

1 Jahan C. Sagafi (Cal. State Bar No. 224887)  
OUTTEN & GOLDEN LLP  
2 One Embarcadero Center, 38th Floor  
San Francisco, California 94111  
3 Telephone: (415) 638-8800  
4 Facsimile: (415) 638-8810  
5 Email: jsagafi@outtengolden.com

Peter Romer-Friedman (*pro hac vice  
motion forthcoming*)  
OUTTEN & GOLDEN LLP  
601 Massachusetts Avenue NW,  
Second Floor West Suite  
Washington, D.C. 20001  
Telephone: (202) 847-4400  
Facsimile: (202) 847-4410  
Email: prf@outtengolden.com

6  
7 Thomas G. Jarrard (*pro hac vice motion  
forthcoming*)  
8 LAW OFFICE OF  
THOMAS JARRARD PLLC  
9 1020 N. Washington Dt.  
Spokane, WA 99201  
10 Telephone: (425) 239-7290  
11 Facsimile: (509) 326-2932  
12 Email: Tjarrard@att.net

Matthew Z. Crotty (*pro hac vice motion  
forthcoming*)  
CROTTY & SON LAW FIRM, PLLC  
905 W. Riverside Ave, Suite 409  
Spokane, WA 99201  
Telephone: (509) 850-7011  
Email: matt@crottyandson.com

13 *Attorneys for Plaintiff and the Proposed Class*

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

16 JAYSON HUNTSMAN, on behalf of himself  
and all others similarly situated,

17 Plaintiffs,

18 v.

19  
20 SOUTHWEST AIRLINES CO.,

21 Defendant.

**CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED  
EXEMPT FROM FILING FEES UNDER  
38 U.S.C. § 4323(h)(1)**

22  
23 Plaintiff Jayson Huntsman, individually and on behalf of all others similarly situated, by  
24 and through his attorneys, alleges as follows:

25 **NATURE OF THE ACTION**

26 1. This is an action brought pursuant to the Uniformed Services Employment and  
27 Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301 *et seq.*, on behalf of a class of current  
28 and former pilots employed by Southwest Airlines Co. (“Southwest”) who did not receive the

1 retirement contributions mandated by USERRA for the short term periods in which the Southwest  
2 pilots took leave from Southwest to honorably serve in the Armed Forces.

3       2.       Since at least 1994, Southwest has been required by § 4318 of USERRA to make  
4 retirement contributions to Southwest pilots for *all* periods in which they engaged in qualified  
5 military service and were subsequently reemployed by Southwest. In addition, under USERRA  
6 § 4316, Southwest has been required to provide accrued paid sick leave to Southwest pilots who  
7 took short term military leave insofar as Southwest provided accrued paid sick leave to similarly  
8 situated pilots who took comparable forms of leave.

9       3.       Both in the past and the present, Southwest has not made the proper retirement  
10 contributions for pilots who take short term periods of leave from Southwest to serve in the Armed  
11 Forces. Nor has Southwest provided accrued paid sick leave to pilots who engaged in short term  
12 military leave. Both of these policies or practices violate USERRA.

13       4.       Upon information and belief, prior to and through 2014, Southwest did not provide  
14 pilots with *any* retirement contributions for the short term periods in which pilots took military  
15 leave (*i.e.*, periods shorter than 30 days), or alternatively made it impossible for pilots to actually  
16 make and receive matching retirement contributions for periods of short term military leave. For  
17 example, a pilot who was scheduled to fly a specific schedule over a month and dropped  
18 scheduled trips over five working days to serve in the Armed Forces would not be given the  
19 opportunity to receive any retirement contributions for such a short term period of military leave.

20       5.       Upon information and belief, since 2014 Southwest has prevented Southwest pilots  
21 from receiving matching retirement contributions for short term periods of military leave that they  
22 are entitled to receive under USERRA by refusing to inform pilots of the amount of contributions  
23 that they can make for specific short term periods of military leave and that will, in turn, be  
24 matched by Southwest, or by delaying the provision of such information to the Southwest pilots.

