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17 *Attorneys for Plaintiff and the Proposed Class*

18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **OAKLAND DIVISION**

21 JAYSON HUNTSMAN, on behalf of  
22 themselves and all others similarly situated,

23 Plaintiffs,

24 v.

25 SOUTHWEST AIRLINES CO.,

26 Defendant.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**EXEMPT FROM FILING FEES UNDER  
38 U.S.C. § 4323(h)(1)**

27 Plaintiff Jayson Huntsman, on behalf of himself and other similarly situated individuals, by  
28 and through his attorneys, alleges as follows:

**INTRODUCTION**

1. This is a class action under the Uniformed Services Employment and  
Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301 *et seq.*, on behalf of current and  
former employees of Defendant Southwest Airlines Co. (“Southwest”) who took short-term  
military leave from Defendant Southwest but were not paid their normal wages or salaries by  
Defendant Southwest during periods of short-term military leave.



1 district courts of the United States with jurisdiction over any USERRA action brought against a  
2 private employer. Southwest is a private employer within the meaning of 38 U.S.C. § 4303(4)(A)  
3 because it “pays salary or wages for work performed or [] has control over employment  
4 opportunities.”

5 7. Venue is proper in this District under 38 U.S.C. § 4323(c)(2), because Southwest,  
6 “the private employer of the person” who has filed this action, “maintains a place of business” in  
7 this District at the Oakland International Airport and the San Francisco International Airport,  
8 employing thousands of workers at those airports. The Oakland International Airport is one of  
9 Southwest’s eleven “operating bases” or “hubs” and is one of Southwest’s top ten airports by daily  
10 departures. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b)(2), as a  
11 substantial part of the events giving rise to the claims in this action occurred in this District.

12 **INTRA-DISTRICT ASSIGNMENT**

13 8. Assignment of this case to the Oakland Division of this District is proper because a  
14 substantial part of the events or omissions giving rise to the claims in this action occurred in  
15 Alameda County, as the Oakland International Airport is Southwest’s operating base or hub in the  
16 San Francisco Bay Area, the Oakland International Airport is one of Southwest’s top ten airports  
17 by departures, and the vast majority of Plaintiff’s flights originate in the Oakland International  
18 Airport.

19 **PARTIES**

20 9. Plaintiff Jayson Huntsman is and has been employed as a pilot by Southwest since  
21 February 2012. Huntsman serves as a First Officer flying 737 passenger airplanes for Southwest.  
22 The vast majority of Huntsman’s flights originate in the Oakland International Airport, which is  
23 located in this District. Following over 12 years of active duty service in the Air Force, Huntsman  
24 joined the Air Force Reserves in 2012. Since the time that Huntsman began working for  
25 Southwest in February 2012, Huntsman has routinely taken short-term military leave to serve in  
26 the Air Force Reserves. Huntsman resides in Sacramento, California.

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1 efforts to recruit, hire and employ veterans. Based on this information, there are at least thousands  
2 of former and current Southwest employees who are members of the proposed Class.

3 13. Southwest currently flies to 99 locations in the United States and 10 other  
4 countries. Based on the varied locations of Southwest's operations through the United States, the  
5 members of the Class are geographically dispersed across the country.

6 **Commonality**

7 14. The central question in this case, which will generate a common answer, is whether  
8 Southwest's policy or practice of failing to pay its employees' wages and/or salaries during  
9 periods of short-term military leave violates USERRA, 38 U.S.C. § 4316(b).

10 15. Plaintiff's claims raise subsidiary common questions, including the following:

11 (a) whether Southwest maintains a policy or practice of refusing to pay its employees when  
12 they take short-term military leave, while paying employees when they take other forms of  
13 comparable leave such as jury duty, bereavement leave, and sick leave;

14 (b) whether under USERRA § 4316(b) short-term military leave is comparable to jury  
15 duty, bereavement leave, sick leave, and other forms of leave for which Southwest has  
16 provided wages or salaries to its employees;

17 (c) what relief should be awarded, including injunctive and monetary relief; and

18 (d) whether Southwest's violations of USERRA were willful, such that it should be  
19 required to pay liquidated damages to Plaintiff and the Class Members.

