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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 YASMINE MAHONE and DAIN
OLSON,

11 Plaintiffs,

12 v.

13 AMAZON.COM, INC.,

14 Defendant.
15

CASE NO. C22-594 MJP

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION TO
DISMISS

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17 This matter comes before the Court on Defendant's Motion to Dismiss and Request for
18 Judicial Notice. (Dkt. Nos. 28 & 30.) Having reviewed the Motion and Request, Plaintiffs'
19 Opposition (Dkt. No. 31), the Reply (Dkt. No. 33) and all supporting materials, the Court
20 GRANTS in part and DENIES in part the Motion and Request for Judicial Notice.

21 **BACKGROUND**

22 Plaintiffs Yasmine Mahone and Dain Olson allege that their former employer, Defendant
23 Amazon.com Inc., discriminated against them on the basis of their military status and service in
24 violation of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38

1 U.S.C. § 4301 et seq. (“USERRA”). They also allege that Amazon failed to offer them
2 reinstatement as required USERRA after they were terminated. They bring claims individually
3 and on behalf of similarly-situated employees of Amazon who were or are serving in the United
4 States Armed Services or National Guard.

5 Amazon seeks dismissal of all of the claims asserted against it, explaining additionally
6 that it believes Plaintiffs sued the wrong entity. (See Mot. at 3 n.1.) It raises jurisdictional
7 arguments about Plaintiff Mahone’s standing, and asserts that Olson’s claims are barred by
8 laches. It also argues that neither Plaintiff has adequately alleged a USERRA discrimination
9 claim, and that neither is entitled to pursue claims for reinstatement. Lastly, Amazon seeks
10 dismissal of Plaintiffs’ requests for declaratory and injunctive relief.

11 The Court reviews Plaintiffs’ allegations and the additional materials Amazon has filed
12 with its Motion and Request for Judicial Notice.

13 **A. Factual Allegations**

14 Mahone worked for Amazon from July 16, 2020 until she was terminated on October 18,
15 2020. (First Amended Complaint ¶ 19 (Dkt. No. 19).) While Amazon employed her, Mahone
16 performed various periods of military service that required her to take unpaid time off, and that
17 was the only reason she took unpaid time off. (Id. ¶¶ 19, 26.) Prior to her termination, she was
18 required to participate in military service from October 16 through October 18, 2020. (Id. ¶ 20.)
19 She gave Amazon notice of her obligation and that she would take unpaid time off. (Id. ¶¶ 20-
20 21.) “On Sunday, October 18, 2020, Plaintiff Mahone was performing military service
21 obligations when she received an email from Amazon terminating her employment because her
22 UTO [unpaid time off] balance was 36 hours, which was a direct result of the three shifts she
23 missed for the military drill weekend.” (Id. ¶ 25.)
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1 Olson worked for Amazon from May 9, 2016 to September 22, 2016, during which he
2 also had military obligations. (FAC ¶ 27.) Olson provide Amazon with his military schedule for
3 2016. (Id. ¶ 28.) During planned military leave in July, “Amazon continuously interrupted
4 Plaintiff Olson’s military service demanding that he perform work for Amazon simultaneously
5 while on military leave of absence.” (Id. ¶ 29.) Olson alleges “Amazon became hostile toward
6 Plaintiff Olson as a result of his performance of military obligations making him unavailable to
7 Amazon at its beck and call.” (Id.) After returning from the July military service, his “direct
8 supervisor, Nityanath Vaidya, exercised open hostility toward Plaintiff Olson, including
9 interrogation of all Plaintiff Olson’s direct reports and deployment of other management to his
10 employment site to seek independent reasons to terminate Plaintiff Olson as cover separate from
11 his military status.” (Id. ¶ 31.)¹ Olson does not squarely allege that Vaidya’s hostility was related
12 to his military service. His claims of “hostility” are all alleged to come from “Amazon,” without
13 specifying who at Amazon. (Id. ¶¶ 29, 31.) Olson alleges that he otherwise received positive
14 reviews from his peers, reports, and management. (Id.) Olson alleges that he encountered similar
15 demands that he work during his August and September military service and hostility towards
16 him from Amazon after his returns. (Id. ¶¶ 32-33.) He alleges that shortly after completing
17 military leave in September 2016, he “continued [experiencing] . . . hostility towards” him, and
18 that Amazon terminated him on September 22, 2016. (Id. ¶ 33.)

