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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAMETRE MACON,  
  
Plaintiff,  
  
v.  
  
UNITED PARCEL SERVICE, INC.,  
  
Defendant.

No. 2:12-cv-260

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant United Parcel Service ("UPS") removes to the United States District Court for the Western District of Washington, the action filed in the Superior Court of the State of Washington for King County, entitled *Dametre Macon v. United Parcel Service, Inc.*, Case No. 11-2-44388-4 ("State Action"), on the basis set forth below:

NOTICE OF REMOVAL (No. 2:12-cv-260) – 1

00895-0673/LEGAL22616687.2

Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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## I. STATE COURT ACTION

1. On or about December 27, 2011, plaintiff Dametre Macon filed a Summons and Complaint for Damages (the "Complaint") in the State Action against UPS. UPS was served with the Summons and Complaint on January 27, 2012. Declaration of Anthony James Nelson ¶ 3. No further proceedings in this matter have been had in the Superior Court.

2. Plaintiff's Complaint alleges employment discrimination and retaliation in violation of Chapter 49.60 RCW and Chapter 49.78 RCW, and wrongful termination and outrage under the common law.

## II. STATE COURT RECORD

3. In accordance with 28 U.S.C. § 1446(a), a copy of the entire state court record is attached to the Verification of State Court Record filed herewith.

## III. GROUNDS FOR REMOVAL

4. There is jurisdiction of the federal court in this matter pursuant to 28 U.S.C. § 1332 based on diversity of citizenship.

a. **Diversity of Citizenship.** According to her Complaint, plaintiff is a resident of King County, Washington. See Complaint. United Parcel Service, Inc. is an Ohio corporation with its principal place of business in Georgia. Nelson Decl. ¶ 2. Diversity of citizenship therefore exists between the parties.

b. **Amount in Controversy**

The amount in controversy in this matter exceeds \$75,000, exclusive of costs and interest. Although plaintiff's Complaint does not contain an allegation regarding the specific amount in controversy, the Court should conclude based on a preponderance of evidence that plaintiff seeks damages in an amount greater than \$75,000 based on the following:

1 Plaintiff seeks actual damages, which in this case includes alleged lost wages. See,  
2 e.g., Complaint at 9:4-5 ("Prayer for Relief"). At the time of her discharge, plaintiff was  
3 working for UPS as a part-time supervisor working approximately 35 hours per week.  
4  
5 Nelson Decl. ¶ 4; Complaint ¶ 10. Plaintiff's pay rate at the time her employment terminated  
6 in December 2009 was \$16.52/hour. Id. Assuming that plaintiff's claim for lost wages  
7 extends from the date of her discharge in December 2009 to a trial date in January 2013  
8 (approximately 12 months from the date of filing), her back pay claim is for 36 months/156  
9 weeks of back pay at \$578.20 per week (\$16.52 x 35 hours), totaling \$90,199.20. The  
10 amount in controversy requirement is exceeded by plaintiff's back pay claim alone.  
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19 Plaintiff also seeks general damages for "severe emotional distress," in an amount to  
20 be proven at trial. Complaint ¶ 83 & p. 9:4-5. These amounts are properly considered part  
21 of the amount in controversy even though the ultimate award cannot be determined with  
22 specificity. See, e.g., Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004) ("Nor  
23 does it present an insurmountable obstacle to quantify the amount at stake when intangible  
24 harm is alleged; the parties need not predict the trier of fact's eventual award with one  
25 hundred percent accuracy."). It is appropriate to consider awards in similar cases in  
26 assessing the amount in controversy. Kroske v. U.S. Bank Corp., 432 F.3d 976, 980 (9th  
27 Cir. 2005) (holding that the district court properly considered emotional distress damage  
28 awards in similar discrimination cases in Washington in determining that the amount in  
29 controversy exceeded \$75,000), cert. denied, 127 S. Ct. 157 (2006). Juries frequently award  
30 substantial amounts of emotional distress or general damages in employment discrimination  
31 cases. See, e.g., Passantino v. Johnson & Johnson Consumer Prods. Inc., 212 F.3d 493, 504,  
32 513-14 (9th Cir. 2000) (affirming \$1,000,000 emotional distress award in a discrimination  
33 and retaliation case brought under the WLAD); Robel v. Roundup Corp., 148 Wn.2d 35, 41-