20 16. Because Southwest adopted and applied a uniform policy or practice of not paying  
21 employees when they take short-term military leave, answers to these questions will produce  
22 common answers for all members of the Class.

23 17. As Southwest acted in a uniform, systematic manner with respect to the Class, all  
24 members of the Class suffered the same type of injury based on a single policy or practice, and  
25 resolving the claims of the Class will be based on common legal and factual questions. Because  
26 Southwest's policy or practice of failing to pay employees when they take short-term military  
27 leave, while paying employees when they take other comparable forms of leave, was applied  
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1 uniformly to the Class, the issues relating to the relief that Class Members should receive are also  
2 common. To the extent that the policy or practice is found to have violated USERRA, the  
3 determination of the amounts to be paid to members of the Class will be formulaic and can be  
4 readily calculated.

5 **Typicality**

6 18. Plaintiff's claims are typical of the other members of the Class, because the claims  
7 challenge a uniform policy or practice by which Southwest failed to pay employees when they  
8 take short-term military leave, while paying employees when they take other comparable forms of  
9 leave, and because all Class Members all were injured by the same uniform policy or practice.

10 **Adequacy**

11 19. Plaintiff will fairly and adequately protect the interests of other members of the  
12 Class.

13 20. Plaintiff does not have any conflict with any other member of the Class. Plaintiff  
14 understands his obligations as a class representative, has already undertaken steps to fulfill them,  
15 and is prepared to continue to fulfill his duties as class representative.

16 21. Southwest has no unique defenses against the Plaintiff that would interfere with  
17 Plaintiff's representation of the Class.

18 22. Plaintiff is represented by counsel with significant experience in prosecuting class  
19 action litigation, including class action litigation involving rights and benefits of servicemembers  
20 under USERRA.

21 **Rule 23(b)(1)**

22 23. This action can be maintained as a class action under Rule 23(b)(1)(A) of the  
23 Federal Rules of Civil Procedure. The central question is whether the uniform policy or practice  
24 by which Southwest failed to pay its employees when they take short-term military leave, while  
25 paying employees when they take other comparable forms of non-military leave, violates  
26 USERRA. As a result, prosecution of separate claims by individual members would create the  
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1 risk of inconsistent or varying adjudications that would establish incompatible standards of  
2 conduct.

3         24. This action can be maintained as a class action under Rule 23(b)(1)(A) of the  
4 Federal Rules of Civil Procedure. As a practical matter, resolution of whether Defendant was  
5 required under USERRA to pay employees when they take short-term military leave when it also  
6 pays employees when they take other comparable forms of non-military leave would be  
7 dispositive of that matter for other employees even if they were not parties to this litigation and  
8 would substantially impair or impede their ability to protect their interests if they are not made  
9 parties to this litigation by being included in the Class.

10 **Rule 23(b)(2)**

11         25. This action can also be maintained as a class action under Rule 23(b)(2), as  
12 Southwest has acted and/or failed to act on grounds generally applicable to the Class, making  
13 declaratory and injunctive relief appropriate with respect to the Class as a whole.

14         26. Southwest maintained a uniform policy or practice as to all members of the Class.  
15 Southwest is alleged to have violated USERRA by refusing to pay employees when they take  
16 short-term military leave, while paying employees when they take other comparable forms of non-  
17 military leave. As such, Southwest has acted or refused to act on grounds that apply generally to  
18 the Class. As a result, final declaratory and injunctive relief is appropriate respecting the Class as  
19 a whole.