25       6.       In addition, Southwest has violated USERRA § 4316(b) by failing to provide its  
26 pilots who take short term military leave with any accrued paid sick leave while simultaneously  
27 providing pilots who engage in jury duty, union duty, and bereavement leave with accrued paid  
28 sick leave. Although these forms of leave are comparable, Southwest has never provided its pilots

1 who take short term military leave with accrued paid sick leave.

2 7. Due to these violations of USERRA, Plaintiff Huntsman and other Southwest pilots  
3 who served in the Armed Forces during their employment at Southwest have received  
4 considerably smaller retirement contributions and amounts of accrued paid sick leave than they  
5 were entitled to receive under USERRA. Southwest has known about these violations of  
6 USERRA for years and has received complaints from Southwest pilots, but has not taken  
7 sufficient action to rectify the problem. Not only does this underscore the willful nature of  
8 Southwest's conduct, but it has forced Plaintiff Huntsman to turn to the federal courts to obtain  
9 justice for all of the Southwest pilots who have been harmed by the practices challenged in this  
10 action.

11 **JURISDICTION AND VENUE**

12 8. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331,  
13 because this action arises under USERRA, a federal law. This Court has subject matter  
14 jurisdiction over the USERRA claim pursuant to 38 U.S.C. § 4323(b)(3), which provides the  
15 district courts of the United States with jurisdiction over any USERRA action brought against a  
16 private employer. Southwest is a private employer because it “pays salary or wages for work  
17 performed or that has control over employment opportunities.” 38 U.S.C. § 4303(4)(A).

18 9. Venue is proper in this District under 38 U.S.C. § 4323(c)(2), because Southwest,  
19 “the private employer of the person” who has filed this lawsuit, “maintains a place of business” in  
20 this District at the Oakland International Airport and the San Francisco International Airport,  
21 employing nearly 750 pilots at the Oakland International Airport. Venue is also proper in this  
22 District pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to the  
23 claims in this action occurred in this District.

24 **INTRADISTRICT ASSIGNMENT**

25 10. A substantial part of the events or omissions which give rise to the claims occurred  
26 in Alameda County and/or adjacent counties in the San Francisco/Oakland Division, and therefore  
27 this action is properly assigned to the San Francisco/Oakland Division pursuant to Local Rule 3-  
28 2(c),(d).

**THE PARTIES**

1  
2 11. Plaintiff Jayson Huntsman is and has been employed as a pilot by Southwest since  
3 February 2012. Huntsman serves as a First Officer flying 737 passenger airplanes for Southwest.  
4 The vast majority of Huntsman’s flights originate in the Oakland International Airport, which is  
5 located in this District. Following more than 12 years of active duty service in the Air Force,  
6 Huntsman joined the Air Force Reserves in 2012. Since the time that Huntsman began working  
7 for Southwest in February 2012, Huntsman has routinely taken short term military leave to serve  
8 in the Air Force Reserves. Huntsman resides in Sacramento, California.

9 12. Southwest Airlines Co. is a publicly traded company and, according to Southwest’s  
10 2016 annual report, as of June 30, 2016, Southwest was the largest domestic air carrier in the  
11 United States, as measured by the number of domestic originating passengers boarded. Southwest  
12 currently employs more than 8,800 pilots, and a substantial percentage of those pilots currently  
13 serve or have served in the United States Armed Forces during their employment with Southwest.  
14 Southwest is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

**CLASS ACTION ALLEGATIONS**

15  
16 13. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules  
17 of Civil Procedure on behalf of the following persons:

18 All current and former pilots of Southwest Airlines Co. (Southwest) or any  
19 subsidiary, joint venture, or division of Southwest who since January 1, 2001 (A)  
20 took leave from their employment at Southwest to engage in qualified military  
21 service for a period of fewer than 30 days, and (B) (1) were eligible to receive  
22 retirement contributions under USERRA, 38 U.S.C. § 4318, for such a period of  
23 qualified military service, or (2) were not credited with paid sick leave for such a  
24 period of qualified military service, and the beneficiaries of all such persons.

