

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

Non-Argument Calendar

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appendix A

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

Before WILSON, JORDAN, and LAGOA, Circuit Judges.

PER CURIAM:

This case involves a series of workplace-related disputes between Saretta Gross, various United Parcel Service (UPS) supervisors, and Teamsters Local 728 (the Union) (collectively, the Defendants). Among other things, Gross alleges that certain UPS supervisors subjected her to repeated sexual harassment. She further claims that these supervisors changed her employee records, withheld timecards, and submitted false write-ups. Gross asserts that, although *she is a dues-paying Union member*, its representatives failed to advocate for her over the course of the harassment and went so far as to falsify her grievance paperwork.

After receiving right-to-sue letters from the Equal Employment Opportunity Commission (EEOC), Gross proceeded pro se in the Northern District of Georgia with a panoply of claims against Defendants. After her motion for appointment of counsel was denied, Gross filed five different complaints over the course of seven months. When faced with dismissal of Gross's second amended complaint, the district court adopted the magistrate's recommendation, and found "no hesitation in labeling [her complaints] as

improper shotgun pleadings” that place “tremendous burden” on both the court and Defendants “to attempt to sort through and discern the specific claims that Defendants need to address and defend against.” However, as a pro se litigant, the court granted Gross an opportunity to address these issues and provided guidance—including examples—of how to properly structure the complaint.

Gross subsequently filed her fourth amended complaint, which she organized into four counts.¹ The district court adopted the magistrate’s recommendation and dismissed her federal claims with prejudice: the amended complaint still qualifies as a shotgun pleading, lacking adequate factual allegations via “a lengthy series of confusing, often conclusory, and largely tangential statements and events presented in a stream-of-consciousness style.” Without the federal claims, the court then declined to exercise supplemental jurisdiction over her state law breach of contract claim, and dismissed without prejudice for lack of subject matter jurisdiction. She timely appealed.

On appeal, and proceeding with counsel, Gross challenges both the dismissal of her fourth amended complaint and denial of her motion for appointment of counsel. She makes three arguments. First, she contends that all five of her complaints, as

¹ (1) “Race Discrimination in Violation of Title VII Against (Both Defendants)”; (2) “Unlawful Retaliation in Violation of Title VII (Desperate Treatment) (Both Defendants)”; (3) “Age Discrimination in the employment Act of 1967, 29 U.S.C. 621 et seq, (ADEA) Teamsters local 728”; and (4) “Breach of Contract code section O.C.G.A, 13-6-14 (2010).” Doc. 66 at 20–27.

incorporated in the fourth amended complaint, sufficiently state a plausible claim for hostile work environment and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*. Second, she alleges that the district court failed to construe her state breach of contract claim as a federal claim for breach of collective bargaining agreement and breach of union's duty of fair representation under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. Finally, she argues that her inability to comply with the district court's pleading directives demonstrates her need for appointment of counsel.

After thorough review of the record and parties' briefing, we affirm.

I. Title VII Claims

We review a district court's order granting a motion to dismiss *de novo*. *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010). However, we review the district court's dismissal of a complaint as a Rule 8 "shotgun" pleading for an abuse of discretion. *See Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). The district court does not abuse its discretion "so long as [its] choice does not constitute a clear error of judgment." *Henderson v. Ford Motor Co.*, 72 F.4th 1237, 1242 (11th Cir. 2023) (quotations omitted).

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." However, so-called "shotgun" pleadings do not provide a short and plain statement of a claim

23-10808

Opinion of the Court

5

under Rule 8. *Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001) (per curiam). Such pleadings violate Rule 8 because “they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Weiland*, 792 F.3d at 1322–23 (listing categories of shotgun pleadings, including complaints that: (1) are “replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action”; or (2) neglect to separate each cause of action or claim for relief into separate counts). Shotgun pleadings “waste scarce judicial resources, inexorably broaden[] the scope of discovery, wreak havoc on appellate court dockets, and undermine[] the public’s respect for the courts.” *Vibe Micro Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018) (quotation marks omitted, alterations in original). A plaintiff’s attempt to “incorporate[] by reference the factual allegations and legal claims in the two previous complaints and then pile[] on them a slew of claims stated in only the most conclusory fashion” constitutes a shotgun pleading. *Cook v. Randolph Cnty.*, 573 F.3d 1143, 1151 (11th Cir. 2009).

A district court can dismiss a complaint on shotgun pleading grounds under its “inherent authority to control its docket and ensure the prompt resolution of lawsuits.” *Vibe Micro Inc.*, 878 F.3d at 1295 (quotations omitted). In such cases, we generally require the district court allow the litigant one chance to remedy the deficiency before dismissing the case with prejudice. *See id.* at 1296.

The Federal Rules further provide that “[a] party may amend its pleading once as a matter of course,” and then requires “the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(1)–(2). While Rule 15 does not discuss the effect of an amended pleading on the previous pleading, the local rules instruct that “[i]n those instances where reproduction of the entire pleading as amended would be unduly burdensome, parties filing . . . an amendment to a pleading shall be permitted to incorporate relevant provisions of prior pleadings by reference.” N.D. Ga. L.R. 15.1. An amended complaint supersedes the original unless it specifically refers to or adopts the earlier pleadings by reference. *See Roy v. Ivy*, 53 F.4th 1338, 1352–53 (11th Cir. 2022) (citing *Varnes v. Local 91, Glass Bottle Blowers Ass’n*, 674 F.2d 1365, 1370 n.6 (11th Cir. 1982)).

Pro se pleadings are held to a less stringent standard than those drafted by attorneys and will be liberally construed. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). But “this leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Id.* at 1168–69 (quotations omitted). Even pro se litigants are required to comply with applicable procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (per curiam).

In the present case, Gross argues that the district court failed to consider all five of her complaints when dismissing her Title VII claims. She claims she incorporated all of them by reference, and when reviewed in the collective, plausibly state hostile work

environment and retaliation claims. Defendants argue that Gross may not incorporate every allegation of every pleading previously filed into a final amended complaint, and the fourth amended complaint remains a shotgun pleading.

We find no error in the district court's dismissal of Gross's fourth amended complaint. Gross's attempt to merge her four prior complaints fails both the district court's order and local rules' guidance on specific incorporation. *See* N.D. Ga. L.R. 15.1. As a result, the district court was within its discretion to conclude that her fourth amended complaint superseded all prior pleadings and limited its review therein. *See Varnes*, 674 F.2d at 1370 n.6. Indeed, Gross's attempt to incorporate every allegation contained in all four preceding complaints by writing (1) that she had filed a pro se complaint in 2021; (2) "A copy of those Charges of Discrimination has already been filed with the Court as well as the Original complaint, along with exhibits is in corporate [sic] herein by reference"; and (3) then referring to the same events as in her prior pleadings throughout, renders the fourth amended complaint a shotgun pleading. *See Cook*, 573 F.3d at 1151. Even under the leniency of a pro se standard, her fourth amended complaint still results in pleadings "replete with conclusory, vague, and immaterial facts" attached to legal labels that risk waste of judicial sources. *Weiland*, 792 F.3d at 1322. Therefore after affording Gross an opportunity to amend, the district court acted within its discretion to dismiss

Gross's fourth amended complaint with prejudice.² *See Vibe Micro Inc.*, 878 F.3d at 1296.

II. Contract Claim

Next, we review a district court's decision to decline supplemental jurisdiction over a state law claim for an abuse of discretion. *Shotz v. City of Plantation*, 344 F.3d 1161, 1185 (11th Cir. 2003).

The LMRA authorizes federal actions for a "violation of contracts between an employer and a labor organization representing employees." 29 U.S.C. § 185(a). To ensure the uniform interpretation of collective bargaining agreements, the LMRA "completely preempts state-law claims . . . that require the interpretation or application of a [collective bargaining agreement]." *Atwater v. Nat'l Football League Players Ass'n*, 626 F.3d 1170, 1176 (11th Cir. 2010). Therefore, when the resolution of a state law claim is substantially dependent upon the terms of a collective bargaining agreement, the claim should be treated as a § 301 claim. *See Bartholomew v. AGL Res., Inc.*, 361 F.3d 1333, 1342 (11th Cir. 2004). We previously found that a complaint meets the requirements of Rule 8 even where it does not specifically mention a collective bargaining agreement, but where the "terms of the collective-bargaining agreement will determine whether the Union[] or the employer

² Moreover, the district court adopted the magistrate's finding that "the factual allegations of the Complaint, to the extent understandable, continue to fail to support any inference of . . . retaliation against protected activity." We note that our judgment remains the same for dismissal under Federal Rule of Civil Procedure 12(b)(6) based upon the district court's well-reasoned opinion.

23-10808

Opinion of the Court

9

held those duties.” *Sams v. United Food & Com. Workers Int’l Union, AFL-CIO, CLC*, 866 F.2d 1380, 1384–85 (11th Cir. 1989).

A hybrid claim exists where an employee sues their employer for breach of the collective bargaining agreement and the union for breach of its duty of fair representation. *See DelCostello v. Int’l Brotherhood of Teamsters*, 462 U.S. 151, 164–65 (1983). Such claims operate under a six-month statute of limitations. *Bartholomew*, 361 F.3d at 1342. We measure “from the date on which the employee knew or should have known of the union’s final action or the date on which the employee knew or should have known of the employer’s final action, whichever occurs later.” *Hill v. Ga. Power Co.*, 786 F.2d 1071, 1075 (11th Cir. 1986) (emphasis in original and quotations omitted).

As a preliminary matter, the district court potentially erred in failing to construe Gross’s state law breach of contract claim as a hybrid claim under the LMRA. While Gross explicitly titled her claim as “Breach of Contract code section O.C.G.A, 13-6-14,” she named both Defendants in the heading of that section, and included allegations related to the collective bargaining agreement and fair representation.³ *See DelCostello*, 462 U.S. at 164–65. However, any such claim under the LMRA is barred by its statute of limitations. The latest date she alleges an adverse action by UPS’s

³ *See, e.g.*, Doc. 66 at 28–29 (“Both defendants never used the JUST CAUSE EFFECT when disciplining an employee[,] . . . refus[ed] to grant an employee’s request for a Union Steward,” failed to fairly bargain, and breached fiduciary duties.).

termination and the Union's representation during the alleged disputes is August 24, 2020, and she did not file her original complaint until March 25, 2021, over a month past the statute of limitations period. *See Bartholomew*, 361 F.3d at 1342; *Hill*, 786 F.2d at 1075. Any remand based on the district court's misconstruction of her hybrid LMRA claim would be futile.

III. Appointment of Counsel

We ordinarily review a district court's decision not to appoint counsel for abuse of discretion. *Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1365 (11th Cir. 2007) (per curiam). However, we lack jurisdiction to hear appeals directly from orders of federal magistrate judges, as an appeal from a magistrate judge's ruling must first be to the district court. *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980).⁴ We previously applied *Renfro* in cases where a magistrate judge issues a non-dispositive order, a party fails to object to the order, and the same party subsequently appeals from the final judgment. *See United States v. Schultz*, 565 F.3d 1353, 1359–62 (11th Cir. 2009) (per curiam). Therefore, this jurisdictional rule applies to non-dispositive matters, and with or without notice that any objections must be filed within the applicable time limits. *Id.* at 1361–62. Relevant here, any objections to a magistrate judge's non-dispositive pretrial order are to be made within 14

⁴ We adopted all decisions of the former Fifth Circuit as binding when handed down prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

23-10808

Opinion of the Court

11

days, and that a party “may not assign as error a defect in the order not timely objected to.” Fed. R. Civ. P. 72(a).

We lack jurisdiction to review the magistrate judge’s order denying Gross’s motion for appointment of counsel. She never appealed that decision to the district court, *Renfro*, 620 F.2d at 500, and all litigants—including those proceeding pro se—are required to comply with applicable procedural rules. *Albra*, 490 F.3d at 829. Because Gross failed to abide by Rule 72(a)’s 14-day requirement, we are required to dismiss that portion of her appeal.

IV. Conclusion

Accordingly, we **AFFIRM** the district court’s dismissal of Gross’s fourth amended complaint, and we **DISMISS** the appeal as to her motion for appointment of counsel for lack of jurisdiction.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appendix B

2

Order of the Court

23-10808

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR
REHEARING EN BANC

Before WILSON, JORDAN, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SARETTA MILDRED GROSS,

Plaintiff,

v.

UNITED PARCEL SERVICE and
TEAMSTERS LOCAL 728,

Defendants.

CIVIL ACTION NO.

1:21-CV-1247-SEG

ORDER

This case is before the Court on the Magistrate Judge's Final Report and Recommendation ("R&R"). (Doc. 74.) The Magistrate Judge recommends that this Court grant the motions to dismiss the amended complaint filed by Defendants United Parcel Service ("UPS") and Teamsters Local 728 ("Teamsters"). Plaintiff Saretta Mildred Gross filed objections to the R&R. (Doc. 81.) Defendants submitted responses (Doc. 82, 83), and Plaintiff replied (Doc. 84, 85). Having considered these documents, the Court now enters the following order.

Appendix A

I. Background

The amended complaint (Doc. 66) contains the following allegations.¹ Plaintiff worked for UPS. During her employment, she was a member of the Teamsters Union and paid weekly union dues. Plaintiff missed work due to illness on August 11, 2020. When she returned to work on August 12, 2020, her supervisor Larry Taylor gave her a warning letter for missing work without authorization. (*Id.* at 6-7, Am. Compl. ¶¶ 17-18.) Plaintiff then requested a grievance form from union steward Natalie Smalls, with the intent to submit a grievance against Taylor for harassment. (*Id.* at 7, Am. Compl. ¶ 18.) After Taylor received the grievance form, he falsely complained to Human Resources that Plaintiff “cursed him out.” (*Id.* at 7, Am. Compl. ¶ 18.) A meeting was held with Human Resources. Present at the meeting were Plaintiff, Taylor, Plaintiff’s other supervisor Don Miller, an unnamed human resources representative, and Marvin Reed of the security department. (*Id.* at 8, Am. Compl. ¶ 19.) During the meeting, Taylor stated that he was giving Plaintiff a warning. Plaintiff was told to leave work for the rest of the day. (*Id.* at 8, Am. Compl. ¶ 19.)

¹ The original complaint was filed on March 25, 2021. (Doc. 1.) Plaintiff amended her complaint several times. Plaintiff’s latest amended complaint was filed on October 15, 2021. (Doc. 66.)