20         27. The relief sought consists primarily of (a) a declaration establishing that Southwest  
21 has violated USERRA by failing to pay employees when they take short-term military leave, (b)  
22 an order requiring Southwest to pay the Class Members the wages or salaries that they should  
23 have received during their periods of short-term military leave, consistent with the requirements of  
24 USERRA, and (c) an order requiring Southwest to comply with USERRA § 4316(b) in the future.  
25 The monetary relief sought either flows from and/or is incidental to the declaratory relief sought,  
26 as it flows directly from the ordering of such declaratory relief and can be calculated in a simple,  
27 objective, and mechanical manner. Specifically, the amount owed to the Class Members can be  
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1 calculated by identifying the wages or salaries the Class Members would have received during  
2 their periods of short-term military leave, *i.e.*, their deemed earnings.

3 **Rule 23(b)(3)**

4 28. This action can also be maintained as a class action under Rule 23(b)(3) of the  
5 Federal Rules of Civil Procedure, because the questions of law and fact common to the members  
6 of the Class predominate over questions affecting only individual members, and a class action is  
7 superior to other available methods for the fair and efficient resolution of this controversy.

8 29. The common questions of law and fact concern whether Southwest's policy of  
9 failing to pay employees when they take short-term military leave, while paying employees when  
10 they take other comparable forms of leave, violated USERRA. As the members of the Class were  
11 all employees of Southwest who took short-term military leave and their compensation was  
12 affected by those violations, common questions related to Southwest's liability will necessarily  
13 predominate over any individual questions. As the calculation of Class Members' wages and/or  
14 salaries during periods of short-term military leave can be readily calculated based on their wage  
15 and/or salary rates, and relief primarily consists of a declaration and an order requiring Southwest  
16 to pay the Class Members the wages or salaries they are owed consistent with USERRA, common  
17 questions as to remedies will likewise predominate over any individual issues.

18 30. A class action is superior to other available methods for the fair and efficient  
19 resolution of this controversy. The common issues will be efficiently resolved in a single class  
20 proceeding rather than multiple proceedings. Class certification is a superior method of  
21 proceeding in this action, because it will obviate the need for unduly duplicative litigation that  
22 might result in inconsistent judgments about Defendant's obligations under USERRA and of the  
23 remedy that should be provided under USERRA.

24 31. The following additional factors set forth in Rule 23(b)(3) also support  
25 certification.

- 26 a) The members of the Class have a strong interest in a unitary adjudication of the issues  
27 presented in this action for the reasons that this case should be certified under Rule  
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1 23(b)(1). Additionally, many members of the Class are unlikely to have sufficient  
2 damages to justify pursuing an individual action in federal court or to obtain counsel to  
3 pursue an individual action, but all Class Members would benefit from a class action  
4 that obtains relief for all members of the Class.

5 b) No other litigation concerning Plaintiff's claim that Southwest should have paid its  
6 employees when they take short-term military leave has been filed by any other  
7 members of the Class.

8 c) This is an appropriate forum for these claims because, among other reasons,  
9 jurisdiction and venue are proper, Oakland is a hub for Southwest, Oakland is one of  
10 Southwest's top ten airports by departures, and Southwest has substantial operations in  
11 San Francisco, and therefore a significant portion of the Classes work and/or reside in  
12 this District. In addition, in another action in this District, Plaintiff Huntsman and  
13 Southwest recently litigated and settled another class action that involved Plaintiff's  
14 claim that he and other Southwest pilots should have accrued sick leave when they  
15 took short-term military leave.

16 d) There are no difficulties in managing this case as a class action.

17 **FACTUAL ALLEGATIONS**

18 **Southwest's Policy and Practice Regarding Military Leave**

19 32. When a servicemember employee of Southwest takes military leave, including  
20 short-term military leave (*i.e.*, defined by Southwest as leave that lasts no more than 14 days),  
21 Southwest does not continue to pay the employee's wages and/or salary. However, when an  
22 employee of Southwest is required to be absent from his or her employment at Southwest for any  
23 one of a number of non-military reasons, including that the employee is required to perform jury  
24 service, has fallen ill, or needs to address the death of a family member, Southwest continues to  
25 pay the employee's wages and/or salary during his or her absence.