25 Excluded from the Class are the following persons: (a) all former or current individuals who  
26 previously reached settlements with or judgments against Southwest resolving or releasing any  
27 claims arising during the Class Period under USERRA related to inadequate pension contributions  
28 for short term periods of military leave and the failure to provide accrued paid sick leave during  
short term periods of military leave; and (b) any person who served as a fiduciary of the Plan and  
their beneficiaries under the Plans and any member of the immediate family of, and any heirs,

1 successors or assigns of any such person.

2 **Impracticability of Joinder**

3 14. The class is so numerous that joinder of all members is impracticable. According to  
4 Southwest's 2016 annual report, Southwest had 7,900 pilots in 2016. Upon information and belief,  
5 at least hundreds and likely over 1,000 former and current Southwest pilots are members of the  
6 proposed Class.

7 15. Southwest employs thousands of pilots, including members of the proposed Class,  
8 throughout the United States. Upon information and belief, the members of the Class are  
9 geographically dispersed.

10 **Commonality**

11 16. The central question in this case concern whether the Southwest pilots' federal  
12 statutory rights under USERRA were violated by Southwest when Southwest failed to make the  
13 proper amount of retirement contributions to the Southwest pilots and to provide accrued paid sick  
14 leave for periods of short term military leave.

15 17. As Southwest adopted and applied a uniform policy or practice for calculating and  
16 making retirement contributions owed under USERRA with respect to the military leave of  
17 Southwest pilots, and for failing to provide accrued paid sick leave for periods of short term  
18 military leave, the answers to these questions will produce common answers for all members of  
19 the proposed Class.

20 18. Plaintiff's claims raise subsidiary common questions that will also have common  
21 answers for each Class Member, including, but not limited to, the following:

22 (a) Whether Southwest failed to make retirement contributions for short term periods  
23 of military leave that Southwest pilots took prior to and through 2014, in violation of  
24 USERRA § 4318?

25 (b) Whether Southwest prevented Southwest pilots from receiving retirement  
26 contributions for short term periods of military leave since 2014 in violation of  
27 USERRA § 4318?

28 (c) Whether Southwest failed to provide accrued paid sick leave to pilots who took

1 short term military leave in violation of USERRA § 4316?

2 (d) Whether Southwest's violations of USERRA were willful, making it appropriate to  
3 award liquidated damages under USERRA?

4 (e) What, if any, other relief should be granted?

5 19. Because the retirement contributions and failure to pay accrued paid sick leave for  
6 periods of the Southwest pilots' qualified military service were based on uniform policies or  
7 practices, and any recovery can be paid into the Southwest pilots' individual retirement accounts,  
8 or deposited into the sick leave banks of the pilots, or paid directly to the pilots, all issues  
9 regarding relief are common.

10 20. Even if the ultimate allocation of recovery into the Southwest pilots' individual  
11 retirement accounts or their sick leave banks is considered, the unifying issues concerning the  
12 policies are the failure to make the proper retirement contributions required by USERRA § 4318  
13 and the failure to provide accrued paid sick leave in violation of USERRA § 4316. As Southwest  
14 acted in a systematic manner with respect to the Class Members, all members of the Class suffered  
15 the same type of injuries based on two discrete policies, and resolving the claims of the Class will  
16 be based on common legal and factual questions.

17 **Typicality**

18 21. Plaintiff's claims are typical of the other members of the proposed Class. Plaintiff  
19 challenges two discrete policies by which Southwest made retirement contributions for short term  
20 periods of the Southwest pilots' qualified military service in violation of USERRA and failed to  
21 provide accrued paid sick leave in violation of USERRA.

22 22. The relief sought consists primarily of: (1) a declaration establishing that Southwest  
23 violated USERRA; (2) an order requiring Southwest to recalculate the retirement contributions  
24 owed to members of the Class and provide accrued paid sick leave to the Class; and (3) an order  
25 that the restored losses and accrued paid sick leave be allocated into the individual retirement  
26 accounts of the members of the Class or be provided to the Class Members.