Plaintiff returned to work on August 13, 2020, with a note from her doctor regarding her absence on August 11, 2020. (*Id.* at 8, Am. Compl. ¶ 20.) For reasons that are unclear, Plaintiff did not have a proper timecard on this day. Taylor marked her as absent from work on August 13, 2020, even though Plaintiff allegedly worked that day. (*Id.* at 9, Am. Compl. ¶¶ 21-22.)

On August 14, 2020, Plaintiff was still without a proper timecard. She informed Taylor of this fact but received no assistance. (*Id.* at 9-10, Am. Compl. ¶ 24.) Plaintiff then went to Human Resources to report the lack of a timecard. (*Id.* at 10, Am. Compl. ¶ 25.) Miller and Mike Welsh, a Human Resources representative, were present. Plaintiff alleges that Miller was disrespectful to her and was “speaking to [her] as if she is a kid and not 42 years old.” (*Id.* at 10, Am. Compl. ¶ 26.)

Following her encounter with Miller, Plaintiff was returning to her work area when Reed informed her that Miller and Taylor wanted to see her in Human Resources. (*Id.* at 11, Am. Compl. ¶ 30.) At this meeting, Miller, Welsh, Reed, Taylor, Smalls and another union representative, Chante Rogers, were present. Plaintiff was given another warning for alleged harassment. She was told that she would be excused from work for 5-10 days without pay, and that she would be informed when she could return to work. (*Id.* at 12-13, Am. Compl. ¶¶ 33, 36-37, 39.)

On August 18, 2020, Plaintiff spoke with Matt Higdon, the Vice President of Teamsters, about submitting a grievance for being placed on unpaid leave. (*Id.* at 14, Compl. ¶ 42.) During this meeting, she told him that she did not feel comfortable returning to work because of harassment, racial discrimination, and retaliation. (*Id.* at 15, Am. Compl. ¶ 44.) The same day, Plaintiff went to UPS to submit three grievances. Smalls met her and asked if Plaintiff had received a discharge letter yet. Plaintiff responded that she thought she was being placed on leave, not discharged. Smalls handed Plaintiff a blank grievance form and asked her to sign it. (*Id.* at 15-16, Am. Compl. ¶¶ 47-48.) Plaintiff alleges that the blank grievance form was filled out by someone else to state that Plaintiff wanted to rescind her employment. (*Id.* at 16, Am. Comp. ¶ 49.) Plaintiff's employment was subsequently terminated.

In addition to these allegations, Plaintiff alleges that younger workers at UPS were treated more favorably than she was treated. She specifically alleges that “[y]ounger workers, like Ashley, Karen, Vicky, and [T]rinity was treated more favorable [sic] at UPS” by being allowed by Taylor “to wear club casual attire and tall designer boots, bringing cell phone to work without proper permission from Human Resources manager.” (*Id.* at 18, Am. Compl. ¶ 55.) She also alleges that Teamsters treated younger workers more

favorably by prioritizing their complaints and grievances over those submitted by older workers. (*Id.* at 18, Am. Compl. ¶ 56.)

Plaintiff also alleges that in January 2020, Taylor removed her from her work area, replacing her with a Latino male. Taylor then sent Plaintiff “to a harder work area just because the plaintiff associated with” this person. (*Id.* at 19, Am. Compl. ¶ 57.) Then, in July 2020, Taylor moved Plaintiff to another work area, this time with a “lesbian supervisor” who gave her no instructions on how to do required work. (*Id.* at 19, Am. Compl. ¶ 58.)

II. Legal Standard

To challenge the findings and recommendations of the Magistrate Judge, a party must file with the Clerk of Court written objections which “shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis of the objection.” *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989). If timely and proper objections are filed, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). The district judge must “give fresh consideration to those issues to which specific objection has been made by a party.” *Jeffrey S. v. State Bd. of Educ. of Ga.*, 896 F.2d 507, 512 (11th Cir. 1990). The district judge reviews legal

conclusions de novo, even in the absence of an objection. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994). “[T]he district court will review those portions of the R & R that are not objected [to] under a clearly erroneous standard.” *Liberty Am. Ins. Group, Inc. v. WestPoint Underwriters, L.L.C.*, 199 F.Supp.2d 1271, 1276 (M.D. Fla. 2001). After conducting a careful review of the findings and recommendations, a district judge may accept, reject, or modify the Magistrate Judge’s R&R. 28 U.S.C. § 636(b)(1); *United States v. Powell*, 628 F.3d 1254, 1256 (11th Cir. 2010).

III. Discussion

The amended complaint alleges federal claims of race discrimination and retaliation under Title VII, 42 U.S.C. §§ 2000e, *et seq.*, and age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.* (“ADEA”), as well as a state law claim for breach of contract.²

The Magistrate Judge found that the factual allegations in the amended complaint “fail to support any inference of discrimination on the

² The amended complaint supersedes all previous complaints in this case such that “the original pleading is abandoned by the amendment, and is no longer a part of the pleader’s averments against his adversary.” *Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210, 1215 (11th Cir. 2006) (footnote and citation omitted).

basis of race or age, or retaliation against any protected activity.” (Doc. 74 at 5.) Plaintiff objects to this finding. (Doc. 81 at 7.)

First, Plaintiff informs the Court that she has experienced mental anguish, distress, and depression from her experience in the UPS workplace. She contends that UPS “didn’t care what she was going through” and “treated her unfairly always a lot of times.” (Doc. 81 at 4.) It is clear that Plaintiff feels that her UPS supervisors were disrespectful, but these and similar allegations of incivility, insensitivity, or rudeness in the workplace, even accepted as true, do not amount to violations of Title VII or the Age Discrimination Act.

Next, Plaintiff’s objections present factual allegations that were not included in the amended complaint. For example, she contends that her work area was the last to receive a fan, forcing her to work in conditions of “102 degrees and sometimes higher in the summer months.” (Doc. 81 at 5.) She also adds new allegations that she was retaliated against for reporting to Human Resources that Taylor took unapproved time away from work (*id.* at 6) and that she was terminated because “she has filed charges and given testimony. . .” (*Id.* at 9.)

As an initial matter, these new allegations are outside the scope of the amended complaint, and the Court cannot consider them when reviewing a motion to dismiss a complaint. *See Boyd v. Peet*, 249 F. App'x 155, 157 (11th Cir. 2007) (“[A]t the motion to dismiss stage, the scope of a court’s review must be limited to the four corners of the complaint”) (citing *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002)).

Furthermore, the new allegations as stated bear no obvious relation to race discrimination or retaliation. The anti-retaliation provision of Title VII applies when an employee is targeted because she engaged in certain protected activities, such as testifying in an investigation or opposing an unlawful employment practice. *Univ. of Texas Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 351-52 (2013). Reporting the misuse of company resources is not a protected activity that supports a Title VII retaliation claim. *See Brown v. U.S. Foods, Inc.*, No. 2:20cv06-MHT, 2020 WL 6044554, at *2 (M.D. Ala. Oct. 13, 2020) (“Because Brown’s allegations indicate that he was targeted for reporting his co-workers’ misuse of company resources – not for an activity protected by Title VII – his complaint fails to state a retaliation claim under the statute.”). And, although Plaintiff asserts in her objections that she “has filed charges and given testimony” (Doc. 81 at 9), there are no descriptions of such activity included in the amended complaint.

Plaintiff's objection that the Magistrate Judge erred in recommending dismissal of her Title VII discrimination and retaliation claims is overruled.

Plaintiff also objects to the dismissal of her age discrimination claim. (Doc. 81 at 7.) This claim is brought only against Teamsters. (Doc. 66 at 25). Thus, Plaintiff's allegations that her UPS supervisor treated younger workers more favorably by allowing them to wear casual attire, including tall designer boots, and to bring cellphones to work, has no bearing on this claim.

The allegations concerning preferential treatment of younger workers' grievances lack factual detail and do not say what treatment Plaintiff received in comparison. As for Plaintiff's allegation that Smalls had her sign a blank grievance that was later filled out by someone other than Plaintiff, the Court cannot see how this allegation, as stated, supports an age discrimination claim. The allegations in the amended complaint do not state a plausible claim of age discrimination against Teamsters. Plaintiff's objection on this issue is overruled.

IV. Conclusion

The Court OVERRULES Plaintiff's objections (Doc. 81), ADOPTS the Magistrate Judge's R&R (Doc. 74), and GRANTS Defendants' motions to dismiss. (Doc. 67, 68). The federal claims (Counts 1-3) are DISMISSED WITH PREJUDICE, for failure to state a claim. The Court declines to

exercise supplemental jurisdiction over the state law claim (Count 4), which is DISMISSED WITHOUT PREJUDICE. As no matters remain pending before this Court, the Clerk is DIRECTED to close this case.

SO ORDERED this 16th day of February, 2023.

Sarah E. Geraghty
SARAH E. GERAGHTY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SARETTA MILDRED GROSS,	:	CIVIL ACTION NO.
	:	1:21-CV-1247-TCB-JSA
Plaintiff,	:	
	:	
v.	:	
	:	
UNITED PARCEL SERVICE <i>et al.</i> ,	:	FINAL REPORT AND
	:	RECOMMENDATION ON A
Defendants.	:	<u>MOTION TO DISMISS</u>

Plaintiff, *pro se*, brings this case against her former employer, Defendant United Parcel Service (“UPS”), and her former labor union, Defendant Teamsters Local 728 (“Teamsters”), claiming discrimination based on race and other grounds, principally in connection with her termination in or about August 2020, as well as breach of contract. The Court previously found that the Complaint fails to state a claim but allowed Plaintiff the opportunity to amend certain claims. After amendment, Defendants now renew their motions to dismiss (“Motions”). *See* Motions [67][68].

The Court agrees that the Amended Complaint continues to fail to state a claim on any of the grounds alleged, and therefore **RECOMMENDS** that the Motions be **GRANTED** and the Amended Complaint be **DISMISSED**. The Court recommends that the federal claims (Counts 1-3) be dismissed for failure to state a claim and the state law claim for breach of contract (Count 4) be dismissed for lack

Appendix B

of subject matter jurisdiction.

I. BACKGROUND

The Court previously summarized the allegations and claims in its Order and Non-Final Report and Recommendation [56], dated August 31, 2021 (“R&R”). The Court will not re-state its prior summary of the facts or legal discussion of the claims, but incorporates the same herein.

In the R&R, the Court found that Plaintiff’s claims of sex and disability-based discrimination against the Teamsters, and her claims against UPS based on any adverse actions other than her termination and related events from August 12-18, 2020, and sexual harassment, should be dismissed with prejudice, but that the remaining claims should be allowed to be repleaded. As to these remaining claims of wrongful termination, the Court found that the Complaint was a so-called “shotgun complaint” for a number of reasons, including that it did not clearly set out the individual claims being asserted with clear reference to the factual allegations in support. The Court also found that Plaintiff’s claims, to the extent discernible, were entirely conclusory, and failed to assert any allegations of fact sufficient to support an inference of discrimination on the grounds of race or any other protected basis. However, the Court offered many pages of guidance and explanation to assist Plaintiff in understanding what was needed to attempt to cure these violations.

The District Judge adopted the R&R and dismissed the Complaint, without

prejudice to re-filing certain claims as explained above. Order [60]. Prior to the issuance of the District Judge's Order, apparently based on the recommendations set forth in the R&R, Plaintiff had already filed another Amended Complaint [61], but then filed a final Amended Complaint [66] after issuance of the Order. The Court treats this most recent Amended Complaint [66] (the "Amended Complaint") as the operative pleading in this case.

As the Court ordered, the Amended Complaint now sets forth individual allegations by paragraph number and sets forth four separate claims: Count 1 (race discrimination in violation of Title VII against both Defendants), Count 2 (unlawful retaliation in violation of Title VII against both Defendants), Count 3 (age discrimination against the Teamsters), and Count 4 (breach of contract against both Defendants). Otherwise, the factual basis of the Amended Complaint appears to be substantially the same as that summarized in more detail in the previous R&R.

The allegations remain very difficult to understand but, in sum, Plaintiff describes being terminated in August 2020 after a confusing series of events in which she had been out sick, then had difficulty clocking back in because she did not have a timecard, and received hostility and disrespect from certain supervisors and human resources officers and ultimately was "constructively terminated." As for the Teamsters, Plaintiff explains that she attempted to seek support through a grievance process with union officials, but they also were hostile to her and refused to assist

her in her complaints against UPS.

II. DISCUSSION

A. *Federal Claims*

Again, the Court incorporates, and does not repeat, the explanation contained in the R&R as to the applicable pleading standards and legal elements of the claims in this case. The Court finds that the Amended Complaint fails to rectify the pleading deficiencies previously identified in the R&R, at least as to the federal claims, and therefore remains subject to dismissal.

First, while the Amended Complaint is less abusive than the original pleading, it still qualifies as a “shotgun complaint.” The Court appreciates that Plaintiff has now organized the Complaint with separately-enumerated factual allegations and individually-listed and entitled legal claims. Nevertheless, it remains that the Amended Complaint is based on a lengthy series of confusing, often conclusory, and largely tangential statements and events presented in a stream-of-consciousness style with almost no clear facts directly relating to any claims of unlawful termination. The Court remains left to attempt to pore through these pages and pages of difficult-to-decipher allegations to attempt to even figure out the basis of Plaintiff’s claim.

As just one example of a factual allegation of entirely unexplained and unclear significance, Plaintiff alleges that “[i]n July of 2020,” apparently prior to her return from being sick and difficulties clocking-in, “Supervisor Larry Taylor walk the

plaintiff to another work location then left her there with a lesbian supervisor name Jennifer without telling the plaintiff anything on instructions or the assignment then Larry walks away.” Amended Complaint [66] ¶ 58. The Court is simply unable to discern how this and many other non-sequitur statements relate to the legal elements of a race or age discrimination or retaliation case, and the inclusion of so many scattershot assertions remains a hallmark of a “shotgun complaint.”

Moreover, the factual allegations of the Complaint, to the extent understandable, continue to fail to support any inference of discrimination on the basis of race or age, or retaliation against protected activity. Clearly, Plaintiff feels that she was treated unfairly and was the subject of disrespectful hostility by her supervisors and human resources officers at UPS and by her union representatives at the Teamsters. But Title VII, the Age Discrimination in Employment Act, and other federal anti-discrimination statutes do not generally proscribe incivility or unfairness in the workplace. Rather, as the Court previously explained in the R&R, to successfully assert a legal claim under Title VII, Plaintiff must allege non-conclusory facts that would support an inference that her termination was on the basis of or motivated by race-based discrimination. Plaintiff’s other claims of discrimination require similar showings of specific facts in support.

