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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEGAN RUTAN,

Plaintiff,

v.

AMERICAN INSURE-ALL AGENCY,
INCORPORATED; and DONALD MOE
JUNIOR Individually,

Defendants.

Case No. 2:16-cv-1114

PLAINTIFF’S COMPLAINT FOR
VIOLATIONS OF THE UNIFORMED
SERVICES EMPLOYMENT AND
REEMPLOYMENT RIGHTS ACT,
DEMAND FOR DAMAGES, AND JURY
TRIAL

**EXEMPT FROM FILING FEES UNDER
38 U.S.C. § 4323(h)(1)**

I. INTRODUCTION

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 (USERRA) and is exempt from filing fees under 38 U.S.C. § 4323(h)(1).

2. Plaintiff, Captain Megan Rutan (“Capt. Rutan”), by the undersigned attorneys, avers as stated herein.

II. PARTIES

3. Captain Rutan was at all times pertinent hereto a resident of Washington and a member of the Washington Army National Guard.

1 4. Defendant, American Insure-All Agency Incorporated (“Insure-All”), maintains a
2 place of business within this judicial district and is a "private employer" as defined by 38 U.S.C.
3 § 4323(i).

4 5. Defendant, Donald Moe, Junior (“Moe Jr.”) is the Vice President of American
5 Insure-All Agency, Incorporated, Captain Rutan’s supervisor, had control of the employment
6 opportunities of Captain Rutan, was a primary decision maker regarding Defendants’ violation
7 of Captain Rutan’s rights, and for the purposes of 38 U.S.C. § 4303(4), is an employer.
8

9 **III. JURISDICTION AND VENUE**

10 6. The Federal Court for the Western District of Washington at Seattle has personal
11 jurisdiction over the parties and subject matter jurisdiction for the claims in this complaint
12 pursuant to 38 U.S.C. § 4323(b)(3) and 28 U.S.C. § 1331.
13

14 7. Venue is proper in the Federal Court for the Western District of Washington at
15 Seattle under 38 U.S.C. § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions in
16 this complaint occurred in this District.
17

18 **IV. FACTS**

19 8. On about February 28, 2014, Captain Rutan was hired as the comptroller for
20 American Insure-All with a beginning salary of \$40,000.00 per year.

21 9. Captain Rutan was hired by Insure-All’s President, Donald Moe, Senior and Vice
22 President, Donald Moe, Junior.
23

24 10. Captain Rutan reported to both Donald Moe, Senior and Donald Moe, Junior.

25 11. In May 2014, Insure-All’s office manager quit.

26 12. Donald Moe Senior and Donald Moe Junior assigned Captain Rutan with greater
27 responsibilities and she received a pay raise to \$45,000.00 per year.
28

1 13. Captain Rutan worked at Insure-All throughout 2014 and 2015 and attended her
2 military obligations.

3 14. During the period of May to December 2014, she properly gave her employer
4 notice of her military obligations, attended those military obligations, gave notice of her intent
5 to return to work, and returned to work without incident.
6

7 15. In about January 2015, Captain Rutan enrolled in a company sponsored
8 Individual Retirement Account (“IRA”) with company matching funds.

9 16. From about January through July 2015, Captain Rutan gave her employer notice
10 of her military obligations, attended those military obligations, and gave notice and returned to
11 work without incident. For example, in June 2015, Captain Rutan gave defendants notice of a
12 three (3) week military obligation to occur in March 2016.
13

14 17. In July 2015, the President of American Insure-All, Donald Moe, Senior, passed
15 away.
16

17 18. In about August 2015, Donald Moe, Junior halted all IRA company contributions
18 for some employees of Insure-All, caused some employees’ IRA accounts (including his own)
19 to be transferred, and caused Captain Rutan’s IRA plan to remain unfunded with the present
20 IRA administrator.