19 Plaintiffs’ FAC lacks clarity on the specific claims they pursue under USERRA. The
20 FAC appears to allege that Amazon violated Sections 4311, 4312, 4313, 4316 of USERRA “by
21 discriminating against Plaintiffs and the Class members, and by denying them employment
22 benefits ‘on the basis of’ their ‘obligation to perform service in a uniformed service.’” (FAC ¶ 65
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24 ¹ Note: the FAC omits paragraph 30 for an unknown reason.

1 (quotation in original.) The Court buckets these allegations into two sets of claims. The first
2 claims allege discrimination on the basis of military membership or service, in violation of
3 Section 4311. See 38 U.S.C. § 4311(a). Under Section 4311, an “employer shall be considered to
4 have engaged in actions prohibited . . . if the person’s membership . . . or obligation for service
5 in the uniformed services is a motivating factor in the employer’s action.” 38 U.S.C. § 4311(c).
6 The second claims allege wrongful denial of reemployment given that plaintiffs’ absence from
7 their positions was due to their service obligations. Section 4313 provides the right to
8 reemployment, while Section 4316 guarantees seniority and other benefits. 38 U.S.C. §§ 4313,
9 4316. But Section 4312 limits the right of reemployment to only those employees who “report[]
10 to, or submit[] an application for reemployment to, such employer” within a set time frame. 38
11 U.S.C. § 4312(a)(3).

12 Plaintiffs seek to represent a group of similarly-situated individuals who form part of the
13 “nearly 40,000 veterans and spouses” who work for Amazon. (FAC ¶ 36.) Plaintiffs allege that
14 they “are informed and believe that the Class exceeds 1,000 present and former Company
15 employees.” (*Id.*)

16 **B. Additional Materials Submitted by Amazon**

17 Amazon has submitted evidence with their Motion to Dismiss and Request for Judicial
18 Notice, which the Court reviews.

19 First, Amazon’s outside counsel submitted a declaration asserting that upon learning of
20 this lawsuit, Amazon determined that Mahone’s termination was an error, offered her
21 reemployment, and paid her back wages. (See Declaration of Lauren M. Blas ¶¶ 5-6 (Dkt. No.
22 29).) Counsel states that after Mahone filed suit, “Amazon investigated her claim” and
23 “acknowledged that Ms. Mahone had been mistakenly terminated due to an administrative error
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1 and apologized for the error.” (Id. ¶ 5.) Amazon then “unconditionally offered Ms. Mahone
2 reinstatement on June 30, 2022” and paid Mahone \$47,880. (Id. ¶ 6.) This sum included “all of
3 the wages that Ms. Mahone would have earned between October 18, 2020 [and] . . . December 2,
4 2021—the date she began working for a new employer” (which totaled \$31,590.00), and, as “a
5 goodwill gesture, . . . all of the wages that Ms. Mahone would have earned between the date she
6 started her new employment and June 30, 2022—the date Amazon offered her unconditional
7 reinstatement, with no offset of earnings from Ms. Mahone’s new employment” (which totaled
8 \$16,290.00). (Id.; see id. Ex. 4.) Mahone accepted these payments, but rejected the offer of
9 reemployment. (Id. ¶¶ 5, 8.)

10 Second, Amazon’s Request for Judicial Notice asks the Court to take notice of prior
11 administrative claims Olson has pursued against Amazon and a USERRA complaint he filed in
12 federal court against a different entity. (See Blas Decl. ¶ 2 & Exs. 1-3.) Amazon asks the Court
13 to take notice of these documents because they “relate to Plaintiff Dain Olson’s knowledge of his
14 USERRA claim, knowledge of how to assert his rights under USERRA, and his subsequent
15 delay in bringing suit against Amazon, as well as the plausibility of his USERRA claim more
16 broadly.” (RJN at 2.) The Court reviews the three documents. First, Amazon submits a letter it
17 received in October 2016 from the United States Department of Labor indicating that Olson had
18 filed a complaint with the agency asserting that he was terminated in violation of USERRA. (Id.
19 ¶ 2 & Ex. 1.) Second, Amazon submits a Notice of Complaint Olson filed against Amazon in
20 January 2017 with the Washington State Human Rights Commission alleging disability
21 discrimination. (Id. ¶ 2 & Ex. 2.) Third, Amazon submits a complaint Olson filed in 2018 in the
22 U.S. District Court for the Northern District of Illinois alleging USERRA violations against XPO
23 Logistics, Inc. (Id. ¶ 2 & Ex. 3.)

