

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ALEX MORGAN BELL, [ ], [ ] [ ],  
individually and on behalf of other similarly  
situated

Index No.

Plaintiffs,

CLASS ACTION COMPLAINT

-against-

UNITED PARCEL SERVICE, INC.

Defendant.

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Plaintiffs Alex Morgan Bell, [ ], [ ] and [ ] on behalf of themselves and others  
similarly situated, respectfully show to the court and allege as follows:

I.

**NATURE OF THE ACTION**

1. Since [December 2016], defendant United Parcel Service Inc. (hereafter “UPS”) has caused and created a public nuisance on the public streets of the City of New York by permitting its delivery drivers to park UPS trucks in designated bicycle lanes. Defendant’s delivery drivers repeatedly violate section 4-08 (e) of the New York City Traffic Rules and Regulations that prohibits the operator of a motor vehicle from parking the vehicle or standing in designated “no stopping” zones, including designated bicycle lanes, by standing, idling, or parking in such lanes when making deliveries. Defendant’s bicycle lane parking practices have placed plaintiffs and other similarly situated bicycle commuters throughout the city at

substantially increased risk of serious physical injury and death.

2. Plaintiffs bring this class action individually and on behalf of similarly situated bicycle commuters in the City of New York for an injunction requiring UPS to follow traffic regulations. Municipal traffic authorities have not eliminated or even reduced defendant's violations; instead, by offering defendant—and other high volume delivery companies—a traffic fine pre-payment option, the City has mitigated any deterrent effect fines might have had on defendant's conduct.

## **II.**

### **THE PARTIES**

#### **Plaintiffs**

3. Plaintiff Alex Bell is a resident of the State of New York and is over the age of eighteen (18) years. Plaintiff resides at XXX Plaintiff is a bicycle commuter.

4. Plaintiff [ ] is a resident of the State of New York (and continuing for each named plaintiff)

#### **Defendant**

5. At all times relevant to this action, defendant UNITED PARCEL SERVICE, INC. ("UPS") was and still is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Georgia. At all times relevant to this action, UPS delivered parcels throughout the United States, including the State of New York and New York City. The corporation maintains a New York City corporate address at 643 West 43rd 6th Floor, New York, NY 10036.

6. Upon information and belief, defendant requires its delivery truck drivers to

have and maintain valid New York State driver's licenses.

### **III.**

#### **GENERAL FACTUAL ALLEGATIONS**

7. As of 2015, the City of New York had installed over 1000 bicycle lanes in selected thoroughfares in all five boroughs. The NYC Department of Transportation has completed the City's ambitious goal of building 200 bike-lane miles in all five boroughs in just three years, nearly doubling the citywide on-street bike network while reshaping the city's streets to make them safer for everyone who uses them. <http://www.nyc.gov> (DOT website)

8. The City of New York and the Department of Transportation reviews and designs the infrastructure of each street so as to maintain usability for all people in the community. The inclusion of bicycle lanes and the associated laws protecting their operation are arrived at after a lengthy evaluation of the needs of all vehicles from cars to delivery vehicles to bicyclists

9. The installation of bicycle lanes has drastically improved safety for cyclists, pedestrians and motorists. For example:

On Ninth Avenue, injuries to all street users dropped by 58% after the bike lane was installed – that includes pedestrians, cyclists, and motorists.

(Source: DOT, “Measuring the Street,” 2012.

<http://www.nyc.gov/html/dot/downloads/pdf/2012-10-measuring-the-street.pdf>)

10. The City of New York has shown its support for increased bicycle lanes, “We have found when we put protected bike lanes in, it does make the roadway safer for all users — for cyclists, for pedestrians, and for motorists.” --- DOT Commissioner Polly Trottenberg

[\(http://newyork.cbslocal.com/2015/09/22/nyc-bike-lanes/\)](http://newyork.cbslocal.com/2015/09/22/nyc-bike-lanes/)

