UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

GRACE ERICA BOTHWELL, on behalf of herself and all others similarly situated, **Plaintiff,** **v.** **EXPRESSJET AIRLINES, LLC,** **Defendant.**	**Case No.: _____** **Class Action** **Jury Trial Demanded**

CLASS ACTION COMPLAINT

Grace Erica Bothwell ("Plaintiff") a former flight attendant for ExpressJet Airlines, brings this class action against Defendant ExpressJet Airlines, LLC ("ExpressJet" or "Defendant"), on behalf of herself and all other similarly situated current and former flight attendants ("Class") who have been employed by ExpressJet within the past three years.

1. Through a uniform pattern and practice, ExpressJet willfully violates the statutory and contractual rights of its flight attendants and denies them employment benefits by: (1) coercing them into not seeking medically-necessary leave or interfering with their right to seek such leave pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601, *et seq*. ("FMLA"), when entitled to benefits under FMLA; (2) failing to provide them with timely COBRA and retirement benefits election notices pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 18, *et seq*. ("ERISA") upon termination of employment; and (3) failing to pay them earned and/or vested vacation time, including funds paid toward flex vacation time, upon leaving ExpressJet.

2. ExpressJet's pattern of violations is especially egregious given the global COVID-19 pandemic currently throwing the United States, and the airline industry, into a tailspin. ExpressJet flight attendants, now more than ever, must be permitted to receive the family medical leave to which they are entitled. If their employment ends, now more than ever, they must be promptly notified of their rights for the continuation of medical insurance without having to hound the airline. And upon termination, whether voluntary or involuntary, ExpressJet must fairly distribute all vacation and flex benefits that each flight attendant has earned through diligently working for this airline.

3. In January and February 2020, prior to bringing this lawsuit, Plaintiff, both individually and through undersigned counsel, attempted to resolve these matters through multiple written communications with ExpressJet's benefits management department and its general counsel. Those efforts were futile.

JURISDICTION & VENUE

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. This Court also has jurisdiction over this action pursuant to 29 U.S.C. § 2617, which allows an employee to bring an action on behalf of herself and similarly situated employees for violations of the FMLA in any federal court of competent jurisdiction. This court also has jurisdiction pursuant to 28 U.S.C.§ 1332(d), as at least one member of the proposed class is a citizen of a state different from the defendant; and the amount in controversy exceeds $5,000,000.

5. This Court has personal jurisdiction over Defendant because it: (1) operates its business within this District; (2) committed acts in violation of the FMLA and ERISA, as alleged herein, within this District; (3) maintained continuous and systematic contacts with this District

over a period of years; and (4) purposefully availed itself of the benefits of doing business within this District.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant conducts business within this District, has agents within this District, transacts its affairs in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

7. Plaintiff Grace Erica Bothwell is a resident of Dauphin Island, Mobile County, Alabama. She was formerly employed by ExpressJet as a flight attendant. She was hired as a flight attendant by ExpressJet on or about July 25, 2005 after successfully completing FAA required training. For the majority of her tenure while employed as a flight attendant for ExpressJet, she was based at Newark Liberty International Airport (EWR) in Newark, New Jersey, and most recently was based at George Bush Intercontinental Airport (IAH) in Houston, Texas. On December 11, 2019, she was forced to retire from her position under duress, as explained herein.

8. Defendant ExpressJet Airlines, LLC is a Delaware company that is registered to do business in the State of Georgia, and whose principal office is located at 1745 Phoenix Boulevard, College Park, Georgia 30349. ExpressJet operates as United Express, and is a partially owned subsidiary of United Airlines, Inc. ExpressJet's parent company, ManaAir is co-owned by KAir Enterprises, Inc., which owns a majority interest, and United Airlines, Inc., which owns a minority interest. ExpressJet's Chairman and CEO is Subodh Karnik, who is also President and CEO of both ManaAir, LLC and KAir Enterprises, LLC.

BACKGROUND

9. ExpressJet was established in 1986 and began operations in 1987. It is a regional commercial airline providing air travel to cities throughout the United States, Canada, and Mexico.

10. Currently, ExpressJet has hundreds of flight attendants in the United States who are based in various places including: Houston, Texas (George Bush Intercontinental/Houston Airport/IAH), Chicago, Illinois (O'Hare International Airport/ORD), Newark, New Jersey (Newark Liberty International Airport/EWR), and Cleveland, Ohio (Hopkins International Airport/CLE).

11. ExpressJet flight attendants are represented by the International Association of Machinists and Aerospace Workers ("IAMAW").

12. On August 1, 2006, a collective bargaining agreement was reached between ExpressJet and the IAMAW ("CBA") regarding the terms of employment and employment benefits for flight attendants. This CBA, by its terms, continued in full force and effect until July 31, 2010, then it automatically renewed without change from that date through March 9, 2020, when the airline and union reached an agreement through a combination of mediation and arbitration.

13. In addition to the CBA, ExpressJet has written an Employee Handbook ("Handbook") that expressly applies to all of ExpressJet's domestic United States based team members. If the terms of the Handbook conflict with any applicable CBA, then the CBA provisions prevail.

Sick Leave, "Instances," and Disciplinary Action

14. Per the CBA, for each month that a flight attendant is employed, he or she accrues 5 hours of sick leave credit and 5 hours of occupational injury ("OI") leave. This includes time on paid sick or OI leave.

15. According to the Handbook, each sick leave taken by a flight attendant constitutes an "instance." Instances are administered on a rolling 12-month period. An accumulation of

instances can lead to corrective action, including termination. The following rules discuss the accumulation of "instances," which are recorded on a flight attendant's permanent record.

- Consecutive absences because of the same illness or injury will be counted as one instance.

- Reporting late for duty, defined as the failure to be at one's designated work location and ready to perform any job duties at the start of scheduled work time, counts as an instance. Any other miscellaneous absences not related to a team member's personal illness or injury will be considered an instance.

