training. Mr. MacDonald waited months to alert Defendant that he was claiming that he did not understand this training. After Plaintiff asserted this position, he was re-trained with an ASL interpreter.

33. Admitted.

34. Denied. By way of further answer, Defendant waited months to request an ASL interpreter from Defendant.

35. Denied. Defendant is without sufficient knowledge as to whether Plaintiff requires an ASL interpreter to perform the daily tasks of his job, and therefore the allegations in Paragraph 35 are denied. By way of further answer, Plaintiff has requested an ASL interpreter in a sufficient number of work situations to suggest that he cannot perform, or is unwilling to perform, the most basic duties without an ASL interpreter.

36. Denied in part; admitted in part. Defendant admits only that Plaintiff sorts packages by color. Defendant denies that Plaintiff does not need to understand English in order to perform the essential functions of his job. Defendant is without sufficient knowledge to form a belief as to the remaining factual allegations in Paragraph 36, and therefore they are deemed denied.

37. Denied. Defendant is without sufficient knowledge to form a belief as to the allegations contained in Paragraph 37, and therefore they are deemed denied.

38. Denied.

39. Denied. The allegations in Paragraph 39 are too vague and ambiguous to permit a response. However, by way of further answer, Defendant admits that during certain employee meetings supervisors communicate with Plaintiff through short, written notes. During other meetings, Defendant has hired an ASL interpreter to translate communications for Plaintiff.

40. Denied. The allegations in Paragraph 40 are too vague and ambiguous to permit a response. However, by way of further answer, Defendant is without sufficient knowledge as to Plaintiff's understanding of information communicated to him during various meetings, and therefore the allegations in Paragraph 40 are denied.

41. Denied as stated. The allegations in Paragraph 41 are too vague and ambiguous to permit a response. However, by way of further answer, Defendant states that Plaintiff has, on occasion, asked for an ASL interpreter, and ASL interpreters have been provided to him.

42. Denied. The allegations in Paragraph 42 are too vague and ambiguous to permit a response. By way of further answer, Defendant admits that there was a communication from Plaintiff's counsel in early January that ultimately led to a meeting on January 13, 2015 between Plaintiff and a UPS Human Resources manager where an ASL interpreter was present.

43. Denied. The form referenced in Paragraph 43 is a writing that speaks for itself and any characterization thereof is denied. Defendant denies that Plaintiff "promptly" completed and returned the form to UPS.

44. Denied. The form referenced in Paragraph 44 is a writing that speaks for itself and any characterization thereof is denied.

45. Denied. The form referenced in Paragraph 45 is a writing that speaks for itself and any characterization thereof is denied. The remaining allegations in Paragraph 45 are denied.

46. Denied. The form referenced in Paragraph 46 is a writing that speaks for itself and any characterization thereof is denied.

47. Denied. Plaintiff received the pamphlet during a meeting with an ASL interpreter present. By way of further answer, Defendant denies the characterization that Plaintiff needed an ASL interpreter to understand the pamphlet.

48. Denied. The form referenced in Paragraph 48 is a writing that speaks for itself and any characterization thereof is denied.

49. Denied.

50. Denied.

51. Denied. By way of further answer, Plaintiff was not terminated in February 2015.

52. Denied. By way of further answer, Plaintiff was not terminated in February 2015.

53. Denied. Defendant is without sufficient knowledge as to Plaintiff's mental state, and therefore the allegations in Paragraph 53 are denied.

54. Denied. Defendant is without sufficient knowledge as to Plaintiff's understanding of his employment status, and therefore the allegations in Paragraph 54 are deemed denied.

55. Denied.

56. Denied. Defendant is without sufficient knowledge as to Plaintiff's feelings, and therefore the allegations in Paragraph 56 are denied. Defendant also specifically denies that any of its actions could have reasonably caused Plaintiff stress, anger or anxiety.

57. Denied.

58. Denied.

59. Denied as stated. Defendant denies that it “failed” to provide an ASL interpreter. By way of further answer, Plaintiff was informed of his temporary lay-off through a face-to-face meeting, using both written communication and lip-reading.