ANALYSIS

A. Legal Standard on Motion to Dismiss

Amazon moves to dismiss under both Rule 12(b)(1) and Rule 12(b)(6). The Court reviews the applicable standards .

Amazon’s Rule 12(b)(1) motion asserts a factual challenge to the Court’s subject matter jurisdiction premised on the theory that Mahone’s claims are moot because her injuries are not redressable. (Mot. at 5.) “[I]n a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004) “In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.” Id. And “[t]he court need not presume the truthfulness of the plaintiff’s allegations.” Id. Instead, “the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” Id. (citation and quotation omitted).

Under Fed. R. Civ. P. 12(b)(6), the Court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” In ruling on a motion to dismiss, the Court must construe the complaint in the light most favorable to the non-moving party and accept all well-pleaded allegations of material fact as true. Livid Holdings Ltd. v. Salomon Smith Barney, Inc., 416 F.3d 940, 946 (9th Cir. 2005); Wylar Summit P’ship v. Turner Broad. Sys., 135 F.3d 658, 661 (9th Cir. 1998). Dismissal is appropriate only where a complaint fails to allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is plausible on its face “when the plaintiff pleads factual content that

1 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
2 alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

3 **B. Legal Standards under USERRA**

4 USERRA was enacted in 1994 “to encourage noncareer service in the uniformed services
5 by eliminating or minimizing the disadvantages to civilian careers and employment which can
6 result from such service.” 38 U.S.C. § 4301(a)(1). “USERRA protects the job security of
7 returning veterans.” Hanson v. Cty. of Kitsap, 21 F. Supp. 3d 1124, 1136 (W.D. Wash. 2014)
8 (quoting Petty v. Metro. Gov’t of Nashville & Davidson Cty., 687 F.3d 710, 716 (6th Cir. 2012)
9 (internal citations omitted)). “Through USERRA, Congress endeavored to ‘clarify, simplify, and,
10 where necessary, strengthen the existing veterans’ employment and reemployment rights
11 provisions.” Belaustegui v. Int’l Longshore & Warehouse Union, 36 F.4th 919, 923 (9th Cir.
12 2022) (quoting Leisek v. Brightwood Corp., 278 F.3d 895, 898 (9th Cir. 2002) (quotations
13 omitted)). “As a law advancing the interests of veterans, USERRA is ‘liberally construed for the
14 benefit of those who left private life to serve their country in its hour of great need.’” Id. (quoting
15 Ziober v. BLB Res., Inc., 839 F.3d 814, 819 (9th Cir. 2016) (quotation omitted)).

16 “Several provisions of USERRA coordinate to provide this security: Sections 4312 and
17 4313, the ‘reemployment provisions,’ entitle veterans to reemployment after military service and
18 prescribe the positions to which they are entitled upon returning.” Petty, 687 F.3d at 716 (internal
19 citations omitted). Section “4316 guarantees veterans the same benefits they would have
20 enjoyed absent the interruption in their employment and prevents employers from terminating
21 without ‘cause’ any returning veteran within one year of his reemployment.” Id. The
22 “discrimination provision,” § 4311, “prohibits employers from discriminating against veterans on
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1 the basis of their military service.” Id. And Section 4318 governs pension plan benefits for
2 returning veterans. 38 U.S.C. § 4318.

3 **C. Mahone Lacks Standing**

4 Amazon asks the Court to dismiss Mahone’s claims under Rule 12(b)(1) on the theory
5 that she has already obtained all relief to which she might be entitled and therefore lacks
6 standing. The Court agrees.

7 The plaintiff must have standing in order to pursue claims before the Court. See Spokeo,
8 Inc. v. Robins, 578 U.S. 330, 337-38 (2016), as revised (May 24, 2016). Standing requires
9 allegations of: (1) an injury in fact; (2) “a causal connection between the injury and the conduct
10 complained of” and (3) an assertion that it is “likely, as opposed to merely speculative, that the
11 injury will be redressed by a favorable decision.” Lujan v. Defs. of Wildlife, 504 U.S. 555, 561
12 (1992) (quotation and citation omitted).