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1 **Adequacy**

2 23. Plaintiff will fairly and adequately protect the interests of other members of the  
3 Class. Plaintiff is aware of no conflict with any other member of the Class. Plaintiff understands  
4 his obligations as a class representative, has already undertaken steps to fulfill them, and is  
5 prepared to continue to fulfill his duties as class representative.

6 24. Southwest has no unique defenses against the Plaintiff that would interfere with  
7 Plaintiff's representation of the Class.

8 25. Plaintiff's counsel are experienced in federal court class action litigation, including  
9 civil rights and employee benefits litigation, and have considerable experience and expertise in the  
10 area of USERRA.

11 **Rule 23(b)(1)**

12 26. This action is properly maintainable as a class action under Rule 23(b)(1) of the  
13 Federal Rules of Civil Procedure, because the central questions in this litigation are whether  
14 Southwest violated USERRA in connection with calculating and making retirement contributions  
15 to the Southwest pilots for short term periods of qualified military service and in failing to provide  
16 accrued paid sick leave for periods of short term military leave.

17 27. Administration of a pension plan requires that all similarly situated participants be  
18 treated consistently. As a practical matter, resolution of whether the appropriate amount of  
19 contributions were made to any participant's account using the policy applied here would be  
20 dispositive of that matter for other members of the Class. Likewise, conflicting interpretations as  
21 to the manner by which the amount should have been calculated and contributed or credited to the  
22 individual accounts of similarly situated participants would create the risk of establishing  
23 inconsistent standards of conduct for the Plan, its administrator, and any subsequently-appointed  
24 independent fiduciary.

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1 **Rule 23(b)(2)**

2 28. This action is also properly maintainable as a class action under Rule 23(b)(2) of  
3 the Federal Rules of Civil Procedure. Southwest is alleged to have violated USERRA in a manner  
4 as to all members of the Class. As such, Southwest has acted or refused to act on grounds that  
5 apply generally to the Class. As a result, final declaratory relief is appropriate respecting the Class  
6 as a whole.

7 29. The monetary relief that Plaintiff seeks either flows from and/or is incidental to the  
8 declaratory relief sought, as it flows directly from the ordering of such declaratory relief and can  
9 be calculated in a simple, objective, and mechanical manner.

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

11 30. This action is also properly maintainable as a class action under Rule 23(b)(3) of  
12 the Federal Rules of Civil Procedure.

13 31. The questions of law and fact common to the members of the Class predominate  
14 over questions affecting only individual members, and a class action is superior to other available  
15 methods for the fair and efficient resolution of this controversy.

16 32. By resolving the common issues described above in a single class proceeding, each  
17 member of the proposed Class will receive a determination of whether Southwest violated  
18 USERRA, and will receive the remedy that should be provided under USERRA.

19 33. Upon information and belief, there is no other pending litigation that has raised  
20 similar allegations with respect to Southwest.

21 34. This is an appropriate forum for these claims because, among other reasons,  
22 jurisdiction and venue are proper, and, as a result of Southwest's significant operations and large  
23 number of employees in this District, a substantial part of the Class likely earned their retirement  
24 contributions in this District, and at least a portion of the Class likely resides in this District.

25 35. There are no difficulties in managing this case as a class action.

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**FACTUAL ALLEGATIONS**

**The Pension and Retirement Rights Mandated by USERRA**

36. Since 2001, Southwest has employed hundreds to thousands of pilots who have served their country in the United States Armed Forces during their employment with Southwest.

37. When these Southwest pilots take military leave to serve in the Armed Forces, federal law requires Southwest to treat these employees as if they never took leave from their civilian jobs at Southwest. For example, USERRA requires Southwest to reemploy Southwest pilots who take military leave, and restore the rights and benefits related to the employees' positions. 38 U.S.C. §§ 4312, 4316.