Plaintiff’s assertion of race discrimination appears to be entirely based on her own speculation and subjective conclusions. The Amended Complaint lacks any

understandable reference to similarly-situated comparators from other racial backgrounds who faced comparable situations but who were not terminated, or other facts to support an inference of discrimination. The only clear reference to any apparent race-based comparator is in Paragraph 57, which states, “Latino worker name Ivan Torres who was treated more favorable than the plaintiff was treated. In Jan of 2020, Larry Taylor removed the plaintiff from her work area and replaced her with Ivan Torres (male) then sends her to a harder work area just because the plaintiff associated with Ivan Torres.” Amended Complaint [66] ¶ 57. There are many deficiencies with this reference, including that a mere reassignment to a different “work area,” seven months prior to Plaintiff’s termination, in unknown circumstances, not apparently because of race but rather because plaintiff “associated with Ivan Torres,” is of completely undiscernible significance.

The Complaint also conclusorily asserts that “[y]ounger workers like Ashley, Karen, Trinity, Vicky, and Ivan Torres was treated more favorable than the plaintiff[,]” and even confusingly cites this allegation in support of the race discrimination count. *See* Amended Complaint [66] ¶ 61. Plaintiff also alleges that “[t]hese employees were not removed from the seniority list, but the plaintiff was.” *Id.* Obviously, an allegation such as this is nonsensical as it relates to race discrimination. As to Plaintiff’s age discrimination case, which appears to be only asserted against the Teamsters, it is not at all clear who (if anyone associated with

the Teamsters at all) treated these UPS employees more favorably than Plaintiff. Nor is there any explanation provided as to what the “seniority list” was, when Plaintiff was removed from this list, whether these other “younger” employees were similarly-situated to Plaintiff, and what significance being removed from a “seniority list” at some unknown point in time had as to the reasons for Plaintiff’s termination or constructive termination.

The Complaint also alleges that several of these same “younger” workers received other “special treatment” by Plaintiff’s UPS supervisor “Larry,” such as being allowed to wear “club casual attire and tall designer boots” and “bringing cell phone to work.” Plaintiff speculates that “she would suffer from race discrimination and retaliation” if she were to do such things. *Id.* ¶ 55. Putting aside the continued confusing nature of conflating the claims for age and race discrimination, Plaintiff’s belief that she would likely not be allowed to wear designer boots is simply not a fact supportive of her wrongful termination claim, especially against the Teamsters, for whom “Larry” does not appear to have been an agent.

Somewhat more focused on the Teamsters, Plaintiff states that “[u]nion stewards would investigate the younger workers complaints or grievances before they would handle any older workers complaints or grievances[,]” and then confusingly offers the non-sequitur, “Plaintiff never slept with any supervisors at UPS workplace at all.” *Id.* ¶ 56. These allegations remain insufficient to suggest that

any similarly-situated “younger” workers received more favorable treatment and, in particular, were not terminated or re-instated for employment in circumstances comparable to those relating to Plaintiff’s departure from UPS.

For all of these deficiencies, the undersigned recommends that the federal claims in the Amended Complaint, Counts 1-3, be dismissed for failure to state a claim. Because Plaintiff has been afforded the opportunity to amend her Complaint with specific warning as to the deficiencies in her Complaint, dismissal of these claims at this juncture should be with prejudice.

B. State Claim (Breach of Contract)

The foregoing recommendation would dispose of all federal claims in this case, which are the only apparent basis for subject matter jurisdiction in federal court. With all federal claims disposed of, the only basis for the Court to issue a ruling on the merits as to the remaining state law claim, for breach of contract, would be to exercise supplemental jurisdiction under 28 U.S.C. § 1337. In most circumstances at this early juncture in the case, however, the Court should decline to exercise such jurisdiction. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (the exercise of supplemental jurisdiction is discretionary, but, generally, “if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well”); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1089 (11th Cir. 2004) (the Eleventh Circuit has “encouraged

district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial").

In this case, the Court is unable to find that a breach of contract claim under Georgia law is clearly and obviously frivolous. Although Plaintiff provides few details, the Amended Complaint at least alleges that she was hired for a specific one-year term, i.e., not indefinitely at-will, and that she was fired by UPS without cause during that term in violation of this contract. *See* Amended Complaint [66] ¶ 104. Plaintiff also alleges that she was a contractual member of the Teamsters and that the Teamsters did not investigate Plaintiff's grievances or intercede or advocate for her with UPS as Plaintiff alleges she was entitled. *See id.* ¶¶ 37-38, 43, 112, 118. Whether any of these or other circumstances might theoretically support a breach of contract claim under Georgia law is unnecessary and inappropriate for this Court to assess, without any of the federal claims that supply the Court with original federal jurisdiction. Thus, the better approach is to dismiss the state claim (Count 4) without prejudice for lack of subject matter jurisdiction.

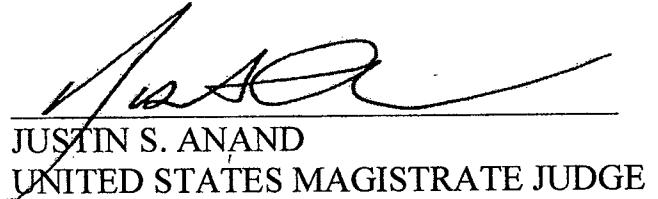
III. CONCLUSION

For the foregoing reasons, the Court **RECOMMENDS** that the Motions to Dismiss [67][68] be **GRANTED**, and that the Amended Complaint [66] be **DISMISSED**. The Court recommends that the federal claims (Counts 1-3) be dismissed on the merits, for failure to state a claim, and that the state claim (Count

4) be dismissed without prejudice for lack of subject matter jurisdiction.

As this is a Final Report and Recommendation, there is nothing further in this action pending before the undersigned. Accordingly, the Clerk is **DIRECTED** to terminate the reference of this matter to the undersigned.

IT IS SO RECOMMENDED this 8th day of April, 2022.



JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appeal from the United States District Court
for the Northern District of Georgia

Appendix B

2

23-10808

D.C. Docket No. 1:21-cv-01247-SEG

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 27, 2024

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: July 23, 2024

Appendix B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appendix C

2

Order of the Court

23-10808

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

ORDER:

Saretta Gross's motion for appointment of counsel is
GRANTED. Counsel shall be appointed by separate order.

/s/ Robin S. Rosenbaum

UNITED STATES CIRCUIT JUDGE

Appendix C

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appendix C

2

Order of the Court

23-10808

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

ORDER:

Attorney Thomas Burch's motion to withdraw as counsel
for Plaintiff-Appellant is GRANTED.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

Appendix C

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appendix C

2

Order of the Court

23-10808

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

ORDER:

The Court previously ordered that counsel would be appointed for appellant Saretta Gross. The Court hereby appoints the following attorney as counsel for the appellant:

Mr. Thomas V. Burch
Director, Appellate Litigation Clinic
The University of Georgia School of Law
225 Herty Drive
Athens, GA 30602
Phone: (706) 542-5236
E-mail: tvburch@uga.edu

The appellant's opening brief shall be due on September 14, 2023. The briefing schedule thereafter shall follow the Federal Rules of Civil Procedure and Eleventh Circuit Rules.

/s/ Jill Pryor

UNITED STATES CIRCUIT JUDGE

Appendix C

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10808

SARETTA MILDRED GROSS,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE,
TEAMSTERS LOCAL 728,

Defendants-Appellees,

TRUCK DRIVERS AND HELPERS LOCAL 728,

Defendant.

Appendix D

2

Order of the Court

23-10808

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

ORDER:

Appellee's motion to substitute the law firm Squire Patton Boggs (US) LLP for Martenson Hasbrouck & Simon LLP is GRANTED.

The motion to withdraw attorneys David Long-Daniels, Lauren Suzanne Kuley, and Merrie Allyson Lumpkin, is GRANTED.

s/ Elizabeth L. Branch

UNITED STATES CIRCUIT JUDGE

Appendix D

2

Order of the Court

23-10808

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01247-SEG

ORDER:

The motion for an extension of time to and including December 18, 2023, to file Appellee's response brief is GRANTED, with the appendix, if any, due 7 days after the filing of the brief.

Appellant's motion for an extension of time to and including January 29, 2024, to file a reply is GRANTED.

/s/ Britt C. Grant

UNITED STATES CIRCUIT JUDGE

Appendix E

THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

SARETTA GROSS

Plaintiff,

CIVIL ACTION NO.

v.

1:21-CV-O1247-TCB-JSA

UNITED PARCEL SERVICE and
TEAMSTERS LOCAL 728

Defendants,

FILED IN CLERK'S OFFICE U.S.D.C. - Atlanta
OCT 15 2021
KEVIN P. WEIMER, Clerk By: <i>[Signature]</i> Deputy Clerk

AMENDED COMPLAINT

Plaintiff Saretta Gross in accordance with Rule 15, FRCP amends her complaint in the above captioned matter, and would respectfully show and allege as follows:

Jurisdiction and Venue

1. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. 1331, which provides district courts with jurisdiction over civil actions arising under the United States Constitution or laws of the United States, of this complaint pursuant to 28 U.S.C. 1331, and 1343. This is an action arising under the laws of the United States,

Specifically, Title VII of the Civil Rights Act of 1964.(Title VII), as amended, 42 U.S.C.2000e, the Age discrimination in Employment Act of 1967, (ADEA”), 29 U.S.C. 621,et seq; and retaliated against for engaging in protected activity, in violation of Title VII and Equal Pay Act of 1983. In violation of 41 U.S.C 6502, 6503. In violation of the First and Eighth Amendment to the U.S constitution Act ratified in 1868, and the Fourteenth Amendment to the U.S constitution Act. In violation of 15 U.S.C.45 Unfair methods. 29 U.S.C 158 unfair Labor Practices.

2. Plaintiff filed the pro se complaint in 2021, seeking to file claims of employment Discrimination. A copy of those Charges of Discrimination has already been filed with the Court as well as the Original complaint, along with exhibits is in corporate herein by reference.

3. The EEOC accepted Plaintiff's formal charge of discrimination as timely.

4. Both defendants were duly put on notice about the Plaintiff's administrative complaints and were given an opportunity to respond to Plaintiff's allegations though the Notice of Charge of discrimination by EEOC's Digital Charge System, which both defendants never responded to the charges.

5. On January 7, 2020 the EEOC made a decision on the merits of Plaintiff's discrimination claims Against (UPS) and was issued a Notice Of Right to sue, by via email and received by plaintiff on this same day. On March 16, 2021 the EEOC made a decision on the merits of Plaintiff discrimination claims against Teamsters Truck Drivers and Helpers local Union728 and was issued a Notice Of Right to sue, by via e-mail and received by Plaintiff the same day.

The Original Complaint was filed within 90 days after Plaintiff received the Notices of Right to Sue on her EEOC complaint.

6. Plaintiff has exhausted the administration remedies available to her under 42 U.S.C. 2000e.et seq, and all conditions precedent have occurred or been performed.

7. Venue is proper in this Northern District pursuant to 28 U.S.C.1391
(b) (1) in that the Defendant (s) is a resident of the district, as defined
by 28 U.S.C 1391 (c)(2) and pursuant to 28 U.S.C. 1391 (b) (2) in that
the events and omission complained of took place in this district.

The Parties

8. Plaintiff Saretta Gross is a resident at P.O Box 942 Mableton,
Georgia 30126 in the State Of Georgia.

9. Defendant United Parcel Service is a Corporation doing business in
the State Of Georgia within the district as an Employer defined in 42
U.S.C.2000e.

10. Defendant Teamsters Truck Drivers and Helpers local Union728.
Is a trade Union doing business in the State of Georgia within the
district.2540 Lakewood Ave. sw. Atlanta, Georgia 30315.

Statement of Facts

11. At all times to the matter stated in this Amended complaint, there was in force and effect the Constitution of the United States which provided in relevant parts as follows:

12. No state shall make or enforce any law which shall abridge the Privileges or immunities of citizens of the United States, nor shall any state deprive any person within its jurisdiction the equal protection of the laws Constitution of the United States (Amendment XIV).

13. At all times relevant to the matters stated in this complaint, which provided in there was in force and affect a federal law known as the Civil Rights Act of 1871, which provided in relevant past as follows:

14. Every person who under color of any statute, ordinance, regulation, custom or usage of any state. Subjects or causes to be subjected, any citizen of the United States. To the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law suit in equality, or other proper proceeding for redress. 42 U.S.C. (1983).

15. At all times complained of, plaintiff was an employee of defendant, United Parcel Service.

16. Plaintiff also was a Member of Teamsters Truck Drivers and Helpers Local Union 728. Plaintiff paid weekly Dues to this Union during the time of the Plaintiff's employment at UPS.

17. On August 12, 2020 plaintiff did not have a proper timecard. Plaintiff had a doctor's appointment and had to leave at 2:45pm this day, Taylor was aware by other supervisors. But Taylor insisted on harassing me again this day at 2:20 pm. Larry radios Whatley saying tell Saretta I can't let her leave yet she has some papers to sign? Taylor never produced any papers for me to sign this day. Taylor asked, if I had a note I stated no I can bring one tomorrow, I contacted you from urgent care letting you know I was sick on August 11, 2020. Plaintiff requested to see her main Union Steward Sheffield and was retaliated upon and declined by Larry Taylor.

18. Taylor gave the Plaintiff a Warning letter for calling in sick on August 11, 2020. Plaintiff moved aside to speak to Smalls, to mention

what she's been going through at UPS. Plaintiff said, to Smalls I know you don't know me but, why can't he leave me the hell alone why can't he leave me the fuck alone. Is there something I can do to stop his discrimination, harassments and retaliation smalls says you can put a grievance in on him. I said ok and smalls handed me a grievance paper Plaintiff asked smalls if she could help her fill the grievance out smalls said that she would show me but, smalls never did. Quickly after getting the grievance paper, Larry Taylor then proceeded to call Don Miller on his Cell phone saying yeah man she just cursed me out we coming to H.R. another (pre textual) lie. Taylor lied on plaintiff saying that I cursed him out when, I was speaking to Smalls about what I've been going through at UPS, and how no one has done anything to stop Larry continuous discrimination and harassments, Plaintiff asked smalls do you know why he is harassing me like this smalls said yeah it's because of how you look. I said if that's true then you should have told Larry it's unlawful to discriminate on an employee because of their race but smalls was just smiley and showed no care.