1 42, 59 P.3d 611 (2002) (\$50,000 general damages award in case for disability discrimination  
2 and retaliation under the WLAD); Hirata v. Evergreen State Ltd. P'ship No. 5, 124 Wn.  
3 App. 631, 636, 103 P.3d 812 (2004) (\$75,000 general damages award to each of two  
4 plaintiffs in an employment discrimination and harassment case brought under the WLAD,  
5 where one of the plaintiffs was awarded only \$1,570.80 in back pay); Herring v. Dep't of  
6 Soc'l & Health Servs., 81 Wn. App. 1, 13-15, 914 P.2d 67 (1996) (\$550,000 award for non-  
7 economic mental distress damages in a suit under the WLAD for wrongful termination,  
8 discrimination, failure to accommodate, harassment, and retaliation related to plaintiff's  
9 disability).

10 Plaintiff also seeks attorneys' fees. Where, as here, attorneys' fees are recoverable  
11 under the applicable state statutes, reasonable attorneys' fees are properly included in the  
12 amount in controversy. Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1155-56 (9th Cir.  
13 1998) (considering attorneys' fees in determining amount in controversy); Kroske, 432 F.3d  
14 at 980 (same); Beaver v. NPC Intern, Inc., 451 F. Supp. 2d 1196, 1198-99 (D. Or. 2006)  
15 (same); Szalay v. Yellow Freight Sys., Inc., 999 F. Supp. 972, 974 (N.D. Ohio 1996) (same),  
16 aff'd by, 127 F.3d 1103 (6th Cir. 1997). As with emotional distress awards, fee awards in  
17 employment discrimination cases are frequently substantial. See, e.g., Hirata, 124 Wn. App.  
18 at 636 (fee award of \$271,230); Herring, 81 Wn. App. at 13 (\$267,862.50 fee award). An  
19 award of even half the amount of fees awarded in Hirata or Herring would be well over the  
20 minimum amount in controversy.

21 Considering plaintiff's claims for lost wages in conjunction with her claims for  
22 emotional distress damages and attorneys' fees, there can be no doubt that the amount in  
23 controversy here exceeds the \$75,000 required for diversity jurisdiction. Therefore, based  
24 upon a preponderance of the evidence, UPS has satisfied its burden to establish that the  
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1 amount in controversy exceeds \$75,000. This Court therefore has diversity jurisdiction  
2 pursuant to 28 U.S.C. § 1332(a).  
3

4 Accordingly, the action is removable pursuant to 28 U.S.C. §§ 1441 and 1446.  
5

#### 6 **IV. VENUE**

7  
8 5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving  
9 rise to the claims alleged in the Complaint concern events that occurred within the Western  
10 District of Washington.  
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#### 13 **V. TIMELINESS OF REMOVAL**

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15 6. This Notice of Removal is timely under 28 U.S.C. § 1446(b). UPS filed this  
16 Notice of Removal within 30 days after its receipt of the Summons and Complaint in the  
17 State Action.  
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#### 22 **VI. NOTICE**

23  
24 7. Pursuant to 28 U.S.C. § 1446(d), UPS will promptly file written notice of this  
25 removal and a copy of the Notice of Removal with the clerk of the court in the State Action  
26 and will serve a copy of this notice on all parties to the removed action.  
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#### 30 **VII. NO ADMISSION OF FACT, LAW OR LIABILITY AND** 31 **RESERVATION OF DEFENSES**

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33 8. By filing this Notice of Removal, UPS makes no admission of fact, law, or  
34 liability, and does not waive, and hereby reserves, any right to assert any objections and  
35 defenses to plaintiff's Complaint, including without limitation, the defense of failure to state  
36 a claim upon which relief can be granted.  
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41 **THEREFORE, UPS now removes this action from the Superior Court to this Court.**  
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DATED: February 15, 2012

s/ Andrew Moriarty, WSBA No. 28651  
AMoriarty@perkinscoie.com  
**Perkins Coie LLP**  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
Facsimile: 206.359.9000

Attorneys for Defendant  
United Parcel Service, Inc.

