UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nicholas Smith and Derik George, individually and on behalf of all others similarly situated, Plaintiffs, v. Sun Country, Inc., The Board of Trustees of the Sun Country, Inc. 401(k) Profit Sharing Plan, John Does and Jane Does 1-50, Defendants. The Sun Country, Inc. 401(k) Profit Sharing Plan, Nominal Defendant.	No. 24-cv-619-KMM-EMB Hon. Kate M. Menendez Magistrate Judge Elsa M. Bullard

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CERTIFICATION

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INTRODUCTION

Plaintiffs seek to certify for purposes of settlement a Class of current and former pilots of Sun Country, Inc. who are or were participants in the Sun Country, Inc. 401(k) Profit Sharing Plan and who took military leave between July 21, 2011 and December 31, 2025, were re-employed at Sun Country and did not receive properly calculated pension contributions, and the beneficiaries of such participants (defined interchangeably in the Settlement Agreement as the "Class" or "Settlement Class").

The Complaint alleges that Sun Country, Inc. uniformly violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") since 2011 by failing to make proper employer contributions in its 401(k) Profit Sharing Plan after employees were reemployed after military leave and that the fiduciaries of the 401(k) Plan violated Employee Retirement Income Security Act ("ERISA") by failing to ensure that proper contributions were made and/or collected by the Plan. The Complaint alleges that under both USERRA § 4318 and the terms of the Plan, Sun Country was required to make those contributions and the Fiduciary Defendants were required to manage that asset (i.e. the right to collect the contributions), but failed to properly comply with USERRA and ERISA. As relief, the Complaint seeks declarations that Defendants failed to comply with USERRA and ERISA, orders requiring them to do so and any monetary relief would be paid into the Plan on behalf of all affective participants (i.e. pilots). Such claims challenging uniform employment practices in which the relief is paid into the Plan are ideally suitable for class certification for settlement purposes. Thus, the claims should be certified on behalf of the Class, Plaintiffs as well as absent class member Lehr should be appointed as Class Representatives, and Plaintiffs' counsel should be appointed as Class Counsel under Rule 23(g).

BACKGROUND

I. Summary of the Factual Allegations of the Complaint.

The Complaint alleges that Sun Country was required under USERRA § 4318 and the terms of its defined contribution 401(k) and Profit Sharing Plan to make employer contributions to the Plan when employees returned from military leave. Compl. ¶¶ 50-52, 54-58. The Complaint alleges that since at least 2011 until this lawsuit was filed, Sun Country failed to do so. *Id.* ¶¶ 59-60. The Complaint alleges that the Plan fiduciaries, which are Sun Country and the Board of Trustees of the Sun Country 401(k) Profit Sharing Plan, had fiduciary duties to administer the Plan, and to enforce the terms of the Plan and manage the assets of the Plan, including the right to collect pension contributions (which is a debt owed by Sun Country to the Plan), but failed to take any action to enforce those terms or properly manage this asset of the Plan. *Id.* ¶¶ 61-73.

Messrs. Smith, George and Lehr are pilots for Sun Country Airlines, Inc. Compl. ¶¶ 9-10; Smith Decl. ¶ 2; George Decl. ¶ 2; Lehr Decl. ¶ 2. Each have taken leave from their employment with Sun County to serve in the military at various times. Compl. ¶¶ 9-10; Smith Decl. ¶ 4; George Decl. ¶ 4; Lehr Decl. ¶ 4. As Sun Country did not implement a revised methodology for calculating 401(k) plan contributions for military leave until at least October 1, 2025, none of them received proper contributions to their Plan accounts for military leave taken during the Class Period. *See* Settlement Agreement ("Agmt.") § II.5

The Complaint alleges that Mr. Smith raised the lack of USERRA-compliant contributions with high-level executives at Sun Country by at least October 2022 and identified that these failures violated USERRA. Compl. ¶ 74. The Complaint alleges that after Sun Country had still not taken any action to fix the issue, either retroactively or prospectively, Smith raised the issue again in May 2023. *Id.* ¶ 75. The Complaint alleges that in August 2023, Mr. Smith met with Sun Country executives again and was promised by Sun Country that it intended to fix the problem. *Id.* ¶ 76. The Complaint alleges that after Sun Country still had not fixed the problem for more than a year after Mr. Smith first raised the issue, Plaintiffs filed this lawsuit on February 27, 2024. ECF No. 1.

