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SUPREME COURT OF THE STATE OF FLORIDA

IVANA VIDOVIC MLINAR,
Appellant/Plaintiff,
vs.

UNITED PARCEL SERVICE INC.,
Appellee/Defendant,

RECOVERY MANAGEMENT CORP. d/b/a CARGO LARGO, PAK MAIL OF WELLINGTON, INC., and AARON ANDERSON,
Defendants.

CASE NO: SC14-54
LOWER TRIBUNAL Nos.
FOURTH DCA: 4D12-1332
15th JUD. CIR.: 502008CA036246 (PALM BEACH)

APPENDIX TO INITIAL BRIEF OF APPELLANT
Volume Three

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEALS AFFIRMING FINAL JUDGMENT OF THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR PALM BEACH COUNTY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-serve, and US Mail this 3rd day of JUNE, 2014, to all counsel on the attached list.

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 036246XXXXMB AH

IVANA VIDOVIC MLINAR,

Plaintiff,

vs.

UNITED PARCEL SERVICE INC., PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT CORP. d/b/a CARGO LARGO and AARON ANDERSON,

Defendant,

_____/

SECOND AMENDED COMPLAINT

Plaintiff IVANA VIDOVIC MLINAR, a Florida Resident, files this Second Amended Complaint[1] against Defendants, UNITED PARCEL SERVICE INC., PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT CORP.., and AARON ANDERSON, and alleges:

JURISDICTIONAL ALLEGATIONS

1. This is an action for damages that are in an amount in excess of $15,000.00.

2. Plaintiff IVANA VIDOVIC MLINAR, (also known professionally as Ivana Vidovic; hereinafter, "VIDOVIC") is a resident of Palm Beach County Florida. VIDOVIC'S husband is Frane Mlinar (hereinafter, "Frane") (hereinafter, VIDOVIC and Frane are collectively referenced as "the Mlinars").

[1] Plaintiffs' Amended Complaint was filed in 2009 changing the corporate names only. Except for the allegations raised in Count IV against Defendant UPS, page 15, and the additional fact noted in paragraph 26a, this Second Amended Complaint is identical to the prior complaint.

3. PAK MAIL OF WELLINGTON, INC. (hereinafter, "PAK MAIL") is a Florida Corporation with a principal address of 13833 Wellington Trace, Suite E4, Wellington, Palm Beach County, Florida, 33414. PAK MAIL'S Registered Agent for Service of Process is Linda A. Ramos, who may be served at PAK MAIL'S address.

4. UNITED PARCEL SERVICE INC. (hereinafter, "UPS") is registered with the Florida Department of State as a foreign corporation, with a principal address of 55 Glenparkway, NE Atlanta, Georgia, 30328. The Florida Registered Agent for UPS is Corporation Service Company, 1201 Hays Street, Tallahassee, Florida, 32301-2525. This Court has personal jurisdiction over UPS as it has committed the following acts: registered as a foreign corporation doing business in Florida, conducted regular business in Florida through vendors, franchisees, and wholly owned retail outlets, and maintained a regional headquarters in Miami, Florida,

5. RECOVERY MANAGEMENT CORP., d/b/a/ CARGO LARGO (hereinafter, "CARGO LARGO") is a Limited Liability Company domiciled in Missouri; it is referred to by UPS as "overgoods." The Registered Agent for CARGO LARGO is Jennifer Al Bedford, 12502 Manchester Ave., Grandview, Missouri, 64030. CARGO LARGO receives overstock and unclaimed goods from various locations including Florida. CARGO LARGO owns and operates surplus and salvage stores including the Internet based auction house known as "Cargo Largo," which advertises and sells, overstock and lost goods to various locations including Florida.

6. Aaron Anderson (hereinafter, "ANDERSON") is an individual living in Kansas City, Missouri who has solicited Florida artists and art buyers in Florida, including VIDOVIC, for the buying and selling of art in Florida.

ALLEGED FACTS OF THE CASE

CONTRACT for BAILMENT
UPS to ship Package to New York

7. On the evening of November 28, 2005, Frane, acting at VIDOVIC'S direction and for her benefit, contracted with PAK MAIL to ship two (2) paintings via UPS to New York. The paintings, entitled "Advice" and "The Messenger" were created and owned by VIDOVIC.

8. Frane rolled and packaged the painting canvases inside of a fifty-one (51) inch long and four (4) inch diameter PVC pipe. Each end of the pipe was closed with a tightly fitting PVC pipe cap and further secured with silver duct tape. This is a customary method of shipping original paintings.

9. The paintings were to be shipped to New York to Mario Novak's (hereinafter,"Novak") residence at 129 Bermuda Street, Atlantic Beach, New York, 11509. The assigned UPS tracking number provided by PAK MAIL was 1Z0XW5271244846234. Since the UPS truck was at PAK MAIL while Frane was there to ship the paintings, he observed the package being loaded on the UPS truck.

PACKAGE ARRIVES EMPTY
Paintings Removed Before Arrival and UPS refuses to act

10. VIDOVIC had arranged to exhibit and offer the paintings for sale at the Mario Novak Gallery, owned by Novak. The Mlinars flew to New York for the exhibit and arrived

on the same day that the paintings were scheduled to arrive. They planned to stay at Novak's residence. Novak met the Mlinars at the airport while his fiancée, Rachel Koenig (hereinafter, "Koenig"), remained at Novak's residence to accept the paintings.

11. While Novak and the Mlinars were driving from the airport to Novak's house, Novak received a telephone call from Koenig reporting that the container had been delivered; however, the duct tape on the cover of one side of the PVC tube had been sliced and the painting canvases had been removed.

12. Novak and the Mlinars arrived at Novak's house a short time after receiving Koenig's telephone call. They were able to locate the UPS truck as it continued to make deliveries in the neighborhood. When they questioned the two UPS deliverymen about the opened package and missing paintings, both advised that the package had already been opened when they received it. The UPS deliverymen stated that they delivered the package in exactly the same condition it had been when they themselves received it before starting their route.

13. Frantic, the Mlinars immediately called UPS to report the missing paintings and initiate an investigation. They explained the totality of the circumstances to UPS: (1) Frane witnessed the package being placed into UPS custody from PAK MAIL; (2) the empty package arrived at the intended destination; (3) Koenig received the empty package directly from a UPS delivery man when it was delivered to the intended destination; and (4) the UPS deliverymen acknowledged to the Mlinars and Novak that the package was sliced open and the paintings had been removed prior to their receipt of the package.

14. UPS insisted that it would do nothing about the missing paintings until a report was filed through PAK MAIL of Wellington.

15. When the Mlinars arrived home two days later, they reported the missing paintings to Roly Ramos (hereinafter, "Ramos"), the proprietor of PAK MAIL of Wellington. VIDOVIC provided Ramos with the PAK MAIL shipping receipt, pictures of both "Advice" and "The Messenger," and a copy of an appraisal reflecting that "Advice," alone, had been appraised at $20,000. They also advised PAK MAIL and UPS that the paintings were labeled on the back with the identity of the artist and her address.

16. Ramos advised that he filed the claim with the UPS Investigations Department. Although VIDOVIC checked in with Ramos frequently, UPS never responded to the claim. Approximately eight (8) months later, Ramos advised VIDOVIC that she was entitled to $100 for the missing package. As a result of the botched delivery, Ramos issued the Mlinars $100.00 in credit for free future shipping. VIDOVIC was deeply distraught over the loss of the paintings and the missed opportunities and exposure. Since the identity of the owner of the goods would have been readily identifiable had the paintings remained within UPS control, VIDOVIC assumed that the paintings had to have been stolen and immediately removed from UPS control. They never imagined that the company, after having been placed on notice of the loss, would have kept and sold off the contents of a package while the packaging was delivered to its destination.

CONVERSION
Rifling through Packages and Sending Contents to Overgoods

17. Approximately two years later, VIDOVIC received a shocking telephone call from ANDERSON stating that he had just acquired "Advice". While somewhat relieved to know the location of "Advice", VIDOVIC was appalled once she became aware of the circumstances under which ANDERSON obtained it: ANDERSON purchased "Advice" from CARGO LARGO who had received the painting from UPS.

18. VIDOVIC was instantly angered as she realized the scam to which she had fallen victim: If the paintings were ever "lost," their packaging would never have arrived at its proper destination. If the paintings were stolen by a rogue UPS employee or even by a trespasser, they should not have ended up at UPS' lost goods contractor's warehouse and listed for auction. Rather than transfer the goods as they were obliged to do, UPS, without consent, allowed the package to be infiltrated, its contents removed and delivered to its servicer for lost goods.

19. Upon information and belief, UPS selectively located the contents based on their nature, probable worth, and lack of insurance. UPS then sent the paintings to CARGO LARGO for some as of yet undiscovered consideration exceeding the $100.00 liability coverage provided for all shipments. Upon information and belief, UPS utilized the information on the back of the painting including VIDOVIC'S name to catalogue, sell and/or distribute the item to CARGO LARGO. In any event certain things are clear: UPS allowed the package to be infiltrated and the paintings removed; UPS allowed an empty package to arrive at the proper destination; UPS never performed a diligent search of its lost goods although it utilized the very same information and effort a search would have required to redistribute the package to CARGO LARGO; UPS

allowed the bare goods from within the package to be sent to overgoods for sale; UPS directly benefited by the infiltration.

20. VIDOVIC asked ANDERSON, the purchaser of her painting from CARGO LARGO, how he was able to locate her. He replied that he "Google" searched her name as it appeared on the label printed on the back of the painting and supplied on the CARGO LARGO invoice. He was readily able to find her contact information on the Internet. VIDOVIC was enraged to learn that ANDERSON had handily contacted her using only the painting label information - information that was at all times available to UPS even after the paintings were stripped of their packaging and transferred from UPS to CARGO LARGO as a "lost good."

21. VIDOVIC inquired whether "The Messenger" was also at the CARGO LARGO auction. ANDERSON replied that "The Messenger" was auctioned in the same lot; however, he did not know the identity of the purchaser.

MISAPPROPRIATION of GOODS AND IDENTITY
Exploitation of the Artist

22. Significantly, the auctioneer at CARGO LARGO was sure to inform the prospective buyers that the paintings were original Ivana Vidovic artwork that had come to CARGO LARGO from UPS'S lost goods. In fact, CARGO LARGO provided ANDERSON with an acknowledgement of sale, identifying the painting and artist as "the original painting on canvas, 'Advice,' by Ivana Vidovic."

23. The auction for "Advice" started at $1,400, but ANDERSON was able to purchase the painting for $1,000. During the telephone conversation, ANDERSON lauded VIDOVIC'S talent. He then asked the value of "Advice." He boldly explained the he intended

to place the painting for sale on his eBay web site. VIDOVIC explained that "Advice" had been appraised at $20,000. ANDERSON was overjoyed to learn the appraisal value and advised that he would use it as the starting eBay bid. ANDERSON even asked VIDOVIC whether she might be interested in purchasing the painting from him; she declined his offer. Alternatively, ANDERSON asked if VIDOVIC might introduce him to art dealers in the Palm Beach Community where potential buyers might be more familiar with VIDOVIC'S work; she declined this request as well.

24. ANDERSON continued to ask VIDOVIC questions regarding her history as an artist and the history of the painting. Soon thereafter, when ANDERSON did, in fact, list "Advice" for sale on eBay, he included the details of his conversation with VIDOVIC and even offered to personally introduce the potential buyer to VIDOVIC. He, like UPS and CARGO LARGO, knowingly used the identity of the artist in a commercial message to obtain a sale.

25. Over the next couple of weeks, ANDERSON continued to contact VIDOVIC to inquire whether she might reconsider his offer to buy the painting or introduce him to local art dealers in Palm Beach. Interested in maintaining communication, VIDOVIC demurred. ANDERSON also questioned the value of "The Messenger". VIDOVIC advised that the value was approximately $10,000. Soon thereafter, ANDERSON acquired "The Messenger".

26. VIDOVIC has recently learned that ANDERSON has placed "Advice" and "The Messenger" for sale in two separate listings on craigslist. Even more insulting, a third listing on craigslist offers both "Advice" and "The Messenger" for the exchange of a late model Mercedes. ANDERSON'S ad reads as follows:

I have two stunningly beautiful originals by the one and only Floridian listed painter, Ivana Mlinar. 2001 "Advice" and 2005 "The Messenger". Her works are appraised at $30,000 for the two canvases, in hand, and you will have direct contact with the artist herself...introduced by me to the new owner. I will trade both of these paintings for a late model Mercedes Benz in superb condition. No high miles, no restoration project, I'm talking about a really nice Mercedes. If you love Ivana's work, you will have to own these two originals. Interested? This is a serious deal for a serious collector looking to upgrade their collection. If the Mercedes just sits in the garage, why not explore the possibility. Have another high-end automobile or classic that's not a Mercedes? I'll listen. Call ....

WILLFUL and MALICIOUS CONDUCT
Victims of a Larger Scheme

26a. VIDOVIC has recovered her paintings from Aaron Anderson. The paintings, reputation of the artists and her career remain damaged.

27. ANDERSON explained to VIDOVIC that he regularly purchased unclaimed or recovered luxury merchandise from transportation giants, like UPS, through CARGO LARGO. He further explained that he was considered a "senior buyer" with CARGO LARGO; therefore, he is given the first right of purchase in the fine art category. He further noted that many times he contacts the original artists and they state a scenario similar to the VIDOVIC'S. Indeed, other artists who had thought that an item of their work was somehow lost, destroyed or perhaps, stolen by a rogue worker during UPS delivery, finally discovered that it was eventually sold as an UPS lost item.

28. In fact, UPS employees report on certain internet blogs that they routinely catalogue contents according to eBay and CARGO LARGO categories as they are removed from bins of lost, misplaced, or stolen goods. The goods are described, packaged, and shipped to these purveyors for as of yet undisclosed consideration.

MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000166

29. Upon information and belief, UPS does not remove the contents from every box it searches; instead, some packages arrive at certain end points with the packaging sliced open and the goods remaining. Tellingly, these items would not garner more than the $100.00 insured loss limit automatically applicable to all packages.

30. Upon information and belief, UPS selectively locates certain contents based on their nature, probable worth, and lack of insurance. UPS then sends them to CARGO LARGO for some as of yet undiscovered consideration exceeding the company's $100.00 per loss liability coverage.

CLAIMS

COUNT I
Conversion
(UPS, Recovery Management)

31. Facts alleged in paragraphs 1-30 are incorporated as if fully set out herein.

32. UPS, CARGO LARGO, and PAK MAIL as noted above, have engaged in a fleecing operation whereby certain articles whose value is deemed to be above that of the insured liability (including VIDOVIC'S paintings) are removed from the packaging and subsequently sold at auction as goods that were undeliverable or otherwise lost in transit. In reality, the shipping and management of these goods (including VIDOVIC'S paintings) is not the purpose of their acts or the intentions upon the receipt of certain property.

33. UPS, PAK MAIL and CARGO LARGO intended to convert VIDOVIC'S property once it was received at PAK MAIL and at all times afterwards.

34. Such conversion directly and proximately caused damages to VIDOVIC including the loss of the property and the lost opportunities alleged in paragraphs 10-16, as well as any prejudgment interest awardable from the date of loss.

WHEREFORE, the Plaintiff, VIDOVIC, demands judgment against the Defendants UPS CARGO LARGO, and PAK MAIL for compensatory damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court may deem appropriate under the circumstances. Plaintiff, VIDOVIC, further demands a trial by jury.

COUNT II

Profiting by Criminal Activity
(UPS, CARGO LARGO, PAK MAIL)

35. Facts alleged in paragraphs 1-30 are incorporated as if fully set out herein.

36. Defendants UPS, CARGO LARGO, and PAK MAIL have systematically taken artwork as a shipper of goods. They have relied upon certain legal protections that are afforded by Federal Law to limit liabilities for these works at the insured amount. It is not coincidence that VIDOVIC, through ANDERSON, discovered the paintings just after the two year limitation to bring a negligence action afforded under the Federal Carmack Amendment expired. (The Carmack Amendment provides a uniform cause of action for the clients of interstate shipping companies whose property was lost or destroyed through the negligence of the shipper. Carmack is a non-exclusive Federal statute which would preempt causes of action based on the negligence of the carrier; it limits damages to the replacement or bartered for insurance value but provides strict liability for loss or damage.)

37. In this scheme, the Defendants UPS, CARGO LARGO, and PAK MAIL have engaged in obtaining property by falsely impersonating and/or representing themselves as part of a shipping enterprise rather than a fencing organization and have thus systematically violated F.S. §817.02.

38. The course of conduct described above includes "criminal acts" as defined by F.S. §772.102 (2), which lists False Pretenses/Fraud including F.S. §817.02: "Obtaining property by false personation" as a criminal act satisfying the statutory predicate for Florida RICO recovery. The activity is a pattern of similar acts as it did not stem out of one single contractor transaction against one or more related persons.[2]

39. The UPS, CARGO LARGO, and PAK MAIL Defendants' engagement in this pattern of activity has caused them to be liable to VIDOVIC for three-fold the damages of any resulting injuries to the Plaintiff. These Defendants are also liable for the attorney fees and appellate costs of any claims made for relief of these injuries. [3]

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[2] **F.S. 772.104 (4):** "Pattern of criminal activity" means engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that the last of such incidents occurred within 5 years after a prior incident of criminal activity. For the purposes of this chapter, the term "pattern of criminal activity" shall not include two or more incidents of fraudulent conduct arising out of a single contract or transaction against one or more related persons.

[3] **F.S. § 772.104. Civil cause of action:** (1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $200, and reasonable attorney's fees and court costs in the trial and appellate courts.

40. Such systematic criminal activity directly and proximately caused damages to VIDOVIC including the loss of the property and the lost opportunities alleged in paragraphs 10-16, as well as any prejudgment interest awardable from the date of loss.

41. In addition, the activity included a public auction of VIDOVIC'S work, including the use of her name without consent. That activity further resulted in the continued misuse of her identity on the World Wide Web through venues such as craigslist, eBay and CARGO LARGO'S website. This has caused injury to the reputation of VIDOVIC who sells works exclusively through reputable art galleries. The unauthorized marketing of works of art attributed to VIDOVIC exposes VIDOVIC to claims that she is in violation of exclusivity contracts she has with these venerable galleries. In addition, the manner of marketing has directly and proximately caused injury to the goodwill associated with the VIDOVIC'S name.

WHEREFORE, the Plaintiff, VIDOVIC, demands judgment against the Defendants UPS, CARGO LARGO, and PAK MAIL for compensatory, pre-judgment and post-judgment interest, treble damages and attorney fees allowed by statute as described above, and costs. Plaintiff, VIDOVIC, further demands a jury trial.

COUNT III
UNAUTHORIZED PUBLICATION OF NAME OR LIKENESS:
F.S. § 540.08
UPS, Recovery Management, ANDERSON

42. Facts alleged in Paragraphs 1-30 and 41 are incorporated as if fully set out herein.

43. Defendants UPS, CARGO LARGO, and ANDERSON each, individually, and in conspiracy used VIDOVIC'S name and likeness (her artistic signature) in connection with the resale, advertisement and other distribution of artistic productions (the paintings) where

VIDOVIC had not consented to the use of her name and likeness in connection with the initial sale or distribution thereof. UPS and CARGO LARGO ultimately published that name in an auction sale and sold the goods wrongfully appropriated.

44. UPS, CARGO LARGO, and ANDERSON knew that VIDOVIC had not consented to the initial distribution as the painting itself was wrongfully converted.

45. Because the contents slip of the bill of lading detailed that the contents of the package included artwork, UPS and CARGO LARGO targeted VIDOVIC'S package with the specific intent of reselling her art product and commercially utilizing her name. Further, because the packages were sent without additional insurance, UPS and CARGO LARGO determined that the artist would likely be unable or disinclined to pursue any remedy for the injuries sustained.

46. ANDERSON procured the painting with the intent to misappropriate the artist's name although he knew or reasonably should have known that the painting had been misappropriated from the artist. Furthermore, after he ascertained the theft to be certain, he continued to utilize her name in order to sell her paintings.

47. UPS, CARGO LARGO, and ANDERSON therefore violated the protections afforded by Fla. Stat. §540.08.

48. Such misappropriation directly and proximately caused VIDOVIC damages appropriately remedied by §540.08 including the loss of a reasonable royalty, compensatory damages (such as the loss of currency associated with her name as described in paragraph 41), and the punitive or exemplary damages provided by the statute.

WHEREFORE, Plaintiff, VIDOVIC, demands judgment against the Defendants UPS, CARGO LARGO, and ANDERSON for compensatory damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court may deem appropriate under the circumstances. Plaintiff, VIDOVIC, further demands a trial by jury.

COUNT IV
Florida's Deceptive and Unfair Trade Practices Act, F.S. Chapter 501, Part II

49. Plaintiff re-alleges and incorporates Paragraphs 1 through 30, 40 and 48 of this Complaint as if fully set forth herein and further alleges as follows:

50. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. '501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204, Fla. Stat.

51. The stated purpose of FDUTPA is to protect consumers from "those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202, Fla. Stat.