38. In addition, USERRA mandates that for the purpose of retirement benefits an employee who returns to his job after serving in the military must be treated as if he or she never took a day off from his or her civilian job. 38 U.S.C. § 4318.

39. The retirement benefits of servicemembers have been protected for decades, because Congress has understood that a servicemember's retirement security should not be compromised simply because he or she answers the call to duty—no more than a servicemember should lose his or her civilian job due to serving in the Armed Forces. These rights are central to a statutory scheme that the U.S. Supreme Court has said constitutes the “mechanism for manning the Armed Forces of the United States.” *Alabama Power Co. v. Davis*, 431 U.S. 581, 583 (1977).

40. As an employer within the meaning of USERRA, Southwest has been required to comply with USERRA and ensure that Southwest pilots receive the retirement contributions mandated by 38 U.S.C. § 4318.

41. Pursuant to 38 U.S.C. § 4318(a)(1)(A), Southwest and the Plans have been required to comply with USERRA § 4318(a)(2), which provides as follows:

(A) A person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

1           42. For each period of military service, USERRA § 4318(b)(1) provides that the  
2 employer is “liable to an employee pension benefit plan for funding any obligation of the plan to  
3 provide the benefits described in subsection (a)(2) [of § 4318] and shall allocate the amount of any  
4 employer contribution for the person in the same manner and to the same extent the allocation  
5 occurs for other employees during the period of service.”

6           43. Southwest is an employer under USERRA because it “pays salary or wages for  
7 work performed or that has control over employment opportunities.” 38 U.S.C. § 4303(4)(a).

8           44. To “comput[e] an employer’s liability” to make retirement contributions under §  
9 4318(b)(1), USERRA § 4318(b)(3) provides that “the employee’s compensation during the period  
10 of service described in subsection (a)(2)(B) shall be computed”:

11           (A) at the rate the employee would have received but for the period of service  
12 described in subsection (a)(2)(B), or (B) in the case that the determination of such  
13 rate is not reasonably certain, on the basis of the employee’s average rate of  
14 compensation during the 12-month period immediately preceding such period (or,  
15 if shorter, the period of employment immediately preceding such period).

16           45. Under this rule, an employee whose compensation during a period of military leave  
17 is reasonably certain is entitled to receive retirement contributions based on the rate of  
18 compensation that the employee would have received but for that period of military service, or, if  
19 the employee’s compensation is not reasonably certain, based on the 12-month average  
20 compensation prior to the period of military service.

21           46. Under USERRA, when a retirement plan requires the employee to make a  
22 retirement contribution before the employer will match that contribution or a portion of the  
23 employee’s contribution, the employee is required to make a “make-up” USERRA contribution  
24 before the employer is required to make its own “make-up” contribution to the employee’s  
25 retirement account. 38 U.S.C. § 4318(b)(2).

26           47. For many years, Southwest has maintained a defined contribution retirement plan  
27 for its pilots, the Southwest Airlines Pilots Retirement Savings Plan (“the Plan”). Since January 1,  
28 2017, under the Plan each pilot is entitled to receive a non-elective contribution that is allocated to  
the pilot, regardless of whether the pilot made salary reduction contributions during the plan year  
(13.4% in 2017, 14.2% in 2018, and 15.0% in 2019 and following years). However, prior to

1 January 1, 2017, Southwest only made a matching contribution for each pilot based on a portion of  
2 the pilot's compensation that the pilot contributed to the Plan, such as 9.3% of the pilot's  
3 compensation in 2016.

4 48. Southwest has stated in its Summary Plan Descriptions ("SPD") of the Plan that it  
5 will count qualified military service towards the compensation that determines the amount of  
6 retirement contributions that will be made by the company (on or after January 1, 2017), or that  
7 can be made by the pilot and matched by Southwest (prior to January 1, 2017). However, the SPD  
8 and related Plan Documents have not identified the formula that Southwest uses to calculate the  
9 "deemed" compensation that will be used for periods of qualified military service. Nor have the  
10 SPD or related Plan Documents identified any process or method by which Southwest would  
11 inform pilots about the amount of retirement contributions that they could make and which  
12 Southwest would match for short term periods of military leave prior to January 1, 2017.