II. Summary of the Claims Alleged in the Complaint.

The Complaint alleges six claims against Defendants on behalf of a Class. Count I alleges that Sun Country violated USERRA § 4318 by failing to make the contributions to the Plan for periods of military leave. Compl. ¶¶ 81-86. Count II alleges that Sun Country and the Board of Trustees violated ERISA § 404(a)(1)(A), (B) and (D) by failing to comply with and enforce the terms of the Plan. *Id.* ¶¶ 87-93. Count III alleges that Sun Country violated ERISA § 404(a)(1)(A), (B) and (D) by failing to direct the Trustee (Fidelity) to take legal action to enforce the Plan's right to collect contributions from Sun Country as required by USERRA and the terms of the Plan. *Id.* ¶¶ 94-99. Count IV alleges that Sun Country and the Board of Trustees violated ERISA § 403 and § 404(a)(1)(D) by failing to hold an asset of the Plan in Trust. *Id.* ¶¶ 100-108. Count V alleges that Sun Country violated ERISA § 404(a)(1)(A), (B) and (D) by failing to monitor other fiduciaries. *Id.* ¶¶ 109-115. Count VI alleges that Sun Country and the Board of Trustees have co-fiduciary liability for various ERISA violations pursuant to ERISA § 405(a). *Id.* ¶¶ 116-119. As a result, the Complaint seeks declarations that Sun Country and the Board of Trustees violated USERRA § 4318 and various provisions of ERISA, orders and injunctions requiring their compliance, and recovery of any contributions that should have been previously paid along with any losses incurred by the Plan (and the respective accounts as to what should have been earned), surcharge, disgorgement of any profits, reformation of the terms of the Trust Agreement *Id.* ¶¶ 120-122 & Prayer for Relief at ¶¶ A-E, I-J. The Complaint also seeks that any of these amounts be paid into the Plan. *Id.* ¶ K. The Complaint also seeks an award of liquidated damages, plus attorneys' fees and costs. *Id.* ¶¶ F, L.

III. Procedural History.

The Complaint alleges that Mr. Smith raised issues about the lack of pension contributions for military leave with Sun Country before the Complaint was filed, and when those efforts failed, he requested documents about the Plan to which he was entitled under ERISA. Compl. ¶¶ 74-80. Shortly after the Complaint was filed in February 2024, Counsel for Plaintiffs and Defendants began discussing the possibility of settling the claims in the Complaint. ECF No. 11 ¶ 3.

By May 6, 2024, Plaintiffs' counsel sent Defendants' counsel a detailed request for data about the periods of military leave for each potential class member, the documents about the contributions for military leave, data about the Plan investments and their performance, the identification of the Board of Trustees and insurance policies. Barton Decl. ¶ 18. After Defendants agreed to produce most of the information, data and documents requested by Plaintiffs, the Parties requested that the Court stay the action. ECF No. 22.

Over the course of the next year, Defendants produced the requested information, data and documents. Agmt. § II.2. Defendants' production included data about the Sun Country pilots who took military leave, the amount of their compensation, pension contributions, various documents and information about the terms of the Plan and Sun Country's policies, and data about the investments and investment performance in the 401(k) Plan. *Id.* § 2. To assist with their analysis, Plaintiffs' counsel hired an expert who calculated the amount of the 401(k) pension contributions that Plaintiffs contended that were owed and the amount of earnings lost from the missed pension contributions. Barton Decl. ¶ 20.

After Plaintiffs' expert completed those calculations and Plaintiffs' counsel analyzed those calculations, the Parties engaged in settlement negotiations at an in-person settlement conference with Magistrate Judge Bullard on August 22, 2025. Agmt. § II.3. Messrs. Smith, George, and Lehr attended. George Decl. ¶ 9; Smith Decl. ¶ 10; Lehr Decl. ¶ 7. While no agreement was reached, the Parties continued to negotiate. ECF No. 47 ¶ 3.