52. Defendant has engaged in, and continues to engage in, the conduct of trade and/or commerce in the State of Florida.

53. The policies, acts and practices alleged herein were intended to result and did result in the payment of UPS rates under false pretenses and through misleading billing practices. Specifically:

a. UPS enters into agreements with third-party retailers and UPS store retail outlets.

b. The agreements require the outlets to feature UPS as its preferred shipper.

c. UPS advertises its reliability nationally.

d. UPS provides identification and locations of third-party retailers and UPS retail store outlets directly to consumers via its 1-800-PICK-UPS telephone service and web-sites.

e. UPS allows the third-party retailers and the UPS store outlets to issue a UPS tracking number to the consumer.

f. Most third-party outlet forms allow consumers to fill out shipper return address information.

g. Unbeknownst to the consumer, the same third-party agreements that require the retailer to feature UPS as a preferred carrier prohibit the retailer from listing the consumer's information on the package.

h. UPS requires third-party retailers and the UPS store to use "WorldShip" a trademarked UPS electronic database that stores shipping label information which includes only the retailers name as the "shipper of record," the location for delivery, the recipient "the consignee," shape of the package, and the class and rate for delivery (for example, UPS ground.) Retailers are prohibited from entering the consumers information.

i. Other shippers, such as the U.S. Mail, have utilized return addresses for decades.

j. The denial of any liability to third-party consumers and the self-declared definition of the retailer as the "shipper of record" is disclaimed to the public only by tariffs which are available on-line.

k. The tariffs are styled as though they have the force and protection of law and imply that UPS's conduct has been sanctioned by some government agency.

l. Consumers are only referred to the tariffs when a package is lost or damaged at which time UPS refuses to deal with consumers of third-party vendors; consumers call UPS based on the provided tracking number information.

m. UPS has contracted with an over-goods servicer (Cargo Largo) to codify the contents of undeliverable packages based on personal information that may be found therein.

n. Since UPS does not record consumer's personal information or identification, over-goods cannot possibly be returned to a consumer or to their associated

tracking number. In fact, the tracking number is completely unassociated with the consumer.

o. Cargo Largo then buys the unresolved over-goods from UPS and/or sells them on a consignment basis.

p. In any one year, UPS makes more money from Cargo Largo's payment for goods than it has paid to the over-goods servicer for its efforts to find packages for UPS consumers over the last 8 years.

q. In fact, the only payment UPS makes to Cargo Largo as a servicer of lost goods is bonuses that are paid based on percentages of found items, so called "voids" of sale.

54. Plaintiff was charged an unfair and deceptive rate because she thought her package was being shipped by her through UPS and that she would be able to track the package through UPS. Plaintiff entrusted UPS with her paintings based on that representation.

55. Instead of paying for the infrastructure to support the service that it has deceptively represented to the public as available through thousands of third-party and UPS stores, UPS hands over unclaimed goods to a separate company—a conveyance for which it makes money. Based upon its refusal to accept consumer information, UPS is virtually guaranteed that it will never pay nearly as much to that servicer as it receives from the servicer.

56. Defendant's conduct of charging these fees to Plaintiff violates FDUTPA. UPS's acceptance of goods for shipment from third party servicers under such limitations violates FDUPTA.

57. Plaintiff sustained damages as a direct and proximate result of Defendant's unfair an unconscionable practices as alleged in paragraphs 40 and 48 above. Section 501.211(2),

Florida Statutes, provides Plaintiff and the Class members a private right of action against Defendant and entitles them to recover their actual damages, plus attorney fees and costs.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, pre and post judgment interest, attorney fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list, this 25th day of August, 2011.

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 036246XXXXMB AH

IVANA VIDOVIC MLINAR,
Plaintiff,

vs.

UNITED PARCEL SERVICE INC., PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT CORP. d/b/a CARGO LARGO and AARON ANDERSON,
Defendants.
_____/

UNOPPOSED MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiff, IVANA VIDOVIC MLINAR, by and through her undersigned attorneys, seeks leave to file the attached Second Amended Complaint and states as follows:

1. Discovery has revealed facts supporting a new claim against defendant UPS.
2. The additional claim is made pursuant to Florida's Deceptive and Unfair Trade Practices Act, F.S. Chapter 501 Part II.
3. The trial of this case is set on the Court's 8 week jury trial docket of January, 2011. The Defendants will not be prejudiced by the granting of this Amendment.
4. Plaintiffs originally filed the Motion to Amend the Complaint with a Proposed Second Amended Complaint.
5. Defendant UPS agreed to the Amendment. Defendant Recovery Management Corporation stated it would agree to the amendment if the wherefore clause of the new claim (alleged against UPS) referred to the "Defendant UPS" rather than to the "Defendant".

EXHIBIT A

6. Plaintiff has revised that referent. Thus, neither Defendant opposes the attached Amendment.

7. The proposed Second Amended Complaint is attached as Exhibit A.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all Counsel on the attached list, this 29th day of September, 2011.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 036246XXXXMB
AH

IVANA VIDOVIC MLINAR,

Plaintiff,

vs.

UNITED PARCEL SERVICE INC., PAK
MAIL OF WELLINGTON, INC.,
RECOVERY MANAGEMENT CORP. d/b/a
CARGO LARGO and AARON ANDERSON,

Defendant,

_____/

SECOND AMENDED COMPLAINT

Plaintiff IVANA VIDOVIC MLINAR, a Florida Resident, files this Second Amended Complaint[1] against Defendants, UNITED PARCEL SERVICE INC., PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT CORP.., and AARON ANDERSON, and alleges:

JURISDICTIONAL ALLEGATIONS

1. This is an action for damages that are in an amount in excess of $15,000.00.

2. Plaintiff IVANA VIDOVIC MLINAR, (also known professionally as Ivana Vidovic; hereinafter, "VIDOVIC") is a resident of Palm Beach County Florida. VIDOVIC'S

[1] Plaintiffs' Amended Complaint was filed in 2009 changing the corporate names only. Except for the allegations raised in Count IV against Defendant UPS, page 15, and the additional fact noted in paragraph 26a, this Second Amended Complaint is identical to the prior complaint.

husband is Frane Mlinar (hereinafter, "Frane") (hereinafter, VIDOVIC and Frane are collectively referenced as "the Mlinars").

3. PAK MAIL OF WELLINGTON, INC. (hereinafter, "PAK MAIL") is a Florida Corporation with a principal address of 13833 Wellington Trace, Suite E4, Wellington, Palm Beach County, Florida, 33414. PAK MAIL'S Registered Agent for Service of Process is Linda A. Ramos, who may be served at PAK MAIL'S address.

4. UNITED PARCEL SERVICE INC. (hereinafter, "UPS") is registered with the Florida Department of State as a foreign corporation, with a principal address of 55 Glenparkway, NE Atlanta, Georgia, 30328. The Florida Registered Agent for UPS is Corporation Service Company, 1201 Hays Street, Tallahassee, Florida, 32301-2525. This Court has personal jurisdiction over UPS as it has committed the following acts: registered as a foreign corporation doing business in Florida, conducted regular business in Florida through vendors, franchisees, and wholly owned retail outlets, and maintained a regional headquarters in Miami, Florida,

5. RECOVERY MANAGEMENT CORP., d/b/a/ CARGO LARGO (hereinafter, "CARGO LARGO") is a Limited Liability Company domiciled in Missouri; it is referred to by UPS as "overgoods." The Registered Agent for CARGO LARGO is Jennifer Al Bedford, 12502 Manchester Ave., Grandview, Missouri, 64030. CARGO LARGO receives overstock and unclaimed goods from various locations including Florida. CARGO LARGO owns and operates surplus and salvage stores including the Internet based auction house known as "Cargo

Largo," which advertises and sells, overstock and lost goods to various locations including Florida.

6. Aaron Anderson (hereinafter, "ANDERSON") is an individual living in Kansas City, Missouri who has solicited Florida artists and art buyers in Florida, including VIDOVIC, for the buying and selling of art in Florida.

ALLEGED FACTS OF THE CASE

CONTRACT for BAILMENT
UPS to ship Package to New York

7. On the evening of November 28, 2005, Frane, acting at VIDOVIC'S direction and for her benefit, contracted with PAK MAIL to ship two (2) paintings via UPS to New York. The paintings, entitled "Advice" and "The Messenger" were created and owned by VIDOVIC.

8. Frane rolled and packaged the painting canvases inside of a fifty-one (51) inch long and four (4) inch diameter PVC pipe. Each end of the pipe was closed with a tightly fitting PVC pipe cap and further secured with silver duct tape. This is a customary method of shipping original paintings.

9. The paintings were to be shipped to New York to Mario Novak's (hereinafter,"Novak") residence at 129 Bermuda Street, Atlantic Beach, New York, 11509. The assigned UPS tracking number provided by PAK MAIL was 1Z0XW5271244846234. Since the UPS truck was at PAK MAIL while Frane was there to ship the paintings, he observed the package being loaded on the UPS truck.

PACKAGE ARRIVES EMPTY
Paintings Removed Before Arrival and UPS refuses to act

10. VIDOVIC had arranged to exhibit and offer the paintings for sale at the Mario Novak Gallery, owned by Novak. The Mlinars flew to New York for the exhibit and arrived on the same day that the paintings were scheduled to arrive. They planned to stay at Novak's residence. Novak met the Mlinars at the airport while his fiancée, Rachel Koenig (hereinafter, "Koenig"), remained at Novak's residence to accept the paintings.

11. While Novak and the Mlinars were driving from the airport to Novak's house, Novak received a telephone call from Koenig reporting that the container had been delivered; however, the duct tape on the cover of one side of the PVC tube had been sliced and the painting canvases had been removed.

12. Novak and the Mlinars arrived at Novak's house a short time after receiving Koenig's telephone call. They were able to locate the UPS truck as it continued to make deliveries in the neighborhood. When they questioned the two UPS deliverymen about the opened package and missing paintings, both advised that the package had already been opened when they received it. The UPS deliverymen stated that they delivered the package in exactly the same condition it had been when they themselves received it before starting their route.

13. Frantic, the Mlinars immediately called UPS to report the missing paintings and initiate an investigation. They explained the totality of the circumstances to UPS: (1) Frane witnessed the package being placed into UPS custody from PAK MAIL; (2) the empty package arrived at the intended destination; (3) Koenig received the empty package directly from a UPS

delivery man when it was delivered to the intended destination; and (4) the UPS deliverymen acknowledged to the Mlinars and Novak that the package was sliced open and the paintings had been removed prior to their receipt of the package.

14. UPS insisted that it would do nothing about the missing paintings until a report was filed through PAK MAIL of Wellington.

15. When the Mlinars arrived home two days later, they reported the missing paintings to Roly Ramos (hereinafter, "Ramos"), the proprietor of PAK MAIL of Wellington. VIDOVIC provided Ramos with the PAK MAIL shipping receipt, pictures of both "Advice" and "The Messenger," and a copy of an appraisal reflecting that "Advice," alone, had been appraised at $20,000. They also advised PAK MAIL and UPS that the paintings were labeled on the back with the identity of the artist and her address.

16. Ramos advised that he filed the claim with the UPS Investigations Department. Although VIDOVIC checked in with Ramos frequently, UPS never responded to the claim. Approximately eight (8) months later, Ramos advised VIDOVIC that she was entitled to $100 for the missing package. As a result of the botched delivery, Ramos issued the Mlinars $100.00 in credit for free future shipping. VIDOVIC was deeply distraught over the loss of the paintings and the missed opportunities and exposure. Since the identity of the owner of the goods would have been readily identifiable had the paintings remained within UPS control, VIDOVIC assumed that the paintings had to have been stolen and immediately removed from UPS control. They never imagined that the company, after having been placed on notice of the loss, would

have kept and sold off the contents of a package while the packaging was delivered to its destination.

CONVERSION
Rifling through Packages and Sending Contents to Overgoods

17. Approximately two years later, VIDOVIC received a shocking telephone call from ANDERSON stating that he had just acquired "Advice". While somewhat relieved to know the location of "Advice", VIDOVIC was appalled once she became aware of the circumstances under which ANDERSON obtained it: ANDERSON purchased "Advice" from CARGO LARGO who had received the painting from UPS.

18. VIDOVIC was instantly angered as she realized the scam to which she had fallen victim: If the paintings were ever "lost," their packaging would never have arrived at its proper destination. If the paintings were stolen by a rogue UPS employee or even by a trespasser, they should not have ended up at UPS' lost goods contractor's warehouse and listed for auction. Rather than transfer the goods as they were obliged to do, UPS, without consent, allowed the package to be infiltrated, its contents removed and delivered to its servicer for lost goods.

19. Upon information and belief, UPS selectively located the contents based on their nature, probable worth, and lack of insurance. UPS then sent the paintings to CARGO LARGO for some as of yet undiscovered consideration exceeding the $100.00 liability coverage provided for all shipments. Upon information and belief, UPS utilized the information on the back of the painting including VIDOVIC'S name to catalogue, sell and/or distribute the item to CARGO LARGO. In any event certain things are clear: UPS allowed the package to be infiltrated and the

paintings removed; UPS allowed an empty package to arrive at the proper destination; UPS never performed a diligent search of its lost goods although it utilized the very same information and effort a search would have required to redistribute the package to CARGO LARGO; UPS allowed the bare goods from within the package to be sent to overgoods for sale; UPS directly benefited by the infiltration.

20. VIDOVIC asked ANDERSON, the purchaser of her painting from CARGO LARGO, how he was able to locate her. He replied that he "Google" searched her name as it appeared on the label printed on the back of the painting and supplied on the CARGO LARGO invoice. He was readily able to find her contact information on the Internet. VIDOVIC was enraged to learn that ANDERSON had handily contacted her using only the painting label information - information that was at all times available to UPS even after the paintings were stripped of their packaging and transferred from UPS to CARGO LARGO as a "lost good."

21. VIDOVIC inquired whether "The Messenger" was also at the CARGO LARGO auction. ANDERSON replied that "The Messenger" was auctioned in the same lot; however, he did not know the identity of the purchaser.

MISAPPROPRIATION of GOODS AND IDENTITY
Exploitation of the Artist

22. Significantly, the auctioneer at CARGO LARGO was sure to inform the prospective buyers that the paintings were original Ivana Vidovic artwork that had come to CARGO LARGO from UPS'S lost goods. In fact, CARGO LARGO provided ANDERSON

with an acknowledgement of sale, identifying the painting and artist as "the original painting on canvas, 'Advice,' by Ivana Vidovic."

23. The auction for "Advice" started at $1,400, but ANDERSON was able to purchase the painting for $1,000. During the telephone conversation, ANDERSON lauded VIDOVIC'S talent. He then asked the value of "Advice." He boldly explained the he intended to place the painting for sale on his eBay web site. VIDOVIC explained that "Advice" had been appraised at $20,000. ANDERSON was overjoyed to learn the appraisal value and advised that he would use it as the starting eBay bid. ANDERSON even asked VIDOVIC whether she might be interested in purchasing the painting from him; she declined his offer. Alternatively, ANDERSON asked if VIDOVIC might introduce him to art dealers in the Palm Beach Community where potential buyers might be more familiar with VIDOVIC'S work; she declined this request as well.

24. ANDERSON continued to ask VIDOVIC questions regarding her history as an artist and the history of the painting. Soon thereafter, when ANDERSON did, in fact, list "Advice" for sale on eBay, he included the details of his conversation with VIDOVIC and even offered to personally introduce the potential buyer to VIDOVIC. He, like UPS and CARGO LARGO, knowingly used the identity of the artist in a commercial message to obtain a sale.

25. Over the next couple of weeks, ANDERSON continued to contact VIDOVIC to inquire whether she might reconsider his offer to buy the painting or introduce him to local art dealers in Palm Beach. Interested in maintaining communication, VIDOVIC demurred.

ANDERSON also questioned the value of "The Messenger". VIDOVIC advised that the value was approximately $10,000. Soon thereafter, ANDERSON acquired "The Messenger".

26. VIDOVIC has recently learned that ANDERSON has placed "Advice" and "The Messenger" for sale in two separate listings on craigslist. Even more insulting, a third listing on craigslist offers both "Advice" and "The Messenger" for the exchange of a late model Mercedes. ANDERSON'S ad reads as follows:

> **I have two stunningly beautiful originals by the one and only Floridian listed painter, Ivana Mlinar. 2001 "Advice" and 2005 "The Messenger". Her works are appraised at $30,000 for the two canvases, in hand, and you will have direct contact with the artist herself...introduced by me to the new owner. I will trade both of these paintings for a late model Mercedes Benz in superb condition. No high miles, no restoration project, I'm talking about a really nice Mercedes. If you love Ivana's work, you will have to own these two originals. Interested? This is a serious deal for a serious collector looking to upgrade their collection. If the Mercedes just sits in the garage, why not explore the possibility. Have another high-end automobile or classic that's not a Mercedes? I'll listen. Call ....**

WILLFUL and MALICIOUS CONDUCT
Victims of a Larger Scheme

26a. VIDOVIC has recovered her paintings from Aaron Anderson. The paintings, reputation of the artists and her career remain damaged.

27. ANDERSON explained to VIDOVIC that he regularly purchased unclaimed or recovered luxury merchandise from transportation giants, like UPS, through CARGO LARGO. He further explained that he was considered a "senior buyer" with CARGO LARGO; therefore, he is given the first right of purchase in the fine art category. He further noted that many times he contacts the original artists and they state a scenario similar to the VIDOVIC'S. Indeed, other

artists who had thought that an item of their work was somehow lost, destroyed or perhaps, stolen by a rogue worker during UPS delivery, finally discovered that it was eventually sold as an UPS lost item.

28. In fact, UPS employees report on certain internet blogs that they routinely catalogue contents according to eBay and CARGO LARGO categories as they are removed from bins of lost, misplaced, or stolen goods. The goods are described, packaged, and shipped to these purveyors for as of yet undisclosed consideration.

29. Upon information and belief, UPS does not remove the contents from every box it searches; instead, some packages arrive at certain end points with the packaging sliced open and the goods remaining. Tellingly, these items would not garner more than the $100.00 insured loss limit automatically applicable to all packages.

30. Upon information and belief, UPS selectively locates certain contents based on their nature, probable worth, and lack of insurance. UPS then sends them to CARGO LARGO for some as of yet undiscovered consideration exceeding the company's $100.00 per loss liability coverage.

CLAIMS

COUNT I
Conversion
(UPS, Recovery Management)

31. Facts alleged in paragraphs 1-30 are incorporated as if fully set out herein.

32. UPS, CARGO LARGO, and PAK MAIL as noted above, have engaged in a fleecing operation whereby certain articles whose value is deemed to be above that of the insured

liability (including VIDOVIC'S paintings) are removed from the packaging and subsequently sold at auction as goods that were undeliverable or otherwise lost in transit. In reality, the shipping and management of these goods (including VIDOVIC'S paintings) is not the purpose of their acts or the intentions upon the receipt of certain property.

33. UPS, PAK MAIL and CARGO LARGO intended to convert VIDOVIC'S property once it was received at PAK MAIL and at all times afterwards.

34. Such conversion directly and proximately caused damages to VIDOVIC including the loss of the property and the lost opportunities alleged in paragraphs 10-16, as well as any prejudgment interest awardable from the date of loss.

WHEREFORE, the Plaintiff, VIDOVIC, demands judgment against the Defendants UPS CARGO LARGO, and PAK MAIL for compensatory damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court may deem appropriate under the circumstances. Plaintiff, VIDOVIC, further demands a trial by jury.

COUNT II

Profiting by Criminal Activity
(UPS, CARGO LARGO, PAK MAIL)

35. Facts alleged in paragraphs 1-30 are incorporated as if fully set out herein.

36. Defendants UPS, CARGO LARGO, and PAK MAIL have systematically taken artwork as a shipper of goods. They have relied upon certain legal protections that are afforded by Federal Law to limit liabilities for these works at the insured amount. It is not coincidence that VIDOVIC, through ANDERSON, discovered the paintings just after the two year limitation

to bring a negligence action afforded under the Federal Carmack Amendment expired. (The Carmack Amendment provides a uniform cause of action for the clients of interstate shipping companies whose property was lost or destroyed through the negligence of the shipper. Carmack is a non-exclusive Federal statute which would preempt causes of action based on the negligence of the carrier; it limits damages to the replacement or bartered for insurance value but provides strict liability for loss or damage.)

37. In this scheme, the Defendants UPS, CARGO LARGO, and PAK MAIL have engaged in obtaining property by falsely impersonating and/or representing themselves as part of a shipping enterprise rather than a fencing organization and have thus systematically violated F.S. §817.02.

38. The course of conduct described above includes "criminal acts" as defined by F.S. §772.102 (2), which lists False Pretenses/Fraud including F.S. §817.02: "Obtaining property by false personation" as a criminal act satisfying the statutory predicate for Florida RICO recovery. The activity is a pattern of similar acts as it did not stem out of one single contractor transaction against one or more related persons.[2]

39. The UPS, CARGO LARGO, and PAK MAIL Defendants' engagement in this pattern of activity has caused them to be liable to VIDOVIC for three-fold the damages of any

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[2] F.S. 772.104 **(4):** "Pattern of criminal activity" means engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that the last of such incidents occurred within 5 years after a prior incident of criminal activity. For the purposes of this chapter, the term "pattern of criminal activity" shall not include two or more incidents of fraudulent conduct arising out of a single contract or transaction against one or more related persons.

resulting injuries to the Plaintiff. These Defendants are also liable for the attorney fees and appellate costs of any claims made for relief of these injuries. [3]

40. Such systematic criminal activity directly and proximately caused damages to VIDOVIC including the loss of the property and the lost opportunities alleged in paragraphs 10-16, as well as any prejudgment interest awardable from the date of loss.

