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12 Attorneys for Plaintiff

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE EASTERN DISTRICT OF WASHINGTON**

15 MARCUS KIMM,

16 Plaintiff,

17 v.

18 AEROTEK, INC, a Maryland  
19 corporation; and, TRANSTECTOR  
20 SYSTEMS, INC. a Delaware  
21 corporation,

22 Defendants.

NO. 17-cv- 221.

COMPLAINT AND DEMAND  
FOR TRIAL BY JURY

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

23 Mr. Kimm, by and through his attorneys, now alleges:

24 **I. PARTIES AND JURISDICTION**

25 1. Defendant, AEROTEK, INC, is a Maryland corporation that is  
licensed to conduct business in the State of Washington. Aerotek maintains a

1 place of business in Spokane, Washington located at 13224 East Mansfield Ste.  
2 200, Spokane, Washington 99216.

3 2. Defendant, TRANSTECTOR is a Delaware corporation that is  
4 licensed to conduct business in the State of Idaho and conducts business in  
5 Hayden Lake, Idaho.  
6

7 3. Plaintiff, MARCUS KIMM is an 11-year military veteran of  
8 numerous combat deployments throughout the Middle East. At all relevant times  
9 to this lawsuit Mr. Kimm was a Non-Commissioned Officer in the Washington  
10 Air National Guard and resided in Spokane Valley, Washington.  
11

12 4. For the purposes of 38 U.S.C. § 4303(4) Aerotek and Transtector are  
13 private employers operating in the State of Washington.  
14

15 5. All acts complained of occurred within the Eastern District of  
16 Washington.  
17

18 6. The Federal Court for the Eastern District of Washington has personal  
19 jurisdiction over the parties and subject matter jurisdiction for the claims in this  
20 complaint pursuant to 38 U.S.C. § 4323(b), 28 U.S.C. § 1331, 28 U.S.C. §  
21 1367(a).  
22

23 7. Venue is proper in the Eastern District of Washington under 38 U.S.C.  
24 § 4323(c) and 28 U.S.C. § 1391(b) because the acts and omissions complained  
25 herein occurred in the District and Defendants conduct business there.

**II. INTRADISTRICT ASSIGNMENT**

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2 8. This action arose in Spokane County, Washington; therefore,  
3 pursuant to local rules it should be assigned to the Spokane Division of the  
4 Eastern District of Washington.  
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**III. FACTS**

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7 9. On March 31, 2017, Transtector posted a job for a “Full-Time” “Lead  
8 RF Electronics Technician” (“RF Technician”) for its Hayden, Idaho facility.  
9

10 10. Upon information and belief, Transtector utilized Aerotek as its agent  
11 for the purposes of recruiting or otherwise hiring individuals into the RF  
12 Technician position.

13 11. On or about April 3, 2017, Lindsey Lee, a recruiter for Aerotek,  
14 called Mr. Kimm and informed Mr. Kimm that Transtector had an opening for a  
15 Lead RF-Technician position.  
16

17 12. Upon information and belief, Ms. Lee and/or an employee/agent of  
18 Transtector had reviewed Mr. Kimm’s resume, assessed that Mr. Kimm’s skill set  
19 matched the above-referenced RF Technician position, and initiated the above-  
20 referenced phone call.  
21

22 13. On April 3, 2017, Mr. Kimm informed Ms. Lee that he was interested  
23 in the position, interested in obtaining long-term employment with Transtector,  
24  
25

1 and, informed Aerotek that he was deploying with the Air National Guard in the  
2 July 2017 timeframe.

3 14. On April 3, 2017, Ms. Lee committed to sending Mr. Kimm's resume  
4 to Transtector but, at the same time, stated that the RF Technician position "would  
5 be longer term, hoping for someone to stick around fulltime," and asked "[h]ow  
6 long do you anticipate the deployment being?"  
7

8 15. On April 3, 2017, Mr. Kimm told Ms. Lee that his deployment would  
9 go until approximately February 2018.  
10

11 16. Upon information and belief, Ms. Lee sent Mr. Kimm's resume to  
12 Transtector.

13 17. Upon information and belief, Ms. Lee told Transtector that Mr.  
14 Kimm would be deploying with the military reserves.  
15

16 18. Upon information and belief, Transtector told Ms. Lee that it did not  
17 want to hire Mr. Kimm, in part, because of his upcoming military obligation and  
18 other military commitments.  
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20 19. On April 4, 2017, Ms. Lee responded to Mr. Kimm as follows:  
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**From:** Marcus Kimm [mailto:[marcus.kimm@gmail.com](mailto:marcus.kimm@gmail.com)]  
**Sent:** Tuesday, April 04, 2017 12:05 PM  
**To:** Lee, Lindsey  
**Subject:** RE: Job Description

Am I not being considered because of the deployment in July?

