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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA (UNLIMITED)

17 FOR THE COUNTY OF ALAMEDA, NORTHERN DIVISION
1225 Fallon Street, Oakland, CA 94612

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19
20 DANIEL C. KLINE, an individual, and
FRANK J. SORIES, an individual,

21 Plaintiffs,

22 v.

23 UNITED PARCEL SERVICE, INC., a
24 Delaware corporation, and DOMINIC
CULOTTA, an individual,

25 Defendants.
26

Case No.

Other Civil Complaint

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE AND DECLARATORY
RELIEF**

1. Discrimination -FEHA
2. Retaliation - FEHA
3. Breach of Written and Implied Contract
4. Negligent Infliction of Emotional Distress
5. Unfair Business Practice - B& P 17200
6. Declaratory Relief

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DEMAND FOR JURY TRIAL

4. Plaintiffs hereby demand a jury trial of these matters except those matter that must be heard before a judge.

PARTIES

5. Plaintiff Daniel C. Kline (“Mr. Kline”) is an individual who resides in San Francisco, California, and who is and has been employed by defendant United Parcel Service, Inc. in the City of Oakland, in Alameda County, California during the time relevant to this complaint. He sues on his own behalf and, with respect to his Fifth Cause of Action, acting also for the interest of the general public.

6. Plaintiff Frank J. Sories (“Mr. Sories”) is an individual who maintains a residence in San Francisco, California, but who has lived in Chicago, Illinois since January of 2003. He sues on his own behalf and, with respect to his Fifth Cause of Action, acting also for the interest of the general public.

7. Defendant United Parcel Service, Inc. (“UPS”) is a corporation organized and existing under the laws of the State of Delaware and transacting business in California and throughout the United States, with offices in the City of Oakland, in Alameda County, California. UPS regularly employs more than five persons in California and is subject to California’s Fair Employment and Housing Act.

8. Defendant Dominic Culotta (“Mr. Culotta”) is an individual who resides in Alameda County, California. In doing the things hereinafter alleged, Mr. Culotta was an agent and employee of UPS, was acting within the scope of that agency and employment, and acted with UPS’s knowledge, acquiescence or ratification of his conduct.

STATEMENT OF FACTS

9. Mr. Kline is a full-time employee of UPS who currently works as a dispatch

1 analyst supervisor in UPS's Oakland, California office. Mr. Kline has worked for UPS for
2 more than twenty years. He became a full-time operations supervisor in UPS's Oakland,
3 California office in 1987. He is entitled to retire from UPS with full benefits in
4 approximately nine years.

5 10. Mr. Kline and Mr. Sories, who are gay, unmarried men, have been in a
6 committed, intimate, relationship with one another for more than 27 years. They are
7 registered as one another's domestic partners in accordance with Sections 297 et seq. of
8 the California Family Code. They are one another's family and each considers the other to
9 be his spouse. They own a home together in San Francisco, California. They are the
10 beneficiaries of one another's wills and hold durable health care and general powers of
11 attorney for one another. Mr. Sories also is the designated beneficiary of Mr. Kline's UPS
12 retirement savings and stock ownership plans and the beneficiary of the life insurance
13 policy UPS provides to Mr. Kline as an employee benefit. In addition, Mr. Kline is listed as
14 the beneficiary of Mr. Sories' employer-provided life insurance and retirement plans. Mr.
15 Kline and Mr. Sories further have executed an Affidavit of Domestic Partnership which
16 they submitted to Mr. Sories' employer. As a result, Mr. Kline receives medical and dental
17 insurance and travel benefits from Mr. Sories' employer by virtue of his being Mr. Sories'
18 domestic partner. UPS has been aware since at least 2000 that Mr. Kline and Mr. Sories
19 are one another's domestic partners. Mr. Kline and Mr. Sories would enter a civil marriage
20 with one another in California if state law permitted them to do so.

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22 11. In October of 2002, Mr. Kline and Mr. Sories learned that Mr. Sories'
23 employer of almost 19 years was closing its San Francisco office and that, if Mr. Sories
24 wanted to keep his job, he would have to transfer to one of his employer's offices in
25 another city. Mr. Sories is only 3-1/2 years away from being able to retire from his current
26 job with full benefits. It therefore was financially necessary that Mr. Sories accept a
27 transfer, and he and his employer agreed that he would transfer to his employer's Chicago,
28 Illinois office effective January 6, 2003.