13 49. Under Southwest's Plan, pilots who engage in military service and satisfy  
14 USERRA's reemployment requirements are supposed to be able to make up any missed  
15 contributions to their retirement accounts during periods of military leave (even though Southwest  
16 has not paid the pilot for that period of time) and have Southwest make a matching contribution to  
17 the pilots' accounts. For example, if a pilot takes military leave for a year and his or her "deemed"  
18 compensation for that year is \$100,000, then in 2016 the pilot was supposed to be able to  
19 contribute up to a 9.3% of that \$100,000 of deemed compensation into his defined contribution  
20 account, and Southwest would then make a matching 9.3% contribution (\$9,300) into the pilot's  
21 account. This make-up contribution procedure is mandated by USERRA. 38 U.S.C. § 4318(b)(2).

22 **Southwest Violated the Retirement Provisions of USERRA**

23 50. For many years, Southwest has failed to satisfy its obligations under USERRA §  
24 4318 with respect to pilots who take short term military leave.

25 51. For pilots' periods of short term leave (fewer than 30 days), Southwest was  
26 obligated to make retirement contributions under § 4318. However, upon information and belief,  
27 prior to and through 2014, Southwest did not provide pilots with *any* retirement contributions for  
28 the short term periods in which pilots took military leave—or in the alternative, Southwest failed

1 to inform Southwest pilots about the amount of retirement contributions that they could make and  
2 Southwest would match for the periods of short term military leave, effectively eliminating the  
3 ability of pilots to receive matching contributions for such periods of leave. As a result, the pilots  
4 who took such short term military leave did not have the opportunity to make employee  
5 contributions for such periods of short term leave and have those contributions matched by  
6 Southwest. Similarly, during and after 2014, Southwest failed to provide Plaintiff and members of  
7 the Class with information about the amount of retirement contributions that they could make and  
8 Southwest would match for the periods of short term military leave, denying them the ability to  
9 make and have matched by Southwest the appropriate amount of retirement contributions for  
10 periods of short term military leave.

11 52. By denying pilots the appropriate amount of retirement contributions for periods of  
12 short term military leave, Southwest violated USERRA § 4318.

13 53. For Southwest pilots like Plaintiff Huntsman and other members of the proposed  
14 Class who regularly took short term military leave, Southwest's violations of USERRA § 4318  
15 caused the pilots to receive lower amounts of USERRA retirement contributions than the amounts  
16 that were required by USERRA § 4318.

17 54. In the case of Plaintiff Huntsman, despite his multiple requests, he was not  
18 provided with any information by Southwest about the amount of retirement contributions that he  
19 could make (and that Southwest would match) for any short term periods of military leave from  
20 2012 to present. From 2012 to present, Plaintiff Huntsman has taken dozens of periods of short  
21 term military leave, most of which were between one and six days.

22 55. On multiple occasions during and/or after 2016, Plaintiff Huntsman has  
23 communicated with the principal official at Southwest who is responsible for USERRA  
24 retirement-related issues and asked the official to provide Plaintiff Huntsman with information on  
25 the amount of retirement contributions that he could make and Southwest would match for periods  
26 of short term military leave. Plaintiff Huntsman was told by the official that Southwest has no  
27 process or procedure for informing him and other Southwest pilots on the amounts of retirement  
28 contributions that they could make and Southwest would match for periods of short term military

1 leave. As a result, Plaintiff Huntsman and other members of the Class have routinely been unable  
2 to receive matching retirement contributions for periods of short term military leave that they have  
3 taken.

4 **Southwest Failed to Provide Southwest Pilots with Accrued Sick Leave During**  
5 **Periods of Military Leave in Violation of USERRA**

6 56. Ordinarily, when Southwest pilots are working they accrue paid sick leave that they  
7 can use in the future.