13 Amazon attacks the third element of standing, arguing that Mahone’s injuries have been
14 fully redressed through Amazon’s payment of backpay and its reinstatement offer. Mahone does
15 not contest the fact that she received all backpay due, and she offers no evidence she is entitled
16 to anything more. (Opp. at 8.) She instead argues that even though she accepted the backpay, she
17 is still entitled to front pay and liquidated damages under USERRA. 38 U.S.C. § 4323(d)(1)(C);
18 (Opp. at 8-11.) She also argues that she has standing to seek reemployment and to obtain
19 injunctive relief. (Opp. at 13-15.) The Court disagrees with Mahone and finds that she has
20 recovered all compensable sums and has otherwise failed to show a right to any further relief.

21 **1. Front pay unavailable**

22 Mahone is not entitled to front pay.
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1 “Front pay is ‘money awarded for lost compensation during the period between judgment
2 and reinstatement or in lieu of reinstatement.’” Traxler v. Multnomah Cnty., 596 F.3d 1007,
3 1009 n.1 (9th Cir. 2010) (quoting Pollard v. E.I. du Pont de Nemours & Co., 532 U.S. 843, 846
4 (2001)). The relief is “an equitable remedy to be determined by the court.” Id. “In cases in which
5 reinstatement is not viable because of continuing hostility between the plaintiff and the employer
6 or its workers . . . courts have ordered front pay as a substitute for reinstatement.” Pollard, 532
7 U.S. at 846. And once the person is reasonably likely to obtain other employment, there is little
8 reason to award front pay. See Traxler, 596 F.3d at 1012.

9 There is no equitable basis on which to award Mahone front pay. Mahone has been paid
10 for all of her back wages, declined the offer of reinstatement in June 2022, and claims in her
11 Opposition that she “has since obtained other work.” (Opp. at 9.) She has not identified any other
12 sums due. And she nowhere argues she cannot return to Amazon on account of a hostile work
13 environment. Given that omission and her current employment status, an award of front pay
14 would be an improper windfall, which the equities do not support. See Traxler, 596 F.3d at 1012.
15 The Court finds that Mahone is not entitled to front pay and lacks standing to pursue claims for
16 such relief.

17 The Court therefore DISMISSES Mahone’s claim for front pay and GRANTS the Motion
18 as to this issue.

19 **2. Liquidated damages unavailable as pleaded**

20 Mahone has failed to allege sufficient facts to support her claim for liquidated damages.

21 Liquidated damages of twice the wages due are available if Amazon’s “failure to comply
22 with the provisions of [USERRA] was willful.” 38 U.S.C. § 4323(d)(1)(C). Regulations define
23 “willful” to mean that “the employer either knew or showed reckless disregard for whether its
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1 conduct was prohibited by the Act.” 20 C.F.R. § 1002.312. Considering the same term in the
2 context of the Age Discrimination in Employment Act, the Supreme Court has defined “willful”
3 to mean that “the employer either knew or showed reckless disregard for the matter of whether
4 its conduct was prohibited by the statute.” Hazen Paper Co. v. Biggins, 507 U.S. 604, 615
5 (1993) (quoting Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 128 (1985)). An intent to
6 violate the statute is not necessary; but it is also not sufficient that the employer simply knew of
7 its potential applicability. Thurston, 469 U.S. at 126–28 & n.19. Plaintiff has the burden of
8 proving willfulness, which may be shown by circumstantial evidence. Paxton v. City of
9 Montebello, 712 F. Supp. 2d 1017, 1021 (C.D. Cal. 2010).

10 The Court here finds that Mahone has failed to allege sufficient facts that Amazon’s
11 decision to terminate her was willful. At best, Mahone has alleged that she put Amazon on notice
12 that her unpaid time off was taken for military leave and that she was terminated for taking that
13 leave. (FAC ¶ 31.) But this does not sufficiently allege that Amazon knew its decision was
14 prohibited by USERRA or that its conduct was in reckless disregard for Mahone’s rights under
15 USERRA. See United States v. Nevada, 817 F. Supp. 2d 1230, 1251 (D. Nev. 2011) (“An intent
16 to violate the statute is not necessary; but it is also not sufficient that the employer simply knew
17 of its potential applicability.”). Mahone has not included sufficient allegations of willfulness,
18 making liquidated damages unavailable.