1 12. UPS has an office in Chicago, Illinois. In addition, UPS maintains a term,
2 condition or privilege of employment, known as UPS's "Management Initiated Transfer
3 Request" policy, pursuant to which UPS has promised, in writing, to allow "[a]ny [UPS]
4 manager or supervisor who provides evidence of a specific and necessary need to transfer"
5 to a job in a UPS office "in a geographically separate location" to do so, provided the
6 manager or supervisor has obtained "[a]n acceptable rating on the most recent Career
7 Development evaluation;" [a]n appropriate assignment [exists] in the destination location;"
8 and "recommendation" or "approval" of the transfer is obtained from the manager or
9 supervisor's "immediate district, region and/or group manager." Heterosexual UPS
10 managers and supervisors who are civilly married to a partner of a different sex have been
11 granted transfers to other UPS offices under this policy.

12 13. UPS additionally has a written employment discrimination policy, which
13 promises that UPS will "comply with all laws governing fair employment and labor
14 practices" and that it will not "discriminate against any applicant for employment or any
15 employee in any aspect of his or her employment at UPS because of," among other factors,
16 "sex" or "sexual orientation." UPS also has a written policy promising a workplace free
17 from "any form of discriminatory harassment," which it defines as including "conduct that
18 is intended to or that has the effect of unreasonably interfering with a fellow employee's
19 work performance or creating an environment that is intimidating, hostile or offensive to
20 the employee." UPS likewise has a written policy promising its employees protection
21 against retaliation for "[r]eporting known or suspected violations of [UPS's] legal or
22 ethical responsibilities," including freedom from being "discouraged from using any
23 available channel within the organization" or even from being "question[ed]" about
24 "choosing one method" of "communicat[ing]" the employee's concerns "over another."

25 14. UPS further has promised in writing to treat each employee "with fairness,
26 dignity, and respect;" to "value diversity" within its "workforce;" to "treat people as
27 individuals," "without favoritism;" "to assign responsibilities and duties to secure the full
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1 benefit of an individual's talents and ability and to provide each person with an opportunity
2 to develop further" and "to obtain personal satisfaction from their work;" and to consider
3 all transfers "carefully," based on the realization "that transfers have profound effects on
4 individuals and their families."

5 15. UPS has made the promises referred to above with the intent of inducing
6 job applicants to seek work at UPS, of inducing employees to remain in their jobs with the
7 company, and of inducing customers to do business with UPS. Job applicants reasonably
8 have relied on these promises in seeking employment with UPS; employees, including Mr.
9 Kline, reasonably have relied on these promises in deciding to remain with the company;
10 and customers reasonably have relied on these promises in electing to do business with
11 UPS. The intent of UPS and of those who relied on its promises was to create enforceable
12 obligations.

13 16. In making the promises relating to transfers referred to above, UPS
14 specifically intended to benefit not only its employees, but also individuals, such as Mr.
15 Sories, with whom a UPS employee shares a committed, intimate, family relationship.

16 17. When Mr. Kline shared with UPS's human resources and management
17 personnel that Mr. Sories would be transferring to Chicago and that Mr. Kline and Mr.
18 Sories wanted to have Mr. Kline accompany Mr. Sories there, Mr. Kline originally was told
19 that the only way in which he could work for UPS in Chicago would be to resign his
20 position and reapply for work at as a new hire in UPS's Chicago office, which would have
21 deprived Mr. Kline of his seniority and accrued benefits. Mr. Kline was told by UPS
22 personnel at that time that he should not attempt to contact anyone at UPS's Chicago
23 office or to transfer to that or another office.