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**CERTIFICATE OF SERVICE**

On February 15, 2012, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

**NOTICE OF REMOVAL**

Noah C. Davis, WSBA #30939  
Meghan D. Rae, WSBA #43626  
In Pacta PLLC  
801 Second Avenue, Suite 307  
Seattle, WA 98101  
Phone: (206) 709-8281  
Fax: (206) 860-0178

Via hand delivery  
 Via U.S. Mail, 1st Class,  
 Postage Prepaid  
 Via Overnight Delivery  
 Via Facsimile  
 Via Email  
 Via Electronic Filing

Attorneys for Plaintiff

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 15<sup>th</sup> day of February, 2012.

s/ Kay M. Sagawinia  
Kay M. Sagawinia  
Legal Secretary

# EXHIBIT A



FILED

11 DEC 27 PM 1:59

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 11-2-44388-4 SEA

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

DAMETRE MACON,  
Plaintiff,

No.

v.

COMPLAINT FOR DAMAGES

UNITED PARCEL SERVICE, INC  
Defendant.

COMES NOW, Plaintiff DAMETRE MACON, by and through her attorney, to allege as follows:

I. PARTIES

1. Plaintiff Dametre Macon is a resident of King County and a former employee of United Parcel Service, Inc.
2. Defendant United Parcel Service, Inc (hereafter "UPS") is a "for-profit" corporation, incorporated in Ohio, and doing business all across Washington State.

II. JURISDICTION AND VENUE

3. UPS is a foreign business registered in Washington and transacting business in King County.
4. The acts complained of herein occurred in King County.
5. Therefore, venue is proper under RCW 4.12.025.

III. STATEMENT OF FACTS

6. Plaintiff Dametre Macon served just under four years in the United States Army, including

1 a tour in Iraq.

2 7. As a result of Dametre's service in Iraq, she suffers from post traumatic stress disorder.

3 8. The United States Department of Veteran Affairs has classified Dametre as a disabled Iraqi  
4 War veteran.

5 9. In or about November of 2007, Dametre began working for UPS as a package handler in  
6 an hourly, union position.  
7

8 10. Within four months, she was promoted to part-time supervisor (approximately 35 hours  
9 per week) in a salaried, but non-union position.

10 11. Shortly after her promotion, Dametre witnessed co-workers (including other part-time  
11 supervisors and managers) involved in the use and sale of illegal drugs.  
12

13 12. Not long thereafter, in April of 2008, Dametre had reported the illicit drug activities to her  
14 superiors.

15 13. As a result of the reporting, UPS management launched an investigation that resulted in  
16 the termination of two part-time supervisors.  
17

18 14. However, not everyone involved in the use and distribution of illegal drugs was  
19 terminated.

20 15. Those who remained (including Dametre's manager and two part-time supervisors) were  
21 clearly unhappy with Dametre's actions and "snitching," and to show their disdain, they initiated a  
22 pattern of retaliation.  
23

24 16. The retaliation began with seemingly innocuous treatments, such co-workers taking  
25 Dametre's supplies from her workstation.

26 17. However, this inhibited Dametre's ability to effectively perform her job and maintain  
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1 timelines that were imposed upon her.

2 18. The retaliation also reared itself in the form of Dametre's manager acquiring a newfound  
3 interest in Dametre which resulted in Dametre getting special treatment in the form of extra  
4 assignments.

5 19. Dametre's immediate supervisor and two other managers also began overly scrutinizing  
6 Dametre's work and began treating her more harshly than other employees.

7 20. Managers used their ability to schedule to put pressure on Dametre so that she would  
8 struggle with workloads.

9 21. As a result of the openly hostile treatment by her superiors, Dametre's subordinates also  
10 began to openly disobey her directives.

11 22. Dametre reported this harassment to at least one other manager at UPS but her concerns  
12 were disregarded if not mocked.

13 23. It became obvious to Dametre that she was not welcome (and that UPS management was  
14 not going to stop the retaliation), so in May of 2008 she attempted to transfer to a night shift.

15 24. However, her immediate supervisor prevented her from transferring by discouraging  
16 another manager from approving Dametre's transfer request.

17 25. In or around June of 2008 Dametre again attempted to transfer out of her department.

18 26. Although this time her transfer request was approved, immediately after Dametre started  
19 the new position, her schedule was changed (without her consent) to a less desirable weekend shift.

20 27. Her supervisors knew this change would negatively and significantly impact her and,  
21 hopefully, force her to quit.

22 28. The stress of the whole ordeal and the unsatisfactory outcome exasperated Dametre's  
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1 disability and on August 28, 2008, Dametre formally took medical leave from UPS at the  
2 recommendation of her therapist.

3 29. In February of 2009 Dametre filed an EEOC complaint against UPS based in part on the  
4 above mentioned facts, as well as on an allegation regarding unequal pay for women in violation of  
5 the 5<sup>th</sup> and 14<sup>th</sup> Amendment to the U.S. Constitution.