In September 2025, Sun Country disclosed that, its payroll department had not calculated 401(k) employer contributions for pilots returning from qualified military service consistent with the methodology that Sun Country had intended to apply. Barton Decl. ¶ 21; *see*Agmt. § II.4. As a result of that disclosure, Plaintiffs' counsel requested additional data and information, which Defendants produced between late 2025 and April 2026. Barton Decl. ¶ 21That data included pension contributions through the end of December 31, 2025. *Id.* Sun Country has represented that as of October 1, 2025, it implemented a revised methodology for calculating such contributions that is intended to comply with USERRA, ERISA, and the terms of the Plan. Agmt. § II.5. After Defendants produced the requested additional data and Plaintiffs' expert had completed her calculations, the Parties continued to engage in settlement discussions. ECF No. 67 ¶ 2. The Parties participated in another in-person settlement conference with Magistrate Judge Bullard on June 10, 2026, Agmt. § II.3. All three proposed class representatives attended that settlement conference. George Decl. ¶ 9; Smith Decl. ¶ 10; Lehr Decl. ¶ 7.

ARGUMENT

Certification of a class is appropriate where the party seeking certification satisfies the four prerequisites of Rule 23(a) and at least one of the requirements of Rule 23(b). Fed. R. Civ. P. 23; *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*., 559 U.S. 393, 398 (2010) (finding rejecting argument that a court does have discretion to deny class certification where the elements of Rule 23 are met because "[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action"). An analysis of whether a class can be certified may "entail some overlap with the merits of the plaintiff's underlying claim" but "[m]erits questions may be considered to the extent — but only to the extent — that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 466-467 (2013). Because the claims satisfy all the requirements of Rule 23, it should be certified as a class action.

I. The Class is Sufficiently Defined and Ascertainable.

"[U]nlike most other courts of appeals," the Eighth Circuit "has not outlined a requirement of ascertainability." *Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc.*, 821 F.3d 992, 996 (8th Cir. 2016) (finding class ascertainable where members could be identified by receipt of fax). Instead, the Eighth Circuit "adheres to a rigorous analysis of the Rule 23 requirements, which includes that a class 'must be adequately defined and clearly ascertainable.'" *Id.* A class is "ascertainable when its members may be identified by reference to objective criteria." *McKeage v. TMBC, LLC*, 847 F.3d 992, 998 (8th Cir. 2017). In both *McKeage* and *Sandusky*, the Eighth Circuit found that the class was properly defined and ascertainable where "class members were identified by reviewing" defendant's data "according to objective criteria." *Id.* Here, this Class is properly defined and ascertainable as evidenced by Defendants' production of data and Plaintiffs' ability to identify the class members in the settlement process. Barton Decl. ¶ 19.

II. The Class Meets the Requirements of Rule 23(a).

Rule 23(a) sets forth four requirements applicable to all class actions: (1)

numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a). Each of these requirements is met here.

A. Joinder of All Class Members Would Be Impracticable.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This Circuit has explained that there are "[n]o arbitrary rules regarding the necessary size of classes." *Paxton v. Union Nat'l Bank,* 688 F.2d 552, 559–60 (8th Cir. 1982) (finding class of 74 employees was sufficient). But "[w]hen the proposed class has at least forty members, there is a presumption that the class is sufficiently numerous." *Advocates for Human Rights v. U.S. Dep't of Homeland Sec.*, 825 F.Supp.3d 858, 883–84 (D.Minn. 2026); *Van Orden v. Meyers*, No. 4:09CV00971 AGF, 2011 WL 4600688, at *6 (E.D. Mo. Sept. 30, 2011) (finding approximately 150 members satisfied Rule 23(a)(1)). Here, Rule 23(a)(1) is easily met, as Defendants' data identifies at least 131 pilots who are class members. Barton Decl. ¶ 19.

B. There are Commons Questions of Fact and Law.

"[A] single [common] question" will satisfy Rule 23(a)(2). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). Commonality exists if the claims "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution." *Id*. at 350. The existence of "a general policy" or a "uniform employment practice" satisfies Rule 23(a)(2). *Id*. at 355. But "[c]ommonality is not required on every question raised in a class action." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995). The Complaint alleges two sets of claims: (1) Sun Country violated USERRA § 4318 by failing to make pension contributions for military leave as required under USERRA, and (2) Sun Country and the Board of Trustees (collectively the Fiduciary Defendants) breached their duties under ERISA by failing to enforce the terms of the Plan and by failing to take actions consistent with ERISA to collect such contributions. Compl. ¶ 2, 22. The Complaint alleges that "Sun Country uniformly failed to make the contributions owed under USERRA and under the terms of the Plan" and there was a "uniform policy or practice not to make Plan contributions [for] an employee's qualified military service." *Id.* ¶ 22, 24. The Complaint also alleges that "the Fiduciary Defendants acted in a systematic manner with respect to the Plan and the Class" and the Class "suffered the same type of injury based on a single policy." *Id.* ¶ 24.

