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Attorneys for James Terry

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

James Terry, an unmarried man,

Case No. _____

Plaintiff,

v.

COMPLAINT

United Parcel Service, Inc., an Ohio
corporation,

Defendant.

Plaintiff James Terry, for his Complaint against Defendant United Parcel Service, Inc., (“UPS”) alleges as follows:

PARTIES, JURISDICTION and VENUE

1. James Terry is an unmarried man who, at all times relevant hereto, resided in, and continues to reside in, Maricopa County, Arizona.

2. UPS, an Ohio corporation, is an international package delivery company headquartered in Sandy Springs, Georgia and transacting business in Arizona.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1332; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq. (the “ADA”); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”); and the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (“ADEA”).

4. UPS caused events to occur within Arizona, out of which this Complaint arises.

1 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

2 **GENERAL ALLEGATIONS**

3 **A. James Terry’s Employment with UPS.**

4 6. James Terry was employed by UPS from September 14, 1984, to April 20,
5 2017.

6 7. James Terry’s most recent position with UPS was Director of Sales for the
7 Desert Mountain District of UPS, which is located in Phoenix, Arizona.

8 8. James Terry had no history of poor performance or misconduct of any kind
9 during his career with UPS.

10 9. James Terry was repeatedly promoted throughout his career with UPS, and he
11 has served as a mentor, supervisor, manager, and director to hundreds of UPS employees.

12 10. James Terry’s employment was terminated by UPS on April 20, 2017.

13 11. At the time his employment was terminated by UPS, James Terry was a
14 medical marijuana card holder pursuant to the Arizona Medical Marijuana Act, 36 A.R.S. §
15 2801 et seq. (the “AMMA”).

16 12. While employed by UPS, James Terry never possessed, used, or was impaired
17 by marijuana while he was present on any of UPS’s properties or premises or during working
18 hours.

19 13. While employed by UPS, James Terry never possessed, used, or was impaired
20 by alcohol or any other impairing substance while he was present on any of UPS’s properties
21 or premises or during working hours.

22 **B. Nature of James Terry’s Disabilities and Resulting Medical Treatments.**

23 14. James Terry is a disabled individual under the ADA.

24 15. James Terry suffers from nearly constant and extreme hip pain for which he
25 has had numerous surgeries and engages in weekly physical therapy; attention deficit
26 disorder (“ADD”); diabetes; allergies; high blood pressure; and high cholesterol.

27 16. A medical doctor determined that medical marijuana would effectively treat
28 James Terry’s nearly constant and extreme hip pain and, therefore, prescribed James Terry
medical marijuana pursuant to the AMMA.

1 17. Accordingly, James Terry became a medical marijuana card holder pursuant to
2 the AMMA so that he could legally treat his nearly constant and extreme hip pain with
3 medical marijuana as directed by a medical doctor and within the parameters and under the
4 protection of the AMMA.

5 18. As directed by a medical doctor and within the parameters and under the
6 protection of the AMMA, James Terry sometimes used medical marijuana and medical
7 marijuana products during non-working hours to treat his nearly constant and extreme hip
8 pain.

9 19. A medical doctor determined that Adderall, which contains amphetamine,
10 would effectively treat James Terry's ADD, and, therefore, prescribed James Terry Adderall
11 to treat his ADD.

12 20. James Terry ingests Adderall as directed by a medical doctor to treat his ADD.

13 **C. UPS's Unlawful Termination of James Terry**

14 21. On April 10, 2017, James Terry held a sales meeting with a team of his direct
15 reports, who are area sales managers ("ASMs").

16 22. After the sales meeting, James Terry held a one-on-one meeting in his office
17 with one of the ASMs.

18 23. During the one-on-one meeting with the ASM, Luis Galindo, a human
19 resources manager, entered James Terry's office looking baffled, interrupted the meeting
20 with James Terry and the ASM, and asked if he could speak with James Terry. Because
21 James Terry was in a meeting with the ASM, he requested that Mr. Galindo return after the
22 meeting had ended, which he estimated would be in 15 minutes.

23 24. However, Mr. Galindo, along with Nicole Campbell, a human resources
24 manager, and Nicole Balducci, a human resources nurse, returned approximately 10 minutes
25 later and while James Terry was still meeting with the ASM, although the ASM had briefly
26 stepped out of James Terry's office to retrieve some information from her office.

27 25. Upon entering his office for the second time, Ms. Campbell, Ms. Balducci, and
28 Mr. Galindo informed James Terry that he was required to immediately report for a drug and
alcohol screening test.

1 26. Despite James Terry's numerous and repeated questions as to the reason he
2 was being forced to take a drug and alcohol screening test, Ms. Campbell, Ms. Balducci, and
3 Mr. Galindo provided James Terry with no information other than that "observable behavior"
4 had been reported.

5 27. Ms. Campbell, Ms. Balducci, and Mr. Galindo escorted James Terry out of the
6 building in plain view of numerous UPS non-supervisory employees who watched James
7 Terry be escorted out of the building.

8 28. James Terry underwent the drug and alcohol screening test as required by UPS.

9 29. After undergoing the drug and alcohol screening test, James Terry was told that
10 he could not return to work until and unless UPS directed him to return to work.

11 30. On or about April 19, 2017, a medical review officer called James Terry and
12 advised him that he had tested positive for marijuana metabolites and amphetamines. During
13 that call, James Terry advised the medical review officer that he is a valid medical marijuana
14 card holder and that he has a valid prescription for Adderall to treat his disabilities.