6  
7 30. After continuing therapy for approximately six months, Dametre was ready to return to  
8 work in March of 2009.

9 31. At that time, Dametre requested an accommodation for her disability.

10 32. However, UPS intentionally stalled the accommodation request process.

11 33. Finally, the EEOC issued a Notice of Right to Sue on October 26, 2009.

12 34. The final accommodation related meeting was held less than a month later, on November  
13 24, 2009.

14  
15 35. After multiple requests for an accommodation, finally, on December 24, 2009, some nine  
16 months after Dametre first request, Dametre was notified that her requested accommodation could  
17 not be met.

18 36. She was then terminated from UPS.

19 37. This suit now follows.

20  
21 **IV. CAUSES OF ACTION**

22 **A. Violation of RCW Chapter 49.60 and specifically 49.60.180 "Unfair  
23 practices of employers"**

24 38. Plaintiff incorporates each of the foregoing factual allegations as if set forth fully herein.

25 39. It is an unfair practice for any employer to discharge or bar any person from employment  
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1 because of sex, race, creed, color, national origin, honorably discharged veteran or military status, or  
2 the presence of any sensory, mental, or physical disability.

3 40. Dametre Macon's termination because of her disability, military or veteran status, or  
4 gender was in violation of RCW 49.60.180 and chapter 49.60.

5 41. As a result, Dametre Macon is entitled to recover general damages, specific damages, as  
6 well as her costs and reasonable attorney fees.  
7

8 **B. Violation of RCW Chapter 49.60, and specifically RCW 49.60.210**  
9 **"Unfair practices — Discrimination against person opposing**  
10 **unfair practice — Retaliation against whistleblower"**

11 42. Plaintiff incorporates each of the factual allegations as if set forth fully herein.

12 43. It is an unfair practice for any employer to discharge, expel, or otherwise discriminate  
13 against any person because she has opposed any practices forbidden by this chapter, or because she  
14 has filed a charge, testified, or assisted in any proceeding under this chapter.

15 44. Dametre's harassment and termination subsequent to her report of drug sale/use within  
16 UPS was in violation of RCW 49.60.210 and chapter 49.60.  
17

18 45. Dametre's termination subsequent to her filing an EEOC complaint was also in violation  
19 of RCW 49.60.210 and chapter 49.60.

20 46. Dametre's termination after requesting an accommodation due to a disability is in violation  
21 of RCW 49.60.210 and chapter 49.60.  
22

23 47. As a result, Dametre Macon is entitled to recover general damages, specific damages, as  
24 well as her costs and reasonable attorney fees.

25 **C. Violation of RCW 49.60.220 Unfair practice to aid violation.**

26 48. Plaintiff incorporates each of the factual allegations as if set forth fully herein.  
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1 49. It is an unfair practice for any person to aid, abet, encourage, or incite the commission of  
2 any unfair practice, or to attempt to obstruct or prevent any other person from complying with the  
3 provisions of this chapter or any order issued thereunder.

4 50. UPS aided in the retaliation against Dametre by failing to take action against her harassers,  
5 by failing to transfer her upon her initial request, by failing to prevent the change of hours after her  
6 second transfer request and by failing to make reasonable accommodation for Dametre (after her  
7 request for accommodation due to a disability).

8 51. As a result, Dametre Macon is entitled to recover general damages, specific damages, as  
9 well as her costs and reasonable attorney fees.  
10

11 **D. Violation of RCW 49.78 Prohibited acts.**  
12

13 52. Plaintiff incorporates each of the factual allegations as if set forth fully herein.

14 53. It is unlawful for any employer to discharge or in any manner discriminate against any  
15 individual for opposing any practice made unlawful by chapter 49.78 of the Revised Code of  
16 Washington.  
17

18 54. Dametre Macon's termination after she filed an EEOC complaint was a violation of RCW  
19 49.78.300 and chapter 49.78.

20 55. As a result, Dametre Macon is entitled to recover general damages, specific damages, as  
21 well as her costs and reasonable attorney fees.  
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23 **E. Retaliation**

24 56. Plaintiff incorporates each of the factual allegations as if set forth fully herein.

25 57. For the safety of others, Dametre Macon reported within UPS the use and sale of illegal  
26 drugs by her peers and superiors.  
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1 58. Dametre's actions of reporting the drug issues spurred harassment by managers and co-  
2 workers and ultimately led to her termination.