11. Bicycle commuting doubled between 2007 and 2011, and is on track to triple by the end of 2017. Because of its density, New York City is particularly suitable for bicycle commuting: ten per cent (10%) of auto trips are under one-half mile, twenty-two percent (22%) are under 1 mile and fifty-six percent (56%) are under 3 miles - distances readily served by bicycles.
12. The blocking of bike lanes by vehicles forces slow moving bicyclists to merge into fast flowing traffic at a point where part of the lane is also blocked causing an enhanced likelihood of vehicle and bicycle collision.
13. More than than eighty percent (80%) of bicycle fatalities in NYC were due to collisions with vehicles. Over a ten-year period, from 1996-2005 fewer than one percent (1%) of bicycle fatalities occurred in a marked bicycle lane. The risk of death and serious injury dramatically increase when bicyclists are forced out of marked lanes.
14. Despite the demonstrated success of bicycle lanes in reducing injuries and fatalities to cyclists, pedestrians and motorists, New York City, through its traffic control department, has failed to enforce regulations that make blocking a bicycle lane illegal, specifically, NYC Traffic Regulation [Section 4-08(e), that states:
  - (e) General no stopping zones (stopping, standing and parking prohibited in specified places). No person shall stop, stand, or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices, or at the direction of a law enforcement officer, or as otherwise provided in this subdivision:

(9) Bicycle Lanes. Within a designated bicycle lane, either by failing to issue parking violation tickets [summons] or permitting high volume ticketed companies drastically to reduce their fines.

15. Instead of rigorous enforcement of its traffic laws, New York City, through its Department of Finance, has implemented the “Delivery Solutions” program for delivery vans, including large volume delivery companies like defendant UPS, that permits businesses to pre-pay parking tickets at a fraction of the amount of the fines actually incurred. As a result, the deterrent effect of fines is eliminated. Large volume delivery companies have no incentive to obey traffic laws, particularly section 4-08 (e), (9), because bicycle lane parking violations tickets are “expungeable” under the program and incur no additional penalties.

16. The NYPD Traffic Bureau has proved unable and unwilling to enforce the law and protect cyclist safety.

17. The combination of low enforcement and relatively low penalty costs have resulted in the present situation with UPS trucks parking in bicycle lanes in which the policy of the company, whether written or simply understood by the drivers, is to park in bicycle lanes.

#### **IV. CLASS ACTION ALLEGATIONS**

18. Plaintiffs bring this action on behalf of themselves and proposed plaintiff class members under section 901 of the CPLR. The proposed class consists of:

[Insert description of class—regularly commuting cyclists who regularly have to ride into traffic due to defendant’s lane parking]

19. Plaintiffs estimate that the prospective class numbers [ ]. The joinder of all prospective members would be impracticable.

20. The action involves questions of fact common to all class members because all members are commuting cyclists who daily [other period?] risk serious bodily harm due to defendant's parking violations.

21. The action involves questions of law common to all class members because NYC Traffic Regulation 4-08(e)(9) applies to all defendant vehicles, regardless of circumstances. Defendant's appropriation of a public right of way affects all prospective class members who have all suffered an increased risk of bodily harm.

22. Plaintiffs claims are typical of the claims of prospective class members.

23. The representative parties will fairly and adequately protect the interest of the class. Plaintiffs have retained counsel competent and experienced in the prosecution of this type of action.

24. Questions of law and fact common to class members predominate over questions affecting only individual class members.

25. Class treatment of the claim set forth herein is superior to all other available methods for the fair and efficient adjudication of this controversy

26. Defendant has acted and refused to act on grounds that apply generally to class members so that injunctive relief is appropriate.

27. Under the circumstances, no one plaintiff has standing to seek relief from defendant's actions. See decision. Plaintiffs on behalf of all affected class members have standing as representative of the cycling public at large.