24 18. UPS personnel subsequently encouraged Mr. Kline, however, to apply for a
25 transfer to UPS's Chicago office under UPS's Management Initiated Transfer Request
26 policy in order to follow his long-term domestic partner, Mr. Sories, to Chicago. In
27 encouraging Mr. Kline to seek a transfer under this policy in order to follow his domestic
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1 partner, UPS personnel specifically referred to UPS's recent addition to its employment
2 non-discrimination policy of a prohibition on sexual orientation discrimination. Although
3 other managers and supervisors working in Mr. Kline's operating district who were not gay
4 had been allowed to transfer to other UPS offices without submitting a Management
5 Initiated Transfer Request or qualifying for a transfer under that policy, applying for a
6 transfer under the terms of the Management Initiated Transfer Request policy was the only
7 option given to Mr. Kline as a means of seeking a transfer. 19. In reliance on the
8 suggestion that Mr. Kline apply under UPS's Management Initiated Transfer Request
9 policy, UPS personnel's reference to UPS's adoption of a sexual orientation non-
10 discrimination policy, and the warnings that the only way that he could obtain a transfer
11 would be to apply under UPS' Management Initiated Transfer Request policy, and based
12 on Mr. Kline's and Mr. Sories' desire to avoid the severe financial and emotional burdens
13 of having to live in separate households, thousands of miles apart from one another, Mr.
14 Kline on November 18, 2002, submitted a written request for a transfer to UPS's Metro
15 Chicago office effective January 6, 2003. Mr. Kline met the eligibility requirements of
16 UPS's Management Initiated Transfer Request policy that he have obtained an acceptable
17 rating on his most recent Career Development evaluation. There were appropriate
18 assignments for Mr. Kline in UPS's Metro Chicago office at the time he applied and there
19 have continued and still continue to be appropriate assignments there for Mr. Kline.
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21 20. Mr. Kline's request for a transfer to UPS's Metro Chicago office was
22 approved by Mr. Kline's District Human Resources Manager, District Manager, and
23 Region Human Resources Manager shortly after its submission. After Mr. Kline was
24 informed in late December of 2002 that his request for a transfer had been lost, he
25 submitted a second written request for a transfer to UPS's Metro Chicago office, again
26 seeking a transfer effective January 6, 2003. This request likewise was approved by Mr.
27 Kline's District Human Resources Manager, District Manger, and Region Human
28 Resources Manager in December 2002. In January of 2003, however, Mr. Kline's request

1 for a transfer was denied by the Corporate Human Resources Department of UPS.

2 21. After Mr. Kline was notified of the rejection of his request for a transfer, his
3 legal counsel wrote to UPS seeking reconsideration. A lawyer acting on behalf of UPS
4 responded that Mr. Kline's request for a transfer had been denied because Mr. Kline sought
5 to trail someone other than a spouse and that UPS therefore did not consider him qualified
6 for a transfer under UPS's Management Initiated Transfer Request policy.

7 22. Because UPS denied Mr. Kline's request for a transfer, he has not been able
8 to move to Chicago, Illinois without loss of his job, and, as a result, he and Mr. Sories
9 have been unable to continue to live together.

10 23. When UPS denied Mr. Kline's request for a transfer and denied
11 reconsideration of that decision, UPS was aware, or reasonably should have been aware, of
12 the financial and serious emotional harm those decisions in high probability would inflict
13 upon both Mr. Kline and Mr. Sories. UPS nonetheless despicably denied the request and
14 reconsideration, either intending to cause injury to Mr. Kline and Mr. Sories or with a
15 willful and conscious disregard for their rights and for the cruel and unjust hardship UPS
16 was causing Mr. Kline and Mr. Sories.

17 24. Mr. Kline was informed by his District Human Resources Manager at UPS
18 that this matter was not appropriate for resolution under UPS's Employee Dispute
19 Resolution Program. Legal counsel for Mr. Kline further inquired of UPS's counsel if
20 there were any internal UPS remedies that were appropriate to remedy this action and was
21 informed of none.

22 25. UPS and Mr. Culotta, who is Mr. Kline's supervisor, retaliated against Mr.
23 Kline for his opposition and objection to UPS's discriminatory refusal to allow him to
24 transfer to another UPS office. After Mr. Kline's counsel contacted UPS on Mr. Kline's
25 behalf objecting to the denial of the transfer and seeking reconsideration, Mr. Culotta in
26 February of 2003 threatened Mr. Kline that he was aware that Mr. Kline's lawyer had
27 taken this action on behalf of Mr. Kline and that Mr. Kline's job would be in jeopardy if he
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1 did not accede to UPS's position regarding the transfer or if he thereafter took any leave in
2 order to deal with the consequences of UPS's denial of the transfer. In addition, in March
3 of 2003, as a result of Mr. Kline's opposition to UPS's discriminatory conduct, Mr. Kline
4 falsely was accused by UPS employees of using profanity and unprofessional conduct and
5 threatened with termination. In further response to Mr. Kline's opposition to UPS's
6 discriminatory conduct, Mr. Kline also has been and continues to be given less desirable job
7 assignments by Mr. Culotta and UPS.

8 26. In April of 2003, Mr. Kline filed a complaint with the California Department
9 of Fair Employment and Housing against UPS and Mr. Culotta for employment
10 discrimination and retaliation.

