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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**

12 JUSTIN BAKER, on behalf of himself
13 and all others similarly situated,
14 **Plaintiff,**

15 v.

16 UNITED PARCEL SERVICE, INC., a
Delaware corporation, and UNITED
17 PARCEL SERVICE, INC., an Ohio
corporation,
18 **Defendants.**

Case No. 21-cv-00114-SMJ

**AMENDED COMPLAINT –
CLASS ACTION**

JURY TRIAL DEMANDED

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

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1 Plaintiff Justin Baker, on behalf of himself and other similarly situated
2 individuals, by and through his attorneys, alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action under the Uniformed Services Employment and
5 Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301 *et seq.*, on behalf of
6 current and former employees of United Parcel Service, Inc., an Ohio corporation
7 (“UPS-Ohio”), and/or United Parcel Service, Inc., a Delaware corporation (“UPS-
8 Delaware”) (collectively, “UPS” or “Defendants”), who took short-term military
9 leave (i.e., military leave that lasts 14 consecutive days or fewer) from UPS but
10 were not paid their normal wages or salaries by UPS during periods of short-term
11 military leave.

12 2. Since at least October 10, 2004, UPS has had a policy and practice of
13 continuing to pay its employees’ wages or salaries during certain leaves of absence
14 from their employment with UPS, but not providing wages or salaries to
15 employees when they take short-term military leave. For example, UPS has paid
16 and continues to pay full or partial wages or salaries to employees who take jury
17 duty leave, sick leave, and bereavement leave, among other types of leave, but not
18 to employees who have taken short-term military leave.

19 3. USERRA requires military leave to be treated no less favorably than
20 any other forms of comparable leave that an employer provides to its employees.
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1 By paying employees who take jury duty leave, sick leave, bereavement leave, and
2 other comparable forms of leave, UPS was required by USERRA to do the same
3 for its employees who take short-term military leave.

4 4. By continuing to pay employees their wages and salaries during
5 periods of jury duty, sick leave, bereavement leave, and other comparable forms of
6 leave, while refusing to offer wages or salaries to employees during their short-
7 term military leave, UPS violated USERRA, 38 U.S.C. § 4316(b).

8 5. This action seeks a declaration that UPS violated USERRA by failing
9 to pay Plaintiff and members of the proposed Class during their periods of short-
10 term military leave, an order requiring UPS to pay its employees during their short-
11 term military leave in the future so long as UPS continues to provide pay to
12 employees who take other forms of comparable leave, and an order requiring UPS
13 to pay Plaintiff and members of the Class the wages or salaries they should have
14 earned during their periods of short-term military leave, consistent with the
15 requirements of USERRA.

16 **JURISDICTION AND VENUE**

17 6. The Court has subject matter jurisdiction over this action under 28
18 U.S.C. § 1331, because this action arises under USERRA, a federal law. This
19 Court also has subject matter jurisdiction over the USERRA claim pursuant to 38
20 U.S.C. § 4323(b)(3), which provides the district courts of the United States with
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1 jurisdiction over any USERRA action brought against a private employer. UPS is
2 a private employer within the meaning of 38 U.S.C. § 4303(4)(A) because it “pays
3 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
6 UPS, “the private employer of the person” who has filed this action, “maintains a
7 place of business” in this District at its Spokane facility. Venue is also proper in
8 this District pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events
9 giving rise to the claims in this action occurred in this District.

10 **Parties**

11 ***Plaintiff Justin Baker***

12 8. Plaintiff Justin Baker resides in Spokane, Washington. He is and has
13 been employed as a full-time package driver by UPS at its Spokane, Washington
14 facility since approximately June 18, 2007. Mr. Baker has also served in the Army
15 Reserve since 2014, having attained the rank of Sergeant. Since 2015, while
16 employed by UPS, Plaintiff has routinely taken short-term leave every year to
17 engage in qualified military service to perform his military obligations in the Army
18 Reserve.

19 9. Plaintiff was hired by Defendant UPS-Ohio and was paid by UPS-
20 Ohio throughout the course of his employment with UPS.