3 59. Dametre filed an EEOC complaint against UPS concerning the harassment she endured.

4 60. Dametre also engaged in a protected activity by taking medical leave as allowed by RCW  
5 49.78.220 and requesting reasonable accommodations upon her return.

6  
7 61. UPS took adverse employment action against Dametre by terminating her on December  
8 24, 2009.

9 62. But for Dametre's reporting of illegal drug (whistle blowing) use, thereafter asserting her  
10 legal rights, Dametre would not have been terminated.

11 63. But for Dametre's medical leave, Dametre would not have been terminated.

12 64. But for Dametre's filing of the EEOC complaint, Dametre would not have been  
13 terminated.  
14

15 65. As a result, Dametre Macon suffered severe emotional stress and is entitled to recover  
16 general damages, specific damages, as well as her costs and reasonable attorney fees.  
17

18 66. It is the public policy of the state of Washington to provide a common law claim for  
19 damages due to retaliation.

20 **F. Wrongful Termination**

21 67. Plaintiff incorporates each of the factual allegations as if set forth fully herein.

22 68. It is the public policy of Washington to protect those with disabilities from discrimination.

23 69. It is also the public policy of Washington to protect whistle blowers.

24 70. Allowing UPS to terminated Dametre for asserting her constitutional and statutory rights  
25 would jeopardize the above public policies.  
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1 71. Dametre's reporting of drug use, taking of medical leave, filing of EEOC complaint, and  
2 requesting accommodation together and individually caused her termination.

3 72. UPS lacks an overriding justification for Dametre's termination.

4 73. As a result, Dametre Macon suffered severe emotional distress and is entitled to recover  
5 general damages, specific damages, as well as her costs and reasonable attorney fees.  
6

7 74. Washington common law provides a claim for damages for Wrongful Termination.

8 **G. Outrage**

9 75. Plaintiff incorporates each of the factual allegations as if set forth fully herein.

10 76. Haun Nyugen and other agents of UPS harassed Dametre on a daily basis because she  
11 reported illegal drug use/sale which had resulted in the termination of two part-time supervisors.  
12

13 77. Dametre's harassers (including her direct supervisor) intended or recklessly caused  
14 Dametre emotional distress which was also permitted by UPS management.

15 78. The relentless harassment caused Dametre to experience severe emotional distress.

16 79. Dametre's therapist, Dr. Sara Ferguson, recommended that Dametre take leave from UPS  
17 until her symptoms were under control.  
18

19 80. Dametre was unable to work for seven months.

20 81. Then UPS denied Dametre's return to work, causing severe emotional distress.

21 82. Washington law provides a claim for the Tort of Outrage in employment.  
22

23 83. As a result of the severe and harsh treatment she received and the severe emotional distress  
24 she suffered, Dametre Macon is entitled to recover general damages, specific damages, as well as  
25 her costs and reasonable attorney fees.  
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X. PRAYER FOR RELIEF

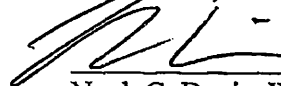
WHEREFORE, Plaintiff prays that a verdict be entered and judgment be returned in her favor against Defendant as requested in each causes of action:

- a. That UPS being ordered to pay Dametre Macon actual, compensatory, general, and specific damages according to proof at trial and as allowable by law;
- b. That Dametre Macon be awarded her costs of suit including reasonable attorneys' fees and expert witness fee;
- c. That Dametre Macon be awarded prejudgment interest; and
- d. That the Court award such further relief as the Court deems just and proper.

Plaintiff reserves the right to amend her Complaint as may be warranted by further discovery, particularly in relation to any claims arising from any facts set forth above and any facts and causes of action set forth in the EEOC complaint.

DATED this 27<sup>th</sup> day of December, 2011

IN PACTA, PLLC

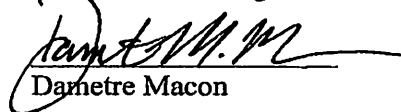


Noah C. Davis, WSBA#30939  
Meghan D. Rae, WSBA#43626  
Attorneys for Plaintiff

Verification

I, Dametre Macon, hereby declare, swear and affirm that I have read the foregoing Complaint and believe it to be true and accurate, to the best of my recollection.

DATED this 27 day of December, 2011, signed at Seattle Washington.



Dametre Macon