On Apr 4, 2017 11:53 AM, "Lee, Lindsey" <[lleee@aerotek.com](mailto:lleee@aerotek.com)> wrote:

Ok. They are hoping for a candidate that would be there to fulfill the whole 6 month contract to hire. I will keep you in mind for other opportunities that may be before you leave. But, please get in contact when you are back, so we can discuss options then.

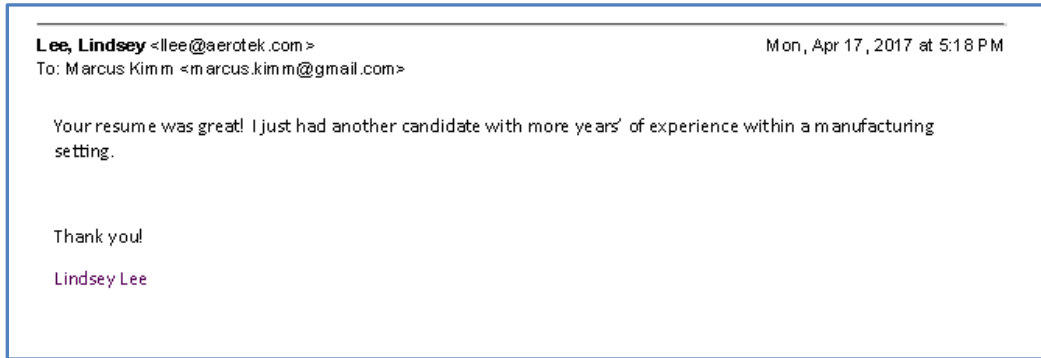
Thank you,

Lindsey

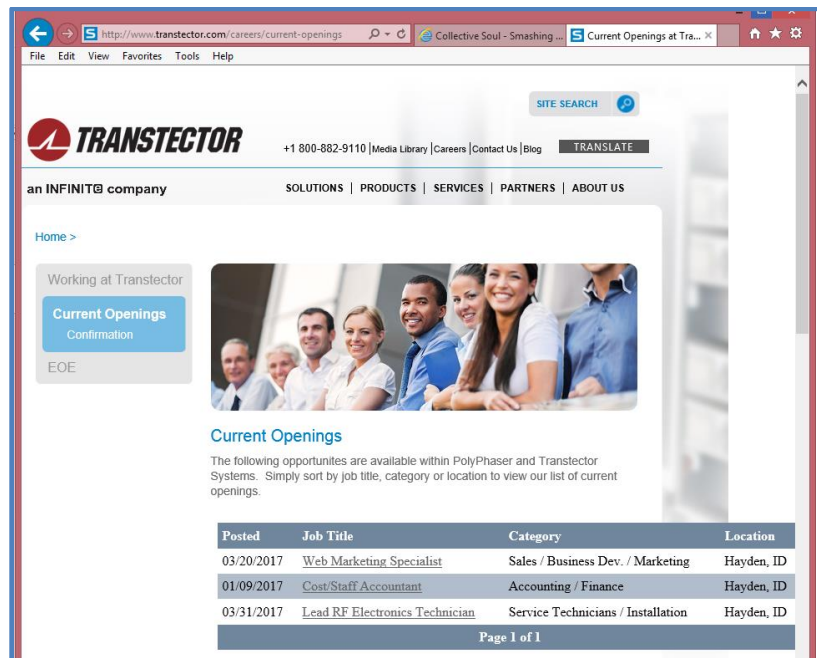
20. Ms. Lee did not respond to Mr. Kimm's question about whether his upcoming deployment was the reason for his not being hired for the RF Technician position.

21. On or about April 13, 2017, Mr. Kimm went to Aerotek's Spokane, Washington office in order to interview for the RF Technician position. That interview lasted approximately 30 minutes. During the interview Ms. Lee expressed no concerns regarding Mr. Kimm's qualifications for the job or interview performance.

1 22. On April 17, 2017, Ms. Lee informed Mr. Kimm that although his  
 2 “resume was great” the job went to another “candidate with more years’ of  
 3 experience within a manufacturing setting.” To wit:



10 23. Aerotech’s statement that Transtector had filled the RF Technician  
 11 position was untrue as that position remains open as of June 14, 2017:



23 24. Mr. Kimm suffered economic injury, as well as other harms and  
 24 losses as a result of Defendants’ discrimination.

1 25. Defendants' actions are the direct and proximate cause of Mr.  
2 Kimm's damages.