41. In addition, the activity included a public auction of VIDOVIC'S work, including the use of her name without consent. That activity further resulted in the continued misuse of her identity on the World Wide Web through venues such as craigslist, eBay and CARGO LARGO'S website. This has caused injury to the reputation of VIDOVIC who sells works exclusively through reputable art galleries. The unauthorized marketing of works of art attributed to VIDOVIC exposes VIDOVIC to claims that she is in violation of exclusivity contracts she has with these venerable galleries. In addition, the manner of marketing has directly and proximately caused injury to the goodwill associated with the VIDOVIC'S name.

WHEREFORE, the Plaintiff, VIDOVIC, demands judgment against the Defendants UPS, CARGO LARGO, and PAK MAIL for compensatory, pre-judgment and post-judgment interest, treble damages and attorney fees allowed by statute as described above, and costs. Plaintiff, VIDOVIC, further demands a jury trial.

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[3] **F.S. § 772.104. Civil cause of action:** (1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $200, and reasonable attorney's fees and court costs in the trial and appellate courts.

COUNT III
UNAUTHORIZED PUBLICATION OF NAME OR LIKENESS:
F.S. § 540.08
UPS, Recovery Management, ANDERSON

42. Facts alleged in Paragraphs 1-30 and 41 are incorporated as if fully set out herein.

43. Defendants UPS, CARGO LARGO, and ANDERSON each, individually, and in conspiracy used VIDOVIC'S name and likeness (her artistic signature) in connection with the resale, advertisement and other distribution of artistic productions (the paintings) where VIDOVIC had not consented to the use of her name and likeness in connection with the initial sale or distribution thereof. UPS and CARGO LARGO ultimately published that name in an auction sale and sold the goods wrongfully appropriated.

44. UPS, CARGO LARGO, and ANDERSON knew that VIDOVIC had not consented to the initial distribution as the painting itself was wrongfully converted.

45. Because the contents slip of the bill of lading detailed that the contents of the package included artwork, UPS and CARGO LARGO targeted VIDOVIC'S package with the specific intent of reselling her art product and commercially utilizing her name. Further, because the packages were sent without additional insurance, UPS and CARGO LARGO determined that the artist would likely be unable or disinclined to pursue any remedy for the injuries sustained.

46. ANDERSON procured the painting with the intent to misappropriate the artist's name although he knew or reasonably should have known that the painting had been misappropriated from the artist. Furthermore, after he ascertained the theft to be certain, he continued to utilize her name in order to sell her paintings.

47. UPS, CARGO LARGO, and ANDERSON therefore violated the protections afforded by Fla. Stat. §540.08.

48. Such misappropriation directly and proximately caused VIDOVIC damages appropriately remedied by §540.08 including the loss of a reasonable royalty, compensatory damages (such as the loss of currency associated with her name as described in paragraph 41), and the punitive or exemplary damages provided by the statute.

WHEREFORE, Plaintiff, VIDOVIC, demands judgment against the Defendants UPS, CARGO LARGO, and ANDERSON for compensatory damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court may deem appropriate under the circumstances. Plaintiff, VIDOVIC, further demands a trial by jury.

COUNT IV
Florida's Deceptive and Unfair Trade Practices Act, F.S. Chapter 501, Part II against UPS

49. Plaintiff re-alleges and incorporates Paragraphs 1 through 30, 40 and 48 of this Complaint as if fully set forth herein and further alleges as follows:

50. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. '501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204, Fla. Stat.

51. The stated purpose of FDUTPA is to protect consumers from "those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202, Fla. Stat.

52. Defendant UPS has engaged in, and continues to engage in, the conduct of trade and/or commerce in the State of Florida.

53. The policies, acts and practices alleged herein were intended to result and did result in the payment of UPS rates under false pretenses and through misleading billing practices. Specifically:

a. UPS enters into agreements with third-party retailers and UPS store retail outlets.

b. The agreements require the outlets to feature UPS as its preferred shipper.

c. UPS advertises its reliability nationally.

d. UPS provides identification and locations of third-party retailers and UPS retail store outlets directly to consumers via its 1-800-PICK-UPS telephone service and web-sites.

e. UPS allows the third-party retailers and the UPS store outlets to issue a UPS tracking number to the consumer.

f. Most third-party outlet forms allow consumers to fill out shipper return address information.

g. Unbeknownst to the consumer, the same third-party agreements that require the retailer to feature UPS as a preferred carrier prohibit the retailer from listing the consumer's information on the package.

h. UPS requires third-party retailers and the UPS store to use "WorldShip" a trademarked UPS electronic database that stores shipping label information which includes only the retailers name as the "shipper of record," the location for delivery, the recipient "the consignee," shape of the package, and the class and rate for delivery (for example, UPS ground.) Retailers are prohibited from entering the consumers information.

i. Other shippers, such as the U.S. Mail, have utilized return addresses for decades.

j. The denial of any liability to third-party consumers and the self-declared definition of the retailer as the "shipper of record" is disclaimed to the public only by tariffs which are available on-line.

makes money. Based upon its refusal to accept consumer information, UPS is virtually guaranteed that it will never pay nearly as much to that servicer as it receives from the servicer.

56. Defendant UPS's conduct of charging these fees to Plaintiff violates FDUTPA. UPS's acceptance of goods for shipment from third party servicers under such limitations violates FDUPTA.

57. Plaintiff sustained damages as a direct and proximate result of Defendant UPS's unfair an unconscionable practices as alleged in paragraphs 40 and 48 above. Section 501.211(2), Florida Statutes, provides Plaintiff and the Class members a private right of action against UPS and entitles them to recover their actual damages, plus attorney fees and costs.

WHEREFORE, Plaintiff demands judgment against Defendant UPS for compensatory damages, pre and post judgment interest, attorney fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list, this _____ day of September, 2011.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 036246XXXXMB
AH

IVANA VIDOVIC MLINAR,

Plaintiff,

vs.

UNITED PARCEL SERVICE INC., PAK
MAIL OF WELLINGTON, INC.,
RECOVERY MANAGEMENT CORP. d/b/a
CARGO LARGO and AARON ANDERSON,

Defendant.
_____/

Proposed ORDER ON PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

THIS CAUSE having come to be heard on Plaintiff's Unopposed Motion for Leave to File Second Amended Complaint, it is hereby

ORDERED and ADJUDGED: Plaintiff's Motion is GRANTED. The Second Amended Complaint attached to the Motion is deemed filed as of the date of this Order. Defendants shall have twenty (20) days from the date of this Order to respond to Plaintiff's Second Amended Complaint.

DONE and ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 20_____.

SIGNED & DATED
SEP 30 2011
JUDGE LUCY CHERNOW BROWN

_____
LUCY CHERNOW BROWN
CIRCUIT COURT JUDGE

Copies Furnished to all counsel on the attached counsel list

Ivana Mlinar v. UPS, et al
Case No.: 50 2008 CA 036246XXXXMB AH
Order on Plaintiffs Motion to Amend Complaint

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

IVANA VIDOVIC MLINAR,

CASE NO. 2008CA36246 AH

Plaintiff,

vs.

UNITED PARCEL SERVICE CO.; PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT SERVICES LLC d/b/a CARGO LARGO and AARON ANDERSON,

Defendants.
_____/

DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT

Defendant, RECOVERY MANAGEMENT CORP. d/b/a CARGO LARGO ("RECOVERY"), by and through undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint, and states as follows:

1. RECOVERY admits this purports to be an action for damages that are in the amount in excess of $15,000.00, but denies that Plaintiff is entitled to any relief.

2. RECOVERY is without knowledge and, as such, this allegation is denied.

3. RECOVERY is without knowledge and, as such, this allegation is denied.

4. RECOVERY is without knowledge and, as such, this allegation is denied.

5. Admitted in part, and denied in part. RECOVERY admits it is a Limited Liability Company domiciled in Missouri. RECOVERY admits its Registered Agent is

Jennifer Al Bedford, 12502 Manchester Ave., Grandview, Missouri 64030. RECOVERY admits it owns an Internet based auction house known as "Cargo Largo." RECOVERY denies the remaining allegations.

6. RECOVERY is without knowledge and, as such, this allegation is denied.

7. RECOVERY is without knowledge and, as such, this allegation is denied.

8. RECOVERY is without knowledge and, as such, this allegation is denied.

9. RECOVERY is without knowledge and, as such, this allegation is denied.

10. RECOVERY is without knowledge and, as such, this allegation is denied.

11. RECOVERY is without knowledge and, as such, this allegation is denied.

12. RECOVERY is without knowledge and, as such, this allegation is denied.

13. RECOVERY is without knowledge and, as such, this allegation is denied.

14. RECOVERY is without knowledge and, as such, this allegation is denied.

15. RECOVERY is without knowledge and, as such, this allegation is denied.

16. RECOVERY is without knowledge and, as such, this allegation is denied.

17. Denied as stated. By way of further answer, RECOVERY admits that it auctioned a painting to Aaron Anderson ("Mr. Anderson"), but denies any wrongdoing in its receipt or auction of the painting. As for the remaining allegations, RECOVERY is without knowledge and, as such, they are denied.

18. RECOVERY is without knowledge and, as such, this allegation is denied.

19. RECOVERY is without knowledge and, as such, this allegation is denied.

20. RECOVERY is without knowledge and, as such, this allegation is denied.

21. RECOVERY is without knowledge and, as such, this allegation is denied.

22. Denied.

23. Denied as stated. By way of further answer, RECOVERY admits that a painting was sold to Anderson. As for the remaining allegations, RECOVERY is without knowledge and, as such, they are denied.

24. RECOVERY is without knowledge and, as such, this allegation is denied.

25. RECOVERY is without knowledge and, as such, this allegation is denied.

26. RECOVERY is without knowledge and, as such, this allegation is denied.

26a. Admitted in part, and denied in part. RECOVERY is without knowledge as to whether Plaintiff has recovered her paintings; however, this allegation is admitted. The remaining allegations of this paragraph are denied.

27. RECOVERY is without knowledge and, as such, this allegation is denied.

28. RECOVERY is without knowledge and, as such, this allegation is denied.

29. RECOVERY is without knowledge and, as such, this allegation is denied.

30. RECOVERY specifically denies any wrongdoing in its receipt or auction of unclaimed goods from UPS. The remaining allegations are denied as RECOVERY is without knowledge.

COUNT I – CONVERSION

31. RECOVERY restates and incorporates its responses to the allegations set forth in paragraphs 1 through 30 as if fully set forth herein.

32. Denied.

33. Denied.

34. Denied.

WHEREFORE, RECOVERY respectfully requests that judgment be enforced in its favor and against Plaintiff, together with attorney's fees and costs and such other relief as may be just and proper.

COUNT II – PROFITING BY CRIMINAL ACTIVITY

35. RECOVERY restates and incorporates its responses to the allegations set forth in paragraphs 1 through 30 as if fully set forth herein.

36. Denied.

37. Denied.

38. Denied. RECOVERY specifically denies that F.S. §772.104 is accurately recited in footnote 1 of the Second Amended Complaint. Additionally, F.S. §772.102(2) refers to an "unlawful debt" which is not alleged anywhere in the Second Amended Complaint and, as such, RECOVERY denies the allegation. The remainder of the allegations contained in this paragraph are denied.

39. Denied.

40. Denied.

41. Denied.

WHEREFORE, RECOVERY respectfully requests that judgment be enforced in its favor and against Plaintiff, together with attorney's fees and costs and such other relief as may be just and proper.

COUNT III – UNAUTHORIZED PUBLICATION OF NAME OR LIKENESS

42. RECOVERY restates and incorporates its responses to the allegations set forth in paragraphs 1 through 30 as if fully set forth herein.

43. Denied.

44. Denied.

45. Denied.

46. RECOVERY is without knowledge and, as such, this allegation is denied.

47. This allegation asserts only legal conclusions and, as such, no response is required. To the extent a response is required, this allegation is denied.

48. Denied.

WHEREFORE, RECOVERY respectfully requests that judgment be enforced in its favor and against Plaintiff, together with attorney's fees and costs and such other relief as may be just and proper.

COUNT IV
FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, F.S. CHAPTER 501, PART II AGAINST UPS

49. RECOVERY restates and incorporates its responses to the allegations set forth in paragraphs 1 through 30, 40 and 48, as if fully set forth herein

50-57. The allegations contained in paragraphs 50 through 57 do not purport to be against this Defendant, and as such, they are hereby denied, and strict proof thereof is demanded.

AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT

First Affirmative Defenses
Failure to Establish Personal Jurisdiction

Plaintiff has failed to establish a statutory or constitutional basis for personal jurisdiction over RECOVERY in this case. All of the events that comprise Plaintiff's causes of action against RECOVERY occurred outside the State of Florida and relate to

personal property located in Missouri. RECOVERY was not present in Florida during any of the alleged activities in Plaintiff's Second Amended Complaint nor did it enter into any illegal agreement or conspiracy to unlawfully obtain possession of any personal property belonging to any third parties at any time.

Second Affirmative Defenses
Failure to State a Cause of Action – Count I and Count II

Plaintiff has failed to state a cause of action in both Count I and Count II against RECOVERY as Plaintiff consented to Defendants' receipt of the property in question.

Third Affirmative Defenses
Failure to State a Cause of Action – Count II

Plaintiff has failed to state a cause of action in Count II against RECOVERY because Florida law prohibits such a claim being based upon a single transaction. See F.S. §772.102(4). In the instant case, Plaintiff alleged only a single transaction giving rise to the cause of action.

Fourth Affirmative Defenses
Failure to State a Cause of Action – Count II

Plaintiff has failed to state a cause of action in Count II against RECOVERY because Plaintiff cites to F.S. § 772.102(2) relating to an "unlawful debt" which is a scenario that is not alleged in the Amended Complaint generally.

Fifth Affirmative Defenses
Name and Likeness Not Used for Commercial Purposes

RECOVERY did not use Plaintiff's name or likeness for commercial purposes when it auctioned the property, but instead its actions were a "fair use" based upon the commercial circumstances of the auction.

Sixth Affirmative Defenses
Accord and Satisfaction

Upon information and belief, Mr. Anderson delivered to Plaintiff and Plaintiff accepted from Mr. Anderson the paintings in full satisfaction of Plaintiff's claims for damages. In return, Plaintiff voluntarily dismissed Mr. Anderson from the litigation and as such, there exists no basis for the instant litigation.

Seventh Affirmative Defenses
Estoppel

Plaintiff is estopped from bringing these causes of action because she was, at all material times, aware of UPS's procedure for liquidating lost items. By virtue of the shipping agreement between UPS and Plaintiff, Plaintiff was aware that in the event her personal property went unclaimed that the property would be sold. Plaintiff accepted the terms and conditions for the shipping of her property and therefore, is estopped from bringing these claims.

Eighth Affirmative Defenses
Release

By virtue of the shipping agreement between UPS and Plaintiff, Plaintiff has unconditionally released Defendants from any liability resulting from the sale of her unclaimed property. Plaintiff accepted the terms and conditions for the shipping of her property and therefore, RECOVERY is released from the allegations contained in the Second Amended Complaint.

Ninth Affirmative Defenses
Waiver

By virtue of the shipping agreement between UPS and Plaintiff, Plaintiff has unconditionally waived any and all claims against Defendants for the sale of her

unclaimed property. Plaintiff accepted the terms and conditions for the shipping of her property and therefore, Plaintiff expressly waived any rights to the claims contained in the Second Amended Complaint.

Tenth Affirmative Defenses
Setoff

RECOVERY states that to the extent Plaintiff has been harmed in any way, which RECOVERY denies, such harm was suffered as a result of Plaintiff's own actions and Plaintiff's damages should be set off accordingly. Plaintiff was provided the opportunity to purchase insurance for her property and refused to protect herself from the loss for which she now claims against RECOVERY.

Eleventh Affirmative Defenses

RECOVERY reserves the right to assert any additional and/or supplemental affirmative defenses which may become known as investigation and/or discovery proceeds in this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished to: **Jack Scarola, Esquire**, Searcy, Denney, Scarola, Barnhart & Shipley, 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL 33409; **Shannon M. Mahoney, Esquire**, Co-Counsel for Plaintiff, Law Offices of Shannon M. Mahoney, P.A., 315 11th Street, West Palm Beach, FL 33401; **Angela Adams, Esquire,** Alston & Bird, One Atlantic Center, 1201 W. Peachtree Street, NW, Atlanta, GA 30309; **David R. Heffernan, Esquire,**

Hamilton, Miller & Birthisel, LLP, 150 S. E. 2nd Avenue, Suite 1200, Miami, FL 33131; and **Robert W. Tormohlen, Esquire**, Lewis, Rice & Fingersh, L.C., 1010 Walnut Street, Suite 500, Kansas City, Missouri 64106, by mail on this 18th day of October, 2011.

CONROY, SIMBERG, GANON, KREVANS, ABEL, LURVEY, MORROW, & SCHEFER, P.A.
1801 Centrepark Drive East
Suite 200
West Palm Beach, FL 33401
Phone: (561) 697-8088
Fax: (561) 697-8664

By: _____
Robert J. Mayer, Esquire
Florida Bar No. 0696242

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

IVANA VIDOVIC MLINAR,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	**CASE NO:**
UNITED PARCEL SERVICE INC., PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT CORP. d/b/a CARGO LARGO and AARON ANDERSON,	)	**502008CA0036246XXXXMB**
	)	
Defendants.	)	

DEFENDANT UNITED PARCEL SERVICE, INC.'S
MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendant, UNITED PARCEL SERVICE, INC. ("Defendant or UPS"), by and through its undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.140, hereby move to dismiss Plaintiff' Second Amended Complaint for failure to state a cause of action, and in support thereof, Defendant states:

INTRODUCTION AND
SUMMARY OF PLAINTIFF'S ALLEGATIONS

1. On September 30, 2011, Plaintiff, Ivana Vidovic Mlinar ("Mlinar") filed her Second Amended Complaint containing four counts against multiple parties, including Defendant United Parcel Service, Inc.
2. Mlinar's various causes of action seek recovery from Defendants based on the shipment of a package via UPS.

3. The package contained two original paintings created by Mlinar. Second Amended Complaint ¶ 9. The package was shipped on November 28, 2005 through Pak Mail of Wellington, Inc. via UPS ground service from Florida to New York. *Id.* 8.
4. When the package was delivered by UPS to the intended address in New York, it was empty. The duct tape allegedly used to seal the container had been sliced and the paintings had been removed. *Id.* at ¶ 11.
5. Two days after returning home to Florida, Mlinar reported the empty package to UPS and to Pak Mail. Mlinar further reported that the paintings were labeled with the identity of the artist (which was plaintiff) and her address. *Id.* at ¶ 13-15.
6. Eight months after a claim was filed, Pak Mail advised Mlinar that she was entitled to $100 for the missing package. *Id.* at ¶ 16.
7. As set forth in Mlinar's Second Amended Complaint, the paintings were later sold by UPS to Recovery Management Corp. d/b/a/ Cargo Largo ("Cargo Largo") who then sold them to an individual by the name of Aaron Anderson. *Id.* at ¶ 17, 22.
8. Aaron Anderson located Mlinar and told her that he had obtained the paintings from Cargo Largo. *Id.* at ¶ ¶17, 20.
9. Based on these facts, Mlinar's Second Amended Complaint alleges the following causes of action: Conversion (Count I), Profiting by Criminal Activity (Count II), Unauthorized Publication of Name or Likeness (Count III), and a count under Florida's Deceptive and Unfair Trade Practices Act (Count IV).
10. As shown below, all of the Counts set forth in the Second Amended Complaint should be dismissed for failure to state a cause of action under Florida Rule of Civil Procedure 1.140(b)(6) as they are undeniably preempted by The Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706.

MEMORANDUM OF LAW

I. MOTION TO DISMISS STANDARD

When reviewing a Fla. R. Civ. P. 1.140(b)(6) motion to dismiss, the Court's review is "limited to the four corners of the complaint." *Gladstone v. Smith*, 729 So. 2d 1002, 1003 (Fla. Dist Ct. App. 1999). The facts alleged in the complaint must be accepted as true and all reasonable inferences are drawn in favor of the pleader. *See Id.* A motion to dismiss should be granted when the party seeking dismissal demonstrates that plaintiff could prove no set of facts whatsoever in support of the cause of action. *See Ingalsbe v. Stewart Agency, Inc.*, 869 So. 2d 30, 35 (Fla. Dist. Ct. App. 2004). Despite this standard, a complaint must "state a cause of action alleging legal liability." *Seminole Tribe of Fla. v. Times Pub. Co.*, 780 So. 2d 310, 314 (Fla. Dist. Ct. App. 2001) (quoting *Wells v. Brown*, 303 So. 2d 395, 396 (Fla. Dist. Ct. App. 1974)). Conclusory allegations, unwarranted deductions of facts, or legal conclusions masquerading as facts will not prevent dismissal. *See Jackson v. Bellsouth Telecomm.*, 372 F.3d 1250, 1262 (11th Cir. 2004).