19. On August 12, 2020 Marvin Redd of security accompanied the plaintiff as a witness while in H.R Don Miller ask Larry what did the plaintiff say Taylor stayed quiet, Then the plaintiff asked if I cursed you what did I say Taylor stayed quite again. Larry Taylor reads the Plaintiff a Harassment paper. Plaintiff asked why she is being read a harassment paper I never harassed anyone Larry stayed silent. Then Smalls say what you are going to do to her Taylor say I'm going to give her a warning in violation of 15 U.S.C. 45. Plaintiff states she is going to miss her doctor's appointment and can she just go back to work Taylor say no just go home girl and come back tomorrow.

20. On August 13, 2020 I returned to work on time with my note, I gave this note to supervisor Whatley Richards he made a copy and said he gave the note to Larry also; saying he declined to see the note. I gave Marvin Redd a Thank You card for accompanying me as a witness to this Retaliation and Unjust and Harassments, with discriminatory behaviors by Larry Taylor and Don Miller on August 12, 2020.

21. On August 13, 2020 plaintiff was without a proper Timecard Plaintiff never encountered with Larry Taylor at all on this day.

22. On August 13, 2020 Taylor decides to go into the plaintiff Employee Record altering my time as being LT. on this day. Then Larry Taylor went in my Employee Statistics and Employee timecard and put me as NC. Then again as absent on August 13, 2020 this same day, and I was present at work this day and I wasn't late or a no call plaintiff worked and went home. Taylor also has false write -up on August 13, 2020 in Plaintiff's employee Record in violation of 29 U.S.C 158

23. Plaintiff was removed from the seniority list by Supervisor Larry Taylor and Don Miller. While younger workers like Ivan, Ashley, Vicky, Karen stayed on the list.

24. On August 14, 2020 Plaintiff was without a proper timecard while trying to clock in, Plaintiff let Larry Know that I'm still without a proper timecard. Taylor said well, I don't know what to tell you" then

literally spent around and walked away. Plaintiff felt disrespected and humiliated and bullied by supervisor Taylor.

25. On August 14, 2020 I went over to H.R Don Miller and another unknown guy was present. I was there to let Miller know that, I just spoke with Larry to let him know I needed a timecard and that Larry said, I don't know what to tell you then spent away, so I came here to let you know that I'm still without a proper timecard but I've been writing my time down just asking when I can receive a timecard.

26. At all times complained of plaintiff was an employee of the Defendant UPS. On August 14, 2020 Don Miller Disrespectfully and very loudly, says to the plaintiff if you want me to do anything for you then you need to put that shit in writing and until you put it in writing then I can't do anything for you now GET out of my office, speaking to the plaintiff as if she is a kid and not 42 years old. Plaintiff stated I'm 42 years old you can't talk to me like this; plaintiff says to the unknown guy do you see how he has disrespected me. The guy stayed silent I said I'm leaving and I went over to Marvin Redd in security.

27. On August 14, 2020 plaintiff spoke to Marvin letting him know what just took place in H.R and how rude and disrespectful Don Miller and the unknown guy was towards me while in H.R Office.

28. Marvin made the Plaintiff a timecard less than 5 minutes.

29. Plaintiff proceeded to return to her work area and was stopped all of a sudden by Natalie Smalls and Whatley Richards saying here is a timecard now. Plaintiff let them know that I just received one less than 5 minutes ago from Marvin in security.

30. At all times complained of plaintiff was an employee of defendant UPS and Paid dues to Teamsters local 728. When returning back to my work area Marvin came saying that Don Miller and Larry Taylor wants me back in H.R I think they are trying to fire you this makes no sense.

31. At this point I feel very stressed disrespected intimidated, Harassed Mentally, Racial Discrimination, Age discrimination with retaliation in violation of Title VII, from Plaintiff participation in a protective activity contacting EEOC, NLRB.

32. On August 14, 2020 plaintiff returned to H.R with witness Marvin Redd present.

33. Plaintiff was read another Harassment paper but, this time by Mike Welsh, this was the unknown guy that was in H.R when I stated to Don Miller I didn't have a timecard on August 14, 2020. I knew his name now because, Plaintiff ask, his name when she returned back to H.R a Second time he was a white guy. Plaintiff asked his name' and position at "UPS" he said, he was a Human Resources Representative. When plaintiff asked Mike Welsh why she is being read a harassment paper again I haven't harassed anyone.

34. On August 14, 2020 Mike Welsh says Larry said, something happened on August 13, 2020. Plaintiff asked Larry what happened on August 13, 2020 Larry stayed quite saying nothing another (pretext lie.)

35. All employees had to sign a Harassment paper in 2019, plaintiff request to see the 2019 harassment paper but H.R declined because it

was proof and fact that I specifically stated on the paper that I am being harassed by supervisors and then she initialed the paper.

36. Welsh says WHAT THERE GOING TO DO TO YOU" is take you out of service for 5-10 days then somebody will call you and tell you when to come back. Mike Welsh was speaking as if they have retaliation planned upon the plaintiff.

37. Plaintiff asked about pay and nobody said anything. Union steward Natalie Smalls and Chante Rogers had their backs towards the plaintiff the whole time and both Union stewards stayed completely silent not fighting for the plaintiff at all even knowing the plaintiff was a Union Member Paying Union Dues weekly.

38. Both Defendants have breached the Contract Agreement with no fair representation by Teamsters local 728. Defendants never used the "JUST CAUSE EFFECT" when disciplining an employee which is part of the contract agreement. No- due process, plaintiff was excluded from arbitration meeting, handling the plaintiff grievances in Bad faith. No- fair bargaining,

39. On August 14, 2020 plaintiff received another Warning Letter by Larry Taylor and Don Miller.

40. On August 14, 2020 shortly after receiving the Warning letter by Supervisor Larry Taylor he Quickly followed up with a Discharge, Constructive Wrongfully dismissal based on plaintiff's Race Age, with Retaliation in violation of Title VII.

41. Both Defendants violated labor laws, violated plaintiff Human Rights.

42. On August 18, 2020 I spoke with Matt Higdon VP of Teamsters Truck Drivers and Helpers local Union 728. Matt had instructed the plaintiff on how and what to put on the grievance form. Saying put this is unjust and stated that he's seen a lot of a hole supervisors in his days at teamsters local 728.

43. Matt Higdon stated that the Union is going to get me paid don't worry but, that was pretext because plaintiff never got paid correctly.

44. Plaintiff explained to Matt that she doesn't feel comfortable returning due to prior harassments, discrimination over race and retaliation upon the plaintiff and adverse action like termination. The Defendants had a Contract with the Plaintiff, the defendants had a duty of care to the plaintiff that was done in bad faith leaving the plaintiff was harmed and damaged with loss wages due to Race Discrimination and Retaliation in violation under Title VII of the civil rights Act of 1964,42 U.S.C 2000e seq as amended.

45. On or about August 24, 2020 Defendant UPS failed to respond to the plaintiff Wrongful Termination complaint inflicting intentional emotional distress upon the plaintiff. Plaintiff was working in a hostile workplace environment.

46. Plaintiff let Matt Higdon know that it is untenable to return so I will accept the discharge and not return.

47. On August 18, 2020, plaintiff went up to UPS to give three grievances because; plaintiff had contacted Matt Higdon earlier.

Plaintiff was there to give and get the grievances signed by Management and a copy returned back to me.

48. On August 18, 2020, Plaintiff was met by Natalie Smalls she asked, if I had a discharge paper I said, no so she asked me to sign a blank grievance and on their plaintiff put I thought I was being taken out of service not discharged. Plaintiff said, if I sign this blank grievance you need to go get this signed by management than bring it right back and if you don't bring it back signed then this grievance will be void because it was not signed by management and returned to the plaintiff.

49. On August 18, 2020, So Smalls only returned the three signed and not the one for the discharge. Smalls never said, anything again about that blank one she had me sign she was handling my grievance unlawfully by not bringing it back signed by management so that grievance was avoided. Come to find out that Natalie Smalls had filled in the top of the grievance and someone typed in the grievance that the plaintiff wanted to rescind her employment but, the plaintiff

never agreed or said that she wanted to rescind anything. Plaintiff spoke to Union VP letting him know it was untenable to return.

50. Smalls was doing things in Bad- faith this was unlawful labor practices and contract fraud to fill out a grievance without the employee knowing or without the employee's permission is unlawful.

51. Plaintiff receives a call from Matt Higdon telling the plaintiff that she has good handwriting being sarcastic about the grievance that I never fully filled out. Plaintiff asked Matt Higdon to send her a copy come to find out that was not my handwriting it was of another.

52. Teamsters Truck drivers and Helpers Local union 728 did not practice in good faith for the plaintiff in all times complained of her grievances. Defendants never enforced the bargaining Agreement in good faith with UPS.

53. Defendants Teamsters local 728 began to carry the same discriminatory behavior as UPS was doing in handling things the right by law. Both defendants blocked the plaintiff unemployment for seven months.

54. Plaintiff did not see any of this unjust coming at all plaintiff was never put on notice about being taken Out Of Service or her termination by Don Miller or supervisor Larry Taylor.

55. Younger workers, like Ashley, Karen, Vicky and trinity was treated more favorable at UPS" Trinity gets special treatment by Larry to wear club casual attire and tall designer boots, bringing cell phone to work without proper permission from Human Resources manager, not worried about safety when clearly we work in a warehouse there would be no disciplinary actions taken upon her she did not receive any warning letters etc. But as for the plaintiff if she did these things she would suffer from race discrimination and retaliation.

56. Union stewards would investigate the younger workers complaints or grievances before they would handle any older workers complaints or grievances like Ashley harassment and Trinity Hayes harassment claims, but not for the plaintiff's allegations of harassment. Plaintiff never slept with any supervisors at UPS workplace at all.

57. Latino worker name Ivan Torres who was treated more favorable than the plaintiff was treated. In Jan of 2020, Larry Taylor removed the plaintiff from her work area and replaced her with Ivan Torres (male) then sends her to a harder work area just because the plaintiff associated with Ivan Torres.

58. In July of 2020 Supervisor Larry Taylor walk the plaintiff to another work location then left her there with a lesbian supervisor name Jennifer without telling the plaintiff anything on instructions or the assignment then Larry walks away.

59. In July of 2020 this day this brought on my medical condition causing the plaintiff to have to go home from pain that was inflicted with stress by supervisor Taylor at times. Plaintiff was excluded from staff meetings, Union Meetings.

60. At all times complained of the plaintiff was employed by Defendant UPS and paid dues to Teamsters Truck Drivers and Helpers local union728. And was a whistleblower to the company's

wrong doings. Plaintiff will continue to suffer until justice is served by the honorable court.

**(Count: 1 Race Discrimination in Violation of Title VII Against
(Both Defendants) reference 36-54**

61. Younger workers like Ashley, Karen, Trinity, Vicky, and Ivan Torres was treated more favorable than the plaintiff. These employees were not removed from the seniority list, but the plaintiff was.

62. Employees had an active timecard but the plaintiff did not for weeks.

63. Wrongful Constructive termination based on Race and Age with retaliation, Unlawful discrimination because of the plaintiff race with retaliation.

64. Defendants blocked the plaintiff unemployment for seven months salary reduction.

65. Defendants discriminated in the provision of services such as banking and health insurance services. Services provided by

government providing goods service and facilities in an unfair manner
in bad faith

66. Direct Discrimination wrongful termination false write ups by
Taylor.

67. Defendant "UPS" would give men more hours than woman
sending woman home letting the males stay to get more hours than
women at UPS.H.R would investigate younger workers Harassment
before investigating older workers allegation which is unfair.

68. No fair bargaining, no due process for grievance, no due process
in my termination.

69. Harassments showing (Desperate Treatment) Taking Plaintiff Out
Of Service with no valid reason just pre text lies.

70. No Equal Pay in violation of title VII and Equal pay Act of 1983.

71. Defendants never used the "JUSTCAUSE EFFECT" when
disciplining an employee. In contract there are specific steps when
using the just cause effect to discipline an employee.

72. Defendant moved the plaintiff to an unknown work area by leaving the plaintiff with a lesbian supervisor name Jennifer with no instructions on the job assignment.

73. Intentionally infliction of emotional distress by supervisor Taylor.

74. Plaintiff civil rights were violated under Title VII and labor laws were broken by (both defendants)

75. Plaintiff complaining to Human Resources about workplace harassment and retaliation and race discrimination.

76. Filing a claim with EEOC, and NLRB

77. Human resources fail to investigate the plaintiff's allegations of harassment and retaliation unlawful race discrimination in violation of Title VII.

78. Denied FMLA by supervisor Larry Taylor.

**Count: 2 Unlawful Retaliation in Violation of Title VII
(Desperate Treatment) (Both Defendants) 1-58**

79. Wrongful termination- UPS

80. Hostile workplace environment with Harassment/ after defendants refused to take action Plaintiff filed a charge with NLRB, EEOC (both defendants)

81. False write –ups by supervisor Larry Taylor (UPS)

82. There was no agreement to rescind the plaintiff grievance which was falsely rescinded without the plaintiff's permission which is sufficient to serve as a valid basis for a legal claim. (Both defendants) re alleged

83. Plaintiff was stripped from healthcare premiums and left with medical bills. (Both Defendants)

84. Defendant UPS (Larry) told the plaintiff that he promises that he would leave her alone and he would do better but he lied he never stop harassing the plaintiff.

85. No Proper timecard plaintiff was denied FMLA Request by supervisor Taylor

86. No due process, no fair bargaining

87. Plaintiff engaged in protected activity as a result of the conduct and actions of defendants.

88. On august 12, 2020 Plaintiff was given a warning letter for calling in sick. Plaintiff was read a harassment paper by supervisor Larry Taylor.

89. On August 14, 2020 Plaintiff was given another Warning letter. Plaintiff was read a harassment paper again by Mike Welsh. On August 13, 2020 nothing took place with Larry and the plaintiff. Pretext lies by Larry.

90. On August 14, 2020 Plaintiff was singled out and told verbally by Mike Welsh she will be taken out of service for 5-10 days then somebody will call the plaintiff back and let her know when to come back.

91. On August 14, 2020 Plaintiff was given a discharge by Larry Taylor.

92. Defendant moved the plaintiff to a unknown location were a lesbian supervisor named Jennifer, leaving the plaintiff with no instructions then leaving her there.

