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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KAON-JABBAR EAST EL, an individual,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., a foreign
business corporation,

Defendant.

Case No.

**COMPLAINT (Religious Discrimination
(ORS §659A.030); Race Discrimination
(ORS §659A.030); Whistleblower
Retaliation (ORS §659A.199); Constructive
Termination (Common Law))**

PRAYER: \$600,000
Fee Authority: ORS 21.160(1)(c)

**NOT SUBJECT TO MANDATORY
ARBITRATION**

JURY TRIAL DEMANDED

For his complaint against Defendant United Parcel Service, Inc. (“Defendant” or
“Defendant UPS”), Plaintiff Kaon-Jabbar East El (“Mr. East El”) alleges as follows:

PARTIES

1.

Mr. East El is a resident of Portland, Multnomah County, Oregon.

2.

Defendant UPS is a foreign corporation with its principal place of business in Atlanta,
Georgia.

///

1 **VENUE**

2 3.

3 Venue is appropriate in Multnomah County because Defendant UPS has an office for the
4 transaction of business in Multnomah County, conducts regular and sustained business activities
5 in Multnomah County, and much of the alleged wrongful conduct giving rise to the causes of
6 action in this complaint took place in Multnomah County.

7 **FACTUAL ALLEGATIONS**

8 4.

9 At all material times, Defendant UPS was Mr. East El’s employer, Mr. East El was
10 supervised by Defendant UPS’ employees or agents and Mr. East El relied on the actual or
11 apparent authority of Defendant UPS’ employees, supervisors and management.

12 5.

13 At all material times, Defendant UPS’ Help Coordinator Karl Zabel (“Supervisor Zabel”)
14 was Mr. East El’s supervisor and was an agent acting on behalf of Defendant UPS.

15 6.

16 Defendant UPS is vicariously liable for the actions of Supervisor Zabel.

17 7.

18 Defendant UPS is a company that provides parcel and mail services.

19 8.

20 Mr. East El’s national origin is Moorish. Mr. East El practices the religion of Islamism.
21 The religion of Islamism prohibits a practitioner from identifying one’s race as a color.

22 9.

23 Mr. East El was hired by Defendant UPS on or about November 19, 2016 as an on-call
24 truck helper. Mr. East El was required by Defendant UPS’ Human Resources Department to
25 identify his race in the employment application before being allowed to return to the employee
26 orientation. Mr. East El did not associate his ethnicity with any of the options in the employment

1 application. There was no option on the application for selecting “other” or “decline to state.”

2 10.

3 Despite Mr. East El’s protests, Defendant UPS insisted that Mr. East El identify a race on
4 his job application as a condition of continued employment. In order to keep his job and
5 believing he had no other choice, Mr. East El marked his race as “white.” Mr. East El was
6 required to compromise his racial identity and religious beliefs to continue his employment with
7 Defendant UPS.

8 11.

9 Mr. East El repeatedly made complaints to Defendant UPS’ executives and to Human
10 Resources that he was compromising his racial identity and religious beliefs by conforming to
11 UPS’ requirement that he identify with one of the limited race classifications on the employment
12 application, and that it was illegal for Defendant UPS to require its employees to do so.

13 12.

14 About a week after Mr. East El was hired by Defendant UPS, he provided a statement
15 with supporting religious documentation illustrating how Defendant UPS’ racial identifier
16 requirement compromised both his religious beliefs and racial identity. Mr. East El’s concerns
17 were ignored.

18 13.

19 As a result of Mr. East El’s complaints, he never received a truck assignment throughout
20 the term of his employment with Defendant UPS. On or about December 15, 2016, Mr. East El
21 emailed Defendant UPS regarding bereavement leave to attend a funeral out of state from
22 December 15, 2016 through on or about December 20, 2016. Supervisor Zabel, being well
23 aware that Mr. East El was out on bereavement leave, contacted Mr. East El regarding work
24 availability during that time. The only time Mr. East El was contacted to receive a truck
25 assignment was when Defendant UPS knew he was on leave and would not be able to work.

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1 14.

2 Because of the complaints of religious and racial discrimination that Mr. East El made to
3 Defendant UPS, Mr. East El was called only once for a truck assignment during his three-month
4 term of employment with Defendant UPS while Defendant UPS knew Mr. East El was on
5 bereavement. Mr. East El is aware of other employees who worked as on-call truck helpers who
6 received truck assignments during this three-month period.