19 The Court therefore DISMISSES Mahone’s claim for liquidated damages and GRANTS
20 the Motion as to this issue. Dismissal is without prejudice, given that Mahone might be able to
21 cure the defect via amendment.
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1 **3. No claim for reemployment**

2 The Court agrees with Amazon that neither Mahone nor Olson may pursue claims for
3 reemployment under USERRA because neither timely asked for reemployment as required.

4 “Section 4312 of USERRA provides a right to reemployment for members of the armed
5 services who comply with statutory notification requirements.” Hanson, 21 F. Supp. at 117
6 (citing Wallace v. City of San Diego, 479 F.3d 616, 625 (9th Cir. 2007)). USERRA’s Section
7 “4312 protects only a serviceperson’s right to reemployment, which in turn triggers § 4313’s
8 guarantee of the appropriate position of employment.” Petty, 538 F.3d at 445. “Section 4312
9 only entitles a service person to immediate reemployment and does not prevent the employer
10 from terminating him the next day or even later the same day,” while “§§ 4311 and 4316 operate
11 to protect the employee as soon as [he] is reemployed.” Hart v. Family Dental Group, PC, 645
12 F.3d 561, 563 (2nd Cir. 2011) (citation and quotation omitted).

13 Plaintiffs’ claim for reemployment fails because they did not comply with the notification
14 requirement under § 4312(a)(3). To be entitled to reemployment, the employee must “report[] to,
15 or submit[] an application for reemployment to, such employer in accordance with the provisions
16 of subsection (e).” 38 U.S.C. § 4312(a)(3). Neither of the Plaintiffs has alleged to have made this
17 request. This is fatal to Plaintiffs’ claims under § 4312, § 4313, and § 4316. The Court therefore
18 DISMISSES Plaintiffs’ claims for reemployment and GRANTS the Motion as to this issue.
19 Dismissal is without prejudice, as Plaintiffs could save these claims by amendment.

20 **4. Plaintiffs cannot obtain injunctive and prospective declaratory relief**

21 Amazon asks the Court to dismiss Plaintiffs’ claims for injunctive and prospective
22 declaratory relief given that neither remains employed by Amazon and would not benefit from it.
23 The Court agrees.

1 USERRA allows for injunctive relief and equitable remedies, “including temporary or
2 permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the
3 rights or benefits of persons under this chapter.” 38 U.S.C. § 4323(d) & (d). But “[u]nless the
4 named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class
5 seeking that relief.” Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1045 (9th Cir. 1999). This
6 includes other forms of prospective relief, because the plaintiff lacks standing to obtain such
7 relief they ““would not stand to benefit from.”” Slayman v. FedEx Ground Package Sys., Inc.,
8 765 F.3d 1033, 1047-48 (9th Cir. 2014 (quoting Walsh v. Nev. Dep’t of Human Res., 471 F.3d
9 1033, 1037 (9th Cir. 2006)). For example, in Slayman, the Court held that named plaintiffs who
10 were no longer working at FedEx could not obtain injunctive and declaratory relief because they
11 could not benefit from it.

12 Plaintiffs’ request for injunctive and prospective declaratory relief are unavailable to
13 them as former employees of Amazon. Plaintiffs ask for a declaratory judgment that Amazon’s
14 acts and practices continue to violate USERRA, or an injunction requiring Amazon to comply
15 with USERRA. (FAC, Prayer For Relief ¶¶ 2-4.) But because Plaintiffs are not employed, they
16 would obtain no benefit from this relief and lack standing to pursue it. See Slayman, 765 F.3d at
17 1047-48. And while Plaintiffs are correct that USERRA allows for this kind of relief, that does
18 not change the fact that they have no standing to obtain it.

19 The Court therefore DISMISSES Plaintiffs’ claims for injunctive and prospective
20 declaratory relief and GRANTS the Motion as to this issue.

21 * * *

22 Even if Mahone had stated a claim for discrimination under USERRA, she has failed to
23 identify any relief to which she is entitled that remains unpaid by Amazon or otherwise available,
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1 including reemployment. As such, the Court finds that she lacks standing to pursue her claims as
2 pleaded. The Court DISMISSES Mahone's claims. Mahone may replead her claims for
3 liquidated damages stemming from the alleged USERRA discrimination, but she must make
4 substantial additions to show she has standing. Plaintiffs may also amend their claims for
5 reemployment, but only if there are truthful allegations that they requested reemployment
6 consistent with USERRA.