26 33. Since at least October 10, 2004 Defendant has maintained a policy or practice of  
27 failing to pay employees their regular wages or salaries when they take short-term military leave,  
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1 while continuing to pay employees their regular wages or salaries when they take other  
2 comparable forms of non-military leave, such as jury duty, bereavement leave, and/or sick leave.

3 **USERRA Required Southwest to Provide the Same Rights and Benefits to Employees Who**  
4 **Took Short-Term Military Leave as Employees Who Took Comparable Forms of Leave**

5 34. USERRA § 4316(b)(1) provides in relevant part that “a person who is absent from  
6 a position of employment by reason of service in the uniformed services shall be”

7 (A) deemed to be on furlough or leave of absence while performing such service; and

8 (B) entitled to such other rights and benefits not determined by seniority as are

9 generally provided by the employer of the person to employees having similar

10 seniority, status, and pay who are on furlough or leave of absence under a contract,

11 agreement, policy, practice, or plan in effect at the commencement of such service or

12 established while such person performs such service.

13 38 U.S.C. § 4316(b)(1).

14 35. Accordingly, if an employer provides non-seniority rights and benefits to similarly  
15 situated employees, including compensation, USERRA § 4316(b)(1) requires the employer to  
16 provide the same rights and benefits to employees during their military leave. *See id.*; 20 C.F.R. §  
17 1002.150(a). As the Department of Labor’s implementing regulations state, the “most significant  
18 factor to compare” two types of leave to determine if they are a “comparable form of leave” under  
19 USERRA is “the duration of the leave.” 20 C.F.R. § 1002.150(b). In addition, “other factors such  
20 as the purpose of the leave and the ability of the employee to choose when to take the leave should  
21 also be considered.” *Id.*

22 **Southwest Fails to Pay Employees When They Took Short-Term Military Leave**

23 36. Pursuant to Southwest’s policy or practice of refusing to pay employees their  
24 regular wages or salaries during periods of short-term military leave, Southwest failed to pay  
25 Plaintiff and the members of the Class their regular wages or salaries during each period in which  
26 they took short-term military leave.

1           37.     Upon information and belief, since at least October 10, 2004, Southwest paid its  
2 employees their regular wages or salaries while they were on leave from their employment with  
3 Southwest because of jury duty, bereavement leave, and sick leave.

4           38.     Jury duty, sick leave, and bereavement leave are comparable to short-term military  
5 leave in terms of the duration of these forms of leave and the involuntary nature of the leave.

6           39.     For employees of Defendant, the duration of jury duty leave, sick leave,  
7 bereavement leave is comparable to the duration of short-term military leave. Each of these types  
8 of leaves most commonly lasts several days, and usually not more than a couple of weeks.

9           40.     In the case of jury duty, sick leave, bereavement leave, and short-term military  
10 leave, the leave is ordinarily involuntary. Jury duty is required by federal, state, or local law. Sick  
11 leave occurs due to a short-term, involuntary medical condition that prevents the employee from  
12 working. And short-term military leave occurs due to an employee's legal obligation to perform  
13 military service in the Armed Forces.

14           41.     In addition, the purpose of jury duty is the same as short term military leave: to  
15 perform service for our government and to engage in public service for the benefit of our society.

16           42.     Southwest's policy or practice of refusing to pay employees their wages or salaries  
17 when they take short-term military leave, while continuing to pay employees their wages or  
18 salaries when they take other comparable forms of non-military leave, violates USERRA § 4316,  
19 because Defendant denies its employees a non-seniority right or benefit that it provides to  
20 similarly situated employees who are on furlough or leave of absence. 38 U.S.C. § 4316(b).

21           43.     This policy has unlawfully denied Southwest's employees the regular wages or  
22 salaries that they should receive when they engage in short-term military leave compared to  
23 employees who continue to receive their regular wages or salaries when they engage in jury duty,  
24 bereavement leave, sick leave, or other comparable forms of non-military leave.