- Failure of the team member to contact a member of management or report to work for his/her shift within two hours after the scheduled start time will result in a No-Call/No Show (NCNS). NCNS events will count as two instances and will be considered separate and accountable instances each day.

16. The Handbook includes the following calculations of "instances" for disciplinary actions:

- Tardy: 6-59 minutes = ½ instance
- Late: 60-119 minutes = 1 instance
- Late: 120+ minutes = 2 instances
- Early Departure: 1 instance
- No Call/No Show: 2 instances per occurrence

17. These disciplinary actions, outlined in the Handbook, may be taken for violations of ExpressJet's attendance policies:

- Step 1: Verbal Warning for 3 instances in 6 months or 4 instances in 12 months
- Step 2: Written Warning for 5 instances in 12 months
- Step 3: Termination Warning for 6 instances in 12 months
- Step 4: Termination for 7 instances in 12 months

18. According to the Handbook, pre-approved absences that <u>do not</u> count as instances include the following:

- Jury duty/Court-mandated appearances
- Military leave
- Vacation
- Scheduled holidays off
- Qualified FMLA

- Approved personal leave of absence
- Pre-approved personal days
- Shift trades
- Authorized emergency leave
- On-the-job injury

19. The Handbook states: "[E]very disciplinary case will be considered and reviewed individually." Certain violations, like theft, normally results in immediate termination but ExpressJet reserves the right to modify one or more of the disciplinary steps listed above, based upon the "gravity of the offense."

20. Involuntary termination, as described in the Handbook, is "a disciplinary action in which employment is terminated for lawful reasons due to unacceptable behavior or poor performance."

21. While the Handbook addresses employee disciplinary action as described above, the CBA includes absolutely no discussion of or guidance regarding either day-to-day disciplinary actions or "instances." Those matters fall completely outside the scope of the CBA.

Family/Medical Leave

22. The FMLA applies to all private employers with 50 or more employees, including ExpressJet.

23. The FMLA entitles an employee "to a total of 12 workweeks of leave during any 12-month period" if the employee suffers from "a serious health condition." 29 U.S.C. § 2612.

24. The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. 29 U.S.C. § 2615(a)(1).

25. ExpressJet states in its Handbook that it "complies with the Family and Medical Leave Act (FMLA) of 1993 when determining a flight attendant's eligibility for a leave of

absence." Flight crew eligibility is defined in FMLA for airline flight crews in 29 USC § 2611(2)(D). To be eligible for an unpaid FMLA leave of absence at ExpressJet, flight attendants must:

- Have completed at least 12 months of active employment
- Have worked a minimum of 1,250 hours (crew members must have worked or been paid for no less than 504 duty hours) in the past 12 months, not including personal commute time, or time spent on vacation, medical, sick or personal leave.

26. Per the Handbook, eligible flight attendants may qualify for FMLA leave for up to 12 work weeks (unless otherwise provided by an applicable collective bargaining agreement) in a rolling 12-month period for any of the following reasons:

- A serious health condition that causes the flight attendant to be unable to perform the essential functions of his/her job with or without reasonable accommodations;
- The birth of a child or placement with a flight attendant of a child for adoption or foster care;
- To bond with the newborn child or newly placed child within one year of birth;
- To care for the flight attendant's spouse/same-sex domestic partner, child under age 18, child over age 18 who is incapable of self-care because of a mental or physical disability, or parent with a serious health condition;
- Any qualifying necessity arising out of the fact that the flight attendant's spouse, child or parent is a military member on covered active duty.

27. According to ExpressJet's Handbook, flight attendants are required to provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When a 30-day notice is not possible, the flight attendant must provide notice as soon as practical.

28. The CBA confirms, but does not modify, the statutory requirements of FMLA. It states: "Flight attendants are eligible for FMLA in accordance with applicable law or ExpressJet policy if more favorable than applicable law."

29. The Handbook further requires that flight attendants provide sufficient information

for the Company to determine whether the leave may qualify for FMLA protection, and the anticipated timing and duration of the leave. Eligible flight attendants must provide documentation that supports the requested leave. ExpressJet reserves the right to require a flight attendant on FMLA leave to report periodically on his/her status and intent to return to work.

30. Flight attendants are required by ExpressJet to make reasonable efforts to schedule treatment and leave so as not to unduly disrupt ExpressJet operations. ExpressJet's Handbook indicates that flight attendants may be required to transfer to an alternate position, work location, or shift with equal pay and benefits to better accommodate the request for leave.

31. When a leave is due to the flight attendant's own medical condition, any sick or disability benefits will run concurrent with FMLA leave. Flight attendants may elect to apply vacation to any FMLA-covered leave as well.

32. Flight attendants who use FMLA leave to recover from a serious health condition may take the leave on an intermittent basis if the treating medical care provider deems it necessary.

33. The CBA and Handbook are consistent with respect to their explanations of ExpressJet's compliance with FMLA. According to the CBA, ExpressJet will grant medical leaves of absence based on verification from a qualified medical doctor, including an anticipated date of availability to return to work.

34. Sick leave and OJI accrue during FMLA if a flight attendant is being paid either sick leave, OJI leave, or vacation. Sick leave may be used for a flight attendant's own serious health condition. The flight attendant must exhaust any available paid sick leave concurrently with FMLA. Any remaining FMLA time is unpaid.

35. Seniority continues to accrue for all purposes for the length of a flight attendant's FMLA. While on an approved FMLA leave, the flight attendant's benefits are retained at active rates for 12 weeks.

36. Group health coverage continues at the flight attendant's active rate for the length of the FMLA.

37. Vacation accrues during FMLA if the flight attendant is being paid either sick leave or vacation. Vacation runs concurrently with FMLA, and if used, must be exhausted immediately after using sick leave.