11 27. Following, and as a result of, Mr. Kline's filing of his complaint with the
12 California Department of Fair Employment and Housing, the retaliation continued.
13 Because of Mr. Kline's opposition to UPS's discrimination, Mr. Kline improperly was
14 subjected to increased scrutiny and criticism, and was written up for alleged delivery
15 failures in May of 2003 for which he was not responsible. Mr. Culotta improperly refused
16 to intervene on Mr. Kline's behalf and instead further criticized Mr. Kline inappropriately
17 in connection with this matter, and UPS subjected Mr. Kline to improperly critical job
18 performance evaluations.

19 28. The retaliatory conduct of UPS and of Mr. Culotta despicably was intended
20 to cause injury to Mr. Kline and to subject him to the cruel and unjust hardship it imposed,
21 and was carried on with a willful and conscious disregard for Mr. Kline's rights.

22 29. In July of 2003, Mr. Kline filed an amendment to his complaint for
23 employment discrimination and retaliation with the California Department of Fair
24 Employment and Housing. Mr. Kline also had his legal counsel again contact counsel for
25 UPS in July of 2003 in a final attempt to resolve this matter internally within the company.
26 Other than to seek additional delay, UPS did not respond to this overture.
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28 30. As a direct and proximate result of the conduct of UPS and Mr. Culotta,

1 Mr. Kline has been made to feel humiliated, upset, insulted, inferior, excluded, isolated,
2 anxious, worried, stressed, and depressed, as well as punished for being a gay man in a
3 domestic partner relationship with another man. The wrongful denial of Mr. Kline's
4 request for a transfer also has caused him such general emotional distress as anyone would
5 feel for being wrongly forced to live separated from the person with whom they had shared
6 a life for more than twenty-seven years. UPS's wrongful denial of the transfer request
7 further has caused Mr. Kline and Mr. Sories financial damages of having to maintain two
8 separate households, added travel and phone costs, and other expenses, as well as
9 attorneys' fees and costs.

10 31. As a direct and proximate result of UPS's conduct, Mr. Sories also has been
11 caused serious emotional distress that has been substantial and enduring, including sleep
12 disorders, stress, anxiety, worry, grief, nervousness, indignity, and depression.
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14 **FIRST CAUSE OF ACTION**

15 **Employment discrimination based on marital status, sexual orientation, and sex, in**
16 **violation of the California Fair Employment and Housing Act**

17 **Cal. Gov't Code §§ 12940 et seq.**

18 **(By Plaintiff Daniel C. Kline Against Defendant United Parcel Service, Inc.)**

19 32. Plaintiff Daniel C. Kline incorporates by reference and realleges the
20 allegations contained in paragraphs 1 through 31 of this complaint, inclusive, as if fully set
21 forth here.
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23 33. UPS is an employer subject to the California Fair Employment and Housing
24 Act ("the Act"). Mr. Kline is an employee protected against discrimination under the Act.

25 34. The conduct of UPS described above in this complaint discriminated against
26 Mr. Kline, and afforded him different treatment, in terms, conditions, and privileges of
27 employment on the basis of marital status, sexual orientation, and sex. Similarly-situated
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1 employees of UPS who were civilly married to a spouse of a different-sex have been
2 provided the transfer benefits denied to Mr. Kline. Had Mr. Kline been a heterosexual man
3 married to a woman or a heterosexual woman married to a man, UPS would have granted
4 Mr. Kline's transfer request. Instead, because Mr. Kline is not married to Mr. Sories, and
5 is a gay man in a same-sex, registered domestic partnership, Mr. Kline's request for a
6 transfer was denied. Such conduct intentionally discriminated against Mr. Kline on the
7 basis of his unmarried, domestic partner marital status, on the basis of his gay sexual
8 orientation, and on the basis of his male sex and his domestic partner being male.
9 Conditioning the ability to transfer on being legally married, when California does not
10 presently allow same-sex couples to enter a civil marriage, also had a disparate impact upon
11 Mr. Kline on the basis of his gay sexual orientation and his male sex. Such conduct
12 violated the California Fair Employment and Housing Act. UPS has no legitimate, non-
13 discriminatory business reason or other justification for its conduct.

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15 35. As a direct and proximate result of UPS's discriminatory conduct, Mr. Kline
16 has been damaged and will continue to be damaged, and caused financial injury and
17 emotional distress, in an amount of general damages to be determined according to proof at
18 trial. Mr. Kline also is entitled to prejudgment interest on such damages, and attorneys'
19 fees and costs.

