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CLERY, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: _____
DEPUTY

[Additional Attorneys listed on following page]

Attorney for Plaintiffs Derek Carder,
Mark Bolleter, Drew Daugherty,
Andrew Kissinger and the Class and Subclass

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DEREK CARDER, an individual,
MARK BOLLETER, an individual,
DREW DAUGHERTY, an individual, and
ANDREW KISSINGER, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

CONTINENTAL AIRLINES, INC. a
Delaware Corporation; and DOES 1 through
100, inclusive,

Defendant.

09 CV 1448 DMS BLM

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

**Violations of Uniformed Services
Employment and Reemployment Rights
Act of 1994, 38 U.S.C. §§ 4301 et. seq.**

DEMAND FOR JURY TRIAL

COPY

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1 Plaintiffs, Derek Carder, Mark Bolleter, Drew Daugherty and Andrew Kissinger
2 (“Plaintiffs”), on behalf of themselves and a class of all similarly situated persons, by the
3 undersigned attorneys, hereby file this Class Action Complaint against Defendant Continental
4 Airlines, Inc. (“Continental”) and Does 1 through 100, inclusive, and each of them, based
5 upon documentary evidence, the investigation of attorneys, interviews of potential witnesses
6 and persons knowledgeable of these events and allege as follows:

7 **I.**

8 **NATURE OF ACTION**

9 1. This is a civil class action brought pursuant to the Uniformed Services
10 Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 et. seq.
11 (“USERRA”). It is brought by Plaintiffs on behalf of a nationwide Class of all persons
12 similarly situated, including current and former employees of Continental, who were or are
13 currently serving in the United States Armed Services or National Guard.

14 **II.**

15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over the subject matter of this action pursuant to 38
17 U.S.C. § 4323(b).

18 3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. §
19 1391(b), because Defendant Continental maintains a place of business in San Diego County.

20 **III.**

21 **PARTIES**

22 4. Plaintiff Derek Carder (“Carder”) is an individual who is residing in the City of
23 Allen, County of Collin, State of Texas. He is currently employed by Continental Airlines as
24 a pilot. Carder is also a Lieutenant Commander in the United States Naval Reserve.

25 5. Plaintiff Mark Bolleter (“Bolleter”) is an individual who is residing in the City
26 of Montgomery, County of Montgomery, State of Texas. He is currently employed by
27 Continental Airlines as a pilot. Bolleter retired as a Major from the Louisiana Air National
28 Guard in or around June 2007.

6. Plaintiff Drew Daugherty (“Daugherty”) is an individual who is residing in the
City of Austin, County of Hays, State of Texas. He is currently employed by Continental

1 Airlines as a pilot. Daugherty is also currently a Lieutenant Colonel in the Texas Air
2 National Guard.

3 7. Plaintiff Andrew Kissinger (“Kissinger”) is an individual who is residing in the
4 City of Schertz, County of Guadalupe, State of Texas. He believes and alleges that he was
5 not hired by Continental due to his involvement with the U.S. Air Force Reserves. Kissinger
6 is currently employed by another major air carrier and is also a Lieutenant Colonel in the U.S.
7 Air Force Reserves.

8 8. Defendant Continental is an air carrier engaged in the business of transporting
9 passengers nationally and internationally. Plaintiffs are informed and believe, and thereon
10 allege, that Continental is a company organized under the laws of Delaware, and which has
11 its principal place of business located at 1600 Smith Street, Houston, Harris County, Texas
12 77002, maintains a place of business in San Diego County, and may be served with service of
13 process by serving its registered agent, CT Corporation System, 818 W. Seventh Street, Los
14 Angeles, California 90017.

15 9. Plaintiffs are informed and believe and thereon allege that at all times herein
16 mentioned, Defendants Does 1 through 100, inclusive, and each of them, were individuals
17 and/or business entities authorized to and doing business as agents, employees,
18 subcontractors, independent contractors or otherwise on behalf of Defendant Continental and
19 at all relevant times were acting with the authorization and/or ratification of Defendant
20 Continental as aforesaid.

21 10. The full extent of the facts linking the fictitiously designated Defendants with
22 each cause of action alleged herein is unknown to Plaintiffs, or the true names or capacities,
23 whether individual, plural, corporate, partnership, associate or otherwise, of Defendants Does
24 1 through 100, inclusive, and each of them, are unknown to Plaintiffs. Plaintiffs therefore sue
25 said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon
26 allege that each of the Defendants designated herein as a Doe is negligently, recklessly,
27 tortiously and unlawfully responsible in some manner for the events and happenings herein
28 referred to and negligently, tortiously, and unlawfully proximately caused the injuries and
damages thereby to Plaintiffs as herein alleged. Plaintiffs will hereinafter seek leave of Court
to amend this Complaint to show said Defendants’ true names and capacities after the same

1 have been ascertained. Plaintiffs are alleging causes of action against each Doe Defendant
2 under every theory of recovery set forth herein.

3
4 IV.

5 GENERAL ALLEGATIONS

6 11. Continental is a flag air passenger carrier employing more than 5,000 pilots.
7 Plaintiffs are informed and believe that approximately one thousand (1,000) of Continental's
8 pilots are members of the United States Armed Services or National Guard.

9 12. Section 4311(a) of USERRA provides:

10 A person who is a member of, applies to be a member of, performs, has performed,
11 applies to perform, or has an obligation to perform service in a uniformed service shall
12 not be denied initial employment, reemployment, retention in employment, promotion,
13 or any benefit of employment by an employer on the basis of that membership,
14 application for membership, performance of service, application for service, or
15 obligation.

16 38 U.S.C. 4311(a).

17 13. A "benefit of employment" is defined as:

18 The term 'benefit', 'benefit of employment', or 'rights and benefits' means any
19 advantage, profit, privilege, gain, status, account, or interest (other than wages or
20 salary for work performed) that accrues by reason of an employment contract or
21 agreement or an employer policy, plan, or practice and includes rights and benefits
22 under a pension plan, a health plan, an employee stock ownership plan, insurance
23 coverage and awards, bonuses, severance pay, supplemental unemployment benefits,
24 vacations, and the opportunity to select work hours or location of employment.

25 38 U.S.C. 4303(2).