38. Contrary to the terms of the Handbook, CBA, and the statutory rights afforded to flight attendants under the FMLA, ExpressJet willfully, uniformly, and consistently violates the FMLA by interfering with flight attendants' ability to seek FLMA leave time and by coercing flight attendants into not taking medically necessary leaves of absence under FMLA.

Preapproved Leaves of Absence

39. Pursuant to the CBA, flight attendants who require a leave of absence or an extension of a leave of absence are to submit a written request to their managers, after which the flight attendant will receive a written response from management. Leaves of absence are typically taken without pay.

40. The CBA explains that leaves of absence are available to flight attendants who are unable to work because of illness or injury. Paid sick time may be available if a flight attendant is unable to work due to her/his own injury or illness. Leaves run concurrent with the FMLA, if eligible. When on a paid leave and/or on an approved leave covered under FMLA, employment status is considered active. When on an unpaid, non-FMLA leave, employment status is considered inactive.

41. A flight attendant returning from an authorized leave of absence is allowed to return to his or her pre-leave status and domicile if his or her seniority so permits and if her or his training credentials are current and she or he is still qualified.

42. The Handbook expressly states that approved leaves of absence are not considered "instances" and, therefore, approved leaves of absence are exempt from the disciplinary policies related to instances.

43. The CBA is completely silent about "instances" and all related disciplinary policies.

Medical Insurance Coverage and ERISA-Required Notices

44. Employer-sponsored group health plans, including the health plan provided by ExpressJet, must comply with ERISA, which sets standards to protect employee benefits.

COBRA Notices

45. One of the protections contained in ERISA is the right to the continuation of group health coverage (for either 18 or 36 months) that would otherwise be lost due to certain life events under The Consolidated Omnibus Budget Reconciliation Act ("COBRA"). Congress promulgated COBRA as part of the ERISA to provide, in part, that qualified employees and their families who lost coverage under their employers' group health plan as a result of a qualifying event are "entitled, under the plan, to elect, within the election period, continuation coverage under the plan." 29 U.S.C. § 1161(a). A qualifying event includes an involuntary discharge for any reason except gross misconduct. *Id*. at § 1163(2).

46. COBRA requires continued coverage under group health plans to be offered to covered employees, former employees, spouses, former spouses, and dependent children when group health coverage would otherwise be lost due to certain events, such as a reduction of their work hours, job loss, or retirement.

47. Under COBRA, covered employees and their families must be provided with specific notices explaining their COBRA rights. Group Health Plans must also abide by the statutory rules for how COBRA continuation coverage is offered, how qualified beneficiaries may elect continuation coverage, and when COBRA benefits can be terminated.

48. When certain qualifying events occur, such as the termination or retirement of an employee covered under a group health plan, employers, including Defendant, must notify the group health plan within 30 days of the qualifying event. 29 U.S.C. § 1166(a)(2). After receiving a notice of a qualifying event, the group health plan must provide the qualified beneficiaries with an election notice within 14 days. *Id.* § 1166(c). The election notice describes their rights to continuation coverage and how to make an election.

49. Qualified beneficiaries then have a minimum of 60 days from the later of the date of receipt of a COBRA election notice or the date that healthcare coverage would be lost to elect to continue healthcare coverage. Failure to do so within this time period means that the qualified beneficiary forfeits the right to elect for continuing coverage. *Id.* § 1165(a)(1).

50. Under ERISA, a statutory penalty of $110 per day is available to qualified beneficiaries who do not receive a timely initial COBRA notice or COBRA election notice. Although the court may consider the employer's good or bad faith and harm to the plaintiff, bad faith is not a prerequisite for imposing penalties. *Id.* § 1132(c); 29 C.F.R. § 2575.502c-3.

Retiree Medical Bridge Plan

51. Included in the CBA, ExpressJet also agrees to provide medical insurance under its "Retiree Medical Bridge Plan" for a flight attendant and his or her eligible dependents when the flight attendant has completed 10 years of active service with ExpressJet and retires. A retired flight attendant—who by the nature of the benefit has significant seniority and earns higher flight-

time wages than lower seniority flight attendants—may continue to be covered by medical insurance if she/he pays the full monthly premium that would be payable by all other employees, i.e., the COBRA rate less the legal administrative costs.

52. In order to be eligible for retiree medical insurance, flight attendants who have retired from service must have been covered by the Company's medical insurance at the time of their retirement.

ExpressJet's Failure to Provide Timely ERISA Notices

53. Contrary to the terms of the CBA and the statutory rights afforded to employees—including ExpressJet flight attendants—under ERISA and COBRA, ExpressJet willfully, uniformly, and consistently fails to provide timely COBRA election notices to flight attendants who have been terminated, retired or otherwise separated from employment with ExpressJet, and fails to inform retiring flight attendants of the Retiree Medical Bridge Plan for continuation of their health insurance at the time of their retirement, thereby delaying their enrollment until they are no longer eligible for continued medical insurance coverage.

Vacation Time

54. Flight attendants accrue vacation time based on their seniority date and months worked in the preceding calendar year.

55. Vacation with pay is based on a flight attendant's continuous employment with ExpressJet. A flight attendant who begins working for ExpressJet on or before the 15th of a month will accrue vacation from the 1st of that month. A flight attendant who begins working for ExpressJet after the 15th of the month will accrue vacation from the 1st day of the following month.

56. Per the CBA, at the end of the calendar year of hire, flight attendants will accrue up to 7 days of vacation to be taken the following year.

57. Vacation days accrue as follows:

Month Hired	**Days of Vacation as of January 1 of the Year Following Hire**
January	7
February	6
March	6
April	5
May	5
June	4
July	4
August	3
September	2
October	2
November	1
December	0

58. In November of each year, ExpressJet notifies flight attendants of the number of vacation days that they have been awarded or earned for the following calendar year.

59. Flight attendants are also able to use "flex" vacation time, which allows them to effectively purchase an extra week of vacation, which is deducted from the flight attendant's pay throughout the year.