21 19. In the months following July 2015, Captain Rutan only reported to Donald Moe,
22 Junior, her supervisor.
23

24 20. After July 2015, Donald Moe, Junior subjected Captain Rutan to episodes of
25 yelling and disparagement whenever she gave Mr. Moe notice of her military obligations.

26 21. In November 2015, Captain Rutan gave Mr. Moe notice of a military drill
27 weekend, to occur on December 4 through 6, 2015.
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1 22. Donald Moe Junior hassled Captain Rutan because her drill duties fell on a day
2 when Insure-All was holding its Holiday Party. Captain Rutan left drill early on December 4,
3 2015 to accommodate Mr. Moe's desire that she attend the company party.

4 23. In late December 2015, Captain Rutan, again, gave defendants notice of a three
5 (3) week military obligation to occur in March 2016.

6 24. Between about January 1 and January 28, 2016, Donald Moe, Junior subjected
7 Captain Rutan to yelling and disparagement because of her upcoming military obligations.

8 25. On February 28, 2016, Captain Rutan's two-year anniversary, she received a pay
9 raise to \$50,000.00 and ten (10) days paid time off, per company policy.

10 26. In the April 2016 timeframe, Captain Rutan gave defendants notice of her
11 upcoming military duty in June 2016.

12 27. Again, Donald Moe, Junior subjected Captain Rutan to episodes of yelling and
13 disparagement because of her military obligations, including yelling angrily at her, and telling
14 her that the company "could not do this anymore" that, Captain Rutan "was hurting the
15 company" every time she when on military duty.

16 28. On or about June 12, 2016, while Captain Rutan was away attending her military
17 training, Donald Moe Junior entered her civilian office area and told Captain Rutan's civilian
18 office assistant that, "she [Rutan] should just go be a captain... she should just go get a job as a
19 captain in the military" and "well things are going to change when she gets back."

20 29. On about June 15, 2016, while Captain Rutan was attending her military training,
21 defendants called her regarding civilian work documentation. Donald Moe Junior told Captain
22 Rutan that he was "disappointed" she did not have the civilian work documentation he was
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1 demanding. Captain Rutan told Donald Moe, Junior that she was attending training and had to
2 go.

3 30. On the morning of June 21, 2016, Donald Moe, Junior text-messaged Captain
4 Rutan, demanding, “we need to talk now” and asked whether she was going to resign as the
5 comptroller. Captain Rutan, responded “no, I am not resigning right now... why?”

6
7 31. Donald Moe, Junior caused Captain Rutan’s position to be posted as open for
8 employment on the INDEED.COM job posting web site on June 21, 2016.

9 32. On June 22, 2016, Captain Rutan sent Donald Moe, Junior an email stating her
10 intent to return to work, requesting that Moe stop mistreating her based on her obligations to
11 perform military service, citing the Law of USERRA and WLAD, and giving defendants notice
12 that the office did not have a required USERRA employment right posters in the building.

13
14 33. On June 24, 2016, defendants posted a USERRA rights poster on the wall of
15 their Lynwood office.

16 34. Captain Rutan completed her June military obligation.

17
18 35. On June 27, 2016, Captain Rutan returned to work at the defendants.

19 36. During her military absence, defendants changed or otherwise altered Captain
20 Rutan’s computer programs and systems passwords such that when she returned to work she
21 was “locked out” of the customary systems and programs she needed to do her work.

22
23 37. On June 28, 2016, Captain Rutan reported to work. At about 9:00 AM, Donald
24 Moe, Junior fired Captain Rutan.

25 38. At all times relevant hereto, defendants maintained policies that prohibit
26 unlawful discrimination.

1 39. The defendants who had responsibly over the employment decisions at Insure-
2 All had access to the requirements imposed upon employers under the USERRA, including, but
3 not limited to a posted USERRA workplace notice of rights and Insure-All's s applicable
4 employment policies or procedures.

5 40. At all times relevant hereto, defendant Donald Moe, Junior had access to the
6 requirements of USERRA.

7 41. At all times relevant hereto, defendants had a duty to conduct itself in
8 compliance of the law of USERRA and to ensure its agents followed the Act.