II. THE SCOPE OF PREEMPTION UNDER THE CARMACK AMENDMENT IS BROAD AND PREEMPTS ALL CLAIMS ARISING FROM UPS'S TRANSPORTATION AND DELIVERY SERVICES

Despite whether Mlinar characterizes the claims at issue in this case as conversion, fraud or as arising under Florida's state statutes, the interstate transportation of packages by a common carrier, such as UPS, is governed exclusively by federal law. *Smith v. United Parcel Serv.*, 296 F.3d 1244 (11th Cir. 2002) (causes of action alleging fraud, negligence, wantonness, or willfulness, outrage and conspiracy were all preempted

by the Carmack Amendment);[1] *Humphrey v. United Parcel Serv. Co.*, No. 05-20283-CIV, 2005 WL 5643872, at *3 (S.D. Fla. May 23, 2005) (quoting *Smith*, 296 F.3d at 1248-49 and explaining that "'[O]nly claims based on conduct separate and distinct from the delivery, loss of, or damage to goods escape preemption'") *aff'd*, 200 F. App'x 950 (11th Cir. 2006).

Mlinar has crafted her claims in hopes of avoiding the application of the Carmack Amendment. *See* Second Amended Complaint ¶ 36. Specifically, Mlinar alleges that UPS has engaged in intentional and systematic misconduct that is not preempted by federal law and that UPS has "engaged in obtaining property by falsely impersonating and/or representing themselves as part of a shipping enterprise..." Second Amended Complaint ¶ 37. Mlinar has further alleged that UPS engaged in policies intended to result in the payment of UPS rates under false pretenses. Second Amended Complaint ¶ 53.

Preemption by the Carmack Amendment, however, does not depend on how artfully a plaintiff may craft her claims. *United Van Lines, Inc. v. Shooster*, 860 F. Supp. 826, 828 (S.D. Fla. 1992) ("the multitude of precedents cited... clearly indicates that the Amendment preempts virtually any state law claim"); *Circle Redmont, Inc., v. Mercer Trans. Co.*, 795 So. 2d 239 (Fla. Dist. Ct. App. 2001) (noting that the United States

[1] Every United States Court of Appeals (including the Eleventh Circuit in *Smith*) that has considered the issue has concluded that the Act preempts a shipper's common law and state statutory claims for damage or loss of goods moving in interstate commerce through a common carrier. *Intech, Inc. v. Consol. Freightways, Inc.*, 836 F.2d 672, 677 (1st Cir. 1987); *N. Am. Phillips Corp. v. Emery Air Freight Corp.*, 579 F.2d 229, 234 (2d Cir. 1978); *Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 706 (4th Cir. 1993); *Air Prods. and Chems., Inc. v. Ill. Cent. Gulf R.R. Co.*, 721 F.2d 483, 487 (5th Cir. 1983); *W. D. Lawson & Co. v. Penn Cent. Co.*, 456 F.2d 419, 421 (6th Cir. 1972); *Hughes v. United Van Lines, Inc.*, 829 F.2d 1407, 1415 (7th Cir. 1987); *cert. denied*, 485 U.S. 913 (1988); *Hopper Furs, Inc. v. Emery Air Freight Corp.*, 749 F.2d 1261, 1264 (8th Cir. 1984); *Hughes Aircraft Co. v. N. Am. Van Lines, Inc.* 970 F.2d 609, 613 (9th Cir. 1992); *Underwriters at Lloyds' v. N. Am. Van Lines, Inc* 890 F.2d 1112,1121 (10th Cir. 1989).

Supreme Court has interpreted the scope of the Carmack Amendment's preemption very broadly); *Straley v. Thomas Logistics, LLC*, No. 2:10cv2, 2010 WL 2231399, (W.D.N.C. Mar. 18, 2010) (noting that "[t]here is little to no room to argue in this district that the Carmack Act has left any rock unturned in the state law arsenal of tort claims, including claims for intentional torts"). "It is well settled that the Carmack Amendment constitutes a complete defense to claims alleging all manner of harms." *Hall v. N. Am. Van Lines*, 476 F.3d 683, 689 (9th Cir. 2007).[2] Preemption applies even where "claims arise from events other than loss or damage to her property. *Id.* And as explained by the Eleventh Circuit, separate and distinct *conduct* rather than *injury* must exist for a claim to fall outside the preemptive scope of the Carmack Amendment. *Smith*, 296 F.3d 1244, 1249 (emphasis supplied).[3]

A review of the case law interpreting preemption under the Carmack Amendment shows that where the parties began their relationship as parties to a shipping contract, all resulting harms, regardless of whether they are alleged as conversion, fraud, or willful conduct, cannot alter the fact that the underlying claims result from the "failure to provide them with particular transportation and delivery services." *Id.* at 1247 (emphasis added). Mlinar's claims here indisputably arise from UPS's failure to provide transportation and delivery services. Accordingly, the Carmack Amendment preempts her claims and they must be dismissed.

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[2] In *Hall*, the plaintiff alleged that the carrier defendant fraudulently induced her into transporting her property with "bogus" shipping charges. The Ninth Circuit ruled that her claims were preempted by the Carmack Amendment. *Id.* at 685-686.

[3] Where UPS refused to deliver packages, the *Smith* plaintiffs sued for wantoness, willfulness and outrage and alleged that UPS committed fraud by accepting shipments for delivery "knowing that they had no intention of fulfilling or attempting to deliver." The Eleventh Circuit found that all claims were preempted by the Carmack Amendment. *Id.* at 1247.

III. COURTS HAVE CONSISTENTLY HELD THAT CLAIMS FOR CONVERSION ARE PREEMPTED BY THE CARMACK AMENDMENT. THEREFORE COUNT I OF PLAINTIFF'S SECOND AMENDED COMPLAINT MUST BE DISMISSED

In applying the Carmack Amendment, courts around the country have consistently ruled that preemption includes claims for conversion. *See Hellinski v. United Van Lines*, No. C 04-02234, 2004 WL 1844842, (N.D. Cal. 2004) ("In the present case, plaintiff offers little resistance to the inescapable conclusion that his claims based on state law [including the California Civil Code] negligence, tortious breach of contract and conversion, cannot go forward in light of the preemptive breath of the Carmack Amendment"). Recognizing the broad preemptive effect of the Carmack Amendment, "almost all courts considering this issue have concluded that the Carmack Amendment has great preemptive force" including preempts of intentional torts such as conversion. *Miracle of Life, LLC v. N. Am. Van Lines, Inc.*, 368 F. Supp. 2d 494, 498 (D.S.C. 2005). *See also Eventus Mktg., Inc. v. Sunset Transp. Co.*, 722 F. Supp. 2d 1311 (S.D. Fla. 2010) (finding that state law claims for breach of contract, conversion and unjust enrichment were all preempted); *Reeves v. Mayflower Transit, Inc.*, 87 F. Supp. 2d 1251, 1254 (M.D. Ala. 1999) (finding all of a plaintiff's state law claims, including conversion and civil conspiracy were preempted by the Carmack Amendment); *Kemper Ins. Cos. v. Fed. Express Corp.*, 115 F. Supp. 2d 116 (D. Mass 2000) (rejecting plaintiff's argument that Federal Express' limitation of liability should be set aside because the shipments at issue were stolen by Federal Express' employees) *aff'd* 252 F.3d 509 (1st

Cir. 2001); *Georgia F. & A. Ry. Co. v. Blish Milling*, 241 U.S. 190, 197, (1916) (preemption applies to conversion, or "trover").[4]

IV. COUNT II OF MLINAR'S SECOND AMENDED COMPLAINT MUST BE DISMISSED BECAUSE THE ALLEGATIONS OF FRAUD UPON WHICH IT IS BASED ARE PREEMPTED BY FEDERAL LAW AND SHE DOES NOT STATE A CLAIM FOR RELIEF UNDER THE STATE STATUTES SHE REFERENCES

A) Claims of fraud are preempted by the Carmack Amendment

In count two of the Second Amended Complaint, Mlinar alleges that Defendants have engaged in obtaining property by "falsely impersonating and/or representing themselves as part of a shipping enterprise." Second Amended Complaint ¶ 37. In effect, Mlinar argues that UPS induced her into providing her artwork for shipment so that UPS could sell it for profit, not ship it. This claim obviously rests in absurdity and does not escape the broad preemptive effect of the Carmack Amendment. *Smith*, 296 F.3d 1244, 1250. "Claims related to the making of the contract for carriage are so closely related to the performance of the contract" they too are preempted.

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[4] In a case that is very similar to the case here, *Aircraft Instrument & Radio, Co. v. United Parcel Service, Inc.*, 117 F. Supp. 2d 1032 (D. Kan. 2000), the plaintiff argued that preemption did not apply because UPS converted the lost property by selling it to a third party for profit. In *Aircraft Instrument & Radio, Co.*, UPS sold plaintiff's $60,000 aircraft instrument as unclaimed property for $23.53 after the shipper had reported it as missing. UPS had been notified by both the shipper of the package and the Federal Bureau of Investigation about a potential theft of the package at issue and asked UPS to search for the aircraft instrument that was contained in it. The aircraft instrument, however, remained at UPS's overgoods department until it was sold to its overgoods carrier months later. Much like in the instant case, the plaintiff in *Aircraft Instrument & Radio, Co.*, argued that preemption did not apply because UPS converted the property by selling it to a third party for profit. The federal district court disagreed. The court explained that despite plaintiff's allegations, nothing suggests that this was anything other than a case of "the right hand at UPS not knowing what the left hand was doing." *Id.* at 1037. In accordance with public policy and well settled law, the court found the plaintiff's claims preempted and enforced the limitation of liability noting that, although the plaintiff may find it unfair, "'Neither is it conformable to plain principles of justice that a shipper may understate the value of his property for the purpose of reducing the [shipping] rate, and then recover a larger value in case of loss.'" *Id.* (quoting *Hart v. Pa. R.R. Co.*, 112 U.S. 331, 340 (1884)).

As explained by the court in *Marshall W. Nelson & Assocs., Inc. v. YRC Inc.*, as it found plaintiff's fraud claim preempted, "[a]fter all, [p]laintiff would not even be in a position to complain . . . if it had not sustained damage to goods that were shipped by the defendant." No. 11-C-0401, 2011 WL 3418302, (E.D. Wis. Aug. 3, 2011). In *Pietro Culotta Grapes, Ltd. v. Southern Pacific Transportation Co.*, plaintiffs alleged that defendants wrongfully induced them to enter into the contract by representing that the agreed upon delivery schedules would be met although defendants knew this was unlikely. The court ruled that claims based on conduct *both before and after* shipment are preempted. 917 F. Supp. 713, 717 (E.D. Ca. 1996) (emphasis supplied) (collecting cases); *see also Smith*, 296 F.3d at 1247 (dismissing claims that carrier committed fraud by accepting shipments it had no intention of fulfilling or attempting to deliver); *Hall*, 476 F.3d at 689 (holding that that Carmack "applies equally to fraud and conversion claims arising from a carrier's misrepresentations as to the conditions of delivery or failure to carry our delivery"); *Berryman v. Wheaton Van Lines, Inc.* No. 06-5679 (PGS), 2007 WL 1296762, (D.N.J. May 2, 2007) (dismissing plaintiff's fraud claim and stating that "[i]n light of the overwhelming case law, it is clear that the claims set forth by plaintiff are preempted by the Carmack Amendment"); *Shooster*, 860 F. Supp. at 826 (noting that "the [c]ourt is sympathetic to ...claim of a bait and switch scheme to induce consumers into entering contracts" and ruling that "as a matter of law the [fraud claims alleged] are preempted by the Carmack Amendment. . .")

B) The four corners of the Complaint do not set forth a claim for relief based on Florida's RICO statutes

Even if Count Two was not preempted, which it is, Mlinar's claim still fails to state a claim under the more heightened standard required for cases brought pursuant to

the Florida RICO statutes she cites. (F.S. § 772.103, § 772.014 and § F.S. 817.02). Among other requirements, RICO claims such as those brought under Fla. Stat. § 772.104 are subject to Fed. Rule 9(b) and must be pled with particularity. *See Oglesbee v. Indymac Fin. Servs., Inc.*, 686 F. Supp. 2d 1313, 1317 (S.D. Fla. 2010). Plaintiffs in such an action must identify and prove that defendants operated as an *enterprise* and have engaged in a *pattern* of *racketeering* or *criminal* activity. *Palm Beach Cnty. Envtl. Coal. v. Florida*, 651 F. Supp. 2d 1328, 1348-1349 (S.D. Fla. 2009). [5]

Mlinar does not describe any losses other than her own. Rather, Count II of the Second Amended Complaint is based on vague allegations that Defendant Anderson regularly purchases merchandise from "transportation giants *like* UPS" (Second Amended Complaint ¶ 27) (emphasis supplied) and that UPS employees report alleged wrongdoings on "certain internet blogs." (Second Amended Complaint ¶ 28). Mlinar ambiguously uses these "facts" to allege some type of conspiracy. Unmistakably, however, such vague allegations do not identify an "illegal agreement to conduct acts of a sufficiently continuous nature to constitute a pattern of racketeering activity." *Jackson v. Bellsouth Telecommunications*, 372 F.3d at 1269. In sum, Mlinar's claim falls woefully

[5] The four elements of civil RICO liability are (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of criminal or racketeering activity. *Id.* " A pattern of criminal activity" is defined as "engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents of criminal activity", but these incidents "shall not include two or more incidents of fraudulent conduct arising out of a single contract or transaction against one or more related persons." *Oglesbee v. Indymac Fin. Servs., Inc.*, 686 F. Supp. 2d 1313, 1317 (S.D. Fla. 2010) (citing Fla. Stat. § 772.103 and Fla. Stat. § 772.102(4)). Merely alleging that the "[d]efendants conspired with each other" does not allege an enterprise. *Palm BeachCnty. Envtl. Coal.*, 651 F. Supp. 2d 1328 at 1349.

short of heightened pleading standards required for RICO claims, where she does not plead facts of the alleged enterprise, activity or damages with any specificity.

V. COUNT III OF THE SECOND AMENDED COMPLAINT DOES NOT IDENTIFY ANY PUBLICATION BY UPS AND IT TOO ARISES FROM UPS'S FAILURE TO PROVIDE TRANSPORTATION AND DELIVERY SERVICES AND IS PREEMPTED BY THE CARMACK AMENDMENT

A) Mlinar does not identify any publication of her name and likeness by UPS.

Mlinar's Complaint alleges that defendant Anderson purchased Mlinar's paintings from Cargo Largo for $1,000 each and subsequently listed them for sale on Craigslist. Complaint ¶¶ 23 and 26. Count III of her Complaint seeks recovery pursuant to Fla. Stat. § 540.08 for misappropriation of Plaintiff's name or likeness.[6] Although Mlinar directs this Count of her Complaint at Defendants UPS, Recovery Management and Anderson, Mlinar's Complaint identifies only Anderson as the author and publisher of the Craigslist advertisement excerpted in paragraph 26 of the Complaint. While Mlinar alleges that UPS should be liable for profiting from the sale of the paintings to Recovery Management, Mlinar does *not* allege that UPS published the advertisement excerpted in paragraph 26 of the Complaint. Nor does Mlinar identify or attribute any advertisement

[6] Under Fla. Stat. § 540.08, a person cannot use a person's name or likeness to directly promote the product or service *of the publisher. Loft v. Fuller*, 408 So.2d 619, 622 (Fla. 4th DCA 1981) (emphasis supplied). Here, Anderson identified Mlinar as the artist of the paintings she offered for sale on craigslist.com. The purpose of Fla. Stat. § 540.08 is to prevent advertisements "used solely to attract attention to a work that is *not* related to the identified person." *Tyne v. Time Warner Entm't Co.*, 901 So. 2d 802, 807 (2005). In instances such as this where an advertisement correctly attributes Mlinar's name to the paintings she created, Mlinar cannot establish that Anderson (or any of the Defendants here) used her name or likeness to directly promote a product or service *unrelated* to her participation in the expressive work. *See Lane*, 242 F. Supp. 2d at 1212-14 (finding that plaintiff failed to establish that the defendants used her image or likeness to directly promote a product or service unrelated to the participation in the expressive work *Girls Gone Wild* where her image appeared in advertisements without her consent).

which publicizes Mlinar's name or likeness to UPS.[7] Therefore, as it relates to UPS, Mlinar does not plead even the most essential elements to establish a claim - that UPS actually misappropriated her likeness. Therefore, it is undeniably clear that Count III of Mlinar's Complaint should be dismissed.

B) Mlinar's claim regarding her name and likeness remain tied to UPS's transportation and delivery services and are preempted by the Carmack Amendment.

Further, Mlinar's attempt to categorize her loss through injury to her name and likeness does not avoid preemption of the Carmack Amendment. In *Smith*, the Eleventh Circuit rejected the plaintiffs' argument that the claim was not preempted because it remedied an injury to the person, rather than to the goods. *Id.* 296 F.3d at 1249. The court concluded that in order for a claim to escape Carmack preemption, the claim must be based on conduct rather than injury that is separate and distinct from the failure to deliver goods. *Id.* at 1249.[8] *See also Moffit v. Bekins Van Lines Co.*, 6 F.3d 305, 307 (5th Cir. 1993) (explaining that the Carmack Amendment preempted the plaintiffs' claims for intentional and negligent infliction of emotional distress and to hold otherwise "could only lead to the morass that existed before the Carmack Amendment").

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[7] Plaintiff essentially alleges that UPS failed to deliver Mlinar's paintings, sold them to Recovery Management, who then sold them to Anderson who listed them on Craigslist.com; and that UPS should be liable to Mlinar for the advertisement ultimately published by *Anderson*. This tenuous chain of facts cannot impose liability on the part of UPS under Fla. Stat. § 540.08.

[8] In more detail, the Eleventh Circuit explained that the Smiths allege outrage in that the "actions of [UPS] to deny deliveries to [them] have been intentional and have been designed to inflict emotional distress." Although the Smiths seek a remedy for an injury to their person, the claim results solely from the loss of and misdelivery of their goods. Therefore, the Smiths' outrage claim is embraced by the preemptive effect of the Carmack Amendment.

VI. AS COURTS AROUND THE COUNTRY HAVE RULED, THE CARMACK AMENDMENT APPLIES TO STATE STATUTORY UNFAIR OR DECEPTIVE TRADE PRACTICES ACTS

As a "multitude of precedents" show, courts around the country have also ruled that preemption applies even when state statutory unfair or deceptive trade practices acts are involved. *Shooster,* 860 F. Supp. at 829 (citing several recent unreported cases "which clearly show" that the Carmack Amendment applies when state statutory unfair or deceptive trade practices acts are involved). *See Rini v. United Van Lines, Inc.*, 104 F.3d 502, 506 (1st Cir. 1997) (holding that a shipper's state law claim for violation of the Massachusetts Consumer Protection Act was preempted by the Carmack Amendment); *Miller v. Reebie Storage & Moving Co.*, No. 93-C-3986, 1993 WL 414689 (N.D. Ill., Oct. 15, 1993) (holding that the Carmack Amendment preempted claims arising under the Illinois Consumer Fraud and Deceptive Practice Act; the Illinois Unlawful Practices Act; and the Illinois Untrue, Misleading or Deceptive Advertising Act); *Malowe v. Mayflower Transit, Inc.* 819 F. Supp. 724 (E.D. Tenn. 1993) (holding that statutory claims under the Tennessee Consumer Protection Act and bad faith penalty provisions were found to be preempted); *Neal v. Allied Van Lines, Inc.,* No. A 06 CA 1008 SS, 2007 WL 831835 (W.D. Tex. Mar. 13, 2007) (actions under the Texas Deceptive Trade Practices Act were found to be preempted); *Miracle of Life, LLC,* 368 F. Supp. 2d 494 (actions under the South Carolina Unfair Trade Practices Act were found to be preempted); *Taylor v. Mayflower Transit, Inc.*, 22 F. Supp. 2d 509, 510 -11 (W.D.N.C. 1998) actions under the North Carolina Unfair Trade Practices Act were found to be preempted).[9]

[9] To the extent that Mlinar bases Count Four of her Complaint on wrongdoing with respect to UPS's claims or billing processes, the case law clearly supports preemption of such claims. *See Rini v. United Van Lines,*

In *Margetson v. United Van Lines*, the court explained:

> Regardless of whether the state legislators who drafted the statutes dealing with unfair or deceptive trade practices contemplated the applicability of those statutes to interstate shipments, the effect of applying the statutes to interstate shipments would be incongruous with the Carmack Amendment.

785 F. Supp. 917, 920 (D. N.M. 1991) (finding New Mexico's Unfair Trade Practices Act preempted by the Carmack Amendment).