60. ExpressJet requires vacation time to be taken within the calendar year following the year of accrual in accordance with the following schedule:

Completed Years of Service	**Base Vacation Accrual**	**Base Vacation Plus Flex Accrual**
1 - 4	7 Days	14 Days
5 – 9	14 Days	21 Days
10 – 17	21 Days	28 Days
18 – 24	28 Days	35 Days
25 – 29	35 Days	42 Days
30 and above	37 Days	44 Days

61. Flight attendants who have been employed by ExpressJet for more than 8 months, who end their employment with ExpressJet, either voluntarily or involuntarily, are entitled to

receive full payment for unused vacation time earned during the previous year according to the CBA.

62. According to the CBA, a flight attendant may, during the annual benefits enrollment, elect to contribute her/his Flex payments for the following year to her/his 401(k) Savings Plan account in lieu of taking Flex vacation. Nothing in the Handbook or the CBA states that Flex benefits do not vest before the end of a calendar year.

63. Contrary to the terms of the CBA, ExpressJet willfully, uniformly, and consistently fails to pay flight attendants their earned and/or vested vacation time when they terminate their employment, whether voluntarily or involuntarily. Further, ExpressJet willfully, uniformly, and consistently fails to repay flight attendants their accrued flex benefit funds at the time of the voluntary or involuntary termination of their employment.

PLAINTIFF'S FACTUAL ALLEGATIONS

64. Plaintiff Grace Erica Bothwell worked as a flight attendant for ExpressJet for more than 16 years. She was hired on July 25, 2005 and remained an exemplary and dedicated employee until she was forced to retire from her position under duress, effective on or around December 11, 2019. During her tenure with ExpressJet, she was based in Newark Airport in Newark, New Jersey and Houston Bush International Airport in Houston, Texas.

65. In September 2019, Plaintiff was informed by her physician that she required a non-elective surgery to address a serious medical issue involving the necessary removal of a cyst from her hyoid bone, without which her ability to perform her job would be hampered.

66. In September 2019, Plaintiff promptly sought leave under the FMLA following the internal requirements established by ExpressJet, an employer covered by FMLA. She was told by the ExpressJet benefits department that, although she was a full-time flight attendant, she was not

eligible for FMLA. Instead, ExpressJet instructed her to request a medical leave of absence to include both her surgery and post-surgery recovery, interfering with her right to apply for and take leave under FMLA.

67. At ExpressJet's direction, in or around September 2019, Plaintiff submitted extensive medical documentation and requested a medically necessary leave of absence to extend from September 14, 2019 to December 1, 2019. Her request for leave was initially denied. Plaintiff subsequently submitted additional medical documentation, and her request for this medically necessary leave of absence was then granted.

68. At no time before Plaintiff requested or took a leave of absence (at the direction of ExpressJet) was she informed that this pre-approved and medically necessary leave of absence would be charged as an "instance"[1] against her employment. Neither was she informed that her approved leave of absence could and would ultimately serve as the basis for ExpressJet's threats of termination. Moreover, according to the express terms of the Handbook, leaves of absence are not considered "instances" counted against a flight attendant's attendance or subject to disciplinary action.

69. Plaintiff took her approved leave of absence from September 14, 2019 to December 1, 2019, during which she underwent the non-elective surgery, and for which she received a preapproved leave of absence in lieu of her requested FMLA leave.

70. In November 2019, ExpressJet informed Plaintiff that she had accrued three weeks of vacation time for the forthcoming year. Plaintiff notified ExpressJet that she was seeking one

[1] ExpressJet's Handbook defines an "instance" as: "[a]ny failure to report on time for a scheduled work assignment, including a sick call, no-show, late report, or any other unplanned lost-time event . . .. The ExpressJet Attendance Policy is a 'no-fault"' policy. This means that 'instances' will normally be counted without regard for the reasons for the absence."

week of vacation in January 2020, one week of vacation in February 2020, and two weeks of vacation in June 2020 – one of which she would pay for via the "flex benefit" vacation program, which permits funds to be used for either an extra week of vacation or contributed to the employee's 401(k) retirement account.

71. On December 2, 2019, as scheduled and without incident or limitations, Plaintiff returned to work and began a multi-day trip.

72. On December 4, 2019, with no forewarning, Plaintiff was removed from the rest of her assigned December trips. When she inquired with the crew scheduling department, she was informed by ExpressJet that her leave of absence was charged against her as an "instance," and because she had six instances in a 12-month period, she was being terminated unless she immediately retired. When she reached out to her union representative, the representative advised her to "just retire" and neither offered nor provided any assistance.

73. On December 11, 2019, Plaintiff had a face-to-face meeting with her supervisor, Linda Duecker, during which she was told that there was "nothing they could do," that her leave of absence was counted as an instance, and that retirement or involuntary termination were Plaintiff's only two options. During this meeting, rather than risk immediate termination, Plaintiff submitted a written "retirement notice." She made clear in her written notice that her retirement was not voluntary, but rather, that it was forced by ExpressJet as her only means to avoid involuntary termination. During this meeting, Plaintiff's supervisor was visibly frustrated that Plaintiff included language regarding the involuntary nature of Plaintiff's resignation in her notice of the same.

74. ExpressJet's conduct in response to Plaintiff's attendance was in direct and willful contravention to its written policies in the Handbook. As expressly stated in the Handbook, the

disciplinary action warranted by six attendance instances is "Step 3: Termination Warning." Per the Handbook, the disciplinary action of termination is only warranted under "Step 4: Termination" when an employee has seven attendance instances – which Plaintiff did not have. To the extent that Plaintiff had six attendance instances within a 12-month period (which she contends she did not), the only permissible disciplinary action set forth in the Handbook was a termination warning.

75. Further, as explained herein, a preapproved personal leave of absence, including Plaintiff's leave of absence, is not supposed to be counted as an "instance" according to the Handbook. The CBA is completely silent about "instances" and attendance-based disciplinary actions so no interpretation of the CBA is necessary here.