26 14. Section 4311(c) further provides:

27 An employer shall be considered to have engaged in actions prohibited:

28 (1) under subsection (a), if the person's membership, application for membership,
service, application for service, or obligation for service in the uniformed services
is a motivating factor in the employer's action, unless the employer can prove that
the action would have been taken in the absence of such membership, application
for membership, service, application for service, or obligation for service.

1 38 U.S.C. 4311(c).

2 15. Pursuant to the Collective Bargaining Agreement (hereinafter the “Collective
3 Bargaining Agreement”) between Continental and the Airline Pilots Association (“ALPA”)
4 executed on April 1, 2005, Continental utilizes a seniority-based system in which a pilot’s
5 seniority date will be the date on which he starts training as a pilot for Continental.

6 16. Pilots with more seniority are afforded more benefits of employment as set
7 forth in Section 22, Part 4 of the Collective Bargaining Agreement, which provides:
8 “seniority, in accordance with a pilot's position on the current Continental Pilot System
9 Seniority List, will govern all pilots in case of promotion or demotion to Captain,
10 International Relief Officer, First Officer, or Second Officer, retention in case of reduction in
11 force, assignment or reassignment due to expansion or reduction in flying time, recall after
12 furlough due to reduction in force, monthly Line award, and choice of vacancies.”

13 **A. Denial of Employment Benefits through Scheduling Practices**

14 17. Pursuant to the Collective Bargaining Agreement between Continental and the
15 ALPA executed on April 1, 2005, Continental implemented a preferential bidding system
16 (“PBS”) as a scheduling tool for the assignment of trips to be flown by each pilot.

17 18. Through the utilization of PBS, Continental allows pilots to bid on flight
18 schedules for the upcoming month based on their seniority status. Those requests are granted
19 according to availability of trips and seniority.

20 19. Pursuant to Section 25, Part 4, subsection B of the Collective Bargaining
21 Agreement, “Lines will be constructed with a minimum of twelve (12) Days Off in a bid
22 period.”

23 20. Pursuant to Section 25, Part 6, Subsection F of the Collective Bargaining
24 Agreement, each pilot is credited with two hours and forty-five minutes (2:45) for each
25 twenty-four hour period of military leave.

26 21. Continental’s policies and procedures require pilots to submit military leave
27 prior to the twelfth (12th) of the month preceding the month in which the military leave is
28 actually taken.

1 22. Continental uses PBS to incorporate military leave inputs as restrictions to
2 building trips by blocking off a pilot's availability on those days and giving that pilot a credit
3 of time in the construction of their flight line.

4 23. Continental uses PBS to construct trip assignments around each pilot's military
5 leave schedule which in turn creates schedules for the Class that are far inferior, lower in
6 quality and/or contain fewer hours and thus less pay than their seniority allows them to hold.

7 24. Quality in schedules would include, but is not limited to, working or not
8 working during certain days of the week, such as weekends, and time off during holidays.

9 25. The resulting line of trips is therefore not in accordance with each pilot's
10 seniority had these pilots not had military obligations.

11 26. Continental denies the Class a benefit of their employment through PBS by
12 building schedules around their military leave and not in accordance with each pilot's
13 seniority.

14 27. The Class' military service is a motivating factor in Continental's denial of
15 these benefits of employment.

16 **B. Denial of Employment Benefits Under Defined Contribution Retirement Plan**

17 28. Pursuant to Section 28, Part 4, subsection A of the Collective Bargaining
18 Agreement, Continental Airlines maintains a separate pilot-only money purchase, defined
19 contribution pension plan, "covering all pilots, line and management, active, retired and
20 terminated."

21 29. Pursuant to Section 28, Part 4, subsection D of the Collective Bargaining
22 Agreement, "A pilot will participate in the B-Plan (and be eligible to receive Company
23 contributions to his B-Plan accounts) upon the later of the effective date of the B-Plan or the
24 pilot's date of hire."

25 30. Continental's policies and procedures further provide that pilots are eligible to
26 receive B-Plan contributions calculated on the amount they would have worked had they not
27 been on military leave.

28 31. Pursuant to Section 28, Part 4, section G of the Collective Bargaining
Agreement, Deemed Compensation under the B-Plan is defined as:

1 Remuneration paid by the Company to a participant (whether before or
2 after separation from service), including but not limited to regular pay,
3 overtime pay, international override, gain-sharing, furlough pay, retro pay,
4 bonuses, and incentive compensation, plus amounts deferred pursuant to
5 Internal Revenue Code Sections 125, 401(k) and the like, but excluding the
6 following: amounts paid pursuant to the Nonqualified Plan, commissions,
7 taxable income derived from group term life insurance, imputed income for
8 LOL/LTD, amounts paid pursuant to other nonqualified plans, distributions
9 from the A-Plan, reimbursements or allowances or advances for expenses
10 (including per diem expenses, relocation expenses and increased cost of
11 living expenses), travel pass benefits, domestic partner benefits, and
12 Company contributions to or benefits paid from any Company maintained
13 welfare plan.

14 32. Continental's policies and procedures require pilots to submit military leave
15 prior to the twelfth (12th) of the month preceding the month in which the military leave is
16 actually taken.

17 33. In determining B-Fund contributions, for a short-notice leave (i.e., notice
18 provided after the twelfth), a pilot's Deemed Compensation should be calculated using the
19 value of the schedule including the actual trip dropped.

20 34. If notice is provided by the pilot prior to the twelfth, B-Fund contributions
21 should be calculated using the compensation that the pilot would have earned had the pilot
22 not been on military leave and there should be no material difference in B-Fund
23 contributions.

24 35. Continental's current policy is to review the average hours worked by the pilot
25 during his or her last twelve (12) Active Status months and use this number as the expected
26 monthly earnings, even though this calculation does not take into account annual pay raises,
27 upgrades in seats or equipment or the actual amount earned had the pilot not been on military
28 leave.

36. Upon information and belief, Continental has repeatedly underpaid B-Plan
contributions to pilots who are on Military Leave, thereby denying members of the Class a
benefit of employment.

37. Upon information and belief, Continental has repeatedly refused to place
military leave on pilots' schedules despite the pilots' notifications of military service

1 obligations.

2 38. Such refusal results in a reduction in contributions to pilots' B-Plan thereby
3 denying members of the Class a benefit of their employment.

4 39. USERRA requires employers to treat the period of military leave as service
5 with the employer for purposes of vesting and the accrual of benefits.