7 15.

8 Due to the religious and racial discrimination and the resulting lack of work, Mr. East El
9 believed he had no choice but to resign from Defendant UPS on February 2, 2017.

10 16.

11 To the best of Mr. East El's knowledge, there have still been no changes made to
12 Defendant UPS' employment application or its requirement of racial identification as a condition
13 of employment.

14 17.

15 It is a reasonable accommodation to add "other" or "decline to state" on an employment
16 application to protect an employee's racial identity and religious beliefs.

17 18.

18 On April 16, 2018, the Oregon Bureau of Labor and Industries ("BOLI") opened a case
19 on behalf of Mr. East El as the result of his filing of a complaint regarding Defendant UPS'
20 unlawful religious and racial discrimination with the Equal Employment Opportunity
21 Commission on October 31, 2017.

22 19.

23 On or about October 31, 2018, BOLI issued a right-to-sue letter to Mr. East El. Mr. East
24 El has filed this complaint within the time period set out therein.

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26 ///

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **Religious Discrimination (ORS 659A.030)**

4 20.

5 Mr. East El realleges and incorporates paragraphs 1 through 19 as though fully set forth
6 herein.

7 21.

8 Defendant UPS discriminated against Mr. East El in the terms, conditions and/or
9 privileges of employment due to Mr. East El's religion.

10 22.

11 Defendant UPS' actions through its agents and employees acting within the course and
12 scope of their duties, as set forth above and incorporated into this paragraph, violated Mr. East
13 El's rights under ORS 659A.030.

14 23.

15 Mr. East El's religion and complaints about religious discrimination were motivating
16 factors for the above-described retaliatory actions and decisions made by Defendant UPS,
17 including, but not limited to, not assigning Mr. East El a truck during his employment or
18 providing him work.

19 24.

20 As a direct and proximate result of Defendant UPS' unlawful conduct, Mr. East El has
21 incurred and continues to incur lost income in an amount to be proven at trial, which is alleged to
22 be \$50,000.

23 25.

24 As a direct and proximate result of Defendant UPS' conduct, Mr. East El has suffered
25 and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of
26 life all due to his non-economic loss in an amount to be determined at trial, which is alleged to be

1 \$550,000.

2 26.

3 Mr. East El is entitled to recover his reasonable attorney fees and costs pursuant to ORS
4 659A.885.

5 **SECOND CLAIM FOR RELIEF**

6 **Race Discrimination (ORS 659A.030)**

7 27.

8 Mr. East El realleges and incorporates paragraphs 1 through 26 as though fully set forth
9 herein.

10 28.

11 Defendant UPS discriminated against Mr. East El in the terms, conditions and/or
12 privileges of employment due to Mr. East El's race.

13 29.

14 Defendant UPS' actions through its agents and employees acting within the course and
15 scope of their duties, as set forth above and incorporated into this paragraph, violated Mr. East
16 El's rights under ORS 659A.030.

17 30.

18 Mr. East El's race and complaints about race discrimination were motivating factors for
19 the above described retaliatory actions and decisions made by Defendant UPS, including but not
20 limited to not assigning Mr. East El a truck during his employment or providing him work.

21 31.

22 As a direct and proximate result of Defendant UPS' unlawful conduct, Mr. East El has
23 incurred and continues to incur lost income in an amount to be proven at trial, which is alleged to
24 be \$50,000.

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1 32.

2 As a direct and proximate result of Defendant UPS' conduct, Mr. East El has suffered
3 and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of
4 life all due to his non-economic loss in an amount to be determined at trial, which is alleged to be
5 \$550,000.

6 33.

7 Mr. East El is entitled to recover his reasonable attorney's fees and costs pursuant to ORS
8 659A.885.

9 **THIRD CLAIM FOR RELIEF**
10 **Whistleblower Retaliation (ORS 659A.199)**

11 34.

12 Mr. East El realleges and incorporates paragraphs 1 through 33 as though fully set forth
13 herein.

14 35.

15 Mr. East El reported information that he believed to be evidence of a violation of a state
16 or federal law, rule, or regulation, including but not limited to Defendant UPS' requirement that
17 Mr. East El identify with a race as a condition of employment.

18 36.

19 Mr. East El acted in good faith in reporting the above information.

20 37.