1 ***Defendant UPS-Delaware***

2 10. Defendant UPS-Delaware, a holding company, through its
3 subsidiaries operates the world’s largest package delivery company, providing
4 delivery to more than 220 countries and territories. It is an employer within the
5 meaning of 38 U.S.C. § 4303(4)(A) with its principal place of business located at
6 55 Glenlake Parkway, N.E., Atlanta, Georgia. UPS-Delaware and its subsidiaries
7 have more than 500,000 employees worldwide, and they have employed thousands
8 of individuals who took short-term military leave from their employment at UPS
9 since 2004. *See Joining Forces: A Win-Win for Veterans and Employers*, United
10 Parcel Service, Inc., [https://www.ups.com/us/en/services/resource-center/UPS-](https://www.ups.com/us/en/services/resource-center/UPS-Offers-Veterans-Career-Networking-Opportunities.page)
11 [Offers-Veterans-Career-Networking-Opportunities.page](https://www.ups.com/us/en/services/resource-center/UPS-Offers-Veterans-Career-Networking-Opportunities.page) (last visited Jan. 12,
12 2021).

13 11. UPS-Delaware has “control over employment opportunities” at its
14 subsidiary UPS-Ohio, because, upon information and belief, its Board of Directors
15 and Board committees oversee labor relations, contract negotiations, compensation
16 and benefits, and other employment matters for employees of its subsidiaries
17 including UPS-Ohio. UPS-Delaware’s control, upon information and belief,
18 extends to participating in collective bargaining with unions that represent UPS
19 employees, including employees of UPS-Ohio.

1 ***Defendant UPS-Ohio***

2 12. Defendant UPS-Ohio is a subsidiary of UPS-Delaware. UPS-Ohio is
3 an employer within the meaning of 38 U.S.C. § 4303(4)(A) with its principal place
4 of business located at 55 Glenlake Parkway, N.E., Atlanta, Georgia. At all times
5 during Plaintiff's employment with UPS, UPS-Ohio paid Plaintiff's employment
6 compensation and controlled his work opportunities, including the rights and
7 benefits that he received during periods of short-term military leave.

8 **CLASS ACTION ALLEGATIONS**

9 13. Plaintiff brings this action as a class action pursuant to Rule 23 of the
10 Federal Rules of Civil Procedure on behalf of the following Class:

11 Current and former employees of UPS (including any of its
12 subsidiaries) who, during their employment with Defendants, took
13 short-term military leave (14 days or less) from their employment
14 with UPS and during such period of short-term military leave did not
15 receive the regular wages or salary that they would have earned had
16 they continued to work their ordinary work schedules, from October
17 10, 2004 through the date of judgment in this action.

18 Excluded from the Class are all former or current employees who previously
19 reached settlements with or judgments against UPS in their individual USERRA
20 actions concerning UPS's failure to pay compensation to employees during periods
21 of short-term military leave.

22 **Impracticality of Joinder**

23 14. The Class is so numerous that joinder of all members is impracticable.

1 15. Since 2004, UPS has employed at least several thousand employees
2 who took short-term military leave from UPS. Accordingly, there are at least
3 several thousand members of the proposed Class.

4 16. The members of the Class are geographically dispersed across the
5 country. UPS currently has more than 1,800 operating facilities and five air hubs
6 scattered throughout the United States.

7 **Commonality**

8 17. The central question in this case that will generate a common answer
9 as to the Class is whether UPS's policy or practice of failing to provide paid leave
10 or pay to employees during periods of short-term military leave violates USERRA
11 § 4316(b).

12 18. Plaintiff's claims raise subsidiary common questions, including the
13 following:

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

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

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

2 and

3 (d) whether UPS's violations of USERRA were willful, such that it should

4 be required to pay liquidated damages to Plaintiff and the Class Members.

5 19. Because UPS adopted and applied a uniform policy or practice of not
6 paying employees when they take short-term military leave, answers to these
7 questions will produce common answers for all members of the Class.

8 20. As UPS acted in a uniform, systemic manner with respect to the Class,
9 all members of the Class suffered the same type of injury based on a single policy
10 or practice, and resolving the claims of the Class will be based on common legal
11 and factual questions. Because UPS's policy or practice of failing to pay
12 employees when they take short-term military leave, while paying employees when
13 they take other comparable forms of leave, was applied uniformly to the Class, the
14 issues relating to the relief Class Members should receive are also common. To
15 the extent that the policy or practice is found to have violated USERRA, the
16 determination of the amounts to be paid to members of the Class will be formulaic
17 and can be readily calculated.

18 **Typicality**

19 21. Plaintiff's claims are typical of the other members of the Class,
20 because the claims challenge a uniform policy or practice by which UPS failed to
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1 pay employees when they take short-term military leave, while paying employees
2 when they take other comparable forms of leave, and because all Class Members
3 were injured by the same uniform policy or practice.

4 **Adequacy**

5 22. Plaintiff will fairly and adequately protect the interests of other
6 members of the Class.

7 23. Plaintiff does not have any conflict with any other member of the
8 Class. Plaintiff understands his obligations as a class representative, has already
9 undertaken steps to fulfill them, and is prepared to continue to fulfill his duties as
10 class representative.