76. At the time of her forced retirement, Plaintiff had not used any of the three weeks of vacation time she earned during the 2019 calendar year, nor had she used the one week of "flex" vacation time that she opted for in lieu of additional financial contributions to her 401(k) plan.

77. When ExpressJet forced Plaintiff to immediately submit a letter of retirement or face involuntary termination—without cause according to its own Handbook—her accrued vacation benefits, which would have fully vested exactly three weeks later, were lost. Upon information and belief, ExpressJet willfully and intentionally treats other flight attendants—especially those who, like Plaintiff, have earned significant seniority—in the same manner in its effort to foreclose paying accrued vacation benefits.

78. Notwithstanding Plaintiff's entitlement to be paid for the three weeks of accrued vacation time and reimbursed for the one unused week of "flex" vacation time, ExpressJet did not pay her any amount for these days. Nor did ExpressJet provide any notice to Plaintiff of their intent to withhold payment for her accrued vacation and flex vacation days. Indeed, Plaintiff only

discovered that she would not be paid for her accrued "flex" vacation time after initiating a call to ExpressJet and confirming in a conversation with ExpressJet employee Mora Lecomte that ExpressJet did not intend to pay her for either her vacation or flex vacation time.

79. Pursuant to COBRA, ExpressJet was required to notify its group health plan administrator within 30 days of the date of Plaintiff's retirement on December 11, 2019, as her forced retirement constituted a qualifying event under COBRA. ExpressJet was also required to notify Plaintiff of her right to continue healthcare coverage under COBRA and under its retiree program. ExpressJet willfully failed to perform either of these required actions. 29 U.S.C. § 1166(a).

80. Within 14 days of receiving notice of a qualifying event from ExpressJet, ExpressJet's group health plan administrator was required to provide Plaintiff with an election notice regarding her right to continuation of coverage through COBRA and/or through the Retiree Medical Bridge Plan with an explanation of how to make such an election for her ongoing medical insurance coverage.

81. In other words, within 44 days of the qualifying event—i.e., by January 24, 2020—Defendant, through its health plan, was obligated to provide Plaintiff with notice of her options for continued healthcare coverage under COBRA. ExpressJet willfully failed to provide this statutorily-required notice on or before January 24, 2020.

82. Between January and February 2020, Plaintiff called ExpressJet's benefits department at least three times requesting the COBRA information to which she was entitled by law and which she was not obligated to request.

83. At no time after her forced retirement on December 11, 2019, or during her many communications with the benefits department between that date and March 1, 2020 was Plaintiff

ever told that she was eligible to participate in the Retiree Medical Bridge Plan for the continuation of her medical insurance. As required, at the time of her forced retirement, she was covered by the plan medical insurance.

84. When Plaintiff checked her health insurance coverage in February 2020, she discovered that her insurance coverage under Blue Cross Blue Shield of Texas appeared to have been terminated on January 31, 2020.

85. On February 13, 2020, Plaintiff again called ExpressJet's benefits department and specifically requested that it send her the COBRA information. On this same date, Plaintiff's undersigned counsel, Lisa White, sent an email to ExpressJet regarding, inter alia, Defendant's failure to provide timely COBRA notice.

86. Also on February 13, 2020, an employee from ExpressJet's benefits department called Plaintiff and informed her that Defendant backdated the cancellation of her insurance coverage to December 31, 2019, and stated that Defendant would send Plaintiff her COBRA information, effectively admitting that the COBRA notice (which was already late) had not yet been sent to her.

87. Notwithstanding its obligations to provide notice no later than 44 days after a qualifying event (which was December 11, 2019), ExpressJet failed to provide notice to Plaintiff regarding her right to continue healthcare coverage under COBRA and/or under the Retiree Medical Bridge Plan.

88. Plaintiff finally received the required COBRA notice on February 26, 2020, which was 77 days after the qualifying event of her forced retirement. It is unclear when the COBRA notice was actually mailed to Plaintiff.

89. Had Plaintiff not repeatedly hounded ExpressJet for the COBRA benefits election notice to which she was entitled by statute, most likely she would never have received it, and would have entirely lost her opportunity and right to elect for the continuation of her healthcare coverage.

90. By the time ExpressJet provided notice, Plaintiff was told she would have to *immediately* pay a lump sum for three months of coverage ($2,440 per month for a total of $7,320) in order to continue her healthcare coverage, back-dated to her retirement. Instead, she had to forego continuation of employee benefits for which she was eligible due to the exorbitant up-front costs.

91. Furthermore, Plaintiff was never notified by ExpressJet since the time of her retirement that pursuant to the terms of the CBA (which was effective during Plaintiff's entire tenure with ExpressJet and through March 8, 2020), she was eligible for continued medical insurance under the Retiree Medical Bridge Plan. As a result of ExpressJet's failure to provide prompt and timely notification required under ERISA, Plaintiff has been harmed.

92. As it is for many people, continuation of healthcare coverage was and is critical to Plaintiff due to her need for coverage of pre-existing medical conditions and her need for medical insurance. Plaintiff, like other ExpressJet former employees and retirees, has been harmed by ExpressJet's failure to comply with the requirements of ERISA.

93. Upon information and belief, ExpressJet willfully fails to provide proper notice of COBRA benefits and/or Retiree Medical Bridge Plan benefits to its former employees as a matter of pattern and practice.

94. Plaintiff is similarly situated to the Classes she seeks to represent, as she and the putative Class Members were uniformly subjected to ExpressJet's illegal conduct, including

interfering with them taking medically necessary leaves pursuant to the FMLA, failing to provide them with timely COBRA benefits election notice(s) pursuant to the ERISA, failing to pay them for accrued vacation time upon their termination of or retirement from employment, and for failing to pay them for accrued flex benefit funds upon their termination of or retirement from employment.