20 36. Mr. Kline has exhausted his administrative remedies by timely filing charges
21 with the California Department of Fair Employment and Housing and commencing this
22 action within one year of receiving notice from that agency of his right to sue.

23 37. Because UPS acted with malice and oppression toward Mr. Kline, he
24 requests the assessment of damages as punishment and example against UPS, as set forth in
25 California Civil Code Section 3294, in an amount to be determined according to proof at
26 trial.

27 38. Because the harm to Mr. Kline is ongoing, imminent, serious, and
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1 irreparable, and because compensation cannot afford Mr. Kline adequate relief, Mr. Kline is
2 entitled to, and requests that the Court issue, preliminary and permanent injunctive relief
3 ordering UPS not to deny, prevent or interfere with Mr. Kline's request for a transfer to
4 UPS's Metro Chicago office.

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6 **SECOND CAUSE OF ACTION**

7 **Retaliation in Employment**

8 **in violation of the California Fair Employment and Housing Act**

9 **Cal. Gov't Code §§ 12940 et seq.**

10 **(By Plaintiff Daniel C. Kline**

11 **Against Defendants United Parcel Service and Dominic Culotta)**

12 39. Plaintiff Daniel C. Kline incorporates by reference and realleges the
13 allegations contained in paragraphs 1 through 31 of this complaint, inclusive, as if fully set
14 forth here.

15 40. UPS is an employer subject to the California Fair Employment and Housing
16 Act ("the Act"). Mr. Culotta is a person subject to the Act's prohibitions on retaliation
17 against employees for opposing practices forbidden under the Act. Mr. Kline is an
18 employee protected against retaliation under the Act.

19 41. Mr. Kline's opposition to UPS's discriminatory denial of his request for a
20 transfer, his retention of legal counsel, his counsel's communications with UPS and its
21 counsel, and Mr. Kline's filing of complaints with the California Department of Fair
22 Employment and Housing all constituted protected activity under the California Fair
23 Employment and Housing Act.

24 42. The conduct of UPS and of Mr. Culotta described above in this complaint
25 was significant and non-trivial and was reasonably likely to deter Mr. Kline and other
26 employees from engaging in protected activity under the California Fair Employment and
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1 Housing Act.

2 43. The conduct engaged in by UPS and Mr. Culotta described above in this
3 complaint was engaged in because of, and in retaliation for, Mr. Kline's protected activity.
4 Such conduct violated the California Fair Employment and Housing Act.

5 44. As a direct and proximate result of UPS's and Mr. Culotta's retaliatory
6 conduct, Mr. Kline has been damaged, and caused emotional distress, in an amount of
7 general damages to be determined according to proof at trial. Mr. Kline also is entitled to
8 prejudgment interest on such damages, and attorneys' fees and costs.

9 45. Mr. Kline has exhausted his administrative remedies by timely filing charges
10 with the California Department of Fair Employment and Housing and commencing this
11 action within one year of receiving notice from that agency of his right to sue.

12 46. Because UPS and Mr. Culotta acted with malice and oppression toward Mr.
13 Kline, he requests the assessment of damages as punishment and example against UPS and
14 Mr. Culotta, as set forth in Civil Code Section 3294, in an amount to be determined
15 according to proof at trial.

16 47. Because the harm to Mr. Kline is ongoing, imminent, serious, and
17 irreparable and because compensation cannot afford Mr. Kline adequate relief, Mr. Kline is
18 entitled to, and requests that the Court issue, preliminary and permanent injunctive relief
19 ordering UPS and Mr. Culotta to cease and desist from engaging in any further acts of
20 retaliation against Mr. Kline for his engaging in protected activity under California's Fair
21 Employment and Housing Act.
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24 **THIRD CAUSE OF ACTION**

25 **Breach of Written and Implied-in-Fact Contract**

26 **(By Plaintiffs Daniel C. Kline and Frank J. Sories**

27 **Against Defendant United Parcel Service)**
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1 48. Plaintiffs incorporate by reference and reallege the allegations contained in
2 paragraphs 1 through 31 of this complaint, inclusive, as if fully set forth here.