VII. MLINAR'S COMPLAINT IS TIME BARRED

The contractual limitation of time for bringing actions with respect to an interstate shipment is valid and enforceable according to federal law, which supersedes state statutes. *Atl. Coast Line R.R. Co. v. Chase & Co.*, 109 Fla. 50, 146 So. 658 (1933). As explained above, Mlinar alleges in her Complaint that two days after arriving home from New York she advised Pak Mail and UPS that her paintings were not delivered and provided documents to support her claim for the missing paintings. *See* Second Amended Complaint, ¶ 15. Approximately eight months after the claim was filed with UPS, Pak Mail advised that Mlinar was entitled to $100 for the missing package. *Id.* ¶ 16. Based on the allegations in the Complaint, this would have been in or around August 2006. This action was instituted by way of filing a Complaint on November 20, 2008, *more than* two years later. Plaintiff herself, in her Second Amended Complaint, **admits**

Inc., 104 F.3d at, 506, *cert. denied*, 522 U.S. 809, (1997) ("Preempted state law claims, therefore, include all liability stemming from damage or loss of goods, liability stemming from the claims process, and liability related to the payment of claims."); *Design X Mfg., Inc. v. ABF Freight Sys., Inc.*, 584 F. Supp. 2d 464, 465, 468 (D. Conn. 2008) (holding that Connecticut Unfair Trade Practices Act claims against carrier asserting damages to business or reputation were preempted by the Carmack Amendment because the alleged damages "flowed directly from the damage to the goods shipped in interstate commerce and the subsequent claims process"); *White v. Mayflower Transit, L.L.C.*, 543 F.3d 581 (2008) (holding that the Carmack Amendment bars claims for improper billing and overcharging); *Marshall W. Nelson & Assocs., Inc.*, 2001 WL 3418302 (denying plaintiff's claim for bad faith denial of insurance claim under Wisconsin law).

that her claim is untimely under Federal Law. *See* Second Amended Complaint, ¶ 36 ("It is not a coincidence that VIDOVIC, through ANDERSON, discovered the paintings just after the two year limitation to bring a negligence action afforded under the Federal Carmack Amendment expired").

The UPS Tariff[10] provides that any lawsuits must be preceded by the filing of a claim with UPS and that lawsuits must be instituted within two years of the denial of any claim.[11] Specifically, the UPS Tariff states:

> As a condition precedent to recovery, all claims for loss or damage to shipments via UPS must be filed, in writing, with UPS nine months after delivery or after a reasonable time for delivery has elapsed. Claims not made in writing within nine months after delivery are deemed waived.

UPS Tariff, pgs. 14-15, Items 510 and 520 (attached, **Exhibit "A"**). The Tariff further states:

> Lawsuits with respect to loss or damage to packages shall be instituted within two years after denial of any portion of a claim. Where claims are not filed or suits are not instituted thereon, such claims shall be deemed waived and will not be paid.

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[10] It is "well established by the courts in this state and throughout this country that 'the contract between the [shipper] and the [carrier] consists of the bill of lading and the applicable tariff.'" *Bryant v. United Parcel Serv. of Am.*, No. 1-05-cv-1352-RBH, 2006 WL 2521613 at *2 (D.S.C. Aug. 30, 2006) (collecting cases); *see also A.I.G. Uru. Compania de Seguros, S.A. v. AAA Cooper Transp.*, 334 F.3d 997, 1003 (11th Cir. 2003) (explaining that pursuant to the Carmack Amendment, common carriers could limit their liability though a Tariff); *Shooster*, 860 F. Supp. at 829 (noting that "courts have been equally clear that...filed tariffs have the force of law and may not be modified) (citations omitted).

[11] Although Plaintiff did not attach the applicable UPS Tariff (shipment contract) to her Second Amended Complaint, she references the contractual relationship between the parties extensively throughout her Second Amended Complaint. *See e.g.* Second Amended Complaint at ¶¶ 7, 8, 9, 36, 53(k), 53(l). In such a situation, the Court may consider the document as part of the Complaint for the purposes of a Motion to Dismiss. *See* Fla.R.Civ.P. 1.130; *Maxcess, Inc. vs. Lucent Technologies, Inc.*, 433 F.3d 1337, 1340 (11th Cir. 2005) (The Court may evaluate a document outside the four corners of the complaint on a motion to dismiss if it is central to plaintiff's claim and is undisputed in terms of authenticity). Plaintiff's references the UPS Tariff, both directly and indirectly, throughout her Second Amended Complaint. However, by not attaching it to the Second Amended Complaint, she seeks to avoid the terms contained within the Tariff. Accordingly, the Court can properly consider the Agreement attached hereto in its analysis. *See also Lawyer Title Ins. Corp. v. JDC (Am.) Corp.*, 52 F.3d 1575, 1580 (11th Cir. 1995) (The interpretation of an unambiguous contract is a matter of law).

UPS Tariff, pg. 15, Item 520 (attached, **Exhibit "A"**). Under the terms of the Tariff identified above, Mlinar was required to file a lawsuit within two years from the denial of her claim. For this reason alone, UPS bears no liability for the shipment of the package at issue. Under governing federal law, a common carrier such as UPS may limit the time in which a lawsuit may be brought with respect to its shipments. *See Arctic Express, Inc. v. Del Monte Fresh Produce NA, Inc.*, 366 B.R. 786 (S.D. Ohio 2007) (explaining that pursuant to federal law, common carriers may restrict the time limit in which lawsuits relating to packages may be instituted); *Kuehn v. United Van Lines, LLC*, 367 F. Supp. 2d 1047 (S.D. Miss. 2005) (explaining that the Carmack Amendment permits a carrier to limit the time in which suit may be brought to two years and a day after the shipper receives written notice that the carrier has denied part or all of the shipper's claim). On the face of the agreement between the parties, it is undeniably clear that Mlinar's action is time-barred and cannot prevail.

CONCLUSION

Plaintiff's claims in this lawsuit stem from the loss of goods shipped in interstate commerce by UPS, a common carrier. Regardless of the wrongs she attributes to UPS, Plaintiff cannot avoid the indisputable fact that all of her claims arose from the loss of her interstate shipment. As the overwhelming weight of the authorities in this area of the law hold, Plaintiff's state law causes of action are preempted by federal law. As explained by the Court in *Miracle of Life, LLC v. N. Am. Van Lines, Inc.*, 368 F. Supp. 2d 494, 498 (D.S.C. 2005):

> Unfortunately for Plaintiffs, this court is not charged with making policy decisions regarding what the proper scope of the Carmack Amendment is. Rather, the court must follow the dictates of the Supreme Court and the...

> Court of Appeals and the wealth of other courts that have considered the questions presented in this case. Because almost all courts considering this issue have concluded that the Carmack Amendment has great preemptive force-including preemptive force over common law fraud, conversion, and unfair trade practices claims-the court rejects Plaintiffs' arguments to the contrary.

Likewise, Plaintiff's legal theories, all of which are grounded in Florida law, are preempted by federal law and are not viable in this case.

WHEREFORE, Defendant, United Parcel Service, Inc., respectfully requests this Court grant the within Motion, and such further relief deemed proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished upon the attached Service List by mail delivery on this 3rd day of November, 2011.

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United Parcel Service Canada Ltd. MC-186275

GENERAL TARIFF CONTAINING THE

CLASSIFICATIONS, RULES AND PRACTICES

FOR THE

TRANSPORTATION OF PROPERTY

In Individual Shipments of Packages or Articles Not Exceeding 150 Pounds per piece nor exceeding 108 inches in Length, or 165 Inches in Length and Girth combined, except as provided in Item 1030 of Tariff, via all Motor and Substituted Service Between Points and Places in the United States. Certain other classifications, rules and practices may apply as provided in the shipper's contract.

For Reference to Governing Publications see Item 400 of Tariff

EFFECTIVE: August 15, 2005

Issued By:

OFFICE OF GENERAL COUNSEL
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55 Glenlake Parkway NE
Atlanta, Georgia 30328

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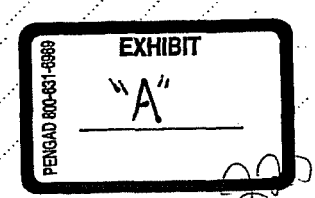

RULES AND OTHER PROVISIONS WHICH GOVERN THE
TRANSPORTATION OF PROPERTY

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ITEM	LIST OF PARTICIPATING CARRIERS	
CARRIER CODE	MOTOR CARRIERS	CERTIFICATE NUMBER
UPSN	United Parcel Service Inc. (a New York corporation)	MC-116200
UPSS	United Parcel Service Inc. (an Ohio corporation)	MC-115495
UPSC	United Parcel Service Canada Ltd.	MC-186275
	Each of the participating carriers individually, or any combination of them collectively, are sometimes referred to herein as UPS.	

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GOVERNING PUBLICATIONS

This Tariff, containing the Rates, Classifications, Rules and Practices, incorporates herein the following described tariffs, and their supplements or loose-leaf page amendments or successive issues thereof, except to the extent the terms therein are inconsistent with the terms of this Tariff, in which case the terms of this Tariff govern.

TITLE OF KIND OF TARIFF	ISSUING AGENT OR CARRIER	TARIFF
Local Zone Charts	UNITED PARCEL SERVICE, INC.	

The effective UPS Rates for shippers located in the 48 contiguous United States are defined as the Daily, On-Demand, or Retail Rates established by UPS for the service selected by the shipper that apply to the shipper and the package, and are in effect at the time of shipping, plus any additional charges or rates for nonstandard service, additional or nonstandard usage, and any other additional charges referenced within this Tariff or the *UPS Rate and Service Guide*, or those applicable additional rates set out in any customized contracts.

The effective UPS Rates for shippers located in Alaska are the UPS Rates published in the *UPS Rate and Service Guide* for customers located in Alaska, for the service selected by the shipper, which apply to the shipper and the package and are in effect at the time of shipping, plus any additional charges or rates for nonstandard service, additional or nonstandard usage, and any other additional charges referenced within this Tariff or the *UPS Rate and Service Guide*, or those applicable additional rates set out in any customized contracts.

The effective UPS Rates for shippers located in Hawaii are the UPS Rates published in the *UPS Rate and Service Guide* for customers located in Hawaii, for the service selected by the shipper, which apply to the shipper and the package and are in effect at the time of shipping, plus any additional charges or rates for nonstandard service, additional or nonstandard usage, and any other additional charges referenced within this Tariff or the *UPS Rate and Service Guide*, or those applicable additional rates set out in any customized contracts.

To determine the amount of any charge for UPS service, consult the effective UPS Rates. The effective UPS Rates are available at UPS.com and upon request at the local UPS office.

UPS reserves the right in its sole discretion to use any mode of transportation whatsoever to provide the service selected by the shipper. Regardless of the mode of transportation used, the effective UPS Rates

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for the service selected by the shipper shall apply. If, however, a shipper selects a UPS service to a destination for which only a higher level of service is available, UPS will substitute the next higher level of available service and will charge the corresponding rate for the substituted service.

The effective UPS Rates and Service Guides in effect at the time of shipment, and the description of UPS Services at UPS.com, as well as any modifications, amendments, supplements, or successive publications thereof, are hereby incorporated by reference as part of the terms and conditions of this Tariff.

The UPS Tariff; the effective UPS Rates and Service Guides and the description of UPS Services at UPS.com, which are incorporated in the Tariff; and the UPS source document for each shipment, together comprise the complete and exclusive agreement of the parties, except as modified by any existing or future written agreement between the parties, and may not be contradicted or modified by any oral agreement.

The Tariff is published periodically by United Parcel Service. The most current version of the Tariff may be found at UPS.com and is available at all local UPS offices. UPS reserves the right to unilaterally modify or amend any portion of the UPS Tariff or *UPS Rate and Service Guide* at any time without prior notice. The current version of this Tariff and any modifications or amendments supersedes all previous UPS Tariffs. Any failure to enforce or apply any term or provision of the Tariff, or any other term or provision of the parties' agreement, shall not constitute a waiver of that term or provision by UPS, and shall not diminish UPS's right to enforce such term or provision in the future. If one or more provisions of this Tariff shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

UPS may engage subcontractors to perform transportation and incidental services and contracts on its own behalf and on behalf of its servants, agents, and subcontractors, each of whom shall have the benefit of the terms and conditions set forth in this Tariff and the *UPS Rate and Service Guide*. No such party has authority to waive or vary any of these terms and conditions.

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SUPPLEMENTAL CORRECTIONS OR SUCCESSIVE ISSUES

Where reference is made in this Tariff to a tariff, item, note, rule, or table, such reference will include any supplemental or successive issues of such tariff, item, note, rule, or table.

425

FIREARMS AND AMMUNITION

Firearms will be transported between licensed importers, licensed manufacturers, licensed dealers and licensed collectors, as defined in the United States Gun Control Act of 1968 (Public Law 90-618, enacted October 22, 1968), as amended by the Firearms Owners' Protection Act (P.L. 99-308, approved May 19, 1986, and a subsequent amendment thereto, P.L. 99-360, approved July 8, 1986) ("the Acts"), law enforcement agencies of the United States or of any department or agency thereof, and law enforcement agencies of any State or any department, agency or political subdivision thereof, and between persons not otherwise prohibited from shipping firearms by federal, state or local law and when such shipment complies with all applicable federal, state and local laws. The shipper must affix a UPS label requesting an adult signature upon delivery to each package containing a firearm. Adult means a person 21 years of age or older. UPS, in its sole discretion, may require the shipper to select a UPS Next Day Air Service for any shipment containing a firearm. Handguns, as defined by the Acts, will only be accepted for transportation via UPS Next Day Air Services, but will not be accepted for transportation via UPS Drop Boxes, Internet Shipping, or in response to a request for On-Call Pickup Service. Firearms, including handguns, will not be accepted when presented for shipment at locations of The UPS Store™ or any Third Party Retailer (as described in Item 1090). Small arms ammunition, as defined in 49 C.F.R. § 173.59, will be transported only when packaged and labeled in compliance with 49 C.F.R. § 172.

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MEASUREMENT OF COMBINED LENGTH AND GIRTH

To determine the length of a regularly shaped package or article, measure the longest side. To determine the girth, measure the distance around the package or article at its thickest part, at a right angle to the length. The total of the two measurements is the combined length and girth.

To determine the length, width, height, or combined length and girth of an irregularly shaped package or article subject to dimensional weight billing, assume the package or article to be enclosed in a six-sided carton having rectangular sides of no thickness joined together at right angles.

To determine the combined length and girth of articles of regular shape but with open or hollow portions, such as tires, hoops, coils, or frames, measure by use of outer dimensions only, as if the open or hollow portions were solid.

437

PACKAGING

It is the responsibility of the shipper to ensure that proper packaging is used and that contents of packages are adequately and securely packed, wrapped, and cushioned for transportation. The use of UPS-provided packaging is not a guarantee that an item is sufficiently packaged for transportation. UPS does not provide special handling for packages with "Fragile," package orientation (e.g., "UP" arrows or "This End Up" markings), or any other similar such markings.

440

REFUSAL OF SERVICE

UPS reserves the right to refuse to provide service, among other reasons, for any package which by reason of the dangerous or other character of its contents may, in the sole judgment of UPS, soil, taint, or otherwise damage other packages or UPS's equipment, or which is improperly or insecurely packed or wrapped. Packages must be so packed or wrapped as to meet UPS's published standards related thereto set forth in this Tariff or elsewhere, and as to pass the tests set forth in the International Safe Transit Association, Procedure 3A, Procedure for Testing Packaged Products, published by the International Safe Transit Association. In addition, any tested product must be free from damage and the packaging must afford reasonable protection as determined by UPS, in its sole judgment.

In addition, UPS reserves the right to refuse to provide service for any package, or to or from any location, or to provide alternative service arrangements, when, among other reasons, UPS, in its sole judgment, deems that it is unsafe or economically or operationally impracticable to provide service.

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RIGHT OF INSPECTION

UPS reserves the right in its sole discretion to open and inspect any package tendered to it, but is not required to do so.

445

DEFINITION OF "PACKAGE"

The term "package," as used herein, means any container and its contents, and includes Letters and Express Envelopes, as well as any article that may be handled without packaging if the handling thereof can be accomplished in a reasonably safe and practicable manner.

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UPS AUTOMATED SHIPPING SYSTEM AND SOURCE DOCUMENT

The term "UPS automated shipping system" as used herein, means a UPS Online® shipping system or a UPS Online Compatible shipping system that meets UPS Online requirements at the time of shipment. The term "source document" as used herein, means a document provided by UPS for the purpose of shipping a

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package via UPS. "UPS automated shipping system" and "source document", individually or collectively, are sometimes referred to herein by the term "UPS shipping system".

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PACKAGE LEVEL DETAIL ("PLD") AND SMART LABEL

Timely upload of Package Level Detail ("PLD") is defined as the electronic transmission of all applicable PLD information to UPS at the time that packages are tendered to UPS. PLD as used herein, includes, but is not limited to consignee's full name; complete delivery address and package weight.

A smart label as defined herein and described in the *UPS Guide to Labeling* includes, but is not limited to, MaxiCode, postal code bar code, current UPS Routing Code, appropriate UPS service level icon and a UPS 1Z tracking number bar code.

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DEFINITION OF "DELIVERY"

Delivery for all purposes shall be deemed to include, but not be limited to: delivery to the consignee or the consignee's actual or apparent agent or representative, delivery to the address or location specified in the UPS shipping system, delivery to any person present at the address or location specified in the UPS shipping system, delivery to a reasonable alternate address or location, delivery in accordance with trade custom or usage, delivery pursuant to UPS's driver release procedures, delivery pursuant to UPS's shipper release procedures, or delivery otherwise permitted under this Tariff. UPS does not limit delivery of a package to the person specified as the consignee on the source document or in the UPS shipping system. Unless the shipper requests Delivery Confirmation service requiring a signature, UPS reserves the right, in its sole discretion, to make a delivery without obtaining a signature.

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PAYMENT OF CHARGES

For purposes of this Item, the term "Charges" means all applicable transportation and other charges, including but not limited to, all applicable accessorial charges, surcharges, additional handling charges, and late payment fees.

Notwithstanding any billing plan that is in effect or payment or billing option selected at the time of shipment, the shipper is ultimately liable for and agrees to pay all Charges, including in the event of insolvency, bankruptcy, or non-payment or refusal to pay by the consignee or third party.

UPS reserves the right to bill for Charges based upon the characteristics of, and services requested for, the packages actually tendered to UPS. UPS also reserves the right to audit invoices to verify service selection, package or shipment weight, and applicability of any Charges, and to make appropriate adjustments. All Charges must be paid in the lawful money of the United States of America. If Charges are paid by credit card, the shipper expressly authorizes UPS to assess any Charges and to obtain payment of the Charges by use of the credit card. If, for any reason, any such credit card transaction is rejected or declined, the shipper will pay to UPS a declined transaction fee of ten dollars (U.S.) ($10.00) per incident, in addition to any late payment fees assessed by UPS and any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper. In no event shall the declined transaction fee exceed the maximum amount allowed by applicable law. The shipper authorizes UPS to charge the declined transaction fee to the shipper's credit card account or to collect the fee directly from the shipper, at UPS's sole option.

UPS reserves the right, in its sole discretion, to request advance payment of Charges for any package sent to any international destination.

If a shipper submits package information to UPS (through an automated shipping system, source document, or UPS Internet Shipping) and does not subsequently tender such package to UPS, it is the shipper's sole responsibility to request an adjustment, as set forth below. Shippers who fail to do so will be liable for all applicable Charges.

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Shippers requesting an invoice adjustment (e.g., adjustment of Charges based on an incorrect rate, billable weight, account number, failure to tender a package, or type of service, etc.) or a refund due to a duplicate payment must notify UPS of the request within 180 days of receiving the contested invoice, or any billing dispute is waived. A partial payment against an invoice is not considered a request for an invoice adjustment.

452

USE OF UPS-PROVIDED MATERIALS AND SERVICES

UPS-provided materials, including but not limited to, packaging materials and supplies, envelopes, labels, label printers, shipping documents, publications and products are provided solely for the use of UPS shippers to obtain UPS services on their behalf and to interact with UPS. Any other use of such UPS-provided materials is strictly prohibited.

Under no circumstances may a shipper sell any UPS-provided materials, products, or services to any third party without prior written authorization from UPS.

455

USE OF UPS ELECTRONIC INFORMATION SYSTEMS

"UPS Systems" means for all purposes herein those UPS electronic information systems to which shippers are granted access by UPS and which are accessed by means of hardware, software, or Internet interfaces.

A shipper may use the UPS Systems solely for UPS-related business conducted by or on behalf of the shipper. Any other use of the UPS Systems is strictly prohibited. A shipper may use or disclose information provided via the UPS Systems only in connection with packages shipped by or to the shipper or on the shipper's behalf.

A shipper may not use the UPS Systems in any way that adversely affects the performance or function of the UPS Systems or interferes with access by other parties to the UPS Systems. A shipper shall not gain access, or attempt to gain access, by any means to any UPS computer system or database, other than the UPS Systems to which the shipper is expressly granted access by UPS.