93. More specifically plaintiff with respect to harassment and discrimination directed specifically at the plaintiff complained that she was being racially discriminated against due to Harassment and retaliation by supervisor Larry Taylor. But nothing was done to stop the harassment leaving the plaintiff harmed with pain and suffering.

Count: 3 Age Discrimination in the employment Act of 1967, 29

U.S.C 621 et seq, (ADEA) Teamsters local 728 Reference 50-58

94. Younger workers like Ivan Torres Karen, Ashley, trinity, and Vicky were treated more favorable than the plaintiff. These employees were not removed from the seniority list. They had a proper timecard but the plaintiff was singled out without a proper timecard.

95. Plaintiff faced Workplace biasness by Teamsters local 728

96. Plaintiff was fired based on Age Discrimination with retaliation.

97. Plaintiff was removed from the seniority list. Retaliation for exercising rights under this statute.

98. Excluded from arbitration meeting by teamsters local 728. Teamsters harmed the plaintiff by negligence and not processing the plaintiff's grievance because of age discrimination with retaliation.

99. Plaintiff is asking the Court for a permanent injunction on both defendants. Plaintiff is under too much Mental Emotional Distress.

100. Defendants Violated terms and conditions and privileges of employment. Loss wages, Pain and Suffering,

101. No due process because of age discrimination by Teamsters local 728.

102. Plaintiff was a benefit worker paying Union Dues weekly to Teamsters local 728.

Count: 4 Breach of Contract code section O.C.G.A, 13-6-14 (2010)

(Both Defendants) 1-78 reference

103. Plaintiff signed a legal binding agreement which is an employment contract that establishes a written agreement between plaintiffs the employee and your employer.

104. Plaintiff was fired without a good reason, despite a One year contract. Defendants dismissed plaintiff without giving fair notice or pay despite contract terms.

105. Leaving the plaintiff with a nonpayment of wages or travel expenses, a non- payment of Holiday and sick pay changes to the terms and conditions of plaintiff contract that plaintiff did not sign off on.

106. Wrongful constructive dismissal in bad faith. (Both defendants)

107. Breach of fiduciary Duty defendants broke the trust with the plaintiff, reckless Breach of Fiduciary duty, saying they will get the defendant paid but didn't.

108. Negligent Breach of fiduciary duty, Intentional Breach of Fiduciary duty, Wages and hour violation, unjust enrichment, whistleblower defendants used desperate treatment towards the plaintiff when terminating the plaintiff. No equal treatment.

109. Bad faith (Mauvaise Foi) (both defendants) actions was in authentically by yielding the plaintiff to the External pressures of society to adopt false values and disowning their innate freedom as sentient human begins and human rights.

110. Both Defendants acted unreasonably and without cause when discharging the plaintiff.

111. Both defendants have acted with the intent to defraud and deceive the plaintiff in handling grievances and fair bargaining.

112. Both defendants made a promise to the plaintiff that they would get her paid but they haven't fulfilled their promise to the plaintiff yet.

113. Both defendants never used the JUST CAUSE EFFECT when disciplining an employee. Defendants owed a duty to the plaintiff both

defendants have breached that duty, which directly and proximately caused harm with damage to the plaintiff by not practicing in good – faith.

114. Plaintiff still have unpaid healthcare premiums.

115. Both defendants released plaintiff social security number email address on the dark web in July of 2020.

116. Both defendants are in Violations of the civil Rights Act 1st & 14th Amendments US, constitution.

117. Both Defendants refusing to grant an employee's request for a Union Steward during work shift when the plaintiff was being harassed and bullied by supervisor Taylor no one stopped the harassments towards the plaintiff leaving the plaintiff intimidated and damaged by defendant's actions.

118. Both defendants Failed to promptly thoroughly investigate a claim or issuing a proper timecard for the Plaintiff.

119. Both defendants unreasonably denying benefits to a claim for unemployment for 7 month unreasonably delaying payments for plaintiff.

120. No fair bargaining (Both Defendants)

121. Both defendants using unreasonable interpretations in translating policy language and refusing to settle a case or reimburse the plaintiff for entirety of loss.

122. Both defendants handling dealings in Bad faith defendants failed to carry out the promise made to the plaintiff when Plaintiff was hired at UPS.

123. Changing the terms or condition of a contract without the plaintiff agreement or agreeing.

124. (Both defendants) Plaintiff was not aware of any consideration or exchange of bargaining between the two parties in this case. Defendant Teamsters Truck Drivers and helper's local union 728 stated to plaintiff you're worried about the wrong things and just go

back to work. There was no agreement to rescind the plaintiff's employment.

125. With the plaintiff simply voicing a complaint or opposing a discriminatory practice, that employee has engaged in Protective Activity under Title VII. (Both defendants)

126. Plaintiff has suffered with irreparable Harm both defendants have injured the plaintiff reputation and good will, plaintiff was deprived of her constitutional Rights, Human Rights, violation of public policy. (Both defendants) had a duty of care to the plaintiff. Defendants did not live up to that duty in the agreement by contract so there is a breach in the contract.

Relief

127. Plaintiff seeks recovery in the amount of Two Million dollars in damages for Violation of the First amendment of the United States Constitutions. Plaintiff was Unlawfully Terminated and treated less favorable then other employees Harassed because of her Race and Age in retaliation in violation of Title VII. (Both Defendants)

128. WHEREFORE, Plaintiff Saretta Mildred Gross respectfully, prays that this Honorable Court grant the following relief:

- a. Issue a permanent injunction requiring defendants to abolish discrimination and reprisal;
- b. For such damages, monetary damages including back pay, equitable remedies, Pain and suffering, front pay and benefits, Severance pay, and cost of medical treatment as plaintiff is entitled to under Title VII of the Civil Rights Act.
- c. For other and Further damages, including Compensatory damages, and punitive damages, for plaintiff Emotional Mental.. Distress daily. Court cost, Plaintiff ask this Honorable Court and Honorable Judges for a "Jury Demand"



By: Saretta Gross

Dated this 15th day of October 2021,

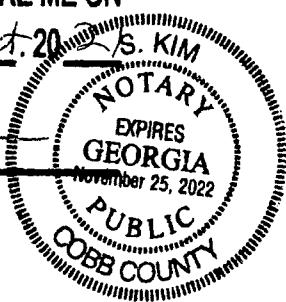
P.O Box 942

Mableton, Georgia 30126

470-623-3324

SUBSCRIBED AND SWORN BEFORE ME ON
THIS THE 19 DAY OF Oct. 2021 S. KIM

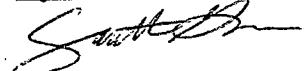

NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Amended Complaint** was served on October 15, 2021, to the Clerk Of Court by hand and to both defendants at the following address:

By: Saretta Gross



Micheal Blair Schoenfeld
Georgia bar no.863727
2540 Lakewood Ave SW
Atlanta Georgia 30315
404-622-0521

David Long-Daniels
SQUIRE PATTONBOGGS (US)
1230 Peachtree st.
Atlanta, Georgia 30309
404-272-6500
Counsel for (UPS)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTERN DISTRICT OF
GERORGIA ATLANTA DIVISION

Saretta M. Gross

Vs,

United Parcel Service and
Teamsters Local 728

Exhibits

EXHIBIT # 1- Contains a denial of FMLA by Larry Taylor. 2. Family Medical leave Act (FMLA) Eligibility Form on how to apply and so forth.3. Also speaks about personal leave. 4. Plaintiff was denied a leave requested for three days to visit her mother on life support.

EXHIBIT # 2 1.Contains Employee Phone Approval with date. 2. A letter by the plaintiff Doctor talks about history of the Plaintiff's Medical Condition / Disability 3. Contains- UPS and the ADA overview 4.UPS and the commitment to Equal Opportunity for Persons with Disabilities, and to providing reasonable accommodations under the (ADA).

Exhibit #3 Contains- 1. Teamcare Verification of group health plan coverage. 2. Contains the Effective dates of Service and Coverage ending status. 3. Contains the Enrollment Worksheet shows that the Plaintiff coverage start date through ending. 4. shows the Plaintiff coverage start date through ending 1/1/2020-

12/30/2020. Shows that UPS and Teamsters Local 728 stopped the Plaintiff's coverage before December 31, 2020, shows health benefits taking away.

Exhibit #4 1. Contains Supervisor Whatley, Richards witness statement dated 1/31/2020. 2. Contains 2 Warning Letters dated 8/12/2020 and 8/14/2020. 3. Contains 1 Wrongful Discharge letter given on 8/14/2020. 4. Contains 1 e-mail letter of complaint to Human resources from Plaintiff's about wrongful dismissal. Contains 1 E-mail from Mikel Hill Mc Kenzie saying Return to work. Contains the Plaintiff's request for Higher Management to e-mail the Plaintiff if need the plaintiff to return to work but UPS never did e-mail the Plaintiff to return so the Plaintiff excepted the Discharge due to prior Harassments etc.

Exhibit #5 Contains UPS Supplemental Agreement of the National Master United Parcel Service Agreement book. Plaintiff Re-sign letter for teamsters local 728 Matt Higdon with proof of Fax confirmation. Contains instructions of Article 12 about how a supervisor should not and cannot change your (DIAD) without the employee being present. Contains -Article 14 compensation claims Section 1. Paragraph 1-5 pg 35. Contains -Article 56- Pay Period in the 4th Paragraph about ALL monetary grievances settlements will be satisfied within two(2) weeks of the settlement date where practical plaintiff never had her grievances' settled correctly by UPS and Teamsters Truck Drivers and Helpers local Union 728. Article 57 Call

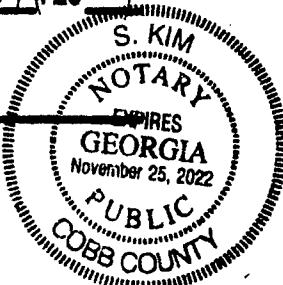
in time and Reporting Guarantee Pgs.238-239.Contains- Partime employees
Article 69 pgs.262-263 Pensions in Section 1.

Saretta Gross
Saretta Gross

9-30-21

SUBSCRIBED AND SWORN BEFORE ME ON
THIS THE 30 DAY OF Sept. 2021

Neem
NOTARY PUBLIC



United States District Court
for the
Northern District of Georgia
Atlanta Division

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

SEP 30 2021

KEVIN P. WEIMER, Clerk
By: *[Signature]*

Saretta Mildred Gross

Plaintiff,

v
United Parcel Service
Teamsters Truck Drivers and
Helpers Local Union 728

Defendant,

Case Number: 1:21-cv-01247-TCI
JS

Exhibits

Attached

Exhibit 1

Taylor Larry (XSQ2KCS)

From: Allen Jr Shane (YWV2KFH)
Sent: Monday, December 30, 2019 10:40 AM
To: Taylor Larry (XSQ2KCS)
Subject: FW: [EXTERNAL] LEAVE NOTIFICATION - Denial Notification for GROSS, SARETTA, GASCR, DIV: 1015, Employee ID: 5801006 - Intermittent Claim: 21090745

Thanks,
Shane Allen | Business Manager
Cell: 404.796.6018

From: ADS-UPSWKAB@AETNA.COM <ADS-UPSWKAB@AETNA.COM>
Sent: Monday, December 30, 2019 10:11 AM
To: Allen Jr Shane (YWV2KFH) <sallenjr@ups.com>; Briggs Richard (lit1rjb) <rjbriggs@ups.com>; Bell Carl (JYY4CEB) <cebelle@ups.com>
Subject: [EXTERNAL] LEAVE NOTIFICATION - Denial Notification for GROSS, SARETTA, GASCR, DIV: 1015, Employee ID: 5801006 - Intermittent Claim: 21090745

CAUTION! This email originated outside of the organization. Please do not open attachments or click links from an unknown or suspicious origin.

DENIAL NOTICE

We weren't able to approve MS. SARETTA GROSS's leave of absence request.

Employee Information

Employee Name: SARETTA GROSS
Employee ID: 5801006
Work State: Georgia
Date Leave Reported: 12/30/2019
Absence Type: Intermittent

Absence Detail

Federal Family and Medical Leave Act (FMLA)

Date(s) of Absence	Time Requested	Status
1/16/2020 - 1/16/2020	4 HR	Denied / < Minimum hours worked

UPS Leave for Family and Medical

Date(s) of Absence	Time Requested	Status
1/16/2020 - 1/16/2020	4 HR	Denied / < Minimum length of service

Family and Medical Leave Act (FMLA)

What you need to know

[Note: Pilot employees in 22/20 are out of scope for this information.]

Intermittent Leave for 2020

You don't need to do anything on your Intermittent leave claim until you miss a day of work in 2020. No doctor's visits to get new paperwork, no fees, no phone calls, and no closing and restarting a leave for 2020. Your 2019 certification is good until it expires or 12 months from the date of the medical provider's signature. When you miss your first day of work in 2020, you can use the web portal at www.aetnability.com (<http://www.aetnability.com>) or call 866-825-0186, and select option 1 and option 1 again to enter your date(s) of absence via phone. Aetna will check your eligibility for 2020 benefits at the first date of absence in 2020. They will review your leave time available and look up any applicable certification paperwork from 2019. If your doctor's certification has expired at the time of your first absence in 2020, Aetna will let you know a new certification is due.

Continuous Leave for 2020

If you are currently on an approved continuous leave, nothing is required to continue into 2020. Your 2019 certification is good until it expires or 12 months from the medical provider's signature. Aetna will check your eligibility for 2020 benefits when:

- Recertification of your existing leave is applicable or
- At your 1st date of absence in 2020 **for a new reason** or
- If an extension of the original leave is required

What is the Family and Medical Leave Act (FMLA)?

It's a federal law that entitles eligible employees to job protection when they go on leave. The U.S. Department of Labor (DOL) provides guidance on and administration of the FMLA. Under this law, the UPS FMLA Policy provides eligible UPSers up to 12 weeks of unpaid job protected leave entitlement in a 12-month period for qualifying family and medical events.

Qualifying Basic Leave Events

1. A serious health condition that prevents you from performing your job duties.
2. The care of a covered family member who has a serious health condition.
3. The birth of a child or placement for adoption or foster care.

Qualifying Military Family Leave Events

4. A qualifying exigency arising out of the active duty or call to active duty for a covered family member who is a member of the U.S. armed forces.
5. Military caregiver leave for the service-related serious injury or illness of your covered family member, or next of kin.