CLASS ACTION ALLEGATIONS

95. Plaintiff brings this action individually and as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following Classes:

FMLA Class:
All persons residing in the United States who are currently or were formerly employed by ExpressJet as flight attendants, and whose request for family or medical leave for which they were eligible under FMLA was denied or interfered with by ExpressJet.

ERISA Class:
All persons residing in the United States who were formerly employed by ExpressJet as flight attendants, and who were not provided timely COBRA benefits election notice(s), including continuation of coverage eligibility.

ERISA Retiree Sub-Class:
All persons residing in the United States who were formerly employed by ExpressJet as flight attendants and retired after 10 years of employment, and who were not provided timely ERISA benefits election notice(s), including notice of continuation of coverage through the Retirees Medical Bridge Plan.

Vacation Pay Class:
All persons residing in the United States who were formerly employed by ExpressJet as flight attendants, and who were not paid for earned or vested vacation time.

Flex Benefits Pay Class:
All persons residing in the United States who were formerly employed by ExpressJet as flight attendants, and who were not repaid for monies paid into "flex" benefit plans at the time of their termination or retirement from ExpressJet.

96. Excluded from the Classes are ExpressJet and its parent companies, any entity in which ExpressJet has a controlling interest, any of ExpressJet's legal representatives, officers, directors, assignees, and successors.

97. Numerosity: The members of the Classes are so numerous that joinder of all members is impracticable. While the exact number of Class Members is presently unknown, it consists of hundreds if not thousands of people geographically disbursed throughout the United States. The number of Class Members can be determined by ExpressJet's employment records and communications with former employees. Moreover, joinder of all potential Class Members is not practicable given their numbers and geographic diversity. The Classes are readily identifiable from information and records in the possession of ExpressJet and its third-party payroll vendors.

98. Commonality: Common questions of law and fact exist as to all Class Members. These questions predominate over questions that may affect only individual Class Members because ExpressJet has uniformly acted on grounds generally applicable to the Classes. These common legal or factual questions include, *inter alia*:

a. Whether ExpressJet engaged in the unlawful conduct as alleged;
b. Whether ExpressJet's conduct violated the FMLA;
c. Whether ExpressJet's conduct violated ERISA;
d. Whether ExpressJet failed to pay former employees for earned and vested vacation time;
e. Whether ExpressJet failed to pay former employees for prepaid "flex" benefits;
f. Whether ExpressJet's conduct breached the employment contract governing its relationship with its flight attendants;
g. Whether ExpressJet's conduct was knowing and willful;

h. Whether ExpressJet's conduct makes them liable to Plaintiff and Class Members;

i. Whether ExpressJet's conduct, as alleged herein, caused Plaintiff and Class Members to suffer an ascertainable loss of monies, benefits, insurance coverage, and/or vacation time;

j. Whether Plaintiff and Class Members are entitled to damages, including compensatory, exemplary, statutory damages and penalties, treble damages, and/or punitive damages, and the amount of such damages; and

k. Whether ExpressJet should be enjoined from the conduct alleged herein.

99. Typicality: Plaintiff's claims are typical of the other Class Members, as all members of the Classes were and are similarly affected by ExpressJet's uniform illegal conduct, including interfering with Plaintiff and Class Members ability to take medically necessary leave pursuant to the "FMLA," failing to provide Plaintiff and Class Members with timely benefits election notice(s) pursuant to ERISA, and failing to pay Plaintiff and Class Members earned and/or vested vacation time and flex benefits.

100. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of the Classes because she has no interests antagonistic to, or in conflict with, the Classes that Plaintiff seeks to represent. Furthermore, Plaintiff has retained counsel experienced and competent in the prosecution of complex class action litigation of this nature.

101. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met here. ExpressJet will continue to commit the unlawful practices alleged herein, including interfering with former and current employees ability to take medically necessary leaves pursuant to the FMLA, failing to provide former employees with timely COBRA and other medical insurance

benefits election notice(s) pursuant to ERISA, and failing to pay former employees earned and/or vested vacation and prepaid flex vacation time.

102. ExpressJet has acted and refused to act on grounds that apply generally to the Classes, such that final injunctive relief and corresponding declaratory relief is appropriate with respect to the Classes as a whole.

103. Predominance: The elements of Rule 23(b)(3) are met here. The common questions of law and fact enumerated above predominate over the questions affecting only individual Class Members, and a class action is the superior method for the fair and efficient adjudication of this controversy. The likelihood that individual Class Members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. Serial adjudication in numerous venues is not efficient, timely, or proper. Judicial resources will be unnecessarily depleted by resolution of individual claims. Joinder on an individual basis of hundreds or thousands of claimants in one suit would be impracticable or impossible. Individualized rulings and judgments could result in inconsistent relief for similarly situated plaintiffs.

104. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

105. ExpressJet has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

COUNT I
VIOLATIONS OF THE FAMILY AND MEDICAL LEAVE ACT
29 U.S.C. §§ 2601, *et seq.*
(on behalf of Plaintiff and the FMLA Class)

106. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 105 as if fully set forth herein.

107. Plaintiff brings this claim on behalf of herself and the FMLA Class against ExpressJet for violating the FMLA by interfering with Plaintiff and FMLA Class Members' efforts to exercise their FMLA rights.

108. The FMLA applies to all private employers with 50 or more employees, which includes the Defendant in this matter.

109. The FMLA entitles an employee "to a total of 12 workweeks of leave during any 12-month period" if the employee suffers from "a serious health condition." 29 U.S.C. § 2612.

110. The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. 29 U.S.C. § 2615(a)(1).

111. The FMLA and the rights it provides to eligible employees are not modified in any way by the CBA or Handbook.

112. ExpressJet is an "employer" covered by the FMLA, pursuant to 29 U.S.C. § 2611(4).

113. Plaintiff was entitled to leave under the FMLA, pursuant to 29 U.S.C. § 2612(a)(1)(D).

114. Plaintiff provided sufficient notice to ExpressJet of her request to take a medically necessary leave to have surgery. Specifically, Plaintiff provided notice to ExpressJet in or around September 2019, immediately after being told by her physician that she required a non-elective surgery to address a serious, time-sensitive medical issue that had an impact on her ability to perform her work as a flight attendant.