21 Defendant UPS discriminated against Mr. East El in the terms, conditions and/or
22 privileges of employment due to Mr. East El's reporting of the above information.

23 38.

24 Defendant UPS' actions, its agents and employees acting within the course and scope of
25 their duties as set forth above and incorporated into this paragraph, violated Mr. East El's right to
26 protection as a whistleblower.

1 39.

2 Mr. East El's protected activity was a substantial and motivating factor for the above
3 described retaliatory actions and decisions made by Defendant UPS, including but not limited to
4 not assigning Mr. East El a truck during his employment or providing him work.

5 40.

6 As a direct and proximate result of Defendant UPS' unlawful conduct, Mr. East El has
7 incurred and continues to incur lost income in an amount to be proven at trial, which is alleged to
8 be \$50,000.

9 41.

10 As a direct and proximate result of Defendant UPS' conduct, Mr. East El has suffered
11 and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of
12 life all due to his non-economic loss in an amount to be determined at trial, which is alleged to be
13 \$550,000.

14 42.

15 Mr. East El is entitled to recover his reasonable attorney fees and costs pursuant to ORS
16 659A.885(a).

17 **FOURTH CLAIM FOR RELIEF**

18 **Constructive Termination (Common Law)**

19 43.

20 Mr. East El realleges and incorporates paragraphs 1 through 42 as though fully set forth
21 herein.

22 44.

23 Defendant UPS intentionally created or maintained working conditions so intolerable that
24 a reasonable person in Mr. East El's position would have left employment because of them.

25 45.

26 Defendant UPS, acting through its supervisors and agents, desired that Mr. East El leave

1 employment as a result of the intolerable working conditions.

2 46.

3 In the alternative, Defendant UPS, acting through its supervisors and agents, knew that
4 Mr. East El was substantially certain to leave employment as a result of the intolerable working
5 conditions and was constructively discharged.

6 47.

7 Mr. East El left employment with Defendant UPS as a result of the above described
8 intolerable working conditions.

9 48.

10 As a direct and proximate result of Defendant UPS' unlawful conduct, Mr. East El has
11 incurred and continues to incur lost income in an amount to be proven at trial, which is alleged to
12 be \$50,000.

13 49.

14 As a direct and proximate result of Defendant UPS' conduct, Mr. East El has suffered
15 and will continue to suffer mental stress, humiliation, inconvenience and loss of enjoyment of
16 life all due to his non-economic loss in an amount to be determined at trial, which is alleged to be
17 \$550,000.

18 50.

19 Mr. East El is entitled to recover his reasonable attorney fees and costs pursuant to ORS
20 659A.885(a).

21 **JURY TRIAL DEMAND**

22 51.

23 Mr. East El demands a jury trial on all questions of fact or combined questions of law and
24 fact raised by this complaint.

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PRAYER FOR RELIEF

WHEREFORE, Mr. East El requests the court to:

1. Assume jurisdiction over each of the causes set forth herein.

2. Issue a declaration that Defendant UPS has violated Mr. East El’s legally protected rights and an order requiring Defendant UPS to correct this deficiency.

3. Grant a permanent injunction enjoining Defendant UPS, its owners, officers, management personnel, employees, agents, successors, assigns and all persons in active concert or participation with Defendant UPS, from engaging in any employment practice which retaliates against employees who request or exercise legally protected rights.

4. Order Defendant UPS to create, implement and carry out policies, practices and programs providing for equal employment opportunities which affirmatively eradicate the effects of past and present unlawful employment practices, on such terms as the court may direct.

5. Order Defendant UPS to make Mr. East El whole by compensating Mr. East El for past and future pecuniary losses, including expenses, impairment of earning capacity, lost past and future earnings and benefits of employment, and such other losses as are awarded by a jury or otherwise established at trial, which is alleged to be \$50,000.

6. Order Defendant UPS to pay Mr. East El an award of compensatory damages for non-economic losses, including but not limited to severe emotional distress, anguish, humiliation, anger, shame, and anxiety in an amount to be proven at trial, which is alleged to be \$550,000.

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1 7. Award Mr. East El his costs of suit and his reasonable attorney fees, costs and
2 expert witness fees.

3 8. Order Defendant UPS to pay prejudgment and post judgment interest, as
4 appropriate, on all amounts due to Mr. East El as a result of this action.

5
6 DATED: January 29, 2019.

7 **HKM EMPLOYMENT ATTORNEYS LLP**

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