3 49. The policies, promises, practices, and course of conduct of UPS described
4 above in this complaint gave rise to a binding written and implied-in-fact contract with Mr.
5 Kline. Pursuant to this contract, UPS agreed: (a) to allow Mr. Kline, like any other UPS
6 manager or supervisor who provided evidence of a specific and necessary need to transfer
7 to a job in a UPS office in a geographically separate location to do so, provided he
8 obtained an acceptable rating on his most recent Career Development evaluation, an
9 appropriate assignment existed in the destination location, and recommendation or
10 approval of the transfer was obtained from his immediate district, region and/or group
11 manager; (b) carefully to consider any potential transfer affecting Mr. Kline and Mr. Sories,
12 like those affecting any other UPS employee and his or her family, based on the realization
13 that transfers have profound effects on individuals and their families; (c) to comply with all
14 laws governing fair employment and labor practices; (d) not to discriminate against Mr.
15 Kline or any other employee in any aspect of his or her employment at UPS because of,
16 among other factors, sex or sexual orientation; (e) to protect Mr. Kline, like all other UPS
17 employees, against any form of discriminatory workplace harassment, including conduct
18 that was intended to or that had the effect of unreasonably interfering with the employee's
19 work performance or creating an environment that is intimidating, hostile or offensive to
20 the employee; (f) to protect Mr. Kline, like all other UPS employees, against retaliation for
21 reporting known or suspected violations of UPS's legal or ethical responsibilities, including
22 being discouraged from using any available channel within the organization or being
23 questioned about choosing one method of communicating concerns over another; (g) to
24 treat Mr. Kline, like all other UPS employees, with fairness, dignity, and respect; (h) to
25 value diversity within UPS's workforce; (i) to treat Mr. Kline and his fellow employees as
26 individuals, without favoritism; and (j) to assign responsibilities and duties to Mr. Kline,
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1 like all other UPS employees, to secure the full benefit of his talents and ability and to
2 provide him with an opportunity to develop further and to obtain personal satisfaction from
3 his work.

4 50. Mr. Sories was an intended third-party beneficiary of UPS's contractual
5 promises with regard to transfers, including under UPS's Management Initiated Transfer
6 Request policy.

7 51. Mr. Kline has fulfilled his obligations and complied with any and all
8 conditions of that contract that he was required to perform, except as have been waived by
9 UPS.

10 52. In engaging in the conduct described above in this complaint, UPS
11 materially and without justification or excuse has breached its written and implied-in-fact
12 contractual promises (a) to allow Mr. Kline, like any other UPS manager or supervisor
13 who provided evidence of a specific and necessary need to transfer to a job in a UPS office
14 in a geographically separate location to do so, provided he obtained an acceptable rating on
15 his most recent Career Development evaluation, an appropriate assignment existed in the
16 destination location, and recommendation or approval of the transfer was obtained from his
17 immediate district, region and/or group manager; (b) carefully to consider any potential
18 transfer affecting Mr. Kline and Mr. Sories, like those affecting any other UPS employee
19 and his or her family, based on the realization that transfers have profound effects on
20 individuals and their families; (c) to comply with all laws governing fair employment and
21 labor practices; (d) not to discriminate against Mr. Kline or any other employee in any
22 aspect of his or her employment at UPS because of, among other factors, sex or sexual
23 orientation; (e) to protect Mr. Kline, like all other UPS employees, against any form of
24 discriminatory workplace harassment, including conduct that was intended to or that had
25 the effect of unreasonably interfering with the employee's work performance or creating a
26 environment that is intimidating, hostile or offensive to the employee; (f) to protect Mr.
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1 Kline, like all other UPS employees, against retaliation for reporting known or suspected
2 violations of UPS's legal or ethical responsibilities, including being discouraged from using
3 any available channel within the organization or being questioned about choosing one
4 method of communicating concerns over another; (g) to treat Mr. Kline, like all other UPS
5 employees, with fairness, dignity, and respect; (h) to value diversity within UPS's
6 workforce; (i) to treat Mr. Kline and his fellow employees as individuals, without
7 favoritism; and (j) to assign responsibilities and duties to Mr. Kline, like all other UPS
8 employees, to secure the full benefit of his talents and ability and to provide him with an
9 opportunity to develop further and to obtain personal satisfaction from his work.

10 53. The contract between UPS and Mr. Kline also contained, by operation of
11 law, a covenant of good faith and fair dealing obligating UPS to perform the terms and
12 conditions of the contract fairly and in good faith and not to do anything that would
13 deprive Mr. Kline of the benefit of UPS's contractual promises, on which Mr. Kline had
14 relied. In engaging in the conduct described above in this complaint, UPS acted in bad
15 faith, deprived Mr. Kline of the benefit of UPS's contractual promises, and breached the
16 covenant of good faith and fair dealing in connection with the contract.