9 42. The above actions by the defendants breached their duties under USERRA and
10 were the proximate cause of Captain Rutan's damages.

11 43. Captain Rutan has suffered damages because of the defendants' unlawful
12 actions.

13 44. As a result of Defendants' unlawful conduct and the necessity of this action to
14 seek a remedy, Captain Rutan's future employment prospects and potential earnings are
15 irreparably harmed.

16 45. Defendants' conduct toward Captain Rutan causes her to continue to suffer
17 damages, including loss of enjoyment of life, humiliation, mental anguish, emotional distress,
18 and injury to her professional reputation.

19 46. As a result of defendants' unlawful conduct in violation of USERRA and the
20 necessity of this action to seek a remedy, Captain Rutan fears further retaliation against her
21 employment rights by defendants or its managers, directors or employees. Therefore, the
22 employment relationship that Captain Rutan enjoyed with defendants prior to the events giving
23 rise to this action is irreparably damaged through no fault of her own.
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V. CLAIMS FOR RELIEF

(COUNT 1 – VIOLATION OF THE WASHINGTON LAW AGAINST DISCRIMINATION (WLAD))

47. The WLAD bars an employer from discriminating against an employee based upon that employee's military or veteran status.

48. Captain Rutan's military/veteran status was, for the reasons set out above, a substantial factor in defendants' decision to, among other things, deny her benefits and proper reemployment upon her return from military obligations, and terminate her employment.

(COUNT 2 – UNLAWFUL DISCRIMINATION IN VIOLATION OF 38 U.S.C. §4311(a))

49. Defendants violated USERRA such that Captain Rutan's membership in the uniformed service was a motivating factor in decisions by defendants that adversely affected her employment.

50. Defendants unlawfully discriminated against Captain Rutan, among other ways, by denying Captain Rutan employment, benefits of employment and retirement benefits, in part, based upon her membership in the uniformed service, a right provided by USERRA.

(COUNT 3 – UNLAWFUL DISCRIMINATION IN VIOLATION OF 38 U.S.C. §4311(b))

51. Defendants' actions caused the violation of Captain Rutan's USERRA rights such that her actions to enforce a protection afforded to her under USERRA, or to exercise a right provided by USERRA, was a motivating factor in defendants' decision to deny her employment and benefits of employment.

52. Defendants unlawfully retaliated against Captain Rutan, among other ways, by denying her employment and benefits of employment because she took action to enforce a protection afforded under USERRA, or to exercise a right provided by USERRA.

1 4. Reasonable attorney and expert fees, and costs, pursuant to 38 U.S.C. § 4323 and
2 as otherwise provided by law.

3 B. Based on the violations discussed above, Captain Rutan asks the Court for the
4 following:

5 1. Declare that Defendants' decision to deny Captain Rutan employment and
6 benefits of employment on the basis of her military/veteran status was unlawful and
7 violated the Washington Law Against Discrimination.

8 2. Declare that Defendants' decision to deny Captain Rutan employment, benefits
9 of employment and retirement benefits on the basis of her membership in the uniformed
10 services was unlawful and violated USERRA, 38 U.S.C. § 4311(a);

11 3. Declare that Defendants' decision to deny Captain Rutan employment and
12 benefits of employment because Captain Rutan took action to enforce protections
13 afforded to her under USERRA is a retaliatory action in violation of USERRA, 38
14 U.S.C. § 4311(b);

15 4. Declare that Defendant's denial of Captain Rutan the right to make
16 contributions to a retirement plan, and failure to give timely and adequate notice
17 to the plan administrator as required under the USERRA was unlawful and
18 violated USERRA 38 U.S.C. § 4318;

19 5. Declare that Defendants' violations of USERRA were willful pursuant to 38
20 U.S.C. § 4323(d)(1)(C);

21 6. Order Defendants to pay Plaintiff lost wages incurred and the value of
22 benefits lost, including lost retirement contributions;