6 40. The Class' military service obligations are motivating factor in Continental's
7 denial of the Class' B-Plan contributions.

8 **C. Pattern Of Conduct By Continental Evidencing Membership In The United**
9 **States Armed Services or National Guard As A Motivating Factor In Denying**
Benefits Of Employment To The Class

10 41. Plaintiffs and the Class they represent have been subject to Continental's
11 continuous pattern of harassment in which Continental has repeatedly chided and derided
12 Plaintiffs for their military service through the use of discriminatory conduct and derogatory
13 comments regarding their military service and military leave obligations.

14 42. Continental's conduct includes placing onerous restrictions on taking military
15 leave and by arbitrarily attempting to cancel military leave.

16 43. This harassment establishes that Plaintiffs' and the Class's membership in the
17 United States Armed Services or the National Guard is a motivating factor in denying
18 employment benefits to Plaintiffs and the Class.

19 44. Plaintiffs are informed, believe and thereon allege that Continental has hired a
20 disproportionately large number of non-military pilots when compared to the number of
21 military pilots who applied for pilot positions.

22 45. Plaintiffs are informed, believe and thereon allege that Gary D. Small
23 (hereinafter "Small") is the Chief Pilot in Continental's Houston, Texas Office and has
24 supervisory and managerial control over members of the Class.

25 46. Plaintiffs are informed, believe and thereon allege that Steve Williams
26 (hereinafter "Williams") is an Assistant Chief Pilot in Continental's Houston, Texas Office
27 and has supervisory and managerial control over members of the Class.

28 47. Plaintiffs are informed, believe and thereon allege that Lloyd Robeson
(hereinafter "Robeson") is an Assistant Chief Pilot in Continental's Houston, Texas Office

1 and has supervisory and managerial control over members of the Class.

2 48. Plaintiffs are informed, believe and thereon allege that Kip Komidor
3 (hereinafter "Komidor") is an Assistant Chief Pilot in Continental's Houston, Texas Office
4 and has supervisory and managerial control over members of the Class.

5 49. Plaintiffs are informed, believe and thereon allege that Thomas Pinardo
6 (hereinafter "Pinardo") is an Assistant Chief Pilot in Continental's Houston, Texas Office and
7 has supervisory and managerial control over members of the Class.

8 50. Plaintiffs are informed, believe and thereon allege that Geoffrey Bender
9 (hereinafter "Bender") is an Assistant Chief Pilot in Continental's Newark, New Jersey
10 Office and has supervisory and managerial control over members of the Class.

11 51. Plaintiffs are informed, believe and thereon allege that Robert Pulvino
12 (hereinafter "Pulvino") is an Assistant Chief Pilot in Continental's Newark, New Jersey
13 Office and has supervisory and managerial control over members of the Class.

14 52. Plaintiffs are informed, believe and thereon allege that Andy Jost (hereinafter
15 "Jost") is the Manager, International Flying in Continental's Newark, New Jersey Office and
16 has supervisory and managerial control over members of the Class.

17 53. Plaintiffs are informed, believe and thereon allege that Robert Duboise
18 (hereinafter "Duboise") is a managerial employee in Continental's Newark, New Jersey
19 Office and has supervisory and managerial control over members of the Class.

20 54. Harassing comments by Continental and Continental management have
21 included:

- 22 a. Comments by Continental management, training and hiring personnel that
23 the company should not hire military pilots due to the inconvenience placed
24 on the airlines' ability to schedule;
- 25 b. Comments by Jost to members of the Class including, but not limited to:
 - 26 i. "If you guys take more than three or four days a month of military
27 leave, you're just taking advantage of the system".
 - 28 ii. Statements that members of the Class should not be taking large
blocks of military leave, that ten days a month was too long and that
ninety-day deployments should stop.

- 1 iii. "We don't hire part time pilots. Their first commitment is to CAL."
- 2 iv. "I'm trying to run a business here, and if you're only available to me
- 3 half the time, then I have to hire another half an employee to make up
- 4 for you."
- 5 v. "I used to be a guard guy, so I know the scams you guys are
- 6 running."

7 c. Comments by Bender to members of Class including but not limited to:

- 8 i. "Your commander can wait. You work full time for me. Part time for
- 9 him. I need to speak with you, in person, to discuss your
- 10 responsibilities here at Continental Airlines."
- 11 ii. "We don't hire part time pilots. Their first commitment is to
- 12 Continental Airlines."
- 13 iii. "Continental is your big boss, the Guard is your little boss";
- 14 iv. "You don't do anything but protect the state of Michigan against the
- 15 Canadians" in response to a Michigan Air National Guardsman's
- 16 request for military leave.
- 17 v. "Those Guard guys are scamming."
- 18 vi. "You take too much military leave,"
- 19 vii. "I didn't think the military did much over the holidays", in response
- 20 to a pilot's military leave request in late December 2005;

21 d. Comments by Pulvino regarding members of the Class including, but not

22 limited to:

- 23 i. "The company was worried about possible staffing ramifications" for
- 24 new military hires.
- 25 ii. That the pilot's military leave was "disapproved".

26 e. Comments by Abbott regarding members of the Class, including but not

27 limited to:

- 28 i. That for every 4 military pilots hired they need to hire and additional
- pilot to pick up their slack;

- 1 f. Comments by Pinaro regarding members of the Class, including but not
2 limited to:
- 3 i. “Continental is not happy with many military reservists right now.
4 Short notice orders and short notice requests screw up their staffing
5 formula and any short notice issues (in some cases 50 days notice)
6 will throw a monkey wrench in PBS”.
- 7 ii. “The military doesn’t work on Thanksgiving” in response to a pilot’s
8 military leave notification the occurred during the Thanksgiving
9 holiday.
- 10 g. Comments by Williams regarding members of the Class, including but not
11 limited to:
- 12 i. “You need to choose between CAL and the Navy”.
- 13 h. Comments by Continental management such as, “it’s getting really difficult
14 to hire you military guys because you’re taking so much military leave”.
- 15 i. Statement to a pilot by Continental employee that “the reason we give you
16 the RX day is to discourage you from taking short notice Mil leave”.
- 17 j. Threats by Continental to a member of the Class that he “may have to
18 choose between the two jobs”.
- 19 k. Comments by Continental interviewers during pilot interviews suggesting
20 that the applicant’s affiliation with the military make it difficult for
21 Continental to hire the applicant because he may have future military
22 commitments.
- 23 l. Comments by Continental interviewers during interviews suggesting that the
24 schedules of current Continental employees who are affiliated with the
25 military have made it difficult for Continental to hire new pilots who may
26 have future military commitments.
- 27 55. Harassing acts by Continental and Continental management have included:
- 28 a. Chastising members of the Class for taking “short notice” military leave if
pilots submit military leave notices after Continental’s deadline for PBS;