115. ExpressJet responded to Plaintiff's FMLA leave notice by telling her that, although she was a full-time flight attendant, she was not eligible for FMLA. Upon information and belief,

she had performed in excess of the required number of paid duty hours in the 12 months prior to her sought FMLA leave.

116. Upon returning from the leave of absence and contrary to the terms of its Handbook, ExpressJet informed Plaintiff that her leave of absence counted as an "instance" and that she must either retire or she would be involuntarily terminated immediately. Plaintiff reluctantly retired under duress.

117. Had ExpressJet not interfered with Plaintiff taking the FMLA leave for which she initially provided notice, her medically-necessary leave could not have been used against her to force her into retirement. Even under the terms of the ExpressJet CBA and Handbook, such retaliation is not permitted.

118. ExpressJet, as a pattern and practice, interferes with Plaintiff and Class Members' statutory right to seek FMLA leave, and retaliates against those who do take leave, contrary to the FMLA, as well as ExpressJet's CBA and Handbook.

119. By denying Plaintiff and Class Members' FMLA leave requests, ExpressJet has denied substantial employment benefits and statutory rights to Plaintiff and FMLA Class Members.

120. As a direct, foreseeable, and proximate cause of ExpressJet's uniform conduct, Plaintiff and FMLA Class Members have suffered damages.

121. Plaintiff and FMLA Class Members seek declaratory and injunctive relief to prohibit ExpressJet from continuing its interference with FMLA statutory rights and from retaliation against employees who seek FMLA leave, damages in an amount to be determined at trial, and reasonable attorneys' fees and costs of suit in an amount to be determined at trial.

COUNT II
VIOLATION OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT
28 U.S.C. § 1101, *et seq.*
(on behalf of Plaintiff, the ERISA Class, and the ERISA Retiree Subclass)

122. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 105 as if fully set forth herein.

123. Plaintiff brings this claim on behalf of herself, the ERISA Class, and the ERISA Retiree Subclass against ExpressJet for violations of the ERISA.

124. ERISA, as amended by COBRA, 29 U.S.C. § 1161-69, provides employees the right to the continuation of group health coverage (for either 18 or 36 months) that would otherwise be lost due to certain life events, including job loss and retirement.

125. The rights provided to all eligible employees under ERISA are not abridged in any way by the CBA or Handbook.

126. When certain qualifying events occur, such as the termination or retirement of an employee who is covered under a group health plan, the employer must notify the plan within 30 days.

127. The group health plan must then provide the qualified beneficiaries with an election notice within 14 days, which describes their rights to continuation coverage and how to make an election.

128. Employers, including ExpressJet, are obligated to provide direct notice of the availability of COBRA to employees following a qualifying event.

129. Qualified beneficiaries then have a minimum of 60 days from the later of the date of receipt of a COBRA election notice or the date that healthcare coverage would be lost to elect

to continue healthcare coverage. Failure to do so within this time period forfeits the right to elect for continuing coverage.

130. Pursuant to COBRA, ExpressJet was required to notify its group health plan administrator by January 10, 2020, which was 30 days from the date of Plaintiff's retirement on December 11, 2019, as this constituted a qualifying event. 29 U.S.C. § 1166(a). Upon information and belief, ExpressJet failed to notify the group health plan within the 30 days required by ERISA. ExpressJet was also required to directly notify Plaintiff of her right to continue healthcare coverage under COBRA.

131. Pursuant to COBRA, within 14 days of receiving notice – which for Plaintiff would be January 24, 2020 – ExpressJet's group health plan administrator was required to provide Plaintiff and other qualified beneficiaries with an election notice regarding her and their rights to continuation of coverage and an explanation of how to make such an election. 29 U.S.C. § 1166(c).

132. Failure to provide timely COBRA election notice to employees and beneficiaries following a qualifying event is punishable by a penalty of $110 per day. 29 USC 1132(c); 29 CFR 2075.502c-3.

133. ExpressJet failed to timely notify its group health plan of Plaintiff's forced retirement effective December 11, 2019. ExpressJet also failed to provide timely direct notice to Plaintiff regarding her right to continue healthcare coverage under COBRA. She did not receive any such notice until February 26, 2020.

134. As described above, Plaintiff did not receive any information regarding her COBRA election notice rights until she took the initiative to contact ExpressJet multiple times and demand the COBRA information to which she was legally entitled. Had Plaintiff not done so, most

likely, she may not have ever received the COBRA information and would have unknowingly forfeited her opportunity to choose whether to continue her healthcare coverage.

135. As a direct result of ExpressJet's unlawful and untimely conduct, Plaintiff would have had to immediately pay a lump sum for three months of coverage ($2,440 per month for a total of $7,320) in order to retain her healthcare coverage, back-dated to December. Instead, she had to forego continuation of employee benefits for which she was eligible due to the exorbitant up-front costs.

136. Furthermore, ExpressJet never notified Plaintiff of her eligibility as a retiree (albeit as a forced retiree) to participate in the Retiree Medical Bridge Plan offered in ExpressJet's CBA. By failing to notify her and other ERISA Retiree Subclass Members in a timely manner, ExpressJet willfully denies substantial employment benefits to the ERISA Retiree Subclass Members.

137. By delaying Plaintiff and Class and Subclass Members' ERISA-required notifications, ExpressJet willfully and intentionally denies substantial employment benefits and statutory rights to Plaintiff and all ERISA Class Members.

138. As a direct, foreseeable, and proximate cause of ExpressJet's uniform conduct, Plaintiff, ERISA Class Members, and ERISA Retiree Subclass Members have suffered damages and are entitled to actual damages, statutory penalties of $110 per day, and reasonable attorneys' fees and costs of suit in an amount to be determined at trial.