As to the USERRA claim in Count I, courts have found common questions for similar claims alleging Defendants failed to make proper contributions under USERRA § 4318 where "[a]ll Class members were subject to the same policy regarding Defendant's contributions to the pension fund." *Tuten v. United Airlines, Inc*., No. 12–cv–1561–WJM–MEH, 2013 WL 8480458, at *1 (D. Colo. Oct. 31, 2013); *see Becher v. Long Island Lighting Co.,* 164 F.R.D. 144, 150 (E.D.N.Y. 1996) (certifying claim by plan participants who took military leaves of absence from their employment).

As to the ERISA fiduciary breach claims in Counts II-VI, "commonality is quite likely to be satisfied." *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 599 n.11 (3d Cir. 2009). Commonality is typically present in ERISA cases because the "appropriate focus … is the conduct of the defendants, not the plaintiffs." *In re Aquila ERISA Litig.*, 237 F.R.D. 202, 209 (W.D. Mo. 2006). Another court in this District found commonality because "the same fiduciaries engaged in the same imprudent and disloyal acts" and "*Defendants' decisions* … were the same for each putative class member." *Krueger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 572 (D. Minn. 2014). The same analysis applies here because "the Fiduciary Defendants" are alleged to have "acted in a systematic manner with respect to the Plan and the Class." Compl. ¶ 24.

C. Plaintiffs' Claims Are Typical of the Claims of the Class & Defendants Have No Defenses Unique to Plaintiffs.

Typicality requires that "the claims or defenses of the representative parties are typical" of those of the class. Fed. R. Civ. P. 23(a)(3). This requirement is "fairly easily met so long as other class members have claims similar to the named plaintiff." *DeBoer*, 64 F.3d at 1174; *Paxton*, 688 F.3d at 562 (the burden of demonstrating typicality is not "onerous"). "[I]f the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal theory or remedial theory" individual factual variations will not normally defeat class certification. *Bradford v. AGCO Corp.*, 187 F.R.D. 600, 603 (W.D. Mo. 1999) (citing *Donaldson v. Pillsbury Co*., 554 F.2d 825, 831 (8th Cir. 1997)). Another court in this District found plaintiffs' claims were typical "because all class members are participants in the Plan, and the alleged [violations and] breaches of fiduciary duties were directed to the Plan rather than to individual participants." *Randall v. Greatbanc Trust Co.*, No. 22-cv-2354 (LMP/DJF), 2025 WL 260160, at *3 (D. Minn. Jan. 22, 2025). A "declaration that Defendants breached their fiduciary duties or engaged in [other violations] 'would affect all class members equally,' even if there are some factual variations among class members with respect to their specific injuries." *Id.*

For the USERRA claim, Plaintiffs' "claims are typical of the rest of the Class" because they are all "pilot[s] who took … military leave" and were affected by Sun Country's alleged failure to make proper pension contributions. *Tuten,* 2013 WL 8480458, at *1 (finding typicality for USERRA § 4318 claim). As to the ERISA claims, "as Plan participants alleging breaches of the fiduciary duties Defendants owed to the Plan, the class members are seeking redress of similar grievances under the same legal and remedial theories." *Krueger,* 304 F.R.D. at 573 (finding typicality for ERISA fiduciary breach claims). Plaintiffs' claims are typical of the class because the common legal claims allege that Defendants engaged in a common course of conduct. Compl. ¶ 22, 24-25. The claims allege violations of USERRA and ERISA as to the whole Class. *See id.* ¶¶ 29-37. The Complaint alleges that claims of Plaintiffs and the Class arise from a uniform practice challenged on behalf of the Class and not from facts specific to Plaintiffs. *Id.* ¶ 25. Plaintiffs are not aware of any unique defenses as to them. *Id.* ¶ 26.

D. The Proposed Representatives and Their Counsel Have Adequately and Will Adequately Represent the Class.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To meet this requirement, the proposed representative must demonstrate that (1) they "will vigorously prosecute the interest of the class through qualified counsel" and (2) they "have common interests with the members of the class." *Paxton,* 688 F.2d at 562–63. "This inquiry requires the Court to evaluate the adequacy of both the proposed class representatives and the proposed class counsel." *Randall*, 2025 WL 260160, at *4. Both elements are satisfied here.