7 **D. Olson's Claim Not Barred By Laches**

8 Amazon argues that Olson's claims should be barred by the doctrine of laches because he
9 waited nearly six years to file this lawsuit despite being aware of his rights to do so under
10 USERRA. While the Court finds some merit in Amazon's argument, it cannot dismiss the claim
11 at this stage of the proceedings on the record before it.

12 The Parties agree that USERRA does not have a statute of limitations, and Amazon thus
13 seeks dismissal of Olson's claims as barred by the doctrine of laches. "Laches is an equitable
14 time limitation on a party's right to bring suit, resting on the maxim that one who seeks the help
15 of a court of equity must not sleep on his rights." Jarrow Formulas, Inc. v. Nutrition Now, Inc.,
16 304 F.3d 829, 835 (9th Cir. 2002) (citation and quotation omitted). "To establish laches a
17 defendant must prove both an unreasonable delay by the plaintiff and prejudice to itself."
18 Couveau v. Am. Airlines, Inc., 218 F.3d 1078, 1083 (9th Cir. 2000). Unreasonable delay is
19 measured by assessing when the plaintiff knew or should have known about the claim and
20 whether the delay is reasonable, including any excuses for the delay. Jarrow, 304 F.3d at 838. As
21 to prejudice, the Ninth Circuit generally recognizes two forms: evidentiary and expectations-
22 based prejudice. Danjaq LLC v. Sony Corp., 263 F.3d 942, 955 (9th Cir. 2001). "Evidentiary
23 prejudice includes such things as lost, stale, or degraded evidence, or witnesses whose memories
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1 have faded or who have died.” Id. Expectation-based prejudice may be shown where the
2 defendant “took actions or suffered consequences that it would not have, had the plaintiff
3 brought suit promptly.” Id. But “[b]ecause the application of laches depends on a close
4 evaluation of all the particular facts in a case, it is seldom susceptible of resolution by summary
5 judgment.” Couveau, 218 F.3d at 1083.

6 The Court here finds that although Olson’s delay in filing suit was unreasonable, Amazon
7 has not shown prejudice. The Court reviews its reasoning.

8 Amazon has provided substantial evidence that Olson waited an unreasonable time to file
9 suit. By at least 2017, Olson knew that he could seek relief under USERRA by filing a lawsuit
10 against Amazon, but chose not to do so. This is demonstrated by the fact that he asserted a
11 USERRA claim against Amazon in 2016 with the Department of Labor and then filed a separate
12 federal lawsuit against another entity under USERRA in 2017. The Court takes judicial notice of
13 these facts and grants the Request for Judicial Notice in part, given that they are not subject to
14 reasonable dispute and come from sources beyond dispute. See Fed. R. Civ. P. 201(b); Khoja v.
15 Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018). These show that Olson sat on his
16 rights from 2016 until he filed this lawsuit in 2022. While neither party identifies an analogous
17 statute of limitations, the Court finds a delay of nearly six years to be substantial and
18 unexplained. On this record, the Court finds an unreasonable delay.

19 But Amazon has failed to identify any prejudice to sustain a finding of laches. While
20 Amazon suggests that evidence could get lost and memories fade, it fails to show any evidence
21 to support this claim. And while Amazon may have hoped that Olson had abandoned his claims,
22 it has not identified any action taken or consequence suffered from its belief that Olson would
23 not sue. Even if Amazon had provided evidence, the Court could not consider it on a Rule
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1 12(b)(6) motion to dismiss. Additionally, the Court is unconvinced that it may simply assume
2 prejudice in light of the unreasonable delay. While the Ninth Circuit has suggested “the bare fact
3 of delay creates a rebuttable presumption of prejudice,” the Court finds no case law supporting
4 dismissal on the pleadings based on this presumption. See Boone v. Mech. Specialties Co., 609
5 F.2d 956, 958 (9th Cir. 1979). And although the Court in Boone cited this presumption, it
6 analyzed the evidence of prejudice, confirming the fact that the defendant was “severely
7 prejudiced” by plaintiff’s delay due to the loss of evidence. See id. at 959. The Court therefore
8 declines to apply a presumption of prejudice.

9 While the Court sees merit in Amazon’s argument, given the procedural posture of this
10 case, a finding of laches would be premature and improper. The Court DENIES the Motion as to
11 laches. This issue requires further evidentiary development that may potentially be resolvable on
12 an early motion for summary judgment.