8 57. Prior to the filing of this Complaint, Southwest has never provided Southwest pilots  
9 with any accrued sick leave during the periods in which they engage in military leave, including  
10 periods of short term military leave.

11 58. During the same period, however, Southwest provided similarly situated Southwest  
12 pilots with accrued sick leave for other comparable forms of leave, including employees on jury  
13 duty and duty with the pilots' union, as well as employees on bereavement leave.

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

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

18 (B) entitled to such other rights and benefits not determined by seniority as are  
19 generally provided by the employer of the person to employees having similar  
20 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.

21 60. Accordingly, if an employer provides non-seniority rights and benefits to similarly  
22 situated employees, USERRA § 4316 requires the employer to provide the same rights and  
23 benefits to employees *during* their military leave. *See id.*; 20 C.F.R. § 1002.150(a). As the  
24 USERRA regulations state, the “most significant factor to compare” two types of leave to  
25 determine if they are a “comparable form of leave” is “the duration of the leave.” 20 C.F.R.  
26 § 1002.150(a). In addition, “other factors such as the purpose of the leave and the ability of the  
27 employee to choose when to take the leave should also be considered.” *Id.*

28



1 where the employer's contribution is "contingent on" the employee first making a contribution.  
2 38 U.S.C. § 4318(b)(2).

3 67. As described in detail above, prior to and after 2014 Southwest violated USERRA  
4 § 4318 by not counting periods of short term military leave towards the compensation that it used  
5 to determine retirement contributions for periods of short term military leave, and/or by refusing to  
6 provide pilots with information that was necessary for them to know the amount of retirement  
7 contributions that they could make and Southwest would match. Accordingly, Southwest denied  
8 those pilots the retirement contributions they otherwise would have received under USERRA.

9 68. Because Southwest applied its policy in violation of USERRA, Plaintiff and the  
10 Class received retirement contributions in their defined contribution accounts that were smaller  
11 than what they would have received had Southwest complied with USERRA. Southwest's  
12 violations of USERRA § 4318 was willful and in reckless disregard of the law. Accordingly,  
13 Southwest should be required to pay liquidated damages to former and current Southwest pilots  
14 whose retirement contributions were reduced due to Southwest's violations of USERRA. 38  
15 U.S.C. § 4323(d)(1)(C).

## 16 **COUNT II**

### 17 **(Violation of USERRA, 38 U.S.C. § 4316)**

18 69. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if  
19 fully set forth herein.

20 70. USERRA requires Southwest to provide its pilots who take military leave with the  
21 same non-seniority rights and benefits that it provides to similarly situated pilots who are on  
22 furlough or leave of absence. 38 U.S.C. § 4316(b); 20 C.F.R. §§ 1002.149, 1002.150(a).

23 71. As described above, Southwest has violated USERRA § 4316(b) by failing to  
24 provide its pilots who take short term military leave with any accrued paid sick leave while  
25 simultaneously providing accrued paid sick leave to pilots who engage in jury duty, union duty,  
26 and bereavement leave or other comparable types of leave. These types of leave are comparable  
27 in terms of duration, purpose, and the ability of the employee to determine whether to take the  
28 leave. Accordingly, Southwest was required by USERRA § 4316(b) to provide accrued paid sick

1 leave to Southwest pilots who took short term military leave, but failed to do so in violation of  
2 federal law.

3 **COUNT III**

4 **(Violation of USERRA, 38 U.S.C. § 4323)**

5 72. USERRA provides that employees may receive liquidated damages in the event  
6 that the trier of fact determines that the defendant willfully violated the statute. 38 U.S.C. §  
7 4323(d)(1)(C).

8 73. In this instance Plaintiff Huntsman and the pilots' union, *inter alia*, repeatedly  
9 informed Southwest's management and principal decision makers that its actions regarding the  
10 company's retirement and sick leave policies did not comply with USERRA.

11 74. Moreover, Southwest was on notice of USERRA's requirements as Southwest, like  
12 all other employers in America, is required to post the statutorily-mandated workplace poster that  
13 informs both workers and management of USERRA's rights and responsibilities.