See [FAQs under Related Links](#) for more information on Military Family Leave events.

Eligibility

You're eligible for FMLA leave if you've worked for UPS for at least 12 months, for 1,250 hours over the previous 12 months, and if at least 50 people are employed by UPS within 75 miles of your work location.

If you aren't eligible for FMLA leave according to the requirements listed above, there is another option. If you've worked for UPS for a minimum of 36 consecutive months and for at least 625 hours during the previous 12-month period, you may be able to take up to six (6) weeks of leave for qualifying events 1 – 4 listed above, and up to 13 weeks of leave for qualifying event 5 (military caregiver leave).

[Note: Employees who have worked as a contingent employee for UPS before becoming a UPS employee, in certain instances the total amount of time worked in both capacities can be considered for the eligibility determination. If denied due to not meeting minimum hours worked, employee should bring it to their management's attention and management should contact Aetna at 866-825-0186, to provide them with this information.]

How do I apply for FMLA?

- Apply online at www.aetnability.com (<http://www.aetnability.com/>). Where possible, provide a 30-day notice in advance of the need to take FMLA. If the leave is unforeseeable, please provide notice as soon as practicable.
- You should also notify your management team of the anticipated timing and duration of the leave. Make sure to share that the requested absence is for a reason for which FMLA leave was previously taken or certified.

New User Registration with Aetna

- Access the Aetna website at <https://www.aetnedisability.com> (<https://www.aetnedisability.com>)
- Select "Register Now"
- Provide first name, last name, date of birth and state
- Provide employee ID, user login ID, password and email address
- Select three security questions and answer them
- Registration is complete

Other things to consider

- **Leave entitlements:** If eligible, you may take up to 12 weeks of unpaid leave during each calendar year for qualifying events 1 – 4 listed above. Likewise, you may take up to 26 weeks of unpaid leave for qualifying leave event 5 (military caregiver leave) during a single 12-month period.
- **Covered family members** include your spouse, child, parent, or qualifying domestic partner.
- **FMLA entitlement year** is calculated using the calendar method (January through December). However, for military caregiver leave, the 12-month entitlement year begins on the first day of an absence.
- **Use of leave:** Leave can be taken consecutively, intermittently, or on a reduced schedule under some circumstances. If you schedule leave for planned medical treatments, please consider times that minimize disruption to the operations.
- **Substitution of paid leave:** Paid time off, such as vacation and discretionary days, will be substituted for unpaid leave. However, you can set aside one (1) week of vacation (accrued or unaccrued) to be taken separately from FMLA leave. Administrative and technical employees are required to substitute any unused discretionary days toward unpaid leave. Vacation days would be substituted for unpaid leave before discretionary days are used. Management employees are not required to substitute discretionary days. **Note: Vacation is accrued through the year EXCEPT when on leave. Please remember that in the calculation of unaccrued vacations for use.**
- **Leave certification:** Aetna will ask for specific information to determine if the requested leave qualifies for FMLA protection. This includes, but is not limited to, providing completed medical certifications. In some cases, Aetna may require you to obtain a second (and third) opinion medical certification, and/or provide periodic recertification, supporting the continued need for leave.
- **Job protection:** Under the FMLA, you'll be returned to the same or equivalent job upon the completion of FMLA leave.
- **Health care benefits:** UPS will maintain your health care benefits during an approved leave on the same terms as if you continued to work. This means you are still responsible for your share of the cost. See Frequently Asked Questions under Related Files for additional information.
- **UPS Savings Plan 401(k)** contributions during an approved FMLA leave. When you return to work and begin receiving regular payroll checks, your deferrals will resume.
- **Employee Discounted Stock Purchase Plan** deferrals also stop while you're on leave. Once you return to work, contact Computershare at 1-888-663-8325 to resume deferrals.
- **United Way and UPSPAC** deductions stop while you're out on leave and resume when you return to work.
- **Liberty Mutual or MetLife** payroll deductions will stop while on leave. Contact Liberty Mutual to arrange at-home billing at 1-800-713-7377 or MetLife at 1-888-526-8495.
- **Education Assistance Program** doesn't cover periods of "inactive" employment. If on leave, you'll be unable to create an application or submit for reimbursement on the EDCOR website. Once you return to work, access to the EDCOR website is reinstated. If you're both "active" and "inactive" during a semester, you'll be able to apply for a prorated reimbursement. Approved prorated reimbursements are paid based on the number of "active" days in the semester.

Did you find this information helpful? Please share your thoughts by taking the survey below.

Related Links

- [Aetna WorkAbility® Management System](#)
- [Resources and Training](#)

Related Files

- [FMLA Frequently Asked Questions \(/upers/wcm/myconnect/41699550-da60-4f5e-a67e-78e267c47967/FMLA%2BFrequently%2BAsked%2BQuestions_06092017_revised_carol_04272018.pdf?MOD=AJPERES&CVID=m-0vaOH\)](#)
- [Aetna New User Registration Guide \(/upers/wcm/myconnect/4d73814e-2e73-4ac2-8cb4-3438cac0ec3f/Workability+New+User+Registration+Guide+Updated+042217.pdf?MOD=AJPERES&CVID=m-0vaOH\)](#)
- [Aetna Employee User Guide \(/upers/wcm/myconnect/f2105538-de8b-48a6-ac5b-860de8084bc6/Workability+Member+User+Guide+Updated+042217.pdf?MOD=AJPERES&CVID=m-0vaOH\)](#)
- [Aetna Management User Guide \(/upers/wcm/myconnect/ade438fd-c50b-4b72-9065-1c7cde7e4551/Workability+Supervisor+Guide+Updated+042217.pdf?MOD=AJPERES&CVID=m-0vaOH\)](#)

Please carefully review the information above. Are there dates your Employee requested where NO benefits are approved at all? If so, then the unapproved days are considered an unauthorized leave of absence. While Aetna communicated the status of the employee's leave to the employee, Aetna does not communicate the implication of an unapproved leave of absence. It is your responsibility to follow up on any unauthorized leave; you can contact your local HR representative for additional guidance, if needed, and consider engaging your local Labor Manager for bargaining unit employees.

If the employee is not in your work group please forward this email to their current supervisor and correct your hierarchy in GEMS. If you need assistance with correcting your hierarchy contact your ES Supervisor.

You may contact me at 1-866-825-0186 if you have any questions regarding this message. Our standard hours of operation are Monday through Friday between the hours of 8am and 8pm.

Thank you,

Stanley Descieux
Customer Service Rep

NOTICE TO RECIPIENT OF INFORMATION:

This e-mail may contain confidential or privileged information. If you think you have received this e-mail in error, please advise the sender by reply e-mail and then delete this e-mail immediately.

This e-mail may also contain protected health information (PHI) with information about sensitive medical conditions, including, but not limited to, treatment for substance use disorders, behavioral health, HIV/AIDS, or pregnancy. This type of information may be protected by various federal and/or state laws which prohibit any further disclosure without the express written consent of the person to whom it pertains or as otherwise permitted by law. Any unauthorized further disclosure may be considered a violation of federal and/or state law. A general authorization for the release of medical or other information may NOT be sufficient consent for release of this type of information.

Thank you. Aetna

I, Richard Whatley, was aware of allegations against supervisors Larry, Kari, and Antwon from Saretta. The allegation included multiple instances of harassment, a position change without following the policy, charging her recorded hours, and other employee were given special privileges. There were also allegations of unwanted sexual advances.

Richard Whatley

GROSS, SARETTA
P.O BOX 942
MABLETON GA, 30126

Employee ID: 5801006
Date: 8/12/2020

IN RE: Warning Notice ~ Attendance
PT 0

Dear GROSS, SARETTA

On 8/12/2020 a meeting was held in the SMART building. Present were you, Supervisor 0

and union representative Natalie Smalls

Discussed at this meeting was your overall attendance record. You have been spoken to on several occasions concerning your unacceptable attendance record. In previous conversations you have given your commitment to correct this problem; yet, your attendance remains unacceptable. As a result of your continued failure to correct your attendance, you are being issued this Warning Notice. If, in the future, should you fail to follow company instructions, procedures, or methods, further disciplinary action will be taken up to and including discharge.

This is an Official Warning Notice, as outlined in Article 52 of the current labor agreement between UPS and IBT Local 728.

Sincerely,

UNITED PARCEL SERVICE

Division Manager
Richard Briggs

Cc: Division Manager
Labor Manager
IBT Local 728

8/11/20

Employee Signature: RTS

Date: 8/12/20
Date: 8/12/20
Date: 8/12/20

Union Representative Signature: Natalie Smalls

UPS Management Signature: SV/SM

Don Miller
Marvin Redd
Saretta G

GROSS, SARETTA
P.O BOX 942
MABLETON GA, 30126

Employee ID: 5801006
Date: 8/14/2020

IN RE: Warning Notice – Professional Conduct
PT 0

Dear GROSS, SARETTA

On 8/14/2020 a meeting was held in the SMART building. Present were you, *Saretta Gross* Supervisor *Larry Taylor*, and union representative *Natalie Smalls*. *She was present* *Chante Rogers*, *Marvin Redd*, *Mike Welsh*, *Don Miller*. Discussed at this meeting was your overall record. You have been spoken to on several occasions concerning your *Never discussed overall record* unacceptable Conduct. In previous conversations you have given your commitment to correct this problem; yet, your conduct remains unacceptable. As a result of your continued failure to correct your behavior, you are being issued this Warning Notice. If, in the future, should you fail to follow company instructions, procedures, or methods, further disciplinary action will be taken up to and including discharge.

This is an Official Warning Notice, as outlined in Article 52 of the current labor agreement between UPS and IBT Local 728.

Sincerely,

UNITED PARCEL SERVICE

Division Manager
Richard Briggs

Cc: Division Manager
Labor Manager
IBT Local 728

Employee Signature: *RTS*

Date: 8/14/2020
Date: 8/14/2020
Date: 8/14/20

Union Representative Signature: *LM*

UPS Management Signature: *SV*

GROSS, SARETTA
P.O BOX 942
MABLETON
GA, 30126

Employee ID: 5801006
Date: 8/14/2020

IN RE:

Discharge – Professional Conduct
PT 0

Dear GROSS, SARETTA

On 8/14/2020 a meeting was held in the SMART building.

Present were you, Union representative Chante Rogers

Supervisor Larry Taylor/H.R. M.I.
we

Discussed at this meeting was your overall conduct. You have been spoken to on several occasions concerning your unacceptable conduct. In previous conversations you have given your commitment to correct this problem; yet, your conduct remains unacceptable. As a result of your continued failure to correct your conduct, you are being discharged.

This is an Official Notice of Discharge, as outlined in Article 52 of the current labor agreement between UPS and IBT Local 728.

Sincerely,

UNITED PARCEL SERVICE

Division Manager
Richard Briggs

Cc: Division Manager
Labor Manager
IBT Local 728

Employee Signature: RTS

Date: 8/14/2020

Union Representative Signature: Chante Rogers

Date: 8/14/2020

UPS Management Signature: SV/RTS

Date: 8/14/20

Do
M.I.
/
Man
Re
/
Nate
Sma

Re: Letter of Complaint/Wrongfully Discharged

Pe <pepsiola1@gmail.com>

Fri 9/4/2020 9:45 AM

To: ods06418cpc <ods06418cpc@OfficeDepot.com>

On Thu, Aug 20, 2020, 11:26 PM Pe <pepsiola1@gmail.com> wrote:

Dear, H.R Management Erin Ervin/Employee Services

I Saretta Gross wanted to make Management Aware of this Complaint.In regards to getting taken OutOfService/Discharged on 8/14/20.

I feel I'm being treated unfairly and been Discriminated/harrassed here at UPS since 2018. Larry Taylor since 2019-2020 Larry started when he found out I had an ADA Accommodation here.When i returned back to work from sick leave on july 27,2020

I feel like Im being retaliated against because I was absent on 8/11/2020. but on 8/12/20 i didnt have a note.So Larry gave me a warning.Then on 8/13/20. I brought in my doctors note he declined to see it.Then on 8/14/20 He had security come and get me to come to H.R And because, I've complained about sex advances, and harrassment/Discrimination, As well as having an ADA Accommodation.I believe he just wanted to Harass me once again.

My time card was deactivated for like 2 weeks when i returned from my sick leave, and read invalid employee when trying to clock in which i made larry taylor aware and was told by larry well i dont know.

Larry has not been giving me all my time like last week im missing 5hrs. Because I had been writing my time down since my time card was down.

Larry has been altering my Employee Records and attendance Record + Time Card and i can prove it.

Also no one in H.R nor Union Stewards,has complied with all these complaints and issues on Larry Taylor towards me when mentioned to H.R nothing transpired with me and Larry on 8/13/20. I was just working that day.

Ive been Wrongfully Discharged on 8/14/20.When i was only told by an Mark Welch that I was being taken Out Of Service, for 5-10 days only which i did nothing to be in H.R this day.That was the only thing told to me.After being takin Out of Service and given paper work.

But come to find out when turning in greviences on 8/18/20. I was told by Natalie Smalls that he Wrongfully Discharged me and that he wasnt suppose to have did that.

Also during this time in H.R on 8/14/20 Two Union stewards Chante Rogers & Natalie Smalls, were present but,stayed silent the whole time.I would also like to point out that I am a very important worker.and a good worker here at UPS, and i should've never got takin Out Of Service.

Respectfully,

S.Gross

Fwd: Return to work on 8-25-2020

Pe <pepsiola1@gmail.com>

Fri 9/4/2020 9:45 AM

To: ods06418cpc <ods06418cpc@OfficeDepot.com>

----- Forwarded message -----

From: **Pe** <pepsiola1@gmail.com>

Date: Mon, Aug 24, 2020, 2:03 PM

Subject: Re: Return to work on 8-25-2020

To: Mikal McKenzie <mmckenzie@teamsterslocal728.org>

Hello, I S.Gross need someone from UPS to put in writing for me that the company they self needs me to return to work.

Someone from management /H.R Because i was Wrongful discharged/dismissal for 10 days.Also this week i have things planned so i cant return this week until i take care of my business with my child this week.

Hey, its not my problem that the supervisor violated work policies in the first place.Also i need all my money that i havent been paid because, I wasn't given all my time worked.Ive also submitted grievances in all my issues but nothing has been done,to my knowledge.If i can receive this letter to return to work from Higher Management/H.R then i will surely return to UPS to work.