25 **Plaintiff's USERRA-Protected Military Leave**

26           44.     Since his employment at Southwest began in 2012, Plaintiff took dozens of periods  
27 of short-term military leave, including in 2012, 2013, 2014, 2015, 2016, 2017, and 2018, that  
28

1 qualified as service in the uniformed services within the meaning of USERRA, 38 U.S.C.  
2 § 4303(13).

3 45. During the time that Plaintiff took short-term military leave, Southwest did not pay  
4 Plaintiff his regular wages.

5 **COUNT I**

6 **VIOLATION OF USERRA, 38 U.S.C. § 4316(b)(1)**

7 46. Plaintiff hereby repeats and incorporates the allegations contained in the foregoing  
8 paragraphs as if fully set forth herein.

9 47. USERRA, 38 U.S.C. § 4316(b)(1), provides that “a person who is absent from a  
10 position of employment by reason of service in the uniformed services shall be (A) deemed to be  
11 on furlough or leave of absence while performing such service; and (B) entitled to such other  
12 rights and benefits not determined by seniority as are generally provided by the employer of the  
13 person to employees having similar seniority, status, and pay who are on furlough or leave of  
14 absence under a contract, agreement, policy, practice, or plan in effect at the commencement of  
15 such service or established while such person performs such service.”

16 48. The U.S. Department of Labor’s regulations that implement and interpret USERRA  
17 § 4316(b)(1), provide that “[i]f the non-seniority benefits to which employees on furlough or leave  
18 of absence are entitled vary according to the type of leave, the employee must be given the most  
19 favorable treatment accorded to any comparable form of leave when he or she performs service in  
20 the uniformed services.” 20 C.F.R. § 1002.150(b). The “duration of leave” “may be the most  
21 significant factor” to determine whether two forms of leave are comparable, and other relevant  
22 factors include “the purpose of the leave and the ability of the employee to choose when to take  
23 the leave.” *Id.*

24 49. As described above, Southwest has maintained a policy or practice of failing to pay  
25 employees their regular wages or salaries when they take short-term military leave, while  
26 continuing to pay employees their wages or salaries when they take other comparable forms of  
27 non-military leave such as jury duty, bereavement leave, and sick leave.

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1 C. Declare that Southwest must pay its employees' regular wages, salaries, or  
2 compensation during periods of short-term military leave;

3 D. Require Southwest to comply with USERRA § 4316(b) by paying Plaintiff and the  
4 Class Members their regular wages, salaries, and/or compensation during periods of short-term  
5 military leave in the future;

6 E. Require Southwest to pay Plaintiff and the Class Members the wages, salaries,  
7 and/or compensation they should have received for periods of short-term military leave, as well as  
8 any non-elective 401(k) contributions that should have been made as a percentage of employees'  
9 wages or salaries, in accordance with USERRA and the Court's declaration;

10 F. Order Southwest to pay all members of the Class liquidated damages in an amount  
11 to be determined at trial, 38 U.S.C. § 4323(d)(1)(C);

12 G. Award pre-judgment and post-judgment interest on any monetary relief awarded or  
13 required by order of this Court;

14 H. Require Defendant to pay attorneys' fees, expert witness fees, litigation expenses  
15 and costs pursuant to 38 U.S.C. § 4323(h) and/or order the payment of reasonable fees and  
16 expenses in this action to Plaintiff's Counsel based on the common benefit and/or common fund  
17 doctrine out of any money or benefit recovered for the Class in this Action; and

18 I. Grant such other and further relief as the Court deems proper, just and/or equitable.

19 **JURY TRIAL DEMAND**

20 Pursuant to Federal Rule of Civil Procedure 38 or any similar rule or law, Plaintiff  
21 demands a trial by jury for all causes of action and issues for which trial by jury is available.

22 Dated: January 7, 2019

Respectfully submitted,

23  
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