COUNT III
BREACH OF CONTRACT (VACATION PAY)
(on behalf of Plaintiff and the Vacation Pay Class)

139. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 to 105 as if fully set forth herein.

140. Plaintiff brings this claim on behalf of herself and the Vacation Pay Class against ExpressJet for its breaches of contract.

141. On July 25, 2005, ExpressJet hired Plaintiff as a flight attendant. Upon her hiring, ExpressJet presented Plaintiff with a copy of the CBA, which constitutes a legally binding contract between ExpressJet and Plaintiff.

142. At all times relevant to this action, Plaintiff performed her duties in compliance with the terms set forth in the CBA.

143. Regarding vacation pay, the CBA provides that vacation time constitutes "compensated time off" and further states:

- Flight attendants accrue vacation time based on hours worked and their years of service.
- Vacation time is accrued during the current year for use in the following calendar year.
- On Jan. 1 of each year, accrued vacation becomes earned, or vested, for use during that calendar year.
- Earned vacation time not used by year-end does not roll over into the next calendar year and will be lost.
- If a team member is separating from service, unused earned vacation that is vested will be paid out at the regular rate.

144. In November 2019, ExpressJet informed Plaintiff that she had accrued three weeks of vacation time for the forthcoming year. Plaintiff then scheduled her 2020 vacation time with ExpressJet, including: one week of vacation in January 2020, one week of vacation in February 2020, and two weeks of vacation in June 2020 – one of which she paid for via the "flex" vacation benefit program.

145. On December 11, 2019, just three weeks prior to the vesting of her accrued vacation time and contrary to its own Handbook, Plaintiff was told that her approved leave of absence was

to be counted as an "instance" requiring her immediate involuntary termination if she did not immediately submit a retirement notice. In addition to violating the terms of the Handbook, ExpressJet's threat of termination in retaliation for taking a leave violates the FMLA.

146. Although Plaintiff reluctantly submitted a forced notice of retirement, her vacation benefits were earned during that year. But for ExpressJet's violations of FMLA, Plaintiff would not have retired on December 11, 2019 and Plaintiff's accrued vacation time would have fully vested.

147. ExpressJet's violations of FMLA, its CBA, and the Handbook to avoid or reduce the payment of vacation benefits to Plaintiff and Vacation Pay Class Members are willful, knowing and intentional breaches of the contract between ExpressJet, on the one hand, and Plaintiff and Vacation Pay Class Members, on the other hand.

148. As a direct result of ExpressJet's breach of contract, Plaintiff and the Vacation Pay Class Members have suffered damages, including lost income, in an amount to be determined at trial.

149. As a direct, foreseeable, and proximate cause of ExpressJet's uniform conduct, Plaintiff and Vacation Pay Class Members have suffered damages and are entitled to actual damages, statutory penalties, and reasonable attorneys' fees and costs of suit in an amount to be determined at trial.

COUNT IV
BREACH OF CONTRACT (FLEX BENEFITS)
(on behalf of Plaintiff and the Flex Benefits Pay Class)

150. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 to 105 as if fully set forth herein.

151. Plaintiff brings this claim on behalf of herself and the Flex Benefits Pay Class against ExpressJet for its breaches of contract.

152. On July 25, 2005, ExpressJet hired Plaintiff as a flight attendant. Upon her hiring, ExpressJet presented Plaintiff with a copy of the CBA, which constitutes a legally binding contract between ExpressJet and Plaintiff.

153. At all times relevant to this action, Plaintiff performed her duties in compliance with the terms set forth in the CBA.

154. According to the CBA, a flight attendant may, during the annual benefits enrollment, elect to contribute her/his Flex payments to her/his 401(k) Savings Plan account in lieu of taking Flex vacation time.

155. Nothing in the CBA or Handbook allows ExpressJet to retain the monies or vacation time accrued through the Flex Benefits Plan upon the termination or retirement of an employee. Further, nothing in the CBA or Handbook indicates that flight attendants' Flex Benefits vest only at the end of a calendar year.

156. Contrary to the terms of the CBA, ExpressJet uniformly and consistently fails to pay flight attendants their accrued Flex Benefit Plan monies when they terminate their employment, whether voluntarily or involuntarily or through retirement.

157. Upon her forced retirement, Plaintiff was not repaid for monies accrued in her Flex Benefits Plan account.

158. ExpressJet's failure to pay Flex Benefits funds to Plaintiff and Class Members is a willful, knowing, and intentional breach of the contract between ExpressJet, on the one hand, and Plaintiff and Flex Benefit Pay Class Members, on the other hand.

159. As a direct result of ExpressJet's breach of contract, Plaintiff and the Flex Benefit Pay Class Members have suffered damages, including lost monies and benefits, in an amount to be determined at trial.

160. As a direct, foreseeable, and proximate cause of ExpressJet's uniform conduct, Plaintiff and Flex Benefits Pay Class Members have suffered damages and are entitled to actual damages, statutory penalties, and reasonable attorneys' fees and costs of suit in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, seeks a judgment against ExpressJet as follows:

a. For an order certifying the Classes under Fed. R. Civ. P. 23 and naming Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel;

b. For an order declaring that ExpressJet's conduct violates the statutes referenced herein;

c. For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;

d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury at trial;

e. For prejudgment interest on all amounts awarded;

f. For an order of restitution and all other forms of equitable monetary relief;

g. For an order enjoining ExpressJet from continuing the unlawful practices alleged herein;

h. For declaratory and injunctive relief as pled or as the Court may deem proper; and

i. For an order awarding Plaintiff and the Classes their reasonable attorneys' fees, litigation expenses, and costs of suit.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: May 14, 2020

Respectfully submitted,

GREG COLEMAN LAW, PC

/s/ Rachel L. Soffin

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** Pending pro hac vice admission*

Attorneys for Plaintiff and the Proposed Classes