11 24. UPS has no unique defenses against the Plaintiff that would interfere
12 with Plaintiff's representation of the Class.

13 25. Plaintiff is represented by counsel with significant experience in
14 prosecuting class action litigation, including class action litigation involving rights
15 and benefits of servicemembers.

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

17 26. The claim can be certified as a class action under Rule 23(b)(3) of the
18 Federal Rules of Civil Procedure because the questions of law and fact common to
19 the members of the Class predominate over questions affecting only individual
20 members and a class action is superior to other available methods for the fair and
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1 efficient resolution of this controversy.

2 27. The common questions of law and fact concern whether UPS's policy
3 of failing to pay employees when they take short-term military leave, while paying
4 employees when they take other comparable forms of leave, violated USERRA.

5 As the members of the Class were all employees of UPS who took short-term
6 military leave and their compensation was affected by those violations, common
7 questions related to UPS's liability will necessarily predominate over any
8 individual questions. As the calculation of Class Members' wages and/or salaries
9 during periods of short-term military leave can be readily calculated based on their
10 wage and/or salary rates, and relief primarily consists of a declaration and an order
11 requiring UPS to pay the Class Members the wages or salaries they are owed
12 consistent with USERRA, common questions as to remedies will likewise
13 predominate over any individual issues.

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

1 leave”), UPS has not provided paid leave or pay to the employee during such short-
2 term military leave. When an employee of UPS has been required to be absent
3 from his or her employment at UPS for any one of a number of non-military
4 reasons, including that the employee needs to address the death of a family
5 member or is ill, however, UPS has provided paid leave or the employee’s full
6 wages and/or salary during his or her leave of absence. And when a UPS
7 employee has been absent from work because he or she is required to perform jury
8 service, UPS has paid the employee the difference between his or her
9 compensation from UPS and any stipend or compensation that employees receive
10 for their jury duty service (i.e., differential pay).

11 **USERRA Required UPS to Provide the Same Rights and Benefits to**
12 **Employees Who Took Short-Term Military Leave as Employees Who Took**
13 **Comparable Forms of Leave, Including Paid Leave or Pay**

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

- 17 (A) deemed to be on furlough or leave of absence while performing
18 such service; and
- 19 (B) entitled to such other rights and benefits not determined by
20 seniority as are generally provided by the employer of the person
21 to employees having similar seniority, status, and pay who are on
furlough or leave of absence under a contract, agreement, policy,
practice, or plan in effect at the commencement of such service or
established while such person performs such service.

1 38 U.S.C. § 4316(b)(1).

2 32. Accordingly, if an employer provides non-seniority rights and benefits
3 to similarly situated employees who take comparable non-military leave, including
4 paid leave and pay, USERRA § 4316(b)(1) requires the employer to provide those
5 same “rights and benefits” to employees during their periods of military leave. *Id.*;
6 *see also id.* § 4303(2); 20 C.F.R. § 1002.150(a).

7 33. As the Department of Labor’s implementing regulations state, the
8 “most significant factor to compare” two types of leave to determine if they are a
9 “comparable form of leave” under USERRA is “the duration of the leave.” 20
10 C.F.R. § 1002.150(b). In addition, “other factors such as the purpose of the leave
11 and the ability of the employee to choose when to take the leave should also be
12 considered.” *Id.*

13 **UPS Fails to Pay Employees When They Take Short-Term Military Leave**

14 34. Pursuant to UPS’s policy or practice of refusing to provide paid leave
15 to employees during periods of short-term military service, UPS failed to pay
16 Plaintiff and the members of the Class paid leave during each period in which they
17 took short-term military leave since October 10, 2004.

18 35. Upon information and belief, throughout the relevant time period,
19 UPS provided fully paid leave or full pay to employees while they were on leave
20 from their employment with UPS for bereavement or illness, and it provided
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1 differential pay to employees while they were on leave from their employment
2 with UPS because of jury duty.

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

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

10 38. Jury duty leave, sick leave, and bereavement leave, like short-term
11 military leave, are ordinarily involuntary. Jury duty is required by federal, state, or
12 local law. Bereavement leave occurs due to the death of a family member. Sick
13 leave is triggered by a medical condition. And short-term military leave occurs
14 due to an employee's legal obligation to perform military service in the Armed
15 Forces.

16 39. In addition, the purpose of jury duty is the same as short-term military
17 leave: to perform service for our government and to engage in public service for
18 the benefit of our society.