A shipper shall preserve and reproduce all content of the information provided by the UPS Systems and maintain all data formats, structure, sequence and organization of the information delivered by the UPS Systems, without amendment, deletion or modification of any type. UPS reserves the right to terminate, update, alter or supplement any or all of the UPS Systems and services and information available from the UPS Systems at any time. UPS reserves the right to assess charges for the use of any UPS System, by providing notice of such charges to the shipper. By permitting limited usage of the UPS Systems, UPS does not convey any property interest in or to the UPS Systems or any other UPS property or services.

UPS reserves the right to terminate a shipper's access to and use of the UPS Systems for any reason, including if UPS in its sole judgment believes that (1) the system is being used for an illegal purpose or a purpose not authorized by UPS, or (2) UPS or a third party's rights are being jeopardized, or (3) UPS or any third party is potentially exposed to liability or damage of any type, or (4) the shipper is violating this Tariff or any other applicable agreement between UPS and the shipper.

458

ITEMS NOT ACCEPTED FOR TRANSPORTATION

UPS does not accept for transportation, and shippers are prohibited from shipping:

(1) Articles of unusual value (as defined in Item 460);

(2) Hazardous waste;

(3) Human remains, fetal remains, human body parts, or components thereof;

(4) Common fireworks;

(5) Packages with an actual weight of more than 150 pounds; or packages that, when measured to determine the billable weight, exceed 108 inches in length, or exceed a total of 165 inches in length and girth combined, or in the case of import shipments, exceed 130 inches in length and girth combined;

(6) Packages with a value of more than $5,000 shipped as a result of a request for service made through the Internet by a shipper who has a UPS Internet shipping account only;

(7) Packages with a value of more than $1,000 returned via Print Return Label, Print and Mail Return Label, Electronic Return Label or 1 UPS Pickup Attempt Return Services;

(8) Packages with a value of more than $500 shipped via a UPS Drop Box;

(9) Prepaid Letters with a value of more than $100;

(10) Packages with a value of more than $999 when Shipper Release is selected;

(11) Packages with a C.O.D. amount in excess of $500 shipped via a UPS Drop Box;

(12) Packages shipped internationally containing jewelry (not including costume jewelry) having a value of more than $500;

(13) Packages presented for shipment at Authorized Shipping Outlets, locations of The UPS Store™ or any Third Party Retailer containing any hazardous materials requiring shipping papers, firearms, or ammunition;

(14) Packages tendered via UPS Return Services containing hazardous materials or requiring a UPS label requesting an adult signature upon delivery; and

(15) Any other items prohibited by this Tariff, the UPS Rate and Service Guide, or UPS.com.

460

DEFINITION OF ARTICLES OF UNUSUAL VALUE WHICH ARE NOT ACCEPTED BY UPS FOR TRANSPORTATION

Shippers are prohibited from shipping articles of unusual value via UPS. Articles of unusual value shall be deemed to include, but are not limited to:

(1) Coins, currency, postage stamps, negotiable instruments (except checks), money orders, unset precious stones, and industrial diamonds.

(2) Any article that contains more than fifty percent by weight of gold or platinum or any combination thereof in raw form, including, but not limited to, bullion, bars, or scraps of these metals.

(3) Any package having an actual value of more than $50,000.

UPS will not be liable for any loss of, or damage to, articles of unusual value. UPS reserves the right, but is not required, to return to the shipper any package containing an article of unusual value. Such return will be made solely at the shipper's risk and expense.

461

HUMAN REMAINS AND BIOLOGICAL MATERIALS

No service shall be rendered in the transportation of human remains, fetal remains, human body parts, or components thereof.

Packages containing Diagnostic Specimens as described in 49 C.F.R. § 173.199, which are prepared in accordance with all aspects of 49 C.F.R. § 173.199, will be accepted for transportation.

Transportation of other biological materials is limited, must be prearranged, and will only be provided under the following conditions: the shipper has received prior written authorization from UPS for the specific package tendered; and the shipper requests service in accordance with the conditions set forth in the written authorization from UPS for the package tendered. Any package containing biological materials shall be considered a perishable commodity and will be accepted for transportation solely at the shipper's risk for any damage or loss arising from the perishable nature of the item.

462

ALCOHOLIC BEVERAGES

The only alcoholic beverages that UPS accepts for transportation are wine and beer. Packages containing wine and beer are accepted for transportation only from shippers who are licensed and authorized under applicable laws to ship alcohol and only on a contractual basis. To receive service for packages containing wine or beer, the shipper must sign a contract and agree to the provisions set forth in the applicable approved UPS agreement for the transportation of wine or beer. The shipper must affix a UPS label, requesting Delivery Confirmation Adult Signature Required service, to each package containing wine or beer. Adult means a person 21 years of age or older. It is the responsibility of the shipper to ensure that a package tendered to UPS does not violate any federal, state, provincial, or local laws or regulations applicable to the package.

UPS reserves the right to dispose of any alcoholic beverages tendered for shipment which shippers are prohibited from shipping, which UPS is not authorized to accept, which UPS states that it will not accept, or which UPS has a right to refuse. The shipper agrees to indemnify, defend, and hold harmless UPS, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from all claims, demands, expenses, liabilities, causes of action, enforcement procedures, and suits of any kind or nature brought by a governmental agency or any other person or entity arising from or relating to the transportation of a package containing alcoholic beverages, or from the shipper's noncompliance with UPS requirements for the shipment of alcoholic beverages or governmental laws or regulations applicable to the transportation of alcoholic beverages. Under no circumstances shall UPS be liable for special, incidental, or consequential damages arising from the transportation of a shipment of alcoholic beverages. UPS reserves the right to discontinue service to any shipper for, among other reasons, tendering a package containing alcoholic beverages that does not comply with all applicable laws or the UPS Terms and Conditions of Service relating to the shipment.

463

LIVE ANIMALS

UPS provides service on a limited basis for packages containing some types of live animals. (The term "animal" as used herein refers to anything living, except plants). UPS will only accept packages containing live animals for shipment within the United States and as set forth in the UPS Terms and Conditions of Service, available at UPS.com. Any package containing a live animal shall be considered a perishable commodity and will be accepted for transportation solely at the shipper's risk for any damage or loss arising from the perishable nature of the item. UPS shall not be liable for any special, incidental, or consequential damages.

464

TOBACCO PRODUCTS

Packages containing tobacco products shipped to a consumer will only be accepted for transportation as a contractual service. To receive service for packages containing tobacco products shipped to a consumer, the shipper must sign a contract and agree to the provisions set forth in the applicable approved UPS agreement for the transportation of tobacco products. For all other service for packages containing tobacco products, the shipper and consignee must be licensed and authorized to ship and receive such items, respectively, pursuant to any applicable federal, state, provincial, or local law or regulation. It is the responsibility of the shipper to ensure that a shipment tendered to UPS does not violate any federal, state, provincial, or local laws or regulations applicable to the shipment.

UPS reserves the right to dispose of any tobacco products tendered for shipment which shippers are prohibited from shipping, which UPS is not authorized to accept, which UPS states that it will not accept, or which UPS has a right to refuse. The shipper agrees to indemnify, defend, and hold harmless UPS, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from all claims, demands, expenses, liabilities, causes of action, enforcement procedures, and suits of any kind or nature brought by a governmental agency or any other person or entity arising from or relating to the transportation of a package containing tobacco products, or from the shipper's

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noncompliance with UPS requirements for the shipment of tobacco products or governmental laws or regulations applicable to the transportation of tobacco products. Under no circumstances shall UPS be liable for special, incidental, or consequential damages arising from the transportation of tobacco products. UPS reserves the right to discontinue service to any shipper for, among other reasons, tendering a package containing tobacco products that does not comply with all applicable laws or the UPS Terms and Conditions of Service relating to the shipment.

465

CORRECTION OF ADDRESSES

If UPS is unable to deliver any package as addressed by the shipper, or if the package has an incorrect or incomplete address (examples include, but are not limited to, P.O. Boxes, missing suite or apartment numbers, old addresses, and missing/incorrect ZIP Codes), UPS will make reasonable efforts, to be determined in its sole discretion, to secure the correct or complete address. An address validated by UPS may be incorrect or incomplete for purposes of completing delivery and may be corrected by UPS.

If the correct or complete address is secured, UPS, at its sole discretion, will attempt delivery, and the shipper will be provided with the correct or complete address in order to update its internal records. An additional charge will be assessed for an address correction.

470

REFUSED PACKAGES RETURNED

Domestic packages refused by consignees, or which for any other reason cannot be delivered, will be promptly returned to the shipper without additional charge. A package returned to the shipper after delivery is subject to applicable Charges.

If a package is refused by the consignee or for any other reason cannot be delivered, and return of the package is refused by the shipper, or the package cannot otherwise be returned to the shipper, UPS will retain the package for a reasonable period of time, to be determined in its sole discretion (not to exceed thirty days), and UPS reserves the right to dispose of the package thereafter.

472

DROP SHIPMENT

Drop Shipment, as defined herein, means any shipment pursuant to a written agreement between UPS and a specific shipper that permits the shipper to tender quantities of individual packages directly to UPS at a UPS pre-approved designated location. A unique Drop Shipper account number will be assigned, which the shipper agrees to use solely for the origin and destination locations as specified in the UPS Drop Ship Letter of Understanding.

UPS reserves the right to refuse any Drop Shipment request, in its sole discretion, including but not limited to, any Drop Shipment that is operationally or economically impracticable to transport. A request for Drop Shipment service is not reasonable unless the shipper makes a prior arrangement with UPS, agreed to in advance by UPS, as to timing, location and volume of the Drop Shipment.

When a shipper, through prior arrangements with UPS, tenders packages at UPS's receiving stations with a return address requiring a movement greater than a Zone 2 movement from the point of tender, any undelivered packages will be returned automatically and will be charged at the rate applicable between the point of tender and the return address. The effective UPS Rates for the applicable shipment will apply.

474

DELIVERY CHANGE REQUESTS

UPS may honor a request that UPS reroute a package to an address or consignee other than the address or consignee identified on a source document, or in the UPS automated shipping system for the package after tender of the package to UPS. UPS will honor such a request where practicable.

475

DELIVERIES ATTEMPTED THREE TIMES WITHOUT EXTRA CHARGE

If UPS is unable to deliver a package, a notice will be left at the consignee's address stating that delivery has been attempted. Thereafter a second and, if necessary, a third attempt to deliver the package will be made without additional charge.

476

SHIP NOTIFICATION

Upon request, UPS will provide notification by fax or e-mail, as directed by the shipper, of a shipment requested by the shipper. The UPS Ship Notification service will be provided by UPS subject to the effective UPS Terms and Conditions of Service. Ship notification is available in UPS Online® Worldship® and UPS Online® Compatible vendor shipping systems approved to use this service. Only e-mail Ship Notification is provided through UPS CampusShip™ or UPS Internet Shipping. An additional charge will be assessed for each successfully faxed Ship Notification.

477

SHIPPER RELEASE

A shipper may request that UPS release a package on the first delivery attempt. Shipper Release will be provided by UPS subject to the effective UPS Terms and Conditions of Service. When Shipper Release is selected, the shipper acknowledges and agrees that UPS will make only one delivery attempt, that a signature will not be obtained upon delivery, and that a UPS delivery record showing a completed Shipper Release delivery shall be conclusive proof that delivery was completed. Shipper Release is provided solely at the shipper's risk of loss or damage arising from the release of the package by UPS, and UPS will not be liable to shippers or third parties for any damages arising from the release of the package. Shipper Release service is not available for packages having a value of more than $999.00 (U.S.).

478

PACKAGE TRACKING/TRACING AND REFUND REQUEST CHARGE

UPS may, in its sole discretion, assess a shipper an additional charge for each Package Tracking/Tracing Request initiated by or at the request of the shipper.

This charge will not be assessed for the first 50 package tracking requests per calendar week, or for a quantity of package tracking requests equal to or less than twenty percent (20%) of the shipper's package volume for that week, whichever is greater.

This charge will not be assessed for a quantity of package tracing requests equal to or less than two percent (2%) of the shipper's package volume for that week.

UPS also reserves the right to assess the shipper a charge in the effective UPS Rates for guaranteed service refund requests when the subject package was delivered in accordance with the applicable UPS Service Guarantee in the effective UPS Terms and Conditions of Service.

480

C.O.D. PACKAGES

C.O.D. means, for all purposes, Collect On Delivery.

Preparation and Listing of C.O.D. Packages: C.O.D.s are accepted for amounts up to $50,000 per package. Shippers not using a UPS automated shipping system must prepare and attach to each C.O.D. package a UPS C.O.D. tag showing the amount to be collected and enter such amount in the space provided for that purpose. Shippers using a UPS automated shipping system will generate, and apply to each C.O.D. package, a system-generated address label with a C.O.D. bar code and the amount to be collected for each individual package. Each C.O.D. package in a Hundredweight shipment must carry a C.O.D. tag or system-generated label for the goods contained in that package. An additional charge will be assessed for each C.O.D. package tendered to UPS. The entry of a C.O.D. amount is not a declaration of value for purposes of

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purchasing declared value protection against loss or damage. Payment of the C.O.D. charge does not constitute payment of the declared value charge.

Responsibility for C.O.D.s: Upon delivery of each C.O.D. package, UPS will attempt to collect the amount shown on the C.O.D. tag or the system-generated label attached to the package and transmit to the shipper the amount so collected subject to the provisions of Item 485, or, if collection cannot be made, will return the package to the shipper. The shipper must notify UPS within 45 days from date of shipment if the shipper has not received payment of the C.O.D. amount, or any claim relating thereto shall be deemed waived. Suits shall be instituted within two years after denial of any portion of the claim.

If collection cannot be made within three delivery attempts, or the consignee refuses delivery, UPS will return the package to the shipper.

Consignee's Checks in Payment of C.O.D.s: Unless instructions to collect cashier's check or money order only are shown on the C.O.D. tag (in conformity with the instructions on the tag) or system-generated label, UPS will accept a check or other negotiable instrument issued by or on behalf of the consignee. When instructions to collect cashier's check or money order only are clearly indicated on the C.O.D. tag or system-generated label UPS reserves the right to accept a cashier's check, money order, official bank check or other similar instrument issued by or on behalf of the consignee. All checks or other negotiable instruments (including cashier's checks, official bank checks, money orders, and other similar instruments) tendered in payment of C.O.D.s will be accepted by UPS based solely upon the shipper assuming all risk relating thereto including, but not limited to, risk of nonpayment, insufficient funds, and forgery, and UPS shall not be liable upon any such instrument. All checks or other negotiable instruments (including cashier's checks, official bank checks, money orders, and other similar instruments) will be transmitted to the shipper together with UPS's own check if consignee check(s) collected are for less than the C.O.D. amount.

Currency in Payment of C.O.D.s: UPS will not accept currency in any amount for payment of C.O.D. shipments.

Payment of $10,000 or more: Payment for any C.O.D. package of $10,000 or more must be received in a single check or other negotiable instrument such as a cashier's check, money order, official bank check, or other similar instrument.

In the event that UPS accepts a personal or company check when a shipper has properly instructed UPS to collect a cashier's check or money order only, UPS reserves the right, in its sole discretion, to deposit into a UPS account the personal or company check collected and to provide the shipper with a check issued by UPS.

In the event that a shipper timely notifies UPS that it has not received payment of the C.O.D. amount, if UPS's records show that it collected a C.O.D. payment and the remittance has not been cashed, UPS may, in its sole discretion, provide the shipper with a digital image of the check or money order along with a C.O.D. Remittance Verification in order to assist the shipper in locating the missing C.O.D. payment. If the shipper is still unable to locate the C.O.D. payment, UPS may, in its sole discretion, provide the shipper with an indemnified C.O.D. check or money order, which is a digital image of the original payment collected by UPS at the time of delivery and can be deposited in a bank, provided that the original check or money order has not previously been deposited or negotiated. If the indemnified check or money order is invalid for any reason, including but not limited to insufficient funds or forgery, UPS shall not be liable upon the instrument.

C.O.D. packages with an amount to be collected in excess of $500 will not be accepted for transportation via a UPS Drop Box.

C.O.D. service is not provided for international shipments.

As with all packages, UPS shall not be liable for any special, incidental, or consequential damages in connection with C.O.D. packages.

485

REMITTANCE OF C.O.D.s

Subject to the remaining provisions of this Item, UPS shall remit C.O.D. collections to the shipper after the date of collection.

For purposes of this Item, the term "Charges" shall have the same definition as set forth in Item 450. The shipper irrevocably authorizes UPS to apply, in its sole discretion and without prior notice to the shipper, any C.O.D. collections to any past due Charges owed by the shipper. To this end, if there are any past due Charges owed by the shipper, the shipper hereby (a) irrevocably assigns and transfers to UPS all of the shipper's right, title and interest in and to each check or other negotiable instrument for payment of a C.O.D. that is received by UPS or its employee or agent, and (b) constitutes and appoints UPS as the shipper's attorney-in-fact and authorizes UPS, in the shipper's name, place and stead, to endorse any such check or other negotiable instrument with the shipper's name, to deposit the same into any UPS account, and to apply the proceeds of the same against any past due Charges owed by the shipper. The shipper acknowledges and agrees that such appointment of UPS as the shipper's attorney-in-fact is coupled with an interest and is irrevocable. UPS may exercise any of its rights under this Item either directly or through any employee or agent.

The shipper relinquishes, waives and agrees not to assert any claim against UPS or any of its employees or agents, any consignee, any collecting or paying bank, or any other person or entity that may directly or indirectly arise as a result of UPS's exercise of any of its rights under this Item. Without diminishing any of UPS's rights under the preceding sentence, the shipper agrees that UPS and such other persons or entities shall not be liable to the shipper or any other person or entity for any special, incidental, or consequential damages in any claim made with respect to UPS's exercise of any such rights.

The shipper agrees that, following UPS's application of any C.O.D. collections to any past due Charges owed by the shipper in accordance with this Item, the shipper will continue to be fully liable for the payment of all remaining Charges owed by the shipper (including, without limitation, (i) any Charges that are not covered by the application of the C.O.D. collections, and (ii) any Charges relating to a previously applied C.O.D. collection that is reversed by reason of the uncollectibility of the C.O.D. check or other negotiable instrument or otherwise).

Nothing in this Item shall constitute an election of remedies by UPS or any other person or entity or a waiver of any of the rights of UPS or any other person or entity under the remaining provisions of this Tariff or at law or in equity.

496

UPS RETURN SERVICES

UPS offers a variety of services for the return of UPS compatible packages, as provided in the applicable UPS Service Guides and effective UPS Terms and Conditions of Service. These services include: Print Return Label, Print and Mail Return Label, Electronic Return Label, 1 UPS Pickup Attempt, 3 UPS Pickup Attempts, and Call Tag. The value limit for each package returned via UPS Print Return Label, UPS Print and Mail Return Label, Electronic Return Label, or 1 UPS Pickup Attempt Return Services is $1,000. The value limit for each package returned via 3 UPS Pickup Attempts or Call Tag Return Services is $50,000.

Packages containing certain items are prohibited from being shipped, and are not accepted by UPS, when tendered for transportation via UPS Return Services, including but not limited to: Hazardous Materials and packages requiring a UPS label requesting an adult signature upon delivery.

C.O.D. (Collect On Delivery) service and Collect or Third-Party billing are not provided for UPS Return Services.

500

INTERRUPTION OF SERVICE

UPS shall not be liable for any interruption of service due to causes beyond UPS's control including, but not limited to, the following: the unavailability or refusal of a person to accept delivery of the shipment; acts of

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God; acts of public authorities acting with actual or apparent authority; acts or omissions of customs or similar authorities; insufficient information provided by a customer; the application of security regulations imposed by the government, or otherwise applicable to the shipment; a government agency hold; riots; strikes or other labor disputes; civil unrest; disruptions of any kind in air or ground transportation networks; and natural disasters.

505

CLAIMS AND LEGAL ACTIONS

Claims against UPS must be filed within strict time limits, including as set forth in Item 450, regarding invoice adjustments or billing disputes; Item 520, regarding claims for loss or damage to property; and pursuant to the UPS Service Guarantee.

All claims against UPS arising from or related to the provision of services by UPS, including, but not limited to, demands for damages, refunds, credits, and any legal or equitable relief whatsoever, shall be extinguished unless the shipper or claimant (1) timely and completely complies with all applicable notice and claims periods set forth in this Tariff and in the *UPS Rate and Service Guide*, including as to claims for loss or damage to property, claims under UPS's Service Guarantee, or claims for invoice adjustments; and (2) pleads on the face of any complaint filed against UPS satisfaction and compliance with those notice and claims periods as a contractual condition precedent to recovery.

Claimants may not deduct the amounts of pending claims from any charges owed to UPS, and the shipper waives any and all rights, including any statutory or common law rights, to set off the amount of any claim against charges owed to UPS.

510

FILING OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

All claims for loss of or damage to property transported or accepted for transportation must: (1) be in writing and must include reference to the source document or pickup record number and date of shipment or copies of other documents sufficient to identify the shipment involved, and the declared value; (2) assert the liability of UPS for alleged loss or damage; (3) make claim for payment of a specified or determinable amount of money; and (4) be accompanied by a copy of the original invoice or, if no invoice was issued, other proof, certified to in writing, as to the purchase price paid by the consignee (where the property involved has been sold to the consignee), actual cost or replacement cost of the property, or extent of the damage to the property.