- b. Yelling at a pilot for taking “short notice” military leave and threats by the Chief Pilot to call the pilot’s squadron;
- c. Continental’s refusal to approve a pilot’s military leave request until after that pilot submitted his military orders;
- d. Continental’s disapproval and denial of military leave notices;
- e. Harassing questions by Continental management regarding whether the requesting pilot’s military leave is voluntary or involuntary;
- f. Continental’s scheduling of an “off day” on a pilot’s schedule rather than a military leave day despite the pilot’s military service on that day;
- g. Continental’s condescending attitude towards taking military leave including comments to a pilot that his check ride after his return from Iraq would be very difficult for him;
- h. Pressure to perform military service on days off;
- i. Phone calls to a pilots’ home questioning the pilots about military leave;
- j. Questions during the interviewing process whether members of the Pilot Class intended to continue their military career; and
- k. Refusal to approve military leave until the submission of orders for military leave less than 30 days.

56. Continental ratified each and every action of harassment by refusing to act or even investigate complaints made by members of the Class.

57. Continental violated Section 4311 of USERRA by creating an environment of harassing, discriminatory and degrading conduct arising in and out of the Class’ United States Armed Services and National Guard membership and service obligations.

58. The specific acts perpetrated by Continental by and through its managerial employees Small, Williams, Robeson, Komidor, Pinardo, Bender, Pulvino, Jost, Duboise, and others, constituted a pattern and practice of intentional harassment related to the Class’ service obligations and military affiliation, and therefore violated Section 4311 of USERRA.

59. The Class’ obligations and membership in the uniformed services was and is a motivating factor in all derogatory actions taken against the Plaintiff by Defendant.

1 **D. Plaintiff Derek Carder's Experiences with Continental**

2 60. Throughout the entirety of his employment with Continental, Plaintiff Carder
3 has been a Lieutenant Commander in the United States Naval Reserve.

4 61. Plaintiff Carder's Reserve Unit requires him to perform varying service
5 obligations each month.

6 62. Each month Plaintiff Carder provides reasonable notice regarding his military
7 leave schedule when possible.

8 63. From the start of his employment, Carder's supervisors, including but not
9 limited to, Jost and Williams and Small, harassed and criticized Carder for his military
10 service.

11 64. Continental, through Williams, Jost, and Small, harassed Carder during his
12 tenure at Continental. Harassing acts included:

- 13 a. Williams repeatedly demanding that Plaintiff Carder provide military orders
14 prior to Plaintiff Carder performing his service obligations to justify
15 Plaintiff Carder's military leave;
- 16 b. Williams repeatedly calling Plaintiff Carder's Command to verify the timing
17 and purpose of his military leave absences;
- 18 c. Jost sending a letter to Plaintiff Carder on or around December 18, 2007,
19 informing Carder that his probationary status was being extended for thirty
20 (30) days to allow an investigation into his military service;
- 21 d. Williams requiring Plaintiff Carder via letter on January 8, 2009 to meet
22 with him on, January 21, 2008, his day off, "to attend an investigatory
23 meeting in the office of the Chief Pilot...to discuss [his] use of Military
24 leave during the December 2007 bid period";
- 25 e. Small repeatedly contacting Plaintiff Carder's Command to verify and
26 discourage Carder's military leave requests, making comments, such as
27 "What we ARE looking for is support by the military command to
28 discourage the use of military leave as 'fairy dust' as a tactical schedule
improvement tool by some pilots."
- f. Small directly and wrongly accusing Plaintiff Carder of submitting a

1 fraudulent military leave notification;

- 2 g. Small directly and publicly accusing Plaintiff Carder in an email to over
3 fifty (50) Chief Pilots from other airlines of fraudulently submitting dates
4 for military leave;
- 5 h. Small contacting the Chief of Naval Air Training at the Department of the
6 Navy concerning Plaintiff Carder's military leave notification, who later
7 confirmed, "Once again, our investigation found no inappropriate use or
8 abuse of military leave in LCDR Carder's case."
- 9 i. Repeated counseling from Williams, Small and Jost for submitting "short
10 notice" military leave requests; and
- 11 j. Continental management repeatedly forcing Plaintiff Carder to submit
12 military leave orders for military leave periods of less than thirty days.

13 65. When Plaintiff Carder does not have military commitments during a given
14 month, he is awarded, through PBS, lines of flying commensurate with his relative seniority.

15 66. A normal line of flying would provide single or multi-day trips to certain
16 locations, a certain number of flying hours based on each trip and certain days off.

17 67. Military leave requirements are generally based on the operational
18 commitments of the military unit and reserve and guard members have very little if any
19 control in being able to select certain days to perform military duties.

20 68. When Plaintiff Carder submits a multi-day block of military leave prior to the
21 twelfth of each month, Continental constructs Plaintiff Carder's schedule through PBS with
22 lower quality trips that include fewer flight hours, corresponding to less pay, with fewer days
23 off and with days of the week off that he might otherwise would have been able to work.

24 69. Continental therefore requires Plaintiff Carder to make up days of work that
25 Plaintiff Carder otherwise would have had off.

26 70. When Plaintiff Carder submits military leave after the twelfth of each month,
27 Continental intimidates and discourages Plaintiff Carder from taking military leave, even
28 though Plaintiff Carder usually has no or very little control in being able to select his days of
military leave.

1 71. During months when Plaintiff Carder is not on military leave, Continental
2 contributes an amount to Plaintiff Carder's B-Plan that is based on a percentage of the
3 amount he is paid for the entire month and is substantially more than what he receives when
4 he is on military leave.

5 72. During months when Plaintiff Carder is in on military leave for some portion of
6 the month, Continental contributes to his B-Plan an amount that is substantially less than the
7 amount he would have received had he not been on military leave.

8 73. Seniority is a benefit of Plaintiff Carder's employment provided by the
9 Collective Bargaining Agreement. Plaintiff Carder's military service is a motivating factor in
10 Continental's denial of this benefit of his employment.