Thanks,Respectfully

S.Gross

On Mon, Aug 24, 2020, 12:06 PM Mikal McKenzie <mmckenzie@teamsterslocal728.org> wrote:

Your start time is 10am tomorrow. Please arrive 10 minutes early at the Marta entrance gate.

Mikal McKenzie

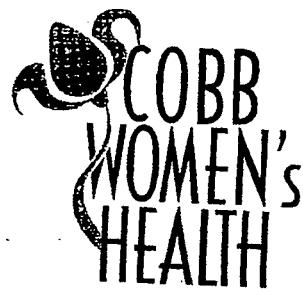
Teamsters Local 728

404-319-3616

mmckenzie@teamsterslocal728.org

THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS.

Exhibit 2



**Nandita Mainthia, M.D.
F.A.C.O.G.**

**Hitendra R. Hansalia, M.D.
F.A.C.O.G.**

September 9, 2019

To Whom It May Concern:

The patient Saretta Gross has a history of dysmenorrhea during her menstrual cycle which prevents her from doing her daily activities and there for she always needs to have her cell phone. If any concerns or questions, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Hitendra Hansalia".

Hitendra Hansalia

Date: September 25, 2019

To: UPS Security

cc: Shane Allen

RE: Employee Phone Approval

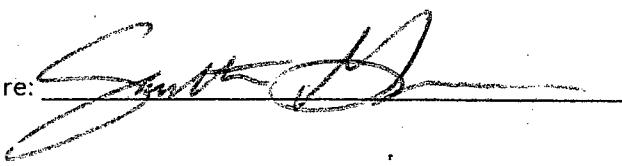
I have approved Saretta Gross' request to have a phone inside the SMART facility for the purpose of use in managing a health issue only. Please provide a sticker for his phone; a copy of this message will be sent and supporting paperwork for your records as well.

Please note however, the phone is not to be used for any other purpose during the work day at UPS for any reason. This means the employee should not use the phone for text messaging, calls, social media, games, videos, music or any other purpose besides a medical emergency or as noted by the physician, including while on breaks. Failure to follow this guidance will result in disciplinary action up to and including termination.

Employee Name (Print):

Saretta Gross

Employee Signature:



HR Manager Name (Print):

Evina Elvin

HR Manager Signature:



UPS and the ADA

THIS DOCUMENT provides an overview of UPS's commitment to equal opportunity for persons with disabilities and to providing reasonable accommodations under the ADA. It is not, nor is it intended to be, a comprehensive description of the ADA or other federal, state or local laws regarding persons with disabilities. For additional information, please contact the HR Service Center ("HRSC") or your local Human Resources representative.

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a federal law designed to eliminate the barriers faced by disabled individuals in the workplace and public places generally. Title I of the ADA covers employment practices and prohibits employers from discriminating against qualified employees and job applicants with disabilities when making employment decisions and from retaliating against any employee or applicant for engaging in activities protected under the ADA. These prohibitions extend to all aspects of the employment relationship, including job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. The ADA also requires employers to make reasonable accommodations to the known disability of qualified applicants or employees, unless the accommodation would impose an undue hardship on the employer.

As defined by the ADA, an individual with a disability is a person who (1) has a physical or mental impairment that substantially limits one or more major life activities, such as seeing, hearing, eating, lifting, speaking, caring for oneself and working; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. An individual with a disability is a qualified employee or applicant if he or she can perform the essential functions of the job in question, with or without reasonable accommodation.

UPS's Commitment to Equal Employment Opportunity

UPS has implemented numerous policies and procedures designed to ensure a workplace that is free from discrimination and provides all employees, including persons with disabilities, with an equal opportunity to succeed. All UPSers, including both management and hourly employees, are responsible for ensuring compliance with these policies. UPS is also committed to making reasonable accommodations for the known disabilities of qualified applicants or employees, provided that the accommodation is not an undue hardship for UPS. To that end, UPS has developed a procedure by which appropriate personnel evaluate any requests for a job-related accommodation in accordance with the ADA. The ADA Procedure for Identifying Reasonable Accommodations (described below) is designed to promote fairness and consistency in responding to such requests, and ensures that each applicant or employee's request will receive the same thorough consideration.

UPS's Procedure for Identifying Reasonable Accommodations

Employees who wish to request a job-related accommodation under the ADA should direct their request to the HR Service Center ("HRSC"), their HR Representative, or the manager/supervisor. Once UPS receives the request, the HRSC will send the employee a Request for Medical Information form to be completed by his or her treating physician. The form solicits information regarding the employee's medical condition and the effect of this condition on the employee's ability to perform his or her job, and must be returned to the HRSC promptly so that the employee's request can be evaluated in a timely manner. Once UPS receives the completed form, the employee's information is reviewed and a determination is made regarding whether the employee may be disabled under the ADA.

If it is determined that the employee may be disabled, then local UPS management will meet with the employee to review the employee's relevant medical restrictions and attempt to identify a reasonable accommodation that will enable the employee to perform the essential functions of his or her, or another, existing position. If a potential accommodation is identified, UPS management will investigate whether the accommodation is available and feasible – e.g., in the case of a transfer or reassignment to a different position, whether the requesting employee is qualified for the new position, and whether the position is currently vacant or will become vacant within a reasonable time. If the requesting employee is a Union member, or the requested accommodation involves a position covered by the Collective Bargaining Agreement ("CBA") between UPS and a union, UPS is also required to meet with local representatives of the Union to determine whether the proposed accommodation conflicts with the CBA. If UPS is able to identify a reasonable accommodation that is available and feasible, and resolve any conflicts with the CBA, UPS will offer the proposed accommodation to the employee.

Although UPS personnel work diligently to evaluate and resolve employee requests for accommodation, the actual time needed to complete the ADA Procedure may vary significantly from employee to employee, depending on the complexity of the request, the proximity and availability of the personnel involved, and the level of cooperation received from the employee, the Union, medical personnel and others outside of UPS. Throughout the process, the Area Human Resources Manager is responsible for keeping the employee advised of the status of his or her request.

Note: In addition to the general procedure outlined above, UPS has developed specific driver-related protocols for identifying reasonable accommodations for individuals with a hearing impairment, vision impairment, or diabetes. If you believe that you may be eligible for an accommodation under one of these specific protocols, please contact your Human Resources representative.

Types of Accommodations Provided by UPS

UPS will always look at your current position first in order to see whether you can be accommodated and still perform the essential functions of your job. If you cannot be accommodated in your current position, UPS will look at other positions. Keep in mind that the ADA does not require that UPS create a new job, nor does it require UPS to promote an employee in order to accommodate a disability. Most non-management promotions at UPS are based on seniority and are governed by the CBA. For promotions to management positions, there is a special application and qualification process. UPS is committed to equal opportunity for employees with a disability who seek promotion to management and non-management jobs. For more information about the promotion process, please contact your supervisor and/or your Human Resources representative.

Questions or Concerns?

If you have questions about the UPS policies described in this document, if you would like to request an accommodation under the ADA or have concerns about the Company's response to a previous request for accommodation, please contact the HRSC at 1-855-UPS-HRSC or your HR representative. If you believe that you or another applicant or employee has been discriminated against or retaliated against in violation of UPS policy, please contact your Human Resources representative, or call the UPS Help Line at (800) 220-4126.

Union members may also speak with their shop steward regarding these issues, to determine whether to pursue a labor grievance pursuant to the CBA. Non-union employees may also choose to resolve their concerns through UPS's Employee Dispute Resolution process. For more information regarding the EDR process, please contact your Human Resources representative.

Exhibit 3

RC-5296072
SARETTA M GROSS
P.O BOX 942
MABLETON, GA 30126

**VERIFICATION OF
GROUP HEALTH PLAN COVERAGE**

Date issued: June 3, 2021

Name of group health plan: Central States, Southeast and Southwest Areas Health and Welfare Plan

Member name: SARETTA M GROSS

Member identification number: 806551411

Coverage type: Medical, RX, Dental, Vision

Name of any covered individuals to whom this verification applies:	Name	Effective Date	Coverage Status
	Saretta M. Cross	10/13/2019	Termed 10/11/2020

Name, address and telephone number of plan administrator responsible for providing this verification: TeamCare, A Central States Health Plan
PO Box 5126
Des Plaines IL 60017-5126
800-TEAMCARE (832-6227)

You have not requested a description of the benefits provided under your plan and this letter does not describe those benefits. The above information is based on current records and work history reported by the member's employer. Updated records or corrections with respect to periods worked may affect dependent eligibility and/or coverage status or date. If you require another Verification of Group Health Plan Coverage letter in the future, you can generate one by visiting MyTeamCare.org.



Statement Date: November 1, 2019



A003306

SARETTA M. GROSS
P.O BOX 942
MABLETON GA 30126

Enrollment Worksheet

Welcome to Annual Enrollment

To enroll or view your 2020 benefits, look for Your Benefits Resources™ on the UPSers.com homepage under Quick Links or go directly to your enrollment site at <http://digital.alight.com/ups/>. You will need your User ID and password to access the site. If you have not yet registered, you will need to provide the last four of your SSN, birth date and zipcode to create a User ID and password. You may also contact the Benefits Service Center at 1-833-277-8054 between 8 a.m. and 8 p.m., (Central time), Monday through Friday.

Your 2020 coverage is shown below. If you don't wish to make any changes to this coverage, you do not need to take any action. This coverage will automatically be assigned to you.

Contact your union plan administrator for questions regarding your health care coverage.

The coverage you elect will be effective January 1, 2020 through December 31, 2020.

Changes must be made between November 18, 2019 and November 29, 2019.

Benefit Choices

	Annual Price	Pay Period Price
• Supplemental Accidental Death and Dismemberment (AD&D) Coverage Amount--\$0	\$0.00	\$0.00
• Employee Supplemental Life Insurance Coverage Amount--\$0 Tobacco Status 2--Tobacco Free	\$0.00	\$0.00





Statement Date: July 30, 2020



A000398

SARETTA M. GROSS
P.O BOX 942
MABLETON GA 30126

Mr. Supervisor
changed my coverage

323.50⁰⁰

NO
Health coverage
Company stopped
Benefits of Coverage

Confirmation of Coverage

Our records indicate that you returned from your leave of absence on **July 27, 2020**. If you received a bill for your coverages while on leave, you must pay the billed amount as it will not be deducted from your paycheck. Failure to pay your bill will cause coverage to be terminated.

If you have any questions, please contact the Benefits Service Center between **8 a.m. and 8 p.m.**, (Central time), Monday through Friday. Call 1-844-290-3670 and listen for the "Health Care," then "Dependents and Coverage Changes" prompts.

Benefit Choices

	Annual Price	Pay Period Price
• Supplemental Accidental Death and Dismemberment (AD&D) Coverage Amount--\$0	\$0.00	\$0.00
• Employee Supplemental Life Insurance Coverage Amount--\$0 Tobacco Status 2--Tobacco Free	\$0.00	\$0.00
• Spouse's Life Insurance Option 0--No Coverage Tobacco Status 2--Tobacco Free	\$0.00	\$0.00

Note: Your spouse must be certified and approved as an eligible spouse to receive coverage.

211811027 01215-A000398



Family Information

Listed below are your covered dependents. If this information is incorrect, please call the Benefits Service Center at **1-844-290-3670**, between **8 a.m. and 8 p.m.**, (Central time), Monday through Friday.

• Personal Information

	You
Name	SARETTA M GROSS
Relationship	--
Birth Date	[REDACTED]
Gender	Female
Dependent Certification Status	--

• Coverage Information

	You
Spouse and Child Life	--



Exhibit 4

Re: Letter of Complaint/Wrongfully Discharged

Pe <pepsiola1@gmail.com>

Fri 9/4/2020 9:45 AM

To: ods06418cpc <ods06418cpc@OfficeDepot.com>

On Thu, Aug 20, 2020, 11:26 PM Pe <pepsiola1@gmail.com> wrote:

Dear, H.R Management Erin Ervin/Employee Services

I Saretta Gross wanted to make Managment Aware of this Complaint.In regards to getting takin OutOfService/Discharged on 8/14/20.

I feel I'm being treated unfairly and been Discriminated/harrassed here at UPS since 2018. Larry Taylor since 2019-2020 Larry started when he found out I had an ADA Accommodation here.When i returned back to work from sick leave on july 27,2020

I feel like Im being retaliated against because I was absent on 8/11/2020. but on 8/12/20 i didnt have a note.So Larry gave me a warning.Then on 8/13/20. I brought in my doctors note he declined to see it.Then on 8/14/20 He had security come and get me to come to H.R And because, I've complained about sex advances, and harrassment/Discrimination, As well as having an ADA Accommodation.I believe he just wanted to Harass me once again.

My time card was deactivated for like 2 weeks when i returned from my sick leave, and read invalid employee when trying to clock in which i made larry taylor aware and was told by larry well i dont know.

Larry has not been giving me all my time like last week im missing 5hrs. Because I had been writing my time down since my time card was down.

Larry has been altering my Employee Records and attendence Record + Time Card and i can prove it.

Also no one in H.R nor Union Stewards,has complied with all these complaints and issues on Larry Taylor towards me when mentioned to H.R nothing transpired with me and Larry on 8/13/20. I was just working that day.

Ive been Wrongfully Discharged on 8/14/20.When i was only told by an Mark Welch that I was being taken Out Of Service, for 5-10 days only which i did nothing to be in H.R this day.That was the only thing told to me.After being takin Out of Service and given paper work.

But come to find out when turning in greviences on 8/18/20. I was told by Natalie Smalls that he Wrongfully Discharged me and that he wasnt suppose to have did that.

Also during this time in H.R on 8/14/20 Two Union stewards Chante Rogers & Natalie Smalls,were present but,stayed silent the whole time.I would also like to point out that I am a very important worker.and a good worker here at UPS, and i should've never got takin Out Of Service.

Respectfully,
S.Gross

RWA: Return to work on 8-25-2020

Pe <pepsiola1@gmail.com>

Fri 9/4/2020 9:45 AM

To: ods06418cpc@OfficeDepot.com

----- Forwarded message -----

From: Pe <pepsiola1@gmail.com>

Date: Mon, Aug 24, 2020, 2:03 PM

Subject: Re: Return to work on 8-25-2020

To: Mikal McKenzie <mmckenzie@teamsterslocal728.org>

Hello, I S.Gross need someone from UPS to put in writing for me that the company they self needs me to return to work.