3 26. As a result of Defendants' unlawful conduct in violation of  
4 USERRA, Mr. Kimm has suffered a loss of earnings and other benefits of  
5 employment in an amount to be proved at trial.  
6

7 27. As a result of Defendants' unlawful conduct in violation of USERRA  
8 and the necessity of this action to seek a remedy, Mr. Kimm fears further  
9 retaliation against his employment rights by Defendants or its managers, directors  
10 or employees. As such, any employment relationship that Mr. Kimm may have  
11 enjoyed with Defendants prior to the filing of this action is irreparably damaged  
12 through no fault of Mr. Kimm.  
13

14 28. Upon information and belief, Defendants are a party to contracts with  
15 the United States which prohibit Defendants from discrimination against veterans  
16 and military service members and further evidence of its knowing and reckless  
17 disregard for the protections afforded a service member under USERRA.  
18

19 29. At all times relevant hereto, Defendants had a duty to conduct  
20 themselves in compliance with the law, including USERRA and ensure its  
21 managers and agents followed the Act.  
22

23 30. The above-referenced actions by Defendants, and their agents,  
24 breached those duties.  
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1 31. Mr. Kimm suffered economic injury, as well as other harms and  
2 losses as a result of Defendants' failure to follow USERRA and Washington law.

3 32. Defendants' actions are the direct and proximate cause of Mr.  
4 Kimm's damages.

5 33. To the extent that Defendants allege application of any agreement  
6 that constitutes any limitation on Plaintiff's rights under USERRA, it is illegal,  
7 null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.  
8

9 34. Upon information and belief, Defendants maintained workplace  
10 posters that set out employer responsibilities under USERRA as required by 38  
11 U.S.C. § 4334.  
12

13 **IV. CAUSES OF ACTION**

14 **(CAUSE OF ACTION NO. 1 – VIOLATION OF 38 U.S.C. §**  
15 **4311(c)(1) - DISCRIMINATION)**

16 35. Under 38 U.S.C. § 4311(c)(1) an employee's military obligation  
17 cannot serve as a motivating factor for an employer's decision that is adverse to  
18 that employee.  
19

20 36. Mr. Kimm's requirement that he deploy with the Air National Guard  
21 is a military obligation.  
22

23 37. Mr. Kimm's military service was a motivating factor in Defendants'  
24 decision to not hire him for the RF Technician position given, *inter alia*, the  
25



1 closeness in time between Mr. Kimm informing Defendants of his military  
2 obligations and his rejection for the RF Technician position, Defendants'  
3 statement that it was "hoping for a candidate that would be there to fulfill the  
4 whole 6 month contract to hire," and Defendants' statement that the RF  
5 Technician position was filled in the April 2017 timeframe when, at least as of  
6 mid-June 2017, the position remained open.

8 38. Defendants' refusal to hire Mr. Kimm constitutes an adverse  
9 employment action that has caused Mr. Kimm damages in an amount to be proven  
10 at trial.

12 39. Additionally, in the failure to hire context, Mr. Kimm need not show  
13 that he actually would have been hired but that he was eliminated from the  
14 applicant pool as a result of his protected characteristic, here his military  
15 obligation. *See Ruggles v. California Polytechnic State Univ.*, 797 F.2d 782, 786  
16 (9th Cir. 1986).

18 **(CAUSE OF ACTION NO. 2 - VETERANS DISCRIMINATION**  
19 **- VIOLATION OF RCW 49.60.030 & RCW 49.60.180)**

20 40. Under the Washington Law Against Discrimination an employer  
21 cannot take an adverse action against an employee on, *inter alia*, account of that  
22 employee's military/veteran status.

1 41. Defendants violated Mr. Kimm's WLAD-guaranteed protection from  
2 military related employment discrimination for the reasons stated above.

3 42. Defendants' violations of the WLAD have caused Mr. Kimm damage  
4 in an amount to be proven at trial.

5  
6 **(CLAIM FOR LIQUIDATED DAMAGES – 38 U.S.C. § 4323)**

7 43. Plaintiff is entitled to liquidated damages under USERRA because  
8 the Defendants knew, or showed reckless disregard for whether its conduct was  
9 prohibited under USERRA.  
10

11 **V. PRAYER FOR RELIEF**

12 Plaintiff respectfully prays for:

13 A. Compensation for all injury and damages suffered by Mr. Kimm  
14 including, but not limited to, both economic and non-economic damages, in the  
15 amount to be proven at trial including back pay, front pay, pre and post judgment  
16 interest, lost benefits of employment, adverse tax consequences of any award for  
17 economic damages pursuant to Chapter RCW 49.60 et seq., liquidated damages  
18 under both federal and Washington law for willful violations as it relates to the  
19 improper withholding of wages and benefits and general damages relating to  
20 emotional distress and mental anguish damages as provided by law.  
21  
22

23 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 38  
24 U.S.C. § 4323, and as otherwise provided by law under RCW 49.48.030 and  
25

1 49.60.030(2), as well as the *private attorney general* theory of recovery of  
2 reasonable attorney fees and costs in employment related cases.

3 C. For such other and further relief as this Court deems just and  
4 equitable.

5  
6 Respectfully submitted this 16th day of June, 2017.

7  
8 /s Matthew Crotty

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