11 74. Time off is a benefit of employment provided by the Collective Bargaining
12 Agreement. Plaintiff Carder's military service is a motivating factor in Continental's denial
13 of this benefit of his employment.

14 **E. Plaintiff Mark Bolleter's Experiences with Continental**

15 75. Continental has employed Plaintiff Bolleter as a pilot since on or around
16 February 15, 1998. When Plaintiff Bolleter began his employment at Continental, he served
17 as an Intelligence Officer in the Louisiana Air National Guard and subsequently served in the
18 Texas Air National Guard and the United States Air Force Reserve.

19 76. Plaintiff Bolleter's military units required him to perform varying service
20 obligations each month.

21 77. Each month Plaintiff Bolleter provided reasonable notice regarding his military
22 leave schedule when possible.

23 78. When Plaintiff Bolleter submitted military leave after the twelfth of each
24 month, Continental intimidated and discouraged Plaintiff Bolleter from taking military leave,
25 even though Plaintiff Bolleter usually has no or very little control in being able to select his
26 days of military leave.

27 79. In or around June 2007, Plaintiff Bolleter retired from the Louisiana Air
28 National Guard.

 80. Prior to retiring from the Air National Guard, Plaintiff Bolleter was a "Reserve
Pilot" at Continental.

1 81. A Reserve Pilot is a pilot who is awarded a Reserve Line, with a schedule for a
2 bid period consisting of Reserve Days and Off Days.

3 82. When Plaintiff Bolleter submitted military leave prior to the twelfth of the bid
4 month, PBS would schedule his days off on days that he otherwise would have been
5 scheduled to work based on his seniority, which caused him to work for Continental on days
6 that he would otherwise would be able to have off and which caused him to perform his
7 military obligations on his days off from Continental.

8 83. Even when Plaintiff Bolleter intentionally performed his service obligations on
9 his scheduled days off, due to PBS formulas, Plaintiff Bolleter would receive less pay than
10 non-military Reserve Pilots.

11 84. During months when Plaintiff Bolleter was not on military leave, Continental
12 contributed an amount to Plaintiff Bolleter's B-Plan that was based on a percentage of the
13 amount he is paid for the entire month and was substantially more than what he received
14 when he was on military leave.

15 85. During months when Plaintiff Bolleter was on military leave for some portion
16 of the month, Continental contributed to his B-Plan an amount that was substantially less than
17 the amount he would have received had he not been on military leave.

18 86. Seniority is a benefit of Plaintiff Bolleter's employment provided by the
19 Collective Bargaining Agreement.

20 87. Plaintiff Bolleter's military service was a motivating factor in Continental's
21 denial of this benefit of his employment.

22 88. Time off is a benefit of employment provided by the Collective Bargaining
23 Agreement. Plaintiff Bolleter's military service was a motivating factor in Continental's
24 denial of this benefit of his employment.

25 89. Continental therefore monetarily penalized Plaintiff Bolleter for submitting his
26 service obligations with reasonable notice and declaring his military leave dates prior the
27 following month's line constructions.

28 90. Due to Plaintiff Bolleter's military obligations, he was provided by Continental
inferior schedules with less potential pay than he otherwise would receive based on his
seniority, had he not had military obligations.

1 **F. Plaintiff Drew Daugherty's Experiences with Continental**

2 91. Continental has employed Plaintiff Daugherty as a pilot since on or around
3 March 2001. Plaintiff Daugherty began his employment at Continental while he was a
4 Captain in the Texas Air National Guard and he is currently serving in the Texas Air National
5 Guard as a Lieutenant Colonel.

6 92. Plaintiff Daugherty's Texas Air National Guard Unit requires him to perform
7 varying service obligations each month.

8 93. Each month Plaintiff Daugherty provides reasonable notice regarding his
9 military leave schedule when possible.

10 94. When Plaintiff Daugherty does not have military commitments during a given
11 month, he is awarded, through PBS, lines of flying commensurate with his relative seniority.

12 95. A normal line of flying would provide single or multi-day trips to certain
13 locations, a certain number of flying hours based on each trip and certain days off.

14 96. Military leave requirements are generally based on the operational
15 commitments of the military unit and reserve and guard members have very little if any
16 control in being able to select certain days to perform military duties.

17 97. When Plaintiff Daugherty submits military leave after the twelfth of each
18 month, Continental intimidates and discourages Plaintiff Daugherty from taking military
19 leave, even though Plaintiff Daugherty usually has no or very little control in being able to
20 select his days of military leave.

21 98. When Plaintiff Daugherty submits military leave prior to the twelfth of the bid
22 month, PBS schedules his days off on days that he otherwise would have been scheduled to
23 work based on his seniority, which causes him to work for Continental on days that he
24 otherwise would be able to have off and which causes him to perform his military obligations
25 on his days off from Continental.

26 99. When Plaintiff Daugherty submits a multi-day block of military leave prior to
27 the twelfth of each month, Continental constructs Plaintiff Daugherty's schedule through PBS
28 with lower quality trips that include fewer flight hours, corresponding to less pay, with fewer
days off and with days of the week off that he might otherwise would have been able to work.

1 100. Continental requires Plaintiff Daugherty to attempt to make up days of work on
2 days Plaintiff Daugherty otherwise would have had off thereby penalizing him for having
3 military commitments.

4 101. During months when Plaintiff Daugherty is not on military leave, Continental
5 contributes an amount to Plaintiff Daugherty's B-Plan that is based on a percentage of the
6 amount he is paid for the entire month and is substantially more than what he receives when
7 he is on military leave.

8 102. During months when Plaintiff Daugherty is in on military leave for some
9 portion of the month, Continental contributes to his B-Plan an amount that is substantially
10 less than the amount he would have received had he not been on military leave.

11 103. Seniority is a benefit of Plaintiff Daugherty's employment provided by the
12 Collective Bargaining Agreement.

13 104. Plaintiff Daugherty's military service is a motivating factor in Continental's
14 denial of this benefit of his employment.

15 105. Time off is a benefit of employment provided by the Collective Bargaining
16 Agreement.

17 106. Plaintiff Daugherty's military service is a motivating factor in Continental's
18 denial of this benefit of his employment.