15 31. On or about the evening of April 19, 2017, Darren Moore, a director of human
16 resources, called James Terry and instructed James Terry to meet him at a hotel in Central
17 Phoenix on April 20, 2017.

18 32. As instructed, James Terry met Mr. Moore, Ms. Balducci, and Meredith Cox,
19 a Business Development Director (who was James Terry's immediate supervisor), at the
20 hotel in Central Phoenix on the morning of April 20, 2017 (the "Termination Meeting").

21 33. During the Termination Meeting, Mr. Moore Ms. Cox advised James Terry
22 that he was being terminated due to the positive results of the drug and alcohol screening test
23 and for violating UPS's drug and alcohol policy.

24 34. During the Termination Meeting, James Terry reiterated to Mr. Moore, Ms.
25 Cox, and Ms. Balducci that he is a valid medical marijuana card holder and that he has a
26 valid prescription for Adderall to treat his disabilities. Mr. Moore responded by asking
27 James Terry if he had ingested marijuana in the last 30 days and by reaffirming UPS's
28 decision to terminate James Terry for testing positive for medical marijuana metabolites and
for amphetamine, an active ingredient in Adderall.

1 35. UPS did not offer James Terry any accommodation in connection with his
2 disabilities.

3 **D. UPS’s Systemic Unlawful Discriminatory Employment Policies and Practices**

4 36. UPS has adopted, maintains, and engages in policies and practices that are
5 unlawfully discriminatory under Title VII and other employment laws, including, but not
6 limited to, basing employment decisions, including decisions related to hiring, retention,
7 promotion, and termination, on gender, race, and other characteristics protected by law.

8 **E. The Charge of Discrimination and Right-to-Sue Letter**

9 37. On October 30, 2017, James Terry filed a Charge of Discrimination with the
10 Equal Employment Opportunity Commission (“EEOC”), alleging race and gender
11 discrimination in violation of Title VII, disability discrimination in violation of the ADA,
12 and age discrimination in violation of the ADEA.

13 38. James Terry received a right-to-sue letter from the EEOC dated November 14,
14 2017.

15 **F. UPS’s Defamation of James Terry**

16 39. UPS management and/or human resources employees communicated false and
17 defamatory statements regarding James Terry to UPS non-supervisory and non-human
18 resources employees and non-UPS employees, including statements that James Terry
19 violated UPS’s drug and alcohol policy and that James Terry was impaired at work.

20 **COUNT ONE**

21 **Unlawful Disability Discrimination - ADA**

22 40. James Terry realleges and incorporates by reference each and every allegation
23 in the proceeding paragraphs.

24 41. James Terry is a disabled individual under the ADA.

25 42. UPS terminated James Terry’s employment.

26 43. At the time he was terminated by UPS, James Terry was qualified for his
27 position and was able to perform the essential functions of his position with a reasonable
28 accommodation.

1 44. At the time he was terminated by UPS, James Terry was satisfactorily
2 performing his duties pursuant to UPS's legitimate expectations.

3 45. UPS failed to offer James Terry any reasonable accommodation for his
4 disabilities.

5 **COUNT TWO**

6 **Unlawful Race Discrimination (Title VII)**

7 46. James Terry realleges and incorporates by reference each and every allegation
8 in the proceeding paragraphs.

9 47. James Terry is an African American.

10 48. UPS terminated James Terry's employment, and a motivating factor for the
11 termination was James Terry's race.

12 49. At the time he was terminated by UPS, James Terry was satisfactorily
13 performing his duties pursuant to UPS's legitimate expectations.

14 50. Other similarly situated non-African American UPS employees were treated
15 more favorably than James Terry.

16 51. The UPS employee who replaced James Terry as Director of Sales for the
17 Desert Mountain District of UPS is Caucasian.

18 **COUNT THREE**

19 **Unlawful Sex Discrimination (Title VII)**

20 52. James Terry realleges and incorporates by reference each and every allegation
21 in the proceeding paragraphs.

22 53. James Terry is male.

23 54. UPS terminated James Terry's employment, and a motivating factor for the
24 termination was James Terry's gender.

25 55. At the time he was terminated by UPS, James Terry was satisfactorily
26 performing his duties pursuant to UPS's legitimate expectations.

27 56. Other similarly situated female UPS employees were treated more favorably
28 than James Terry.

1 RESPECTFULLY SUBMITTED this 28th day of December, 2017.

2 **FREDENBERG BEAMS**

3
4 By: /s/ Christian C.M. Beams

Daniel E. Fredenberg

5 Christian C. M. Beams

6 Attorneys for James Terry

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the
Complaint or Notice of Removal.**

Plaintiff(s): James Terry

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Defendant(s): United Parcel Service, Inc

County of Residence: Maricopa

Plaintiff's Atty(s):

**Christian C.M. Beams
Fredenberg Beams
4747 N. 7th Street, Suite 402
Phoenix, Arizona 85014
602-595-9299**

Defendant's Atty(s):

II. Basis of Jurisdiction:

4. Diversity (complete item III)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- **1 Citizen of This State**

Defendant:- **5 Non AZ corp and Principal place of Business outside AZ**

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

445 Amer. w/Disabilities - Employment

VI.Cause of Action:

ADA, Title VII

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **TBD**

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: /s

Date: 12/27/2017

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014