Someone from management /H.R Because i was Wrongful discharged/dismissal for 10 days.Also this week i have things planned so i cant return this week until i take care of my business with my child this week.

Hey, its not my problem that the supervisor violated work policies in the first place.Also i need all my money that i havent been paid because, I wasn't given all my time worked.Ive also submitted grievances in all my issues but nothing has been done,to my knowledge.If i can receive this letter to return to work from Higher Management/H.R then i will surely return to UPS to work.

Thanks,Respectfully

S.Gross

On Mon, Aug 24, 2020, 12:06 PM Mikal McKenzie <mmckenzie@teamsterslocal728.org> wrote:

Your start time is 10am tomorrow. Please arrive 10 minutes early at the Marta entrance gate.

Mikal McKenzie

Teamsters Local 728

404-319-3616

mmckenzie@teamsterslocal728.org

THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE

Case

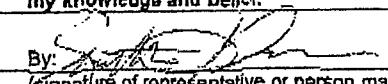
Date Filed

10-CA-272378

02/08/2021

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer #1 (See additional employers in attachment) United Parcel Service		b. Tel. No. (404)681-7958
		c. Cell No.
d. Address (street, city, state ZIP code) 3680 Sandy Creek Road, Atlanta, GA 30331	e. Employer Representative Larry Taylor Supervisor	f. Fax No.
		g. e-Mail
i. Type of Establishment (factory, nursing home, hotel) Parcel Delivery	j. Principal Product or Service parcel	
I. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since about August 14, 2020, the Employer has failed to bargain collectively and in good faith with Teamsters Local 728, by failing and refusing to abide the parties' collective-bargaining agreement concerning the discharge of employee Saretta Gross. ALSO NO labor person has ever contacted me in regards to regarding my employment or my discharge.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Saretta Gross		
4a. Address (street and number, city, state, and ZIP code) PO BOX 942, Mableton, GA 30126		4b. Tel. No.
		4c. Cell No. (470)623-3324
		4d. Fax No.
		4e. e-Mail pepsiola1@gmail.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By:  (signature of representative or person making charge)		Tel. No.
		Office, if any, Cell No. (470)623-3324
Address: PO BOX 942, Mableton, GA 30126		Date: 1/6/21
		Fax No.
		e-Mail pepsiola1@gmail.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

1-2879338101

ACCOMMODATION AGREEMENT – JOB MODIFICATION

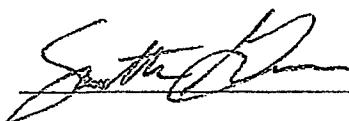
[THIS ACCOMMODATION AGREEMENT SHOULD BE USED FOR JOB MODIFICATIONS OF FULL-TIME OR PART-TIME JOBS]

This Accommodation Agreement ("Agreement") is made and entered into among United Parcel Service, Inc. ("UPS"), Saretta Gross, ("Employee") and Local 728 of the International Brotherhood of Teamsters ("Union") in order to confirm the terms of the job accommodation that Employee has accepted as a reasonable accommodation pursuant to Article 14, Section 3, of the National Master UPS Agreement ("NMA") and all applicable Supplements, Riders and Addenda ("SRA") and the Americans with Disabilities Act ("ADA") and all other applicable laws. The terms of this Agreement are as follows:

1. Employee is no longer able to perform the essential functions of Employee's current position as a part-time loader/unloader.
2. As an accommodation under Article 14, Section 3, of the NMA and all applicable SRA and under the ADA and all other applicable laws, Employee's job will be modified as follows: The employee will be granted three (3) consecutive days off per month. The employee is to make the request for an "ADA Day"; Management agrees to use code 24-Personal Leave/26-Scheduled Off.
3. Other than the job modification described in the preceding paragraph, Employee will continue to be treated in all respects as a part-time package handler under the NMA and all applicable SRA, including for purposes of Employee's wage rate, benefits under the applicable health and welfare and pension plans, layoff and recall rights, vacation entitlement and vacation selection preferences, bidding rights for future part-time and full-time positions, and other terms and conditions of employment.
4. It is understood and agreed that UPS has offered Employee this accommodation pursuant to the NMA and all applicable SRA and under the ADA and all applicable laws and that, as a consequence, this position has not been made available to other employees to bid. It is further understood and agreed that, when Employee vacates this position, it shall no longer cease to exist for any purpose under the NMA and all applicable SRA.

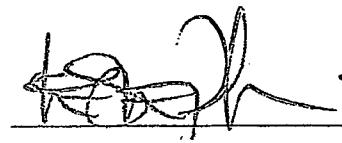
It is expressly understood and agreed that this Agreement is for Employee only and in no way constitutes a precedent for future or other employees. It is also understood that nothing in this Agreement should be construed as an admission by UPS or the Union that Employee is "disabled" as a matter of law or that UPS or the Union is obligated, contractually, legally or otherwise, to accommodate Employee or enter into this Agreement.

This 3 day of Aug, 2020



Employee

Union Official



UPS Human Resources Representative

UPS Labor Relations Representative



Certificate of Completion

UPS IE LMS

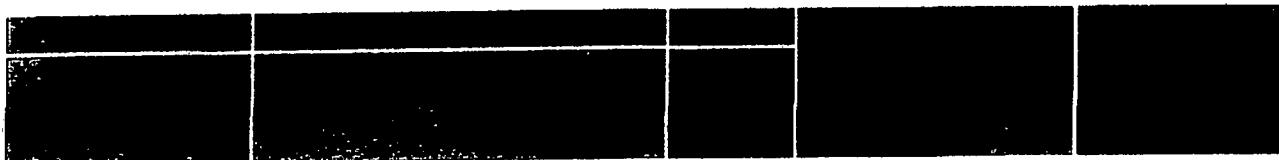
This is to certify that

5801006 - SARETTA GROSS

has completed the course

**2575 - HS Singulator Belt Tender Training
Procedures**

on 11/22/2019



GROSS, SARETTA
P.O BOX 942
MABLETON
GA, 30126

Employee ID: 5801006
Date: 8/14/2020

IN RE: Warning Notice – Professional Conduct
PT 0

Dear GROSS, SARETTA

On 8/14/2020 a meeting was held in the SMART building. Present were you, *Saretta Gross Supervisor* *Larry Terry*, *Natalie Smalls*, *Chante Rogers*, *Marvin Ladd*, *Mike Welsh*, *Don Miller* and union representative *Natalie Smalls*. *She was present*. Discussed at this meeting was your overall record. You have been spoken to on several occasions concerning your unacceptable Conduct. In previous conversations you have given your commitment to correct this problem; yet, your conduct remains unacceptable. As a result of your continued failure to correct your behavior, you are being issued this Warning Notice. If, in the future, should you fail to follow company instructions, procedures, or methods, further disciplinary action will be taken up to and including discharge.

This is an Official Warning Notice, as outlined in Article 52 of the current labor agreement between UPS and IBT Local 728.

Sincerely,

UNITED PARCEL SERVICE

Division Manager
Richard Briggs

Cc: Division Manager
Labor Manager
IBT Local 728

Employee Signature: *RTS*

Date: 8/14/2020
Date: 8/14/2020
Date: 8/14/2020

Union Representative Signature: *Shawn H.*

UPS Management Signature: *SV/LL*

GROSS, SARETTA
P.O BOX 942
MABLETON GA, 30126

Employee ID: 5801006
Date: 8/12/2020

IN RE: Warning Notice -- Attendance
PT 0

Dear GROSS, SARETTA

On 8/12/2020 a meeting was held in the SMART building. Present were you, Supervisor 0
and union representative Natalie Smalls

Discussed at this meeting was your overall attendance record. You have been spoken to on several occasions concerning your unacceptable attendance record. In previous conversations you have given your commitment to correct this problem; yet, your attendance remains unacceptable. As a result of your continued failure to correct your attendance, you are being issued this Warning Notice. If, in the future, should you fail to follow company instructions, procedures, or methods, further disciplinary action will be taken up to and including discharge.

This is an Official Warning Notice, as outlined in Article 52 of the current labor agreement between UPS and IBT Local 728.

Sincerely,

UNITED PARCEL SERVICE

Division Manager
Richard Briggs

8/11/20

Cc: Division Manager
Labor Manager
IBT Local 728

Employee Signature: RTS

Date: 8/12/20
Date: 8/12/20
Date: 8/11

Union Representative Signature: Natalie Smalls

UPS Management Signature: SVG

Don Miller
Marvin Redd
Saretta G

GROSS, SARETTA
P.O BOX 942
MABLETON
GA, 30126

Employee ID: 5801006
Date: 8/14/2020

IN RE:

Discharge - Professional Conduct
PT 0

Dear GROSS, SARETTA

On 8/14/2020 a meeting was held in the SMART building.

Present were you, Union representative

Chante Rogers

Supervisor

Laurie Taylor/H.R. I

Discussed at this meeting was your overall conduct. You have been spoken to on several occasions concerning your unacceptable conduct. In previous conversations you have given your commitment to correct this problem; yet, your conduct remains unacceptable. As a result of your continued failure to correct your conduct, you are being discharged.

This is an Official Notice of Discharge, as outlined in Article 52 of the current labor agreement between UPS and IBT Local 728.

Sincerely,

UNITED PARCEL SERVICE

Division Manager
Richard Briggs

Cc: Division Manager
Labor Manager
IBT Local 728

Employee Signature: RTS

Date: 8/14/2020

Union Representative Signature: Elaine Doff

Date: 8/14/2020

UPS Management Signature: SV/PLS

Date: 8/14/20

Exhibit 5

*** Send Results ***

Sending is complete.

Job No.	4720
Address	4046272045
Name	
Start Time	12/14 04:17 PM
Call Length	00'25
Sheets	1
Result	OK

FAT
Resign Letter

Dec 14, 2020

Dear Local 728 Union / Matt Higdon / UPS

I Saretta Gross,
I have already resigned my
Membership in this Union and
all affiliated Unions.

To the Extent that you consider
me a Union Member, I Herby,
Resign from this Union and
all affiliated Unions.

I hereby, revoke my dues
Check-off Authorization and no
longer Authorize any payments
to the Union.

Mr. ...

ARTICLE 57 - CALL-IN TIME AND REPORT GUARANTEE

Service commitments are not jeopardized. In the event there is an alleged abuse of the meal period, the Company and the Union will meet in an effort to resolve the alleged abuse in an expeditious manner.

ARTICLE 55 - EQUIPMENT

Effective January 1, 1978, all tractor-trailer equipment placed in service shall be equipped with air conditioning. Three years from January 1, 1978, all other tractor-trailer equipment shall be equipped with air conditioning.

ARTICLE 56 - PAY PERIOD

All regular employees covered by this Agreement shall be paid on full each week. No more than two (2) weeks' pay shall be held on an employee. In areas where only one (1) week is held, this practice shall continue unless otherwise mutually agreed. The Employer shall continue from the present one (1) week withheld to two (2) weeks by giving proper notice to the involved employees and the Local Union, and then withhold one (1) additional day each week until the maximum of two (2) weeks is withheld.

The Union and Employer may, by mutual agreement, provide for semi-monthly pay periods. Each employee shall be provided with a statement of total hours, divided into straight time and overtime, and gross earnings and an itemized statement of all deductions made for any purpose. All checks will be in individual envelopes. Wages for the properly selected vacations, in all instances, will be paid to the employee no later than the workday prior to their vacation. If the employee does not receive his/her vacation or regular check, the Employer will make all reasonable efforts to provide the Day Air. Shortages involving more than forty dollars (\$40) for full-time employees and twenty dollars (\$20) for part-time employees will be corrected the next workday. All other errors will be corrected on the following weekly paycheck.

All monetary grievance settlements will be satisfied within two (2) weeks of the settlement date where practical.

ARTICLE 58 - HOURS OF WORK AND OVERTIME

SECTION 1 - HOURS OF WORK AND OVERTIME

(A) Work Week: The work week shall be five (5) consecutive days of eight (8) hours each or any four (4) days of ten (10) hours each. The hours of work each day shall be worked in uninterrupted succession. The work week may be changed by the Employer from one to the other as operating conditions may demand, provided however, that the employee shall receive one (1) week's notice of such contemplated change. The Employer may bid one (1) employee per Center to a work week of any five (5) out of seven (7) days. Such employee will be notified no later than the end of the shift as to his/her next work schedule or day off.

(B) Overtime: For employees assigned to five (5) eight (8) hour days, time and one-half (1-1/2) shall be paid for all hours worked in excess of forty (40) hours in a week or in excess of eight (8) hours in a day. For employees assigned to four (4) ten (10) hour days, time and one-half (1-1/2) shall be paid for all hours worked in excess of forty (40) hours in a week or in excess of ten (10) hours in a day. All on-call/cover board feeder drivers who do not have a weekly scheduled run will work on a five (5) day, of eight (8) hours, week. (i.e.) All runs pulled in a week where an on-call/cover board driver chooses his/her work on a daily basis the driver will be paid eight

ARTICLE 69 – PENSION

SECTION 1 – JOINTLY TRUSTEE UPS/IBT FULL TIME PENSION FUND

The following provisions pertain to the UPS/IBT Full-Time Employee Pension Plan (hereinafter "UPS/IBT Plan") to be created for employees who under the prior Agreement participated in the Central States Southeast and Southwest Areas Pension Fund ("CS Plan") and for future employees who have participated in the CS Plan absent this Agreement who have one (1) hour of service in Covered Employment on or after January 1, 2008.

(1) Effective January 1, 2008, the Employer and the Union will establish a new, single Employer, jointly trustee and administered defined benefit plan within the meaning of 29 U.S.C. Section 302 (c) (5) for full time employees who under the prior agreement would have participated in the CS Plan. As of December 26, 2007, the Employer will cease to have an obligation to contribute to the CS plan and will have no other obligation to provide such employees with future benefits accruals under the CS Plan.

(2) The benefit formula for current or future full-time employees who are participants in the UPS/IBT Plan will be set forth below for each year of future service hours worked in Covered Employment on or after the effective date up to a maximum of thirty-five (35) years of Credited Service. Such limitation is only applicable to service pensions. This benefit is unreduced if payable at Normal Retirement Age (age 65) and 5 years of vesting service or at age 62 with twenty (20) years of credited service. Benefit payments may begin as early as Early Retirement Age (age 50) with 5 years of vesting service, and are reduced 6% per year for each year and partial year prior to Normal Retirement Age. There shall be no reduction or change in the level of benefits described herein unless negotiated and agreed to by the Union.

- 262 -