19 107. Continental therefore monetarily penalizes Plaintiff Daugherty for submitting
20 his service obligations with reasonable notice and declaring his military leave dates prior the
21 following month's line constructions.

22 108. Due to Plaintiff Daugherty's military obligations, he is provided by Continental
23 inferior schedules with less potential pay than he otherwise would receive based on his
24 seniority, had he not had military obligations.

25 **G. Plaintiff Andrew Kissinger's Experiences with Continental**

26 109. Plaintiff Kissinger applied for a position at Continental and received an
27 interview with Continental on March 29, 2006.

28 110. At the time of the interview, Plaintiff Kissinger was a Major in the United
States Air Force Reserves.

 111. During the interview, Plaintiff Kissinger was asked about his military reserve

1 commitments and how he would be able to fulfill both his military commitments and his
2 potential Continental commitments.

3 112. During the interview, Plaintiff Kissinger was informed by an interviewer that
4 due to the scheduling conflicts of some current Continental employees with those employees'
5 military commitments, it was going to be extremely difficult for Continental to hire new
6 employees who are members of the military reserves and National Guard.

7 113. Upon information and belief, Plaintiff Kissinger was not hired by Continental
8 due to his military commitments.

9 114. Plaintiff Kissinger's military service was a motivating factor in Continental's
10 denial of his employment.

11 115. Continental therefore penalized Plaintiff Kissinger for being affiliated with the
12 United States Air Force Reserves.

13 116. Due to Plaintiff Kissinger's military obligations, he was refused employment by
14 Continental.

15 **V.**

16 **CLASS ACTION ALLEGATIONS**

17 117. Plaintiffs bring this action on behalf of themselves and all others similarly
18 situated, as a class action pursuant to Rule 23(a) and 23(b)(1)-23(b)(2) of the Federal Rules of
19 Civil Procedure. The nationwide class which Plaintiffs seek to represent is composed of and
20 defined as follows (hereinafter the "Class"):

21 All past and present employees and/or employee applicants of Continental who
22 are or were members of the United States Armed Services or National Guard.

23 118. Plaintiffs Carder, Bolleter and Daugherty seek to represent the following
24 subclass (hereinafter the "Employee Subclass"):

25 All past and present employees of Continental who are or were members of the
26 United States Armed Services or National Guard and who have taken military
27 leave between January 1, 1994 and the present while employed by Continental.

28 119. Plaintiff Kissinger seeks to represent the following subclass (hereinafter the
"Applicant Subclass"):

1 All those individuals who applied for employment at Continental from January
2 1, 1994 to the present who were not hired due to their military affiliations
3 and/or commitments.

4 120. Numerosity (Fed R. Civ. P. 23(a)(1)): The Class and Subclasses are so
5 numerous that joinder of all individual members in one action is impracticable and unfeasible.
6 The disposition of their claims through this action will benefit both the parties and this Court.

7 121. Plaintiffs are informed and believe and thereon allege that the Class and
8 Subclasses consists of, at a minimum, 100 individual members.

9 122. The exact size of the Class and Subclasses are ascertainable through
10 Defendant's records, including, but not limited to, Defendant's employment and human
11 resources records.

12 123. Members of the Class and Subclasses may be notified of the pendency of this
13 action by techniques and forms commonly used in class actions, such as by first class mail,
14 email notice, website notice, or combinations thereof, or by other methods suitable to this
15 class and deemed necessary and/or appropriate by the Court.

16 124. Typicality (Fed. R. Civ. P. 23(a)(3)): Plaintiffs Carder's, Bolleter's and
17 Daugherty's claims are typical of the claims of the Class and Employee Subclass. Plaintiff
18 Kissinger's claims are typical of the claims of the Class and Applicant Subclass. The claims
19 of Plaintiffs and members of the Class and the respective Subclasses are based on the same
20 legal theories and arise from the same unlawful conduct.

21 125. Plaintiffs and members of the Class and Subclasses are or were employees or
22 employee applicants of Defendant and are or have served in the United States Armed
23 Services or United States National Guard.

24 126. Common Questions of Fact and Law (Fed. R. Civ. P. 23(a)(2) and b(3)): There
25 is a well-defined community of interest and common questions of fact and law affecting the
26 members of the Class and the respective Subclasses.

27 127. The questions of law and fact common to the Class and the respective
28 Subclasses predominate over questions affecting only individual members of the Class and
the respective Subclasses and include the following, without limitation:

- 1 a. Whether Defendant's preferential bidding system (hereinafter "PBS") denies
2 benefits of employment to the Class due to military service;
- 3 b. Whether Defendant's retirement contribution policies and procedures
4 (hereinafter "B-Plan contributions") discriminate against the Class on the
5 basis of their military service obligations;
- 6 c. Whether Defendant has harassed and discriminated against the Class due to
7 their service and/or affiliation with the United States Armed Services or
8 National Guard, by including, but not limited to, denying military leave,
9 discouraging military leave, and making derogatory comments to and about
10 the Class for their United States Armed Services or National Guard
11 affiliation and service obligations;
- 12 d. Whether Defendant's acts, practices, policies and procedures have violated
13 USERRA by denying benefits of employment and/or discriminating against
14 and/or harassing members of the Class and Subclasses;
- 15 e. Whether Defendant's acts, practices and policies and procedures have
16 violated USERRA by denying employment to members of the Applicant
17 Subclass.
- 18 f. Whether Defendant's conduct, as set forth herein, injured members of the
19 Class and Subclasses;
- 20 g. Whether injunctive and other equitable remedies for the Class and
21 Subclasses are warranted, and;
- 22 h. Whether members of the Class and Subclasses are entitled to damages,
23 including recovery of costs and/or reasonable attorneys' fees based on
24 Defendant's conduct as alleged herein.

25 128. Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)): Plaintiffs are adequate
26 representatives of the Class and respective Subclasses because their interests do not conflict
27 with the interests of the Class or Subclasses which Plaintiffs seek to represent. Plaintiffs will
28 fairly, adequately, and vigorously represent and protect the interests of the Class and
Subclasses through their attorneys and have no interests antagonistic to the Class or

1 Subclasses. Plaintiffs have retained adequate counsel who have substantial experience and
2 success in the prosecution of class actions and complex business litigation matters.