1. The Proposed Representatives are More Than Adequate.

The first requirement is satisfied when the proposed representatives have actively participated in the case and "[a]ll indications to date suggest that [they] will prosecute this action competently and vigorously." *Randall,* 2025 WL 260160, at *4. The Complaint alleges that Mr. Smith raised the issues with Sun Country management before filing suit and when the issues were not corrected, he and Mr. George found experienced counsel and filed this lawsuit. Compl. ¶¶ 74-78. Messrs.

Smith, George and Lehr have actively participated in this case including attending two settlement conferences. Smith Decl. ¶ 10; George Decl. ¶ 9; Lehr Decl. ¶ 7. Thus, these representatives have vigorously represented the Class.

The second requirement is met when Plaintiffs' interests are aligned with those of the Class and "they share a common goal of recovery" from Defendants "as a result of the [Plans] losses" and protect the Class in the future. *Randall,* 2025 WL 260160, at *4. Here, Plaintiffs seek the same plan-wide relief on behalf of all affected participants to resolve a decade-long problem. Compl. ¶¶ 74-78. Thus, Plaintiffs satisfy Rule 23(a)(4)'s adequacy requirement.

2. Absent Class Member Taylor Lehr Should Be Appointed As an Additional Class Representative.

Nothing requires "that a class representative must be a named plaintiff in the action." *Peterson v. Alaska Commc'ns Sys. Grp., Inc.*, 328 F.R.D. 255, 268 (D. Alaska 2018) (appointing non-party class members as class representatives without amending complaint to add them as plaintiffs); *Norwood v. Raytheon Co.*, 237 F.R.D. 581, 588 & n.12 (W.D. Tex. 2006) (reaching the same conclusion); *Manual for Complex Litigation* § 21.26 ("The Court may permit intervention by a new representative or may simply designate that person as a representative in the order granting class certification."). "Courts have generally permitted the addition or substitution of class representatives when there is no showing of prejudice to defendants and such addition or substitution would advance the purposes served by class certification." *In re Arakis Energy Corp. Sec. Litig.*, No. 95-cv-3431 (ARR), 1999 WL 1021819, at *13 (E.D.N.Y. Apr. 27, 1999). In another USERRA case, the court appointed an absent class member as an additional class representative because the plaintiff and previously appointed class representative had "retired from the military while th[e] case was pending." *Huntsman v. Sw. Airlines Co.,* No. 3:19-cv-00083-JSC, 2025 WL 3552243, at *3 (N.D. Cal. Dec. 11, 2025). Similarly here, Plaintiffs seek to add Mr. Lehr as a class representative because since this litigation has been pending, Mr. Smith and Mr. George are no longer in the military and they want to ensure that the interests of current servicemembers are adequately represented. George Decl. ¶ 3; Smith Decl. ¶ 3. Mr. Lehr is still in the military and participated in the settlement discussions and the settlement conferences. Lehr Decl. ¶¶ 3, 7. Mr. Lehr has fulfilled and will continue to fulfill his duties as a class representative. *Id.* ¶ 6. As his addition ensures that current servicemembers are adequately represented, he should also be appointed as a class representative.

3. Plaintiffs' Counsel Are More Than Qualified.

Plaintiff's counsel are adequate when they have "significant experience" handling class actions alleging similar claims. *Randall,* 2025 WL 260160, at *4, 6. Plaintiffs' counsel here have handled USERRA claims for at least 14 years and have obtained some of the largest USERRA settlements, including several settlements where the class has obtained 100% of actual damages. Barton Decl. ¶¶ 3-8; Jarrard Decl. ¶¶ 5-6. Courts have recognized that these counsel have extensive experience in USERRA and employee benefit class actions. *Clarkson v. Alaska Airlines Inc.*, No. 2:19-CV-0005-TOR, 2020 WL 4495278, at *5 (E.D. Wash. Aug. 4, 2020) (finding these same "counsel have significant experience litigating class action and USERRA cases."); *see Huntsman v. Sw. Airlines Co.*, No. 19-cv-00083-PJH, 2021 WL 391300, at *10 (N.D. Cal. Feb. 3, 2021) (certifying a USERRA class action after finding these same counsel had "experience in and knowledge regarding litigating employment class action cases."); *see Anderson v. City and Cnty. of San Francisco*, No. 4:20-cv-01149-DMR, 2025 WL 3785958, at *4 (N.D. Cal. Dec. 18, 2025) (recognizing Mr. Barton's "substantial experience litigating USERRA class actions"). Indeed, Mr. Barton also has 25 years of experience handling ERISA and pension claims in addition to USERRA claims for the last 14 years. Barton Decl. ¶ 3. Mr. Jarrard has been practicing law since 2007 and has litigated USERRA claims nearly exclusively. Jarrard Decl. ¶¶ 3, 9. They are and have been class counsel in numerous USERRA class actions and/or ERISA class actions. *Id.* ¶¶ 5-6; Barton Decl. ¶¶ 5-8. As Mr. Williams has 30 years experience litigating class action claims, he is qualified to be local counsel. Williams Decl. ¶ 2. Thus, Plaintiffs' counsel are more than adequate class counsel.