60. Denied. The letter referenced in Paragraph 60 is a writing that speaks for itself and any characterization thereof is denied.

61. Denied.

62. Denied. The letter referenced in Paragraph 62 is a writing that speaks for itself and any characterization thereof is denied.

63. Denied. The letter referenced in Paragraph 63 is a writing that speaks for itself and any characterization thereof is denied.

64. Denied. The form referenced in Paragraph 64 is a writing that speaks for itself and any characterization thereof is denied.

65. Denied in part; admitted in part. Defendant admits only that, at Plaintiff’s request, Defendant conducted another training session with Plaintiff, with an ASL interpreter present. All remaining allegations in Paragraph 65 are denied.

66. Denied. The allegations in Paragraph 66 are too vague and ambiguous to permit a response.

67. Denied.

68. Denied. The form referenced in Paragraph 68 is a writing that speaks for itself and any characterization thereof is denied.

69. Denied. The allegations in Paragraph 69 are too vague and ambiguous to permit a response.

70. Denied. The allegations in Paragraph 70 are too vague and ambiguous to permit a response.

71. Denied. The allegations in Paragraph 71 are too vague and ambiguous to permit a response.

72. Denied. Defendant is without sufficient knowledge as to what Plaintiff saw on an unidentified date in August 2015, and therefore the allegations in Paragraph 72 are deemed denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied as stated. By way of further answer, Defendant has provided an ASL interpreter to Plaintiff upon request and has in place a system to alert Plaintiff to emergency situations.

83. Denied. Defendant is without sufficient knowledge to form a belief as to Plaintiff's mental state, and therefore the allegations in Paragraph 83 are denied. Defendant also specifically denies that it has failed to provide effective communications accommodations in the workplace.

84. Denied. Paragraph 84 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 84 are denied.

85. Denied. Paragraph 85 states conclusions of law to which no responsive pleading is required. The settlement referenced in Paragraph 85 is a writing that speaks for itself and any characterization thereof is denied. To the extent a responsive pleading is required, the allegations in Paragraph 85 are denied.

86. Denied. The settlement referenced in Paragraph 86 is a writing that speaks for itself and any characterization thereof is denied.

87. Denied. The settlement referenced in Paragraph 87 is a writing that speaks for itself and any characterization thereof is denied.

88. Denied. The settlement referenced in Paragraph 88 is a writing that speaks for itself and any characterization thereof is denied.

89. Denied. Paragraph 89 states conclusions of law to which no responsive pleading is required. The opinion referenced in Paragraph 89 is a writing that speaks for itself and any characterization thereof is denied. To the extent a responsive pleading is required, the allegations in Paragraph 89 are denied.

90. Denied. The consent decree referenced in Paragraph 90 is a writing that speaks for itself and any characterization thereof is denied. To the extent a responsive pleading is required, the allegations in Paragraph 90 are denied.

91. Admitted.

FIRST CLAIM FOR RELIEF

92. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

93. Denied. Paragraph 93 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 93 are denied.

94. Denied. Paragraph 94 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 94 are denied.

95. Denied. Paragraph 95 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 95 are denied.

96. Denied. Paragraph 96 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 96 are denied.

97. Denied. Paragraph 97 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 97 are denied.

98. Denied. Paragraph 98 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 98 are denied.

99. Denied. Paragraph 99 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 99 are denied.

100. Denied. Paragraph 100 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 100 are denied.

101. Denied as stated. Defendant objects to the term “obvious,” as it is subject to a variety of interpretations. Upon information and belief, Defendant admits that Plaintiff has a hearing impairment.

102. Denied as stated. Paragraph 102 states conclusions of law to which no responsive pleading is required. Upon information and belief, Defendant admits that Plaintiff has a hearing impairment.

103. Denied as stated. Defendant objects to the term “obvious,” as it is subject to a variety of interpretations. Paragraph 103 states conclusions of law to which no responsive pleading is required. Upon information and belief, Defendant admits that Plaintiff has a hearing impairment.