3 129. Superiority (Fed. R. Civ. P. 23(s)(1) and 23(b)(3)): The nature of this action and
4 the nature of the laws available to the Class and Subclasses make use of the class action
5 format a particularly efficient and appropriate procedure to afford relief to the Class and
6 Subclasses for the wrongs alleged. Further, this case involves a large corporate employer and
7 a large number of individual employees and employee applicants (Plaintiffs and the members
8 of the Class and Subclasses) with many relatively small claims with common issues of law
9 and fact. If each employee or employee applicant was required to file an individual lawsuit,
10 Defendant would necessarily gain an unconscionable advantage since they would be able to
11 exploit and overwhelm the limited resources of each individual Plaintiff with their vastly
12 superior financial and legal resources. As a result, the expense and burden of individual
13 litigation makes it economically infeasible and procedurally impracticable for each member
14 of the Class and/or Subclasses to individually seek redress for the wrongs done to them.
15 Requiring each member of the Class and/or Subclasses to pursue an individual remedy would
16 also discourage the assertion of lawful claims by employees who would be disinclined to
17 pursue an action against their present and/or former employer for an appreciable and
18 justifiable fear of retaliation and permanent damage to their careers at their present and/or
19 subsequent employment. Proof of common business practice or factual pattern, of which the
20 named Plaintiffs experienced, is representative of the Class and Subclasses and will establish
21 the right of each Class and/or Subclass Member to recovery on the causes of action alleged.

22 130. The likelihood of individual Class and/or Subclass members prosecuting
23 separate claims is remote. The prosecution of separate actions by the individual Class and/or
24 Subclass Members, even if possible, would create a substantial risk of inconsistent,
25 contradictory or varying verdicts or adjudications with respect to the individual Class and/or
26 Subclass Members against Defendants, and would establish potentially incompatible
27 standards of conduct for Defendants and/or legal determinations with respect to individual
28 Class and/or Subclass Members which would, as a practical matter, be dispositive of the
interest of other Class and/or Subclass Members not parties to the adjudications or which
would substantially impair or impede the ability of the class members to protect their

1 interests. Individualized litigation would also increase the delay and expense to all parties
2 and the court system resulting from multiple trials of the same factual issues. In contrast, the
3 conduct of this matter as a class action presents fewer management difficulties, conserves
4 resources of the parties and the court system, and would protect the rights of each member of
5 the Class and respective Subclasses. Further, the claims of the individual Class and Subclass
6 Members are not sufficiently large to warrant vigorous prosecution considering all of the
7 concomitant costs and expenses attending thereto. Plaintiffs know of no difficulty to be
8 encountered in the management of this action that would preclude its maintenance as a class
9 action.

10 131. Class certification is appropriate pursuant to Fed. R. Civ. Proc. Rule 23(b)(2)
11 because Continental Airlines has acted on grounds generally applicable to the Class, making
12 appropriate compensatory, declaratory and injunctive relief to Plaintiffs and the Class as a
13 whole. The Class and Subclass members are entitled to compensatory, declaratory and
14 injunctive relief to end Defendant's acts and practices that have denied members of the Class
15 and Employee Subclass certain benefits of their employment and have denied members of the
16 Applicant Subclass employment.

17 VI.

18 **FIRST CAUSE OF ACTION FOR VIOLATIONS OF**
19 **THE UNIFORMED SERVICES EMPLOYMENT AND**
20 **REEMPLOYMENT RIGHTS ACT OF 1994 §2(A), 38 U.S.C. §§4311, 4323**

21 (As Against All Defendants)

22 132. Plaintiffs re-allege and incorporate herein by reference each and every
23 allegation contained within paragraphs 1 through 131, inclusive, as though set forth at length
24 herein and made a part hereof.

25 133. Plaintiffs, the Class and respective Subclasses they represent are persons
26 protected under the Uniformed Services Employment and Reemployment Rights Act of 1994
27 ("USERRA") §2(a), 38 U.S.C. §§4301-4333.

28 134. Continental has violated USERRA by depriving Plaintiffs and Members of the
Class employment benefits through discriminatory scheduling practices. The Class' and the

1 Employee Subclass military service is a motivating factor in Continental's denial of these
2 benefits of employment.

3 135. Continental utilizes its PBS system to incorporate military leave inputs as
4 restrictions to building trips by blocking off a pilot's availability on those days and giving
5 that pilot a credit of time in the construction of their flight line.

6 136. Continental also utilizes PBS to construct trip assignments around each pilot's
7 military leave schedule which in turn creates schedules for the Class that are far inferior,
8 lower in quality and/or contain fewer hours and thus less pay than their seniority allows them
9 to hold.

10 137. The resulting line of trips is therefore not in accordance with each pilot's
11 seniority.

12 138. Continental denies the Class and the Employee Subclass a benefit of their
13 employment by building trips around their military leave and not in accordance with each
14 pilot's seniority.

15 139. By repeatedly discriminating against Plaintiffs, the Class and the Employee
16 Subclass through their scheduling practices, Continental violated §4311 of USERRA
17 Plaintiffs', the Class' and the Employee Subclass' service obligations were a motivating
18 factor in the discriminatory actions taken against Plaintiffs, the Class and the Employee
19 Subclass by Continental.

20 VII.

21 SECOND CAUSE OF ACTION FOR VIOLATIONS OF 22 THE UNIFORMED SERVICES EMPLOYMENT AND 23 REEMPLOYMENT RIGHTS ACT OF 1994 §2(A), 38 U.S.C. §§4311, 4323

24 (As Against All Defendants)

25 140. Plaintiffs re-allege and incorporate herein by reference each and every
26 allegation contained within paragraphs 1 through 139, inclusive, as though set forth at length
27 herein and made a part hereof.

28 141. Plaintiffs, the Class and respective Subclasses they represent are persons
protected under the Uniformed Services Employment and Reemployment Rights Act of 1994

1 (“USERRA”) §2(a), 38 U.S.C. §§4301-4333.

2 142. Continental violated USERRA by depriving Plaintiffs, members of the Class
3 and the Employee Subclass employment benefits through the discriminatory practices in the
4 underpayment of B-Plan retirement contributions.

5 143. The Class’ military service is a motivating factor in Continental’s denial of
6 these benefits of employment.

7 144. Continental has repeatedly underpaid B-Plan contributions to pilots who are on
8 Military Leave, thereby denying members of the Class a benefit of employment.