No claims will be voluntarily paid unless filed in writing by or on behalf of the shipper in accordance with these provisions.

515

ACKNOWLEDGMENT OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

After receiving a proper written claim in the manner and form and with the supporting documents described in Items 510 and 525, UPS or its designee will acknowledge the receipt of such claim in writing to the claimant within 30 days after the date of receipt, unless such claim has already been paid or denied in writing. UPS will at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim including the written acknowledgment of receipt and, if in its possession, the source document and delivery receipts, if any, covering the shipment involved. At the time such claim is received, UPS will cause the date of receipt to be recorded on the face of the claim document, and the date of receipt will also appear on the written acknowledgment of receipt sent to the claimant.

520

TIME LIMIT FOR FILING CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

As a condition precedent to recovery, all claims for loss or damage to property must be filed in writing with UPS within the following time limits: for domestic shipments, claims must be filed within nine months after delivery of the package or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed. For international shipments, claims must be filed within sixty days after delivery of the package or in the case of non-delivery, within sixty days after a reasonable time for delivery has elapsed. Suits shall be instituted within two years after denial of any portion of the claim. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, such claims shall be deemed waived and will not be paid.

A request for proof of delivery does not constitute the filing of a claim.

525

INVESTIGATION OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

(1) Prompt Investigation. Each claim for loss or damage to a package or shipment filed in the manner prescribed herein will be promptly and thoroughly investigated, if investigation has not already been made prior to receipt of the claim.

(2) Supporting Documents. A necessary part of an investigation requires that each claim be supported by the following: evidence of payment of the shipping and any declared value charges; and either the original invoice, a photographic copy of the original invoice or an exact copy thereof, or an extract made therefrom, certified by the claimant to be true and correct with respect to the property and cost thereof involved in the claim, or certification of prices or costs, with trade or other discounts, allowance, or deductions of any nature whatsoever and the terms thereof, or depreciation reflected thereon; provided, however, that where the property involved in a claim has not been invoiced to the consignee shown on the bill of lading or receipt or where an invoice does not show price or cost, or where the property involved has not been sold, or where the property has been transferred at bookkeeping values only, UPS will, before paying a claim thereon, require the claimant to establish the value in the quantity shipped, transported, or involved and to certify the correctness thereof in writing. UPS reserves the right to request the original shipping record or source document.

(3) Original Packaging Materials. In the event that a claim is made for damage to a package, the original packaging materials must be made available to UPS or its designee for inspection.

(4) Verification of Loss. When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, UPS will obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from UPS or from any other source.

530

DISPOSITION OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

UPS or its designee, after receiving a written claim for property transported, will pay, decline, or make a firm compromise settlement offer in writing to the claimant within 120 days after UPS receives the claim; provided, however, that if the claim cannot be processed and disposed of within 120 days after receipt, UPS or its designee will at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing of the status of the claim and the reason for the delay in making final disposition thereof and shall retain a copy of such notice to the claimant in its claim file.

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LIMITATIONS OF LIABILITY

Each UPS domestic package or international shipment is automatically protected by UPS against loss or damage up to a value of $100 (U.S.). Unless a greater value is recorded in the declared value field of the UPS source document or the UPS shipping system used, the shipper agrees that the released value of each domestic package or international shipment is no greater than $100 (U.S.), which is a reasonable value under the circumstances surrounding the transportation, and that UPS shall not be liable for more than $100 for each domestic package or international shipment. If additional protection is desired, the shipper may declare a value in excess of $100 by showing a value in excess of $100 in the declared value field of the UPS source document or the UPS shipping system used. An additional charge as set forth in the UPS Rates in effect at the time of shipping will be assessed.

Whenever property is damaged or lost by UPS in the course of transportation, and a valid claim has been filed in accordance with Items 510, 520, and 525, UPS will pay, at its option, the lowest of the following, not to exceed $100: (1) for the damaged or lost goods; (2) for the purchase price paid by the consignee (where the property involved has been sold to the consignee); (3) for the actual cost or replacement cost of the property; or (4) for the cost of repairing the damaged property.

Where a value has been declared and the applicable charges paid, UPS's maximum liability shall not exceed the lesser of: (1) the declared value on the UPS source document or shipping system used; (2) the lesser of the purchase price paid by the consignee (where the property involved has been sold to the consignee), the actual cost, or the replacement cost of the property; (3) the cost of repairing the damaged property; (4) $50,000 per package, except for (i) packages shipped via a UPS Drop Box, in which case UPS's maximum liability shall be $500 per package, (ii) packages shipped as the result of a request for service made through the Internet by a shipper who has a UPS Internet shipping account only, in which case UPS's maximum liability shall be $5000 per package, (iii) packages returned via UPS Print Return Label, UPS Print and Mail Return Label, Electronic Return Label, or 1 UPS Pickup Attempt Return Services, in which case UPS's maximum liability shall be $1,000 per package, and (iv) packages for which Shipper Release is selected, in which case UPS's maximum liability shall be $999 per package, or (5) $500 for international jewelry (not including costume jewelry) shipments.

In the event of loss of or damage to any article or articles which are part of a pair or set, UPS will be liable only for an amount consisting of the reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set.

In the event of loss of or damage to any part of property (including any part of a machine) consisting, when complete for sale or use, of several parts, UPS will be liable only for the value of the part lost or damaged, not to exceed the declared value of the part lost or damaged.

When UPS pays the actual cost, the purchase price, or the replacement cost of the property, title to the property shall thereupon pass to UPS; otherwise, the damaged property shall be returned to the shipper. UPS will not be liable or responsible for the loss of or damage to any package, the contents of which shippers are prohibited from shipping, which UPS is not authorized to accept, which UPS states that it will not accept, or which UPS has a right to refuse. UPS will not voluntarily pay a claim for loss or damage to property unless all applicable transportation and other charges have been paid. UPS shall not be liable for and reserves the right in its sole discretion to deny claims pertaining to a package for which there are no UPS records reflecting that the package was tendered to UPS by the shipper.

UPS will not be liable or responsible for the loss of or damage to (1) articles of unusual value (as defined in Item 460), (2) any package resulting from insects, moths, vermin, inherent vice (including, but not limited to, improper, inadequate, or unsafe packaging or wrapping that fails to meet UPS's published standards related thereto set forth in this Tariff or elsewhere), deterioration, dampness of atmosphere, extreme of temperature, ordinary wear and tear, or that which occurred or arose prior to or after the course of transportation by UPS, (3) perishable commodities or commodities requiring protection from heat or cold, to the extent the loss or damage results from exposure to heat or cold or the perishable nature of the items, (4) human remains, fetal remains, human body parts, or components thereof, (5)

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packages lost or damaged due to war risks, (6) packages lost or damaged due to nuclear damage, (7) packages with a value in excess of $5000 when the package is shipped as a result of a request for service made through the Internet by a shipper who has a UPS Internet shipping account only, (8) packages having a value of more than $500 if shipped via a UPS Drop Box, (9) Prepaid Letters having a value of more than $100, (10) packages shipped internationally containing jewelry (not including costume jewelry) with a value in excess of $500, (11) packages having a value of more than $1,000 returned via UPS Print Return Label, UPS Print and Mail Return Label, Electronic Return Label, or 1 UPS Pickup Attempt Return Services, or (12) packages having a value of more than $999 when Shipper Release is selected.

UPS's liability for a package containing a check or checks is limited to the cost of stopping payment on and reissuing the check(s), not to exceed $100 per package. In no event shall UPS be liable for the face value of the check(s). UPS's liability for a package containing a phone card, gift certificate, or gift card is limited to the cost (which shall not include any amount of the value attached to the card or certificate) of replacing the physical card(s) or certificate(s), not to exceed $100 per package. In no event shall UPS be liable for the face value of any phone card, gift certificate, or gift card.

Declaring a value in the declared value field of the UPS source document or UPS shipping system used does not provide protection for, and shippers may not declare a value for protection for, any damages related to providing, or the failure to provide, C.O.D. service, including but not limited to: failure to collect the C.O.D. amount; failure to collect the specified form of payment; collection of an instrument in the wrong amount; failure or delay in delivering the collected instrument to the shipper; or collection of forged, insufficient funds, or otherwise invalid instruments.

UPS does not provide a protective service for the transportation of perishable commodities or commodities requiring protection from heat or cold. Such commodities will be accepted for transportation solely at the shipper's risk for any loss or damage arising from the perishable nature of the item. Shippers shall not file claims for, and UPS shall not be liable to shippers or any third parties for, any damage arising from the transportation of perishable commodities or commodities requiring protection from heat or cold, regardless of whether the package is delivered pursuant to an applicable UPS Service Guarantee or is delayed in transit. UPS reserves the right to dispose of any package in the UPS system containing a perishable commodity that, in UPS's sole discretion, is deemed to be unsafe or unsanitary.

In the event that UPS fails to attempt delivery in accordance with the terms of the UPS Service Guarantee, set forth in full in the Terms and Conditions of Service in the *UPS Rate and Service Guide* and at UPS.com, UPS, at its option, will either credit or refund the transportation charges for each such package to the payer only, upon request, provided that the conditions set forth in the UPS Service Guarantee are met. This is the sole remedy available under the UPS Service Guarantee.

Any declared value in excess of the maximums allowed in the applicable UPS Tariff or Service Guide is null and void. Acceptance for carriage of any package bearing a declared value in excess of the allowed maximums specified in the applicable UPS Tariff or Service Guide, or any package containing articles that shippers are prohibited from shipping or that UPS does not or is not authorized to accept for transportation, does not constitute a waiver of any provision of the Tariff or Service Guide limiting UPS's liability or responsibility for any such package.

Under no circumstances shall UPS be liable for any special, incidental, or consequential damages, including but not limited to, damages arising from loss, misdelivery of, or damage to property, delayed delivery, or failure to attempt delivery in accordance with the UPS Service Guarantee. Under no circumstances shall UPS be liable for any damages whatsoever for delayed delivery, except as specifically provided for shipments made under the UPS Service Guarantee.

UPS shall not be liable for any damages arising from UPS's inability, failure, or refusal to comply with a request to stop, return or reroute shipment of a package after tender to UPS.

540

METHOD OF DETERMINING TRANSPORTATION RATES

To determine rates pursuant to this Tariff:

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(1) Refer to the UPS Zone Chart applicable to the package in effect at the time of shipping to determine the appropriate zone for use in determining the rate.

(2) Refer to the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping and declared value charges applicable to the package in effect at the time of shipping, which are available at UPS.com and upon request at the local UPS office.

(3) Refer to the effective UPS Rates applicable to the shipper and package and in effect at the time of shipping, for other charges, surcharges or rates charged by reason of nonstandard service and/or additional or nonstandard usage.

(4) Refer to any applicable customized contract.

Released value of package:

The effective UPS Rates and any declared value charges are applicable only when the value of the property inserted in the declared value field of the UPS shipping system used by the shipper, or agreed upon in writing, as the released value thereof is as follows:

a. For a value not exceeding $100 per package:

Apply the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping, which are available at UPS.com and at local UPS offices upon request;

b. For a declared value exceeding $100 per package:

Apply the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping, plus the declared value charge, the amount of which is available at local UPS offices upon request and at UPS.com.

560

OPTIONS FOR PAYMENT OF CHARGES

For purposes of this Item, the term "Charges" shall have the same definition as set forth in Item 450.

In its sole discretion, UPS may provide alternative payment terms to certain of its shippers. UPS, in its sole discretion, shall decide which, if any, of the alternative payment plans described below will be made available to the shipper. A shipper that is not enrolled in any of the payment plans described below shall pay all Charges in advance of shipment as required by UPS.

If, for any reason, a negotiable instrument submitted to UPS as payment for Charges is returned to UPS unpaid, or an electronic request for payment is dishonored, UPS may charge the shipper a dishonored payment fee of twenty dollars (U.S. $20.00) or such greater amount as may be allowed by applicable law, per incident, in addition to any late payment fees assessed by UPS and any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper. In no event shall the dishonored payment fee exceed the maximum amount allowed by applicable law.

As an accommodation to the shipper, and in UPS's sole discretion, UPS may render invoices or copies of invoices to a third party at the request of the shipper. The shipper remains responsible for the timely payment in full of all Charges owed by the shipper. By requesting UPS to render invoices or copies of invoices to a third party, the shipper is deemed to authorize the third party to act on behalf of the shipper, and UPS may rely thereon in all respects.

UPS also may in its sole discretion elect to render an invoice that includes Charges owed in addition to payments owed for services provided by UPS affiliates.

Where UPS elects to make an alternative payment plan available to the shipper, UPS may render an invoice to the shipper on a weekly (i.e., seven days) or a monthly (i.e., four or five calendar weeks) basis. A weekly invoice will include the Charges incurred in the previous week. Notwithstanding that UPS has elected to render an invoice to the shipper on a weekly basis, an invoice may be issued only when the shipper has incurred aggregate Charges in excess of ten dollars ($10.00), or when five (5) calendar weeks have elapsed from the date of issuance of the last invoice, whichever event occurs first. A monthly invoice

will include the Charges incurred for the four or five week period for which the invoice is issued. A weekly service charge will be added to each invoice if the shipper has requested UPS's automatic daily pickup call service. Except as otherwise expressly provided below, UPS's payment terms require payment of all Charges within seven (7) days after receipt of the UPS invoice. In its sole discretion, UPS may offer one or more of the following alternative payment plans for the payment of Charges:

(1). Electronic Funds Transfer Plan (Debit EFT)

By written agreement with UPS, the shipper will provide UPS with the shipper's bank account number and bank account routing number to enable UPS to electronically request payment, for all Charges incurred by the shipper, directly from the shipper's bank, on a weekly or monthly basis. The shipper's bank will remit the amount requested to UPS and deduct that amount from the shipper's bank account. Payments to UPS will be shown on the shipper's bank statements. The shipper is responsible for payment of any fees imposed by the shipper's bank. Additionally, the shipper will receive a weekly or monthly invoice, as applicable, except as described above, from UPS listing the services provided for the applicable billing period. If, for any reason, an electronic request for payment is dishonored, the shipper is responsible for making a timely payment directly to UPS. Past due balances will be subject to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper. No late payment fee shall be assessed with respect to the Electronic Funds Transfer Plan.

(2). Monthly Prepayment Plan

By written agreement with UPS, the shipper will make a prepayment with UPS in an amount equal to four weeks' anticipated Charges as estimated by UPS. Upon notice to the shipper, the required prepayment amount may be changed by UPS at any time to reflect a revised estimate of four weeks' Charges. All prepayment amounts will remain on account with UPS. No interest will be paid or accrued on the prepayment amounts.

The Charges incurred for the applicable month will be totaled and billed to the shipper on a monthly basis. Payment is due within seven (7) days after receipt of the UPS invoice. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(3). Weekly Prepayment Plan

By written agreement with UPS, the shipper will make a prepayment with UPS in an amount equal to four weeks' anticipated Charges as estimated by UPS. Upon notice to the shipper, the required prepayment amount may be changed by UPS at any time to reflect a revised estimate of four weeks' Charges. All prepayment amounts will remain on account with UPS. No interest will be paid or accrued on the prepayment amounts.

Shipper will receive invoices on a weekly basis, except as described above. Each invoice will list the previous period's Charges incurred. Payment for all accumulated Charges will be due within seven (7) days following the shipper's receipt of every fourth invoice; however, if prior to receiving the fourth invoice the shipper's accumulated Charges should equal or exceed the prepayment amounts on account with UPS, then the accumulated Charges will be due within seven (7) days following the shipper's receipt of the invoice requiring such payment. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(4). Special Payment Plan

By written agreement with UPS, the shipper may elect to prepay an amount equal to the anticipated Charges for a period of between ten to twenty-six weeks, as estimated by UPS. The Charges actually incurred by the shipper will be deducted by UPS on a weekly basis from the prepayment amounts on account with UPS. Weekly invoices marked as paid will be forwarded to the shipper reflecting the balance of the prepayment amount on account with UPS. When the prepayment amount on account with UPS reaches the minimum balance specified in the written agreement, the shipper is required to make another prepayment for an additional period pursuant to the same agreement, or, if the shipper

does not do so, the shipper must make another payment arrangement with UPS. All prepayment amounts will remain on account with UPS. No interest will be paid or accrued on the prepayment amounts. If the Charges incurred by the shipper exceed the remaining balance of the prepayment amounts on account with UPS, the excess Charges will be due within seven (7) days following the shipper's receipt of the invoice requiring such payment. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(5). Credit Extension Plan

By written agreement with UPS, the shipper may elect to pay an annual credit extension fee and thereafter receive invoices for Charges incurred by the shipper on a monthly basis with no prepayment requirement. The invoices will be payable within seven (7) days following receipt by the shipper. The credit extension fee is based upon the shipper's total annual Charges, as estimated by UPS, and is subject to change annually by UPS in its sole discretion. In order to be eligible for the Credit Extension Plan, the shipper must use UPS's transportation services and the Credit Extension Plan solely for business, commercial, or agricultural purposes. A shipper is not eligible for the Credit Extension Plan if the shipper uses UPS's transportation services and the Credit Extension Plan for any personal, family, or household purposes. By using the Credit Extension Plan (if made available to the shipper), the shipper represents, warrants, certifies, and agrees that it will use UPS's transportation services and the Credit Extension Plan solely for business, commercial or agricultural purposes and not for any personal, family, or household purposes. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(6). Weekly Payment Plan

Each week the shipper will receive an invoice for the previous week's Charges except as described above. The invoice is due within seven (7) days of receipt. No prepayment is required under this plan.

Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

Shipper acknowledges and agrees that there may be a delay of two or more days between the date that payments are received by UPS and the date that the payments are posted and credited to the shipper's account with UPS. If a UPS remittance advice is attached to the shipper's payment, the payment will be credited accordingly. If no remittance advice is attached to the shipper's payment, the payment will be credited to the oldest outstanding invoice.

For the Monthly Prepayment Plan, the Weekly Prepayment Plan, the Special Payment Plan, the Credit Extension Plan, and the Weekly Payment Plan, a late payment fee will be assessed if the shipper's payment is not received by UPS within fourteen (14) days of the invoice due date. Except as otherwise stated below, the late payment fee will equal five percent (5%) of the total past due balance of the shipper's invoice (including, without limitation, any previously assessed but unpaid late payment fees) that is fourteen (14) days past due or the maximum amount permitted by applicable law, whichever is less.

In determining the late payment fee for the Monthly Prepayment Plan and the Weekly Prepayment Plan, UPS will apply the prepayment amounts on account with UPS to reduce the calculated base amount on which the late payment fee is assessed; provided, that UPS will so apply the prepayment amounts to the oldest outstanding invoice first, and to each subsequent invoice thereafter, until the prepayment amounts have been fully so applied. If an invoice 14 days past due is fully so covered by the prepayment amount, no late payment fee will apply. If an invoice 14 days past due is partially so covered by the prepayment amount, the late payment fee will apply to the portion not so covered by the prepayment amount.

For the Special Payment Plan, a late payment fee will not be assessed if there has been a positive balance in the shipper's prepayment account with UPS at any time during the 27-day period immediately preceding the transmittal of the current invoice to the shipper. The late payment fee for the Special Payment Plan will

be assessed on the "charges this period" of the shipper's invoice (including, without limitation, any previously assessed but unpaid late payment fees) that is fourteen (14) days past due.

A late payment fee will be assessed only once on each invoice that is fourteen (14) days past due. Each late payment fee will be due and payable within seven (7) days following the shipper's receipt of the invoice that first reflects the assessment of the late payment fee. The late payment fee is in addition to any collection costs that may be incurred by UPS in the final collection of Charges owed by the shipper. Neither the assessment nor the payment of a late payment fee will (a) affect the shipper's responsibility to pay all Charges owed, or (b) in any manner preclude UPS from exercising any of its rights or remedies hereunder or under applicable law.

575

WEEKLY SERVICE CHARGE FOR DAILY PICKUP SERVICE

When Daily Pickup Service is requested, an additional weekly service charge will be assessed and shall apply in addition to the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping. UPS will call upon each UPS daily pickup service shipping account once each business day to pick up packages for delivery to all points served without a special pickup request. UPS may not call upon a UPS daily pickup service shipping account on any day in which the account indicates that there are no packages available for pickup.

The weekly service charge is based on a daily pickup account's weekly billing total, as reflected in the UPS billing system. The weekly billing total may not necessarily reflect all packages tendered during a calendar week.

580

HAZARDOUS MATERIALS SERVICE

Hazardous Materials, defined as those materials regulated under Title 49 of the Code of Federal Regulations (49 C.F.R.), excluding ORM-D ground shipments, are accepted for transportation only via Daily Pickup Service, and only as a contract service under the provisions set forth in the UPS standard form Agreement for Transportation of Hazardous Materials (Agreement). To receive Hazardous Materials Service, a shipper must either sign an Agreement or incorporate the provisions of the Agreement into the shipper's existing customized contract for shipping service with UPS.

UPS transports Hazardous Materials only within and among the 50 United States and Puerto Rico.