19 40. UPS's policy or practice of refusing to provide paid leave or pay to
20 employees when they take short-term military leave, while continuing to provide
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1 paid leave or pay to employees when they take other comparable forms of non-
2 military leave, violates USERRA § 4316(b), because UPS denies its employees the
3 same non-seniority “rights and benefits” that it provides to similarly situated
4 employees who are on furlough or leave of absence. 38 U.S.C. § 4316(b).

5 41. This policy has unlawfully denied UPS’s employees the pay that they
6 should have received when they engaged in short-term military leave compared to
7 employees who received paid leave or pay when they engage in jury duty, sick
8 leave, bereavement leave, or other, comparable forms of non-military leave.

9 **Plaintiff’s USERRA-Protected Military Leave**

10 42. Since his employment at UPS began in 2007, Plaintiff regularly took
11 periods of short-term military leave every year from 2010 to 2020 that qualified as
12 service in the uniformed services under 38 U.S.C. § 4303(13).

13 43. During the time that Plaintiff took short-term military leave, UPS did
14 not pay Plaintiff his regular wages.

15 **COUNT I**
16 **VIOLATION OF USERRA, 38 U.S.C. § 4316(b)(1)**
17 **(On Behalf of the Class Against Defendants)**

18 44. Plaintiff hereby repeats and incorporates the allegations contained in
19 the foregoing paragraphs as if fully set forth herein.

20 45. USERRA, 38 U.S.C. § 4316(b)(1), provides that “a person who is
21 absent from a position of employment by reason of service in the uniformed

1 services shall be (A) deemed to be on furlough or leave of absence while
2 performing such service; and (B) entitled to such other rights and benefits not
3 determined by seniority as are generally provided by the employer of the person to
4 employees having similar seniority, status, and pay who are on furlough or leave of
5 absence under a contract, agreement, policy, practice, or plan in effect at the
6 commencement of such service or established while such person performs such
7 service.”

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

17 47. As described above, UPS has maintained a policy or practice of
18 failing to pay employees their regular wages or salaries when they take short-term
19 military leave, while continuing to pay employees their wages or salaries when
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1 they take other comparable forms of non-military leave such as jury duty, sick
2 leave, and bereavement leave.

3 48. As described above, these forms of leave – jury duty, sick leave, and
4 bereavement leave – are comparable to short-term military leave in terms of the
5 duration, purpose, and/or the ability of the employee to determine whether to take
6 the leave.

7 49. By adopting and applying a policy or practice of not providing
8 employees who take short-term military leave paid leave or pay, UPS denied
9 Plaintiff and the Class the same “rights and benefits,” namely paid leave, pay,
10 wages, and/or salaries, that UPS provided to employees who take other,
11 comparable forms of non-military leave, including jury duty leave, sick leave, and
12 bereavement leave. Thus, UPS failed to provide employees on short-term military
13 leave the most favorable treatment that UPS afforded employees on other,
14 comparable forms of non-military leave. By doing so, UPS violated and continues
15 to violate USERRA § 4316(b)(1).

16 50. Due to UPS’s failure to comply with USERRA § 4316(b)(1), Plaintiff
17 and other members of the Class have received less paid leave, pay, and/or
18 compensation than they would have received had UPS complied with USERRA
19 and the Department of Labor’s regulations.

1 E. Order UPS to pay all members of the Class liquidated damages in an
2 amount to be determined at trial pursuant to 38 U.S.C. § 4323(d)(1)(C);

3 F. Award pre-judgment and post-judgment interest on any monetary
4 relief awarded or required by order of this Court;

5 G. Require UPS to pay attorneys' fees, expert witness fees, litigation
6 expenses and costs pursuant to 38 U.S.C. § 4323(h) and/or order the payment of
7 reasonable fees and expenses in this action to Plaintiff's Counsel on the basis of
8 the common benefit and/or common fund doctrine out of any money or benefit
9 recovered for the Class in this Action; and

10 H. Grant such other and further relief as the Court deems proper, just,
11 and/or equitable.

12 **JURY TRIAL DEMAND**

13 Plaintiff demands a trial by jury for all causes of action and issues for which
14 trial by jury is available.

1 Dated: August 2, 2021

Respectfully submitted,

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** *pro hac vice* application
forthcoming

*Attorneys for Plaintiff and the Proposed
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CERTIFICATE OF SERVICE

I certify that on August 2, 2021, I caused the foregoing Amended Class Action Complaint to be electronically filed with the Clerk of the Court using the CM/ECF system, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system.

/s/ Michael J. Scimone
Michael J. Scimone

*Attorney for Plaintiff and the
Proposed Class*