9 145. Upon information and belief, Continental has repeatedly refused to properly
10 account for military leave on pilots’ schedules despite the pilots’ timely notifications of
11 military service obligations.

12 146. Such refusal results in a reduction in contributions to pilots’ B-Plan thereby
13 denying members of the Class a benefit of their employment.

14 147. USERRA requires employers to treat the period of military leave as service
15 with the employer for purposes of vesting and the accrual of pension benefits. Pension
16 benefits should accrue as though the employees were available but for the military service.

17 148. By repeatedly discriminating against Plaintiffs, the Class and the Employee
18 Subclass through the underpayment of their B-Plan retirement contributions, Continental
19 violated §4311 of USERRA.

20 149. Plaintiffs’, the Class’ and the Employee Subclass’ service obligations were a
21 motivating factor in the discriminatory actions taken against Plaintiffs, the Class and the
22 Employee Subclass by Continental.

23 VIII.

24 THIRD CAUSE OF ACTION FOR VIOLATIONS OF 25 THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 §2(A), 38 U.S.C. §§4311, 4323

26 (As Against All Defendants)

27 150. Plaintiffs re-allege and incorporate herein by reference each and every
28 allegation contained within paragraphs 1 through 149, inclusive, as though set forth at length

1 herein and made a part hereof.

2 151. Plaintiffs, the Class and respective Subclasses they represent are persons
3 protected under the Uniformed Services Employment and Reemployment Rights Act of 1994
4 (“USERRA”) §2(a), 38 U.S.C. §§4301-4333.

5 152. Continental violated Section 4311 of USERRA by creating a hostile work
6 environment through harassing, discriminatory and degrading comments and conduct related
7 to and arising in and out of Plaintiffs United States Armed Services and National Guard
8 membership and service obligations.

9 153. Plaintiffs, the Class and the Employee Subclass have been subjected to
10 Continental’s continuous pattern of harassment in which Continental has repeatedly chided
11 and derided Plaintiffs for their military service through the use of discriminatory conduct and
12 derogatory comments regarding their military service and military leave obligations.

13 154. Continental ratified each and every action of harassment by refusing to act or
14 even investigate complaints made by members of the Employee Subclass.

15 155. The specific acts perpetrated by Continental by and through its managerial
16 employees, Small, Williams, Robeson, Komidor, Pinardo, Bender, Pulvino, Jost, and others,
17 constituted a pattern and practice of intentional harassment related to the Employee Subclass’
18 service obligations and military affiliation, and therefore violated Section 4311 of USERRA.

19 156. By repeatedly harassing the Employee Subclass, Continental violated §4311 of
20 USERRA by creating an environment of severe and pervasive harassment at Continental
21 thereby altering the conditions of employment and creating a hostile work environment.

22 157. Plaintiffs’, the Class’ and the Employee Subclass’ service obligations were a
23 motivating factor in all of the discriminatory comments made and derogatory actions taken
24 against the Plaintiffs by Continental.

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IX.

FOURTH CAUSE OF ACTION FOR VIOLATIONS OF
THE UNIFORMED SERVICES EMPLOYMENT AND
REEMPLOYMENT RIGHTS ACT OF 1994 §2(A), 38 U.S.C. §§4311, 4323

(As Against All Defendants)

158. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained within paragraphs 1 through 157, inclusive, as though set forth at length herein and made a part hereof.

159. Plaintiffs, the Class and respective Subclasses they represent are persons protected under the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) §2(a), 38 U.S.C. §§4301-4333.

160. Continental has violated USERRA by denying employment to the Applicant Subclass based on their military service.

161. Upon information and belief, Continental has repeatedly made comments to members of the Applicant Subclass during the pilot application process indicating that the applicant’s affiliation with the military made it difficult for Continental to hire the applicant because the individual may have future military commitments.

162. Upon information and belief, Continental has repeatedly refused to hire members of the Applicant Subclass because they may have future military obligations.

163. USERRA requires employers to treat all applicants for employment similarly regardless of their military service affiliation and obligations.

164. By repeatedly discriminating against Plaintiffs, the Class and the Applicant Subclass through their refusal to hire members of the Applicant Subclass, Continental violated §4311 of USERRA.

165. Plaintiffs’, the Class’ and the Applicant Subclass’ service obligations were a motivating factor in the Continental’s refusal to hire and similar discriminatory actions taken against Plaintiffs, the Class and the Applicant Subclass by Continental.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class and respective Subclasses, pray for judgment against Continental, its officers, agents, employees, successors and all persons in active concert or participation with it as follows:

1. Determine that this action may proceed and be maintained as a class action, designating Plaintiffs as Lead Plaintiffs, and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and their counsel as lead counsel, and designating Plaintiffs as representatives of the class and their counsel of record as Class Counsel;

2. Declare that the acts and practices complained of herein are unlawful and are in violation of USERRA, 38 U.S.C. § 4301, et.seq.;

3. Require that Continental fully comply with the provisions of USERRA by providing Plaintiffs and class members all employment benefits denied them as a result of the unlawful acts and practices under USERRA described herein, including, but not limited to, lost B-Fund contributions, lost earned vacation time, lost earned sick leave (or the monetary equivalent), pay lost due to the inability to bid on flights commensurate with their levels of seniority, lost pay due to not being hired, lost employment and lost seniority;

4. Enjoin Continental from taking any action against Plaintiffs and members of the class that fails to comply with the provisions of USERRA;

5. Award Plaintiffs prejudgment interest on the amount of lost wages or employment benefits found due;

6. Order that Continental pay liquidated damages in an amount equal to the amount of lost compensation and other benefits suffered by reason of Continental's willful violations of USERRA;

7. Award special damages to Plaintiffs and each member of the Class and respective Subclasses according to proof at trial;

8. Award general damages to Plaintiffs and each member of the Class and respective Subclasses according to proof at trial;

9. Award reasonable attorneys' fees and costs to Class Counsel; and

1 10. Grant such other and further relief as may be just and proper and which
2 Plaintiffs may be entitled to under all applicable laws.
3

4 Dated: July 2, 2009

PILOT LAW, P.C.

5 THE LAW OFFICES OF CHARLES M. BILLY, A
6 PROFESSIONAL CORPORATION

7 LINDSAY & STONEBARGER, APC
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JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: July 2, 2009

PILOT LAW, P.C.

THE LAW OFFICES OF CHARLES M. BILLY, A
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