An additional charge will be assessed for each Hazardous Materials package shipped under the Agreement. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply.

It is the shipper's responsibility to determine if a package contains a Hazardous Material and to properly classify, label, mark, and package it in accordance with governmental regulations, 49 C.F.R. and the terms set forth in the Agreement.

UPS reserves the right to charge and the shipper agrees to pay, for all costs resulting from improperly packed Hazardous Materials, or the cost of disposal if the shipper refuses to accept a returned item. The shipper agrees to indemnify, defend, and hold harmless UPS, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from all claims, demands, expenses, liabilities, causes of action, enforcement procedures, and suits of any kind or nature brought by a governmental agency or any other person or entity arising from or relating to the transportation of a Hazardous Materials package, from the shipper's breach of the Agreement, or from the shipper's non-compliance with governmental laws or regulations applicable to the transportation of Hazardous Materials. Under no circumstances shall UPS be liable for special, incidental, or consequential damages arising from the transportation of a Hazardous Materials shipment.

UPS reserves the right to discontinue service to any shipper for, among other reasons, tendering an undeclared Hazardous Materials package (including ORM-D shipments that are tendered without the proper shipping documentation) to UPS. If a shipper tenders an undeclared Hazardous Materials

package to UPS, UPS shall not be liable for the package in the event of loss, damage, delay, or misdelivery, nor shall UPS be liable for any special, incidental, or consequential damages.

Additional terms and conditions regarding the shipment of Hazardous Materials are set forth in the *UPS Guide for Shipping Ground and* Air *Hazardous Materials,* which is available at UPS.com.

590

HAZARDOUS WASTE AND MERCURY-CONTAINING WASTE

No service shall be rendered in the transportation of hazardous waste. Hazardous waste is a solid waste that meets any of the criteria of hazardous waste as described in Section 261.3 of Title 40 of the Code of Federal Regulations.

UPS's acceptance for transportation of any mercury-containing waste material or used mercury-containing device (including, but not limited to, medical devices, spent or broken fluorescent lamps, thermostats or thermometers) is limited, must be prearranged, and will only be provided pursuant to prior written authorization from UPS upon satisfaction of certain requirements, including appropriate packaging and financial assurances.

592

PORTABLE ELECTRONIC DEVICES

UPS transports packages containing radio frequency devices (RFID), ultra-wideband devices (UWB) and other portable electronic devices (PED) only when such devices are in an inactivated state or otherwise in compliance with applicable law, including 14 C.F.R. 91.21, 14 C.F.R. 121.306, or 47 C.F.R. 15.521(a).

600

DELIVERY CONFIRMATION SERVICE

At the time a shipper tenders a domestic package to UPS, the shipper may request Delivery Confirmation Service by indicating Delivery Confirmation on a UPS source document (excluding Air Shipping Documents) or in a UPS automated shipping system. Each Delivery Confirmation response will include the date of delivery and either the name of the recipient or the disposition of the package; however, in the event of a return, the response will indicate the reason for the return and the date processed. An additional charge will be assessed for each such response. All responses will be consolidated and provided to the shipper in printed or electronic format.

For an additional charge, a shipper may request UPS to obtain the recipient's signature and to include it on the Delivery Confirmation response.

A shipper may request UPS to obtain the signature of an adult 21 years of age or older and to include it in the Delivery Confirmation response. An additional charge will be assessed for each such response. UPS, in its sole discretion, will determine if delivery can be completed when such a request is made, and may request photo identification indicating the recipient's age before completing delivery. The shipper must use a UPS automated shipping system to initiate a request for this service.

A shipper may elect to direct the response to an address other than the return address specified on the shipping label. In such a case, the response will be mailed individually and an additional charge will be assessed.

601

PROOF OF DELIVERY (P.O.D.)

Upon request, UPS will provide proof of delivery via facsimile or mail transmission. The request must include a facsimile number, including area code, for an operating facsimile machine, or an address deliverable by the United States Postal Service for mail. UPS reserves the right to assess the shipper an additional charge for each successfully transmitted or mailed P.O.D.

605

ADDITIONAL HANDLING CHARGES

An additional handling charge in the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will be assessed for the transportation of the following: any article that is encased in an outside shipping container made of metal or wood; any cylindrical item, such as a barrel drum, pail, or tire, that is not fully encased in a corrugated cardboard shipping container; any package with the longest side exceeding 60 inches or its second-longest side exceeding 30 inches; and any package qualifying as a Large Air Package. An additional handling charge will not be assessed to packages qualifying for a Large Package Surcharge. UPS reserves the right to assess the Additional Handling Charge for any package that, in UPS's sole discretion, requires special handling.

606

FUEL SURCHARGE

UPS reserves the right to institute a fuel surcharge on some or all shipments without prior notice. This surcharge is subject to adjustment monthly. This surcharge may apply to any domestic or international transportation or other charges, including but not limited to, any accessorial charge or surcharge. This surcharge will be applied to such services and for such periods as UPS, in its sole discretion, may determine necessary. The current fuel surcharge is described at UPS.com.

1000

DELIVERY SERVICE FOR SHIPPERS RECEIVING DAILY PICKUP SERVICE

Shippers who elect Daily Pickup Service, pursuant to the terms of Item 575, may ship general commodities except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, those commodities injurious or contaminating to other lading and items identified in Item 458. The rate for delivery of packages between points and places in the United States to a commercial location (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public) or to a residential location (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

If the delivery location could be construed as either residential or commercial, then the rates for residential delivery service will be applied.

For rates applicable to Daily Pickup Service, see Item 575.

Note 1 - UPS will profile the shipper's traffic at a single location and/or at multiple locations as necessary and, based on that profile, will assign the shipper's traffic to a customer group for the receipt of applicable package information, problem resolution, solution support, and communication services.

Note 2 - In the event a shipper selects the "Bill Consignee" or "Bill Third Party" option and omits the account number or supplies an invalid account number, then in addition to being liable for the transportation and other charges, the shipper shall be assessed an additional charge. An account number is invalid if it is the wrong account number for the bill-to party, or if it is the account number for a consignee or third party who fails to pay the shipping charges.

1005

ON-CALL PICKUP SERVICE

When On-Call Pickup Service is requested by the shipper, UPS will arrange (where reasonably practicable) a package pickup at the shipper's location. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply. An additional charge for On-Call Pickup Service will also be assessed.

On-Call Pickup Service is available for packages containing general commodities, except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, hazardous materials requiring shipping papers in accordance with 49 C.F.R. § 172.200, those commodities injurious or contaminating to other lading and items identified in Item 458.

1010

UPS GROUND SERVICE GUARANTEE

UPS guarantees on-schedule delivery of UPS Ground Service and UPS Hundredweight Service Ground packages, where such services are available, to all 50 states and Puerto Rico. The guarantee is provided according to the terms of the applicable UPS Service Guarantee in the effective UPS Terms and Conditions of Service.

Note 1 - If the delivery location could be construed as either residential (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) or commercial (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public), then the rates for residential delivery service will be applied.

Note 2 - The guarantee does not apply to shipments that are delayed due to causes beyond UPS's control including, but not limited to, the following: the unavailability or refusal of a person to accept delivery of the shipment; acts of God; acts of public authorities acting with actual or apparent authority; acts or omissions of customs or similar authorities; insufficient information provided by a customer; the application of security regulations imposed by the government, or otherwise applicable to the shipment; a government agency hold; riots; strikes or other labor disputes; civil unrest; disruptions of any kind in air or ground transportation networks; and natural disasters.

Note 3 - The guarantee does not apply to shipments that are picked up or scheduled to be delivered between December 12th and December 24th.

Note 4 - The sole remedy provided under the UPS Ground Service Guarantee is the credit or refund of transportation charges, which will only be remitted to the payer. Under no circumstances shall UPS be liable for any special, incidental, or consequential damages for failure to attempt delivery in accordance with the UPS Ground Service Guarantee.

1020

UPS 3 DAY SELECT SERVICE

UPS 3 Day Select Service is available for the shipment of general commodities, except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, those commodities injurious or contaminating to other lading, and items identified in Item 458, between points and places in the 48 contiguous United States. UPS 3 Day Select Service is available to the shipper by attaching a special label, approved by UPS, at the time the package is tendered to UPS, in accordance with the effective UPS Terms and Conditions of Service. UPS guarantees delivery of UPS 3 Day Select packages subject to the terms of the applicable UPS Service Guarantee in the effective UPS Terms and Conditions of Service.

The rate for delivery of UPS 3 Day Select Service packages to a residential location (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) or to a commercial location (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public) shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

Note 1 - A service charge for pickup service may apply. For rates applicable to pickup service, see Items 575 and 1005.

Note 2 - Transportation charges will be based on the dimensional weight of the package when the dimensional weight exceeds the actual weight.

Dimensional weight is determined as follows:

Step 1 - Calculate cubic size: Multiply the package length by the width by the height (round each number to the nearest whole inch) (LxWxH). The result is the cubic size of the package.

Step 2 - Determine dimensional weight: Divide the cubic size of the package by 194 to determine the dimensional weight (in pounds). Increase fractions of a pound to the next full pound.

$$\frac{LxWxH}{194} = \text{Dimensional Weight}$$

Note 3 - Hazardous materials are accepted for transportation via UPS 3 Day Select Service only in passenger aircraft quantities prepared according to the requirements set forth in Title 49 of the Code of Federal Regulations and the UPS *Guide for Shipping Ground and Air Hazardous Materials*, and only for customers who have completed a UPS standard form Agreement for Transportation of Hazardous Materials or have the provisions of that Agreement incorporated into their existing customized contract for shipping service with UPS. Hazardous materials and all "Other Regulated Materials" (ORM) are prohibited from being shipped via UPS 3 Day Select Hundredweight Service.

Note 4 -UPS Hundredweight Service is available for 3 Day Select Service provided the total shipment actual weight is 200 pounds or more. All other terms and conditions of UPS Hundredweight Service contained in the applicable UPS Service Guides and the effective UPS Rates will apply.

1030

RATES FOR OVERSIZE, OVERWEIGHT AND LARGE PACKAGES

Oversize 1: If a package exceeds 84 inches in length and girth combined and is less than or equal to 108 inches in length and girth combined and has an actual weight of less than 30 pounds, the package will be considered "Oversize 1" (OS1). Each OS1 package will be treated as a 30-pound package when calculating the billable weight.

Oversize 2: If a package exceeds 108 inches in length and girth combined, and is less than or equal to 130 inches in length and girth combined, and has an actual weight of less than 70 pounds, the package will be considered "Oversize 2" (OS2). Each OS2 package will be treated as a 70-pound package when calculating the billable weight.

Oversize 3: If a UPS Ground package exceeds 130 inches in length and girth combined and has an actual weight of less than 90 pounds, the package will be considered "Oversize 3" (OS3). Each UPS Ground OS3 package will be treated as a 90-pound package when calculating the billable weight and will be subject to a Large Package Surcharge.

A Large Package Surcharge (LPS) will be applied to each UPS Ground package sent between locations in the United States, including Hundredweight, when the size of the package exceeds 130 inches in length and girth combined and/or the package is identified as OS3. Each Large Package in a UPS Ground multi-piece shipment may receive an LPS. An LPS will not apply to UPS Standard To Canada packages or Authorized Return Services Ground packages.

A package shipped using a UPS Air Service or UPS 3 Day Select is considered a Large Air Package when its length, combined with twice the width plus twice the height, exceeds 130 inches, and is equal to or less than 165 inches. For each Large Air Package, the rate is based on the greater of the dimensional weight or the actual weight. Large Air Packages are subject to a minimum billable rate of $90. The minimum billable rate will not apply to UPS Hundredweight Service shipments.

Packages with an actual weight of more than 150 pounds, or packages that, when measured to determine the billable weight, exceed 108 inches in length, or exceed a total of 165 inches in length and girth combined, or in the case of import shipments, exceed 130 inches in length and girth combined, are not accepted for transportation. If found in the UPS system, they are subject to one or more of the following additional charges: Over Maximum Weight ($50), Over Maximum Length ($50), or Over Maximum Size ($50).

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EXPEDITED SERVICE

Expedited Service may be selected by a shipper for general commodities, except articles of unusual value (as defined in Item 460), Classes A & B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, those commodities injurious or contaminating to other lading and items identified in Item 458. This service is available between points and places in the United States. Expedited Service may be selected by tendering a package to UPS and attaching a special label, approved by UPS, requesting expedited UPS Next Day or 2nd Day delivery service.

When such service is requested, the rates for delivery of UPS Next Day or UPS 2nd Day Letters, Express Envelopes or packages, with a value not exceeding $100 per package, shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

Note 1 - Alternatively, the shipper may attach a special label, approved by UPS, to the package requesting UPS Next Day Saver delivery service. The UPS Next Day Saver delivery service will be provided by UPS subject to the terms and conditions published in the applicable UPS Service Guides. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply.

Note 2 -The shipper may attach a special label, approved by UPS, to the package requesting UPS Next Day Early A.M. delivery service. The UPS Next Day Early A.M. delivery service will be provided by UPS, subject to the terms and conditions published in the applicable UPS Service Guides, and subject to the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping. The shipper may request optional verbal confirmation of delivery service by indicating Verbal Confirmation of Delivery on the UPS Next Day Early A.M. source document or in the UPS automated shipping system. When this service is selected, UPS will call the shipper to confirm delivery on the day of delivery. The Verbal Confirmation of Delivery will be provided for an additional charge.

Note 3- The shipper may also attach a special label, approved by UPS, to the package requesting UPS 2nd Day A.M. delivery service. The UPS 2nd Day A.M. delivery service will be provided by UPS, subject to the terms and conditions published in the applicable UPS Service Guides. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply.

Note 4 - For Next Day services, there is no weight limit for Express Envelopes containing correspondence, urgent documents, and electronic media. When a Next Day service is selected, Express Envelopes containing items other than those listed above are subject to the corresponding rates for the applicable weight. The shipper agrees to comply with the requirements of the Private Express Statutes when using UPS 2nd Day A.M. and UPS 2nd Day services. For UPS Second Day services, Express Envelopes weighing one (1) pound or more are subject to the corresponding rates for the applicable weight.

Note 5 -A service charge for pickup service may apply. For rates applicable to pickup service, see Items 575 and 1005.

Note 6 - An additional charge will be assessed on each UPS Next Day or UPS 2nd Day package picked up on Saturday for subsequent delivery.

An additional charge will be assessed on regular Saturday Pickup accounts when a pickup stop is made and no packages are picked up.

Note 7 - Transportation charges will be based on the dimensional weight of the package when the dimensional weight exceeds the actual weight.

Dimensional weight is determined as follows:

Step 1 - Calculate cubic size: Multiply the package length by the width by the height (round each number to the nearest whole inch) (LxWxH). The result is the cubic size of the package.

Step 2 - Determine dimensional weight: Divide the cubic size of the package by 194 to determine the dimensional weight (in pounds). Increase fractions of a pound to the next full pound.

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$\frac{LxWxH}{194}$ = Dimensional Weight

Note 8 - In the event a shipper selects the "Bill Consignee" or "Bill Third Party" option for a UPS Next Day or 2nd Day package and omits the account number or supplies an invalid account number, then in addition to being liable for the transportation and other charges, the shipper shall be assessed an additional charge. An account number is invalid if it is the wrong account number for the bill-to party, or if it is the account number for a consignee or third party who fails to pay the shipping charges.

Note 9 - Hazardous materials are accepted for transportation via expedited delivery service only in passenger aircraft quantities prepared according to the requirements set forth in Title 49 of the Code of Federal Regulations and the *UPS Guide for Shipping Ground and Air Hazardous Materials*, and only for customers who have completed a UPS standard form Agreement for Transportation of Hazardous Materials or have the provisions of that Agreement incorporated into their existing customized contract for shipping service with UPS.

Note 10 - UPS Hundredweight Service is available for Expedited Service provided the total shipment weight is 100 pounds or more. All other terms and conditions of the UPS Hundredweight Service contained in the applicable UPS Service Guides and the effective UPS Rates will apply.

1080

UPS CUSTOMER CENTER

A UPS Customer Center is a UPS facility where shippers may tender packages for transportation by UPS. Customer Centers will accept packages containing general commodities, except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, hazardous materials requiring shipping papers in accordance with 49 C.F.R. § 172.200, those commodities injurious or contaminating to other lading and items identified in Item 458.

The rates for packages sent from a UPS Customer Center to a residential location (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) or to a commercial location (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public) shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

If the delivery location could be construed as either residential or commercial, then the rates for residential delivery service will be applied.

Before releasing any package at a UPS Customer Center to a consignee or other recipient, UPS reserves the right to require sufficient verification, as determined by UPS in its sole discretion, of the recipient's name, address, authorization to receive the package, or any other information UPS deems necessary to release the package in its sole discretion.

1090

THE UPS STORE™/THIRD PARTY RETAILERS

The UPS Store™ locations are independently owned and operated by licensed franchisees of Mail Boxes Etc., Inc., an indirect subsidiary of United Parcel Service of America, and are not agents of UPS. UPS assumes no liability other than to The UPS Store location, as the shipper of the package, for lost, damaged, or delayed packages sent via that The UPS Store location. Any such liability to The UPS Store location is subject to the limitations set forth in the applicable UPS Tariff or *UPS Rate and Service Guide*. All inquiries regarding packages shipped via any The UPS Store location must be directed to the shipping The UPS Store location. UPS will deal solely with The UPS Store location in all matters concerning packages shipped via The UPS Store location, including but not limited to: tracking/tracing requests; claims and guarantees; C.O.D. preparation and remittance; return of undeliverable packages and letters; proper packaging and labeling; and billing. Even if UPS responds directly to customers of a The UPS Store location regarding tracking requests, UPS will not be liable to those customers. The UPS Store locations are solely responsible

for the issuance of any refunds and claims to those who shipped packages via The UPS Store location. The UPS Store locations agree not to ship any articles that UPS does not accept for transportation. The UPS Store locations shall indemnify and hold harmless UPS in any action against UPS arising from the loss, damage, or delay of a package shipped via that The UPS Store location.

UPS Authorized Shipping Outlets or Commercial Counters (collectively referred to within this Item as "Third-Party Retailers") are independently owned and operated businesses and are not agents of UPS. UPS assumes no liability other than to the Third-Party Retailer, as the shipper of the package, for lost, damaged, or delayed packages sent via the Third-Party Retailer. Any such liability to the Third-Party Retailer is subject to the limitations set forth in the applicable UPS Tariff or *UPS Rate and Service Guide.* All inquiries regarding packages shipped via Third-Party Retailers must be directed to the Third-Party Retailer. UPS will deal solely with the Third-Party Retailer in all matters concerning packages shipped via a Third-Party Retailer, including but not limited to: tracking/tracing requests; claims and guarantees; C.O.D. preparation and remittance; return of undeliverable packages and letters; proper packaging and labeling; and billing. Even if UPS responds directly to Third-Party Retailer customers regarding tracking requests, UPS will not be liable to those customers. Third-Party Retailers are solely responsible for the issuance of any refunds and claims to those who shipped packages via the Third-Party Retailer. The Third-Party Retailer agrees not to ship any articles that UPS does not accept for transportation. Third-Party Retailers shall indemnify and hold harmless UPS in any action against UPS arising from the loss, damage, or delay of a package shipped via the Third-Party Retailer.

2000

HUNDREDWEIGHT SERVICE

UPS Hundredweight Service is available only for customers receiving Daily Pickup Service. Hundredweight Service may be selected for shipment of general multiple-piece commodities that total 200 pounds actual weight or more for commercial or residential Ground or 3 Day Select delivery service, or for expedited shipments totaling 100 pounds or more sent to a single address on the same day. Excluded shipments include: articles of unusual value (as defined in Item 460), Classes A & B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities requiring special equipment, hazardous materials requiring shipping papers in accordance with 49 C.F.R. § 172.200, those commodities injurious or contaminating to other lading and items identified in Item 458.

The rate for delivery of Hundredweight shipments subject to the terms and conditions in the applicable UPS Service Guides, with a value not exceeding $100 per package, shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

Note 1 - RATE DETERMINATIONS - For Ground and 3 Day Select Hundredweight shipments, a minimum charge equal to the greater of either a charge based on 15 pounds per package or a shipment minimum charge in effect at the time of shipping will be assessed. For expedited Hundredweight shipments, a minimum charge based on an average weight of 10 pounds per package will be assessed. Note 2 - MAXIMUM WEIGHT PER PACKAGE is 150 pounds. The maximum weight for an "Other Regulated Materials" (ORM) package is 66 pounds unless further restricted in the *UPS Guide for Shipping Ground and* Air *Hazardous Materials,* which is available at UPS.com.

Note 3- For expedited shipments, if the dimensional weight of a package exceeds the actual weight, the dimensional weight of that package will be used in the calculation of the shipment billed weight. See Item 1060 for explanation of dimensional weight.

Note 4 - UPS Express Envelopes and Letters are excluded from Hundredweight Service.

Note 5 - UPS Return Services are not provided for UPS Hundredweight Service.

Note 6 -All ORM packages are prohibited in UPS 3 Day Select Hundredweight and expedited Hundredweight Service.

The End

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