III. The Claims Meet the Requirements of Rule 23(b).

The claims must meet the requirements of only "one of the three subsections of Rule 23(b)." *Stuart v. State Farm Fire and Casualty Co.*, 910 F.3d 371, 374 (8th Cir. 2018). When there is a choice between (b)(3) and either (b)(1) or (b)(2) certification, generally it is proper to proceed under (b)(1) or (b)(2). *Reynolds v. Nat'l Football League*, 584 F.2d 280, 284 (8th Cir. 1978); *see Piazza v. Ebsco Indus., Inc.*, 273 F.3d 1341, 1352-53 (11th Cir. 2001) (finding an ERISA claim should have been certified under Rule 23(b)(1), not Rule 23(b)(3)). The Eighth Circuit has also recognized that "hybrid certification" – certifying classes under more than one prong of Rule 23 – "is an available approach." *Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 480 (8th Cir. 2016).

A. The Claims Meet the Requirements of Rule 23(b)(1).

Rule 23(b)(1) provides for certification where the prosecution of separate actions by individual class members would create a risk of (A) inconsistent or varying adjudications which would establish incompatible standards for the party opposing the class, or (B) individual adjudications which would either be dispositive of or impair the interests of other nonparty class members. Fed. R. Civ. P. 23(b)(1). In the most analogous USERRA case, the court certified USERRA § 4318 claims under Rule 23(b)(1). *Tuten,* 2013 WL 8480458, at *2. As to the ERISA claims, "[m]ost ERISA class action cases are certified under Rule

23(b)(1)[.]" *Rozo v. Principal Life Ins. Co.*, No. 14-463, 2017 WL 2292834, at *4 (S.D. Iowa May 12, 2017) (internal citation omitted). Indeed, "ERISA litigation of this nature presents a paradigmatic example of a (b)(1) class." *Jones v. Novastar Fin., Inc.*, 257 F.R.D. 181, 194 (W.D. Mo. 2009) (citation and quotation marks omitted); *see In re Schering Plough*, 589 F.3d at 604 (same).

1. The Claims Meets the Requirements of Rule 23(b)(1).

Certification under Rule 23(b)(1)(B) is appropriate where, if the action were litigated individually instead of as a class, it would have the practical effect of impairing the interests of persons who are not parties to the lawsuit. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999) (citing the 1966 Committee Notes and noting one paradigmatic example is "an action which charges a breach of trust by a[ ] ... trustee or other fiduciary similarly affecting the members of a large class of beneficiaries."). As the Supreme Court explained, in the classic examples, "the shared character of rights claimed or relief awarded entails that any individual adjudication by a class member disposes of, or substantially affects, the interests of absent class members." *Id.* As another court in this District recently explained, where "[p]laintiffs seek Plan-wide relief for actions that allegedly impacted all potential class members, Plaintiffs' proof regarding Defendants' conduct 'will, as a practical matter, significantly impact the claims of other Plan participants and of employees' who participated in the Plan." *Randall*, 2025 WL 260160, at *5 (certifying claims of plan participants under Rule 23(b)(1)(B)); *Krueger,* 304 F.R.D. at 578 (reaching similar conclusion).

As another court in this District explained, "if this Court concluded that Defendants breached their fiduciary duties" or in this case also violated USERRA, "and ordered recovery to the Plan, but another Court concluded the opposite, Defendants would be required to treat contributions for similarly-situated Plan participants differently." *Randall*, 2025 WL 260160, at *5. Such a result is incompatible with the administration of retirement plans. *Id.* That same analysis applies to both the USERRA and ERISA claims which seek recovery into the plan accounts of the Class. *See* Compl. ¶¶ 120-122 & Prayer for Relief ¶¶ A, J, K.