14 75. As described above, Southwest's violations of USERRA § 4318 and USERRA §  
15 4316 were willful and occurred in reckless disregard for the law.

16 **REQUEST FOR RELIEF**

17 WHEREFORE, Plaintiff prays that judgment be entered against Defendant on all claims  
18 and respectfully requests that this Court award the following relief:

19 A. Declare that Defendant's policy with respect to the formula by which any  
20 retirement contributions related to Plaintiff and the proposed Class Members' short term periods  
21 of military leave were calculated by Southwest violated the rights of Plaintiff and the Class under  
22 USERRA and declare that Defendant's failure to provide accrued paid sick leave to pilots who  
23 took short term military leave violated the rights of Plaintiff and the Class under USERRA.

24 B. Declare that Plaintiff and the Class were and are entitled under USERRA to receive  
25 contributions to their defined contribution retirement accounts in an amount that is consistent with  
26 USERRA § 4318 and that they are entitled to receive accrued paid sick leave in the amount that is  
27 consistent with USERRA § 4316;

28 C. Require Defendant to fully compensate Plaintiff and the Class for the loss of

1 benefits suffered by reason of its failure to comply with the provisions of USERRA by awarding  
2 an amount that fully compensates Plaintiff and the Class for Defendant's failure to make these  
3 retirement contributions and accrued paid sick leave when originally due, including any lost  
4 earnings on the unmade contributions or accrued paid sick leave and/or awarding Plaintiff and the  
5 Class prejudgment interest on the amount of contributions or accrued paid sick leave that were  
6 required to be made under USERRA but which Defendant failed to make (whichever amount is  
7 greater);

8 D. Order Defendant to comply with USERRA, 38 U.S.C. § 4318 and § 4316;

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

11 F. Require Defendant to pay attorneys' fees and costs pursuant to 38 U.S.C. §  
12 4323(h), and/or this Court's inherent equitable authority and powers, and ordering the payment of  
13 reasonable attorneys' fees and expenses of this action to Plaintiff's counsel on the basis of the  
14 common benefit and/or common fund doctrine (or other applicable law) out of any money or  
15 benefit recovered for the Class or the Plans in this Action.

16 G. Grant such other and further relief as the Court deems proper, appropriate, just  
17 and/or equitable including, without limitation, allowing for any adverse tax consequence  
18 multiplier to be applied to any jury award.

19 **JURY DEMAND**

20 Plaintiff hereby demands a trial by jury.

21 Dated: July 14, 2017

Respectfully submitted,

22 By: /s/ Jahan C. Sagafi

23 Jahan C. Sagafi (Cal. State Bar No. 224887)  
24 OUTTEN & GOLDEN LLP  
25 One Embarcadero Center, 38th Floor  
26 San Francisco, California 94111  
27 Telephone: (415) 638-8800  
28 Facsimile: (415) 638-8810  
Email: jsagafi@outtengolden.com

Peter Romer-Friedman (*pro hac vice motion  
forthcoming*)  
OUTTEN & GOLDEN LLP  
601 Massachusetts Avenue NW,  
Second Floor West Suite  
Washington, D.C. 20001  
Telephone: (202) 847-4400  
Facsimile: (202) 847-4410  
Email: prf@outtengolden.com

1 Thomas G. Jarrard (*pro hac vice motion*  
*forthcoming*)  
2 LAW OFFICE OF  
THOMAS JARRARD PLLC  
3 1020 N. Washington Dt.  
Spokane, WA 99201  
4 Telephone: (425) 239-7290  
Facsimile: (509) 326-2932  
5 Email: Tjarrard@att.net

Matthew Z. Crotty (*pro hac vice motion*  
*forthcoming*)  
CROTTY & SON LAW FIRM, PLLC  
905 W. Riverside Ave, Suite 409  
Spokane, WA 99201  
Telephone: (509) 850-7011  
Email: matt@crottyandson.com

6 *Attorneys for Plaintiff and the Proposed Class*

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