104. Denied. Paragraph 104 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 104 are denied.

105. Denied. Paragraph 105 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 105 are denied.

106. Denied. Paragraph 106 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 106 are denied.

107. Denied. Paragraph 107 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 107 are denied.

108. Denied. Paragraph 108 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 108 are denied.

109. Denied. Paragraph 109 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 109 are denied.

110. Denied. UPS at all times has and continues to provide reasonable accommodations, including certified interpreters, in the workplace. UPS maintains a reasonable accommodations process, and employees are trained regarding same.

111. Denied. Paragraph 111 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 111 are denied.

112. Denied. Paragraph 112 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 112 are denied.

SECOND CLAIM FOR RELIEF

113. Defendant incorporates by reference its answers to the preceding Paragraphs as if set forth at length herein.

114. Denied. Paragraph 114 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 114 are denied.

115. Denied. Paragraph 115 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 115 are denied.

116. Denied. Paragraph 116 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 116 are denied.

117. Denied. Paragraph 117 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 117 are denied.

118. Denied. Paragraph 118 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 118 are denied.

119. Denied. Paragraph 119 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 119 are denied.

120. Denied. Paragraph 120 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 120 are denied.

121. Denied. Paragraph 121 states conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the allegations in Paragraph 121 are denied.

PRAYER FOR RELIEF

WHEREFORE, Defendant denies that Plaintiff is entitled to any of the relief requested in the unnumbered “**WHEREFORE**” clause following Paragraph 121, including subparts (a) through (i), and respectfully requests that the Court dismiss the Complaint in its entirety and enter judgment in its favor and against Plaintiff.

The final paragraph also requires no response. To the extent a responsive pleading is required, Defendant denies that Plaintiff is entitled to a jury trial.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Amended Complaint fails to state a claim against UPS upon which relief may be granted.

SECOND DEFENSE

Upon information and belief, Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitation.

THIRD DEFENSE

Upon information and belief, Plaintiff's claims are barred, in whole or in part, based upon the doctrines of accord and satisfaction, release, waiver, and estoppel.

FOURTH DEFENSE

Upon information and belief, Plaintiff's claims are barred, in whole or in part, because all employment decisions made with regard to Plaintiff were at all times motivated by legitimate, non-discriminatory and lawful factors, and UPS at no time acted in an unlawful manner in connection with any decision regarding Plaintiff.

FIFTH DEFENSE

Plaintiff's claims under the Americans with Disabilities Act ("ADA") are barred to the extent that he is not a qualified individual with a disability within the meaning of 42 U.S.C. § 12111(8) and therefore has no standing to initiate this action and no right to any relief under the ADA.

SIXTH DEFENSE

Upon information and belief, Plaintiff's claims are barred, in whole or in part, because of undue hardship.

SEVENTH DEFENSE

Plaintiff's claims are barred to the extent that UPS made good faith efforts to reasonably accommodate Plaintiff.

EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the fact that UPS established procedures reasonably designed, implemented, and enforced to be effective in preventing and detecting unlawful conduct such as that alleged by Plaintiff.

NINTH DEFENSE

Upon information and belief, Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to take reasonable steps to mitigate his claims of damages, the existence of such damages being hereby denied.

TENTH DEFENSE

Plaintiff's punitive damages claims are barred because UPS did not act with malice or with reckless indifference to the federally protected rights of Plaintiff.

ELEVENTH DEFENSE

Plaintiff is not entitled to punitive damages because UPS made good faith efforts to comply with the ADA and other applicable laws.

Respectfully submitted,

/s/ Gary M. Tocci

Gary M. Tocci, Esq.

Sarah T. Hansel, Esq.

REED SMITH LLP

1717 Arch Street, Suite 3100

Philadelphia, PA 19103

(215) 851-8100

(215) 851-1420 (Facsimile)

Email: shansel@reedsmith.com

Attorneys for Defendant

United Parcel Service, Inc.

Dated: March 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2016, I served a true and correct copy of the foregoing Answer to Plaintiff's Complaint via electronic filing with the Court's ECF system for notice to all counsel of record.

/s/ Sarah T. Hansel

Sarah T. Hansel