2. The Claims Also Meet the Requirements of Rule 23(b)(1)(A).

Rule 23(b)(1)(A) applies in cases "where the party is obliged by law to treat the members of the class alike […], or where the party must treat all alike as a matter of practical necessity[.]" *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (citing 1996 Committee Note). ERISA administrators are required to treat similarly situated participants consistently. *In re J.P. Morgan Chase Cash Balance Litig.,* 242 F.R.D. 265, 275-76 (S.D.N.Y. 2007) (certifying ERISA claims under Rule 23(b)(1)(A)); *see Moyle v. Liberty Mut. Ret. Ben. Plan*, 823 F.3d 948, 965 (9th Cir. 2016) (affirming Rule 23(b)(1)(A) certification of ERISA claims).

In the case most similar to this one, involving claims that an airline failed to make pension contributions consistent with USERRA § 4318, the court certified the claims "under Rule 23(b)(1)(A) because permitting individual plaintiffs to pursue their own claims could result in United being required to treat pilots differently, which is forbidden by the laws governing employee benefits." *Tuten*, 2013 WL 8480458, at *1; *see Harju v. Olson*, 709 F.Supp.2d 699, 735 (D. Minn. 2010) (certifying a Rule 23(b)(1)(A) class because there was "a risk that prosecution of separate actions by individual [plan participants] would result in inconsistent adjudications that would establish incompatible standards of conduct" for the defendant fiduciaries). The same concerns apply here because separate adjudication could result in incompatible rulings about the method to calculate the contributions or if one court orders that no payment be made while another requires payment to a similarly situated participant.

3. Claims Resulting in Monetary Relief Are Suitable for Certification Under Rule 23(b)(1).

As numerous courts have concluded, Rule 23(b)(1) allows class certification of claims "in which monetary relief is sought." *Wildman v. Am. Century Servs., LLC*, No. 4:16–CV–00737–DGK, 2017 WL 6045487, at *6 (W.D. Mo. Dec. 6, 2017). The Eighth Circuit and numerous other courts have held that claims about benefits seeking monetary relief may be certified under Rule 23(b)(1). *Reynolds,* 584 F.2d at 283 (rejecting argument that claims could not be certified under Rule 23(b)(1) because they sought damages); *see Moyle,* 823 F.3d 965 (affirming Rule

23(b)(1)(A) certification of ERISA claims seeking monetary relief); *Harris v. Koenig*, 271 F.R.D. 383, 393-94 (D.D.C. 2010) (collecting cases).

B. The Claims Meets the Requirements of Rule 23(b)(2).

Rule 23(b)(2) applies where (1) "the party opposing the class has acted or refused to act on grounds that apply generally to the class, [(2)] so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" Fed. R. Civ. P. 23(b)(2).

1. Defendants' Actions Were Uniform as to the Class.

Rule 23(b)(2) focuses on whether defendants' conduct was uniform as to the class. *Postawko v. Mo. Dep't of Corrections*, 910 F.3d 1030, 1040 (8th Cir. 2018) (finding claims alleging that Defendants "uniformly applied a …policy" that harmed each class member was sufficient to "describe a party acting 'on grounds generally applicable to the class.'"). "Courts routinely have certified classes pursuant to [Rule 23(b)(2)] where, as in the instant case, a [] plan administrator makes a uniform decision about administering the Plan as it applies to the putative class members." *Cottillion v. United Refining Co.,* No. 09-140E, 2013 WL 5936368, at *6 (W.D. Pa. Nov. 5, 2013).

Here, the Complaint alleges that Sun Country uniformly failed to make the contributions owed by USERRA since at least 2011. Compl. ¶ 18, 22. For each of those years, the Complaint alleges that the Fiduciary Defendants breached their fiduciary duties by failing to ensure the Plan received the correct contributions and by failing to take any steps to collect those contributions. *Id.* ¶ 22. As the focus under Rule 23(b)(2) is on whether Defendants' conduct was uniform as to the Class, the first criterion of Rule 23(b)(2) is satisfied.