17 54. As a direct and proximate result of UPS's breach of contract, Mr. Kline and
18 Mr. Sories have been damaged in an amount of compensatory damages to be determined
19 according to proof at trial. Mr. Kline and Mr. Sories also are entitled to prejudgment
20 interest on such damages.
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1 **FOURTH CAUSE OF ACTION**

2 **Negligent Infliction of Emotional Distress**

3 **(By Plaintiff Frank J. Sories Against Defendant United Parcel Service, Inc.)**

4 55. Plaintiff Frank J. Sories incorporates by reference and realleges the
5 allegations contained in paragraphs 1 through 31 of this complaint, inclusive, as if fully set
6 forth here.

7 56. As a result of the conduct of and the promises made by UPS, it undertook a
8 duty of care to individuals in committed, intimate, family relationships with its employees,
9 including Mr. Sories, with regard to the impact upon them of the grant or denial of
10 requested transfers by employees and of the impact upon them of prohibited employment
11 discrimination in connection with its actions in response to such requests for transfers.

12 57. At the time UPS denied Mr. Kline's request for a transfer, UPS knew that
13 Mr. Kline and Mr. Sories were in a long-term, committed, intimate, family relationship;
14 knew that Mr. Sories was being transferred by his employer to Chicago; knew that the
15 result of a denial of Mr. Kline's request for a transfer would be to require Mr. Kline and
16 Mr. Sories to live apart from one another, separated by thousands of miles; and knew, or
17 reasonably should have known, that someone in Mr. Sories' position would suffer serious
18 emotional distress that would be substantial and enduring if such a request for transfer
19 inappropriately was denied. It was easily predictable and reasonably foreseeable that, if
20 Mr. Kline's request for a transfer improperly was denied, Mr. Sories, as well as Mr. Kline,
21 would be directly injured.

22 58. In discriminatorily and without justification denying Mr. Kline's request for
23 a transfer, UPS negligently breached its duty to act with care toward Mr. Sories. Mr.
24 Sories was a direct victim of UPS's negligence.

25 59. As a direct and proximate result of UPS's negligent conduct, Mr. Sories has
26 suffered serious, substantial, and enduring emotional distress that was foreseeable by UPS.
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1 (c) members of the general public who have been or are customers of UPS reasonably were
2 likely to be, and have been, misled by UPS's public statements that it does not discriminate
3 based on sexual orientation or sex and is an "equal-opportunity employer;" that "workforce
4 diversity" is "central to [its] business" and "drive[s] the way [UPS] does business," that
5 UPS is committed to its "employees ... and their families;" and that "the cornerstones of
6 fairness, respect and dignity serve as the basis of [UPS's] work environment;" and (d)
7 members of the general public who have been or are in the business of package delivery
8 and specialized transportation and logistics services and who have acted in compliance with
9 the California Fair Employment and Housing Act have been put at a competitive
10 disadvantage as a result of UPS's conduct.

11 65. The conduct of UPS described above in this complaint constitutes business
12 practices that violate California statutes or otherwise are unfair, unlawful or fraudulent.
13 This conduct accordingly violates Sections 17200 et seq. of the California Business and
14 Professions Code. Through this conduct, UPS has acquired money and other property
15 from members of the general public.

16 66. Pursuant to Section 17203 of the California Business and Professions Code,
17 Mr. Kline and Mr. Sories seek permanent injunctive relief in the form of an order that UPS
18 cease violating the promises and public assurances described above and that UPS restore to
19 any aggrieved person any money or property acquired by means of such unfair business
20 practices.
21

22 SIXTH CAUSE OF ACTION

23 **Declaratory Relief**

24 **(By Plaintiffs Daniel C. Kline and Frank J. Sories**

25 **Against Defendants United Parcel Service, Inc. and Dominic Culotta)**

26 67. Plaintiffs incorporate by reference and reallege the allegations contained in
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1 paragraphs 1 through 31, 33 through 38, 40 through 47, 49 through 54, 56 through 61, and
2 63 through 66 of this complaint, inclusive, as if fully set forth here.