28. Defendant's acts and omissions are the direct and proximate cause of damage as described in the following claims for relief:

**V.  
CLAIM FOR RELIEF:  
PUBLIC NUISANCE**

29. Since September 2015, UPS trucks have intentionally blocked bicycle lanes throughout New York City. UPS has repeatedly been notified that its practices are unlawful and unreasonably dangerous for bicycle riders and other vehicles on New York City streets but has failed to change its practices and policies regarding bicycle lane parking when there are other, lawful alternatives, thereby causing harm to the public at large and specific harm to plaintiff.

30. Since September 2015, defendant's delivery vehicles intentionally park in and block the bicycle lanes from 110th - 125th streets on the avenues of Frederick Douglass Boulevard, Adam Clayton Powell, and Saint Nicholas Ave during all hours but particularly between the hours of 7 a.m to 10 a.m and 5 p.m. to 8 p.m., that is during regular morning and evening commuting hours.

31. [Inserts from other plaintiffs about routine parking along bike lane thoroughfares]

32. Since September 2015, defendant has knowingly and intentionally violated New York City Traffic Regulations [Section 4-08(e), (l)] by repeatedly parking its delivery vehicles in bicycle lanes.

33. Since September 2015, defendant has increased the risk of death and serious injury to cyclists, pedestrians and motorists by causing, permitting and allowing its drivers to

park its delivery vehicles in areas other than bicycle lanes.

34. Since September 2015, defendant has increased the risk of death and serious injury to cyclists, pedestrians and motorists by failing to instruct its drivers, supervisors and administrators that defendant's delivery vehicles should be parked in areas other than bicycle lanes.

35. Since September 2015, defendant has knowingly violated New York City traffic regulations and laws by failing to penalize its drivers, supervisors, administrators for parking delivery vehicles in designated bicycle lanes.

36. Since September 2015, defendant has participated in "Delivery Solutions" and had its Section 4-08 (e) violations expunged.

37. Since September 2015, plaintiff Alex Bell, and [ ] have attempted via numerous channels to address the situation, including but not limited to:

- i. calling 311 on numerous occasions, documented, with no result from law enforcement;
- ii. requesting defendant's drivers to park other than in cycling lane;
- iii. Notifying defendant at its corporate headquarters that delivery van drivers have repeatedly, and on documented instances, violated New York City Traffic Regulation 4-08 (e), (1)
- iv. Notifying defendant's Security Division of documented instances of violations of New York City Traffic



Regulation 4-08 (e), (1).

All of plaintiffs' requests have been ignored or met with hostility.

37. Despite notice of the violations and the ongoing danger to cyclists, defendant has failed to implement practices or educate drivers about legal parking methods.

38. In failing to cease its unlawful and unreasonable conduct defendant places the public and plaintiffs individually and in their representative capacity at risk of specific harm for which there is no remedy at law.

39. Defendant's conduct imperils the lives and safety of New York City bicyclists every day and will continue to threaten the health, safety and welfare of the cycling public, of which plaintiffs are the representatives, if unabated.

40. As a result of defendant's unreasonable conduct in causing and continuing to cause harm to plaintiffs in their individual and representative capacities on behalf of the cycling public, plaintiffs seek injunctive relieve abating the public nuisance caused by defendant including but not limited to:

- a) An order prohibiting defendant's drivers from parking their delivery vehicles in bicycle lanes, in violation of 4-08(e)(1);
- b) Training for drivers in lawful delivery practices in New York City;
- c) provisions relating to fines for violation of the order – and law-- payable to [Transportation Alternatives, Biking Solutions?] after submission of time stamped photographic documentation identifying defendant's specific vehicle and its traffic infringement.

41.

WHEREFORE, Plaintiffs respectfully requests this Court to enter judgment in its favor as follows:

- a) an order certifying the class defined herein, appointing undersigned counsel as class counsel, approving plaintiffs as class representatives, and [requiring notice to be provided to prospective class members at defendant's expense?]
- b) for injunctive relief enjoining defendant UPS from parking in designated cycling lanes in the City of New York;
- c) an order setting forth the terms of enforcement of the injunction;
- d) reasonable attorneys fees,

and for such other and further relief as this court may deem just and proper.

Respectfully submitted,

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