13 **E. Olson Adequately Alleges a Claim of Discrimination**

14 Amazon argues that Olson has not adequately alleged discrimination in violation of
15 USERRA. The Court disagrees.

16 A violation of USERRA occurs when a person’s:

17 membership, application for membership, service, application for service, or obligation
18 for service in the uniformed services is a motivating factor in the employer’s action,
19 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.

20 38 U.S.C. § 4311(c)(1). “USERRA replaced the ‘sole motivation’ test with a more lenient
21 standard that requires only that the employee’s military status was ‘a motivating factor’ in the
22 employer’s action.” Leisek, 278 F.3d at 898. The Ninth Circuit “appl[ies] a two-part test to §
23 4311 discrimination claims.” Belaustegui, 36 F.4th at 924. “An employee first has the burden of
24 showing, by a preponderance of the evidence, that his or her protected status was a substantial or

1 motivating factor in the adverse employment action; the employer may then avoid liability only
2 by showing, as an affirmative defense, that the employer would have taken the same action
3 without regard to the employee’s protected status.” Id. (quotation and citation omitted).

4 Olson has plausibly alleged discrimination on account of his military status. He alleges
5 that during three different periods, he was contacted while participating in military drills to
6 return to work and that “Amazon became hostile towards [him] as a result of his performance of
7 military obligations. . . .” (FAC ¶¶ 29, 32, 33.) After enduring this “hostility,” he was terminated
8 just four days after his return from military leave. (FAC ¶ 33.) These allegations, construed in
9 Olson’s favor, satisfy the requirement to show that a motivating factor in his termination was his
10 military status and his use of leave to meet his military obligations. The Court notes that Olson’s
11 allegations about his manager are vague as to whether the manager was hostile towards him on
12 account of his military service. Olson makes no such direct allegation, referring instead to
13 “Amazon,” not the manager, as being hostile. (See FAC ¶¶ 29, 31, 32.) Notwithstanding this lack
14 of specificity, Olson’s has provided sufficient factual allegations to suggest that a motivating
15 factor in his termination was his military service. See Leisek, 278 F.3d at 898.

16 The Court briefly considers three arguments Amazon advances that do not compel a
17 different outcome.

18 First, Amazon suggests that Olson has not identified any policy of discrimination
19 pursuant to which he was terminated. (Mot. at 12-13.) This is a nondispositive issue. Whether
20 there was a policy or practice may impact the class allegations, but they are not required to state
21 an individual claim.

22 Second, while Amazon correctly argues that its efforts to contact Olson during his
23 military leave do not give rise to a separate cause of action under USERRA, this does not compel
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1 dismissal of the discrimination claim. These allegations add to Olson's claim that Amazon
2 engaged in discrimination against him on account of his military status.

3 Third, Amazon argues that Olson has not alleged a hostile work environment claim and
4 that the Ninth Circuit has never resolved whether such a claim can be brought under USERRA.
5 (Mot. at 14.) As the Court construes the claims, Olson has not premised his discrimination claim
6 on having endured a hostile work environment. Rather, he alleges that Amazon was hostile
7 towards his military service and that this helps show his termination was motivated by a
8 discriminatory animus.

9 Having considered Amazon's arguments, the Court finds that the claim is adequately
10 pleaded. The Court DENIES the Motion as to Olson's Section 4311 discrimination claim.

11 The Court therefore DENIES the Motion as to Olson's discrimination claim.

12 CONCLUSION

13 Plaintiffs' claims in the First Amended Complaint suffer from several defects. First,
14 Mahone lacks standing to pursue her claims because she has not identified any redressable
15 injury. Second, neither Plaintiff has standing to pursue claims for reemployment, injunctive, or
16 prospective declaratory relief. While Plaintiffs may be able to amend their claims for
17 reemployment and Mahone's claim for liquidated damages, they cannot revive their claims for
18 injunctive and prospective declaratory relief. The Court therefore GRANTS the Motion to
19 Dismiss as to these claims. Except where expressly noted, the Court DISMISSES these claims
20 WITH PREJUDICE. Should Plaintiffs wish to amend their complaint, they must do so within 21
21 days of entry of this Order. But the Court DENIES the Motion as to Olson's discrimination
22 claim, which may proceed.

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The clerk is ordered to provide copies of this order to all counsel.

Dated December 1, 2022.



Marsha J. Pechman
United States Senior District Judge