3 68. An actual and present controversy exists between Plaintiffs Daniel C. Kline
4 and Frank J. Sories, on the one hand, and Defendants United Parcel Service, Inc. and
5 Dominic Culotta, on the other, relating to their respective legal rights and duties:

6 (a) Plaintiffs contend that UPS has discriminated against Mr. Kline on
7 the basis of marital status, sexual orientation and sex, in violation of the California Fair
8 Employment and Housing Act and that Defendants UPS and Mr. Culotta have retaliated
9 against Mr. Kline in violation thereof; that UPS has breached its written and implied-in-fact
10 contract with Mr. Kline, of which Mr. Sories is an intended third-party beneficiary; that
11 UPS negligently has inflicted emotional distress upon Mr. Sories; that UPS has engaged in
12 unfair business practices; and that Mr. Kline and Mr. Sories have been damaged thereby
13 and, as a result, are entitled to relief from this Court; and

14 (b) Defendants deny each and every one of those contentions.

15 69. A judicial declaration among the parties is necessary and appropriate at this
16 time in order that they promptly may ascertain and enforce their respective rights and
17 obligations.

18 70. Plaintiffs are entitled to a declaratory judgment that UPS has discriminated
19 against Mr. Kline on the basis of marital status, sexual orientation and sex, in violation of
20 the California Fair Employment and Housing Act and that Defendants UPS and Mr.
21 Culotta have retaliated against Mr. Kline in violation thereof; that UPS has breached its
22 written and implied-in-fact contract with Mr. Kline, of which Mr. Sories is an intended
23 third-party beneficiary; that UPS negligently has inflicted emotional distress upon Mr.
24 Sories; that UPS has engaged in unfair business practices; and that Mr. Kline and Mr.
25 Sories have been damaged thereby and, as a result, are entitled to relief from this Court .
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1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiffs Daniel C. Kline and Frank J. Sories respectfully request
3 that the Court:

- 4 (1) Issue (a) a preliminary and a permanent injunction ordering Defendant
5 United Parcel Service, Inc. not to deny, prevent or interfere with plaintiff
6 Daniel C. Kline's request for a transfer to UPS's Metro Chicago office; (b)
7 a preliminary and a permanent injunction ordering Defendants United Parcel
8 Service, Inc. and Dominic Culotta to cease and desist from engaging in any
9 further acts of retaliation against Mr. Kline for his engaging in protected
10 activity under California's Fair Employment and Housing Act; and (c) a
11 permanent injunction ordering Defendant United Parcel Service, Inc. to
12 cease violating the promises and public assurances described in this
13 complaint and restore to any aggrieved person any money or property
14 acquired by means of its unfair business practices;
- 15 (2) Award compensatory damages in an amount to be determined according to
16 proof by Plaintiffs against Defendants United Parcel Service, Inc., and
17 Dominic Culotta, as well as prejudgment interest thereon;
- 18 (3) Award punitive damages against Defendants United Parcel Service, Inc. and
19 Dominic Culotta in such other amount as the jury may determine is
20 sufficient to punish them for and deter others from violating the Plaintiffs'
21 rights as alleged in this complaint;
- 22 (4) Enter a declaratory judgment that (a) UPS has Defendant United Parcel
23 Service, Inc. has discriminated against Plaintiff Daniel C. Kline on the basis
24 of marital status, sexual orientation and sex, in violation of the California
25 Fair Employment and Housing Act; (b) Defendants United Parcel Service,
26 Inc. and Dominic Culotta have retaliated against Mr. Kline in violation of
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1 the California Fair Employment and Housing Act; (c) United Parcel Service,
2 Inc. has breached its written and implied-in-fact contract with Mr. Kline, of
3 which Plaintiff Frank J. Sories is an intended third-party beneficiary; (d)
4 Defendant United Parcel Service, Inc. negligently has inflicted emotional
5 distress upon Mr. Sories; (e) Defendant United Parcel Service, Inc. has
6 engaged in unfair business practices; and (f) Mr. Kline and Mr. Sories have
7 been damaged as a result of the conduct of Defendants United Parcel
8 Service, Inc. and Dominic Culotta, and, as a result, are entitled to relief
9 from this Court;

10 (5) Award Plaintiffs their costs, expenses, and reasonable attorneys' fees
11 pursuant to, inter alia, Section 12965 of the California Government Code,
12 Section 1021.5 of the California Code of Civil Procedure, and other state
13 laws;

14 (6) Grant such other and further relief as the Court may deem just and proper.
15

16 Dated: August ____, 2003
17

18 Respectfully submitted,

19 JON W. DAVIDSON
20 JENNIFER MIDDLETON
21 LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.

22 ALEXANDER G. van BROEK
23 LAW OFFICE OF ALEXANDER G. van BROEK

24
25 By _____
Jon W. Davidson

26
27 Attorneys for Plaintiffs
DANIEL C. KLINE and FRANK J. SORIES
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