2. The Claims Seek Final Declaratory & Injunctive Relief.

Rule 23(b)(2) applies "when a single injunction or declaratory judgment would provide relief to each member of the class." *Dukes*, 564 U.S. at 360. Rule 23(b)(2) is satisfied even where a declaratory judgment is "merely a prelude to a request for [monetary relief]." *Berger v. Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755, 763 (7th Cir. 2003) (affirming certification of ERISA claims under Rule 23(b)(2)); *see Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364, 371 (7th Cir. 2012); *see Amara v. CIGNA Corp.*, 775 F.3d 510, 523 (2d Cir. 2014) (affirming Rule 23(b)(2) class certification for claims where once "the plan is reformed . . . monetary benefits flow as a necessary consequence of that injunction"). Not only do both USERRA and ERISA allow a plaintiff to obtain an injunction or a declaration, "[b]ut the fact that th[e] relief takes the form of a money payment does not remove it from the category of traditionally equitable relief." *Amara*, 563 U.S. at 441 (concluding "injunctions requir[ing] the plan administrator to pay to already retired beneficiaries money owed them under the plan as reformed" was appropriate equitable relief); *see* 29 U.S.C. §§ 1109(a), 1132(a)(3); 38 U.S.C. § 4323(e).

Here, the Complaint seeks declarations that Sun Country violated USERRA § 4323(e) and that the Fiduciary Defendants breached their fiduciary duties under ERISA. Compl. at Prayer for Relief ¶¶ A-C. To remedy these alleged breaches, Plaintiffs seek various forms of equitable relief such as reformation, surcharge, disgorgement, an accounting and/or recalculation of benefits. Compl. at Prayer for Relief ¶¶ A, D, I, J. Here, the Complaint seeks final declaratory and injunctive relief and any monetary relief would simply flow from a declaration or injunction that Defendants violated USERRA and/or ERISA.

C. The Claims Also Meet the Requirements of Rule 23(b)(3).

Rule 23(b)(3) requires that (1) common questions predominate over any questions affecting only individual members, and (2) a class action is superior to other available methods for the fair and efficient adjudication of claims. Fed. R. Civ. P. 23(b)(3). *Custom Hair Designs by Sandy v. Cent. Payment Co., LLC,* 984 F.3d 595, 601 (8th Cir. 2020) (affirming class certification).

1. Common Questions Predominate Over Individual Ones.

Predominance tests "whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 W. Rubenstein, *Newberg on Class Actions* § 4:49 (5th ed.

2012)). "An individual question is one where 'members of a proposed class will need to present evidence that varies from member to member,' while a common question is one where 'the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.'" *Id.* When "one or more of the central issues in the action are common to the class and can be said to predominate," the action is proper under Rule 23(b)(3) "even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Id.* Where the "the main questions" of law and fact are "capable of classwide resolution," common questions predominate. *Sandusky,* 821 F.3d at 998 (reversing denial of certification). And "[t]he potential need for individualized damages inquiries" does not defeat predominance. *Stuart*, 910 F.3d at 376.

Here, the central questions are whether Sun Country violated USERRA in failing to make proper pension contributions for periods of military leave and whether the Fiduciary Defendants breached their fiduciary duties in connection with those owed, but unpaid contributions. Compl. ¶ 29. Those issues do not require any individual determinations. Nor are there even any individual damages inquiries as Plaintiffs' expert was able to calculate damages using Defendants' own data. Barton Decl. ¶ 21.

2. A Class Action is the Superior Method of Adjudication.

Superiority measures whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *Custom Hair Designs,* 984 F.3d at 605. Class actions are superior when "the class members' claims are generally small and unlikely to be pursued individually." *Id.* Factors relevant to superiority include (A) the class members' interests in individually controlling the litigation; (B) the extent and nature of any prior litigation concerning the controversy; (C) the desirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3). Each factor is met here.

Here, the Rule 23 factors weigh in favor of superiority. *First*, the members of the Class have an interest in a unitary adjudication of the issues presented in this action because the amount owed to most Class members does not justify pursuing an individual action. *Second*, no other litigation concerning this controversy has been filed. *Third*, this is an appropriate forum for these claims because, among other reasons (a) jurisdiction and venue are proper, (b) Sun Country is headquartered in this District, and (c) a significant number of Class Members are believed to be in this District. *Finally*, there are no manageability concerns for a settlement class. *See Amchem*, 521 U.S. at 620. In short, a class action is superior to other available methods for the fair and efficient resolution of this controversy.

CONCLUSION

For these reasons, Plaintiffs' Motion for Certification of the Class should be granted and the Class should be certified for purposes of Settlement pursuant to Rule 23(b)(1) and/or (b)(2) or if the Court concludes that neither Rule 23(b)(1) nor 23(b)(2) are not met, then under Rule 23(b)(3).

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Respectfully submitted,

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